

ARTICLE 53
COLORADO COMMODITY CODE

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Editor's note: This article was originally enacted as article 5 of chapter 125 in C.R.S. 1963 as the Antibucketing Law. The substantive provisions of this article were repealed and reenacted in 1989, causing some addition, relocation, and elimination of sections as well as subject matter. When this article was repealed and reenacted, the Colorado Commodity Code replaced the Antibucketing Law. The Commodity Code is based on the Model State Commodity Code drafted by a national committee of state, federal, and industry regulators and experts in 1984. It is designed to fill a jurisdictional void between securities and commodities laws. For prior amendments, consult the red book table distributed with the session laws; the 1987 replacement volume and the original volume of C.R.S. 1973, and annual supplements to these volumes prior to 1989; the original comparative table located with the index; and C.R.S. 1963.

Section

PART 1 - REGULATION OF COMMODITY SALES -UNLAWFUL ACTIVITIES

11-53-101. Short title.

This article shall be known and may be cited as the "Colorado Commodity Code".

11-53-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(2) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on July 1, 1989, and all subsequent amendments, additions, or other revisions thereto, unless the commissioner, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof to this article or to any provisions thereof by rule.

(3) "Commissioner" means the commissioner of securities created by section 11-51-701.

(4) "Commodity" means, except as otherwise specified by the commissioner by rule, regulation, or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal as defined in subsection (13) of this section), any gem or gemstone (whether characterized as precious, semi-precious, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. The term "commodity" shall not include:

(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 property; or

(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 thereof.

(5) "Commodity contract" means any 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 shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar 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, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provisions thereof by rule.

(7) "Commodity futures trading commission" means the federal commission established by 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) Futures commission merchant;

(b) Commodity pool operator;

(c) Commodity trading advisor;

(d) Introducing broker;

(e) Leverage transaction merchant;

(f) An associated person of any of the foregoing;

(g) Floor broker; and

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

(9) "Commodity option" means any account, agreement, or contract giving a party thereto 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 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 an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government but does not include the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission (or any employee, officer or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(13) "Precious metal" means the following in either coin, bullion, or other form:

(a) Silver;

(b) Gold;

(c) Platinum;

(d) Palladium;

(e) Copper; and

(f) Such other items as the commissioner may specify by rule, regulation, or order.

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

(15) "Securities and exchange commission" means the commission established by the "Securities Exchange Act of 1934".

(16) "Securities Exchange Act of 1934" and "Investment Company Act of 1940" mean the federal statutes of those names as amended, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provision thereof by rule.

11-53-103. Unlawful commodity transactions.

Except as otherwise provided in section 11-53-104 or 11-53-105, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

11-53-104. Exempt person transactions.

(1) The prohibitions in section 11-53-103 shall not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(a) 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;

(b) A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph (a) or (b) of this subsection (1);

(d) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(e) A financial institution; or

(f) A person registered under the laws of this state as a securities broker or dealer whose activities require such registration.

(2) The exemption provided by subsection (1) of this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule.

11-53-105. Exempt transactions.

(1) The prohibitions in section 11-53-103 shall not apply to 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 for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar 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 such payment; except that, for purposes of this paragraph (b), physical delivery shall be deemed to have occurred if, within such twenty-eight-day period:

(I) Such quantity of precious metals purchased by such payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either:

(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 thereof; or

(D) A depository designated by the commission; and

(II) Such depository (or other person which itself qualifies as a depository as provided in said subparagraph (I)) or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument evidencing that such 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) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants, each commodity subject thereto, or any by-product thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 11-53-104, an insurance company, an investment company as defined in the "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 paragraph (b) of subsection (1) of this section, a "qualified seller" is a person who:

(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, and annually thereafter, files with the commissioner a sworn notice of intent to act as a qualified seller under paragraph (b) of subsection (1) of this section, containing:

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

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

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

(IV) The name and address of the depository or depositories that the seller intends to use, and 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;

(V) 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, including balance sheet and income statements which have been audited by an independent certified public accountant, together with the accountant's report;

(VI) 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:

(A) Civil litigation and administrative proceedings involving securities or commodities law 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 association with, self-regulatory organizations registered under the "Securities Exchange Act of 1934" or the commodity exchange act; or

(E) A statement that there were no such proceedings;

(d) Notifies the commissioner within fifteen days of any material changes in the information provided in the notice of intent; and

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

(3) The commissioner may, upon request by the seller, waive any of the exemption requirements in paragraph (b) of subsection (1) and subsection (2) of this section, conditionally or unconditionally.

(4) The commissioner may, by order, deny, suspend, revoke, or place limitations on the qualified seller exemption under paragraph (b) of subsection (1) and subsection (2) of this section if the commissioner finds that the order is in the public interest and that the seller, the seller's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, or the seller's affiliates or subsidiaries:

(a) Has filed a notice of intention under subsection (2) of this section with the commissioner or the designee of the commissioner 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 violated or failed to comply with a provision of this article or is the subject of an adjudication or determination within the last five years by an agency, administrator, or court of competent jurisdiction of any other jurisdiction that the person has willfully violated the anti-fraud provisions of any state or federal securities or commodities law;

(c) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime involving fraud or unlawful taking;

(d) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice in violation of the anti-fraud provisions of any state or federal securities or commodities law;

(e) Is the subject of any of the following orders which are in effect and issued within the last five years:

(I) An order by the administrator of any jurisdiction administering a state commodity law 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 pool operator, commodity trading advisor, introducing broker, leverage transaction merchant, associated person, floor broker, or the substantial equivalent of those terms;

(II) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the commodity exchange act;

(III) A United States postal service fraud order; or

(IV) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(f) Has failed reasonably to supervise its sales representatives or sales employees engaged in the investment commodities business.

(5) The commissioner may designate an administrative law judge, appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings pursuant to section 24-4-105, C.R.S.

(6) Any person aggrieved by a final order of the commissioner may obtain review of the order in the district court of the city and county of Denver pursuant to the provisions of section 24-4-106, C.R.S.

(7) If the commissioner 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 commissioner may, by order, revoke qualified seller status.

(8) By order or rule and subject to such terms and conditions prescribed therein, the commissioner may, from time to time, add any persons or transactions not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, to the persons and transactions exempted from the prohibitions set forth in section 11-53-103, if the commissioner finds that such prohibitions are not necessary in the public interest and for the protection of investors.

11-53-106. Unlawful commodity activities.

(1) No person shall engage in a trade or business of or otherwise act as a commodity merchant unless such person is either:

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

(b) Exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade shall 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 such board of trade has been so designated for such commodity contract or commodity option and such designation has not been vacated, suspended, or revoked.

11-53-107. Fraudulent conduct.

(1) No person shall, directly or indirectly, 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 any commodity contract or commodity option prohibited by section 11-53-103 or made pursuant to section 11-53-104 or 11-53-105 (1) (b) or (1) (d):

(a) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

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

(c) Engage in any 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; or

(d) Misappropriate or convert the funds, security, or property of any other person.

11-53-108. Misleading filings.

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this article, any statement which is, at the time and in the light of the circumstances under which it was made, false or misleading in any material respect.

11-53-109. Liability of principals, controlling persons, and others.

(1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this article, every partner, officer, or director of such liable person, every person occupying a similar status or performing similar functions to such liable person, and every employee of such liable person who materially aids in the violation is also liable jointly and severally with and to the same extent as the person liable under the provisions of this article unless the person who is also liable by virtue of this subsection (2) 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.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

11-53-110. Securities law unaffected.

Nothing in this article shall impair, derogate, or otherwise affect the authority or powers of the commissioner under article 51 of this title or the application of any provision thereof to any person or transaction subject thereto.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

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11-53-111. Purpose.

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

Source: L. 89: Entire article R&RE, p. 637, § 1, effective July 1.

PART 2 - ENFORCEMENT OF COMMODITY CODE - PENALTIES

11-53-201. Investigations and subpoenas.

(1) The commissioner in his discretion may make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated any provision of this article or any rule or order under this article or to aid in the enforcement of this article, or, in the prescribing of rules and forms under this article, the commissioner may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any proceeding brought under this article or any rule or order issued under this article.

(2) For purpose of any investigation or proceeding under this article, the commissioner or any officer designated by the commissioner 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 commissioner finds to be relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the commissioner, may issue to such person an order requiring the person to appear before the commissioner, or the officer designated by him, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of the person subpoenaed may tend to incriminate said person or subject the person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

11-53-202. Enforcement - cease-and-desist orders.

(1) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, the commissioner may apply to the district court for the city and county of Denver, or to the appropriate courts of another state, for the appropriate legal or equitable relief, including but not limited to:

(a) A declaratory judgment;

(b) A temporary restraining order or preliminary or permanent prohibitory or mandatory injunction enjoining the act or practice in question and to enforce compliance with this article or any rule or order under this article;

(c) An order for restitution and disgorgement, or either of them; and

(d) An order for appointment of a receiver or conservator for the defendant or the defendant's assets.

(2) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, then, in addition to the powers granted in subsection (1) of this section, the commissioner may enter an order to show cause directed to such person and shall follow substantially the procedure set forth in section 11-51-606 (1.5).

11-53-203. Power of court to grant relief.

(1) Upon a proper showing by the commissioner that a person has violated any provision of this article or any rule or order under this article, the court may grant appropriate legal or equitable remedies including a temporary restraining order, a preliminary and permanent prohibitory or mandatory injunction, and writ or prohibition or mandamus. In addition, the court may grant the following special remedies:

(a) Imposition of a civil penalty in an 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;

(b) Disgorgement;

(c) Declaratory judgment;

(d) Restitution to investors wishing restitution; and

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

(2) In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

11-53-204. Criminal penalties - statute of limitations.

(1) Any person who willfully violates any provision of this article, except section 11-53-108, or who willfully violates section 11-53-108 when the person knows or should know that the statement the person makes in violation of section 11-53-108 is false or misleading in any material respect commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) The commissioner may refer such evidence as is available concerning violations of this article to the attorney general, the proper district attorney or other criminal prosecutor, who may, with or without such a reference from the commissioner, prosecute the appropriate criminal proceedings.

(3) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(4) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

11-53-205. Administration of article.

(1) This article shall be administered by the commissioner as the head of the division of securities within the department of regulatory agencies.

(2) Neither the commissioner nor any employees of the commissioner shall use any information which is filed with or obtained by the commissioner or the designee of the commissioner which is not public information for personal gain or benefit, nor shall the commissioner or employees of the commissioner conduct any securities or commodity dealings whatsoever 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) Any information obtained by the commissioner or any designee of the commissioner under this article shall be nonpublic and confidential unless made public by the commissioner or the designee of the commissioner in connection with an investigation or proceeding under this article or under section 11-53-206. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any designee of the commissioner.

11-53-206. Cooperation with other agencies.

(1) To encourage uniform application and interpretation of this article and commodities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, including bearing the expense of such cooperation, with law enforcement and other regulatory agencies of this state or other jurisdictions.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, 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; except that any information or documents shared by the commissioner with other agencies shall remain nonpublic and confidential as provided in section 11-53-205 (3) unless made public in connection with an investigation or proceeding brought by agencies with whom said information or documents was shared; and

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

11-53-207. General authority to adopt rules, forms, and orders.

(1) In addition to specific authority granted elsewhere in this article, the commissioner may make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article. Such rules or forms shall include, but need not be limited to, rules defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules or forms, the commissioner may classify commodities, commodity contracts, commodity options, persons, and matters within the commissioner's jurisdiction.

(2) Unless specifically provided in this article, no rule, form, or order may be adopted, amended, or rescinded unless the commissioner finds that the action is:

(a) Necessary or appropriate in the public interest or for the protection of investors; and

(b) Consistent with the purposes fairly intended by the policy and provisions of this article.

(3) All rules and forms of the commissioner shall be published.

(4) No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the commissioner, 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.

11-53-208. Scope of the article.

(1) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to buy is made and accepted in this state.

(2) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who buy or offer to buy when an offer to buy is made in this state or when an offer to sell is made and accepted in this state.

11-53-209. Pleading exemptions.

It shall not be necessary to plead in the negative any of the exemptions of this article in any complaint, information, or indictment or any writ or proceeding brought under this article; and the burden of proof of any such exemption shall be upon the party claiming the same.

11-53-210. Affirmative defenses.

(1) It shall be an affirmative defense in any complaint, information, or indictment, or to any writ or proceeding brought under this article alleging a violation of section 11-53-103 based solely on the failure in an individual case to make physical delivery within the applicable time period under section 11-53-102 (5) or 11-53-105 (1) (b) if:

(a) 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, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, the seller's affiliates, subsidiaries, or successors; and

(b) Physical delivery was completed within a reasonable time under the applicable circumstances.

11-53-211. Interpretive opinions.

The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exclusions from the definitions set forth in section 11-53-102, for the applicability of exemptions set forth in sections 11-53-104 and 11-53-105, and for the applicability of any other provision of this article. Any person making such a request shall pay a nonrefundable fee which shall be set and collected pursuant to section 11-51-707. In response to any request for a confirmation or other interpretive opinion received pursuant to this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making the request.