

(B) Make and maintain specified records and preserve such records for five years or such other period as may be specified by rule; and

(C) Establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article.

(III) An online intermediary shall:

(A) Limit its offer of securities pursuant to the exemption provided by this section to only Colorado residents as that term is defined in subsection (d) of the securities and exchange commission's rule 147, 17 CFR 230.147 (d);

(B) Not hold a financial interest in any issuer or be affiliated with or under common control with an issuer whose securities appear on any website maintained for the offer of securities by the online intermediary; and

(C) Not be an owner of any issuer offering securities pursuant to the exemption provided by this section.

(IV) An online intermediary shall not be compensated based on the amount of securities sold. The fee that an online intermediary may charge an issuer for an offering of securities pursuant to the exemption provided by this section must be either:

(A) A fixed amount for each offering;

(B) A variable amount based on the length of time that the securities are offered by the online intermediary; or

(C) A combination of the fixed and variable amounts.

(V) An online intermediary shall not identify, promote, or otherwise refer to any individual security offered by it in any advertising for or on behalf of the online intermediary.

(VI) An online intermediary shall not engage in any other activities that the securities commissioner, by rule, determines are prohibited by the online intermediary.

(VII) An online intermediary and a director, executive officer, general partner, managing member, or other person with management authority over the online intermediary must not have been subject to any conviction, order, judgment, decree, or other action that would disqualify an issuer from claiming an exemption pursuant to rule 506 (a) to (d) adopted by the securities exchange commission pursuant to the federal "Securities Act of 1933", 17 CFR 230.506 (a) to (d).

(4) **Rules.** The securities commissioner may adopt rules to:

(a) Implement or enforce this section or provide exceptions or waivers to the requirements of this section; or

(b) Conform or add to the requirements of this section to accommodate the requirements of federal law applicable to the offer or sale of a security by an issuer under this section.

**Source: L. 2015:** Entire section added, (HB 15-1246), ch. 98, p. 279, § 1, effective August 5. **L. 2016:** (3)(a)(IV)(D), (3)(a)(IV)(F), and (3)(a)(IX) amended, (HB 16-1049), ch. 3, p. 5, § 1, effective March 9.

**11-51-309. Discretionary exemptions.** The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, from time to time add any

securities to the securities exempted in section 11-51-307 or add any transactions to the transactions exempted in section 11-51-308, if the securities commissioner finds that the application of sections 11-51-301 and 11-51-305 to such securities or transactions is not necessary in the public interest and for the protection of investors.

**Source: L. 90:** Entire article R&RE, p. 719, § 1, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**11-51-310. Denial or revocation of exemptions.** (1) (a) The securities commissioner may, by order, deny or revoke the exemption specified in section 11-51-307 (1)(g) with respect to a specific security or transaction if the securities commissioner finds that such order is necessary in the public interest and for the protection of investors.

(b) The securities commissioner may, by summary order under section 11-51-606 (3)(b), summarily suspend the exemption specified in section 11-51-307 (1)(g) as to a specific security or issuer pending final determination of any proceeding under this subsection (1).

(2) The securities commissioner may, by rule or order, deny or revoke any exemption specified in section 11-51-308 (1)(i), (1)(j), and (1)(p) with respect to a specific security, transaction, issuer, or class of persons if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been convicted within ten years of any felony in connection with the purchase or sale of any security. Such ten years shall be any ten years prior to any offer or sale of a security for which such exemption would otherwise be available.

(3) No order under subsection (1) or (2) of this section may operate retroactively. No person may be considered to have violated section 11-51-301 or 11-51-305 by reason of any offer or sale effected after the entry of an order under subsection (1) or (2) of this section if that person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

**Source: L. 90:** Entire article R&RE, p. 720, § 1, effective July 1. **L. 94:** (1)(b) amended, p. 1839, § 3, effective July 1.

**Editor's note:** This section is similar to former § 11-51-113 as it existed prior to 1990.

**11-51-311. Coordination of exemptions.** In furtherance of the policy stated in section 11-51-101 (3), the exemptions under sections 11-51-307 to 11-51-309 shall be coordinated with exemptions for securities and transactions under the federal "Securities Act of 1933" so that an offering registered under the federal "Securities Act of 1933" shall be subject to registration by filing under this article in the absence of an exemption under this article and so that an offering exempt from registration under the federal "Securities Act of 1933", other than pursuant to the exemption for intrastate offerings, shall also be exempt from registration under this article. The