

North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

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**NC Securities Division
Investor Protection
Hotline**

1-800-688-4507

Mailing Address:

**PO Box 29622
Raleigh, NC 27626-0622**

www.sosnc.com

Secretary of State Marshall Speaks at Campbell Crowdfunding Symposium

Investment crowdfunding was the focus of the 2015 Campbell Law Review Symposium on Friday, October 16. The day-long symposium at Campbell Law School drew about a hundred securities attorneys, entrepreneurs and law school students, all eager to hear the latest on investment crowdfunding legislation for North Carolina.

Secretary of State Elaine F. Marshall delivered the day's featured address. She commented on the strength of the crowdfunding legislation, Senate Bill 481, which did not gain passage in the recently adjourned session of the General Assembly, and she noted the importance of getting a similar bill passed in the 2016 legislative session.

Comparing crowdfunding legislation to building basic safety features into a new highway, Secretary Marshall noted, "You need these features because bad weather can happen. That's like in the investing world when bad, fast-moving incidents happen to suddenly change the business climate. You do those things on a new stretch of highway because not all drivers are equally skilled; just as not all investors are equally savvy."

Secretary Marshall pointed to the 2008 global financial crisis as a strong case for the need for clear, enforceable securities laws to protect investors and the modern economy. She added, "that was not a crisis caused by things beyond our control. That was a crisis caused by a lack of controls." (You can read Secretary Marshall's symposium speech in its entirety on sosnc.com.)

The symposium also featured several expert panels, including a panel with recently retired SOSNC Securities Director David Massey and Sen. Tamara Barringer on policy and legal issues surrounding crowdfunding. SOSNC Investor Education Program Director John Maron spoke about fraud prevention measures as part of a panel on disclosure requirements for businesses.



**Secretary Marshall with
Campbell Law School
Dean J. Rich Leonard
and Campbell's Law
Review Group at the
2015 Campbell Law
Review Symposium.**

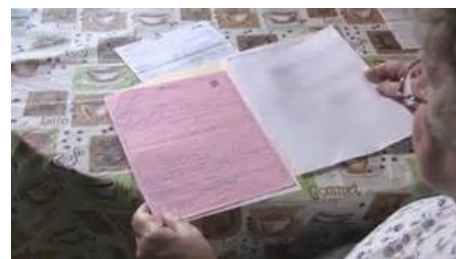


NASAA Releases Annual Enforcement Report

Report Indicates Seniors Remain a Top Target for Cons

On September 22, the North American Securities Administrators Association (NASAA) reported that senior investors continue to be a primary target for fraudulent investment pitches.

In its 2015 Enforcement Report on 2014 data NASAA reported that affinity fraud and unregistered securities scams disproportionately affect seniors. More than half of all reported enforcement actions that involved a senior victim featured unregistered securities, the report found.



“Seniors remain a top target of investment fraud and protecting seniors from investment fraud and abuse is a key priority of NASAA and its members,” said William Beatty, NASAA President and Washington Securities Director.

The report, which includes responses from 49 jurisdictions throughout the United States, indicated that seniors were targeted in one-quarter of the enforcement actions taken in 2014 by states that track victims by age.

“This number is conservative, in part, because of a reluctance by victims to approach authorities,” Beatty said, noting senior-related cases typically involved an average of three senior victims per case. Unregistered securities, in the form of promissory notes, private offerings or investment contracts continue to be the most common product involved in senior abuse cases.

Since 2008, when NASAA began collecting data from state securities agencies that track victims by age, one-third of all enforcement actions taken by state securities regulators involved senior victims, Beatty noted.

The NASAA report also said state securities regulators conducted 4,853 investigations in 2014 and took 2,042 enforcement actions. These actions led to \$405 million in restitution ordered returned to investors, fines of \$174 million and prison sentences of 1,629 years.

“Investors continue to rely upon their state securities agencies to provide frontline enforcement resources to protect them,” Beatty said. “State securities regulators serve a vital role in protecting retail investors, especially those who lack the expertise, experience, and resources to protect their own interests.”

Unlicensed individuals or firms continued to be the most common subject of state securities enforcement actions, with 746 reported enforcement actions in 2014. Among licensed financial professionals, NASAA members reported 230 enforcement actions involved broker-dealer agents, 190 actions involved investment adviser representatives, 156 involved broker-dealer firms, and 146 involved investment adviser firms.

States also continue to serve a vital gatekeeper function by screening bad actors before they have a chance to conduct business with unsuspecting investors. A total of 2,857 securities licenses were withdrawn in 2014 as a result of state action and an additional 728 licenses were either denied, revoked, suspended or conditioned.

The complete enforcement report is available on the NASAA website [here](#).



NASAA President William Beatty Presenting the Blue Sky Cube Award to Dave Massey at the 2015 NASAA Conference (Photo courtesy of NASAA)

Massey Receives Prestigious Blue Sky Cube Award from NASAA

Recently retired NC Secretary of State Securities Division Director David Massey was honored at the end of September by the North American Securities Administrators Association (NASAA) with its prestigious Blue Sky Cube Award.

Massey, who retired at the end of August after 18 years at the helm of the Secretary of State's Securities Division, received the award during NASAA's 98th Annual Conference, which was September 27-29 in San Juan, Puerto Rico.

The Blue Sky Cube Award is NASAA's highest honor, recognizing career achievement as well as distinguished contributions to securities regulation. The award is named after state securities laws, commonly referred to as "blue sky" laws. This is Massey's second Blue Sky Cube Award. He was presented with the first award following his tenure as President of NASAA in 2011.

"The fact that Dave now has won NASAA's top award twice speaks volumes about his leadership and stature on issues of investor protection," said Secretary of State Elaine F. Marshall. "Dave has become a national leader on complex issues of securities regulation, and he steered the Secretary of State's Securities Division through especially challenging economic terrain following the 2008 financial crisis. I am thankful for his many years of exemplary service and I'm gratified to see him honored by NASAA for his commitment to protecting the investing public."

During his tenure as President of NASAA, Massey testified before the US Senate Banking Committee in July of 2011 regarding enhanced investor protection in the wake of the 2008 financial crisis. He was also a founding member of the nation's Financial Stability Oversight Council, created in 2010 to identify systemic risks to the nation's financial stability.

"I am honored to have spent my career serving the public and working to protect investors," said Massey. "I feel extremely lucky to have had the opportunities that have come my way and I'm grateful to all the people who've helped me along the way."

Also presented with the Blue Sky Cube Award at the 2015 NASAA Conference were current NASAA President and Washington State Securities Director William Beatty and Tennessee Securities Director Daphne Smith.

NASAA is the oldest international organization devoted to investor protection. Its membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, Canada and Mexico.

SOSNC Workshops for Investment Advisers

The Secretary of State's Securities Division held a series of one-day educational workshops for investment advisers from around the state in September. The workshop was offered on September 15 in Charlotte, September 16 in Greensboro and September 17-18 in Raleigh.

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

The workshops were led by Betty Guido, the SOSNC Securities Division's Senior Financial Investigator, and John Maron, Director of the Division's Investor Education Program. Each workshop also featured comments from NC Secretary of State Elaine F. Marshall, who made clear the workshops are designed to protect IAs as well as the investing public.



Betty Guido leading a presentation in Greensboro



Secretary Marshall welcoming IAs to Greensboro's workshop

"I want us all working together for the same purpose: helping North Carolina investors," said Marshall. "Scammers poison the well when they rip off victims. The news articles and sad tales that follow a scam end up making everyone leery of investing. Fear of investment crime makes people become paralyzed when it comes to their finances, so that they do not trust even the best brokers or advisers."

One growing area of concern for IAs and regulators alike is cybersecurity. Cyber attacks launched against a variety of financial services firms has put the need for strong cybersecurity measures in sharp focus and made the issue a priority from the national level to the local level. IAs are strongly encouraged to carefully review and update their cybersecurity practices and policies to protect clients' financial data.

See ['IA Workshops'](#) cont. on p. 11

NASAA Reports Common IA Deficiencies

State Coordinated Investment Adviser Exams Show Signs of Improved Compliance

Books and records continue to be the most problematic compliance area for state-registered investment advisers, accounting for more than twice as many deficiencies found by state examiners as the next highest problem area, while the number of total deficiencies uncovered declined from the previous series of state coordinated examinations, according to the North American Securities Administrators Association (NASAA).

Every two years, state securities examiners voluntarily report sample data from their investment adviser examinations to NASAA's Investment Adviser Operations Project Group. The 2015 sample examination data was provided by 42 jurisdictions between January and June 2015. The 1,170 reported state examinations uncovered 4,983 deficiencies in 22 compliance areas; down 30 percent from the 6,482 deficiencies in 20 compliance areas reported in 2013.

See ['NASAA Reports'](#) cont. on p. 12

Working Group Develops Model Fee Disclosure Schedule

On September 28, the North American Securities Administrators Association (NASAA) announced that a working group it convened has developed a model fee disclosure schedule to help investors better understand and compare various broker-dealer service and maintenance-related fees and guidelines to make fee disclosure accessible and transparent.

A report from the Working Group unveiled a voluntary model fee disclosure schedule as well as specific parameters for its use. The table can be customized to be consistent with a firm's branding and should include all miscellaneous account and service fees, including account maintenance fees. It does not include commissions, mark-ups, commission equivalents, or advisory fees.

In addition to the model fee disclosure schedule, the Working Group developed a series of guidelines to make fee disclosure readily accessible and transparent for retail investors, both online and offline. The broker-dealer firms within the Working Group have adopted and are in the process of implementing both the model fee disclosure and the investor access guidelines.

“Fee disclosure increases transparency for investors, but its effectiveness depends, in part, on the accessibility and prominence of the disclosure,” the report said. “The Working Group encourages other broker-dealers to voluntarily adopt and implement the model fee disclosure and accessibility standards as a sound business practice.”

Click [here](#) to read the full press release and download the report.

Follow SOSNC on Social Media!



The North Carolina Secretary of State's Office launched accounts on several popular social media platforms last week as part of our ongoing efforts to enhance our community outreach.

You can now follow SOSNC on Twitter, Facebook, LinkedIn and YouTube for updates on everything from investor education to trademarks enforcement and charitable solicitation regulation.

Click on the icons above to go to SOSNC's social media accounts!



Podcast

SOSNC Official Featured on Entrepreneur's Podcast

If you're a frequent listener to Tom Ryan's "Success in Business" podcast you may have heard SOSNC Investor & Business Outreach Legal Specialist Leo John being interviewed in a two-part podcast recently.

Leo discussed SOSNC's new business outreach initiative to help educate entrepreneurs and business startups by holding educational workshops around the state focused on what fledgling businesses need to know to avoid common pitfalls and navigate state regulations when setting up shop.

Issues covered in workshops range from how to incorporate a business and register a trademark to how to comply with securities regulations when fundraising.

Leo also discussed crowdfunding issues from the state and federal level of regulation.

Just click on the links to listen to [Part I](#) and [Part II](#) of Leo's podcast interview. You can also subscribe to the "Success in Business" podcast on iTunes.



SOSNC Chief Deputy Maddox Addressing Cybersecurity Conference

Raleigh Conference Aims to Make Consumers Cyber-savvy

SOSNC officials joined Congressman David Price and other government agencies in Research Triangle Park in September for a conference aimed at helping consumers and businesses better protect themselves against cyber-criminals.

The conference, hosted by the National Cyber-Security Alliance (NCSA), promoted the adoption of additional security measures, such as SMS texts to your cell phone or tablet to make it more difficult for unauthorized people to gain access to your data.

NC Chief Deputy Secretary of State Rodney Maddox addressed the increasing threat of business identity theft and the need to be ever more vigilant against financial cyber-crime. The theme of increased vigilance continued in a panel discussion at the conference. John Maron, Director SOSNC's Investor Education Program, pointed to the NC Attorney General's "Shred-a-Thons" as a great way for consumers to protect themselves. The free events, held across the state, give consumers and businesses an easy way to safely dispose of pre-approved credit card offers, old bills, out-of-date account statements and other personal documents that include confidential information. To see a listing of Shred-a-Thons in your county, go to www.ncdoj.gov.



Make #Cyberaware 'Trend' in October

By Aditi Jjaveri
Consumer Education Specialist, FTC

You know what would go great with your pumpkin spiced treats this October? Cyber security! Okay, now that I have your attention, October is [National Cyber Security Awareness Month](#), and it's a great time to be #CyberAware. There are plenty of ways to participate.

Are you tech savvy, but maybe your friends or family members aren't? Check out our [easy-to-share videos](#) — and spread some good karma on social media with #CyberAware.

Are you a parent or teacher? Check out our [Net Cetera resources](#) for tips on starting the conversation with kids about online safety.

Does your company collect and use personal information? Learn how to protect it with our [Start with Security resources](#) for businesses.

Have you been a victim of identity theft? Visit identitytheft.gov for step-by-step advice that can help you limit the damage, report *identity theft*, and fix your credit.

However you choose to participate this October, we hope you'll help us raise awareness on how to be safe, secure, and responsible online.



NASAA Board Approves Release for Comment of Proposed Model Act to Protect Vulnerable Adults from Financial Exploitation

On September 29, the North American Securities Administrators Association (NASAA) announced that its Board of Directors has approved for release for comment a proposed model act to address issues faced by broker-dealer and investment adviser firms and their employees when confronted with suspected financial exploitation of seniors and other vulnerable adults.

“Working together we can and will close the holes in our safety net of support and protection for vulnerable adult investors,” said Judith Shaw, NASAA President and Maine Securities Administrator in a speech today at NASAA’s 98th Annual Conference in San Juan, Puerto Rico.

“I am pleased that NASAA is publishing for comment a proposed model act that facilitates reporting to regulators and Adult Protective Services; respects the dignity and independence of older investors by encouraging firms to develop financial advanced directives for execution by clients; permits the delay in disbursement of funds when financial exploitation is suspected; and provides immunity from administrative and civil liability for taking actions permitted under the model,” Shaw said.

The proposed model, entitled “An Act to Protect Vulnerable Adults From Financial Exploitation,” was developed by the NASAA Board-level Committee on Senior Issues and Diminished Capacity.

The proposed model act would:

- ◆ Require qualified employees of broker-dealers and investment advisers who reasonably believe that financial exploitation of a vulnerable adult may have occurred, been attempted, or is being attempted, to promptly notify Adult Protective Services and their state securities regulator. These employees also may notify any third party previously designated by the vulnerable adult as long as that party is not suspected of participating in the financial exploitation.
- ◆ Enable broker-dealers or investment advisers to delay disbursements from an account of a vulnerable adult if financial exploitation is suspected.
- ◆ Allow qualified employees of broker-dealers or investment advisers to provide records that are relevant to the suspected or attempted financial exploitation to relevant authorities.

Provide immunity from administrative or civil liability for broker-dealers and investment advisers for taking actions permitted under the act.

The model act defines “qualified employee” as any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser. The act would apply to instances where there is a reasonable belief of financial exploitation of individuals age 60 and older as well as individuals protected by state Adult Protective Services laws.

The full text of the proposed model act is available on the NASAA [website](#). The comment period will be open for 30 days.



Two Former Swisher Hygiene Inc. Executives Indicted on Securities Fraud and Obstruction of Justice Charges

Former Senior Level Corporate Employees to Plead Guilty to Securities Fraud Conspiracy

A federal grand jury has indicted two former executives of Swisher Hygiene Inc. (Swisher) on securities fraud and obstruction of justice charges, announced U.S. Attorney Jill Westmoreland Rose of the Western District of North Carolina on Monday, October 19. Joining in this announcement is Special Agent in Charge John A. Strong of the FBI's Charlotte Division.

Swisher's former chief financial officer, Michael Kipp, 61, of Charlotte, and certified public accountant and Swisher's former director of external reporting, Joanne Viard, 36, of Santa Rosa Beach, Florida, have been charged in connection with a securities fraud conspiracy allegedly carried out at Swisher throughout fiscal year 2011 and a subsequent obstruction of justice scheme in 2012. The federal indictment was returned late Monday afternoon and Kipp and Viard made their initial appearances in federal court on Tuesday, Oct. 20, 2015.

"My office has a long record of holding corporate executives accountable for their criminal conduct," said U.S. Attorney Rose. "These charges continue to make clear that regardless of title or position, my office will prosecute corporate executives who engage in financial fraud schemes that defraud the investing public and undermine the integrity of our financial markets. We will work diligently to uncover such fraud, no matter how pernicious the cover-up."

"As alleged in the indictment, these corporate executives were entrusted to fairly and accurately report the earnings of their employer; instead, they manipulated and falsified the numbers putting the hard earned money of shareholders at risk and undermining the laws in place to protect our financial markets," said Special Agent in Charge Strong. "The FBI will root out corporate fraud wherever it exists and ensure those who engage in such practices are held accountable."

These charges follow the Oct. 7, 2015, announcement that Swisher had entered into a deferred prosecution agreement with the United States, in which Swisher accepted and acknowledged responsibility for the conduct of its former employees and agreed to pay a \$2 million penalty. Formal charges were also filed on Oct. 7, 2015, against Swisher's former senior-level accounting employee, John Pierrard, who is scheduled to enter his guilty plea on Tuesday, Oct. 20, 2015, for his role in the alleged accounting fraud conspiracy.

According to allegations contained in the indictment and documents filed in related cases:

Throughout fiscal year 2011, Kipp, Viard and their conspirators engaged in an accounting fraud scheme to ensure that Swisher's reported earnings had met or exceeded executive management's forecasts, and to conceal the existence of the fraud from Swisher's auditors, Wells Fargo, the investing public and others.

Some of the fraudulent methods Kipp, Viard and their conspirators used to manipulate Swisher's books and records to fraudulently increase the company's income included reducing expenses by moving them from the company's profit and loss statement to its balance sheet as well as engaging in what is commonly referred to as "cookie jar" accounting.

The accounting fraud scheme began to unravel when Swisher's then-controller pushed back on making a fraudulent entry during the year end close. The controller wrote in an email, "I'll run it by BDO [Swisher's auditors] so we're on the same page," to which Kipp responded, "You'll run it by me since I'm the chief accounting officer. I'm out of patience with this." The controller persisted in his refusal to book the fraudulent entry and Kipp fired him. Swisher's audit committee learned of the controller's allegations and promptly commissioned an independent internal investigation. After the allegations of fraud were reported, Kipp and Viard almost immediately began to engage in misleading conduct to conceal the accounting fraud conspiracy and to obstruct justice by lying to the investigators hired by the audit committee.

Approximately 11 months following the announcement of the investigation, Swisher filed restated financial reports for the first three quarters of 2011 and filed its Form 10-K for the 2011 year. The restatement reflected, among other things, that Swisher had substantially overstated its earnings and significantly understated its losses during the relevant time period.

The indictment charges Kipp and Viard each with one count of conspiracy to commit securities fraud, to falsify books, records and accounts of Swisher, and to make misleading statements to Swisher's auditors and accountants; one count of securities fraud; one count of wire fraud; and one count of obstruction of justice. Kipp is also charged with one count of bank fraud. The conspiracy charge carries a maximum prison term of five years. The securities fraud, wire fraud and obstruction offenses each carry a maximum prison term of 20 years. The bank fraud charge carries a maximum prison term of 30 years.

The details contained in the indictment are allegations. The defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law.

U.S. Attorney Rose praised the FBI for its outstanding work in leading the ongoing investigation that resulted in the filing of these charges. Rose also thanked the U.S. Securities and Exchange Commission for their assistance in the investigation.

Assistant U.S. Attorneys Mark T. Odulio and Maria K. Vento of the U.S. Attorney's Office in Charlotte are assigned to this case.

Read the full indictment [here](#).



FINRA Board Approves Rulemaking Item to Protect Seniors and Other Vulnerable Adults from Financial Exploitation

The Financial Industry Regulatory Authority (FINRA) announced in September that its Board of Governors has approved a rulemaking item to help firms better protect seniors and other vulnerable adults from financial exploitation. The proposal would allow a firm to place a temporary hold on a disbursement of funds or securities and notify a customer's trusted contact when the firm has a reasonable belief that financial exploitation is occurring.



"Each day for the next 15 years, an average of 10,000 Americans will turn 65. Seniors are at risk, and FINRA is committed to helping protect seniors and other vulnerable adults from financial exploitation. This proposal is an important step forward that would benefit both investors and firms," said Richard Ketchum, FINRA Chairman and Chief Executive Officer.

The proposal would amend FINRA's customer account information rule to require firms to make reasonable efforts to obtain the name and contact information for a trusted contact person upon opening a customer's account.



In addition, the proposal would create a new FINRA rule permitting firms to place temporary holds on disbursements of funds or securities, from the accounts of investors aged 65 or older where there is a reasonable belief of financial exploitation. The proposal would also apply to investors 18 and older if they have mental or physical impairments that render them unable to protect their own interests and there is a reasonable belief of financial exploitation.

This new FINRA rule would not create a duty to place temporary holds on disbursements. Rather, it would provide firms with a safe harbor when they exercise discretion in placing temporary holds on disbursements.

FINRA plans to issue a Regulatory Notice soliciting comment on this proposal within the next several weeks.

On April 20, 2015, FINRA launched a toll-free senior hotline – 1-844-57-HELPS – 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. To date, FINRA has received over 1500 calls on issues including how to find information on their brokers, calls from children of deceased parents trying to locate assets or having difficulty moving assets from a brokerage firm, concerns from seniors ranging from routine poor service complaints to routine sales practice issues at firms, and fraud raised by a senior and/or child on behalf of senior investors.

SOSNC Workshops for Investment Advisors

Continued from p. 4

IAs in attendance applauded the goal of protecting investors and maintaining a level playing field and healthy marketplace for everyone. A few comments from IAs included:

“Informative and engaging—creating an open environment to ask questions.”

“All new advisors in NC should make it a point to attend.”

“This information isn’t available anywhere else. You would have to pay an attorney and quiz them for hours to get the equivalent of this seminar’s information.”

“Really appreciate the attitude of presentations—cooperation and mutual benefits. Very worthwhile.”

Guido notes that SOSNC’s workshops and other IA outreach efforts are resulting in better compliance from state-registered IAs in regards to keeping required books and records. SOSNC’s workshops for IAs go into greater detail on contract requirements as well as required financial records.

The following “Best Practices” should be considered a guide to assist investment advisors as they develop compliance practices and procedures:

Prepare and maintain all required records, including financial records. Back-up electronic data and protect records.

Prepare and maintain client profiles or other client suitability info.

Review and update all contracts. Make sure all fees are clearly noted and adequately explained in the contract.

Review and revise Form ADV and disclosure brochure annually to reflect current and accurate information. File amendments in a timely manner.

Prepare and distribute a privacy policy initially and annually.

Calculate and document fees correctly in accordance with contracts and ADV.

Keep accurate financials. File timely with the jurisdiction. Maintain surety bond if required.

Implement appropriate custody safeguards, paying attention to direct fee deduction if applicable.

Review all advertisements, including website and performance advertising, for accuracy.

Provide disclosure brochure to clients initially, then provide updates and offers to deliver afterwards as required.

Prepare a written compliance and supervisory procedures manual relevant to the type of business to include a business continuity plan.

Keep accurate financials. File timely with the jurisdiction. Maintain surety bond if required.

Review solicitor agreements, disclosures, and delivery procedures.

We hope IAs that haven’t attended a workshop, or haven’t attended one recently, will consider getting registered when SOSNC announces its next round of workshops!

NASAA Reports Common IA Deficiencies

Continued from p. 4

“The data suggests a robust state examination program and adherence to NASAA’s recommended best practices has helped investment advisers focus on remediating problem areas, which in turn reduces the risk of regulatory violations,” said William Beatty, NASAA President and Washington Securities Director.

Beatty noted that the examination results also suggest state-registered investment advisers should pay closer attention to their books and records practices. Rounding out the top five problem areas for state-registered investment advisers were: contracts, registration, fees, and custody.



“Maintaining sound books and records is the best way for investment advisers to protect themselves and their clients,” Beatty said. “Regulators encourage investment professionals to be mindful of their responsibilities and to work with us as a strong line of defense for their clients.”

State securities regulators have regulatory oversight responsibility for investment advisers with assets under management of less than \$100 million. Of the 823 investment advisers included in this year’s coordinated examinations, 232 had assets under management between of \$30 million and \$100 million and 591 had assets under management of less than \$30 million. Under the Dodd-Frank Act, about 2,100 mid-sized investment advisers with assets under management between \$30 million and \$100 million switched from federal to state oversight in 2013.

The following are the leading problem areas found within the top five deficiency categories found by state securities regulators.

Top books and records deficiencies: not maintaining client suitability documentation and order memorandum.

Top contracts deficiencies: fees not explained and not having all contracts in writing.

Top registration deficiencies: Form ADV inconsistencies between Part 1 and Part 2 and the timely filing of amendments.

Top fee deficiencies: fee charged does not match contract or ADV and unreasonable or excessive charges.

Top custody deficiencies: improper client invoice for direct fee deduction and dual invoicing of client and custodian for direct fee deduction.

Deficiencies also were found in advertising, privacy, fees, compliance/supervision, financial matters, brochure delivery, and pooled investments as well as other compliance areas.

Go to NASAA.org to see the 2015 report on NASAA IA Coordinated Examinations in its entirety.

Updated site Unveiled to Share Cross-Border E-Commerce Complaints

The Federal Trade Commission and consumer protection agencies in 33 other countries that are part of the International Consumer Protection and Enforcement Network (ICPEN) have unveiled an updated version of ICPEN's econsumer.gov to help law enforcement authorities gather and share cross border consumer complaints that can be used to investigate and take action against international scams.

ICPEN is an international network of consumer protection authorities that aims to protect consumers' economic interests around the world by sharing information about cross-border issues and encouraging global cooperation among law enforcement agencies.

"Increasingly, we live in a cross-border world in which consumers buy goods and services from around the globe, so the Econsumer.gov website is a valuable means of detecting and combating unlawful practices that are occurring across national boundaries," said Nisha Arora, ICPEN President and CMA Senior Director, Consumer. "I encourage anyone who has encountered a problem that crosses national borders to send the details to econsumer.gov."

Read the FTC's complete release [here](#).

Important Announcement Regarding Fees for the Series 63, 65, and 66 Exams

Effective January 1, 2016, the enrollment fees for the Series 63, 65, and 66 examinations will increase. Candidates enrolling for the Series 63, 65, or 66 on or after January 1, 2016, will be charged the following:

Examination	Enrollment Fee
Series 63	\$125
Series 65	\$165
Series 66	\$155

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.



Investor Alert: Investment-Related Radio Programs Used to Defraud

The SEC's Office of Investor Education and Advocacy is issuing this Investor Alert to provide investors with an overview of fraudulent schemes that may be carried out through radio programs.

Many people listen to radio programs that discuss investments. Some of these programs address general topics, such as which types of stocks, bonds, or funds might make good investments. Others may provide commentary and analysis about particular companies, investment products, or financial trends.

While many radio programs are legitimate and operate within the law, a radio program also could be part of a fraudulent scheme designed to deceive investors or the public at large. For example, a radio program might claim to be a source of unbiased information when, in fact, the program sponsor or broadcaster stands to profit if the program convinces investors to buy or sell a particular stock. Even if you do not give the radio program sponsor or broadcaster any money to invest, the sponsor or broadcaster still could profit from your trading activity. For example, you might purchase a stock (causing the stock price to rise), and then the broadcaster might sell its shares of that stock (profiting from the rise in the price of the stock at your expense).

A radio program could be involved in numerous types of investment frauds. Examples include:

- **Touting** – promoting a security without properly disclosing compensation received by the radio program sponsors or broadcasters for promoting the stock.
- **“Pump and dump” schemes** – inflating a company’s stock price by making false and misleading statements about the company to create a buying frenzy and then selling the stock at the inflated price.
- **Scalping** – recommending a stock to drive up the stock price and then selling shares of the stock at the inflated prices to generate profits.
- **Failing to disclose conflicts of interest** – falsely claiming to provide an independent analysis or failing to explain a conflict of interest or bias, including financial incentives, that may influence a given investment recommendation.

Fraudulent unregistered offerings – under the federal securities laws, a company that offers to sell its securities must register the offering with the SEC, unless a registration exemption applies. Fraudsters may use unregistered offerings to conduct investment scams by, among other things, claiming that investors can obtain high returns by taking little or no risk, and by using aggressive sales tactics.

- **Making false performance claims** – misrepresenting the track record of the radio show’s investment recommendations and using nonstandard benchmarks as a point of comparison.

Ponzi schemes – an investment fraud that involves the payment of purported investment returns to existing investors, but the purported returns are actually from funds contributed by new investors.

If a radio program promotes a particular stock or investment opportunity, listen carefully to what the program says about compensation it receives. Be on the lookout for the following red flags:

- **No disclosures.** Be suspicious if the radio program does not disclose that the program sponsor or broadcaster received any compensation for promoting a specific investment.
- **Vague disclosures.** Be skeptical of radio programs that do not specifically disclose any compensation the program sponsor or broadcaster received, who compensated them, the compensation amount, and the type of compensation payment. The following vague statements described raise red flags:
 - “From time to time, the radio program may receive compensation from the companies we discuss.”
 - “From time to time, the radio program or its sponsors or staff may hold stock in some of the companies we discuss.”
 - “The radio program receives fees from the companies we discuss.”
- **Buried disclosures.** Be suspicious if the radio program’s disclosures are made at the end of the broadcast or at a lower sound level than the rest of the broadcast.
- **Questions about your stock purchases.** If you call the radio program or if the program sponsor otherwise obtains identifying information about you, be careful if a person associated with the radio program later asks you detailed questions about your stock purchases, like how many shares did you buy, when did you buy the shares, or which broker did you use to buy the shares.

Even if a radio program does disclose that it received compensation for promoting a stock, be aware that fraudsters may make those disclosures to create the false impression that the radio program is legitimate – to promote investor confidence in the program’s recommendations and to try to obtain profits from later trading activity.

Signs of a Potential Investment Scam

Fraudsters also may use radio programs as a way to establish an air of legitimacy that would persuade individuals to invest in fraudulent schemes. Or, they may use them to get their feet in investors’ doors to make fraudulent investment pitches by phone or in person. Be careful if someone tries to persuade you to listen to a radio program and then later contacts you directly with specific investment recommendations. When considering any potential investment, watch out for these potential warning signs of investment fraud:

- **Promises of high investment returns.** Be highly suspicious if the promoter guarantees you a high rate of return on your investment. In fact, any sort of guaranteed return should trigger skepticism because all investments have some risk.
- **Pressure to buy RIGHT NOW.** Be skeptical if the promoter pitches the investment as a “limited time only” opportunity, especially if the promoter claims to base the recommendation on “inside” or confidential information.
- **Sounds too good to be true.** Exercise caution if the investment sounds too good to be true. Investments providing higher returns typically involve more risk.

Bogus Credentials / Business Experience. One way that a fraudster “tricks” investors into giving the fraudster money or access to their money is to create bogus credentials and /or business experience. Claims of certifications, degrees, training, and previous work experience can be used to lull potential investors and clients into a false sense of trust. Many of these kinds of claims can be verified by investigation. See, e.g., [FINRA Professional Designations Database](#) to decode the letters that a financial professional may include at the end of the professional’s name and to identify the organization, if any, that issues the claimed credential or designation (the database includes a disclaimer that FINRA does not endorse any professional credential or designation).

Complex products and strategies. Investors should be wary of trading strategies or financial products that are too complex to explain or understand. Fraudsters may use complex products and strategies to defraud investors.

Investigate the Program and the Program’s Associated Persons

A number of tools are available to assist you in investigating radio programs and persons associated with them:

Search SEC.gov (<http://www.sec.gov/>), contact the NC Secretary of State’s Securities Division at 1-800-688-4507), and use the website of the Financial Industry Regulatory Authority (FINRA) (<http://www.finra.org>) to research whether any regulatory actions have been taken against the radio program or anyone associated with it.

Use the SEC’s Investment Adviser Public Disclosure (IAPD) database (http://www.adviserinfo.sec.gov/IAPD/Content/IapdMain/iapd_SiteMap.aspx) or FINRA’s BrokerCheck (<http://brokercheck.finra.org/Search/Search.aspx>) website to check the background, including the registration or license status and disciplinary history, of any individual or firm buying, selling, or recommending a security.

Some entities that sponsor or broadcast radio programs are registered with the SEC as investment advisers (http://www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx) and have certain responsibilities and obligations (<http://www.sec.gov/divisions/investment/advoverview.htm>). If a radio program states that it is not broadcast or sponsored by a registered investment adviser, keep in mind that the entity broadcasting or sponsoring the program is attempting to deny that it is subject to the responsibilities and obligations of an investment adviser. Radio program sponsors or broadcasters may be registered broker-dealers and their radio programs are subject to other regulatory requirements. See [Fast Answers: Broker-Dealer Registration](#) for information about brokers and links to additional broker information.

Before making any investment, independently and thoroughly investigate the investment opportunity. For more information about how to evaluate a potential investment, read our publication [Ask Questions](#).



Investor Alert: Identity Theft, Data Breaches and Your Investment Accounts

The SEC's Office of Investor Education and Advocacy is issuing this Investor Alert to provide investors with important steps to take regarding their investment accounts if they become victims of identity theft or a data breach. Investors should always take steps to safeguard their personal financial information (e.g., social security number, financial account numbers, phone number, e-mail address, or usernames and passwords for online financial accounts). However, if identity theft or a data breach compromises your personal financial information, here are some important steps to take immediately.



Contact your investment firm and other financial institutions immediately. If you think your personal financial information has been stolen, contact your broker-dealer, investment adviser or other financial professional immediately to report the problem. You should also contact any other financial institutions where you have accounts that may be impacted by the loss of your personal financial information. These may include banks, credit card companies, or insurance companies. Please remember to document any conversations with your investment or financial firms in writing.

Change your online account passwords. Immediately change the password for any investment or financial accounts associated with the compromised personal financial information. Always remember to use strong passwords that are not easy to guess, consisting of at least eight or more characters that include symbols, numbers and both capital and lowercase letters.

Consider closing compromised accounts. If you notice any unauthorized access into your investment account, you may want to ask your investment firm to close the account and move the assets to a new account. You should consult your investment firm about the best way to handle closing an account, if you choose to do so.

Activate two-step verification, if available. Your brokerage firm or investment adviser may offer a two-step verification process for gaining access to your online accounts. With a two-step verification process, each time anyone attempts to log into your account through an unrecognized device (i.e., a device you have not previously authorized on the account), your investment firm sends a unique code to either your e-mail or cell phone. Before anyone can gain access to your account, they must enter this code and your password. Activating this added layer of security may help reduce the risk of unauthorized access to your accounts by identity thieves.

Monitor your investment accounts for suspicious activity. Closely monitor your investment accounts for any suspicious activity. Look out for any changes to your account information that you do not recognize (e.g., a change to your address, phone number, e-mail address, account number, or external banking information). You should also confirm that you authorized all of the transactions that appear in your account statements and trade confirmations. If you find any suspicious activity, immediately report it to your investment firm. Please remember to document any conversations with your investment firm in writing and provide a copy to your investment firm.

Place a fraud alert on your credit file. Placing an initial fraud alert in your credit file provides notice to potential creditors (e.g., banks and credit card companies) that you may have been a victim of fraud or identity theft and will help reduce the risk that an identity thief can use your personal financial information to open new accounts. Contact any of the three credit bureaus listed below and ask them to add an initial fraud alert to your credit file.

Experian

1-888-397-3742

www.experian.com

Transunion

1-800-680-7289

www.transunion.com

Equifax

1-800-525-6285

www.equifax.com

You only need to contact one of the credit bureaus to add the alert to your credit file at all three credit bureaus. The credit bureau you contact will notify the other bureaus about the alert. The initial fraud alert will last for 90 days, and can be renewed every 90 days. Requesting an initial fraud alert and renewing the alert are both free.

Active duty members of the military may elect to add an “active duty alert” to their credit file. Active duty alerts are the same as initial fraud alert except they last for 12 months.

If you have been a victim of identity theft, you may also consider placing an extended fraud alert or credit freeze in your credit file. An extended fraud alert is similar to an initial fraud alert except that it lasts for seven years. A credit freeze stops any new creditors from accessing your credit file until you remove the credit freeze from your credit file. Since most businesses will not open new credit accounts without checking your credit report, a freeze can stop identity thieves from opening new accounts in your name, but it does not stop them from taking over existing accounts. For additional information on extended fraud alerts and credit freezes, please visit the Federal Trade Commission’s (FTC) identity theft website at www.identitytheft.gov.

Monitor your credit reports. After you place an initial fraud alert in your credit file, you are entitled to obtain a free copy of your credit report from each of the credit bureaus. Check each of your reports for signs of fraud, such as an unknown account, a credit check or inquiry to your credit file that you do not know about, an employer you have never worked for, or unfamiliar personal information.

Consider creating an Identity Theft Report. If a breach in your personal financial information results in identity theft, you may want to consider creating an identity theft report. An Identity Theft Report helps you deal with credit reporting companies, debt collectors, and business that opened accounts in your name. You can use the report to:

- Get fraudulent information removed from your credit report
- Stop a company from collecting debts that result from identity theft
- Place an extended fraud alert on your credit report
- Get information from companies about accounts the identity thief opened or misused.

Creating an Identity Theft Report involves three steps:

1. Report the identity theft to the Federal Trade Commission (FTC) by completing the FTC’s online complaint form at <https://www.ftccomplaintassistant.gov> or by calling the FTC at 1-877-438-4338, and obtain an FTC Identity Theft Affidavit. If you decide to use the FTC’s online complaint form, please remember to print out your completed form before leaving the website since you will be unable to retrieve it once you leave the FTC’s website.

2. Contact your local police department about the identity theft and provide them with:

- A copy of your FTC Identity Theft Affidavit
 - A government-issued ID with a photo
 - Proof of your address (mortgage statement, rental agreement, or utilities bill)
 - Any other evidence you have of the identity theft (bills, IRS notices, etc.)
- A copy of the FTC’s [Memo to Law Enforcement on identity theft](#)

Ask for a copy of the police report.

3. Attach your FTC Identity Theft Affidavit to your police report to make an Identity Theft Report.

Additional information on Identity Theft Reports and identity theft in general, is available on the FTC’s website at www.identitytheft.gov.

Document all communications in writing. Remember to document, in writing, and keep copies of any communications you have related to your identity theft.

Attention Veterans, Active Duty Military, Reservists and Families



Fraud Awareness & Prevention for the Military

A Consumer Protection Seminar designed just for you!

Thursday, November 12, 2015

Registration & Exhibits Open: 8:15am

Program: 9:00am-12noon

Pritchard Memorial Baptist Church 1117 South Blvd, Charlotte, NC 28203

Featuring N.C Secretary of State, Elaine Marshall

YOU PROTECTED US, NOW LET US PROTECT YOU!

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Calendar of Upcoming Events

A representative from the Securities Division will be giving an anti-fraud presentation on the following dates and locations. Dates and times are subject to cancellation (although cancellations are rare), so please call the contact number listed to confirm the event is still on before leaving for it. All presentations are free and open to the public unless otherwise indicated. If you would like to schedule a speaker for your church, business, group or organization, please contact [John Maron](#), [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
10/15-10/26	Raleigh	SOSNC representatives will be staffing the Department's booth at the NC State Fair. Please come out to the Kerr Scott Building to meet us and learn more about what the Secretary of State's Office does for you. We'll see you at the Fair!
10/21/15	Hickory	Presentation on the "Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention Program as part of the NC Association of County Social Services Director 2015 Social Services Institute. Location: Hickory Convention Center, 1960 13th Avenue Drive SE. Registration is required. For more information, visit http://ncacdss.org/meetings/ .
10/22/15	Havelock	An official from the Secretary of State's Office will give a presentation on preventing investment fraud aimed at senior citizens. Location: Havelock Tourist Center, 201 Tourist Center Drive. Time: 10 AM—11 AM.
10/22/15	Charlotte	"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. Packard Place, 222 S Church Street. Time: 5 PM—7 PM. For more information, contact Chelsea Barrett at cbarrett@packardplace.us or call (716) 969-4808.
10/22/15	Gibsonville	An official from the Secretary of State's Office will give a presentation on how accountants and bookkeepers can help in the fight against investment fraud. This event is open to members of the NC Association of CPAs and their guests. Kimbers Restaurant, 230 W Main St. Time: 6:30 PM—8 PM.
10/23/15	Greensboro	An official from the Secretary of State's Office will speak at the "Practitioners' Tax Forum," presented by the NC Society of Accountants. SOSNC's presentation, scheduled to run from 2 PM — 3 PM, will focus on investment fraud and how accountants can help protect their clients. Accountants will also receive information on advance health care directives. Registration is required.

- 10/27/15 Greensboro SOSNC Securities SAC John Curry and Senior Enforcement Attorney Zesely Haislip give presentation on “Investigating & Prosecuting Securities Fraud” at the NC Association of CPAs 2015 Fraud Conference. Time: 12:10 PM—1:25 PM. Embassy Suites Greensboro—Airport, 204 Centreport Drive. [Registration](#) is required for this event.
- 10/28/15 Raleigh “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. US Dept of Agriculture, Rural Development Administration office, 4405 Bland Road. Time: 11AM—2 PM. For more information, contact Barry Ryan at barry@ncruralcenter.org.
- 10/30/15 Charlotte An official from the Secretary of State’s Securities Division will give a presentation about the “Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention” program as part of the Aging in Action! 2015 Centralina Annual Aging Conference. Time: 2:45 PM. To register and learn more about this event, please visit www.centralina.org.
- 11/3/15 New Bern An official from the Secretary of State’s Securities Division will give a presentation about the “Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention” program. CarolinaEast Medical Center, 2000 Neuse Boulevard. Time: 10:30 AM—1 PM.
- 11/4/15 Durham An official from the Secretary of State’s Securities Division will give a presentation on about the “Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention” program. Triangle J Council of Governments, 4307 Emperor Blvd. Time: 9:30 AM—10:30 AM.
- 11/4/15 Greenville An official from the Secretary of State’s Securities Division will give a presentation on SOSNC’s Advance Health Care Directive Registry as part of the ECU Lifelong Learning Program, ECU Self Help Center, 301 Evans Street. Time: 2 PM—3 PM.
- 11/4/15 Durham “Business & Capital Formation: Things Every Entrepreneur Needs to Know” presentation at American Underground @Main, 201 W. Main Street. Time: 3 PM—5 PM. For more information, contact Adam Klein at 919-357-4837 or visit americanunderground.com.
- 11/10/15 Concord Investment fraud presentation. Gardens or Taylor Glen, 3700 Taylor Glen Lane NW. Time: 11 AM—Noon (followed by lunch at noon). Open to Gardens of Taylor Glen residents and their guests only. For more information, contact Sharon Stoudemayer at (704) 788-6510 or visit www.taylorglencommunity.org.
- 11/10/15 Concord Presentation on SOSNC’s Advance Health Care Directive Registry, Location: Community Care of Southern Piedmont. Time: 12:30 PM—1:30 PM. This presentation is open to CCSP employees and their guests. For more information, contact Teresa Efrid at Teresaefrid@ccofsp.com.

- 11/12/15 Charlotte “Fraud Awareness & Prevention for the Military.” Secretary of State Elaine F. Marshall will speak at this event, which is being sponsored by the BBB Consumer Foundation. Time: 9 AM— Noon. Pritchard Memorial Baptist Church, 1117 South Boulevard. This event is free and open to Active Duty service members, veterans, reservists and their families. For more information, call (704) 927-8635 or email khenderson@charlotte.bbb.org.
- 11/17/15 Barco “Scam Jam” anti-fraud event. Officials from the NC Secretary of State’s Office, NC Department of Justice and the NC Department of Insurance will make presentations offering tips on how to protect yourself from a wide variety of scams. Currituck County Senior Center, 130 Community Way. Time: 10 AM—2 PM. This event is free and open to the public. For more information, contact Laura Alvarico, Director, Area Agency on Aging, Albemarle Commission at (252) 426-5753 ext. 224.
- 11/18/15 Swan Quarter “Scam Jam” anti-fraud event. Officials from the NC Secretary of State’s Office, NC Department of Justice and the NC Department of Insurance will make presentations offering tips on how to protect yourself from a wide variety of scams. Hyde County Senior Center, 160 Juniper Bay Road. Time: 10 AM—2 PM. This event is free and open to the public. For more information, contact Laura Alvarico, Director, Area Agency on Aging, Albemarle Commission at (252) 426-5753 ext. 224.
- 11/19/15 Matthews Investment Fraud and Advance Health Care Directives presentation to NC Society of Accountants. Location: Captains Cove, 11032 E Independence Blvd. Time: 6:30 PM—8:00 PM. Open to NC Society of Accountants members 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 hearing is set for March 7, 2016.

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. A Brunswick County Grand Jury has indicted Topping on the felony charges, which are now pending in Superior Court. 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 more than \$500,000 in by false pretense. On Monday, August 31 in Yadkin County Superior Court his case was continued until January 25, 2016. Fackrell remains in custody in the Yadkin County Detention Center under a \$2.25 million 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 **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.



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.

[SEC Charges Investment Adviser With Failing to Adopt Proper Cybersecurity Policies and Procedures Prior To Breach](#)

September 22, 2015—The Securities and Exchange Commission today announced that a St. Louis-based investment adviser has agreed to settle charges that it failed to establish the required cybersecurity policies and procedures in advance of a breach that compromised the personally identifiable information (PII) of approximately 100,000 individuals, including thousands of the firm’s clients. The federal securities laws require registered investment advisers to adopt written policies and procedures reasonably designed to protect customer records and information. An SEC investigation found that R.T. Jones Capital Equities Management violated this “safeguards rule” during a nearly four-year period when it failed to adopt any written policies and procedures to ensure the security and confidentiality of PII and protect it from anticipated threats or unauthorized access.

[SEC Publishes Request for Comment on Regulation S-X](#)

September 25, 2015—The Securities and Exchange Commission announced today that it is seeking public comment on the effectiveness of financial disclosure requirements in Regulation S-X. The request for comment focuses on the requirements for the form and content of financial disclosures that companies must file with the Commission about acquired businesses, affiliated entities, and guarantors and issuers of guaranteed securities. “This is an important step in our review of the disclosure requirements that apply to public companies,” said SEC Chair Mary Jo White. “We are interested in feedback from investors, companies, and other market participants to help us evaluate potential changes to Regulation S-X that would benefit both investors and companies.” The public comment period will remain open for 60 days following publication of comment request in the Federal Register.

[SEC Proposes Liquidity Management Rules For Mutual Funds And ETFs](#)

September 22, 2015—The Securities and Exchange Commission today voted to propose a comprehensive package of rule reforms designed to enhance effective liquidity risk management by open-end funds, including mutual funds and exchange-traded funds (ETFs). Under the proposed reforms, mutual funds and ETFs would be required to implement liquidity risk management programs and enhance disclosure regarding fund liquidity and redemption practices. The proposal is designed to better ensure investors can redeem their shares and receive their assets in a timely manner. The comment period for the proposed rules will be 90 days after publication in the Federal Register.

SEC Proposes to Amend Rules Governing Administrative Proceedings

September 24, 2015—The Securities and Exchange Commission today announced it has voted to propose amendments to rules governing its administrative proceedings.

“The proposed amendments seek to modernize our rules of practice for administrative proceedings, including provisions for additional time and prescribed discovery for the parties,” said SEC Chair Mary Jo White.

The proposals include three primary changes to the Commission’s Rules of Practice that:

- Adjust the timing of administrative proceedings, including by extending the time before a hearing occurs in appropriate cases
- Permit parties to take depositions of witnesses as part of discovery
- Require parties in administrative proceedings to submit filings and serve each other electronically, and to redact certain sensitive personal information from those filings

The proposals also make certain other clarifying and conforming changes. For example, the proposals include procedures related to the mechanics of the proposed expanded deposition practice, such as location, methods of recording, forms of objections, and duties of the deposition officer. The proposed amendments also would simplify the requirements for seeking Commission review of an initial decision and provide enhanced transparency into the timing of the Commission’s decisions in such appeals. The SEC will seek public comment on the proposed rule amendments concerning procedures in administrative proceedings and electronic filing for 60 days following each proposal’s publication in the Federal Register.

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

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

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

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