

# North Carolina Department of the Secretary of State

*Hon. Elaine F. Marshall, Secretary*

## September-December 2018 SECURITIES NEWSLETTER

### NASAA Marks Cryptocurrency Anniversary with a Word of Caution

*New NASAA video helps explain cryptocurrency risks*

#### In this Issue:

A Decade of Cryptocurrency NASAA Urges Caution	1
After the Storm: Hurricane Scam Watch	2
SOSNC Welcomes New Investor Educator	4
SOSNC IA Workshops A Success	4
Millennials and Money	5
Investor Alert: Promissory Notes	6
Cyber Safety Corner: Holiday Edition	8
SEC Alert: Digital Assets	9
NASAA Releases Annual Enforcement Report	10
SEC Alert: Online Marketers	11
Proposed Rule Changes for Variable Annuities	13
Investor Education In Your Community	14
Recent Enforcement	17
On the Docket	18



The North American Securities Administrators Association (NASAA) is marking the 10th anniversary of Bitcoin with the release of the second in its series of “Get in the Know” videos to raise awareness of the risks of cryptocurrency-related investment products.

The new, short, animated video focuses on concerns individuals should consider before investing in any crypto-related offering, including the three “U’s” (untraceable, uninsured, unregulated), volatility and liquidity risks, and the very real potential for fraud. The video is available on NASAA’s website, [here](#).

“There are new and exciting advances being made daily in the fintech world, but investors and those interested in cryptocurrencies need to be aware of the risks involved before jumping in. Don’t rely on media hype to make your purchase and investment decisions,” said NASAA President and Vermont Financial Regulation Commissioner Michael S. Pieciak.

Volatility risk is a key consideration in cryptocurrency investments. Pieciak noted that Bitcoin, for example, was valued at \$6,447 on October 31, 2017 before spiking to an all-time high of \$19,068 on December 17, 2017 and returning to \$6,283 as of October 30, 2018. Other cryptocurrencies experienced similar volatility.

The video explains that cryptocurrencies or crypto-related investments exist only on the Internet and their promoters may be anywhere in the world, making them virtually untraceable. Unlike deposits made to a bank account, deposits into a digital wallet for cryptocurrency transactions are uninsured in case of adverse events such as fraud or insolvency. Moreover, cryptocurrencies are traded on unregulated digital platforms that lack the protections of the regulated financial markets.

Earlier this year, NASAA launched “Operation Cryptosweep,” a coordinated enforcement effort by state and provincial securities regulators in the United States and Canada. To date, this ongoing initiative has resulted in more than 200 active investigations of cryptocurrency-related investment products and Initial Coin Offerings (ICOs) and more than 50 enforcement actions.

“Operation Cryptosweep has helped raise awareness among industry participants of their regulatory responsibilities to remain compliant with securities laws and, in some cases, has stopped fraudulent offerings,” Pieciak said, noting that not every ICO or cryptocurrency-related investment identified in the initiative is fraudulent. “State and provincial securities regulators have dedicated significant regulatory resources to this initiative and are aggressively protecting individuals from financial harm involving fraudulent ICOs and cryptocurrency-related investment products.”

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## Watch for Financial Scams Related to Recent Hurricanes

*The SEC's Office of Investor Education and Advocacy issued this [Investor Alert](#) to warn investors, including individuals who may receive lump sum payouts from insurance companies and others as a result of damage from recent hurricanes, about fraudulent investment scams.*

Fraudsters often try to use natural disasters, like Hurricanes Florence or Michael, as a way to lure victims into investment scams. These scams can take many forms:

- Direct “investments” in companies purportedly involved in cleanup, repair and recovery efforts;
- False claims of affiliation with state and federal governments or large, well-known companies; and
- In the wake of widespread damage caused by Hurricanes Florence and Michael, the North American Securities Administrators Association (NASAA) is [cautioning](#) investors to watch out for opportunistic investment scams.

Some scams are circulated through unsolicited email. Fraudsters may also directly target individuals receiving compensation from insurance companies. Individuals, including those receiving lump sum insurance payouts, should be extremely wary of potential investment scams related to Hurricanes Florence or Michael.

### Be Skeptical and Ask Questions

One of the best ways to avoid investment fraud is to ask questions. Be skeptical if you are approached by somebody touting an investment opportunity. Ask that person whether he or she is licensed and whether the investment they are promoting is registered with the SEC or with a state. Check out their answers with an unbiased source such as the [NC Secretary of State's Securities Division](#) or [SEC's Office of Investor Education and Advocacy](#).

Our short publication called [Ask Questions](#) discusses many of the other questions you should ask of anyone who wants you to make an investment.

Keep in mind that promises of high or guaranteed profits with little or no risk are classic signs of fraud.

### Things to Consider

Take a close look at your entire financial situation before making any investment decision, especially if you are a recipient of a lump sum payment. Remember, your payment may have to help finance your recovery, as well as last you and your family for a long time.

Below is a list of some online resources that may help. If you are thinking about investing and have any questions, do not hesitate to call the SEC's Office of Investor Education and Advocacy at 1-800-732-0330, or ask a question [using this online form](#).

## North Carolina Public Libraries Awarded FINRA Disaster Recovery Grants

The FINRA Investor Education Foundation is awarding grants to the Cumberland County Public Library in Fayetteville, the Wayne County Public Library in Goldsboro, and the Onslow County Public Library in Jacksonville to expand their personal finance collections in the wake of Hurricanes Florence and Michael.

The grants are designed to ease access to the tools and resources the affected communities will need for critical financial decisions as residents work to repair, rebuild, and recover from the storms.

The grants are part of the FINRA Foundation's initiative to partner with local libraries to respond to and mitigate the personal finance impact of major natural disasters in the United States.



# Give Wisely to Help Hurricane Victims

As hurricane relief efforts continue to help victims of Hurricanes Florence and Michael recover and rebuild, North Carolina Secretary of State Elaine F. Marshall advises the giving public to keep a keen eye out for fake charity scams seeking to misuse their generosity.

“As North Carolinians, we all want to reach out to help our neighbors who are suffering right now, we just need to make sure that our generosity counts,” Secretary Marshall advises.

“It is always wise to give to established charities that you know – whose good works you’ve seen in your own community and that have resources in the affected regions to do the most good. [The Salvation Army](#), the [American Red Cross](#), the [Food Bank of Central & Eastern NC](#) are just a few examples, as well as [The North Carolina Disaster Relief Fund](#), which addresses urgent needs in the wake of disasters.”



You can make sure your generosity gets to those in need by following a few basic tips:

- 🚩 Watch out for groups mimicking the names of established, respected charities.
- 🚩 If you get an unsolicited call, text or email from an organization, research that organization yourself online instead of clicking on links the organization provides. Also make your donations directly on the charity’s official website rather than clicking on a link in a text or email.
- 🚩 Never give your credit card or bank account information over the phone or email.
- 🚩 Be cautious about circulating GoFundMe pages appealing for donations. While many of these may be well-intentioned, it’s wise to consider which charities have the infrastructure, experience and resources on the ground to help the most people.

Visit the Secretary of State’s Charitable Solicitation Licensing Division online at [www.sosnc.gov/CSL/](http://www.sosnc.gov/CSL/) to research charities registered with the Secretary of State’s Office, and download the Secretary of State’s [Smart Donor Checklist](#) for a handy list of suggested questions you should ask any charity that solicits you for contributions. Check out our [Annual Reports](#) that include financial information related directly to those charities and nonprofits using a professional fundraiser and otherwise required by law to register with the Department. Our reports serve as a resource for North Carolina citizens as they strive to make educated decisions for their charitable dollars.

Other good tools to check out charities include [Charity Navigator](#), [CharityWatch](#), the [Better Business Bureau Wise Giving Alliance](#), and [Guidestar](#).

If you believe you have been contacted by a scam charity, please write down any information as soon as possible, or take a screen shot of the suspect solicitation, and then immediately contact the Secretary of State’s Office or local law enforcement authorities. Charitable Solicitation Enforcement staff with the Secretary of State’s Office can be reached by calling [1-888-830-4989](tel:1-888-830-4989) or by using the complaint form given on the [Charities section](#) of the Department’s website.



## SOSNC Investor Ed Team Welcomes Newest Member



Ann Elmore recently joined SOSNC's Investor Education team and she's really hit the ground running, leading workshops around the state.

Protecting the investing public from scams comes natural to Elmore, an attorney who worked as a prosecutor for 27 years in Georgia, including 23 years as an Assistant District Attorney in Savannah.

"We're thrilled to have Ann on the team," said Investor Protection & Education Program Director John Maron. "Her legal expertise and extensive courtroom experience makes her a great fit for leading investor education workshops."

"As a career prosecutor, it's gratifying to get to work to stop crime before it ever happens through these education workshops," noted Elmore.

## SOSNC at NC State Fair

After getting a late start due to Hurricane Michael, the 2018 NC State Fair was a huge success. A total of 977, 256 people attended the Fair's 10 day run to enjoy this great North Carolina autumnal tradition.

Many thanks to everyone who came by the NC Department of the Secretary of State's Kerr Scott Building to say Hi! Secretary of State



Elaine F. Marshall and Department staff always enjoy meeting fairgoers. It's a great way to interact with the public we serve and



answer your questions about the Department's work, including sharing tips for spotting potential investment scams.

## SOSNC Investment Adviser Workshops

The NC Secretary of State Securities Division's popular series of one-day educational workshops for investment advisers drew IAs from across North Carolina in September and November.

The "Best Practices Workshop for NC Investment Advisers" workshops were held at Central Piedmont Community College in Charlotte on September 25th and 26th and at SOSNC's Securities Division offices in Raleigh on September 27th and 28th, and at A-B Tech/Mission Health Center in Asheville on November 19th.

The workshops are designed to protect North Carolina's investing public by helping investment advisers and their representatives better understand their compliance obligations under the North Carolina Investment Advisers Act, as well as what to expect during the routine compliance audits that SOSNC Securities examiners conduct throughout North Carolina.



The workshops were led by Betty Guido, SOSNC's Senior Financial Investigator, and John Maron, Director of SOSNC's Investor Education and Protection Program.



## State-Registered IAs/IARs!

Those of you who have attended one of our “Best Practices” workshops will recognize the image below and what it is reminding you to do! The deadline is **December 17, 2018**. More information can be found at <http://www.finra.org/industry/renewal-payment-options>.



### Sign up for Our RSS Feed!

Have you signed up for the Secretary of State’s Securities Division’s RSS (Really Simple Syndication) feed yet?

It’s a great way to get our monthly Securities newsletter delivered direct to your computer.

And don’t forget to follow the Secretary of State’s Office on social media!

We’re on Twitter, Facebook, LinkedIn and YouTube, so follow us on your favorite platforms for more frequent updates on everything from investor education to trademarks enforcement and charitable solicitation regulation.

Just click on the icons below to go to SOSNC’s social media accounts!



Contrary to popular belief, many millennials aren’t too keen on robo-advisors and would actually prefer to work with a professional—but don’t feel confident enough to know where to begin. What does that actually mean for young, would-be investors?

Listen to this [podcast](#) as Gerri Walsh and Gary Mottola of the [FINRA Foundation](#) discuss these and other misconceptions and roadblocks that Millennials face in their paths to becoming investors as revealed by the new study, “[Uncertain Futures: Seven Myths about Millennials and Investing](#).” In this second part of the series, Gerri and Gary are back to turn some of those myths into actionable information.



### SOSNC on YouTube

If you have a North Carolina business that uses an assumed business name, check out this informative webinar on our YouTube Channel about the recently revised NC Assumed Business Name Act.

Companies that registered their assumed name PRIOR to December 1, 2017 need to re-register their assumed names with their county Register of Deeds Office BEFORE December 1, 2022 to continue doing business under the assumed name. Under the law, the NC Secretary of State’s Office now maintains a registry of assumed business names across North Carolina.

You can also check out our library of helpful “How to” videos on our YouTube Channel.

## Promissory Notes

*Unscrupulous individuals sell bogus promissory notes to unsuspecting retail investors and promissory note schemes continue as a leading source of investor complaints. Members of the North American Securities Administrators Association (NASAA) recently reported 210 new investigations involving promissory notes, which led to 149 formal enforcement actions by state securities regulators last year.*

### What is a **promissory note**?

A promissory note is a written promise to pay (or repay) a specified sum of money at a stated time in the future or upon demand. Promissory notes are a form of debt similar to a loan or an IOU. Promissory notes generally pay interest, either periodically prior to the maturity of the note or in a lump sum at maturity.

### Who invests in **Promissory Notes**?

Companies may sell promissory notes to raise capital and usually offer them only to sophisticated or institutional investors.

These investors often possess the resources to research an investment to determine whether an issuer has the capacity to pay the promised interest and principal. Even investors who spend time and money on extensive research run the risk of losing some or all of their invested capital. Promissory notes also may be offered and sold to retail investors. Notes sold to retail investors generally must be registered with the Securities and

Exchange Commission and/or the state(s) in which they are sold. But not all promissory notes are sold in this way.

### What might a **Fraudulent Promissory Note Scheme** look like?

Suppose a business person you meet through a community networking event introduces an intriguing investment opportunity – a company he or she is connected with is looking to expand its business and needs to raise money.

Instead of borrowing money from a bank, the company is offering the opportunity to purchase “promissory notes” with a maturity of 12 months and an annual interest rate of 8 percent paid in monthly installments. As a purchaser, you have the option to take your money out after one year or renew the note.

The promoter emphasizes that this investment is better than other investments because it is not subject to market volatility, the principal and rate of return are guaranteed, and the company has never missed a payment to an investor. You may be pressured to move money quickly

from other investments into these notes, or to borrow from your home equity to invest.

### **Red Flags to Watch For**

The example you've just read exhibits many of the red flags state securities regulators see in promissory note schemes:

#### **Insured or guaranteed returns:**

Claims of guaranteed investment returns are usually a mirage. There are always risks when making an investment.

#### **A promise of above-market**

**returns:** Fraudsters often advertise investment returns well above prevailing market. Sometimes these claims are in the double digits, other times they are just enough above market-rates to entice investors.

**Risk-free notes:** The risk with promissory notes is that the issuer will not be able to make principal and/or interest payments. Risk and reward are intrinsically related when investing. There is no reward without some level of risk.

(over)

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### To learn more, contact:

North Carolina Department of The Secretary of State, Securities Division  
P.O. Box 29622 | Raleigh, NC 27626-0622 | [www.sosnc.gov](http://www.sosnc.gov) | Phone: (800) 688-4507  
or (919) 814-5400 | Fax: (919) 807-2183 | E-mail: [secdiv@sosnc.gov](mailto:secdiv@sosnc.gov)



## Red Flags (continued)

**Short-term offers:** Fraudsters make short-term offers for two reasons. The first is to entice investors that their investment will not be tied up for long. The second is that some short-term notes may not be covered by federal or state securities laws. Investors should be cautious about promissory notes with durations of nine months or less, as these notes generally do not require federal or state securities registration. Such short-term notes have been the source of most (though not all) of the fraudulent activity involving promissory notes identified by state securities regulators. These short-term debt instruments may be offered by little-known (or perhaps even nonexistent) companies and extend promises of high returns – perhaps more than 15 percent monthly – at little to no risk.

**Unsolicited offers:** An unsolicited investment offer from anyone should set off alarm bells.

## How to Protect Yourself

- Check with the SEC's EDGAR Database or your local securities regulator to confirm that the notes are registered or legally exempt from registration.
- Research the company. Find out how it plans to generate returns to pay principal and interest, and the costs associated with promoting the notes (i.e., fees to brokers, marketing costs, etc.).
- Enlist the help of a financial professional, lawyer or accountant who is independent from the seller or company offering the notes.
- Be suspicious if the notes offer a high or double-digit interest rate with a guaranteed return.
- Ask the seller what they are getting paid in commissions. Steer clear of hidden or exorbitant commissions.
- Sellers may use high-pressure sales tactics. Walk away if you feel uncomfortable.

## The Bottom Line:

*Promissory notes are at the heart of many different types of investment scams. Investors may mistakenly believe the written guarantee is "proof" of the deal's legitimacy and that it offers the investor protections that other investments do not. Before making any financial decisions, ask questions, do your homework and contact the North Carolina Department of the Secretary of State, Securities Division with any questions about the product or the person selling it.*



# Cyber Safety Corner: Holiday Travel Edition!

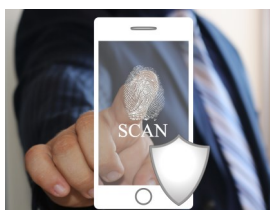
By Norm Burtness, CIA, CISA, CISSP, IAM  
Information Systems Consultant  
NC Department of the Secretary of State Securities Division



Now that the Holiday season is in full swing, you may be hitting the road to visit family. Keep in mind the ever-present threat to your mobile devices such as laptops, tablets, and smartphones.



These devices are a convenient way to stay connected everywhere you go, but they can also provide crooks with a treasure trove of information about you, your family, and even your clients. It's vital to use your mobile devices safely to protect everything from your contacts, photos, and videos, to your location, and your health and financial data.



- **Secure your devices:** Use strong passwords or touch ID features to lock your devices. These security measures can help protect your information from prying eyes if your devices are lost or stolen. Be sure you encrypt any data on your laptop that you wouldn't be happy to hand over to a stranger.
- **Use proper digital hygiene:** Keep your Operating System and apps up to date. If you no longer use an app, delete it. Information about you, such as the games you like to play, your contact list, where you shop and your location, has value – just like money. Be thoughtful about who gets that information and how it's collected through apps.
- **Become invisible:** Disable your device's Wi-Fi and Bluetooth functionality when not in use. Do not allow your device to connect to networks or other devices automatically. Not only will this save your battery, it will ensure no one can "see" your device. Although they are convenient, public wireless networks and hotspots are not secure. Be aware that digital thieves can mimic legitimate public Wi-Fi networks so you can never be sure if you are connecting to your favorite coffee shop's public network, or the one with the same (or similar) network name created by the person sitting at the table next to you. If you mistake the two and sign onto the fake network, the thief can steal passwords, account numbers, or any other data on your device. If you need to access your private information while on the go, and are unsure how to establish a virtual private network (VPN), it is better to connect to the internet using either your carrier's cellular network or a personal mobile hotspot than a public Wi-Fi.
- **Block that data!** Consider getting a data blocker – a plug that connects your device's charging cable to a USB port so that you can charge it up. The blocker is relatively inexpensive and allows electricity to flow to your device while blocking any data from leaving or entering your device while it is charging.
- **Who's watching the baby?** Just like a toddler, your device can "walk off" if left unattended. Is your data backed up and recoverable? If not, make sure it is before you hit the road.



Following these tips will help assure that where you go this holiday season, your data will make it there and back safe and sound. Safe travels!

# Investor Alert: Watch Out For False Claims About SEC And CFTC Endorsements Used To Promote Digital Asset Investments

The SEC's Office of Investor Education and Advocacy (OIEA) and the Commodity Futures Trading Commission's (CFTC) Office of Customer Education and Outreach [warn](#) investors to watch out for false claims about agency actions and endorsements related to digital assets. Fraudsters may use false claims to lure investors into purchasing digital assets and to artificially raise their value. "Digital assets" include crypto-currencies, coins, and tokens such as those offered in so called initial coin offerings (ICOs).

The SEC and CFTC staff are aware of fraudsters making false claims about SEC or CFTC actions and endorsements related to digital assets. Examples of these false claims may include:

- Having advance knowledge of future agency actions to approve new financial products that derive their value from digital assets.
- Using the SEC or CFTC seal on promotional materials related to digital assets.
- Advertising that agency officials are working with certain digital industry participants to bring their financial products to the market.



Be skeptical of anyone attempting to sell you digital assets, or any investment, that makes claims about future SEC or CFTC actions. Both agencies will announce any official actions, including those regarding digital assets, through official government sources such as an agency press release, the Federal Register, their official government websites (SEC.gov, Investor.gov, or CFTC.gov), or authorized public statements by the each agency's leadership. *Also, federal government agencies, including the SEC and CFTC, do not endorse or sponsor any particular securities, issuers, products, services, professional credentials, firms, or individuals.* Real government officials or staff would never:

- Ask for money over the phone or by email;
- Ask for money because of new regulation or tax;
- Try to collect fees for trades or transactions;
- Demand immediate payment;
- Suggest payment by virtual currency, prepaid credit cards, or gift cards;
- Request copies of your Social Security card, Passport, or tax forms via email; or
- Endorse an investment, product, or service.



Do not trust information provided by someone contacting you with an investment idea when that person claims to be affiliated with any federal government agency, and always be cautious about providing personal information to anyone you do not personally know.

- You should verify any information you read regarding an SEC action reported by a third party through official SEC sources. If you need assistance verifying information about an SEC action, call OIEA at 1-800-732-0330 or email at [Help@SEC.gov](mailto:Help@SEC.gov).
- If you need assistance verifying information about a CFTC action, call toll-free by dialing 866-FON-CFTC (866-366-2382) or email [consumers@cftc.gov](mailto:consumers@cftc.gov).
- If you have been contacted by someone pretending to be from the SEC, submit a complaint to the SEC's Office of Inspector General (OIG) online at [www.sec.gov/oig](http://www.sec.gov/oig) or call the OIG's toll-free hotline at 833-SEC-OIG1 (833-732-6441).



# NASAA Releases Annual Enforcement Report

The North American Securities Administrators Association (NASAA) has [released](#) its annual enforcement report, which shows a reversal in a recent trend as more enforcement actions were taken in 2017 against unregistered individuals or firms than registered members of the securities industry.

In its 2018 Enforcement Report on 2017 Data, which includes responses from 51 jurisdictions throughout the United States, NASAA reported that state securities regulators conducted 4,790 investigations in 2017 and took 2,105 enforcement actions overall. These actions led to more than \$486 million in restitution ordered returned to investors, fines of \$79 million and criminal relief of 1,985 years, including incarceration and probation.

Reversing a two-year trend, NASAA reported that its U.S. members brought more enforcement actions against unregistered firms and individuals (675 actions) compared to registered individuals and firms (647 actions). Among registered firms and individuals, the report noted that 377 enforcement actions were taken against registered investment adviser firms and their representatives and 270 actions were taken against registered broker-dealer firms and their agents.

“The results from this year’s enforcement survey demonstrate that state securities regulators continue to play a critical role in protecting investors and holding securities law violators responsible for the damage that they cause to individual investors specifically and to the integrity of our capital markets in general,” said Michael S. Pieciak, NASAA President and Vermont Commissioner of Financial Regulation.

Pieciak attributed the increase in enforcement against unregistered firms or individuals, in part, to an increased focus on fraudulent initial coin offerings (ICOs) and other crypto-assets and the growing enactment of state legislation based on, or inspired by, NASAA’s Model Act to Protect Vulnerable Adults from Financial Exploitation.

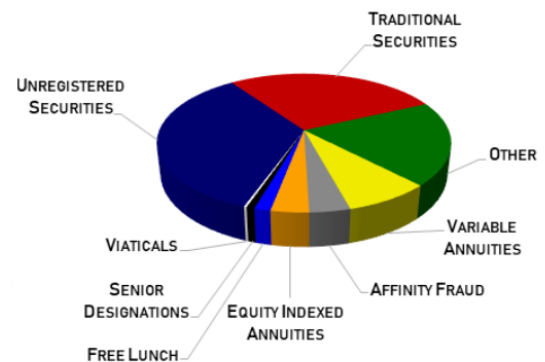
The model act mandates reporting to a state securities regulator and state adult protective services agency when an agent or representative has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred.

State securities regulators have dual roles as enforcers and gatekeepers. In 2017, NASAA U.S. members revoked, barred or suspended more than 300 individuals’ and firms’ licenses and denied or conditioned the registrations of more than 575 others. Nearly 3,600 licensing requests were withdrawn after state action, the most in the past four years.

“Securities fraud is a constant, ongoing, ever-evolving threat to investors. But as this year’s enforcement survey demonstrates, NASAA members are well-prepared, well-organized, and uniquely qualified to continue to aggressively protect investors,” said Christopher Gerold, NASAA Enforcement Section Chair.

The report also identifies enforcement trends, highlights the cooperation among NASAA members in multi-jurisdictional investigations and combating frauds involving emerging technologies, and notes the ways that NASAA members are responding to securities frauds involving seniors. The complete enforcement report is available on the NASAA website at [www.nasaa.org](http://www.nasaa.org).

## Schemes and Products Used to Target Seniors







## Investor Alert: Don't Invite Investment Scams to Find You

The SEC's Office of Investor Education and Advocacy (OIEA) and Retail Strategy Task Force (RSTF) [warn](#) investors that providing your phone number and email address in response to an online investment promotion may make you a target for fraud.

Some investment scams start with a promotion or advertisement, like an intriguing online video or email, followed by a seemingly innocent request for your phone number and email address. The purpose of the promotion is to make you believe that there is an exciting opportunity that requires you to act soon or you will miss it. Think carefully before giving the promoters your phone number or email address – it may be a fraud.

The promoters often seek to assure you that the investment is legitimate by not asking for any money upfront and telling you that it is risk-free. To get started, they say, all you need to do is give them your phone number and email address, create an account, or sign in to an online portal.

Once you sign up, you begin to receive unsolicited offers for so-called “can't miss” investment opportunities. You may even start receiving phone calls from slick salespeople who will try to befriend you and then lure you into an investment scam.

The fraudsters also may add your contact information to a list with names and contact information of others who signed up. Then they may sell the list – including your phone number and email address – to other fraudsters who will target you for other scams. And these fraudsters may sell or share your phone number and email address *again*, so that you and your money are targeted for life.

In [SEC v Atkinson, et al.](#) and [SEC v. Montano, et al.](#), the SEC charged several online marketers for perpetuating a fraudulent investment scheme by mass distributing bogus videos and other marketing materials through emails and websites. The SEC alleges that the videos and marketing materials fraudulently touted purported trading software running on autopilot and supposedly capable of generating large profits for investors who opened trading accounts. The videos allegedly purport to show actual investors and real results, but are complete fiction, and include:

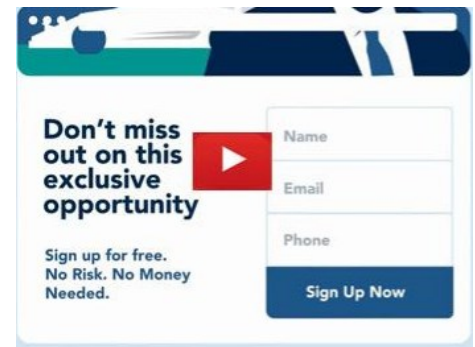
- Paid actors pretending to be recent millionaires;
- Fake testimonials that falsely claimed there was great wealth made by investing in, and using the free trading software;
- Expensive homes, luxury cars, and other rented props that supported the illusion that people had accumulated great wealth by making the investment touted in the videos;
- Fake photos of investment account balances; and
- Staged “live” demonstrations of people opening and funding accounts in “real time” and seeing their trading balances increase automatically.

Watch segments of the videos the SEC alleges are fraudulent [here](#).

The marketers allegedly coordinated the timing and spamming of their campaigns, sometimes sending millions of emails with fake marketing materials to prospective investors. The SEC alleges that several of the marketers, while communicating among themselves, ridiculed investors who believed the marketing materials and who lost their money to the investment scams.

Be skeptical of any promotion that suggests you will get rich quickly, or that you are guaranteed to make a lot of money with little or no risk. These are classic signs of investment fraud. If you have a question about an investment promotion, contact OIEA by phone at 1-800-732-0330, [online](#), or by email at [Help@SEC.gov](mailto:Help@SEC.gov).

If an investment promotion grabs your interest, research the “opportunity” before providing your phone number and email address. Take a few minutes to **verify that the person offering the investment is currently registered or licensed by using the free and simple search tool on [Investor.gov](#). If you cannot verify that the person is currently registered or licensed, do not hand over any money and do not share your contact information.**





## SEC Proposes Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts

The Securities and Exchange Commission is proposing rule changes designed to improve disclosure for investors about variable annuities and variable life insurance contracts. The proposal is intended to help investors better understand these contracts' features, fees, and risks, and to more easily find the information that they need to make an informed investment decision.

"This proposal is another important step in the Commission's efforts to provide Main Street investors with better information to make informed investment decisions. I have participated in many roundtables with retail investors over the last several months, and investors have emphasized their preference for clear and concise disclosure," said SEC Chairman Jay Clayton. "Providing key summary information about variable annuities and variable life insurance contracts to investors is particularly important in light of the long-term nature of these contracts and their potential complexity."

The proposal would newly permit these contracts to use a summary prospectus to provide disclosures to investors. This document would be a concise, reader-friendly summary of key facts about the contract. More-detailed information about the contract would be available online, and an investor also could choose to have that information delivered in paper or electronic format at no charge.



Mutual funds have been permitted to use a similar layered approach to disclosure—with investors receiving a summary prospectus, and more-detailed information available on request—since 2009.

The Commission has requested public comment on the proposed rule changes, as well as on hypothetical summary prospectus samples that it has published. The Commission has also published a Feedback Flier that it will use to seek investor input about what improvements would make the summary prospectus easier to read and understand, and what information investors would like to see included.

The public comment period will remain open through February 15, 2019.

The Commission proposed a new rule, and rule and form amendments, that are intended to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts. The proposed rule would permit a person to satisfy its prospectus delivery obligations under the Securities Act for a variable contract by sending or giving a summary prospectus to investors and making the statutory prospectus available online. The proposal leverages both technology and a layered disclosure approach to improve the ability of investors to understand and evaluate variable contracts.

Read the complete details on the SEC's proposal [here](#).

## Investor Bulletin: Variable Annuities



If you're considering investing in variable annuities, please review this [updated bulletin](#) from the SEC's Office of Investor Education and Advocacy detailing how variable annuities work.

The bulletin includes a helpful list of questions to ask yourself in determining whether variable annuities are suitable for your investment needs.

Variable annuities serve as an investment account that may grow on a tax-deferred basis and includes certain insurance features, such as the ability to turn your account into a stream of periodic payments.

A variable annuity offers a range of investment options. The value of your contract will vary depending on the performance of the investment options you choose. The investment options for a variable annuity are typically mutual funds that invest in stocks, bonds, money market instruments, or some combination of the three.

## Investor Bulletin: Variable Life Insurance

Check out this [SEC Investor Bulletin](#) for an in-depth primer on how variable life insurance works. It includes a checklist of issues and potential risks to consider before you invest.

A variable life insurance policy is a contract between you and an insurance company. It's intended to meet certain insurance needs, investment goals, and tax planning objectives.

It pays a specified amount to your family or others (your beneficiaries) upon your death. It also has a cash value that varies according to the amount of premiums you pay, the policy's fees and expenses, and the performance of a menu of investment options—typically mutual funds—offered under the policy

Keep in mind that the features of each policy may vary by product and state.

## Five Minutes Could Save Your Life Savings!



Is that individual offering you an investment opportunity licensed to sell securities in North Carolina? Is the investment opportunity itself registered? Know before you sign!

While registration in and of itself is no guarantee against fraud, not being registered is a very big red warning flag.

We urge you to take five minutes to call our NC Investor Hotline at 1-800-688-4507 to see if the person you have been dealing with – perhaps even for years – is properly registered and/or has a disciplinary history.

Pick up the phone and call us. You owe it to yourself and your family to check.





## 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 [Ann Elmore](#) at (800) 688-4507. For a complete list of all upcoming events, please check out our online [calendar](#).

- |         |               |  |
|---------|---------------|--|
| 1/7/19  | Morehead City | "ABC's of Trademarks for Small Business with the Secretary of State" presentation for small businesses. Carteret County Community College, Commerce Development Center, 3615 Arendell Street. Time: 6:00 PM -- 8:00 PM. Free, but registration is required. For more information and to register, please visit <a href="https://www.ncsbc.net/workshop.aspx?ekey=90380096">https://www.ncsbc.net/workshop.aspx?ekey=90380096</a> . |
| 1/9/19  | Cary          | "Investment Fraud: Guarding Your Assets in a Scary World" presentation to Living Information for Today (LIFT) members. Stoneridge Gracious Retirement Living, 105 Convention Drive. Time: Gather at Noon, lunch at 12:30 and speaking at 1:10. For more information, please contact Joyce Loeb sack at <a href="mailto:jeassociates@earthlink.net">jeassociates@earthlink.net</a> .  |
| 1/30/19 | Fayetteville  | "Can the Scams: Put a Lid on Investment Fraud and Charity Scams: Protecting Your Assets and Your Charitable Gifts in a Scary World." Tokay Senior Fitness Center, 328 W. Hamilton Street, Fayetteville, NC 28301-3234. Contact: Brian Gaskell, (910) 433-1414.   |
| 1/31/19 | Laurinburg    | "Can the Scams! Put a Lid on Investment Fraud and Charity Scams: Protecting Your Assets and Your Charitable Gifts in a Scary World." Scotia Village Retirement Community, 2200 Elm Avenue, Laurinburg, NC 28352. Time: 11:00 AM—Noon. Contact Peggy Dean at 910-277-2000, ext. 2260.   |
| 1/31/19 | Fayetteville  | "Business Registration including use of the Assumed Name Registry," Women's Business Center of Fayetteville, Center for Economic Empowerment and Development (CEED), 230 Hay Street, Fayetteville, NC 28301. Time: 5:30 PM—7:00 PM. Contact JurLonna Walker, Director, 910-323-3377.   |
| 2/5/19  | Fayetteville  | "Business Registration including use of the Assumed Name Registry," Fayetteville Technical Community College Small Business Center, 2817 Fort Bragg Road, Fayetteville, NC 28303. Time: 6:00 PM—7:00 PM. Contact: Preston "Kent" Hill, Director. 910-678-8496.   |

- 2/11/19      Fayetteville      “Capital Raising including Crowdfunding,” Women’s Business Center of Fayetteville, Center for Economic Empowerment and Development (CEED), 230 Hay Street, Fayetteville, NC 28301. Time: 10:00 AM—11:30 AM. Contact JurLonna Walker, Director, 910-323-3377.
- 2/15/19      Raleigh      “Investment Fraud: Guarding Your Assets in a Scary World” presentation to Living Information for Today (LIFT) members. Whispering Pines Gracious Retirement Living, 7501 Lead Mine Rd. Time: Gather at Noon, lunch at 12:30 and speaking at 1:10. For more information, please contact Joyce Loeb sack at [jeassociates@earthlink.net](mailto:jeassociates@earthlink.net).
- 2/18/19      Morehead City      “The ABCs of Business Registration” presentation. Carteret County Community College Small Business Center, 3615 Arendell St. Time: 11:30 AM—7:00 PM. Free, but registration is required. Contact: Brandy Bell (252-222-6123 or email [brandyc0937@carteret.edu](mailto:brandyc0937@carteret.edu)).
- 3/11/19      Fayetteville      “Trade Marks and Service Marks,” Women’s Business Center of Fayetteville, Center for Economic Empowerment and Development (CEED), 230 Hay Street, Fayetteville, NC 28301. Time: 10:00 AM—11:30 AM. Contact JurLonna Walker, Director, 910-323-3377.
- 4/2/19      Greensboro      “MoneySmart Week 2019: What are Cryptocurrencies?” presentation at Central Library, 219 N. Church Street, Greensboro, NC 27401. Time: 6:00 PM—7:30 PM. Contact Morgan Ritchie-Baum at 336-373-4559 or [Morgan.RitchieBaum@greensboro-nc.gov](mailto:Morgan.RitchieBaum@greensboro-nc.gov).
- 4/30/19      Sanford      “Trade Marks and Service Marks,” Central Carolina Community College, 5910 Enterprise Park Drive, Sanford NC 27330. Time: 1:00PM—2:30 PM. Contact Terri Brown at 919-718-7558.
- 5/6/19      Morehead City      “Investment Crowdfunding in North Carolina” presentation for small businesses. Carteret County Community College, Commerce Development Center, 3615 Arendell Street. Time: 11:00 AM—Noon. Free, but registration is required. Contact: Brandy Bell (252-222-6123 or email [brandyc0937@carteret.edu](mailto:brandyc0937@carteret.edu)).

Money Smart Week 2019

# What are Cryptocurrencies?



**TUESDAY,  
APRIL 2  
6-7:30 PM**

## Bitcoin? Blockchain? Initial Coin Offerings?

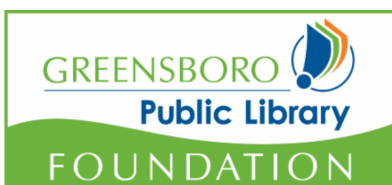
Cryptocurrencies are everywhere in the news but do you know enough to make smart investing choices when it comes to virtual currencies?

Join us as we welcome John Maron from the Securities Division of the North Carolina Secretary of State's office for an educational and engaging evening about cryptocurrencies and ways to protect yourself from fraud involving virtual currency.

## Central Library

219 N. Church Street, (336) 373-4559

Program sponsored by





# Recent Enforcement Action

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



On **November 28, 2018**, the Securities Division entered into a **Consent Order** with **Conestoga Trust Services LLC, Conestoga Settlement Services, LLC, and Conestoga International LLC** (“Conestoga”). Conestoga used unregistered persons to offer and sell securities to North Carolina residents in violation of the Securities Act. Conestoga has agreed to cease this practice and to pay a monetary penalty. Click [here](#) to view the Consent Order.

On **October 25, 2018**, the Securities Division entered an **Order** against **Patriots Energy Group, Inc. (“PEG”)**. This matter was heard by an Administrative Law Judge. The Judge entered a Proposed Decision. The Administrator adopted the Findings and Conclusions from that Proposed Decision and entered an Order. The Judge and the Administrator found that PEG violated the securities laws when it hired two unregistered salesmen to sell its security interests and when it made misrepresentations and omitted material facts in order to entice investors to purchase security interests. The Administrator ordered PEG to immediately and permanently cease and desist a) employing any unregistered salesmen to sell securities to North Carolina residents, b) offering or selling the profit-sharing investments to residents of North Carolina, and c) violating any other provisions of the Securities Act. Click [here](#) to view the Order.

On **October 2, 2018**, the Securities Division entered into a **Consent Order with Raymond Marx Financial Advisory Group, Inc. (“RMFAG”)**. RMFAG is a North Carolina registered investment adviser. RMFAG, along with Raymond Marx Financial, Inc. (“RMGI”), an insurance company jointly marketed their services. The Securities Division found that RMFAG touted its investment adviser services to attract clients to the joint RMFAG and RMFI office. Once there, the clients would be offered insurance products from RMFI. RMFAG has agreed to cease this practice and to pay a monetary penalty. Click [here](#) to view the **Consent Order**.

On **September 6, 2018**, the Securities Division entered into a **Consent Order with Ameriprise Financial Services, Inc. (“Ameriprise”)**. The Securities Division found that Ameriprise violated North Carolina law by failing to update its written supervisory procedures (“WSPs”). The WSPs designated facsimile as the only method to transmit certain documents and led to delayed communication of important information. Ameriprise has updated its WSPs and consented to a monetary penalty. Click [here](#) to view the **Consent Order**.

On **September 4, 2018**, the North Carolina Department of the Secretary of State, Securities Division entered into a **Consent Order with Wesleyan Investment Foundation Inc. (“Wesleyan”)**. The Consent Order found that Wesleyan sold unregistered securities in North Carolina. Pursuant to the Consent Order, Wesleyan agreed, among other things, to immediately cease and desist from violating any provisions of the North Carolina Securities Act and any related administrative rules, to pay a civil penalty, and to pay investigative costs. Click [here](#) to see the **Order**.



## 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.**

In **June 2018**, Adam Pflum, of Garner, NC, was indicted by Special Agents of the NC Department of the Secretary of State Securities Division in Johnston County Superior Court on two counts of securities fraud and one count of obtaining property by false pretenses. Pflum had been an employee of Scottrade Inc., located in Garner, NC, but was fired in July 2011 for having conducted unauthorized outside business activity. Upon his termination, Pflum was unlicensed to offer or sell any securities within the state. In August of 2011, Pflum solicited a North Carolina investor to invest money into a hedge fund that Pflum had created. In exchange for a \$50,000 investment, Pflum promised the investor 10% in interest. During his interview with Secretary of State investigators, Pflum admitted he failed to disclose to the investor that he was unlicensed to sell or offer securities in North Carolina, that he did not have the necessary knowledge of investing, or that he had been terminated by Scottrade Inc. for involvement with unregistered investment offerings. On **September 6, 2018**, Pflum pled guilty to one count of securities fraud and one count of obtaining property by false pretenses. He was placed on probation and order to pay \$50,000 in restitution.

On **May 7, 2018**, a Forsyth County grand jury indicted **Russell Joseph Mutter** on four felony counts of investment adviser fraud, four felony counts of obtaining property by false pretenses, and four felony counts of financial exploitation of an older adult. Mutter is alleged to have defrauded three men — each in their 60s and 70s at the time of the alleged incidents. Mutter is alleged to have taken a total of \$904,000 from the men's retirement accounts. On **September 10, 2018**, a Forsyth County grand jury handed down 24 new felony counts against Mutter, including 10 counts of investment adviser fraud, nine counts of obtaining property by false pretenses and five counts of financial exploitation. The new charges cover a period from 2011 to 2017 and involve eight different clients of Mutter's company, RJM Financial LLC. The indictments allege that Mutter mismanaged and took money from his clients' accounts, resulting in losses of \$2.2 million. A \$5 million secured bond has been set, but Mutter has not posted bail and remains in custody in the Forsyth County Detention Center.

In **March 2018**, a Carteret County grand jury indicted **Darrell Dwayne York** on five felony counts of securities fraud, four felony counts of obtaining property by false pretenses, and one felony count of embezzlement in an alleged Ponzi scheme. According to the indictments, victims were promised high rates of return in short term commodities investments with York's company, Provision Financial. The victims' money was instead used to repay earlier investors, as well as for York's own use and benefit.



## News from the Regulators

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

### [CFTC Seeks Public Comments on Crypto-asset Mechanics and Markets](#)

Dec. 11, 2018—The Commodity Futures Trading Commission (CFTC) is seeking public comment and feedback in order to better inform the Commission’s understanding of the technology, mechanics, and markets for virtual currencies beyond Bitcoin, namely Ether and its use on the Ethereum Network. In a [Request for Information](#) (RFI) that will be published in the Federal Register, the CFTC is asking for public feedback on a range of questions related to the underlying technology, opportunities, risks, mechanics, use cases, and markets, related to Ether and the Ethereum Network. All comments must be received within 60 days of publication in the Federal Register.

### [CFTC’s LabCFTC Releases Primer about Smart Contracts](#)

Nov. 27, 2018—The Commodity Futures Trading Commission’s LabCFTC has released, “[A CFTC Primer on Smart Contracts](#).” This primer is part of LabCFTC’s effort to engage with innovators and market participants on a range of financial technology (FinTech) topics, and follows on a 2017 primer on virtual currencies and the agency’s recent FinTech Forward conference. The primer sets out to define “smart contracts,” including by exploring their history, characteristics, and potential applications that may eventually impact daily life. The primer includes graphics to help explain early self-executing software logic evolving into current smart contract technology – for example, starting with a simple vending machine illustration and then discussing more complex examples, including credit default swap contracts. The primer goes on to speak to the CFTC’s role to protect market users and their funds, consumers, and the public.

### [CFTC Division of Enforcement Issues Report on FY 2018 Results](#)

Nov. 15, 2018—The Division of Enforcement (DOE) of the Commodity Futures Trading Commission (CFTC) has issued its report outlining its major priorities and initiatives during the past Fiscal Year 2018 (FY 2018). Consistent with the mission of DOE, and the broader mission of the CFTC, the report outlines the four major priorities that served as the focus of DOE’s enforcement efforts in FY 2018: preserving market integrity; protecting customers; promoting individual accountability; and enhancing coordination with other regulators and law enforcement authorities. The report also explains a number of key initiatives that DOE began or continued during FY 2018, including cooperation and self-reporting, data analytics, and the development of a set of specialized task forces focused on four different substantive areas — spoofing and manipulative trading, virtual currency, insider trading and protection of confidential information, and the Bank Secrecy Act. Finally, the report details key metrics that reflect the work DOE has done during FY 2018, including statistics regarding the number of cases filed (83) and the relief obtained (more than \$950 million in monetary sanctions).

### [SEC Issues Annual Enforcement Report](#)

Nov. 2, 2018—The Securities and Exchange Commission’s Enforcement Division has [issued the annual report](#) of its ongoing efforts to protect investors and market integrity. The report also highlights several significant actions and initiatives that took place in FY 2018. The report presents the activities of the Division from both a qualitative and quantitative perspective. The SEC brought a diverse mix of 821 enforcement actions, including 490 standalone actions, and returned \$794 million to harmed investors. A significant number of the SEC’s standalone cases concerned investment advisory issues, securities offerings, and issuer reporting/accounting and auditing, collectively comprising approximately 63 percent of the overall number of standalone actions. The SEC also continued to bring actions relating to market manipulation, insider trading, and broker-dealer misconduct, with each comprising approximately 10 percent of the overall number of standalone actions, as well as other areas. And it obtained judgments and orders totaling more than \$3.945 billion in disgorgement and penalties.

### [SEC Launches New Strategic Hub for Innovation and Financial Technology](#)

**October 18, 2018**—The U.S. Securities and Exchange Commission announced the launch of the agency’s Strategic Hub for Innovation and Financial Technology ([FinHub](#)). The FinHub will serve as a resource for public engagement on the SEC’s FinTech-related issues and initiatives, such as distributed ledger technology (including digital assets), automated investment advice, digital marketplace financing, and artificial intelligence/machine learning. The FinHub also replaces and builds on the work of several internal working groups at the SEC that have focused on similar issues.

The FinHub will:

- Provide a portal for industry and the public to engage directly with SEC staff on innovative ideas and technological developments;
- Publicize information regarding the SEC’s activities and initiatives involving FinTech on the [FinHub page](#);
- Engage with the public through publications and events, including a FinTech Forum focusing on distributed ledger technology and digital assets planned for 2019;
- Act as a platform and clearinghouse for SEC staff to acquire and disseminate information and FinTech-related knowledge within the agency; and
- Serve as a liaison to other domestic and international regulators regarding emerging technologies in financial, regulatory, and supervisory systems.

### [Court Denies Defendants’ Motion to Dismiss in Commodity Fraud Case Involving the Virtual Currency My Big Coin](#)

**October 3, 2018**—On September 26, 2018, Senior Judge Rya W. Zobel of the U.S. District Court for the District of Massachusetts, entered an order holding that the Commodity Futures Trading Commission (CFTC) has the power to prosecute fraud involving virtual currency and denying the defendants’ motion to dismiss the CFTC’s amended complaint. “This is an important ruling that confirms the authority of the CFTC to investigate and combat fraud in the virtual currency markets,” said CFTC Director of Enforcement James McDonald. “This ruling, like the one in *McDonnell* from Judge Weinstein in the Eastern District of New York, recognizes the broad definition of commodity under the CEA, and also that the CFTC has the power to prosecute fraud with respect to commodities including virtual currencies. We will continue to police these markets in close coordination with our sister agencies.”

Agreeing with the CFTC’s arguments, the Court held that the CFTC had sufficiently alleged that the particular virtual currency at issue, **My Big Coin** (MBC), was a commodity under the Commodity Exchange Act (CEA) because the CFTC alleged that MBC “is a virtual currency and it is undisputed that there is futures trading in virtual currencies (specifically involving Bitcoin).” According to the Court, the term “commodity” “includes a host of specifically enumerated agricultural products as well as ‘all other goods and articles . . . and all services rights and interests . . . in which contracts for future delivery are presently or in the future dealt in.’” The Court specifically agreed with the CFTC that “Congress’ approach to defining ‘commodity’ signals an intent that courts focus on categories—not specific items.” The Court found that “[t]his broad approach also accords with Congress’s goal of ‘strengthening the federal regulation of the . . . commodity futures trading industry,’ . . . since an expansive definition of ‘commodity’ reasonably assures that the CEA’s regulatory scheme and enforcement provisions will comprehensively protect and police the markets.”



## [SEC Adopts Rules That Increase Information Brokers Must Provide to Investors on Order Handling](#)

**Nov. 2, 2018** — The Securities and Exchange Commission announced that it has voted to adopt amendments that will require broker-dealers to disclose to investors new and enhanced information about the way they handle investors’ orders. “In the eighteen years since the Commission originally adopted its order handling and routing disclosure rules, technology and innovation have driven significant changes in the way that our equities market functions and investors transact,” said Chairman Jay Clayton. “This rule amendment will make it easier for investors to evaluate how their brokers handle their orders and ultimately make more informed choices about the brokers with whom they do business.”

Specifically, the Commission has amended Rule 606 of Regulation NMS to require a broker-dealer, upon a request of a customer who places a “not held” order (e.g., an order in which the customer gives the firm price and time discretion), to provide the customer with a standardized set of individualized disclosures concerning the firm’s handling of the customer’s orders. The new disclosures will, among other things, provide the customer with information about the average rebates the broker received from, and fees the broker paid to, trading venues. The new disclosures are designed to help investors better understand how the broker-dealer routes and handles their orders and assess the impact of their broker-dealers’ routing decisions on order execution quality. The Commission also adopted two exceptions designed to minimize the implementation costs of the new disclosure requirement on the broker-dealer industry, particularly small broker-dealers. The rulemaking also includes enhancements to the quarterly public reports that broker-dealers are already required to publish. The public disclosures must now describe any terms of payment for order flow arrangements and profit-sharing relationships, among other things.

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.gov](http://www.sosnc.gov). Click on the yellow box entitled “Investment Securities.”

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron), Director of the Investor Education Program, or call (919) 814-5560.

**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.gov](mailto:jmaron@sosnc.gov) with “Remove from mailing list” in the subject line.

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