STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by:

David Lyn Lenihan; Alliance Capital Asset Management, LLC; Crown Preferred Capital, LLC; The UltraSharpe Fund, LP; Noah James Aulwes; James Bernard Kayser;

Respondents

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, David Lyn Lenihan, Alliance Capital Asset Management, LLC; Crown Preferred Capital, LLC; The UltraSharpe Fund, LP; Noah James Aulwes; and James Bernard Kayser, have each violated the Securities Act of Washington and that their violations justify the entry of an order to cease and desist from such violations pursuant to RCW 21.20.390, to deny future securities registrations pursuant to RCW 21.20.110(1), to impose fines, and to charge costs. The Securities Administrator finds as follows:
TENTATIVE FINDINGS OF FACT

Respondents

1. David Lyn Lenihan (“Lenihan”) was the sole proprietor of an investment advisory business called Alliance Capital Investments, which conducted its business at addresses located in Vancouver, Washington. Lenihan has a Central Registration Depository (“CRD”) number of 2937789. In June 2000, the David Lenihan sole proprietorship, Alliance Capital Investments, registered as an investment adviser with Washington State. Alliance Capital Investments had an Investment Adviser Registration Depository (“IARD”) number of 117413.

2. Alliance Capital Asset Management, LLC (“Alliance Capital”), was a Washington limited liability company, formed on March 28, 2007. Lenihan acted as the managing member of Alliance Capital. In August 2007, Alliance Capital succeeded to the investment adviser registration of Lenihan’s sole proprietorship and registered in Washington. Alliance Capital assumed the IARD number of 117413 (Hereinafter “Lenihan Investment Adviser” will refer collectively to both the Lenihan sole proprietor investment adviser and Alliance Capital). Lenihan registered as an investment adviser representative of Alliance Capital. On its most recent investment adviser registration application on Form ADV, Alliance Capital listed an address in Camas, Washington as its principal place of business. Alliance Capital ceased its business in March 2010.

4. The UltraSharpe Fund, LP ("UltraSharpe") is a Delaware limited partnership, formed on March 28, 2007. AllianceCapital acted as the general manager of UltraSharpe.

5. Noah James Aulwes ("Aulwes") is a resident of Iowa. From August 2007 until August 2010, Aulwes acted as President for Covenant Advisors, a licensed investment adviser in Iowa. Aulwes was licensed as an investment adviser representative in Iowa, beginning in August 2007. In August 2010, the Iowa Insurance Commissioner revoked Aulwes’ license and barred him from reapplying for license in Iowa as an investment adviser, investment adviser representative, or insurance producer. Aulwes has a CRD number of 1380136.

6. James Bernard Kayser ("Kayser") is a resident of Iowa. From August 2007 until August 2010, Kayser was an investment adviser representative for Covenant Advisors. Kayser was licensed as an investment adviser representative in Iowa, beginning in August 2007. In March 2011, the Iowa Insurance Commissioner revoked Kayser’s license and barred him from reapplying for license in Iowa as an investment adviser, investment adviser representative, or insurance producer. Kayser has a CRD number of 3079895.

**Related Entity**

7. Covenant Investment Fund, LP ("CIF"), is a Delaware limited partnership, formed on August 13, 2007. Aulwes and Covenant Advisors solicited investors to purchase interests in CIF, which then purchased interests in UltraSharpe.

**Nature of the Conduct**

8. Between 2004 and 2009, while based in Washington, David Lenihan created and managed two pooled investment vehicles, through which he raised at least $6.8 million from investors. With the first pooled investment vehicle, Lenihan sold unregistered ownership interests in a limited liability company, called Crown Preferred Capital LLC. In the second
pooled investment, Lenihan sold limited partnership interests in a hedge fund called
UltraSharpe. Both pooled investments purportedly involved Lenihan utilizing trading
algorithms to determine when to buy and sell securities. The investors were to receive a
percentage of any profits from the trades, which would be shared with Lenihan or
AllianceCapital. In operating the pooled investment vehicles, Lenihan and AllianceCapital
charged performance fees to clients who were not qualified clients and withdrew hundreds of
thousands of dollars from the accounts without providing clients with invoices or account
statements that detailed those transactions. In 2009, Lenihan wound up both investments, with
most investors only receiving back a small percentage of their initial principal investment.

**Crown Preferred Capital LLC**

totaling at least $3.4 million, in the form of LLC ownership interests in Crown Preferred to at
least 43 investors. Aulwes and Kayser located many of the investors in Iowa, but Lenihan
participated in some solicitations via conference calls. The three men sometimes worked
together to solicit an investor. Aulwes participated in soliciting at least 34 of those 43
investors, who purchased approximately $2.8 million worth of Crown Preferred LLC interests.
Kayser participated in soliciting at least 14 of the 43 investors. Crown Preferred paid Covenant
Advisors for the referrals from Aulwes and Kayser.

10. Lenihan, Aulwes, and Kayser sold Crown Preferred interests to several
individuals in or near retirement, who sought a low risk investment. Many Crown Preferred
investors were not accredited and had no experience with sophisticated pooled investment
vehicles, like Crown Preferred.
11. Lenihan, Aulwes, and Kayser represented to Crown Preferred investors that Lenihan had developed an algorithm that predicted small changes in the stock market, and that Lenihan would use the algorithm to trade exchange-traded funds (“ETFs”), investment funds that trade on stock exchanges and which typically track an index, like the S&P 500. One solicitation document stated that Crown Preferred’s trading would be limited to specific ETFs: QQQQ, SPY, DIA, and IWM. Crown Preferred offered investors a share of any profits from Lenihan’s trading of ETFs, typically 50% of the net profits from the trading of that investor’s pooled interest. Lenihan would take the remainder of the net profits.

12. Lenihan, Aulwes, and Kayser told investors that Lenihan would return all trading positions to cash at the end of the business day, eliminating exposure to negative events that might occur after the markets closed.

13. Lenihan told at least one investor that an investment in Crown Preferred could earn between ¼ to ½ percent per day and that the investor could realistically expect a 60% increase in the value of the Crown Preferred investment each year.

14. In soliciting at least one investor, Kayser represented that Crown Preferred would provide the investor with a 15% return and that Crown Preferred would always make a profit, whether the market was up or down. Kayser represented Crown Preferred as a safe investment to multiple investors and told at least one investor that their initial investment would never be touched.

15. To purchase their interests in Crown Preferred, most investors wired funds directly to Crown Preferred’s bank account in Vancouver, Washington. Investors signed a Limited Liability Operating Agreement, which Lenihan also signed, as an agent of Crown Preferred.
16. Generally, pursuant to RCW 21.20.030(1), an investment adviser cannot enter into a performance-based compensation arrangement with a client. An exception to RCW 21.20.030(1) is made under WAC 460-24A-150, which allows an investment adviser to enter into a performance compensation arrangement with a customer provided that the arrangement complies with Rule 205-3 of the Investment Advisers Act of 1940. Rule 205-3 allows an investment adviser to enter into an agreement with a client that provides for the investment adviser to receive a share of the capital gains or appreciation of the funds of the client, provided that the client meets the definition of a qualified client. In 2007, when most investors purchased interests in Crown Preferred, a qualified client was defined by Rule 205-3 of the Investment Advisers Act of 1940 as (1) a person or company that had at least $750,000 under the management of the investment adviser or (2) a person or company that the investment adviser had reason to believe had assets of more than $1.5 million or was a “qualified purchaser,” which required a person to own not less than $5 million in investments. At least 11 of the Crown Preferred investors did not meet the criteria of an accredited investor, much less the higher standard of being a qualified client. Despite this, Lenihan, as the manager of Crown Preferred, entered into agreements with Crown Preferred investors that called for him to receive 50% of any net profits from the trading of their funds.

17. Lenihan, as a sole proprietor investment adviser, and then through AllianceCapital, had custody of the funds of the CrownPreferred members. Lenihan and his wife contributed $130,000 to Crown Preferred, but between 2003 and 2009, Lenihan made distributions from Crown Preferred accounts to himself totaling approximately $401,000. Lenihan also made purchases using Crown Preferred’s debit card with merchants such as
ShopNBC.com, Delta Airlines, Alaska Airlines, and Puma Store. Those purchases totaled approximately $65,000.

18. Crown Preferred did not return all positions to cash at the end of each business day and did not limit trading to ETFs. Most Crown Preferred investors purchased their interests between January 2007 and April 2007. During that time period, Crown Preferred held shares of a penny stock, ARSC, and continued to purchase more shares, despite the claim that trading was limited to ETFs. Crown Preferred purchased hundreds of thousands of shares of the penny stock and held the shares throughout the existence of Crown Preferred. Crown Preferred also purchased shares of ARSC on margin. Crown Preferred failed to disclose to investors that it had a margin account which could be subject to calls. In addition to investing in ARSC, in December 2007, Crown Preferred invested $2.4 million with another Lenihan investment vehicle, called the UltraSharpe Fund.

The UltraSharpe Fund


20. Lenihan, as managing member of Crown Preferred, signed Crown Preferred’s limited partnership agreement and subscription agreement with UltraSharpe. In December 2007, Lenihan transferred $2.4 million from Crown Preferred to UltraSharpe. In late 2007 prior to the funds being transferred from Crown Preferred to UltraSharpe, Lenihan and Aulwes
notified Crown Preferred investors that their investments in Crown Preferred would become
invested in UltraSharpe. Crown Preferred investors who did not want to participate in
UltraSharpe had to notify Crown Preferred by January 15, 2008. Ultimately however, the
Crown Preferred investors did not individually enter into limited partnership agreements with
UltraSharpe. Instead, UltraSharpe entered into a limited partnership agreement and
subscription agreement with Crown Preferred, the entity, signed by Lenihan.

21. Aulwes, as the general partner of CIF, signed CIF’s limited partnership
agreement and subscription agreement with UltraSharpe. CIF ultimately invested
approximately $3.2 million with UltraSharpe.

22. As the general partner for UltraSharpe, AllianceCapital entered into a
performance-based compensation plan with Crown Preferred through a side-letter agreement
which charged Crown Preferred a flat rate performance fee of 50% of the net increase in the net
asset value of Crown Preferred’s capital account each month.

23. In Crown Preferred’s subscription agreement with UltraSharpe, Lenihan
checked boxes which indicated that Crown Preferred met the criteria of a qualified client as
defined in Rule 205-3 of the Investment Advisers Act of 1940. Crown Preferred did not meet
the criteria of a qualified client as defined in Rule 205-3 of the Investment Advisers Act of
1940. Rule 205-3 requires the investment adviser to consider each equity owner of a private
investment company as a client for purposes of determining whether the adviser could charge
the client a performance fee. Crown Preferred was a private investment company primarily
engaged in the business of investing or trading in securities and as such AllianceCapital had to
consider each of Crown Preferred’s equity owners as clients. The equity owners of Crown
Preferred were not all qualified clients. At least 11 Crown Preferred investors were not
accredited investors or qualified clients. AllianceCapital improperly charged Crown Preferred approximately $122,000 in performance fees.

24. AllianceCapital directly deducted the management and performance fees from client accounts. Each time AllianceCapital deducted fees it failed to provide an invoice to the client that disclosed the formula used to calculate the fee, the amount of assets under management the fee was based on, and the time period covered by the fee. The management fees charged by AllianceCapital, including the improperly charged performance fees, totaled approximately $383,644. Lenihan withdrew amounts which exceeded that total, approximately $431,619, from UltraSharpe’s bank accounts.

25. In October 2008, UltraSharpe faced a margin call from the brokerage firm that held its accounts, which required Lenihan to deposit several hundred thousand dollars to avoid having securities in the account liquidated. To help meet the margin call, Lenihan entered into a loan agreement with CIF and Aulwes that called for Lenihan to loan UltraSharpe $200,000. Lenihan charged UltraSharpe three percent interest on the loan, which UltraSharpe ultimately paid when Lenihan withdrew $206,000 from UltraSharpe’s account in December 2008.

26. During the time period following the margin call, UltraSharpe continued to accept investor funds, but did not respond to at least one investor’s request to liquidate their investment. Later, Lenihan directed Aulwes to notify investors that the fund would not make any distributions or redemptions for several months while UltraSharpe awaited a year-end accounting, annual audit, and annual K-1’s from its CPA.

27. In July 2009, Lenihan liquidated CIF’s investment in UltraSharpe by sending a check to Covenant Advisors for $124,000. In the process of closing down UltraSharpe, AllianceCapital received shares of the penny stock ARSC from UltraSharpe in lieu of cash for
fees Lenihan said AllianceCapital had not collected. In October 2009, Lenihan sent checks to Crown Preferred investors to liquidate their investments. Lenihan paid investors a fraction of the original principal they invested.

Misrepresentations and Omissions

28. Respondents Crown Preferred, Lenihan, and Aulwes misrepresented the use of investor funds by telling investors that their funds would be used only to purchase ETFs and that the investments would be in cash at the end of each business day. However, from inception of the company, nothing prevented Crown Preferred from engaging in other types of transactions. The Crown Preferred operating agreement allowed the LLC to engage in any lawful business that could be engaged in by a company organized under the LLC laws of the state of Washington. The brokerage accounts that Crown Preferred used did not restrict trading to ETFs or require Crown Preferred to convert investments to cash at the end of the day. Ultimately, Crown Preferred engaged in multiple transactions that did not involve ETFs. Crown Preferred also did not convert investments to cash at the end of each business day. Crown Preferred purchased hundreds of thousands of shares of ARSC and held those shares throughout the existence of Crown Preferred, including during the time period when most investors purchased interests. Crown Preferred also purchased a partnership interest in UltraSharpe. Respondents failed to disclose that Crown Preferred had a margin account subject to margin calls.

29. As described in paragraph 13, Respondent Lenihan failed to provide a reasonable basis for his projection of a 60% increase in the value of the investment each year and any limitations on that projection.
30. As described in paragraph 14, Respondent Kayser failed to provide a reasonable basis for his projection of 15% returns and any limitations on that projection. Respondent Kayser misrepresented the risks of investing with Crown Preferred by referring to it as a safe investment and telling at least one investor that their initial investment would never be touched.

31. Lenihan failed to disclose to investors that he had filed a Chapter 13 bankruptcy petition on May 24, 2005. The petition resulted in a discharge of Lenihan’s debts on December 31, 2008.

32. As described in paragraph 20, Respondent UltraSharpe, Lenihan, and Aulwes misrepresented to Crown Preferred investors that their individual investments would become invested in UltraSharpe, when instead Crown Preferred invested in UltraSharpe.

Form ADV Filings

33. Form ADV is a uniform disclosure form used by investment advisers to register with the SEC and state securities authorities. An investment adviser provides information about its business, ownership, clients, and affiliations in the Form ADV.

34. Schedule D, Section 7.B. of Form ADV requires an investment adviser to “complete a separate Schedule D Page 4 for each limited partnership in which you or a related person is a general partner, each limited company for which you or a related person is a manager, and each other private fund that you advise.” In the five amendments to Form ADV filed after the formation of Crown Preferred (2/11/2005, 3/20/2007, 8/9/2007, 10/17/2008, 10/12/2009), Lenihan Investment Adviser failed to disclose the existence of Crown Preferred in Section 7.B.

35. Lenihan Investment Adviser had custody of the funds of the Crown Preferred members and the UltraSharpe limited partners. Item 9A of Form ADV asks the investment

36. Under WAC 460-24A-170(1), an investment adviser who has custody of client funds or securities is required to maintain at all times a minimum net worth of $35,000. By falsely representing to the Securities Division that it did not have custody of client funds, AllianceCapital avoided the $35,000 minimum net worth requirement. During the time periods when AllianceCapital falsely represented that it did not have custody of client funds, AllianceCapital did not maintain a minimum net worth of $35,000. From January 2008 through April 2009, AllianceCapital failed to maintain a minimum net worth of $35,000.

37. In operating Crown Preferred, Lenihan failed to provide members with quarterly account statements, audited financial statements, or invoices that documented the approximately $466,000 that Lenihan deducted from Crown Preferred accounts. AllianceCapital similarly failed to provide quarterly custodial account statements and annual audited financial statements of UltraSharpe to CIF. Part 1B, Item 2I of Form ADV asks, “Does the custodian send quarterly statements to your clients showing all disbursements for the custodian account, including the amount of the advisory fees?” Lenihan Investment Adviser falsely answered ‘Yes’ to this question in the five Form ADV amendments filed on 2/11/2005, 3/20/2007, 8/9/2007, 10/17/2008, and 10/12/2009.
**Registration Status**

38. During the time period described above, Crown Preferred Capital, LLC was not registered to sell its securities in the state of Washington and had not previously been so registered nor had it filed a claim of exemption from registration.

39. On December 17, 2007, the Securities Division received a Notice of Exempt Offering of Securities filed on behalf of The UltraSharpe Fund, LP pursuant to section 18(b)(4)(D) of the Securities Act of 1933 and WAC 460-44A-506.


Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

**CONCLUSIONS OF LAW**

1. The offer or sale of limited partnership interests and limited liability company interests described above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and (17).

2. Respondents Crown Preferred, Lenihan, Aulwes, and Kayser violated RCW 21.20.140, the securities registration provision of the Securities Act, because they offered and/or sold securities for which there was no registration on file with the Securities Administrator and which did not qualify for exemption filing.
3. Respondents Crown Preferred, Lenihan, Aulwes, and Kayser violated RCW 21.20.010 because, as set forth in paragraphs 28 through 31, they made misstatements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

4. Respondents UltraSharpe, Lenihan, and Aulwes violated RCW 21.20.010 because they misrepresented to Crown Preferred investors that their individual investments would become invested in UltraSharpe, when instead Crown Preferred invested in UltraSharpe.

5. Respondents Lenihan, when acting as a sole proprietor investment adviser, and AllianceCapital violated RCW 21.20.030(1) by entering into performance-based compensation arrangements with clients. Those arrangements did not qualify for an exemption under WAC 460-24A-150 because the arrangements did not comply with Securities and Exchange Commission Rule 205-3 of the Investment Advisers Act of 1940. Such conduct is a dishonest or unethical practice in the securities business as defined by WAC 460-24A-220(18).

6. Respondents Lenihan, when acting as a sole proprietor investment adviser, and AllianceCapital violated RCW 21.20.020 because they had custody of client funds, failed to have a qualified custodian maintaining those funds, and failed to send account statements to clients at least quarterly, as required by WAC 460-24A-105. Pursuant to WAC 460-24A-105, such a failure constitutes an act, practice, or course of business which operates as a fraud within the meaning of RCW 21.20.020.

7. Respondent AllianceCapital violated WAC 460-24A-170 by failing to maintain at all times a minimum net worth of $35,000, which is required of an investment adviser with custody of client funds or securities.
8. Respondents Lenihan, when acting as a sole proprietor investment adviser, and AllianceCapital violated WAC 460-24A-106 and RCW 21.20.110 by failing to send an invoice each time it deducted fees from client accounts.

9. Respondents Lenihan, when acting as a sole proprietor investment adviser, and AllianceCapital violated WAC 460-24A-107 by failing to provide audited financial statements of the pooled investment vehicle to all limited partners or members.

10. Respondent Lenihan, as described above, engaged in one or more dishonest or unethical practices in the securities business, as defined by WAC 460-24A-220(7), by loaning money to a client. Such conduct is grounds for the denial of future securities registration applications pursuant to RCW 21.20.110(1)(b).

11. Respondents Lenihan, when acting as a sole proprietor investment adviser, and AllianceCapital violated RCW 21.20.350 by making false statements in Form ADV amendments filed with the director.

NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Crown Preferred Capital, LLC, David Lyn Lenihan, Noah James Aulwes, James Bernard Kayser, their agents and employees, each shall cease and desist from any violation of RCW 21.20.140.

Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, Crown Preferred Capital, LLC; The UltraSharpe Fund, LP; David Lyn Lenihan; Noah James Aulwes; James Bernard Kayser; their agents and employees, each shall cease and desist from any violation of RCW 21.20.010.
Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondents, David Lyn Lenihan and AllianceCapital Asset Management, LLC, their agents and employees, each shall cease and desist from any violation of RCW 21.20.020, RCW 21.20.030, and RCW 21.20.350.

NOTICE OF INTENT TO DENY FUTURE REGISTRATIONS

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to deny any investment adviser registration that AllianceCapital Asset Management, LLC may file in the future.

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to deny any investment adviser, investment adviser representative, and securities salesperson registrations David Lyn Lenihan may file in the future.

NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.395 and RCW 21.20.110, and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent David Lyn Lenihan shall be liable for and pay a fine of $60,000.

NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.390(5), and based upon the Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent David Lyn Lenihan shall be liable for and shall pay the Securities Division the costs, fees, and other expenses incurred in the conduct of the administrative investigation and hearing of this matter in an amount not less than $10,000.
AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of RCW 34.05. The Respondents, AllianceCapital Asset Management, LLC; Crown Preferred Capital, LLC; The UltraSharpe Fund, LP; David Lyn Lenihan; Noah James Aulwes; and James Bernard Kayser, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges. If a Respondent does not request a hearing in this matter, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final, and as described above, enter a permanent order to cease and desist, bar future registrations, impose the fine, and charge costs.

DATED and ENTERED this 11th day of January ___________, 2013.

WILLIAM M. BEATTY
Securities Administrator

Approved by:

Suzanne Sarason
Chief of Enforcement

Presented by:

Jack McClellan
Enforcement Attorney