



# North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

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## SEC Announces Charges Against Retirement Plan Custodian in Connection With Ponzi Scheme

The Securities and Exchange Commission on June 16 announced charges against an Ohio-based self-directed IRA provider accused of ignoring red flags for accounts with investments that turned out to be fraudulent.

The SEC Enforcement Division alleges that Equity Trust Company took an active role in marketing investments offered by Ephren Taylor, who [targeted churchgoers while running a Ponzi scheme](#), and Randy Poulson, who has been indicted in federal district court for an alleged offering fraud targeting investors in New Jersey. The Enforcement Division alleges that Taylor and Poulson defrauded more than 100 investors out of \$5 million invested through accounts at Equity Trust, and that Equity Trust was a cause of violations of Section 17(a) of the Securities Act of 1933 by Taylor and Poulson.

*[Editor's Note: In October of 2014, Taylor pleaded guilty in federal court to conspiracy to commit mail fraud and wire fraud. He was sentenced to nearly 20 years this past March. The NC Department of the Secretary of State Securities Division issued a Final Cease and Desist Order against Taylor and his various companies on March 29, 2012. To read the Order, click [here.](#)]*

“We allege that Equity Trust failed to protect the interests of its customers when it acted as more than a passive custodian,” said Andrew J. Ceresney, Director of the SEC’s Division of Enforcement. “When custodians like Equity Trust are aware of red flags suggesting an ongoing fraud, they must take action to try to prevent it.”

### [Investor Alert: Self-Directed IRAs and the Risk of Fraud](#)

*[Please click on the headline to see the complete Investor Alert, which the SEC reissued in June following its charges against Equity Trust Company.]*

The North American Securities Administrators Association (NASAA) has noted a recent increase in reports or complaints of fraudulent investment schemes that utilized a self-directed IRA as a key feature. While self-directed IRAs can be a safe way to invest retirement funds, investors should be aware of potential fraudulent schemes when considering a self-directed IRA. Custodians and trustees of self-directed IRAs may have limited duties to investors, and will generally not evaluate the quality or legitimacy of an investment and its promoters.

As with every investment, investors should undertake their own evaluation of the merits of a proposal, and should check with regulators about the background and history of an investment and its promoters before making a decision.

Investors in North Carolina are always urged to contact the NC Securities Division at 1-800-688-4507 to find out if the individual promoting an investment—and the investment itself—are properly registered with the state, and check on their disciplinary history.

See [“Custodian Charged”](#) continued on p. 6



**Kristine Louise  
Johnson**

## **Colorado Woman Charged With Wire Fraud Conspiracy For Operating \$6.8 Million Ponzi Scheme**

### ***Investment Scam Solicited over 10,000 Victims before Collapsing in February 2015***

On June 18, 2015 a criminal bill of information was filed in federal court, charging Kristine Louise Johnson, 60, of Aurora, Colorado, with wire fraud conspiracy for operating a \$6.8 million Ponzi scheme that defrauded more than 10,000 investor victims, announced Jill Westmoreland Rose, Acting U.S. Attorney for the Western District of North Carolina.

Robert W. Rolin, Jr. Acting Special Agent in Charge of the United States Secret Service, Charlotte Field Office joins Acting U.S. Attorney Rose in making the announcement.

According to filed court documents, from about April 2014 to February 2015, Johnson and her conspirators ran the investment scheme through a sham internet company, “The Achieve Community” (TAC). To induce victims to invest their money, the conspirators falsely claimed the investors would receive a bogus 700% return on their investment. According to court records, the victims’ money was never invested. Rather, TAC operated as a “Ponzi” scheme, and the conspirators used monies from later victim-investors to pay fraudulent “returns” to earlier ones and to enrich themselves. Johnson and her conspirators defrauded over 10,000 investors both in the Charlotte-area and worldwide, causing the victims to sustain losses totaling millions of dollars.



Court records show Johnson served as Chief Financial Officer (CFO) and managed TAC’s day-to-day operations, including managing company bank accounts and producing marketing materials. According to filed documents, Johnson falsely told potential participants that TAC was not a “Pyramid Scheme,” when, in fact, TAC operated solely as a pyramid scheme and initial investors were paid with later investors’ money. Johnson also falsely told potential investors that the “more products purchased, the more people move through the matrix and get paid.” According to filed documents, there were no actual products and early victim-investors only received Ponzi-like payments, regardless of the purchase of any products. Johnson and her conspirators also falsely promoted TAC as a “lifetime income plan” with “limitless” returns when, in reality, the Ponzi scheme could only operate with ever increasing infusions of new victim-investor cash.

As described in court documents, Johnson and her conspirators falsely represented that TAC was able to sustain and continue making payouts through the use of what they called a “Triple Algorithm” and a “3D Matrix,” which were so complex that they could not be explained in writing. In reality, no such business model existed and the only revenue for the scheme came from victim-investors. According to court records, in order to sustain the scheme, Johnson and her conspirators encouraged investors to “re-purchase” positions in the matrix, thereby reducing the amount of money needed to pay out to early investors and enabling the fraudsters to prolong the scheme. Court records indicate that Johnson used over \$200,000 of the victims’ money for her own enrichment.

According to court filings, as the scheme grew in size and scope, Johnson and her conspirators concealed the true nature of the scheme through multiple misrepresentations. According to court records, when the conspirators became concerned that the use of the term “investment” would draw scrutiny from regulators, they instructed victim-investors that “We ARE NOT an INVESTMENT program, please don’t use that term when you speak or post about our re-purchase strategy.”

See [“Wire Fraud”](#) continued on p. 3



## DAVID CHRISTOPHER MAYHEW CONVICTED OF CONSPIRACY, MAIL FRAUD, AND MONEY LAUNDERING

United States Attorney Thomas G. Walker announced that on June 12, 2015 in federal court before Senior United States District Judge James C. Fox, a jury convicted David Christopher Mayhew, 43, of Conspiracy, Wire Fraud, Mail Fraud, and Money Laundering.

Mayhew was named in a Superseding Indictment filed on July 2, 2014. He was originally indicted on July 9, 2013. His co-defendant, Ronald McCullough, has not yet been located and arrested on the charges.

Assistant United States Attorney David A. Bragdon stated: "Mayhew used trust in himself and trust in others to deprive victims of money, money that many of them had taken a lifetime to save."

"Few betrayals are as devastating as being the victim of investment fraud. David Mayhew and Ronald McCullough preyed upon people's trust and financial stability for the sake of greed," said Thomas J. Holloman, III, Special Agent in Charge, IRS Criminal Investigation. "This jury verdict with respect to Mayhew, delivers a measure of justice to those victimized. IRS Criminal Investigation remains committed to the pursuit of those who profit at the expense of innocent victims, through criminal activity."

At trial, the Government presented evidence that Mayhew was involved in an investment fraud scheme that spanned from January 2009 to May 2012 and swindled more than \$2,000,000 from investors, promising them returns as much as 100% in 30 days. One victim testified that he had lost his family's house as a result of the fraud. Two other victims testified that they had to back out of contracts to purchase property because of the fraud.

Investigation of this case was conducted by the FBI, the IRS Criminal Investigation, the Postal Inspection Service, and the North Carolina Secretary of State's Office, Securities Division. Assistant United States Attorney David A. Bragdon represented the government.

["Wire Fraud"](#) continued from p. 2

According to court records, Johnson and her conspirators also lied about the company's "business model" to the third-party payment processors which processed TAC's money transactions. When one payment processor concluded that TAC was operating a Ponzi scheme and terminated TAC as a client, court records show that Johnson and her conspirators falsely told victim investors that it was because the payment processor was unable to handle the large amount of money TAC paid to its investors.

As indicated in court documents, the investment scheme began to crumble when payment processors stopped processing the Ponzi payments to victim-investors. By the time the scheme collapsed in February 2015, the conspirators owed victim-investors at least \$51 million in purported investment returns, yet Johnson, her conspirators and TAC had available only 4% or approximately \$2.6 million.

A signed plea agreement was also filed today, and Johnson is expected to appear before a U.S. Magistrate judge in the coming days to formally accept the plea. The wire fraud charge carries a maximum of 20 years in prison and a \$250,000 fine. As part of her plea agreement, Johnson has agreed to pay restitution, the amount of which will be determined by the Court.

The case was investigated by the U.S. Secret Service. In making today's announcement, Acting U.S. Attorney Rose also thanked the Denver Regional Office of the Securities and Exchange Commission for its assistance with the investigation.

# Financial Investigators Converge at Pfeiffer University Training Conference to Hone Their Skills

Education, enforcement and awareness shared top billing when Pfeiffer University held its second annual Fraud and Forensic Investigations Conference at the Charlotte Convention Center on June 10.

Secretary of State Elaine F. Marshall delivered the luncheon keynote speech at the conference, which included training sessions led by Secretary of State Securities Division Special Agent-In-Charge JC Curry and Investor Education Program Director John Maron. The conference was kicked off by FBI Consultant Frank Abagnale, whose years as a teen con man and identity thief were depicted in the movie and Broadway musical *Catch Me If You Can*.

Marshall's comments focused on the regulatory and enforcement role of the Secretary of State's Office. In giving a rundown of recent securities cases, Marshall highlighted the Secretary of State's work with federal agencies in the investigation and prosecution of Operation Wax House, a vast racketeering conspiracy that defrauded victims out of \$75-million in a wide-ranging mortgage fraud and investment fraud scheme.

A total of 91 people have been charged in the case, 89 of whom have pleaded guilty or been convicted, and two of whom are now international fugitives.



Elaine Marshall addressing the 2015 Fraud and Forensic Investigation Conference.

Noting that victims believed they were investing in real companies and real estate deals, Marshall added, "this case serves as a powerful reminder that such big organized financial scams are not just legends from the past. They are ripping off victims right now, and for huge sums."

Marshall also touched on the case of Walter Reinhart, who defrauded retired educators in Durham County out of more than \$1 million in a Ponzi scheme.

"He would charm his way into schools and onto college campuses and get them to pull their money out of safe retirement plans and give it to him. That is how good these crooks are. They can spin a story that sounds like the best idea in the world."

Marshall also implored citizens to become partners in the fight against scams, by looking out for their friends, family and neighbors and asking questions if it seems that a loved one is possibly being targeted by a con artist.

In his comments, Abagnale said individuals can make themselves less vulnerable to identity theft with a few simple steps, including using credit cards rather than debit cards because credit card holders are generally not held liable if their data is compromised. He also recommended being careful where and to whom you write checks, and using micro-cut paper shredders to destroy old bank statements and other financial records. He pointed out that documents shredded with straight-cut and diamond cut shredders can be reassembled by identity thieves within hours.



Secretary of State Marshall with C. William Barker Award winner Howard Kies, Pfeiffer President Dr. Jerry M. Boone, Conference Coordinator Dr. Patrick Malloy, and D. Larry Crumbly Award Winner Eric Lioy.


Patrick Malloy, Conference Coordinator and Director of Pfeiffer's Financial Fraud and Investigations Programs, noted the importance of financial and healthcare institutions and government agencies staying up to date on technology in order to stay a step ahead of fraudsters.


Also at the conference, Howard Kies, Managing Partner at Cherry Bakaert LLP and Erik Lioy, Partner in Forensic and Valuation Services at Grant Thornton LLP, were honored for their contributions to the field of forensic accounting.



## Investor Alert for Seniors: Five Red Flags of Investment Fraud


*Older Americans are often targets of investment fraud. The SEC's Office of Investor Education and Advocacy is issuing this investor Alert to help seniors identify signs that what is offered as an investment may actually be a fraud. Here are five "red flags" seniors should look out for when making an investment decision:*


 **Promises of High Returns with Little or No Risk.** The promise of a high rate of return, with little or no risk, is a classic warning sign of investment fraud. Every investment carries some degree of risk, and the potential for greater returns generally comes with greater risk. Avoid putting money into "can't miss" investment opportunities or those promising "guaranteed returns." Remember—if it sounds too good to be true, it probably is.


 **Unregistered Persons.** Always check whether the person offering to sell you an investment is registered and licensed, even if you know him or her personally. Unregistered/unlicensed persons who sell securities perpetrate many of the securities frauds that target older investors. Researching the background of the individuals and firms selling you investments, including their registration/license status and disciplinary history, is free:

- Call the NC Secretary of State's Securities Division at 1-800-688-4507.
- Search the SEC's [Investment Adviser Public Disclosure \(IAPD\)](#) online database.
- Search FINRA's [BrokerCheck](#) online database.

You can also call the SEC's Office of Investor Education and Advocacy directly to help research the person and firm selling you the investment. Our direct number is (800) 732-0330 and we are open from 9:00 a.m. to 5:30 p.m. (Eastern Time) Monday through Friday.

 **Red Flags in the Financial Professional's Background.** Even if an investment professional is in good standing with his or her regulators, you should be aware of potential red flags in the professional's background. SEC, FINRA, and state securities regulator records can be used to identify red flags for potential problems, including: (1) employment at firms that have been expelled from the securities industry; (2) personal bankruptcy; (3) termination; (4) being subject to internal review by an employer; (5) a high number of customer complaints; (6) failed industry qualification examinations; (7) federal tax liens; and (8) repeatedly moving firms.

 **Pressure to Buy Quickly.** No reputable investment professional should push you to make an immediate decision about an investment, or tell you that you've got to "act now." If someone pressures you to decide on an investment without giving you ample time to do your research, walk away.

 **Free Meals.** Be wary of "free lunch" seminars. The ultimate goal of free meal investment seminars is typically to lure new clients and to sell investment products, not to educate the public. If you decide to attend one, commit to yourself before the seminar that you won't purchase anything or open an account while at the seminar. Even if the free meal does not come with a high-pressured sales pitch, you should expect the "hard sell" in subsequent contacts from the person selling the investment.



## FINRA Foundation and D2D Fund Launch Interactive Strategy Game to Fight Investment Fraud

The FINRA Investor Education Foundation (FINRA Foundation) in collaboration with Doorways to Dreams (D2D) Fund on July 10 launched an exciting new educational tool in the form of an interactive game that helps investors spot the psychological persuasion tactics used by con artists. The game—available for play on desktop or by downloading the phone or tablet mobile application—is designed to help investors outsmart investment fraud criminals.

According to the Financial Fraud Research Center, Americans lose up to **\$50 billion** a year to fraud, and research funded by the FINRA Foundation indicates that more than eight in 10 respondents over the age of 40 have been solicited to participate in potentially fraudulent schemes. Fraud criminals are masters of persuasion, taking advantage of their victims using seemingly benign tactics, such as asking victims about their health, family, political views, hobbies or prior employers—all while thinking of ways to separate victims from their money. Research shows that learning to spot persuasion tactics in pitches can reduce their effect, and increase an individual's ability to spot and avoid fraud.

FINRA Foundation President Gerri Walsh says that the "goal is to give investors an interactive tool they can use to help them recognize the red flags of fraud. [\*Con 'Em If You Can\*](#) challenges users to really understand the psychology behind scams."

"Video games are an effective strategy for building financial capability, and *Con 'Em If You Can* is an innovative game that will expand the reach of fraud prevention messages. D2D is excited to have developed this new Financial Entertainment title with the FINRA Foundation," said Tim Flacke, Executive Director, D2D Fund.

*Con 'Em If You Can* brings players into the fictional world of Shady Acres. Playing alongside Connor, a con artist and mentor, players learn first-hand about the types of persuasion tactics used to perpetuate financial fraud, and they accumulate wealth and strength by using these tactics as fraud tools on a range of targets. But they have to watch out—the Fraud Fighting Agency's lead agent, Fiona, is hot on their trail. Can they take down Shady Acres' biggest target before she finds them?

[“Custodian Charged”](#) continued from p. 1

In its order instituting proceedings, the Enforcement Division alleges among other things:

- Equity Trust representatives participated at events hosted by Taylor and Poulson, and they encouraged attendees to transfer their retirement savings from traditional IRAs to self-directed IRAs at Equity Trust so they could invest in the Taylor or Poulson offerings. Equity Trust also sponsored Poulson dinner events with prospective investors.
- Equity Trust processed investments in notes offered by Taylor and Poulson in spite of serious red flags. These included knowing that Taylor and Poulson had not provided them with documentation of the investments' collateral as it required as custodian of the self-directed IRAs, and that Taylor made false statements to thousands of people at a church near Atlanta.
- Equity Trust continued to charge fees to customers invested in Taylor's notes as recently as this year despite the fraud charges announced against him in 2012.

See [“Custodian Charged”](#) continued on p. 7



## Plan for Transition: What You Should Know About the Transfer of Brokerage Account Assets on Death

The Financial Industry Regulatory Authority (FINRA) on June 17 issued a new Investor Alert called [\*Plan for Transition: What You Should Know About the Transfer of Brokerage Account Assets on Death\*](#).

FINRA's new Alert responds to issues raised by investors calling FINRA's [Securities Helpline for Seniors](#), and informs brokerage account holders, family members and other beneficiaries about the general process firms follow when an account holder passes away.

"While many people plan for the inevitable by creating wills or trusts, some investors might not be aware of the steps they can take to help ensure a smooth transfer of securities held in their non-retirement brokerage accounts. FINRA's new Securities Helpline for Seniors brought the importance of this issue to our attention, and we hope investors who read this alert will be better prepared to take action," said Gerri Walsh, FINRA's Senior Vice President for Investor Education.



*Plan for Transition* provides tips for making the transfer process as efficient and trouble-free as possible for account holders and also for heirs and beneficiaries. Tips include the following.

- Keep family members informed. Have frank and open discussions with family members about your brokerage account holdings and beneficiaries.
- Hold onto account statements and trade confirmations. Something as basic as putting account information in a safe and logical place can help heirs and beneficiaries quickly locate firm contact information and notify the firm upon death.
- Work with your brokerage firm. Brokerage firms often offer services to account holders and their beneficiaries to discuss assets, last wishes and aspects of the transfer process on death.
- Designate beneficiaries with care. Your brokerage firm may provide "Transfer on Death" or other beneficiary documents in order to designate a beneficiary for your brokerage account. Ask your firm who they have recorded as a beneficiary for each of your accounts, and make any changes necessary to conform to your will or estate plan.

A key issue for investors and their beneficiaries to consider is whether a Transfer on Death Plan (TOD) is right for them. Available in most states, a TOD allows investors to keep control of the brokerage account assets during their lifetime. After they die, ownership is passed to the named beneficiaries.

*Plan for Transition* also outlines what generally happens when an account holder dies, provides tips for heirs and beneficiaries, and lets investors know the options they have if they feel a problem has occurred.

["Custodian Charged"](#) continued from p. 6

The matter will be scheduled for a public hearing before an administrative law judge for proceedings to adjudicate the Enforcement Division's allegations and determine what, if any, remedial actions are appropriate.

The SEC's investigation was conducted by Andrew Dean and Lara Shalov Mehraban in the New York Regional Office and Luke Fitzgerald in the Asset Management Unit. The case was supervised by Julie M. Riewe and Amelia A. Cottrell, and the SEC's litigation will be led by Mr. Dean, Mr. Fitzgerald, and David Stoelting. The SEC appreciates the assistance of the U.S. Attorney's Office for the District of New Jersey, the U.S. Attorney's Office for the Northern District of Georgia, the Federal Bureau of Investigation, and the U.S. Secret Service.



## Investor Alert: Beware of False or Exaggerated Credentials

*The SEC's Office of Investor Education and Advocacy (OIEA) is issuing this Investor Alert to warn investors that fraudsters may misrepresent their backgrounds and experience to lure investors into investment schemes. Before investing, investors should verify that any person who tries to sell them an investment product or service is properly licensed or registered and should not make investment decisions based solely on assertions regarding the person's credentials or professional experience, including claims found on the Internet or in traditional media sources.*

In order to attract unsuspecting investors and gain their trust, fraudsters may boast about credentials they do not have. They may fabricate, exaggerate, or hide facts about their backgrounds to portray themselves as successful professionals and to make you believe that the investments they offer are legitimate. Others may repeat these misrepresentations and contribute – perhaps unintentionally – to a fraudster's false reputation of success and professional accomplishment. ***Do not trust someone with your investment money just because he or she claims to have impressive credentials or experience, or manages to create a "buzz of success" around himself or herself.***

**Look out for unlicensed or unregistered sellers.** Many fraudulent investment schemes involve persons who are not licensed or registered. Use the SEC's [Investment Adviser Public Disclosure \(IAPD\)](#) website and the Financial Industry Regulatory Authority (FINRA)'s [BrokerCheck](#) site to determine whether a person recommending or selling an investment is licensed or registered and if so, to check out the person's background including any disciplinary history. Contact the NC Secretary of State's Securities Division at 1-800-688-4507 to find out whether the person is licensed in North Carolina to do business with you.

***Fraudsters may misrepresent their education.*** In [SEC v. Colangelo](#), the defendant allegedly defrauded investors, and made misrepresentations regarding the investments he offered as well as his professional and educational background. The SEC alleges that the defendant emailed potential and existing investors a link to his LinkedIn profile in which he represented that he had studied finance at Nyack College when he never attended Nyack College and had not even graduated from high school. In [SEC v. Hicks](#), the SEC alleges that the defendant falsely represented in the offering memorandum for a fictitious hedge fund that he had earned undergraduate and graduate degrees from Harvard University when he had only enrolled there for a few semesters.

***Fraudsters may lie about having been awarded honors that they have not received or that do not even exist.*** In the matter of [Michael G. Thomas](#), the respondent allegedly solicited investors for a private fund by misrepresenting that he was named a "Top 25 Rising Business Star" by *Fortune Magazine* when no such distinction exists. To gain credibility, he also allegedly lied to potential investors about the persons who would be associated with his fund, the profitability of his past investments, and the expected profitability of the fund's proposed investment.

***Fraudsters may pretend to hold certain professional titles to suggest that they have certain expertise or qualifications.*** In [SEC v. Nickles](#), the defendant allegedly solicited investors through advertisements in prominent newspapers. The SEC alleges that he falsely promised that the investments he offered were insured or U.S. Government guaranteed, and he held himself out as a certified financial planner (CFP) when he had no such credentials or certification. The [website](#) of the Certified Financial Planner Board of Standards allows visitors to search for CFP professionals to verify CFP certification. For more information regarding professional titles used by financial professionals, read our Investor Bulletin, [Making Sense of Financial Professional Titles](#).



***Fraudsters may appear as a guest commentator on financial television shows.*** In the matter of [Todd M. Schoenberger](#), the respondent allegedly made misrepresentations in soliciting investors to invest in short-term promissory notes and used the majority of money he received from investors for his own personal expenses. The respondent allegedly touted his appearances as an investment and stock market commentator on television business news programs in soliciting investors. He also allegedly gave prospective investors marketing materials stating that he had received a degree from the University of Maryland (when he had not) and that he previously worked for a broker-dealer registered with the SEC (without disclosing that the broker-dealer terminated him for misuse of company assets).

***Fraudsters may use traditional media sources, the Internet, or social media to develop a public profile that gives them a false air of legitimacy.*** In the matter of [Keiko Kawamura](#), the respondent allegedly conducted an investment scheme involving a self-described hedge fund and another scheme involving a subscription service for investment advice, fraudulently using investors' money for her own living expenses and luxury trips. The respondent allegedly posed as an investment banker with nearly 10 years of experience and solicited investors through Twitter, Facebook, and other social media.

***Fraudsters may pretend that they have a certain position or title at a company.*** In [SEC v Homepals](#), the SEC alleges that the defendants sold unsecured notes as part of a Ponzi scheme. When meeting with prospective and actual investors, two of the defendants allegedly misrepresented that they were the company's secretary and the company's attorney when they never held any official positions at the company.

***Fraudsters may inflate their professional experience.*** In [SEC v. Helms](#), the defendants allegedly raised nearly \$18 million for supposed purchases of oil-and-gas royalty interests through a company they controlled and used most of investors' money to make Ponzi payments and to cover various personal and business expenses. The defendants allegedly misled investors about the defendants' experience in the oil and gas industry. As another example, in [SEC v. Della Penna](#), the defendant allegedly misrepresented his trading track record as a private fund manager and then lost almost all of investors' money by making unsuccessful investments, paying his own personal expenses, and using later investors' money to pay fake "returns" to prior investors.

As you can see from these examples, you cannot believe everything you hear about a person's educational and professional background. Ask for details and be particularly skeptical if you do not receive direct and specific answers to your questions. Be cautious if you encounter discrepancies regarding someone's background such as conflicting information or dates that do not add up. Independently verify claims with reliable sources, including [IAPD](#), [BrokerCheck](#), and the [NC Securities Division](#). If someone falsely depicts his or her background and tries to sell you an investment, do not trade with the person, do not give the person any money, and do not share your personal information with the person. Submit a complaint with the [NC Securities Division](#) or the [SEC](#) and report the misrepresentations.



## **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 Securities 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. You owe it to yourself and your family to check.



## SEC Publishes Request for Public Comment on Exchange-Traded Products

The Securities and Exchange Commission announced on June 12 that it is seeking public comment to help inform its review of the listing and trading of new, novel, or complex exchange-traded products (ETPs). The request for comment addresses key issues that arise when exemptions are sought by a market participant to trade a new ETP or when a securities exchange seeks to establish standards for listing new ETPs. Due to the expansion of ETP investment strategies in recent years that has led to a significant increase in the number and complexity of these requests, the Commission determined it would be beneficial to receive public input on these issues.

“Exchange-traded products have become an increasingly important investment vehicle to market participants ranging from individuals to large institutional investors,” said SEC Chair Mary Jo White. “As new products are developed and their complexity grows, it is critical that we have broad public input to inform our evaluation of how they should be listed, traded, and marketed to investors, especially retail investors.”



The request for comment addresses arbitrage mechanisms and market pricing for ETPs, legal exemptions and other regulatory positions related to the trading of ETPs, and securities exchange listing standards for ETPs. In addition, the request invites comment on how market professionals sell ETPs, especially to retail investors, and on investors’ understanding of the nature and use of ETPs.

ETPs constitute a diverse class of financial products that seeks to provide investors with exposure to financial instruments, financial benchmarks, or investment strategies across a wide range of asset classes. ETP trading occurs on national securities exchanges and other secondary markets that are regulated by the Commission under the Securities Exchange Act of 1934.

The request for public comment has been published in the [Federal Register](#). The public comment period will remain open until August 17, 2015.



## Cybersecurity a Growing Concern for Investment Advisers

Cybersecurity tops the list of compliance concerns for federally registered investment advisers, according to a new survey released by the Investment Adviser Association and the ACA Compliance Group.

Nearly 88-percent of investment advisers surveyed considered the combined issue of cybersecurity, privacy and identity theft to be the “hottest” compliance topic facing investment adviser firms in 2015, a 13-percent jump from the 2014 poll. More than two in five firms reported having a formal, written, standalone cybersecurity program. Fifteen percent reported having suffered a cybersecurity breach in the past 18 months, an 11-percent increase from 2014.

A total of 89-percent of investment adviser firms surveyed reported having adopted formal written policies and procedures to govern the use of social media by employees, and nearly half said they prohibit the use of personal social networking sites for business purposes.

The Investment Adviser Association and the ACA Compliance Group surveyed 475 federally registered investment adviser firms between April 27 and May 22. You can see the full survey results on the Investment Adviser Association’s [website](#).



## 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](#), [Leo John](#) or [Lauren Benbow](#) at (800) 688-4507. For a complete list of all upcoming events, please check out our online [calendar](#).

| Date    | City       | Details  |
|---------|------------|--|
| 7/16/15 | Shelby     | “Business Essentials” Presentation offering information to help new businesses navigate government regulations. Cleveland Community College, 137 S. Post Road. Time: 6 PM—9 PM. Event is free, but <a href="#">registration</a> is requested.  |
| 7/22/15 | Raleigh    | “Starting and Financing a Business” presentation. What every entrepreneur or small businessperson needs to know about starting and financing a business in North Carolina. American Underground @Raleigh, 213 Fayetteville Street. Time: Noon—1 PM. To learn more, please contact Garrett Wood at <a href="mailto:gwood@americanunderground.com">gwood@americanunderground.com</a> .   |
| 7/28/15 | Charlotte  | “Starting and Financing a Business” presentation. What every entrepreneur or small businessperson needs to know about starting and financing a business in North Carolina. Packard Place, 222 S. Church Street. Time: 5 PM—7 PM. To learn more, contact Chelsea Barrett at (716) 969-4808 or <a href="mailto:cbarrett@packardplace.us">cbarrett@packardplace.us</a> .  |
| 7/29/15 | Raleigh    | “Starting and and Financing a Business” presentation. What every entrepreneur or small businessperson needs to know about starting and financing a business in North Carolina. The Frontier, 800 Park Offices Drive. Time: 5 PM—7 PM. To learn more, contact Anna Rhyne at (919) 433-1673.   |
| 8/12/15 | Whiteville | Secretary of State Elaine F. Marshall will join Columbus County Sheriff Lewis Hatcher and officials from the US Commodity Futures Trading Commission and the Cape Fear Council of Governments Area Agency on Aging to discuss how people can protect themselves from investment scams. Southeastern Community College, Building T, 4564 Chadbourn Highway. Time: 9 AM—Noon. For more information, contact Jane S. Jones, Director, Area Agency on Aging, Cape Fear Council of Governments, at (910) 395-4553 ext. 209. |
| 8/26/15 | Sanford    | The 13th Annual “Boomer, Senior and Caregiver Expo” will include a presentation from an NC Secretary of State’s Office official providing tips on recognizing and avoiding investment scams, as well as information about the Secretary of State’s Advance Healthcare Directive Registry. The Dennis A. Wicker Civic Center, 1801 Nash Street. Time: 10 AM—2:30 PM. For more information please contact <a href="#">Judi Womack</a> or visit the Expo <a href="#">website</a> .  |
| 8/28/15 | Asheville  | “Starting and Financing a Business in N.C.” An official from the NC Secretary of State’s Office will discuss what startups need to know when starting and financing new businesses. Venture Asheville, Asheville Chamber of Commerce, 36 Montford Avenue. For more information, contact <a href="#">Josh Dorfman</a> .   |

- 8/29/15 Asheville “Startup Weekend Asheville” is a 54-hour event designed to teach the skills of entrepreneurship by having participants work on a team to convert an idea into an operating business. On Saturday, August 29, an official from the NC Secretary of State’s Office will be on hand to discuss what new startups need to know from a state government perspective when starting and financing a new business. Nesbitt Discovery Academy, 175 Bingham Road. For more information, please visit [Asheville.startupweekend.org](http://Asheville.startupweekend.org).
- 9/10/15 Candler “Business Essentials” presentation, offering information to help new businesses navigate government regulations. Asheville-Buncombe Technical Community College, Room 2046 of the Small Business Center, 1465 Sand Hill Road. Time: 2 PM—4 PM. Event is free, but [registration](#) is requested.
- 9/23/15 Cary Investment fraud presentation, Heritate Pines Clubhouse, 2000 Heritage Pines Drive. Time: 10 AM—11 AM. Free, but open to Heritage Pines residents and their guests only. For more information, please contact Sharon Toomey at (919) 466-0016 or visit [www.heritagepinesnc.com](http://www.heritagepinesnc.com).
- 10/13/15 St. James “Modern Times, Modern Crimes” anti-fraud workshop will feature comments from Secretary of State Elaine F. Marshall. St. James Community Center, 4136 Southport-Supply Road SE. Time: 9:30 AM—2:00 PM. For more information, please contact Jane S. Jones at (910) 395-4553 ext. 209.
- 10/14/15 Southport Elder fraud prevention training for law enforcement officers. Southport Community Building, 223 E. Bay Street. Time: 9:30 AM—2:30 PM. For more information, please contact Jane S. Jones, Director, Area Agency on Aging, Cape Fear Council of Governments, at (910) 395-4553 ext. 209.
- 10/15/15 Salisbury “Business Essentials” presentation offering information to help new businesses navigate government regulations. Rowan-Cabarrus Community College North Campus, Building 400, Room 4133, 1333 Jake Alexander Blvd. South. Time: 9 AM—11 AM. Event is free, but [registration](#) is requested.
- 10/16/15 Raleigh “Nothing Ventured, Nothing Gained: The Evolving Impact of Investment Crowdfunding on Modern Legal Markets” symposium. Hosted by the Campbell Law Review, this symposium will feature a day of panel discussions and group collaboration. Campbell University School of Law, 225 Hillsborough Street. Time: 9AM—5 PM. For more information, contact [Lillie Seifart](#).
- 10/20/15 Clyde “Business Essentials” presentation offering information to help new businesses navigate government regulations. Haywood Community College Auditorium, Room 1502 of 1500 Building, 185 Freedlander Drive. Time: 2 PM—4 PM. Event is free, but [registration](#) is requested.



## 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.**

**Darren Joseph Capote**, of Patterson, NY, was indicted on July 11, 2011, in Ashe County Superior Court on three Class C felony counts of securities fraud. He is alleged to have defrauded an elderly victim in Ashe County. He was released from custody on a \$100,000 secured bond. His next court appearance in Ashe County has been scheduled for September 28, 2015.

**Claude Darrell McDougal**, formerly of Charlotte, appeared before U.S. Magistrate Judge David S. Cayer and pleaded guilty on July 24, 2014 to securities fraud for orchestrating a Ponzi scheme that defrauded his investor victims of more than \$2.5 million. McDougal has been released on his own recognizance and is currently awaiting sentencing.

**David Alan Topping**, of Oak Island, NC, was arrested by law enforcement agents with the NC Secretary of State Securities Division on November 4, 2014 and charged with one felony count of securities fraud. The Brunswick County Sheriff's Office also charged Topping with one felony count of obtaining property by false pretenses and one misdemeanor charge for solicitation to obtain property by false pretenses. Topping is alleged to have defrauded multiple victims out of more than \$100,000. He is currently out of jail on a \$250,000 unsecured bond.

**Charles Caleb Fackrell**, of Booneville, NC, was arrested by the Yadkinville Police Department in December, 2014 and to date has been charged with seven felony counts of obtaining property by false pretense. He is currently in the Yadkin County Detention Center under a \$2.5 million secured bond.

To assist in the NC Securities Division's ongoing criminal investigation into Fackrell, we ask that any person who may have invested with Fackrell or his company, Fackrell Trivette Wealth Management, LLC, **please contact the Division immediately at 1-800-688-4507**. The Division would be interested in receiving **copies – not originals** – of any and all correspondence anyone may have had with Fackrell relating to the offer, sale or purchase of any investments. Anyone wishing to file a complaint against Fackrell or his company may do so by submitting a complaint form, located on the NC Secretary of State's [website](#).

# Recent Enforcement Actions



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

On **May 15, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued a **Final Order of Revocation (Order) against Aegis Capital, LLC** (Aegis). The Order revoked Aegis's registration to operate as an Investment Adviser in North Carolina. The Order found that Aegis had violated provisions of the Investment Advisers Act. Click [here](#) to view the Final Order Revocation.

On **May 4, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued a **Final Order to Cease and Desist to CAUSwave, Inc.** CAUSwave, Inc. This Order made permanent the terms of the Temporary Order to Cease and Desist issued on March 12, 2015. The Final Order found that CAUSwave, Inc. has violated the North Carolina Securities Act. The Order directs CAUSwave, Inc. and any person, employee, officer, director, entity or independent contractor under the direction or control of CAUSwave, Inc. to cease and desist from offering for sale, soliciting offers to purchase or selling, in or from North Carolina, any securities unless and until: (1) such securities have been registered under the provisions of the North Carolina Securities Act, and (2) CAUSwave, Inc. and any person or entity under the direction or control of CAUSwave, Inc. is properly registered as a securities dealer or salesman under the provisions of the North Carolina Securities Act. Click [here](#) to view the Final Order.

On **February 12, 2015**, the Securities Division of the North Carolina Department of the Secretary of State issued a **Final Order to Cease and Desist** to Respondents **Stark Innovations, L.L.C.**, and **David Alan Topping**, doing business as "Stark Investments, Inc." This Order made permanent the terms of the Temporary Order to Cease and Desist issued on November 5, 2014 in this matter. Respondents failed to object to the issuance of the Final Order or to seek any hearing in this matter. Respondents are prevented and restrained from offering to sell, or selling, securities interests in Stark Innovations, L.L.C., or any other security, in North Carolina without first complying with the North Carolina Securities Act. Click [here](#) to see the Order.

On **January 27, 2015**, the Securities Division of the North Carolina Department of the Secretary of State entered into a **Final Consent Order** with Respondent, **McGrath & Associates, Inc.** McGrath & Associates, Inc. is a registered investment adviser in the State of North Carolina. McGrath & Associates, Inc. violated the registration provisions of the North Carolina Investment Advisers Act by employing an unregistered investment adviser representative. The unregistered investment adviser representative was fully qualified for registration. The registration violation came to the Securities Division's attention through a routine audit of the investment adviser. McGrath & Associates, Inc. properly registered the investment adviser representative on May 13, 2014. Click [here](#) to view the Final Order.

On **December 19, 2014**, the Securities Division of the North Carolina Department of the Secretary of State entered into a **Consent Order** with respondents, **Senior Veterans Council, LLC**, and **David L. Cole**. Respondent Senior Veterans Council, LLC, through its agent, Respondent David L. Cole improperly held itself out to the North Carolina investing public as an investment adviser licensed to legally engage in investment advisory business. The Consent Order also found that respondents engaged in the business of providing investment advisory services in North Carolina without being properly registered to do so under the North Carolina Investment Advisers Act. To read the Consent Order, please click [here](#).

# 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.*

## [Crowdfunding Project Creator Settles FTC Charges of Deception](#)

**June 11, 2015**—In its first case involving crowdfunding, the Federal Trade Commission has taken legal action against the deceptive tactics of a project creator who raised money from consumers to produce a board game through a Kickstarter campaign, but instead used most of the funds on himself. The defendant has agreed to a [settlement that prohibits him from deceptive representations related to any crowdfunding campaigns](#) in the future and requires him to honor any stated refund policy. According to the FTC’s complaint, Erik Chevalier, also doing business as The Forking Path Co., sought money from consumers to produce a board game called *The Doom That Came to Atlantic City* that had been created by two prominent board game artists.

## [SEC Charges KKR With Misallocating Broken Deal Expenses](#)

**June 29, 2015**—The Securities and Exchange Commission has charged Kohlberg Kravis Roberts & Co. (KKR) with misallocating more than \$17 million in so-called “broken deal” expenses to its flagship private equity funds in breach of its fiduciary duty. KKR agreed to pay nearly \$30 million to settle the charges, including a \$10 million penalty. The SEC Enforcement Division’s Asset Management Unit has been scrutinizing the private equity industry to make sure that fund managers aren’t misallocating or unfairly charging fees and expenses to investors. An SEC investigation found that during a six-year period ending in 2011, KKR incurred \$338 million in broken deal or diligence expenses related to unsuccessful buyout opportunities and similar expenses. “This is the first SEC case to charge a private equity adviser with misallocating broken deal expenses,” said Andrew J. Ceresney, Director of the SEC Enforcement Division. “Although KKR raised billions of dollars of deal capital from co-investors, it unfairly required the funds to shoulder the cost for nearly all of the expenses incurred to explore potential investment opportunities that were pursued but ultimately not completed.”

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

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron@sosnc.com), Director of the Investor Education Program, or call (919) 807-2106.

**Please help us publicize the educational information in this mailing by forwarding it to your contacts around the state.** If you no longer wish to receive mailings from the Securities Division, please send an email to: [jmaron@sosnc.com](mailto:jmaron@sosnc.com) with “Remove from mailing list” in the subject line.

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