

## SEC Brings Suit Against Alleged Mastermind of Foreign Currency Trading Ponzi Scheme

By Michael J. Miller and Timothy J. O'Driscoll

We write today about an action filed by the SEC against Jeffrey Alan Lowrance and his company, First Capital Savings & Loan, Ltd. (First Capital), for allegedly orchestrating a multi-million dollar Ponzi scheme involving foreign currency trading. According to the complaint, “[f]rom at least April 2007 through February 2009 ... First Capital defrauded investors by promising high fixed rates of return from foreign currency trading.” The complaint further alleges that, “after transferring investors’ money to an off-shore account, Lowrance and First Capital secretly diverted investor funds to pay fake returns to other, earlier investors, in the classic *modus operandus* of a ‘Ponzi Scheme.’” In total, according to the complaint, “Lowrance and First Capital have solicited approximately \$21 million from investors in at least twenty-six (26) states including Illinois, California, Oregon, and Utah.” The three-count complaint alleges that Lowrance and First Capital violated various provisions of the Securities Act and the Exchange Act, and seeks, among other things, a permanent injunction that enjoins the defendants from violating these provisions of the Securities Act and the Exchange Act, payment of civil penalties and the disgorgement of any ill-gotten gains.

The SEC filed this complaint in the United States District Court for the Northern District of California on July 14, 2011. According to the SEC’s complaint, beginning in 2007, Lowrance “perpetrat[ed] a type of ‘affinity fraud,’ [whereby] Lowrance sought the trust of potential investors by pretending to share their values and aspirations.” Among other things, the complaint alleges that Lowrance “held himself out as practicing Christian values to gain the trust of Christian investors [and] sought the trust of individuals who shared his political views, attending a rally for Congressman Ron Paul’s presidential campaign.” Lowrance allegedly “induced investments into First Capital by ... making the materially false claim that First Capital was highly profitable” as a result of “‘rock-solid trading skills’... and [a] steady, successful trading system.” According to the complaint, after an investor made an investment, “Lowrance and First Capital ... made several monthly payments to investors to deceive them into believing that First Capital’s foreign currency trading program was legitimate.”

According to the SEC’s allegations, however, “in June, 2008 ... Lowrance’s scheme began to unravel as First Capital was unable to pay the monthly returns to investors.” The complaint avers that in “October 2008, Lowrance ... represented to certain investors that he would return everyone’s principal by January 5, 2009.” Further, Lowrance allegedly wrote a letter in February, 2009 “characterize[ing] the foreign currency trading business as ‘nearly impossible to make money at’ and as ‘one big scam.’” According to the complaint’s allegations, Lowrance “had only traded (and lost) a small amount of money in 2005 and had used investor money to pay other investors’ purported returns and to fund his start-up newspaper, *USA Tomorrow*.” The complaint alleges that “[e]ven though Lowrance claimed he planned to repay investors by, among other things, trading foreign currency, as of March 5, 2009 First Capital’s Netherlands bank account only held approximately \$121.”

If you are interested in receiving a copy of the complaint described above, or updates regarding the SEC’s lawsuit against Lowrance and First Capital, please contact Michael J. Miller or Timothy J. O’Driscoll at Drinker Biddle & Reath LLP.

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