

COMMODITIES CODE

502A.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Administrator*" means the administrator of the securities bureau of the insurance division of the department of commerce.
2. "*Board of trade*" means a person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.
3. "*CFTC rule*" means a regulation or order of the commodity futures trading commission in effect on July 1, 1990, and all subsequent amendments, additions or other revisions to the regulation or order, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows the application to this chapter in whole or in part by rule or order.
4. "*Commodity*" means, except as otherwise specified by the administrator by rule or order: an agricultural, grain, or livestock product or by-product; a metal or mineral, including a precious metal; a gem or gemstone, whether characterized as precious, semiprecious or otherwise; a fuel, whether liquid, gaseous or otherwise; a foreign currency; and all other goods, articles, products, or items of any kind.

The term commodity does not include any of the following:

- a. A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains.
 - b. Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property.
 - c. Any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner of the work of art.
5. "*Commodity contract*" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract offered or sold, in the absence of evidence to the contrary, shall be presumed to be offered or sold for speculation or investment purposes. A commodity contract does not include a contract or agreement which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.
 6. "*Commodity Exchange Act*" means the federal Commodity Exchange Act, as amended to July 1, 1990, codified at 7 U.S.C. § 1, et seq., and all subsequent amendments, additions, or other revisions to the Act, unless the administrator, within ten days following the effective date of the amendment, addition, or revision, disallows its application to this chapter in whole or in part by rule or order.
 7. "*Commodity futures trading commission*" or "*CFTC*" means the independent regulatory agency established by the United States Congress to administer the Commodity Exchange Act.

8. "*Commodity merchant*" means any of the following as defined or described in the Commodity Exchange Act or by CFTC rule:

a. A futures commission merchant.

b. A commodity pool operator.

c. A commodity trading adviser.

d. An introducing broker.

e. A leverage transaction merchant.

f. An associated person of any of the persons listed in paragraphs "a" through "e".

g. A floor broker.

h. Any other person, other than a futures association, required to register with the commodity futures trading commission.

9. "*Commodity option*" means an account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. "*Financial institution*" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

11. "*Offer*" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

12. "*Person*" means a person as defined in section 4.1, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse of the CFTC or a national securities exchange registered with the securities and exchange commission, or any employee, officer, or director of a contract market, clearinghouse, or exchange acting solely in that capacity.

13. "*Precious metal*" means one or more of the following in either coin, bullion, or other form:

a. Silver.

b. Gold.

c. Platinum.

d. Palladium.

e. Copper.

f. Such other items as the administrator may specify by rule or order.

14. "*Sale*" or "*sell*" includes every sale, contract of sale, contract to sell, or disposition, for value.

90 Acts, ch 1169, §1

502A.2 Unlawful commodity transactions.

Except as otherwise provided in section 502A.3 or 502A.4, a person shall not sell or purchase, or offer to sell or purchase, a commodity under a commodity contract, or under a commodity option, or offer to enter into, or enter into as seller or purchaser, a commodity contract or commodity option.

90 Acts, ch 1169, §2

502A.3 Exempt person transactions.

The prohibitions in section 502A.2 do not apply to a transaction in which any of the following persons, or any employee, officer, or director of a listed person acting solely in that capacity, is the purchaser or seller:

1. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.
2. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.
3. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2.
4. A person who is a member of a contract market designated by the commodity futures trading commission, or any CFTC clearinghouse.
5. A financial institution.
6. A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

This exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

90 Acts, ch 1169, §3

502A.4 Exempt transactions.

1. Section 502A.2 does not apply to any of the following:

- a.* An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.
- b.* A commodity contract, offered or sold by a qualified seller as defined in subsection 2, for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by the payment. For purposes of this paragraph, physical delivery shall be deemed to have occurred if both of the following conditions are satisfied:

(1) Within twenty-eight days, the required quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is any of the following:

(a) A financial institution.

(b) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission.

(c) A storage facility licensed or regulated by the United States or any agency of the United States.

(d) A depository designated by the administrator.

(2) The depository or a qualified seller issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the required quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

c. For the purposes of paragraph "b", a depository other than the seller shall not include a financial institution which makes loans to enable the borrower to finance the purchase of one or more precious metals if any of the following apply:

(1) The financial institution knows that the seller arranged for a commission, brokerage, or referral fee for the extension of credit by the financial institution.

(2) The financial institution is a person related to the seller, unless the relationship is remote or is not a factor in the transaction.

(3) The seller guarantees the loan or otherwise assumes the risk of loss by the financial institution upon the loan.

(4) The financial institution directly supplies the seller with the contract document used by the borrower to evidence the loan, and the seller has knowledge of the credit terms and participates in the preparation of the document.

(5) The loan is conditioned upon the borrower's purchase of the precious metals from a particular seller, but the financial institution's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned.

(6) The financial institution otherwise knowingly participates with the seller in the sale. The fact that the financial institution takes a security interest in the precious metals sold or makes the proceeds of the loan payable to the seller does not in itself constitute knowing participation in the sale.

d. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, the commodity which is the subject of the contract, or any by-product of the commodity.

e. A commodity contract under which the offeree or the purchaser is a person under section 502A.3, an insurance company, an investment company as defined in the federal Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan other than a self-employed individual retirement plan, or individual retirement account.

2. For the purposes of subsection 1, paragraph "b", a qualified seller is a person who satisfies all of the following conditions:

a. Is a seller of precious metals and has a tangible net worth of at least five million dollars, or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller and the affiliate has a tangible net worth of at least five million dollars.

b. Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years.

c. Prior to any offer, files with the administrator a sworn notice of intent to act as a qualified seller under subsection 1, paragraph "b", and annually files a new notice. A notice of intent to act as a qualified seller must contain all of the following:

(1) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons.

(2) The address of its principal place of business, state and date of incorporation or organization, and the name and address of seller's registered agent in this state.

(3) A statement that the seller, or a person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, has a tangible net worth of at least five million dollars.

(4) Depository information including all of the following:

(a) The name and address of the depository or depositories that the seller intends to use.

(b) The name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years.

(c) Independent verification from each and every depository named in subparagraph subdivision (b) that the seller has in fact stored precious metals on behalf of the seller's customers for the previous three years and a statement of total deposits made during this period.

(5) Financial statements for the seller, or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller, for the past three years, audited by an independent certified public accountant, together with the accountant's reports.

(6) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including all of the following in subparagraph subdivisions (a) through (d), or if not applicable, subparagraph subdivision (e):

(a) Civil litigation and administrative proceedings involving securities or commodities violations, or fraud.

(b) Criminal proceedings.

(c) Denials, suspensions, or revocations of securities or commodities, licenses, or registrations.

(d) Suspensions or expulsions from membership in, or associations with, self-regulatory organizations registered under the Securities Exchange Act of 1934, or the Commodities Exchange Act.

(e) A statement that there were no such proceedings.

d. Notifies the administrator within fifteen days of any material changes in the information provided in the notice of intent.

e. Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the administrator, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

3. The administrator may, upon request by the seller, waive any of the exempt transaction requirements of this section, conditionally or unconditionally.

4. The administrator may, by order, deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under subsection 1, paragraph "b" if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants or employees, a person occupying a similar status or performing similar functions, a person who directly or indirectly controls or is controlled by the seller, or any of them, the seller's affiliates or subsidiaries meets any of the following conditions:

a. Has filed a notice of intention under subsection 2 with the administrator or the designee of the administrator which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodity business.

c. Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice which injunction indicates a lack of fitness to engage in the investment commodities business.

d. Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a securities broker-dealer, sales representative, or investment adviser.

e. Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms.

(2) Suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the federal Securities Exchange Act of 1934 or the Commodity Exchange Act.

(3) A United States postal service fraud order.

(4) A cease and desist order entered after notice and opportunity of hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the United States securities and exchange commission, or the commodity futures trading commission.

(5) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the Commodity Exchange Act.

f. Has engaged in an unethical or dishonest act or practice in the investment commodities or securities business.

g. Has failed reasonably to supervise sales representatives or employees.

5. If the public interest or the protection of investors so requires, the administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the administrator shall promptly notify the person claiming such status that an order has been entered and the reasons for the order and that within thirty days after the receipt of a written request the matter will be set for hearing. Section 502A.20 applies with respect to all subsequent proceedings.

6. If the administrator finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, deny or revoke the exemption for a qualified seller.

7. The administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting and conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities.

90 Acts, ch 1169, §4

502A.5 Unlawful commodity activities.

1. A person shall not engage in a trade or business or otherwise act as a commodity merchant unless the person is either of the following:

a. Registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or revoked.

b. Exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

2. A board of trade shall not trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked.

90 Acts, ch 1169, §5

502A.6 Fraudulent conduct.

A person shall not directly or indirectly do any of the following in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to section 502A.2, 502A.3, 502A.4, subsection 1, paragraph "b", or section 502A.4, subsection 1, paragraph "d":

1. Cheat or defraud, or attempt to cheat or defraud, another person or employ any device, scheme, or artifice to defraud another person.

2. Make a false report or enter a false record.

3. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

4. Engage in a transaction, act, practice, or course of business, including, without limitation, any form of

advertising or solicitation, which operates or would operate as a fraud or deceit upon any person.

5. Misappropriate or convert the funds, security, or property of another person.

90 Acts, ch 1169, §6

502A.7 Liability of principals, controlling persons, and others.

1. The act, omission, or failure of an official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of the individual, association, partnership, corporation, or trust, as well as of the person.

2. A person who directly or indirectly controls another person liable under this chapter, a partner, officer, or director of the other person, a person occupying a similar status or performing similar functions, and an employee of such other person who materially aids in the violation, is liable jointly and severally with and to the same extent as the other person, unless the person who is liable by virtue of this provision sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

90 Acts, ch 1169, §7

502A.8 Securities laws unaffected.

This chapter does not impair, derogate, or otherwise affect the authority or powers of the administrator under chapter 502 or the application of any provision of chapter 502 to a person or transaction subject to that chapter.

90 Acts, ch 1169, §8

502A.9 Purpose.

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate this chapter.

90 Acts, ch 1169, §9

502A.10 Reserved.

502A.11 Investigations.

1. The administrator may make investigations, within or without this state, as the administrator finds necessary or appropriate to do either or both of the following:

a. Determine whether any person has violated, or is about to violate this chapter or any rule or order of the administrator.

b. Aid in enforcement of this chapter.

2. The administrator may publish information concerning a violation of this chapter or any rule or order of

the administrator.

3. For purposes of an investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator finds to be relevant or material to the inquiry.

4. *a.* If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

b. The request for order of compliance may be addressed to either of the following:

(1) The Polk county district trial court or the district court where service may be obtained on the person refusing to testify or produce, if the person is within this state.

(2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

90 Acts, ch 1169, §10

502A.12 Enforcement of chapter.

1. If the administrator believes, whether or not based upon an investigation conducted under section 502A.11, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or a rule or order issued under this chapter, the administrator may do any or all of the following:

a. Issue a cease and desist order.

b. Issue an order imposing a civil penalty in amount which may not exceed ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

c. Initiate any of the actions specified in subsection 2.

2. The administrator may institute any or all of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

a. A declaratory judgment.

b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a rule or order of the administrator.

c. An action for disgorgement.

d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

e. An action for restitution.

90 Acts, ch 1169, §11

502A.13 Power of court to grant relief.

1. *a.* Upon a proper showing by the administrator that a person has violated, or is about to violate, this chapter or a rule or order of the administrator, a court of competent jurisdiction may grant appropriate legal or equitable remedies.

b. Upon showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant any or all of the following special remedies:

(1) Imposition of a civil penalty in amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings.

(2) Disgorgement.

(3) Declaratory judgment.

(4) Restitution to investors wishing restitution.

(5) Appointment of a receiver or conservator for the defendant or the defendant's assets.

c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the administrator shall be limited to any or all of the following:

(1) A temporary restraining order.

(2) A temporary or permanent injunction.

(3) A writ of prohibition or mandamus.

(4) An order appointing a receiver or conservator for the defendant or the defendant's assets.

2. The court shall not require the administrator to post a bond in any official action under this chapter.

3. *a.* Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a rule or order of the administrator or securities or commodity agency of that state, the district court may grant appropriate legal and equitable remedies.

b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant either or both of the following special remedies:

(1) Disgorgement.

(2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state shall be limited to any or all of the following:

- (1) A temporary restraining order.
- (2) A temporary or permanent injunction.
- (3) A writ of prohibition or mandamus.
- (4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

90 Acts, ch 1169, §12

502A.14 Criminal penalties.

1. A person who willfully violates either of the following shall, upon conviction, be fined not more than twenty thousand dollars or be imprisoned not more than ten years, or both, for each violation.

a. This chapter.

b. A rule or order of the administrator under this chapter.

2. A person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves the person had no knowledge of the rule or order.

3. The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the attorney general or the proper county attorney, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter.

4. This chapter does not limit the power of the state to proceed against a person for conduct which constitutes a breach of duty, a crime, or a violation under common law, rule, or another statute. An action pursuant to this chapter is not an election of remedies, and an aggrieved person or the state retains any other common law or statutory causes of action which may exist against a person alleged to have violated this chapter or against a person convicted of such a violation.

90 Acts, ch 1169, §13

502A.15 Administration of chapter.

1. This chapter shall be administered by the administrator of the securities bureau of the insurance division of the department of commerce.

2. The administrator or any employees of the administrator shall not use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, and the administrator or any employees of the administrator shall not conduct any securities or commodity dealings based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

3. *a.* Except as provided in paragraph "*b*", all information collected, assembled, or maintained by the administrator is public information and is available for the examination of the public as provided by chapter 22.

b. The following are exceptions to paragraph "*a*" and are confidential:

(1) Information obtained in an investigation pursuant to section 502A.11, unless published pursuant to

section 502A.11, subsection 2.

(2) Information made confidential by chapter 22.

(3) Information obtained from federal agencies which cannot be disclosed under federal law.

c. The administrator in the administrator's discretion may disclose any information made confidential under paragraph "*b*" to persons identified in section 502A.16, subsection 1.

d. This chapter does not create or derogate any privilege which exists at common law, by statute or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

90 Acts, ch 1169, §14

502A.16 Cooperation with other agencies.

1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the commodity futures trading commission, the United States securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the federal Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

2. The cooperation authorized by subsection 1 shall include, but need not be limited to, any or all of the following:

a. Making joint examinations or investigations.

b. Holding joint administrative hearings.

c. Filing and prosecuting joint litigation.

d. Sharing and exchanging personnel.

e. Sharing and exchanging information and documents.

f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the United States securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

90 Acts, ch 1169, §15

502A.17 General authority to adopt rules, forms, and orders.

1. In addition to specific authority granted elsewhere in this chapter, the administrator may adopt rules and forms, pursuant to chapter 17A, and issue orders as are necessary to administer this chapter. Rules or forms to

be adopted shall include, but need not be limited to, the following:

a. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter.

b. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

2. Unless specifically provided in this chapter, a rule, form, or order shall not be adopted or issued unless the administrator finds that the action is both of the following:

a. Necessary or appropriate in the public interest or for the protection of investors.

b. Consistent with the purposes fairly intended by the policy of this chapter.

3. All rules and forms of the administrator shall be published as provided in chapter 17A.

4. A provision of this chapter imposing any liability shall not apply to an act done or omitted in good faith in conformity with a rule or form adopted or order issued by the administrator, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

90 Acts, ch 1169, §16

502A.18 Consent to service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the administrator, the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the administrator with the same force and validity as if served personally.

90 Acts, ch 1169, §17

502A.19 Chapter scope.

1. Sections 502A.2, 502A.5, and 502A.6 apply to a person who sells or offers to sell when either of the following occurs:

a. An offer to sell is made in this state.

b. An offer to buy is made and accepted in this state.

2. Sections 502A.2, 502A.5, and 502A.6 apply to a person who buys or offers to buy when either of the following occur:

a. An offer to buy is made in this state.

b. An offer to sell is made and accepted in this state.

3. For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when either of the following occurs:

a. The offer originates from this state.

b. The offer is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

4. For the purpose of this section, an offer to buy or to sell is accepted in this state when the acceptance satisfies both of the following conditions:

a. The acceptance is communicated to the offeror in this state.

b. The acceptance has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

5. An offer to sell or to buy is not made in this state when either of the following occurs:

a. The publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.

b. A radio or television program originating outside this state is received in this state.

90 Acts, ch 1169, §18

502A.20 Effect of pending judicial review.

The filing of a petition for judicial review pursuant to chapter 17A does not, unless specifically ordered by the court, operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

90 Acts, ch 1169, §19

502A.21 Pleading exemptions.

It is not necessary for the state to plead the absence of an exemption under this chapter in a complaint, information, or indictment, or a writ or proceeding brought under this chapter. The burden of proof of a claimed exemption is upon the party claiming the exemption.

90 Acts, ch 1169, §20

502A.22 Affirmative defense.

It is an affirmative defense in a complaint, information, indictment, writ, or proceeding brought under this chapter alleging a violation of section 502A.2 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 502A.1, subsection 5, or section 502A.4, subsection 1, paragraph "b" if both of the following apply:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or

any of them, the seller's affiliates, subsidiaries, or successors.

2. Physical delivery was completed within a reasonable time under the applicable circumstances.

90 Acts, ch 1169, §21