

BEFORE THE IOWA INSURANCE COMMISSIONER

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IN THE MATTER OF	)	CEASE AND DESIST ORDER
	)	
PROSAPIA FINANCIAL LLC	)	DIVISION FILE NO.: 68806
PROSAPIA CAPITAL MANAGEMENT LLC	)	
ALAN LEE LUCAS	)	
ROBYN RENEE PALMER	)	

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Now comes the Iowa Insurance Division ("Division"), pursuant to the provisions of the Iowa Uniform Securities Act – Iowa Code Chapter 502 and finds as follows:

**PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Susan Voss, pursuant to Iowa Code § 502.601 (2009), administers the Iowa Uniform Securities Act.
2. Alan Lee Lucas ("Lucas") is an individual with a last known residential mailing address of 1259 Golfview Drive, Cedar Rapids, Iowa 52402. According to the Central Registration Depository website, Lucas is an operating manager of Prosapia Capital Management LLC. Lucas is not and has not been licensed as an investment adviser representative in the state of Iowa.
3. Robyn Renee Palmer ("Palmer") is an individual with a last known residential mailing address of 927 25<sup>th</sup> Street SE, Cedar Rapids, Iowa 52403. According to the Central Registration Depository website, Palmer is a co-operating manager of Prosapia Capital Management LLC and the compliance manager. Palmer is not registered as an investment adviser representative in the state of Iowa. Palmer was formerly with Berthel, Fisher & Company Financial Services, Inc. and her investment adviser representative and securities agent licenses were voluntary terminated on May 19, 2010.
4. Prosapia Financial LLC is an Iowa limited liability company with a last known mailing address of 425 2<sup>nd</sup> Street SE, Suite 300, Cedar Rapids, Iowa 52401. Prosapia Financial LLC

was issued a Certificate of Organization on May 27, 2010 according to the Iowa Secretary of State's website. Lucas is shown as the organizer and registered agent for Prosapia Financial LLC. Prosapia Financial LLC is not and has not been registered as an investment adviser in the state of Iowa.

5. Prosapia Capital Management LLC is an Iowa limited liability company with a last known mailing address of 425 2<sup>nd</sup> Street SE, Suite 300, Cedar Rapids, Iowa 52401. Prosapia Capital Management LLC was issued a Certificate of Organization on May 27, 2010 according to the Iowa Secretary of State's website. Lucas is shown as the organizer and registered agent for Prosapia Financial LLC. According to the Central Registration Depository, Prosapia Capital Management LLC is a newly formed investment adviser relying on SEC Rule 203A-2(d) and expects to be eligible for SEC registration within 120 days from its filing date. Prosapia Capital Management LLC is not and has not been registered as an investment adviser in the state of Iowa.

6. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have engaged in acts or practices within the state of Iowa constituting violations of Iowa Code Chapter 502 and/or any rule or order adopted or issued pursuant to Iowa Code Chapter 502. The Insurance Commissioner is authorized to issue a summary order directed to any person requiring the person to cease and desist from engaging in such acts or practices or take other affirmative action as in her judgment is necessary to comply with the requirements of Iowa Code Chapter 502 pursuant to Iowa Code § 502.604 (2009).

## FACTUAL BACKGROUND

### I. Sale of private offerings in the Covenant Investment Fund, L.P.

7. Noah James Aulwes a/k/a Tom Lee Aulwes a/k/a Thomas Lee Aulwes ("Aulwes") of Cedar Rapids, Iowa was the former owner and manager of Covenant Benefits, Inc. a/k/a Covenant Advisors ("Covenant"). Covenant and Aulwes solicited and sold to Iowa investors and investors from other states shares of private placement funds through an entity owned by Covenant called the Covenant Investment Fund, L.P. ("CIF"). CIF was purported to be a Delaware limited partnership and Private Equity Fund. Covenant also owned an entity called Covenant Asset Management, Inc. which purported to be a General Partner and the investment manager for CIF.

8. A brochure for CIF stated the following regarding CIF and the private placement funds available to investors:

#### **Fund of Funds**

Covenant Investment Fund, L.P. (CIF) is primarily a 'Fund of Funds'. Noah Aulwes, (Managing Member) chooses outside private equity managers who fit the investment profile for the individual members who make up the CIF limited partnership. Members then have the option to participate in the various 'side funds' to their liking. The investment risk, return and/or income varies according to the individual side fund(s) chosen.

#### **Ultrasharpe**

Ultrasharpe was the first fund added and remains the most popular both by way of safety and posted returns. It is a trading program that seeks to make small incremental profits realized by investing the change of direction of exchange traded funds (ETF's). This process is driven by a time tested proprietary algorithm developed by its manager David Lenihan of Vancouver, Washington. Ultrasharpe targets a 1%/month net return.

#### **Energy Opportunity Fund**

The Energy Opportunity Fund attempts to create profits by buying poorly managed or marginally producing properties that are geologically conducive to a well refurbishing (Radial Jet Technology) process which is patented and run by Well Enhancement Service (WES) LLC. Oil wells are refurbished and then resold once the production has been increased. The investor receives both cash

flow, tax benefits, as well as capital gains. Double digit returns are expected over an expected two year investment hold.

### **Venture Capital**

One of the distinct advantages of a private equity fund is being able to take advantage of special opportunities that are not available to mutual fund managers. O.S.A.G.I. is a small construction product development company. They produce roofing accessories for nail guns used in both remodeling and new construction. CIF is furnishing the manufacturing and marketing capital for its product(s). In exchange, the investing member will receive a 15% annual income as part of a 30% subordinated return overall. Anticipated holding period one to three years.

### **Real Estate – Lighthouse Holdings, L.L.C.**

Every market environment affords special circumstances where undervalued commodities become attractive as purchases. The recent home mortgage debacle has sent real-estate values plummeting. A 'contrarian' philosophy may consider this an opportunity to buy what is cheap and sell when it comes back into favor. Lighthouse holdings, LLC looks for distressed properties owned by banks. They buy these notes at a deep discount for later resale. As with any investment, time horizon may be a deciding factor. Current portfolio holdings have a minimum two year commitment.

9. According to documents provided to investors by Millennium Trust Company LLC, the custodian for Covenant investments, investors' monies including retirement account monies had been placed solely or substantially with CIF in one of the four sub-funds.

10. According to the most recent Form ADV dated March 3, 2009, Covenant had approximately \$4.6 million in assets under management. According to a balance sheet for CIF prepared by an outside accounting firm dated September 30, 2009, Covenant had only \$1.55 million under management.

## **II. Sale of promissory notes in Alethian Resource Corporation**

11. Aulwes had sold unsecured promissory notes to Iowa investors/clients in an entity called Alethian Resource Corporation ("Alethian") purportedly located in Las Pinas City, Philippines.

The promissory notes were signed by Aulwes as an "Incorporator and/or Authorized Agent" of Alethian.

12. Aulwes borrowed the following sums from Iowa investors/clients on behalf of Alethian. The money being borrowed was contemporaneous with the incorporation of Alethian.

Name	Date of Investment	Amount	Int. Rate	Due Date
W.M.&M.M.	10/15/2009	\$33,333	9%	11/30/2011
W.M.&M.M.	10/15/2009	\$33,333	11%	11/30/2012
W.M.&M.M.	10/15/2009	\$33,334	13%	11/30/2014
H.L. Trust	10/15/2009	\$50,000	9%	11/30/2011
H.L. Trust	10/15/2009	\$50,000	11%	11/30/2012
H.L. Trust	10/15/2009	\$50,000	13%	11/30/2014
E.C.&P.C Trust	10/15/2009	\$92,000	13%	11/30/2014
P.N.	4/30/2009	\$36,000	10%	4/30/2011
Total Loans		\$378,000		

13. It is unknown what value remains in the Alethian promissory notes.

14. The Division has identified other payments wired to the Philippines by CIF. On April 28, 2009, CIF (authorized by Aulwes) wired \$37,200 to James Ziegler in Butuan City, Philippines. On August 27, 2009, CIF (authorized by Aulwes) wired \$50,000 to Gregorio T. Murillo in Davao City, Philippines for a stated purpose of "Business Investment". On September 18, 2009, CIF (authorized by Aulwes) wired \$50,000 to Gregorio T. Murillo in Davao City, Philippines. These wire transfers were made at the Kerndt Brothers Savings Bank in Cedar Rapids, Iowa.

15. On April 5, 2010, the Division issued a Cease and Desist Order directed to Covenant and Aulwes for alleged violations in the sale of investments in CIF.

16. On May 17, 2010, Aulwes sold or otherwise turned over control of Covenant to Lucas and/or Palmer. Aulwes closed his bank accounts for CIF and Covenant Asset Management at the Kerndt Brothers Savings Bank in Cedar Rapids, Iowa. The funds, approximately \$190,000, were transferred to a new account controlled by Lucas and Palmer according to a bank resolution for Covenant Asset Management, LC and dated May 17, 2010. Lucas and Palmer have expended approximately \$20,000 of the funds to pay certain expenses that may or may not have been on the behalf of investors.

17. On June 11, 2010, Prosapia Financial LLC sent a letter containing a salutation to "Dear Covenant Investor" which stated as follows:

This letter is to inform you that as of June 1, 2010 Covenant Asset Management, the General Partner of Covenant Investment Fund has been acquired by Prosapia Financial, LLC and is being merged with Prosapia Capital Management. Noah Aulwes, the former Operating Manager of Covenant Asset Management now has no affiliation with the fund.

Your investment into Covenant Investment Fund now has a dedicated, full time Investment Advisor, Robyn Palmer, to address your financial situation. She is currently reviewing the current status of the fund and will contacting members to set up personal appointments to discuss the situation of the fund.

Prosapia Financial understands any confusion or frustration you may have with the fund and its prior management. We hope to alleviate that stress and look forward to working with you going forward.

If you have any questions in the meantime you may contact Robyn Palmer at the email/phone number listed below. Please also indicate the best time for her to reach you.

Sincerely,

Prosapia Financial, LLC  
425 2<sup>nd</sup> St. SE  
Suite 300  
Cedar Rapids, IA 52401  
(319) 202-8835  
[r.palmer@prosapiafinancial.com](mailto:r.palmer@prosapiafinancial.com)

18. On information and belief, investors formerly with Covenant have been contacted by Palmer or Lucas about their investment needs.

19. Lucas and/or Palmer have held themselves out as a financial and/or investment adviser.

20. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have made misrepresentations and omissions of material fact to investor(s) including, but not limited to, the following:

a. misrepresented to investors that Palmer was a licensed investment adviser representative;

b. failed to disclose to investors that Palmer was not licensed as an investment adviser representative; and

c. failed to disclose to investors that Prosapia Financial LLC and Prosapia Capital Management LLC were not licensed as an investment adviser.

## **VIOLATIONS OF SECURITIES ACT**

### **COUNT I**

#### **MISREPRESENTATIONS**

21. Paragraphs 1 - 20 are incorporated herein by reference.

22. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have made untrue statements of material fact in the sale of securities.

23. Therefore, Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have violated Iowa Code § 502.501 (2009) by making untrue statements of material facts and should be ordered to cease and desist.

24. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

**COUNT II**

**OMISSIONS**

25. Paragraphs 1 - 24 are incorporated herein by reference.
26. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have made omissions of material fact in the sale of securities.
27. The omission of these material facts, in light of the circumstances surrounding the sale of securities, is misleading.
28. Therefore, Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer have violated Iowa Code § 502.501 (2009) by failing to state material facts, and should be ordered to cease and desist.
29. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

**COUNT III**

**UNLICENSED INVESTMENT ADVISER**

30. Paragraphs 1 - 29 are incorporated herein by reference.
31. Prosapia Financial LLC and Prosapia Capital Management LLC are acting as investment advisers as defined in Iowa Code § 502.102(15) (2009).
32. Neither Prosapia Financial LLC nor Prosapia Capital Management LLC was registered with the Iowa Securities Bureau as investment advisers.
33. Therefore, Prosapia Financial LLC and Prosapia Capital Management LLC acted as unlicensed investment advisers in violation of Iowa Code § 502.403 (2009) and should be ordered to cease and desist.



34. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

#### **COUNT IV**

##### **UNLICENSED INVESTMENT ADVISER REPRESENTATIVE**

35. Paragraphs 1 - 34 are incorporated herein by reference.

36. Lucas and Palmer are acting as an investment adviser representative as defined in Iowa Code § 502.102(16) (2009).

37. Neither Lucas nor Palmer was registered with the Iowa Securities Bureau as an investment adviser representative.

38. Therefore, Lucas and Palmer acted as an unlicensed investment adviser representative in violation of Iowa Code § 502.404 (2009) and should be ordered to cease and desist.

39. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

#### **ORDERS**

WHEREFORE, IT IS HEREBY ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code §§ 502.604 (2009) as follows:

A. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer shall Cease and Desist making untrue statements of material facts in the offer or sale of securities in violation of Iowa Code § 502.501 (2009).

B. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas and Palmer shall Cease and Desist omitting material facts which, in light of the circumstances surrounding the sale of securities, are misleading in violation of Iowa Code § 502.501 (2009).

C. Prosapia Financial LLC and Prosapia Capital Management LLC shall Cease and Desist acting as an investment adviser in the state of Iowa without registration, in violation of Iowa Code § 502.403 (2009).

D. All individuals representing Prosapia Financial LLC and Prosapia Capital Management LLC, specifically including Lucas and Palmer, shall Cease and Desist acting as investment adviser representatives in the state of Iowa without registration, in violation of Iowa Code § 502.404 (2009).

E. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas, Palmer and any other employee or agent shall Cease and Desist spending or otherwise making use of investor funds obtained from Covenant or Aulwes, specifically including funds obtained from the Covenant bank accounts formerly controlled by Aulwes, without the written prior approval of the Division.

F. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas, Palmer and any other employee or agent shall Cease and Desist spending or otherwise making use of investor funds obtained from the sale or conversion of any investment obtained from Covenant or Aulwes without the written prior approval of the Division.

G. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas, and Palmer shall provide the Division with documentation of all investments obtained from Covenant or Aulwes by investor and the value of each investor's holdings, if known, within 20 calendar days of the date of this Order.

H. Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas, and Palmer shall be assessed a civil penalty of \$10,000.00 for knowingly and recklessly violating provisions of the

Iowa Uniform Securities Act pursuant to Iowa Code § 502.604(4) (2009) and rules enacted thereunder.

- I. The Division shall retain \$1,000 costs from any penalty or payment.

#### **NOTICE REGARDING FAILURE TO REQUEST A HEARING**

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

#### **NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW**

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

#### **NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER**

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code section 502.604. The administrator may petition the district court to hold a hearing to enforce the order as certified by the administrator. The district court may assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation and may issue further orders as it deems appropriate.

YOU ARE ALSO NOTIFIED that a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony pursuant to Iowa Code section 502.605(1)(a). A person who willfully violates section 502.401, 502.402, 502.403, or section 502.408, subsection (1) or (2), resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony pursuant to Iowa Code section 502.605(1)(b).

#### **NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES**

A final Cease and Desist Order may adversely affect existing business or professional licenses and result in license revocation or disciplinary action. For example, a final Cease and Desist Order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

#### **NOTICE OF RIGHT TO REQUEST HEARING**

NOTICE IS HEREBY GIVEN that Prosapia Financial LLC, Prosapia Capital Management LLC, Lucas, Palmer or any individual representing any Respondent, may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with Robert Koppin, Enforcement Bureau Chief, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. A notice of the hearing shall be prepared and shall be given at least fifteen (15) days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within forty-five (45) days after the date of the notice of the hearing unless extended by the presiding officer for good cause with at least fifteen days

notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2009).

Dated this 30<sup>th</sup> day of August, 2010.

Iowa Insurance Division



by ROBERT KOPPIN  
Enforcement Bureau Chief

**COPY SENT BY CERTIFIED AND FIRST CLASS MAIL TO:**

Alan Lee Lucas  
1259 Golfview Drive  
Cedar Rapids, Iowa 52402

Robyn Renee Palmer  
927 25<sup>th</sup> Street SE  
Cedar Rapids, Iowa 52403

Prosapia Financial LLC  
425 2<sup>nd</sup> Street SE  
Suite 300  
Cedar Rapids, Iowa 52401

Prosapia Capital Management LLC  
425 2<sup>nd</sup> Street SE  
Suite 300  
Cedar Rapids, Iowa 52401

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
Des Moines, Iowa 50319

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IN THE MATTER OF ) Docket No. 10DOCID032  
)  
ALAN LEE LUCAS, ROBYN RENEE )  
PALMER, PROSAPIA FINANCIAL LLC, )  
AND PROSAPIA CAPITAL ) **PROPOSED DECISION**  
MANAGEMENT LLC, )  
)  
Respondents. )

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A contested case hearing was held on December 20, 2010. Attorney Jesse Linebaugh appeared on behalf of Respondents Allan Lee Lucas, Robyn Renee Palmer, Prosapia Financial LLC (“Prosapia Financial”) and Prosapia Capital Management LLC (“Prosapia Management”). Lucas and Palmer appeared and testified. Attorney John Leonhart appeared on behalf of the Insurance Division. James Ennis, Allen Hanson and Insurance Division Field Auditor Susan Fagen appeared and testified on behalf of the Insurance Division. Exhibits 1 through 23 were admitted into the record.

### ISSUES

Whether Prosapia Financial and Prosapia Management acted as unlicensed investment advisers in violation of the Iowa insurance laws and rules.

Whether Lucas and Palmer acted as unlicensed investment adviser representatives in violation of the Iowa insurance laws and rules.

Whether Lucas, Palmer, Prosapia Financial, and Prosapia Management made untrue statements of material fact or omissions of material fact in the sale of securities in violation of the Iowa insurance laws and rules.

### FINDINGS OF FACT

Noah Aulwes was the president and owner of Covenant Benefits, Inc. a/k/a Covenant Advisers (“Covenant Benefits”). Aulwes worked as a licensed securities agent with ING Financial Partners, Inc. (“ING”) from January 1, 2004 through June 11, 2007. ING discharged Aulwes for engaging in an outside business activity without providing prior notice to the firm. Aulwes became a licensed investment adviser in the state of Iowa in August 2007.

Palmer worked for Covenant Benefits as an administrative assistant from September 2006 through September 2007. Palmer sent out appointment notices and made sure

forms were correctly filled out. Palmer did not provide any investment advice to Iowa investors while working for Aulwes.

Aulwes and Covenant Benefits solicited and sold to Iowa investors and investors from other states shares of private placement funds through Covenant Investment Fund, L.P. ("Covenant Investment"). Covenant Benefits owned Covenant Asset Management ("Covenant Asset") which was purported to be the general partner and investment manager for Covenant Investment. Covenant Investment was primarily a "Fund of Funds." Individual investors were afforded the opportunity to invest in four sub-funds ("Sub-Funds"): (1) Ultrasharpe; (2) the Energy Opportunity Fund; (3) Venture capital; and (4) Lighthouse Holdings, L.L.C. ("Lighthouse Holdings").

The Insurance Division received investor complaints that Aulwes steered investors into one or more of the four Sub-Funds without regard to other investments that may involve less risk. The investors did not have substantial experience in investing and relied on Aulwes' advice to make money consistent with their desire for safety of principal. The investments were made without an adequate suitability determination based on a reasonable inquiry into the investor's investment objectives, financial situation and needs, and any other information known to the investment adviser. Covenant Benefits and Aulwes failed to maintain written records documenting the investors' suitability for a given investment.

Covenant Benefits and Aulwes represented in marketing materials and verbally to investors that their investments in the Sub-Funds were safe and that they would receive positive returns on their investments. Aulwes did not discuss the risk of investing in the Sub-Funds with clients or downplayed the risk. Several investors complained they did not receive disclosure documents on the Sub-Funds discussing the risk until after they invested.

Several investors stated Aulwes met with and sold them investments in Covenant Investment at the offices of ING and that Aulwes led them to believe that the Covenant Investment Sub-Funds were affiliated with or sponsored by ING. Investors later learned ING was not affiliated with Covenant Investment and did not have written preapproval from ING to engage in the sale of any investment regarding Covenant Investment.

Aulwes told the Insurance Division he became acquainted with David Lenihan through a friend at New York Life Insurance Company, whom he had met at church. Lenihan managed the Wavesync which later became Ultrasharpe.

Aulwes submitted account values to Millennium Trust Company LLC ("Millennium Trust"), the custodian for Covenant Investment that were used to prepare quarterly statements that were mailed to investors. The statements overstated the value of the investors' accounts. Aulwes also charged excessive management fees. Investors sustained substantial losses on their investment portfolios.

Aulwes also sold unsecure promissory notes to Iowa investors in an entity called Alethrian Resource Corporation ("Alethrian") purportedly located in Las Pinas City,

Philippines. Aulwes borrowed sums from Iowa investors on behalf of Alethrian. The value of the Alethrian promissory notes is unknown.

In April 2010, the Insurance Division issued a Cease and Desist Order directed to Covenant Benefits and Aulwes for violations of the Iowa insurance laws and rules in the sale of investments in Covenant Investment.

Lucas is the owner and managing partner of Phalanx Technology Holdings, LLC (“Phalanx Technology”). Phalanx Technology is a holding company owning utilities doing business in Iowa and other states.

Lucas first became acquainted with Aulwes approximately thirteen years ago at a church he attended. Lucas testified approximately eighteen months ago he again met Aulwes. Lucas’s uncle had invested with Aulwes and needed money following a car accident. Lucas testified he confronted Aulwes and convinced him to assign his business to Lucas. Lucas’s background is in fiber optics. At the time he met with Aulwes, he did not have any experience in advising investors in securities.

Aulwes contacted Palmer in 2010. He told her he knew someone who was looking for someone with her background. Palmer told Aulwes she was interested. Lucas interviewed Palmer. During the interview Lucas told Palmer he was looking for someone to help with paperwork, licensing, and compliance issues for a new business he was starting.

Aulwes turned over control of Covenant Benefits to Lucas and Palmer on May 17, 2010. Aulwes closed his bank accounts for Covenant Investment and Covenant Asset. According to a bank resolution for Covenant Asset dated May 17, 2010, the funds, approximately \$190,000, were transferred to a new account controlled by Lucas and Palmer. The Deposit Account Application stated there was a “change of ownership/management.” (Exhibit 11B at 3). \$189,884 was placed into the Covenant Investment account and \$1,198 was placed in the Covenant Asset account. Lucas testified that he intended to liquidate the assets and provide the assets to the investors.

Lucas is the creator and organizer of Prosapia Financial LLC (“Prosapia Financial”) and Prosapia Capital Management LLC (“Prosapia Capital”). Prosapia Financial and Prosapia Capital were each issued a Certificate of Organization in Iowa on May 27, 2010. According to the Central Registration Depository Prosapia Capital was a newly formed investment adviser relying on SEC Rule 203A-2(d) and expected to be registered within 120 days from the filing date. Prosapia Financial and Prosapia Capital have not been registered investment advisers in the state of Iowa. Lucas testified that Phalanx Technology is the parent company to Prosapia Capital.

Palmer worked for Prosapia Capital from May 17, 2010 through September 17, 2010. She reported she was responsible for going through Covenant Investment’s records and for registering Prosapia Capital with the United States Securities and Exchange Commission (“SEC”). Palmer’s job title was listed as co-operating manager/compliance manager. Palmer reported Lucas was not licensed, but she was. Because the business



needed a licensed individual, Palmer stated the business needed to have at least one licensed person. Lucas failed the requisite examination and never became licensed.

\$20,000 of the Covenant Investment investor funds were expended to pay certain expenses by Lucas and Palmer. Lucas directed Palmer to transfer \$11,000 from Covenant Investment to Phalanx Technology. Palmer transferred the funds on May 21, 2010. Before making the deposit, the Phalanx Technology account had a balance of \$73.51. The bank ledger shows withdrawals after the deposit for purchases at Best Buy, Firehouse Bar, Klinger Paint, Taco Bell, and Welter Storage. Lucas testified that all of the purchases were expenses related to Covenant Investment. The record also reflects salary payments to Palmer.

On May 24, 2010, Covenant Investment issued a \$9,000 check to Unzeitig Construction. Lucas signed the withdrawal slip in the amount of \$9,005. Lucas testified that the payment was made as an operating cost of Phalanx Technology. Lucas reported the payment was needed to avoid the need to immediately vacate the premises. Lucas did not repay the funds.

On June 11, 2010, Prosapia Financial sent a letter containing a salutation to "Dear Covenant Investor" which stated:

This letter is to inform you that as of June 1, 2010 Covenant Asset Management, the General Partner of Covenant Investment Fund has been acquired by Prosapia Financial, LLC and is being merged with Prosapia Capital Management. Noah Aulwes, the former Operating Manager of Covenant Asset Management now has no affiliation with the fund.

Your investment into Covenant Investment Fund now has a dedicated, full time Investment Adviser, Robyn Palmer, to address your financial situation. She is currently reviewing the current status of the fund and will contacting members to set up personal appointments to discuss the situation of the fund.

Prosapia Financial understands any confusion or frustration you may have with the fund and its prior management. We hope to alleviate that stress and look forward to working with you going forward.

If you have any questions in the meantime you may contact Robyn Palmer at the email/phone number listed below. Please also indicate the best time for you to reach her.

Sincerely,

Prosapia Financial, LLC  
425 2<sup>nd</sup> St SE  
Suite 300  
Cedar Rapids, IA 52401

(319) 202-8835  
[r.palmer@prosapiafinancial.com](mailto:r.palmer@prosapiafinancial.com).

(Exhibit 1). Palmer testified Lucas dictated the letter and she typed it. Palmer reported the purpose of the letter was to inform the Covenant Benefits investors Aulwes was no longer involved. Palmer admitted that at the time she typed the letter she was not licensed as an investment adviser or investment adviser representative in the state of Iowa. She stated she assumed she would be licensed.

Lucas testified an attorney by the name of Linda Oberling from the SEC informed him that the SEC registration was immediate and that Prosapia Capital could begin communicating with investors. Oberling did not testify at hearing. Lucas did not submit any documentary evidence supporting his assertion.

Palmer testified that she went through the records for Covenant Benefits to try to figure out the investors' investment interests. The records were in horrible shape. Palmer denied providing investment advice while working for Prosapia Capital.

On June 21, 2010, the Insurance Division filed a Statement of Charges against Aulwes and Covenant Benefits. Aulwes and Covenant Benefits entered into an Order and Consent to Order and Agreement whereby Aulwes agreed to a revocation of his investment adviser representative license and insurance producer license and a permanent bar from reapplying for an investment adviser representative license or insurance producer license in Iowa.

The Insurance Division believed Palmer and Lucas contacted the investors formerly with Covenant Benefit about their investment needs and have held themselves out as financial and/or investment advisers. On October 11, 2010, the Insurance Division filed a Statement of Charges alleging: (1) Prosapia Financial, Prosapia Capital, Lucas and Palmer made misrepresentations and omissions to investors in the sale of securities; (2) Prosapia Financial and Prosapia Capital acted as unlicensed investment advisers in the state of Iowa; and (3) Lucas and Palmer acted as unlicensed investment adviser representatives in the state of Iowa. The Insurance Division requests entry of a cease and desist order against Prosapia Financial, Prosapia Capital, Lucas and Palmer, and entry of a \$10,000 civil penalty.

James Ennis was an investor with Covenant Benefits. Ennis invested in Covenant Benefits because Aulwes made the investments sound great, with little risk.

After receiving the letter from Prosapia Financial, around July 5, 2010, Ennis attempted to contact Prosapia Financial and left a message. Ennis assumed he was trying to contact Palmer. Lucas returned his call that day. During the conversation Ennis asked Lucas if he was licensed and he said no. According to Ennis, Lucas reported he would be licensed by July and that Palmer was licensed. Ennis told Lucas that he wanted his 2009 K-1s, so he could file his taxes.

Ennis had no communication with Prosapia Capital, Prosapia Financial, Lucas or Palmer before July 2010. Ennis did not speak with Palmer regarding any investment decisions.

Ennis testified he had several conversations with Lucas. Lucas made contact with individuals involved with the Sub-Funds. Ennis reported that during his conversations with Lucas, he discussed a possibility of future investments in a fiber network. Lucas had told Ennis his employment involved a fiber network, but Lucas did not tell Ennis the name of his business. Ennis did not pay Lucas any money.

Allen Hanson and his wife invested over \$1,000,000 in the Sub-Funds at Aulwes recommendation. Hanson had been a client of Aulwes at ING.

Hanson received the June 11, 2010 letter from Prosapia Financial of the ownership change of Covenant Investment. In early September 2010, Lucas contacted Hanson and told him he was the majority owner of the Lighthouse Sub-Fund. The Lighthouse Sub-Fund was comprised of distressed mortgages. Lucas asked Hanson to take over the fund and to create a LLC or partnership to collect on the mortgages and resell them on the market. Lucas told Hanson he did not have any experience in real estate. Hanson testified he never spoke with Palmer.

Lucas discussed several options for dealing with the mortgages. He told Hanson the past due payments could be forgiven if the homeowners agreed to start making payments. If the homeowners made payments for a period of six months the mortgages could be sold on the open market. Hanson stated that Lucas believed twenty-four mortgages were worth about \$2,000,000. Hanson was unaware how much was owed on the properties. Hanson testified Lucas told him to do what he wanted to sell the mortgages and to let the other investors fend for themselves.

Lucas told Hanson his uncle, Bill Wright, owned 17% of Energy Opportunity Fund 7 and that he wanted to help his uncle out. Hanson reported that Lucas told him he was trying to get his uncle to take over Energy Opportunity Fund 7. Lucas stated his uncle, Hanson, and another person owned the majority of the Energy Opportunity Fund.

Lucas went to Oregon to meet with the manager of Lighthouse. Hanson testified that during a subsequent conversation, Lucas stated he had the mortgages in a box. Lucas again discussed having Hanson create a LLC or a partnership to handle the mortgages. Lucas suggested Hanson or Lucas's wife could manage the mortgages.

## CONCLUSIONS OF LAW

Iowa has adopted the Iowa Uniform Securities Act, which governs the offering and sale of securities in Iowa.<sup>1</sup> The Insurance Commissioner administers the Iowa Uniform Securities Act.<sup>2</sup>

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<sup>1</sup> Iowa Code chapter 502.

<sup>2</sup> *Id.* § 502.601.

If the Insurance Commissioner determines a person has engaged in, is engaging in, or is about to engage in an act, practice, or course of business constituting a violation of Iowa Code chapter 502, the Insurance Commissioner may proceed with civil or administrative enforcement.<sup>3</sup> When the Insurance Commissioner seeks administrative enforcement, the Insurance Commissioner may issue a cease and desist order, and assess penalties and actual costs of an investigation or proceeding.<sup>4</sup>

## **I. Unlicensed Investment Adviser**

It is unlawful for a person to transact business in Iowa as an investment adviser unless the person is a registered investment adviser or is exempt from registration under Iowa Code section 502.403(2).<sup>5</sup> The exemptions apply to persons with businesses located outside of Iowa.<sup>6</sup> There is no dispute that at all times material hereto Prosapia Capital and Prosapia Financial were businesses located in Iowa.

Iowa Code section 502.102(15) an investment adviser is defined as:

a person that for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as a part of a business or that holds itself out as providing investment advice to others for compensation.

Several categories of persons are excluded from the term investment adviser, including a federally-covered investment adviser.<sup>7</sup> Prosapia Capital filed the Uniform Application for Investment Adviser Registration (“Form ADV”) with the SEC.

Under the Investment Advisers Act of 1940, an investment adviser

means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.<sup>8</sup>

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<sup>3</sup> *Id.* §§ 502.603, .604.

<sup>4</sup> *Id.* § 502.604.

<sup>5</sup> *Id.* § 502.403(1).

<sup>6</sup> *Id.* § 502.403(2).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. § 80b-2(a)(11).

Certain businesses, professionals and persons are excluded from the definition, none of which apply in this case.<sup>9</sup>

Investment advisers are either subject to SEC or state authorities, based upon the amount of assets under management.<sup>10</sup> Federal law precludes an investment adviser from registering with the SEC unless it has \$25,000,000 of assets under management as follows:

No investment adviser that is regulated or requires to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b-3 of this title, unless the investment adviser –

(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter 1 of this chapter.<sup>11</sup>

Assets under management are defined as “securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.”<sup>12</sup> Under the rules adopted by the SEC, an investment adviser is not required to register with the SEC if it does not have assets under management of \$30,000,000.<sup>13</sup>

Prosapia Capital submitted a Uniform Application for Investment Adviser Registration (“Form ADV”) to the SEC. According to the Form ADV, Prosapia Capital was going to provide investment supervisory services and investment advice through consultations. Prosapia Capital reported it was going to charge clients making use of investment management services a fee of 2% of the assets under management annually invoiced on a quarterly basis. Prosapia Capital received an automatic 120-day approval from the SEC effective June 21, 2010, despite having less than \$200,000 in assets under management. There is no evidence Prosapia Financial ever submitted a Form ADV to the SEC. Under federal law Prosapia Capital and Prosapia Financial were precluded from filing with the SEC.

To meet the Iowa definition of an investment adviser, Prosapia Capital and Prosapia Financial had to receive compensation for (1) issuing or promulgating analyses or reports concerning securities as part of a regular business; or (2) advising others as to the value of securities, or the advisability of investing in, purchasing or selling securities.<sup>14</sup> “The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for

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<sup>9</sup> *Id.* (listing categories of exempted businesses, professionals and persons).

<sup>10</sup> *Id.* § 80b-3(a)-(b).

<sup>11</sup> *Id.* § 80b-3a(a)(1)(A)-(B).

<sup>12</sup> *Id.* § 80b-3a(a)(2).

<sup>13</sup> 17 C.F.R. § 275.203A-4.

<sup>14</sup> Iowa Code § 502.102(15).

compensation as a part of a business or that holds itself out as providing investment advice to others for compensation.”<sup>15</sup>

On June 11, 2010, Prosapia Financial sent the investors in Covenant Investment a letter. The letter indicated that Covenant Asset, the general partner of Covenant Investment had been acquired by Prosapia Financial and was being merged with Prosapia Capital. Prosapia Financial stated the investors’ investment into Covenant Investment had a full-time investment adviser to address their financial situation and would be contacted regarding the status of the fund and to set up personal appointments to discuss the situation of the fund. The letter acknowledged confusion and frustration “with the fund and its prior management” and indicated that Prosapia Financial looked “forward to working with you going forward.” (Exhibit 1).

In the letter Prosapia Financial holds itself out as providing investment advice to others and indicates the investors will be contacted soon to discuss the situation of the fund and their “financial situation.” (Exhibit 1). The letter also states Prosapia Financial was being merged with Prosapia Capital.

While Palmer did not meet with or provide financial advice to the investors, Lucas had several conversations and meetings with Ennis and Hanson. Lucas contends he was not providing investment advice. Lucas encouraged Hanson to create his own LLC or partnership and provided advice with respect to handling of the Lighthouse mortgages. He told Hanson he could forgive the past-due sums if the homeowners became current on their loans and then sell the loans on the open market in six months.

Lucas did not discuss a management fee with Ennis or Hanson. While the June 11, 2010 letter does not indicate a fee will be charged to the investors, the Form ADV clearly indicated the intent to charge a management fee. The record reflects Prosapia Capital took the Covenant Investment funds and paid expenses related to and unrelated to the management of the funds. Prosapia Capital and Prosapia Financial violated Iowa Code section 502.403 by transacting business as investment advisers in the state of Iowa without being registered or exempt from registration.

## **II. Unlicensed Investment Adviser Representative**

It is unlawful for an individual to transact business in this state as an investment adviser representative in Iowa unless the individual is registered as an Iowa investment adviser representative, or is exempt from registration.<sup>16</sup> An investment adviser representative is defined as:

an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or

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<sup>15</sup> *Id.*

<sup>16</sup> Iowa Code § 502.404.

advice regarding securities should be given, provides investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing.<sup>17</sup>

The term does not include: (1) a person only performing clerical or ministerial acts; (2) “an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; (3) a person who is employed by or associated with a federally-covered investment adviser, unless the individual has a “place of business” in Iowa as defined by the rules adopted by the SEC and is a investment adviser representative as defined by 15 U.S.C. section 80b-3a or is not a “supervised person” as defined in 15 U.S.C. section 80b-2(a)(25).<sup>18</sup>

A place of business is defined as “[a]n office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients” and “[a]ny other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.”<sup>19</sup> The letter sent by Lucas and Palmer to the Iowa investors provides a Cedar Rapids, Iowa address and telephone number where the Iowa Investors could reach Prosapia Capital, Prosapia Financial, Lucas and Palmer.

A “supervised person” means “any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.”<sup>20</sup> An investment adviser representative includes a supervised person of the investment adviser who has more than five clients who are natural persons and more than ten percent of whose clients are natural persons.<sup>21</sup> A supervised person is not an investment adviser representative if the person does not regularly solicit, meet with, or otherwise communicate with clients of the investment adviser, or provides only impersonal investment advice.<sup>22</sup>

The evidence in this case supports a finding that during her employment with Prosapia Capital, Palmer only performed clerical or ministerial tasks. While the June 11, 2010 letter sent to investors indicated she had a greater role as a full-time investment adviser, Palmer did not provide any advice to the investors or receive any special compensation for investment advisory services. The evidence does not support the same finding for Lucas.

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<sup>17</sup> *Id.* § 502.102(16).

<sup>18</sup> *Id.*

<sup>19</sup> 17 C.F.R. § 275.203A-3(b)(1)-(2).

<sup>20</sup> 15 U.S.C. § 80b-2(a)(25).

<sup>21</sup> *Id.* § 275.203A-3(a)(1).

<sup>22</sup> *Id.* § 275.203A-3(a)(2).

There is no evidence Lucas was only performing clerical or ministerial tasks. He met with and had communications with Hanson on several dates. Lucas encouraged Hanson to create a LLC or partnership and to take over the mortgages. Lucas advised Hanson that he could forgive the past-due amounts due on the mortgages if the homeowners became current on the mortgages, and sell them on the open market. The record reflects Lucas took the investors' funds and paid expenses related to and unrelated to the management of the funds. Lucas violated Iowa Code section 502.404 offering investment advice to Iowa investors when he was not registered as an investment adviser representative in Iowa.

### **III. Misrepresentation and Nondisclosure**

The Division alleges Prosapia Capital, Prosapia Financial, Lucas, and Palmer made untrue statements and omissions of material fact in connection with the sale of securities. Under Iowa law it is unlawful for a person, in connection with the offer, sale, or purchase of a security to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made not misleading.<sup>23</sup> At hearing the Insurance Division did not present any evidence that Prosapia Capital, Prosapia Financial, Lucas or Palmer made untrue statements or omissions of material fact in connection with the sale of securities. While the June 11, 2010 letter identifying Palmer as an investment adviser is misleading, it was not sent in connection with the sale of securities.

### **IV. Imposition of a Civil Penalty**

The Division seeks imposition of a \$10,000 civil penalty against Prosapia Capital, Prosapia Financial, Lucas and Palmer, including \$1,000 for costs, for violating the Iowa Uniform Securities Act. When the Insurance Commissioner determines a person has violated Iowa Code chapter 502, the Insurance Commissioner may impose a civil penalty of \$5,000 for a single violation or \$500,000 for more than one violation, and may recover the actual cost of an investigation or proceeding.<sup>24</sup> Prosapia Capital and Prosapia Financial acted as investment advisers and Lucas acted as investment adviser representative without being registered in the state of Iowa. There is no evidence Prosapia Capital, Prosapia Financial or Lucas sold any securities to Iowa investors. However, Lucas encouraged Hanson to assume control of the mortgages and provided him with advice on how to liquidate the mortgages. Hanson's testimony reflects that Lucas had conversations with Hanson on September 3, 2010, October 4, 2010, and October 14, 2010, after the Insurance Division served the Cease and Desist Order on Lucas. I conclude imposition of a \$1,000 civil penalty is proper. The Division did not present evidence showing it expended \$1,000 in actual costs for the investigation or proceeding. No portion of the penalty is attributed to costs.

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<sup>23</sup> Iowa Code § 502.501.

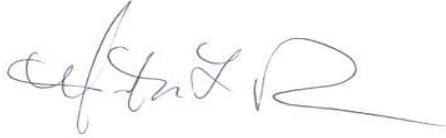
<sup>24</sup> *Id.* § 502.604



## ORDER

Prosapia Capital and Prosapia Financial are ordered to cease and desist from acting as investment advisers in Iowa without being registered investment advisers. Lucas is ordered to cease and desist from acting as an investment adviser representative without being registered as an investment adviser representative. Prosapia Capital, Prosapia Financial, and Lucas are hereby assessed a \$1,000 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 28th day of January, 2011.



Heather L. Palmer  
Administrative Law Judge  
515-281-7183

cc: Alan Lucas, 1259 Golfview Dr. NE, Cedar Rapids, IA 52401  
Jesse Linebaugh  
Christina Hazelbaker and Bob Koppin

## Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.<sup>25</sup> The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

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<sup>25</sup> 191 IAC 3.27.

Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building – Third Floor  
Des Moines, Iowa 50319

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IN THE MATTER OF ) Docket No. 10DOCID032  
)  
ALAN LEE LUCAS, ROBYN RENEE )  
PALMER, PROSAPIA FINANCIAL LLC, )  
AND PROSAPIA CAPITAL ) **PROPOSED DECISION**  
MANAGEMENT LLC, )  
)  
Respondents. )

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A contested case hearing was held on December 20, 2010. Attorney Jesse Linebaugh appeared on behalf of Respondents Allan Lee Lucas, Robyn Renee Palmer, Prosapia Financial LLC (“Prosapia Financial”) and Prosapia Capital Management LLC (“Prosapia Management”). Lucas and Palmer appeared and testified. Attorney John Leonhart appeared on behalf of the Insurance Division. James Ennis, Allen Hanson and Insurance Division Field Auditor Susan Fagen appeared and testified on behalf of the Insurance Division. Exhibits 1 through 23 were admitted into the record.

### ISSUES

Whether Prosapia Financial and Prosapia Management acted as unlicensed investment advisers in violation of the Iowa insurance laws and rules.

Whether Lucas and Palmer acted as unlicensed investment adviser representatives in violation of the Iowa insurance laws and rules.

Whether Lucas, Palmer, Prosapia Financial, and Prosapia Management made untrue statements of material fact or omissions of material fact in the sale of securities in violation of the Iowa insurance laws and rules.

### FINDINGS OF FACT

Noah Aulwes was the president and owner of Covenant Benefits, Inc. a/k/a Covenant Advisers (“Covenant Benefits”). Aulwes worked as a licensed securities agent with ING Financial Partners, Inc. (“ING”) from January 1, 2004 through June 11, 2007. ING discharged Aulwes for engaging in an outside business activity without providing prior notice to the firm. Aulwes became a licensed investment adviser in the state of Iowa in August 2007.

Palmer worked for Covenant Benefits as an administrative assistant from September 2006 through September 2007. Palmer sent out appointment notices and made sure

forms were correctly filled out. Palmer did not provide any investment advice to Iowa investors while working for Aulwes.

Aulwes and Covenant Benefits solicited and sold to Iowa investors and investors from other states shares of private placement funds through Covenant Investment Fund, L.P. ("Covenant Investment"). Covenant Benefits owned Covenant Asset Management ("Covenant Asset") which was purported to be the general partner and investment manager for Covenant Investment. Covenant Investment was primarily a "Fund of Funds." Individual investors were afforded the opportunity to invest in four sub-funds ("Sub-Funds"): (1) Ultrasharpe; (2) the Energy Opportunity Fund; (3) Venture capital; and (4) Lighthouse Holdings, L.L.C. ("Lighthouse Holdings").

The Insurance Division received investor complaints that Aulwes steered investors into one or more of the four Sub-Funds without regard to other investments that may involve less risk. The investors did not have substantial experience in investing and relied on Aulwes' advice to make money consistent with their desire for safety of principal. The investments were made without an adequate suitability determination based on a reasonable inquiry into the investor's investment objectives, financial situation and needs, and any other information known to the investment adviser. Covenant Benefits and Aulwes failed to maintain written records documenting the investors' suitability for a given investment.

Covenant Benefits and Aulwes represented in marketing materials and verbally to investors that their investments in the Sub-Funds were safe and that they would receive positive returns on their investments. Aulwes did not discuss the risk of investing in the Sub-Funds with clients or downplayed the risk. Several investors complained they did not receive disclosure documents on the Sub-Funds discussing the risk until after they invested.

Several investors stated Aulwes met with and sold them investments in Covenant Investment at the offices of ING and that Aulwes led them to believe that the Covenant Investment Sub-Funds were affiliated with or sponsored by ING. Investors later learned ING was not affiliated with Covenant Investment and did not have written preapproval from ING to engage in the sale of any investment regarding Covenant Investment.

Aulwes told the Insurance Division he became acquainted with David Lenihan through a friend at New York Life Insurance Company, whom he had met at church. Lenihan managed the Wavesync which later became Ultrasharpe.

Aulwes submitted account values to Millennium Trust Company LLC ("Millennium Trust"), the custodian for Covenant Investment that were used to prepare quarterly statements that were mailed to investors. The statements overstated the value of the investors' accounts. Aulwes also charged excessive management fees. Investors sustained substantial losses on their investment portfolios.

Aulwes also sold unsecure promissory notes to Iowa investors in an entity called Alethrian Resource Corporation ("Alethrian") purportedly located in Las Pinas City,

Philippines. Aulwes borrowed sums from Iowa investors on behalf of Alethrian. The value of the Alethrian promissory notes is unknown.

In April 2010, the Insurance Division issued a Cease and Desist Order directed to Covenant Benefits and Aulwes for violations of the Iowa insurance laws and rules in the sale of investments in Covenant Investment.

Lucas is the owner and managing partner of Phalanx Technology Holdings, LLC (“Phalanx Technology”). Phalanx Technology is a holding company owning utilities doing business in Iowa and other states.

Lucas first became acquainted with Aulwes approximately thirteen years ago at a church he attended. Lucas testified approximately eighteen months ago he again met Aulwes. Lucas’s uncle had invested with Aulwes and needed money following a car accident. Lucas testified he confronted Aulwes and convinced him to assign his business to Lucas. Lucas’s background is in fiber optics. At the time he met with Aulwes, he did not have any experience in advising investors in securities.

Aulwes contacted Palmer in 2010. He told her he knew someone who was looking for someone with her background. Palmer told Aulwes she was interested. Lucas interviewed Palmer. During the interview Lucas told Palmer he was looking for someone to help with paperwork, licensing, and compliance issues for a new business he was starting.

Aulwes turned over control of Covenant Benefits to Lucas and Palmer on May 17, 2010. Aulwes closed his bank accounts for Covenant Investment and Covenant Asset. According to a bank resolution for Covenant Asset dated May 17, 2010, the funds, approximately \$190,000, were transferred to a new account controlled by Lucas and Palmer. The Deposit Account Application stated there was a “change of ownership/management.” (Exhibit 11B at 3). \$189,884 was placed into the Covenant Investment account and \$1,198 was placed in the Covenant Asset account. Lucas testified that he intended to liquidate the assets and provide the assets to the investors.

Lucas is the creator and organizer of Prosapia Financial LLC (“Prosapia Financial”) and Prosapia Capital Management LLC (“Prosapia Capital”). Prosapia Financial and Prosapia Capital were each issued a Certificate of Organization in Iowa on May 27, 2010. According to the Central Registration Depository Prosapia Capital was a newly formed investment adviser relying on SEC Rule 203A-2(d) and expected to be registered within 120 days from the filing date. Prosapia Financial and Prosapia Capital have not been registered investment advisers in the state of Iowa. Lucas testified that Phalanx Technology is the parent company to Prosapia Capital.

Palmer worked for Prosapia Capital from May 17, 2010 through September 17, 2010. She reported she was responsible for going through Covenant Investment’s records and for registering Prosapia Capital with the United States Securities and Exchange Commission (“SEC”). Palmer’s job title was listed as co-operating manager/compliance manager. Palmer reported Lucas was not licensed, but she was. Because the business

needed a licensed individual, Palmer stated the business needed to have at least one licensed person. Lucas failed the requisite examination and never became licensed.

\$20,000 of the Covenant Investment investor funds were expended to pay certain expenses by Lucas and Palmer. Lucas directed Palmer to transfer \$11,000 from Covenant Investment to Phalanx Technology. Palmer transferred the funds on May 21, 2010. Before making the deposit, the Phalanx Technology account had a balance of \$73.51. The bank ledger shows withdrawals after the deposit for purchases at Best Buy, Firehouse Bar, Klinger Paint, Taco Bell, and Welter Storage. Lucas testified that all of the purchases were expenses related to Covenant Investment. The record also reflects salary payments to Palmer.

On May 24, 2010, Covenant Investment issued a \$9,000 check to Unzeitig Construction. Lucas signed the withdrawal slip in the amount of \$9,005. Lucas testified that the payment was made as an operating cost of Phalanx Technology. Lucas reported the payment was needed to avoid the need to immediately vacate the premises. Lucas did not repay the funds.

On June 11, 2010, Prosapia Financial sent a letter containing a salutation to "Dear Covenant Investor" which stated:

This letter is to inform you that as of June 1, 2010 Covenant Asset Management, the General Partner of Covenant Investment Fund has been acquired by Prosapia Financial, LLC and is being merged with Prosapia Capital Management. Noah Aulwes, the former Operating Manager of Covenant Asset Management now has no affiliation with the fund.

Your investment into Covenant Investment Fund now has a dedicated, full time Investment Adviser, Robyn Palmer, to address your financial situation. She is currently reviewing the current status of the fund and will contacting members to set up personal appointments to discuss the situation of the fund.

Prosapia Financial understands any confusion or frustration you may have with the fund and its prior management. We hope to alleviate that stress and look forward to working with you going forward.

If you have any questions in the meantime you may contact Robyn Palmer at the email/phone number listed below. Please also indicate the best time for you to reach her.

Sincerely,

Prosapia Financial, LLC  
425 2<sup>nd</sup> St SE  
Suite 300  
Cedar Rapids, IA 52401

(319) 202-8835  
[r.palmer@prosapiafinancial.com](mailto:r.palmer@prosapiafinancial.com).

(Exhibit 1). Palmer testified Lucas dictated the letter and she typed it. Palmer reported the purpose of the letter was to inform the Covenant Benefits investors Aulwes was no longer involved. Palmer admitted that at the time she typed the letter she was not licensed as an investment adviser or investment adviser representative in the state of Iowa. She stated she assumed she would be licensed.

Lucas testified an attorney by the name of Linda Oberling from the SEC informed him that the SEC registration was immediate and that Prosapia Capital could begin communicating with investors. Oberling did not testify at hearing. Lucas did not submit any documentary evidence supporting his assertion.

Palmer testified that she went through the records for Covenant Benefits to try to figure out the investors' investment interests. The records were in horrible shape. Palmer denied providing investment advice while working for Prosapia Capital.

On June 21, 2010, the Insurance Division filed a Statement of Charges against Aulwes and Covenant Benefits. Aulwes and Covenant Benefits entered into an Order and Consent to Order and Agreement whereby Aulwes agreed to a revocation of his investment adviser representative license and insurance producer license and a permanent bar from reapplying for an investment adviser representative license or insurance producer license in Iowa.

The Insurance Division believed Palmer and Lucas contacted the investors formerly with Covenant Benefit about their investment needs and have held themselves out as financial and/or investment advisers. On October 11, 2010, the Insurance Division filed a Statement of Charges alleging: (1) Prosapia Financial, Prosapia Capital, Lucas and Palmer made misrepresentations and omissions to investors in the sale of securities; (2) Prosapia Financial and Prosapia Capital acted as unlicensed investment advisers in the state of Iowa; and (3) Lucas and Palmer acted as unlicensed investment adviser representatives in the state of Iowa. The Insurance Division requests entry of a cease and desist order against Prosapia Financial, Prosapia Capital, Lucas and Palmer, and entry of a \$10,000 civil penalty.

James Ennis was an investor with Covenant Benefits. Ennis invested in Covenant Benefits because Aulwes made the investments sound great, with little risk.

After receiving the letter from Prosapia Financial, around July 5, 2010, Ennis attempted to contact Prosapia Financial and left a message. Ennis assumed he was trying to contact Palmer. Lucas returned his call that day. During the conversation Ennis asked Lucas if he was licensed and he said no. According to Ennis, Lucas reported he would be licensed by July and that Palmer was licensed. Ennis told Lucas that he wanted his 2009 K-1s, so he could file his taxes.

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## CONCLUSIONS OF LAW

Iowa has adopted the Iowa Uniform Securities Act, which governs the offering and sale of securities in Iowa.<sup>1</sup> The Insurance Commissioner administers the Iowa Uniform Securities Act.<sup>2</sup>

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It is unlawful for a person to transact business in Iowa as an investment adviser unless the person is a registered investment adviser or is exempt from registration under Iowa Code section 502.403(2).<sup>5</sup> The exemptions apply to persons with businesses located outside of Iowa.<sup>6</sup> There is no dispute that at all times material hereto Prosapia Capital and Prosapia Financial were businesses located in Iowa.

Iowa Code section 502.102(15) an investment adviser is defined as:

a person that for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as a part of a business or that holds itself out as providing investment advice to others for compensation.

Several categories of persons are excluded from the term investment adviser, including a federally-covered investment adviser.<sup>7</sup> Prosapia Capital filed the Uniform Application for Investment Adviser Registration (“Form ADV”) with the SEC.

Under the Investment Advisers Act of 1940, an investment adviser

means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.<sup>8</sup>

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<sup>3</sup> *Id.* §§ 502.603, .604.

<sup>4</sup> *Id.* § 502.604.

<sup>5</sup> *Id.* § 502.403(1).

<sup>6</sup> *Id.* § 502.403(2).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. § 80b-2(a)(11).



Certain businesses, professionals and persons are excluded from the definition, none of which apply in this case.<sup>9</sup>

Investment advisers are either subject to SEC or state authorities, based upon the amount of assets under management.<sup>10</sup> Federal law precludes an investment adviser from registering with the SEC unless it has \$25,000,000 of assets under management as follows:

No investment adviser that is regulated or requires to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b-3 of this title, unless the investment adviser –

(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter 1 of this chapter.<sup>11</sup>

Assets under management are defined as “securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.”<sup>12</sup> Under the rules adopted by the SEC, an investment adviser is not required to register with the SEC if it does not have assets under management of \$30,000,000.<sup>13</sup>

Prosapia Capital submitted a Uniform Application for Investment Adviser Registration (“Form ADV”) to the SEC. According to the Form ADV, Prosapia Capital was going to provide investment supervisory services and investment advice through consultations. Prosapia Capital reported it was going to charge clients making use of investment management services a fee of 2% of the assets under management annually invoiced on a quarterly basis. Prosapia Capital received an automatic 120-day approval from the SEC effective June 21, 2010, despite having less than \$200,000 in assets under management. There is no evidence Prosapia Financial ever submitted a Form ADV to the SEC. Under federal law Prosapia Capital and Prosapia Financial were precluded from filing with the SEC.

To meet the Iowa definition of an investment adviser, Prosapia Capital and Prosapia Financial had to receive compensation for (1) issuing or promulgating analyses or reports concerning securities as part of a regular business; or (2) advising others as to the value of securities, or the advisability of investing in, purchasing or selling securities.<sup>14</sup> “The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for

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<sup>9</sup> *Id.* (listing categories of exempted businesses, professionals and persons).

<sup>10</sup> *Id.* § 80b-3(a)-(b).

<sup>11</sup> *Id.* § 80b-3a(a)(1)(A)-(B).

<sup>12</sup> *Id.* § 80b-3a(a)(2).

<sup>13</sup> 17 C.F.R. § 275.203A-4.

<sup>14</sup> Iowa Code § 502.102(15).

compensation as a part of a business or that holds itself out as providing investment advice to others for compensation.”<sup>15</sup>

On June 11, 2010, Prosapia Financial sent the investors in Covenant Investment a letter. The letter indicated that Covenant Asset, the general partner of Covenant Investment had been acquired by Prosapia Financial and was being merged with Prosapia Capital. Prosapia Financial stated the investors’ investment into Covenant Investment had a full-time investment adviser to address their financial situation and would be contacted regarding the status of the fund and to set up personal appointments to discuss the situation of the fund. The letter acknowledged confusion and frustration “with the fund and its prior management” and indicated that Prosapia Financial looked “forward to working with you going forward.” (Exhibit 1).

In the letter Prosapia Financial holds itself out as providing investment advice to others and indicates the investors will be contacted soon to discuss the situation of the fund and their “financial situation.” (Exhibit 1). The letter also states Prosapia Financial was being merged with Prosapia Capital.

While Palmer did not meet with or provide financial advice to the investors, Lucas had several conversations and meetings with Ennis and Hanson. Lucas contends he was not providing investment advice. Lucas encouraged Hanson to create his own LLC or partnership and provided advice with respect to handling of the Lighthouse mortgages. He told Hanson he could forgive the past-due sums if the homeowners became current on their loans and then sell the loans on the open market in six months.

Lucas did not discuss a management fee with Ennis or Hanson. While the June 11, 2010 letter does not indicate a fee will be charged to the investors, the Form ADV clearly indicated the intent to charge a management fee. The record reflects Prosapia Capital took the Covenant Investment funds and paid expenses related to and unrelated to the management of the funds. Prosapia Capital and Prosapia Financial violated Iowa Code section 502.403 by transacting business as investment advisers in the state of Iowa without being registered or exempt from registration.

## **II. Unlicensed Investment Adviser Representative**

It is unlawful for an individual to transact business in this state as an investment adviser representative in Iowa unless the individual is registered as an Iowa investment adviser representative, or is exempt from registration.<sup>16</sup> An investment adviser representative is defined as:

an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or

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<sup>15</sup> *Id.*

<sup>16</sup> Iowa Code § 502.404.

advice regarding securities should be given, provides investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing.<sup>17</sup>

The term does not include: (1) a person only performing clerical or ministerial acts; (2) “an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; (3) a person who is employed by or associated with a federally-covered investment adviser, unless the individual has a “place of business” in Iowa as defined by the rules adopted by the SEC and is a investment adviser representative as defined by 15 U.S.C. section 80b-3a or is not a “supervised person” as defined in 15 U.S.C. section 80b-2(a)(25).<sup>18</sup>

A place of business is defined as “[a]n office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients” and “[a]ny other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.”<sup>19</sup> The letter sent by Lucas and Palmer to the Iowa investors provides a Cedar Rapids, Iowa address and telephone number where the Iowa Investors could reach Prosapia Capital, Prosapia Financial, Lucas and Palmer.

A “supervised person” means “any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.”<sup>20</sup> An investment adviser representative includes a supervised person of the investment adviser who has more than five clients who are natural persons and more than ten percent of whose clients are natural persons.<sup>21</sup> A supervised person is not an investment adviser representative if the person does not regularly solicit, meet with, or otherwise communicate with clients of the investment adviser, or provides only impersonal investment advice.<sup>22</sup>

The evidence in this case supports a finding that during her employment with Prosapia Capital, Palmer only performed clerical or ministerial tasks. While the June 11, 2010 letter sent to investors indicated she had a greater role as a full-time investment adviser, Palmer did not provide any advice to the investors or receive any special compensation for investment advisory services. The evidence does not support the same finding for Lucas.

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<sup>17</sup> *Id.* § 502.102(16).

<sup>18</sup> *Id.*

<sup>19</sup> 17 C.F.R. § 275.203A-3(b)(1)-(2).

<sup>20</sup> 15 U.S.C. § 80b-2(a)(25).

<sup>21</sup> *Id.* § 275.203A-3(a)(1).

<sup>22</sup> *Id.* § 275.203A-3(a)(2).

There is no evidence Lucas was only performing clerical or ministerial tasks. He met with and had communications with Hanson on several dates. Lucas encouraged Hanson to create a LLC or partnership and to take over the mortgages. Lucas advised Hanson that he could forgive the past-due amounts due on the mortgages if the homeowners became current on the mortgages, and sell them on the open market. The record reflects Lucas took the investors' funds and paid expenses related to and unrelated to the management of the funds. Lucas violated Iowa Code section 502.404 offering investment advice to Iowa investors when he was not registered as an investment adviser representative in Iowa.

### **III. Misrepresentation and Nondisclosure**

The Division alleges Prosapia Capital, Prosapia Financial, Lucas, and Palmer made untrue statements and omissions of material fact in connection with the sale of securities. Under Iowa law it is unlawful for a person, in connection with the offer, sale, or purchase of a security to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made not misleading.<sup>23</sup> At hearing the Insurance Division did not present any evidence that Prosapia Capital, Prosapia Financial, Lucas or Palmer made untrue statements or omissions of material fact in connection with the sale of securities. While the June 11, 2010 letter identifying Palmer as an investment adviser is misleading, it was not sent in connection with the sale of securities.

### **IV. Imposition of a Civil Penalty**

The Division seeks imposition of a \$10,000 civil penalty against Prosapia Capital, Prosapia Financial, Lucas and Palmer, including \$1,000 for costs, for violating the Iowa Uniform Securities Act. When the Insurance Commissioner determines a person has violated Iowa Code chapter 502, the Insurance Commissioner may impose a civil penalty of \$5,000 for a single violation or \$500,000 for more than one violation, and may recover the actual cost of an investigation or proceeding.<sup>24</sup> Prosapia Capital and Prosapia Financial acted as investment advisers and Lucas acted as investment adviser representative without being registered in the state of Iowa. There is no evidence Prosapia Capital, Prosapia Financial or Lucas sold any securities to Iowa investors. However, Lucas encouraged Hanson to assume control of the mortgages and provided him with advice on how to liquidate the mortgages. Hanson's testimony reflects that Lucas had conversations with Hanson on September 3, 2010, October 4, 2010, and October 14, 2010, after the Insurance Division served the Cease and Desist Order on Lucas. I conclude imposition of a \$1,000 civil penalty is proper. The Division did not present evidence showing it expended \$1,000 in actual costs for the investigation or proceeding. No portion of the penalty is attributed to costs.

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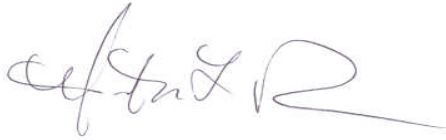
<sup>23</sup> Iowa Code § 502.501.

<sup>24</sup> *Id.* § 502.604

## ORDER

Prosapia Capital and Prosapia Financial are ordered to cease and desist from acting as investment advisers in Iowa without being registered investment advisers. Lucas is ordered to cease and desist from acting as an investment adviser representative without being registered as an investment adviser representative. Prosapia Capital, Prosapia Financial, and Lucas are hereby assessed a \$1,000 civil penalty. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 28th day of January, 2011.



Heather L. Palmer  
Administrative Law Judge  
515-281-7183

cc: Alan Lucas, 1259 Golfview Dr. NE, Cedar Rapids, IA 52401  
Jesse Linebaugh  
Christina Hazelbaker and Bob Koppin

## Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.<sup>25</sup> The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

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<sup>25</sup> 191 IAC 3.27.