

## SCRUB YOUR HANDS AND YOUR OPTIONS: UPDATED GUIDANCE ON AVOIDING INVESTMENT SCAMS IN THE TIME OF COVID-19

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It is reassuring to focus on heartwarming stories of people being and doing their best to help protect one another as our county, and the world, confront the spread of the coronavirus. However, we also know that at times of uncertainty and market disruption, schemers and scammers see opportunity in the confusion and the potential for a quick profit in an uncertain economy. Now is the time to be vigilant. Scrub any new investment opportunity just as thoroughly as you scrub your hands.

Here are some suggestions for socially distancing yourself from the scammers, so you can protect your financial health and well-being, including recently issued advice from the Securities and Exchange Commission's (SEC) Office of Investor Education and Advocacy (OIEA).

On [July 14, 2020](#), the OIEA issued *Broadly Advertised Investments – Investor Alert* advising investors on how to avoid fraudulent investment schemes. Prior to disclosing its advice, the OIEA examined the SEC's action against Abetterfinancialplan.com, LLC d/b/a A Better Financial Plan (ABFP) and Dean Vagnozzi (Vagnozzi), ABFP's President, to highlight unlawful offerings that were openly advertised. According to the SEC, ABFP and Vagnozzi used the radio, mass mailers, and ABFP's public website to advertise an opportunity to invest in the "highest yielding, safe" investments available in the market. ABFP and Vagnozzi raised more \$32 million from April 2013 to August 2017 because of their broad marketing efforts. However, neither ABFP nor Vagnozzi was registered with the SEC as required in order to lawfully promote or sell the offerings. Additionally, the offerings were not registered with the SEC. As a result, the SEC issued an order finding that ABFP and Vagnozzi violated Sections 5(a) and 5(c) of the Securities Act of 1933 and Section 15(a) of the Securities and Exchange Act of 1934. The SEC's order may be found [here](#), and the press release may be found [here](#).

### RECOGNIZE THE RED FLAGS

- Investment scams come in a variety of shapes and sizes. Sometimes scams are circulated through spam or phishing emails, or touted over social media or the radio. Other times, scammers will solicit investments through "word of mouth" opportunities distributed through friend and family networks and affinity groups—church groups, social clubs, and the like.
- Be on the lookout for:
  - promoters and companies touting an ability to diagnose, prevent, or treat COVID-19 or a new way to address supply chain concerns to deliver consumer goods;
  - affinity groups claiming to raise funds in order to provide funds, medical treatment, or other supplies to individuals who cannot secure such items themselves;

- other investment opportunities premised on market uncertainty and low interest rates; and
- promoters claiming high returns with little or no risk.

## DO THE RESEARCH AND ASK QUESTIONS

- Research the website and any marketing materials prepared about the investment or the party offering it.
- Is the person recommending the investment licensed? The OIEA [recommends](#) checking the background of the investment professional trying to sell securities, including searching whether the investment professional is registered with the SEC because a person selling securities generally must be registered with the SEC.
- Is the offered investment registered with the SEC or with any state agency? If not, is it exempt from registration? If exempt, why? The OIEA [warns](#) not to invest if a promoter claims an offering is registered with the SEC but there is no associated registration statement on the SEC's online electronic [database](#).
- Verify the information you receive, and check the credentials of the people you receive it from, by checking with the [SEC](#), your state's [regulator](#), and [FINRA](#).
- Is the person recommending the investment receiving compensation for promoting the opportunity or from securing your investment? Section 17(b) of the Securities Act of 1933 requires promoters of securities to disclose the nature, source, and amount of compensation they received or will receive, either directly or indirectly, from touting the security.
- Review the OIEA's [guide](#) and updated investor [alert](#) on questions to ask when investing.

## REQUIRE DOCUMENTS AND READ THEM

- Be skeptical of any investment opportunity that lacks documentation of the nature of the investment.
- Understand how your money will be used and how you will be paid.
- Understand how the promoter, company, and others will be compensated.
- Look for disclosures on the risks of investing and ask follow-up questions to understand risks particular to you.

## AVOID PRESSURE TO ACT QUICKLY

- Prudent investment requires time and careful consideration. Be wary of tactics designed to create the sense that time is of the essence or that you will miss out on an opportunity if you fail to act quickly. Indeed, the OIEA [cautions](#) investors to avoid investment opportunities claiming a "once-in-a-lifetime" opportunity because investment scams often create a false sense of urgency.

**BEWARE OF PROMISES OR GUARANTEES OF HIGH RETURNS**

- Carefully consider your and your family’s financial situation before making any investment decision, especially your ability to withstand losing your investment.
- Remember that when a promise seems too good to be true, it probably is. The mere fact that a company is publicly traded does not mean you are safe from fraud.
- Beware of pump-and-dump schemes, in which promoters disseminate promising, positive, but often baseless rumors (for example: that the company has developed a breakthrough technology). Such information often drives many investors to buy the stock, pushing or “pumping” up its price. The same promoters, and others working with them, then quickly sell, or “dump” their own shares in the company leaving recent purchasers with nothing but empty promises. Typically, after the promoters profit from their sales, the stock price drops and the remaining investors lose their money.

Be smart, be skeptical, and remember that scammers rely on the desires and needs of others to secure high returns in a short timeframe. Scrub your hands, scrub your investment opportunities, and maintain good physical and financial health.

If you have any questions about the information contained in this Client Alert, please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

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*This Client Alert is sent for the information of our clients and friends. It is not intended as legal advice or an opinion on specific circumstances. Furthermore, due to the rapidly evolving nature of the COVID-19 pandemic, you should consult with counsel for the latest developments and updated guidance.*

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