



April-May 2013 NEWSLETTER • Vol. 5, No. 4-5

First Multijurisdictional Elder Fraud Conference a Success!



NC Secretary of State Elaine F. Marshall holding a resource CD compiled by her office. Seated behind her are (left) Mark Strickland, Director of the NC Justice Academy, and (right) Benjamin David, District Attorney for Prosecutorial District 5.

On April 4-5, 2013, approximately 180 people representing multiple agencies across the state attended a first-of-its-kind conference in Wilmington promoting interagency communication to better prevent, investigate and prosecute cases involving all forms of elder abuse, including cases of financial exploitation.

The conference, entitled **“Elder Abuse: A Multidisciplinary Approach to Justice”**, was developed by the Elder Fraud Task Force. The Task Force is comprised of representatives of the NC Conference of District Attorneys, the NC Division of Aging and Adult Services, the NC Department of the Secretary of State, the NC Justice Academy, the Cape Fear Council of Governments and the Haywood County Sheriff’s Office.

The conference was made possible by a grant from the Governor’s Crime Commission with additional funding provided by the Investor Protection and Education Trust Fund (IPET). The IPET is administered by the NC Department of the Secretary of State and funds programs and materials to educate and protect

the investing public from falling victim to fraudulent investment schemes. By the end of the conference, attendees better understood how colleagues in other jurisdictions might be of assistance when investigating cases involving the abuse of an elderly victim.

During her welcoming remarks, Secretary of State Elaine F. Marshall invited attendees to contact the Department of the Secretary of State Securities Division for advice or assistance when investigating cases that may involve, among other things, investment fraud. She drew attention to a compact disc (CD) her agency prepared as a resource handout for attendees. The CD includes not only copies of all the Department’s investor education brochures/pamphlets, but also a handbook on investment fraud specifically designed for law enforcement officials.

Division speakers during the two-day conference included Zesely Haislip, Senior Enforcement Attorney; John Curry, Special Agent-in-Charge; Allan Russ, Deputy Securities Director and Senior Enforcement Attorney; Dena King, Enforcement Attorney; and John Maron, Director of the Investor Education Program.

Paul Greenwood, Deputy District Attorney with the San Diego District Attorney’s Office, was the conference’s keynote speaker and gave tips about overcoming various barriers in the investigation and prosecution of elder abuse cases.



Nine More Members of Racketeering Enterprise Indicted on Investment Fraud, Mortgage Fraud and Related Charges

***Two Others to Plead Guilty on Related Charges
A Total of 92 Defendants Have Been Charged To Date in "Operation Wax House"***

A federal superseding indictment unsealed on April 24, 2013, in U.S. District Court charged nine additional defendants in Charlotte and elsewhere with racketeering, investment fraud, mortgage fraud, bank bribery and money laundering, announced the U.S. Attorney's Office for the Western District of North Carolina. This latest round of criminal charges resulting from **Operation Wax House**, a mortgage fraud investigation which began in the Western District of North Carolina in 2007, brings the total number of defendants charged to date to 92, of which 66 have pleaded guilty.

[Editor's Note: Initial indictments in this case were reported in the September/October 2012 edition of this newsletter. Click [here](#) to read that initial report.]

John A. Strong, Special Agent in Charge of the Federal Bureau of Investigation, Charlotte Division, Jeannine A. Hammett, Special Agent in Charge of the Internal Revenue Service, Criminal Investigation (IRS-CI) and Elaine Marshall, North Carolina Secretary of State join the U.S. Attorney's Office in making this announcement.

The superseding federal racketeering indictment was returned by a federal grand jury sitting in Charlotte on April 18, 2013 and remained sealed until today. The superseding indictment adds nine defendants to the existing charges, bringing to 26 the total number of individuals currently charged as part of a criminal organization (the "Enterprise") that operated principally in the cities of Charlotte and Waxhaw, N.C., and stole more than \$75 million from investors and mortgage lenders.

According to allegations contained in the unsealed indictment: The Enterprise, which operated from about 2005 through 2012, engaged in an extensive pattern of racketeering activities, consisting of investment fraud, mortgage fraud, bank fraud, money laundering and distribution of illegal drugs. Members of the Enterprise also bribed bank officials.

Profitable Sunrise Investors are being Targeted Again

The NC Securities Division has learned that Profitable Sunrise investors are being contacted with promises of help in getting their money back for them.

The Securities Division has issued an [alert](#) to warn investors that such promises may be yet another attempt to scam them again through a "reload scam".

Reload scams hit consumers when they're down, offering to help them make back money they lost to a previous scam or bad business decision. These scams have been popular for years with telemarketing fraud rings but can also follow other types of fraud, including investment fraud.

Click the link to read this latest alert.

<http://www.secretary.state.nc.us/sec/pdf/ProfitableSunriseInvestorAlert04112013.pdf>.

In the investment fraud portion of the racketeering activities, the co-conspirators targeted professional athletes and doctors as well as their personal and professional acquaintances and convinced them to invest in a series of sham corporations controlled by the Enterprise. For example, members of the Enterprise told potential investors that one of the sham corporations, PEI, was a commodities trading company that would broker deals for the supposed export-import of various commodities like rice-trading and gold and diamond mining in Africa. In truth and fact, instead of investing the victims' money as promised, the Enterprise used the funds obtained through PEI to support its members' lifestyles and to make Ponzi-style payments to other victims. The co-conspirators stole over \$27 million from more than 50 investor victims, including monies that the investor victims were induced to obtain as loans from financial institutions.

The Enterprise's mortgage fraud operations involved acquiring luxury homes in neighborhoods in Charlotte and Waxhaw. One member of the Enterprise would agree with a builder to purchase a property at the "true price." The Enterprise would then arrange for a buyer to purchase the property at an inflated price. In most circumstances, the buyer would agree to purchase the property in his or her own name and sign whatever documents were necessary, in exchange for a hidden monetary kickback. The builder would sell the property at the inflated price, the lender would make a mortgage loan on the basis of that inflated price, and the difference between the inflated price and the true price would be extracted at closing by the Enterprise.

The vast majority of the houses purchased as part of the Enterprise's mortgage fraud operations subsequently fell into foreclosure, resulting in losses of hundreds of thousands of dollars in most instances. Over the course of the conspiracy, members of the Enterprise purchased four condos in one building for inflated prices, resulting in an aggregate loss on those units of approximately \$2 million.

Members of the Enterprise also engaged in bank bribery conspiracies, by bribing bank employees to cash checks received from fraudulent mortgage transactions carried out by the Enterprise, and to deposit checks in a manner designed to further conceal the true distribution of the proceeds, and to supply false letters of credit in the names of local banks in an attempt to obtain financing from other financial institutions. In one instance a bank employee was paid a \$55,000 bribe for preparing and providing a false letter of credit.

The racketeering activities of the Enterprise also included distribution of illegal drugs. For example, members of the Enterprise transported truckloads of marijuana from Texas and elsewhere to North Carolina, using companies utilized in both the drug trafficking and mortgage fraud operations and trucks controlled by members of the Enterprise and others.

Defendants added in this superseding indictment are:

- **William Brown**, 34, of Matthews, N.C. is charged with racketeering conspiracy and mortgage fraud. Role: Promoter and buyer. Status: In custody, pending release on conditions, following arrest and initial appearance.
- **Benjamin Clarke**, 40, of Smyrna, Ga. is charged with mortgage fraud. Role: Buyer. Status: Released following arrest and initial appearance.
- **Frank DeSimone**, 40, of Charlotte is charged with racketeering conspiracy, securities fraud, wire fraud to defraud investors and money laundering. Role: Promoter. Status: To appear for an initial appearance pursuant to a summons.
- **Lorie Dooley**, 48, of Washington, D.C. is charged with racketeering conspiracy, mortgage fraud and bank bribery. Role: Promoter. Status: To appear for an initial appearance pursuant to a summons.
- **James E. Fink**, 43, of Waxhaw is charged with racketeering conspiracy and mortgage fraud. Role: Builder. Status: To appear for an initial appearance pursuant to a summons.

- **Ralph Johnson**, 35, of Charlotte is charged with racketeering conspiracy and mortgage fraud. Role: Promoter. Status: In custody pending detention hearing.
- **Denetria Myles**, 41, of Charlotte is charged with racketeering conspiracy and mortgage fraud. Role: Promoter. Status: To appear for an initial appearance pursuant to a summons.
- **Matthew Newland**, 39, of Coralville, Iowa is charged with racketeering conspiracy and mortgage fraud. Role: Promoter and seller. Status: Released following arrest and initial appearance.
- **Nazeere Saddig**, 40, formerly of Charlotte is charged with racketeering conspiracy and mortgage fraud. Role: Promoter and buyer. Status: Fugitive.

Additionally, **Steve Jones**, 44, of Waxhaw, previously charged with securities fraud, wire fraud to defraud investors and money laundering conspiracy has now also been charged with racketeering conspiracy. Role: Promoter. Status: To appear pursuant to a summons.

The U.S. Attorney's Office also announced charges filed against two additional promoters in the mortgage and investment fraud scheme. They acknowledge taking part in the conspiracy and have agreed to plead guilty. They are:

- **Waylon Long**, 40, of Texas is charged with mortgage fraud conspiracy and money laundering conspiracy. Role: Promoter. Status: To appear for initial appearance upon a summons.
- **Melvin Moye**, 34, of Charlotte is charged with investment or securities and mortgage or bank fraud conspiracy. Role: Promoter. Status: Pleaded guilty and is awaiting sentencing.

Additionally, the U.S. Attorney's Office announced that three of the original 17 defendants who were charged with racketeering conspiracy have pleaded guilty to those racketeering charges. They are:

- **Travis Bumpers**, 36, of Charlotte pleaded guilty to racketeering conspiracy to commit securities fraud, mortgage fraud, wire fraud and money laundering conspiracy. Role: Promoter. Status: In custody pending sentencing.
- **Victoria Hunt**, 36, of Rockville, Maryland, pleaded guilty to racketeering conspiracy, securities fraud, mortgage fraud, wire fraud to defraud investors, and money laundering. Role: Leader and promoter. Status: On house arrest pending sentencing.
- **Purnell Wood**, 41, of Holly Springs, N.C. pleaded guilty to racketeering conspiracy to commit mortgage fraud and money laundering. Role: Promoter. Status: Released pending sentencing.

The conspiracy to participate in the racketeering activities charge carries a maximum term of 20 years in prison and a \$250,000 fine or twice the gross profits or other proceeds. The securities fraud charge carries a maximum term of 20 years in prison and a \$250,000 fine. The bank fraud charge carries a maximum term of 30 years in prison and a \$1 million fine. The wire fraud charge carries a maximum term of 20 years in prison and a \$250,000 fine. The money laundering conspiracy charge carries a maximum term of 20 years in prison and a \$500,000 fine or twice the amount of criminally derived proceeds. And, the bank bribery conspiracy charge carries a maximum term of five years in prison and a \$250,000 fine.

An indictment is merely an allegation, and the defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law. In addition, the guilty plea of any other person is not relevant to the guilt of any indicted person.

Operation Wax House in the Western District of North Carolina is being handled by the Charlotte Division of the FBI, the Criminal Division of the IRS for the Financial Fraud Enforcement Task Force, and the Securities Division of the North Carolina Secretary of State. The prosecution for the government is being handled by Assistant United States Attorneys Kurt W. Meyers and Maria K. Vento and Special Assistant United States Attorney Kevin M. Harrington.

The President's Financial Fraud Enforcement Task Force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general, and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information on the task force, visit www.stopfraud.gov.

The names and case numbers of all the defendants charged to date in Operation Wax House are listed below, organized by their alleged role in the scheme.

Attorneys and Paralegals

Crawford/Mallard, Michelle 3:11cr374
Gates, Christine 3:09cr100
Norwood, Kelli, 3:09cr162
Rainer, Demetrius 3:08cr239/241
Smith, Troy, 3:08cr264

Bank Insiders

Brown, Jamilia, 3:10cr124
Eason, Danyelle, 3:10cr116
Henson, Vic. F., 3:10cr124
Jackson, Mitzi, 3:11cr374
Ramey, Bonnie Sue, 3:10cr124

Real Estate Agents

Belin, Chris, 3:11cr374
Clark, Christina, 3:09cr44
Lee, Shannon, 3:12cr338
Pasut, Holly Hardy, 3:12cr331
Wolf, Nathan Shane, 3:12cr239
Wood, Gary, 3:09cr208

Builders and Sellers

Fink, James, 3:11cr374; 3:12cr239
Jackson, Jennifer, 3:09cr241
Smith, Kelvis, 3:12cr238
Viegas, Jeffrey, 3:12cr298
Wittig, Mark, 3:12cr335
Wood, Gary, 3:09cr208

Facilitators and Financiers

Hickey, Denis, 3:09cr103
McClain, Landrick, 3:10cr124
Mitchell, Ann Tyson, 3:12cr239
Panayoton, Sherrill, 3:11cr176
Taylor, Alicia Renee, 3:10cr124
Wilson, Willard, 3:09cr161

Buyers

Banks, Arketa, 3:12cr297
Hillian, Kirk, 3:12cr83
Mathis, Charles, 3:10cr1
Mobley, Sarena, 3:10cr124
Moore, George, 3:12cr337
Richards, Dan, 3:10cr119
Smith, Kevin, 3:12cr341
Tyler, Glenna, 3:11cr200

Mortgage Brokers

Bradley, Bonnette, 3:12cr299
Clarke, Linda, 3:10cr120
Flood, Ericka, 3:10cr124
Goodson-Hudson, Crystal,
3:12cr339
Mahaney, Robert, 3:12cr34-0
Scagliarini, Coley, 3:11cr374
Staton, Walter, 3:10cr113
Vaughn, Danielle, 3:12cr329
Williams, Marcia, 3:12cr334
Williams, Sean, 3:12cr336
Woods, Joseph, 3:09cr178

Promoters

Amini, Ramin, 3:12cr239
Barnes, Vonetta Tyson, 3:12cr239
Brown, William, 3:12cr239
Bumpers, Travis, 3:12cr239
Carr, Stephen, 3:10cr124
Clarke, Benjamin, 3:12cr239
Clarke, Reuben, 3:10cr120
Coleman, Gregory, 3:10cr118
DeSimone, Frank, 3:12cr239
Dooley, Lorie, 3:12cr239
Hitchcock, Jimmy, 3:11cr374
Hubbard, Glynn, 3:12cr239
Hunt, Victoria, 3:12cr239
Hunter, Toby, 3:12cr239
Johnson, Ralph, 3:12cr239
Jones, Steven, 3:12cr239
Jones, Tyree, 3:10cr230
Long, Waylon, 3:12cr98
Marshall, Michael, 3:07cr283
McDowell, John, 3:12cr239
McPhaul, Elizabeth, 3:10cr114
Mehr, Kurosh, 3:12cr239
Mitchell, Ann Tyson, 3:12cr239
Moye, Melvin, 3:13cr99
Myles, Denetria, 3:12cr239
Newland, Matthew, 3:12cr239
Perry, John Wayne, Jr., 3:12cr239
Perry, Kim, 3:10cr25
Phillips, Rick, 3:10cr115
Saddig, Nazeere, 3:12cr239
Sharreff-El, Drew, 3:10cr124
Sherald, Kiki, 3:10cr117



Owner of Investment Firm Is Charged with Securities Fraud for Orchestrating a \$4.7 Million Ponzi Scheme

The owner of a North Carolina investment firm has been charged with securities fraud for orchestrating a Ponzi scheme that solicited victims to invest millions in the foreign currency market ("FOREX"), announced Anne M. Tompkins, U.S. Attorney for the Western District of North Carolina, on April 30, 2013.

North Carolina Secretary of State Elaine F. Marshall and John A. Strong, Special Agent in Charge of the Federal Bureau of Investigation (FBI), Charlotte Division join U.S. Attorney Tompkins in making today's announcement.

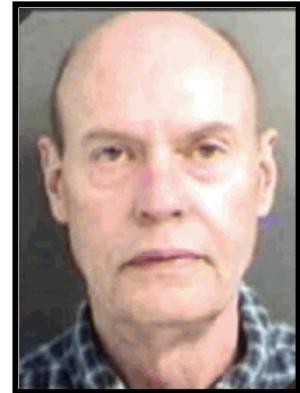
On April 18, 2013, a federal criminal indictment charged James H. Mason, 66, of Graham, N.C., with one count of securities fraud in connection with a \$4.7 million foreign currency Ponzi scheme. According to allegations contained in the indictment, beginning in 2010 and continuing through March 28, 2013, Mason executed the Ponzi scheme by inducing victims to invest with his investment companies, JHM Forex Only Pool and Forex Trading at Home Association, and other related entities, for the supposed purpose of investing in Over-the-Counter ("OTC") foreign currency exchange.

The indictment alleges that Mason engaged in a scheme and artifice to defraud victims by making a series of false and fraudulent representations, omissions of material facts and deceptive half-truths. Specifically, Mason falsely claimed to victims that he had over 35 years of experience in commodity futures and options trading, when in fact, Mason had no such experience at all, according to the indictment. Also, Mason lulled his victims into a false sense of security by falsely projecting substantial returns of their investments. Mason solicited at least 500 victims to invest over \$4.7 million. According to allegations in the indictment, rather than investing it as promised, Mason simply deposited victim money into various bank accounts he controlled and used a substantial amount of investor money to pay for personal and business expenses, real estate, cars and other expenses unrelated to any foreign exchange. In addition, the indictment alleges that Mason diverted most of the rest of his victims' money to make "Ponzi" payments to other victims.

The criminal indictment also alleges that, throughout the course of this scheme, Mason put only a portion of investor money into foreign currency exchange. According to allegations contained in the indictment, Mason lost essentially all the money he did invest while conducting FOREX trading, thus losing even the minority of funds that he did trade. Mason failed to disclose his actual trading results to his victims, and instead made false oral representations and provided bogus statements to clients, fraudulently reporting profits. The indictment alleges that in order to induce individuals to further invest in his fraudulent foreign currency commodity pool, Mason established a website so that investors could access their accounts online. These online investor accounts depicted that investors were making money through successful FOREX trading and had, in many cases, significant amounts of money in their accounts. As alleged in the indictment, profits stated on individual investor accounts were false and, in many cases, there was no actual money in the victims' accounts.

Mason has been in local federal custody since April 15, 2013. He has been charged with one count of securities fraud which carries a maximum prison term of 20 and a \$5 million fine, plus restitution to investor victims of the scheme.

The charges contained in the indictment are allegations. The defendant is presumed innocent unless and until he is proven guilty beyond a reasonable doubt in a court of law.



James H. Mason

The case was investigated by the North Carolina Secretary of State, Securities Division with assistance from the FBI, Charlotte Division. U.S. Attorney Tompkins also acknowledges the invaluable assistance of the Commodities Futures Trading Commission in this case.

The prosecution is being handled by Special Assistant United States Attorney Kevin M. Harrington and Assistant U.S. Attorney Kurt W. Meyers of the Western District of North Carolina.

Mr. Harrington is an Enforcement Attorney with the North Carolina Department of Secretary of State, Securities Division, and was appointed to serve as a Special Assistant United States Attorney (SAUSA) with the U.S. Attorney's Office in Charlotte in September 2011. The SAUSA position is reflection of the partnership between the North Carolina Securities Division and the United States Attorney that helps ensure the effective and vigorous prosecution of white collar criminals, particularly in the area of securities fraud.

Federal Court Orders NC Residents to Pay over \$1.8M for Fraud in Forex Ponzi Scheme

The U.S. Commodity Futures Trading Commission (CFTC) announced on April 17, 2013, that it had obtained federal court orders requiring Defendants **Timothy Bailey** of Monroe, North Carolina, **Michael Hudspeth**, formerly of Statesville, North Carolina, and their company, **PMC Strategy, LLC** (PMC), to pay over \$1.8 million for solicitation fraud and misappropriation in connection with an off-exchange foreign currency (forex) Ponzi scheme that solicited at least \$669,000 from more than 22 individuals (see CFTC Press Release [5983-11](#)). **[Editor's Note: The NC Securities Division had previously issued an [order](#) requiring PMC Strategy and its directors to cease and desist from violating the state's securities laws.]**

Judge Graham C. Mullen of the U.S. District Court for the Western District of North Carolina entered an Order of Default Judgment and Permanent Injunction against Defendants PMC and Bailey on October 18, 2012, requiring PMC and Bailey jointly to pay over \$429,700 in restitution to defrauded pool participants. The Order also imposes a civil monetary penalty of \$560,000 on PMC and \$420,000 on Bailey and permanently bans them from trading and registering with the CFTC. The Order finds that PMC and Bailey violated the anti-fraud provisions of the Commodity Exchange Act (CEA) by fraudulently soliciting pool participants to trade forex, misappropriating pool participant funds, issuing false account statements, and refusing to return pool participant funds. PMC claimed to have earned a profit of \$160,000 from January through June 2008 as a result of its forex trading, according to the Order.

However, these representations were false, as PMC was not formed until June 18, 2008, and engaged in no forex trading until July 2008. Furthermore, PMC and Bailey sent false monthly profit checks to pool participants purporting to represent profits earned, when in fact PMC incurred trading losses in 15 of the 22 months it traded, and was overall net negative from October 2008 onward, according to the Order.

Subsequently, on April 3, 2013, Judge Mullen granted Summary Judgment against Defendant Hudspeth finding him liable for the same violations of the CEA as Bailey and PMC, and making Hudspeth jointly and severally liable with Bailey and PMC for the \$429,700 restitution award previously ordered by the Court. The Order also imposes a \$420,000 civil monetary penalty against Hudspeth and permanently bans him from the commodities industry.

Securities Division Re-Issues FOREX Alert

As readers will note, alleged fraud involving investments in foreign currency contracts ("forex") can ensnare hundreds of victims. Forex trading by retail investors is at best extremely risky, and at worst, plagued by outright fraud.

A few years ago, the North American Securities Administrators Association (NASAA) and the US Commodity Futures Trading Commission (CFTC), issued a joint alert warning investors about the potential dangers associated with forex trading.

The NC Securities Division believes it would be instructive for people considering making such investments to read the alert before doing so. Click [here](#) to read the joint investor alert.

NC Businesses Registering for *Investor Education in Your Workplace® Program*



The NC Department of the Secretary of State Securities Division is pleased to announce that fourteen employers have pledged to enroll their employees or members in the next round of the ***Investor Education in Your Workplace® (IEiYW®) Program***.

As the chart below demonstrates, there is great diversity in the types of employer groups participating in the next round of the IEiYW program, which will run approximately fourteen weeks beginning May 6, 2013. The Division is once again able to make the program available free-of-charge to up to 1185 participants through a grant from the Investor Protection Trust, a Washington, DC-based nonprofit organization that funds investor education programs and materials.

Organizations Participating in the IEiYW® Program

Employees of the following organizations, listed in alphabetical order, will be able to participate in the spring IEiYW® campaign:

- **A Small Miracle, Inc.** (*Goldsboro*)
- **Blue Ridge Bone and Joint Clinic** (*Asheville & Hendersonville*)
- **Charlotte Firefighters Retirement System** (*Charlotte*)
- **Eastern Band of Cherokee Indians** (*Cherokee*)
- **First Carolina People's Credit Union** (*Goldsboro*)
- **Freudenberg Nonwovens Ltd** (*Durham*)
- **Halifax Regional Medical Center** (*Roanoke Rapids*)
- **Li & Fung USA** (*Greensboro*)
- **Medical Action Industries, Inc.** (*Arden*)
- **Meredith College** (*Raleigh*)
- **NC Mutual Life Insurance Co.** (*Durham*)
- **Radiator Specialty Company** (*Charlotte*)
- **Sonic Automotive** (*Charlotte*)
- **Town of Cary** (*Cary*)
- **US Conec Ltd.** (*Hickory*)

Since 2011, over 2000 employees from 61 North Carolina-based organizations have participated in the IEiYW program. The program provides on-line instruction on ten different investor education-related topics. Each topic is designed to take about an hour to complete, making it an ideal length for a workplace-based instructional program. The program, which debuted in 2009 in Wisconsin, has been offered in North Carolina and thirteen other states, the District of Columbia and Puerto Rico.

To date, over 16,000 total participants have gone through the program nationwide. Comparing before and after testing results, participants have experienced up to a 40% improvement in their knowledge of financial concepts. As further evidence of the program's effectiveness:

- Data shows that participant behavior and attitudes towards setting financial goals, implementing a budget and starting or increasing contributions to 401(k), IRA or equivalent plans has improved by up to 50%.
- Statistically significant improvements in behaviors, including up to 50% increases in short- and long-term saving and investing activities. Participating credit unions have reported 200% to 300% growth in helping members learn more about retirement and investing.
- 88% of participants complete the program.
- 91% satisfaction ratings from employees and senior management.
- 91% say they would recommend the program to family and friends.
- 96% say they would like to participate in additional programs.

NC Securities Division Issues Two New Advisories

The North Carolina Securities Division has just added two new advisories to its growing library of [investor education resources](#).

In advance of a federal rule to allow advertising of high-risk and potentially fraudulent private placement offerings, the North Carolina Department of the Secretary of State Securities Division has issued an advisory (see pages 10-11 of this newsletter) cautioning investors about the risks these offerings carry. The Division is also issuing an advisory explaining the different duties and responsibilities of various financial service providers (see pages 12-13). These advisories are freely available for download at <http://www.secretary.state.nc.us/sec/brochures.aspx>.

Private placement offerings allow companies to raise money by selling stocks, bonds and other instruments. These offerings may be exempt from federal securities registration requirements. As a result, this exemption allows a company to raise business capital without having to comply with the registration requirements of a public securities offering.

Currently, Rule 506 of Regulation D of the Securities Act of 1933 does not permit general solicitation or advertising of private placement offerings. The JOBS Act directed the Securities and Exchange Commission (SEC) to lift this ban as long as the sales are limited to "accredited" investors – people who have sufficient wealth or access to information that would presumably allow them to make completely informed investment decisions. The SEC is finalizing its proposed rule lifting the ban.

"State securities regulators are concerned that Mom and Pop investors will be lured by con men selling fraudulent investments when the ban on general solicitation of private placement offerings is lifted," said David Massey, Deputy Securities Administrator and Director of the NC Securities Division.

Once implemented, this rule will allow companies and promoters to offer securities through direct mail, cold calls, free lunch seminars and television or radio commercials. "As a result, unscrupulous companies and promoters may take advantage of the new rules to offer potentially fraudulent investments," the Division's advisory says.

Because private placement offerings made in reliance on Rule 506 of Regulation D are not reviewed by regulators, they have become a haven for fraud. According to the most recent enforcement statistics compiled by the North American Securities Administrators Association (NASAA), private placement offerings are the most frequent source of enforcement cases conducted by state securities regulators.

The Securities Division's advisory includes information on the risks associated with private placement offerings and tips on how to protect yourself when considering such an offering.

"Rule 506 can be and has been used by legitimate small businesses as an important source of capital, and state securities regulators want those businesses to be able to access funding and create jobs without unnecessary red tape," Massey said. "However, the real challenge is to facilitate capital formation while keeping the crooks and shysters at bay."

The second advisory helps investors understand the differences between brokers, investment advisers and financial planners. The investor advisory also provides questions to ask your financial professional and warning signs to watch for.

For more information about the risks associated with private placement offerings, or to check the credentials and backgrounds of your financial professional, contact the NC Securities Division at (919) 733-3924 or toll-free at (800) 688-4507 or visit us on the Web at www.sosnc.com.

Private Placements

In 2012, Congress passed the JOBS Act, which directs the Securities and Exchange Commission (SEC) to implement rules that, among other things, allow general solicitation and advertising of private placement offerings that are made in reliance on Regulation D, Rule 506. Once implemented, those rules will allow companies and promoters to offer securities through means such as direct mail, cold calls, free lunch seminars and media advertisements. As a result, unscrupulous companies and promoters may take advantage of the new rules to offer potentially fraudulent investments.

What is a Private Placement Offering?

Private placement offerings allow companies to raise money by selling stocks, bonds and other instruments. Such offerings may be exempt from federal securities registration requirements. This exemption allows a company to raise business capital without having to comply with the registration requirements of a public securities offering.

Federal law allows companies to make a private placement offering to people who have sufficient wealth or access to information that would presumably allow them to make completely informed investment decisions. Those investors are known as “accredited” or “sophisticated” investors.

Currently, Rule 506 of Regulation D of the Securities Act of 1933 does not permit general solicitation or advertising of private placement offerings.

The JOBS Act directs the SEC to lift this ban on general solicitation or advertising as long as the sales are limited to “accredited” investors.

Who is an Accredited Investor?

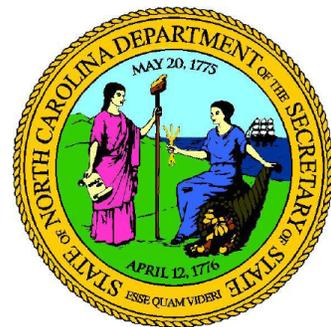
To qualify as an accredited investor, you must:

- Have a net worth, not including your primary residence, of a least \$1 million; or
- Have an income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year.

Private Placements and the Risk of Fraud

Entities raising capital through private placements often have a limited operating history and typically have more modest revenue streams than larger companies.

Because private placement offerings made in reliance on Rule 506 of Regulation D are not reviewed by regulators, they have become a haven for fraud. According to the most recent enforcement statistics from the North American Securities Administrators Association, private placement offerings are the most frequent source of enforcement cases conducted by state securities regulators.



To learn more or for help with these or other products, contact:

NC Department of the Secretary of State, Securities Division, PO Box 29622, Raleigh, NC 27626-0622

www.sosnc.com | Phone: (800) 688-4507 or (919) 733-3924 | Fax: (919) 807-2183 | E-mail: secdiv@sosnc.com

Risks Associated with Private Placement Offerings

- Because private placement offerings are exempt from registration requirements at both the state and federal level, no regulator has reviewed the offerings to make sure the risks associated with the investment and all material facts about the entity raising money are adequately disclosed.
- There may not be regulatory background checks of the sellers or managers and officers of the company issuing the investment.
- Private placement offerings often project higher rates of return, but this is only because the risk of the underlying investment is also significantly higher.
- Securities offered through private placements are generally illiquid, meaning there are limited opportunities to resell the security. Therefore, investors may be forced to hold the investment indefinitely.
- Investors in a private placement offering are usually provided with less disclosure information than they would receive in a public securities offering. Consequently, investors know much less about the investment and the people behind it.
- Historically, private placement offerings have been sold through familiar sources such as the recommendation of a friend, a broker-dealer, or members of a church or other social organizations. These sales rely upon directed communication and trusted relationships. Once the general solicitation provision of the JOBS Act is implemented, private placement offerings may be sold through unknown sources by such means as cold calls or free lunch seminars that may use high pressure sales tactics and impose artificial time limits in an effort to hurry the investment decision.

How to Protect Yourself When Considering a Private Placement Offering

- Do not complete a Subscription Agreement or Accredited Investor Questionnaire unless you understand it and agree with the entire document.
- If you are asked to falsify your financial information to qualify as an accredited investor, walk away.
- If the seller cannot satisfactorily answer your questions about the company, its business model, or its executives' backgrounds, walk away.
- Ask for information. Even though federal and state securities laws do not mandate companies to disclose information in a private placement offering, an investor should still ask questions and request information. Take control and withhold your investment dollars if you do not get the information you request.

The Bottom Line



If you have any questions about private placement offerings, contact the North Carolina Department of the Secretary of State, Securities Division at (800) 688-4507 or (919) 733-3924, or by emailing at secdiv@sosnc.com.

Financial Service Providers

Whether you are just starting a retirement fund or need additional help with growing and managing your money, you may benefit from selecting an investment services professional. Finding a person who is knowledgeable, affordable, and trustworthy may be a challenging process. This advisory provides basic information on three types of financial services professionals and their obligations to you as a client: **broker-dealer agents, investment adviser representatives, and financial planners.** An individual professional can hold any of these three credentials or titles, among others.

Broker-Dealer Agents

Broker-dealer agents sell securities and other investment products.

Generally, the term broker-dealer refers to a firm rather than an individual; an individual in a firm is known as a broker-dealer agent.

A broker-dealer agent may be informally referred to as any of the following, among others: *broker, stockbroker, financial consultant, financial adviser, investment consultant, salesperson, or registered representative.*

Brokers are typically compensated by transaction-based commissions—that is, the client pays a fee every time the broker buys or sells securities on the client's behalf. Brokers are obligated to make sure the securities they recommend are suitable for clients based upon factors such as the client's risk tolerance, age, and investment goals.

It is possible that brokers may recommend investments that appear suitable but may not be optimal for investors' objectives. Because of the manner in which they are compensated, it is possible for brokers to have incentives to sell financial products that may not entirely align with clients' goals.

Investment Adviser Representatives

Investment adviser representatives give advice about securities and other investment products and provide ongoing management of investments based on clients' objectives.

Generally, the term investment adviser refers to a firm rather than an individual; an individual in a firm is known as an investment adviser representative.

In some instances, an investment adviser is operated by only one person and, in this case, the individual is both the investment adviser and the investment adviser representative. With the distinction sometimes difficult to discern, investment adviser representatives are often commonly referred to as investment advisers.

Investment advisers may be referred to by a variety of titles, among others: *investment manager, investment counsel, asset manager, wealth manager, or portfolio manager.*

Clients may grant their advisers discretionary authority to make decisions about investments without prior approval. Investment advisers have a fiduciary responsibility to put clients' interests ahead of their own when providing investment advice. Because investment advisers give

(over)



To learn more or for help with these or other products, contact:

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www.sosnc.com | Phone: (800) 688-4507 or (919) 733-3924 | Fax: (919) 807-2183 | E-mail: secdiv@sosnc.com

continuous comprehensive investment advice, they are considered to be acting in a fiduciary role; by contrast a broker who serves clients on a transactional basis is not considered to be a fiduciary.

Investment advisers typically charge a flat rate or an asset-based fee. The compensation structure must be disclosed to the client.

Financial Planners

Financial planners design an overall plan for their clients to save, invest, and manage their money.

Planners who provide specific investment advice—such as recommending particular financial products or investments—must be registered or licensed as investment adviser representatives and are subject to a fiduciary duty.

The fee structures charged by financial planners vary greatly and are dependent on whether they are licensed or registered. Financial planners may charge hourly, flat, or asset-based fees, or they could earn commissions based upon the purchase of recommended products.

Checking out your potential financial services provider

Whether you choose a broker, investment adviser, or financial planner, make sure you verify the person's registration or license, background, and employment history by contacting your state or provincial securities regulator.

Every broker and investment adviser must be properly registered or licensed. Each is assigned a unique identification number by the Central Registration Depository (CRD), a nationwide database jointly maintained by state securities regulators and the Financial Industry Regulatory Authority (FINRA). This CRD number corresponds to the associated individual's information, including employment history, certifications, licenses, registrations, and disciplinary actions.

Background information is available through the NC Department of the Secretary of the State, Securities Division. In addition, you may obtain information regarding a broker or investment adviser through FINRA's BrokerCheck database, available at www.finra.org/investors/toolscalculators/brokercheck or through the SEC's Investment Adviser Public Disclosure website, www.adviser.info.sec.gov.

Financial planners may be certified by the Certified Financial Planner Board of Standards, Inc. (CFP Board). A certified financial planner's background can be checked through a database maintained by the CFP Board available at www.cfp.net.

Questions to ask:

- What services do you offer?
- What licenses, registrations, qualifications, and experience do you have to offer these services?
- Are you a broker, investment adviser, financial planner or any combination thereof?
- Can you provide me with your CRD number, and, if not, why not?
- Are you required to always act in my best interest?
- Do you have any potential conflicts of interest when providing me with investment advice?
- How are you paid? Explain commissions or fees you may charge.

These questions are not exhaustive, and the answers will likely raise additional questions you will want answered before you decide to entrust the professional with your money. You may want to ask for the answers in writing. Be suspicious if your investment services provider:

- Refuses to provide you with his or her CRD number.
- Cannot explain to you how a proposed financial product is intended to make money.
- Suggests that you take out a mortgage or reverse mortgage on your home in order to invest.
- Recommends that you cash out current holdings (such as life insurance or retirement accounts) to fund other investments.
- Ignores your financial objectives.
- Pressures you to invest today or tells you to keep the investment secret.

(The following is taken from a [news release](#) published by the Consumer Financial Protection Bureau. It is reprinted here for educational purposes only.)

CFPB Report: Seniors Confused by Financial Advisory Titles

More than 50 titles used by financial advisers risky for older consumers



On April 18, 2013, the Consumer Financial Protection Bureau (CFPB) published a [report](#) highlighting problems with so-called “senior designation” credentials that many financial advisers use to market their services to older Americans. The Bureau found that there are more than 50 different senior designations that financial advisers use to indicate that they have advanced training or expertise in the financial needs of older consumers. These designations can confuse older consumers, who are already at risk of deception and fraud.

[Editor’s Note: Since February 1, 2010, North Carolina has had a [rule](#) in place stating that it shall be considered a dishonest or unethical business practice for anyone to use a senior specific certification or designation to mislead seniors into thinking the person has specialized knowledge or experience in securities when no such knowledge or experience actually exists. The North Carolina rule incorporates by reference the [Model Senior Designation Rule](#) adopted by the North American Security Administrators Association (NASAA) on March 20, 2008. The North Carolina rule was approved without comment by the NC Rules Review Commission on January 21, 2010.]

“With such a bewildering array of titles and acronyms, it is no wonder that older Americans are confused and misled by these titles,” said CFPB Director Richard Cordray. “[This] report underscores the need for consistent high-level standards of training and conduct for those advisers who want to acquire a bona fide senior designation.”

The report highlights the challenges that the nation’s 50 million seniors face in navigating the complex world of financial advice and services. Older consumers have unique vulnerabilities, and are often the targets of fraud. The Dodd-Frank Wall Street Reform and Consumer Protection Act directed the CFPB’s Office of Financial Protection for Older Americans (Office for Older Americans) to make recommendations to help older consumers identify the most appropriate financial adviser and verify a financial adviser’s credentials.

The report, entitled “Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks,” includes recommendations to Congress and the U.S. Securities and Exchange Commission. Because many financial advisers holding senior designations are regulated by state securities and insurance regulators, the Bureau offers recommendations for their consideration as well.

The report found that:

- **The names and acronyms of senior designations confuse consumers.** Titles and acronyms for the numerous designations can appear quite similar, and consumers have no simple, clear means to distinguish among these designations. Similar sounding designations can have very different requirements for earning the designation.
- **There is a wide variety of required training, qualifying exams, and oversight associated with different designations.** Some senior designations may require rigorous college-level coursework while others may be acquired by attending a weekend seminar.
- **There is a lack of comprehensive supervision and enforcement.** No single authority is responsible for ensuring that those who use senior designations do not mislead or harm consumers.

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Older consumers can be attractive targets for the marketing of various financial products. They often have higher household wealth in the form of retirement savings, inheritance, accumulated home equity, or other assets. They are also more likely to experience cognitive decline, which can impair their capacity to manage their finances. For example, a particular problem associated with senior designations is the participation of some designees in “free lunch seminars.” These events are often marketed as educational seminars, when in fact they are staged sales events to sell investment and other financial products.

A study conducted by the Financial Industry Regulatory Authority showed that older consumers are more likely to rely on the advice of a professional who uses a senior designation. With more than 50 designations, consumers risk paying for an adviser they believe has a breadth of experience, but who, in reality, simply paid a website for multiple designations.

Today’s report was informed by a Request for Information on senior financial exploitation that the Bureau issued in June 2012. The Bureau conducted extensive outreach to outside stakeholders, and, in addition, held roundtable listening sessions on the topic of senior designations in late 2012. The report was informed by financial planners, insurance and securities professionals, consumer advocates, social workers, and other industry stakeholders.

Based on its findings, the Bureau’s recommendations include:

- **Implementing rigorous training standards to obtain senior designations:** The Bureau recommends that state and federal regulators implement rigorous criteria for acquiring senior designations, including specific standards for education, training, and accreditation.
- **Setting strict standards of conduct for those using senior designations:** The Bureau recommends that state and federal regulators set consistent and strict standards of conduct for those using senior designations. Such standards could include prohibiting senior designees from characterizing sales events as educational seminars, and selling financial products and services at events that are advertised or described as educational or informational events.
- **Increasing supervision and enforcement:** The Bureau recommends that federal and state regulators consider increasing existing supervision of and enforcement authority against misleading conduct by a holder of a senior designation.

The Bureau believes that adoption of these recommendations will help older consumers avoid financial advisers who would misuse their designations to sell inappropriate investment and financial products.

The Bureau’s Office for Older Americans conducts research and educational efforts in order to provide seniors the information they need to make safe and responsible financial decisions. Following the report’s release, the Office for Older Americans will work with federal and state regulators and offer assistance in developing a tool to help consumers verify the credentials of financial advisers who market their services and products to older adults.



Upcoming Small Business Seminars

Date: 5/14/13
Time: 10:00 am – 12:00 pm
Location: Wilkes Community College
Alumni Hall – Room 1112
1328 S. Collegiate Drive
Wilkesboro, NC 28697

Date: 5/16/13
Time: 10:00 am – 12:00 pm
Location:
K.E. White Graduate Ctr, Rm 130
Elizabeth City State University
1862 Edgewood Drive
Elizabeth City, NC 27909

Date: 5/29/13
Time: 10:00 am – 12:00 pm
Location:
Craven Community College
Bosch & Siemens AMC, Room 102
800 College Court
New Bern, NC 28562

Business Essentials

The NC Department of Revenue, NC Department of the Secretary of State, and NC Department of Commerce Division of Employment Security will present a seminar titled "**Business Essentials**". Each agency will cover basic requirements to help businesses in North Carolina understand the laws and obligations necessary to be a compliant business.

- **Department of Revenue** –Covers the basics of tax compliance ranging from registering your business, to withholding from employees, and sales and use tax requirements.
- **Secretary of State** –Covers registration of business entities and the requirements for doing so. Also will provide an overview of the things small businesses need to consider when conducting securities offering in order to raise capital to finance their businesses.
- **Industrial Commission** - Covers Workers' Compensation laws and the types of businesses required to carry workers' compensation insurance and how to obtain it.

At the end of the seminar, there will be a question and answer session with the presenters and networking possibilities with other business owners. Don't miss this great opportunity.

For more information and to register, visit <http://www.dornc.com/business/>



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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
05/08/13	Goldsboro	Seymour Johnson AFB, 1200 Wright Brothers Building 3602, 2:00 PM – 3:00 PM. Saving and Investing Education. For Seymour Johnson personnel and their families only. For more information, contact Arnedrea Thomas at (919) 722-7337.
05/10/13	Chapel Hill	Carolina Meadows Retirement Community , 500 Carolina Meadows. Time: 2:00 PM -- 3:00 PM. Open to residents and guests only. For more information, contact Paul Joffrion at (919) 370-7185.
05/14/13	Wilkesboro	“Business Essentials for Small Businesses” presentation in Alumni Hall, Room 1112, Wilkes Community College, 1328 S. Collegiate Drive. Time: 10:00 AM -- Noon. Free, but registration requested. To register, visit www.dornc.com/business .
05/14/13	Spindale	Scam Jam at Rutherford County Senior Center , 193 Callahan-Koon Road. Time: 1:00 PM -- 4:00 PM. Free, but registration is requested. To make a reservation or for more information, contact Barbara Hill at (828) 287-6409.
05/14/13	King's Mtn.	“Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention Program”, at H. Lawrence Patrick Senior Center , 909 E. King Street. Time: 6:00 PM -- 7:30 PM. For more information, contact Monty Thornburg at (704) 734-0447.
05/15/13	Laurinburg	Scam Jam, Scotland Place Senior/Civic Center , 1210 Turnpike Road. Time: Noon – 3:00 PM. Free. For more information, contact Parks and Recreation at (910) 277-2585.
05/15/13	Wake	St. Mary Mother of the Church, Altar Guild , 1008 Vandora Springs Road. Time: 7:00 PM – 8:00 PM. Open to Altar Guild members only.
05/16/13	Elizabeth City	“Business Essentials for Small Businesses” presentation in K.E. White Graduate Center, Room 130, Elizabeth City State University, 1862 Edgewood Drive. Time: 10:00 AM -- Noon. Free, but registration requested. To register, visit www.dornc.com/business .
05/18/13	Raleigh	The Minuteman Muster , NC National Guard Community Outreach and Open House Event/Fund Raiser, Joint Forces HQ, 4105 Reedy Creek Road. Time: 6:30 AM – 4:00 PM. For more information, click the link above.
05/21/13	Hamlet	Scam Jam, Cole Auditorium , Richmond Community College, 1042 West Hamlet Avenue. Time: 10:00 AM – 2:00 PM. Free, but registration required. To register, call the Lumber River AAA at (910) 618-5533 or (866) 582-4281.

Date	City	Details
05/28/13	High Point	Immaculate Heart of Mary Catholic Church, Young at Heart Group , 4145 Johnson Street. Time: 10:30 AM -- 11:30 AM. For more information, contact Irene Fordyce at (336) 883-1705.
05/29/13	New Bern	“Business Essentials for Small Businesses” presentation at Craven Community College, Bosch & Siemens AMC, Room 102, 800 College Court. Time: 10:00 AM -- Noon. Free, but registration requested. To register, visit www.dorncc.com/business .
06/05/13	Durham	“Introduction to Securities for Entrepreneurs Seeking to Raise Business Capital”. Small Business Center Network, Durham Technical Community College, 400 West Main Street, 3rd Floor. Free, but registration required. To register, click here or contact LaShon Harley at (919) 536-7241, Ext. 4501.
06/13/13	Knightdale	Senior Health Fair sponsored by the Knightdale Parks & Recreation Department. 950 Steeple Square Court. Time: 9:00 AM – Noon. For more information, contact : Michelle Wester at (919) 217-2236.
07/08/13	Apex	Apex Masonic Lodge , 408 E. Williams Street. Time: 6:30 PM – 8:30 PM. Open to club members and their guests only.
07/10/13	Hope Mills	Hope Mills Sunshine Senior Center , “Annuity and Investments Scams”. Time: 10:00 AM – 11:00 AM. For more information, contact: Ryan Gordon , Sr. Center Assistant Supervisor, at (910) 425-6707.
07/11/13	Lexington	Davidson County Healthcare Industry Professionals Serving Seniors (HIPSS) luncheon. Hospice of Davidson Co., 200 Hospice Way. Time: 11:30 AM -- 1:00 PM. Open to HIPSS members and their guests only. For more information, contact Ms. Chris Sterling at (336) 249-1011.
08/07/13	Chapel Hill	“Introduction to Securities for Entrepreneurs Seeking to Raise Business Capital”. Free, but registration required. To register, contact LaShon Harley at (919) 536-7241, Ext. 4501.
08/20/13	Concord	Gardens of Taylor Glen , 3700 Taylor Glen Lane. Time: 11:00 AM – Noon. Open to residents and their guests only. For more information, contact Sharon Stoudemayer at (704) 788-6510.
08/21/13	Knightdale	Knightdale Parks & Recreation , 950 Steeple Square Court. Time: 9:00 AM – 10:00 AM. For more information, contact: Michelle Wester at (919) 217-2236.
08/22/13	Fayetteville	“Ft. Bragg Marriage Money Matters”, ACS, Building 4-2843 3rd Floor Soldier Support Center, Normandy Drive. Time: 5:30 PM -- 7:30 PM. Open to military personnel and their families only. For more information, contact Lynn Olavarria at (910) 907-3670.



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.

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

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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 currently being held in the Durham County Jail under a \$4 million bond. His trial is expected to begin later this year.

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 has not been scheduled.

Michael Anthony Jenkins, of Raleigh, NC, was served on August 17, 2012, with three felony arrest warrants for securities fraud. Investigators with the Secretary of State Securities Division allege that Jenkins told investors he would use their funds to trade commodities futures or "E-mini futures" through his company, Harbor Light Asset Management, LLC. Investigators allege Jenkins instead converted funds to his personal use and used money from later investors to pay earlier investors in what is commonly referred to as a Ponzi scheme. Jenkins is in the Wake County Jail under \$500,000 secured bond. During his first hearing on August 20, the prosecutor told the court that there are 377 known victims of Jenkins' approximately \$1.79 million Ponzi scheme. The Securities Division's investigation is continuing. Anyone who has made investments with Harbor Light Asset Management, LLC is asked to contact the Securities Division at (800) 688-4507 or (919) 733-3924.

Recent Enforcement Actions

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

On **April 22, 2013**, Arkansas Securities Commissioner A. Heath Abshire ("Commissioner") entered a cease and desist order against **VFG, LLC, f/k/a/ Voyager Financial Group, LLC ("VFG")**, a Delaware limited liability company based in Little Rock, Arkansas; **Andrew Gamber ("Gamber")**; **Kevin McNay ("McNay")**; **Robert Henry ("Henry")**; and **Jonathan Sheets ("Sheets")**. The order directed the parties to stop the offer and sale of securities in Arkansas and to refrain from further activity in violation of the Arkansas Securities Act ("Act") and is available at

<http://www.securities.arkansas.gov/userfiles/Cease%20and%20Desist%20Order%20S-12-0015-13-OR02.pdf>.

VFG facilitates the selling of future monthly payments of pension income streams for a lump sum. As of August 20, 2012, VFG has facilitated approximately 317 sales in 31 states (AL, AR, CA, CO, DE, FL, GA, IA, IL, LA, MA, MD, ME, MI, MO, MS, **NC**, NH, NJ, NM, NV, NY, OH, OK, OR, PA, SC, TX, VA, WI, and WV) for an estimated total of \$34,245,351.48 and received an estimated \$6,724,049.71 in commissions. VFG paid additional commissions to an estimated 81 agents between February 2011 and July 2012. The order found that secondary sales of income streams are considered investment contracts and therefore a security not properly registered or exempt pursuant to the Act. The order also found that Gamber, McNay, Henry and Sheets had control of the company while it sold securities that were not registered or exempt under the Act. Further, the Commissioner ordered a continued investigation for any other violations including possible fraud.

On **March 27, 2013**, the Securities Division of the North Carolina Department of the Secretary of State issued a **Temporary Order to Cease and Desist** to, respondents, **James Harvey Mason, The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP)**, and **Forex Trading at Home (d/b/a "FTAH Partners")**. The Temporary Order to Cease and Desist ordered each respondent, and any agent thereof, to immediately cease and desist offering for sale, soliciting offers to purchase, or selling, any security of any issuer, howsoever denominated, including but not limited to the securities of respondents or other entities under their control, unless and until any such: (a) Securities have been registered under the provisions of the Securities Act; and (b) Respondent, and any person or entity under the direction or control of any such respondent, is properly registered as a securities dealer or salesman under the provisions of the North Carolina Securities Act. The Temporary Order to Cease and Desist found that respondents offered investment contracts in the form of an investment program whereby investors' money was pooled and used to trade off-exchange foreign currencies. The Temporary Order to Cease and Desist gives James Harvey Mason, The JHM Forex Only Pool (f/k/a The JHM Forex Only Pool, LP), and Forex Trading at Home (d/b/a "FTAH Partners") 30 days in which to request a hearing. If no such request is made during that time, the Temporary Order to Cease and Desist shall become final. To read the Temporary Order, click [here](#).

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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.)

Fee Rate Advisory #3 for Fiscal Year 2013

April 25, 2013 — The Securities and Exchange Commission announced that starting on May 25, 2013, the fee rates applicable to most securities transactions will decrease from \$22.40 per million dollars to \$17.40 per million dollars. The assessment on security futures transactions will remain unchanged at \$0.0042 for each round turn transaction. For more information, click [here](#).

New CFTC Anti-Fraud Resources Released for Financial Capability Month

April 25, 2013 — In recognition of National Financial Capability Month, the U.S. Commodity Futures Trading Commission's (CFTC) Office of Consumer Outreach is making available new print resources to help consumers learn ways to protect themselves from frequently encountered and potentially devastating commodity futures trading frauds. Print brochures and the book, *Ponzimonium*, written by CFTC Commissioner Bart Chilton, are available for free download. These materials are available to the public on CFTC's [consumer resources web page](#). Hard copies of the materials can also be ordered through the Federal Citizen Information Center at www.Publications.USA.gov or by calling 800.FED.INFO (800.333.4636).

PCAOB Issues Policy Statement on Extraordinary Cooperation in Connection with Board Investigations

April 24, 2013 — The Public Company Accounting Oversight Board (PCAOB) has published a formal [policy statement](#) concerning the benefits that may be available to registered public accounting firms and individuals who provide extraordinary cooperation in PCAOB investigations and how credit might be reflected for such cooperation. There are three broad types of cooperation that (alone or taken together) might merit cooperation credit: self-reporting; remedial or corrective action; and substantial assistance to the Board's investigative processes or to other law enforcement authorities. Such extraordinary cooperation might help the Board's staff to discover potential violations earlier and allow the Board to conclude investigations in a more efficient and timely manner, thus reducing the risk that such violative conduct will be repeated and result in more significant harm to investors, and assisting the Board in identifying audit reports that may be inaccurate.

NASAA Statement in Support of HR 1627, the Investment Adviser Examination Improvement Act of 2013

April 19, 2013 – Click the link above to read the statement from Heath Abshure, president of the North American Securities Administrators Association (NASAA) and Arkansas Securities Commissioner, in support of HR 1627, the "Investment Adviser Examination Improvement Act of 2013." The legislation would amend the Investment Advisers Act of 1940 to provide the Securities and Exchange Commission (SEC) with the authority to impose and collect user fees on investment advisers for the purpose of increasing the number and frequency of SEC examinations. To read the bill's text, click [here](#).

SEC Says Social Media OK for Company Announcements if Investors Are Alerted

April 2, 2013 — The Securities and Exchange Commission today issued a [report](#) that makes clear that companies can use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD) so long as investors have been alerted about which social media will be used to disseminate such information. The SEC's report of investigation confirms that Regulation FD applies to social media and other emerging means of communication used by public companies the same way it applies to company websites. The SEC issued guidance in 2008 clarifying that websites can serve as an effective means for disseminating information to investors if they've been made aware that's where to look for it. Today's report clarifies that company communications made through social media channels could constitute selective disclosures and, therefore, require careful Regulation FD analysis.

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@sosnc.com), 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 with "Remove from mailing list" in the subject line.

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