



North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

May 2016 SECURITIES NEWSLETTER • Vol. 8, No. 5

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Equity Crowdfunding Headlines Wake CLEs

As new federal equity crowdfunding rules under the Jumpstart Our Business Startup (JOBS) Act finally came into law on Monday, May 16, crowdfunding took center stage at two separate continuing legal education (CLE) seminars presented by the Secretary of State’s Office for non-securities attorneys.

NC Secretary of State Elaine F. Marshall noted that even with the federal law now in effect, North Carolina would still benefit from having its own state law on the books. State crowdfunding legislation has failed to gain passage in the past two sessions of the General Assembly.

“One thing I can tell you after being North Carolina’s ‘Cop on the Beat’ for investor protection for many years is: When North Carolinians feel they have been ripped off by someone here selling them bad investments—they want a state response.”



***Elaine Marshall
addressing Wake
County CLE.***

Comparing crowdfunding legislation to building basic safety features into a new highway, Secretary Marshall noted, “You need these features because bad weather happens. Just as the investing world, unexpected events can suddenly produce a stormy business climate. This is particularly true with offers to invest in start-ups, which carry a heightened risk.”

Protections built into Senate Bill 481 included limiting the amount that a non-accredited investor could give in a 12-month period to \$5,000, as well as a requirement that the companies seeking investors provide a thorough description of the company and disclose identifying information about the principals seeking the investment.

Secretary Marshall also highlighted the urgent need for crowdfunding regulation to keep pace with emerging technology, noting that “when things go bad in these high-tech schemes, they can go bad faster than a human being can react. We need to have the option where North Carolina issuers can make crowdfunding offers to North Carolina investors in a well-regulated environment.”

Following up Secretary Marshall's presentation, Leo John spoke to attorneys about the specifics of the federal crowdfunding law.

John pointed out that new federal rules now allow companies to raise small amounts of capital online from a broad group of investors.

Companies may offer any type of security (e.g., stock, debt, return on investment, or other forms of interests in a company) pursuant to Section 4(a) (6) of the Securities Act of 1933 without registering the offer.

Transactions made in reliance on Section 4(a)(6) must be conducted through a SEC-registered Internet website, termed a funding portal, or via a single registered broker-dealer.

An issuer may raise an aggregate of \$1 million during a 12-month period.

Amounts raised through other exempt transactions will not be counted in determining the aggregate amount raised, and offerings made will not be integrated with other exempt offerings made by the issuer (such as Regulation D offerings), provided the conditions of each exemption are satisfied.

However, amounts raised by a predecessor to the issuer or by entities controlled by or under common control with the issuer must be aggregated for purposes of the \$1 million limit.

An issuer seeking to raise capital is required file certain disclosures with the SEC in an offering statement on a new Form C and to provide the same disclosures to investors through the issuer's chosen intermediary.

That form and other filings must be provided electronically on the SEC's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system, and the issuer must check the relevant box on the cover of the Form C to indicate the purpose of the Form C filing.

The rules include limits on how much an individual can invest into crowdfunding offerings, ranging from \$2,000 to \$100,000 depending on the income and net worth of each investor.

To read the SEC's final rules on crowdfunding in their entirety, please go to www.sec.gov/rules/final/2015/33-9974.pdf.

If your county's chapter of the bar association is interested in requesting a CLE from the Secretary of State's Office on securities and crowdfunding issues, please contact Leo John at (919) 733-3924.



Leo John covering details of federal crowdfunding in Wake CLE.

Crowdfunding and the JOBS Act: What Investors Should Know

Investors can now buy securities through crowdfunding.

"Crowdfunding" generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors. Under new rules effective May 16, 2016, the general public can invest in capital raising by start-up companies. This advisory is designed to help the public understand the crowdfunding rules and processes so they can make informed decisions about the risks and rewards of investing in these early-stage businesses.

What Are the Rules?

Title III of the Jumpstart Our Business Startups Act (JOBS Act) established crowdfunding provisions that allow early-stage businesses to offer and sell securities. The SEC subsequently adopted [Regulation Crowdfunding](#) to implement the crowdfunding provisions of the JOBS Act. The role of the Financial Industry Regulatory Authority (FINRA) is to oversee the registration of crowdfunding portals and to ensure that they comply with the federal securities laws and [FINRA rules](#). Broker-dealers and [funding portals that are registered](#) with the SEC and are FINRA members are permitted to offer and sell securities on behalf of issuers to the investing public using crowdfunding.

Investors will be subject to investment limits that we describe below. Investors should be aware that crowdfunding investments carry significant risk: you can lose some or all of your investment.

Who Can Invest?

Like stocks and bonds, anyone can invest in crowdfunding offerings. But because of the risks involved, you are limited in **how much** you can invest during any 12-month period in these kinds of securities. The limitation on how much you can invest depends on your net worth and annual income:

- If *either* your annual income *or* your net worth is less than \$100,000, then during any 12-month period, you can invest up to the greater of either \$2,000 or five percent of the lesser of your annual income or net worth.
- If *both* your annual income *and* your net worth are equal to or more than \$100,000 then, during any 12-month period, you can invest up to 10 percent of your annual income or net worth, whichever is less, but not to exceed \$100,000.

Say your annual income is \$150,000 and your net worth is \$80,000. JOBS Act crowdfunding rules allow you to invest the greater of \$2,000 or five percent of \$80,000 (\$4,000) during a 12-month period. So in this case, you can invest \$4,000 over a 12-month period.

Know Your Net Worth

To calculate your net worth, add up all your assets and subtract your liabilities. The resulting sum is your net worth. To learn more, read FINRA's [Know Your Net Worth](#), which includes a worksheet to help with your net worth computation. **For purposes of JOBS Act crowdfunding, the value of your primary residence is not included in your net worth calculation.**

When you calculate your annual income or net worth, you may include your spouse's income or assets even if those assets are not held jointly. However, if you use a joint calculation, you and your spouse's aggregate investment may not exceed the limit that would apply to an individual investor at that income and net worth level.

How to Invest

In addition to investment limits described above, other requirements and procedures have been put in place to protect and inform those who invest in crowdfunding offerings.

Among the most important, you can invest in an offering pursuant to Regulation Crowdfunding only through an online platform of a broker-dealer or a [funding portal](#), a new type of intermediary that was created by the JOBS Act.

Companies may not offer crowdfunding investments to you directly—they must use a broker-dealer or funding portal.



The broker-dealer or funding portal must be registered with the SEC and be a member of FINRA. To check registration status and additional information on broker-dealers, visit FINRA's [BrokerCheck](#). To check if a funding portal is registered, go to FINRA's [Funding Portals Web page](#).

To begin the investment process, you will have to use a new or existing account with the broker-dealer or funding portal. While brokers can offer investment advice and recommendations, funding portals cannot. Also, a funding portal cannot solicit purchases, sales or offers to buy the securities being offered or displayed on the platform.

Liquidity Risk

Be aware that you will be limited in your ability to resell your investment for the first year—and you may need to hold your investment for an indefinite period of time. While you are allowed to transfer shares to certain parties such as a family member or the firm that issued the securities, this may not be easy to do.

Read and Understand Key Disclosure and Education Information

Since crowdfunding investments are likely to be early-stage ventures and may be highly risky, the JOBS Act and Regulation Crowdfunding include provisions designed to inform investors about these investments and their potential risks.

Companies that conduct offerings under Regulation Crowdfunding are required to disclose, among other things:

- A description of the business of the company and its anticipated plan of business, including its name, legal status, physical address and website address.
- A discussion of the material factors that make an investment in the company speculative or risky.
- A discussion of the company's financial condition.
- The names and positions of the directors and officers; the name of each person who is a beneficial owner of 20 percent or more of the company's outstanding voting equity securities; and additional information such as the business experience of the directors and officers over the past three years.
- The price of the securities or the method for determining the price.

This information is to be filed in a document called Form C and uploaded to the SEC’s Edgar system for access by investors and crowdfunding intermediaries.

Depending on the amount of money being raised—which includes any amounts raised by the company in the prior 12 months in reliance on JOBS Act crowdfunding—issuers are also required to make certain financial disclosures, including:

Amount Raised	Required Minimum Disclosures
\$100,000 or less	Financial statements and specific line items from income tax returns, both of which are certified by the principal executive officer of the company.
\$100,000.01 to \$500,000	Financial statements reviewed by an independent public accountant and the accountant's review report. If audited statements are available, those must be provided.
\$500,000.01 to \$1 Million	For an issuer using crowdfunding for the first time, financial statements reviewed by an independent public accountant and the accountant's review report. If audited statements are available, those must be provided. For all other issuers, financial statements audited by an independent public accountant and the accountant's audit report.

Be aware that an audit of financial statements involves a higher level of scrutiny than a review.

Broker-dealers and funding portals that operate Regulation Crowdfunding platforms are required to:

- Provide educational materials to help investors understand this type of investing, as well as make available information about the offering and the company raising the funds (such as Form C).
- Provide communications channels that allow discussions to take place about offerings on the platform.
- Obtain a representation from the investor that he or she understands that they may lose their entire investment, and can bear such a loss.
- Provide prospective investors with questions designed to demonstrate an understanding, among other things, that it may be difficult to resell the securities and that investing in these types of securities involves risk.

Changing Your Mind

You have up to 48 hours prior to the end of the offer period to change your mind and cancel your investment commitment for any reason. ***Once the offering period is within 48 hours of ending, you will not be able to cancel for any reason even if you make your commitment during this period.***

If the company makes a material change to the offering terms or other information disclosed to you, you will be given five business days to reconfirm your investment.

Four Tips

While investing in early-stage businesses may bring rewards, it also carries risks. These tips can help you determine if a crowdfunding offering is right for you.

1. **Ask yourself if you can handle the risk—and the potential loss of your investment.** Both are real possibilities when it comes to companies that issue securities using crowdfunding. The venture may not succeed. Startups and early-stage ventures can and do fail. You should be able to afford, and be prepared to lose, your entire investment. If you are risk-averse, are just starting to invest, have only a little money to invest, or may need the money in the short term, crowdfunding investments likely are not for you.
2. **Read and understand the educational and financial information, and all disclosures, provided by the issuer and crowdfunding intermediaries.** If you are [working with a financial professional](#), or seeking information over a crowdfunding platform’s communication channel, ask direct questions about the investment, including worst-case scenarios. It’s also a good idea to seek a second, or even third, opinion especially when it comes to highly speculative investments. This might include checking with an accountant who understands financial balance sheets and likely has no vested interest in the investment.
3. **Recognize that fraud is a possibility.** As with all investment opportunities, the possibility of fraud is real. [Protect yourself](#) by understanding the tactics a fraudster might use—and how to avoid them. As noted above, check out investment professionals using [BrokerCheck](#) and go to FINRA’s [Funding Portals](#) Web page. Under Regulation Crowdfunding, offerings must be conducted through a registered broker or funding portal. A basic Internet search is also valuable. Proceed with caution if you turn up legal or regulatory concerns about company officials, or news reports that raise other red flags.
4. **Revisit your financial goals.** Setting clear, prioritized goals—each with steps to achieve the goal, a price tag and a time frame—will help guide your investment approach, including whether crowdfunding offerings have a place in your portfolio. Basic strategies such as [asset allocation](#) and [diversification](#) can help manage risk and make sound investment decisions.



Crowdfunding Guides

For more details on navigating federal crowdfunding rules, the SEC has also issued the following guides:

- ◆ A small entity guide for [“issuers.”](#)
- ◆ A small entity guide for broker-dealers and portals, also known as [“intermediaries.”](#)
- ◆ Regulation crowdfunding [disclosure interpretations.](#)



NASAA Releases for Public Comment Proposed Model Rule and Uniform Notice Filing Form for Federal Crowdfunding Offerings

In a step toward providing guidance to issuers and promoting uniformity, the North American Securities Administrators Association (NASAA) announced on Monday, May 16 that its Board of Directors has approved the release for public comment of a proposed model rule and uniform notice filing form for federal crowdfunding offerings.

“Today, as the SEC’s Regulation CF takes effect, the United States enters a new era in crowdfunding. I believe this milestone gives state regulators another opportunity to increase our collaboration with our federal partners,” said Judith Shaw, NASAA President and Maine Securities Administrator.



The Notice of Request for Public Comment is available in the Regulatory and Legal Activity section of NASAA’s website, nasaa.org.



The JOBS Act provides for certain state filings for offerings conducted under the federal crowdfunding exemption in the state that is either the principal place of business of the issuer or where purchasers of 50 percent or greater of the aggregate amount of the offering reside. Shaw noted that states may wish to require notice filings in these circumstances to provide a basic level of regulatory oversight of these offerings affecting their residents. The uniform notice filing form simplifies the filing process for issuers by incorporating documents filed on EDGAR and including consent to service of process language within the form.

“Ultimately, NASAA believes that the adoption of a model rule and uniform notice filing form by those states that wish to require notice filings will be a benefit to both issuers and regulators,” Shaw said, noting that 32 states and the District of Columbia have adopted intrastate crowdfunding models.

Shaw also announced that NASAA will host its second annual Capital Formation Roundtable in Washington in June to provide an opportunity for an open dialogue regarding issues important to issuers, investors, and regulators. “If we are to regulate effectively, we cannot do so in a vacuum. Last year’s inaugural roundtable provided an opportunity for us to step back and assess our role in regulating the capital markets,” Shaw said. “We look forward to continuing this important dialogue with the capital formation community.”

State and Local Officials Give Columbus County Senior Citizens Tips for Avoiding Financial Predators

"Crooks are real, so always check the deal!" That was the message that NC Secretary of State Elaine F. Marshall brought to Columbus County on May 24.



Marshall addressing Columbus County Scam Jam.

Secretary Marshall was one of several speakers at the "Modern Times, Modern Crimes" anti-fraud Scam Jam jointly co-sponsored by the Cape Fear Elder Abuse Prevention Network, Southeastern Community College and the Retired & Senior Volunteer Program (RSVP) of Southeastern Community College, the Cape Fear Council of Governments Area Agency on Aging and the NC Department of the Secretary of State.

Secretary Marshall urged people considering investing in securities to always check with the Secretary of State's Securities Division before signing over any money to make sure that the person offering the investment - and the investment opportunity itself - are registered with the state.

Marshall cautioned the crowd that, "investment crooks are so skilled at appearing to be good people, and appearing to be offering you a safe investment that you must - I repeat must - always check before making any investment."

Other presenters at the day's event included Columbus County Sheriff Lewis Hatcher, Thirteenth Judicial District Attorney Jon David, David Oakley of the US Postal Inspection Service, Carol Young of the NC Attorney General's Office and Stephanie Bias, Senior Medicare Patrol Coordinator for the NC Department of Insurance's Seniors' Health Insurance Information Program (SHIIP).



Columbus County Sheriff Lewis Hatcher.

Secretary Marshall reported that in a 12-month period between 2014 and 2015, Secretary of State agents worked investment fraud cases where 22 individuals were fined, charged, convicted or sentenced. At least 707 victims lost a combined total of \$91 million as a result of those crimes, adding up to roughly \$129,000 of losses per victim, on average.

Marshall noted, "that equals almost \$129,000 per victim on average. Probably the life savings for many of those victims."



In the News

Check out coverage of the workshop from [WECT](#).

The Secretary of State also urged workshop attendees to be proactive about protecting themselves and their friends and family from investment scams and other financial crime.

"Take it on yourself to be a little nosy if you hear a friend or relative suddenly talking about some new investment that sounds "too good to be true. Because if it sounds too good to be true, then it almost always is too good to be true. It's really a scam," said Marshall.

District Attorney Jon David echoed Marshall's advice to be careful in choosing your friends, and advised Scam Jam-goers to always protect their social security numbers and their mail.

Each speaker gave the more than 50 attendees valuable information and tips on how to guard against fraudulent email and telemarketers, identity thieves, fraudulent lottery scams and fraudulent charges against their Medicare accounts.

Call the NC Securities Hotline at 1-800-688-4507 to check the registration of anyone offering you an investment."



Pasquotank County Walk Raises Awareness About Elder Abuse

Two million older Americans are victims of abuse, neglect, and exploitation each year. World Elder Abuse Awareness Day, which falls on June 15, aims to unite communities across the globe against the abuse and neglect of our seniors.

The Secretary of State's Office joined the Albemarle Commission Area Agency on Aging in May to raise awareness about elder financial abuse, specifically investment frauds targeting seniors. SOSNC Investor Education Director John Maron offered tips for avoiding investment fraud.



SOSNC Investor Education Director John Maron joined officials in Pasquotank County to Walk for Awareness of Elder Abuse.

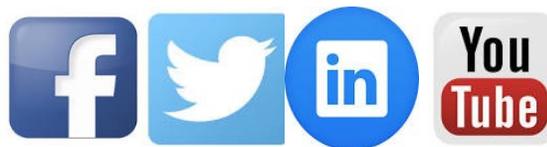
Changing Domains!



The Secretary of State's Office has officially changed its web domain from www.sosnc.com to www.sosnc.gov. All SOSNC email addresses have also changed from .com to .gov.

We still have all the same useful information, just with a new domain name, so please don't forget to update your bookmarks!

Follow SOSNC on Social Media!



The North Carolina Secretary of State's Office now has accounts on several popular social media platforms to make it easier than ever for the investing public and regulated communities to keep up with important news you need to know.

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 platform icons above to go to SOSNC's social media accounts!



FINRA Investor Ed Podcast

This 5 minute [podcast](#) walks you through the process of filing a complaint with FINRA if you have been treated unfairly by a broker or salesperson.

If you ever see a transaction on your statement that you didn't authorize or don't understand, don't hesitate to ask questions, beginning with asking your broker or adviser for clarification.

Investors may also file a complaint with the NC Department of the Secretary of State Securities Division. Information about our complaint process can be found on our website at www.sosnc.gov/sec/complaint.aspx

Investment Advisers Take Note: Small Firm Cybersecurity Checklist



As a fiduciary, every investment adviser has a duty to keep client information confidential and secure. In its April 2015 [Guidance Update](#), the US Securities and Exchange Commission stated:

In the staff’s view, funds and advisers should identify their respective compliance obligations under the federal securities laws and take into account these obligations when assessing their ability to prevent, detect and respond to cyber attacks. Funds and advisers could also mitigate exposure to any compliance risk associated with cyber threats through compliance policies and procedures that are reasonably designed to prevent violations of the federal securities laws.

Investment advisers subject to the registration requirements of the North Carolina Investment Advisers Act (N.C.G.S. § 78C) should take similar steps to safeguard client personal financial data.

The Financial Industry Regulatory Authority (FINRA) has also identified cybersecurity as an important issue for its members. To that end, FINRA has created a [Cybersecurity Checklist](#) (Excel *114 KB*) to assist small firms in establishing a cybersecurity program to identify and assess cybersecurity threats, protect assets from cyber intrusions, detect when their systems and assets have been compromised, plan for the response when a compromise occurs and implement a plan to recover lost, stolen or unavailable assets. This checklist is primarily derived from the National Institute of Standards and Technology (NIST) Cybersecurity Framework and FINRA’s [Report on Cybersecurity Practices](#).

The NC Department of the Secretary of State Securities Division is republishing FINRA’s checklist here as a courtesy to state-registered investment advisers. Use of this checklist does not create a “safe harbor” with respect to FINRA rules, federal or state securities laws, or other applicable federal or state regulatory requirements.

See more at: <http://www.finra.org/industry/cybersecurity>.



Investor Bulletin: Stop and Stop Limit Orders

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to help educate investors about the difference between using "stop" and "stop limit" orders to buy and sell stocks.

Stop and stop limit orders may not be available through all brokerage firms. Investors should contact their firm to determine which stop and stop limit orders are available for buying and selling, as well as their firms' specific policies regarding these types of orders.

Stop Order

A stop order, also referred to as a stop-loss order, is an order to buy or sell a stock once the price of the stock reaches a specified price, known as the stop price. When the stop price is reached, a stop order becomes a [market order](#). A **buy stop order** is entered at a stop price above the current market price. Investors generally use a buy stop order in an attempt to limit a loss or to protect a profit on a stock that they have sold short. A **sell stop order** is entered at a stop price below the current market price. Investors generally use a sell stop order in an attempt to limit a loss or to protect a profit on a stock that they own.



Before using a stop order, investors should consider the following:

- ◆ **The stop price is not the guaranteed execution price for a stop order.** The stop price is a trigger that causes the stop order to become a market order. The execution price an investor receives for this market order can deviate significantly from the stop price in a fast-moving market where prices change rapidly. An investor can avoid the risk of a stop order executing at an unexpected price by placing a stop-limit order. A stop-limit order includes a limit price that requires the order to be executed at the limit price or better — but the limit price may prevent the order from being executed.
- ◆ A stop order may be triggered by a short-term, intraday price that results in an execution price for the stop order that is substantially worse than the stock's closing price for the day. *Investors should carefully consider the risk of such short-term price fluctuations in deciding whether to use a stop order and in selecting the stop price for an order.*

- ◆ Different brokerage firms have different standards for determining whether a stop price has been reached. Some brokerage firms use only last-sale prices to trigger a stop order, while others use quotation prices. Investors should check with their brokerage firms to determine which standard would be used for stop orders.

Stop-Limit Order

A stop-limit order is an order to buy or sell a stock that combines the features of a stop order and a [limit order](#). Once the stop price is reached, a stop-limit order becomes a limit order that will be executed at a specified price (or better). *The benefit of a stop-limit order is that the investor can control the price at which the order can be executed.*



Before using a stop-limit order, investors should consider the following:

- ◆ As with all limit orders, a stop limit order may not be executed if the stock's price moves away from the specified limit price, which may occur in a fast-moving market.
- ◆ The stop price and the limit price for a stop-limit order do not have to be the same price. For example, a sell stop limit order with a stop price of \$3.00 may have a limit price of \$2.50. Such an order would become an active limit order if market prices reach \$3.00, however the order can only be executed at a price of \$2.50 or better.
- ◆ As with a stop order, a stop-limit order may be triggered by a short-term, intraday price move that results in an execution price for the stop order that is substantially inferior to the stock's closing price for the day. *Investors should carefully consider the risk of such short-term price fluctuations in deciding whether to use a stop order and in selecting the stop price for an order.* As with stop order, different brokerage firms may have different standards for determining whether the stop price of a stop-limit order has been reached. Some brokerage firms use only last-sale prices to trigger a stop-limit order, while others use quotation prices. Investors should check with their brokerage firms to determine which standard would be used for stop-limit orders.

keeping up with the terminology

This is part of an occasional series of columns from the North American Securities Administrators Association (NASAA) focusing on investor education resources available online and through social media.

Keeping up with the financial services industry’s jargon can be exhausting. There’s a seemingly endless stream of acronyms and insider-terms to keep straight, and the differences that distinguish a dealer from a portfolio manager from an adviser can often come down to a number of fine-print details that are buried in your state securities laws. And it doesn’t help that the titles that firms and advisers use to describe themselves rarely match the terminology used by regulators – you likely won’t find “personal investment counsel” or “wealth concierge” outlined anywhere in your jurisdiction’s securities act.



However, those fine-print details can have a significant impact over the types of advice or services that these professionals can offer investors, so it’s important to be clear on the categories of registration and the rules around them. Fortunately, the North American Securities Administrators Association (NASAA) offers a [publication](#) that outlines the different roles and responsibilities of financial service providers. The Financial Industry Regulatory Authority’s (FINRA) website also has a [breakdown of the different types of investment professionals](#), who regulates them, and what they can offer. You can also check out FINRA’s [glossary of professional designations](#) to decode the letters that sometimes follow a financial professional’s name and learn if the organization responsible for accrediting them requires continuing education, takes complaints or has a way for you to confirm who holds the credential.

But the industry’s complex terminology doesn’t end at job titles. For a quick way to expand your lexicon, don’t overthink it: [Investopedia’s Financial Dictionary](#) is an impressively thorough collection of terms to know, breaking down what you need to know about things like negative bond yields, leveraged buyouts, the Panama Papers, and just about everything else.

Background Check

It is always a good idea to check on the background of an investment professional. It is easy and free. Details of an investment professional’s background and qualifications are available through FINRA’s [BrokerCheck](#) and the Investment Adviser Public Disclosure [website](#). You can also call the NC Secretary of State’s Securities Hotline at (800) 688-4507.

If you have any questions on checking the background of an investment professional, call the SEC’s toll-free investor assistance line at (800) 732-0330.



Investor Bulletin: Master Limited Partnerships – An Introduction

The Securities and Exchange Commission's Office of Investor Education and Advocacy is issuing this Investor Bulletin to help investors understand Master Limited Partnerships, or MLPs. Because investing in an MLP may be unfamiliar, investors should carefully consider potential benefits – and risks – before making an investment decision.

What are Master Limited Partnerships?

Generally, Master Limited Partnerships (MLPs) are exchange-traded investments that are focused on exploration, development, mining, processing, or transportation of minerals or natural resources. MLPs hold cash-generating assets such as oil and gas properties or pipelines. MLPs have certain characteristics that can make them attractive to some investors, including partnership tax consequences, limited liability to investors for the MLP's debts, and anticipated consistent distributions of cash. However, like all investments, MLPs have risks investors should consider before making an investment decision. Those risks include governance features that can favor management over other investors, potential conflicts of interest, and concentrated exposure to a single industry or commodity. Since most MLPs are clustered in the energy sector, they can therefore be sensitive to shifts in oil and gas prices. The 2015-16 decreases in oil prices are an example.



What are the unique characteristics of an MLP?

- **Control by sponsor.** MLPs begin with a sponsor. That sponsor, often a public company, contributes assets to the MLP. The sponsor exerts control over the MLP by controlling the general partner (GP) of the MLP and appointing the GP's board of directors. The GP manages the affairs of the MLP; the MLP does not have a board of directors of its own. In addition to holding the general partner interests of the MLP, the sponsor also holds limited partner interests as well as incentive distribution rights (IDRs), which are rights to an increasing share of distributions, or payouts, after the distribution level hits certain predetermined thresholds.
- **Limited liability for MLP debts and obligations.** Investors may become limited partners in an MLP by purchasing limited partner interests, known as units. Although the limited partners are liable for the debts and obligations of the MLP, each limited partner's liability generally extends only up to the amount of capital contributed.
- **Cash distribution features.** Most MLPs provide a "forecast" of their intention to pay a minimum cash distribution over the next 12 months. MLPs often state that they expect to continue to pay, if not increase, that distribution over time based upon steady or increased cash flows and sometimes assuming certain events, such as the price of oil or gas, acquisitions (buying new properties or assets) or further development of producing properties.

Caution! An MLP's inability to maintain distributions can have a negative impact on the trading price of the limited partner units. As a result, sponsors have an incentive to cause the MLP to maintain a certain level of distributions, even if it requires borrowing by the MLP or refraining from making capital expenditures. Increasing distributions also benefits the sponsor through its ownership of IDRs.

- **MLPs have partnership tax consequences.** As partnerships for federal income tax purposes, MLPs generally do not pay federal taxes. Instead, limited partners report on their tax returns their share of the MLP's income, gains, losses, and deductions, and are taxed at their individual tax rates. Each limited partner receives annually a Schedule K-1 showing its share of the MLP's income, gains, losses, and deductions. MLP investors must pay applicable federal, state, and local income taxes even if the MLP does not provide the investor with cash distributions. Additionally, investors may need to file state tax returns in states where the MLP operates even though the investors do not live in that state.

Caution! Investors considering MLPs should consult a tax advisor and relevant IRS publications, such as those relating to Schedule [K-1](#) and [Unrelated Business Taxable Income](#).

What are the risks of a Master Limited Partnership?

MLP units can produce regular cash distributions and appreciate in value, but they are not without risk. As with any investment, investors can lose their entire investment or experience lower- than-expected returns. Before investing, investors should carefully evaluate the risks associated with a particular offering. Investors should also be aware of the following risks:

- **Governance and standard of care can favor the sponsor.** Most listed companies must have a majority of independent directors on their boards, but the GP of an MLP is only required to have independent directors on its audit committee. Also, MLPs can opt for a lower standard of care (or duties owed by the GP's directors to the owners/investors) than the more stringent fiduciary standard generally owed to shareholders of corporations under state law. Lack of independence and lower standards of care are factors that could influence the decisions made by the GP's directors, possibly to the detriment of the limited partners of the MLP.
- **Conflicts of Interest.** The sponsor's relationship with the MLP and with the GP creates inherent conflicts of interest. These conflicts arise most frequently in transactions between the sponsor and the MLP, such as when the sponsor wants to sell assets to the MLP or if the sponsor decides to merge the MLP into the GP. If the GP opts for the lower standard of care discussed above, it may consider its own interests ahead of the interests of the MLP and its limited partners and resolve conflicts in a manner favorable to itself.
- **Industry risk and concentrated exposure.** As most MLPs are focused on a single industry or industry segment, investors have concentrated exposure to the volatility of that industry or segment. Changes in the price of commodities in that industry could impact the amount of income that an MLP generates or the ability of the MLP to maintain or expand its operations. Because most MLPs are currently in the energy sector, particularly in the pipeline or energy storage industries, MLPs can be acutely sensitive to shifts in oil and gas prices, as noted above.

How do I learn more about an MLP?

When considering investing in an MLP, investors should search [EDGAR](#) to access an MLP's prospectus (Form 424) and annual (Form 10-K) and quarterly (Form 10-Q) financial reports. Information on using EDGAR can be found [here](#). These publicly available filings include information about the MLP's business strategy, forecasts of future distributions, and risks. To see our Investor Bulletin on How to Read a 10-K, click [here](#). For additional information on MLPs, see the SEC's [Office of the Investor Advocate, Report on Activities – Fiscal Year 2015](#), filed December 23, 2015, at pp. 17 to 19.

Ask questions before you invest – in anything.

When considering an MLP, investors should ask their investment professional the same questions about suitability and risks that they ask with other prospective investments, in addition to reading the prospectus. See our publication on [Questions You Should Ask About Your Investments](#) for more information.



It's Your Money: Investigate Before You Invest

When it comes to investing your hard-earned money, the only bad questions are the ones you don't ask. If someone is offering you an investment opportunity, here are a few questions you should ask:

- ◆ Are you—and the investment opportunity you are marketing—registered with the NC Securities Division?
- ◆ Have you ever been disciplined by a regulator?
- ◆ What financial training do you have?
- ◆ Are you paid by commission or by the amount of assets under your management? Which method would be most beneficial to me given my specific circumstances?

Before you sign over any of your money, please call the NC Secretary of State's Investor Hotline at 1-800-688-4507 to confirm whether the people offering you an investment opportunity—and the investment opportunity itself—are registered to sell securities in North Carolina and whether they have a disciplinary history.

Registration in and of itself is no guarantee against fraud, but not being registered is a very big red warning flag. Know before you invest.



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
6/2/2016	Nashville	<p>"Aging, Just Rock It!" will take a look at the many challenges faced by those who are aging as well as their families and caregivers. It will also explore a facet of Elder Abuse. You are invited to attend this conference on Tuesday, June 2, 2016 to learn more about the challenges and discover some of the solutions. Knowledge is power and attending this conference will help one prepare for this stage of life, no matter your role. This conference is brought to you by the following sponsors: Nash County Cooperative Extension Service, Nash County Nursing Home & Adult Care Home Community Advisory Committees, South Village Nursing and Rehab and the Upper Coastal Plain Council of Governments Long Term Care Ombudsman Program. A member of the NC Department of the Secretary of State Securities Division will give a presentation on preventing financial exploitation from 10:00 - 10:45 AM. This event is free, but since lunch will be provided, registration is required. For more information and to register, please contact Ty Whitaker 252-234-5963 or twhitaker@ucpcog.org, Autumn Pittman 252-234-5962 or apittman@ucpcog.org, or Barbara High Tyre 252-567-8295 or hightyre@aol.com.</p>
6/7/2016	Candler	<p>A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: St. Joan of Arc Catholic Church, 768 Asbury Road. Time: 4:30 PM — 6:30 PM. This event is free and open to the public.. For more information, please contact Sandra Breakfield at sandrab@charlottediocese.org</p>
6/7/2016	Pittsboro	<p>Seminar on "Changing Business Funding Landscape of North Carolina". Location: Central Carolina Community College Small Business Center (Building 1, Room 209) 764 West Street Pittsboro, NC 27312 Time: 6:00 PM -- 7:30 PM. Free. A representative of the NC Department of the Secretary of State Securities Division will provide information about various funding options available to small businesses under state or federal securities law. To register, please contact Jon Spoon at jspoo035@cccc.edu.</p>

6/7/2016	Waynesville	A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: St. John the Evangelist Catholic Church, 234 Church Street. This event will be free and open to the public. For more information please contact Sandra Breakfield at sandrab@charlottediocese.org .
6/8/2016	Raleigh	A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: Springmoor Retirement Home. Time: 2 PM—4 PM. This event is free, but open only to residents of Springmoor Retirement Home and their guests. For more information, contact Hannah.skillestad@springmoor.org .
6/9/2016	Morehead City	"Scam Jam" Anti-fraud event. Officials from the NC Secretary of State's Office, NC Department of Justice Consumer Protection Division, and the NC Department of Insurance Senior Health Insurance Information Program will provide information to help prevent you from falling victim to a wide range of scams. Time: 1 PM — 4 PM. Location: Leon Mann Senior Center, 3820 Galantis Dr. This event is open to the public.
6/9/2016	Wilmington	"Crowdfunding and Securities Regulation" presentation. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on crowdfunding and securities regulation and the regulatory issues that small businesses need to be aware of when planning securities offerings to help finance their operations. Free. Location: TekMountain, 1844 Sir Tyler Drive. Time: 6:00 PM — 7:30 PM. For more information, please contact Amanda Sipes at amandas@tekMountain.com .
6/9/2016	Durham	"Guarding Your Assets in a Scary World." A representative of the Secretary of State's Securities Division will give a presentation on investment fraud aimed at the elderly as well as on the Advance Health Care Directive Registry maintained by the Secretary of State's Office. Location: Community Center at Carolina Arbors by Del Webb, 3055 Del Webb Arbors Drive. Time: 7 PM—8 PM. This event is free but open only to members of the Carolina Arbors Investment Education Club.
6/10/2016	Durham	A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: Durham Center for Senior Life, 406 Rigsbee Ave. Time: 8:45 AM—10:00 AM. This event is free and open to the public. For more information please contact Melissa Black at mblack@dconc.gov .

- 6/10/2016 Edenton A representative of the NC Secretary of State's Office will give a presentation on investment fraud aimed at senior citizens, and will talk about SOSNC's Advance Health Care Directive Registry. Location: Edenton Primetime, 106 Mark Drive. Time: 2:30 PM—3:30 PM. This event is free, but open only to Edenton Primetime residents and their guests.
- 6/11/2016 Matthews A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: Matthews Public Library, 230 Matthews Station Street. Time: 2 PM—4 PM. This event will be free and open to the public.. For more information please contact Les Hutchens at lutchens@cmlibrary.org.
- 6/13/2016 Lillington "Scam Jam" anti-fraud event. Representatives from the NC Secretary of State's Office, the NC Department of Justice Consumer Protection Division, and the NC Department of Insurance Senior Health Insurance Information Program will provide information about how you can protect yourself from a wide range of financial scams. Topics will include identity theft, how to establish a protective "freeze" on your credit report, investment fraud, fake charity scams, and Medicare fraud. Location: Harnett County Division of Aging 309 W Cornelius Harnett Blvd. Time: 9 AM—12 PM. This event is free and open to the public. For more information contact Kareem Strong at kstrong@mccog.org.
- 6/14/2016 Durham "Starting and Financing a Business in NC" presentation. A representative of the NC 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 Secretary of State's Office can help. Location: RTP Frontier, 800 Park Offices Dr. Time: 2:00 PM—3:30 PM. This event is free and open to the public. To register, please contact Leo John at ljohn@sosnc.gov. For more information contact Amanda Frystock at frystock@rtp.org.
- 6/14/2016 Hickory A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: Mt. Olive Lutheran Church, Fellowship Hall, 2780 N Center Street. Time: 5:30 PM —7 PM. This event is free and open to the public, but registration is requested. To register, email fhall@ACAPcommunity.org or call 1-877-599-ACAP.
- 6/15/2016 Durham "Fundraising and Exits" presentation. NC Center of Innovation Network (NC COIN) Presents: Implementing Legal & Business Solutions to Support Your Company's Growth. Location: First Flight Venture Center, 2 Davis Drive. Time: 9 AM– 11 AM. For more information, please contact Karen Shank at karens@nccoin.org or (919) 369-0380. Please register [here](#).

- 6/15/2016 Fort Bragg Investment Fraud Prevention presentation to Fort Bragg Legal Division. This event is open to military personnel only. For more information please contact Marie Joiner at marie.a.joiner.civ@mail.mil.
- 6/20/2016 Raleigh “Guarding Your (& Your Clients’) Assets in a Scary World” presentation. This event is free, but open only to the training conference for internal auditors being sponsored by the NC Office of State Budget and Management. 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, contact Barbara Baldwin (919) 807-4721.
- 6/21/2016 Raleigh Triangle Caregivers Conference. Location: McKimmon Center, 1101 Gorman Street. Time: 8:00 AM — 3:30 PM. This event is open to family and professional caregivers; registration and fee are required. Please visit <http://www.trianglecaregiversconference.org/> for more information. A representative from the NC Secretary of State, Securities Division will be at The Triangle Caregivers Conference as one of the Conference Exhibitors. This conference will be a full day of practical solutions designed for caregivers, focusing on exploring various techniques and strategies that caregivers can use to care for their loved ones and themselves.
- 6/22/2016 Charlotte A representative of the NC Secretary of State’s Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: St. Gabriel Catholic Church, 3016 Providence Road. Time: 9:30 AM—11:30 AM. This event is free and open to the public. For more information contact Sandra Breakfield at sandrab@charlottediocese.org.
- 6/22/2016 Charlotte A representative of the NC Secretary of State’s Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: St. Luke Catholic Church, 13700 Old Lawyers Road. Time: 2:30 PM—4:30 PM. This event is free and open to the public. For more information contact Sandra Breakfield at sandrab@charlottediocese.org.
- 6/22/2016 Raleigh "Microenterprise Loan Program Professional Development" Meeting. The NC Rural Center is hosting this professional development meeting. The meeting will cover a variety of program updates, discuss the credit climate with an Equifax representative and introduce you to new small business resources. A representative of the NC Department of the Secretary of State Securities Division will participate in the Business Resource panel. Location: NC Rural Center, 4021 Carya Drive. Time: 10 AM—3 PM. This event is free, but since lunch will be provided registration is required. To register, please click [here](#).

- 6/23/2016 Greensboro Advance Health Care Directive Registry Continuing Legal Education (CLE) A representative of the NC Secretary of State's Office will provide a one-hour presentation on the Advance Health Care Directive Registry. This is a private event. For more information please contact Lora Howard at lhoward@lhowardlaw.com.
- 6/27/2016 Wilmington Investor Protection and Education Presentation to the NC Society of Accountants. This event is free, but open only to members of the NC Society of Accountants. Location: McAlister's Deli. 740 S College Road. Time: 6:00 PM — 7:30 PM.
- 6/28/2016 Durham Triangle Caregivers Conference. Location: Durham Convention Center, 301 W Morgan Street. Time: 8:00 AM -- 3:30 PM. This event is open to family and professional caregivers; registration and fee are required. Please visit www.trianglegiversconference.org/ for more information. A representative from the NC Secretary of State, Securities Division will be at The Triangle Caregivers Conference as one of the Conference Exhibitors. This conference will be a full day of practical solutions designed for caregivers, focusing on exploring various techniques and strategies that caregivers can use to care for their loved ones and themselves.
- 6/29/2016 Asheville Annual Elder Fraud Summit. NC Secretary of State Elaine F. Marshall will deliver the keynote address at The 7th Annual Elder Fraud Summit in Asheville, NC. The Summit targets professionals from banks, business and human service organizations who want to increase their ability to protect older adults and people with disabilities from financial exploitation. The signs and indications of financial exploitation will be covered as well as ways in which local banks and other organizations can respond to protect their customers while still respecting confidentiality. Location: Asheville-Buncombe Technical Community College, Simpson Hall, 342 Victoria Road. Time: 9:00 AM—12:30 PM. To register, or for more information, please contact Carole Spainhour at (828) 255-1966 or elderlegal@att.net.
- 7/11/2016 Roxboro "Guarding Your Assets in a Scary World." A representative of the Secretary of State's Securities Division will give a presentation on investment fraud aimed at the elderly as well as on the Advance Health Care Directive Registry maintained by the Secretary of State's Office. Location: Clarksville Station, 4080 Durham Road. Time: 6 PM—7 PM. This event is free, but open only to members and guests of the Roxboro Kiwanis Club. For more information please contact David Turner at (336) 599-7409 or Julie@heritagecircleapts.com.

8/12/2016 Cary

A representative of the NC Secretary of State's Office will speak about the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. Information will include the signs of financial elder abuse and community resources available if you suspect elder abuse. Location: Cary Senior Center, 120 Maury Odell Place. Time: 9:30 AM—10:30 AM. This event is open to the public, but registration and fee may be required. For more information, go to www.townofcary.org.

8/18/2016 Oxford

"Scam Jam" anti-fraud workshop. Representatives of the NC Secretary of State's Office, the NC Department of Justice Consumer Protection Division, and the NC Department of Insurance Senior Health Insurance Information Program will present information to help you steer clear of a wide range of financial scams. Topics covered will range from identity theft and investment scams to Medicare fraud. Location: Granville County Senior Services, 107 Lanier Street. Time: 1 PM — 4 PM.



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 September 26, 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, pleaded guilty on April 12 in federal court to one count of securities fraud. A sentencing hearing has not yet been set. 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.



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.

[Agencies Request Public Comment on Proposed Rule to Prohibit Incentive-Based Pay Encouraging Inappropriate Risk-Taking in Financial Institutions](#)

May 16, 2016 — Six federal agencies are inviting public comment on a proposed rule to prohibit incentive-based compensation arrangements that encourage inappropriate risks at covered financial institutions. The deadline for comments on the proposed rule, which was submitted for publication in the Federal Register, is July 22, 2016.

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the agencies to jointly prescribe such regulations or guidelines. There is evidence that flawed incentive-based compensation packages in the financial industry were one of the contributing factors in the financial crisis that began in 2007.

The proposed rules would apply to covered financial institutions with total assets of \$1 billion or more. The requirements are tailored based on assets, and covered institutions would be divided into three categories:

- ◆ Level 1: institutions with assets of \$250 billion and above;
- ◆ Level 2: institutions with assets of \$50 billion to \$250 billion; and
- ◆ Level 3: institutions with assets of \$1 billion to \$50 billion.

Much of the proposed rules would address requirements for senior executive officers and employees who are significant risk-takers at Level 1 and Level 2 institutions. All institutions that would be covered by the proposed rules would be required to annually document the structure of incentive-based compensation arrangements and retain those records for seven years. Boards of directors of covered institutions would be required to conduct oversight of the arrangements. All covered institutions would be subject to general prohibitions on incentive-based compensation arrangements that could encourage inappropriate risk-taking by providing excessive compensation or that could lead to a material financial loss.

The proposed rule is available at <https://www.sec.gov/rules/proposed/2016/34-77776.pdf>.

[SEC Seeks Public Comment on Plan to Create A Consolidated Audit Trail](#)

April 27, 2016 — The Securities and Exchange Commission voted on April 27 to publish for public comment a proposed national market system (NMS) plan to create a single, comprehensive database that would enable regulators to efficiently track all trading activity in the U.S. equity and options market. The plan for the database, known as the consolidated audit trail (CAT), was submitted jointly by the self-regulatory organizations (SROs) as required by Rule 613 of Regulation NMS.

“The Commission’s action to approve the proposed CAT plan for public comment is a major market structure milestone. CAT will enable regulators to harness today’s technology to enhance the regulation and oversight of today’s trading markets,” said SEC Chair Mary Jo White. “It will significantly increase the ability of regulators to conduct research, reconstruct market events, monitor market behavior, and identify and investigate misconduct.”

The proposed NMS plan details the methods by which SROs and broker-dealers would record and report information, including the identity of the customer, resulting in a range of data elements that together provide the complete lifecycle of all orders and transactions in the U.S. equity and options markets. The proposed NMS plan also sets forth how the data in the CAT would be maintained to ensure its accuracy, integrity and security.

In seeking public comment on the NMS plan, the Commission also prepared a detailed preliminary economic analysis of the proposal, which includes a discussion of the economic effects, including costs of the creation, implementation and maintenance of the CAT as proposed by the SROs.

Public comments on the proposal should be received by the Commission within 60 days of its 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.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:jmaron@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 with “Remove from mailing list” in the subject line.

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