



# North Carolina Department of the Secretary of State

*Hon. Elaine F. Marshall, Secretary*

**May 2015 SECURITIES NEWSLETTER • Vol. 7, No. 5**

## **Secretary of State Shines a Light on Broker-Dealer Fees**

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In recognition of Financial Literacy Month, the NC Secretary of State's Office issued an advisory on April 22 to help raise investor awareness about fees charged by broker-dealer firms for services and maintenance of investment accounts.

New research from the North American Securities Administrators Association (NASAA), of which the NC Secretary of State's Office is a member, shows that investors are confused about brokerage service and maintenance fees and want clear, easy access to fee information from their broker-dealer firms.

A national public opinion poll commissioned by NASAA found that fees are important to investors, but a general lack of standardization and clarity in their disclosure has left many investors unaware of how much their broker-dealer firms charge for the service and maintenance of investment accounts.

"Transparency is vital here," said NC Secretary of State Elaine F. Marshall. "It is especially vital when it comes to investors' need to understand what services they are paying for and how much they are paying."

To sharpen the investing public's understanding of broker-dealer fees, the Secretary of State's Office suggests investors focus on the timing, method and content of fee disclosures.

- **Pay attention.** Fees are typically disclosed when a customer account is opened. Ask for a fee schedule and make sure it is up to date. If it is not readily available, do not place any assets until it is provided. You have the right to know the fees in advance. Also, watch out for fee changes. Most broker-dealers disclose fee changes at least 30 days in advance, but they may use different methods to reach investors. Make sure your broker dealer firm knows how you prefer to be contacted.
- **Read the fine print.** Most broker-dealer firms disclose fees for certain services on a table, chart, or list, while some use a narrative, but it may not list dollar amounts or formulas. If you do not see a section on fees and charges, ask for it. Investors are responsible for reading and understanding all materials provided by a broker-dealer.
- **Talk the talk.** Different firms may use different terms for the same service. Know the services you may be using regularly and ask specifically what terms a firm uses for its services and the associated fees.

"Just like any other consumer, North Carolina's investing public should be able to comparison shop to make the most informed decision when looking for broker-dealer firms," said Secretary Marshall.

The advisory is available on pages 2-3 of this newsletter and on the Secretary of State's website. For more information, contact the Secretary of State's Securities Division at 1-800-688-4507.

## Understanding Broker-Dealer Fees

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*Savvy consumers know it is important to compare prices on similar products to get the best value for their money. Wouldn't it be nice if the same were true when shopping for a broker-dealer firm to handle your investments?*

New research from the North American Securities Administrators Association (NASAA) shows investors are confused about the fees brokers charge for services and maintenance of their brokerage accounts. The research also shows investors want clear and easy access to fee information from their brokerages.

Broker-dealer firms must disclose all fees to customers; however, brokerage firms are largely free to decide for themselves how to do this. In an effort to do comparison shopping of broker-dealer firms, NASAA also surveyed brokerage firms to determine how firms disclosed their fees to customers and the amount they charged. The survey found:

- How and when firms disclosed fees to clients varied tremendously from firm to firm.
- Markups for some of the services charged to clients were routine among the surveyed brokerage firms, ranging in some cases from 100 percent to 280 percent. In one case, a firm charged \$500 for a securities certificate when its cost was \$60, a 733 percent markup!

Despite these discrepancies, firms are compliant with the law as long as they disclose their fees to customers. Therefore, investors must be vigilant and know what to look for when comparison shopping for broker-dealers.

It can be difficult for investors to comparison shop among different broker-dealer firms due to the different terminology used by the firms and the lack of consistent fee descriptions or definitions. Until fee disclosures are more consistent and transparent, the burden falls to the investor to understand all the fees.

(over)

Issued: April 2015

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

NC Department of the Secretary of State, Securities Division, PO Box 29622, Raleigh, NC 27626-0622  
www.sosnc.com | Phone: (800) 688-4507 or (919) 733-3924 | Fax: (919) 807-2183 | E-mail: secdiv@sosnc.com



## The Needle in the Haystack:

### *How to find the fees in disclosures*

The NASAA survey found differences among broker-dealer firms in the timing, method, manner, and length of the fee disclosures.

#### Timing of Disclosure

Fees are typically disclosed when a customer account is opened. **Ask for the fee schedule** – make sure it's up-to-date. If it is not readily available, do not place any assets until it is provided. You have the right to know the fees in advance.

**Watch out for fee changes.** Most broker-dealers disclose fee changes at least 30 days in advance, but they may use different methods to notify you (e.g., email, postal mail, or their website). At your first meeting, clarify how you want to be notified, and how the fees and fee changes will be disclosed. Before authorizing any service, ask the broker-dealer firm to provide the fee in writing.

#### Method of Disclosure

Most broker-dealers disclose fees for certain services on a table, chart, or list, while some use a narrative, but it may not list dollar amounts or formulas. Either way, **read the fine print and ask questions.** If you do not readily see a section on fees and charges, ask for it. You are responsible for reading and understanding all materials the broker-dealer firm sends.

#### Disclosure Length and Content

There are no defined minimum or maximum length requirements for disclosure, but whether it's one page or 10, take your time to review the information and be sure to ask questions. **Talk the talk.** Different firms may use different terms for the same service. Know the services you may be using regularly and ask specifically what terms the firm uses for the services and the associated fees.



#### **The Bottom Line:**

Remember, every broker-dealer firm and broker-dealer representative must be registered to lawfully sell you any security. Check out the firms or representatives with your state or provincial securities regulator before placing any assets with them or authorizing them to conduct a trade. Your securities regulator can tell you if there are any complaints or past actions against any firms or representatives you are considering. If you have any questions, contact the North Carolina Securities Division at (800) 688-4507 or (919) 733-3924.

# US Labor Department seeks public comment on proposal to protect consumers from conflicts of interest in retirement advice

On April 4, 2015, the U.S. Department of Labor released a proposed rule that will protect 401(k) and IRA investors by mitigating the effect of conflicts of interest in the retirement investment marketplace. A White House Council of Economic Advisers analysis found that these conflicts of interest result in annual losses of about 1 percentage point for affected investors — or about \$17 billion per year in total.

Under the proposals, retirement advisers will be required to put their clients' best interests before their own profits. Those who wish to receive payments from companies selling products they recommend and forms of compensation that create conflicts of interest will need to rely on one of several proposed prohibited transaction exemptions.

"This boils down to a very simple concept: if someone is paid to give you retirement investment advice, that person should be working in your best interest," said Secretary of Labor Thomas E. Perez. As commonsense as this may be, laws to protect consumers and ensure that financial advisers are giving the best advice in a complex market have not kept pace. Our proposed rule would change that. Under the proposed rule, retirement advisers can be paid in various ways, as long as they are willing to put their customers' best interest first."

The Department of Labor's announcement includes a proposed rule that would update and close loopholes in a nearly 40-year-old regulation. The proposal would expand the number of persons who are subject to fiduciary best interest standards when they provide retirement investment advice. It also includes a package of proposed exemptions allowing advisers to continue to receive payments that could create conflicts of interest if the conditions of the exemption are met. In addition, the announcement includes a comprehensive economic analysis of the proposals' expected gains to investors and costs.

The proposed "best interest contract exemption" represents a new approach to exemptions that is broad, flexible, principles-based and can adapt to evolving business practices. It would be available to advisers who make investment recommendations to individual plan

participants, IRA investors and small plans. It would require retirement investment advisers and their firms to formally acknowledge fiduciary status and enter into a contract with their customers in which they commit to fundamental standards of impartial conduct. These include giving advice that is in the customer's best interest and making truthful statements about investments and their compensation.

If fiduciary advisers and their firms enter into and comply with such a contract, clearly explain investment fees and costs, have appropriate policies and procedures to mitigate the harmful effects of conflicts of

interest, and retain certain data on their performance, they can receive common types of fees that fiduciary advisers could otherwise not receive under the law. These include commissions, revenue sharing, and 12b-1 fees. If they do not, they generally must refrain from recommending investments for which they receive conflicted compensation, unless the payments fall under the scope of another exemption.

In addition to the new best interest contract exemption, the proposal also includes other new exemptions and updates some exemptions previously available for investment advice to plan sponsors and participants. For example, the proposal includes a new exemption for principal transactions. In addition, the proposal asks for comment on a new "low-fee exemption" that would allow firms to accept conflicted payments when recommending the lowest-fee products in a given product class, with even fewer requirements than the best interest contract exemption.

Finally, the proposal carves out general investment education from fiduciary status. Sales pitches to large plan fiduciaries who are financial experts, and appraisals or valuations of the stock held by employee-stock ownership plans, are also carved out.

Links to the proposed fiduciary rule, prohibited transaction exemptions, economic impact analysis and other materials are available at [www.dol.gov/ProtectYourSavings/](http://www.dol.gov/ProtectYourSavings/), and was published for public comment on April 20, 2015, in the [Federal Register](#).

*"This boils down to a very simple concept: if someone is paid to give you retirement investment advice, that person should be working in your best interest."*

*-Secretary of Labor  
Thomas E. Perez*



# SEC Staff and FINRA Issue Report on National Senior Investor Initiative

With the Social Security Administration estimating that each day for the next 15 years, an average of 10,000 Americans will turn 65, the staff of the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) have issued a report to help broker-dealers assess, craft, or refine their policies and procedures for investors as they prepare for and enter into retirement.

The National Senior Investor Initiative [report](#) includes observations and practices identified in examinations that focused on how firms conduct business with senior investors. The examinations by the SEC's Office of Compliance Inspections and Examinations (OCIE) and FINRA focused on the types of securities purchased by senior investors, the suitability of recommended investments, training of brokerage firm representatives, marketing, communications, use of designations such as "senior specialist," account documentation, disclosures, customer complaints, and supervision.

According to the [most recent U.S. Census Bureau data](#), in 2011, more than 13 percent of those living in the United States, or more than 41 million people, were 65 or older. By 2040, that number is expected to exceed 79 million, more than twice as many as in the year 2000. Given that, OCIE and FINRA staff are keenly focused on issues related to senior investors and regard compliance with laws, rules, and regulations applicable to senior investors to be a high regulatory priority. At a time of historically low yields on traditional savings accounts and more conservative investments, OCIE and FINRA staff are concerned that some broker-dealers may be recommending riskier and possibly unsuitable securities to senior investors looking for higher returns and may be failing to adequately disclose the terms and risks of the securities they recommend.

Andrew J. Bowden, OCIE's Director, said, "Seniors are more dependent than ever on their own investments for retirement. Broker-dealers are developing and offering a variety of new products and services that are intended to generate higher yields in a low interest rate environment. It is imperative that firms are recommending suitable investments and providing proper disclosures regarding the related terms and risks."

"With the dramatic increase in the population of our nation's seniors, it is critical that securities regulators work collaboratively to make sure that senior investors are treated fairly. The culture of compliance at firms is key to ensuring that seniors receive suitable recommendations and proper disclosures of the risks, benefits, and costs of any investments they are purchasing," said Susan Axelrod, FINRA Executive Vice President, Regulatory Operations.

## Boomers Beware

A 2006 FINRA Investor Education Foundation-funded study shattered previous stereotypes when it found that senior investment fraud victims tend to be married, college-educated males who actually score higher on financial literacy tests than non-victims.

Always check out the people pitching investment deals to you. Call the NC Securities Hotline at 1-800-688-4507 to make sure they're registered to sell securities in North Carolina, and that the investment opportunity itself is registered. Also ask about their disciplinary history.



## FINRA Launches Toll-Free FINRA Securities Helpline for Seniors

The Financial Industry Regulatory Authority (FINRA) has launched the toll-free [FINRA Securities Helpline for Seniors](#)<sup>TM</sup> to provide older investors with a supportive place to get assistance from knowledgeable FINRA staff related to concerns they have with their brokerage accounts and investments.

Senior investors can call FINRA's new toll-free FINRA Securities Helpline for Seniors (844-57-HELPS or 844-574-3577) from 9:00 a.m. – 5:00 p.m. ET, Monday through Friday, and get neutral, knowledgeable assistance with:

- understanding how to review your investment portfolio or account statements;
- concerns about the handling of a brokerage account; and
- investor tools and resources from FINRA, including BrokerCheck<sup>®</sup>.

"Protecting senior investors has been an important priority for FINRA for several years. Our goal in setting up this Helpline is to build on these efforts and provide an additional resource to senior investors. FINRA's Helpline means that older investors are only a phone call away from getting help with questions or concerns they may have regarding their investments. FINRA staff will point seniors to educational tools that can help them better understand investing, savings and investment products, as well as resources like BrokerCheck that can provide valuable information about securities firms and financial professionals," said Susan Axelrod, FINRA's Executive Vice President for Regulatory Operations.

The [Social Security Administration](#) estimates that an average of 10,000 Americans will turn 65 every day for the next 15 years. Seniors have unique needs that elevate the need for expedited attention with securities brokerage concerns, including lack of outside income, potential health complications and diminished mental capacity. The FINRA Securities Helpline for Seniors provides investors who feel that their account has been mishandled by a broker with quick and easy access to information and resources.

FINRA views the protection of senior investors as a key priority. The treatment of senior investors has consistently been one of FINRA's top examination priorities, and FINRA has sponsored forums for regulators and securities industry representatives to come together to identify and discuss the challenges and solutions around this segment of the investing public. The FINRA Securities Helpline for Seniors, along with a recently published paper captioned [Report on National Senior Investor Initiative](#), continue FINRA's initiatives designed to protect senior investors

## Beware of Companies Using the SEC Seal

*The SEC's Office of Investor Education and Advocacy is issuing this updated Investor Alert to help investors identify fraudsters' unauthorized use of the SEC seal as a way to convince prospective customers that a fraud, including an [advance-fee loan scam](#), is legitimate.*

The SEC has issued several related warnings about scams employing the SEC seal or making phony claims of endorsement by the SEC, including letters purporting to be signed by the [SEC Inspector General](#) and an SEC Commissioner, and fraudulent investment offers implying an SEC endorsement. *The SEC does not "approve" or "endorse" any particular securities, issuers, products, loans, services, professional credentials, firms or individuals, and does not allow private entities to use its government seal.*

Before taking any action based on correspondence purporting to come from the SEC, contact the SEC [online](#) or call 1-800-SEC-0330. Fake SEC correspondence may look authentic and include a link to the SEC's website, [www.sec.gov](http://www.sec.gov). Email messages may appear to come from SEC email accounts. Letters may imitate the official SEC seal and forge signatures of SEC officials. If you are unsure whether correspondence appearing to be from the SEC is authentic, submit a [question online](#) to the SEC or call the SEC at 1-800-SEC-0330 (or 1-202-551-6551 if calling from outside of the United States).



# Investor Bulletin: Bankruptcy for a Public Company

The SEC's Office of Investor Education and Advocacy is issuing this [Investor Bulletin](#) to educate investors about what happens when a publicly traded company declares bankruptcy.

## What happens in bankruptcy?

A company may decide to declare *bankruptcy* when it suffers from crippling debt. Federal bankruptcy laws govern how the assets and business of a company will be used to clear its debts. There are two types of bankruptcy available to companies. If the company is going out of business, then the company files for *Chapter 7 bankruptcy*. Under Chapter 7 bankruptcy, a trustee is appointed to liquidate the company's assets and use the money to pay off its debts.

Under *Chapter 11 bankruptcy*, the company seeks to reorganize its business and, in particular, restructure its debt obligations. Management often continues to run the day-to-day business operations but all significant business decisions must be approved by the bankruptcy court. If it's successful in the bankruptcy process, the company will emerge from bankruptcy with more manageable debt obligations.

***Regardless of the type of bankruptcy a company files under, any common stock in a bankrupt company is likely to be worthless. That is because the common stock (that is, "equity") is the last in line to receive what's available to be distributed in a bankruptcy proceeding. Creditors, including bondholders, suppliers and employees, all come before holders of the company's common stock. And, even if a company successfully reorganizes, its plan of reorganization often cancels the existing shares of common stock.***

## Can I still trade the stock after bankruptcy?

A company's common stock may continue to trade even after the company has filed for bankruptcy. Companies that file for bankruptcy, however, are generally unable to meet the listing standards to continue to trade on the NYSE or NASDAQ. But, even when a company is delisted from one of these stock exchanges, its shares may continue to trade on over-the-counter securities markets, such as OTCBB or the OTC Markets. There is no federal law that prohibits trading of securities of a company solely because it is bankruptcy.

**Note: "Q" is for Caution.** Once a company files for bankruptcy, a "Q" may be added to its stock symbol to indicate the company's bankrupt status. If the company issues new stock as a part of its reorganization plan, the new shares will be traded without the "Q" and the "old" shares (if still traded) will retain the "Q." Investors are often confused by the fact that, despite the likelihood that the common stock of a bankrupt company will be cancelled, the company's securities may continue to trade after the company has filed for bankruptcy protection and before it emerges as a newly reorganized company. This confusion may be aggravated by the lengthy bankruptcy process—which may take months, if not years.

## What are the risks of investing in a bankrupt company?

When a company files for reorganization under the federal bankruptcy laws, investors may be tempted to buy or hold the company's common stock in anticipation that the company that emerges from bankruptcy will be profitable. ***The reality is that when companies emerge from bankruptcy, the "old" common stock of the company is usually worthless. In most instances, the company's plan of reorganization will cancel the existing shares of common stock.***

When a company files for reorganization under the federal bankruptcy laws, investors may be tempted to buy or hold the company's common stock in anticipation that the company that emerges from bankruptcy will be profitable. ***The reality is that when companies emerge from bankruptcy, the "old" common stock of the company is usually worthless. In most instances, the company's plan of reorganization will cancel the existing shares of common stock.***

While a typical bankruptcy reorganization plan allows the reorganized company to issue new shares, holders of the "old" common stock generally do not receive any of these shares. A company must settle existing debt before it emerges from bankruptcy—and creditors, including bondholders, are the ones that usually receive these new shares as settlement.

This leaves little or nothing of value for holders of the "old" common stock. It may seem unfair, but it reflects the established priority scheme under federal bankruptcy laws and the fact that, in contrast to bondholders, holders of common stock take greater risk, but have the potential for the greater gain.

#### **How will I know what's going on?**

*How can I invest in the "new" company? If you are interested in investing in a newly reorganized company, you can do so by purchasing shares of "new" common stock after the company emerges from bankruptcy. Investing in the shares of companies that are in the middle of bankruptcy proceedings is extremely risky and can lead to financial loss.*

If you hold stocks or bonds in street name with a broker, your broker should forward information from the company to you. If you hold a stock or bond in your own name, you should receive information directly from the company. In addition, a public company is required to file Forms 8-K with the SEC that provide information regarding the bankruptcy proceedings. You can search for these Form 8-K filings on the SEC's [EDGAR](#) website.

As an investor in either the common stock or a bond of the company, you may be asked to vote on the plan of reorganization. Before you vote, you should receive from the company:

- a copy of the plan of reorganization or a summary;
- a court-approved disclosure statement which includes information to help you make an informed decision about the plan;
- a ballot to vote on the plan; and
- notice of the date, if any, for a hearing on the court's confirmation of the plan, including the deadline for filing objections.

Even if you are not afforded an opportunity to vote, you should get a summary of the disclosure statement and a notice on how to file an objection to the plan.

You may also receive other notices unrelated to the plan of reorganization, such as a notice of a hearing on the proposed sale of assets, or notice of a hearing if the company converts to a Chapter 7 bankruptcy.

#### ***How Well Do You Know Your Investment Professional?***

It is always a good idea to check on the background of an investment professional. It's easy, it's free, and it can save your life savings!

Details of an investment professional's background and qualifications are available through the Investment Adviser Public Disclosure [website](#) and FINRA's [BrokerCheck](#). If you have any questions on checking the background of an investment professional, call the SEC's toll-free investor assistance line at (800) 732-0330. You may also call the NC Securities Division at (800) 688-4507.





## **FINRA Board Approves Changes to Communications With the Public Rules, Trading Activity Fee**

On April 16, 2015, the Financial Industry Regulatory Authority (FINRA) announced that its Board of Governors has approved proposed changes to FINRA's Communications With the Public Rules, as well as amendments to the Trading Activity Fee for firms with no customers that are engaged solely in proprietary trading activity for their own accounts.

The changes to the Communications With the Public Rules follow a retrospective rule review that was launched in April 2014, which was designed to assess their effectiveness and efficiency. The proposed rule changes to the Communications With the Public Rule set are the first changes made to FINRA rules under the retrospective rule review program. FINRA will issue a Regulatory Notice in the coming months seeking comment on proposed changes to Rules 2210, 2213 and 2214.

"The proposed changes to FINRA's Communications With the Public Rules will help ensure that these rules are meeting their intended investor-protection objectives by reasonably efficient means. FINRA also announced that it is proposing to tailor its Trading Activity Fee (TAF) to the business activities of proprietary trading firms with no customers," said FINRA Chairman and CEO Richard Ketchum.

FINRA will issue Regulatory Notices soliciting public comment on a series of proposals, including:

### **Communications With the Public**

The Board authorized FINRA to publish a Regulatory Notice requesting comment on proposed amendments that would eliminate certain filing requirements that present a low level of risk to investors, such as the filing requirements for generic investment company material and investment company shareholder reports, and make other changes to better align the requirements to the relative risks presented by specific types of sales material.

### **Trading Activity Fee**

The Board authorized FINRA to publish a Regulatory Notice requesting comment on proposed amendments to the TAF for firms with no customers and are engaged solely in proprietary trading activity for their own accounts. The proposed amendments would exclude from the TAF those transactions executed on an exchange of which the firm is a member (including non-market-maker trades) provided the firm does not have customers and trades only for its own account. These proposed changes follow the SEC's recent proposal to eliminate the registration exemption for proprietary trading firms that are members of exchanges but not FINRA.

## **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.

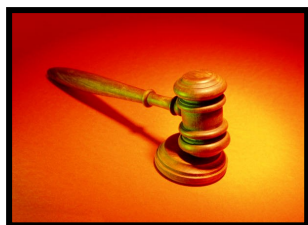


## Calendar of Upcoming Events

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](#), [Barbara Bennett](#), [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
5/1/15	Wilmington	"Elder Investment Fraud & Financial Exploitation Prevention" presentation at the 2015 NC Association on Aging Training Conference, Wilmington Convention Center, 515 Nutt Street. Time: 9:30 AM -- 10:45 AM. Conference <a href="#">registration</a> required.
5/3/15	Clinton	"Investment Fraud: Guarding Your Assets in a Scary World", Senior Adult Day at First Baptist Church (fellowship hall), 408 College Street. Time: Noon-1 PM. Contact: Paula Peters (910) 592-8124. Free, open to First Baptist Church members and their guests.
5/12/15	Lenoir	"Business Essentials" Presentation. Caldwell Community College & Technical Institute, JE Broyhill Civic Center, Room 206, 1913 Hickory Blvd. SE. Time: 9 AM — 11 AM. Event is free, but registration is <a href="#">requested</a> .
5/12/15	Blowing Rock	"Business Essentials" Presentation. Blowing Rock Fire & Rescue, 8001 Valley Blvd., Highway 321. Time: 1 PM — 3 PM. Event is free, but registration is <a href="#">requested</a> .
5/14/15	Oriental	Officials from the Secretary of State's Office, the Department of Justice and the Department of Insurance will speak at "Scam Jam." Oriental United Methodist Church. 404 Freemason Street. Time: 1 PM — 3 PM. Event is free and open to the public. For more information, contact Joan Gracie, Prime Time Activity Director, at <a href="mailto:joandgracie@gmail.com">joandgracie@gmail.com</a> or (252) 670-7409.
5/14/15	Charlotte	"Business Essentials" Presentation. Central Piedmont Community College, 1112 Charlottetown Avenue. Time: 6:30 PM – 8:30 PM. Event is free, but <a href="#">registration</a> is requested.
5/19/15	Wadesboro	"Business Essentials" Presentation. South Piedmont Community College, Lockhart-Taylor Center, 500 N. Washington Street. Time: 11:30 AM — 1:30 PM. Event is free, but <a href="#">registration</a> is requested.
5/20/15	Durham	"Business and Capital Formation: Things Every Entrepreneur Needs to Know" presentation. First Flight Venture Center (FFVC), 2 Davis Drive. Time: Noon — 1 PM. Event is free. For more information contact Adam Klein at (919) 357-4837 or visit <a href="#">FFVC online</a> .
5/21/15	Spindale	"Business Essentials" Presentation. Isothermal Community College, Communications Technology Building, Room 108, 286 ICC Loop Road. Time: 6 PM — 8 PM. Event is free, but <a href="#">registration</a> is requested.
5/28/15	Benson	Investment fraud prevention presentation. 1204 N. Johnson Street. Time: 10:30 AM — 11:30 AM. Event is free and open to the public. For more information please contact Debra Cordone at (919) 894-2370 or visit <a href="http://townofbenson.com">townofbenson.com</a> .
6/9/15	Candler	"Business Essentials" Presentation. A-B Technical Community College (Enka Campus), Small Business Center, Room 2046, 1465 Sand Hill Road. Time: 2:00 PM – 4:00 PM. Event is free, but <a href="#">registration</a> is requested.

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|---------|-----------|---|
| 6/10/15 | Charlotte | “2015 Fraud and Forensic Investigations Conference: Lessons Learned from the Experts,” sponsored by Pfeiffer University. Guest speakers include Frank Abagnale (subject of the book, movie and musical, “Catch Me If You Can”) and NC Secretary of State Elaine F. Marshall. Ritz Carlton-Charlotte, 201 E. Trade Street. Open to registered conference attendees only. For more information, please contact Erica Burroughs, Director of Development, Pfeiffer University, at (704) 463-3038 or <a href="mailto:erica.burroughs@pfeiffer.edu">erica.burroughs@pfeiffer.edu</a> . |
| 6/18/15 | Charlotte | “Investment Fraud: Guarding Your Assets in a Scary World” presentation to the <a href="#">Charlotte-Blue Ridge Chapter</a> of Hospitality Financial Technology Professionals, at Meyers Park Country Club, 2415 Roswell Avenue. Open to HFTP members and guests only.   |
| 7/16/15 | Shelby    | “Business Essentials” Presentation. Cleveland Community College, 137 S. Post Road. Time: 6:00 PM – 9:00 PM. Event is free, but <a href="#">registration</a> is requested.   |
| 9/23/15 | Cary      | Anti-investment fraud presentation. <a href="#">Heritage Pines Clubhouse</a> , 2000 Heritage Pines Drive. Time: 10:00 AM -- 11:00 AM. Free, but open to Heritage Pines residents and their guests only.   |



## 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.

**Michael Anthony Jenkins**, of Raleigh, NC, was served on August 17, 2012, with three felony arrest warrants for securities fraud. Investigators with the Secretary of State Securities Division allege that Jenkins told investors he would use their funds to trade commodities futures or “E-mini futures” through his company, Harbor Light Asset Management, LLC.

Investigators allege Jenkins instead converted funds to his personal use and used money from later investors to pay earlier investors in what is commonly referred to as a Ponzi scheme. Jenkins is in the Wake County Jail under \$500,000 secured bond. During his first hearing on August 20, 2012, the prosecutor told the court that there are 377 known victims of Jenkins’ approximately \$1.79 million Ponzi scheme. The Securities Division’s investigation is continuing. **Anyone who has made investments with Harbor Light Asset Management, LLC is asked to contact the Securities Division at (800) 688-4507 or (919) 733-3924.**

**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. He is scheduled for a preliminary hearing in Brunswick County District Court on June 3.

**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 of 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 **March 20, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued an **Order of Summary Suspension** (Order) against **Aegis Capital, LLC** (Aegis). The Order suspended 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. The Order gives Aegis thirty (30) business days in which to request a hearing. If no such request is made during that time, the Order shall become final. Click [here](#) to view the Order of Summary Suspension.

On **March 12, 2015**, the Securities Division of the North Carolina Department of Secretary of State issued a **Temporary Order to Cease and Desist** to **CAUSwave, Inc.** CAUSwave, Inc. was ordered to cease and desist from offering for sale, soliciting offers to purchase or selling, in or from North Carolina, any securities unless and until such securities have been registered and CAUSwave, and any person or entity under the direction or control of CAUSwave is properly registered as a securities dealer or salesman. The Temporary Order to Cease and Desist found that CAUSwave, Inc. was not registered as a dealer or salesman of securities in North Carolina and offered and sold shares of its unregistered stock; these activities are in violation of the North Carolina Securities Act. The Temporary Order to Cease and Desist gives CAUSwave, Inc. thirty (30) business days in which to request a hearing. If no such request is made during that time, the Temporary Order to Cease and Desist shall become final. Click [here](#) to view the Temporary 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 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 Charges North Carolina Resident Barry C. Taylor and His Companies with Commodity Pool Fraud in a Multi-Million Dollar Fraudulent Forex Scheme and with Registration Violations](#)

**April 30, 2015** — The U.S. Commodity Futures Trading Commission (CFTC) filed a civil enforcement Complaint against Barry C. Taylor of Franklin, North Carolina, charging him with operating a multi-million dollar fraudulent scheme through his firms, OTC Investments LLC and Forex Currency Trade Advisors, LLC (collectively, Defendants). On April 22, 2015, Judge Martin Reidinger of the U.S. District Court for the Western District of North Carolina, Asheville Division entered an emergency restraining Order freezing Defendants’ assets and prohibiting the destruction or concealment of their books and records. None of the Defendants has ever been registered with the CFTC, as is required.

The CFTC Complaint, filed under seal on April 21, 2015, alleges that from at least August 1, 2011 through the present, the Defendants engaged in a fraudulent scheme that solicited more than \$2.4 million from approximately 24 members of the public in North Carolina and other states within the United States and in Canada to participate in a commodity pool that traded leveraged or margined retail off-exchange foreign currency (forex) contracts.

### [Federal Court Orders North Carolina Resident James Harvey Mason to Pay a Civil Penalty and Restitution Totaling \\$5.5 Million for Commodity Pool Fraud](#)

**April 29, 2015** — The U.S. Commodity Futures Trading Commission (CFTC) today announced that Judge C. Graham Mullen of the U.S. District Court for the Western District of North Carolina entered a Consent Order against Defendant James Harvey Mason of Graham, North Carolina, imposing a \$1.67 million civil monetary penalty and restitution of \$3.88 million in connection with off-exchange foreign currency (forex) commodity pool fraud in violation of the Commodity Exchange Act (CEA). The Consent Order also permanently enjoins Mason from further violations of the CEA, as charged, and imposes permanent trading and registration bans on him. Mason has never been registered with the CFTC in any capacity.

The Consent Order finds that, commencing in at least July 2010, Mason fraudulently solicited, accepted, and pooled at least \$5.3 million from approximately 500 participants. The Consent Order further finds that Mason pooled only a portion of the participant funds and placed them in forex trading accounts in his commodity pools’ names, in which he lost over \$1.12 million trading and that he deposited the rest of the participant funds in various bank accounts, withdrawing funds as needed to make “Ponzi” payments to other participants, and misappropriating at least \$779,000 of participant funds and using such funds for purposes other than for forex trading.

## [Investment Scheme Targeting Military Personnel Halted, Fraud Charges Brought](#)

**April 14, 2015** -- The Securities and Exchange Commission announced fraud charges and an asset freeze against a man living in central Texas accused of telling false tales about his stockbroking experience to lure current and former U.S. military personnel into investing with him.

The SEC alleges that Leroy Brown Jr. touted his own military connection as an Army veteran while soliciting members of the military and other investors through his firm LB Stocks and Trades Advice LLC. Brown falsely assured investors, including some stationed at nearby Fort Hood, that he had many years of experience in the securities markets. He specifically claimed to have all the necessary licenses and registrations to conduct securities business. In reality, Brown is not a licensed securities professional and his firm is not registered with the SEC, Financial Industry Regulatory Authority, or any state regulator. Brown and his firm have no evident experience with investments.

## [SEC Charges North Carolina Executive with Fraud](#)

**April 1, 2015** -- The Securities and Exchange Commission has charged the owner and chief executive of a North Carolina business with defrauding a publicly-traded telecommunications company and its shareholders during and after its acquisition of his business. Timothy Scronce agreed to settle the charges against him without admitting or denying the SEC's findings. Scronce consented to the SEC's order requiring him to return his allegedly ill-gotten gains with interest, pay a civil penalty, and be barred for 10 years from serving as a public company officer or director.

Bloomington, Ill.-based PCTEL Inc. acquired assets of TelWorx Communications LLC and three related telecommunications companies owned or controlled by Scronce for cash and a stock-based earn-out. According to the SEC's order, Scronce used false accounting entries to inflate TelWorx's quarterly revenues and earnings in the months leading up to the purchase to inflate the price PCTEL paid for the companies. Scronce indirectly defrauded PCTEL's shareholders because TelWorx's false financial statements were incorporated into an SEC filing made by PCTEL.

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:jmaron@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!**