

**SENATE, No. 3390**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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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.

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STATEMENT

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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.