

North Carolina Department of the Secretary of State

Hon. Elaine F. Marshall, Secretary

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David Christopher Mayhew Sentenced To 26 Years in Prison in \$2 Million Investment Fraud Case



**David
Christopher
Mayhew**

United States Attorney Thomas G. Walker announced that on January 6 in federal court, Senior United States District Judge James C. Fox sentenced David Christopher Mayhew, 43, of Raleigh, NC to 320 months imprisonment, followed by 3 years of supervised release. He also ordered payment of \$2,025,300 in restitution

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

Special Agent in Charge Thomas J. Holloman III stated, “The IRS, Criminal Investigation is committed to using our Agents’ financial expertise to help bring those that prey on innocent taxpayers for their own enrichment to justice.”

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

Investigation of this case was conducted by the FBI, the IRS Criminal Investigation, the Postal Inspection Service, and **the North Carolina Secretary of State’s Office, Securities Division**. Assistant United States Attorney David A. Bragdon represented the government. AUSA Bragdon stated: “Mayhew used trust in himself and trust in others to deprive victims of money, money that many of them had taken a lifetime to save.”

See “[Mayhew Sentenced](#)” cont. on page 3



SOSNC Gives Update on Crowdfunding at Orange County CLE

The ins and outs of equity crowdfunding and the legislative forecast for a law to regulate crowdfunding at the state level were the focus of a Continuing Legal Education (CLE) seminar presented by the Secretary of State's Office this month.



Secretary Marshall addressing attorneys at the Orange County CLE.

NC Secretary of State Elaine F. Marshall and Investor and Business Outreach Legal Specialist Leo John gave presentations on crowdfunding at the January 6 CLE for the Orange County Bar Association.

Delivering the day's featured address, Secretary Marshall noted the importance of pushing forward for a state crowdfunding bill when the General Assembly's 2016 session convenes in April. Senate Bill 481 failed to gain passage in the General Assembly last session.

Under the rules approved by the SEC last fall for a national system, issuers could begin selling crowdfunding investments as early as mid-May, but Secretary Marshall stressed that North Carolina's investing public still needs a state crowdfunding law. "One thing I can tell you after being North Carolina's 'Cop on the Beat' for investor protection for many years now is: When North Carolinians feel they have been ripped off by someone here selling them bad investments—they want a state response."

Making the argument for crowdfunding regulation, Secretary Marshall told attorneys at the CLE that whether the investments are being made online or in a brick and mortar office, investors need a level of protection and need to have enough information to make informed decisions.

Comparing crowdfunding legislation to building basic safety features into a new highway, Secretary Marshall noted, "You need these features because bad weather can happen. That's like in the investing world when bad, fast-moving incidents happen to suddenly change the business climate. This is particularly true with offers to invest in start-ups, which carry a certain amount of 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, saying "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."

See "[Crowdfunding CLE](#)" cont. on page 3

Mayhew Sentenced

Continued from [page 1](#)

"When making investment decisions, Investors should always consider that if it sounds too good to be true, it probably is," said Thomas Noyes, Inspector in Charge of the US Postal Inspection Service Charlotte Division. "This case was especially egregious because the defendants used the victims' religious beliefs to gain their trust and steal their money. The US Postal Inspection Service will continue to vigorously pursue those who utilize the US Mail to steal our customers' hard earned money."

"David Mayhew promised his victims huge investments returns, instead they lost their homes, their life savings, even property where they planned to build a church. Now he'll pay for his crimes behind bars. The FBI and federal partners will keep exposing those responsible for these schemes as long as innocent people are being swindled," said John Strong, Special Agent in Charge of the FBI in North Carolina.

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!

Crowdfunding CLE

Continued from [page 2](#)

North Carolina's legislation, which the Secretary of State's Office helped draft, was chosen by NASAA as a national model for state crowdfunding legislation and several other states have now developed their own laws based on that. All of North Carolina's neighboring states—and nearly 30 states across the nation—now have passed state crowdfunding legislation.

Following up Secretary Marshall's speech, Leo John's presentation focused on the nuts and bolts of staying in compliance with securities regulations, and provided an update on the new federal crowdfunding rules that are now set to take effect on May 16.



Leo John presenting at Orange County CLE.

Pointing to established caselaw regarding securities, including transactions such as real estate "flipping" that may be deemed to involve securities, John's presentation brought into sharp focus the need for caution from attorneys and entrepreneurs when wandering into the realm of securities.

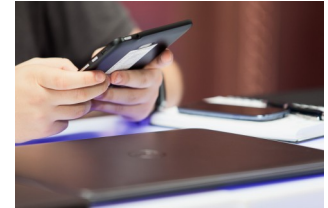
If your county's chapter of the bar association is interested in requesting a CLE from the Secretary of State's Office on securities and crowdfunding issues, please contact Leo John at (919) 733-3924.



Investor Bulletin: Ten Investment Tips for 2016

Whether you are a first-time investor or have been investing for years, here are ten tips from the SEC's Office of Investor Education and Advocacy to help you make more informed investing decisions and avoid common scams in 2016.

Always check the background of an investment professional – it is easy and free. Details on an investment professional's background and qualifications are available on the SEC's Investment Adviser Public Disclosure [website](#), which you can also find through the SEC's website for individual investors, Investor.gov. If you have any questions about checking the background of an investment professional, you can call the SEC's toll-free investor assistance line at (800) 732-0330 for help.



Promises of high returns with little or no risk are classic warning signs of fraud. Every investment carries some degree of risk and the potential for greater returns comes with greater risk. Ignore so-called "can't miss" and "guaranteed risk-free" investment opportunities. Better yet, [report them](#) to the SEC.



Be careful when using social media as an investment tool. Social media and the Internet have become important tools for investors, but also present opportunities for fraudsters to lure investors into a wide range of investment scams. For additional information on ways to avoid fraud through social media, please read our bulletin on [Social Media and Investing](#).

It can be costly to ignore fees associated with buying, owning, and selling an investment product. Expenses vary from product to product, and even small differences in costs can mean large differences in earnings over time. An investment with high costs must perform better than a low-cost investment to generate the same returns. In addition, some products, such as annuities, are designed to be long-term investments. If you need your money early, you may need to pay substantial surrender fees.

Be alert to affinity fraud. [Affinity frauds](#) target members of identifiable groups, such as the elderly, religious or ethnic communities, or the military. Even if you know the person making the investment offer, be sure to check out the investment and the person's background – no matter how trustworthy the person seems or how well you think you know them.

Any offer or sale of securities must be either registered with the SEC or exempt from registration. Otherwise, it is illegal. Registration is important because it provides investors access to key information about the company's management, products, services, and finances. Always check whether an offering is registered with the SEC by using the SEC's [EDGAR database](#) or contacting the SEC's toll-free investor assistance line at (800) 732-0330.

Diversification can help reduce the overall risk of an investment portfolio. By picking the right mix of investments, you may be able to limit your losses and reduce the fluctuations of your investment returns without sacrificing too much in potential gains. Some investors find that it is easier to achieve diversification through ownership of mutual funds or exchange-traded funds rather than through ownership of individual stocks or bonds.

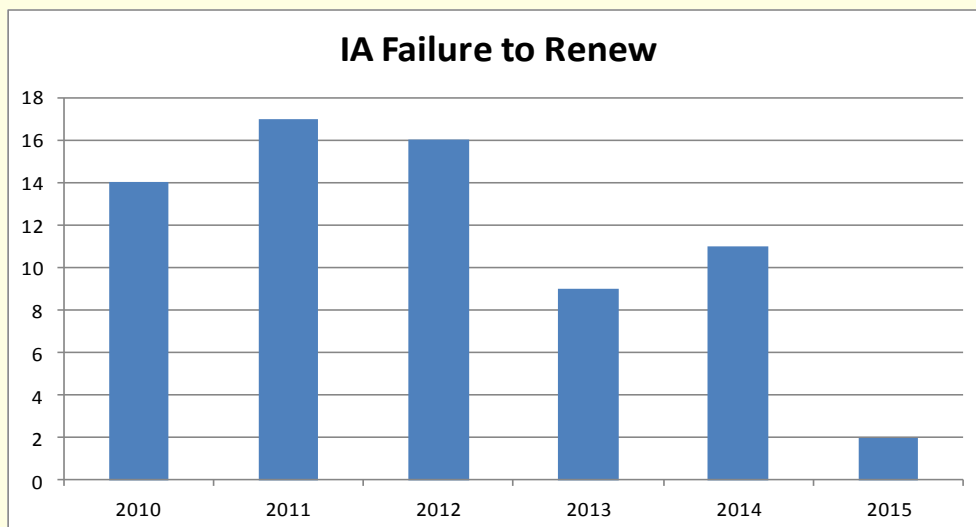
Active trading and some other very common investing behaviors actually undermine investment performance. According to researchers, other [common investing mistakes](#) include focusing on past performance, favoring investments from your own country, region, state or company, and holding on to losing investments too long and selling winning investments too soon.

Unbiased resources are available to help individuals make informed investing decisions. Whether checking the background of an investment professional, researching an investment, or learning about new products or scams, unbiased information can be a significant advantage for investing wisely. A great starting point is [Investor.gov](#).

If you have questions about your investments, your investment account or a financial professional, don't hesitate to contact the SEC's Office of Investor Education and Advocacy [online](#) or on our toll-free investor assistance line, (800) 732-0330.

IA Registration Renewal Compliance Hits High Mark

We want to take a moment this month to give a shoutout to North Carolina's investment advisers. By statute, investment advisers' and investment adviser representatives' registration automatically expires each year on December 31 if not renewed by the IA or rep. Only two IA's in North Carolina failed to renew by the December deadline in what is by far the best compliance rate we have seen in the past five years!



SOSNC's Securities Division has made outreach and education a particular priority in recent years, holding 21 IA compliance workshops since 2010. A total of 680 IA reps have participated in our workshops over that period. The workshops are designed to help IA's better serve their customers and help us better protect the investing public.



NASAA Launches Senior-Focused Website: ServeOurSeniors.org

The North American Securities Administrators Association (NASAA) on December 17 announced the launch of ServeOurSeniors.org, a new website designed to provide senior-focused resources to investors, caregivers, industry and policymakers. The website is available at serveourseniors.org.

“We are pleased to provide a resource-rich online environment for senior investors and those best positioned to provide for their care, financial security and protection,” said Judith Shaw, NASAA President and Maine Securities Administrator.



A key feature of the website is an interactive map to help users quickly and easily locate contact information for their jurisdiction’s [securities regulator](#), adult protective services agency, and other governmental senior-related service providers.



Each of the website’s four portals provides specific information for its targeted audience: investors, caregivers, industry and policymakers. The website also serves as the online presence of the NASAA Committee on Senior Issues & Diminished Capacity as well as its Advisory Council.

NASAA convened the committee and its advisory council in 2014 to work on a wide range of challenges confronting senior investors, regulators and securities industry professionals. In addition to the website, other committee initiatives underway include NASAA’s proposed model act to protect vulnerable adults and a series of recommended best practices for broker-dealers and investment advisers working with senior clients.

“NASAA and its members are leaders in detecting the problem of senior investor abuse and responding to it aggressively with innovative regulatory solutions, targeted enforcement, and investor education,” Shaw said.

The new website is the latest in a series of initiatives from NASAA members to protect senior investors since the launch of the Senior Investor Resource Center in 2003 and the adoption of a model rule on the use of senior-specific certifications and professional designations in 2008.

Protecting senior investors from financial exploitation long has been a primary focus of state and provincial securities regulators. “Senior investor fraud and abuse is a steadily growing concern due to the cumulative wealth of seniors and the continuing growth in the number of retirees coupled with increased social isolation,” Shaw said.

Ethical Challenges Facing Entrepreneurs

We recommend this great read - “The Ethical Challenges Facing Entrepreneurs” - from the Wall Street Journal about common ethical challenges that entrepreneurs face. In it, Kirk O. Hanson, Executive Director of Santa Clara University’s Center for Applied Ethics, expounded on the ethical risks that face entrepreneurs at every stage of a company’s life.

A recent panel of Silicon Valley entrepreneurs and venture capitalists offered several lessons on how to avoid common ethical pitfalls.

You can find the article in the November 23 issue of the WSJ. WSJ subscribers can check out the full article [here](#).



SEC Announces 2016 Examination Priorities

The Securities and Exchange Commission on January 11 announced its Office of Compliance Inspections and Examinations' (OCIE) [2016 priorities](#). New areas of focus include liquidity controls, public pension advisers, product promotion, and two popular investment products – exchange-traded funds and variable annuities. The priorities also reflect a continuing focus on protecting investors in ongoing risk areas such as cybersecurity, microcap fraud, fee selection, and reverse churning.

“These new areas of focus are extremely important to investors and financial institutions across the spectrum,” said SEC Chair Mary Jo White. “Through information sharing and conducting comprehensive examinations, OCIE continues to promote compliance with the federal securities laws to better protect investors and our markets.”

“For the last four years, OCIE’s transparency and information sharing has helped inform the industry,” said OCIE Director Marc Wyatt. “We hope that registrants will use this information to inform the evaluation of their own compliance programs in these key areas.”

The 2016 examination priorities address issues across a variety of financial institutions, including investment advisers, investment companies, broker-dealers, transfer agents, clearing agencies, and national securities exchanges. Areas of examination include:

Retail Investors – Protecting retail investors, including those investing for retirement, remains a priority in 2016. OCIE will continue several 2015 initiatives to assess risks to retail investors seeking information, advice, products, and services to help them plan for and live in retirement. It also will undertake examinations to review exchange-traded funds (ETFs) and ETF trading practices, variable annuity recommendations and disclosure, and potential conflicts and risks involving advisers to public pension funds.

Market-Wide Risks – To help fulfill the SEC’s mission of maintaining fair, orderly, and efficient markets, OCIE will continue its focus on cybersecurity controls at broker-dealers and investment advisers. New initiatives for 2016 include an evaluation of broker-dealers’ and investment advisers’ liquidity risk management practices, and firms’ compliance with the SEC’s Regulation SCI, designed to strengthen the technology infrastructure of the U.S. securities markets.

Data Analytics – OCIE’s enhanced ability to analyze large amounts of data will assist examiners’ ongoing initiatives to assess anti-money laundering compliance, detect microcap fraud, and review for excessive trading. Data analytics also will help examinations focused on promotion of new, complex, and high-risk products.

The published priorities for 2016 are not exhaustive and may be adjusted in light of market conditions, industry developments and ongoing risk assessment activities. OCIE selected the priorities in consultation with the Commission, the SEC’s policy divisions and regional offices, the Division of Enforcement, the SEC’s Investor Advocate, and other regulators.



Investor Alert: Securities-Backed Lines of Credit

An increasing number of securities firms are marketing and offering securities-backed lines of credit, or SBLOCs, to investors. SBLOCs can be a key revenue source for securities firms, especially in times of solid market returns and growing investment portfolios, when investors may feel more comfortable leveraging their assets. Firms market SBLOCs as a type of financing and liquidity strategy that can unlock the value of your investment portfolio. Between 2012 and 2014, one large brokerage firm that offers these programs reported a 70 percent increase in its securities-based lending business, while another firm reported an over 50 percent increase.

The Financial Industry Regulatory Authority (FINRA) and the SEC's Office of Investor Education and Advocacy (OIEA) are issuing this investor alert to provide information about the basics of SBLOCs, how they may be marketed to you, and what risks you should consider before posting your investment portfolio as collateral. SBLOCs may seem like an attractive way to access extra capital when markets are producing positive returns, but market volatility can magnify your potential losses, placing your financial future at greater risk.

What Are SBLOCs?

SBLOCs are loans that are often marketed to investors as an easy and inexpensive way to access extra cash by borrowing against the assets in your investment portfolio without having to liquidate these securities. They do, however, carry a number of risks, among them potential unintended tax consequences and the possibility that you may, in fact, have to sell your holdings, which could have a significant impact on your long-term investment goals.



Set up as a revolving line of credit, an SBLOC allows you to borrow money using securities held in your investment accounts as collateral. You can continue to trade and buy and sell securities in your pledged accounts. An SBLOC requires you to make monthly interest-only payments, and the loan remains outstanding until you repay it. You can repay some (or all) of the outstanding principal at any time, then borrow again later. Some investors like the flexibility of an SBLOC as compared to a term loan, which has a stated maturity date and a fixed repayment schedule. In some ways, SBLOCs are reminiscent of home equity lines of credit, except of course that, among other things, they involve the use of your securities rather than your home as collateral.

How Do SBLOCs Work?

Many firms might offer you the opportunity to pursue an SBLOC, including your brokerage or advisory firm, a clearing firm (a firm that maintains custody of your securities and other assets, such as cash in your account), or a third-party lender like a bank. To set one up, you and the lender execute an SBLOC contract. The contract specifies the maximum amount you may borrow, and you agree to use your investment account assets as collateral. If the value of your securities declines to an amount where it is no longer sufficient to support your line of credit, you will receive a "maintenance call" notifying you that you must post additional collateral or repay the loan within a specified period (typically two or three days). If you are unable to add additional collateral to your account or repay the loan with readily available cash, the firm can liquidate your securities and keep the cash to satisfy the maintenance call.



SBLOCs are non-purpose loans, which means you may not use the proceeds to purchase or trade securities. However, an SBLOC still provides a fair amount of flexibility when you consider the restrictions on other types of loans, such as a mortgage or auto loan, or borrowing on margin. Those types of loans all require that loan proceeds be used for a specific purpose. Money from an SBLOC can be used to finance virtually anything you might want, from home renovations and real estate purchases, to

personal travel or a new business venture. They also can be used, for example, to fund education expenses or to pay an unexpected tax bill.

But remember: The fact that you might be eligible for an SBLOC doesn't mean the loan is necessarily a good idea. And be aware that SBLOCs are just one type of securities-based lending offered to investors. Other types include [margin](#) and [stock-based loan programs](#).

What About Credit Limits?

A typical SBLOC agreement permits you to borrow from 50 to 95 percent of the value of the assets in your investment account, depending on the value of your overall holdings and the types of assets in the account. To qualify for an SBLOC, firms often require that both the market value of your portfolio assets and your initial withdrawal on an SBLOC meet certain minimum requirements. It's not uncommon for a firm to require that your assets have a market value of \$100,000 or more to qualify for an SBLOC.

In general, securities that are eligible to serve as collateral for an SBLOC include stocks, bonds and mutual funds held in fully paid-for, cash accounts. The maximum credit limit for an SBLOC typically is based on the quantity and type of underlying collateral in your account, and is determined by assigning an advance rate to your eligible securities. Advance rates vary by institution, depending on the firm's underwriting criteria. Typical advance rates range from 50-65 percent for equities, 65-80 percent for corporate bonds and 95 percent for U.S. Treasuries. For example, if your account contains a mix of equity securities and mutual fund shares with a total market value of \$500,000, you could be eligible to borrow from \$250,000 to \$325,000 for an SBLOC.

SBLOCs generally allow you to borrow as little as \$100,000 and up to \$5 million, depending on the value of your investments. Once approved, you can access your SBLOC funds using checks provided by the firm, a federal funds wire, electronic funds transfer, or ACH payments. SBLOC funds may be available to you within a week from the date you sign your SBLOC contract.

Interest Rates and Repayment

The interest rates for SBLOCs often are lower than those you would be able to qualify for with a personal loan or line of credit from your bank or by using a credit card to fund purchases. In fact, some SBLOC lenders might not run a credit check or conduct an analysis of your liabilities before setting and extending the credit line, and may determine your maximum limit solely based on the value of your portfolio. SBLOC interest rates typically follow broker-call, prime or LIBOR rates plus some stated percentage or "spread"—and you will be responsible for interest payments on an on-going basis. Although interest is calculated daily, and the interest rate on your loan can change every day, it is usually charged monthly and will appear on your monthly account statement. Some firms offer the option of a fixed rate SBLOC.



Weigh Potential Advantages and Risks

An SBLOC may allow you to avoid potential capital gains taxes because you don't have to liquidate securities for access to funds. You might also be able to continue to receive the benefits of your holdings, like dividends, interest and appreciation. Marketing materials for SBLOCs also promote the flexibility of spending that comes with an SBLOC as a key feature. And, some firms market SBLOCs as part of a retirement income strategy to fund short-term expenses.

However, as with virtually every financial product, SBLOCs have risks and downsides. Be aware that marketing materials touting the advantages of SBLOCs may suggest benefits that you may not achieve given the risks. For instance, if the value of the securities you pledge as collateral decreases, you may need to come up with extra money fast, or your positions could be liquidated. So even if an SBLOC may be an appropriate solution for you, it always pays to ask questions.



10 Questions to Ask Before Taking Out an SBLOC

Before you use your assets as collateral for an SBLOC, take time to understand the risks, and get answers to important questions about how this type of lending arrangement could impact your long-term investment goals.



(1) When I take out an SBLOC, what am I agreeing to? Make sure you fully understand the details of any SBLOC offered to you, including the terms of your agreement with the lender and how the lending arrangement will impact your holdings, including potential tax consequences, maintenance call requirements, and other costs. You need to know what aspects of the arrangement are out of your control. For example, the interest that you pay on your loan may change every day. In addition, your firm may

decide that a security that was previously eligible as collateral for an SBLOC is no longer eligible. If this happens, your credit limit will be adjusted to reflect the change, leaving you with less money to borrow than you planned for. You also may be required to post additional assets to shore up the account if the remaining eligible securities cannot cover the balance. In addition, some SBLOC agreements permit the lender to increase the percentage of equity you must keep in your pledged accounts, which would require you to deposit additional securities or cash into the account, or pay down the loan.

(2) Who is the lender? Before you sign up for an SBLOC, understand who you are doing business with (your brokerage or advisory firm, one of its affiliates, a clearing firm or a third-party lending institution). Many brokerage firms offering SBLOCs do so through a bank affiliate, so your broker may not be the point of contact for your loan and may not know much about how the program works. Make sure you know who to contact with questions about the SBLOC and ongoing account services. If your securities firm is offering the SBLOC for a third-party lending institution, ask your firm how they will continue monitoring your account and how, and when, you will be notified if a collateral shortfall or other issue may impact your assets.





(3) Should I use my investments as collateral? While SBLOCs' low rates and quick access to cash may be appealing, remember that your investment portfolio may not be the best option for loan collateral. The prices of securities in your portfolio are constantly shifting, which means that the collateral backing your line of credit may be volatile. If the market is up and the value of your assets increases, then great. But nothing guarantees that the market, or the value of your assets, won't go down.

(4) What if the value of my portfolio decreases? The firm might sell your securities if you receive a maintenance call and are unable to meet it. SBLOCs seem like a great option for extra capital when markets are producing positive returns and interest rates are low, but a market downswing or change in interest rates could make it much less enticing, and this can happen at any time. The value of your holdings is always changing, so you can't assume that the price today will be the price tomorrow. And keep in mind that SBLOCs are classified as demand loans, which means lenders may call the loan at any time. If you are unable to repay some, or all, of the loan on demand, the firm can liquidate securities and reduce your credit limit.

(5) Does my investment mix matter? Consider the extent to which your portfolio is diversified. If your portfolio is concentrated in a particular stock or sector, a single market event could cause your portfolio value to drop precipitously and trigger a maintenance call. Then you might be forced to liquidate your assets at the bottom of the market. Other assets may be more appropriate to serve as collateral for a loan, and without terms that allow the lender to liquidate your investments at a moment's notice. With that in mind, if you do decide to pursue an SBLOC, consider taking out less than the maximum amount of credit offered to you.



(6) What if my securities are liquidated to meet collateral requirements? There might be tax consequences. For example, if your lending firm notifies you that securities will be liquidated to maintain collateral at a sufficient level to support your SBLOC, you could be faced with paying capital gains taxes on the proceeds from these sales, depending on your cost basis in the stock and other factors affecting your tax status. Lenders often are permitted to make these decisions without giving you any notice. One way to protect yourself and your assets is to limit the amount you borrow. If you are offered an SBLOC based on a high percentage of the value of your assets, consider taking a lesser amount than what you are offered, so that you are not putting such a substantial portion of your portfolio on the line.

(7) What impact will an SBLOC have on my pledged investments? If you pledge securities that typically receive dividend payments, you should determine whether those payments will be credited to your loan balance and what, if any, circumstances will cause ownership of your holdings to change. In addition, certain account features may change with securities pledged for an SBLOC, such as check-writing privileges and recurring distributions. Some firms cancel check-writing privileges for your account when you take out an SBLOC because you will be issued a new set of checks directly tied to the SBLOC.

(8) What about interest rates? If interest rates rise, it could cause a spike in the broker-call, prime or LIBOR rates that apply to your SBLOC. If this happens, the cost of your SBLOC may increase significantly. Also, for accounts that have money market funds or bank sweeps, depending on your firm's SBLOC policy, the debit in your account from the interest charge may be paid from redemptions, effectively reducing your cash or money fund balances. Interest payments may be rolled into the balance, which, over time, can erode the value of your account (particularly if the SBLOC is sizeable), or increase your indebtedness. In addition, depending on the interest rate environment, if you have a money market fund or cash in your account, you may be paying more in interest for your SBLOC than you are earning.

(9) How is my broker compensated with SBLOCs? Your broker or adviser may receive additional compensation or a portion of the fees generated by SBLOCs sold to customers. Some firms pay salespersons on a quarterly basis depending on how much money you have borrowed on the line of credit. Your broker or adviser also will benefit from your SBLOC because you don't have to liquidate assets in your account to pay for things with cash, which would diminish the assets held in the account and the potential fees and commissions that could be earned by your broker or adviser from holding or engaging in future transactions with those assets. For example, with a fee-based account, by encouraging investors to take out an SBLOC to fund some purchase or financial need rather than liquidate securities, the firm continues to earn fees on the full account value, and may also earn revenue from the new loans.

(10) Can I move to a new firm if I have an SBLOC? It is not as easy to pick up and move your assets to a new firm if they are pledged as collateral for an SBLOC. This makes an SBLOC a "sticky" product because it makes it more difficult to leave your current brokerage or advisory firm. To move, you will likely have to pay off the loan.

Today, financing opportunities come in all shapes and sizes. Remember to exercise caution and consider the risks before pledging your securities as collateral. You worked hard to build your investment portfolio.

Five Minutes Could Save Your Life Savings



Regular readers of this newsletter know that investors have a lot of potential pitfalls when investing their money, from legitimate but risky or inappropriate investments to outright scams.

One simple tip that can catch a scam artist is to check their registration. With a few limited exceptions, anyone who sells or promotes an investment – or who is paid to provide individualized investment advice – has to be registered with the NC Securities Division in order to lawfully do business in North Carolina.

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 call our NC Securities Hotline at 1-800-688-4507** to see if the person you have been dealing with – perhaps even for years – is properly registered and/or has a disciplinary history. You owe it to yourself and your family to check.



Calendar of Upcoming Events

A representative from the Securities Division will be giving an anti-fraud presentation on the following dates and locations. Dates and times are subject to cancellation (although cancellations are rare), so please call the contact number listed to confirm the event is still on before leaving for it. All presentations are free and open to the public unless otherwise indicated. If you would like to schedule a speaker for your church, business, group or organization, please contact [John Maron](#), [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
2/5/16	Durham	Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention Program Presentation. A representative of the NC Department of the Secretary of State Securities Division will present information on the EIFFE in a Continuing Legal Education (CLE) seminar for the Orange County Bar Association. This event is open to Orange County Bar Association members only. For more information, please contact Bonnie Biggs at info@durhambar.org .
2/8/16	Williamston	“Investment Fraud: Guarding Your Assets in a Scary World.” A representative of the NC Secretary of State’s Office will give a presentation on investment fraud aimed at senior citizens, as well as information on the secure, online Advance Health Care Directive Registry maintained by the Secretary of State’s Office. Open to Martin County Collaborative members only. Location: Martin County Department of Social Services. 222 E. Main Street. Time: 9 AM — 10 AM. For more information contact Lori Furr, Life Enrichment Coordinator, at (704) 532-7017.
2/10/16	Williamston	A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. Senior citizens, family members and anyone acting as a caregiver to the elderly are also encouraged to attend to learn more about how to protect themselves and their loved ones from investment scams. This event is free and open to the public. Location: Martin Memorial Library Meeting Room. 200 N. Smithwick Street. Time: 10 AM — 12 PM. For more information, please contact Betsy Cuthrell at cuthrellb14@ecu.edu .

- 2/10/16 Washington A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free and open to the public. Location: Grace Martin Harwell Senior Center, Room B, 310 West Main Street. Time: 2 PM—4 PM. For more information, please contact Betsy Cuthrell at cuthrellb14@ecu.edu.
- 2/11/16 Greenville A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free and open to the public. Location: Self Help Center, Room 100 H, 301 Evans Street. Time: 10 AM—12 PM. For more information, please contact Betsy Cuthrell at cuthrellb14@ecu.edu.
- 2/11/16 Tarboro A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free and open to the public. Location: E.L. Roberson Center Library, 305 West Baker Street. Time: 2 PM—4 PM. For more information, please contact Betsy Cuthrell at cuthrellb14@ecu.edu.
- 2/11/16 Greenville A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free, but open only to members of the Quilt Guild and their guests.
- 2/16/16 Chapel Hill “Investment Fraud: Guarding Your Assets in a Scary World.” A representative of the NC Secretary of State’s Office will give a presentation on investment fraud aimed at senior citizens, as well as information on the secure, online Advance Health Care Directive Registry that’s maintained by the Secretary of State’s Office. This event is free, but open only to Sunrise Rotary Club members and their guests. Location: Southern Season, 201 S. Estes Drive. Time: 7:15 AM—8:15 AM. For more information, contact Jim Evans at jevans@bankofnc.com.

2/23/16	Cary	A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free, but open only to residents of Walton Wood Senior Living and their guests.
3/17/16	Raleigh	A representative of the NC Department of the Secretary of State Securities Division will give a presentation on the Elder Investment Fraud & Financial Exploitation (EIFFE) Prevention program. The program is designed to train medical professionals and others who work with senior citizens to spot the signs that a senior may have fallen prey to investment fraud, or may be particularly vulnerable to investment scams. This event is free, but open only to Fountain of Raleigh members and their guests.
3/18/16	Jacksonville	Secretary of State Elaine F. Marshall will speak at a USO of North Carolina financial literacy training for military personnel at Camp Lejeune.
4/22/16	Wilmington	“Modern Times, Modern Crimes” anti-fraud event. Secretary of State Elaine F. Marshall will speak at an event designed to give seniors the tools they need to avoid financial fraud. Location: Brightmore Wilmington, 2324 South 41st Street. Time: 8:30 AM — 2:00 PM. For more information, contact Jane S. Jones, Director, Area Agency on Aging, Cape Fear Council of Governments, at (910) 395-4553, ext 209.
4/26/16	Fayetteville	Scam Jam Anti-Fraud Presentation. 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. Free and open to the public. Location: Kiwanis Recreation Center at Honeycutt Park, 352 Devers Street. Time: 9 AM—12 PM. For more information please contact the Cumberland County Council on Older Adults at (910) 484-0111.
5/4/16	Flat Rock	A representative from the NC Secretary of State’s Office will give presentations on the Elder Investment Fraud and Financial Exploitation prevention program and the Advance Health Care Directives Registry. Time: There will be workshops at 10 AM and 1 PM. Location: Blue Ridge Community Center, 180 West Campus Drive. For more information, contact JR Mason at smie09@yahoo.com.
5/11/16	Raleigh	The NC Secretary of State’s Office will have an exhibition booth at the “State Employees 2016 Wellness & Safety Expo.” Location: The Jim Graham Building, NC State Fairgrounds, 1025 Blue Ridge Blvd. Time: 9:00 AM — 4:00 PM.

5/14/16

Cary

“Guarding Your Assets in a Scary World” anti-fraud presentation. A representative of the NC Secretary of State’s Securities Division will Give a presentation on investment fraud targeting senior citizens, a as well as information about the secure, online Advance Health Care Directive Registry maintained by the Secretary of State’s Office. Location: Jordan Oaks Retirement Community. Time: 11:00 AM — 12 PM. This event is free, but open only to Jordan Oaks Retirement Community residents and their guests. For more information, contact Sheila Bullock at (919) 387-8250 or Sheila.bullock@holidaytouch.com.



On The Docket

The following cases are ones in which the Securities Division has had some involvement, either as the lead investigative agency or in a supporting role.

Darren Joseph Capote, of Patterson, NY, was indicted on July 11, 2011, in Ashe County Superior Court on three Class C felony counts of securities fraud. He is alleged to have defrauded an elderly victim in Ashe County. He was released from custody on a \$100,000 secured bond. His next hearing is set for March 7, 2016.

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

Charles Caleb Fackrell, of Booneville, NC, was arrested by the Yadkinville Police Department in December, 2014 and to date has been charged with seven felony counts of obtaining more than \$500,000 in by false pretense. On Monday, August 31 in Yadkin County Superior Court his case was continued until January 25, 2016. Fackrell remains in custody in the Yadkin County Detention Center under a \$2.25 million bond.

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

Recent Enforcement Actions



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

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

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

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

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



News from the Regulators

The following are links to selected public notices issued by one or more securities regulator. Click the links to view the full notices. These are offered for informational purposes only.

[J.P. Morgan Misled Customers on Broker Compensation](#)

Jan. 6, 2016 — The Securities and Exchange Commission today announced that J.P. Morgan’s brokerage business agreed to pay \$4 million to settle charges that it falsely stated on its private banking website and in marketing materials that advisors are compensated “based on our clients’ performance; no one is paid on commission.” An SEC investigation found that although J.P. Morgan Securities LLC (JPMS) did not pay commissions to registered representatives in its U.S. Private Bank, compensation was not based on client performance. Advisors were instead paid a salary and a discretionary bonus based on a number of other factors.

“JPMS misled customers into believing their brokers had skin in the game and were being compensated based on the success of customer portfolios. But none of the factors JPMS used to determine broker compensation was tied to portfolio performance,” said Andrew J. Ceresney, Director of the SEC Enforcement Division.

[FINRA Rule Proposed for Broker-to-Client Communication](#)

Finra has filed a [proposed rule change](#) with the SEC that would require any broker who has transferred to a new firm to send a FINRA-designed “educational communication” to any clients he is encouraging to move firms with him. The required communication would outline questions that clients should ask to gauge how their broker’s new firm and position might affect them as investors. Suggested questions would include:

- ◆ Could financial incentives create a conflict of interest for your broker?
- ◆ Can you transfer all your holdings to the new firm?
- ◆ What are the implications and costs if you can’t?
- ◆ What costs will you pay — both in the short term and ongoing — if you change firms?
- ◆ How do the products at the new firm compare with your current firm?
- ◆ What level of service will you have?

[FINRA Releases 2016 Regulatory and Exam Priorities](#)

Jan. 5, 2016 — The Financial Industry Regulatory Authority (FINRA) has released its 2016 Regulatory and Examination Priorities letter, highlighting three broad areas of concern—culture, conflicts of interest and ethics; supervision, risk management and controls; and liquidity—as well as more narrowly focused concerns. Among those concerns is the danger to senior investors from individuals outside the securities industry as well as people registered to sell securities. In some cases, registered salesmen have borrowed large sums of money from elderly clients, recommended products not suitable for elderly investors, or taken control of seniors’ assets through Powers of Attorney. FINRA is urging firms to monitor investors’ accounts for red flags of possible abuse, such as overly aggressive investments or unusual asset movements, including to recipients outside of the country.

[CFTC Launches Whistleblower Program’s Website](#)

Jan. 21, 2016 — The U.S. Commodity Futures Trading Commission (CFTC) today launched the CFTC Whistleblower Program’s new website, www.whistleblower.gov. The new website provides an improved interface that educates the public about the Whistleblower Program and allows users to submit tips about potential violations of the Commodity Exchange Act (CEA) and apply for monetary awards.

The new website outlines whistleblower rights and protections and guides users through the process of filing a whistleblower tip and applying for an award. The website also provides users with easy access to the rules and regulations governing the CFTC’s Whistleblower Program, final award determinations, notices of covered actions, and press releases, while encouraging users to sign up for emailed CFTC Whistleblower Program updates.

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

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

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

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