

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

JEFFERY ALAN LOWRANCE, an
individual, and FIRST CAPITAL SAVINGS
and LOAN, a New Zealand Finance
Corporation,

Defendants.

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**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR
CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT,
AS AMENDED, 7 U.S.C. §§ 1-25**

I. SUMMARY

1. From at least June 18, 2008 to the present (“relevant period”), Jeffery Alan Lowrance (“Lowrance”) and First Capital Savings and Loan (“First Capital”) (collectively, “Defendants”), by and through its employees and agents, in particular its principal and controlling person, Lowrance, have solicited at least \$1 million from approximately 36 members of the general public, for the sole purpose of trading off-exchange foreign currency (forex) contracts. Upon information and belief, Defendants did not deposit any of these investor’s funds into forex trading accounts. Instead, Defendants misappropriated most of the investor funds, and used the misappropriated funds, among other things, to pay previous First Capital investors, pay personal expenses and create a religious newspaper.

2. Defendants promise investors fixed rates ranging from 1.1 to at least 4.15 percent monthly as a return on investment. The promised rates of return depend on the amount and size of the investor's investment. Defendants falsely state they can comfortably pay these rates of return because they generate substantial profits trading forex.

3. On information and belief, First Capital did not use the investor funds to trade forex. Therefore, any purported "profits" paid to investors came from existing investors' original principal and/or from money invested by subsequent investors. Defendants, thus, appear to be operating a Ponzi scheme.

4. To conceal and perpetuate their fraud, Defendants provide their investors with access to false account statements that misrepresent that the accounts are increasing by as much as 4.15 percent per month, when, in fact, it is not true.

5. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act (the "Act") as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), § 13102, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

6. Lowrance, along with other First Capital employees and agents, committed the acts and omissions described herein within the course and scope of their employment at First Capital. Therefore, First Capital is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C.

§ 2(a)(1)(B) (2006), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2011), as principal for Lowrance’s and the other First Capital employees’ violations of the Act as amended by the CRA.

7. Lowrance is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of First Capital for its violations of the Act as amended by the CRA, because he did not act in good faith or knowingly induced, directly or indirectly, the acts constituting First Capital’s violations.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2), the Commission brings this action to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act as amended by the CRA and to further enjoin Defendants from engaging in certain commodity-related activity. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

9. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(C). Section 6c(a) of the Act authorizes the plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”) to seek injunctive relief against any

person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

11. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, in that the Defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

III. THE PARTIES

12. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2011).

13. **First Capital Savings and Loan** was created in approximately February 2007 and is registered in New Zealand as an offshore finance company. The First Capital website states, "First Capital Savings & Loan is offering financial services as a Finance Company and not as a registered bank under supervision by the Reserve Bank of New Zealand." Since at least April 2007, First Capital has been in the business of soliciting members of the public to invest in forex. It lists its address as Auckland Compliance Ltd, Level 3, Suite 24, 60 Cook St, Auckland 1010, New Zealand, which is the address of its registered agent. First Capital utilizes the web address of www.firstcapitalsl.com. First Capital has never been registered with the CFTC.

14. **Jeffery Alan Lowrance** resided in Houston, Texas, as recently as the fall of 2009. On information and belief, Lowrance currently is residing outside of the United States in the vicinity of Lima, Peru.

15. Lowrance is the Chief Executive Officer of First Capital. At all relevant times, First Capital is wholly owned by Lowrance who holds himself out to the public as the owner of First Capital. Lowrance hires and fires employees and limits employee access to all records of the business. Lowrance has access to all records and passwords to the First Capital website and the Eurowire Clearing Corporation (“Eurowire”), a wire transfer clearing and messaging company, website. Lowrance’s username indicates that he is the “administrator” of the First Capital website with the only active profile on the website. Lowrance used ceo@firstcapitalsl.com to communicate with First Capital investors and vendors, and is also listed as using the info@firstcapitalsl.com email address. Lowrance has never been registered with the CFTC.

IV. FACTS

16. Beginning in approximately March 2006, Lowrance ran a company called Mentor Investing Group, Inc. (“Mentor Investing”), which solicited members of the public to invest in forex through the Internet and mass mailings. On September 13, 2006, the State of California Department of Corporations issued a Cease and Desist against Lowrance and Mentor Investing relating to their solicitation for forex trading. In approximately April 2007, Lowrance ceased doing business through Mentor Investing and formed First Capital, through which he continued to solicit members of the public to trade forex. Mentor Investing customers were transferred to First Capital. From approximately April 2007 to June 17, 2008, First Capital received approximately \$20 million from approximately 400 investors.

17. Since at least June 18, 2008, First Capital, by and through its sales representatives, including Lowrance, its principal and controlling person, solicits members of the general public to trade forex. Upon information and belief, Defendants fail to disclose to

investors that their funds are being used to fund the creation of a religious newspaper titled “USA Tomorrow.” To date, Defendants have received at least \$1 million from approximately 36 investors. Defendants have misappropriated most of these funds. Through their password protected website, www.firstcapitalsl.com, Defendants issue false account statements to investors which misrepresent the value of investor accounts.

18. Defendants, through their employees and agents, mailings, and www.firstcapitalsl.com, solicit members of the public to invest in forex through First Capital.

19. Defendants, through the First Capital website and promotional materials, promise investors monthly returns ranging from 1.1% to at least 4.15% on their investment, depending on the amount and size of the investor’s investment. Specifically, First Capital promotional materials state, “The way in which we pay our 13.25 to 18.70 % annual returns on our Certificate of Deposits is from the gains that we generate in the FOREX Currency Market. Since the FOREX is the biggest business in the world, it is a great place to generate small, predictable returns for our clients.”

20. First Capital includes a spreadsheet of its forex trading on its website and claims that the trading was First Capital’s actual forex trading , and that the Excel spreadsheet “contains all of our trading activity....” First Capital also offers to send the investors emails of “trades live, as they happen...”, and states on its website, “...there is no better way for you to verify our profitability than for you to receive the trades as they happen, live and in real time.” First Capital promotional materials also state in regard to the Excel spreadsheet, “This is the most honest and transparent way for us to show you that we are making good and steady money trading in the FOREX currency market. Plenty enough to pay our clients 13.25% to 18.70% annually on our Certificate of Deposit program.” These statements and those in ¶ 18 above are

false. In fact, Defendants never achieved these returns and never made any of the trades purported to be actual forex trades.

21. Defendants represent to investors that their approximate 1.1 to 4.15 percent monthly return on investment is produced by profits from Defendants' forex trading. This representation is false. On information and belief, First Capital did not have a forex trading account during the relevant period at any registered futures commission merchant ("FCM").

22. Lowrance opened a forex trading account at registered FCM Oanda Corporation ("Oanda") in his own name in approximately November 2005 and funded it with only \$4,000. The account has not had any trading activity since October 2009. Lowrance's forex trading resulted in net losses, and the account never had a balance greater than \$4,002. Currently, approximately \$141 remains in the Oanda trading account in Lowrance's name.

23. In order to conceal and perpetuate their fraud, from at least June 18, 2008 through the present, Defendants report consistent monthly profits to their investors. This false information is reported to investors in the form of, among other things, individual investor account statements that are made available to investors through the secured, password protected portion of the First Capital website. For example, Defendants reported to one investor monthly profits of 4.15% percent for July, August, October, November and December 2008.

24. Once investors decide to invest in First Capital, the money is sent to Asset Strategies International, Inc., a foreign currency exchange service provider, where it is converted into Euros, and wired to an account in the name of First Capital at Eurowire, a wire transfer clearing and messaging company. None of the approximately \$1 million received by First Capital from investors was sent to a forex trading account. For example, an investor deposited

\$25,000 in August 2008, and there is no deposit into a forex trading account, nor any transaction in the Eurowire account that shows those funds were transferred to a forex trading account.

25. As of July 31, 2009, approximately €96.75, or \$136.00, remains in the First Capital Eurowire account.

26. The purported 1.1 to 4.15 percent monthly return on investment paid to investors was actually paid from existing investors' original principal and/or from money invested by subsequent investors. Defendants, thus, appear to be running a Ponzi scheme.

27. In July 2008, Defendants suspended all investor withdrawals and informed them that First Capital was not in a position to distribute any funds to its investors. Lowrance explained in an emailed "Update" to investors that he has been spending the "trading profits" that belong to investors on the creation of his lifelong dream, the "USA Tomorrow" newspaper, stating "I have used more than the newspaper's share of the trading profits starting in May and continuing through June." Lowrance sent an "Update" to investors asking for their patience and continued to stress the profitable forex trading by First Capital.

28. From at least June 18, 2008 to the present, Defendants returned approximately \$330,000 to investors. Lowrance also misappropriated at least \$177,621 for himself, at least \$13,176 for his family members, and at least \$158,386 for his USA Tomorrow newspaper.

29. Defendants continue to claim to be profitable forex traders, when they have little experience trading actual money in forex. On March 29, 2009, Defendants sent an "Update" to First Capital investors in which Lowrance claims First Capital "chart readers" have been trading forex for three weeks and earned \$6,000. Defendants are using this information to continue to solicit funds in order to repay investor money. On information and belief, this trading is not with money, but demonstration or "reco"/recommendation account trading.

30. On or about June 6, 2009, Lowrance convinced a First Capital investor to open a forex trading account in the investor's name at FX Solutions LLC ("FX Solutions"), a registered FCM, in order to give access to the account to Lowrance and First Capital's traders to prove that they can earn a profit trading forex. The forex trades entered into at FX Solutions are entered into on a leveraged or margined basis and only a percentage of the value of the forex contracts purchased were required to be purchased. Lowrance described this as a "project" to current First Capital investors that would allow him to repay current First Capital investors. Lowrance stated that the information generated from the forex trading would be used to solicit new investors and build capital.

31. Neither Defendants nor the counterparty to the Defendants' forex transactions were financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies or the associated persons of financial institutions, registered broker dealers, insurance companies, financial holding companies, or investment bank holding companies.

32. Some or all of Defendants' investors were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12) (2006) (an "eligible contract participant," as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual").

33. The forex transactions conducted, or purportedly conducted, by Defendants on behalf of their investors were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

34. The forex transactions conducted or purportedly conducted by Lowrance neither resulted in delivery within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts remained open or purportedly remained from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

35. By virtue of their actions, Defendants have engaged, are engaging, or are about to engage in acts and practices that violate Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

Fraud in Connection with Forex

36. The allegations set forth in paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

38. Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA apply to Defendants' forex transactions "as if" they were a contract of sale of a commodity for future delivery.

Section 2(c)(2)(C)(iv) of the Act as amended by the CRA, to be codified at 7 U.S.C.

§ 2(c)(2)(C)(iv).

39. As set forth above, from at least June 18, 2008 through the present, in or in connection with forex contracts, made, or to be made, for or on behalf of or with other persons, Defendants cheated or defrauded, or attempted to cheat or defraud, investors or prospective investors and willfully deceived or attempted to deceive investors or prospective investors by, among other things, knowingly: (i) misrepresenting that First Capital investor funds would be and were being used exclusively for forex trading; (ii) misrepresenting that First Capital forex traders are extremely successful and generate consistent monthly profits; (iii) misrepresenting that First Capital's investors would receive approximately 1.1% to 4.15% per month return on their investment that was generated from the forex trading profits; (iv) misrepresenting that First Capital's consistent profits trading forex enabled First Capital to guarantee a set return of interest each month to its investors; (v) misappropriating investor funds, and (vi) providing investors access to account statements that misrepresented the value of the investors' investments, all in violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

40. Defendants engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

41. Lowrance controlled First Capital, directly or indirectly, and knowingly induced, directly or indirectly, First Capital's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Lowrance is liable for First Capital's violations of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

42. The foregoing acts, misrepresentations, omissions, and failures of Lowrance, along with the acts, misrepresentations, omissions, and failures of other First Capital employees and agents, occurred within the scope of their employment with First Capital; therefore, First Capital is liable for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

43. Each misappropriation, misrepresentation or omission of material fact, and false statement or report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

- a) An order finding that Defendants violated Sections 4b(a)(2)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C);
- b) An order of permanent injunction prohibiting the Defendants from engaging in conduct violative of the Sections of the Act and Regulations that they were found to have violated;
- c) An order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, in:
 - 1) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a;
 - 2) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and/or 2(c)(2)(C)(i) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 2(c)(2)(B) and

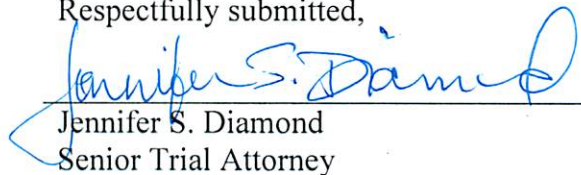
- 2(c)(2)(C)(i) (“forex contracts”)) for their own personal account or for any account in which they have a direct or indirect interest;
- 3) having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
 - 4) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
 - 5) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
 - 6) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);
 - 7) acting as a principal (as that term is defined in Regulation 3.1(a)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).
- d) An order directing Defendants, as well as any successors and/or agents to any Defendant, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices that constitute violations of the Act, as described herein, and pre-interest thereon from the date of such violations and post-judgment interest;
 - e) An order directing Defendants to make full restitution to every person or entity whose funds Defendants received or caused another person or entity to receive as a result of acts and practices that constitute violations of the Act, as described herein, and pre-interest thereon from the date of such violations and post-judgment interest;
 - f) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the investors whose funds were received by them as a result of the acts and practices that constitute violations of the Act, as described herein;
 - g) An order directing each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act or (2) \$130,000 for each

violation of the Act occurring from October 23, 2004 through October 22, 2008, and \$140,000 for each violation of the Act occurring on or after October 23, 2008;

- h) An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- i) Such other and further relief as the Court deems proper.

Dated: July 14, 2011

Respectfully submitted,



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