

STATE OF ALABAMA  
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF: )  
 )  
CAPITAL MANAGEMENT ADVISORS INC. )  
CONSOLIDATED CAPITAL MGMT )  
TEDDY JOE PROPS )  
TOMMIE JACOB GOGGANS )  
 )  
RESPONDENTS )  
 )  
ADMINISTRATIVE ORDER  
NO. CD-2010-0012

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Code of Alabama 1975, Title 8, Chapter 6 the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of transacting business in this state as an investment adviser or investment adviser representative by providing investment advisory services, into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. **CAPITAL MANAGEMENT ADVISORS Inc. ("CMA")** (CRD# 110447) is a Federally registered Investment Adviser with the Securities and Exchange Commission ("SEC") with a commercial address of One Parkway Center, 1850 Parkway PL SE Suite 135 Marietta, Georgia 30067-8219.

2. **CONSOLIDATED CAPITAL MANAGEMENT**, with a commercial address of 1130 Quintard Avenue, Suite 102, Anniston, Alabama 36201, is identified as the owner of CMA on national CRD records as maintained by the Commission.

3. **TEDDY JOE PROPES, ("PROPES") (CRD# 368274)** is the Chief Investment Officer of CMA and the owner of CONSOLIDATED CAPITAL MANAGEMENT, with a commercial business address of One Parkway Center, 1850 Parkway PL SE Suite 135 Marietta, Georgia 30067-8219.

4. **TOMMIE JACOB GOOGANS III, ("GOOGANS") (CRD# 3235292)** is the Vice President of CMA, with a commercial business address of 1130 Quintard Avenue, Suite 102, Anniston, Alabama 36201.

#### **STATEMENT OF FACTS**

5. On August 28, 2008, an Alabama resident telephoned the Commission to inquire about the registration status of GOOGANS, who, according to the caller, was transacting business as an investment adviser representative of CONSOLIDATED CAPITAL MANAGEMENT at an office located in Anniston, Alabama.

6. On August 29, 2008, a review of the national CRD records as maintained by the Commission determined that GOOGANS was not registered as an investment adviser representative. Further review of CRD records disclosed no record of any federal registration with the Securities and Exchange Commission, state notice filing or state registration by CONSOLIDATED CAPITAL MANAGEMENT.

7. Further review of CRD records determined that CONSOLIDATED CAPITAL MANAGEMENT is identified as the owner of CMA, a federally registered investment adviser. CMA notice filed with the Alabama Securities Commission on May 5, 2006, failed to renew on December 31, 2006, and again notice filed with the Commission on June 26, 2008. CMA was not notice filed in Alabama from January 1, 2007 through June 25, 2008.

8. In the ADV Part I that CMA filed with the Alabama Securities Commission on June 26, 2008, CMA disclosed that PROPES is the Chief Investment Officer of

CMA and that Consolidated Capital Management is direct owner of CMA. CMA also disclosed an office located at 613 Wilmer Avenue, Anniston, Alabama 36201 and that books and records were kept at the CMA Atlanta office and also at the Wilmer Avenue location in Alabama. CMA's ADV Part I also disclosed that PROPES is the President of Consolidated Capital Management, Inc.

9. In a telephonic interview with the Commission staff on October 3, 2008, GOGGANS stated that he was transacting business as an Investment Adviser Representative at the Alabama office, providing investment advisory services on behalf of CMA as an employee of CONSOLIDATED CAPITAL MANAGEMENT. GOGGANS estimated that he had provided investment advisory services to at least seventy (70) and possibly to one hundred (100) Alabama residents since November 2005, with at least \$12 million of assets under management.

10. On October 8-9, 2008, the Commission staff conducted an on-site audit of the office which was the subject of the August 28, 2008, inquiry from an Alabama resident. The office is located at 1130 Quintard Avenue, Anniston, Alabama, 36201. The words "Consolidated Capital Management, Inc." were prominently featured on the front door of the office, appearing to reflect name of the business being conducted therein. (GOGGANS also used the business name Consolidated Capital Management on his business email address.)

11. On October 14, 2008 the Commission staff telephoned GOGGANS to request CMA's Compliance Manual and a copy of CMA's third party check log, which had not been available onsite when the audit was conducted October 8-9, 2008. In addition, the staff requested a statement showing the total amount of fees received by CMA from Alabama clients who had been provided services through GOGGANS.

12. On October 14, 2008, the Commission staff received a copy of CMA's third party check log via email.

13. On October 20, 2008, the Commission staff met with GOGGANS to discuss GOGGANS' Alabama registration requirement and the issues raised by the audit of the Alabama office. Although the Commission staff had requested that a compliance and/or control person with CMA be present, GOGGANS attended the meeting alone.

14. On October 24, 2008, GOGGANS emailed the Commission staff stating that GOGGANS had not provided the Compliance Manual or the information concerning the advisory services fees because GOGGANS had been out of work due to a back injury. The Commission staff responded via email to express the urgency of an expedited response from CMA for the resolution of the Alabama registration issues.

15. On October 29, 2008, the Commission staff received a letter from one of GOGGAN's former business partners. The letter included copies of court documents showing that the Circuit Court of Etowah County, Alabama had entered a Judgment against GOGGANS for \$80,353.00 on behalf of the former business partner. See Morris v Goggans, et. al., CV-2008- 900252.00, Etowah County Circuit Court, Alabama, October 3, 2008.

16. On November 7, 2008, the Commission staff met with PROPES, as President and CEO of CMA and as owner of Consolidated Capital Management, to discuss GOGGANS' lack of Alabama registration, the use of the unregistered business name of Consolidated Capital Management by GOGGANS at CMA's Alabama office, the period of time during which CMA was not notice filed in Alabama, and the deficiencies identified during the audit conducted of the Alabama office.

17. On November 10, 2008 the Commission staff mailed a visitation letter to National Financial Services, LLC (NFS) requesting information on the following: all transactions executed by CMA for Alabama clients, dates the accounts of any Alabama clients were opened, addresses and telephone numbers of the Alabama clients, and trade confirmations of any trades executed by CMA for Alabama clients (identifying the

securities involved, the representative that placed the trade, the date of the transaction, and the price and number of shares traded).

18. On November 12, 2008 GOGGANS applied for registration as an Investment Adviser Representative of CMA in the state of Alabama.

19. On November 21, 2008, the Commission staff received a response from NFS providing the information requested in the November 10, 2008 letter.

20. On December 2, 2008, the Commission staff emailed GOGGANS again requesting CMA's Compliance Manual and a statement of the total compensation received by CMA from all Alabama clients. This information had been requested during the October 20, 2008 meeting.

21. On December 16, 2008, the Commission staff telephoned the office of CMA to get an update on CMA's efforts to provide the Compliance Manual and fee information. PROPES was unavailable, but Nathaniel Propes, the Assistant Compliance Officer, stated that he had no knowledge of the Commission staff's request for these items.

22. On December 17, 2008, a certified letter was mailed to PROPES and CMA by the Commission staff requesting CMA's Compliance Manual and the fee information. These items were previously requested at the following times: during the audit on October 8, 2008, at the meeting on October 20, 2008, at the meeting on November 7, 2008 and during various telephone conversations with GOGGANS and PROPES.

23. On December 19, 2008, the Commission staff issued a deficiency letter concerning GOGGAN's application for registration as an investment adviser representative of CMA to PROPES, as the Chief Investment Officer of CMA. The letter informed PROPES that GOGGANS's CRD record reflected IRS and state tax liens as well as an unsatisfied debt. The Commission staff requested evidence that the liens

had been satisfied, or, in the alternative, evidence that GOGGANS had made arrangements to resolve the lien and that he was making payments therefore in a timely manner. The Commission staff also requested that GOGGANS provide a current personal balance sheet with an attestation by GOGGANS that the balance sheet was a true and accurate reflection of GOGGANS's net worth. PROPES was informed in the deficiency letter that GOGGANS's registration would not be available until the prior business activities were resolved.

24. On December 23, 2008, the Commission staff received CMA's Compliance Manual and a portion of the requested fee information from GOGGANS via e-mail. However, GOGGANS provided only a numerical fee total and did not provide the required documentation from a third party to confirm the amount or the manner in which the total was derived. The Commission staff sent a request for third party verification on December 23, 2008 to GOGGANS and CMA via certified mail.

- 25. On December 24, 2008 the Commission staff was notified that GOGGANS had taken and passed the Series 65 test in order to be eligible to apply for registration.

26. On January 16, 2009, the Commission staff sent a visitation letter to NFS requesting a list of all management fees received by CMA from Alabama clients.

27. On January 21, 2009, the Commission staff telephoned PROPES to make a specific request for the third party documentation of the management fee information. The Commission staff also inquired about the manner in which supervision was provided to GOGGANS at the Alabama office.

28. On January 23, 2009, the Commission staff sent another request to CMA requesting the required documentation from a third party to confirm the total amount of fees received from Alabama clients and/or the manner in which the fee total was derived.

29. On February 3, 2009 the Commission staff received a response from NFS in electronic format on compact disc. NFS provided a list of all of CMA's Alabama

clients that had fees directly deducted from their accounts to pay management fees to CMA.

30. On February 5, 2009 the Commission staff received a statement from CMA that provided a total amount of fees paid to CMA by Alabama clients.

31. The Commission staff conducted an analysis of the information received from NFS and CMA. NFS provided information that the total amount of management fees paid by all Alabama clients was \$447,504.70. The Commission staff conducted a detailed analysis of fees paid by Alabama clients, reconciling the fees paid with the lists of Alabama clients provided by NFS and CMA. The Commission staff determined that the fees attributable to GOGGANS amounted to \$343,584.00, which is the total amount of fees according to the statement provided by CMA.

32. On April 20, 2009, the Commission staff received an email from GOGGANS requesting a fax number to which GOGGANS could fax the documents requested by the Commission staff in its December 19, 2008 deficiency letter to PROPES concerning GOGGANS's tax liens and unsatisfied debts.

33. On April 21, 2009, the Commission staff responded to GOGGANS' request via email and advised him that GOGGANS could email the documents.

34. On April 21, 2009, the Commission staff received a response from GOGGANS to the questions concerning the tax liens and unsatisfied debt that had been raised in the December 19, 2008 deficiency letter to PROPES. GOGGANS stated that the tax liability owed to the State of Alabama had been satisfied and provided a letter from the Alabama Department of Revenue stating that on January 26, 2009, the garnishment of August 11, 2008, was satisfied and should be released. GOGGANS provided documents showing that GOGGAN's tax liability for the years 2001, 2002, and 2003 was satisfied. Documents reflected that GOGGANS owed the IRS \$6,657.91 for 2004 taxes. However, there was no response to the request for a current personal balance sheet.

35. On May 18, 2009, the Commission staff issued a continued deficiency letter to PROPES requesting a current personal balance sheet from GOGGANS to show solvency and an attestation by the applicant that the balance sheet was a true and accurate reflection of GOGGAN's net worth.

36. On June 15, 2009, the Commission staff received GOGGANS' personal balance sheet reflecting solvency.

37. On June 26, 2009 the Commission staff attempted to contact PROPES at CMA's office. PROPES was not in the office so the Commission staff left a message requesting that PROPES return the call on Monday, June 29, 2009.

38. On June 29, 2009 PROPES returned the Commission staff's telephone call. The Commission staff advised PROPES of the Commission staff's intent to impose an administrative assessment against PROPES, as authorized by Code of Alabama 1975, §8-6-19(j)(1). PROPES stated that CMA disclosed the Alabama office location and GOGGANS on its ADV Part I when CMA first filed its ADV in Alabama, and that CMA had renewed every year. PROPES contended that the Commission had a duty to notify persons of the registration requirements. PROPES further contended that PROPES and CMA were not responsible for the unregistered business transacted by GOGGANS using the name of CONSOLIDATED CAPITAL MANAGEMENT at CMA's office located in Alabama.

39. On June 29, 2009 the Commission staff received a voice mail message from GOGGANS stating that any administrative action taken by the Commission would "be costing him his livelihood". GOGGANS requested that the Commission take no action against CMA.

40. The Commission staff has discussed the pending registration application of GOGGANS with PROPES on several occasions and has explained that, under Alabama law, it is unlawful to employ unregistered investment adviser representatives to provide investment advisory services at any office located in Alabama. See also

Code of Alabama 1975, §8-6-18(e), which provides: In any proceeding under this article, scienter need not be alleged and proved in prosecutions involving the sale of unregistered securities or in the failure to register as a dealer, agent, investment adviser, or investment adviser representative.

### CONCLUSIONS OF LAW

41. Pursuant to Code of Alabama 1975, §8-6-2(18) an investment adviser is 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 a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment Adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the forgoing investment advisory services to others for compensation. CMA is an Investment Adviser as defined under the Act subject to Federal notice filing in Alabama pursuant to the National Securities Market Improvement Act of 1996.

42. Pursuant to Code of Alabama 1975, §8-6-2(19), an investment adviser representative is any partner, officer, director or other individual employed by or associated with an investment adviser who makes any recommendation or otherwise renders advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, or solicits, offers or negotiates for the sale of or sells investment advisory services. GOGGANS is acting as an investment adviser representative under this definition and is employed by and associated with an investment adviser at a place of business located in Alabama and is therefore subject to Alabama registration provisions.

43. Pursuant to Code of Alabama 1975, §8-6-3(b), it is unlawful for any person

to transact business in this state as an Investment Adviser or an Investment Adviser Representative unless he is registered under the Act. GOGGANS has transacted business as an Investment Adviser Representative, as the term is defined in Code of Alabama 1975, §8-6-2(19), in the state of Alabama by offering and providing investment advisory services to Alabama residents in violation of Code of Alabama 1975, §8-6-3(b).

44. Pursuant to Code of Alabama 1975, §8-6-3(b), it is unlawful for any person to transact business in this state as an Investment Adviser or an Investment Adviser Representative unless he is registered under the Act. CONSOLIDATED CAPITAL MANAGEMENT, through GOGGANS, has transacted business as an investment adviser and has offered and provided investment advisory services to Alabama residents in violation of Code of Alabama 1975, §8-6-3(b).

45. Pursuant to Code of Alabama 1975, §8-6-3(c), it is unlawful for any investment adviser to employ an investment adviser representative unless such investment adviser representative is registered under the Act. TEDDY JOE PROPS, as the Chief Investment Officer of CMA and the owner of CONSOLIDATED CAPITAL MANAGEMENT, has employed and directly compensated GOGGANS through salary for transacting business as an investment adviser representative in violation of §8-6-3(c) of the Act.

This Order does not prevent the Alabama Securities Commission from seeking such other administrative, civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the RESPONDENTS to make a timely request for hearing, or default of the respondents, it is the intention of the Commission to impose sanctions upon the RESPONDENTS. Such sanctions may include, *inter alia*, an

administrative assessment imposed on RESPONDENTS, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against RESPONDENTS, and a permanent order to bar RESPONDENTS from participation in any securities related industry in the state of Alabama.

**ACCORDINGLY, IT IS HEREBY ORDERED** that the **RESPONDENTS** immediately **CEASE AND DESIST** from transacting business as an investment adviser or investment adviser representative and/or providing investment advisory services into, within or from the state of Alabama.

**FURTHER, IT IS HEREBY ORDERED** that **RESPONDENTS** immediately **CEASE AND DESIST** from transacting business as an investment adviser or investment adviser representative and/or providing investment advisory services into, within or from the State of Alabama until such time as **TOMMIE JACOB GOOGANS, III** is registered as an Investment Advisory Representative in Alabama; and

**FURTHER, IT IS HEREBY ORDERED** that **RESPONDENTS** immediately **CEASE AND DESIST** from transacting business as an investment adviser or investment adviser representative and/or providing any further investment advisory services into, within or from the State of Alabama until such time as **CONSOLIDATED CAPITAL MANAGEMENT** has registered or filed proper state notice as a Federally Registered Investment Advisor in Alabama.

Entered at Montgomery, Alabama, this 2ND day of MARCH, 2010.

ALABAMA SECURITIES COMMISSION  
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BY:

Joseph P. Borg  
Director

