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2011 NASAA Top Investor Traps and Threats

Products

Distressed Real Estate Schemes. Investment offerings involving distressed real estate have been on the rise following the collapse of the real estate bubble. While many legitimate investment offerings are tied to real estate, investment pools targeting distressed real estate have become increasingly popular with con artists as well as investors. Investments in properties that are bank-owned, in foreclosure, pending short sales or otherwise in distress inevitably carry substantial risks and should be evaluated carefully. Just like other securities, interests in real estate ventures also must be registered with state securities regulators.

- In February 2011, a Florida man pleaded guilty to conspiracy to commit mail and wire fraud in a scheme that solicited \$2.3 million from 39 investors nationwide to purchase and refurbish distressed properties and, in turn, sell them for a profit. Investors were issued corporate promissory notes with returns of up to 12 percent. Investigators determined that the investments were used for personal gain and to make Ponzi-type distributions to other investors.

Energy Investments.

Swindlers continue to attempt to trick investors by using high-pressure marketing tactics touting the mystique associated with untapped oil and gas reserves and bountiful production runs. Even genuine oil and gas investments almost always bear a high degree of risk. Investors must realize the distinct possibility that they could lose their total investment in legitimate ventures. Energy investments tend to be poor alternatives for those planning for retirement and should be avoided by anyone who cannot afford to strike out when trying to strike it rich.

- Colorado securities regulators issued a cease and desist order earlier this year against a Texas oil and gas company for allegedly violating state securities registration and licensing provisions. The case came to light after a company

sales agent unwittingly “cold called” an employee of the Colorado Division of Securities and offered a joint venture interest in two Pennsylvania oil wells with next to no drilling risk.

Gold and Precious Metals. Higher precious metal prices and the promise of an ever-appreciating, “tangible” asset have lured unsuspecting investors into a variety of scams. Many recent schemes are variations on old themes: a promoter seeking capital for extraction equipment to reopen a long dormant mine in exchange for a full refund plus interest and a stake in the mine. In another case, operators claimed to have special coins or nuggets that they can store or trade for investors in special markets for high profits and returns. Investors suffered heavy losses in each of these cases. And

despite ubiquitous promises to the contrary, there are no guarantees with gold or precious metals, even in legitimate markets. In the spring of 2011, silver’s value declined by 30 percent in a single three-week period.

- In 2011, the founder of Florida-based Gold Bullion Exchange pleaded guilty to fraud charges in a scheme that collapsed on more than 1,400 investors who lost \$29.5 million. Investors were solicited through a sophisticated telemarketing operation to purchase precious

metal bullion using purported “leverage” financing. Investors were led to believe that they would need only to provide a fraction of the total cost of the purchased metals, with the remainder of the purchase price to be covered by margin-type financing, which would purportedly be extended to the investor by a “clearing firm.” State and federal investigators found that the clearing firm delayed or ignored requests by investors to sell their precious metals investments. Despite having paid commissions and fees of up to 18 percent for their precious metals investments, investigators determined that no bullion was purchased.

“Con artists follow the news and seek ways to exploit the headlines to their advantage while leaving investors holding an empty bag.”

*David Massey
NASAA Past-President and North
Carolina Deputy Securities
Administrator.*

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Promissory Notes. Investors seeking safety in uncertain economic conditions or those enticed by the promise of big returns through a private, informal loan arrangement may suffer deep losses investing in unregistered or fraudulent promissory notes. These notes give investors a false sense of security with promises or guarantees of fixed interest rates and safety of principal. However, even legitimate notes carry some risk that the issuers may not be able to meet their obligations. Often initially pitched as personal loans or short-term business arrangements, most promissory notes and the persons who sell them must be registered with state securities regulators. Unregistered promissory notes are often covers for Ponzi schemes and other scams. Investors should check with their state regulator to determine whether a promissory note and the seller/borrower are properly registered.

- *A former FBI agent was convicted in Alabama this year after an investigation by Alabama securities regulators revealed that he used promissory notes guaranteeing returns as high as 12 percent to lure investors into a Ponzi scheme. The funds were to be invested in real estate and medical technology ventures, but investigators determined that the former agent used most of the funds, more than \$4 million, to pay Ponzi-style returns to previous investors and for his personal use.*

Securitized Life Settlement Contracts. Life settlement contracts are investments in the death benefits of insurance policies that insure the lives of unrelated third parties. Legitimate investments in life settlement contracts involve a high degree of risk, and investors may be responsible for routinely paying costly premiums for policies that insure people who outlive their life expectancies. Outside the legitimate offerings, crooks are embracing new schemes to deceive even cautious investors. For example, “securitized” life settlement contracts are increasingly popular investments that combine life settlement contracts with traditional securities, such as bonds that supposedly guarantee a fixed return on a fixed date, regardless of whether the insured outlive their life expectancies. This risk-reducing structure has too often proven fraudulent and left victims with nothing but worthless paper issued by a bonding company that does not maintain sufficient assets to fulfill the guarantee, operates in an unregulated overseas territory or simply does not exist.

- *In 2011, two executives of National Life Settlements LLC of Houston were indicted on charges of securities fraud and*

the sale of unregistered securities after an undercover investigation by Texas securities regulators determined the pair had sold \$30 million in unregistered promissory notes secured by life settlement contracts. One of the executives was a three-time convicted felon with a long history of investment fraud. The promise of a safe investment with annual returns as high as 10 percent served as bait to lure investors into what a court-appointed receiver testified was a Ponzi scheme. The company sold these unregistered investments largely to retired teachers and state employees through a network of financial professions, including insurance agents and securities brokers. The criminal indictment alleges that investors' money was spent on commissions and personal expenses, including the purchase of houses and cars.

Practices

Affinity Fraud. Marketing a fraudulent investment scheme to members of an identifiable group or organization continues to be a highly successful and lucrative practice for Ponzi scheme operators and other fraudsters. A recent national study of Ponzi schemes over the past decade found that one in four were marketed to affinity groups to increase the scheme's credibility and build the fraud. The most commonly exploited are the elderly or retired, religious groups, and ethnic groups. Investment decisions should always be made based on careful evaluation of the underlying merits rather than common affiliations with the promoter.

- *A 73-year-old North Carolina man pleaded guilty this year to 19 felony counts of securities fraud following an investigation by North Carolina securities regulators that determined he had collected more than \$18.5 million from more than 100 investors, many of whom he knew from church or other social circles. The investments for venture capital investments in various unspecified companies came with a promissory note guaranteeing annual returns of between 10 and 50 percent. Bank records revealed a Ponzi scheme using money from new investors to pay returns to previous investors.*

Bogus or Exaggerated Credentials. State securities regulators have led the effort to prevent the misuse of credentials or designations intended to imply special expertise or training in advising senior citizens on

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financial matters. Since 2008, 29 states have adopted laws or rules preventing such misuse. Now, state regulators are noting an increase in the use of other bogus credentials or exaggerated designations. State securities regulators have encountered salesmen pitching financial services or products with nonexistent law degrees or CPA certificates and expired or nonexistent CRD numbers. Others have boasted of impressive sounding designations that prove to be meaningless. In every circumstance, investors should press for full disclosure and the meaning behind all designations, and should check with their state regulator if they have any suspicions about claimed credentials.

- *Securities regulators in Utah came across a broker who listed "C.H.S.G." after his name on his business card. When asked, the broker told regulators the initials stood for "Certified High School Graduate."*

Mirror Trading. The securities market is constantly evolving to provide investors with new products, different platforms and a variety of choices. The latest evolution is "mirror trading," which is promoted as an automated trading platform that ensures investors will participate in real-time transactions placed or executed by a skilled and knowledgeable third party. Whenever the third party executes a trade in his or her account, the same trade is mechanically placed on behalf of the investor in the investor's account. Investors should not be lulled into a false sense of security, and they need to continue to objectively evaluate and carefully consider all new or popular investment platforms. They should also recognize that unscrupulous traders and promoters may use trendy platforms such as mirror trading as a way to launch fraudulent schemes or manipulate markets by lying about their qualifications, misrepresenting the success of their strategies, or concealing their motivations and conflicts of interest.

Private Placements. Investors should be aware that, even in the case of legitimate issuers, private placement offerings are highly illiquid, generally lack transparency and have little regulatory oversight. In the United States, the federal exemption for private placement offerings provided under Rule 506 of Regulation D continues to be abused by criminals. Although properly used by many legitimate issuers,

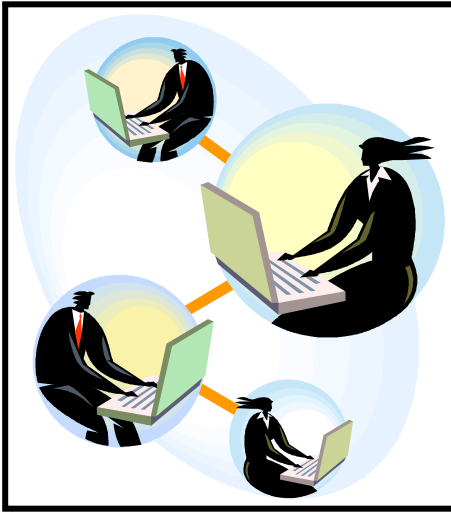
unscrupulous promoters use Rule 506 to cloak an otherwise fraudulent offering in legitimacy.

- *In 2011, U.S. and Canadian authorities convicted three individuals of criminal fraud charges related to the sale of \$33 million in oil and gas private placement offerings. The defendants claimed the securities were exempt from registration under Rule 506. In an attempt to avoid regulatory scrutiny, the defendants organized their company in the Bahamas and sold the securities from a boiler room located in Ontario, Canada, while telling investors the company was located in Kentucky. Securities regulators also have taken civil fraud actions against private placement issuers, Medical Capital Holdings, Inc. and Provident Royalties, which raised more than \$500 million from investors through private offerings sold by dozens of broker-dealers. The companies are alleged to have defrauded investors by misrepresenting the use of the investment proceeds and misappropriating millions in investor funds.*

Securities and Investment Advice Offered by Unlicensed Agents. State securities regulators have identified a consistent increase in investor complaints regarding salesmen unlicensed as securities brokers or investment advisers giving investment advice or effecting securities transactions. For example, insurance agents offering securities or investment advice without a securities license have not demonstrated sufficient expertise to legally recommend that an investor liquidate securities holdings in favor of insurance products. Investors are often unaware that their insurance agent may not be licensed to give investment advice, and these recommendations too often turn out to be unsuitable or result in investors placed in under-performing products or those with hidden fees or long lock-up periods. Investors should insist that any time anyone recommends or suggests any transaction related to an investor's stocks, bonds, mutual funds or other securities holdings, the person must produce a proper license.

- *In 2011, an insurance agent unlicensed to sell securities and his manager were barred from working in the Missouri securities industry for five years after Missouri securities regulators uncovered a complex scheme that saw the liquidation of more than \$7 million in securities investments from 180 customer accounts. Agents had moved most of these funds into proprietary fixed or equity indexed annuities.*

Are you an informed investor? Social Networking



Social networking in the Internet age allows people to connect to one another more quickly and easily than ever before. Investment promoters increasingly are logging on to find investors ... and their money.

Before investing through a social network, ask yourself these questions:

- Have I verified that the promoter is legitimate?
- Do I understand the risks of the investment?

Where are social networks?

A social network is a group of individuals (or organizations) who are connected through common interests, hobbies, lifestyles, relationships, faith or other beliefs. Websites such as Facebook, Twitter, LinkedIn, eHarmony and other online social networks and communities have made it faster and easier for users to meet, interact and establish connections with other users anywhere in the world.

Offline, social networking involves making these connections through membership in community service organizations, professional associations, faith-based organizations, multi-level marketing opportunities and singles groups, among others. While social networking helps connect people with others who share similar interests or views, con artists infiltrate these social networks looking for victims. By joining and actively participating in a social network or community, the con artist builds credibility and gains the trust of other members of the group.

How do con artists exploit social networks?

In traditional social networks, con artists use the weekly or monthly meetings to establish strong bonds through face-to-face contact and sharing of personal interests and lifestyles.

In online social networks, a con artist can establish this trust and credibility more quickly. The scammer has immediate access to potential victims through their online profiles, which may contain sensitive personal information such as their dates or places of birth, phone numbers, home addresses, religious and political views, employment histories, and even personal photographs.

The con artist takes advantage of how easily people share background and personal information online and uses it to make a skillful and highly targeted pitch. The scam can spread rapidly through a social network as the con artist gains access to the friends and colleagues of the initial target.

What are the red flags of an online investment scam?

Online investment fraud has many of the same characteristics as offline investment fraud. Learn to recognize these red flags:

- **Promises of high returns with no risk.** Many online scams promise unreasonably high short-term profits. Guarantees of returns around 2 percent a day, 14 percent a week or 40 percent a month are too good to be true. Remember that risk and reward go hand-in-hand.

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- **Offshore operations.** Many scams are headquartered offshore making it more difficult for regulators to shut down the scam and recover investors' funds.
- **E-Currency sites.** If you have to open an e-currency account to transfer money, use caution. These sites may not be regulated, and the con artists use them to cover up the money trail.
- **Recruit your friends.** Most cons will offer bonuses if you recruit your friends into the scheme.
- **Professional websites with little to no information.** These days anyone can put up a website. Scam sites may look professional, but they offer little to no information about the company's management, location or details about the investment.
- **No written information.** Online scam promoters often fail to provide a prospectus or other form of written information detailing the risks of the investment and procedures to get your money out.

Before you invest

Evaluate every investment opportunity in the virtual world the same way you would in the real world.

Visit the Securities Division's website www.sosnc.com for more tips on recognizing, avoiding and reporting investment fraud.

How can I protect myself from fraud in social networking?

- **Contact your state securities regulator.** Before investing any money, contact the Securities Division at 1-(800) 688-4507 to make sure the person and the investment are both properly registered.
- **Protect your personal information.** Many sites will allow you to choose how much personal information you want to make publicly accessible, and how much you want to keep private. Adjust your privacy and security settings accordingly, and think twice before posting personal information online.
- **Search the names of all persons and companies connected to the investment being offered.**
The Internet offers anonymity and scam artists take advantage of this. Do a search for the name of the person offering you the investment and the companies involved in the investment. If there are few results, or their name doesn't appear anywhere outside of the one investment program they're offering you, that's a red-flag that they may be using multiple aliases, or hiding behind a fake identity.
- **Beware of the use of names or testimonials from other group members.** Scam artists frequently pay out high returns to early investors using money from later arrivals. This type of scam is a Ponzi scheme. Fraud aimed at groups of people who share similar interests is called affinity fraud.
- **Obtain a prospectus.** Ask for written documentation that details the risks of the investment and procedures to get your money out.
- **Do not take the word of a salesperson.** Don't feel pressured to "act now." Take time to check out the investment yourself, and remember the old adage: "If it sounds too good to be true, it probably is."

Updated Investor Alert: Investor Warning Regarding Possible Advance Fee Fraud Targeting Deaf Investors



The SEC's Office of Investor Education and Advocacy issued an updated alert to investors, including deaf investors, about "Imperia Invest IBC" and similarly-named companies. In October of 2010, the SEC obtained a temporary restraining order and emergency asset freeze against Imperia Invest IBC ("Imperia") for defrauding more than 14,000 investors worldwide. The Commission's complaint alleged Imperia raised more than \$7 million, of which \$4 million was collected primarily from deaf investors in the United States. The SEC's Office of Investor Education and Advocacy issued an Investor Alert at the time warning of the scheme.

This updated alert is to warn potential investors, including deaf investors, about the risk of "advance fee fraud" schemes involving companies with names similar to Imperia. Advance fee fraud gets its name from the fact that an investor is asked to pay a fee up front -- in advance of receiving any proceeds, money, stock or warrants -- in order for the deal to go through. The bogus fee may be described as a "processing fee", a commission, regulatory fee or tax, or some other incidental expense. Sometimes, advance fee frauds brazenly target investors who have already lost money in investment schemes.

We urge investors to be skeptical of any request for an advance fee and to thoroughly research the person or group making the request.

Investors are encouraged to review the SEC publication "Ask Questions" and other SEC publications located at Investor.gov before making any investment. Some questions investors may consider asking include:

Does it sound too good to be true? If it sounds too good to be true, it (probably) is.

Is the investment product registered with the SEC and my state securities agency? Where can I get more information about this investment? Can I get the latest reports filed by the company with the SEC: a prospectus or offering circular, or the latest annual report and financial statements?

Is the person making the offer registered with our state securities regulator? Have they ever been disciplined by the SEC, a state regulator, or other organization (such as the Financial Industry Regulatory Authority (FINRA) or one of the stock exchanges)?

Related Materials

[SEC's Office of Investor Education and Advocacy's Publication "Ask Questions - Questions You Should Ask About Your Investments"](#)

[SEC's Office of Investor Education and Advocacy's Fast Answer on Avoiding Fraud](#)

[Investor Alert: Investor Warning Regarding Web-Based Scheme Defrauding Deaf Investors \(Imperia Invest IBC\)](#)

[Litigation Release No. 21686 / October 7, 2010: SEC OBTAINS TEMPORARY RESTRAINING ORDER AND ASSET FREEZE OF IMPERIA INVEST IBC RELATING TO INTERNET BASED OFFERING FRAUD](#)

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.

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FINRA Fines Five Broker Dealers for Improper Handling Fees

Firms Understated Commissions by Mischaracterizing Portion of Charges as Handling Fees



On September 7, 2011 the Financial Industry Regulatory Authority (FINRA) announced that it has fined five broker-dealers for understating the amount of total commissions charged to customers in trade confirmations and on fee schedules by mischaracterizing a portion of the commission charges as fees for handling services. With respect to each of these firms, the handling fees were designed to serve as a source of additional transaction based remuneration for the firm and thus were far in excess of the cost of the handling-related services the firms provided.

Brad Bennett, FINRA Executive Vice President and Chief of Enforcement, said, "Trade confirmations and fee schedules must clearly reflect commission charges, and firms cannot disguise commissions by improperly describing them as charges for ancillary services. FINRA will continue to look closely at any firms that engage in these practices."

The cases resulted from a targeted review of improper fees charged by broker-dealers in which FINRA found that the firms were routinely charging customers for handling fees that far exceeded the actual cost of the direct handling-related services the firms incurred in processing securities transactions. In some cases, firms charged a handling fee of almost \$100 per transaction and earned a substantial percentage of their revenue from these fees.

FINRA sanctioned the following firms:

- Pointe Capital, Inc. (nka JHS Capital Advisors, Inc.), of Boca Raton, Florida, was fined \$300,000. The firm charged customers a handling fee as high as \$95 per trade in addition to a commission. (Additional violations included inadequate supervisory procedures.)
- John Thomas Financial, of New York, NY, was fined \$275,000. The firm charged its customers a handling fee as high as \$75 per trade in addition to a commission. (Additional violations included effecting material changes in its business operations without prior approval from FINRA, and deficiencies in complaint reporting, supervisory controls and certifications, branch office supervision and recordkeeping.)
- First Midwest Securities, Inc., of Bloomington, IL, was fined \$150,000. The firm charged customers a handling fee as high as \$99 per trade in addition to a commission. (Additional violations included unfair and unreasonable markups/markdowns and inadequate written supervisory procedures.)
- A&F Financial Securities, Inc., of Syosset, NY, was fined \$125,000. The firm charged its customers a handling fee of \$65 per trade in addition to a commission. (Additional violations included inadequate supervisory system and procedures, and failure to comply with continuing education requirement.)
- Salomon Whitney LLC, of Babylon Village, NY, was fined \$60,000. The firm charged its customers a handling fee as high as \$69 per trade in addition to a commission.

In settling FINRA's actions, the firms agreed to implement corrective action to remedy the handling fee-related violations. The firms agreed to fully and accurately disclose the specific service performed and the related fee on confirmations and any other communications with a customer where fees are discussed. In addition, they will identify all transaction-based remuneration as commissions or mark-ups (mark-downs) rather than as postage, handling or any other miscellaneous fee. The firms also agreed to revise their written supervisory procedures and to provide training to the firms' registered representatives and associated persons related to transaction-based remuneration, reasonable fees, their appropriate disclosure to customers and retention of related records.

In concluding these settlements, the firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's free BrokerCheck at www.finra.org/brokercheck or by calling (800) 289-9999. Investors may find copies of this disciplinary action as well as other disciplinary documents in [FINRA's Disciplinary Actions Online database](#). Investors may also contact the NC Securities Division at (800) 688-4507.

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.

Date	City	Details
09/20/11	Walkertown	Walkertown Branch Library , 2969 Main St. Time: 1:00 PM -- 3:00 PM. For more information, contact Natalia Tuchina at (336) 703-2991.
09/20/11	Winston-Salem	Reynolda Manor Branch Library , 2839 Fairlawn Dr. Time: 5:00 PM – 6:00 PM. For more information, contact Kathryn Nesbit at (336) 703-2962.
09/21/11	Washington	Scam Jam, Grace Martin Harwell Senior Center , 310 W. Main Street. Time: 8:30 AM – Noon. For more information, contact Edwina Fyle at (252) 974-1836.
09/22/11	High Point	Scam Jam, Roy B. Culler, Jr. Senior Center , 600 N. Hamilton Street. Time: 8:30 AM – Noon. Free, but registration is required. To register, call toll-free (877) 926-8300 and indicate you are registering for the Scam Jam in High Point, NC.
09/26/11	Fayetteville	Cumberland County Public Library, Bordeaux Branch , 3711 Village Drive. Time: 7:00 PM – 8:00 PM. For more information, contact Janet Beaudry at (910) 424-4008, Ext. 231.
09/27/11	Wilson	Scam Jam, Wilson County Senior Activity Center , 1808 SW Goldsboro Street. Time: 10:00 AM – 2:00 PM. For more information, contact Sandra Carter at (252) 206-4059.
09/28/11	Morehead City	Carteret County Chapter of National Association of Insurance and Financial Advisors (NAIFA) , Golden Corral, 4060 Arendell Street. Open to NAIFA members and their guests only. For more information, contact Matt Dressel at (866) 671-6896.
09/29/11	Scotland Neck	Scotland Neck Senior Center , 1403 Church Street. 11:00 AM – Noon. For more information, contact Hattie Staton at (252) 826-3891.
09/29/11	Pittsboro	Chatham County Extension & Community Association , 45 South Street. Time: 10:00 AM – 2:00 PM. For more information, contact Phyllis Smith at (919) 542-8247.
09/29/11	Ahoskie	Scam Jam at R.L. Vann Community Resource Center , 415 E. Holloman Avenue. Time: 2:00 PM – 5:00 PM. For more information, contact Edwina Fyle at (252) 974-1836.
10/07/11	Statesville	Piedmont Regional International Institute of Municipal Clerks (IIMC) Academy at Iredell County Agricultural Resources Center, 444 Bristol Drive. Time: 12:45 PM -- 2:30 PM. Registration required. For more information, contact Jean Moore at (704) 878-3058.
10/10/11	Winston-Salem	Scam Jam, Forsyth County Senior Services, Inc. , 2895 Shorefair Drive. Time: 10:00 AM – 2:00 PM. For more information, contact the Center at (336) 725-0907.
10/12/11	Tarboro	E. L. Roberson Center , 305 West Baker Street. Time: 10:30 AM -- 11:30 AM. For more information, contact Morgan Whitehead at (252) 641-4263.
10/12/11	Holly Springs	Holly Springs II Apartments, 215 W. Earp Street. Time: 1:30 PM -- 2:30 PM. For more information, contact Tyra Carter at (919) 552-5978.
10/12/11	Holly Springs	Dorothy Nixon Allen Apartments, 155 W. Holly Springs road. Time: 2:30 PM – 3:30 PM. For more information, contact Tyra Carter at (919) 552-5978.

Date	City	Details
10/25/11	Garland	Garland Senior Center , 106 W. Third Street. "Women In Transition." Time: 10:30 AM -- 11:30 AM. For more information, contact Marie Faircloth at (910) 529-3931.
10/26/11	Fayetteville	National Active and Retired Federal Employees (NARFE) meeting, Hotel Bordeaux and Conference Center, 1707 Owen Drive. Time: 11:00 AM -- 1:00 PM. Open to NARFE members and guests only. For more information, contact George Hardwick at (910) 488-1152.
11/01/11	Cornelius	Retired Men's Clubs of America Lake Norman Chapter , meeting at the Acropolis Café & Grille , 20659 Catawba Avenue. Time: 8:30 AM – 10:30 AM. Open to members and their guests only. For more information, contact John Gioffre at (704) 516-9340.
11/10/11	Winston-Salem	"Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention Program, Shepherd's Center of Greater Winston-Salem , 1700 Ebert Street. Time: Noon – 2:00 PM. For more information, contact Susan Meny at (336) 748-0217.
11/16/11	Winston-Salem	Scam Jam at Arbor Acres United Methodist Retirement Community , Fellowship Hall, 1240 Arbor Road. Time: 2:00 PM – 4:00 PM. For more information, contact Janice Lutz-Vanhoy at (336) 748-4646.
12/05/11	Huntersville	Scam Jam at St. Mark Catholic Church , 14740 Stumptown Road. Time: 11:00 AM – 1:00 PM. For more information, contact: Mary Alice Hollars at (704) 947-4885.



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.

Sean Fitzgerald Mescall, of Denver, NC, was arrested by law enforcement agents of the Securities Division on September 9, 2009, on charges of securities fraud, obtaining property by false pretense and conducting an unlawful telephone room. He is alleged to have defrauded approximately 69 victims of approximately \$1.3 million in a Ponzi scheme involving foreign currency trading since at least September 2006. In a separate action, the CFTC has filed a civil action against Mescall and Capital Street Financial. On May 25, 2010, US District Court Judge Robert Conrad, Jr., ruled Mescall to be in contempt of the Court's Sept. 2009 Preliminary Injunction. On May 4, 2011, he was sentenced to 27 months in federal prison for criminal contempt relating to the CFTC action. He is scheduled for arraignment in Mecklenburg County Superior Court on the state charges on October 11, 2011.

Walter Ray Reinhardt, of Durham, NC, was served with 62 felony arrest warrants for securities violations on November 17, 2010. He is alleged to have defrauded 16 victims in Durham County out of more than \$1 million. Reinhardt had his first appearance in Durham County District Court on November 18, 2010 on 38 felony counts of securities fraud, 12 felony counts of common law forgery, and 12 felony counts of common law uttering. He is scheduled to appear in Durham Superior Court on October 3, 2011. He is currently being held in the Durham County Jail under a \$4 million bond. (Note: In the August 2011 newsletter, the bond amount was incorrectly stated at \$6 million.)

Darren Joseph Capote, of Patterson, NY, was indicted on July 11, 2011, in Ashe County Superior Court on three Class C felony counts of securities fraud. He is alleged to have defrauded an elderly victim in Ashe County. He was released from custody on a \$100,000 secured bond. His next court appearance in Ashe County is expected in October 2011. (Note: In the August 2011 newsletter, the bond amount was incorrectly stated at \$200,000.)



Recent Enforcement Actions

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

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.)

[CFTC Charges North Carolina Resident Toby D. Hunter and Two of His Companies with Fraud and Misappropriation in Multi-Million Dollar Commodity Scheme](#)

September 9, 2011 -- The U.S. Commodity Futures Trading Commission (CFTC) announced that a federal court in Charlotte, N.C., entered an emergency order freezing assets held by defendants Toby D. Hunter of Waxhaw, N.C., and his companies, Prestige Capital Advisors, LLC (Prestige) and D2W Capital Management, LLC (D2W) of Charlotte, N.C. The court's order, entered by Judge Max O. Cogburn, Jr., also prohibits the destruction of books and records and grants the CFTC immediate access to such documents. The judge ordered Hunter to appear in court on October 3, 2011, for a preliminary injunction hearing. The order arises out of a CFTC civil complaint filed on September 6, 2011, in the U.S. District Court for the Western District of North Carolina, Charlotte Division. The CFTC's complaint alleges that, since April 2008, Hunter, Prestige, and D2W fraudulently solicited and accepted funds from the general public to trade pooled investments in commodity futures, options on commodity futures and managed forex accounts. As a result of defendants' allegedly fraudulent solicitation, at least six individuals invested \$4.65 million with the Prestige Multi-Strategy Fund, LP, a pool established by Hunter and Prestige. In addition, the defendants solicited and received \$2.36 million in connection with forex trading accounts managed by D2W. Defendants also allegedly misrepresented the profitability of their trading programs by posting false purported returns on a website called BarclayHedge. The complaint further alleges that defendants misappropriated some of the Prestige investors' funds and issued false account statements to investors in both schemes in order to perpetuate defendants' fraud. In its continuing litigation, the CFTC seeks a return of ill-gotten gains, restitution to defrauded customers, civil monetary penalties, trading and registration bans, and permanent injunctions against further violations of the federal commodities laws.

[SEC to Seek Comment on Review of Existing Regulations](#)

September 6, 2011 – The Securities and Exchange Commission has announced that it will seek public comment on a plan to conduct retrospective reviews of its existing regulations. The Commission is [seeking public comment](#) on the process it should use to conduct retrospective reviews, such as how often rules should be reviewed, the factors that should be considered, and ways to improve public participation in the rulemaking process. Public comments should be received by October 6, 2011.

[CFTC Charges North Carolinian Roy Scarboro, Jr. with Solicitation Fraud and Misappropriating Customer Funds in Forex Scheme](#)

September 1, 2011 -- The Commodity Futures Trading Commission (CFTC) filed and simultaneously settled charges that Roy Scarboro, Jr. of Archdale, N.C., fraudulently solicited approximately \$713,000 from customers to trade off-exchange foreign currency (forex). The CFTC order also finds that Scarboro misappropriated funds for his personal use and issued false account statements to conceal that he lost most of the funds trading. Scarboro has never been registered with the CFTC. The CFTC order requires Scarboro to pay a \$350,000 civil monetary penalty, and permanently prohibits him from trading on a CFTC-registered entity and from registering or seeking exemption from registration with the CFTC. In a related criminal proceeding, Scarboro was sentenced on May 4, 2011 to 26 months imprisonment and required to pay \$682,663.62 in restitution (*United States v. Roy E. Scarboro*, Case Number 3:10-cr-254 (W.D.N.C.)).

[CFTC Chairman Gary Gensler's op/ed: CFTC Eager to Clean Up Swap Market](#)

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September 1, 2011 -- Gary Gensler, Chairman of the Commodity Futures Trading Commission (CFTC), issued an op/ed piece about the reform efforts his agency is taking to promote greater transparency in the swaps market.

[SEC Seeks Public Comment on Use of Derivatives by Mutual Funds](#)

August 31, 2011 – The Securities and Exchange Commission voted unanimously to seek [public comment](#) on a wide range of issues raised by the use of derivatives by mutual funds and other investment companies regulated under the Investment Company Act. The SEC is seeking public input through a [concept release](#), which is a Commission-approved document that poses an idea or ideas to the public to get their views. The Commission will use the comments received in response to this concept release to help determine whether regulatory initiatives or guidance is needed that would continue to protect investors and fulfill the purposes underlying the Investment Company Act. The concept release is a continuation of the SEC's ongoing review of mutual funds' use of derivatives [announced last year](#). The concept release requests public input on the issues that the SEC staff has been examining for potential ways to improve the regulation of mutual funds' use of derivatives. Public comments should be received within 60 days from the date of publication in the Federal Register.

[Fee Rate Advisory #2 for Fiscal Year 2012](#)

August 31, 2011 – The Securities and Exchange Commission announced that in fiscal year 2012 the fees that public companies and other issuers pay to register their securities with the Commission will be set at \$114.60 per million dollars. A copy of the Commission's order, including the calculation methodology, is available at <http://www.sec.gov/rules/other/2011/33-9255.pdf>.

[FINRA Regulatory Notice 11-39](#)

FINRA provides members guidance on the use of social networking websites and business communications. In January 2010, FINRA issued [Regulatory Notice 10-06](#), providing guidance on the application of FINRA rules governing communications with the public to social media sites and reminding firms of the recordkeeping, suitability, supervision and content requirements for such communications. Since its publication, firms have raised additional questions regarding the application of the rules. This *Notice* responds to these questions by providing further clarification concerning application of the rules to new technologies. It is not intended to alter the principles or the guidance provided in [Regulatory Notice 10-06](#).

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. 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.

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