



# North Carolina Department of the Secretary of State

*Hon. Elaine F. Marshall, Secretary*

## March-April 2018 SECURITIES NEWSLETTER

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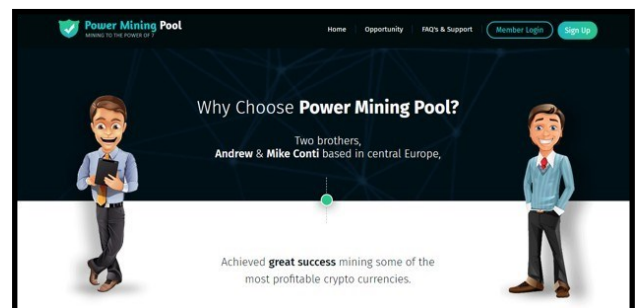


## Power Mining Pool Cryptocurrency Outfit Goes Dark Following SOSNC Cease and Desist Order

On April 19, the North Carolina Secretary of State Securities Division made permanent its Temporary [Cease and Desist Order](#) on March 2, 2018 to halt the sale of “mining pool shares” by Power Mining Pool. These mining pool shares were agreements with investors which allegedly allowed them to share in the profits generated from cryptocurrency mining activities.

The North Carolina Secretary of State found the mining pool shares to be securities. Under the NC Securities Act (NCGS 78A), a seller of securities must register both itself and its securities with the Secretary of State’s Office or qualify for an exemption. Power Mining Pool failed to meet any of these requirements. Consequently, as a result of the Department’s action, on March 6, 2018, Power Mining Pool removed its website from the internet leaving its investors in the dark.

“We believe we are the first securities regulator in the United States to act to halt investment sales activities by this group,” North Carolina Secretary of State Elaine F. Marshall said, “and we note that Power Mining Pool appears to have vanished off the internet since our Order was issued.”



**Image from Power Mining Pool’s website. Would you trust cartoon characters with YOUR money?**

During its investigation, the NC Secretary of State’s Office found Power Mining Pool was no more than a website whose activities were allegedly directed by two brothers based in central Europe. The only two people known to be associated with the entity were depicted by cartoons with fictitious names and location.

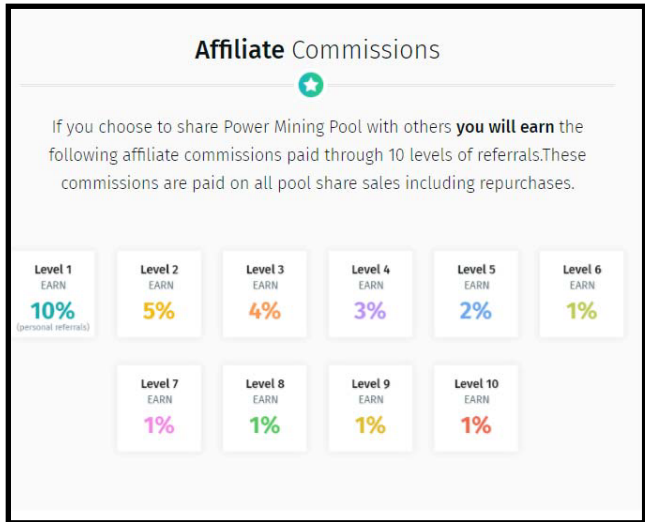
In the online world of cryptocurrency, “mining” is the process of validating cryptocurrency transactions and adding them to a transactional ledger called the “blockchain.” Entities and individuals compete to validate and add transactions to the blockchain using computers called “mining rigs.”

Mining can be profitable because cryptocurrencies are programmed to pay small amounts to the entity or individual which validates and adds transactions to the blockchain first.


Power Mining Pool offered the mining pool shares to the public on its website. Additionally, the Securities Division discovered advertisements on social media and online classified listings targeted directly at residents of North Carolina.

“What we found was that Power Mining Pool also encouraged others to offer these shares. Power Mining Pool promised commissions and bonuses to investors who offered and sold the shares,” Secretary Marshall said, “but failed to inform them that, by doing so, they would be acting as unregistered dealers in violation of the North Carolina Securities Act.”

In order to attract investors to purchase these shares, Power Mining Pool represented that it owned and operated mining rigs that could mine and track the profitability of seven cryptocurrencies. However, after an extensive investigation, the Securities Division was unable to find any evidence whatsoever that Power Mining Pool owned a single mining rig.



**Image from Power Mining Pool’s website that promised commissions and bonuses to investors who offered and sold mining pool shares.**



## In The News

This Cease and Desist Order, along with some of the NC Secretary of State’s other enforcement actions regarding cryptocurrency-related investment schemes, was the subject of a recent story in the Triangle Business Journal.

TBJ subscribers can check out the March 9 story, “Inside the state’s cryptocurrency scheme crackdown”, by clicking [here](#).

While Power Mining Pool has ceased to do business over the internet, Secretary of State Marshall and the Securities Division are aware of several other similar online schemes. The purported returns from these schemes appear too good to be true and the associated investments are likely to be securities.

Securities offered to residents of North Carolina must be registered with the NC Secretary of State’s office. You can check the registration status of any investment opportunity by calling 800-688-4507.

“We continue to ask everyone to always ‘check before you write one’ when considering making any investment—even in this high-tech age of cryptocurrencies,” Secretary Marshall said. “The only way to avoid having your hard-earned money stolen on the Internet by a fraudulent investment scam is not to make the investment in the first place,” she added.

The Secretary of State’s Securities Division enforces and administers North Carolina’s securities laws, which are designed to protect the investing public. The Division investigates complaints and allegations of fraud involving securities brokers and dealers, investment advisers and commodities dealers.

To read more on this topic, see our Informed Investor alert, “*What to Know about ICOs*” on [pages 4-5](#) of this newsletter.

# Brunswick County Workshop Raises Awareness of Elder Abuse

## *“Modern Times, More Modern Crimes: 2018”*

State and local officials spoke to a packed room in the town of Supply, NC on Thursday, April 19 to help bring the problem of elder abuse into sharper focus. Secretary of State Elaine F. Marshall joined Brunswick County Sheriff John Ingram, District Attorney Jon David, officials from the NC Attorney General’s Office, NC Department of Insurance and local elder care advocates in discussing issues from elder abuse and financial fraud to the opioid crisis.

Secretary Marshall’s comments focused on the NC Department of State’s regulatory role in protecting the State’s investing public. She stressed to workshop-goers and people watching the workshop on Facebook Live, “if it sounds too good to be true—call us!”

### ICYMI:

You can watch the presentations from Secretary Marshall and the NC Attorney General’s Office in their entirety [here](#).



Secretary Marshall warned seniors, “if a financial criminal gets your savings or your retirement account under his control—the clock starts ticking fast!” She urged anyone considering an investment to first call the NC Investor Hotline at 1-800-688-

4507 to make sure that the person offering them an investment opportunity—and the investment opportunity itself—are properly registered with the State. Not being registered is one of the most common red warning flags of an investment scam.

Speakers also noted a troubling intersection between elder abuse and the opioid crisis, and



### In the News

Check out coverage of the workshop from [WECT-TV](#) and [WWAY-TV](#).

urged seniors to lock up prescription medications and turn in expired medication to authorities so they can safely dispose of it.



## SOSNC Securities Director Named SAUSA for Eastern District

North Carolina Secretary of State Securities Division Director Kevin Harrington has gained an additional title as a Special Assistant US Attorney for the Eastern District of NC. The Eastern District covers 44 counties, stretching from Wake County to the coast.



**SOSNC Securities Division Director Kevin Harrington**

Harrington has served as a Special Assistant US Attorney for the Western District US Attorney’s Office since 2011.

“We believe Kevin’s new role in the Eastern District will help us build an even closer partnership to pursue financial crimes and protect the investing public” said Secretary of State Elaine F. Marshall.

In his role in the Western District US Attorney’s Office, Harrington has led prosecutions in financial crime cases SOSNC investigated, including the cases of Ponzi scheme operators Claude McDougal and James Mason. In addition, Harrington was a key member of the team that prosecuted Operation Waxhouse, a \$75 million racketeering conspiracy.

# Are You An Informed Investor?

## What to Know about ICOs

*Initial Coin Offerings (ICOs) are attracting investors interested in new trends in technology investing. Regulation of ICOs is evolving and complex. With considerably fewer investor protections than in traditional securities markets, investors considering participating in an ICO investment should be aware of the growing potential for fraud and manipulation these offerings present. Investors need to approach ICOs with extreme caution. ICOs are very risky and are not suitable for many investors. You could lose all of your investment. Before parting with your hard-earned money, make sure you know what you're getting into.*

### What is an Initial Coin Offering?

An Initial Coin Offering (ICO), also sometimes referred to as an Initial Token Offering (ITO), is a method used by an individual, group of individuals or organization to raise capital for a planned project. Most ICO's involve projects that are at the "idea" stage and in many instances may lack a prototype or "real world" implementation of the idea. To finance the idea or project through an ICO, promoters create a new virtual "coin" or "token," which is then sold online to participants in the ICO in exchange for fiat currency, such as the U.S. or Canadian dollar or Mexican peso.

The facts and circumstances of each ICO are different. For example, if the ICO is considered to include the offer and sale of securities, the offer and sales of the coins or tokens in the ICO must be registered with appropriate securities

regulators or have an exemption from registration. Most exemptions require sales only to accredited investors, or those with net worth of more than \$1 million. Use extreme caution when dealing with promoters who claim their ICO offering is exempt from securities registration yet does not ask about your income, net worth or level of investing sophistication.

Before participating in an ICO, potential investors should ask whether the "coins" or "tokens" are considered securities and whether the offering itself has been registered with appropriate securities regulators. If properly registered in the United States, free information about the offering is available on the "Form S-1" in the U.S. Securities and Exchange Commission's online EDGAR system. Also, virtual "coins" or "tokens" considered to be securities must comply with securities laws, which require the

individuals or firms selling them to be licensed or registered with securities regulators. Potential purchasers can check the registration status and background of those selling "coins" and "tokens" by contacting their state or provincial securities regulator or by visiting Investor.gov.

While some may tout ICOs as a new form of crowdfunding, it is important to remember that crowdfunded offerings must comply with the requirements of the federal Regulation Crowdfunding and securities laws in general. It also is important that potential participants understand that an ICO should not be confused with an Initial Public Offering (IPO), which requires potential offerings to undergo a very rigorous and robust process before they can attempt to raise capital on regulated securities markets.

### What is Blockchain Technology?

Many of the projects for which tokens are issued seek to leverage blockchain technology, which stores transaction information, similar to a ledger. Unlike a traditional ledger, blockchain is distributed through the internet and transaction information is duplicated on many computers connected on a network.

A blockchain has no central authority to maintain and update the ledger of transaction information. This function is instead performed by software stored on each of the computers on the network that uses cryptographic techniques to ensure entries in the ledger cannot be changed and that only valid transactions are added to the blockchain "ledger."

### What Types of Coins or Tokens are There?

In an ICO, promoters generally create a new virtual "coin" or "token." There are two main types of tokens: utility and equity.

**Utility tokens** enable the holder to exchange the coin for a good or service in the future.

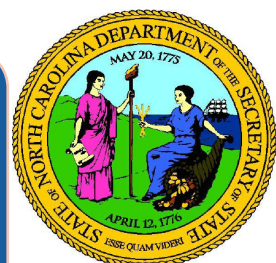
**Equity tokens** entitle the holder to an interest in the revenue or ownership of the underlying venture.

The regulatory treatment of tokens is evolving. Equity tokens are more likely to be regulated as securities than utility tokens. However, if a utility token is issued for a non-operational project or if it is planned to be traded on an exchange, it may also fall under the purview of securities regulation.

Issued: April, 2018

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## Considerations for Investors

Investors should be aware of the following risks when considering whether to participate in an ICO:

**Phony Initial Coin Offerings:** There is a real risk that the ICO you are considering is a fraud. Federal and state regulators are daily uncovering new scams involving these products. Here are two examples of potential ICO frauds:

▶ Scammers create a fake ICO and simply steal investors' money, either outright or through a Ponzi-style prolonged investment scheme.

▶ Computer hackers "spoof" a legitimate ICO and trick investors into paying them instead of the company behind the ICO.

**Lack of Investor Protection.** If a "token" or "coin" does not qualify as a security, the investor protections available under the securities laws will not apply. Also, unlike brokerage accounts where third-party custodians hold investors' funds, "coins" or "tokens" created for an ICO may be held in an encrypted "wallet," which may be difficult for enforcement authorities to freeze or access. Because ICOs are conducted over the internet, the promoters could be anywhere in the world, greatly increasing the risk that you will be unable to recover any losses.

**Lack of Disclosure.** Individuals launching an ICO usually do so through their own websites or through various online blockchain and cryptocurrency forums. Unlike in a registered securities offering, potential purchasers in an ICO likely will not receive a prospectus with important disclosures required by the securities laws. Instead, the promoters behind an ICO may include a "white paper" describing the project and their goals on a website created specifically for the ICO project.

**Unproven projects:** Unlike traditional capital raising processes, most ICOs are at the "idea" stage and usually not implemented in any real way. Recent data shows that 46 percent of ICOs initiated in 2017 failed, and more than half of these unsuccessful ICOs failed after fundraising had already begun.

**Unclear terms.** What an investor actually receives when purchasing a coin or token varies greatly from ICO to ICO. Some ICO tokens may have little to no resale value or may constitute nothing more than a donation. If a token is not a security, investor protections available under the securities laws will not apply.

### The Bottom Line:

To learn more, watch "Get in the Know About ICOs" at [www.nasaa.org/investor-education/multimedia-resources](http://www.nasaa.org/investor-education/multimedia-resources). Before making any financial decisions, do your homework and contact the North Carolina Department of the Secretary of State, Securities Division at (800) 688-4507 if you have any questions about the product or the person selling it.

**Lack of liquidity.** Some promoters may tell potential participants that they can sell their "coins" or "tokens" on a secondary market or alternative trading system. There is no guarantee that secondary markets or alternative trading exchanges would accept the "coins" or "tokens" of a particular ICO. Moreover, if the exchanges are not registered, they will not provide investor protections similar to those of investors who purchase stocks listed on an exchange.

**Price volatility:** The value of the token could swing up or down drastically.

**Lack of liquidity:** It could be hard to find a buyer to sell the token at a favorable price.

## How do investors protect themselves?

**Don't Invest Money You Can't Afford to Lose.** ICOs are not the same as other asset classes like traditional stocks and bonds. Investing in ICOs should be seen as entirely speculative.

**Read the fine print.** Don't assume all ICOs are the same or have the same terms.

**Research the ICO on the web.** Particularly on popular sites such as reddit.com, bitcointalk.org. Research the individuals behind the ICO. Ask questions and be skeptical.

**Focus on the token features.** Consider whether the token has any value outside of the ICO. Also consider whether the tokens can be traded on virtual currency exchanges. This could help determine whether you will be able to convert the tokens to cash.

**Watch for scams.** Individuals could organize a pump-and-dump scheme to urge investors to buy into the ICO, promote it to elevate the price, and then sell it off in a coordinated sale. The price plummets and those unaware of the scheme are left with devalued tokens.

**Don't be star struck.** Sometimes ICOs are promoted by celebrities or "industry insiders" who encourage the public to get in on the deal fast.

**Think with your head, not your heart.** Scammers often use language intentionally designed to provoke some emotional reaction in their targets. Whatever the appeal, remember that investing is a business decision. Ask yourself, "Is this investment right for me?"

## Are Unicorns a Myth?

*Unicorns are not just the stuff of fairy tales; some financial unicorns exist today. But investing in unicorns is speculative, and generally is unavailable to retail investors. Retail investors looking to bet on a unicorn may be able to do so indirectly through a mutual fund, exchange-traded fund or business development company. But beware; investing in unicorns is risky. This investment may bite.*

### What Does it Mean to be a **Financial Unicorn**?

In the area of financing businesses and start-up companies, the term “unicorn” has come to refer to a privately held company with a supposed valuation on paper of more than \$1 billion. A privately held company is one that generally cannot sell shares to the public and is owned by a limited number of investors. Private companies can raise capital to fund their businesses in a variety of ways, and recent changes in federal and state securities laws have expanded these options.

Investors in unicorns typically are private funds (such as venture-capital, private-equity or hedge funds), wealthy individuals, and direct owners or employees of the unicorn itself. SEC-registered mutual funds, exchange-traded funds (ETFs) and business development companies (BDCs) also may invest in unicorns.

Retail investors generally cannot purchase shares of unicorns directly, though. (Retail investors interested in betting on a particular unicorn could however search for a mutual fund, ETF or BDC with exposure to the company.)

Investing in unicorns carries very real risks, however, particularly when investing directly into a unicorn. As privately held companies, there is no public market to trade the securities of unicorns. This means that the securities are illiquid, or not easily sold or exchanged for cash. The market valuations of unicorns therefore may not reflect the intrinsic value of these businesses. Unicorns also are unlikely to have the same level of robust public disclosures required of publicly-traded companies.

Historically, investors in start-ups had limited opportunities to sell shares before the company held an IPO and a secondary trading market opened. Start-ups’ securities accordingly were highly illiquid. Federal legislation that came into effect on December 4, 2015, though, eased the way for early investors to resell shares.<sup>1</sup> This enabled unicorns to expand their investor base and develop market awareness prior to making a public offering (though unicorns should still be considered illiquid). In addition, regulatory changes enacted in 2012 raised the ceiling on the number of investors a private company could have before the company would be obligated to register its securities and become publicly-traded. This regulatory change has helped unicorns stay private for longer periods of time.<sup>2</sup>

### What are Some **Risks of Investing in pre-IPO Shares**?

**Fraud:** weak internal controls and corporate governance infrastructure may lead to fraudulent practices by a unicorn. For example, a company could create false sales and shipping documents to artificially increase sales numbers.

**Disclosure:** since the securities of unicorns will not be registered at the state or federal level, investors may lack important information to make an investment decision.

**Liquidity:** there is no guarantee shares can be resold after purchase.

**Valuation:** the valuation on a unicorn pre-IPO may not reflect the intrinsic value of the enterprise. In addition, even if the unicorn eventually holds an IPO, there is no guarantee the stock price will rise. Some IPOs are unsuccessful, and shares fall after the company goes public.

### **The Bottom Line:**

Before making any decisions with your money, do your homework.

1 See *The Reforming Access for Investments in Startup Enterprises (“RAISE”) Act*, enacted as Title LXXVI of the *Fixing America’s Surface Transportation Act (“FAST Act”)* of 2015.  
2 See Title V of the *Jumpstart Our Business Startups Act (“JOBS Act”)* of 2012. Specifically, Title V of the *JOBS Act* amended Section 12(g)(1) of the *Securities Exchange Act of 1934*, which sets a shareholder of record threshold beyond which private companies generally must register their securities with the U.S. Securities and Exchange Commission.

Issued: March, 2018

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## Theranos, CEO Holmes, and Former President Balwani Charged With Massive Fraud

*Editor's Note: This SEC case is a prime example of the "Financial Unicorns" we expound on in the [Informed Investor Advisory](#) on [page 6](#). You can read the SEC's full press release regarding the Theranos case [here](#).*

The Securities and Exchange Commission on March 14th charged Silicon Valley-based private company Theranos Inc., its founder and CEO Elizabeth Holmes, and its former President Ramesh "Sunny" Balwani with raising more than \$700 million from investors through an elaborate, years-long fraud in which they exaggerated or made false statements about the company's technology, business, and financial performance. Theranos and Holmes have agreed to resolve the charges against them.

Importantly, in addition to a penalty, Holmes has agreed to give up majority voting control over the company, as well as to a reduction of her equity which, combined with shares she previously returned, materially reduces her equity stake.

The complaints allege that Theranos, Holmes, and Balwani made numerous false and misleading statements in investor presentations, product demonstrations, and media articles by which they deceived investors into believing that its key product – a portable blood analyzer – could conduct comprehensive blood tests from finger drops of blood, revolutionizing the blood testing industry. In truth, according to the SEC's complaint, Theranos' proprietary analyzer could complete only a small number of tests, and the company conducted the vast majority of patient tests on modified and industry-standard commercial analyzers manufactured by others.



**Theranos founder Elizabeth Holmes speaking at a Wall Street Journal event in 2015.**

The complaints further charge that Theranos, Holmes, and Balwani claimed that Theranos' products were deployed by the U.S. Department of Defense on the battlefield in Afghanistan and on medevac helicopters and that the company would generate more than \$100 million in revenue in 2014. In truth, Theranos' technology was never deployed by the U.S. Department of Defense and generated a little more than \$100,000 in revenue from operations in 2014.

"Investors are entitled to nothing less than complete truth and candor from companies and their executives," said Steven Peikin, Co-Director of the SEC's Enforcement Division. "The charges against Theranos, Holmes, and Balwani make clear that there is no exemption from the anti-fraud provisions of the federal securities laws simply because a company is non-public, development-stage, or the subject of exuberant media attention."

"As a result of Holmes' alleged fraudulent conduct, she is being stripped of control of the company she founded, is returning millions of shares to Theranos, and is barred from serving as an officer or director of a public company for 10 years," said Stephanie Avakian, Co-Director of the SEC's Enforcement Division. "This package of remedies exemplifies our efforts to impose tailored and meaningful sanctions that directly address the unlawful behavior charged and best remedies the harm done to shareholders."

"The Theranos story is an important lesson for Silicon Valley," said Jina Choi, Director of the SEC's San Francisco Regional Office. "Innovators who seek to revolutionize and disrupt an industry must tell investors the truth about what their technology can do today, not just what they hope it might do someday."

## Meet the State Enforcers on Cryptocurrency Fraud

A recent write-up from [Bloomberg Law](#) includes North Carolina on the short list of State regulators across the nation that have put a focus on enforcement actions directed at cryptocurrency investment programs.

The Texas State Securities Board became the first State regulator to issue a cryptocurrency-related Administrative Order in December. The North Carolina Secretary of State's Securities Division became the second State regulator to bring a Cease and Desist Order in January, has now issued a total of six Cease and Desist Orders against alleged cryptocurrency investment schemes. You can read the full Bloomberg piece [here](#).

You can read more about the NC Secretary of State's Securities Division's enforcement actions against cryptocurrency investment schemes on our [Cryptocurrencies and Investing](#) page, which includes links to a wealth of educational resources and a link to file a complaint with the NC Securities Division if you believe you've fallen victim to a fraudulent investment involving cryptocurrencies.



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Have you [signed](#) up for the Secretary of State's Securities Division's RSS (Really Simple Syndication) feed yet? It's a great way to get our monthly Securities newsletter delivered direct to your computer.

And don't forget to follow the Secretary of State's Office on social media! Just click on the icons below to go to SOSNC's social media accounts!



## True Fraud Stories



The Commodity Futures Trading Commission (CFTC) has released [The Truth Behind Binary Options Fraud](#), two new videos that give viewers a first-hand look at the tactics shrewd fraudsters use to con investors.

CFTC Public Affairs Director Erica Elliott Richardson says the videos should be a powerful wake-up call to investors to check the registration of the company they are entrusting with their money: "Binary options can be helpful hedging tools for some traders, but there are only a few entities that can legitimately do business with individual investors in the U.S."

In this two-part episode, experienced investors tell their stories of how they were swindled in a binary options scheme that ultimately stole more than \$1 million from U.S. victims. Their ordeal illustrates how even seasoned investors can be fooled when fraudsters build legitimacy by promoting supposedly infallible trading platform software with convincing online advertisements and fake testimonials and reviews.



**SOSNC on  
YouTube**

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

Our videos cover how to file annual reports for LLCs and business corporations, what to do if you've received a notice about annual reports you owe, and much more!





## Investor Bulletin: Investment Clubs

The SEC's Office of Investor Education and Advocacy issued this [Investor Bulletin](#) to answer some common questions about investment clubs.

### What is an investment club?

An investment club is generally a group of people who pool their money to invest together. Club members generally study different investments and then make investment decisions together—for example, the group might buy or sell based on a member vote. Club meetings may be educational, and each member may actively help make investment decisions.



In another type of investment club, sometimes called a “self-directed investment club,” members research and select investments together, but they invest individually instead of pooling their money.

### Do the SEC and/or the states regulate investment clubs?

The SEC generally does not regulate investment clubs. But since each investment club is unique, each club will need to decide if it has any registration requirements.

Membership interests in the investment club may be securities under the [Securities Act of 1933](#) (Securities Act). If so, the SEC may regulate the offer and sale of those membership interests.

An investment club may be an investment company under the [Investment Company Act of 1940](#) (1940 Act). If so, one or more states or the SEC may regulate that investment club.

A person who is paid for providing advice regarding the investments of the club or its members may be an investment adviser under the [Investment Advisers Act of 1940](#) (Advisers Act) or state law. If so, one or more states or the SEC may regulate that person. Also, if one club member is paid for selecting investments for the club or its members, that person may be an investment adviser.

To learn more about securities laws in North Carolina and how they could affect your investment club, call the NC Secretary of State's Securities Division at 800-688-4507.

### When does an investment club have to register the offer and sale of its membership interests with the SEC?

Since the Securities Act requires the registration of the offer and sale of most securities, the investment club must first decide if its membership interests are “securities.” Generally, a membership interest is a security if it is an “investment contract.”

Generally, a membership interest is an investment contract if members invest and expect to make a profit from the *efforts of others*. If every member in an investment club actively helps decide what investments to make, the membership interests in the club would probably not be considered securities. If the club has even one passive member, it may be issuing securities.

## When does an investment club have to register with the SEC as an investment company?

An investment club must register with the SEC as an investment company under the 1940 Act if:

1. the club invests in securities;
2. The club issues membership interests that are securities (see above); and
3. The club is not able to rely on an exclusion from the definition of investment company.

For example, a “private investment company” may not need to register with the SEC. To qualify, an investment club:

- must not make, nor propose to make, a public offering of its securities; and
- must not have more than 100 members.

A public web site or other public communication that could be viewed as suggesting that a club is looking for new members might be considered a public offering. An attorney with experience in securities law can help the club evaluate, based on its particular facts, whether its membership interests are securities and whether the club is making a public offering of those securities.

## Does a person who provides advice to an investment club have to register with the SEC?

If someone is paid for providing advice about the club’s investments, he or she may be an investment adviser. Also, if one club member (instead of all members) selects investments for the club, that person may be an investment adviser.

Unless an exemption applies, an investment adviser must register with the SEC or one or more states. Even if an investment adviser is exempt from registration, the antifraud provisions of the Advisers Act still apply.



*If you have questions, don't hesitate to contact [help@sec.gov](mailto:help@sec.gov), the SEC's [online question form](#), or its toll-free investor assistance line at (800) 732-0330. You can also contact the NC Secretary of State's Securities Division at 800-688-4507.*

## Additional Resources



[Ask Questions - Questions You Should Ask About Your Investments](#)

[Researching Investments](#)

For additional resources on the regulation of investment companies and investment advisers, see the [Division of Investment Management's page](#).

For additional resources on offerings that are exempt from SEC registration, see the [Exempt Offerings page](#) on the SEC's website.



## Investor Alert: SEC Impersonators Pretend to Help Investors Buy Stock

The SEC’s Office of Investor Education and Advocacy (OIEA) is [warning](#) investors about investment schemes where fraudsters misrepresent that they work for the SEC and pretend to help investors purchase stock or confirm trades – but really just steal investors’ money. If you receive an email or phone call claiming to be from the SEC to “confirm” your purchase of a security or to help you trade a stock, it is likely a scam. Do not send them money or give them your account information.

The SEC does not contact investors to confirm trades, set up trading accounts, or record the details of trades. Federal government agencies, including the SEC, do not endorse or sponsor any particular securities, issuers, products, services, professional credentials, firms, or individuals. **Any correspondence you receive purportedly from the SEC confirming a specific securities transaction is a red flag of fraud.**

In some cases, after you have been solicited to buy shares of a stock, you may receive a call or email pretending to be from the SEC to verify or to confirm the transaction. Here’s an excerpt from an actual phone call of an SEC impersonator pretending to help an investor confirm a trade: “...I’m a senior compliance officer with the Securities and Exchange Commission...my job is to simply verify and confirm the order...so I am confirming a buy order from Mr. [name of person], who is a portfolio manager of [name of firm]...in accordance to the regulations that are set forth by the Securities and Exchange Commission on the U.S. markets, Mr. [name of investor], for the protection of both parties, what I’m going to do is record the details of the trade. It goes on file as a voice audio signature with the Securities and Exchange Commission as a regulated trade. Okay?...and it functions exactly as a fingerprint. It’s non-retractable...do I have your consent to place the order, Mr. [name of investor]?”

You can listen to a [snippet](#) of an actual fraudulent call:



Or even listen to the [entire fraudulent pitch](#) (Names and contact information have been bleeped out):



**If you are unsure whether correspondence claiming to be from the SEC is authentic, call OIEA at 1-800-732-0330 or email us at [Help@SEC.gov](mailto:Help@SEC.gov). If you have been contacted by someone pretending to be from the SEC, submit a [Complaint Form](#) to the SEC’s Office of Inspector General (OIG) or call the OIG’s toll-free hotline at (877) 442-0854.**

Also know that people who are not licensed or registered commit many of the scams that target retail investors. When someone tries to sell you an investment, the first thing you should do is check whether the person is registered. [Investor.gov](#) has a free and simple search tool that allows you to find out if your investment professional is licensed and registered, and if he or she has a disciplinary history or customer complaints.



# ETF vs. Mutual Fund: What's the Difference?

Reprinted from [Finra.org](http://Finra.org)  
Kaitlyn Kiernan

Exchange-traded funds (ETFs) and mutual funds are two of the most common ways for Americans to invest. And while the investment vehicles have some important similarities, they have some key differences.

ETFs saw a record year of new investment inflows in 2017 with over \$476 billion in ETF investments, bringing total assets to \$3.4 trillion, according to [ETFs.com](http://ETFs.com), which reports on ETFs. Meanwhile, investors held another \$16.3 trillion in mutual fund assets at the end of 2016, according to the [Investment Company Institute](http://Investment Company Institute).

**Both ETFs and mutual funds can offer diversification and professional management—and they can feature a wide variety of investment strategies and styles.**

**Mutual funds** have long been a mainstay of retirement investment accounts. In fact, the first modern mutual fund appeared as far back as 1924. **ETFs** are a relatively newer option with the first ETF hitting the scene in 1993. As ETFs become ever more popular, it is important for investors to understand both the similarities and differences between mutual funds and ETFs.

## What Are They?

Both ETFs and mutual funds are pooled investment funds that offer investors an interest in a professionally managed, diversified portfolio of investments. Combining the money of many investors, both types of funds invest according to a specific strategy. Mutual funds and ETFs can offer investors exposure to a wide array of markets, industry sectors, regions, asset classes and investment strategies. And each fund will come with different risks and features depending on the strategy.

Generally, mutual funds, which are also known as open-ended companies, and ETFs must be registered with the Securities and Exchange Commission (SEC) as investment companies. However, some ETFs that invest in commodities, currencies or commodity- or currency-based instruments are not registered investment companies, although their publicly offered shares are registered under the Securities Act.

Both types of funds can offer diversification and professional management—and they can feature a wide variety of investment strategies and styles. As with any security, investing in a fund involves risk, including the possibility that you may lose money. And how a fund performed in the past is not an indication of how it will perform in the future.

Since both mutual funds and ETFs can vary broadly in their objectives, it's important for any potential investor to read all of an ETF or mutual fund's available information, including its prospectus.





## How Are They Purchased?

From the perspective of ordinary investors, one of the biggest differences between mutual funds and ETFs is how they are purchased. Investors purchase and “redeem” shares in a mutual fund directly from the mutual fund or through a broker for the fund—and not on an exchange.

Meanwhile, ETF investors buy or sell shares of an ETF on an exchange, as they would any other publicly traded stock. That’s because ETFs do not sell shares to or redeem shares from investors directly.

Instead, ETFs follow a unique format where they enter into contracts with financial institutions to act as Authorized Participants (APs). APs purchase and redeem shares directly with the ETF in large blocks of shares called Creation Units.

Those shares are then sold on an exchange, where investors can buy and sell them.



## How Are They Priced?

Both ETFs and mutual funds calculate the net asset value (NAV) of their portfolios at the end of each trading day. There are some differences between how mutual funds and ETFs calculate this figure, but, generally, NAV comes from a calculation of the total value of all the securities in the fund portfolio, any liabilities of the fund and the number of fund shares outstanding.

The NAV is the price at which mutual fund investors will buy or sell their shares. All mutual fund transactions are “forward priced,” which means that while investors can place buy or sell orders throughout the day, all orders placed during the day will execute at that day’s NAV when it is calculated, typically as of 4 p.m. Eastern Time when stock trading closes for the day in the U.S.



ETF investors, on the other hand, will pay market value for their shares, which may not equal the NAV at any given time since the market value of the shares will fluctuate throughout the trading day.

Imbalances in supply and demand can cause the market price of an ETF to deviate from its NAV. However, significant shifts tend to be short-lived due to the transparency in an ETF’s portfolio and the ability of APs to create or redeem ETF shares at the NAV at the end of each trading day.

## What Kind of Fees or Other Expenses Do They Charge?

Mutual funds and ETFs both have expense ratios. An expense ratio is the annual fee that all mutual funds or ETFs charge their shareholders, including [12b-1 fees](#), management fees, administrative fees, operating costs and all other asset-based costs incurred by the fund. It is expressed as a percentage of assets.

These fees will vary based on the type of fund. Actively managed ETFs and mutual funds generally cost more than passively managed funds.

ETF investors may also have to pay a brokerage commission on each transaction, though some ETF providers offer no-commission ETFs. While skipping the commission can certainly save you some money, it shouldn't be the only factor you consider when choosing to purchase an ETF. You should be sure to compare all expenses when making a choice, as well as differences in fund performance and objectives.

Mutual fund investors typically don't pay commissions, but they may pay account, redemption, load or other fees not included as part of the expense ratio.

All of these fees—whether you are looking at an ETF or a mutual fund—will be detailed in a fund's prospectus, so read up to make sure you understand the investment.



A small percentage difference in fees can add up to a big dollar difference in the returns on your mutual fund or ETF, so it's important to be aware of all the fees associated with any fund in which you invest. Fortunately, FINRA offers a free tool called the [Fund Analyzer](#), which allows you analyze and compare the cost of owning more than 30,000 different mutual funds, ETFs and other funds.

At the end of the day, both mutual funds and ETFs can provide diversification, flexibility and exposure to a wide array of markets at a relatively low cost. But as is the case with any investment product, it pays to be informed and understand the differences between the two types of investment funds before you make any decision.

## Five Minutes Could Save Your Life Savings!



Is that individual offering you an investment opportunity licensed to sell securities in North Carolina? Is the investment opportunity itself registered? Know before you sign!

While registration in and of itself is no guarantee against fraud, not being registered is a very big red warning flag.

We urge you to take five minutes to call our NC Investor Hotline at 1-800-688-4507 to see if the person you have been dealing with – perhaps even for years – is properly registered and/or has a disciplinary history.

Pick up the phone and call us. You owe it to yourself and your family to check.

# Investor Alert: Ponzi Schemes Targeting Seniors

The SEC's Office of Investor Education and Advocacy (OIEA) and Retail Strategy Task Force are [warning](#) investors about Ponzi schemes that prey on senior investors.

Many seniors have spent years saving and investing, which is a great way to achieve financial security – but also may make them targets for investment fraud, including [Ponzi schemes](#). In a Ponzi scheme, fraudsters use money they collect from new investors to pay existing investors. What appears to be a return on your investment is actually money from another investor who has been swindled.

Before investing, check for these classic warning signs of a Ponzi scheme:

- **Promises of High Returns with Little or No Risk.** Guaranteed high investment returns are the hallmark of a Ponzi scheme. Every investment has risk, and the potential for high returns usually comes with high risk. If it sounds too good to be true, it probably is.
- **Unlicensed and Unregistered Sellers.** Most Ponzi schemes involves individuals or firms that are not licensed or registered. Even if an investment professional comes across as likeable or trustworthy, use the free search tool on [Investor.gov](#) to check whether the person is licensed and registered.
- **Overly Consistent Returns.** Investment values tend to fluctuate over time. Be skeptical of an investment that generates steady positive returns regardless of market conditions.



If you or someone you know has been pitched an investment with any of these red flags, [report](#) it to the SEC or the NC Secretary of State's [Securities Division](#). Also, be wary of aggressive sales ploys such as pressure to buy immediately and persuasion tactics such as offering investment seminars with a free meal. Take your time deciding whether an investment is right for you and don't give any money until you have confirmed for yourself that the seller is licensed and registered.

For investments that you already have, be suspicious if you have problems getting paid or if you are pressured to rollover your investments. Ponzi scheme promoters sometimes try to prevent investors from cashing out by offering even higher returns for staying invested.

The SEC has brought enforcement actions involving Ponzi schemes aimed at seniors, including: In the [Lifepay Group, LLC](#) matter, two defendants conducted an alleged Ponzi scheme that targeted seniors and their retirement savings. The SEC alleges that these defendants offered investors unregistered promissory notes, telling them that their money would be used for real estate investments that would generate high returns. To keep the Lifepay scam going, these defendants allegedly used new investors' money to pay earlier investors and convinced investors to rollover their investments into new promissory notes for larger amounts. According to the complaint, these defendants only invested a small portion of investors' money in real estate and stole roughly \$1.3 million to pay for personal expenses.

In the [Woodbridge](#) matter, the defendants allegedly conducted a \$1.2 billion Ponzi scheme in which thousands of people invested their retirement savings. The SEC alleges that the defendants employed hundreds of sales agents to advertise through television, radio, newspaper, cold calls, social media, websites, seminars, and in-person presentations. According to the complaint, although the defendants claimed that investors would get paid revenue from high-interest loans to third parties, the defendants, in reality, used money from new investors to pay returns owed to existing investors. One defendant allegedly used \$21 million of investors' money for his own extravagant personal expenditures.

# Investor Awareness Takes Center Stage for National Financial Capability Month

The Securities and Exchange Commission's Office of Investor Education and Advocacy (OIEA) marked National Financial Capability Month by [encouraging](#) investors to go to [Investor.gov](#) to learn about the importance of saving and investing early, and to check out their investment professional before investing. Investor.gov also provides investors with free financial planning tools such as a compound interest calculator, information on investment products, risks and fees, as well as [alerts on recent investment scams and bulletins on various securities topics](#).



In support of National Financial Capability Month OIEA staff participated in education programs and activities with military service members, students, seniors and the general public throughout April in an effort to enhance Americans' understanding of financial principles and practices.

“Education is a critical part of our efforts to empower investors to make informed investment decisions, not only during National Financial Capability Month, but every day throughout the year,” said SEC Chairman Jay Clayton. “Learning how to invest wisely and be alert to risks can help all Americans reach their financial goals.”

Key investor education themes to remember:

**Learn About the Importance of Saving and Investing Early** – Learn about the effect of [compounding](#) over time on your initial investment.



**Check Out Your Financial Professional on Investor.gov** – Use free resources that are available to [check the backgrounds of investment professionals](#) before investing. Learn some [top tips for selecting a financial professional](#).

**Research and Understand Investment Products Before Making a Decision** – Understand the [basics of investing](#) and [how to research public companies](#) before making an investment. Learn about things to consider before investing in an [IPO](#). Learn more about risks involved with [fixed-income investments](#) or [municipal bonds](#).

**Take Full Advantage of Company Matching** – An easy way to [boost your retirement savings](#) is to take full advantage of the “free money” many employer-sponsored retirement plans offer.

**Understand Investment Fees and Their Impact on Returns** – Fees and expenses [can have a real effect](#) on your investments, including [mutual funds and ETFs](#), [variable annuities](#), and [529 college savings plans](#).

**Beware of the Red Flags of Investment Fraud** – Be alert that claims of high returns with little to no risk are a common red flag for potential investment fraud. Learn more about how to [avoid investment scams](#), take steps to [protect your online investment accounts](#) from fraud and look out for [potential scams involving public companies making ICO-related claims](#).



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*Elder Abuse, Fraud, & Scams Workshop: Learn How to Protect Yourself*  
*~ May 15, 22, 29, 2018 ~*

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*My World... Your World... Our World - Free of Elder Abuse*

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\*\*\*\*\*FREE PUBLIC EVENT (RSVP)\*\*\*\*\*

## *No Excuse, Stop the Abuse*

Harnett County: May 15, 2018 from 8:30am-12pm, at Harnett County Department on Aging Common Area  
309 W Cornelius Harnett Blvd,  
Lillington NC, 27546

Sampson County: May 22, 2018 from 9am- 12pm, at Bellamy Recreation Center  
500 Pierce Street  
Clinton, NC, 28328

Cumberland County: May 29, 2018, from 9am-12pm, at Kiwanis Recreation Center  
352 Devers Street  
Fayetteville, NC, 28303

Mid-Carolina Area Agency on Aging  
CEU's Available  
Please **RSVP**

**For more information & to RSVP contact:**  
**Mid-Carolina Area Agency on Aging**  
**Kareem Strong, Regional Long Term Care Ombudsman,**  
**(910) 323-4191 x 25**





# SCAM JAM

AGENCIES REPRESENTED

## DON'T BE A VICTIM

Please join The Nash County Senior Center and the Rocky Mount Senior Center as we partner together to provide this years "Scam Jam" to help seniors in our area gain information on how to protect themselves from becoming a victim of fraud!

**TIME: 9AM - 12PM**

**DATE: JUNE 6TH**

LOCATION: NASH COUNTY AG CENTER  
1006 Eastern Ave, Nashville, NC

**EVENT IS FREE**

**PRE-REGISTRATION IS REQUIRED!**

**252-459-7681**





## 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](#) at (800) 688-4507. For a complete list of all upcoming events, please check out our online [calendar](#).

Date	City	Details
5/2/18	Durham	<p>“Investment Fraud: Guarding Your Assets in a Scary World” presentation to Money Matter\$ Women's Group. Location: Croasdaile Country Club, 3800 Farm Gate Ave. Time: 5:30 PM - 7:00 PM. A representative of the NC Department of the Secretary of State Securities Division will give a presentation on investment frauds aimed at the elderly as well as on the Advance Health Care Directive Registry which the Department maintains. For more information, please contact Lisa Gabriel at <a href="mailto:lgabriel@pinaforewealth.com">lgabriel@pinaforewealth.com</a>.</p>
5/15/18	Lillington	<p>“No Excuse, Stop the Abuse” Scam Jam presentation in the Harnett County Division on Aging Common Area, 309 W Cornelius Harnett Blvd. Time: 9:00 AM -- Noon. This event is free and open to the public, but registration is requested. To RSVP contact: Mid-Carolina Area Agency on Aging, Kareem Strong, Regional Long Term Care Ombudsman, (910) 323-4191 ext. 25. Representatives of the NC Dept. of the Secretary of State Securities Division, NC Dept. of Justice Consumer Protection Division, and the NC Dept. of Insurance Senior Health Insurance Information Program and others will provide information on how you can protect yourself from falling victim to a wide range of scams. Topics will include identity theft, how to establish a protective ‘freeze’ on one’s credit report, securities fraud, charitable giving fraud and medical/Medicare fraud.</p>
5/15/18	Durham	<p>“Investment Fraud: Guarding Your Assets in a Scary World” presentation at the Triangle J Council of Governments, 4307 Emperor Blvd., Suite 110. Time: 11:00 AM -- Noon. This presentation is free, but open only to members of the Triangle J COG's Advisory Council on Aging.</p>
5/16/18	Raleigh	<p>2018 NC Partnership to Address Adult Abuse Annual Meeting and Conference: “Elder Abuse Doesn’t Discriminate”, Wake Technical Community College: Southern Wake Campus, Student Services Building, 9101 Fayetteville Road. Time: 9 AM to 4 PM. NC Secretary of State Elaine F. Marshall will deliver a keynote address during the conference focusing on the threat of elder financial abuse and tips for avoiding investment fraud. Click <a href="#">here</a> for more information about the event and registration.</p>

5/22/18	Clinton	“No Excuse, Stop the Abuse” Scam Jam presentation at Bellamy Recreation Center, 500 Pierce Street. Time: 9:00 AM -- Noon. This event is free and open to the public, but registration is requested. To RSVP contact: Mid-Carolina Area Agency on Aging, Kareem Strong, Regional Long Term Care Ombudsman, (910) 323-4191 x 25.
5/24/18	Raleigh	“Investment Fraud: Guarding Your Assets in a Scary World” presentation to the Triangle Chapter of the National Aging in Place Council, 4408 Marriott Drive Raleigh, NC 27612 Time: Noon -- 1:00 PM. Free, but open to Council members and their guests only.
5/29/18	Fayetteville	“No Excuse, Stop the Abuse” Scam Jam presentation at Kiwanis Recreation Center and Honeycutt Park, 352 Devers Street. 9:00 AM -- Noon. This event is free and open to the public, but registration is requested. To RSVP contact: Mid-Carolina Area Agency on Aging, Kareem Strong, Regional Long Term Care Ombudsman, (910) 323-4191 x 25.
5/30/18	Raleigh	“Investment Crowdfunding in North Carolina” presentation at Small Business Development Fund. Carolina Small Business Development Fund 444 S Blount Street, Suite 115-B Raleigh, NC 27601 Time: 6:00 PM - 7:30 PM Free. For more information, contact Joe Battle at (919) 803-1437 x 244.
5/31/18	Elizabeth City	Elder Abuse Awareness Day Walk sponsored by the Albemarle Commission Council of Governments Area Agency on Aging. The walk will start at 10:00 a.m. and will proceed to Mariner’s Wharf, 400 S. Water Street, Elizabeth City, NC 27909, where anti-fraud presentations will be given. For more information, contact Laura Alvarico ( <a href="mailto:lalvarico@accog.org">lalvarico@accog.org</a> or 252-426-5753 ext 224).
6/2/18	Thomasville	“Investment Fraud: Guarding Your Assets in a Scary World” presentation at the Thomasville Church of God, 1200 W Holly Hill Road. Time: 9:00 AM -- 10:00 AM. This event is free and open to the public.
6/6/18	Nashville	Scam Jam” anti-fraud presentation at Nash County Agricultural Center, 1006 Eastern Avenue, Room 102. Time: 9:00 AM -- 11:30 AM. This event is free and open to the public. For more information, please contact Morgan Doughtie at (252)-462-2730.
6/12/18	Carrboro	“Focus on Business” Radio Show on WCOM 103.5 FM. Time: Noon -- 1:00 PM. A representative of the NC Department of the Secretary of State Securities Division will discuss some of the latest trends in business financing in North Carolina. The show streams live via the station website: <a href="http://www.wcomfm.org">www.wcomfm.org</a> (for listeners outside the Triangle area). The edited podcast will post on <a href="http://FOCUSonBusinessRadio.com">FOCUSonBusinessRadio.com</a> .



# Recent Enforcement Actions



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

On **April 19, 2018**, the **Temporary Cease and Desist Order** entered on **March 2, 2018** against **Power Mining Pool (“PMP”)** became **final**, permanently barring PMP from, among other things, offering unregistered securities in North Carolina. Click [here](#) to view the Final Order.

On **April 17, 2018**, **Alan Carver and Dechoker, LLC** entered into a **Consent Order** with the Deputy Securities Administrator agreeing to cease offering unregistered securities and acting as unregistered dealers/salesmen in North Carolina. Click [here](#) to view the Consent Order. Also on **April 17, 2018**, the Deputy Securities Administrator entered a **Final Order** against **Russell Wadell, Mark Shores, and Mark Honeycutt** making permanent the Temporary Cease and Desist Order in the matter of **Dechoker, LLC, Alan Carver, Russell Wadell, Mark Shores, and Mark Honeycutt** entered on February 15, 2018. Click [here](#) to view the Final Order.

On **April 6, 2018**, the **Temporary Cease and Desist Order** entered on **February 16, 2018** against **USI-Tech Limited (“USIT”)** became final, permanently barring USIT from, among other things, offering securities in North Carolina until such time as it becomes fully compliant with North Carolina's securities laws. Click [here](#) to view the Final Order.

On **March 26, 2018**, as the result of a multi-jurisdictional investigation, the Securities Division of the North Carolina Department of the Secretary of State entered into an **Administrative Consent Order** with **LPL Financial, LLC (“LPL”)** regarding its conduct surrounding the offers of non-traded real estate investment trusts (“REITs”) to citizens of North Carolina. The Order found that LPL failed to implement and enforce an adequate supervisory system which led to the improper conduct by its employees when offering the REITs. LPL will offer to remediate losses of all North Carolina residents who purchased the improperly sold REITs. LPL also paid a fine and investigative costs to the Secretary of State's office. Click [here](#) to view the Consent Order.

On **March 8, 2018**, the Securities Division of the North Carolina Department of Secretary of State issued a **Temporary Cease and Desist Order to Frank Calabro, Jr. (“Calabro”)**. The Temporary Cease and Desist Order found that Calabro was not registered as a dealer or salesman of securities in North Carolina and offered and sold securities on behalf of multiple different companies in violation of the North Carolina Securities Act. The Temporary Cease and Desist Order ordered Calabro to cease and desist a) offering unregistered securities, b) acting as a securities dealer and/or salesman in North Carolina while not registered to do so, and c) making material misstatements and omissions of fact when offering securities. The Temporary Cease and Desist Order gives Calabro thirty (30) business days in which to request a hearing. If no such request is made during that time, the Temporary Cease and Desist Order shall become final. Click [here](#) to view the Temporary Order.

On **March 2, 2018**, the North Carolina Secretary of State issued a **Temporary Cease and Desist Order to Power Mining Pool (“PMP”)**. The Temporary Cease and Desist Order found that PMP was not registered as a dealer or salesman of securities in North Carolina and offered investments called the mining pool shares, which were found to be securities. The Temporary Order to Cease and Desist also found that PMP had omitted to disclose material facts when offering the mining pool shares in North Carolina. These activities are in violation of the North Carolina Securities Act. The **Temporary Cease and Desist Order** directed PMP to cease and desist offering unregistered securities, acting as an securities dealer in North Carolina while it is not registered to do so, and engaging in fraud in connection with the offer or sale of any security. The **Temporary Cease and Desist Order** gives PMP thirty (30) business days in which to request a hearing. If no such request is made during that time, the **Temporary Cease and Desist Order** shall become final. Click [here](#) to view the Temporary Order.

On **February 27, 2018**, the Securities Division of the North Carolina Department of the Secretary of State entered into a **Final Consent Order** (“Order”) with **David Ralph Allison**. The Order found that the respondent had transacted business in North Carolina as a dealer or salesman without being registered in North Carolina, and he had sold or offered to sell securities in North Carolina that were not registered in North Carolina, and that were not otherwise exempt from registration, or covered under federal law. Pursuant to the Order, Mr. Allison agreed to immediately cease and desist from violating any provisions of the North Carolina Securities Act and any related administrative rules. Click [here](#) to see the Order.

On **February 27, 2018**, the Securities Division of the North Carolina Department of Secretary of State issued a **Temporary Cease and Desist Order** to **RJM Financial, RJM Financial, LLC and Russell Joseph Mutter (the “RJM Respondents”)**. The Temporary Cease and Desist Order found that the RJM Respondents violated the North Carolina Investment Advisers Act by misappropriating client funds. The Temporary Cease and Desist Order ordered the RJM Respondents to cease and desist soliciting new clients, administering the assets of current clients, misappropriating client funds, and engaging in fraud. The Temporary Cease and Desist Order gives the RJM Respondents thirty (30) business days in which to request a hearing. If no such request is made during that time, the Temporary Cease and Desist Order shall become final. Click [here](#) to view the Temporary Order.

On **February 27, 2018**, the Securities Division of the North Carolina Department of Secretary of State issued an **Order of Summary Suspension** (the “Order”) to **RJM Financial, RJM Financial, LLC and Russell Joseph Mutter (the “RJM Respondents”)**. The Order found that the RJM Respondents violated the North Carolina Investment Advisers Act by filing misleading and false documents with the Secretary of State’s office, and by engaging in a course of business which operated as a fraud. The Order suspends the registration of the RJM Respondents. The Order gives the RJM Respondents thirty (30) business days in which to request a hearing. If no such request is made during that time, the Order shall become final. Click [here](#) to view the Order.

On **February 16, 2018**, the North Carolina Secretary of State issued a **Temporary Cease and Desist Order** to **USI-Tech Limited (“USIT”)**. The Temporary Cease and Desist Order found that USIT was not registered as a dealer or salesman of securities in North Carolina and offered investments called the BTC Package, which were found to be securities. The Temporary Order to Cease and Desist also found that USIT had omitted to disclose material facts when offering the BTC Package in North Carolina. These activities are in violation of the North Carolina Securities Act. The **Temporary Cease and Desist Order** directed USIT to cease and desist offering unregistered securities, acting as an a securities dealer in North Carolina while it is not registered to do so, and engaging in fraud in connection with the offer or sale of any security. The **Temporary Cease and Desist Order** gives USIT thirty (30) business days in which to request a hearing. If no such request is made during that time, the **Temporary Cease and Desist Order** shall become final. Click [here](#) to view the Temporary Order.

On **February 15, 2018**, the Securities Division of the North Carolina Department of Secretary of State issued a **Temporary Cease and Desist Order** to **Dechoker, LLC, Alan Carver, Russell Wadell, Mark Shores and Mark Honeycutt (the “Dechoker Respondents”)**. The Temporary Cease and Desist Order found that the Dechoker Respondents were not registered as dealers or salesmen of securities in North Carolina and offered and sold interests in Dechoker, LLC; these activities are in violation of the North Carolina Securities Act. The Temporary Cease and Desist Order ordered Dechoker Respondents to cease and desist offering unregistered securities and acting as securities dealers and/or salesmen in North Carolina while not registered to do so. The Temporary Cease and Desist Order gives the Dechoker Respondents thirty (30) business days in which to request a hearing. If no such request is made during that time, the Temporary Cease and Desist Order shall become final. Click [here](#) to view the Temporary Order.

On **January 9, 2018**, the Securities Division of the North Carolina Department of Secretary of State issued a **Temporary Order to Cease and Desist to Bitconnect, BitConnect LTD, BitConnect International PLC and BitConnect Trading LTD (“BitConnect”)**. BitConnect was ordered to cease and desist from offering for sale, soliciting offers to purchase or selling, in or from North Carolina, any securities unless and until such securities have been registered and BitConnect, and any person or entity under the direction or control of BitConnect, is properly registered as a securities dealer or salesman. The Temporary Order to Cease and Desist found that BitConnect. was not registered as a dealer or salesman of securities in North Carolina and offered investments called the BitConnect Lending Program and the BitConnect Staking Program. The Temporary Order to Cease and Desist also found that BitConnect had omitted to disclose material facts when offering these investments in North Carolina. These activities are in violation of the North Carolina Securities Act. The Temporary Order to Cease and Desist gives BitConnect thirty (30) business days in which to request an hearing. If no such request is made during that time, the Temporary Order to Cease and Desist shall become final. Click [here](#) to view the Temporary Order.



## On 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.**

A Carteret County grand jury has indicted **Darrell Dwayne York** on five felony counts of securities fraud, four felony counts of obtaining property by false pretenses, and one felony count of embezzlement in an alleged Ponzi scheme. According to the indictments, victims were promised high rates of return in short term commodities investments with York's company, Provision Financial. The victims' money was instead allegedly used to repay earlier investors, as well as for York's own use and benefit. The indictments were handed down on March 12, 2018. York is currently in custody in the Carteret County Jail under a \$500,000 secured bond. His next hearing is scheduled for May 9th in Carteret County Superior Court.

**Alan Peter Darcy**, of Murphy, pleaded guilty on June 7, in federal court to one count of felony wire fraud. A federal grand jury indicted Darcy on March 24 for orchestrating an \$800,000 investment fraud scheme. Darcy is currently awaiting sentencing. On February 25, 2018, Darcy was sentenced to 108 months in federal prison followed by three years of supervised release. He was ordered to pay \$740,028.43 in restitution to his seven victims.



## 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.*

### [Altaba, Formerly Known as Yahoo!, Charged With Failing to Disclose Massive Cybersecurity Breach; Agrees To Pay \\$35 Million](#)

**April 24, 2018**—The Securities and Exchange Commission has announced that the entity formerly known as Yahoo! Inc. has agreed to pay a \$35 million penalty to settle charges that it misled investors by failing to disclose one of the world’s largest data breaches in which hackers stole personal data relating to hundreds of millions of user accounts. According to the SEC’s order, within days of the December 2014 intrusion, Yahoo’s information security team learned that Russian hackers had stolen what the security team referred to internally as the company’s “crown jewels”: usernames, email addresses, phone numbers, birthdates, encrypted passwords, and security questions and answers for hundreds of millions of user accounts. Although information relating to the breach was reported to members of Yahoo’s senior management and legal department, Yahoo failed to properly investigate the circumstances of the breach and to adequately consider whether the breach needed to be disclosed to investors. The fact of the breach was not disclosed to the investing public until more than two years later, when in 2016 Yahoo was in the process of closing the acquisition of its operating business by Verizon Communications, Inc. “We do not second-guess good faith exercises of judgment about cyber-incident disclosure. But we have also cautioned that a company’s response to such an event could be so lacking that an enforcement action would be warranted. This is clearly such a case,” said Steven Peikin, Co-Director of the SEC Enforcement Division.

### [SEC Proposes to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Investment Professionals](#)

**Apr. 18, 2018**—The Securities and Exchange Commission voted on April 18 to propose a package of rulemakings and interpretations designed to enhance the quality and transparency of investors’ relationships with investment advisers and broker-dealers while preserving access to a variety of types of advice relationships and investment products. Under proposed Regulation Best Interest, a broker-dealer would be required to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. Regulation Best Interest is designed to make it clear that a broker-dealer may not put its financial interests ahead of the interests of a retail customer in making recommendations. Taken as a whole, the proposed rules and interpretations would enhance investor protection by applying consistent principles to investment advisers and broker-dealers: provide clear disclosures, exercise due care, and address conflicts of interest. The specific obligations of investment advisers and broker-dealers would be, however, tailored to the differences in the types of advice relationships that they offer. SEC Chairman Jay Clayton stated, “The tireless work of the SEC staff has proven to me that we can increase investor protection and the quality of investment services by enhancing investor understanding and strengthening required standards of conduct. Importantly, I believe we can achieve these objectives while simultaneously preserving investors’ access to a range of products and services at a reasonable cost. The package of rules and guidance that the Commission proposed today is a significant step to achieving these objectives on behalf of our Main Street investors.” The public comment period will remain open for 90 days following publication of the documents in the Federal Register.



## One-year Report Lays out Changes through the Organizational Review

**April 24, 2018**—The Financial Industry Regulatory Authority (FINRA) has released a comprehensive progress [report](#) summarizing the significant operational and regulatory changes FINRA has made in the first year of its ongoing FINRA360 organizational review. “The first year of FINRA360 is already resulting in significant change across the organization,” FINRA CEO Robert Cook wrote in the report. “We have placed particular emphasis on changes that benefit investors, promote compliance, address duplicate operations, enhance transparency, foster engagement, or improve our day-to-day supervisory interactions with firms.” Major actions to date include: integrating two Enforcement programs into a single unified structure; releasing an [Examinations Findings Report](#) detailing FINRA’s observations from the prior year’s examinations; publishing a summary of FINRA’s [2018 budget and financial guiding principles](#); launching a [Small Firm Helpline](#) to address routine questions about FINRA; creating an [Innovation Outreach Initiative](#) to address the growing activity in FinTech, cryptocurrencies and related issues; increasing funding for training of examiners and regulatory coordinators; updating the activities of FINRA’s [advisory](#) and [governance](#) committees and enhancing transparency regarding what they do and how interested parties can [get involved](#); and further advancing FINRA’s risk-based approach to examinations and implementing certain process improvements in how FINRA interacts with member firms in the exam context. As part of this ongoing initiative, FINRA continues to make organizational changes that will impact FINRA’s day-to-day interactions with member firms and investors, Cook noted in the report. “A year into what I have often emphasized is a multi-year initiative, we have accomplished a great deal, but we still have much more work ahead of us,” Cook wrote in the report. “We are turning our attention in the coming year to our Examination program and a number of other areas where we think we can achieve additional meaningful change. These may include larger organizational changes as well as smaller improvements that collectively will have significant impacts on our day-to-day interactions with the firms we regulate and the investing public we protect. Expect more to come.”

All investors are strongly encouraged to contact the Securities Division at (919) 814-5400 or toll-free at (800) 688-4507 to check that their investment professional is properly registered ***before*** transferring any assets to that person’s control.

One five-minute telephone call to the Securities Division could protect your entire life’s savings from being stolen from you. For a wealth of investor education information, please visit our web site, [www.sosnc.gov](http://www.sosnc.gov). Click on the yellow box entitled “Investment Securities.”

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