

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; AllianceCapital
Asset Management, LLC; Crown
Preferred Capital, LLC; The
UltraSharpe Fund, LP; Noah James
Aulwes; James Bernard Kayser;

Respondents

Order Number S-09-507-12-SC01

STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER ORDER TO CEASE
AND DESIST, DENY FUTURE
REGISTRATIONS, IMPOSE FINES, AND
CHARGE COSTS

THE STATE OF WASHINGTON TO:

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

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, David Lyn Lenihan, AllianceCapital 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:

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND DESIST,
DENY FUTURE REGISTRATIONS, IMPOSE FINES,
AND CHARGE COSTS

1

DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **TENTATIVE FINDINGS OF FACT**

2 Respondents

3 1. David Lyn Lenihan (“Lenihan”) was the sole proprietor of an investment
4 advisory business called Alliance Capital Investments, which conducted its business at
5 addresses located in Vancouver, Washington. Lenihan has a Central Registration Depository
6 (“CRD”) number of 2937789. In June 2000, the David Lenihan sole proprietorship, Alliance
7 Capital Investments, registered as an investment adviser with Washington State. Alliance
8 Capital Investments had an Investment Adviser Registration Depository (“IARD”) number of
9 117413.
10

11 2. AllianceCapital Asset Management, LLC (“AllianceCapital”), was a
12 Washington limited liability company, formed on March 28, 2007. Lenihan acted as the
13 managing member of AllianceCapital. In August 2007, AllianceCapital succeeded to the
14 investment adviser registration of Lenihan’s sole proprietorship and registered in Washington.
15 AllianceCapital assumed the IARD number of 117413 (Hereinafter “Lenihan Investment
16 Adviser” will refer collectively to both the Lenihan sole proprietor investment adviser and
17 AllianceCapital). Lenihan registered as an investment adviser representative of
18 AllianceCapital. On its most recent investment adviser registration application on Form ADV,
19 AllianceCapital listed an address in Camas, Washington as its principal place of business.
20 AllianceCapital ceased its business in March 2010.
21

22 3. Crown Preferred Capital LLC (“Crown Preferred”) is a Washington limited
23 liability company, formed on January 2, 2004. Lenihan acted as the manager of Crown
24 Preferred, until December 2008, when AllianceCapital became the manager.
25

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

3 5. Noah James Aulwes (“Aulwes”) is a resident of Iowa. From August 2007 until
4 August 2010, Aulwes acted as President for Covenant Advisors, a licensed investment adviser
5 in Iowa. Aulwes was licensed as an investment adviser representative in Iowa, beginning in
6 August 2007. In August 2010, the Iowa Insurance Commissioner revoked Aulwes’ license and
7 barred him from reapplying for license in Iowa as an investment adviser, investment adviser
8 representative, or insurance producer. Aulwes has a CRD number of 1380136.
9

10 6. James Bernard Kayser (“Kayser”) is a resident of Iowa. From August 2007 until
11 August 2010, Kayser was an investment adviser representative for Covenant Advisors. Kayser
12 was licensed as an investment adviser representative in Iowa, beginning in August 2007. In
13 March 2011, the Iowa Insurance Commissioner revoked Kayser’s license and barred him from
14 reapplying for license in Iowa as an investment adviser, investment adviser representative, or
15 insurance producer. Kayser has a CRD number of 3079895.
16

17 Related Entity

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

21 Nature of the Conduct

22 8. Between 2004 and 2009, while based in Washington, David Lenihan created and
23 managed two pooled investment vehicles, through which he raised at least \$6.8 million from
24 investors. With the first pooled investment vehicle, Lenihan sold unregistered ownership
25 interests in a limited liability company, called Crown Preferred Capital LLC. In the second

1 pooled investment, Lenihan sold limited partnership interests in a hedge fund called
2 UltraSharpe. Both pooled investments purportedly involved Lenihan utilizing trading
3 algorithms to determine when to buy and sell securities. The investors were to receive a
4 percentage of any profits from the trades, which would be shared with Lenihan or
5 AllianceCapital. In operating the pooled investment vehicles, Lenihan and AllianceCapital
6 charged performance fees to clients who were not qualified clients and withdrew hundreds of
7 thousands of dollars from the accounts without providing clients with invoices or account
8 statements that detailed those transactions. In 2009, Lenihan wound up both investments, with
9 most investors only receiving back a small percentage of their initial principal investment.
10

11 *Crown Preferred Capital LLC*

12 9. Between January 2004 and 2008, Lenihan, Aulwes, and Kayser sold investments
13 totaling at least \$3.4 million, in the form of LLC ownership interests in Crown Preferred to at
14 least 43 investors. Aulwes and Kayser located many of the investors in Iowa, but Lenihan
15 participated in some solicitations via conference calls. The three men sometimes worked
16 together to solicit an investor. Aulwes participated in soliciting at least 34 of those 43
17 investors, who purchased approximately \$2.8 million worth of Crown Preferred LLC interests.
18 Kayser participated in soliciting at least 14 of the 43 investors. Crown Preferred paid Covenant
19 Advisors for the referrals from Aulwes and Kayser.
20

21 10. Lenihan, Aulwes, and Kayser sold Crown Preferred interests to several
22 individuals in or near retirement, who sought a low risk investment. Many Crown Preferred
23 investors were not accredited and had no experience with sophisticated pooled investment
24 vehicles, like Crown Preferred.
25

1 11. Lenihan, Aulwes, and Kayser represented to Crown Preferred investors that
2 Lenihan had developed an algorithm that predicted small changes in the stock market, and that
3 Lenihan would use the algorithm to trade exchange-traded funds (“ETFs”), investment funds
4 that trade on stock exchanges and which typically track an index, like the S&P 500. One
5 solicitation document stated that Crown Preferred’s trading would be limited to specific ETFs:
6 QQQQ, SPY, DIA, and IWM. Crown Preferred offered investors a share of any profits from
7 Lenihan’s trading of ETFs, typically 50% of the net profits from the trading of that investor’s
8 pooled interest. Lenihan would take the remainder of the net profits.
9

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

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

16 14. In soliciting at least one investor, Kayser represented that Crown Preferred
17 would provide the investor with a 15% return and that Crown Preferred would always make a
18 profit, whether the market was up or down. Kayser represented Crown Preferred as a safe
19 investment to multiple investors and told at least one investor that their initial investment would
20 never be touched.
21

22 15. To purchase their interests in Crown Preferred, most investors wired funds
23 directly to Crown Preferred’s bank account in Vancouver, Washington. Investors signed a
24 Limited Liability Operating Agreement, which Lenihan also signed, as an agent of Crown
25 Preferred.

1 16. Generally, pursuant to RCW 21.20.030(1), an investment adviser cannot enter
2 into a performance-based compensation arrangement with a client. An exception to RCW
3 21.20.030(1) is made under WAC 460-24A-150, which allows an investment adviser to enter
4 into a performance compensation arrangement with a customer provided that the arrangement
5 complies with Rule 205-3 of the Investment Advisers Act of 1940. Rule 205-3 allows an
6 investment adviser to enter into an agreement with a client that provides for the investment
7 adviser to receive a share of the capital gains or appreciation of the funds of the client, provided
8 that the client meets the definition of a qualified client. In 2007, when most investors
9 purchased interests in Crown Preferred, a qualified client was defined by Rule 205-3 of the
10 Investment Advisers Act of 1940 as (1) a person or company that had at least \$750,000 under
11 the management of the investment adviser or (2) a person or company that the investment
12 adviser had reason to believe had assets of more than \$1.5 million or was a “qualified
13 purchaser,” which required a person to own not less than \$5 million in investments. At least 11
14 of the Crown Preferred investors did not meet the criteria of an accredited investor, much less
15 the higher standard of being a qualified client. Despite this, Lenihan, as the manager of Crown
16 Preferred, entered into agreements with Crown Preferred investors that called for him to receive
17 50% of any net profits from the trading of their funds.
18

19 17. Lenihan, as a sole proprietor investment adviser, and then through
20 AllianceCapital, had custody of the funds of the Crown Preferred members. Lenihan and his
21 wife contributed \$130,000 to Crown Preferred, but between 2003 and 2009, Lenihan made
22 distributions from Crown Preferred accounts to himself totaling approximately \$401,000.
23 Lenihan also made purchases using Crown Preferred’s debit card with merchants such as
24
25

1 ShopNBC.com, Delta Airlines, Alaska Airlines, and Puma Store. Those purchases totaled
2 approximately \$65,000.

3 18. Crown Preferred did not return all positions to cash at the end of each business
4 day and did not limit trading to ETFs. Most Crown Preferred investors purchased their
5 interests between January 2007 and April 2007. During that time period, Crown Preferred held
6 shares of a penny stock, ARSC, and continued to purchase more shares, despite the claim that
7 trading was limited to ETFs. Crown Preferred purchased hundreds of thousands of shares of
8 the penny stock and held the shares throughout the existence of Crown Preferred. Crown
9 Preferred also purchased shares of ARSC on margin. Crown Preferred failed to disclose to
10 investors that it had a margin account which could be subject to calls. In addition to investing
11 in ARSC, in December 2007, Crown Preferred invested \$2.4 million with another Lenihan
12 investment vehicle, called the UltraSharpe Fund.
13

14 *The UltraSharpe Fund*

15 19. In late 2007, Lenihan and Aulwes restructured their business relationship.
16 Lenihan and AllianceCapital formed the UltraSharpe Fund and Aulwes created his own hedge
17 fund, CIF. Aulwes stopped finding investors for Crown Preferred and instead placed new
18 investors in his own fund, CIF. CIF became one of two limited partner investors in
19 UltraSharpe. UltraSharpe sold the other limited partnership interest to Crown Preferred.
20 Together, CIF and Crown Preferred invested \$5.6 million in UltraSharpe.
21

22 20. Lenihan, as managing member of Crown Preferred, signed Crown Preferred's
23 limited partnership agreement and subscription agreement with UltraSharpe. In December
24 2007, Lenihan transferred \$2.4 million from Crown Preferred to UltraSharpe. In late 2007
25 prior to the funds being transferred from Crown Preferred to UltraSharpe, Lenihan and Aulwes

1 notified Crown Preferred investors that their investments in Crown Preferred would become
2 invested in UltraSharpe. Crown Preferred investors who did not want to participate in
3 UltraSharpe had to notify Crown Preferred by January 15, 2008. Ultimately however, the
4 Crown Preferred investors did not individually enter into limited partnership agreements with
5 UltraSharpe. Instead, UltraSharpe entered into a limited partnership agreement and
6 subscription agreement with Crown Preferred, the entity, signed by Lenihan.
7

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

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

15 23. In Crown Preferred's subscription agreement with UltraSharpe, Lenihan
16 checked boxes which indicated that Crown Preferred met the criteria of a qualified client as
17 defined in Rule 205-3 of the Investment Advisers Act of 1940. Crown Preferred did not meet
18 the criteria of a qualified client as defined in Rule 205-3 of the Investment Advisers Act of
19 1940. Rule 205-3 requires the investment adviser to consider each equity owner of a private
20 investment company as a client for purposes of determining whether the adviser could charge
21 the client a performance fee. Crown Preferred was a private investment company primarily
22 engaged in the business of investing or trading in securities and as such AllianceCapital had to
23 consider each of Crown Preferred's equity owners as clients. The equity owners of Crown
24 Preferred were not all qualified clients. At least 11 Crown Preferred investors were not
25

1 accredited investors or qualified clients. AllianceCapital improperly charged Crown Preferred
2 approximately \$122,000 in performance fees.

3 24. AllianceCapital directly deducted the management and performance fees from
4 client accounts. Each time AllianceCapital deducted fees it failed to provide an invoice to the
5 client that disclosed the formula used to calculate the fee, the amount of assets under
6 management the fee was based on, and the time period covered by the fee. The management
7 fees charged by AllianceCapital, including the improperly charged performance fees, totaled
8 approximately \$383,644. Lenihan withdrew amounts which exceeded that total, approximately
9 \$431,619, from UltraSharpe's bank accounts.
10

11 25. In October 2008, UltraSharpe faced a margin call from the brokerage firm that
12 held its accounts, which required Lenihan to deposit several hundred thousand dollars to avoid
13 having securities in the account liquidated. To help meet the margin call, Lenihan entered into
14 a loan agreement with CIF and Aulwes that called for Lenihan to loan UltraSharpe \$200,000.
15 Lenihan charged UltraSharpe three percent interest on the loan, which UltraSharpe ultimately
16 paid when Lenihan withdrew \$206,000 from UltraSharpe's account in December 2008.
17

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

23 27. In July 2009, Lenihan liquidated CIF's investment in UltraSharpe by sending a
24 check to Covenant Advisors for \$124,000. In the process of closing down UltraSharpe,
25 AllianceCapital received shares of the penny stock ARSC from UltraSharpe in lieu of cash for

1 fees Lenihan said AllianceCapital had not collected. In October 2009, Lenihan sent checks to
2 Crown Preferred investors to liquidate their investments. Lenihan paid investors a fraction of
3 the original principal they invested.

4 Misrepresentations and Omissions

5 28. Respondents Crown Preferred, Lenihan, and Aulwes misrepresented the use of
6 investor funds by telling investors that their funds would be used only to purchase ETFs and
7 that the investments would be in cash at the end of each business day. However, from
8 inception of the company, nothing prevented Crown Preferred from engaging in other types of
9 transactions. The Crown Preferred operating agreement allowed the LLC to engage in any
10 lawful business that could be engaged in by a company organized under the LLC laws of the
11 state of Washington. The brokerage accounts that Crown Preferred used did not restrict trading
12 to ETFs or require Crown Preferred to convert investments to cash at the end of the day.
13 Ultimately, Crown Preferred engaged in multiple transactions that did not involve ETFs.
14 Crown Preferred also did not convert investments to cash at the end of each business day.
15 Crown Preferred purchased hundreds of thousands of shares of ARSC and held those shares
16 throughout the existence of Crown Preferred, including during the time period when most
17 investors purchased interests. Crown Preferred also purchased a partnership interest in
18 UltraSharpe. Respondents failed to disclose that Crown Preferred had a margin account subject
19 to margin calls.
20

21 29. As described in paragraph 13, Respondent Lenihan failed to provide a
22 reasonable basis for his projection of a 60% increase in the value of the investment each year
23 and any limitations on that projection.
24
25

1 adviser, “Do you have custody of an advisory clients’: (1) cash or bank accounts? (2)
2 securities?” Item 9B asks, “Do any of your related persons have custody of any of your
3 advisory clients’: (1) cash or bank accounts? (2) securities?” Lenihan Investment Adviser
4 falsely answered ‘No’ to each question in the five Form ADV amendments filed on 2/11/2005,
5 3/20/2007, 8/9/2007, 10/17/2008, and 10/12/2009.

6
7 36. Under WAC 460-24A-170(1), an investment adviser who has custody of client
8 funds or securities is required to maintain at all times a minimum net worth of \$35,000. By
9 falsely representing to the Securities Division that it did not have custody of client funds,
10 AllianceCapital avoided the \$35,000 minimum net worth requirement. During the time periods
11 when AllianceCapital falsely represented that it did not have custody of client funds,
12 AllianceCapital did not maintain a minimum net worth of \$35,000. From January 2008
13 through April 2009, AllianceCapital failed to maintain a minimum net worth of \$35,000.

14 37. In operating Crown Preferred, Lenihan failed to provide members with quarterly
15 account statements, audited financial statements, or invoices that documented the
16 approximately \$466,000 that Lenihan deducted from Crown Preferred accounts.
17 AllianceCapital similarly failed to provide quarterly custodial account statements and annual
18 audited financial statements of UltraSharpe to CIF. Part 1B, Item 2I of Form ADV asks, “Does
19 the custodian send quarterly statements to your clients showing all disbursements for the
20 custodian account, including the amount of the advisory fees?” Lenihan Investment Adviser
21 falsely answered ‘Yes’ to this question in the five Form ADV amendments filed on 2/11/2005,
22 3/20/2007, 8/9/2007, 10/17/2008, and 10/12/2009.
23
24
25

1 Registration Status

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

5 39. On December 17, 2007, the Securities Division received a Notice of Exempt
6 Offering of Securities filed on behalf of The UltraSharpe Fund, LP pursuant to section
7 18(b)(4)(D) of the Securities Act of 1933 and WAC 460-44A-506.

8 40. David Lenihan registered his sole proprietorship as an investment adviser in
9 Washington State in June 2000. In August 2007, David Lenihan registered as an investment
10 adviser representative of AllianceCapital.

11 41. AllianceCapital registered in Washington State as an investment adviser in
12 August 2007. AllianceCapital withdrew its registration as an investment adviser in Washington
13 in March 2010.

14
15
16 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

17 **CONCLUSIONS OF LAW**

18 1. The offer or sale of limited partnership interests and limited liability company
19 interests described above constitutes the offer or sale of a security as defined in RCW
20 21.20.005(14) and (17).

21 2. Respondents Crown Preferred, Lenihan, Aulwes, and Kayser violated RCW
22 21.20.140, the securities registration provision of the Securities Act, because they offered
23 and/or sold securities for which there was no registration on file with the Securities
24 Administrator and which did not qualify for exemption filing.

1 3. Respondents Crown Preferred, Lenihan, Aulwes, and Kayser violated RCW
2 21.20.010 because, as set forth in paragraphs 28 through 31, they made misstatements of
3 material facts or omitted to state material facts necessary in order to make the statements made,
4 in light of the circumstances under which they were made, not misleading.

5 4. Respondents UltraSharpe, Lenihan, and Aulwes violated RCW 21.20.010
6 because they misrepresented to Crown Preferred investors that their individual investments
7 would become invested in UltraSharpe, when instead Crown Preferred invested in UltraSharpe.
8

9 5. Respondents Lenihan, when acting as a sole proprietor investment adviser, and
10 AllianceCapital violated RCW 21.20.030(1) by entering into performance-based compensation
11 arrangements with clients. Those arrangements did not qualify for an exemption under WAC
12 460-24A-150 because the arrangements did not comply with Securities and Exchange
13 Commission Rule 205-3 of the Investment Advisers Act of 1940. Such conduct is a dishonest
14 or unethical practice in the securities business as defined by WAC 460-24A-220(18).

15 6. Respondents Lenihan, when acting as a sole proprietor investment adviser, and
16 AllianceCapital violated RCW 21.20.020 because they had custody of client funds, failed to
17 have a qualified custodian maintaining those funds, and failed send account statements to
18 clients at least quarterly, as required by WAC 460-24A-105. Pursuant to WAC 460-24A-105,
19 such a failure constitutes an act, practice, or course of business which operates as a fraud within
20 the meaning of RCW 21.20.020.
21

22 7. Respondent AllianceCapital violated WAC 460-24A-170 by failing to maintain
23 at all times a minimum net worth of \$35,000, which is required of an investment adviser with
24 custody of client funds or securities.
25

1 8. Respondents Lenihan, when acting as a sole proprietor investment adviser, and
2 AllianceCapital violated WAC 460-24A-106 and RCW 21.20.110 by failing to send an invoice
3 each time it deducted fees from client accounts.

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

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

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

15 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

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

20
21 Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact
22 and Conclusions of Law, the Securities Administrator intends to order that Respondents, Crown
23 Preferred Capital, LLC; The UltraSharpe Fund, LP; David Lyn Lenihan; Noah James Aulwes;
24 James Bernard Kayser; their agents and employees, each shall cease and desist from any
25 violation of RCW 21.20.010.

1 Pursuant to RCW 21.20.390(1), and based upon the above Tentative Findings of Fact
2 and Conclusions of Law, the Securities Administrator intends to order that Respondents, David
3 Lyn Lenihan and AllianceCapital Asset Management, LLC, their agents and employees, each
4 shall cease and desist from any violation of RCW 21.20.020, RCW 21.20.030, and RCW
5 21.20.350.

6
7 **NOTICE OF INTENT TO DENY FUTURE REGISTRATIONS**

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

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

15 **NOTICE OF INTENT TO IMPOSE FINES**

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

19 **NOTICE OF INTENT TO CHARGE COSTS**

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

1 **AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW
3 and is subject to the provisions of RCW 34.05. The Respondents, AllianceCapital Asset
4 Management, LLC; Crown Preferred Capital, LLC; The UltraSharpe Fund, LP; David Lyn
5 Lenihan; Noah James Aulwes; and James Bernard Kayser, may each make a written request for
6 a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
7 OPPORTUNITY FOR HEARING accompanying this Statement of Charges. If a Respondent
8 does not request a hearing in this matter, the Securities Administrator intends to adopt the
9 above Tentative Findings of Fact and Conclusions of Law as final, and as described above,
10 enter a permanent order to cease and desist, bar future registrations, impose the fine, and charge
11 costs.
12

13
14 DATED and ENTERED this 11th day of January, 2013.

15
16
17 

18
19 WILLIAM M. BEATTY
Securities Administrator

20 Approved by:

21 

22
23 Suzanne Sarason
24 Chief of Enforcement

Presented by:

25 

Jack McClellan
Enforcement Attorney