

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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IN THE MATTER OF  
TIMOTHY ALONZA LILLY, d/b/a  
COVENANT SENIOR ADVISORS, LLC

Case No. S-08-053

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REQUEST FOR CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that TIMOTHY ALONZA LILLY, doing business as COVENANT SENIOR ADVISORS, LLC, and others unknown to the Staff connected with that person and/or that entity have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of sections of the Arkansas Securities Act, §§ 23-42-101, *et seq.* (Repl. 2000) (Act), and is therefore properly before the Arkansas Securities Commissioner (Commissioner) in accordance with Ark. Code Ann. § 23-42-209 (Repl. 2000).

RESPONDENTS

2. Timothy Alonza Lilly is a licensed insurance agent and a resident of Maumelle, Arkansas.
3. Covenant Senior Advisors, LLC (Covenant), is an Arkansas limited liability company formed on 30 March 2006. Lilly is listed as the organizer and manager. It is not registered as an investment adviser, but is registered with the Arkansas Insurance Department as an association connected to Lilly. Lilly does business using the Covenant name, as well as

one other name, First Fidelity Financial Group of Maumelle, LLC.

## FACTS SUPPORTING CEASE AND DESIST ORDER

4. Lilly took the series 65 securities exam without being sponsored by a present or future employer and scored a 69.25%. Needing a score of 68.5% to pass the exam, Lilly passed. Because he took the test without sponsorship by an employing firm or state, the results will not be posted on the Central Registration Depository (CRD) until Lilly is hired by an employing investment adviser firm. As of this date, he is not registered either as an investment adviser, or the agent of an investment adviser.
5. Lilly contacted a couple close to retirement living in rural Arkansas (Mr. and Mrs. AR). Referred to them by Mr. AR's brother, Lilly met with them on 18 June 2008 and recommended that they roll over their investments in a 401(k) deferred compensation plan, an individual retirement account (IRA) and some certificates of deposit (CDs)—altogether worth about \$50,000— into an equity indexed annuity with a 10 year maturity date. Mr. AR is 62 years old, still working at present, but eligible to retire soon. Mrs. AR is 59 years old and still working. The 401(k) plan contained securities in the form of mutual funds which contained stocks and bonds. In recommending that the ARs sell their securities in order to purchase an equity indexed annuity, Lilly was recommending the sale of securities and opining that the re-investment of the funds realized from the sale of those securities into an equity indexed annuity would be a suitable investment for Mr. and Mrs. AR.
6. On 20 and 21 May 2008 the Staff conducted an examination of Lilly's office. That

examination revealed that Lilly recommended the sale of securities to fund the purchase of equity indexed annuities and facilitated the liquidation of securities accounts by filling out various forms for customers who had an existing account holding securities. These forms included 1) new account forms to open new accounts with a broker-dealer in Florida, 2) forms instructing the Florida broker-dealer to cause all the securities in an existing account holding securities to be transferred to the new account, 3) forms instructing the new broker-dealer to liquidate all securities in the new account and, finally, 4) forms instructing the new broker-dealer to transfer the money realized from the sale of all securities in the account to the insurance company to fund the purchase of one or more equity indexed annuities.

7. The Staff has in its possession a copy of a post card invitation to a “Free Lunch and Informative Workshop” at a restaurant in Sherwood, Arkansas that was scheduled to take place on 24 June 2008 at 11:30 a.m. It was received by the recipient on or about 16 June 2008. In the upper left hand corner, where a return address could be posted, Lilly and Covenant are identified as follows:

Tim Lilly, CSA  
Covenant Senior Advisors®

8. The term, CSA, refers to Certified Senior Advisor. According to the Society of Certified Senior Advisors (SCSA), Lilly completed the SCSA training and passed a test based on the training, but his membership expired on 15 May 2008. In March 2007 the SCSA issued a new policy regarding CSA designation. In order to use the CSA designation, the following disclosure statement was supposed to be placed on all materials produced for

consumers:

Certified Senior Advisors (CSA) have supplemented their individual professional license, credentials and education with knowledge about aging and working with seniors. You should ask what those licenses, credentials and education signify. *The CSA designation alone does not imply experience in financial, health or social matters.* [Emphasis added.]

This disclosure does not appear on the invitation post card referred to above or on his web site, where he again uses the CSA designation, but more prominently and explicitly:

“Certified Senior Advisor and Certified Retirement Financial Advisor.”

9. The designation, Certified Retirement Financial Advisor, is granted by the Society of Certified Retirement Financial Advisors (CRFA). According to that organization, Lilly is not registered with it and apparently has never applied for membership or registration with it.
10. On this same invitation post card, Lilly refers to himself as a “Registered Financial Advisor.” The National Association of Personal Financial Advisors (NAPFA) grants this designation to fee-only financial planners who fit several other qualifications, including the requirement that members “make all appropriate filings . . . with regulatory authorities,” which “shall include, but is not limited to, Form ADV.” Form ADV is the form used to register as an investment adviser on the CRD. Although he is a licensed insurance agent, he is not registered as an investment adviser with this agency or the United States Securities and Exchange Commission. The CRD shows no registration for Lilly as an investment adviser or agent of an investment adviser. His having passed the series 65 is not the equivalent of being registered as an investment adviser.

## APPLICABLE LAW

11. Ark. Code Ann. § 23-42-102(15)(A)(ii) (Supp. 2007) defines a security as stock.
12. Ark. Code Ann. § 23-42-102(15)(A)(iv) (Supp. 2007) defines a security as a bond.
13. Ark. Code Ann. § 23-42-102(8) (Repl. 2000) defines investment adviser as any person who, for compensation, engages in the business of advising others of, among other things, the advisability of selling securities.
14. Ark. Code Ann. § 23-42-301(c) (Repl. 2000) provides that it is unlawful for any person to transact business in this state as an investment adviser without first being registered as such, unless such person is registered as an investment adviser or agent of an investment adviser registered with the United States Securities and Exchange Commission or is exempt from registration under the Investment Advisers Act of 1940.
15. Persons registered as investment advisers are subject to Rule 308.02, Rules of the Arkansas Securities Commissioner, entitled “Fraudulent, Deceptive, Dishonest or Unethical Practices of Investment Advisers,” which forbids, among other things,
  - a. Rule 308.02(H), misrepresenting the qualifications of the investment adviser; and
  - b. Rule 308.02(M)(5), distributing any advertisement containing any untrue statement of a material fact.
16. Ark. Code Ann. § 23-42-307(a)(2) (Repl. 2000) provides that it is unlawful for any person who receives any consideration, directly or indirectly, from another person for advising the other person as to the value of securities or their purchase or sale, to engage in any act, practice or course of business which would operate as a fraud or deceit upon

the other person.

17. Ark. Code Ann. § 23-42-307(a)(3) (Repl. 2000) provides that it is unlawful for any person who receives any consideration, directly or indirectly, from another person for advising the other person as to the value of securities or their purchase or sale, to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.
18. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security, directly or indirectly, to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.
19. Ark. Code Ann. § 23-42-507(3) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security, directly or indirectly, to engage in any act, practice or course of business which would operate as a fraud or deceit upon another person.

#### VIOLATIONS OF LAW

20. The facts set out in ¶¶ 4, 5 and 10 show that Lilly acted as an unregistered investment adviser when dealing with Mr. and Mrs. AR in violation of Ark. Code Ann. § 23-42-301(c) (Repl.2000). When he recommended that Mr. and Mrs. AR liquidate all the securities in the 401(k) and the IRA and invest all the proceeds in an equity indexed annuity, he was recommending the sale of securities in return for a fee, specifically the fee he anticipated receiving from the sale of the equity indexed annuity.

21. The facts set out in ¶¶ 4, 6 and 10 show that Lilly acts with many customers as an unregistered investment adviser in advising them to liquidate securities and facilitating the liquidation of those securities in order to fund the purchase of equity indexed annuities, a violation of Ark. Code Ann. § 23-42-301(c) (Repl. 2000).
22. The facts set out in ¶¶ 7 and 8 show material omissions made in violation of Ark. Code Ann. §§ 23-42-307(a)(3) and 23-42-507(2) (Repl. 2000) in the use of the CSA designation without disclosing that Lilly was no longer of member of the SCSA and without the disclosure statement required by the SCSA. The use of that designation without the SCSA disclosure statement, particularly when used on the web site, where it is printed out as “Certified Senior Advisor” and placed next to the title, “Certified Retirement Financial Advisor,” is misleading in that it implies that Lilly has a special expertise or more knowledge than most in dealing with the financial affairs of senior citizens and retirees by virtue of having completed a course of training and/or study under the direction of some entity that would allow the use of the CSA certification. Nothing could have been further from the truth because not even the entity that once bestowed this certification on Lilly, the SCSA, permitted this inference to be drawn from the use of the CSA certification and required the disclaimer set out in ¶ 8 to be used along with the CSA certification. Had Lilly been registered as an investment adviser, as he should have been in order to give advice professionally, this statement without the SCSA disclosure statement also would have violated Rules 308.02(H) (misrepresenting the investment adviser’s qualifications) and 308.02(M)(5) (distributing an advertisement containing an untrue statement of material fact or is otherwise false or misleading), Rules of the

Arkansas Securities Commissioner.

23. The facts set out in ¶ 9 show a positive misstatement of fact made in the title, Certified Retirement Financial Advisor (CRFA), set out in Lilly's web site, when Lilly was totally unknown to the organization that grants that certification, the Society of Certified Retirement Financial Advisors (SCRFA). This misstatement was a violation of Ark. Code Ann. §§ 23-42-307(a)(3) and 23-42-507(2) (Repl. 2000). The CRFA designation implies that Lilly is certified to be someone who holds special knowledge or expertise in the field of financial matters of persons who are retired by virtue of having completed a course of training and/or study under the direction of the SCRFA that would allow the use of the CRFA certification. Lilly's failure to inform visitors to the web site that he held no such certification signifying such knowledge and/or expertise by virtue of having completed a course of study or training made the title, "Certified Retirement Financial Advisor," totally misleading. Had Lilly been registered as an investment adviser, as he should have been in order to give advice professionally, the use of the CRFA certification also would have violated Rules 308.02(H) (misrepresenting the investment adviser's qualifications) and 308.02(M)(5) (distributing an advertisement containing an untrue statement of material fact or is otherwise false or misleading), Rules of the Arkansas Securities Commissioner.

24. As set out in ¶ 10, Lilly referred to himself in the invitation post card as a "Registered Financial Advisor" (RFA). The National Association of Personal Financial Advisors (NAPFA) grants this designation to fee-only financial planners who fit several other qualifications, including the requirement that members "make all appropriate filings . . .

with regulatory authorities,” which “shall include, but is not limited to, Form ADV.” Form ADV is the form used to register as an investment adviser on the CRD. This statement says to readers that Lilly is registered to do business as an investment adviser and offer advice concerning securities for a fee. As noted in ¶¶ 4 and 10, Lilly is not registered as an investment adviser and cannot legally render advice concerning securities for a fee. Although the invitation post card does not explicitly offer such advice, inasmuch as it solicits such business, and it is clear that Lilly does business by advising potential customers to sell their securities holdings and invest the proceeds in annuities issued by insurance companies, *see* ¶¶ 5 and 6, it constitutes an act, practice or course of business that would operate as a fraud or deceit upon another person, a violation of Ark. Code Ann. §§ 23-42-307(a)(2) and 23-42-507(3) (Repl. 2000).

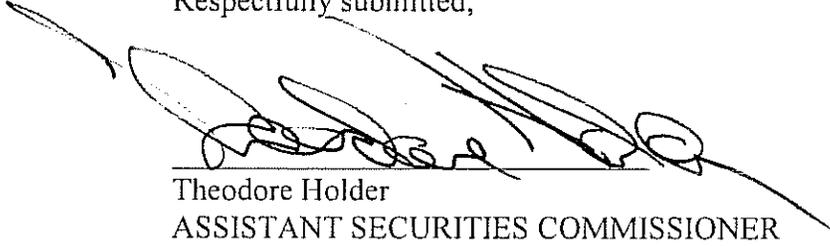
#### LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

25. Ark. Code Ann. § 23-42-209(a)(1)(A) (Repl. 2000) provides that whenever it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Act, he may summarily order the person to cease and desist from the act or practice.

WHEREFORE, the Staff respectfully requests that the Commissioner summarily issue a cease and desist order against TIMOTHY ALONZA LILLY, d/b/a COVENANT SENIOR ADVISORS, LLC, as well as others whose identities are not yet known who are employed by or otherwise affiliated with TIMOTHY ALONZA LILLY or COVENANT SENIOR ADVISORS, LLC, directly or through other business entities owned or controlled by TIMOTHY ALONZA

LILLY or COVENANT SENIOR ADVISORS, LLC, ordering them to cease and desist from any further actions in the state of Arkansas in connection with the business of an investment adviser or the offer or sale of securities until such time as Lilly is properly registered or shown to be exempt from registration pursuant to the Arkansas Securities Act.

Respectfully submitted,



Theodore Holder  
ASSISTANT SECURITIES COMMISSIONER

*Attorney for the Staff*  
Arkansas Securities Department