



GOV. MSG. NO. 1154

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

April 23, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 23, 2012, the following bill was signed into law:

SB2759 SD1

RELATING TO SECURITIES.  
**Act 054 (12)**

*Aloha*  
Sincerely,  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO SECURITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 485A-202, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The following transactions are exempt from the  
4 requirements of sections 485A-301 to 485A-305 and 485A-504:

5 (1) An isolated nonissuer transaction, whether or not  
6 effected by or through a broker-dealer;

7 (2) A nonissuer transaction by or through a broker-dealer  
8 registered or exempt from registration under this  
9 chapter, and a resale transaction by a sponsor of a  
10 unit investment trust registered under the Investment  
11 Company Act of 1940, in a security of a class that has  
12 been outstanding in the hands of the public for at  
13 least ninety days, if, at the date of the transaction:

14 (A) The issuer of the security is engaged in  
15 business, the issuer is not in the organizational  
16 stage or in bankruptcy or receivership, and the  
17 issuer is not a blank check, blind pool, or shell  
18 company that has no specific business plan or



1 purpose or has indicated that its primary  
2 business plan is to engage in a merger or  
3 combination of the business with, or an  
4 acquisition of, an unidentified person;

5 (B) The security is sold at a price reasonably  
6 related to its current market price;

7 (C) The security does not constitute the whole or  
8 part of an unsold allotment to, or a subscription  
9 or participation by, the broker-dealer as an  
10 underwriter of the security or a redistribution;

11 (D) A nationally recognized securities manual or its  
12 electronic equivalent designated by rule adopted  
13 or order issued under this chapter or a record  
14 filed with the Securities and Exchange Commission  
15 that is publicly available and contains:

16 (i) A description of the business and operations  
17 of the issuer;

18 (ii) The names of the issuer's executive officers  
19 and the names of the issuer's directors, if  
20 any;

21 (iii) An audited balance sheet of the issuer as of  
22 a date within eighteen months before the



1 date of the transaction or, in the case of a  
2 reorganization or merger when the parties to  
3 the reorganization or merger each had an  
4 audited balance sheet, a pro forma balance  
5 sheet for the combined organization; and  
6 (iv) An audited income statement for each of the  
7 issuer's two immediate previous fiscal years  
8 or for the period of existence of the  
9 issuer, whichever is shorter, or, in the  
10 case of a reorganization or merger when each  
11 party to the reorganization or merger had  
12 audited income statements, a pro forma  
13 income statement; and  
14 (E) Any one of the following requirements is met:  
15 (i) The issuer of the security has a class of  
16 equity securities listed on a national  
17 securities exchange registered under section  
18 6 of the Securities Exchange Act of 1934 or  
19 designated for trading on the National  
20 Association of Securities Dealers' Automated  
21 Quotation System;



- 1           (ii) The issuer of the security is a unit
- 2                           investment trust registered under the
- 3                           Investment Company Act of 1940;
- 4           (iii) The issuer of the security, including its
- 5                           predecessors, has been engaged in continuous
- 6                           business for at least three years; or
- 7           (iv) The issuer of the security has total assets
- 8                           of at least \$2,000,000 based on an audited
- 9                           balance sheet as of a date within eighteen
- 10                          months before the date of the transaction
- 11                          or, in the case of a reorganization or
- 12                          merger when the parties to the
- 13                          reorganization or merger each had such an
- 14                          audited balance sheet, a pro forma balance
- 15                          sheet for the combined organization;
- 16       (3) A nonissuer transaction by or through a broker-dealer
- 17                           registered or exempt from registration under this
- 18                           chapter in a security of a foreign issuer that is a
- 19                           margin security defined in regulations or rules
- 20                           adopted by the Board of Governors of the Federal
- 21                           Reserve System;

- 1 (4) A nonissuer transaction by or through a broker-dealer  
2 registered or exempt from registration under this  
3 chapter in an outstanding security if the guarantor of  
4 the security files reports with the Securities and  
5 Exchange Commission under the reporting requirements  
6 of section 13 or 15(d) of the Securities Exchange Act  
7 of 1934 (15 U.S.C. 78m or 78o(d));
- 8 (5) A nonissuer transaction by or through a broker-dealer  
9 registered or exempt from registration under this  
10 chapter in a security that:
- 11 (A) Is rated at the time of the transaction by a  
12 nationally recognized statistical rating  
13 organization in one of its four highest rating  
14 categories; or
- 15 (B) Has a fixed maturity or a fixed interest or  
16 dividend, if:
- 17 (i) A default has not occurred during the  
18 current fiscal year or within the three  
19 previous fiscal years or during the  
20 existence of the issuer and any predecessor  
21 if less than three fiscal years, in the



- 1 payment of principal, interest, or dividends  
2 on the security; and
- 3 (ii) The issuer is engaged in business, is not in  
4 the organizational stage or in bankruptcy or  
5 receivership, and is not and has not been  
6 within the previous twelve months a blank  
7 check, blind pool, or shell company that has  
8 no specific business plan or purpose or has  
9 indicated that its primary business plan is  
10 to engage in a merger or combination of the  
11 business with, or an acquisition of, an  
12 unidentified person;
- 13 (6) A nonissuer transaction by or through a broker-dealer  
14 registered or exempt from registration under this  
15 chapter effecting an unsolicited order or offer to  
16 purchase;
- 17 (7) A nonissuer transaction executed by a bona fide  
18 pledgee without the purpose of evading this chapter;
- 19 (8) A nonissuer transaction by a federal covered  
20 investment adviser with investments under management  
21 in excess of \$100,000,000, acting in the exercise of



- 1 discretionary authority in a signed record for the  
2 account of others;
- 3 (9) A transaction between the issuer or other person on  
4 whose behalf the offering is made and an underwriter,  
5 or among underwriters;
- 6 (10) A transaction in a note, bond, debenture, or other  
7 evidence of indebtedness secured by a mortgage or  
8 other security agreement if:
- 9 (A) The note, bond, debenture, or other evidence of  
10 indebtedness is offered and sold with the  
11 mortgage or other security agreement as a unit;
- 12 (B) A general solicitation or general advertisement  
13 of the transaction is not made; and
- 14 (C) A commission or other remuneration is not paid or  
15 given, directly or indirectly, to a person not  
16 registered under this chapter as a broker-dealer  
17 or as an agent;
- 18 (11) A transaction by an executor, administrator of an  
19 estate, personal representative, sheriff, marshal,  
20 receiver, trustee in bankruptcy, guardian, or  
21 conservator;
- 22 (12) A sale or offer to sell to:





- 1 (A) An institutional investor;
- 2 (B) A federal covered investment adviser; or
- 3 (C) Any other person exempted by rule adopted or
- 4 order issued under this chapter;
- 5 (13) Any transaction pursuant to a sale or an offer to sell
- 6 securities of an issuer, if the transaction is part of
- 7 an issue in which:
  - 8 (A) There are no more than twenty-five purchasers
  - 9 (other than those designated in paragraph (12)),
  - 10 wherever located, during any twelve consecutive
  - 11 months;
  - 12 (B) The issuer reasonably believes that all
  - 13 purchasers (other than those designated in
  - 14 paragraph (12)), wherever located, are purchasing
  - 15 for investment purposes and not with the view to,
  - 16 or for sales in connection with, a distribution
  - 17 of the security. The purchase shall be presumed
  - 18 to be made with a view to distribute and not to
  - 19 invest if any resale of a security sold in
  - 20 reliance on this exemption is within twelve
  - 21 months of sale, except a resale pursuant to a
  - 22 registration statement effective under section



- 1                   485A-301, or to an accredited investor pursuant  
2                   to an exemption available under this chapter;
- 3           (C) No commission, discount, or other remuneration is  
4                   paid or given, directly or indirectly, to a  
5                   person, other than a broker-dealer or agent  
6                   registered under this chapter, for soliciting a  
7                   prospective purchaser in this State; and
- 8           (D) The securities of the issuer are not offered or  
9                   sold by general solicitation or any general  
10                  advertisement or other advertising medium;
- 11       (14) A transaction under an offer to existing security  
12                  holders of the issuer, including persons who at the  
13                  date of the transaction are holders of convertible  
14                  securities, options, or warrants, if a commission or  
15                  other remuneration, other than a standby commission,  
16                  is not paid or given, directly or indirectly, for  
17                  soliciting a security holder in this State;
- 18       (15) (A) A transaction involving the offer or sale of a  
19                  security by an issuer to an accredited investor  
20                  that meets the following requirements:
- 21                   (i) The issuer reasonably believes that the sale  
22                   is to persons who are accredited investors;



- 1                   (ii) The issuer is not in the development stage,  
2                                 without specific business plan or purpose;
- 3                   (iii) The issuer has not indicated that the  
4                                 issuer's business plan is to engage in a  
5                                 merger or acquisition with an unidentified  
6                                 company or companies, or other entity or  
7                                 person; and
- 8                   (iv) The issuer reasonably believes that all  
9                                 purchasers are purchasing for investment  
10                                 purposes and not with the view to, or for  
11                                 sales in connection with, a distribution of  
12                                 the security. The purchase shall be  
13                                 presumed to be made with a view to  
14                                 distribute and not to invest if any resale  
15                                 of a security sold in reliance on this  
16                                 exemption is within twelve months of sale,  
17                                 except a resale pursuant to a registration  
18                                 statement effective under section 485A-301,  
19                                 or to an accredited investor pursuant to an  
20                                 exemption available under this chapter;
- 21                   (B) The exemption under this paragraph shall not  
22                                 apply to an issuer if the issuer; any affiliated



1 issuer; any beneficial owner of ten per cent or  
2 more of any class of the issuer's equity  
3 securities; any issuer's predecessor, director,  
4 officer, general partner, or promoter presently  
5 connected in any capacity with the issuer; and  
6 any underwriter or partner, director, or officer  
7 of the underwriter of the securities to be  
8 offered:

9 (i) Within the last five years has filed a  
10 registration statement that is the subject  
11 of a currently effective registration stop  
12 order entered by any state securities  
13 administrator or the Securities and Exchange  
14 Commission;

15 (ii) Within the last five years has been  
16 convicted of any criminal offense in  
17 connection with the offer, purchase, or sale  
18 of any security, or involving fraud or  
19 deceit;

20 (iii) Is currently subject to any state or federal  
21 administrative enforcement order or judgment  
22 entered within the last five years, finding



1 fraud or deceit in connection with the  
2 purchase or sale of any security; or  
3 (iv) Is currently subject to any order, judgment,  
4 or decree of any court of competent  
5 jurisdiction, entered within the last five  
6 years, temporarily, preliminarily, or  
7 permanently restraining or enjoining such  
8 party from engaging in or continuing to  
9 engage in any conduct or practice involving  
10 fraud or deceit in connection with the  
11 purchase or sale of any security;

12 (C) Subparagraph (B) shall not apply if:

13 (i) The party subject to the disqualification is  
14 licensed or registered to conduct  
15 securities-related business in the state in  
16 which the order, judgment, or decree  
17 creating the disqualification was entered  
18 against such party;

19 (ii) Before the first offer under this exemption,  
20 the commissioner, or the court or regulatory  
21 authority that entered the order, judgment,  
22 or decree waives the disqualifications; or



1 (iii) The issuer establishes that the issuer did  
2 not know and in the exercise of reasonable  
3 care, based on a factual inquiry, could not  
4 have known that a disqualification existed  
5 under this paragraph; and

6 (D) An issuer claiming the exemption under this  
7 paragraph, [~~within~~] no later than fifteen days  
8 after the first sale in this State, shall file  
9 with the commissioner a notice of transaction, a  
10 consent to service of process, a copy of the  
11 offering circular or similar document provided to  
12 the accredited investor and a \$200 filing fee.

13 For the purposes of this paragraph, "accredited  
14 investor" shall have the same meaning as provided in  
15 Rule 501(a) adopted under the Securities Act of 1933  
16 (17 C.F.R. 230.501(a));

17 (16) An offer to sell, but not a sale, of a security not  
18 exempt from registration under the Securities Act of  
19 1933 if:

20 (A) A registration or offering statement or similar  
21 record as required under the Securities Act of  
22 1933 has been filed, but is not effective, or the



- 1 offer is made in compliance with Rule 165 adopted  
2 under the Securities Act of 1933 (17 C.F.R.  
3 230.165); and
- 4 (B) A stop order of which the offeror is aware has  
5 not been issued against the offeror by the  
6 commissioner or the Securities and Exchange  
7 Commission, and an audit, inspection, or  
8 proceeding that is public and that may culminate  
9 in a stop order is not known by the offeror to be  
10 pending;
- 11 (17) An offer to sell, but not a sale, of a security exempt  
12 from registration under the Securities Act of 1933 if:
- 13 (A) A registration statement has been filed under  
14 this chapter, but is not effective;
- 15 (B) A solicitation of interest is provided in a  
16 record to offerees in compliance with a rule  
17 adopted by the commissioner under this chapter;  
18 and
- 19 (C) A stop order of which the offeror is aware has  
20 not been issued by the commissioner under this  
21 chapter and an audit, inspection, or proceeding



1                   that may culminate in a stop order is not known  
2                   by the offeror to be pending;

3       (18) A transaction involving the distribution of the  
4           securities of an issuer to the security holders of  
5           another person in connection with a merger,  
6           consolidation, exchange of securities, sale of assets,  
7           or other reorganization to which the issuer, or its  
8           parent or subsidiary and the other person, or its  
9           parent or subsidiary, are parties;

10       (19) A rescission offer, sale, or purchase under section  
11           485A-510;

12       (20) An offer or sale of a security to a person not a  
13           resident of this State and not present in this State  
14           if the offer or sale does not constitute a violation  
15           of the laws of the state or foreign jurisdiction in  
16           which the offeree or purchaser is present and is not  
17           part of an unlawful plan or scheme to evade this  
18           chapter;

19       (21) Employees' stock purchase, savings, option, profit-  
20           sharing, pension, or similar employees' benefit plan,  
21           including any securities, plan interests, and  
22           guarantees issued under a compensatory benefit plan or





1 compensation contract, contained in a record,  
2 established by the issuer, its parents, its majority-  
3 owned subsidiaries, or the majority-owned subsidiaries  
4 of the issuer's parent for the participation of their  
5 employees, including offers or sales of such  
6 securities to:

7 (A) Directors; general partners; trustees, if the  
8 issuer is a business trust; officers;  
9 consultants; and advisors;

10 (B) Family members who acquire the securities from  
11 those persons through gifts or domestic relations  
12 orders;

13 (C) Former employees, directors, general partners,  
14 trustees, officers, consultants, and advisors if  
15 those individuals were employed by or providing  
16 services to the issuer when the securities were  
17 offered; and

18 (D) Insurance agents who are exclusive insurance  
19 agents of the issuer, or the issuer's  
20 subsidiaries or parents, or who derive more than  
21 fifty per cent of their annual income from those  
22 organizations;



- 1           (22) A transaction involving:
- 2                   (A) A stock dividend or equivalent equity
- 3                           distribution, whether or not the corporation or
- 4                           other business organization distributing the
- 5                           dividend or equivalent equity distribution is the
- 6                           issuer, if nothing of value is given by
- 7                           stockholders or other equity holders for the
- 8                           dividend or equivalent equity distribution other
- 9                           than the surrender of a right to a cash or
- 10                          property dividend if each stockholder or other
- 11                          equity holder may elect to take the dividend or
- 12                          equivalent equity distribution in cash, property,
- 13                          or stock;
- 14                   (B) An act incident to a judicially approved
- 15                          reorganization in which a security is issued in
- 16                          exchange for one or more outstanding securities,
- 17                          claims, or property interests, or partly in such
- 18                          exchange and partly for cash; or
- 19                   (C) The solicitation of tenders of securities by an
- 20                          offeror in a tender offer in compliance with Rule
- 21                          162 adopted under the Securities Act of 1933 (17
- 22                          C.F.R. 230.162);



1           (23) A nonissuer transaction in an outstanding security by  
2                   or through a broker-dealer registered or exempt from  
3                   registration under this chapter, if the issuer is a  
4                   reporting issuer in a foreign jurisdiction designated  
5                   by this paragraph or by rule adopted or order issued  
6                   under this chapter; has been subject to continuous  
7                   reporting requirements in the foreign jurisdiction for  
8                   not less than one hundred eighty days before the  
9                   transaction; and the security is listed on the foreign  
10                  jurisdiction's securities exchange that has been  
11                  designated by this paragraph or by rule adopted or  
12                  order issued under this chapter, or is a security of  
13                  the same issuer that is of senior or substantially  
14                  equal rank to the listed security or is a warrant or  
15                  right to purchase or subscribe to any of the  
16                  foregoing. For purposes of this paragraph, Canada,  
17                  together with its provinces and territories, is a  
18                  designated foreign jurisdiction and the Toronto Stock  
19                  Exchange, Inc., is a designated securities exchange.  
20                  After an administrative hearing in accordance with  
21                  chapter 91, the commissioner, by rule adopted or order  
22                  issued under this chapter, may revoke the designation



1 of a securities exchange under this paragraph, if the  
2 commissioner finds that revocation is necessary or  
3 appropriate in the public interest and for the  
4 protection of investors;

5 (24) Any offer or sale by or through a real estate broker  
6 or real estate salesperson licensed under the laws of  
7 this State, of a security issued on or after July 1,  
8 1961, by a corporation organized under the laws of  
9 this State, the holder of which is entitled solely by  
10 reason of the holder's ownership thereof, to occupy  
11 for dwelling purposes a house, or an apartment in a  
12 building, owned or leased by such corporation;  
13 provided that the issuer of the security shall apply  
14 for the exemption to the commissioner on such form and  
15 containing such information as the commissioner may  
16 prescribe. If the commissioner finds that the  
17 business applicant's proposed plan and the proposed  
18 issuance of securities are fair, just, and equitable,  
19 that the applicant intends to transact its business  
20 fairly and honestly, and that the securities that the  
21 applicant proposes to issue and the method to be used  
22 by the applicant in issuing or disposing of the



1 securities will not, in the opinion of the  
2 commissioner, work a fraud upon the purchaser thereof,  
3 the commissioner shall issue to the applicant a permit  
4 authorizing the applicant to issue and dispose of the  
5 securities in this State in the manner provided herein  
6 and in such amounts and for such consideration as the  
7 commissioner may provide in the permit. Otherwise,  
8 the commissioner shall deny the application and refuse  
9 the permit and notify the applicant of the decision in  
10 writing, subject to appeal as provided in section  
11 485A-609. In any permit issued under this paragraph,  
12 the commissioner may require the deposit in escrow or  
13 impoundment of any or all securities, the proceeds  
14 from the sale thereof, approval of advertising  
15 material, and any of the conditions as set forth in  
16 section 485A-304(f). The commissioner may act as  
17 escrow holder for securities required to be deposited  
18 in escrow by the commissioner's order or as a  
19 necessary signatory on any account in which impounded  
20 proceeds from the sale of escrowed securities are  
21 deposited;



1           (25) Any offer or sale by or through a real estate broker  
2                   or real estate salesperson licensed under the laws of  
3                   this State of an apartment or unit in a condominium  
4                   project, and a rental management contract relating to  
5                   the apartment or unit, including an interest in a  
6                   partnership formed for the purpose of managing the  
7                   rental of apartments or units if the rental management  
8                   contract or the interest in the partnership is offered  
9                   at the same time as the apartment or unit is offered.

10                   For the purposes of this paragraph, the terms  
11                   "apartment", "unit", "condominium", and "project"  
12                   shall have the meanings prescribed in section 514A-3  
13                   or 514B-3; and

14           (26) Any transaction not involving a public offering within  
15                   the meaning of section 4(2) of the Securities Act of  
16                   1933 (15 U.S.C. 77d), but not including any  
17                   transaction specified in the rules and regulations  
18                   thereunder."

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

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



- 1 (1) An individual who represents a broker-dealer in  
2 effecting transactions in this State limited to those  
3 described in section 15(h)(2) of the Securities  
4 Exchange Act of 1934 (15 U.S.C. 78(o)(2));
- 5 (2) An individual who represents a broker-dealer that is  
6 exempt under section 485A-401(b) or 485A-401(d);
- 7 (3) An individual who represents an issuer with respect to  
8 an offer or sale of the issuer's own securities or  
9 those of the issuer's parent company or any of the  
10 issuer's subsidiaries, and who is not compensated in  
11 connection with the individual's participation by the  
12 payment of commissions or other remuneration based,  
13 directly or indirectly, on transactions in those  
14 securities;
- 15 (4) An individual who represents an issuer and who effects  
16 transactions in the issuer's securities exempted by  
17 section 485A-202, other than section [~~485A-202(a)(11)~~  
18 ~~and (14)]<sup>7</sup>] 485A-202(a)(10) and (13);~~
- 19 (5) An individual who represents an issuer that effects  
20 transactions solely in federal covered securities of  
21 the issuer; provided that an individual who effects  
22 transactions in a federal covered security under



1 section 18(b)(3) or 18(b)(4)(D) of the Securities Act  
2 of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not  
3 exempt if the individual is compensated in connection  
4 with the agent's participation by the payment of  
5 commissions or other remuneration based, directly or  
6 indirectly, on transactions in those securities;

7 (6) An individual who represents a broker-dealer  
8 registered in this State under section 485A-401(a) or  
9 exempt from registration under section 485A-401(b) in  
10 the offer and sale of securities for an account of a  
11 nonaffiliated federal covered investment adviser with  
12 investments under management in excess of \$100,000,000  
13 acting for the account of others pursuant to  
14 discretionary authority in a signed record;

15 (7) An individual who represents an issuer in connection  
16 with the purchase of the issuer's own securities;

17 (8) An individual who represents an issuer and who  
18 restricts participation to performing clerical or  
19 ministerial acts; or

20 (9) Any other individual exempted by rule adopted or order  
21 issued under this chapter."





1 SECTION 3. Section 485A-501, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) It shall be unlawful for a person, in connection with  
4 the offer, sale, or purchase of a security, directly or  
5 indirectly:

6 (1) To employ a device, scheme, or artifice to defraud;

7 (2) To make an untrue statement of a material fact or to  
8 fail to state a material fact necessary to make the  
9 statements made, in light of the circumstances under  
10 which they were made, not misleading;

11 (3) To engage in an act, practice, or course of business  
12 that operates or would operate as a fraud or deceit  
13 upon another person;

14 (4) To issue, circulate, or publish any prospectus,  
15 circular, advertisement, printed matter, document,  
16 pamphlet, leaflet, or other literature (in this  
17 chapter collectively referred to as "advertising  
18 matter"), which contains an untrue statement [~~or~~] of a  
19 material fact or fails to state a material fact  
20 necessary to make the statements therein made, in  
21 light of the circumstances under which they are made,  
22 not misleading;



1 (5) To issue, circulate, or publish any advertising matter  
2 or make any written representation, unless the name of  
3 the person issuing, circulating, publishing, or making  
4 the same and the fact that the person is issuing,  
5 circulating, or making the same shall be clearly  
6 indicated thereon;

7 (6) To make any statement or representation or issue,  
8 circulate, or publish any advertising matter  
9 containing any statement, to the effect that the  
10 security has been in any way approved or endorsed by  
11 the commissioner; or

12 (7) To issue, circulate, or publish any advertising matter  
13 unless a copy thereof has been previously filed with  
14 the office of the commissioner, or unless the  
15 commissioner has by rule adopted or order issued under  
16 this chapter exempted the filing of any advertising  
17 material."

18 SECTION 4. Section 485A-502, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 "(c) Notwithstanding subsection (b)(1), an investment  
21 adviser may enter into, extend, or renew an investment advisory  
22 contract that:

- 1 (1) Provides for compensation based upon the total value  
2 of a fund averaged over a definite period, or as of  
3 definite dates, or taken as of a definite date; or
- 4 (2) Provides for compensation to the investment adviser on  
5 the basis of a share of capital gains or capital  
6 appreciation of the funds of the client; provided that  
7 the conditions and requirements as defined and set  
8 forth in Rule 205-3 under the Investment [Company]  
9 Advisers Act of 1940 (17 C.F.R. 275.205-3) shall be  
10 met; and provided further that before entering into  
11 the advisory contract, and in addition to the  
12 requirements of Form ADV, the investment adviser shall  
13 disclose in writing to the client or the client's  
14 independent agent all material information concerning  
15 the proposed advisory arrangement, including the  
16 following:
- 17 (A) That the fee arrangement may create an incentive  
18 for the investment adviser to make investments  
19 that are riskier or more speculative than would  
20 be the case in the absence of a performance-based  
21 fee;



- 1 (B) Where relevant, that the investment adviser may  
2 receive increased compensation with regard to  
3 unrealized appreciation as well as realized gains  
4 in the client's account;
- 5 (C) The periods that will be used to measure  
6 investment performance throughout the contract  
7 and their significance in the computation of the  
8 fee;
- 9 (D) The nature of any index that will be used as a  
10 comparative measure of investment performance,  
11 the significance of the index, and the reason the  
12 investment adviser believes that the index is  
13 appropriate; and
- 14 (E) Where the investment adviser's compensation is  
15 based in part on the unrealized appreciation of  
16 securities for which market quotations are not  
17 readily available within the meaning of Rule  
18 2a-4(a)(1) under the Investment Company Act of  
19 1940 (17 C.F.R. 270.2a-4(a)(1)), how the  
20 securities will be valued and the extent to which  
21 the valuation will be independently determined."



1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3           SECTION 6. This Act shall take effect upon its approval.

APPROVED this 23 day of APR, 2012

A handwritten signature in cursive script, reading "Neil Abernethy". The signature is written in black ink and is positioned above the printed name of the Governor.

GOVERNOR OF THE STATE OF HAWAII