GUIDELINES FOR THE DETECTION AND INVESTIGATION OF INVESTMENT FRAUD

1. REFERENCE: See Annex “D”

2. BACKGROUND AND RATIONALE:

The recent discovery of an investment scam that proliferated in Mindanao caught law enforcement agencies and regulatory bodies by surprise. The magnitude of its operation (i.e. more than 8,000 victims and involving approximately Php15 billion worth of investment) was not anticipated. At the moment, the effect of this illicit activity to the country’s economy is beyond comprehension. It can be expected, however, that violence perpetrated by the victims, in their attempt to recover their family savings, will escalate.

Recently, the Aman Futures Group Philippines (hereinafter referred to as “Aman Futures”), has been the subject of a Cease and Desist Order issued by the Securities and Exchange Commission (SEC) in connection with the Php244 million worth of Ponzi scheme in Pagadian City. Incorporators and officers of Aman Futures solicited investments by promising 15 percent to 40 percent rate of return in just a matter of 20 to 30 days for investments that were to be made in a Malaysian company engaged in commodity trading futures, such as manganese, palm oil, and nickel. The supposed investment returns cannot be sustained that eventually caused its collapse since it was an illegal scheme from the start.

Crimes of this nature victimize a magnitude of people with serious repercussions to the local and/or national economy, and even to the victims’ personal, familial and professional relationships, not to mention the ruin of the victims’ finances, as exemplified by the Ponzi scam perpetrated by the Aman Futures. Thus, these fraudulent activities might require the organization of a Special Investigation Task Group (SITG), as stipulated in Chapter-8 of PNPM-DIDM-DS-9-2, which states that “as mandated, a SITG shall be organized whenever a major case or crime of violence occurs.” Further, the creation of a multi-agency investigation task group composed of government entities or agencies, which have jurisdiction on the nature of the crime, may even be imperative. But in the meantime, while the effects of such case are yet to be realized and a special group is created, investigation should commence right away in order to immediately address the proliferation of the aforementioned fraud-related incidents.

"To Serve and Protect."
3. PURPOSE:

This Memorandum Circular aims to:

a. Serve as a guide and provide standard policies and procedures on the pro-active and reactive investigation of crimes involving investment fraud particularly in cases of alleged Ponzi/pyramiding scams.

b. Establish a protocol for all police personnel on how to impede the existence of an investment scam in a locality, in close coordination with the financial regulatory agencies of the government; and,

c. Ensure the conduct of a comprehensive and efficient investigation process to establish an air-tight case for the prosecution of personalities and/or groups engaged in investment fraud;

4. DEFINITION OF TERMS:

a. Investment Fraud or Scam – refers to any and all forms of fraud involving money, including but not limited to Ponzi Schemes, Pyramid Schemes, Telemarketing Fraud, Nigerian Letter or 419 Fraud, Identity Theft, Advance Fee Schemes, Health Care Fraud or Health Insurance Fraud, Redemption/Strawman/Bond Fraud, Letter of Credit Fraud, and Prime Bank Note Fraud.

b. Pyramid Sales Scheme - also referred to as franchise fraud or chain referral schemes, (Section 53 of R.A. 7394, also known as the Consumer Act of the Philippines) involves “-x-x- sales devices whereby a person, upon condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: Provided, That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sale of consumer products, services and credit; Provided, further, That the limitation on the number of participants does not change the nature of the plan.” (Section 53 of R.A. 7394, also known as the Consumer Act of the Philippines) pyramid scheme as a marketing and investment fraud “in which an individual is offered a distributorship or franchise to market a particular product. The real profit is earned, not by the sale of the product, but by the sale of new distributorships.”

c. Ponzi scheme - A Ponzi Scheme is “an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors.” (GR Nr 10860 -02, September 3, 1998)These are schemes that “promise high financial returns or dividends not available through traditional investments. Instead of investing the funds of victims, however, the con artist pays ‘dividends’ to initial investors using the funds of subsequent investors. The scheme generally falls apart when the operator flees with all of the proceeds or when a sufficient number of new investors cannot be found to allow the continued payment of ‘dividends.’” (FBI definition)
d. **Syndicated Estafa** — (Articles 315 and 316 of the Revised Penal Code, as amended), is "committed by a syndicate consisting of five or more persons formed with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon (s), or farmer associations, or of funds solicited by corporations/associations from the general public. (Articles 315 and 316 of the Revised Penal Code, as amended) "Any person or persons who shall commit such kind of estafa shall be punished by life imprisonment to death. (Section 1 of PD 1689, "Increasing the Penalty for Certain Forms of Swindling or Estafa")."

e. **Investment solicitor** — a person who procures or induces another to enter into an investment scheme. He may or may not be the actual person who receives the investment money.

f. **Proactive investigation** — an investigation commenced in response to information regarding an ongoing criminal activity obtained through intelligence gathering or from reports of witnesses.

g. **Reactive investigation** — an investigation commenced as a law enforcer’s response to a particular incident or complaint.

h. **Entrapment** — a legitimate method of apprehending criminals used by a law enforcer wherein the information on the alleged illegal activity of a suspect is validated by luring him into executing his criminal plan, and that the suspect had already committed in and continue to do so.

i. **Inducement** — also refers to as instigation. It involves a situation wherein a law enforcer induces the would-be accused into committing an offense that he would otherwise have been unlikely to commit. This situation is prohibited, illegal, and not sanctioned by any regulation in the PNP.

5. **POLICIES:**

a. **Duty of the City Director/Chief of Police/Station Commander**
The City Director/Chief of Police/Station Commander in the locality shall have the inherent duty to check any and all fraud-related and syndicated criminal activities ongoing in his jurisdiction. The presence of indicators of any fraud-related criminal activity shall be relentlessly pursued even in the absence of complainants. Absence of complainants shall not excuse a police unit from initiating any investigation on a scam or fraud, and such omission may be tantamount to Neglect of Duty that would warrant the Chief of Police to be subjected to administrative sanctions.

b. **Responsibility and Accountability** - The immediate superior of the City Director/Chief of Police/Station Commander who has jurisdiction over the area where a scam or fraud is committed shall be equally liable for such Neglect of Duty and may be proceeded against, pursuant to the Doctrine of Command Responsibility.
c. Coordination with Government Regulatory Bodies - Field Investigators shall be hereby directed to coordinate closely with government financial regulatory bodies like the SEC, DTI, BSP and BIR in order to be guided on what evidence to collect so as to support the traces of perpetuation of crimes with the end of establishing a probable cause.

6. PROCEDURES:

PRO-ACTIVE PHASE

a. Determination of the Presence of an Investment Fraud - The City Director/Chief of Police/Station Commander upon receipt of information regarding the presence of investment frauds or scams within his locality shall perform the following actions:

1. Validate the report through the conduct of discreet investigation to ascertain the presence of investment frauds/scam in his locality for entrapment operations;

2. Identify the personalities involved and their status/role in the reported investment fraud/scam;

3. Determine the personalities involved and their status in the reported investment fraud/scam;

4. Verify with the Securities and Exchange Commission (SEC) and Department of Trade and Industry (DTI) the authority to operate business of the company involved; and

5. Prepare the necessary Case Investigation Plan and recommend the creation of SITG if necessary.

The City Director/Chief of Police/Station Commander is expected to know in great detail how investment fraud works and how it has pervaded the country. For this purpose, Annex "B" (Pyramiding and Ponzi Scheme Investment Scams and Their Mechanics) is hereto attached.

REACTIVE PHASE

b. Gathering of Evidence to Establish Existence of Fraud - Once the existence of the reported investment scam is validated, the investigator under the supervision of the City Director/Chief of Police/Station Commander shall immediately conduct the initial collection of evidence as follows:

1) Secure statements from the victims and prospective victims based on the guidelines set forth under Interviewing Techniques (Annex "C").

The investigator should be aware, however, that based on previous experiences of investigators from other police agencies abroad, he will definitely encounter resistance from would-be victims because they are still receiving the fruits of their investment. According to an American private investigator, "the investigation of these cases is pursued much like the investigation of other financial
crimes, but the investigator pursuing them should be aware that:

The denial common to most fraud victims often escalates to hostility and resentment in these cases. These schemes typically pay off until the inevitable collapse that the investigator may well precipitate. Even if you convinced them that they have been scammed, these 'investors' do not want the investigator to 'rock their boat,' and they typically blame the investigator who collapses the program prematurely (from their perspective). (Frauds and Scams.com: Bill E. Branscam)

The operator of the scheme is dependent upon the cash flow provided by the pyramid and therefore vulnerable. Investigation that threatens to collapse an otherwise thriving pyramid often results in a settlement offer based upon a global nondisclosure agreement."

2) Clearly establish the identity of the investment solicitor and his actual participation in the fraudulent activity in the statements of the victims.

3) Clearly state in the complaint the trail of the investment money – from the victim up to the investment solicitor or any other person on top of the "pyramid." The proof of receipt of the investment money should be properly annotated in the complaint.

4) Gather all possible documentary evidence to support the case. The certification from the SEC or DTI, which identifies the alleged nature or business of the company engaged in Ponzi scheme/pyramid sales scheme, must also be incorporated in the case folder.

5) Conduct entrapment operations, when necessary to strengthen the case.

c. Conduct of entrapment operations. Once the involvement of a company, person, or group in a fraudulent activity (i.e. Ponzi Scheme/Pyramiding Scam) is established, but no complainant has come forward yet, entrapment operations may be done. This may result in the immediate arrest of the suspect, as well as in the gathering of additional evidence that will strengthen the case.

Law enforcers can pose as investors/clients joining the prey of the Ponzi. This can be a highly effective and relatively low risk and low cost investigation technique. This can also assist investigators in establishing an evidential chain that could establish the involvement of the offenders in the crime of syndicated estafa and other related criminal activities.
The proper conduct of entrapment operations will maximize the potential for collecting concrete and reliable evidence that can be used in court.

Factors to consider in determining the viability of an entrapment operation.

Check the following key factors to assess whether or not an entrapment operation should be undertaken:

1) What is the nature of investment being offered in this particular case? Is it in the form of goods, like gold or other precious metal, services or cash? — Can the investment be entered into right away?

2) What would be the most credible method of introducing the probable law enforcer investor – direct approach, response to advertisement, or making an appointment?

3) What role should the law enforcer adopt – investor, client, solicitor, or prospective employee?

4) What would be the method of payment – cash, cheque, or credit card?

5) Are police officers with the appropriate gender, skills and training profile available?

If an entrapment operation is viable, then execute the same with detailed planning. It must be noted that the entrapment operation is conducted only to get additional pieces of evidence in support to the main case being investigated. Investigation must not stop with the persons that will be apprehended during the entrapment operation, they should only be used as key to apprehend the officers of the fraudulent company.

d. Coordination with Government Regulatory Bodies - When the investigator is faced with the difficulty of gathering written complaints or statements, the investigator shall initiate close coordination with other government agencies.

1. Aside from checking with the Department of Trade and Industry (DTI) and the Securities and Exchange Commission (SEC), Field Investigators shall verify if the investment enterprise is operating under a Business Permit. Thereafter, they shall coordinate with the local licensing office and verify if there is any violation of the business permit issued, such as whether or not the investment enterprise is engaging in activities other than what is specified in the permit.

2. Investigators shall also verify with the Bureau of Internal Revenue (BIR) whether or not the investment enterprise is paying its taxes. If not, the BIR should be advised about such tax evasion case.
3. Investigators shall likewise coordinate with the Bangko Sentral ng Pilipinas (BSP) to determine if any banking law is being violated by the investment enterprise.

e. **Determination of Applicable Violation of Laws** - Coordination with other government regulatory bodies such as DTI, BIR, SEC, BSP and AMLC, among others, shall be made in order to determine if any law, circular, rule and/or regulation is being violated by the investment enterprise, and whether or not a syndicated Estafa, in violation of PD 1689 (Increasing the Penalty for Certain Forms of Swindling or Estafa), is being committed by the investment enterprise.

f. **Preparation of Case Investigation Plan (CIPLAN)** - Preparation of case folders for the eventual filing of charges against the perpetrators shall be initiated by the concerned City Director/Chief of Police/Station Commander. It is not necessarily in conjunction with the efforts of other government agencies.

g. **Creation of a Special Investigation Task Group (SITG)** – As the need arises, and to ensure effective measures in the arrest and prosecution of violators, the creation of a formal organization and activation of a multi-agency Special Investigation Task Group (SITG) will be implemented. Members shall meet regularly to establish procedures and operational plans in order to make sure that perpetrators will not have any opportunity to evade arrest.

7. **PENAL CLAUSE:**

Any PNP member who fails, without justifiable reasons, to act in the investigation and prosecution of individual(s) involved in an investment fraud or scam shall be dealt with administratively for neglect of duty or nonfeasance under Sec. 1 Rule 21 of NAPOLCOM Memorandum Circular 2007-001 without prejudice to the filing of a criminal complaint against him or her.

8. **EFFECTIVITY:**

This Memorandum Circular shall take effect fifteen (15) days from the filing of a copy hereof at the University of the Philippines Law Center in consonance with Sections 3 and 4 of Chapter 2, Book VII of Executive Order No 292, otherwise known as the "Revised Administrative Code of 1987," as amended.

Annexes:

“A” - Pyramiding and Ponzi Scheme Investment Scams and their Mechanics
“B” - Red Flags on the Presence of an Investment Scam
“C” - Interviewing Techniques
“D” - References
PYRAMIDING AND PONZI SCHEME INVESTMENT SCAMS AND THEIR MECHANICS

Investment scams have been recorded in the country. Sometime in the mid-1990s, the Pentagono pyramiding scheme flourished, operated by an Italian firm, Future Strategies Srl, allegedly a licensed investment firm in Modena, Italy. It costs US$120 to join Pentagono. A victim buys a certificate for US$40 from a sponsor; sends US$40 to Italy with the personal bank account details of the victim; and another US$40 is sent to the person on top of the “list.” He then receives three (3) certificates with his name in the seventh position of the “list,” and will have to sell the three (3) certificates to others. As more people join, his name moves up in the “list.” To date, authorities have yet to determine how much US dollar currency the national reserve of the Philippines lost because of the Pentagono scam.

Other scams that were discovered to have victimized residents of the country include the following:

1. On August 17, 2007, the NBI filed syndicated Estafa cases against 27 officers and investors of FrancSwiss Investment (FS Investment), a Ponzi pyramiding scam on the Internet. Charged were Michael Mansfield, Chief Financial Officer; Kurt Sandelman, Risk Management Team Leader; Rupert Benedict Da Vinco, Investment Team Leader; Julia Rodriguez, International Banking Team Leader; Hector Willem Sidberg, Marketing and International Affairs; Fernando Munoz, Customer Service Leader; Roger Smith, the British Chief Operation Officer of FS Investment in the Asia-Pacific Region; Bensy Fong, the Singaporean System Operation Officer; Raymond Chua, Singaporean Marketing Officer; a certain Michelle and Mike, Filipino secretaries and collectors of money from investors; 16 investors, including arrested suspect Eleazard Castillo, 26, a native of Cabuyao, Ilocos Sur. Castillo is allegedly one of the financial advisers of FS Investment. At least 41 investors claimed they lost a total of US$75,000 to the investment scheme. FS Investment deceived investors in the Philippines of about P1 billion.

2. In one of the biggest Philippine Ponzi scams, involving US$250 million, criminal charges, based on suits filed by 21,000 complainants, were filed in June 2008, before the Department of Justice, against the officers and incorporators of Performance Investments Products Corp (PIPC) for violation of the Securities Regulation Code (SRC). Said charges were filed against Singaporean national Michael H.K. Liew, PIPC president; Cristina Gonzalez-Tuason, General Manager; and other officers and agents, including Ma. Cristina Bautista-Jurado, Barbara Garcia, Anthony Kierulf, Eugene Go, Michael Melchor Nubla, Ma. Pamela Morris, Luis Aragon, Renato Sarmiento Jr., Victor Jose Vergel de Dios, Nicoline Amoranto Mendoza, Jose Tengco III, Oudine Santos, and Herley Jesuitas.

Other cases of investment scams have been recorded not only in the Philippines but also in other countries. In fact, the recent Aman Futures Group scam in Pagadian City, which actually victimized other investors from Luzon and Visayas, traces its roots to the Ponzi scheme in the United States.

What is a Ponzi Scheme?

The US Securities and Exchange Commission defines a PONZI Scheme as “an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate
high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity.”

The Ponzi scheme is named after Charles Ponzi, “who duped thousands of New England residents into investing in a postage stamp speculation scheme back in the 1920s. At a time when the annual interest rate for bank accounts was five percent, Ponzi promised investors that he could provide a 50% return in just 90 days. Ponzi initially bought a small number of international mail coupons in support of his scheme, but quickly switched to using incoming funds to pay off earlier investors.”

How Does It Work?

Basically, Ponzi scheme operates on a “rob-Peter-to-pay-Paul” system. Early investors will be paid with the money invested by subsequent investors. That is why the later investors usually lose everything when the scheme collapses.

In addition, Ponzi schemes usually initially target respected or prominent members of the community. They will definitely receive high returns on their investment to promote the scheme and encourage others to join. All Ponzi schemes, however, tend to collapse. This happens “when it becomes difficult to recruit new investors or when a large number of investors ask to cash out.” This is due to the fact that this scheme requires a consistent flow of money from new investors to continue and that it actually has little or no legitimate earnings.

What Is A Pyramid Scheme?

A pyramid scheme is a fraudulent investing plan that has unfortunately cost many people worldwide their hard-earned savings. The concept behind the pyramid scheme is simple and should be easy to identify. However, it is often presented to potential investors in a disguised or slightly altered form. For this reason, it is important to not only understand how pyramid schemes work, but also to be familiar with the many different shapes and sizes they can take. Many investors do not understand how to determine the level of risk their individual portfolios should bear.

1. The Scheme - As its name indicates, the pyramid scheme is structured like a pyramid. It starts with one person, the initial recruiter, who is on top, at the apex of the pyramid. This person recruits a second person, who is required to “invest”, say Php 100, which is paid to the initial recruiter. In order to make his or her money back, the new recruit must recruit more people under him or her, each of whom will also have to invest Php 100. If the recruit gets 10 more people to invest, this person will make Php 900 with just a Php 100 investment.

2. The 10 new people become recruiters and each one is in turn required to enlist an additional 10 people, resulting in a total of 100 more people recruited in the pyramid. Each of these 100 new recruits is also obligated to pay Php 100 to the person who recruited him or her. Recruiters get a profit of all of the money received minus the initial Php 100 paid to the person who recruited them. The process continues until the base of the pyramid is no longer strong enough to support the upper structure, meaning there are no more recruits.

3. The Fraud - The problem is that the scheme cannot go on forever because there is a finite number of people who can join the scheme, even if all the people in the world join. People are deceived into believing that by giving money they will make more money - “With an investment of just Php 100, you will receive Php 900 in
return”. But no wealth has been created, no product has been sold, no investment has been made, and no service has been provided.

4. The fraud lies in the fact that it is impossible for the cycle to sustain itself, so people will lose their money somewhere down the line. Those who are most vulnerable are those towards the bottom of the pyramid, where it becomes impossible to recruit the number of people required to pay off the previous layer of recruiters. This kind of fraud is illegal in most countries throughout the world. It is estimated that 90% of people who get involved in a pyramid scheme will lose their money. Lower levels of liquidity in exchange-traded funds make it harder to trade them profitably.

5. **Fraud Disguised** - Because people are attracted to the idea of making quick money with very little effort, many different forms of disguised pyramid schemes have succeeded in fooling people. Despite the illusion of legality presented by these revamped schemes, they are still illegal. It is thus important to recognize the characteristics of such so-called investment plans.

6. Many schemes will adopt the guise of gift-giving or loans that take place in investment clubs because none of these activities are technically illegal. However, the practice of donating a gift to someone (the recruiter), then having to recruit people into the club in order to receive a return on your investment (or your gift, rather) is essentially a pyramid scheme in disguise.

### Multi-Level Marketing (MLM)

1. Legal multi-level marketing (MLM) involves being recruited in order to sell a product or service that actually has some inherent value. As a recruit, you can make a profit from the sales of the product or service, so you don’t necessarily have to recruit more salespeople below you. And while you may be encouraged to recruit other salespeople whose sales would give you more profit, you can stick to just selling the product directly to the consumer if you choose.

2. A pyramid scheme, MLM, however, will most likely sell a product with no independent value. The product could take the form of reports of some kind, for example, or mailing lists. In this kind of pyramid scheme, you would be required to recruit new members into the MLM in order to make a profit and keep the MLM alive. Joining the MLM is the only reason anyone would buy the products sold by this pyramid scheme.

### Chain Letters

Chain letters can be received electronically or through snail mail and are not illegal on their own. However, they take on the form of a pyramid scheme when the letter asks you to donate a certain amount of money to the people on a list, then delete the name of the first person on the list, add your name, and forward the letter to a certain number of other people. The next people receiving the letter are then asked to do the same thing, so that you can receive your money as well. By forwarding the letter, you are asking people to give money with the promise of making money.

### Conclusion

It is easy to see how a pyramid scheme can work, but participating in it, regardless of the form in which it is presented, involves deception and fraud because not everyone will receive the money that is promised in return.
What is the Difference Between a Ponzi Scheme and a Pyramid Scheme?

While Pyramid schemes and Ponzi schemes are often lumped together, and both are well-known forms of investment fraud, the differences between these two types of stockbroker malpractice lie in the organization of the scam and the number of people involved in perpetrating it.

Ponzi Schemes - Stockbroker Fraud through Misrepresentation

A Ponzi scheme is built meticulously from the ground up. What makes these scams so difficult to detect is the care with which the deception is handled. An unscrupulous broker begins by creating false documents, which he then uses to lure investors. The money he gathers does not go into any real investments, however, but into his own pocket.

As the scheme progresses the broker secures additional investors, and uses their funds to continue to line his own bank account, as well as returning some to the initial parties to support the illusion that their investments are creating dividends. When there are no more new investors, this form of investment fraud is usually exposed.

Pyramid Schemes - An Insidious Type of Securities Fraud

One of the differences that makes a Pyramid scheme more difficult to detect than a Ponzi scheme is the sheer number of people involved, which lends the scam credibility in the eyes of investors. Rather than recruiting investors, the perpetrator of this scam recruits more recruiters.

Each investor is expected to bring more investors on board working under him, and the money is then disseminated to the levels above. This creates an organizational structure similar to a pyramid, hence the name. Since these scams lack a solid foundation in goods or services, the pyramid collapses once no new investors can be found.

They May be Different, but Both are Financial Fraud

The main difference between these scams is the structure. Pyramid schemes work in a top-down manner, involving multiple levels of investors. Ponzi schemes, on the other hand, have a more circular structure centered around the perpetrator of the scam, with all investors on equal, illegitimate footing.

Both, however, are not only unsupported business models, but also illegal. Perpetrating either of these scams can result in heavy fines and lengthy prison sentences.
Evidence of Ponzi and Pyramiding Schemes

1. **Places** - In general, most of these schemes are located in populous areas.

2. **Co-Perpetrators** - One in every two Ponzi and Pyramiding schemes involves co-perpetrators.

3. **Company Name** - These schemes commonly operate under a company name, whether registered or not.

4. **Business Type** - Most schemes purport to operate legitimate financial businesses such as investment advisory, asset and investment management, hedge funds, real estate investment funds, faith-based investment schemes, investment in distributorships, leasing companies, time-shares, pension management, and trusteeships.

5. **Registration** - Small schemes mostly operate as unregistered businesses; however, large ones are registered.

6. **Frequency** - Their numbers increased significantly in the first decade of the 2000s, coinciding with a bullish stock market period.


8. **Promised Return** - The most common rate of return promised is close to that available from stock market investments.

9. **Investment Horizon** - The majority of Ponzi schemes promise to pay a return within a year.

10. **Investors' Pool** - The average number of investors involved in a Ponzi scheme is 100 or less. Larger Ponzi schemes affect thousands of investors.

**Strategies**

Besides misrepresenting their businesses, Ponzi perpetrators adopt one or more of the following strategies to draw investors:

1. Propose investments that are high-return, no-risk, and principal-protected;

2. Grossly inflate the amount of funds under management and the returns paid;

3. Pretend that they are experienced and had a successful investment career;

4. Purport to use proprietary trading software and/or special connections;

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5. Send regular account statements that show fictitious profits;
6. Provide investors a personal guarantee for their principals;
7. Claim investments are fully backed by collaterals;
8. Have auditors who will "vouch" that the investments and accounts are legitimate;
9. Make false claims that investments are FDIC- and/or SIPC-insured;
10. Claim to be an expert in derivatives and/or foreign exchange trading;
11. Use Bible-speak to win investors' trust;
12. Recruit through local and/or community-based ads and/or agents;
13. Target faith-based and/or ethnically or culturally based associations;
14. Target retirees.

Investment Products

Besides stock market and derivatives investments, perpetrators also propose the following as investment products: postal coupons, accounts receivables, automated teller machines, private investment in public equity (PIPE) securities, payphone lease programs, foreign currencies, fractional interests in discounted life insurance, gold coins, limited partnership interests in trade ventures, oil and gas investments, promissory notes, self-styled certificates of deposit, faith-based investment funds, real-estate investment trusts, shares in shell companies, time-shares, and viatical settlement contracts.

Investors Recovery

There are almost no cases in which all investors involved recovered 100 percent of their investments. The average recovery rate is less than 40 percent.

Legal Charges

Most Ponzi and Pyramiding schemes are prosecuted for one or more of the following crimes: Mail Fraud; Money Laundering; Securities Fraud; Wire Fraud; Tax Crime; Operating Unregistered Securities Business.

The SEC Guide on How to Identify Ponzi and Pyramiding Schemes

1. High Investment Returns with Little or No Risk - Usually there is a positive relationship between risk and return and schemes that promise high returns with low risk need to be looked at suspiciously.

2. Overly Consistent Returns - Investment returns usually follow the business cycle. Returns are up when the economy is booming, and down in a recession. Investments that promise to pay the same return, irrespective of business cycle, are often a key feature of Ponzi schemes.
3. **Unregistered Investments** - Investments that are not registered with either the SEC or government regulators should be questioned.

4. **Unlicensed Sellers** - National securities laws require investment professionals and their firms to be licensed or registered. Most Ponzi schemes are not.

5. **Secretive and/or Complex Strategies** - Ponzi schemes usually do not publish detailed information about their investments. They are referred to as "blind pools" wherein investors do not know exactly how their money is invested.

6. **Issues with Paperwork** - Ponzi and Pyramiding schemes usually do not send regular performance statements or reports on clients' investments, and instead are more likely to be inconsistent and error-prone in correspondences.

7. **Difficulty Receiving Payments** - Perpetrators usually encourage investors to roll over their high returns and increase their investment holdings. Investors attempting to cash out their investments are more likely to face difficulties obtaining cash back. Ponzi perpetrators will encourage investors who want to cash out their investment to do so gradually or not at all.

8. Investors should be careful about investment proposals that promise to pay exorbitantly in a short period of time and that are not accompanied by prospectuses, quarterly or annual reports, and offering memoranda. The public should be wary of "affinity scams," not to invest based on acquaintance alone, and to be suspicious of investment offerings emanating from social networking sites and chatrooms. It is also recommended that investors seek third-party advice, for example, to contact an independent broker or licensed financial adviser before investing. Therefore, financial planners and advisers may face questions at some point during their careers from clients about questionable investment schemes, and it is best for financial industry professionals to be as well informed as possible.

9. Research has shown that some of the common features of fraudulent schemes are random returns, too few negative returns, and too many repeat returns. These findings suggest that increased regulatory oversight with stricter requirements for mandatory reporting will help to identify such schemes.

10. The following is a checklist that Field Investigators may find useful when interviewing would-be victims about questionable investments that might indicate a Ponzi or Pyramiding scheme.

   a. In terms of returns, does the scheme promise:
      - To pay a high rate of return not available elsewhere?
      - To pay back in a short period of time?
      - To pay a constant rate of return independent of economic cycles?

   b. The scheme manager:
      - Does not possess the relevant qualifications and experience to act as a money manager?
      - Is not licensed by national securities law to be an investment professional?
      - Wants complete control of your money?
      - Was involved in fraud or was under investigation in the past?
• Lied to or deceived people in the past?
• Is a willing donor to charities, institutions, and politicians?
• Is always trying to obtain political favor?
• Appears to have become rich in a very short period of time?
• Appears to be in financial trouble because of his lavish lifestyle?
• Is always looking for new investors at social, religious, and family gatherings?
• Asks you to remain coy about the fund to people whom you do not know or regulators?

c. The scheme or investment proposal or fund:
• Is not registered with the SEC or other government regulatory bodies?
• Is registered abroad where investment laws are less strict?
• Is opened to all kinds of investors?
• Conducts all transactions in-house; that is, acts as a broker, investment manager, custodian of assets, and fund administrator at the same time?
• Uses lesser-known or mostly unknown auditors?
• Charges very little in the form of fees?
• Employs only family members or friends or the same people overtime?
• Has low turnover on management team and does not grow with the size of the fund?
• Transacts mostly with small banks, unlike its peers?

d. Regarding reporting:
• The certificates received from the scheme/fund are not registered?
• You do not have a reasonable understanding of the investment strategies adopted?
• You do not receive regular performance statements?
• There is no person available to take/answer your calls?
• Your calls are not answered in a straightforward manner?
• Your adviser's firm is regularly closed during business days?
• The firm does not allow electronic or real-time access to your account?

e. Payments:
• Were (i.e., interest or dividend or principal) missed?
• Are persistently encouraged to be reinvested?

f. As an investor, you:
• Never called the SEC and/or other government regulatory bodies to verify the scheme in which you are invested?
• Never verified whether the fund is filing all its paperwork with the SEC, DTI and/or DTI, etc?
• Contributed to the scheme based on trust (or a friend's recommendation) and/or faith only?
• Tend to ignore negative comments about the fund's adviser/manager?
• Have suffered unexplained losses, but you do not want to withdraw as you have hopes that you will recoup your investment?
INTERVIEWING TECHNIQUES

Introduction

The intention of this Annex is to provide an overview of interview techniques to assist an investigator both in statement taking and general investigation of losses.

It must be understood that the purpose of the interview is to gather information. Such information will then be used to investigate the cause of the incident or subject of the investigation; to allow recovery of lost items or amount to be pursued; or for other purposes such as the establishment of quantum ownership of goods, and other issues.

The investigator shall bear in mind that interviews make interviewees uncomfortable. This may be due to their awareness that the information being sought may not be to their advantage, or that in the instance of a recovery, a disciplinary action against them may follow. If this is the case, valuable information will not be given and it will become difficult to determine what has occurred. Thus, investigators must make the interviewee relax by following the guidelines listed below.

General Interviewing Guidelines

1. Interview Promptly - Short-term memory degrades. Talking with others dilutes memories and actual observations are rationalised. This is a common problem for the Field Investigator; thus, notes of the initial contact should always be taken. Phone interviews shall also be conducted if onsite interview could not be carried out promptly.

2. Make informal written notes in chronological and objective form. Do not put personal interpretations or comments. - These informal written notes, when read later on, often reveal items that may have been heard but not understood. It is very easy for an interviewer to filter items or information given by the interviewee.

3. During the Interview, ask “What happened?” - Do not interrupt the statement. Make occasional notes of the discussion for later assessment.

4. Ask open, neutral, unbiased, non-leading questions for clarification.

5. Have common questions on hand for later cross-confirmations with other witnesses.

6. Do not lead the person into giving answers they think you want to hear - This is particularly important when investigating business transaction information or details. It could be the case that an interviewee will be guided by the line of questioning pursued by an interviewer. This is why the techniques of open questioning and listening shall be clearly understood.

Human Characteristics - The following are human characteristics that are worth remembering during interviews:

1. Eyewitnesses are not trained in observation and forget things.

2. Information is filtered by both the witness and the interviewer. - This is something to be particularly aware of. From time to time, the witness will say
something that you believe is not credible or not possible. Do not just dismiss such statement. Record every conversation you have with an interviewee and review the recordings later on. It is possible to get information that was initially thought of as unimportant but will later on be considered as otherwise.

3. **Recollection and communication are affected by emotions such as shock, unfairness, peer pressure, and embarrassment.** – This is true particularly to those interviewees-investors who may have been culpable in recruiting other investors.

4. **Memory recall is not chronological, therefore review and repeat if needed.** - This highlights why modern interviewing techniques are focused on hearing the story and recreating and/or testing it if possible. This is invaluable in fraud cases, if for instance a detail that could strengthen the case and that which might not be readily available to a fraudster could be tested.

**Interview Preparation for Fraud Investigation** - Maximise the quality and quantity of the information obtained. The following techniques can be useful:

1. Use a neutral location near the normal workplace (if in a commercial situation) which will be private and where you will not be interrupted. Make sure it is large enough for you and the interviewee to relax. This is a particular problem in a domestic environment where quite often, partners will be present and interrupt each other during the interview.

2. Have your question checklist and topic areas prepared.

3. Have photographs, documents, operating plans, and other pertinent documents ready to help you in clarification during the later part of the interview. It is worthwhile to ensure that any plan or document presented by the witness is appropriately annotated and appended to the statement.

4. Be aware of the person's background, responsibilities, and involvement. It is important to have an understanding of how the person to be interviewed fits into the organisation or what his role in the criminal activity/organization is.

5. Anticipate personal needs such as transport home, food, beverage, and other personal needs.

**The Interview** - There are four (4) phases to the interview:

1. **Develop Rapport and Trust.** Develop a positive and constructive atmosphere. Recognise that the person being interviewed is under stress. Explain the purpose of the interview and what your job and role are. Say what you hope to achieve. Ensure the interviewee that anything he says or provides will be treated with utmost confidentiality, unless, otherwise required by the court to be presented. Also ask the interviewee for any special concern or personal need.

2. Request the interviewee to tell you what happened in a narrative statement. Do not ask questions. Do not interrupt, and allow the interviewee to use his own words. Take notes as reminders for questions later on.

3. **Interactive Discussion.** Ask open-ended questions for clarification of information. Listen actively and repeat what was heard periodically for confirmation. Use photographs, drawings, and any other documents as needed.
4. **Conclusion.** Ask if there are any other facts or thoughts, no matter how big, small, or seemingly unimportant they are, that the person would like to add.

   a. Summarise what you have heard to ensure accuracy.

   b. At this point, develop a written statement in the presence of the interviewee. Ideally, the statement should be a chronological summary of what happened and what you have heard; a copy of which should be given to the interviewee for his signature. Having concluded the interview, ask the interviewee to get back to you or call you if he remembers or thinks of anything else that might be helpful.

   c. Finally, write down notes and observations on the information shared. Take note of any follow up questions. Evaluate key points and insights, and look for any apparent factual conflicts with the statements of other witnesses. These may reflect the individuals' different view points on the incident or different areas of what they have seen or understood. Explore these differences in a neutral way later.

**Common Interview Mistakes** - These include:

1. Screening out information which does not seem to fit.

2. Interrupting people when they are talking.

3. Having too many people in the first interview. Ideally, it should be one-to-one, since this is seen as non-threatening.
REFERENCES

a. Criminal Investigation Manual Revised 2011 (PNPM-DIDM-DS-9-1);

b. Field Manual on Investigation of Crimes of Violence and Other Crimes 2011 (PNPM-DIDM-DS-9-2);

c. Commonwealth Act Nr 3815, dated December 8, 1930, The Revised Penal Code of the Philippines, as amended;

d. Republic Act Nr 8494, dated February 12, 1998, An Act Further Amending Presidential Decree Nr 1080, As Amended, By Reorganizing and Renaming the Philippine Export and Foreign Loan Guarantee Corporation, Expanding Its Primary Purposes, and for Other Purposes;

e. Republic Act Nr 8799, The Securities Regulation Code;

f. Implementing Rules and Regulations of RA Nr 8799;


i. Batas Pambansa Blg 22, dated April 3, 1979, An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes;

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