

**§ 78D-33. Affirmative defense.**

It shall be a defense in any complaint, information, indictment, any writ or proceeding brought under this Chapter alleging a violation of G.S. 78D-2 based solely on the failure in an individual case to make physical delivery within the applicable time period under G.S. 78D-1(5) or G.S. 78D-4(a)(2) if the party asserting the defense sustains the burden of proof that:

- (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; and
- (2) Physical delivery was completed within a reasonable time under the applicable circumstances. (1989, c. 634, s. 1.)