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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

19 JAMES P. LEWIS, JR., individually
20 and doing business as FINANCIAL
21 ADVISORY CONSULTANTS,
22 INCOME FUND, LTD. AND
23 GROWTH FUND, LTD.,

24 Defendant.

25 Case No. CV03-9354 JSL (VBKx)

26 COMPLAINT FOR VIOLATIONS OF THE
27 FEDERAL SECURITIES LAWS

28 Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendant has, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or

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CENTRAL DISTRICT OF CALIF.
BY _____

1 of the facilities of a national securities exchange in connection with the
2 transactions, acts, practices and courses of business alleged in this Complaint.

3 2. Venue is proper in this district pursuant to Section 22(a) of the
4 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
5 § 78aa, because the defendant resides in this district and certain of the
6 transactions, acts, practices and courses of conduct constituting violations of the
7 federal securities laws occurred within this district.

8 SUMMARY

9 3. For almost 20 years, James P. Lewis, Jr. has been doing business as
10 Financial Advisory Consultants ("FAC"). Financial Advisory Consultants offers
11 and sells securities in the Income Fund, Ltd. and the Growth Fund, Ltd.
12 (collectively, the "Funds").

13 4. Defendant has sold securities in the Funds to over 5,200 investor
14 accounts whose combined balances in the Funds (i.e., the principal investment
15 plus purported profits minus any withdrawals) exceed \$813 million.

16 5. No registration statement has been filed or been in effect with respect
17 to Financial Advisory Consultants or either of the Funds.

18 6. In response to requests from investors to withdraw funds, Defendant
19 has defrauded his investors by misrepresenting that the Funds' accounts are frozen
20 by the Department of Homeland Security when the Department of Homeland
21 Security has not frozen, and does not have the authority to freeze, the Funds'
22 accounts.

23 7. Defendant, by engaging in the conduct described in this Complaint,
24 has violated the antifraud provisions of Section 17(a) of the Securities Act and
25 Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

26 THE DEFENDANT

27 8. James P. Lewis, Jr. has residences in Laguna Niguel and Palm Desert,
28 California, and is doing business under the fictitious business name of Financial

1 Advisory Consultants ("FAC"), an unincorporated entity with offices in Lake
2 Forest, California.

3 9. Lewis, individually and doing business through FAC, offers and sells
4 securities in the Income Fund, Ltd. (the "Income Fund") and the Growth Fund,
5 Ltd. (the "Growth Fund") (collectively, the "Funds"). The Funds are
6 unincorporated entities controlled by Lewis.

7 THE OFFERINGS

8 10. The Income Fund purportedly invests in equipment leasing and
9 insurance premium financing programs and has purportedly realized an average
10 annual return of more than 19% per year since its inception in 1983.

11 11. The Growth Fund purportedly buys and sells distressed businesses
12 and has purportedly realized an average annual return of almost 39% per year
13 since its inception in 1987.

14 12. Defendant pools investors' monies in a common enterprise, the Funds,
15 which, according to the Funds' offering brochure, are "comprised of a variety of
16 investments; each investor owns an interest in every investment."

17 13. FAC receives a management fee equal to 5% of the Funds' total
18 return, with the remaining 95% purportedly going to the investors.

19 14. The interests in the Funds are securities in the form of investment
20 contracts in that the investors' funds are pooled with the expectation of profit from
21 Lewis' management of the Funds.

22 15. Fund investors receive \$1.6 million per month in regular withdrawals
23 and until recently \$4 to \$7 million through special or non-scheduled withdrawals.
24 Investors who do not receive regular withdrawals have their purported profits
25 reinvested in the Funds.

26 16. The investors do not receive audited financial statements or any other
27 details concerning the accomplishments of the Funds. Instead, offering materials,
28 including offering brochures and monthly newsletters, describe the activities of the

1 Funds in a generic manner that is absent of detail. For example, the Income Fund
2 is said to have "provided financing for several companies" in 2001 and the Growth
3 Fund is said to have "closed 26 projects . . . [whereby FAC] purchased the
4 businesses for cash and then resold them at a profit" that same year, without
5 identifying any of the involved entities. Monthly newsletters make similar claims
6 in similarly vague terms.

7 **THE DEFENDANT'S FRAUDULENT SCHEME**

8 17. Although the Funds permit withdrawals upon notice, since at least
9 June 2003, Lewis has not honored many unscheduled withdrawal requests from
10 Fund investors. In other cases, Lewis has honored withdrawal requests only in
11 part and/or in piecemeal fashion.

12 18. Beginning in about June 2003 and continuing through at least August
13 2003, Lewis told Fund investors requesting withdrawals that monies of FAC and
14 the Growth Fund had been frozen by the Department of Homeland Security
15 ("DHS"). Lewis, directly and/or indirectly, told Fund investors that DHS had
16 frozen FAC and the Growth Fund monies because FAC had received a wire
17 transfer from the Middle East.

18 19. In November 2003, Lewis falsely told Fund investors requesting
19 withdrawals that Growth Fund monies had been frozen by DHS because investors
20 had wired money they received from FAC to Middle Eastern organizations.

21 20. In November and/or December 2003, Lewis falsely told Fund
22 investors requesting withdrawals that the Internal Revenue Service was involved
23 in, and complicating, the withdrawal process because investors should have been
24 paying taxes on the withdrawals.

25 21. Approximately one month ago, FAC's office received a telephone call
26 from a Mr. Sanchez purportedly from DHS about the freeze. However, that call
27 was in fact placed from Lewis' cell phone number.

28

1 c. engaged in transactions, practices, or courses of business which
2 operated or would operate as a fraud or deceit upon the purchaser.

3 27. By engaging in the conduct described above, defendant violated and,
4 unless restrained and enjoined, will continue to violate, Section 17(a) of the
5 Securities Act, 15 U.S.C. § 77q(a).

6 **SECOND CLAIM FOR RELIEF**

7 **FRAUD IN CONNECTION WITH THE**
8 **PURCHASE OR SALE OF SECURITIES**

9 **Violations of Section 10(b) of the Exchange Act**
10 **and Rule 10b-5 thereunder**

11 28. The Commission realleges and incorporates by reference ¶¶ 1 through 24
12 above.

13 29. Defendant, by engaging in the conduct described above, directly or
14 indirectly, in connection with the purchase or sale of a security, by the use of
15 means or instrumentalities of interstate commerce, of the mails, or of the facilities
16 of a national securities exchange, with scienter:

- 17 a. employed devices, schemes, or artifices to defraud;
- 18 b. made untrue statements of a material fact or omitted to state a
19 material fact necessary in order to make the statements made, in
20 the light of the circumstances under which they were made, not
21 misleading; or
- 22 c. engaged in acts, practices, or courses of business which operated
23 or would operate as a fraud or deceit upon other persons.

24 30. By engaging in the conduct described above, defendant violated and,
25 unless restrained and enjoined, will continue to violate, Section 10(b) of the
26 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
27 § 240.10b-5.

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Commission respectfully requests that the Court:

5 **I.**

6 Issue findings of fact and conclusions of law that the defendant
7 committed the alleged violations.

8 **II.**

9 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
10 temporarily, preliminarily and permanently enjoining defendant and his officers,
11 agents, servants, employees, attorneys, subsidiaries and affiliates and those
12 persons in active concert or participation with him, who receive actual notice of
13 the order by personal service or otherwise, and each of them, from violating
14 Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule
15 10b-5 thereunder.

16 **III.**

17 Issue in a form consistent with Fed. R. Civ. P. 65, a temporary
18 restraining order and a preliminary injunction freezing the assets of the defendant;
19 prohibiting the defendant from destroying documents; and ordering expedited
20 discovery and accountings.

21 **IV.**

22 Order defendant to disgorge all ill-gotten gains from his illegal conduct,
23 together with prejudgment interest thereon.

24 **V.**

25 Order defendant to pay civil penalties under Section 20(d) of the
26 Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15
27 U.S.C. § 78u(d)(3).

28 **VI.**

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

6 VII.

7 Grant such other and further relief as this Court may determine to be just
8 and necessary.

9 DATED: December 22, 2003

Peter Del Greco
Peter F. DelGreco
Attorney for Plaintiff
Securities and Exchange Commission