



North Carolina  
Department of the Secretary of State  
*Hon. Elaine F. Marshall, Secretary*



Securities Division

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## June 2012 NEWSLETTER • Vol. 4, No. 6

### Secretary Marshall: "Never Be Too Polite to Put a Crook in Jail!"

On June 7, 2012, NC Secretary of State Elaine F. Marshall spoke to an audience of 115 people who had gathered over dinner to learn how to spot the persuasion tactics con artists use to pressure victims into handing over their money in fraudulent investment schemes.

The two-hour investor education seminar was sponsored by the FINRA Investor Education Foundation in association with the NC Department of the Secretary of State, US Securities and Exchange Commission, AARP North Carolina, the Better Business Bureau of the Southern Piedmont, and Centralina Area Agency on Aging. It is the fifth such investor education event FINRA has sponsored in North Carolina since September 2009.

"Hopefully this will be the most important night of your life going forward," Secretary Marshall told attendees. (To watch a video excerpt of Secretary Marshall's remarks, visit our [Multimedia Section](#) on page 7).



NC Secretary of State Elaine F. Marshall

"Tonight, I'm going to ask you to **NOT** to turn your cheek," Secretary Marshall told attendees. "Or turn over your checkbook or your retirement funds to the crooks and scam artists who, unfortunately, keep trying so very hard to use your own beliefs – your sense of politeness and your sense of trust -- when they use it against you. This evening, we will show you how to win against those scam artists, con men and fraudsters. You will leave here tonight knowing what red flags to watch out for that scammers frequently use to dupe people."

Following Secretary Marshall were Ms. Geraldine Walsh, President of the FINRA Investor Education Foundation, and Ms. Lori Schock, Director of the SEC Office of Investor Education and Advocacy. Using humorous video clips, they demonstrated the persuasion tactics investment con artists use to swindle money from unsuspecting investors. These tactics include:

- **The "Phantom Riches" Tactic** – The con artist dangles the prospect of wealth, enticing you with something you want but can't have. (Ex. "These gas wells are guaranteed to produce \$6,800 a month in income.")
- **The "Source Credibility" Tactic** – The con artist builds credibility by claiming to be with a reputable firm, or have a special credential or experience. (Ex. "Believe me, as a senior vice president of XYZ Firm, I would never sell an investment that doesn't produce.")
- **The "Social Consensus" Tactic** – The con artist leads you to believe that other savvy investors have already invested. (Ex. "This is how X got his start. I know it's a lot of money, but I'm in and so is my mom and half of her church.")
- **The "Reciprocity" Tactic** – The con artist offers to do a small favor (like giving you a free meal or a discount) hoping you feel obliged to do an even bigger favor in return (like giving him your money).
- **The "Scarcity" Tactic** – The con artist creates a false sense of urgency by claiming limited supply.

Call or email [John Maron](mailto:John.Maron@sos.nc.gov) (919-807-2106) if you would like a free copy of FINRA's "**Tricks of the Trade**" DVD.



## Request for Information Regarding Senior Financial Exploitation

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the [Consumer Financial Protection Bureau](#) (CFPB). The CFPB's central mission is to make markets for consumer financial products and services work for Americans — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products.

In a June 14 blog posting on the CFPB's website, Skip Humphrey, Director of the CFPB's Office for the Financial Protection of Older Americans, wrote, "Congress gave my Office for Older Americans a broad mandate to look out for the consumer financial interests of older Americans. As part of that work, we are keenly focused on the important issue of financial abuse and exploitation of the elderly. According to a recent study, seniors lost at least \$2.9 billion to financial exploitation in 2010. Unfortunately, it is a growing trend. From 2008 to 2010, there was a 12 percent increase in the amount of money scammed from seniors."

On June 19, 2012, in accordance with Section 1013(g)(1) of the Dodd-Frank Act, the CFPB published a Request for Information in the [Federal Register](#) seeking information on consumer financial products and services, financial literacy efforts, and fraudulent or deceptive practices impacting the lives of older Americans and their families.

Comments are due by **August 20, 2012**, and may be submitted, identified by Docket No. CFPB-2012-0018, by any of the following methods:

- <http://www.regulations.gov>: Follow the instructions for submitting comments.
- **Mail/Hand Delivery/Courier**: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552 (202-435-7275).

Pursuant to Section 1013(g)(3)(D), the Office for Older Americans is also conducting research to identify best practices for educating seniors on personal finance management. The office for Older Americans intends to use this research to develop goals for programs that provide financial literacy and counseling to seniors.

The Bureau is therefore seeking comments in response to the questions posed below. The questions are grouped into the following categories:

- A. Evaluation of senior financial advisor certifications and designations;
- B. providing financial advice and planning information to seniors;
- C. senior certification and designation information sources;
- D. financial literacy efforts;
- E. financial exploitation of older Americans; and
- F. financial exploitation of older veterans of the Armed Forces.

Please feel free to respond to any or all of the questions but please be sure to indicate in your comments on which questions you are commenting.

Please note that the Bureau is not soliciting individual borrower complaints in response to this Notice and Request for Information. Nor is the Bureau seeking personally identifying information regarding borrower complaints, from the parties to the complaint or any third party. Responses to this subsection should not contain

account numbers, Social Security numbers or other personal information that could be used to identify the complainant or another party identified in a complaint, or in any way otherwise reveal personally identifiable information.

#### **A. Evaluation of Senior Financial Advisor Certifications and Designation**

1. What resources do seniors have for determining the legitimacy, value, and authenticity of credentials held by their financial advisors and planners? What sources have been found most helpful, accurate, and thorough? Among other things, comments could address issues such as state or organizational level review standards, evaluation practices, or selection criteria to determine the validity of proposed senior certifications or designations.
2. How effective are the existing sources at maintaining the legitimacy, value, and authenticity of credentials held by senior financial advisors and planners?
3. How effectively do existing accountability controls deter the misuse of senior advisor credentials? Examples of accountability controls include revoking credentials, public notices of disapproval, or other disciplinary actions.

#### **B. Providing Financial Advice and Planning Information to Seniors**

4. What resources are available to explain the subject matter expertise presented or implied by specific certifications and designations? How effective are the publicly available sources at disseminating thorough, up-to-date information? How effectively are seniors able to use the available resources to select a financial advisor with appropriate knowledge to address their specific financial needs?

#### **C. Senior Certification and Designation Information Sources**

5. What sources of information on the fraudulent or misleading uses of senior certifications and designations are available? Comments could include, among other things, references to publicly available research or data sets, suggestions for other potentially available research or data, or other information on enforcement, civil, administrative, or criminal cases.

#### **D. Financial Literacy Efforts**

6. What financial education, counseling, or personal finance management programs are tailored to the unique financial needs of older Americans and their families or caregivers? Among these programs, what are the best practices in providing seniors financial literacy and robust, practical information on personal finance management? Possible comments could address methods for improving recognition of unfair or deceptive financial practices; means for helping seniors plan for retirement, long-term care, and economic security; or approaches to consumer credit counseling and other financial literacy or financial protection practices.

#### **E. Financial Exploitation of Older Americans**

7. What types of fraudulent, unfair, abusive or deceptive practices target Americans age 62 and over? Comments could include unique types of financial exploitation or additional information concerning the examples listed below.
  - a. **Power of Attorney or Guardian Abuse**, whereby an agent under power of attorney or a court-appointed guardian uses his/her fiduciary authority (or a forged power of attorney instrument) to misappropriate the older person's assets and uses them for personal gain rather than for the support of the incapacitated older person; and
  - b. **Affinity fraud**, in which the characteristics of a trusted advisor such as a member of the clergy or government official are impersonated by those attempting to extract payments or personal information from an older person.

**F. Financial Exploitation of Older Veterans of the Armed Forces**

8. What types of fraudulent or deceptive practices target older veterans and/or military retirees? Comments could include unique examples of financial exploitation or additional information concerning the examples listed below.
- a. **VA Aid and Attendance fraud**, whereby veterans are advised to transfer retirement funds into irrevocable trusts that cause them to lose access to the funds and also become ineligible for Medicaid benefits; or,
  - b. **Military pension buyout schemes**, in which veterans are offered cash payments in return for their military pension payouts in a manner that could ultimately deprive the veteran of the majority of his or her pension.

**Instructions:** The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question to which you are responding at the top of each response (respondents need not answer each question). In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

For general inquiries, submission process questions or any additional information, please call Monica Jackson at (202) 435-7275. For specific questions on senior financial exploitation, please call James Miner at (202) 435-7953. In support of its statutory mandates under Section 1013(g)(1) and (3) of the Dodd-Frank Act, the Office for Older Americans will monitor certifications or designations of financial advisors who serve seniors and alert the SEC and state regulators of certifications or designations that are identified as unfair, deceptive or abusive. The Office for Older Americans will also make legislative and regulatory recommendations to Congress on best practices for disseminating information to seniors regarding the legitimacy of certifications and designations, and methods through which a senior can identify the financial advisor most appropriate for the senior's needs.

***Don't think you can become a victim of fraud?***

Every day there are new reports of victims being cheated out of their money. The North American Securities Administrators Association (NASAA) collects these news reports on a daily basis and we post them on the NC Securities Division's website. Check out the latest news headlines by visiting our [website](#).



*A Few Minutes With...*

## DAVID MASSEY

Director of the North Carolina Securities Division



David S. Massey

We recently sat down with David Massey, Director of the North Carolina Securities Division, and posed the following questions:

**Q: What is the biggest threat you see facing the North Carolina investor today?**

**DM:** The North Carolina investor faces the same threats facing all retail, or “mom and pop”, investors and that is the challenge of forming a deliberate and well-thought out investment plan for themselves and their families when they are faced with a seemingly unlimited range of investment choices that are often difficult to evaluate.

**Q: What can investors do to arm themselves against this sort of situation?**

**DM:** An investor can either learn the practical rules of investing by studying the subject on his or her own, or solicit professional advice about investment decisions from others, such as registered investment advisers and registered brokers.

**Q: What would you say are the practical rules of investing?**

**DM:** My first rule of investing is don't have all of your investment money stolen from you with the first investment you make. After that, it's more a matter of identifying your own investment goals and coming up with a financial plan or strategy that enables you to reach those investment goals while minimizing your investment risk. The next requirement is to monitor the performance and suitability of your investment plan regularly, to make sure it continues to be right for you.

**Q: How would an investor find an investment adviser with whom they can do business?**

**DM:** One thing one should do when looking for an investment adviser is to make certain that the investment adviser is properly registered with the Securities Division. After checking to see that the person does in fact have a license, you should ask Division staff about the investment adviser's business record or disciplinary history, if any. It is important to select an investment adviser with whom you feel some degree of affinity and who shows interest in *your* goals rather than his or her own. As an investor, you need to choose someone who can explain his or her recommendations in a way you can understand; someone who appears to give you reasonable information (rather than a sensational sales pitch); someone who is very sensitive to choosing investments that, in fact, implement your own investment goals.

**Q: How does someone go about checking to see if an investment adviser is registered?**

**DM:** The easiest way is to call the North Carolina Securities Division. Give the registration agent the investment adviser's name and ask for any information the Securities Division is able to find out about that particular individual and the firm he or she works for based upon their registration records.

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**Q: What if I'm dealing with an investment adviser in New York or Miami or anywhere else for that matter? What information can the North Carolina Securities Division provide me about that adviser?**

**DM:** As a general rule, an investment adviser must register with the State of North Carolina in order to provide investment advisory services to persons in North Carolina. That's the general rule. There are exceptions. There are different rules for investment advisers who advise institutional clients or pension plans. But if you are looking to an investment adviser to provide financial planning for you and your family, that person is supposed to be registered with the Securities Division in order to provide that advice legally. If the person is **not** registered, discuss this further with Division staffers – we would like to know about such situations.

**Q: I've heard there is something called an "IA Switch" coming up. What is the "IA Switch"?**

**DM:** The term "IA Switch" has been given by securities regulators to refer to the transfer of about 2,200 investment adviser firms that were previously registered with and regulated by the Securities and Exchange Commission, the federal regulatory agency, over to regulation by the various state securities regulators. These switching advisers are required by the Dodd-Frank Act to transfer their registrations and become registered with the securities agencies of the states in which they do business by June 28, 2012.

**Q: What does that mean for the average investor?**

**DM:** These advisers are managing sums of money that far exceed the "assets under management" range of the previous group of advisers that were permitted to register with the states. When they have registered with us, these advisers are probably going to be examined by a securities regulator for the very first time in their lives, because the reason **for** the switch was Congress' fear that this group of advisers – the advisers who manage between \$25 million to \$100 million in client assets – have never, or have been inadequately, examined by the Securities and Exchange Commission.

**Q: What is the Securities Division doing to prepare for taking on these additional oversight responsibilities?**

**DM:** The Securities Division has increased the training of its personnel in order to do more field audits, so we have more people who are trained to examine investment advisers. Because we support the participation by legitimate advisers in this business, the Securities Division also has been engaging in outreach presentations to this group of advisers for the last two years in order to welcome them and to make them familiar with their new regulator. We intend to continue these outreach efforts going forward.

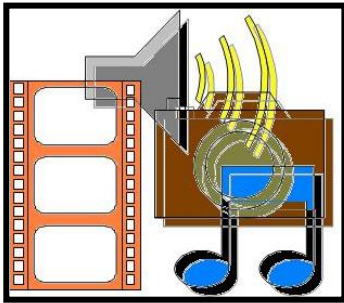
**Q: If I am an investment adviser who will be switching, what do I need to do?**

**DM:** If you are an investment adviser who needs to switch and you haven't already transferred your registration, you should call the Securities Division (919-733-3924) and ask for detailed information about whether the switch requirements apply to you and, if so, how you can make the necessary changes in registration as soon as possible.

For more information about the IA Switch, please call the NC Securities Division at (919) 733-3924 or toll-free at (800) 688-4507, or visit the "[IA Switch Resource Center](#)" on the North American Securities Administrators Association's (NASAA) website.



## MULTIMEDIA SECTION



From time to time we feature a new video or audio clip on some topic relating to investor education.

This month, we are featuring excerpts from Secretary Elaine F. Marshall's June 7 speech to attendees of FINRA's "Get Smart About Investment Fraud" investor education seminar that was held at the Embassy Suites Charlotte-Concord Hotel. (See [lead story](#) on page 1 for more details.)

The following [Investor Bulletin](#) was issued by the SEC's Office of Investor Education and Advocacy and is reprinted here for informational purposes only.



**SEC**  
OFFICE of INVESTOR  
EDUCATION and ADVOCACY

## How to Read an 8-K

A company has just released its quarterly earnings.

Another company has auditor news that could raise a red flag, and a third company is filing for bankruptcy. Where can you find more facts? Information about these events and many more are found in a document called a current report on Form 8-K.

Form 8-K provides investors with current information to enable them to make informed decisions. The types of information required to be disclosed on Form 8-K are generally considered to be "material." That means that, in general, there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision.

Companies typically provide a number of 8-Ks throughout the year, whenever significant corporate events take place that trigger a disclosure. Companies must file 8-Ks promptly, rather than waiting until their next periodic report, such as the quarterly report (on Form 10-Q) or annual report (on Form 10-K). Companies are required to make most 8-K disclosures within four business days of the triggering event and in some cases even earlier. The public can find 8-Ks on the SEC's [EDGAR](#) website. Please see "[Additional Information](#)" at the end of this Investor Bulletin for more information on how to use EDGAR.

The rest of this Investor Bulletin highlights a number of 8-K disclosures that investors may find particularly relevant, including some red flags for investors. This Investor Bulletin does not discuss all required 8-K disclosures.

### Highlights of Disclosure Items in Form 8-K

#### **Item 1.01 – Entry into a Material Definitive Agreement**

This item requires disclosure of certain material agreements not made in the ordinary course of business, or material amendments to those agreements. For example, if a company takes out a five-year loan with a bank or signs a long-term lease, and the loan or lease is material to the company, the agreement must be reported here. But if a retailer already has a chain of stores and signs a lease for one more, the new lease generally would be in the ordinary course of business and would not be reported here.

#### **Item 1.02 – Termination of a Material Definitive Agreement**

Under this item, a company generally must disclose the termination of a material agreement. If the agreement simply expires according to its terms, that termination would not need to be reported on

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Form 8-K. For example, if a widget company made

most of its sales under a long-term supply agreement with one significant customer, and that customer terminates the agreement prior to the date on which it would otherwise expire, that event would need to be reported under this item.

### **Item 1.03 – Bankruptcy or Receivership**

If a company becomes the subject of a bankruptcy or receivership court filing, that must be disclosed. Future 8-Ks may outline the company's plan for reorganization (under Chapter 11) or liquidation (under Chapter 7) and the court's confirmation of the plan. Investors should look at the reorganization plan for information about whether the company's common stock is likely to be canceled and when the company expects to emerge from bankruptcy.

### **Item 2.01 – Completion of Acquisition or Disposition of Assets**

If a company acquires or disposes of a significant amount of assets, the company must file an 8-K to describe the terms of the transaction. Examples include buying or merging with another company, or selling a business unit. A company that is no longer a "shell company" as a result of a merger would also use this item to provide investors with comprehensive information about the other merging company. A shell company is a company that either has little or no operations or has little or no assets other than cash and cash equivalents.

### **Item 2.02 – Results of Operations and Financial Condition**

Many companies announce their quarterly and annual results simultaneously in a press release and an 8-K (which includes the press release as an exhibit). The documents often include an announcement that the company will hold a conference call (sometimes called an analyst or earnings call) shortly after the release to discuss the results. The financial disclosures in the 8-K typically summarize the full financial statements, which will appear later in the company's quarterly report (on Form 10-Q) or annual report (on Form 10-K).

### **Item 2.03 – Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The basic terms of material financial obligations that the company takes on must be reported. These financial obligations include any long-term debt, capital or operating lease, and short-term debt outside the ordinary course of business. This item also requires disclosure of material financial obligations, whether direct or contingent, that arise out of off-balance sheet arrangements.

### **Item 2.04 – Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement**

Defaults on loans or other events that trigger the acceleration or increase of a financial obligation must be disclosed in an 8-K if the consequences of the event are material to the company. For example, if a company defaults on a loan, its creditors typically have the right to demand immediate payment of the entire amount owed. In such a case, if immediate repayment would be material, the company must disclose the amount to be repaid, the repayment terms and other financial obligations that might have to be repaid on an accelerated basis as a result of the initial default. Cross-default provisions may allow other creditors to demand immediate repayment of amounts owed to them.

### **Item 2.05 – Costs Associated with Exit or Disposal Activities**

This item requires disclosure of restructuring plans under which the company will incur material charges. For example, the 8-K may report the company's decision to close some of its plants or stores or to lay off workers. The company also must disclose its estimates of the costs involved, once it is able to determine them. These costs could include, for example, total severance benefits for all laid-off employees.

### **Item 2.06 – Material Impairments**

A company must disclose certain material write-downs (also called impairments) in an 8-K. (If the company determines the impairment when routinely preparing its financial statements for its periodic report, the company may make the disclosure in the periodic report rather than in an 8-K.) A write-down may occur when a company significantly lowers its estimate of the value of certain assets, such as the value of its brand or of a business it has acquired. The write-down hits the financial statements in two places—as a decrease in assets on the balance sheet and as an expense on the income statement.

### **Item 3.01 – Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing**

If a stock exchange notifies a company that it no longer satisfies the requirements for continued listing, this must be disclosed. For example, the stock may have been trading below the minimum price requirement for a certain period of time. The company may have a grace period to return to compliance, and will have to disclose any steps it intends to take to avoid delisting.

### **Item 3.02 – Unregistered Sales of Equity Securities**

Private sales of securities exceeding 1 percent of a company's outstanding shares of that class (or 5 percent for smaller reporting companies) would be reported under this item. Public offerings registered with the SEC need not be disclosed under this item. Investors can use the information provided under this item to determine the amount of capital raised by the company as well as the potential dilutive effect of reported private sales.

### **Item 3.03 – Material Modification to Rights of Security Holders**

Under this item, companies must disclose material changes to instruments that define the rights of shareholders (such as a company's governing documents) or material limitations on the rights of security holders that result from the issuance or modification of another class of securities. Examples of such changes could include loan terms restricting dividend payments, the adoption of an antitakeover device or the issuance of preferred stock.

### **Item 4.01 – Changes in Registrant's Certifying Accountant**

Companies must disclose if they dismiss their independent auditor, if the auditor resigns or declines to stand for re-appointment, and if the company hires a new auditor.

A change of auditors is sometimes, but not always, a cause for concern. It depends on the reasons for the change. The following circumstances are widely seen as red flags, and companies must disclose them if they occurred over the previous two fiscal years.

First, companies must disclose whether the departing auditor gave an adverse or qualified opinion on the company's financial statements. These indicate that the financial statements are not prepared in conformity with generally accepted accounting principles.

Second, the company must report certain disagreements it had with its departing auditor over accounting principles or practices, financial statements, or the scope or procedure of the audit.

Third, whether or not it led to a disagreement between the company and its auditor, companies must disclose whether its former auditor advised it that:

- the necessary internal controls to prepare reliable financial statements do not exist,
- the auditor can no longer rely on management's representations or is unwilling to be associated with the financial statements prepared by management,
- the auditor believed it should further investigate a matter or significantly expand the scope of its audit, and the auditor did not do so, or

- the auditor has found new information that materially impacts the fairness or reliability of current or prior financial statements, and the issue has not been resolved to the auditor's satisfaction.

#### **Item 4.02 – Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review**

This item requires disclosure if the company believes that previously issued financial statements should not be relied upon because of an error in the statements. Disclosure is also required if the auditor believes that its previously issued audit reports or interim reviews on financial statements should not be relied upon. In both cases, the company also must disclose whether its audit committee, full board or authorized executive officers have discussed these matters with its auditor.

Investors should pay attention to these disclosures, which could affect the company's previously reported earnings. Companies generally restate their financial statements after the 8-K disclosure. The restatement could come at a much later date.

#### **Item 5.01 – Changes in Control of Registrant**

If there is a change of control of the company, the company must identify the persons who have acquired control and the percentage of voting securities that they beneficially own, as well as any arrangements between the old and new control groups regarding the election of directors or other matters.

#### **Item 5.02 – Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

If a board member resigns or refuses to stand for re-election because of a disagreement with the company relating to the company's operations, policies or practices, or a director is removed for cause from the board, the company must briefly describe the circumstances of the disagreement. If the director provides a letter regarding her resignation, refusal or removal, the company must file the letter as an exhibit to the 8-K.

If a high-level executive officer—such as the chief executive officer, president, chief financial officer, chief accounting officer or chief operating officer—retires, resigns or is terminated, the company must disclose that fact.

The company also must disclose the appointment of any new director or high-level officers and briefly describe any related compensation arrangements. In addition, the company must disclose any changes to the compensation of current high-level officers.

#### **Item 5.03 – Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

This item generally requires disclosure if a company amends its articles of incorporation or bylaws, or changes its fiscal year, unless the company already disclosed the proposed amendment or fiscal year change in a proxy statement or information statement. Companies that issue only debt securities are typically not required to comply with this item.

#### **Item 5.05 – Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics**

Companies must generally report changes to their code of ethics that apply to the chief executive officer, chief financial officer, chief accounting officer or controller, or others performing similar functions. The company also must disclose any waivers granted to any of these persons. Many investors consider ethics waivers to be a red flag. Please note that a company may elect to provide these disclosures on the company's website instead of filing an 8-K.

#### **Item 5.07 – Submission of Matters to a Vote of Security Holders**

Within four business days of the end of an annual or special meeting, companies must file the results of shareholder votes in director elections and on all other matters put to a vote. If the company is only able to report preliminary

results at that time, it must file an amended 8-K to report the final vote results within four business days after those results are known.

### **Item 7.01 – Regulation FD**

The purpose of Regulation FD—for “fair disclosure”—is to prevent companies from selectively disclosing material, non-public information. Regulation FD is intended to level the playing field: companies generally must give material information to the public at the same time they provide it to others, such as securities market professionals.

Companies may submit an 8-K under this item or Item 8.01 as one method of complying with the public disclosure requirement of Regulation FD. Actual examples of 8-Ks filed under this item address a wide range of topics, such as announcements of dividends, quarterly sales figures, or other business developments.

### **Item 8.01 – Other Events**

This is the place where companies may report anything that they believe is important but is not specifically required elsewhere in the 8-K.

### **Item 9.01 – Financial Statements and Exhibits**

Under this item, a company must file certain financial statements and list the exhibits that it has filed as part of the 8-K. For example, if a company discloses in Item 2.01 that it has acquired a business, Item 9.01 would require the company to provide the financial statements of the business acquired in the same or a later-filed amended 8-K. In addition, the company must also present “pro forma” financial statements that show what the company’s financial results might have been if the transaction had been completed earlier. Likewise, if the company discloses in Item 1.01 that it has entered into a material agreement, that agreement may be filed as an exhibit in the 8-K.

## **Additional Information**

For information on how to search for company documents, such as Forms 8-K, in the SEC’s EDGAR database, visit [Using Edgar - Researching Public Companies](#).

Another resource for using EDGAR is [Researching Public Companies Through EDGAR: A Guide for Investors](#).

Click [Form 8-K](#) for a copy of the form, which lists all items and has instructions on how to complete it..

See [2004 Final Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date](#).

For information on how to read a company’s annual report, see [How to Read a 10-K](#).

For additional educational information for investors, visit the SEC’s Office of Investor Education and Advocacy’s [website](#).

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# SEC

OFFICE of INVESTOR  
EDUCATION and ADVOCACY

## DTC Chills and Freezes

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to help educate investors about the effects of chills and freezes on an investor's ability to hold and trade securities. A "chill" is a limitation of certain services available for a security on deposit at The Depository Trust Company ("DTC"). A "freeze," formally referred to as a "global lock," is a complete restriction on all DTC services for a particular security on deposit at DTC.

### What is DTC and what does it do?

DTC was created by the securities industry to improve efficiencies and reduce risk in the clearance and settlement of securities transactions. Today, DTC is the largest securities depository in the world. Including securities issued in the U.S. and 121 other countries, DTC has on deposit 3.6 million securities worth about \$35 trillion.

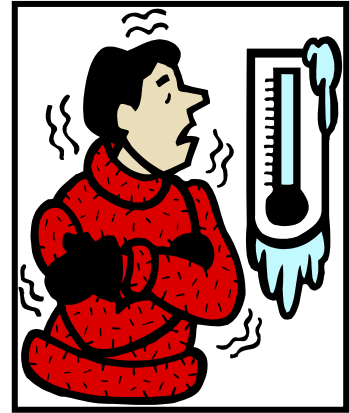
As a clearing agency registered with the SEC, DTC provides security custody and book-entry transfer services for securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, American depository receipts, and exchange-traded funds. In accordance with its rules, DTC accepts deposits of securities from its participants (i.e., broker-dealers and banks), credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.

Most large U.S. broker-dealers and banks are DTC participants, meaning that they deposit and hold securities at DTC. DTC appears in an issuer's stock records as the sole registered owner of securities deposited at DTC. DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by DTC participants. Rather, each participant owns a pro rata interest in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant, such as an individual investor, owns a pro rata interest in the shares in which the DTC participant has an interest.

Because the securities held by DTC are for the benefit of its participants and their customers (i.e., investors holding their securities at a broker-dealer), frequently the issuer and its transfer agent must interact with DTC in order to facilitate the distribution of dividend payments to investors, to facilitate corporate actions (i.e., mergers, splits, etc.), to effect the transfer of securities, and to accurately record the number of shares actually owned by DTC at all times.

## What are “chills” and “freezes” and why does DTC impose them?

Occasionally a problem may arise with a company or its securities on deposit at DTC. In some of those cases DTC may impose a “chill” or a “freeze” on all the company’s securities. A “chill” is a restriction placed by DTC on one or more of DTC’s services, such as limiting a DTC participant’s ability to make a deposit or withdrawal of the security at DTC. A chill may remain imposed on a security for just a few days or for an extended period of time depending upon the reasons for the chill and whether the issuer or transfer agent corrects the problem. A “freeze” is a discontinuation of all services at DTC. Freezes may last a few days or an extended period of time, depending on the reason for the freeze. If the reasons for the freeze cannot be rectified, then the security will generally be removed from DTC, and securities transactions in that security will no longer be eligible to be cleared at any registered clearing agency.



DTC imposes chills and freezes on securities for various reasons. For example, DTC may impose a chill on a security because the issuer no longer has a transfer agent to facilitate the transfer of the security or the transfer agent is not complying with DTC rules in its interactions with DTC in transferring the security. Often this type of situation is resolved within a short period of time.

Chills and freezes can be imposed on securities for more complicated reasons, such as when DTC determines that there may be a legal, regulatory, or operational problem with the issuance of the security, or the trading or clearing of transactions involving the security. For example, DTC may chill or freeze a security when DTC becomes aware or is informed by the issuer, its transfer agent, federal or state regulators, or federal or state law enforcement officials that an issuance of some or all of the issuer’s securities or transfer in those securities is in violation of state or federal law. If DTC suspects that all or a portion of its holdings of a security may not be freely transferable as is required for DTC services, it may decide to chill one or more of its services or place a freeze on all services for the security. When there is a corporate reorganization, DTC will temporarily chill the security for book-entry activities.

When DTC chills or freezes a security, it will issue a “Participant Notice” to its participants. These notices are publicly available on DTC’s website at [http://www.dtcc.com/legal/imp\\_notices](http://www.dtcc.com/legal/imp_notices). When securities are frozen, DTC also provides optional automated notifications to its participants. These processes provide participants the ability to update their systems to automatically block future trading of affected securities, in addition to alerting participant compliance departments. DTC has [information regarding these processes](#) on its website.

## What can investors do?

Prior to investing in a security, investors can ask their broker-dealer if there are or ever have been any DTC restrictions placed on any security they are considering buying or selling. This information may affect your decision to purchase or sell the security. The broker-dealer or the broker-dealer’s compliance department should be able to address the inquiry by checking with its back office or by calling its account manager at DTC. Given that DTC does not always disclose the reason for a chill or freeze, a broker-dealer may not be able to provide its customer with information as to why the freeze was imposed or if or when it will be lifted. Investors should also thoroughly research the company and its transfer agent prior to investing in the security.

## Related Information

We offer educational materials so that investors can develop an understanding of the securities industry and learn how to avoid costly mistakes and fraud. Our educational materials also provide tips on how investors can invest wisely. Investors can order our free publications by calling (800) SEC-0330, or access them on the Internet through the [SEC’s Investor.gov website](#). For additional educational information for investors, see the SEC’s [Investor.gov](#) website, the [Office of Investor Education and Advocacy’s homepage](#), and [www.sec.gov](http://www.sec.gov).

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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
06/28/12	Charlotte	JA Summer Biz Camp, <a href="#">Junior Achievement of Central Carolinas, Inc.</a> 201 South Tryon Street. Open to campers only.
06/28/12	Charlotte	<a href="#">Beatties Ford Road Public Library</a> , 2412 Beatties Ford Road. Time: 5:00 PM -- 6:30 PM. Free, but <a href="#">registration</a> suggested. For more information, contact (704) 416-3000.
06/29/12	Charlotte	<a href="#">Sugar Creek Public Library</a> , 4045 N. Tryon Street. Time: Noon -- 1:30 PM. Free, but <a href="#">registration</a> suggested. For more information, contact: (704) 416-7000.
07/02/12	Durham	<a href="#">Emerald Pond Retirement Community</a> , 205 Emerald Pond Lane. "Women In Transition" presentation (men are welcome). Time: 2:00 PM -- 3:00 PM. Open to residents and guests only. For more information, contact Lorene Currin at (919) 493-4713 .
07/12/12	Charlotte	JA Summer Biz Camp, <a href="#">Junior Achievement of Central Carolinas, Inc.</a> 201 South Tryon Street. Open to campers only.
07/16/12	Charlotte	JA Summer Biz Camp, <a href="#">Junior Achievement of Central Carolinas, Inc.</a> 201 South Tryon Street. Open to campers only.
07/24/12	Jacksonville	<a href="#">Jacksonville Rotary Club</a> ,Jacksonville Country Club, 2201 Country Club Road. Open to club members and guests only. Time: 1:00 PM -- 2:00 PM. For more information, contact Elizabeth Elks at (910) 455-3136.
07/25/12	Greensboro	<a href="#">2012 Career and Technical Education Summer Conference</a> , Koury Convention Center, 3121 High Point Road. Registration required. For more information, contact Curt Miller at (919) 807-4014.
07/27/12	Charlotte	<a href="#">Independence Regional Public Library</a> , 6000 Conference Drive. "Women In Transition" presentation (men are welcome). Time: 2:00 - 3:30. Free, but <a href="#">registration</a> suggested. For more information, contact (704) 416-4800.
07/28/12	Fuquay-Varina	Health Fair, <a href="#">St. Augusta Missionary Baptist Church</a> , 605 Bridge Street. Time: 9:00 AM – 1:00 PM. Free. For more information, contact Delcia Wiggins at (919) 346-1209.
07/28/12	Charlotte	<a href="#">Mint Hill Public Library</a> , 6840 Matthews-Mint Hill Road. Time: 10:30 AM – Noon. Free, but <a href="#">registration</a> suggested. For more information, contact (704) 416-5200.
08/02/12	Cary	<a href="#">Senior Resource Alliance of the Triangle</a> , 1255 Crescent Green, Suite 440. "Elder Investment Fraud and Financial Exploitation Prevention". Time: 11:30 AM -- 1:00 PM. For more information, contact (919) 463-7977, X105.
08/02/12	Charlotte	JA Summer Biz Camp, <a href="#">Junior Achievement of Central Carolinas, Inc.</a> 201 South Tryon Street. Open to campers only.
08/02/12	Charlotte	<a href="#">Beatties Ford Road Public Library</a> , 2412 Beatties Ford Road. Time: 6:00 PM -- 7:30 PM. Free, but <a href="#">registration</a> suggested. For more information, contact (704) 416-3000.
08/03/12	Charlotte	<a href="#">Scaleybark Public Library</a> , 101 Scaleybark Road. Time: 10:30 AM – Noon. Free, but <a href="#">registration</a> suggested. For more information, contact Staci Falkowski at (704) 416-6401.

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- 08/03/12 Charlotte [Hickory Grove Public Library](#), 5935 Hickory Grove Road. "Women In Transition" presentation (men are welcome). Time: 2:00 - 3:30. Free, but [registration](#) suggested. For more information, contact (704) -416-4400.
- 08/06/12 Chapel Hill Robert & Pearl Seymour Center, 2551 Homestead Road. "Women In Transition" presentation (men are welcome). Time: 10:30 AM -- 11:30 AM. For more information, contact Sidney Simms at (919) 969-3025.
- 08/09/12 Charlotte JA Summer Biz Camp, [Junior Achievement of Central Carolinas, Inc.](#) 201 South Tryon Street. Open to campers only.
- 08/14/12 Concord [Gardens of Taylor Glen Retirement Community](#), 3700 Taylor Glen Lane. Time: 11:00 AM – Noon. Open to residents and guests only. For more information, contact Sharon Stoudemayer at (704) 788-6510.
- 08/15/12 Lincolnton [Lincolnton-Lincoln County Chamber of Commerce's](#) Small Business Council quarterly Networking Luncheon, First Baptist Church, 201 Robin Road. For more information, contact Brad Rivers at (704) 922-6449.



## 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.

**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 currently being held in the Durham County Jail under a \$4 million bond. No trial date has been set.

**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 July 2012.

## Recent Enforcement Actions

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

No new enforcement actions have been issued. But click [here](#) to see our current orders.



## 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.)*

### **[SEC Adopts Rule Requiring Listing Standards for Compensation Committees and Compensation Advisers](#)**

*June 20, 2012* — The Securities and Exchange Commission has approved a rule that directs national securities exchanges to adopt listing standards for public company boards of directors and compensation advisers. Click the link to read the [Final Rule](#).

### **[Request for Information Regarding Senior Financial Exploitation](#)**

*June 19, 2012* – The Bureau of Consumer Financial Protection (CFPB) has published a Request for Information in the *Federal Register* regarding senior financial exploitation. The CFPB's Office for the Financial Protection of Older Americans seeks information on consumer financial products and services, financial literacy efforts, and fraudulent or deceptive practices impacting the lives of older Americans and their families. Click the link above for full details. The deadline for submitting comments is August 20, 2012.

### **[Public Comments on SEC Regulatory Initiatives under the JOBS Act](#)**

The Jumpstart Our Business Startups (JOBS) Act includes provisions that require the SEC to undertake various initiatives, including rulemaking and studies touching on capital formation, disclosure and registration requirements. To submit official comments on particular rulemaking proposals, click the link above.

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

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron@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](mailto:jmaron@sosnc.com) with "Remove from mailing list" in the subject line.

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