

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

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

CONSENT 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 an Investment Adviser registered 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, Inc. ("CONSOLIDATED CAPITAL MANAGEMENT")**, with a commercial address of 1130 Quintard Avenue, Suite 102, Anniston, Alabama 36201, is the parent company of CMA and is identified on CMA's ADV Part I as the "owner" of CMA.

3. **TEDDY JOE PROPES, ("PROPES")** (CRD# 368274) is the Chief Investment Officer of CMA and the Chief Investment Officer and Chief Financial Officer 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 federal covered adviser. CMA notice filed with the Alabama Securities Commission on May 5, 2006 and failed to renew on January 1, 2008. CMA later notice filed with the Commission on June 26, 2008. CMA was not notice filed in Alabama from January 1, 2008 through June 25, 2008.

8. In the ADV Part I that CMA filed with the Alabama Securities Commission on June 26, 2008, CMA identifies PROPES as the Chief Investment Officer of CMA and identifies CONSOLIDATED CAPITAL MANAGEMENT as the direct owner of CMA. CMA lists an office located at 613 Wilmer Avenue, Anniston, Alabama 36201 and states that books and records were kept at CMA's Atlanta office and also at the Anniston office in Alabama. CMA's ADV Part I also identifies PROPES as 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 GOOGANS to discuss GOOGANS' 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, GOOGANS attended the meeting alone.

14. On October 24, 2008, GOOGANS emailed the Commission staff stating that GOOGANS had not provided the Compliance Manual or the information concerning the advisory services fees because GOOGANS 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 GOOGAN'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 GOOGANS 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 PROPS, as CEO of CMA and as CEO and CFO of CONSOLIDATED CAPITAL MANAGEMENT, to discuss GOOGANS' lack of Alabama registration, the use of the unregistered business name of "Consolidated Capital Management" by GOOGANS 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 GOOGANS'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 GOOGANS had made arrangements to resolve the lien and that he was making payments therefore in a timely manner. The Commission staff also requested that GOOGANS provide a current personal balance sheet with an attestation by GOOGANS that the balance sheet was a true and accurate reflection of GOOGANS's net worth. PROPES was informed in the deficiency letter that GOOGANS'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 GOOGANS via e-mail. However, GOOGANS 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 GOOGANS and CMA via certified mail.

25. On December 24, 2008, the Commission staff was notified that GOOGANS 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 GOOGANS at the Alabama office.

28. On January 23, 2009, the Commission staff sent another request to CMA requesting documentation from a third party confirming the amount of fees received from Alabama clients and/or explaining 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. NFS provided a list of CMA's Alabama clients who have accounts from which fees were directly deducted to pay CMA's management fees.

30. On February 5, 2009, the Commission staff received a statement from CMA providing 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 in order to reconcile the amounts of the fees received by CMA with the lists of Alabama clients provided by NFS and CMA. The Commission staff confirmed that the amount of fees received by CMS that were attributable to GOOGANS's services was \$343,584.00, which is consistent with the statement provided by CMA. The Commission staff was also informed that CMA had paid \$157,614 on GOOGANS' behalf to GOOGANS' former business partners as purchasing expenses. CMA submitted a Profit and Loss Statement showing additional operating expenses which resulted in total operating losses for its Anniston office of \$54,025.26 in 2006, \$56,298.90 in 2007, and \$34,838.54 in 2008.

32. On April 20, 2009, the Commission staff received an email from GOOGANS requesting a fax number to which GOOGANS could fax the documents requested by the Commission staff in its December 19, 2008 deficiency letter to PROPES concerning GOOGANS's tax liens and unsatisfied debts. On April 21, 2009, the Commission staff responded to GOOGANS' request via email and advised him that GOOGANS could email the documents.

33. On April 21, 2009, the Commission staff received a response from GOOGANS to the questions concerning the tax liens and unsatisfied debt that had been raised in the December 19, 2008 deficiency letter to PROPES. GOOGANS 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. GOOGANS provided documents showing that GOOGAN's tax liability for the years 2001, 2002, and 2003 was satisfied. Documents reflected that GOOGANS owed the IRS \$6,657.91 for 2004 taxes. However, there was no response to the request for a current personal balance sheet.

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

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

36. 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.

37. 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 GOOGANS 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 GOOGANS using the name of CONSOLIDATED CAPITAL MANAGEMENT at CMA's office located in Alabama.

38. On June 29, 2009 the Commission staff received a voice mail message from GOOGANS stating that any administrative action taken by the Commission would

"be costing him his livelihood" and requested that the Commission take no action against CMA.

39. On March 2, 2010, the Commission issued a Cease and Desist Order directing Respondents 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.

40. On or about March 30, 2010, the Commission received a letter dated March 29, 2010 from Respondents requesting an informal hearing.

41. On April 5, 2010, an informal hearing was conducted by the Commission with Respondents appearing by counsel.

42. On April 8, 2010, the Commission received information that CMA provides an internship program utilizing undergraduate students who act solely in a ministerial capacity at CMA's Alabama location. The student interns provide services such as collecting information from clients, processing and submitting paper work to CMA's corporate office, checking and sending mail, and other services as needed. Further, the Commission was provided a statement that although Goggans' title was "Co-Portfolio Manager" from May 2006 until November 2008, Goggans never directly managed any accounts. Further, the Commission was informed that Nathaniel Propes is the acting compliance officer for CMA.

43. On April 9, 2010, the Commission requested an explanation of the purchase of the business GOOGANS referred to CMA and was informed of the details of the purchase agreements between GOOGANS and his former business partners. According to the agreement between CMA and GOOGANS, CMA is not obligated to make payments on behalf of GOOGANS unless the fees for GOOGANS services rise to a specific amount.

44. The Commission's review of national CRD records as maintained by FINRA reflects no registration and no compliance credentials for Nathaniel Propes.

45. On July 12, 2010, the Commission was provided additional information about the internship program provided by CMA to the students of Jacksonville State University. Representatives of Jacksonville State University requested that the Commission consider additional information regarding the value of the internship provided by CMA to students at Jacksonville State University.

46. On July 23, 2010, the Commission received a letter from the President of Jacksonville State University. In the letter, Dr. William A. Meehan, President, described the internships offered and provided by CMA. Dr. Meehan informed the Commission that, in his opinion, "the value of the internship experience provided to our students by Capital Management Advisors cannot be overstated." Dr. Meehan attributed a substantial benefit to students at Jacksonville State University from CMA's internship program.

47. On July 23, 2010, CMA provided a description of its internship program to the Commission. CMA states that qualified students are recommended into the program by University professors and that 100% of the internship participants have completed the program and have been employed in their chosen career fields.

CONCLUSIONS OF LAW

48. 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.

49. 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.

50. 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).

51. 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).

52. 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 PROPES, as the Chief Investment Officer of CMA and the Chief Executive Officer and Chief Financial Officer 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.

WHEREAS, RESPONDENTS voluntarily waived all rights to a hearing upon entry of this Order and have consented to the entry of this Order, and

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act;

WHEREAS, the Commission and RESPONDENTS are desirous of settling this matter as hereafter set forth and agree;

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That RESPONDENTS shall, until such time as properly registered in the state of Alabama, refrain from effecting transactions into, within or from the state of Alabama.

2. That RESPONDENTS shall ensure that proper procedures are enacted to preclude any future non-compliance with the Act.

3. That RESPONDENTS shall ensure that proper procedures are enacted to properly supervise all interns, that the activities performed by interns be strictly limited to the performance of ministerial tasks only, that interns be prohibited from providing investment advisory services, and that written procedures be established by CMA for use in its internship program. The written procedures shall be reviewed and approved

by the appropriate officer at CMA and CONSOLIDATED CAPITAL MANAGEMENT and shall be further certified by the compliance officer of CMA. The written procedures shall be provided to the Commission staff within forty-five (45) days of the date of the execution of this Order.

4. That RESPONDENTS shall ensure that there is adequate supervision of all activities performed at its Alabama location and that proper procedures are enacted to insure future compliance with required supervision. RESPONDENTS CMA and PROPES agree to obtain a qualified compliance officer or to obtain compliance services from a qualified source. RESPONDENTS CMA and PROPES shall notify the Commission staff of the manner in which compliance services are being provided within forty-five (45) days of the date of the execution of this Order.

5. That in settlement of the issues raised by these facts, RESPONDENTS Consolidated Capital Management, CMA and PROPES shall:

- A. Pay Twenty Thousand and No/100 (\$20,000.00) Dollars, said funds to be paid in twenty-four (24) equal consecutive monthly installments of Eight Hundred Thirty Three and 33/100 (\$833.33) Dollars each commencing August 1, 2010, and on the first day of each month thereafter until paid in full; and,
- B. RESPONDENT CMA shall while transacting business in this state continue its internship program with Jacksonville State University and that the internship programs offered and provided to the interns will provide a cumulative minimal benefit to Jacksonville State University and its accepted interns of One Hundred Thousand and No/100 (\$100,000.00) Dollars over the next five (5) years commencing from the date of this Order.

AGREED AND CONSENTED to on dates indicated:

RESPONDENTS:

Consolidated Management Advisors, Inc.

BY: *Teddy Joe Prope*

TITLE: G. I. D

DATE: 7-28-2010

Consolidated Capital Management, Inc.

BY: *Teddy Joe Prope*

TITLE: G.F.O.

DATE: 7-28-2010

Teddy Joe Prope

Tommie Jacob Goggans

DATE: 7-28-2010

DATE: 7-29-2010

Tommie Jacob Goggans

APPROVED AND ORDERED this 1ST day of AUGUST, 2010



ALABAMA SECURITIES COMMISSION
P. O. Box 304700
Montgomery, AL 36130-4700
(334) 242-2984

BY:

JOSEPH P. BORG
Director