

SENATE, No. 3390

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 4, 2021

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

“New Jersey Commodity Code Act.”

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning commodity futures trading and supplementing
2 Title 49 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may cited as the “New Jersey
8 Commodity Code Act.”

9
10 2. As used in this act:

11 “Board of trade” means any person or group of persons engaged
12 in buying or selling any commodity or receiving a commodity for
13 sale on consignment, whether the person or group of persons is
14 characterized as a board of trade, exchange, or other form of
15 marketplace.

16 “Bureau chief” means the chief of the Bureau of Securities in the
17 Division of Community Affairs in the Department of Law and Public
18 Safety.

19 “Commodity” means, except as otherwise specified by the bureau
20 chief by rule, regulation or order, any agricultural, grain or livestock
21 product or by-product, any metal or mineral, including a precious
22 metal as set forth in this act, any gem or gemstone, whether
23 characterized as precious, semi-precious or otherwise, any fuel,
24 whether liquid, gaseous or otherwise, any foreign currency and all
25 other goods, articles, products or items of any kind, provided that the
26 term commodity shall not include:

27 (1) a numismatic coin whose fair market value is at least twenty
28 percent higher than the value of the metal it contains;

29 (2) real property or any agricultural or livestock product grown
30 or raised on real property and offered or sold by the lessee of the real
31 property; or

32 (3) any work of art offered or sold by art dealers at public auction
33 or offered or sold through a private sale by the owner of the art.

34 “Commodity contract” means any account, agreement or contract
35 for the purchase or sale, primarily for speculation or investment
36 purposes and not for use or consumption by the offeree or purchaser,
37 of one or more commodities,, whether for immediate or subsequent
38 delivery or whether delivery is intended by the parties, and whether
39 characterized as a cash contract, deferred shipment or deferred
40 delivery contract, forward contract, futures contract, installment or
41 margin contract, leverage contract or otherwise. Any commodity
42 contract offered or sold shall, in the absence of evidence to the
43 contrary, be presumed to be offered or sold for speculation or
44 investment purposes. A commodity contract shall not include any
45 contract or agreement which requires, and under which the purchaser
46 receives, within 28 calendar days from the payment in good funds of
47 any portion of the purchase price, physical delivery of the total

1 amount of each commodity to be purchased under the contract or
2 agreement.

3 “Commodity Exchange Act” means the federal Commodity
4 Exchange Act,” 7 U.S.C. s.1 et seq.

5 “Commodity Futures Trading Commission” means the regulatory
6 agency established to administer the federal Commodity Exchange
7 Act (7 U.S.C. s.2(a)(2)).

8 “Commodity Futures Trading Commission rule” means any rule,
9 regulation or order of the federal Commodity Futures Trading
10 Commission in effect on the effective date of this act.

11 “Commodity merchant” means any of the following, as defined or
12 described in the Commodity Exchange Act or by the federal
13 Commodity Futures Trading Commission regulation:

- 14 (1) futures commission merchant;
- 15 (2) commodity pool operator;
- 16 (3) commodity trading advisor;
- 17 (4) introducing broker;
- 18 (5) leverage transaction merchant;
- 19 (6) an associated person of any of the foregoing;
- 20 (7) floor broker; or
- 21 (8) any other person, other than a futures association, required to
22 register with the Commodity Futures Trading Commission.

23 “Commodity option” means any account, agreement or contract
24 giving a party to the contract the right to purchase or sell one or more
25 commodities or one or more commodity contracts, whether
26 characterized as an option, privilege, indemnity bid, offer, put, call
27 advance guaranty, decline guaranty or otherwise, but it shall not
28 include a commodity option traded on a national securities exchange
29 registered with the federal Securities and Exchange Commission.

30 “Financial institution” means a bank, savings bank, savings and
31 loan association, or trust company organized and supervised pursuant
32 to the laws of the United States or of any state.

33 “Offer” or “offer to sell” includes every offer, every attempt to
34 offer to dispose of, or disposition, for value.

35 “Person” means an individual, a corporation, a partnership, an
36 association, a joint stock company, a trust where the interest of the
37 beneficiaries are evidenced by a security, an unincorporated
38 organization, a government or a political subdivision of a
39 government, but shall not include a contract market designated by the
40 Commodity Futures Trading Commission or any clearinghouse of the
41 same or a national securities exchange registered with the federal
42 Securities and Exchange Commission pursuant to 15 U.S.C. s.78d et
43 seq., or any employee, officer or director of the contract market,
44 clearinghouse or exchange acting solely in that capacity.

45 “Precious metal” means:

- 46 (1) silver, in either coin, bullion, or other form;
- 47 (2) gold, in either coin, bullion, or other form; and

1 (3) any other items as the bureau chief may specify by rule,
2 regulation, or order.

3
4 3. a. Except as provided in paragraph (1) of subsection a. of
5 section 5 of this act, no person shall offer to enter into, enter into or
6 confirm the execution of any transaction for the delivery of any
7 commodity under a commodity contract or any other contract,
8 account, arrangement, scheme, or device that serves the same
9 function or functions or is marketed or managed in substantially the
10 same manner as the account or contract.

11 b. Except as provided in section 4 of this act, no person shall sell
12 or purchase or offer to sell or purchase any commodity under any
13 other commodity contract or under any commodity option or offer to
14 enter into or enter into as the seller or purchaser of any other
15 commodity contract or any commodity option.

16
17 4. The prohibition in subsection b. of section 3 of this act shall
18 not apply to any of the following persons, or any employee, officer
19 or director who is acting solely in that capacity:

20 a. a person registered with the Commodity Futures Trading
21 Commission as a futures commission merchant or as a leverage
22 transaction merchant whose activities require that registration;

23 b. a person registered with the federal Securities and Exchange
24 Commission as a broker-dealer whose activities require this
25 registration;

26 c. a person affiliated with, and whose obligations and liabilities
27 are guaranteed by, a person referred to in subsection a. or b. of this
28 section;

29 d. a person who is a member of a contract market designation by
30 the Commodity Futures Trading Commission or any clearinghouse
31 of the commission;

32 e. a financial institution; or

33 f. a person registered under the laws of this State as a securities
34 broker-dealer whose activities require that registration.

35
36 5. a. The prohibitions established by section 3 of this act shall
37 not apply to the following:

38 (1) a transaction within the exclusive jurisdiction of the
39 Commodity Futures Trading Commission as granted under the
40 "Commodity Exchange Act," 7 U.S.C. s.1 et seq.;

41 (2) a commodity contract for the purchase of a precious metal
42 which requires, and under which the purchaser receives, within seven
43 calendar days from the payment in good funds or any portion of the
44 purchase price, physical delivery of the quantity of the precious
45 metals purchased by the payment, provided that, for the purposes of
46 this paragraph, physical delivery shall be deemed to have occurred
47 if, within the seven-day period, the quantity of precious metals
48 purchased by the payment is delivered, whether in specifically

1 segregated or fungible bulk form, into the possession of a depository
2 other than the seller which is either:

- 3 (a) a financial institution;
- 4 (b) a depository in which the warehouse receipts of which are
5 recognized for delivery purposes for any commodity on a contract
6 market designated by the Commodity Futures Trading Commission;
- 7 (c) a storage facility licensed or regulated by the United States or
8 any agency of the federal government; or
- 9 (d) a depository institution designated by the bureau chief or
10 other person which qualifies as a depository, issues and the purchaser
11 receives, a certificate, document of title, confirmation or other
12 instrument evidencing that the quantity of precious metals has been
13 delivered to the depository and is being held by the depository on the
14 purchaser's behalf, free and clear of all liens and encumbrances,
15 other than liens of the purchaser, tax liens, liens agreed to by the
16 purchaser or liens of the depository for fees and expenses which have
17 previously been disclosed to the purchaser;

18 (3) a commodity contract for the sale of a cash commodity for
19 deferred shipment or delivery entered into solely between persons
20 engaged in, processing, using commercially or handling as
21 merchants, each commodity subject to the contract or any by-product
22 of the commodity;

23 (4) a commodity contract under which the offeree or the
24 purchaser is a person referred to in section 4 of this act, an insurance
25 company, an investment company as defined in the "Investment
26 Company Act of 1940," 15 U.S.C. s.80a-1 et seq., or an employee
27 pension and profit-sharing or benefit plan, other than a self-employed
28 individual retirement plan or individual retirement account.

29 b. The bureau chief may issue rules, regulations or orders
30 prescribing the terms and conditions of all transactions and contracts
31 covered by the provisions of this act which are not within the
32 exclusive jurisdiction of the Commodity Futures Trading
33 Commission, exempting any person or transaction from any
34 provision of this act conditionally or unconditionally and otherwise
35 implementing the provisions of this act for the protection of
36 purchasers and sellers of commodities.

37

38 6. a. No person shall engage in a trade or business or otherwise
39 act as a commodity merchant unless the person:

40 (1) is registered or temporarily licensed with the Commodity
41 Futures Trading Commission for each activity constituting the person
42 as a commodity merchant and the registration or temporary license
43 has not have expired, suspended or revoked; or

44 (2) is exempt from the registration by virtue of the federal
45 Commodity Exchange Act or of a Commodity Futures Trading
46 Commission rule.

47 b. No board of trade shall trade, or provide a place for the trading
48 of, any commodity contract or commodity option required to be

1 traded on or subject to the rules of a contract market designated by
2 the Commodity Futures Trading Commission unless the board of
3 trade has been designated for the commodity contract or commodity
4 option and the designation has not been vacated, suspended, or
5 revoked.

6
7 7. For any commodity contract or commodity option that is
8 subject to the provisions of section 3 of this act, no person shall
9 directly or indirectly:

10 a. cheat or defraud or attempt to cheat or defraud, any other
11 person or employ any device, scheme or artifice to defraud any other
12 person;

13 b. make any false report, enter any false record or make any
14 untrue statement of a material fact or omit to state a material fact
15 necessary in order to make the statements, in the light of the
16 circumstances under which they were made, not misleading, except
17 the provisions of this subsection shall not apply in the case of a
18 commodity contract covered by paragraph (3) of subsection a. of
19 section 5 of this act;

20 c. engage in any transaction, act, practice or course of business,
21 including, without limitation, any form of advertising or solicitation
22 that operates or would operate as a fraud or deceit upon any person;
23 or

24 d. misappropriate or convert the funds, security, or property of
25 any other person, in or in connection with the purchase or sale of the
26 offer to sell, to the offer to enter into or the entry into a contract.

27
28 8. a. The act, omission or failure of any official, agent, or other
29 person acting for any individual, association, partnership,
30 corporation, or trust within the scope of his employment or office
31 shall be deemed the act, omission or failure of the individual,
32 association, partnership, corporation, including a limited liability
33 company and a subchapter S corporation, trust, as well as that of the
34 official, agent or other person.

35 b. A person who directly or indirectly controls another person
36 under any provision of this act, a partner, officer, or director of the
37 other person, a person occupying a similar status or performing
38 similar functions, and an employee of the other person who
39 materially aids in the violation shall be liable jointly and severally
40 with and to the same extent as the other, unless the person who is also
41 liable by virtue of this provision sustains the burden of proof that he
42 did not know, and in exercise of reasonable care could not have
43 known, of the existence of the facts by reason of which the liability
44 is alleged to exist.

45
46 9. Nothing in this act shall impair, derogate or otherwise affect
47 the authority or powers of the bureau chief under the "Uniform
48 Securities Law (1997)," P.L.1997, c.276 (C.49:3-47 et seq.), or the

1 application of any provision of that act to any person or transaction
2 subject to that act.

3

4 10. This act may be construed and implemented to effectuate its
5 general purpose to protect investors, to prevent and prosecute illegal
6 and fraudulent schemes involving commodities and to maximize
7 coordination with federal laws and the laws of other states and the
8 administration and enforcement of those laws.

9

10 11. a. The bureau chief may make investigations, within or
11 without this State, as he finds necessary and appropriate to:

12 (1) determine whether any person has violated, or is about to
13 violate, any provision of this act or any rule or order of the bureau
14 chief; or

15 (2) aid in enforcement of this act.

16 b. The bureau chief may publish information concerning any
17 violation of this act or any rule or order of the bureau chief, consistent
18 with the laws of this State.

19 c. For the purposes of any investigation or proceeding under this
20 act, the bureau chief or any officer or employee designated by rule or
21 order may administer oaths and affirmations, subpoena witnesses,
22 compel their attendance, take evidence and require the production of
23 any books, papers, correspondence, memoranda, agreements or other
24 documents or records which the bureau chief finds to be relevant or
25 material to the inquiry.

26 d. (1) If a person does not give testimony or produce the
27 documents required by the bureau chief or a designated employee
28 pursuant to an administrative subpoena, the bureau chief or
29 designated employee may apply for a court order compelling
30 compliance with the subpoena or the giving of the required
31 testimony.

32 (2) The request for order of compliance may be addressed to
33 either:

34 (a) the Superior Court where service may be obtained on the
35 person refusing to testify or produce, if the person is within this State,
36 or

37 (b) if the person is outside this State, the appropriate court of the
38 state having jurisdiction over the person refusing to testify or
39 produce.

40

41 12. a. If the bureau chief believes that any person has engaged,
42 or is about to engage in any act or practice constituting a violation of
43 any provision of this act or any rule or order under the act, the bureau
44 chief may:

45 (1) issue a cease and desist order;

46 (2) take disciplinary action against a licensed person as specified
47 in this act;

1 (3) issue an order imposing a civil penalty in an amount which
2 may not exceed \$10,000 for any single violation or \$100,000 for
3 multiple violations of a single proceeding or a series of related
4 proceedings;

5 (4) initiate any of the actions specified in subsection b. of this
6 section.

7 b. The director may institute any of the following actions in the
8 appropriate court of this State or in the appropriate courts of another
9 state, in addition to any legal or equitable remedies otherwise
10 available:

11 (1) a declaratory judgement;

12 (2) an action for a prohibitory or mandatory injunction to enjoin
13 the violation and to ensure compliance with this act or any rule or
14 order of the bureau chief;

15 (3) an action for disgorgement;

16 (4) an action for restitution; or

17 (5) an action for appointment of a receiver or conservator for the
18 defendant or the defendant's assets.

19

20 13. a. (1) Upon a proper showing by the bureau chief that a
21 person has violated, or is about to violate, any provision of this act,
22 or a rule or order of the bureau chief, the Superior Court may grant
23 appropriate remedies.

24 (2) Upon the showing of a violation of this act or a rule or order
25 of the bureau chief, the court, in addition to traditional remedies,
26 including temporary restraining orders, permanent or temporary
27 prohibitory or mandatory injunctions and actions in lieu of
28 prerogative writs may grant the following remedies:

29 (a) imposition of a civil penalty in an amount which may not
30 exceed \$10,000 for any single violation or \$100,000 for multiple
31 violations in a single proceeding or a series of related proceedings;

32 (b) disgorgement;

33 (c) declaratory judgement;

34 (d) restitution to investors wishing restitution; and

35 (e) appointment of a receiver or conservator for the defendant or
36 the defendant's assets.

37 (3) Appropriate remedies when the defendant is shown only about
38 to violate this act or a rule or order of the bureau chief shall be limited
39 to:

40 (a) a temporary restraining order;

41 (b) a temporary or permanent injunction;

42 (c) a proceeding in lieu of prerogative writ;

43 (d) an order appointing a receiver or conservator for the
44 defendant or the defendant's assets;

45 b. The court shall not require the bureau chief to post a bond in
46 any official action under this act.

47 c. (1) Upon a proper showing by the bureau chief or securities
48 or commodity agency of another state that a person other than a

1 government or governmental agency or instrumentality has violated,
2 or is about to violate, any provision of the commodity code of that
3 state or any rule or order of the administrator or securities or
4 commodity agency of that state, the Superior Court may grant
5 appropriate legal remedies.

6 (2) Upon a showing of a violation of the securities or commodity
7 act of the foreign state, the court, in addition to traditional legal
8 remedies including temporary restraining orders, permanent or
9 temporary prohibitory or mandatory injunctions and a proceeding in
10 lieu of prerogative writ, may grant the following special remedies:

11 (a) disgorgement; and

12 (b) appointment of a receiver, conservator, or ancillary receiver
13 or conservator or ancillary receiver or conservator of the defendant
14 or the defendant's assets located in this State.

15 (3) Appropriate remedies when the defendant is shown only about
16 to violate the securities or commodity act of the foreign state or a rule
17 or order of the administrator or securities or commodity agency of
18 the foreign state shall be limited to:

19 (a) a temporary restraining order;

20 (b) a temporary or permanent injunction;

21 (c) a proceeding in lieu of prerogative writ;

22 (d) an order appointing a receiver, conservator, or ancillary
23 receiver or conservator for the defendant or the defendant's assets
24 located in this State.

25
26 14. a. Any person who willfully violates any provision of this act
27 is guilty of a crime of the third degree.

28 b. Any person who willfully and knowingly violates any rule or
29 order of the bureau chief under this act is guilty of a crime of the third
30 degree.

31 c. The bureau chief may refer any evidence as available
32 concerning violations if this act or any rule or order of the bureau or
33 the Attorney General who may, with or without a reference from the
34 director, institute the appropriate criminal proceedings under the act.

35
36 15. a. The act shall be administered by the bureau chief.

37 b. Neither the bureau chief nor any employee of the bureau shall
38 use any information which is filed with or obtained by the bureau
39 chief which is not public information for personal gain or benefit, nor
40 shall the bureau chief or any employees of the bureau conduct any
41 securities or commodity dealings whatsoever based upon any upon
42 any such information, even though public, if there has not been a
43 sufficient period of time for the securities or commodity markets to
44 assimilate such information.

45 c. (1) Except as provided in paragraph (2) of this subsection, all
46 information collected, assembled, or maintained by the bureau chief
47 is public information and shall be available for the examination of
48 the public as provided in P.L.1963, c.73 (C.47:1A-1 et seq.).

1 (2) The following are exceptions to paragraph (1) of this
2 subsection, which shall be deemed to be confidential:

3 (a) information obtained in private investigations pursuant to
4 section 11 of this act;

5 (b) information made confidential by the provisions of P.L.1963,
6 c.73 (C.47:1A-1 et seq.); and

7 (c) information obtained from federal agencies which may not be
8 disclosed under federal law.

9 (3) The bureau chief, in his discretion, may disclose any
10 information made confidential subparagraph (a) of paragraph (2) of
11 this subsection to persons identified in section 16 of this act.

12 (4) No provision of this act either creates or derogates any
13 privilege which exists at common law, by statute or otherwise when
14 any documentary or other evidence is sought under subpoena directed
15 to the bureau or any employee of the bureau.
16

17 16. a. To encourage uniform application and interpretation of this
18 act and securities regulation and enforcement in general, the bureau
19 chief and the employees of the bureau chief may cooperate, including
20 bearing the expense of the cooperation with the securities agencies
21 or administrator of another jurisdiction, Canadian province or
22 territory or other agencies, the Commodity Futures Trading
23 Commission, the Securities and Exchange Commission, any self-
24 regulatory organization established under the Commodity Exchange
25 Act or the Securities Exchange Act of 1934, any national or
26 international organization of commodities or securities officials or
27 agencies and any governmental law enforcement agency.

28 b. The cooperation authorized by this section shall include, but
29 need not be limited to:

30 (1) making joint examinations or investigations;

31 (2) holding joint administrative hearings;

32 (3) filing and prosecuting joint litigation;

33 (4) sharing and exchanging personnel;

34 (5) sharing and exchanging information and documents;

35 (6) formulating and adopting mutual regulations, statements of
36 policy, guidelines, proposed statutory changes, and

37 (7) issuing and enforcing subpoenas at the request of the agency
38 administering the act in another jurisdiction, the securities agency of
39 another jurisdiction, the Commodity Futures Trading Commission or
40 the Securities and Exchange Commission if the information sought
41 would also be subject to lawful subpoena for conduct occurring in
42 this State.
43

44 17. In addition to specific authority granted elsewhere in this act,
45 the bureau chief may make, amend, and rescind rules, forms and
46 orders as are necessary to carry out the provisions of the act and may
47 classify commodities and commodity contracts. Any rule, form, or
48 order may be adopted, amended or rescinded if the bureau chief finds

1 that the action is: (1) necessary or appropriate in the public interest
2 or for the protection of investors; and (2) consistent with the purposes
3 of the provisions of this act.

4
5 18. a. (1) Sections 3, 6, and 7 of this act shall apply to persons
6 who sell or offer to sell when an offer to sell is made in this State, or
7 an offer to buy is made and accepted in this State.

8 (2) Sections 3, 6, and 7 of this act shall apply to persons who buy
9 or offer to buy when an offer to buy is made in this State, or an offer
10 to sell is made and accepted in this State.

11 (3) For the purposes of this section, an offer to sell or to buy is
12 made in this State, whether or not either party is then present in this
13 State, when the offer originates from this State, or is directed by the
14 offeror to this State and received at the place to which it is directed
15 or at any post office in this State in the case of a mailed offer.

16 (4) For the purpose of this section, an offer to buy or to sell is
17 accepted in this State when acceptance is communicated to the
18 offeror in this State, and has not previously been communicated to
19 the offeror, whether or not either party is then present in this State,
20 when the offeree directs it to the offeror in this State reasonably
21 believing the offeror to be in this State and it is received at the place
22 to which it is directed or at any post office in this State in the case of
23 a mailed acceptance.

24 b. (1) For the purposes of subsection a. of this section, an offer
25 to sell or to buy is not made in this State when the publisher circulates
26 or there is circulated on his behalf in this State any bona fide
27 newspaper or other publication of general, regular and paid
28 circulation which is not published in this State, or which is published
29 in this State but had more than two-thirds of its circulation outside
30 this State during the past twelve months.

31 (2) For the purposes of paragraph (1) of this subsection, when a
32 publication is published in editions, each edition shall be considered
33 a separate publication except for material common to all editions.

34 c. (1) For the purposes of subsection a. of this section, an offer
35 to sell or to buy is not made in this State when a radio or television
36 program or other electronic communication originating outside this
37 State is received in this State.

38 (2) For the purpose of paragraph (1) of this subsection, a radio or
39 television program or other electronic communication shall be
40 considered having originated from this State if either the broadcast
41 studio or means of transmission are located within this State, unless:

42 (a) the program or communication is syndicated and distributed
43 from outside this State for redistribution to the general public in this
44 State;

45 (b) the program or communication is supplied by a radio,
46 television or other electronic network with the electronic signal
47 originating from outside this State for redistribution to the general
48 public in this State;

1 (c) the program or communication is an electronic signal that
2 originates outside this State and is captured for redistribution to the
3 general public in this State by a community antenna or cable radio,
4 television, or other electronic system; or

5 (d) the program or communication consists of an electronic signal
6 which originates from within this State but which is not intended for
7 redistribution to the general public in this State.

8 (3) Paragraph (2) of this subsection shall not apply to any
9 changes, alterations or additions made locally to a radio or television
10 program or other electronic communication.

11
12 19. a. The bureau chief shall commence an administrative
13 proceeding under this act by entering either a notice of intent to do a
14 contemplated act or a summary order. The notice of intent or
15 summary order may be entered without notice, without opportunity
16 for a hearing, and need not be supported by findings of fact or
17 conclusions of law, and shall be in writing.

18 b. Upon entry of a notice of intent or summary order, the bureau
19 chief shall promptly notify all interested parties that the notice or
20 summary order has been entered and the reasons therefor. If the
21 proceeding is pursuant to a notice of intent, the bureau chief shall
22 inform all interested parties of the date, time, and place set for the
23 hearing on the notice. If the proceeding is pursuant to a summary
24 order, the bureau chief shall inform all interested parties that they
25 have 30 business days from the entry of the order to file a written
26 request for a hearing on the matter with the bureau chief and that the
27 hearing will be scheduled to commence within 30 business days after
28 the receipt of the written request.

29 c. If the proceeding is pursuant to a summary order, the bureau
30 chief, whether or not a written request for a hearing is received from
31 any interested party, may set the matter down for hearing on the
32 bureau chief's own motion.

33 d. If no hearing is requested and none is ordered by the bureau
34 chief, the summary order shall automatically become a final order
35 after 30 business days.

36 e. If a hearing is requested or ordered, the bureau chief, after
37 notice of and opportunity for hearing to all interested persons, may
38 modify or vacate the order or extend it until final determination.

39 f. No final order or order after hearing shall be returned without
40 the following:

- 41 (1) appropriate notice to all interested persons;
- 42 (2) opportunity for hearing by all interested parties; and
- 43 (3) entry of written findings of fact and conclusions of law.

44 g. Every hearing in an administrative proceeding under this act
45 shall be public unless the bureau chief grants a request joined in by
46 all the respondents that the hearing be conducted privately.

1 20. a. Any person aggrieved by a final order of the bureau chief
2 may obtain a review of the order in Superior Court.

3 b. The filing of an appeal pursuant to subsection a. of this section
4 shall not, unless specifically ordered by the court, operate as a stay
5 of the bureau chief's order, and he may enforce or ask the court to
6 enforce the order pending the outcome of the review proceedings.
7

8 21. It shall be a defense to any action brought pursuant to this act
9 alleging a violation based solely on the failure in an individual case
10 to make physical delivery within the applicable time period specified
11 in this act if:

12 a. failure to make physical delivery was due solely to factors
13 beyond the control of the seller, the seller's officers, directors,
14 partners, agents, servants, or employees, every person occupying a
15 similar status or performing similar functions, every person who
16 directly or indirectly controls or is controlled by the seller, or any of
17 the seller's affiliates, subsidiaries, or successors; and

18 b. physical delivery was completed within a reasonable time
19 under the applicable circumstances.
20

21 22. It shall not be necessary to negate any of the exemptions of
22 this act in any complaint, information or indictment, or any
23 proceeding brought under the act, and the burden of proof of any such
24 exemption shall be upon the party claiming the exemption.
25

26 23. This act shall take effect on the first day of the ninth month
27 next following enactment, except the bureau chief may take any
28 anticipatory administrative action in advance as shall be necessary
29 for the implementation of this act.
30

31
32 STATEMENT
33

34 This act, the "New Jersey Commodity Code Act," establishes a
35 framework in the State for the regulation of commodities futures
36 trading.

37 Under the bill, "commodities" are agricultural, grain or livestock
38 products or by-products, metals or minerals, gems, fuel, foreign
39 currency and all other goods, articles, products or items of any kind.
40 The term commodity does not include certain numismatic coins, real
41 property and certain agricultural or livestock products grown or
42 raised on real property, or certain works of art.

43 Under the bill, a "commodity contract" means any account,
44 agreement or contract for the purchase or sale, primarily for
45 speculation or investment purposes and not for use or consumption
46 by the offeree or purchaser, of one or more commodities, whether for
47 immediate or subsequent delivery or whether delivery is intended by
48 the parties, and whether characterized as a cash contract, deferred

1 shipment or deferred delivery contract, forward contract, futures
2 contract, installment or margin contract, leverage contract or
3 otherwise. The bill provides that any commodity contract offered or
4 sold shall, in the absence of evidence to the contrary, be presumed to
5 be offered or sold for speculation or investment purposes. A
6 commodity contract shall not include any contract or agreement
7 which requires, and under which the purchaser receives, within 28
8 calendar days from the payment in good funds of any portion of the
9 purchase price, physical delivery of the total amount of each
10 commodity to be purchased under the contract or agreement.

11 The bill provides that the chief of the Bureau of Securities in the
12 Division of Community Affairs in the Department of Law and Public
13 Safety is responsible for the enforcement of the provisions of the bill.

14 The bill generally prohibits persons from offering to enter into,
15 entering into or confirming the execution of any transaction for the
16 delivery of any commodity under a commodity contract or other
17 substantially similar contract, except for the following:

18 (1) a person registered with the Commodity Futures Trading
19 Commission as a futures commission merchant or as a leverage
20 transaction merchant whose activities require that registration;

21 (2) a person registered with the federal Securities and Exchange
22 Commission as a broker-dealer whose activities require this
23 registration;

24 (3) a person affiliated with, and whose obligations and liabilities
25 are guaranteed by a futures commission merchant, leverage
26 transaction merchant, or broker-dealer ;

27 (4) a person who is a member of a contract market designated by
28 the Commodity Futures Trading Commission or any clearinghouse
29 of the commission;

30 (5) a financial institution; or

31 (6) a person registered under the laws of this State as a securities
32 broker-dealer whose activities require that registration.

33 The bill provides that no person shall engage in a trade or business
34 or otherwise act as a commodity merchant unless the person:

35 (1) is registered or temporarily licensed with the Commodity
36 Futures Trading Commission for each activity constituting the person
37 as a commodity merchant and the registration or temporary license
38 has not have expired, suspended or revoked; or

39 (2) is exempt from the registration by virtue of the federal
40 Commodity Exchange Act or of a Commodity Futures Trading
41 Commission rule.

42 The bill provides that no board of trade shall trade, or provide a
43 place for the trading of, any commodity contract or commodity
44 option required to be traded on or subject to the rules of a contract
45 market designated by the Commodity Futures Trading Commission
46 unless the board of trade has been designated for the commodity
47 contract or commodity option and the designation has not been
48 vacated, suspended, or revoked.

1 The bill provides that no person shall directly or indirectly:

2 (1) cheat or defraud or attempt to cheat or defraud, any other
3 person or employ any device, scheme or artifice to defraud any other
4 person;

5 (2) make any false report, enter any false record or make any
6 untrue statement of a material fact or omit to state a material fact
7 necessary in order to make the statements, in the light of the
8 circumstances under which they were made, not misleading;

9 (3) engage in any transaction, act, practice or course of business,
10 including, without limitation, any form of advertising or solicitation
11 that operates or would operate as a fraud or deceit upon any person;
12 or

13 (4) misappropriate or convert the funds, security, or property of
14 any other person, in or in connection with the purchase or sale of the
15 offer to sell, to the offer to enter into or the entry into, any commodity
16 contract or commodity option that is subject to certain provisions of
17 the bill.

18 The bill provides that the bureau chief may make investigations,
19 within or without this State, as he finds necessary and appropriate to
20 determine whether any person has violated, or is about to violate, any
21 provision of the bill or to aid in enforcement of the bill.

22 The bill provides that the bureau chief may administer oaths and
23 affirmations, subpoena witnesses, compel their attendance, take
24 evidence and require the production of any books, papers,
25 correspondence, memoranda, agreements or other documents or
26 records which the bureau chief finds to be relevant or material to the
27 inquiry. If a person does not give testimony or produce the
28 documents required by the bureau chief pursuant to an administrative
29 subpoena, the bureau chief may apply for a court order compelling
30 compliance with the subpoena or the giving of the required
31 testimony.

32 The bill provides that if the bureau chief believes that any person
33 has engaged, or is about to engage in any act or practice constituting
34 a violation of any provision of the bill, the bureau chief may:

35 (1) issue a cease and desist order;

36 (2) take disciplinary action against a licensed person;

37 (3) issue an order imposing a civil penalty in an amount which
38 may not exceed \$10,000 for any single violation or \$100,000 for
39 multiple violations; or

40 (4) initiate certain actions as specified in the bill.

41 Under the bill, neither the bureau chief nor any employee of the
42 bureau may use any information which is filed with or obtained by
43 the bureau chief which is not public information for personal gain or
44 benefit, nor shall the bureau chief or any employees of the bureau
45 conduct any securities or commodity dealings whatsoever based
46 upon any upon any such information, even though public, if there has
47 not been a sufficient period of time for the securities or commodity
48 markets to assimilate such information.

1 The bill provides that all information collected, assembled, or
2 maintained by the bureau chief is public information and shall be
3 available for the examination of the public, with certain exceptions.

4 To encourage uniform application and interpretation of the bill,
5 the bureau chief and the employees of the bureau chief may
6 cooperate, including bearing the expense of the cooperation with the
7 securities agencies or administrator of another jurisdiction, Canadian
8 province or territory or other agencies, the Commodity Futures
9 Trading Commission, the Securities and Exchange Commission, any
10 self-regulatory organization established under the Commodity
11 Exchange Act or the Securities Exchange Act of 1934, any national
12 or international organization of commodities or securities officials or
13 agencies and any governmental law enforcement agency.

14 The cooperation authorized by the bill shall include, but need not
15 be limited to:

- 16 (1) making joint examinations or investigations;
- 17 (2) holding joint administrative hearings;
- 18 (3) filing and prosecuting joint litigation;
- 19 (4) sharing and exchanging personnel;
- 20 (5) sharing and exchanging information and documents;
- 21 (6) formulating and adopting mutual regulations, statements of
22 policy, guidelines, proposed statutory changes; and
- 23 (7) issuing and enforcing subpoenas at the request of the agency
24 administering the act in another jurisdiction, the securities agency of
25 another jurisdiction, the Commodity Futures Trading Commission or
26 the Securities and Exchange Commission if the information sought
27 would also be subject to lawful subpoena for conduct occurring in
28 this State.

29 In addition to specific authority granted in the bill, the bureau
30 chief may make, amend, and rescind rules, forms and orders as are
31 necessary to carry out the provisions of the bill and may classify
32 commodities and commodity contracts. Any rule, form, or order
33 adopted, amended or rescinded if the bureau chief finds that the
34 action is: (1) necessary or appropriate in the public interest or for the
35 protection of investors; and (2) consistent with the purposes of the
36 provisions of the bill.

37 The bill provides that it is a defense to any action brought pursuant
38 to the bill alleging a violation based solely on the failure in an
39 individual case to make physical delivery within the applicable time
40 period specified in the bill if:

- 41 (1) failure to make physical delivery was due solely to factors
42 beyond the control of the seller, the seller's officers, directors,
43 partners, agents, servants, or employees, every person occupying a
44 similar status or performing similar functions, every person who
45 directly or indirectly controls or is controlled by the seller, or any of
46 the seller's affiliates, subsidiaries, or successors; and
- 47 (2) physical delivery was completed within a reasonable time
48 under the applicable circumstances.