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Investor Alert

Investment Products and Sales Practices Commonly Used to Defraud Seniors: Stories from the Front Line

In recent years, senior citizens have increasingly become targets of financial abuse and fraud. Approximately 5 million senior citizens become victims of financial abuse and fraud each year. This trend is related to the high amount of wealth held by older investors as nearly one-third of all U.S. investors are between 50 and 64 years of age. It is particularly devastating when older investors are defrauded because they are generally beyond or near the end of their earning years and as a result, have little or no ability to rebuild their retirement funds.

The Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and the North American Securities Administrators Association (NASAA), which represents state securities regulators, are seeing a number of investment products and sales practices recurring in schemes to defraud older investors. The following are examples of products and practices that have triggered SEC, FINRA, and/or state securities regulator investigations in recent months. Investors should exercise caution before investing in these types of products.



Charitable Gift Annuities

When investing in charitable annuities, investors should ensure that the firm or individual is representing a legitimate charitable organization and that the organization is fully aware of the salesperson's activities. In an increasing number of cases, a solicitor will pose as an employee of a charitable organization and offer customers the opportunity to invest money that will purportedly provide monthly annuity payments to both the investor and the charity. Unbeknownst to the investor, a significant portion of the funds are never invested for charitable purposes, but instead are directly deposited in the solicitor's personal account. The following are examples of such schemes that have triggered SEC and state securities regulator investigations in recent months.

- The SEC sued Robert Dillie for defrauding senior investors of at least \$52.9 million through the sale of charitable gift annuities. He represented to investors that their funds would go into stocks, bonds and money market accounts, but \$19.2 million of the monies raised were diverted to a hidden account that afforded him a luxurious lifestyle. When the plan collapsed, he told investors that the company had "disbanded due to inadequate assets." [*See Securities and Exchange Commission v. Robert R. Dillie et al.* (Civil Action No. CV-01-2493-PHX-JAT)].
- Arizona state securities regulators obtained a \$4.3 million final judgment against two insurance agents who fraudulently sold charitable gift annuities to seniors, telling them that their money would be invested in secure accounts. Instead the funds were placed in high-risk, speculative investments with the potential for a complete loss of those funds, and the insurance agents helped themselves to \$1.3 million in commissions. [*See Arizona Corporation Commission v. One Vision Children's Foundation, Inc., et al.* (State of Arizona, Maricopa County Superior Court, No. CV2002-020878)].

"High Return" or "Risk-Free" Investments

Investors should be wary of opportunities that promise spectacular profits or "guaranteed" returns. As the adage goes, if the deal sounds too good to be true, then it probably is. Commonly, an individual will claim that unrealistic returns can be realized from "Low-Risk Investment Opportunities." But no investment is risk-free. And sometimes the investment products touted do not even exist – they're merely scams. The following are examples of such schemes that have triggered SEC and state securities regulator investigations in recent months.

- The SEC obtained a \$112 million judgment against investment advisers who induced at least 803 seniors to invest in notes that purportedly paid a "guaranteed" return of 5.5% to 8% per year. The fraudsters claimed that investor funds would be used to make secured loans to businesses and that investors would be repaid their principal at maturity, but these representations were false. [*See SEC v. D.W. Heath & Associates, Inc., et al.*, No. CV 04-02949JFW (Ex) (C.D. Cal.)].

- Florida regulators sued two insurance agents who convinced clients to liquidate annuity investments and invest in a bogus real estate company by promising returns of up to 9%. Thomas A. Masciarelli and Steven Petrarca were convicted of aggravated white collar crime and making fraudulent investment transactions following an investigation by the Florida Department of Financial Services, Division of Insurance Fraud, and the Office of Financial Regulation. Detectives arrested Masciarelli a second time in 2005 and charged him with stealing \$300,000 from three investors – a 58-year-old woman supporting a disabled adult daughter, an 82-year-old woman with no family, and an 80-year-old man suffering from Parkinson's disease. All three cases were nearly identical: Masciarelli sold them fixed annuities and then later advised them to cash out the annuities and buy investments purportedly offered through his own company. However, detectives said Masciarelli did not invest the funds but instead used the money for personal and other expenses. [See <http://myfloridacfo.com/pressoffice/ViewMediaRelease.asp?ID=2354>].
- Florida regulators sued three individuals who conspired to obtain money from investors by fraudulently representing that the viatical contracts they were selling were risk-free. Many of the victims were senior citizens who had invested their life savings in these policies. [See <http://myfloridacfo.com/pressoffice/ViewMediaRelease.asp?ID=2042>].

Investment Adviser Services

An “investment adviser” is an individual or firm responsible for making investments on behalf of, and providing advice to, investors. An investment adviser has a duty to act in the best interest of their clients. Sometimes, however, investment advisers will take advantage of their positions of trust and use unauthorized and deceptive methods to misappropriate money directly from their clients. Investors should be careful to review their monthly account statements and to conduct annual reviews of their investment plans with their investment adviser. Investors should be vigilant for abnormal changes in their monthly account statements. The following are examples of investment adviser services that have triggered SEC and state securities regulator investigations in recent months.

- Wisconsin state securities regulators issued an order of prohibition against a Duane C. Boechler, a former investment adviser who took over \$7 million from at least 27 senior investors. The investors were mostly clients from his investment advisory business. The investors were told that their investments, either promissory notes or limited liability company interests in various businesses that Boechler had formed, were going to be used to improve these allegedly successful businesses. Instead the money was used to finance Boechler's lifestyle including his luxury apartment in Panama City and to repay earlier investors. Boechler is now also facing criminal charges in two Wisconsin counties. See *In the Matter of Duane C. Boechler*, File No. S-07034 (April 13, 2007)

- The SEC brought an action against an investment adviser who misappropriated over \$5.4 million from the accounts of four profit-sharing plans that were owned by clients of her employer. As part of the scheme, the investment adviser placed unauthorized orders to sell securities in these accounts and forged documents that transferred the proceeds from those sales to the accounts of two elderly women who were also advisory clients. The adviser then forged the signatures of these women on checks that she made payable to herself, her creditors, and her relatives. [See *SEC v. Susana P. Longo*, Case No. 1:05-CV-0164 (N.D. Ga.)].
- The Oregon Department of Consumer and Business Services and the SEC charged an investment adviser with misleading investors and misappropriating their funds. The adviser raised millions of dollars from investors, including many seniors, by representing that he would invest their money in stocks and bonds. Instead, the adviser used the money to buy himself vintage cars and sports memorabilia. [See *SEC v. C. Wesley Rhodes, Jr., et al.*, Civil Action No. CV06-1353-MO (D. Or.); *In the Matter of Rhodes Econometrics, Inc. and Charles Wesley Rhodes Jr.* No. S-06-0036 (A)].

Certificates of Deposit or Bonds

Investors searching for relatively low-risk investments that can easily be converted into cash often turn to certificates of deposit (CDs). A CD is a special type of deposit account with a bank or thrift institution that typically offers a higher rate of interest than a regular savings account. Unlike other investments, CDs feature federal deposit insurance of up to \$100,000. Investors should be skeptical of promises of above-market returns and be careful to confirm the legitimacy of the CD with the named issuing bank or thrift institution. The following are examples of CD sales that have triggered SEC and state securities regulator investigations in recent months.

- The SEC filed a complaint against individuals who raised more than \$3.9 million from at least 50 investors by selling CDs that did not exist. The fraudsters lured investors, many of whom were seniors, with promises of above market rates on FDIC-insured CDs purportedly issued by an entity called the "Liberty Certificate of Deposit Trust Fund." Rather than purchasing the CDs as agreed, the perpetrators used the invested money to make payments to prior investors and for their own personal uses. [See *SEC v. Reinhard et al.*, Civil Action No. 06-997-CMR (E.D. Pa.)].
- The SEC and the Florida Office of Financial Regulation filed an Emergency action and secured injunctions and asset freezes against financial services firm AmeriFirst Funding and its principals for defrauding investors of approximately \$55 million in a fraudulent offer and sale of so-called Secured Debt Obligations (SDOs). AmeriFirst sales agents lured older investors and those saving for retirement, with advertisements for relatively high-yielding FDIC-insured certificates of deposit, then convinced the investors to purchase the SDOs instead. Defendants falsely asserted that the investment had little or no risk because accounts were guaranteed by a commercial bank, protected by many layers of

insurance coverage and fully secured by collateral. [*See SEC v. Amerifirst Funding, Inc., et al.* Civil Action No. 3:07-CV-1188-D (N.D. Tex.); *State of Florida vs. AmeriFirst Funding Inc. et al.*].

Promissory Notes

A promissory note is a form of debt – similar to a loan– that a company may issue to raise money. Typically, an investor agrees to loan money to a company for a set period of time. In exchange, the company promises to pay the investor a fixed return on his or her investment, generally principal plus annual interest. While promissory notes can be legitimate investments, those that are marketed broadly to individual investors often turn out to be scams. Investors should carefully investigate the legitimacy of all promissory notes. The following are examples of such schemes that have triggered SEC and state securities regulator investigations in recent months.

- The SEC sued a number of individuals who used mailing lists to target seniors for investments in "guaranteed" and fully-collateralized promissory notes. The individuals distributed literature stating that the lengthy, complicated, and expensive Texas probate process could be overcome by employing their company's planning services. Investors were urged to liquidate their legitimate, safe investments; to withdraw funds from their IRAs; and to invest in high-risk investments. Investors were told their investments would be used to fund business ventures, none of which existed. Instead, investor funds were misappropriated to inappropriate uses as the construction of a lake home and the payment of personal credit card debts. [*See SEC v. Gary Landon Davenport, et al.*, Case No. 7:99-CV-185-R (N.D. Tex.)].
- Georgia securities regulators brought charges against four individuals who had purportedly sold phony promissory notes to senior investors. The investors lost approximately \$305,000. The investors had been told the investments were safe, guaranteed, and would earn a 2 to 3 % return each month. [*See* <http://sos.georgia.gov/pressrel/021006.htm>].

Sale and Leaseback Contracts

In an attempt to avoid the investor protections of securities laws, some investments are structured to resemble the sale of a piece of equipment such as a payphone, ATM machine or Internet booth. Commonly, the equipment is located in a location where the investor cannot service or maintain the equipment and must enter into a servicing agreement. To make the deal more attractive, investors are told that after a given period the equipment can be sold back to the seller at the investor's original purchase price. The investor is also promised a specific rate of return. In a variant of this scheme, a real estate interest such as a long-term lease in a resort community is sold instead of physical equipment. Frequently the equipment or property does not exist, and the seller lacks the financial capacity to keep the promise of repurchase. Investors should be skeptical of such leaseback contracts.

The following are examples of sale and leaseback contracts that have triggered SEC and state securities regulator investigations in recent months.

- The SEC obtained a judgment against individuals who offered and sold unregistered investment contracts in a scheme involving pay telephone leasebacks. The scheme raised more than \$74 million from more than 2,000 investors most of whom were seniors. [See *SEC v. Phoenix Telecom, L.L.C., et al.*, Civil Action File No. 1:00-CV-1970-JTC (N.D. Ga.)].
- In Texas, state securities regulators sued an individual who had deceived a senior into investing in a timeshare sale and leaseback arrangement involving hotels located in Branson, Missouri. In addition to a prison term, the individual was ordered to pay restitution of \$35,000 to the investor. [See http://www.ssb.state.tx.us/Enforcement/2006_Civil_and_Criminal_Actions.php].

Unsuitable Investment Recommendations

Some unscrupulous investment advisers convince clients to purchase investment products that don't meet the objectives of an investor. Unsuitable recommendations can occur when a broker sells speculative investments such as options, futures, or penny stocks to a senior with a low risk tolerance. Investors should be careful to review the risk profile of each investment recommendation. The following are examples of actions that have triggered SEC, FINRA, and state securities regulator investigations in recent months.

- In Texas, three individuals were convicted of violations of the registration requirements of the Texas Securities Act in connection with a scheme that offered investments in high-risk foreign currency markets to senior citizens. [See http://www.ssb.state.tx.us/Enforcement/2006_Civil_and_Criminal_Actions.php].
- The SEC brought an enforcement action against two brokers who induced their clients to invest in unsuitably high-risk securities. To persuade seniors to invest large amounts of their savings and retirement funds in the high-risk securities, the brokers falsely represented that the investments had little or no risk and were as safe as bank deposits. [See *SEC v. William Edward Sears and Patricia Jean Sears Million*, Case No. CV-05-1473 CO (D. Ore.)].
- The Oregon Department of Consumer and Business Services revoked the securities license of a stockbroker and fined him \$100,000 after finding that, instead of recommending investments appropriate for seniors, the stockbroker advised more than a dozen of his clients to become "general partners" in risky oil and gas ventures. In one instance, the stockbroker accompanied an 89-year-old man suffering from dementia to a bank branch, and instructed the visibly confused client to withdraw funds for investment purposes. [See *In the Matter of Jack Kleck*, Oregon Department of Consumer and Business Services No. S-07-0001].

- FINRA sanctioned a financial services firm for abusive sales practices and inadequate supervisory procedures because the company recommended inappropriately high-risk investments to its clients, a number of whom were retired or approaching retirement. The company was censured, fined \$500,000, and ordered to make restitution totaling more than \$2.8 million. [See http://www.nasd.com/PressRoom/NewsReleases/2003NewsReleases/NASDW_002809].
- FINRA expelled a brokerage firm from its membership after it engaged in fraudulent and illegal sales activities. The firm used misleading and incomplete information to induce seniors into making highly risky private investments, leading to losses of over \$10 million. [See http://www.nasd.com/PressRoom/NewsReleases/2004NewsReleases/NASDW_010886].
- FINRA barred Travis Wakeley, a registered representative, from association with any FINRA member firm in any capacity after he made an investment recommendation to a senior that was not suitable for the customer based on her age, risk tolerance, investment objective, investment experience and net worth. [See FINRA Case #2005001267501].
- The New York Stock Exchange (NYSE) took action against a registered representative who engaged in a pattern of unsuitable trading in the accounts of nine customers, seven of whom were seniors. Over a three-year period, the customers saw a total realized loss of approximately \$1,321,988 and the registered representative earned approximately \$585,274 in commissions from these accounts. [See *Kenneth Edward Stephens*, Decision 06-216 NYSE Hearing Board (December 13, 2006)].

Churning

“Churning” refers to when securities professionals making unnecessary and excessive trades in customer accounts for the sole purpose of generating commissions. Most churning occurs where a broker has discretion to trade the account without prior approval from the client. Investors should be careful to review their monthly account statements and investigate any abnormally high trading activity. The following are examples of churning activities that have triggered FINRA and state securities regulator investigations in recent months.

- In Massachusetts, Secretary of the Commonwealth William F. Galvin fined a brokerage \$1 million for the theft, churning, and unauthorized trading perpetrated by one of its agents. In addition to the \$987,500 that it had already been ordered to pay to settle the senior investor’s claim, the brokerage was ordered to pay \$135,000 in restitution. [See *In the Matter of Oppenheimer & Co., Inc., & Stephen J. Toussaint*].

- FINRA sanctioned a broker who churned the accounts of two senior citizens. A default decision was entered against the broker, and he was barred from trading and ordered to pay \$278,072.59 in restitution. [See FINRA Case #ELI200400810].
- The Attorney General of New York reached a settlement agreement with a brokerage after it failed to supervise one of its brokers who defrauded 15 customers, many of whom were seniors, out of over \$740,000. The broker mismanaged customer accounts by engaging in excessive, unauthorized, and unsuitable trading, signing wire transfers and new account documents without customer authorization, and failing to inform her clients of the risks of trading on margin. [See http://www.oag.state.ny.us/press/2006/oct/oct17a_06.html].

Equity Indexed Certificates of Deposit

Equity indexed CDs are hybrid securities products that offer an interest coupon payment that is based on a stock market index. Returns are not FDIC insured and are dependent on the performance of the stock market. As a result, these products may not be suitable for seniors who need liquid funds for retirement living.

High Pressure Sales Seminars

Investment advisers commonly invite investors to attend sales seminars. These seminars are sometimes held at upscale hotels and restaurants and offer a free meal. At these seminars, advisers often use high pressure sales tactics to pitch unsuitable products. Investors should avoid making rushed decisions at sales seminars and should seek objective third party advice before committing their funds. The following are examples of high pressure sales seminars that have triggered SEC and state securities regulator investigations in recent months.

- The SEC filed a complaint against an investment adviser who fraudulently solicited over \$22 million from investors. The adviser invited investors to free dinner seminars for the sake of retirement planning and told the investors that he would invest their funds in real estate transactions that would provide returns as high as 24%. The adviser failed to purchase real estate, misrepresented to investors that their investments would be secured by real property, and failed to disclose that he used new investor money to pay returns to prior investors. [See *SEC v. Jon W. James*, No. 06 Civ. 4966 (C.D. Cal. Aug. 24, 2006)].
- The Nevada Securities Division filed a complaint against an individual who defrauded over 42 investors out of \$2.7 million. The individual held seminars at several Las Vegas hotels and casinos, soliciting seniors to participate in various investment opportunities. Instead of investing the money as promised, the individual funneled investor funds into her personal accounts. She was charged with 23 felony violations for, amongst other things, the sale of unregistered securities and securities fraud. [See <http://sos.state.nv.us/information/news/press/2007/20070525.asp>].
- A brokerage firm consented to an order entered by the Utah Division of Securities to pay a \$50,000 fine after two of its agents were found offering free lunch seminars to seniors and misrepresenting the credentials of one of the agents. At the seminars, inaccurate and misleading information was presented in an attempt to persuade the seniors to transfer their investment accounts to one of the agents. [See *In the Matter of Andrew J. Moleff, John F. Hoschouer and World Group Securities, Inc.*].
- The Colorado Securities Commission sued an individual who fraudulently solicited over \$600,000 from at least 25 investors who were induced into investing during free lunch seminars held at their retirement and senior centers.

The perpetrator failed to invest the funds he raised and, instead, used the funds to pay his personal living expenses. [See http://co.jefferson.co.us/news/news_item_T3_R354.htm].

Prime Bank Schemes

Investors should be particularly wary of investment opportunities that promise spectacular profits when the investment product is from outside of the U.S. securities markets. In prime bank schemes, individuals persuade investors to purchase and trade "prime bank" financial instruments on clandestine overseas markets. Neither these instruments, nor the markets on which they are allegedly traded exist. To provide the appearance of legitimacy, documents are distributed which appear to be, complex, sophisticated, and official. Investors are commonly told that they have special access to programs that otherwise would be reserved for top financiers on Wall Street. Investors are also told that profits of 100% or more are possible with little risk. The following is an example of a prime bank scheme that triggered a recent SEC investigation:

- The SEC sued several individuals involved in a massive nationwide prime bank scheme which targeted, amongst others, seniors. The perpetrators raised \$45 million from 300 investors by selling "prime bank" securities. The perpetrators told investors that their funds would be deposited in a London bank, secured by a bank guarantee, and used as collateral to trade financial instruments with "top 50" European banks for annual returns of 24% to 60%. The prime bank program did not exist, no funds were sent to Europe, and the funds were left unsecured by any sort of guarantee. The investment funds had been misappropriated for personal and other unauthorized uses. [See *SEC v. Benjamin Franklin Cook*, No. 99 Civ. 571 (N.D. Tex. Mar. 17, 1999); *SEC v. Resource Development International, LLC*, No. 97 Civ. 1018Y, (N.D. Tex. filed Mar. 2002); *United States v. William Whelan*, No. 05 Crim. 00226OWW (E.D. Ca. Nov. 28, 2005)].

Pump and Dump Schemes

In a "pump and dump" scheme, individuals drive up the price of a company's stock (typically a microcap or penny stock) by issuing false and misleading statements. After the price is driven up, the individuals sell their own shares. Typically, at whatever point the individuals stop touting the stock, the price plummets and leaves legitimate investors with worthless or significantly devalued stock. Investors should remain particularly skeptical of any security that is priced below \$5 or that does not trade on a registered securities exchange. Investors also should be suspicious of all "too good to be true" stories coming from salespersons who are neither registered brokers nor investment advisers. The following are examples of pump and dump schemes that have triggered SEC and FINRA investigations in recent months.

- The SEC sued a number of individuals who used telemarketers that employed high-pressure sales tactics and made false representations to investors in order to sell shares of a certain penny stock. As a result of the fraud, investors, many of whom were seniors, lost over \$6.8 million. [See *SEC v. U.S. Gas & Elec., Inc., et al.* (S.D. FL 2006)].

- FINRA brought a successful disciplinary action against brokers in Brooklyn who used high-pressure sales tactics, fraudulent misrepresentations, baseless price predictions, and omissions of material facts to persuade investors – many of whom were seniors – to purchase shares of three highly speculative securities. The brokers were ordered to pay 10 customers more than \$3.8 million in restitution, plus interest and costs. [See <http://www.finra.org/PressRoom/NewsReleases/2005NewsReleases/P012997>].
- FINRA sanctioned two investment firms for using fraudulent tactics to sell highly speculative securities to seniors and other investors. The firms manipulated the market and the price of stocks by permitting a broker to buy and sell shares in his personal accounts in order to give the appearance of market interest in the stock. [See http://www.nasd.com/PressRoom/NewsReleases/2004NewsReleases/NASDW_002833].

Variable Annuities

Variable annuities are insurance products that allow investors to enjoy tax-deferred growth in mutual funds, while retaining the security of an insurance policy. While these products are legitimate investments, commissions for those who sell variable annuities are very high, and create incentives for sellers to promote products that are inappropriate for older investors. Variable annuities are generally not appropriate for most seniors or individuals near retirement because of their steep penalties incurred for early withdrawals. Investors should be skeptical of any broker who suggests purchasing a variable annuity to hold in a 401(k) or IRA because these accounts already provide tax-deferred growth, and the variable annuity simply adds a layer of cost with no additional tax benefits. The following are examples of actions that have triggered investigations in recent months.

- The Missouri State Commissioner of Securities sanctioned an investment adviser for recommending inappropriate variable annuity products to seniors. Eight Missouri residents between the ages of 72 and 87 invested approximately \$1.2 million with the adviser, resulting in commissions of approximately \$98,000. These investment products were not suitable for the clients. In fact, one annuity's producers had a policy against the sale of the product to individuals over the age of 75. The adviser's registration was suspended for four months, she was fined \$25,000, and she was prohibited from selling variable annuities or handling accounts for individuals over the age of 65 for five years. [See <http://www.sos.mo.gov/securities/orders/AP-06-47.asp>].
- FINRA suspended an investment adviser for six months and levied a fine of \$28,000 against the adviser when the adviser sold unsuitable variable annuities to seniors. [See http://www.nasd.com/PressRoom/NewsReleases/2004NewsReleases/NASDW_002828].

- FINRA barred an investment adviser from association with any FINRA-regulated securities firm and ordered the adviser to pay more than \$1.5 million in restitution to seniors and other customers for unsuitable sales of variable annuities and mutual funds totaling over \$6 million. [See http://www.nasd.com/PressRoom/NewsReleases/2004NewsReleases/NASDW_002860].
- FINRA fined a financial services firm, \$2.75 million for failing to maintain an adequate supervisory system to oversee the variable annuity sales activities of over 1,000 branch managers working in offices throughout the United States. In a related action, FINRA permanently barred one of those branch managers because the manager recommended unsuitable variable annuity products to seniors and made misleading statements to customers in correspondence. [See http://www.nasd.com/PressRoom/NewsReleases/2007NewsReleases/NASDW_018681].
- FINRA fined an investment services firm, \$850,000 for supervisory, recordkeeping, telemarketing, and other violations. The firm had failed to implement proper procedures for selling variable annuities to seniors. [See http://www.nasd.com/PressRoom/NewsReleases/2006NewsReleases/NASDW_017657].
- NYSE fined a firm \$550,000 for making unsuitable sales of variable annuities. The \$550,000 penalty included a \$175,000 fine and \$375,000 to be used to compensate injured customers. [See *David A. Noyes & Co., Inc.*, Decision 05-98 (NYSE Hearing Panel November 9, 2005)].
- NYSE disciplined a registered representative for sales practice violations involving the sale of unsuitable variable annuities to seniors. [See *Steven Allen Koch*, Decision 05-104 (NYSE April 12, 2007)].

Early Retirement

Commonly, individuals provide misleading advice to seniors about early retirement schemes. The individuals mislead seniors into cashing in their company retirement savings and reinvesting the money, promising that the seniors will be able to live comfortably off the proceeds for the rest of their lives. People who have built up sizeable retirement savings have been misled and harmed by flawed and fraudulent early-retirement investment schemes. The following are examples of situations that have triggered investigations in recent months.

- FINRA brought a claim against a brokerage when the brokerage failed to supervise a broker who lured long-term employees of Exxon Corporation into retiring prematurely. The broker made unreasonable and exaggerated promises of high returns from reinvested funds from their company retirement plans. FINRA fined the brokerage \$2.5 million for failure to supervise and required it to pay \$13.8 million in restitution to 32 former Exxon employees. [See <http://www.nasd.org/PressRoom/NewsReleases/2006NewsReleases/P017386>].

- FINRA fined a brokerage \$3 million and ordered it to pay \$12.2 million in restitution to more than 200 former BellSouth employees. The brokerage failed to supervise a team of brokers who used misleading sales materials during dozens of retirement seminars and meetings for hundreds of employees of BellSouth Corporation. FINRA found that the brokers' sales materials and presentations did not disclose that the recommended investments exposed the employees to greater market risk than their fixed annuity pension payments from BellSouth. As a result of these omissions and misrepresentations, BellSouth employees believed they could afford to retire early by relying upon monthly withdrawals from their retirement savings. Relying on the brokers' representations, many of the customers cashed out their nearly risk-free BellSouth pensions, their 401(k) accounts and other retirement assets and invested the proceeds with the brokers. [See <http://www.finra.org/PressRoom/NewsReleases/2007NewsReleases/P019240>].
- NYSE fined an investment firm \$900,000 for its failure to supervise a branch office manager who made unsuitable trades in customer accounts. The manager held seminars in which he encouraged long-term factory workers to retire, sell their stock in the profit sharing plan, and invest the derived funds through him. He then employed a trading strategy that included the purchase of unsuitable stocks. In some instances, the manager executed unauthorized trades and exercised discretionary trading authority without the customers' prior written authorization. [See *A. G. Edwards*, Decision 06-133 (NYSE Hearing Board July 10, 2006)].
- NYSE fined a registered representative for various sales practice violations. The representative gave investment seminars to employees of an oil refinery who were offered lump-sum retirement payments in lieu of pensions. He recommended that retired or soon-to-be-retired customers should invest in technology-sector stocks that were unsuitable for the customers' investment experience, financial resources, and investment objectives. [See *Henry William Kalweit*, Decision 06-62 (NYSE October 4, 2006)].