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NORTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

HRL

CV 11 3451

15 SECURITIES AND EXCHANGE COMMISSION,
16 Plaintiff,
17 v.
18 JEFFERY ALAN LOWRANCE and FIRST
CAPITAL SAVINGS & LOAN, LTD.,
19
20 Defendants.

Case No. _____

COMPLAINT
DEMAND FOR JURY TRIAL

22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 SUMMARY OF THE ACTION

25 1. From at least April 2007 through February 2009, defendant Jeffery A. Lowrance
26 ("Lowrance") and his off-shore company, First Capital Savings & Loan, Ltd. ("First Capital"),
27 defrauded investors by promising high fixed rates of return from foreign currency trading. In reality,
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1 First Capital conducted little foreign currency trading, lost money on the little trading that it
2 conducted, and never engaged in any profitable business operations. Instead, after transferring
3 investors' money to an off-shore account, Lowrance and First Capital secretly diverted investor funds
4 to pay fake returns to other, earlier investors in the classic *modus operandus* of a "Ponzi scheme."
5
6 Lowrance also secretly diverted investor funds to pay himself (despite his failure to earn a profit for
7 the investors) and to fund his start-up alternative newspaper, *USA Tomorrow*, which carried articles
8 and advertisements promoting a limited government ideology.

9 2. Lowrance and First Capital sought investors for their fraudulent scheme in a predatory
10 fashion. Perpetrating a type of "affinity fraud," Lowrance sought the trust of potential investors by
11 pretending to share their values and aspirations. Lowrance held himself out as practicing Christian
12 values to gain the trust of Christian investors for his scheme. He also sought the trust of individuals
13 who shared his political views, attending a rally for Congressman Ron Paul's presidential campaign
14 to distribute copies of his *USA Tomorrow* newspaper containing ads for First Capital. Lowrance and
15 First Capital also paid "returns" to early investors, while encouraging those initial investors to tout
16 Lowrance to their friends by offering a referral bonus.
17

18 3. In June 2008, however, Lowrance's scheme began to unravel as First Capital was
19 unable to pay the monthly returns promised to investors. Lowrance had First Capital stop making
20 monthly payments, and by September 2008, Lowrance and First Capital had lost all of the investors'
21 money. Nevertheless, between June 2008 and February 2009, Lowrance solicited at least an
22 additional \$1 million from at least thirty-six investors by continuing to falsely tout First Capital's
23 high returns. After being criticized about the missing monthly payments, Lowrance admitted to
24 certain investors that investor funds were not used for currency trading, that the representations of
25 trading success were fictitious and that he has misappropriated investor money for himself and his
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1 newspaper. Lowrance also falsely represented that he soon would repay all of the investors, while
2 disparaging any investor who questioned Lowrance's integrity.

3 4. Lowrance and First Capital violated the Securities Act of 1933 ("Securities Act") and
4 the Securities Exchange Act of 1934 ("Exchange Act") by intentionally making materially false and
5 misleading statements and omissions in connection with the offer and sale of securities through
6 interstate commerce and by engaging in a fraudulent scheme. Lowrance and First Capital also
7 violated the Securities Act by offering and selling securities in interstate commerce without
8 registering those offers and sales with the Commission. To protect investors and enforce the federal
9 securities laws, the Commission seeks to enjoin Lowrance and First Capital from further conduct that
10 violates the securities laws and to require defendants to disgorge their ill-gotten gains and to pay civil
11 money penalties.
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14 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**
15

16 5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
17 Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act
18 [15 U.S.C. §§ 78u(d) and 78u(e)]. This Court has jurisdiction over this action pursuant to Sections
19 20(d)(1) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections 21(d)(3),
20 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa].
21

22 6. Venue in this district is proper pursuant to Section 22(a) of the Securities Act
23 [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because conduct alleged
24 in this complaint occurred within the Northern District of California.
25

26 7. Assignment to the San Jose Division is appropriate pursuant to Civil Local Rules 3-
27 2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims occurred, among
28 other places in this district, in Santa Clara County.

DEFENDANTS

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2 8. Defendant Jeffery A. Lowrance, 48, founded and controls First Capital and since its
3 inception has served as its Chairman and Chief Executive Officer. In 2006, the State of California
4 issued a Desist and Refrain Order against Lowrance in connection with his operation of a predecessor
5 entity, Mentor Investing Group, Inc., which appears to be defunct and is not registered to do business
6 in any state. California's administrative order prohibits Lowrance from selling commodities,
7 including foreign currency contracts.

8 9. First Capital Savings & Loan, Ltd. was incorporated in February 2007 in New
9 Zealand. First Capital purportedly traded foreign currency on behalf of investors in a pooled
10 investment program that primarily raised money from investors in the United States. Up until at least
11 July 2010, First Capital continued to solicit investors through its website www.firstcapitalsl.com.
12 First Capital was solely controlled by Lowrance and, accordingly, all of its acts were done by
13 Lowrance.

FACTUAL ALLEGATIONS

Defendants Raised Millions by Touting First Capital's Fictitious Trading Program

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15
16 10. From at least April 2007 through February 2009, Lowrance and First Capital
17 fraudulently induced investments in First Capital's purported pooled foreign exchange trading
18 program. To date, they have raised approximately \$21 million from hundreds of investors. These
19 investors reside in multiple states, including California, Oregon, Utah, and Illinois, as well as some
20 foreign countries. Investors understood First Capital would only use their money to buy or sell
21 foreign currency. For many investors, this was the first time they invested in foreign currency.
22 Investors had no role in making or executing foreign currency trades.

23
24 11. Lowrance and First Capital solicited investors from the general public in a variety of
25 ways: through First Capital's website at www.firstcapitalsl.com, through word-of-mouth referrals, by
26 making cold-calls and mass mailings, and by reaching out to members of Christian communities.

27 12. Lowrance also targeted investors who shared his political beliefs. He used a
28 significant portion of the money he raised from investors to fund the creation of his alternative

1 newspaper, *USA Tomorrow*, which claimed to promote “truth in journalism” and contained articles
2 and advertisements advocating a limited government ideology. He then included in at least one
3 edition of *USA Tomorrow* a flyer advertising the First Capital investment opportunity which he
4 distributed at the September 2008 Ron Paul Rally for the Republic in Minneapolis, Minnesota. *USA*
5 *Tomorrow* was placed on every seat at the rally.

6 13. Lowrance and First Capital knowingly and/or recklessly made the materially false
7 claim that First Capital used investor money to trade foreign currency and in return, pay them a high,
8 fixed, monthly rate of return. Before February 2008, First Capital offered monthly rates of return
9 ranging from 4% to 7.15% (resulting in annual rates of return up to 85.8%). It also offered to pay
10 referral fees for new investors ranging from 5% to 6% of the amount invested. As of July 2010, First
11 Capital’s website offered monthly rates of return ranging from 1.104% to 1.558% (resulting in annual
12 rates of up to 18.7%) and referral fees ranging from 1% to 2%. Lowrance made, or authorized to be
13 made, these statements on First Capital’s website. Several investors referred new investors and
14 received referral fees. Depending on the rates of return they wanted, investors agreed to three-, six-,
15 or twelve-month limitations on withdrawals.

16 14. First Capital representatives instructed investors to send their investment money to a
17 money converter located in Baltimore, Maryland. The money converter received investor money,
18 converted it into Euros, and then wired it overseas to a bank account in the Netherlands. Investors
19 received monthly return payments from that same Netherlands bank account.

20 15. Lowrance and First Capital primarily induced investments into First Capital by
21 knowingly and/or recklessly making the materially false claim that First Capital was highly profitable.
22 For example, First Capital’s website claimed the returns it offers are the results of the “rock-solid
23 trading skills” of its professional traders and its “steady, successful trading system.” Lowrance made,
24 or authorized to be made, these statements on First Capital’s website. Several investors in late 2008
25 received from First Capital representatives a form letter stating that First Capital earned its “13.25% -
26 18.7% annual returns” because they were “specialists in the Forex Currency Market.” Lowrance also
27 authorized these statements.

28

1 16. Additionally, First Capital’s website contained a chart and spreadsheet purporting to
2 show its multi-year history of profitable trades. These statements were false; First Capital never
3 entered into the trades detailed on First Capital’s website. Moreover, First Capital never was
4 profitable. Lowrance and First Capital knew and/or were reckless in not knowing that the trading
5 history posted on First Capital’s website was materially false and misleading.

6 17. Lowrance and First Capital also offered prospective investors the opportunity to
7 receive daily emails detailing the trades it entered into. First Capital’s website states: “As far as
8 transparency, there is no better way for you to verify our profitability than for you to receive the
9 trades as they happen, live and in real time . . . This will prove that our trading system works well in
10 the Forex Currency market.” Several investors received these daily emails before they invested.
11 These statements were false; First Capital never entered into the trades detailed in the daily emails.
12 Moreover, First Capital never was profitable. Lowrance and First Capital knew and/or were reckless
13 in not knowing that the representations in these daily emails were materially false and misleading.

14 18. Lowrance and First Capital knowingly made several monthly payments to investors to
15 deceive them into believing that First Capital’s foreign currency trading program was legitimate.
16 Several investors invested because they had friends or family who had been receiving significant
17 returns. Others made multiple investments based on the significant returns they had received on their
18 initial investment.

19 19. Lowrance and First Capital also knowingly and/or recklessly made the materially false
20 claim that the First Capital investment was safe. According to First Capital’s website, investors’
21 returns were “locked-in” to provide a “predictable monthly income.” Several investors in late 2008
22 received from First Capital representatives a form letter informing them that because of the recent
23 uncertainties in the stock market, First Capital now offered a standby letter of credit to secure their
24 investment. The letter described the standby letter of credit as a “**guarantee** that is placed by a third-
25 party bank, in order to back up the principal that you would have with us at First Capital S&L”
26 (emphasis in original). According to First Capital representatives, the standby letter of credit

1 provided "a new level of security." In reality, as Lowrance and First Capital knew and/or were
2 reckless in not knowing that no standby letter of credit existed.

3 **Lowrance's Scheme Begins to Unravel and he Admits his Fraud to Investors**

4 20. In June 2008, Lowrance and First Capital stopped making investors' monthly return
5 payments. In July 2008, Lowrance informed certain investors that First Capital's monthly payments
6 were late because he had spent more than his share of the profits on his start-up newspaper, *USA*
7 *Tomorrow*. In October 2008, Lowrance falsely represented to certain investors that he would return
8 everyone's principal by January 5, 2009.

9 21. In February 2009, Lowrance admitted in writing to certain investors that First Capital
10 never was profitable. He characterized the foreign currency trading business as "nearly impossible to
11 make money at" and as "one big scam." He further admitted that the daily trade emails First Capital
12 sent to investors were fictitious and that First Capital had not actually entered into those trades.
13 Instead, Lowrance admitted, these trades were merely recommended trades suggested by a group of
14 three Peruvians he had trained to read foreign exchange charts. According to Lowrance, although the
15 Peruvian chart readers made good trade recommendations, they lost money whenever they made live
16 trades. Lowrance further admitted that he had mismanaged First Capital's funds and that by
17 September 2008 he had lost all the investors' money.

18 22. Lowrance further admitted that First Capital had only traded (and lost) a small amount
19 of money in 2005 and that he had used investor money to pay other investors' purported returns and
20 to fund his start-up newspaper, *USA Tomorrow*.

21 23. Nevertheless, between June 2008 and February 2009, Lowrance and First Capital
22 solicited at least an additional \$1 million from at least thirty-six investors. Lowrance personally
23 spoke with at least three of these investors before they invested. He did not tell any of those investors
24 that First Capital had stopped making investors' monthly return payments, that First Capital had lost
25 all the earlier investors' money, or that First Capital never had been profitable. Instead, he told a
26 December 2008 investor that he personally had invested with First Capital and that the returns were
27 "good" and "dependable." Lowrance told another December 2008 investor that First Capital

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1 employed two or three traders who were among the best in the industry and who had significant
2 experience trading foreign currency.

3 24. In addition to failing to disclose First Capital's true financial condition and operations
4 to investors solicited between June 2008 and February 2009, Lowrance did not use any new investor
5 money to trade foreign currency. Rather, he used new investor money to pay himself, pay some
6 investors' returns, and to pay for expenses associated with his start-up newspaper.

7 **Lowrance and First Capital Continued to Solicit Money by Way of False and Misleading** 8 **Representations**

9 25. Until at least July 2010, First Capital's website was up and running and actively
10 solicited investments by making false claims about its profitability.

11 26. In February 2009 Lowrance informed investors that he planned to trade foreign
12 currency in order to pay them back. He told investors that he wanted them, at some point, to consider
13 reinvesting with First Capital again. He further told investors that "the millions lost [did] not shake
14 [him]." Additionally, when certain investors circulated some of Lowrance's admissions regarding the
15 falsity of his earlier representations, Lowrance sent purported updates to other investors disparaging
16 the character of those persons who circulated his earlier admissions and disparaging the character of
17 anyone who questioned Lawrence's integrity.

18 27. Even though Lowrance claimed he planned to repay investors by, among other things,
19 trading foreign currency, as of March 5, 2009 First Capital's Netherlands bank account only held
20 approximately \$121.

21 **Lowrance and First Capital Sold Securities In An Unregistered Offering**

22 28. Since April 2007, Lowrance and First Capital have solicited approximately \$21
23 million from investors in at least twenty-six (26) states including Illinois, California, Oregon, and
24 Utah.

25 29. Neither Lowrance nor First Capital took steps to determine whether prospective
26 investors were financially qualified or had the requisite investment experience to invest in a foreign
27 currency trading program. Indeed, some investors did not have sufficient assets or income to take on
28 the risk of investing in foreign currency. For example, one investor used retirement funds to invest

1 with First Capital because he planned to use the promised fixed, predictable income to pay nursing
2 home and medical bills. Another investor convinced his church to invest because the fixed monthly
3 income would support a daycare the church was starting; he mortgaged his house to loan the church
4 the money to invest.

5 30. No registration statement was filed with the Commission in connection with the offer
6 or sale of First Capital securities.

7 **FIRST CLAIM FOR RELIEF**

8 **(Violations of Section 17(a) of the Securities Act)**

9 31. The Commission realleges and incorporates by reference paragraphs 1 through 29.

10 32. By engaging in the acts and conduct alleged above, Lowrance and First Capital,
11 directly or indirectly, in the offer or sale of securities, by use of the means or instruments of
12 transportation or communication in interstate commerce or by use of the mails: (a) with scienter
13 employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of
14 untrue statements of material fact or by omitting to state a material fact necessary in order to make
15 statements made, in the light of the circumstances under which they were made, not misleading; and
16 (c) engaged in transactions, practices, or courses of business which operated or would operate as a
17 fraud or deceit upon the purchasers.

18 33. By reason of the foregoing, Lowrance and First Capital have violated and, unless
19 restrained and enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C.
20 § 77q(a)].

21 **SECOND CLAIM FOR RELIEF**

22 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)**

23 34. The Commission realleges and incorporates by reference Paragraphs 1 through 29.

24 35. By engaging in the acts and conduct alleged above, Lowrance and First Capital,
25 directly or indirectly, in connection with the purchase or sale of securities, by the use of means or
26 instrumentalities of interstate commerce, or of the mails, or of a facility of a national security
27 exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue
28

1 statements of material fact or omitted to state material facts necessary in order to make the statements
2 made, in light of the circumstances under which they were made, not misleading; and (c) engaged in
3 acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other
4 persons, including purchasers and sellers of securities.

5 36. By reason of the foregoing, Lowrance and First Capital have violated and, unless
6 restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C.
7 § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

8
9 **THIRD CLAIM FOR RELIEF**

10 **(Violations of Section 5(a) and 5(c) of the Securities Act)**

11 37. The Commission realleges and incorporates by reference Paragraphs 1 through 29.

12 38. By engaging in the acts and conduct alleged above, Lowrance and First Capital,
13 directly or indirectly, made use of means or instruments of transportation or communication in
14 interstate commerce or of the mails to offer and to sell securities through the use or medium of a
15 prospectus or otherwise when no registration statement had been filed or was in effect as to such
16 securities and no exemption from registration was available.

17 39. By reason of the foregoing, Lowrance and First Capital have violated and, unless
18 enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a)
19 and 77e(c)].

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Commission respectfully requests that the Court:

22 I.

23 Permanently enjoin defendants Lowrance and First Capital from directly or indirectly
24 violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)]
25 and Section 10(b) of the Exchange Act [15U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §
26 240.10b-5].

27 II.

28 Enter an order freezing Lowrance's and First Capital's assets.

1 III.

2 Order defendants Lowrance and First Capital to provide a verified accounting identifying (i)
3 the location and disposition of all funds received from investors; (ii) the location and disposition of
4 all accounts controlled by Lowrance or First Capital or held for their benefit; and (iii) the location and
5 value of all investor as well as personal or other assets currently held by Lowrance or First Capital, or
6 under Lowrance's or First Capital's control or over which they may exercise actual or apparent
7 authority;

8 IV.

9 Order defendants Lowrance and First Capital to repatriate to the territory of the United States
10 all assets and funds received from, or held for the benefit of, investors.

11 V.

12 Order defendants Lowrance and First Capital to disgorge their ill-gotten gains with
13 prejudgment interest in an amount according to proof, plus prejudgment interest thereon.

14 VI.

15 Order defendants Lowrance and First Capital to pay civil money penalties pursuant to Section
16 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21A of the Exchange Act [15
17 U.S.C. § 78u-1].

18 VII.

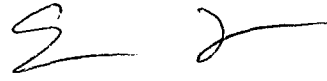
19 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
20 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that
21 may be entered, or to entertain any suitable application or motion for additional relief within the
22 jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

DATED: July 14, 2011

Respectfully Submitted,



Marc J. Fagel
Michael S. Dicke
John S. Yun
Robert S. Leach
Erin E. Schneider
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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JURY TRIAL DEMAND

Plaintiff Securities and Exchange Commission demands a jury trial of its claims.

DATED: July 14, 2011

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'S J', written over a horizontal line.

Marc J. Fagel
Michael S. Dicke
John S. Yun
Robert S. Leach
Erin E. Schneider
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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