



August 2012 NEWSLETTER • Vol. 4, No. 8

Raleigh Man Charged with Securities Fraud



Michael Anthony Jenkins

Law enforcement agents with the North Carolina Secretary of State Division of Securities served Michael Anthony Jenkins, 56, of Raleigh on August 17 with three felony arrest warrants for securities fraud.

Secretary of State Securities Investigators 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 also was never registered with the NC Secretary of State's Office to sell securities, or with the National Futures Association to act as a commodities trader.

"Calling our Securities Division would have revealed that Mr. Jenkins was not registered to sell securities, and that should send up a red flag for anyone considering an investment," Secretary of State Elaine F. Marshall said. "We strongly urge everyone considering an investment to call our Securities Division at 1-800-688-4507 to make sure that the person pitching the investment, and the investment itself, are properly registered with us before they sign over any of their money."

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 at least 377 known victims of Jenkins' approximately \$1.79 million Ponzi scheme. His next court appearance is scheduled for September 7. The investigation by the NC Secretary of State's Securities Division is continuing. Secretary of State Investigators ask that anyone who has made investments with Harbor Light Asset Management, LLC contact the Securities Division at 1-800-688-4507 or 1-919-733-3924.

Important Information for ZeekRewards.com Investors

The U.S. Securities and Exchange Commission (SEC) announced fraud charges and an emergency asset freeze against Rex Venture Group, LLC d/b/a ZeekRewards.com, and Paul R. Burks.

The SEC alleges that online marketer Paul Burks of Lexington, NC, and his company Rex Venture Group have raised money from more than one million Internet customers nationwide and overseas through the website ZeekRewards.com, which they began in January 2011.

According to the SEC's [complaint](#) filed in federal court in Charlotte, NC, customers were offered several ways to earn money through the ZeekRewards program. The SEC has alleged that interests in this program were marketed in violation of federal law.

According to the SEC's complaint, ZeekRewards has paid out nearly \$375 million to investors to date and holds approximately \$225 million in investor funds in 15 foreign and domestic financial institutions. Those funds will be frozen under the [emergency asset freeze](#) granted by the court at the SEC's request.

U.S. District Judge Graham C. Mullen has appointed Kenneth D. Bell as the receiver to freeze the assets of Rex Venture Group, LLC d/b/a ZeekRewards.com, and to take control of the company. The receiver has set up the following website, www.zeekrewardsreceivership.com. Anyone with an interest in this case should monitor that website for the latest information about this case and how to file a claim.

Complaints against ZeekRewards.com may be filed with Brian M. Privor and Alfred C. Tierney in the SEC's Enforcement Division, 100 F Street, NE, Washington, DC 20549.



NC Securities Division to Sponsor Workplace-Based Investor Education Program

Question: How do you encourage employees to participate more fully in workplace saving and investing programs?

Answer: By enrolling your employees in the *Investor Education in Your Workplace*® program!

For a second year, the NC Securities Division is sponsoring this Internet- and workplace-based investor education program designed to help employees gain greater control over their personal finances and become better informed investors.

The *Investor Education in Your Workplace*® program is a ten-part course of instruction that will begin in North Carolina on October 22, 2012 and run through the last week of January 2013. Employers wishing to enroll their employees may do so for **free** on a **first-come, first-served** basis. The NC Securities Division is prepared to cover the cost to provide the program to up to 1,500 employees, making this an investor education program worth up to \$150,000. For more information about the program, see page 3 of this newsletter or go to www.ieiyw.com/webinars to sign up for an informational webinar.

The *Investor Education in Your Workplace*® program is an award-winning program that provides unbiased information that has already been field tested by nearly 8,500 employees in hundreds of workplaces in Pennsylvania, North Carolina and Wisconsin. The Spring 2012 program is wrapping up in seven other states and the District of Columbia. The program and materials were developed in collaboration between Educated Investor® and the Investor Protection Trust. So far, the program has produced the following documented results:

- Up to 50 percent increases in short- and long-term saving and investing activities;
- Up to 40 percent improvement in investment knowledge measured through pre- and post-testing;
- Up to 50 percent improvement in participant attitudes and behaviors including increased financial well-being, setting investment goals, implementing a budget, and starting/increasing contributions to 401(k), IRA, or equivalent plans;
- Over 80 percent of participants complete the entire 10-week program; and
- 96 percent say they would like to participate in additional programs.

The topics covered during the program include:

1. Getting Started with Saving and Investing
2. Basics of Personal Finance
3. Basics of Investing
4. Basics of Investment Strategies
5. Understanding Investment Risks
6. Basics of Retirement Planning
7. Investing in Mutual Funds
8. Working with Financial Advisors
9. Saving for College
10. Learning More about Taxes and Investing

If your company is interested in participating in this program, please contact John Maron at (919) 807-2106 or via email at jmaron@sosnc.com. Please include "**Investor Education in Your Workplace**" in the subject line.

North Carolina Department of the Secretary of State
Securities Division • PO Box 29622 • Raleigh, NC 27626-0622
(919) 733-3924 • (800) 688-4507
secdiv@sosnc.com • www.sosnc.com • www.sos.nc.gov

Employers Participating in Fall 2012

The following will participate in the Fall 2012 IEIYW® program:

- NC National Guard (State-wide)
- NC Department of the Secretary of State (State-wide)
- National Board for Certified Counselors (Greensboro)
- Acclaim Federal Credit Union (Greensboro)
- Champion Credit Union (Canton)
- Marine Federal Credit Union (Jacksonville)
- Summit Credit Union (Greensboro)
- Your Company???

Sign Up Today!



Investor Education in Your Workplace®

Register Now

HOME | THE PROGRAM | HOW IT WORKS | WHY PARTICIPATE | LEARN MORE | WEBINARS

North Carolina

The Investor Education in Your Workplace® program is made possible in North Carolina thanks to the North Carolina Secretary of State Securities Division, the North Carolina Credit Union League, the Investor Protection Trust, and the support of the Investor Protection Institute.

Who can participate, what is the cost, and how do I get involved?

For North Carolina in 2012, thanks to the support of the aforementioned partners:

- Up to 1,500 employees may participate at no cost (a \$100 value per employee).
- Participation in the program is awarded to qualified employers on a first-come, first-served basis.

To participate in the Investor Education in Your Workplace® program, please [click here](#) to fill out and submit the online application form.

What if I don't qualify for grant-funded participation?

If you or your company is interested in participating in the Investor Education in Your Workplace® program but you don't meet the criteria for grant-funded participation, please [click here](#) to explain your interest.

Want to find out more? Go to <http://www.ieiyw.com/webinars/> and choose a webinar date that is convenient for you or your team.

If you have additional questions, please contact us at: info@educatedinvestor.com

Fact Sheet

Want a quick one page program summary to share with others? [Click here](#) to download the Investor Education in Your Workplace® Fact Sheet.

*This cautionary article, intended primarily for accountants and tax preparers, was first published in the February 2006 edition of **Activity Review**, the newsletter of the North Carolina State Board of Certified Public Accountant Examiners. It is reprinted here for educational purposes.*

Referral Fees Trigger Investment Adviser Licensing Rules

by **Secretary of State Elaine F. Marshall**



Secretary Elaine F. Marshall

Thinking of referring a client to an investment adviser firm? In that case, you need to know that the receipt of payment for the referrals will trigger additional licensing obligations for you. The following scenario explains what can happen:

Jim is a well-respected accountant with his own successful, growing practice. One day he receives a call from Dana, a senior representative of an established investment adviser firm. Dana tells Jim that the firm would like to enter into a business arrangement with him. For every one of Jim's clients who agree to let Dana's company manage his or her assets in reliance on Jim's assurance, Dana's company will pay Jim an ongoing fee, based proportionally on the size of the client's portfolio.

Since the arrangement sounds intriguing, Jim thanks Dana for the overture. Then Jim promises to go through his client list to see if there are any clients that he is ethically precluded from referring to Dana. During this review, Jim realizes that there are several clients for whom he has not done any recent work. He remembers that they seemed satisfied with his services in the past. Perhaps these sleeper clients could be turned into a revenue source once again. No harm in checking, he thinks to himself, as he begins dialing the first number.

Over the next few weeks, Jim and Dana finalize the terms of their referral agreement. When speaking with his clients, Jim tells them that, in an effort to maximize services to his clients, he has become associated with a company that can offer them investment advice and asset management. He successfully convinces three of his old clients into signing on with Dana's company, and has hopes that a fourth might agree to sign, too. Thereafter, Dana sends Jim a sizeable check for his efforts. Life is good – so far.

However, unbeknownst to Jim, Mary, the fourth client, after reading a newspaper article, decided to call the North Carolina Secretary of State's Securities Division to check out Dana's company. Although Mary is told that Dana's company is properly registered and that there were no complaints on record against it, she learns that neither Jim nor his firm is registered with the North Carolina Secretary of State. From Mary's description of Jim's phone call, one of the North Carolina Secretary of State's Securities Division's Investment Adviser Examiners tells Mary that it appears Jim may be acting as an

unregistered investment adviser representative, in violation of the state's Investment Advisers Act. (G.S. 78C-1 *et seq.*, which was enacted in 1988.)

Mary's information is passed along to one of the Securities Division's investigators, who begins an investigation. An audit of Dana's firm quickly reveals that the required disclosures about the referral arrangement have not been made to Jim's clients.

At this point, the investigator contacts Jim and Dana. The investigator explains that Jim has failed to register with the State as an "investment adviser representative" and has failed to provide the mandatory disclosure information to his clients. He also explains that Dana's company appears to be in violation of the regulations relating to the firm's duty to supervise its investment adviser representative. Jim inquires about the consequences, so the investigator explains the Investment Advisers Act's provisions for civil damages, state civil penalties, and potential criminal penalties for violations. Life is no longer quite so good for Jim, and things have become complicated for Dana's company.

Of course, I have oversimplified this scenario for purposes of illustration. Unfortunately, however, the overall aspects of this scenario are not far from the mark. My office has seen an increase in cases involving well-intentioned accountants, tax preparers and even attorneys who have become associated with an investment advisory firm without realizing that state law requires "solicitors" like Jim to be registered as "investment adviser representatives," and that the failure to do so can expose these professionals to lawsuits brought by their clients as well as other awkward consequences. Therefore, I want to invite you to contact the Securities Division (1-800-688-4507) **before** signing any agreement with an investment advisory firm. We want to help make sure you don't run afoul of the law or risk your reputation, your livelihood, and your career.

As in most states, in North Carolina, any individual who directly or indirectly solicits any client for or refers any client to an investment adviser for a fee or some other benefit is known as a "solicitor," in investment adviser terminology. The solicitor is subject to the state registration requirements for an "investment adviser representative." For the arrangement to be deemed legal in North Carolina, the investment adviser (which can be either an individual or a company) must be registered with the North Carolina Secretary of State or the federal Securities and Exchange Commission. In addition, the solicitor cannot have a history of certain disciplinary actions; there must be a written agreement between the solicitor and the investment adviser; and the fee paid to the solicitor must be adequately described in the written agreement. The written agreement must describe the solicitor's activities, his/her compensation, and acknowledge that the solicitor agrees to perform his/her duties consistently with the investment adviser's instructions.



Are you being paid to make client referrals? If so, be careful not to run afoul of the state's Investment Advisers Act.

The solicitor is also required to provide the client with a copy of the investment adviser's disclosure statement. The solicitor must also provide the client, at the time of the solicitation for the referral, a separate written disclosure document containing the names of both the solicitor and the investment adviser, the nature of the relationship, a clear statement that the solicitor is being compensated, the terms of the compensation, and the additional amount the client is paying as a result of the use of a solicitor. In turn, the investment adviser is required to receive and maintain a signed and dated acknowledgment form from each client, stating that the client has received both the investment adviser's disclosure form as well as the solicitor's separate written disclosure.

On occasion, I'm asked why all these regulatory requirements are necessary. Because of the fiduciary status of investment adviser work, state legislators wrote the securities laws to emphasize the importance of protecting the general investing public from dishonest and unqualified financial advisers and investment salesmen. They wanted to ensure there was a great deal of transparency with regard to

solicitations on behalf of investment advisers so that investors would be able to make informed investment decisions. I want to make sure you understand these requirements because the civil administrative penalties for violating these laws can go as high as \$25,000, and willful violations of the Act may subject the violator to a Class I felony conviction, which could also result in the revocation of your CPA license.

So, if an investment adviser ever approaches you and tries to get you to refer your clients in exchange for compensation, I urge you to call the Securities Division at (800) 688-4507 before you agree to take part. Keep in mind that payments for such referrals can be made legally, **if done in compliance with the requirements of the North Carolina Investment Advisers Act.** For further information, please visit our Web site at <http://www.sosnc.com> and/or consult with your firm's legal counsel.

Securities Division Launches New Fraud Fighting Tool



The NC Securities Division is pleased to announce that it has added a powerful new tool to its toolbox to make its job of administering and enforcing the state's securities laws more effective and more efficient.

The NC Securities Division recently began using the case and matter management software system known as Legal Files. The Division is one of only a handful of state securities regulators nationwide exercising both civil administrative and criminal enforcement authority over matters involving investment securities. Having both powers concentrated within one Department is very efficient and promotes the rapid identification of cases worthy of greater scrutiny. This, in turn, promotes greater investor protection.

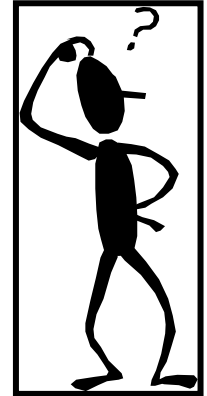
However, from its involvement on a national task force investigating several large investment banks and their roles in the auction rate securities crisis of 2008, to having nearly 100 investment advisory firms added to its oversight responsibilities by the Dodd-Frank Act, the Division has seen its caseload increase as it responds to the challenges of a growing and increasingly complex global securities market. The Division recognized it needed a more robust case and data management system.

"In many respects, the Securities Division is just like a private practice law firm," said David Massey, Deputy Securities Administrator and Director of the NC Securities Division. "And like any private law firm, we saw the need for a tool that will enable us to serve North Carolina's investors and professional investment industry more effectively and efficiently. Now that Legal Files is operational, we feel we are ready to do just that."

- Among its myriad capabilities, Legal Files allows the Division to:
- Monitor all complaints received, their subject matter, case file location, and present status;
- Identify all individuals assigned to and associated with each case;
- Electronically associate all documents, emails and telephone memoranda to its specific case;
- Set automatic reminders for any calendar deadlines or dates when further action is required by Division personnel;
- Produce reports and statistics relating to Division activities;
- Schedule meetings; and,
- Integrate front office receiving functions with the subsequent assignment and processing of the transactions received.

NC Securities Division Updates Its Frequently Asked Questions

In last month's issue of this newsletter, we reported that we had updated our list of answers to [frequently asked questions \(FAQs\)](#) that we have received from investors and had posted the updates to our website. Here are some of the questions and their answers. To see the full list of questions and answers, click the link above.



1. What are “securities”?

There is no single definition of the term “security.” Generally, a “security” is either a debt or ownership interest in some kind of business or venture. The investor makes an investment of funds or of something of value in order to get a profit generated by the managerial efforts of the promoter. Other than giving money to help fund the venture, the buyer plays no active role in the management of the business or venture.

2. What are some examples of securities?

The most common types of securities are stocks and bonds. However, securities can include:

- Certain certificates of deposit (CDs)
- Promissory notes
- Life settlement contracts (viaticals)
- Interests in a business involved in the renovation and sale of distressed real estate property
- Interests in a business involved with energy or technology development
- Interests in a business involved with precious metals or foreign currencies

The list of products that are securities continues to grow as issuers become more creative. Although there are exceptions, you are likely buying a security if your only role in the enterprise is to invest money.

3. How do I find out if an old stock certificate has value?

In general, a security is only worth what you can sell it for. However, for your certificate to have significant value, the company issuing it should still be in existence. The easiest way to determine if it has value is to ask a broker, a stock certificate company or a securities attorney to research the matter for you. These individuals may charge a fee to conduct this research. If you wish to do the research yourself, you should contact the agency responsible for corporate records filings in the state where you think the company is or was organized. For companies organized in North Carolina, contact the [Corporations Division](#) at (888) 246-7636 or (919) 807-2225. Additional information is available [here](#) on the SEC's website.

4. Why is it important for me to know what securities are?

It is important to know what securities are because federal and state laws give investors in securities certain legal rights. These rights include disclosure of important information by persons trying to sell securities and the right to bring a lawsuit based on the violation of a securities law.



SURVEY: FAMILY MEMBERS, CAREGIVERS AND SWINDLERS ARE TOP FINANCIAL EXPLOITERS OF OLDER AMERICANS

Over Half of Experts Say Seniors Do Not Have Right Resources to Pick Financial Advisors; Most Effective Ways to Stop Victimization Seen as Face-to-Face Education and Help.

Investment fraud and financial exploitation targeting older Americans is a major problem today and most seniors do not have the information they need to pick a financial advisor to help them protect their savings, according to a [major new survey](#) of 756 experts conducted by the Investor Protection Trust (IPT) and Investor Protection Institute (IPI) in response to questions posed by the Consumer Financial Protection Bureau (CFPB).

The online poll of a diverse group of state securities regulators, financial planners, health care professionals, social workers, adult protective services, law enforcement officials, elder law attorneys, academics and others found that about two thirds (65 percent) of those surveyed deal with elderly victims of investment fraud/financial exploitation. Three out of four experts said that such swindles are a “very serious” problem in America today and an even greater number – 78 percent – said older Americans are “very vulnerable” to investment fraud/financial exploitation.

Other key IPT/IPI survey findings:

- **Most common abuses?** The top three financial exploitation problems identified by the experts are: (1) “theft or diversion of funds or property by family members” (79 percent); (2) “theft or diversion of funds or property by caregivers” (49 percent); and (3) “financial scams perpetrated by strangers” (47 percent).
- **What works?** As for the “financial education, counseling, or personal finance management programs ... best tailored to the unique financial needs of older Americans and their families or caregivers,” the experts identified the following: (1) “programs delivered by local professionals, such as caregivers, adult protective services workers, law enforcement agencies, and health care professionals” (71 percent); (2) “programs delivered through senior centers and other facilities catering to older Americans” (65 percent); and (3) “programs delivered by senior oriented national and local organizations” (55 percent).
- **Do seniors have the right information?** Over half (53 percent) said that “the available resources for seniors when selecting a financial advisor with appropriate knowledge to address their specific financial needs” are either not very effective or not effective at all. Under a third (30 percent) said the resources are somewhat effective or very effective.

Don Blandin, president and CEO, Investor Protection Trust, said: “Our new survey shows that financial swindles targeting older Americans are a bigger problem today than ever before and that seniors need more help. That’s why the Investor Protection Trust’s Elder Investment Fraud and Financial Exploitation (EIFFE) Prevention Program has already trained more than 3,000 U.S. medical professionals who deal everyday with older Americans to spot the impaired mental capacity that can leave seniors vulnerable to financial abuse. It is encouraging that we are seeing more securities regulators collaborating with health care practitioners, adult protective services professionals, and others to help curb this national crisis. Seven out of 10 survey respondents agree that this type of collaborative, community-based program is an effective means to combat financial abuse before the damage is done. Of course, there is no ‘silver bullet’ that will end the financial abuse of America’s seniors. Putting a major dent

North Carolina Department of the Secretary of State
Securities Division • PO Box 29622 • Raleigh, NC 27626-0622
(919) 733-3924 • (800) 688-4507
secdiv@sosnc.com • www.sosnc.com • www.sos.nc.gov

in the problem will require new and innovative collaborative efforts by many different experts and organizations, both public and private. Our survey makes it clear that those efforts need to take root all across America and then link up with other groups and their programs in order to reduce the attack on the investment and life savings of older Americans.”



Irving Faught, Oklahoma Department of Securities Administrator, said: “There are some good signs in these findings that we are on the right track in tackling financial swindles that go after older Americans. These survey results show that our training and outreach programs, like the EIFFE Prevention Program, are a good way to identify and reach victims and potential victims of elder financial abuse. Social workers, caregivers, adult protective services professionals and others are key to protecting these vulnerable individuals. Those working with the elderly need to come together to combat this serious problem.”

Mark Lachs, M.D., M.P.H., Psaty Distinguished Professor of Medicine, Weill Cornell Medical College, and director of geriatrics, New York-Presbyterian Healthcare System, said: “Elder financial abuse is not only about financial exploitation: It is a major public health problem. When older Americans are financially exploited and there are no resources left for their care, these individuals effectively become wards of the state. In these cases, all Americans end up paying. This is a major problem and we know there is significant underreporting. I am an epidemiologist and what we are looking at here qualifies as an epidemic. And it’s not only minor financial exploitation but includes major problems like people getting deeds to houses, taking out credits cards, getting control of bank accounts, etc. That’s why I tell the residents who I train around these issues that an annual physical may be the only opportunity to intervene.”

OTHER KEY FINDINGS

- Half (51 percent) said that “veterans/military retirees face basically the same [fraud and deception] risks as other older Americans.”
- According to the experts, the best practices “in providing seniors financial literacy and robust, practical information on personal finance management” are: (1) availability primarily in person (71 percent); (2) measurement of results in terms of improved awareness/understanding (52 percent); and (3) availability in person and via the internet (35 percent).
- Nearly three in five (58 percent) said seniors are “not very able” or “not able at all” to determine “the legitimacy, value, and authenticity of credentials held by their financial advisors and planners.”
- By a margin of 36 percent to 26 percent, the experts said that “current efforts for maintaining the legitimacy, value, and authenticity of credentials held by financial advisors and planners” are “not very effective” or “not effective at all”.
- About six in 10 (59 percent) think existing accountability controls are not effective “when it comes to deterring the misuse of ‘senior advisor credentials’.”

For full survey findings go to <http://www.investorprotection.org> on the Web.

BACKGROUND

Senior citizens have long been the target of unscrupulous investment scam artists. According to the 2010 Investor Protection Trust (IPT) Elder Fraud Survey, more than seven million older Americans – one out of every five citizens over the age of 65 – already have been victimized by a financial swindle. (See <http://www.investorprotection.org/learn/research/?fa=eiffeSurvey>.)

More recently, the Investor Protection Trust released the June 2012 findings of an online survey showing that the vast majority (84 percent) of more than 700 experts dealing with investment fraud/financial exploitation of American senior citizens agree that the problem of swindles targeting the elderly is getting worse today, according to the findings of a major new online survey released today by the nonprofit Investor Protection Trust (IPT). Another key finding: Nearly all of the respondents (99 percent) say that older Americans are “very vulnerable” (75 percent) or “somewhat vulnerable” (24 percent) to financial swindles. (See http://www.investorprotection.org/downloads/pdf/learn/press/IPT_Elder_Fraud_Survey_News_Release_06-13-12.pdf.)

The Investor Protection Trust launched the Elder Investment Fraud and Financial Exploitation Prevention Program in 2010. Starting with a grant from the Investor Protection Trust in 2008, the Huffington Center on Aging at Baylor College of Medicine and the Texas Consortium Geriatric Education Center developed a program called the Elder Investment Fraud and Financial Exploitation Prevention Program. In 2009, the TCGEC and its affiliates in nine locations in Texas conducted a series of 10 pilot continuing medical education programs throughout the state.

Based on the results of the Texas pilot project, the IPT secured the participation of state securities offices in a total of now 28 states and jurisdictions to form a coalition to prevent elder investment fraud/financial exploitation. The 28 participating states and other jurisdictions are: Alabama; California; Colorado; Connecticut; Delaware; District of Columbia; Georgia; Idaho; Illinois; Indiana; Iowa; Kentucky; Maine; Michigan; Minnesota; Nebraska; **North Carolina**; New Jersey; New Mexico; Oklahoma; Oregon; Pennsylvania; Puerto Rico; Tennessee; Utah; Vermont; Washington and West Virginia. To learn more about EIFFE, go to <http://www.investorprotection.org/learn/?fa=eiffe>.

ABOUT IPT AND IPI

The Investor Protection Trust (<http://www.investorprotection.org>) is a nonprofit organization devoted to investor education. The primary mission of IPT is to provide independent, objective information needed by consumers to make informed investment decisions. Founded in 1993 as part of a multi-state settlement to resolve charges of misconduct, IPT serves as an independent source of unbiased and non-commercial investor education materials. IPT operates programs under its own auspices and uses grants to underwrite important investor education and protection initiatives carried out by other organizations. The IPT provides investor education at both the state and national levels.

The Investor Protection Institute (<http://www.protectinvestors.org>) is an independent nonprofit organization that advances investor protection by conducting and supporting unbiased research and groundbreaking education programs. IPI carries out its mission through investor education, protection and research programs delivered at both the national and grassroots level in collaboration with state securities regulators and other strategic partners. IPI is dedicated to providing innovative investor protection programs that will make a meaningful difference in the financial lives of Americans in all walks of life and at all levels of sophistication about financial matters.



SAVE THE DATE!

WHEN: NOVEMBER 30, 2012
WHERE: ASHEVILLE, NC

North Carolina and EIFFE

Last March (see [March 2012 newsletter](#)) the Securities Division jointly sponsored the Elder Investment Fraud and Financial Exploitation (EIFFE) Prevention Program with the J. Paul Sticht Center on Aging at Wake Forest Baptist Hospital, the WFU School of Law Elder Law Clinic and Dr. Jan Busby-Whitehead, Director of the UNC Center for Aging and Health.

Over fifty doctors, social workers and elder law attorneys received training on how to spot signs that elderly patients may be victims of financial abuse. The program was a huge success.

We are pleased to announce that we will conduct another EIFFE training event at the [Mountain Area Health Education Center \(MAHEC\)](#) on Friday, November 30, 2012. Details to follow

A maximum of 1.0 AMA PRA Category 1 Credit™ is available for attending this educational program.



Public Non-Traded REITs: Perform a Careful Review Before Investing

FINRA is reissuing this Alert because of concern—reflected in a [recent enforcement action](#)—that some investors may be the recipients of misleading information regarding certain public non-traded REITs. Some investors may also receive recommendations to purchase these products without adequate investigation by the firm or individual broker to determine whether these or similar investments are suitable. Since this Alert was first issued, FINRA has developed a [tip sheet](#) to help investors avoid pitfalls and misconceptions regarding public non-traded REITs.

Turbulence in the stock market and an extended period of low interest rates have contributed to investors seeking products offering attractive yields. One such product is the publicly registered non-exchange traded real estate investment trust (REIT) or "non-traded REIT" for short. While non-traded REITs and exchange-traded REITs share many features in common, they differ in several key respects. Most significantly, as the name implies, shares of non-traded REITs do not trade on a national securities exchange. For this reason, non-traded REITs are generally illiquid, often for periods of eight years or more. Early redemption of shares is often very limited, and fees associated with the sale of these products can be high and erode total return. Furthermore, the periodic distributions that help make these products so appealing can, in some cases, be heavily subsidized by borrowed funds and include a return of investor principal. This is in contrast to the dividends investors receive from large corporations that trade on national exchanges, which are typically derived solely from earnings.

FINRA is issuing this alert to inform investors of the features and risks of publicly registered non-exchange traded REITs. If you are considering a publicly registered non-exchange traded REIT, be prepared to ask questions about the benefits, risks, features and fees.

What Is a REIT?

A real estate investment trust, or REIT, is a corporation, trust or association that owns (and might also manage) income-producing real estate. REITs pool the capital of numerous investors to purchase a portfolio of properties—from office buildings and shopping centers to hotels and apartments, even timber-producing land—which the typical investor might not otherwise be able to purchase individually.

REITs can offer tax advantages. For instance, qualified REITs that meet [Internal Revenue Service requirements](#) can deduct distributions paid to shareholders from corporate taxable income, avoiding double taxation. The REIT must also distribute at least 90 percent of its taxable income to shareholders annually. These distributions are taxable to the extent of any ordinary income and capital gains included in the distribution.

There are two types of public REITs: those that trade on a national securities exchange and those that do

not. REITs in this latter category are generally referred to as publicly registered non-exchange traded, or simply non-traded REITs, which are the focus of this alert.

Features of Non-Traded REITs

Like exchange-traded REITs, non-traded REITs invest in real estate. They are also subject to the same IRS requirements that an exchange-traded REIT must meet, including distributing at least 90 percent of taxable income to shareholders. Like exchange-traded REITs, non-traded REITs are registered with the Securities and Exchange Commission and are required to make regular SEC disclosures, including filing a prospectus and quarterly (10-Q) and annual reports (10-K), all of which are publicly available through the SEC's EDGAR database. While these two types of REITs share these similarities, there are also numerous differences between them, as illustrated in the chart on the following page.

	Non-Traded REITs	Exchange-Traded REITs
Listing Status	Shares do not list on a national securities exchange.	Shares trade on a national securities exchange.
Secondary Market	Very limited. While a portion of total shares outstanding may be redeemable each year, subject to limitations, redemption offers may be priced below the purchase price or current price.	Exchange traded. Generally easy for investors to buy and sell.
Front-End Fees	Front-end fees that can be as much as 15% of the per share price. Those fees include selling compensation and expenses, which cannot exceed 10%, and additional offering and organizational costs.	Front-end underwriting fees in the form of a discount may be 7% or more of the offering proceeds. Investors who buy shares in the open market pay a brokerage commission.
Anticipated Source of Return	Investors typically seek income from distributions over a period of years. Upon liquidation, return of capital may be more or less than the original investment depending on the value of assets.	Investors typically seek capital appreciation based on prices at which REITs' shares trade on an exchange. REITs also may pay distributions to shareholders.

*Broker-dealers involved in the sale of these products to investors are required to provide valuations within 18 months after cessation of a non-traded REIT's offering of shares, and they must comply with FINRA Rule 2340 and FINRA's Notice to Members (09-09) regarding timeliness of data supporting account statement valuations. Non-traded REITS must also provide annual valuation guidance for ERISA custodians to comply with IRS and Department of Labor rules.

Private REITs

There is another type of REIT—a **private REIT**, or **private-placement REIT**—that also does not trade on an exchange. Private REITS carry significant risk to investors. Not only are they unlisted, making them hard to value and trade, but they also generally are [exempt](#) from Securities Act registration. As such, private REITs are not subject to the same disclosure requirements as public non-traded REITs. The lack of disclosure documents makes it extremely difficult for investors to make an informed decision about the investment. Private REITS generally can be sold only to [accredited investors](#), for instance those with a net worth in excess of \$1 million. As with any private investment, it is a good idea to have the investment reviewed by an investment professional who understands the product and can offer impartial advice.

Complexities and Risks

When it comes to investing in non-traded REITs, selling points such as the opportunity for capital appreciation, diversification and the allure of a robust distribution can be enticing. But investors should balance these selling points against the numerous complexities and risks these investments carry.

- **Distributions are not guaranteed and may exceed operating cash flow. Deciding whether to pay distributions and the amount of any distribution is within discretion of a REIT's Board of Directors**

North Carolina Department of the Secretary of State
Securities Division • PO Box 29622 • Raleigh, NC 27626-0622
(919) 733-3924 • (800) 688-4507
secdiv@sosnc.com • www.sosnc.com • www.sos.nc.gov

in the exercise of its fiduciary duties. Distributions can be suspended for a period of time or halted altogether. Many factors may influence the composition of these payments. For example, in newer programs, distributions may be funded in part or entirely by cash from investor capital or borrowings—leveraged money that does not come from income generated by the real estate itself, such as rents or hotel occupancy fees. The REIT's articles of incorporation often allow it to increase debt, dip into cash reserves and apply proceeds of the sale of new shares to sustain or even increase distributions. Some REITS even allow borrowing in excess of 100 percent of net assets. Leveraging, including the use of borrowed funds to pay distributions, can place the REIT at greater risk of default and devaluation, which can result in investment losses when it comes time to redeem or liquidate shares, as well as a reduction in, or suspension of, distributions.

- **Tip:** Understand the REIT's borrowing policies, outlined in the prospectus, and use the SEC's [EDGAR](#) database of company filings to research how heavily leveraged the REIT may be, as well as how it is financing distributions. If *Net Cash from Operations* (what the company earns through its real estate alone) is less than the distribution (usually found in the *Financing Activities* section), then other sources, including borrowed funds, may be supporting the distribution. Before investing, be sure to ask the person offering the investment how much the REIT may have borrowed and whether the distributions include, or are likely to include, a return of principal. Ask how these factors might impact your investment. Keep these same factors in mind when deciding whether or not to reinvest distributions.
- **Distributions and REIT status carry tax consequences.** Distributions for all REITS that are from current or accumulated earnings and profits are taxed as ordinary income, as opposed to the tax rate on qualified dividends, which generally carries a maximum tax rate of 15 percent (0 percent for people whose other income is taxed at a rate of 10 or 15 percent). If a portion of your distribution constitutes a return of capital, that portion is not taxed until your investment is sold or liquidated, at which time you will be taxed at capital gains rates.
 - **Tip:** Take steps to obtain an understanding of the tax consequences associated with this investment. Consider speaking with a tax advisor prior to investing and on an ongoing basis.
- **Lack of a public trading market creates illiquidity and valuation complexities.** As their name implies, non-traded REITs have no public trading market. However, most non-traded REITS are structured as a "finite life investment," meaning that at the end of a given timeframe, the REIT is required either to list on a national securities exchange or liquidate. Even if a liquidity event takes place, there is no guarantee that the value of your investment will have gone up—and it may go down or lose all its value. Indeed, valuation of non-traded REITS is complex. Many factors affect the pricing, including the portfolio of real estate assets owned, strength of the trust's balance sheet (assets versus liabilities), overhead expenses, cost of capital and more. The boards and managers of non-traded REITs might even rely on third-party sources to estimate a per-share value.
 - **Tip:** Ask your financial professional to explain the risk of illiquidity. Review the *Risks* section of the prospectus to find out more about the investment's expected holding period and potential liquidity events. Also ask if the offering has concluded—and, if not, when it is expected to conclude. Check your brokerage statements or with your financial professional to see if there has been a fluctuation

in the per-share price. Whether the value fluctuated or not, ask the brokerage firm how—and how recently—the share price was valued.

- **Advisory:** If the value of the REIT's portfolio has changed materially during the offering period, then new investors may be paying a per-share price above or below the per-share net value of the underlying real estate.
- **Early redemption is often restrictive and may be expensive.** Most public non-traded REIT offerings place limits on the amount of shares that can be redeemed prior to liquidation. Redemption provisions can be as restrictive as 5—or even 3—percent of the weighted average number of shares outstanding during the previous year. In addition, shares may have to be held for some period, typically one year, before they can be redeemed. Redemption programs may be terminated or adjusted, so investors should not count on them, even as an emergency exit strategy. While a redemption program may allow you to sell your shares prior to a liquidity event, the redemption price is generally lower than the purchase price, sometimes by as much as 10 percent.
 - **Tip:** When investing in non-traded REITs investors must consider their short-term needs for capital before investing in a long-term, illiquid security and should carefully review the section explaining the terms and limitations of the REIT's share redemption plan.
 - **Advisory:** Investors may be solicited to sell a stake in their non-traded REIT investment outside of the sponsor's redemption program through a process known as a "mini-tender offer." Mini-tender offers are offers for less than 5 percent of a company's stock, and they typically carry far fewer protections to investors than traditional tender offers. For instance, there is no requirement to identify who the buyer is, provide disclosures to the SEC or provide competing bids. Investors can wind up receiving a price well below the sponsor's estimated per-share value or, if available, the early-redemption program price. For more information, see the SEC's information on [Mini-Tender Offers](#).
- **Fees can add up.** Non-traded REITs can be expensive. Front-end fees generally come in two parts:
 - Selling compensation and expenses, which cannot exceed 10 percent of the investment amount; and
 - Additional offering and organizational costs, sometimes referred to as "issuer costs," which are also paid from the offering proceeds.

According to state regulatory guidelines, the total for both types of fees cannot exceed 15 percent.

FINRA guidelines also limit the total for both types of fees to 15 percent in offerings that are sold by an affiliated broker-dealer. All investments carry fees, and they add up, reducing the amount of capital available for investment. For example, a 15 percent front-end fee on a \$10,000 investment means that \$8,500 is going to work for you at the time of investment. By comparison, the underwriting compensation associated with exchange-traded REITS is normally seven percent of the offering proceeds.

- **Tip:** Non-traded REITs are rarely, if ever, suitable for short-term investors and even long-term investors must be willing to bear the risks of illiquidity. You should consider the front-end cost

relative to the sales costs you would incur to buy and sell other securities during the same holding period as the life of the REIT. You may also want to consider how much share price appreciation and distributions you will need to receive to overcome these front-end charges.

- **Properties may not be specified.** Most non-traded REITS start out as blind pools, which have not yet specified the properties to be purchased. Others may specify a portion of the properties the REIT plans to acquire, or they may be in various stages of acquisition. In general, the more properties that have been specified for purchase or that have actually been acquired the less risk an investor incurs because the investor has the opportunity to assess the nature and quality of the assets of the REIT before investing.
 - **Tip:** Ask what percentage of a non-traded REIT's properties have been specified for acquisition or actually acquired.
- **Diversification can be limited.** While REITs as an investment class may help diversify your portfolio, putting all of your intended real estate investment in one REIT—including investments in different issuances or phases of the same REIT—can expose you to the risk of underdiversification.
 - **Tip: Review the offering document** relating to the REIT's investment policies to evaluate the intended diversification of the REIT's portfolio. Read ongoing disclosure documents to track how well the REIT is executing its business plan. As with any investment, avoid putting all your eggs in one basket.
- **Remember Real Estate Risk.** There are risks associated with both the real estate market as a whole and any specific subset of the real estate market on which a particular REIT concentrates.
 - **Tip:** Understand risks associated with the types of properties the REIT holds (for instance, hotels have a different set of risks than shopping malls), the geographical area it concentrates in and the strategies the REIT uses, including leveraging to acquire assets. Have an in-depth discussion with your financial professional about risks and carefully read the prospectus.

Before You Invest

Be wary of pitches or sales literature offering simplistic reasons to buy a REIT investment. Sales pitches might play up high yields and stability while glossing over the product's lack of liquidity, fees and other risks. Ask whoever is recommending that you purchase a REIT how much they (and their company) are receiving in selling commissions or other fees. Also ask them to explain why they think the REIT is the right investment for you and how will it help you achieve your specific investment objectives and goals.

Always ask to review the initial prospectus and any prospectus supplements, as these documents will contain a more extensive and balanced discussion of the risks involved than any sales material you receive or pitches you hear. You can obtain a prospectus by going to the SEC's EDGAR database of company filings and typing in the name of the REIT, then search for entries titled "*Prospectus*." Remember that the fact that a company has registered its securities or has filed reports with the SEC does not mean that it will be a good investment—or that it will be right for you.

Ask about fees associated with the product. Also ask how the distribution is being funded and whether a portion of that distribution is comprised of a return of investor capital. Make sure you understand that you will be locking up your investment, with only limited avenues for redemption. If the REIT offers a share redemption program, make sure you understand how the repurchase price for your shares will be determined and, most importantly, the limitations of the plan. Review with your financial professional the risks associated with real estate investment and evaluate other products that could meet your investment objectives (investment income, for instance). Understand the various liquidity events specific to the REIT you are considering.

Remember to only invest if you are confident the product can help you meet your investment objectives and you are comfortable with the associated risks.

These tips can help avoid some common pitfalls and misconceptions surrounding public non-traded REIT investing:

- Do not put all your investments in one basket: Avoid putting too much of your nest egg in a single REIT or in multiple REITs of the same family. Older investors should be particularly cautious about investing large portions of their retirement income in non-traded REITs.
- Your initial investment in a non-traded REIT is not guaranteed and may increase or decrease in value.
- Do not invest solely based on distributions the non-traded REIT may currently be generating. Distributions can be suspended for a period of time or halted altogether. Unlike interest from a CD or bond, REIT distributions may be funded in part or entirely by cash from investor capital or borrowings—leveraged money that does not come from income generated by the real estate itself.
- Redemption policies can change, making it extremely difficult to get money out of the non-traded REIT when you need it.
- Think hard before deciding to reinvest any distributions, especially if you think you might need the money in the near future. Reinvested distributions are generally subject to the same redemption policies as other investments, which means they may be illiquid for significant periods of time.
- Be wary of claims that a non-traded REIT "is about to go public." The public offering process is often lengthy and may never come to fruition; and if it does, the REIT may trade at a price that is lower than its current valuation. Your best source of information about a non-traded REIT's path to liquidity will be SEC filings made by the REIT itself, found on the SEC's [EDGAR database](#).
- Decisions about distributions, redemptions and "liquidity events" such as going public or selling property are made by the REIT that owns the actual real estate. Most non-public REITs have an investor relations department that can help answer questions about a REIT's business operations, including a REIT's redemption program. [Contact the SEC](#) if you have concerns about the REIT itself.
- Think hard before investing any proceeds from one non-traded REIT into another, particularly if both REITs are being sold by the same securities firm. While this may be good for the sales representative, who is likely to make a commission on your investment, it may not be good for you.

Calendar of Upcoming Events



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

Date	City	Details
09/04/12	Waynesville	Haywood Community Connections , Senior Resource Center, 81 Elmwood Way. Time 10:00 AM – 11:00 AM. For more information, contact Yvonne Gold at (828) 452-2370, Ext. 2813.
09/06/12	Matthews	Kiwanis Club of Matthews , Jonathan's Restaurant, 10630 Independence Pointe Pkwy. Time: Noon -- 1:00 PM. Open to Kiwanis members and their guests only. For more information, visit the website above.
09/08/12	Raleigh	"Women in Transition", St. Francis of Assisi Church , 11401 Leesville Road. Time: 1:00 PM – 3:00 PM. For more information, contact Kathy Owen at (919) 847-8205 ext. 241.
09/11/12	Asheville	Southeastern Association of Area Agencies on Aging (SE4A) 2012 Annual Training Conference , Grove Park Inn & Spa, 290 Macon Avenue. Time: 3:15 PM -- 4:30 PM. Registration required. Click link above for registration information.
09/16/12	Fayetteville	St. Patrick's Catholic Church , 2844 Village Drive. Time: 1:00 PM -- 2:00 PM. For more information, contact Beth O'Leary at (910) 323-2410, Ext 133.
09/18/12	Roseboro	Investor education presentation at the Railroad Street Steakhouse , 102 SW Railroad St. Presentation sponsored by Edward Jones Investments. The NC Securities Division does not endorse any specific investment business or investment professional. No product or service will be solicited. Time: Noon – 1:00 PM. For more information, contact Dave Jenkins at (910) 592-1694.
09/19/12	Wilmington	New Hanover County Senior Resource Center , 2222 S. College Road. Time: 10:00 AM -- 11:00 AM. For more information, contact Jane Jones at (910) 395-4553, X-209.
09/19/12	Wilmington	Investor education presentation at Carraba's Italian Grill , 15 Van Campen Boulevard. Presentation sponsored by Edward Jones Investments. The NC Securities Division does not endorse any specific investment business or investment professional. No product or service will be solicited. Time: Noon -- 1:30 PM. For more information, contact Dave Jenkins at (910) 592-1694.
09/25/12	Louisburg	Senior Fun Day in the Park, Riverbend Park, S. Church Street. Time: 10:00 AM -- 2:00 PM. For more information, contact Debbie Conner at (919) 496-1131.
10/13/12	Raleigh	"Elder Investment Fraud and Financial Exploitation", St. Francis of Assisi Church , 11401 Leesville Road. Time: 10:00 AM – Noon. For more information, contact Kathy Owen at (919) 847-8205 ext. 241.
10/24/12	Hickory	Scam Jam at Gateway Hotel and Conference Center , 909 US Highway 70 SW. Time: 8:30 AM -- Noon. For more information, contact Elizabeth Hilliard at Western Piedmont AAA at (828) 485-4266.
11/13/12	Matthews	Secretary Elaine F. Marshall & Commissioner Wayne Goodwin -- "Protecting Older Adults from Scams, Fraud & Financial Exploitation", Levine Senior Center , 1050 Devore Lane. Sponsored by the Better Business Bureau of Southern Piedmont. For more information, contact Kim Henderson or Maryanne Dailey at (704) 927-8623.



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 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 October 2012.

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. His next court appearance is scheduled for September 7. 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.)

No new actions this month.

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.)

[Statement of SEC Chairman Mary L. Schapiro on Money Market Fund Reform](#)

Aug. 22, 2012 — Securities and Exchange Commission Chairman Mary Schapiro today made the following statement: "Three Commissioners, constituting a majority of the Commission, have informed me that they will not support a staff proposal to reform the structure of money market funds. The proposed structural reforms were intended to reduce their susceptibility to runs, protect retail investors and lessen the need for future taxpayer bailouts. I -- together with many other regulators and commentators from both political parties and various political philosophies -- consider the structural reform of money markets one of the pieces of unfinished business from the financial crisis." To read Chairman Schapiro's entire statement and background information on the issue, click the link above.

[SEC Issues First Whistleblower Program Award](#)

Aug. 21, 2012 — A whistleblower who helped the Securities and Exchange Commission stop a multi-million dollar fraud will receive nearly \$50,000 — the first payout from a new SEC program to reward people who provide evidence of securities fraud. The award represents 30 percent of the amount collected in an SEC enforcement

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action against the perpetrators of the scheme, the maximum percentage payout allowed by the whistleblower law. For more information about the SEC's whistleblower program, go to <http://www.sec.gov/whistleblower>.

[PCAOB Issues Report on the Interim Inspection Program for Broker and Dealer Auditors](#)

Aug. 20, 2012 -- The Public Company Accounting Oversight Board released its first [report](#) on the progress of the interim inspection program for auditors of brokers and dealers, providing an overview of the new program and the audit deficiencies identified in the initial group of inspected audits of brokers and dealers. In this first look, carried out over a five-month period from October 2011 to February 2012, PCAOB inspectors reviewed 10 audit firms covering portions of 23 audits of brokers and dealers registered with the Securities and Exchange Commission, and identified deficiencies in the following areas: Audit procedures related to the computations of customer reserve and net capital requirements; audits of financial statements; and auditor independence. "While the results of these initial inspections cannot be generalized to all securities broker and dealer audits and represent only a small portion of the inspections planned for the interim program, the nature and extent of the findings are of concern to the Board," said James R. Doty, PCAOB Chairman. For more information, click the links 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. 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!