

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1981

6 S.P. 788

In Senate, February 7, 1986

7 Submitted by the Department of Business, Occupational and Professional
8 Regulation pursuant to Joint Rule 24.

9 Reference to the Committee on Business and Commerce suggested and
ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Bustin of Kennebec.

Cosponsored by Representative Aliberti of Lewiston, Representative
Martin of Van Buren and Representative Telow of Lewiston.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Create a Maine Code Governing the
18 Sale of Certain Commodities.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 32 MRSA c. 109 is enacted to read:

23 CHAPTER 109

24 MAINE COMMODITY CODE

25 SUBCHAPTER 1

26 GENERAL PROVISIONS

27 §11201. Definitions

28 As used in this chapter, unless the context oth-
29 erwise indicates, the following terms have the fol-
30 lowing meanings.

1 1. Board of trade. "Board of trade" means any
2 person or group of persons engaged in buying or sell-
3 ing any commodity or receiving any commodity for sale
4 on consignment, whether that person or group of per-
5 sons is characterized as a board of trade, exchange
6 or other form of marketplace.

7 2. Commodity. "Commodity" means, except as oth-
8 erwise specified by the superintendent by rule or or-
9 der, any agricultural, grain or livestock products or
10 by-products, any metals or minerals, including a pre-
11 cious metal set forth in subsection 12, any gem or
12 gemstone, whether characterized as precious,
13 semiprecious or otherwise, any fuel, whether liquid,
14 gaseous or otherwise, any foreign currency and all
15 other goods, articles, products, items, services,
16 rights or interests of any kind.

17 3. Commodity contract. "Commodity contract"
18 means any account, agreement or contract for the pur-
19 chase or sale of one or more commodities, whether for
20 immediate or subsequent delivery or whether delivery
21 is intended by the parties, and whether characterized
22 as a cash contract, deferred shipment or deferred de-
23 livery contract, forward contract, futures contract,
24 installment or margin contract, leverage contract or
25 otherwise.

26 4. Commodity Exchange Act. "Commodity Exchange
27 Act" means the Act of Congress known as the "Commodi-
28 ty Exchange Act," as amended to the effective date of
29 this chapter, codified at the United States Code, Ti-
30 tle 7, Section 1, et seq., and all subsequent amend-
31 ments, additions or other revisions to that Act, un-
32 less the superintendent, within 10 days following the
33 effective date of the amendment, addition or revi-
34 sion, disallows its application to this chapter or to
35 any provision of this chapter by rule, regulation or
36 order.

37 5. Commodity Futures Trading Commission. "Com-
38 modity Futures Trading Commission" means the indepen-
39 dent regulatory agency established by Congress to ad-
40 minister the Commodity Exchange Act.

41 6. Commodity Futures Trading Commission Rule.
42 "Commodity Futures Trading Commission Rule" means any

1 rule, regulation or order of the Commodity Futures
2 Trading Commission in effect on the effective date of
3 this chapter, and all subsequent amendments, addi-
4 tions or other revisions to this chapter, unless the
5 superintendent, within 10 days following the effec-
6 tive date of any such amendment, addition or revi-
7 sion, disallows its application to this chapter by
8 rule or order.

9 7. Commodity merchant. "Commodity merchant"
10 means any of the following, as defined or described
11 in the Commodity Exchange Act or by Commodity Futures
12 Trading Commission Rule:

13 A. Futures commission merchant;

14 B. Commodity pool operator;

15 C. Commodity trading advisor;

16 D. Introducing broker;

17 E. Leverage transaction merchant;

18 F. An associated person of any of the persons
19 set out in paragraphs A to E;

20 G. Floor broker; and

21 H. Any other person, other than a futures asso-
22 ciation, required to register with the Commodity
23 Futures Trading Commission.

24 8. Commodity option. "Commodity option" means
25 any account, agreement or contract giving a party to
26 the account, agreement or contract the right to pur-
27 chase or sell one or more commodities and one or more
28 commodity contracts, whether characterized as an op-
29 tion, privilege, indemnity, bid, offer, put, call,
30 advance guaranty, decline guaranty or otherwise.

31 9. Financial institution. "Financial institu-
32 tion" means a bank organized under the laws of the
33 United States, or a bank, savings institution or
34 trust company organized and supervised under the laws
35 of any state.

1 10. Offer or offer to sell. "Offer" or "offer
2 to sell" includes every offer, every attempt to offer
3 to dispose of or solicitation of an offer to buy, to
4 purchase or to acquire, for value.

5 11. Person. "Person" means an individual, a
6 corporation, a partnership, an association, a joint-
7 stock company, a trust where the interests of the
8 beneficiaries are evidenced by a security, an unin-
9 corporated organization, a government or a political
10 subdivision of a government, but does not include,
11 except for purposes of section 11206, a financial in-
12 stitution, or any of the employees, officers or di-
13 rectors of that institution acting solely in that ca-
14 capacity.

15 12. Precious metal. "Precious metal" means the
16 following:

17 A. Silver, in either coin, bullion or other
18 form;

19 B. Gold, in either coin, bullion or other form;

20 C. Platinum; and

21 D. Such other items as the superintendent may
22 specify by rule or order.

23 13. Sale or sell. "Sale" or "sell" includes ev-
24 ery sale, contract of sale, contract to sell or dis-
25 position, for value.

26 14. Superintendent. "Superintendent" means the
27 Superintendent of Banking.

28 §11202. Unlawful commodity transactions

29 Except as otherwise provided in section 11203 or
30 11204, no person may sell or offer to sell any com-
31 modity under any commodity contract or any commodity
32 option or offer to enter into or enter into as seller
33 any commodity contract or commodity option.

34 §11203. Transactions permitted by the Commodity Ex-
35 change Act

1 Section 11202 does not apply to any transaction
2 involving solely the following:

3 1. Contract market. A commodity contract or
4 commodity option entered into, on or subject to the
5 rules of a board of trade designated as a contract
6 market by the Commodity Futures Trading Commission
7 for trading that commodity contract or commodity op-
8 tion;

9 2. Foreign board of trade. Unless otherwise
10 specified by the Commodity Futures Trading Commission
11 Rule, a commodity contract entered into, on or sub-
12 ject to the rules of any board of trade located sole-
13 ly outside the United States, its territories or pos-
14 sessions;

15 3. Commodity option. A commodity option autho-
16 riized by the provisions of the Commodity Exchange
17 Act, or by any Commodity Futures Trading Commission
18 Rule issued under that Act; or

19 4. Leverage contract. A commodity contract that
20 is a leverage contract authorized by, and effected in
21 accordance with the provisions of, any Commodity
22 Futures Trading Commission Rule issued under the Com-
23 modity Exchange Act.

24 §11204. Other exempted transactions

25 Section 11202 does not apply to any transaction
26 involving solely the following:

27 1. Delivery for consumption. A commodity con-
28 tract for the delivery of the commodity for the pur-
29 pose of consumption by the purchaser;

30 2. Delivery within 28 days. A commodity con-
31 tract which requires, and under which the purchaser
32 receives, within 28 calendar days from the payment of
33 any portion of the purchase price, either:

34 A. Physical delivery of the total quantity of
35 each commodity to be purchased under the con-
36 tract; or

1 B. In the case of a contract for the purchase of
2 one or more precious metals, a certificate or
3 documents of title issued by a financial institu-
4 tion, or by any other person specified by the su-
5 perintendent by rule, that title to the total
6 quantity of precious metals has passed to the
7 purchaser and that the total quantity of precious
8 metals has been deposited with, and is being and
9 will continue to be held by, the financial insti-
10 tution or such other person solely for the bene-
11 fit of the purchaser, free and clear of all in-
12 terests, liens and encumbrances, except those of
13 the purchaser;

14 3. Precious metal. A commodity contract for the
15 purchase of one or more precious metals on an in-
16 stallment or other deferred payment basis and which
17 does not permit, either by its terms or otherwise,
18 any party to the contract to waive or discharge its
19 rights or obligations under the contract, except by
20 performance, by any form of offsetting, liquidation,
21 termination, repurchase, refinancing or roll-over
22 agreement or transaction, and which requires, and un-
23 der which the purchaser receives, within 7 days of
24 each installment payment, either:

25 A. Physical delivery of an amount of the pre-
26 cious metal at least equal in proportion to the
27 total quantity to be purchased as the portion of
28 the total purchase price represented by the in-
29 stallment payment; or

30 B. A certificate or documents of title issued by
31 a financial institution, or by any other person
32 specified by the superintendent by rule, stating
33 that title to that amount of the precious metal
34 has passed to the purchaser and that the amount
35 of the precious metal has been deposited with,
36 and is being and will continue to be held by, the
37 financial institution or such other person solely
38 for the benefit of the purchaser, free and clear
39 of all interests, liens and encumbrances, except
40 those of the purchaser;

41 4. Commercial contracts. A commodity contract
42 for the sale of a cash commodity for deferred ship-
43 ment or delivery entered into solely between persons

1 engaged in producing, processing, using commercially
2 or handling as merchants, each commodity subject to
3 the contract, or any by-product of the commodity, and
4 which does not permit, either by its terms or other-
5 wise, any party to discharge or waive its rights or
6 obligations under the contract, except by perform-
7 ance, by any form of offsetting, liquidation, termi-
8 nation, repurchase, refinancing or roll-over agree-
9 ment or transaction;

10 5. Government security. A commodity contract
11 for the delivery solely of a government security or
12 securities and which does not permit, either by its
13 terms or otherwise, any party to discharge or waive
14 its rights or obligations under the contract, except
15 by performance, by any form of offsetting, liquida-
16 tion, termination, repurchase, refinancing or
17 roll-over agreement or transaction other than a re-
18 purchase agreement conforming to such terms and con-
19 ditions as the superintendent may specify; or

20 6. Other. Such other commodity contracts or
21 commodity options as the superintendent may specify
22 which are not prohibited by the Commodity Exchange
23 Act or Commodity Futures Trading Commission Rule.

24 The superintendent may issue rules prescribing
25 the terms and conditions of all transactions and con-
26 tracts covered by this section, exempting any person
27 from any provision of this section and otherwise im-
28 plementing the provisions of this section for the
29 protection of purchasers and sellers of commodities.

30 §11205. Unlawful commodity activities

31 1. Commodities merchants. No person may engage
32 in a trade or business involving commodity contracts,
33 commodity options or otherwise as a commodity mer-
34 chant unless that person:

35 A. Is currently effectively or temporarily li-
36 censed with the Commodity Futures Trading Commis-
37 sion for each activity which makes that person a
38 commodity merchant; or

39 B. Is exempt from that registration by virtue of
40 the Commodity Exchange Act or of a Commodity
41 Futures Trading Commission Rule.

1 2. Board of trade. No board of trade may trade,
2 or provide a place for the trading of, any commodity
3 contract or commodity option required to be traded on
4 or subject to the rules of a contract market desig-
5 ned by the Commodity Futures Trading Commission un-
6 less that board of trade has a current effective desig-
7 nation for that commodity contract or commodity op-
8 tion.

9 §11206. Fraudulent conduct

10 No person may directly or indirectly:

11 1. Cheat. Cheat or defraud, or attempt to cheat
12 or defraud, any other person or employ any device,
13 scheme or artifice to defraud any other person;

14 2. False statements. Make any false report, en-
15 ter any false record, or make any untrue statement of
16 a material fact or omit to state a material fact nec-
17 essary in order to make the statements made, in the
18 light of the circumstances under which they were
19 made, not misleading;

20 3. Fraud; deceit. Engage in any transaction,
21 act, practice or course of business, including, with-
22 out limitation, any form of advertising or sollicita-
23 tion, which operates or would operate as a fraud or
24 deceit upon any person; or

25 4. Misappropriation. Misappropriate or convert
26 the funds, security or property of any other person,
27 in or in connection with the purchase or sale of, the
28 offer to sell, the offer to enter into, or the entry
29 into of, any commodity contract or commodity option
30 subject to the provisions of section 11202 or 11204.

31 §11207. Liability of principals, controlling persons
32 and others

33 1. Officials and agents. The act, omission or
34 failure of any official, agent or other person acting
35 for any individual, association, partnership, corpo-
36 ration or trust within the scope of his employment or
37 office shall be deemed the act, omission or failure
38 of the individual, association, partnership, corpora-
39 tion or trust, as well as of that official, agent or
40 other person.

1 2. Controlling persons. Every person who di-
2 rectly or indirectly controls another person liable
3 under any provision of this chapter, every partner,
4 officer or director of such other person, every per-
5 son occupying a similar status or performing similar
6 functions, every employee of such other person who
7 materially aids in the violation is also liable
8 jointly and severally with and to the same extent as
9 such other person, unless the person who is also lia-
10 ble by virtue of this provision sustains the burden
11 of proof that he did not know, and in exercise of
12 reasonable care could not have known, of the exis-
13 tence of the facts by reason of which the liability
14 is alleged to exist.

15 §11208. Securities laws unaffected

16 Nothing in this chapter impairs, derogates or
17 otherwise affects the authority or powers of the su-
18 perintendent under the Revised Maine Securities Act
19 or the application of any provision to that Act to
20 any person or transaction subject to that Act.

21 SUBCHAPTER 2

22 ADMINISTRATION AND ENFORCEMENT

23 §11301. Investigations

24 1. Investigations. The superintendent may make
25 investigations, within or outside this State, as he
26 finds necessary or appropriate to:

27 A. Determine whether any person has violated, or
28 is about to violate, any provision of this chap-
29 ter or any rule or order of the superintendent;
30 or

31 B. Aid in enforcement of this chapter.

32 2. Publication. The superintendent may publish
33 information concerning any violation of this chapter
34 or any rule or order of the superintendent.

35 3. Power of superintendent. For purposes of any
36 investigation or proceeding under this chapter, the
37 superintendent or any officer or employee designated

1 by rule or order, may administer oaths and affirma-
2 tions, subpoena witnesses, compel their attendance,
3 take evidence and require the production of any
4 books, papers, correspondence, memoranda, agreements
5 or other documents or records which the superintend-
6 ent deems to be relevant or material to the inquiry.

7 4. Court order. If a person does not give tes-
8 timony or produce the documents required by the su-
9 perintendent or a designated employee pursuant to an
10 administrative subpoena, the superintendent or desig-
11 nated employee may apply for a court order compelling
12 compliance with the subpoena or the giving of the re-
13 quired testimony.

14 The request for order of compliance may be addressed
15 to either:

16 A. The Superior Court located in the County of
17 Kennebec or the Superior Court where service may
18 be obtained on the person refusing to testify or
19 produce, if the person is within this State; or

20 B. The appropriate court of the state having ju-
21 risdiction over the person refusing to testify or
22 produce, if the person is outside this State.

23 §11302. Enforcement of Act

24 1. Cease and desist order. If the superintend-
25 ent believes, whether or not based upon an investiga-
26 tion conducted under section 11301, that any person
27 has engaged or is about to engage in any act or prac-
28 tice constituting a violation of any rule or order
29 under this chapter, the superintendent may:

30 A. Issue a cease and desist order; or

31 B. Initiate any of the actions specified in sub-
32 section 2.

33 2. Court action. The superintendent may insti-
34 tute any of the following actions in the appropriate
35 courts of this State, or in the appropriate courts of
36 another state, in addition to any legal or equitable
37 remedies otherwise available:

- 1 A. An action for declaratory judgment;
2 B. An action for a prohibitory or mandatory in-
3 junction to enjoin the violation and to ensure
4 compliance with this chapter or any rule or order
5 of the superintendent;
6 C. An action for disgorgement; or
7 D. An action for appointment of a receiver or
8 conservator for the defendant or the defendant's
9 assets.

10 §11303. Power of court to grant relief

11 1. Violation of chapter. Upon showing of viola-
12 tion of this Act or a rule or order of the superin-
13 tendent, the court, in addition to traditional legal
14 and equitable remedies, including temporary restrain-
15 ing orders and permanent or temporary prohibitory or
16 mandatory injunctions, may grant one or more of the
17 following special remedies:

- 18 A. Imposition of a civil penalty in an amount
19 which may not exceed \$10,000 for any single vio-
20 lation;
21 B. Disgorgement;
22 C. Declaratory judgment;
23 D. Restitution to investors wishing restitution;
24 or
25 E. Appointment of a receiver or conservator for
26 the defendant or the defendant's assets.

27 2. Violation about to occur. Appropriate reme-
28 dies when the defendant is shown only about to vio-
29 late this chapter or a rule or order of the superin-
30 tendent shall be limited to:

- 31 A. A temporary restraining order;
32 B. A temporary or permanent injunction; or
33 C. An order appointing a receiver or conservator
34 for the defendant or the defendant's assets.

1 3. No bond required. The court shall not re-
2 quire the superintendent to post a bond in any offi-
3 cial action under this chapter.

4 4. Violation of foreign state law. Upon showing
5 by the administrator of securities or commodity agen-
6 cy of another state that a person has violated the
7 securities or commodity act of the foreign state or a
8 rule or order of the administrator or securities or
9 commodity agency of the foreign state, the court, in
10 addition to traditional legal or equitable remedies
11 including temporary restraining orders, and permanent
12 or temporary prohibitory or mandatory injunctions,
13 may grant the following special remedies:

14 A. Disgorgement; or

15 B. Appointment of a receiver, conservator or an-
16 cillary receiver or conservator for the defendant
17 or the defendant's assets located in this State.

18 5. Violation of foreign law about to occur.
19 Upon showing by the administrator or securities or
20 commodity agency of another state that a person is
21 about to violate the securities or commodity act of
22 the foreign state or a rule or order of the adminis-
23 trator or securities or commodity agency of the for-
24 ign state, the court may only grant:

25 A. A temporary restraining order;

26 B. A temporary or permanent injunction; or

27 C. An order appointing a receiver, conservator
28 or ancillary receiver or conservator for the de-
29 fendant or the defendant's assets located in this
30 State.

31 §11304. Criminal penalties

32 1. Knowing violation. Any person who knowingly
33 violates any provision of this chapter or any rule or
34 order of the superintendent under this Act shall,
35 upon conviction, be fined not more than \$10,000 or
36 imprisoned more than 5 years, or both, for each vio-
37 lation.

1 2. Prosecution. The superintendent may refer
2 such evidence as is available concerning violations
3 of this Act or any rule or order of the superintend-
4 ent to the Attorney General or the proper district
5 attorney, who may, with or without such a reference
6 from the superintendent, institute the appropriate
7 criminal proceedings under this chapter.

8 §11305. Administration of chapter

9 1. Superintendent. This chapter shall be admin-
10 istered by the Superintendent of Banking.

11 2. Use of information. Neither the superintend-
12 ent nor any employee of the superintendent may use
13 any information which is filed with or obtained by
14 the superintendent which is not public information
15 for personal gain or benefit, nor may the superin-
16 tendent nor any employee of the superintendent con-
17 duct any securities or commodity dealings whatsoever
18 based upon any such information, even though public,
19 if there has not been a sufficient period of time for
20 the securities or commodity markets to assimilate
21 that information.

22 3. Public information. Notwithstanding any oth-
23 er provision of law, except as provided in paragraph
24 A, all information collected, assembled or maintained
25 by the superintendent is public information and is
26 available for the examination of the public.

27 A. The following are exceptions to this subsec-
28 tion:

29 (1) Information obtained in private inves-
30 tigations pursuant to section 11301; or

31 (2) Information made confidential by rule
32 or order of the superintendent.

33 4. Disclosure of information. The superintend-
34 ent may disclose any information made confidential
35 under subsection 3, paragraph A, subparagraph (1) to
36 persons identified in section 11306, subsection 1.

37 5. Privilege. No provision of this chapter cre-
38 ates or derogates any privilege which exists at com-

1 mon law, by statute or otherwise, when any documenta-
2 ry or other evidence is sought under subpoena di-
3 rected to the superintendent or any employee of the
4 superintendent.

5 §11306. Cooperation with other agencies

6 1. Cooperation. To encourage uniform applica-
7 tion and interpretation of this chapter and commo-
8 dities regulation and enforcement in general, the su-
9 perintendent and the employees of the superintendent
10 may cooperate, including bearing the expense of the
11 cooperation, with the securities agencies or adminis-
12 trator of another jurisdiction, Canadian province or
13 territory or such other agencies administering this
14 Act, the Commodity Futures Trading Commission, the
15 Securities and Exchange Commission, any self-regula-
16 tory organization established under the Commodity Ex-
17 change Act or the Securities Exchange Act of 1934,
18 any national or international organization of commo-
19 dities or securities officials or agencies and any
20 governmental law enforcement agency.

21 2. Type of cooperation. The cooperation autho-
22 riized by subsection 1 includes, but is not limited
23 to, the following:

24 A. Making joint examinations or investigations;

25 B. Holding joint administrative hearings;

26 C. Filing and prosecuting joint litigation;

27 D. Sharing and exchanging personnel;

28 E. Sharing and exchanging information and docu-
29 ments;

30 F. Formulating and adopting mutual regulations,
31 statements of policy, guidelines, proposed statu-
32 tory changes and releases; and

33 G. Issuing and enforcing subpoenas at the re-
34 quest of the agency administering this chapter in
35 another jurisdiction, the securities agency of
36 another jurisdiction, the Commodity Futures Trad-
37 ing Commission or the Securities and Exchange

1 Commission if the information sought would also
2 be subject to lawful subpoena for conduct occur-
3 ring in this State.

4 §11307. General authority to adopt rules, forms and
5 orders

6 1. Rules; forms; orders. In addition to specif-
7 ic authority granted elsewhere in this chapter, the
8 superintendent may make, amend and rescind rules,
9 forms and offers as are necessary to carry out this
10 chapter. These rules or forms shall include, but
11 need not be limited to, the following:

12 A. Rules defining any terms, whether or not used
13 in this chapter, insofar as the definitions are
14 not inconsistent with this chapter. For the pur-
15 pose of rules or forms, the superintendent may
16 classify commodities and commodity contracts,
17 persons and matters within the superintendent's
18 jurisdiction.

19 2. Adoption of rules; forms; orders. Unless
20 specifically provided in this chapter, no rule, form
21 or order may be adopted, amended or rescinded unless
22 the superintendent finds that the action is:

23 A. Necessary or appropriate in the public inter-
24 est or for the protection of investors; and

25 B. Consistent with the purposes fairly intended
26 by the policy and provisions of this chapter.

27 3. Publication. All rules and forms of the su-
28 perintendent shall be published.

29 4. Liability. No provision of this chapter im-
30 posing any liability applies to any act done or omit-
31 ted in good faith in conformity with a rule, order or
32 form adopted by the superintendent, notwithstanding
33 that the rule, order or form may later be amended or
34 rescinded, or be determined by judicial or other au-
35 thority to be invalid for any reason.

36 §11308. Consent to service of process

1 1. Appointment of superintendent. When a per-
2 son, including a nonresident of this State, engages
3 in conduct prohibited or made actionable by the chap-
4 ter or any rule or order of the superintendent, the
5 engaging in the conduct shall constitute the appoint-
6 ment of the superintendent as the person's attorney
7 to receive service of any lawful process in a
8 noncriminal proceeding against the person, a succes-
9 sor or personal representative, which grows out of
10 that conduct and which is brought under the chapter
11 or any rule or order of the superintendent with the
12 same force and validity as if served personally.

13 2. Service. Service under subsection 1 may be
14 made by leaving a copy of the process in the office
15 of the superintendent, but it is not effective un-
16 less:

17 A. The plaintiff, who may be the superintendent
18 in a suit, action or proceeding instituted by
19 him, forthwith sends notice of the service and a
20 copy of the process by registered or certified
21 mail to the defendant or respondent at his last
22 address known to the plaintiff; and

23 B. The plaintiff's affidavit of compliance with
24 this subsection is filed in the case on or before
25 the return day of the process, if any or within
26 such further time as the court allows.

27 §11309. Scope of chapter

28 1. Seller. Sections 11202, 11205 and 11206 ap-
29 ply to persons who sell or offer to sell when:

30 A. An offer to sell is made in this State; or

31 B. An offer to buy is made and accepted in this
32 State.

33 2. Purchaser. Sections 11202, 11205 and 11206
34 apply to persons who buy or offer to buy when:

35 A. An offer to buy is made in this State; or

36 B. An offer to sell is made and accepted in this
37 State.

1 3. Offer in this State. For the purpose of this
2 section, an offer to sell or to buy is made in this
3 State, whether or not either party is then present in
4 this State, when the offer:

5 A. Originates from this State; or

6 B. Is directed by the offeror to this State and
7 received at the place to which it is directed, or
8 at any post office in this State in the case of a
9 mailed offer.

10 4. Acceptance in this State. For the purpose of
11 this section, an offer to buy or to sell is accepted
12 in this State when acceptance:

13 A. Is communicated to the offeror in this State;
14 and

15 B. Has not previously been communicated to the
16 offeror, whether or not either party is then
17 present in this State, when the offeree directs
18 it to the offeror in this State reasonably be-
19 lieving the offeror to be in this State and it is
20 received at the place to which it is directed, or
21 at any post office in this State in the case of a
22 mailed acceptance.

23 5. Publications. For the purpose of this sec-
24 tion, an offer to sell or to buy is not made in this
25 State when the publisher circulates or there is cir-
26 culated on his behalf in this State, any bona fide
27 newspaper or other publication of general, regular
28 and paid circulation.

29 A. An offer to sell or to buy is not made in
30 this State when a radio or television program or
31 other electronic communication originating out-
32 side this State is received in this State.

33 B. Any radio or television program or other
34 electronic communication shall be considered as
35 having originated from this State if either the
36 broadcast studio or means of transmission is lo-
37 cated within this State, unless:

1 (1) The program or communication is
2 syndicated and distributed from outside this
3 State for redistribution to the general pub-
4 lic in this State;

5 (2) The program or communication is sup-
6 plied by a radio, television or other elec-
7 tronic network with the electronic signal
8 originating from outside this State for re-
9 distribution to the general public in this
10 State;

11 (3) The program or communication is an
12 electronic signal that originates outside
13 this State and is captured for redistribu-
14 tion to the general public in this State by
15 a community antenna or cable radio, televi-
16 sion or other electronic system; or

17 (4) The program or communication consists
18 of an electronic signal which originates
19 from within this State, but which is not in-
20 tended for redistribution to the general
21 public in this State.

22 C. Paragraph B does not apply to any changes,
23 alterations or additions made locally to a radio
24 or television program or other electronic commu-
25 nications.

26 §11310. Procedure for entry of an order

27 1. Notice of intent, summary order. The super-
28 intendent shall commence an administrative proceeding
29 under this chapter, by entering either a notice of
30 intent to do a contemplated act or a summary order.
31 The notice of intent or summary order may be entered
32 without notice, without opportunity for hearing and
33 need not be supported by findings of fact or conclu-
34 sions of law, but must be in writing.

35 2. Notification of parties. Upon entry of a no-
36 tice of intent or summary order, the superintendent
37 shall promptly notify all interested parties that the
38 notice or summary order has been entered and the rea-
39 sons for that notice or order. If the proceeding is
40 pursuant to a notice of intent, the superintendent

1 shall inform all interested parties of the date, time
2 and place set for the hearing on the notice. If the
3 proceeding is pursuant to a summary order, the super-
4 intendent shall inform all interested parties that
5 they have 30 days from the entry of the order to file
6 a written request for a hearing on the matter with
7 the superintendent and that the hearing will be
8 scheduled to commence within 15 days after the re-
9 ceipt of the written request.

10 3. Hearing. If the proceeding is pursuant to a
11 summary order, the superintendent, whether or not a
12 written request for a hearing is received from any
13 interested party, may set the matter down for hearing
14 on the superintendent's own motion.

15 4. Summary order final. If no hearing is re-
16 quested and none is ordered by the superintendent,
17 the summary order will automatically become a final
18 order after 30 days.

19 5. Action pending final determination. If a
20 hearing is requested or ordered, the superintendent,
21 after notice of and opportunity for hearing to all
22 interested persons, may modify or vacate the order or
23 extend it until final determination.

24 6. Final order. No final order or order after
25 hearing may be returned without:

26 A. Appropriate notice to all interested persons;

27 B. Opportunity for hearing by all interested
28 persons; and

29 C. Entry of written findings of fact and conclu-
30 sions of law.

31 §11311. Judicial review of orders

32 Any person aggrieved by a final order of the su-
33 perintendent may obtain review of the order in the
34 Kennebec County Superior Court by filing a petition
35 in accordance with Title 5, section 11001, and the
36 Maine Rules of Civil Procedure, Rule 80C.

37 §11312. Burden of proof

1 The burden of proof for an exemption from this
2 chapter shall be upon the person claiming that exemp-
3 tion.

4 STATEMENT OF FACT

5 The proposed Maine Commodity Code allows the
6 State of Maine Securities Division to regulate the
7 offer and sale of certain commodities within this
8 State. This new power is necessary to protect the
9 investing public because of changes in the market-
10 place and the federal regulatory scheme.

11 In 1982, the Commodities Futures Trading Commis-
12 sion, the federal agency responsible for the regula-
13 tion of securities, was reauthorized. As a result,
14 the Commodities Futures Trading Commission's juris-
15 diction in certain areas was curtailed. Within that
16 regulatory vacuum, certain commodities products have
17 developed which escape regulation from either the
18 Commodities Futures Trading Commission or the indi-
19 vidual state.

20 The Code allows the Securities Division to re-
21 quire that persons who sell commodities within this
22 State must also be in compliance with the federal
23 commodities law, much as the division requires feder-
24 al compliance in some aspects of securities regula-
25 tion. The administration and enforcement provisions
26 in the Code are essentially the same as those pro-
27 posed in the 1985 amendments to the Maine Securities
28 Act. The Code includes antifraud provisions to af-
29 ford to buyers of commodities the same protection
30 which has been enjoyed by buyers of securities under
31 the Revised Maine Securities Act.

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