WHY INVESTMENT SCAMS TARGET SENIORS[1]

UTAH GERONTOLOGICAL SOCIETY, SPRING CONFERENCE
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I. **WHY SENIORS?** Willie Sutton is reputed to have responded to the question "Why do you rob banks?" with the wry observation: "That's where the money is." Today, Willie Sutton would be holding investment seminars for seniors – and offering free dinners. Why?

A. There are 36 million senior citizens in the U.S.

B. 10,000 seniors will turn 60 every day over the next 20 years.

C. Baby boomers have over $8.5 trillion in investable assets.

D. Within 40 years, these boomers will inherit at least $7 trillion from their parents.

E. While making up 15% of the U.S. population, seniors account for 30% of fraud victims.

F. The National Center on Elder Abuse estimates there may be as many as 5 million senior victims a year, counting investment fraud, theft by care givers, and consumer scams. *Financial abuse of elderly people grows*, Apr. 11, 2006, www.msnbc.msn.com/id/12270747/from/ET/.

II. **WILLIE SUTTON or MISTER ROGERS?**

A. Who will be the thief? To understand how seniors are at risk of losing their money to investment fraud requires identifying who is most likely to deceive them. While it is easy to visualize smooth-talking telemarketers conning seniors out of their life savings, the most likely thief will be a trusted acquaintance.

B. Trusted Acquaintance? It is precisely because the acquaintance is trusted that he or she can be so effective at getting money from seniors.

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[1] Wayne Klein, Director, Utah Division of Securities.

The acquaintance generally already knows their financial information because he or she is the insurance broker, real estate agent, accountant, or attorney for the senior. Or, the seller will focus first on getting this financial information by selling living trusts or making presentations at 'free meal' seminars. The senior's willingness to share this information initially also makes the senior less likely to question any advice given.

> In February 2007, the Division initiated an enforcement action accusing David C. Young, of South Jordan, of fraud in connection with a $128,000 variable annuity he sold to his wife's grandmother. He decided his $3,590 commission on the sale was not enough. Over the next year and a half, the Division alleges Young forged account records to permit him to make withdrawals from the annuity, then withdrew $61,156.11. The money was used to cover overdrafts in his checking account, make car payments, purchase an all-terrain vehicle, and pay other expenses, or was withdrawn as cash. These withdrawals also caused the grandmother's account to incur $2,161.90 in surrender charges and pay taxes on monies withdrawn by Young.

Sometimes the trusted acquaintance does not start out intending to steal – or even knowing the investment being offered is fraudulent. Instead, the acquaintance may just be supplementing his income by selling promissory notes paying him a 15% commission. Or, the acquaintance may intend to "borrow" the money to carry him over during a slow commission month. But, times never get better and the acquaintance needs more and more money. Examples include:

1. <u>AIM</u> Automated Information Management was a Utah County company formed by two insurance agents tired of selling insurance and behind in paying office expenses. They wanted to buy a franchise of a company developing electronic billing of medical charges. They hired Don Forbush to raise $300,000 in capital. Forbush went to eight of his elderly insurance clients – who he knew had large cash values in insurance – and persuaded them to take money out of their insurance policies to buy promissory notes from AIM. AIM was willing to pay 25% interest. Forbush promised investors 12% interest; he kept the other half – as well as a 10% up-front sales commission. Several of the investors died before the last criminal conviction was obtained.

2. <u>Promissory Notes</u> Half of the enforcement cases investigated by the Division involve real estate or insurance agents selling

promissory notes. The notes may be used to fund the agent's operations or may be issued by companies in financial trouble, trying to raise money to avoid bankruptcy. Neither the sellers nor the investors seem to question why these companies don't go to the banks to borrow money.

C. Sociopaths Sadly, there are many crooks out there willing to do and say anything to separate seniors from their savings. These are sociopaths who have no qualms about stealing money from anyone. One crook referred to the process as a "walletectomy," extracting wallets from owners. These crooks target seniors because the seniors have money and exhibit traits that can be exploited: the Willie Sutton principle.

1. Wall Street Bucket Shops In the book "*Born to Steal: When the Mafia Hit Wall Street,"* Gary Weiss describes how Louis Pasciuto, an uneducated street crook from Staten Island, became a broker at a "chop shop." Pasciuto found an 85 year-old Tucson man who had $10 million invested at Smith Barney. The book recounts: "Louis wanted all of it." Pasciuto went to Tucson trying to get some of the money for fake investments he was selling. At the man's home, Pasciuto "concentrated on the task at hand. 'This pathetic b_____ – I'm gonna rob him blind,'" he said to himself. (ppg 7, 10).

2. Greg Simper A Salt Lake City insurance agent and securities broker took more than $2.2 million from 21 customers. He had them make checks out to his company Greystone Marketing. He purposely targeted customers near death or severely handicapped, hoping they would not realize he was taking their money or that they would die before recognizing the theft. He committed suicide, but only after causing enormous losses among retired clients, mostly widows. He preyed on widows for their life insurance settlements. During an examination conducted after the suicide, the Division discovered that Simper had falsified transaction confirmations, created false account statements, lied to clients about their account values, and destroyed account documentation.

3. John Tenney Twenty years ago, Idaho officials enjoined Salt Lake City resident John Tenney for selling exotic investments involving Gibraltar insurance companies, Caribbean companies, and the Global Stock Exchange of Panama. In 2002, Utah convicted him for soliciting investments in Cellwest (a cellular telephone business). In 2005 he was convicted again for taking money from investors for a factoring scheme (Echo Tek). Incredibly, while awaiting sentencing on the Echo Tek fraud, he solicited investors to

purchase factoring agreements in a new company – CommuniCom. He now is teaching his son the family business.

4. Attitude Adjustment Factory In 2001, the Division of Securities ordered Ogden resident Janelle Garner to cease raising money illegally for her company that claimed to sell educational products for schools. When she continued soliciting investor funds in violation of the order, the Attorney General filed criminal charges in December, 2005. A few days before a March 2, 2006 hearing in the criminal case, the Division was contacted by investigators for the Pennsylvania Securities Commission, describing how a Pennsylvania resident had been solicited by Garner. The Division set up a sting. An investigator telephoned Garner, pretending to be the Pennsylvania resident. The investigator said she would be traveling through Salt Lake, on her way to California, and wanted to meet Garner at the airport. Garner met the investigator at the airport, making a personal pitch for an investment. Two days later, the investigators met Garner again, this time in a Utah County court telling the judge about the solicitation. At that hearing, the judge revoked Garner's bail and sent her to jail to await her trial.

5. Mob Connections Some investment schemes and penny-stock brokerage firms are just fronts for mob operations. The mafia has discovered that investment schemes not only provide great vehicles for laundering money, but that they can make huge profits at the same time.

6. No Conscience The stories are legion in which fraud promoters do not care who they steal from, so long as the investor has money. In criminal and administrative cases filed in April 2006, the state alleged that a Dallas promoter sold an investment program in advertising devices to an 86-year-old, blind Utah resident. Enforcement proceedings also are pending against two Utah attorneys who were soliciting investments despite being disbarred for stealing money from clients. As will be discussed below, the Division encounters frequent situations in which investment promoters have prior criminal convictions.

D. How Do Seniors Get Pitched? Seniors are bombarded with pitches. They come via:

1. Advertisements in the newspaper and on the radio;

2. Cold callers, brokers, and financial planners calling on the telephone;

3. Invitations that arrive in the mail for free lunches or dinners; and

4. Insurance and real estate agents who drop by to offer help.

E. Warning Signs Most scams pitched to seniors have one or more of the following traits. The existence of any of these is an indication of fraud.

1. Promises of high returns;

2. Assurances that the investment is "guaranteed;" or

3. Claims there is no risk ("It is as safe as a CD") or very little risk.

III. WHY ARE SENIORS SO SUSCEPTIBLE?

A. Seniors are not Unique in Being Susceptible At the outset, it needs to be recognized that fraud promoters are very good at their job. They are extremely proficient at getting investors voluntarily to hand over money, even their life savings. When salespeople get to keep as much as 30% of what they bring in, there is enormous incentive to be very good liars.

1. These salespeople are trained to overcome any objection. For example, how does a potential investor say no when the seller asks: "If I can show you a way to double your money with no risk in 60 days, would you be interested?" Sales scripts seized by regulators from boiler rooms show the methods salespeople use to befriend investors and to counter any reluctance to invest.

2. Fraudsters are very good at understanding human nature. They will use a variety of tactics until finding the *Achilles heel* that works for each investor. *Investment fraud pitches, more than any other type of fraud, use the highest number of "influence tactics."* The most common influence tactics are:

a. Source credibility (claiming to be from a known legitimate business);
b. Phantom fixation (dangling the prospect of wealth and riches);
c. Social consensus (showing examples of others who have invested);
d. Scarcity (making the product offered seem rare, to increase its value);
e. Comparison (juxtaposing a more expensive investment choice);
f. Friendship (appearing to be the victim's friend);
g. Commitment (the victim makes a commitment early, then is pressured to follow through on a larger commitment);

h. Reciprocity (the con does a small favor for the victim, expects reciprocity);
i. Landscaping (structuring the pitch so all roads lead to this investment);
j. Profiling (identifying the victim's psychological hot buttons through extensive questioning);
k. Fear (preying upon fears and using intimidation);
l. Authority (the con plays the role of an authority figure over the victim);
m. Appealing to the investor's greed;
n. Claiming inside information or access to special opportunities;
o. Asserting market expertise, including lying about their age, expertise, and training;
p. Belittling potential investors for being unwilling to make a decision or too scared to take a chance;
q. Getting angry, hoping investors will invest to appease the salesperson;
r. Pretending there is an urgency to the decision, that this *rare* opportunity is about to pass;
s. Embarrassing the investor; or
t. Promising enormous profits at no risk.

B. Ten Reasons Crooks Target Seniors Ten factors make seniors favored targets for investment con artists:

1. Money They have money; they have spent a lifetime accumulating assets and saving for retirement;

2. Equity They have home equity, which is convertible to cash;

3. Assume Responsibility As companies do away with pensions and guaranteed retirement benefits and Congress debates whether to establish personal social security accounts, seniors feel they must assume greater responsibilities over their own investments;

4. Trust They are more trusting. They don't understand why someone would call and lie to them. A publication directed at LDS readers described this principle well: "*Most people tend to judge others by themselves. If you are striving to be honest and always tell the truth, there is a tendency to assume others will do the same.*" www.ldsmag.com/moneywise/060418gullible.html

5. Availability They are home during the day, when salespeople make their calls;

6. Courtesy They grew up believing it is impolite to hang up on callers or not to hear out a visitor;

7. Reciprocate If someone offers a free lunch, seniors feel an obligation to buy something in return – to reciprocate the gesture of kindness;

8. Gullibility They have seen so much technological innovation, it is easy to be overwhelmed with technical talk or to believe anything is possible;

9. Concern for Future Seniors are very worried. After saving for retirement, they now discover they will live longer than they thought. They need to supplement their income and make their savings earn higher returns; and

10. Won't Report Fraud When the investment proves to be a fraud, seniors often are reluctant to tell their children or report the crime to authorities. They don't want to appear to be incapable of managing their finances and are afraid their children will belittle them.

IV. **COMMON FRAUDULENT SCHEMES**

A. Schemes Targeting Seniors

1. "Certified Senior Advisors" A company in Colorado sponsors a course training salespeople how to scare seniors into giving them money for investments or annuities. For payment of $1,200, the attendees receive the designation Certified Senior Advisor. There are many designations in use; some reflect significant training and high ethical standards. Others are just ruses, designed to create the impression the holder has expertise in helping seniors structure their investments in a manner to reduce taxes, minimize risk, and avoid probate. Designations include: CFP, CLU, ChFC, AFC, PFS, MSFS, CFS, CEA, and AFP. There are at least 35 different designations in the financial-planning, investment advisory, and tax areas. Hube, *Alphabet Soup*, Wall St. J., Apr. 24, 2006 at R7. When the designation is intended to hide the fact that the person is a "salesperson," not an independent advisor, it turns out that most of the products they sell to seniors are unsuitable.[2]

[2] Brokers are required to make sure all investments they recommend are suitable. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer, salesperson, investment adviser, or investment adviser representative must have reasonable grounds for believing that the recommendation is suitable for the customer based on the customer's other security holdings, financial situation, and investment goals. The broker has a duty to determine the clients needs and financial situation and sell products that are suitable.

2. Free Lunch Seniors receive invitations or tickets for a free lunch or dinner. The invitation says it is a no-obligation opportunity to hear how they can prepare for retirement. Seminar attendees are encouraged to set up individual appointments with the presenter. The presenter hopes he has created credibility during the seminar and that investors will follow the advice given in the followup meeting.

   a. Typically, the investor is told to liquidate existing securities holdings and use the proceeds to purchase annuities (or other products that generate lucrative commissions).

   b. The presenter's success is aided by three predilections of seniors: first, they are concerned about having sufficient money for retirement and are generally receptive to suggestions on how to be prepared. Second, they are confused about all the financial products available and want someone to explain it to them. Third, they will feel an obligation to buy something because they have eaten a free lunch.

   c. Presenters follow the advice of sales manuals teaching "How to get sixty qualified seniors to your seminar." The promotional materials explain what presenters should do during these seminars: "I talk to [seniors] about health care risks and long-term care. I talk to them about Medicaid and asset protection and annuities. I explain the solutions and before leaving the seminar, I book appointments with 65% of the attendees."

3. Variable Annuities There have been many allegations of abuse by sellers of variable annuities. The primary concerns with annuities are the high surrender charges for early terminations, the lengthy holding periods (generally 7-8 years), and the frequency of agents recommending that customers replace their existing policies (called "twisting" or "churning").

   a. In 2005, state securities and insurance regulators entered disciplinary orders against Waddell & Reed. The Kansas-based seller of securities and variable annuities was upset that an annuity provider whose products Waddell sold, United Investors Life Insurance Company (UILIC), would not share more of its revenue with Waddell, so Waddell asked Nationwide Insurance to create a new variable insurance

product that was almost identical to the UILIC annuity. Waddell & Reed then pushed its sales force to have all their customers sell their UILIC annuities and buy one of the new Nationwide annuities via 1035 exchanges – regardless of the suitability of the new product or the expenses to the customers. In the process, salespeople earned new 7.5% commissions, Waddell & Reed received a greater share of fees paid by customers, and customers became subject to new eight-year surrender periods. 6,742 customers surrendered $616 million in annuities. Of these, 4,937 paid $9,667,266 in surrender charges. The firm paid $11 million in restitution and $7 million in fines and implemented new supervisory procedures.

b. There is special concern over the sales of equity indexed annuities (EIAs). These are incredibly complex instruments sold to investors as retirement solutions. They have high commissions and long holding periods. Regulators question whether salespeople themselves even understand what is being sold. The NASD issued an investor alert in 2005 warning of abuses relating to the sales of EIAs. The alert is available at: http://www.nasd.com/ .

c. A company selling marketing services to insurance salespeople says it has "one clear mission." That mission is "*to ensure that every one of America's 35 million retirees allocated a portion of their retirement assets in a secure product such as equity-indexed annuities.*" www.assetmarketingsystems.net/aboutAMS/history.asp.

d. Matt Rettick, an annuity salesman from Denver, teaches other insurance agents how to reach the million-dollar commission level. His "dynamite senior seminar program" teaches agents how to sell annuities to seniors and earn an average of $70,000 in commissions per sale.

e. An insurance marketing company teaches insurance agents to "Sell Annuities to Seniors Who Don't Have Money! *Most Have Equity in Their Homes – Help Them Tap It!"*

f. Another marketing company advertises: *"How I Sell $300,000 in Annuities Every Month Without Making a Phone Call."* The company sells leads made up of people who already own annuities. The salespeople try to convince investors who have large balances in their annuities to

"exchange" the old annuities for new annuities.

g. Some sales agents pay $375 to attend "Annuity University," where they learn how to get seniors to buy annuities. The advice includes: "*Treat them like they're blind 12-year-olds*," and "*You'll waste time if you think you can impress them with charts, graphs printouts or use sophisticated words . . . . They buy based upon emotions! Emotions of fear, anger and greed*." Schultz and Opdyke, *Annuities 101: How to Sell to Senior Citizens*, Wall. St. J., July 1, 2002 at C1.

h. Another sales training course emphasizes:

> *"The key to closing your client is positioning that client. The first step in the process is to get people to accept the idea of an indexed annuity without really knowing. The quality of the close is dependent upon the fact that the client doesn't know where you are taking them until the very end."*

4. Brokerage Abuses Unfortunately, even licensed brokers sometimes commit abuses. The Division of Securities and the Attorney General have taken action against the following brokerage firms and agents that targeted seniors:

a. *Stockbroker offers private investment program* In 2000, Val D. Christoffersen of West Jordan was a licensed stockbroker. He solicited $90,000 from six investors for an investment program he said he would run apart from his broker-dealer, but using his investment expertise. Most of the victims were elderly. Christoffersen urged them to use retirement savings for the investment. He promised investors they would "make a fortune." Half the money was used to pay Christoffersen's personal expenses and the other half was lost in securities trading in his personal investment account. When the scheme was detected, the Division revoked his securities license and got back $25,000 for investors. In November 2005 he was sentenced on four counts of securities fraud and ordered to pay an additional $20,000 in restitution in February, with monthly payments of $1,500 after that. The solution? *When giving money to a securities agent, make sure the check is made out to a licensed brokerage firm;* ***never make the check payable to the broker****.*

b. *High-risk, speculative securities* A retired Utah couple

asked their son to manage their retirement funds while they served a mission for their church. After attending an investment seminar, the son opened an account at Access Financial, a Chicago brokerage firm. The son failed to control what the broker was buying. The broker put high-risk, speculative stocks into the parents' account and excessively traded the account (frequent buying and selling). The $300,000 account lost $203,000 in value. In the meantime, the broker generated $25,000 in commissions. The fees were so high, the account would have had to earn 22% annual return just to break even. This broker also was trying to manipulate the prices of speculative stocks he was buying for customers. The firm paid restitution to the clients and paid a $100,000 fine. The broker was barred from the securities industry and must pay a fine of $50,000 and additional restitution of $10,000.

c. *New York boiler room*[3] A 62-year-old Utah resident had retired from an oil company with a large pension. He had $40,000 in income, but $2 million in IRA accounts and stock option plans. Eugene Maloney, a broker from New York called claiming he earned an 80% return for his customers. After the customer opened an account, the broker bought penny stocks and blind pool companies.[4] The broker claimed he would get 5% commission, but really got 17%. He and his firm, Joseph Stevens & Co., took $49,500 in compensation. The broker's license was revoked and he was fined $64,000. The firm was fined another $50,000.

d. *Forged account* A broker for Couch & Co., a New York firm, opened an account for an 88-year-old Utah resident in 1999. The broker listed the customer's age on account forms as only 68 and forged the customer's signature. The broker also engaged in excessive trading in the account and

[3] Boiler room is the term used to describe firms using high-pressure sales tactics to sell particular stocks, rather than determining what is in the best interests of the clients.

[4] A blind pool company is one that has gone public, but has not yet determined what business it will be in. Generally, its goal is to find another business with which it can merge and be the surviving entity.

purchased unsuitable securities. Division examiners went to New York to conduct an examination. The day they began the examination, the broker tried to withdraw his license, hoping the examiners would stop looking at his records. The licenses of the firm and the agent were revoked. They were fined $150,000.

e. *Misleading seminars* Henry Brock, a St. George investment adviser estimated he had mailed 6.2 million invitations to investment seminars he held. He targeted seniors through seminars, flyers, and mailers. He held himself out as a Certified Financial Planner (CFP), even though his designation had been revoked. The seminars touted his knowledge and expertise by the use of testimonials and celebrity endorsements. The adviser used scare tactics to "disturb" seniors and persuade them to meet with him individually and purchase advisory services. The Division found that his presentations and advertising materials were based on conjecture and unfounded and unrealistic claims. Despite his claimed investment expertise, he filed for bankruptcy in 2003 – and sought to extinguish claims filed against him by clients. The Division ordered him to cease and desist the illegal conduct and barred him from the securities industry. The $100,000 fine imposed on him was waived on the conditions that he comply with the terms of the order and also reopen his bankruptcy proceeding to exclude client claims from the bankruptcy discharge.

f. *Excessive trading* Salt Lake City broker Stephen W. Nebeker admitted that he made unsuitable investment recommendations and engaged in excessive trading in the account of a retired Utah widow. Due to the improper trading, one account dropped in value from $41,000 to less than $14,000, while generating $18,000 in commissions and fees. A separate trust account dropped in value from $150,000 to $54,000 while generating $41,000 in commissions and fees. The firm, Round Hill Securities, paid restitution and a $25,000 fine. The broker was barred from the securities industry.

B. Schemes Targeting all Investors

1. Note Scams: An Anatomy

a. *The pitch*: Between 1997 and 2003, JT Wallenbrock raised

$253 million from thousands of investors by selling unregistered promissory notes. Wallenbrock salespeople told investors the money raised would be matched by funds from Wallenbrock and used to buy accounts receivable of a latex glove manufacturer in Malaysia. *The premise was that the manufacturer would have to wait until the gloves were delivered to buyers in the U.S. before they could get paid and needed financing to continue operations while awaiting payment.* Investors were promised returns of 15-20% every 90 days.

b. *The reality*: No receivables were purchased. Investor monies were used to engage in a high-stakes Ponzi scheme and invest in speculative business ventures. Of the $253 million raised:

(1) $113.8 million was used to make payments to earlier investors.
(2) $11.1 million covered operating expenses such as office space and payroll for 60 employees.
(3) $25.5 million was spent on the promoter's operating and personal expenses.
(4) $99.8 million funded 175 start-up companies.
(5) $3 million remained in the bank.

c. *The result*: Defendants were enjoined and ordered to make restitution. The court ordered restitution of the full $253 million, rejecting defendants' arguments that the costs of raising these funds should be deducted from their repayment obligation. One of the defendants later was criminally convicted because he continued soliciting funds after entry of the injunction – by moving his operations to Canada and Belize. *SEC v. JT Wallenbrock*, No. 04-551000, Mar. 10, 2006 (9th Cir. 2006).

2. Reloading Solicitors often purposely target people who have lost money in earlier ventures, claiming the solicitors can help the victims reclaim their lost money. In some cases, it is the same company that sold the initial investment and is now using the same list of investors to "reload" them into a new scam. In other cases, the salespeople have moved to new firms and took the investor names with them.

3. Surprising Incidence of Frauds Promoted by Convicted Felons It is amazing how many cases are brought by the Division of Securities

where the investment promoters have prior criminal convictions. Not surprisingly, the prior convictions are never disclosed. Recent examples include:

a. Pacific Nakon Michael Meservy, of Sandy, entered a guilty plea on December 19, 2006 for assisting Lamar N. Jensen in taking $100,000 from investors for use in Pacific Nakon. They promised a return of their investment plus 10% interest within 45 days, 2% ownership of another company, 5% of revenue from a third company, and 100,000 shares of a fourth company. Investors were not told that Jensen had a 2001 conviction for forgery, false statements, and falsifying government records.

b. Collateral Investment Douglas Merritt, of Layton, took $129,000 from investors, saying the money would be held in a bank account but used to fund investments. He not only falsely claimed he had been an investment adviser registered with the SEC and had two Ph.D's, but failed to disclose that he had two prior criminal convictions. In December 2006 he pled guilty to two more felonies – this time for securities fraud.

c. City Lips Cosmetics The Division of Securities entered an order against City Lips Cosmetics and two of its officers in December 2006 for having taken $454,000 from investors to expand the cosmetics business and take the company public. Investors were never told that one officer had been convicted of crimes and spent time in jail, another had his securities license revoked, and a third had unpaid tax liens.

d. Onti Management Robert Q. Cook, of Salt Lake, was fined $25,000 in October 2006 after losing $238,000 of investor monies in a fraudulent currency trading scheme. The investor was never told that Cook had a 1998 conviction for theft by deception and a 1999 bankruptcy.

e. Car Flipping Dennis Wynn was accused in September 2006 of taking $82,000 from investors for investments in cars that would be purchased at wholesale and resold to buyers, with the profits to be shared with investors. Wynn had been charged in 2002 with criminal violations, had over $2 million in unpaid judgments, and owed $163,000 in tax liens.

f. Cable Company Factoring Jordan Tenney consented to an

order in August 2006 finding he raised $295,000 from investors, promising they would receive profits from their cable installation business as soon as Comcast paid the company. Investors were not told that when the company was taking the money from investors, some of the money was being used to pay the defense costs of lawyers defending criminal charges filed against his father, John Tenney. John Tenney was awaiting sentencing on an earlier conviction when he solicited money from investors for this new venture.

g. Attitude Adjustment Janelle M. Garner, of Ogden, pleaded guilty to a felony charge of securities fraud in July 2006 for raising money from investors for her company, claiming the money would fund school programs teaching mental tools to students. Criminal charges were filed after Garner continued soliciting investors after she had consented to an order that she cease and desist securities violations. Amazingly, Garner continued soliciting investors after the criminal charges were filed, but finally stopped after Division investigators conducted a sting operation, taping her soliciting investors while awaiting trial on the criminal charges.

h. International Stock Sales Thomas M. Johnson, of Los Angeles, was charged in July 2006 with taking $45,000 from an investor to buy stock in a British company, claiming the investor would double his money within four months. Johnson claimed to be CEO of a private investment banking firm called Zurich Capital. In fact, Johnson did not own the stock he was selling and had been convicted of grand theft on two prior occasions.

i. Futures Trading – From Prison In July 2006, Douglas E. Gish and his wife – perversely named “Justice Gish” – pleaded guilty to criminal charges for taking $159,000 from an investor, claiming the money would be used to trade corn futures. The investor was not told about Douglas Gish’s criminal history or the extent of the criminal history of Jeffrey Wilson, whom the investor was helping find work.

j. Multilevel Fraud Criminal charges were filed in June 2006 against Jeffrey L. Mowen, of Lindon, for taking $200,000 from an investor for foreign currency trading. Mowen said he was a successful international banker, had made his first

million by the age of 19, and that a best-selling real estate investment book was based on his business records. In actuality, Mowen had securities fraud convictions in 2003 and 2004 and a separate theft conviction in 2004. The money was used for Mowen's personal expenses.

k. Debt Elimination Scam In June 2007, criminal charges were filed by Utah County against Christopher Harris of Orem for defrauding an investor of $205,000. The money was to be used for a debt elimination company. Harris never disclosed criminal charges filed against him in 2003, unpaid liens against him, and a bankruptcy.

l. Used Car Dealer Fails to Tell the Truth Scott L. Rhoads and his son Zach, of Ogden, were charged in June 2006 with taking $800,000 from investors for a used car business. Investors were told their funds would be used to buy cars to resell, with the investors keeping title to the cars until they investments were paid. Investors were not told that Scott Rhoads had a prior conviction for failing to deliver car titles to new owners.

m. Movie Fiction William E. Ferguson, of Salt Lake, was sentenced in May 2006 to up to 15 years in prison for taking $157,000 from 8 investors for a movie being filmed. Ferguson never told investors that he had a prior criminal conviction in Florida for securities fraud, had been ordered by Florida regulators to cease selling unregistered securities, and was the subject of a lawsuit alleging fraud and breach of fiduciary duty relating to movie production.

n. Property Investment Notes The Attorney General filed criminal charges in May 2006 against Michael B. Snow, of Salt Lake, for taking $276,000 from an investor to purchase properties in her name. She did not get deeds to the homes as Snow sold them to others. He failed to disclose a 1997 conviction for workers compensation fraud, unpaid restitution for that conviction, and unpaid judgments and liens totaling $67,000.

o. Funding an Insurance Business Lyle B. Dahle, of Highland, was accused by the Division of taking $55,000 from an investor to fund the operations of Dahle's insurance company, Golden Age Marketing. Dahle failed to disclose a prior conviction on two counts of securities fraud.

p. Stealing a Whole Company Kenneth W. Webb was sentenced in April 2006 for fraudulently inducing owners of a company into transferring the company and its assets to him. He failed to disclose a criminal history of bad checks and drug violations. He was ordered to undergo mental health counseling.

q. "Double Your Money" Zell Lou Mills sold stock, claiming to have been a stockbroker. He never delivered the stock and failed to tell investors he had two prior criminal convictions – for bad checks and bank fraud. He was sentenced in March 2006 for securities fraud charges.

r. Mutual Fund William Ray Clemons took money from fellow church members for a supposed mutual fund, but used the money for personal expenses. In addition to misrepresenting his background, he also failed to disclose a conviction for unlawful use of a credit card. He is currently in jail on the credit card conviction and was charged with securities fraud in March 2006.

s. *Promissory Notes* Michael A. Espinoza, of Massachusetts, sold promissory notes and factoring agreements without disclosing two prior convictions for drug crimes. He was sentenced on new charges in February 2006.

t. Penny Stock Promoter Allen W. Wolfson was convicted of bank fraud in connection with the 1982 failure of a Tampa bank and served time in prison. In 1995, he sold stock in a new company, disclosing that "in the past five years" he has not been convicted of any crimes. In 2000 he was charged in federal court with securities fraud, wire fraud, and conspiracy. He pled guilty in March 2003. In January 2004 he pled guilty again, for another other securities fraud. On April 26, 2006, Wolfson was indicted by a federal grand jury in Utah for selling stock to overseas investors in a stem cell company – that did not conduct any research into stem cells. He had sold stock to the overseas investors without disclosing any of his prior charges or convictions – and that he had not yet been sentenced on the 2004 conviction.

C. Top Ten Scam Predictions On December 27, 2006, the Division identified ten investment scams it predicted would be prevalent during 2007. Some of the scams are more targeted at seniors than others.

1. Real Estate Investments The dramatic escalation of real estate values in Utah and the nation has lured crooks into the real estate investment industry. Property investment scams take several forms: a) using your credit (or credit score) to allow promoters to buy homes and resell them, b) borrowing money from investors to buy and sell (flip) real estate, c) buying homes in the names of investors and getting loans for higher amounts, then investing the difference, d) investments in "hard money" lending that will be used to finance high-interest home loans, and e) claiming that real estate collateral has no risk.

2. Note Brokering Investors purchase training courses from companies advertising on the Internet that claim they will teach the investors how to become loan brokers. The investors pay large fees to learn how to find real estate notes, purchase them at a discount, list them on a web site, then resell them at a profit. Not only are profits hard to find, but investors discover that they need to obtain securities licenses to buy and sell investment notes.

3. "Free Meal" Seminars for Seniors Many seniors receive invitations to a seminar at which investment advice will be offered, along with a promise of a free meal. At the seminar, seniors are told they can increase their investment income, avoid taxes, and earn safe and guaranteed returns. At the conclusion of the seminar, each senior is asked to make an appointment for a personal visit with the instructor, during which the senior's individual investment goals can be discussed. The real purpose of these seminars is to learn about all the senior's assets and to recommend that they sell their current assets and purchase high-commission, illiquid investments.

4. Prime Banks Prime bank schemes involve claims that money will be deposited with European banks or financial institutions in the U.S. and used to facilitate financial transactions around the world. Investors are promised "high-yield" tax free returns through trading by international elite, or "prime" banks. In one case brought by the Division, promoters claimed they could receive 160% profit *per week*, that no one had lost money in the program, that investors already had put up $17 million, and that the money would never leave their local banks. These claims are all false. There are no prime banks or legitimate financial institutions that use money from individual investors to facilitate transactions.

5. "Hot Tip" Stock Recommendations via E-mail The most prevalent unsolicited e-mails no longer are Nigerian scams; they now offer stock tips. Some e-mails pretend to contain inside information

directed to another person. Most use language proclaiming the urgency of buying a particular stock immediately: “Get this stock first thing tomorrow,” “This is Going to Explode,” or “Check out for HOT NEWS!!!” The e-mails generally list a current price for the stock of less than $1, saying there is a target price of $3 to $5 per share. One recent study found that investors who act on e-mail invitations lost an average of 5.25% of their money in the first two days. Over time, they lose a third of their investments.

6. Church Frauds/Affinity Frauds One of the most effective ways to defraud others is to belong to their church or have some other shared association such as volunteering for the PTA, coaching kids’ sports, or being co-workers. People naturally trust those with whom they associate and ask fewer questions. Crooks know this and use those feelings of trust when soliciting money. The most common affinity fraud is religion. Enforcers of state securities laws found that 80,000 people lost nearly $2 billion nationally in church frauds between 1998 and 2001.

7. Foreign Currency Trading There has been a dramatic increase in the number of people claiming to be making huge profits buying and selling international currencies. Foreign exchange trading is notoriously risky and dominated by international banks and professional traders. Nevertheless, local promoters claim immense profits and create the appearance of legitimacy by having an office with multiple computer screens tracking financial markets or by distributing financial statements showing rapid gains. In three cases prosecuted by the state during 2006, the promoters always claimed special expertise but the money they raised was actually used to pay personal expenses.

8. Oil and Gas Investments The high price of gasoline is leading to a spurt of oil and gas investment frauds. Investors may be told they will own part of an oil well or will be invited to invest in technology to extract oil from tar sands or shale. During 2006, enforcement actions were taken against a Washington County man who told investors their investments were backed by an existing oil and gas lease in Texas and against a Cache County man who claimed money from investors would be used to develop oil wells.

9. Deceptive Internet Advertising Many Internet web sites offer investment programs. Some are managed by licensed securities brokers, but many others are completely fraudulent. Two Internet scams were recently discovered that claim to be based in Utah. The addresses given in Utah do not exist. One offers three

investment programs paying from 5 to 12% profit *per day*. Investors also are promised 5% commissions for other investors they refer. The company claims to be licensed, but the license is a business license, not a securities license. The other site promises "strategic turnkey solutions that maximize shareholder value." Investors who pay $37,500 are promised profits of $376,000. Money must be wired to a bank in Panama, where it disappears.

10. Promissory Notes or Guarantees Notes and guarantees are commonly offered by investment promoters to create the appearance that investments are solid or backed by collateral. In reality, a note is just a person's promise to pay and provides no protection if the person giving the note has no assets. Investors should ask themselves: "If this company is in such good financial condition, why are they borrowing money from me? What collateral will be put into my name to ensure the note is repaid?" More than 40% of the frauds prosecuted by the Division involve the sale of promissory notes or guarantees.

D. Enforcement Efforts by the Division

1. Enforcement Initiatives: The largest percentage of fraud investigations are opened when the victims contact the Division, realizing their money is gone. Sadly, these reports generally come too late to recover much money. To increase our chances of identifying fraud earlier, the Division takes proactive steps to identify frauds in the early stages. This involves:

   a. Training local law enforcement officials to recognize signs of investment fraud;
   b. Responding to mail, television, and radio solicitations so we see what types of investments are being offered;
   c. Having Division investigators pretend to be investors, using undercover phones where caller ID will not identify the state and where calls can be recorded;
   d. Conducting stings and reverse frauds;
   e. Attending seminars offered by promoters; and
   f. Conducting surprise examinations of firms in New York and Florida where boiler room operations are expected.

2. Senior Abuse Law Because we have seen so much investment fraud targeting seniors, the Utah Legislature amended the law to increase the penalties for taking money from seniors. It is now a second degree felony to take money from seniors when it amounts to "exploitation of a vulnerable adult." (Utah Code Ann. §76-5-

111(4)). Exploitation exists under the following conditions:

a. The seller has a position of trust and confidence, or has a business relationship with the senior (such as insurance agents and securities brokers);
b. The victim is age 65 or older;
c. The seller uses deception or intimidation;
d. The seller obtains or attempts to obtain the senior's funds, credit, assets, or other property;
e. The assets or property is worth $5,000 or more; and
f. The seller has the intent to permanently deprive the senior of the funds for the benefit of someone other than the senior.[5]

3. Heightened Securities Fraud Penalties Securities fraud also will be a second degree felony if any of the following conditions exists (§61-1-21(2)(b)):

a. The amount of money taken is greater than $10,000;
b. The investment represented equity in a person's home; or
c. The investment was funded from a retirement or pension account.

4. Statistics: The number of enforcement actions taken by the Division illustrates how prevalent investment fraud is in Utah. And, since many frauds are not reported, the actual amount of fraud is estimated to be much higher. For a recent fiscal year, the Division reported the following:

a.	Cases opened:	87
b.	Broker-dealer examinations:	50
c.	Administrative orders issued:	70
d.	Criminal cases filed:	54
e.	Fines paid:	$3,535,142
f.	Restitution ordered:[6]	$28,167,307

V. INVESTOR EDUCATION, OUTREACH BY THE DIVISION

A. Outreach, Partnering The Division seeks a close relationship with

[5] The crime also includes unjustly or improperly managing the resources of the senior for the profit or advantage of the manager, rather than the senior. This would include any excessive trading or unsuitable investment recommendations by securities brokers.

[6] Unfortunately, only a small percentage of this is actually recovered. Much of this is restitution ordered in criminal cases as the defendants are sent to jail. The money taken from investors often is spent before enforcement officials become aware of the fraud.

professionals who deal with seniors. These include the Utah Gerontological Society, AARP, financial institutions, lawyers helping senior clients, and police agencies. These are the groups in the best position to know what fraud schemes are being pitched to seniors in Utah. We ask them to "birddog" for the Division, to let us know when schemes are being promoted.

B. Profile of Investment Fraud Victims A study of victims of investment fraud released by the NASD in May 2006 revealed some startling information. Historically, securities regulators and other investor advocates had targeted their investor education efforts according to the perceived victim profile: widows and those less informed about financial matters. In fact, the profile of a typical investment fraud victim is very different:

1. Typical victims are male, married, more educated, and have higher income than non-victims;

2. Investment fraud victims score higher on financial literacy tests than non-victims;

3. They are more likely than non-victims to listen to a telephone sales pitch or attend a "free" seminar on investing;

4. They are self-reliant and self-deterministic, relying on their own knowledge rather than consulting with others (and less likely to have attorneys or accountants);

5. They have experienced more negative life events than non-victims. Somehow, this life stress contributes to their vulnerability;

6. They are more optimistic than others, probably reflecting "wishful thinking;"

7. They dramatically underreport fraud; 40% of known victims denied being victims.

C. NASD Study: Specialized Tactics Used by Fraud Promoters Investment fraud pitches, more than any other type of fraud, used the highest total number of "influence tactics" (*i.e.*, methods used to persuade victims). The most common influence tactics were described earlier.

Investment fraud pitches typically involve lengthy conversations; the promoter is "profiling" the victim. This allows the con to customize the pitch by better identifying the victim's weaknesses.

Promoters will use multiple tactics against the same victim, to put the victim in a type of psychological haze that reduces the victim's ability to spot and resist persuasion. The con then insists on an immediate decision – before this effect wears off. Afterwards, victims often report "I don't know what I was thinking" or "it really caught me off guard."

The customization of pitches underscores the importance of consumers becoming aware of how their particular psychological tendencies are exploited. Most of these are the same tactics used by legitimate businesses (*e.g.*, compare them to the techniques used on cable television home shopping networks).

D. Investor Education The Division speaks to groups of seniors (or any group of citizens) to educate them about the types of investment frauds seen regularly in Utah. Education efforts also have included:

1. The Aging Game television program;

2. "Staying Sharp" seminars with AARP;

3. A booth at the Senior Expo; and

4. Presentations at the Utah Gerontological Society.

E. Brochures The Division has many brochures and investor education tools available to educate seniors about distinguishing legitimate investment opportunities from investment frauds. These include:

1. "*Ten Tips to Protect Your Nest Egg.*"

2. "*Danger Signs: How to Spot a Con Artist.*"

3. "*Checklist*" of questions to ask before making an investment.

4. "*How to Avoid Becoming a Victim*"

5. The North American Securities Administrators Association has a "Senior Investor Resource Center" at www.nasaa.org . The FDIC has a consumer news guide, "*Fiscal Fitness for Older Americans,*" available at www.fdic.gov/consumers/consumer/news/cnfall05/index.html .

VI. **RED FLAGS** Elder advocates have identified "red flags" that a senior is being victimized. *Signs of financial abuse*, Apr. 11, 2006, www.msnbc.msn.com/id/12270749/from/ET/ . Common red flags are:

A. Sudden changes in a senior's banking practices;

B. Uncharacteristic and unexplained withdrawals of large sums by a senior or someone with power of attorney;

C. Large checks (or credit card transactions) made out to unusual recipients, including "salesperson" or "cash;"

D. Abrupt changes in a will or other financial documents;

E. Sudden transfer of assets to a family member or acquaintance without a reasonable explanation;

F. Complaints of stolen or misplaced credit cards or Social Security and pension checks;

G. New signatories added to a senior's account;

H. A recent acquaintance becomes a close friend, especially anyone who suddenly takes up residence with an elderly person who had been living alone;

I. Redirection of the senior's mail to another address;

J. Disconnect notice from utilities or an eviction notice against an elderly person who should not be having financial problems; or

K. A senior's willingness to give out his or her Social Security number and other information to telemarketers, phishers, and other callers.

VII. **WHAT SHOULD SENIORS DO?**

A. Do not accept any free lunches (or dinners).

B. Hang up on cold-callers. Ask solicitors to put you on their "Do Not Call" list.

C. Verify that every salesperson is licensed before making any investments.

D. Watch for unsuitable recommendations.

E. If seniors don't understand the investment, they shouldn't invest. No matter how much a salesperson says foreign exchange, options trading, or prime bank notes are sure things, they should be avoided.

F. Ask a trusted friend or another financial adviser whether a promoter's investment offering is legitimate.

G. Understand what fees and commissions will be charged. Is there a penalty for withdrawal? If so, how long does the investment have to be held to avoid a sales charge? Is the salesperson suggesting this investment to roll money over into a different product that will pay a new commission?

H. Never make a financial decision under pressure. Any investment where the seller says the investor has to act today is a scam.

I. Beware of any investment described as "guaranteed" or "no risk."

J. Contact the Division of Securities if they have any suspicions. (801) 530-6600. www.securities.utah.gov .

What the scam artist fears most is critical thinking.