



North Carolina

# Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

Securities Division

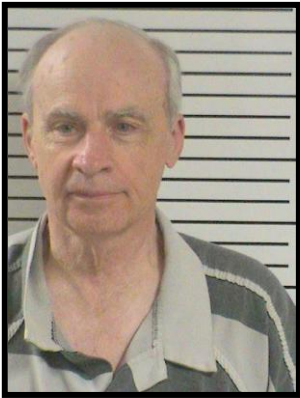


PO Box 29622 | Raleigh NC | 27626-0622 | 919-814-5400 | (800) 688-4507 | [www.sosnc.com](http://www.sosnc.com)

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## June 2011 NEWSLETTER • Vol. 3, No. 6

### Mooresville Man Pleads Guilty in \$18.5 Million Ponzi Scheme



Shelby Dean Martin

On June 30, 2011, Shelby Dean Martin, 73, of Mooresville, NC pleaded guilty in Iredell County Superior Court to 19 felony counts of securities fraud following an investigation by the North Carolina Secretary of State's Securities Division.

Senior Resident Superior Court Judge Christopher Collier sentenced Martin to two consecutive Class C felonies. Martin must serve between 9 years 8 months to just over 13 years in prison. Additionally, Judge Collier ordered Martin to repay victims approximately \$5.35 million. After hearing his sentence, Martin was immediately taken into custody by the Iredell County Sheriff's Department to begin serving his sentence.

The Secretary of State's Office began receiving complaints in October of 2008 from North Carolina residents regarding investments they made with Martin individually or through one of his two businesses, D. Martin Enterprises and DM Ventures.

Between January 2004 and December 2008, Martin collected over \$18.5 million from more than 100 investors. He told investors that their money would be used as venture capital for various companies, although many victims told investigators that Martin never told them specifically which companies he was investing in. All of the victims were told that their principal and interest were guaranteed and that they could get their money back at any time upon a 30-day notice. Martin issued promissory notes and receipts of funds to each of the victims, which detailed the guarantees he promised to the victims. The victims were all guaranteed a rate of return between 10-50% per year on their principal investment.

However, Martin's own bank records revealed that he used new investor money to pay returns to previous investors, the hallmark of a classic Ponzi scheme. Many of the victims knew Martin from church or other social circles.

"Sadly, we are seeing more fraudulent securities schemes in this challenging economy," Secretary of State Elaine F. Marshall said. "So it's more important than ever for investors to be hyper-vigilant when they're approached with investment opportunities. Mr. Martin was not registered to sell securities, so in this case a phone call to our Securities Division would have raised a very big red flag for any potential investor. That is why it is so very important that anyone considering an investment first call our Securities Division at 1-800-688-4507 to make sure that the person offering the investment, and the investment itself, are properly registered with us."

The prosecution of this case was handled by Zesely Haislip, Senior Enforcement Attorney, and Dena King, Enforcement Attorney with the Secretary of State's Securities Division. The Secretary of State's Office gratefully acknowledges the assistance of Sarah Kirkman, District Attorney for Prosecutorial District 22A, and her staff as well as the staff of the Iredell County Clerk of Court's office.

To find out if a broker, adviser, or investment offering is registered with the State, call the N.C. Secretary of State Securities Division at 1-800-688-4507.



## CFTC Charges Neal E. Hall of North Carolina with Registration and Disclosure Violations

### Hall conducts business via his trading system website.

On June 7, 2011, the U.S. Commodity Futures Trading Commission (CFTC) announced the filing of a complaint against Neal E. Hall, of Reidsville, N.C., charging him with failure to register as a commodity trading advisor (CTA) and failure to include required cautionary statements on his trading system's website, [www.showmemyfuture.com](http://www.showmemyfuture.com). Hall has never been registered with the CFTC in any capacity.

The CFTC civil complaint, filed in the U.S. District Court for the Middle District of North Carolina, alleges that Hall violated Section 4m(1) of the Commodity Exchange Act by failing to register as a CTA. The complaint alleges that, beginning no later than June 2010 and continuing to the present, Hall used the mails and other avenues of interstate commerce while offering services as a CTA in exchange for payment in the form of either flat charges or a percentage of profits from customers. Hall used his website to solicit clients both to subscribe to his e-mini S&P 500 futures trading program and to have him manage their trading accounts, according to the complaint.

Additionally, the complaint alleges that Hall is violating CFTC regulations 4.41(a)(3) and 4.41(b). These regulations require cautionary statements to accompany the use of client testimonials and the presentation of the performance of a simulated or hypothetical commodities account. Regulation

4.41(b) further dictates that the cautionary statement accompanying the presentation of the performance of simulated or hypothetical trading results contain specific language and be prominently displayed in immediate proximity to the hypothetical results.

According to the complaint, Hall is in violation of regulation 4.41(a)(3) because his website lacks a cautionary statement despite featuring testimonials from unnamed clients. Similarly, the complaint alleges that Hall is in violation of regulation 4.41(b) because his website does not contain a disclaimer with the specific language required by the regulation that is prominently displayed in immediate proximity to the hypothetical trading results.

In its continuing litigation, the CFTC seeks restitution, disgorgement of ill-gotten gains, a civil monetary penalty and a permanent injunction against further violations of the federal commodities laws.

### *Did You Know?*

What if you were told that a particular investment has been validated by the Securities Regulatory Authority or the International Securities Commission? Sounds pretty good, right? The only problem is that neither of these entities actually exists!

The U.S. Securities and Exchange Commission (SEC) receives complaints from investors and others, including foreign securities regulators, about securities solicitations made by entities that claim to be registered, licensed and/or located in the US in their solicitation of non-U.S. investors, and entities not registered in the U.S. that are soliciting U.S. investors. In some cases, the complaints are about entities claiming to offer investments endorsed by governmental agencies, including the SEC. These claims are important because when an entity claims to be registered with the SEC, it is in effect claiming that it has made itself available for SEC regulation and oversight. Generally, U.S. entities that solicit you to purchase or sell securities for your own account are required to register with the SEC. For this reason, it is important for you to consider whether the entity that solicits you is, in fact, registered with the SEC.

The SEC has looked into these complaints and has learned that in many cases, the soliciting entities are **not** registered in the U.S. as they claim or imply. In an effort to warn the public about these entities, the SEC is publishing information it has learned in reviewing these complaints. To see the SEC's list of fake governmental agencies and international organizations that some con artists use to make investors think a particular investment is endorsed by a governmental entity, click [here](#). For the SEC's list of unregistered soliciting entities, click [here](#).

## Secretary Marshall Touts Investor Fraud Awareness in Wilmington



Secretary of State Elaine F. Marshall is flanked by District Attorney Benjamin R. David (left) and New Hanover County Sheriff Ed McMahon (right).

On June 16, 2011, approximately 300 Wilmington-area residents participated in a two-hour investment fraud prevention program at the Hilton Wilmington Riverside Hotel. The program, entitled “**Learn to Spot and Avoid Fraud,**” was jointly sponsored by the Financial Industry Regulatory Authority (FINRA) Investor Education Foundation, the NC Department of the Secretary of State, the U.S. Securities and Exchange Commission, AARP North Carolina and the Cape Fear Area Agency on Aging.

Helen Savage, Associate State Director of AARP North Carolina, welcomed attendees and introduced Benjamin R. David, District Attorney for North Carolina’s Fifth Prosecutorial District. Before introducing North Carolina Secretary of State Elaine F. Marshall, Mr. David recognized New Hanover County Sheriff Ed McMahon.

During her keynote address, Secretary Marshall urged attendees to join her, Mr. David and Sheriff McMahon “in talking to the people around you about how not to get scammed. Take it on yourself,” she said, “to be a little nosy if you hear a friend or relative suddenly talking about some new investment. Don’t be afraid to butt in if you see they are suddenly listening to the advice of a person they did not even know six months ago.”

Secretary Marshall concluded her remarks by encouraging attendees to “adopt a missionary’s zeal” about what they learn about financial scams during the program. “By that I mean,” said Secretary Marshall, “go back to your neighborhoods, your churches, and your clubs and groups and share the points these experts are going to give you.”



Secretary Marshall with David S. Massey, Director of the NC Securities Division and President of the North American Securities Administrators Association, and Geraldine Walsh, Acting President of the FINRA Investor Education Foundation.



Some of the 300 people who attended the anti-fraud presentation at the Hilton Wilmington Riverside Hotel.

Geraldine Walsh, Acting President of the FINRA Investor Education Foundation, and Lori Schock, Director of the SEC Office of Investor Education and Advocacy, each provided tips on how to avoid falling victim to investment fraud. Echoing Secretary Marshall’s advice to attendees, Ms. Walsh and Ms. Schock urged audience members to remember to “Ask and Check – Ask questions and check the answers.” They explained to attendees how con artists use various psychological tactics to get victims to open up their wallets and purses. Such tactics include:

- **The "Phantom Riches" Tactic**—In this tactic, the con artist dangles the promise of wealth in a short period of time. Example: *"These gas wells are guaranteed to produce \$6,800 a month in income."* Attendees learned, however, that all investments carry risk.
- **The "Source Credibility" Tactic**—In this tactic, the con artist projects an image of success or authority or offers testimonials “proving” he and the sales offer are “legitimate.” Example: *"Believe me, as a senior vice president of XYZ Firm, I would never sell an investment that doesn't produce."* Attendees learned, however, that credibility can be faked.

- **The "Social Consensus" Tactic**—In this tactic, the con artist tells a potential investor that others are investing and that (s)he should too or risk losing out on a good deal. *"This is how \_\_\_ got his start. I know it's a lot of money, but I'm in—and so is my mom and half her church—and it's worth every dime."* Attendees learned, however, not to fall victim to the "lemming" effect.
- **The "Reciprocity" Tactic**—In this tactic, a con artist gives a potential investor something (like a free meal or a discount) hoping that the investor will feel obligated to give the con artist something in return (like his/her money). Example: *"I'll give you a break on my commission if you buy now—half off."* Attendees learned, however, that they have no obligation to return any business-related favor.
- **The "Scarcity" Tactic**—In this tactic, a con artist pressures a potential investor to "act fast" by saying that the offer will only be available "for a limited time" or is in short supply. Example: *"There are only two units left, so I'd sign today if I were you."* Attendees learned, however, that they should never succumb to pressure to make a quick investment decision. If it's a good investment today, it will be a good investment next week after you have had an opportunity to check out the promoter and the investment offering itself.

These tactics are discussed and illustrated at greater length in a DVD which FINRA has produced entitled, **"Tricks of the Trade: Outsmarting Investment Fraud."** (The Securities Division has a limited supply of these DVDs. Anyone wishing to obtain a free copy may request one by contacting John Maron at 919-807-2106 or via [email](#).)

The evening concluded with a question and answer panel discussion. Ms. Walsh and Ms. Schock were joined by David S. Massey, Director of the NC Securities Division and current President of the North American Securities Administrators Association (NASAA). Ms. Jane S. Jones, Director of the Cape Fear Area Agency on Aging, served as the panel's moderator.

The bottom-line message attendees heard from all of the speakers: **Ask and Check**. Take a few minutes to **ask** questions about the seller and the investment, and then contact one of the regulators to **check** to see if the person selling the investment and the investment opportunity itself are properly registered. North Carolina investors may do this by contacting the Securities Division at (919) 733-3924 or toll-free (800) 688-4507.

## Securities Division Provides Training for IAs at Pitt CC



Betty Guido, Senior Securities Examiner, provides training to investment advisers.

Representatives of the NC Securities Division traveled to Greenville on June 28, 2011, to conduct the Division's eighth educational training workshop for state-registered investment advisers. The workshop was held at the Small Business Center at Pitt Community College.

Ms. Elizabeth (Betty) Guido, Senior Securities Examiner, provided attendees with an overview of the compliance issues all state-registered investment advisers face in their practices, as well as a review of common compliance violations and what advisers should expect during an audit by Division personnel.

The Division wishes to thank Ms. Gail Nichols of the Small Business Center for her assistance in putting this workshop on at her facility.



**If an investment company begins offering a new series, fund or portfolio before December 31, 2011, what do I need to submit to the Division? What will I need to submit to the Division after December 31, 2011 to add a new series, fund or portfolio?**

As stated above, investment company notice filings expire on December 31 of each year. If the investment company had an effective notice filing prior to July 1, 2011, it will not need to submit an amended Form NF or the \$275 portfolio fee to add new series, funds or portfolios until the investment company's notice filing expires on December 31, 2011.

If the investment company submits its initial notice filing with the Division on or after July 1, 2011, it must submit an amended Form NF and the \$275 portfolio fee for each new series, fund or portfolio added to the investment company's notice filing. For example, if an investment company with an effective notice filing as of July 5, 2011 decides to sell two new portfolios in September 2011, then the company would submit an amended Form NF listing the two new portfolios and a notice filing fee of \$550 (\$275 +\$275).

After December 31, 2011, in order to add a series, fund or portfolio to the investment company's notice filing, all investment companies must submit an amended Form NF and the \$275 portfolio fee for each new series, fund or portfolio.

**Can the investment company list the series, funds or portfolios on a single Form NF?**

Yes, please submit one (1) Form NF per investment company. If needed, the investment company may attach additional sheets to the form.

**Whom should I contact if I have questions?**

If you have any questions regarding the investment company notice filing fees, please contact the Securities Division at (919) 733-3924 and ask to speak with a Securities Examiner in the Registration Section.

## **Securities Division Participates in Financial Literacy Summit II**



On June 22, 2011, John Maron, Director of the Investor Education Program for the NC Securities Division, took part in the Financial Literacy Summit II.

Jointly sponsored by the [NC Department of Public Instruction](#) and the [Jump\\$tart Coalition for Personal Financial Literacy for Youth](#), the Summit was held on the campus of NC A&T State University.

Maron gave two presentations. The first was entitled, "**Investor Education: Don't Let a Scammer School You**," and was designed to help teachers avoid becoming personally victimized by con artists.

For the second presentation, Maron teamed up with Dr. Carolyn Bird, Assistant Professor and Family Resource Management Specialist for the NC Cooperative Extension Service. Together, they acquainted teachers with a ready-made investor education instructional curriculum entitled, "**The Basics of Saving and Investing: Investor Education 2020**." The *Basics* curriculum was developed by the Investor Protection Trust, a non-profit organization that funds programs and materials that provide unbiased investor education instruction. Free copies of the curriculum were handed out to attendees. The Securities Division has a limited supply of the curriculum available. Any teacher who would like a copy may contact John Maron at (919) 807-2106 or via [email](#).

## Calendar of Upcoming Events



A representative from the Securities Division will be giving an anti-fraud presentation on the following dates and locations. Dates and times are subject to cancellation (although cancellations are rare), so please call the contact number listed to confirm the event is still on before leaving for it. All presentations are free and open to the public unless otherwise indicated. If you would like to schedule a speaker for your church, business, group or organization, please contact [John Maron](#) or [Barbara Bennett](#) at (800) 688-4507.

<b>Date</b>	<b>City</b>	<b>Details</b>
07/12/11	Charlotte	<a href="#">Junior Achievement Biz Camp</a> , 201 S. Tryon Street. Time: 11:45 AM – 12:45 PM. Open to Junior Achievement campers only. For more information, contact Ann Elliott at (704) 536-9660.
07/14/11	Fayetteville	<a href="#">Elder Investment Fraud and Financial Exploitation Prevention (EIFFE)</a> training for Cumberland Co. DSS employees, 1225 Ramsey Street. Time: 8:30 AM – 10:00 AM. For more information, contact Crystal Black at (910) 677-2405.
07/21/11	Winston-Salem	<a href="#">Arbor Acres United Methodist Retirement Community</a> , 1240 Arbor Road, Fellowship Hall. Town Hall meeting from 11:00 AM – Noon, then a more formal presentation from 1:00 PM - 1:30 PM. For more information, please contact Janice Lutz-Vanhoy at (336) 748-4646.
07/27/11	Greensboro	<a href="#">Career and Technical Education Summer Conference 2011</a> , Koury Convention Center. Time: 9:00 AM – 10:00 AM. Registration required. For more information, click the link above or contact Curtis Miller at (919) 807-4014.
07/28/11	Charlotte	<a href="#">Junior Achievement Biz Camp</a> , 201 S. Tryon Street. Time: 11:45 AM – 12:45 PM. Open to Junior Achievement campers only. For more information, contact Ann Elliott at (704) 536-9660.
08/01/11	Raleigh	<a href="#">American Business Women's Association Tarheel Chapter</a> , NC State University Club, 4200 Hillsborough Street. Time: 6:00 PM – 8:00 PM. Open to Chapter members and their guests only. For more information, contact Chapter President Diane Rickman at <a href="mailto:diane.rickman@hp.com">diane.rickman@hp.com</a> .
08/02/11	Hickory	<a href="#">Hickory Rotary Club District 7670</a> , Lake Hickory Country Club, 430 17th Avenue., NW. Time: Noon -1:00 PM. Open to Rotary Club members and their guests only. For more information, contact: Lou Wetmore at (828) 624-4123.
08/04/11	Charlotte	<a href="#">Junior Achievement Biz Camp</a> , 201 S. Tryon Street. Time: 11:45 AM – 12:45 PM. Open to Junior Achievement campers only. For more information, contact Ann Elliott at (704) 536-9660.
08/13/11	Charlotte	<a href="#">American Association of Individual Investors Charlotte Chapter</a> , Myers Park United Methodist Church, 1501 Queens Road. "Investment Fraud: Don't Let a Scammer School You!" Time: 9:30 AM – Noon. For more information, contact Bob Clyde at (704) 763-2427.



## On The Docket

The following cases are ones in which the Securities Division has had some involvement, either as the lead investigative agency or in a supporting role.

**Dennis Todd Hagemann**, of Raleigh, NC, is scheduled to go on trial in Wake County Superior Court on September 12, 2011. Hagemann was arrested by law enforcement agents from the NC Secretary of State Division of Securities on March 10, 2010, on two felony counts of securities fraud and one felony count of obtaining property by false pretense following a state investigation into alleged actions by Hagemann through his currency trading company, Yellowstone Partners, Inc. The charges allege he defrauded victims out of \$930,000 in a foreign currency trading scam. He has been held in the Wake County Jail under a \$1 million secured bond. In a separate, but related, action, the U.S. Commodity Futures Trading Commission filed a civil action against Hagemann and Yellowstone Partners, Inc. on March 9, 2010, also alleging Hagemann and Yellowstone had operated a Ponzi scheme. On March 10, 2011, Chief U.S. District Judge Louise W. Flanagan of the U.S. District Court for the Eastern District of North Carolina, ordered Hagemann and Yellowstone jointly and severally to pay restitution of \$827,779 and a civil monetary penalty of \$827,779. The order also permanently prohibits Hagemann or Yellowstone Partners Inc. from engaging in any commodity-related activity and from registering with the CFTC in any capacity. (For more information on the CFTC action, click [here](#).)

## Recent Enforcement Actions

(For prior administrative and criminal actions, click on the badge to the right.)

On **June 20, 2011**, the Securities Division of the North Carolina Department of the Secretary of State, with the consent of **Claude D. McDougal**, a resident of Mecklenburg County, and **US Financial Alliance Consultants, LLC**, a North Carolina limited liability company, issued a Final Order against **McDougal** and **US Financial Alliance Consultants, LLC**. **McDougal** and **US Financial Alliance Consultants, LLC** were ordered to cease and desist from offering for sale, soliciting offers to purchase, or selling promissory notes or other securities in violation of the North Carolina Securities Act. The Final Order found that **McDougal** and **US Financial Alliance Consultants, LLC** were not licensed to sell securities and were selling unregistered securities, in violation of the North Carolina Securities Act. Click [here](#) to view the Order.



On **June 14, 2011**, the Securities Division of the North Carolina Department of the Secretary of State, with the consent of **Jotham Walker Pruitt**, a resident of Durham County, North Carolina; **Cinchpoint, Inc. d/b/a Cinchpoint Financial Services**, a North Carolina Corporation; and **Ramses Capital Partners, LLC**, a Delaware limited liability company; issued a Final Order in which the respective registrations of **Mr. Pruitt** and **Cinchpoint, Inc.** as an investment advisor representative and investment advisor were revoked. **Mr. Pruitt, Cinchpoint, Inc.** and **Ramses Capital Partners, LLC** were ordered to cease and desist from violating any statute, rule or regulation under the North Carolina Securities Act or Investment Advisers Act. The Final Order allows **Mr. Pruitt** to apply for registration as a securities salesman and/or investment advisor representative under supervision; however, **Mr. Pruitt** may not apply for registration as a principal of an investment advisor or securities dealer before March 2, 2014. Click [here](#) to view the Final Order.

On **June 3, 2011**, the Securities Division issued a Final Order to Cease and Desist against **Michael A. Smith**, a resident of Castle Hayne, North Carolina. Smith was ordered to cease and desist from offering for sale, soliciting offers to purchase, or selling any securities, including securities of **Carr Miller Capital, LLC**, in violation of the North Carolina Securities Act. The Final Order found that Smith was not registered to sell securities in North Carolina and that Smith was selling unregistered securities of Carr Miller Capital, LLC, in violation of the North Carolina Securities Act. Click [here](#) to view the Final Order.

North Carolina Department of the Secretary of State  
Securities Division • PO Box 29622 • Raleigh, NC 27626-0622  
(919) 733-3924 • (800) 688-4507  
[secdiv@sosnc.com](mailto:secdiv@sosnc.com) • [www.sosnc.com](http://www.sosnc.com)



## News from the Regulators

(The following are selected public notices issued by one or more securities regulator. Click the links to view the full notices. These are offered for informational purposes only.)

### [State Securities Regulators Announce Settlement with Raymond James in Auction Rate Securities Investigations](#)

On June 29, 2011, the North American Securities Administrators Association (NASAA) announced that a settlement in principle had been reached between Raymond James Financial Services, Inc. and state securities regulators to return approximately \$300 million to the firm's clients who have had their funds frozen in the auction rate securities (ARS) market since 2008. The settlement requires the St. Petersburg, Florida, firm to extend offers to repurchase auction rate securities from its retail customers nationwide within the next 30 days. The purchase offer is to remain open for 75 days following the distribution of the initial notice to individual investors. NASAA President David S. Massey commended the work of state securities regulators in Florida and Texas, who co-led the settlement negotiations, as well as those in Indiana, New York, North Carolina, Pennsylvania and South Carolina, who participated in the investigation. For more information about the settlement in principle, click the link above. The settlement was reached in close cooperation with the Miami Regional Office of the U.S. Securities and Exchange Commission, which will enter [its own order and related documents](#).

### [Morgan Keegan and Morgan Asset Management Agree to \\$200 Million Settlement](#)

On June 22, 2011, state and federal securities regulators announced a \$200 million settlement with Morgan Keegan & Company and Morgan Asset Management to settle fraud charges related to subprime mortgage-backed securities. These actions are a direct result of intensive multi-state, federal, and self-regulatory organization (SRO) investigations. The States' task force was led by Alabama, Kentucky, Mississippi, South Carolina and Tennessee in cooperation with state securities regulators from Arkansas, Florida, Georgia, Illinois, Louisiana, Missouri, North Carolina, and Texas. North Carolina's involvement was first announced in the [April 2010 newsletter](#). For more information, click the link above or view the [SEC order](#) or [FINRA's announcement](#).

### [SEC Adopts Several Rules Implementing Provisions of the Dodd-Frank Act](#)

On June 22, 2011, the Securities and Exchange Commission (SEC):

- [Adopted rules](#) implementing the exemption from registration for advisers to venture capital firms and to certain advisers to private funds;
- [Adopted rules](#) defining "family office"; and
- [Adopted rules and form changes](#) to implement the transition of mid-sized investment advisers (between \$25 and \$100 million in assets under management) from SEC to State regulation.

All investors are strongly encouraged to contact the Securities Division at (919) 733-3924 or toll-free at (800) 688-4507 to check that their investment professional is properly registered **before** transferring any assets to that person's control. One five-minute telephone call to the Securities Division could protect your entire life's savings from being stolen from you. For a wealth of investor education information, please visit our Web site, [www.sosnc.com](http://www.sosnc.com). Click on the yellow box entitled "Investment Securities".

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron), Director of the Investor Education Program, or call (919) 807-2106.

**Please help us publicize the educational information in this mailing by forwarding it to your contacts around the state.** If you no longer wish to receive mailings from the Securities Division, please send an email to: [jmaron@sosnc.com](mailto:jmaron@sosnc.com) with "Remove from mailing list" in the subject line.

Remember that if an investment sounds too good to be true, it *probably* is!