

# North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

**October/November 2016**  
**SECURITIES NEWSLETTER** Vol. 8, No. 10

## **NASAA Releases Annual Enforcement Report**

*For First Time, Report Shows More Actions Brought Against Registered Securities Industry Members*

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The North American Securities Administrators Association (NASAA) recently reported that for the first time since it has collected enforcement data, more registered members of the securities industry than nonregistered members were named in enforcement actions.

In its 2016 Enforcement Report on 2015 Data, which includes responses from 52 jurisdictions throughout the United States, NASAA reported that state securities regulators conducted 4,487 investigations in 2015 and took 2,074 enforcement actions. These actions led to more than \$538 million in restitution ordered returned to investors, fines of \$230 million and criminal relief of 1,282 years, including incarceration, probation and deferred prosecution.

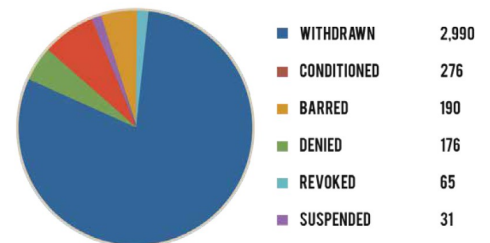
States also continued to serve a vital function by screening bad actors before they have a chance to conduct business with unsuspecting investors. A total of 2,990 securities licenses were withdrawn in 2015 as a result of state action, and an additional 738 licenses were either denied, revoked, suspended or conditioned.

"The vigorous, fair and effective enforcement of state securities laws through formal administrative, civil and criminal actions is a critical priority for NASAA members," said Mike Rothman, NASAA President and Minnesota Commerce Commissioner.

In a first, NASAA reported that its members in the United States brought enforcement actions against 812 registered industry members, compared to 791 unregistered members.

Laura Posner, NASAA Enforcement Section Chair and Chief of the New Jersey Bureau of Securities, attributed the increase in actions brought against registered securities industry members to enhanced regulatory scrutiny, and noted that the actions involved claims ranging from books and records violations, to failure to supervise, unsuitable sales, dishonest or unethical practices, unauthorized trading and fraud.

### **LICENSE SANCTIONS**



**NC Securities Division  
Investor Protection  
Hotline**

**1-800-688-4507**



### **Mailing Address:**

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

See "[NASAA Enforcement Report](#)" on page 2



## SOSNC on YouTube

Have questions about becoming a notary public or filing annual reports for your LLC or business corporation? A series of informative videos available now on [SOSNC's YouTube channel](#) has you covered!

We have recently added several new instructional videos detailing the qualifications to be a notary, the process to become a notary, and walking you through completing your North Carolina Notary Public application.

If you have a business corporation or LLC registered with the Secretary of State's Office, we also have videos that give step-by-step instructions for filing your annual reports with our Corporations Division.



## Sign up for Our RSS Feed!

You can now sign up for SOSNC's RSS (Really Simple Syndication) feed to receive our monthly Securities newsletter direct to your computer.

No checking your email inbox—just the latest securities and investor education updates from SOSNC each month, direct to your computer. Just click on the orange RSS icon above to sign up!

And follow SOSNC on Twitter, Facebook, LinkedIn and YouTube for more frequent updates on everything from investor education to trademarks enforcement and charitable solicitation regulation.

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## NASAA Enforcement Report

*Continued from [page 1](#)*

“Moving forward, it is essential that the industry take all necessary steps to protect their clients by ensuring compliance with both state and federal securities laws,” Posner said. “Given the large number of suitability and dishonest or unethical claims brought by state regulators in 2015, it is particular critical that broker-dealers put in place sufficient safeguards to ensure such practices do not continue.”

The report also identified four enforcement priorities of state securities agencies: Ponzi schemes, internet fraud, gate-keeper fraud, and senior fraud.

### CRIMINAL RELIEF OBTAINED



Rothman explained that gatekeeper fraud is particularly pernicious because of the violation of trust it represents. Intermediaries, or gatekeepers such as accountants or attorneys, are supposed to provide important services that benefit investors. “Unfortunately, state securities regulators often must take enforcement action against gatekeepers who abuse their position of trust to carry out investment fraud,” he said.

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



## SOSNC in the News

Please check out the great write-up in [Wilmington Business Journal](#) on the recent Cocalorus Connect Business Conference in downtown Wilmington. SOSNC Business and Investor Legal Outreach Specialist Leo John participated in a panel discussion on the evolving state of crowdfunding. Conference goers learned more about North Carolina's new state crowdfunding law as well as federal crowdfunding regulations, and how they could affect business startups. Read the full article [here](#).

## 2016 NC State Fair a Big Success!

By all accounts, the 2016 NC State Fair was a huge success! Beautiful weather made it possible for 1,028,364 people to enjoy this wonderful family tradition, second only to the record of 1,091,887 in 2010.

Secretary of State Elaine F. Marshall and representatives from all facets of the Department took turns staffing the Department's booth during the Fair's eleven-day run. They greeted Fairgoers, distributed information and generally answered questions about the various responsibilities the Department has and the services it provides to the citizens and businesses of this state.



NC Secretary of State Elaine F. Marshall greets some of the state's youngest citizens. Also pictured, Trey Taylor.



Fried dough is a wonderful Fair treat! Who doesn't love it? But there is nothing "sweet" when you have had the "dough" you've saved for retirement stolen from you by a con artist!

Fairgoers who visited the Secretary of State's booth this year learned how to recognize and avoid potential investment scams, meaning ... (wait for it!) ... they learned how they could have their dough and eat it, too!



Clockwise from top left: Judy Fulmore, Angela West, Emily Blue (right) and family, Verlyn Porte and Jennifer DuPree, Jana Hightower, Gail Eluwa and Sarai Brodie (flanking Miss NC Agriculture), and Harry and Sheila Taylor.

Thanks to all who helped out!

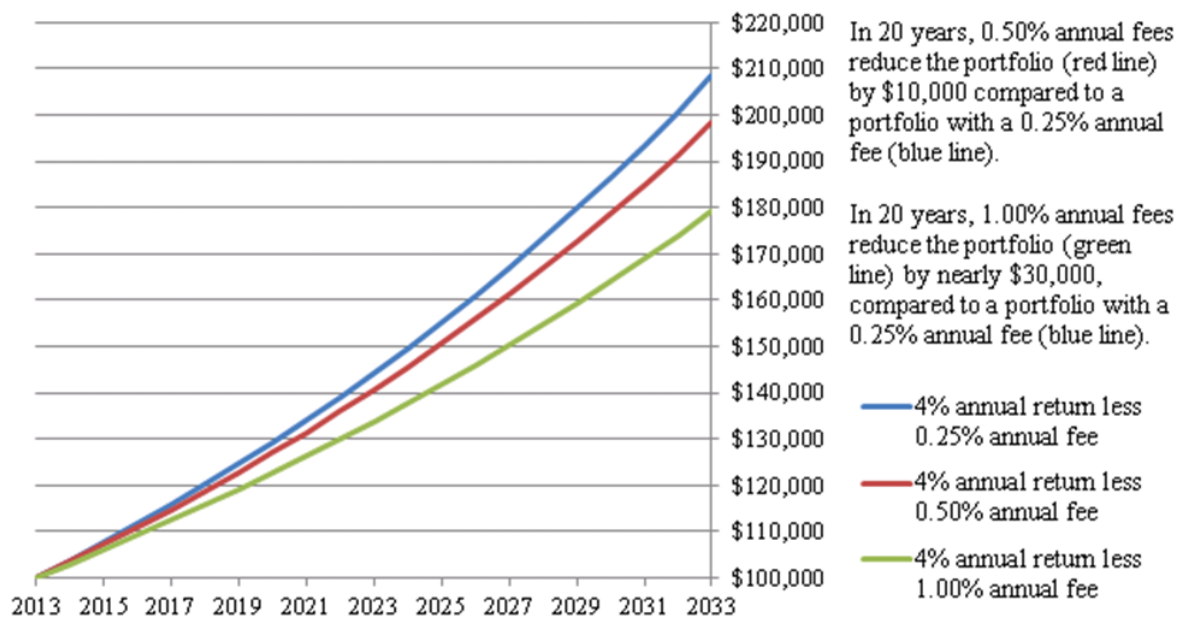


## Investor Bulletin: How Fees and Expenses Affect Your Investment Portfolio

The SEC's Office of Investor Education and Advocacy is issuing this updated [bulletin](#) to educate investors about how fees you pay for investment services and products can impact the value of your portfolio.

As with anything you buy, there are fees and costs associated with investment products and services. ***These fees may seem small, but over time they can have a major impact on your investment portfolio.*** The following chart shows an investment portfolio with a 4% annual return over 20 years when the investment either has an ongoing fee of 0.25%, 0.50% or 1%. Notice how the fees affect the investment portfolio over 20 years.

**Portfolio Value From Investing \$100,000 Over 20 Years**



Along with the other factors you think about when choosing either a financial professional or a particular investment, be sure you understand and compare the fees you'll be charged. It could save you a lot of money in the long run.

### How do I know what I'm being charged?

- **Get informed.** Find out what you may be charged by reading what your financial professional provides you. For example, look at your account opening documents, account statements, confirmations and any product-specific documents to see the types and amount of fees you are paying. *Fees impact your investment, so it's important you [understand](#) them.*
- **Ask questions so that you understand what you will be charged, when and why.**  
**Questions might include:**

**Q** What are all the fees relating to this account? Do you have a fee schedule that lists *all* of the fees that will be charged for investments and maintenance of this account?

- Q What fees will I pay to purchase, hold and sell this investment? Will those fees appear clearly on my account statement or my confirmation? If those fees don't appear on my account statement or my confirmation, how will I know about them?
- Q How can I reduce or eliminate some of the fees I'll pay? For example, may I buy the investment directly without paying a financial professional? Can I pay lower fees if I open a different type of account?
- Q Do I need to keep a minimum account balance to avoid certain fees?
- Q Are there any other transaction or advisory fees? Account transfer, account inactivity, wire transfer fees or any other fees?
- Q How do the fees and expenses of the product compare to other products that can help me meet my objectives?
- Q How much does the investment have to increase in value before I break even?
- **Ask questions about your financial professional's compensation. Questions might include:**
  - Q How do you get paid? By commission? How are commissions determined? Do they vary depending on the amount of assets you manage?
  - Q Do you get paid through means other than through commissions and amount of assets you manage and, if yes, how?
  - Q Do I have any choice on how to pay you?
- **Check your statements.** Review confirmation and account statements to be sure you're being charged correctly and ask your financial professional to break the fees down for you if it's unclear.

### **What types of fees are there?**

Fees typically come in two types—*transaction fees* and *ongoing fees*. Transaction fees are charged each time you enter into a transaction, for example, when you buy a stock or mutual fund. In contrast, ongoing fees or expenses are charges you incur regularly, such as an annual account maintenance fee.

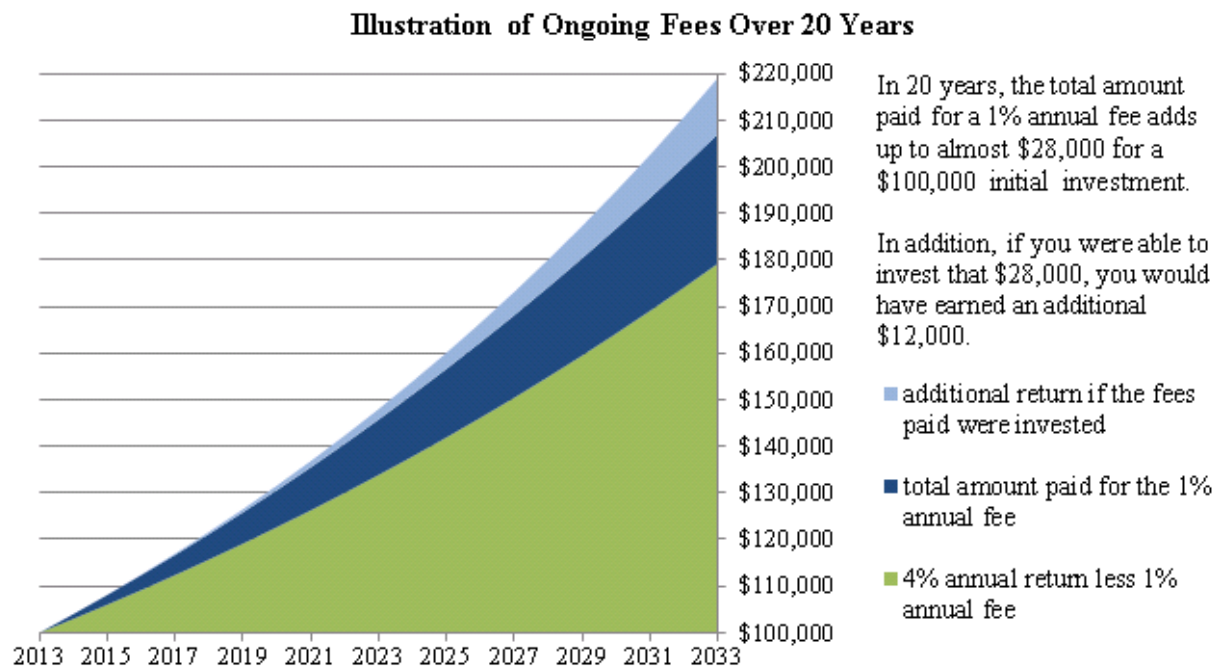
### **How do transaction fees affect your investment portfolio?**

Transaction fees are charged at the time you buy, sell or exchange an investment. As with any fee, transaction fees will reduce the overall amount of your investment portfolio.

### **How do ongoing fees affect your investment portfolio?**

Ongoing fees can also reduce the value of your investment portfolio. This is particularly true over time, because not only is your investment balance reduced by the fee, but you also lose any return you would have earned *on* that fee. ***Over time, even ongoing fees that are small can have a big impact on your investment portfolio.*** The chart above illustrates the effect of different ongoing fees on a \$100,000 investment portfolio with a 4% annual return over 20 years.

The chart below illustrates the impact of a 1% ongoing fee on a \$100,000 investment portfolio that grows 4% annually over 20 years. As the investment portfolio grows over time, so does the total amount of fees you pay. Because of the fees you pay, you have a smaller amount invested that is earning a return.



### What is an example of a transaction fee?

**Commissions.** You will likely pay a commission when you buy or sell a stock through a financial professional. The commission compensates the financial professional and his or her firm when it is acting as *agent* for you in your securities transaction.

**Markups.** When a broker-dealer sells you securities out of its inventory, the broker-dealer acts as a principal in the transaction (that is, selling to you directly the securities it holds). When acting in a principal capacity the broker-dealer generally will be compensated by selling the security to you at a price that is higher than the market price (the difference is called a *markup*), or by buying the security from you at a price that is lower than the market price (the difference is called a *markdown*).

**Sales loads.** Some mutual funds charge a fee called a sales load. Sales loads serve a similar purpose to commissions by compensating the financial professional for selling the mutual fund to you. Sales loads can be *front-end* in that they are assessed at the time you make your investment or *back-end* in that you are assessed the charge if you sell the mutual fund usually within a specified timeframe.

**Surrender charges.** Early withdrawal from a variable annuity investment (typically within six to eight years, but sometimes as long as 10 years) will usually result in a surrender charge. This charge compensates your financial professional for selling the variable annuity to you. Generally, the surrender charge is a percentage of the amount withdrawn, and declines gradually over a period of several years.

## What is an example of an ongoing fee?

**Investment advisory fees.** If you use an investment adviser to manage your investment portfolio, your adviser may charge you an ongoing annual fee based on the value of your portfolio.

**Annual operating expenses.** Mutual funds and exchange-traded funds, or ETFs, are essentially investment products created and managed by investment professionals. The management and marketing of these investment products result in expenses and costs that are often passed on to you—the investor—in the form of fees deducted from the fund’s assets. These annual ongoing fees can include management fees, 12b-1 or distribution (and/or service) fees, and other expenses. These fees are often identified as a percentage of the fund’s assets—the fund’s *expense ratio* (identified in the fund’s prospectus as the *total annual fund operating expenses*).



**401(k) fees.** The expenses for operating and administering 401(k) plans may be passed along to its participants. This is in addition to the annual operating expenses of the mutual fund investments that you may hold in your plan.

**Annual variable annuity fees.** If you invest in a variable annuity, you may be charged fees to cover the expenses of administering the variable annuity. You also may pay fees such as insurance fees and fees for optional features (often called *riders*). You will also be subject to the annual operating expenses of any mutual funds or other investments that the variable annuity holds.

## What are some examples of products with combined transaction and ongoing fees?

Some investment products or services, including mutual funds, ETFs and variable annuities, commonly include both transaction and ongoing fees as part of the structure of the product or service. For example, an ETF is bought and sold like stock, so you may be charged a commission when you use a financial professional to purchase an ETF. An ETF also typically has ongoing fees in the form of its expense ratio, referred to in the ETF’s prospectus as the *total annual fund operating expenses*. You can use the Financial Industry Regulatory Authority, Inc. (FINRA)’s Fund Analyzer to compare the cost of various types of securities, including mutual funds and ETFs.

## What other fees might I pay?

In addition to commissions, a broker-dealer may also charge certain additional fees such as fees for not maintaining a minimum balance, account maintenance, account transfer, account inactivity, wire transfer or other fees. These fees may not always be obvious to you from your account statement or confirmation statement. You should obtain information about all the fees you are charged and why they are charged. Ask your broker-dealer to explain the fees if you do not understand them.



**SEC Enforcement Actions.** The SEC routinely brings enforcement actions involving fees and costs incurred by investors. For example:

- In [SEC v. Kingdom Legacy General Partner](#), the defendants allegedly represented to investors that the investment manager charged an asset management fee of 2% per year and the fund manager charged an incentive allocation fee of 20% of all trading profits in three share classes. According to the SEC’s complaint, the defendants charged additional undisclosed fees of 40% of the trading profits in one share class and 50% of the trading profits in the other two share classes.
- The SEC recently settled three cases involving transaction costs paid by [wrap fee account](#) advisory clients. The SEC announced charges against RiverFront Investment Group, Robert W. Baird & Co., and Raymond James & Associates, Inc. related to the practice of “trading away” (using a broker other than the sponsoring broker to execute trades in which a commission is charged, in addition to the wrap fee, to the client) in wrap fee accounts (accounts where a single fee typically covers all of the management, brokerage and administrative expenses for the account). The SEC charged [RiverFront Investment Group](#), a sub-adviser to investors in multiple wrap fee programs, with failing to make accurate disclosures to its clients in wrap fee programs it managed about how much it utilized the practice of trading away in those programs. In addition, the SEC charged [Robert W. Baird & Co., Inc.](#) and [Raymond James & Associates, Inc.](#) with failing to adopt and implement adequate policies and procedures to track and provide information to their wrap fee clients and financial advisors about the amount of trading away costs charged to the clients. Without this information, the firms’ financial advisors could not separately consider the costs of trading away in determining whether the use of these programs and sub-advisers was, and continued to be, suitable for clients.

### **What can I do if I think my fees are too high?**

- **Follow up.** If your fees seem too high, ask questions. Consider following up in writing if you are not satisfied.
- **Negotiate.** In some cases, fees are negotiable, so you can talk to your financial professional about reducing them.
- **Shop around before you invest.** Just like shopping around for the best price on any other product or service, you should consider how much you are paying for investing services. However, to the extent you decide to move to a new firm, you should think about any tax consequences and fees for closing or transferring your account, for example, if you have to sell some or all of your current holdings in order to transfer.

Check the background and registration status of anyone recommending or selling an investment by using the SEC’s Investment Adviser Public Disclosure (IAPD) database, which is available on [Investor.gov](#). If you feel the fees charged to you are excessive, report your concern to the [SEC](#), [FINRA](#), or the [North American Securities Administrators Association \(NASAA\)](#).

### **Additional Information**

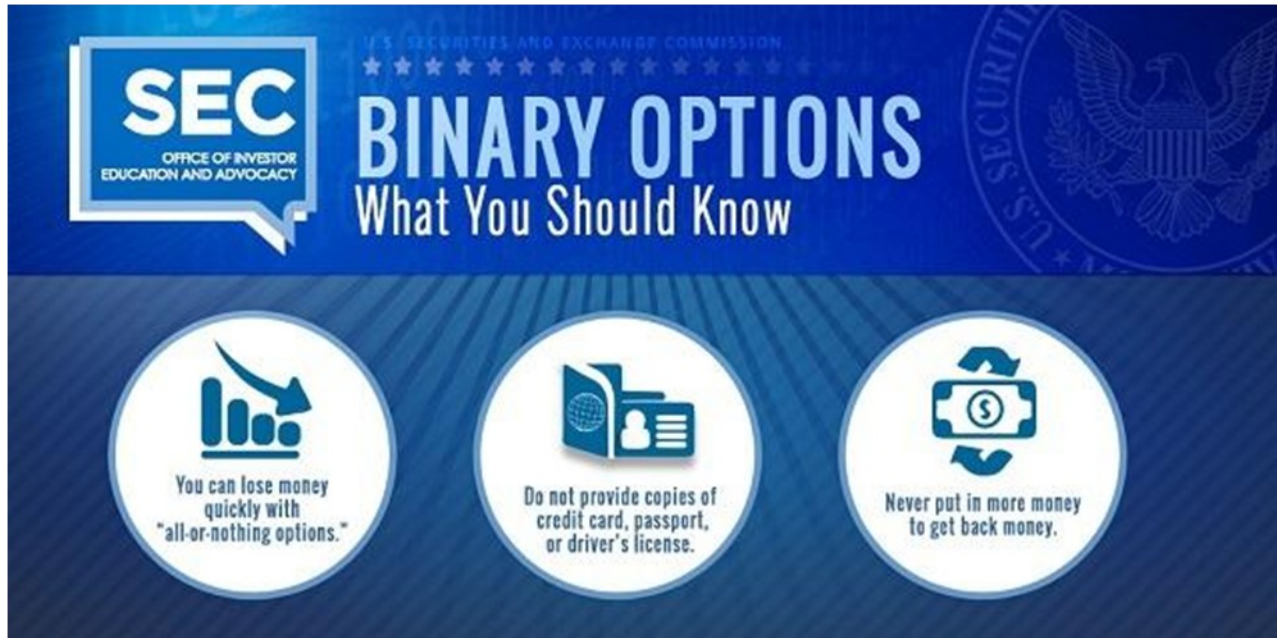
[Investor Bulletin: Brokers’ Miscellaneous Fees](#)

[Investor Bulletin: Mutual Fund Fees and Expenses](#)





The SEC's Office of Investor Education and Advocacy is issuing this [Investor Alert](#) to warn investors that fraudsters may conduct investment schemes through purported online binary options trading platforms. While some binary options are listed on registered exchanges or traded on a designated contract market that are subject to oversight by U.S. regulators such as the [SEC](#) or the [Commodity Futures Trading Commission](#), respectively, this is only a portion of the binary options market. Much of the binary options market operates through Internet-based trading platforms that are not necessarily complying with applicable U.S. regulatory requirements.



## What is a Binary Option?

A [binary option](#) is a type of options contract in which the payout will depend entirely on the outcome of a yes/no (binary) proposition. When the binary option expires, the option holder will receive either a pre-determined amount of cash or nothing at all. Given the all-or-nothing payout structure, binary options are sometimes referred to as “all-or-nothing options” or “fixed-return options.”

Typically, a representative of a binary options website will ask a customer to deposit money into an account where the customer can purchase binary options contracts. A customer may be asked to, for example, pay \$50 for a binary option contract that promises a 50% return if the stock price of XYZ company is above \$5 per share when the binary option expires.

## Be Wary of Sales Pitches

Representatives of binary options websites may use fictitious names and tout fake credentials, qualifications, and experience. They may misrepresent where they are calling from (for example, pretending that they are in the U.S.). Supposedly “unbiased” sources reviewing or ranking binary options websites may have been paid to promote or criticize particular websites. Fraudsters may “warn” you that the binary options website you are using is a scam in order to gain your trust and get you to deposit even more money in another website that they also run.

If you are considering investing money with a binary options website, look out for these red flags:

- 🚫 **Unsolicited Offers.** Unsolicited offers (you didn't ask for it and don't know the sender) to earn investment returns that seem too good to be true may be part of a fraudulent investment scheme.
- 🚫 **High Pressure Sales Tactics or Threats.** Representatives of binary options websites may use high pressure sales tactics or even threats (for example, threatening to file a lien against your property) to swindle you.
- 🚫 **Identity Theft.** Representatives of binary options websites may falsely claim that the government requires photocopies of your credit card, passport, driver's license, utility bills, or other personal data. Protect yourself and safeguard your personal information.
- 🚫 **Constant Turnover of Representatives.** Be skeptical if the names of the persons you are dealing with at a binary options website seem to change frequently or if you are told your former "broker" has been fired.
- 🚫 **Issues with Withdrawals.** Representatives of binary options websites may use delay tactics to hold up your withdrawal request until it is too late for you to dispute the charge(s) with your credit card company. The Fair Credit Billing Act (FCBA) provides consumer protections if you are charged for goods and services you didn't accept or that weren't delivered as agreed, but you must send a letter disputing the charges that reaches the creditor within 60 days after the first bill with the error was mailed to you. Also, be skeptical if someone tries to convince you to pay more money for a "premium" account with fewer restrictions on withdrawals.
- 🚫 **Credit Card Abuse.** If you used a credit card to fund your account, keep an eye out for unauthorized charges on your credit card statements. Even if you signed a form purportedly waiving your right to dispute any credit card charges, report all unauthorized charges to your credit card company immediately.
- 🚫 **Government Impersonators.** If someone claiming to be affiliated with the SEC contacts you and asks you to pay money to help you recover binary options investment-related losses, submit a Complaint Form to the SEC's Office of Inspector General (OIG) or call the OIG's toll-free hotline at (877) 442-0854. It's important for all investors to know that the SEC never makes people pay to get their money back.

## Violations of the Federal Securities Laws Involving Binary Options

In addition to perpetrating fraudulent investment schemes, the operators of binary options websites may be violating the federal securities laws through other illegal conduct, including:

- Offering or selling securities that have not been registered with the SEC (and no exemption to registration is available);
- Operating as unregistered broker-dealers;
- Operating as unregistered [securities exchanges](#);
- Making material misrepresentations to investors (for example, overstating the average return on investment, overstating the long-term profitability of investing in binary options over the course of multiple trades, or understating the risk of binary options trading.)

Furthermore, if any of the products offered by binary options trading websites are [security-based swaps](#), additional requirements will apply.

**SEC Enforcement Actions Involving Binary Options.** The SEC’s Division of Enforcement has brought charges against companies for failure to register the securities and failure to register with the SEC as a broker before offering and selling binary options to U.S. investors, as required. In [SEC v. Banc de Binary](#), the binary options seller allegedly solicited U.S. investors through methods including YouTube videos, spam emails, and advertising on the Internet, and also communicated with U.S. investors by phone, email, and instant messenger. In [In the Matter of EZTD, Inc.](#), another binary options seller allegedly misrepresented the risk of investing in binary options sold on its trading platforms, including by stating on its websites that investing in the binary options that it offered and sold is profitable when, in fact, less than 3% of its customers in the U.S. earned a profit trading binary options sold by the respondent.

***If you purchase binary options from a firm that is not registered with or subject to the oversight of the SEC, you may not have the full benefit of the safeguards of the federal securities laws that have been put in place to protect investors. Some safeguards and remedies are available only to purchasers of securities in registered offerings.*** In addition, individual investors may not be able to pursue, on their own, some remedies that are available for [unregistered offerings](#).

Before investing, check out the background, including registration or license status, of any firm or financial professional you are considering dealing with through the SEC’s Investment Adviser Public Disclosure ([IAPD](#)) database, available on [Investor.gov](#), and the National Futures Association Background Affiliation Status Information Center’s [BASIC Search](#). If you cannot verify that they are registered, don’t trade with them, don’t give them any money, and don’t share your personal information with them.

### **Additional Information**

[Beware of Off-Exchange Binary Options Trades](#)

[Binary Options: These All-Or-Nothing Options Are All-Too-Often Fraudulent](#)

[Canadian Securities Administrators Investor Alert: Unregistered binary option platforms target Canadians](#)

Report [possible securities fraud](#) to the SEC. [Ask a question or report a problem](#) concerning your investments, your investment account or a financial professional. You may also report possible fraud to the [NC Department of the Secretary of State Securities Division](#).

Visit [Investor.gov](#), the SEC’s website for individual investors.

## **Investor Bulletins: Penny Stocks**

While all investments involve risk, microcap stocks are among the most risky. The term “*microcap stock*” (sometimes referred to as “*penny stock*”) generally applies to companies with [market capitalizations](#) of less than \$250 million – although many have market capitalizations of far less than this amount. Some of these companies have no assets, operations, or revenues. Others have products and services that are still in development or have yet to be tested in the market.



The SEC’s Office of Investor Education and Advocacy has issued a series of three Investor Bulletins to provide investors with important information to consider before investing in microcap stock.

The [first Bulletin](#) provides a general overview of microcap stocks and their marketplaces, the [second Bulletin](#) provides a list of sources to research microcap stocks, and the [third Bulletin](#) provides a list of “red flags” of fraud and other important factors to consider before making an investment in microcap stocks.



# Precious Metals Fraud



The following alert from the US Commodity Futures Trading Commission is designed to notify you about tricky promises of easy profits from rising prices in precious metals such as gold, silver, palladium, and platinum. Below is information about these offers and simple ways to spot offers that could be scams.

## Signs of a Possible Fraudulent Sales Pitch

- Lead you to believe you can profit from current news already known to the public.  
*“Since that mine disaster, you are certain to earn big returns on your deposit.”*
- Made by people who call themselves “metals dealers” or “merchants.”
- Advertised on radio, television, or online.
- Contacts you asking for personal information such as your name, phone number, and email and home address.
- Calls received from a broker or salesman from the company to promote the precious metals purchase.

## Possible Persuasion Tactics You May Experience

- Dangling the prospect of wealth and enticing you with something you want, but can’t have.  
*“This gold purchase is guaranteed to rise and double what your current investments are doing.”*
- Trying to build credibility by claiming to be with a reputable firm or to have a special credential or experience.  
*“Believe me, as a senior vice president of XYZ Metals Merchant Inc., I would never sell an investment that doesn’t produce.”*
- Leading you to believe that other savvy investors have already invested.  
*“This is how Bob down your street got his start. I know it’s a lot of money, but I’m in and so is half our club.”*
- Offering to do a small favor for you in return for a big favor.  
*“I’ll give you a break on my commission if you buy now—half off.”*
- Creating a false sense of urgency by claiming limited supply.  
*“There are only two units left and the Asian market is about to open, so I’d sign up today.”*

## Frequent Sales Arrangement That May Indicate Problems

- Claiming you can make a lot of money with little risk by purchasing through a “financing agreement.”
- Structured so you only pay a small percentage (between 15% and 25%) of the total purchase price.
- Full price paid by a loan, that the company arranges, to finance the rest of your purchase.
- Claims that the company will store the precious metals for you in a storage facility or “bank.”

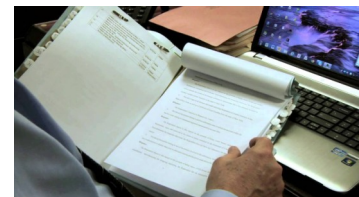


## Frequent Problems

- Often do not use your money to purchase metals at any time.
- Do not actually arrange for loan financing with an independent financial institution, but charge phony interest.
- Do not store metal with an independent bank or storage facility, but charge storage fees.
- Fraudulently fail to point out that because you are not paying the full price for the metals, you will have to send the company additional funds if prices move unfavorably.
- Often use your funds to pay themselves commissions, leaving little for you.
- Usually do not make you the promised profits and lose all or a significant portion of your money.

## Precious Metals Sales Warning Signs!

- States that precious metals transactions are not regulated by the CFTC or the National Futures Association.
- Agreement that does not identify the financial institution or bank that will be loaning you the money.
- Agreement that does not identify where the physical metal is located.
- Claims to deliver the physical metal to an overseas storage facility.
- Difficulty in verifying the company’s license.
- A salesperson that cannot provide a way to prove their licensure from a government agency.
- A salesperson offering highly complex purchasing techniques for unusual success.
- Missing documentation that seems necessary.



## Before Investing in Precious Metals, Ask, Ask, and Ask Some More!

- Contact the CFTC at (866) 366-2382 or the National Futures Association to check the company's registration status, business background, and disciplinary history.
- Ask how the financial professional is qualified to provide you with this service.
- Ask how the product meets your financial needs.
- Ask how the financial professional is paid for his/her service.



If you have questions, are aware of suspicious activities, or believe you have been defrauded, please contact the CFTC quickly. Call the CFTC or file a [tip or complaint](#).

The North Carolina Department of the Secretary of State Securities Division has its own alert on what investors should know about investing in gold. Click [here](#) to view this alert. For free copies of this alert, email [John Maron](#)



## Technology is changing how people access their financial records: Share your story

If you use financial services that require you to allow access to your digital financial records, the Consumer Financial Protection Bureau would like to hear from you.

Across the economy, technological advancements have helped make people's lives easier and more efficient in ways prior generations could only imagine. The same is true of financial products and services, but like any new innovations there are risks, too. Many new financial innovations rely on people choosing to give a company access to their digital financial records held by another company. These innovations include tools that help you budget, file your taxes, pay bills, put aside savings regularly and automatically, apply for loans, and more.



We're seeking to understand the full range of benefits people receive and risks they may face when they access and share their financial records with other financial companies. If you're using products or services that access your financial records stored by another company, we'd love to hear about your experiences.

Make your voice heard. Share your comments on [Facebook](#) or [Twitter](#). If you want to give us more details, [you can share your story](#) with us through our website. To see and respond to the full range of questions we're interested in learning about, visit our formal [Request for Information](#).

Visit the [CFPB blog](#) for all the details!



## It Can Be Hard to Recover from “Recovery” Scams

It’s an alluring offer. You hear from someone who claims to be able to help you recover money you lost from a previous investment. The information sounds credible and the organization sounds legitimate. Documents you receive also look authentic, and the money that’s promised is not only welcome, but seems well-deserved compensation for previous losses.

The catch? They want you to pay money upfront for the recovery “services,” which in some cases are purely fraudulent. In addition to the original money you lost, you now may lose more money at the hands of professional con artists.

FINRA is issuing this alert to warn investors, particularly investors who live outside the U.S., that offers to recover money lost from securities investments may be fraudulent. Both FINRA and the [SEC](#) routinely receive questions and concerns about recovery offers.



This [alert](#) provides seven tips for how to spot and avoid fraudulent “recovery” scams. In an accompanying [resource](#), FINRA offers information about legitimate ways to attempt to recover funds or be compensated for losses.

### International Targets

While recovery scams can take many forms, investors who have contacted FINRA from abroad report a similar series of tactics:

- Urgent correspondence and high-pressure calls are received from official-sounding organizations that claim falsely to be working closely with the U.S. government.
- In a number of cases, the correspondents and callers impersonate registered securities professionals and brokerage firms. In some instances, they go so far as to falsely use the name of a real person or firm that is registered with FINRA—and some will even encourage investors to research their names on FINRA BrokerCheck in an attempt to bolster credibility and build trust.
- Once contact is made with the investor and the investor expresses interest, a series of official-looking documents are sent that assure the investor that money is waiting in an account and can be recovered for a fee.

**Real-life example:** One international caller received a series of emails and phone calls from individuals who claimed to be associated with a number of important-sounding institutions including “Beacon Hill Regulatory Trade Commission” and the “Federal Financial Regulatory Board” (neither organization exists). The caller received a document describing a “regulatory guarantee,” purportedly signed by FINRA’s CEO, entitling him to funds associated with a previous petroleum private placement investment he had made (no such documents are ever sent by FINRA or other securities regulators). The caller was told that funds had been placed in an account and would be released to him if he paid the amount stated on an official-looking invoice. The fee would remove a “restricted title” on shares in his original private placement investment.

## Seven Tips

If you find yourself in contact with someone offering to help you recover lost capital, use these tips to help you avoid suffering additional losses:

1. **Proceed with caution.** Be extremely skeptical of a purported U.S. firm reaching across the globe offering to recover funds on your behalf, especially if the firm claims to be a regulatory organization, law firm or U.S. brokerage firm. If you choose to contact a firm that claims to be registered with FINRA, do so **using the contact information found on Page 1 of the firm’s full BrokerCheck report**, not a number provided by the organization that contacted you. Posing as a legitimate securities firm, regulator or government agency is a tried and true tactic of fraudsters designed to build [credibility](#). It is often a first step in a series of tactics designed to culminate in the payment of money to the scammers.
2. **Do some research.** Do an internet search of the organizations or individuals who contact you. Also search the type of offer you are being pitched and tactics used. **Do so before you send any money.** You may turn up red flags, or find that consumer protection, regulatory or law enforcement organizations have identified your situation as a potential fraud.
3. **Consider your history.** Realize that a previous purchase of speculative securities that lost money, or an earlier fraud, makes you a **more likely candidate** for additional scams, including follow-on frauds. Lists of previous victims are often recirculated. It is common for scammers to “go back to the well” and try to take more money from a previous victim.
4. Know the tricks fraudsters use. On its [MoneySmart](#) website, the Australian Securities & Investments Commission cautions investors to be aware of follow-up (or recovery) scam tactics. These include offers to: (1) swap your investment for another to recover losses; (2) buy your shares back at a premium (provided you pay an administration or other fee); or (3) recover your losses for a fee described as a tax, deposit or refundable insurance bond. FINRA’s [website](#) includes numerous “tricks of the trade,” including the influence tactics and persuasion techniques cons tend to use, along with ways to avoid becoming victimized. And the United Kingdom’s Financial Conduct Authority provides additional [tips](#) related to avoiding scams, including recovery scams.
5. **Don’t send money by wire transfer.** Fraudsters often push to have funds sent by wire transfer. When you wire money, it can go anywhere in the world, and you can’t get it back. In general, unless the person is well known to you (a relative, for instance) don’t send money by wire transfer, and treat requests to do so with caution.
6. **Call your national securities regulator before sending any money.** Visit the website of the [International Organization of Securities Commissions \(IOSCO\)](#) to find contact information for the national securities regulator in your country. In the U.S., contact the [SEC](#) or [FINRA](#). SEC or FINRA.
7. **Learn about legitimate avenues for recovery and investment losses.** All investments carry some degree of risk, including risk of loss, even of all their value, if market conditions sour. But if you believe you have been treated unfairly, FINRA, other regulators and the courts have [mechanisms](#) to help you recover assets or receive compensation.

If you suspect fraud, you can file a complaint using FINRA’s online [Investor Complaint Center](#) or call FINRA at (240) 386-4357. Filing a complaint is something investors can do on their own. Think twice if someone offers to help you file an investor complaint with any securities regulator—FINRA, the Securities and Exchange Commission or your state securities regulator—for a fee.



## Additional Resources

- SEC Investor Alert: [What You Should Know About Asset Recovery Companies](#)
- FINRA Investor Alert: [Well-Traveled Fraud—Advance-Fee Scams Target Non-U.S. Investors Using Fake Regulator Websites and False Broker Identities](#)
- SEC Investor Alert: [Be on the Lookout for Advance Fee Fraud](#)
- FINRA Securities Helpline for Seniors: 1-844-574-3577



The North Carolina Department of the Secretary of State Securities Division has its own alert about third-party asset recovery companies. Click [here](#) to view this alert. For free copies of this alert, email [John Maron](#).

## 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.

Pick up the phone and call us.

You owe it to yourself and your family to check.



## Calendar of Upcoming Events

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

Date	City	Details
11/29/16	Asheville	<p>“Starting and Financing a Venture in N.C.” presentation. Twisted Laurel, 130 College Street, Asheville, NC 28801. Time: 10:30 AM—1:00 PM. Free and open to the public. A representative of the NC Department of the Secretary of State Securities Division will discuss things that all new startups need to know when starting and financing a new business, and how the Department of the Secretary of State can assist. For more information, contact Leo John at <a href="mailto:ljohn@sosnc.gov">ljohn@sosnc.gov</a>.</p>
11/30/16	Greenville	<p>“Crowdfunding in NC” presentation at ECU business incubator, E 5th St., Greenville, NC 27858. Time: 5:30 PM -- 6:30 PM. This presentation is planned as an overview of investment crowdfunding for entrepreneurs that may want to utilize this option. Leo John of the NC Securities Division will cover the following: a regulatory overview and how crowdfunding fits within securities laws, the legal do’s and don’ts of a crowdfunding offering; the marketing aspects — what you can say and how to reach investors; and utilizing a web site intermediary — picking one and connecting with investors. For additional information, please contact John Ciannamea at <a href="mailto:ciannameaj16@ecu.edu">ciannameaj16@ecu.edu</a>.</p>
12/1/16	Weldon	<p>“Crowdfunding in NC” presentation at Halifax Community College, 100 College Dr., Weldon, NC 27890. Time: 1:00 PM — 2:00 PM. ECU business incubator, E 5th St., Greenville, NC 27858. Time: 5:30 PM -- 6:30 PM. This presentation is planned as an overview of investment crowdfunding for entrepreneurs that may want to utilize this option. Leo John of the NC Securities Division will cover the following: a regulatory overview and how crowdfunding fits within securities laws, the legal do’s and don’ts of a crowdfunding offering; the marketing aspects — what you can say and how to reach investors; and utilizing a web site intermediary — picking one and connecting with investors. For additional information, please contact Jerry Edmonds at <a href="mailto:jedmonds080@halifaxcc.edu">jedmonds080@halifaxcc.edu</a>.</p>
1/11/17	Durham	<p>“Investment Fraud: Guarding Your Assets in a Scary World” presentation to Money Matter\$ Women’s Group, Croasdaile Country Club, 3800 Farm Gate Ave., Durham, NC 27705. Time: 5:30 PM — 7:00 PM. A representative of the NC Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains. For more information please contact Lisa Gabriel at <a href="mailto:lgabriel@pinaforewealth.com">lgabriel@pinaforewealth.com</a>.</p>

- 1/12/17      New Bern      "Scam Jam" anti-fraud presentation at Craven County Senior Center, 811 George St., New Bern, NC 28560. Time: 10:00 AM -- 12:00 PM. Free and open to the public. Representatives of the NC Department of the Secretary of State Securities Division, NC Department of Justice Consumer Protection Division, and the NC Department of Insurance Senior Health Insurance Information Program will provide information on how you can protect yourself from falling victim to a wide range of scams. Do not miss this important workshop! Bring your friends and family members!
- 1/16/17      Dunn      Cape Fear Accountants meeting at The Brass Lantern, 515 Spring Branch Rd., Dunn, NC 28334. Time: 6:30 PM -- 7:30 PM. Free, but open only to Cape Fear Accountants and their guests. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains. For more information please contact Marsha Wheeler at [mwheeler14@nc.rr.com](mailto:mwheeler14@nc.rr.com).
- 1/23/17      Asheville      TRIAD Crime Prevention Series at the Osher Lifelong Learning Institute, University of North Carolina Asheville, Reuter Center, 1 Campus View Rd., Asheville, NC 28804. Time: 2:00 PM - 4:00 PM. Free. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains. A representative of the Buncombe County Sheriff's Office will discuss other types of consumer frauds and scams. For more information, click the link above or contact Betsy Cantrell at [olli@unca.edu](mailto:olli@unca.edu).
- 2/9/17      Jamestown      "Investment Fraud: Guarding Your Assets in a Scary World" presentation to the Cedarwood Garden Club, 412 Cedarwood Drive, Jamestown, NC 27282. Time: 10:00 AM -- 11:00 AM. Free, but open to members of the Cedarwood Garden Club and their guests only. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains.
- 2/12/17      Raleigh      "Investment Fraud: Guarding Your Assets in a Scary World" presentation to the Raleigh Chapter of Sisters in Crime. Earth Fare, 10341 Moncreiffe Road, Raleigh, NC 27617. Time: 1:00 PM -- 3:00 PM. Free, but open to members of Sisters in Crime and their guests. Meeting will take place in the meeting room to the far left, through the cafe area. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds and scams.

- 2/22/17 Fayetteville "Starting and Financing a Venture in N.C." presentation at Womens Business Center, 230 Hay St., Fayetteville, NC 28301. Time: 10:00 AM -- 11:00 PM. A representative of the NC Department of the Secretary of State Securities Division will discuss things that all new startups need to know when starting and financing a new business, and how the Department of the Secretary of State can assist. For more information, contact Shannon Loper at [sloper@nceed.org](mailto:sloper@nceed.org).
- 4/24/17 Asheboro CPE Training - "Investment Fraud: Guarding Your (Clients') Assets in a Scary World" - Central Chapter of the NC Society of Accountants, Sagebrush Restaurant, 1505 E Dixie Drive, Asheboro, NC 27203. Time: 6:00 PM -- 8:00 PM. Open to NC Society of Accountants members and their guests. A representative of the Securities Division will provide an overview of investment fraud and how we can help accountants help protect their clients. Also, information will also be presented about the Advance Health Care Directive Registry which the Department manages for the State. This is another valuable resource accountants can direct their clients to when making plans for their future.
- 6/13/17 Hickory "Investment Fraud: Guarding Your Assets in a Scary World" presentation to ACAP-Hickory meeting, Mt. Olive Lutheran Church, 2780 N Center Street, Hickory, NC 28601. Time: 5:30 PM - 7:00 PM. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains. For more information, please contact Frances S. Hall at [fhall@compascable.net](mailto:fhall@compascable.net).



## 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 has been scheduled for March 6, 2017.

**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, pleaded guilty on April 12 in federal court to one count of securities fraud. A sentencing hearing in Charlotte at the U.S. District Court for the Middle District of North Carolina has been set for December 6, 2016. Fackrell is still facing trial in state court on charges of obtaining property by false pretenses. He is currently in the custody of the U.S. Marshals Service under a \$2.25 million bond.

## Recent Enforcement Actions

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



On **October 18, 2016**, the Securities Division of the North Carolina Department of the Secretary of State issued a **Final Order** against **Daniel P. Sexton**. The Order obligates Mr. Sexton to cease and desist from violating the N.C. Securities Act (G.S. Ch. 78A) and also to accurately report information on Form U-4. Mr. Sexton further agreed to amend his Form U-4 in a timely manner. In addition, the Order required a monetary payment of \$1,000.00 in settlement of the Securities Division's investigation. The Order found Mr. Sexton had failed to disclose business activities outside the scope of his employment with his securities dealer and, consequently, had filed an incomplete application for registration under the N.C. Securities Act. Click [here](#) to view the Order.

On **July 14, 2016**, the North Carolina Secretary of State's Securities Division issued an **Order of Summary Postponement** to **Palmetto Premier Advisors, LLC**. The Order of Summary Postponement ordered pursuant to the authority contained in N.C.G.S. §78C-19(c) and 78C-19(f), that, pending a hearing and a final determination of this matter, the North Carolina registration of **Palmetto Premier Advisors, LLC** as an investment adviser be postponed. Click [here](#) to see the 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 Approves Plan to Create Consolidated Audit Trail](#)

**Nov. 15, 2016** — The Securities and Exchange Commission voted to approve a national market system (NMS) plan to create a single, comprehensive database known as the consolidated audit trail (CAT) that will enable regulators to more efficiently and thoroughly track all trading activity in the U.S. equity and options markets.

### [SEC Chair Mary Jo White Announces Departure Plans](#)

**Nov. 14, 2016** — SEC Chair Mary Jo White, after nearly four years as the agency's head, announced that she intends to leave at the end of the Obama Administration. Under Chair White's leadership, the Commission strengthened protections for investors and the markets through transformative rulemakings that addressed major issues highlighted by the financial crisis. The Commission also instituted a new approach to enforcement that has resulted in greater accountability and record actions through, among other things, the use of admissions of wrongdoing and enhanced data analytics and technology.

### [Study Finds 1 in 3 Student Loan Holders with Payments Due Are Late with Payments and More Than Half Regret Their Borrowing](#)

**November 14, 2016** — Nearly half of young Americans start their working lives with student debt, and 43 million Americans carry student loans. A new study by the Global Financial Literacy Excellence Center (GFLEC) at the George Washington University School of Business found that many borrowers are struggling to make student loan payments and regret their borrowing. GFLEC's [newly published policy brief](#) reports that most borrowers did not fully understand what they were taking on when they obtained student loans. Additionally, 54 percent of student loan holders did not try to figure out what their monthly payments would be before taking out loans. And 53 percent said that if they could go back and redo the process of taking out loans, they would do things differently.

### [SEC Adopts Final Rules to Facilitate Intrastate and Regional Securities Offerings](#)

**Oct. 26, 2016** — The Securities and Exchange Commission adopted final rules that modernize how companies can raise money to fund their businesses through intrastate and small offerings while maintaining investor protections.

The final rules amend Securities Act Rule 147 to modernize the safe harbor under Section 3(a)(11) of the Securities Act, so issuers may continue to use state law exemptions that are conditioned upon compliance with both Section 3(a)(11) and Rule 147. The final rules also establish a new intrastate offering exemption, Securities Act Rule 147A, that further accommodates offers accessible to out-of-state residents and companies that are incorporated or organized out-of-state.

To facilitate capital formation through regional offerings, the final rules amend Rule 504 of Regulation D under the Securities Act to increase the aggregate amount of securities that may be offered and sold from \$1 million to \$5 million. The rules also apply bad actor disqualifications to Rule 504 offerings to provide additional investor protection, consistent with other rules in Regulation D. In light of the changes to Rule 504, the final rules repeal Rule 505 of Regulation D. Amended Rule 147 and new Rule 147A will be effective 150 days after publication in the Federal Register. Amended Rule 504 will be effective 60 days after publication in the Federal Register. The repeal of Rule 505 will be effective 180 days after publication in the Federal Register.

## **SEC Proposes Amendments to Require Use of Universal Proxy Cards**

**Oct. 26, 2016** — The Securities and Exchange Commission voted to propose amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees. The proposal gives shareholders the ability to vote by proxy for their preferred combination of board candidates, similar to voting in person.

## **FINRA Files Rule Proposal with SEC to Protect Seniors and Other Vulnerable Adults from Financial Exploitation**

**October 20, 2016** — The Financial Industry Regulatory Authority (FINRA) submitted to the Securities and Exchange Commission (SEC) proposed rules addressing the financial exploitation of seniors and other vulnerable adults. FINRA is proposing amendments that would require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account. In addition, FINRA is proposing a new rule that would permit firms to place a temporary hold on a disbursement of funds or securities when there is reasonable belief of financial exploitation, and to notify the trusted contact of the temporary hold. The rule change is not effective until approved by the SEC. Currently, FINRA's rules do not explicitly permit firms to contact a non-account holder or to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of a senior or other vulnerable adult.

## **SEC Announces Enforcement Results for FY 2016**

**Oct. 11, 2016** — The Securities and Exchange Commission announced that, in the fiscal year that ended September 30, it filed 868 enforcement actions exposing financial reporting-related misconduct by companies and their executives and misconduct by registrants and gatekeepers, as the agency continued to enhance its use of data to detect illegal conduct and expedite investigations.

The new single year high for SEC enforcement actions included the most ever cases involving investment advisers or investment companies (160) and the most ever independent or standalone cases involving investment advisers or investment companies (98). The agency also reached new highs for Foreign Corrupt Practices Act-related enforcement actions (21) and money distributed to whistleblowers (\$57 million) in a single year.

The agency also brought a record 548 standalone or independent enforcement actions and obtained judgments and orders totaling more than \$4 billion in disgorgement and penalties.

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

This newsletter is produced by the Investor Education Program of the Securities Division of the North Carolina Department of the Secretary of State. If you have questions or comments about this publication, or would like to schedule an investor education presentation with your group or organization, please email [John Maron](mailto:John.Maron@sosnc.gov), 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.gov](mailto:jmaron@sosnc.gov) with "Remove from mailing list" in the subject line.

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