INITIAL DECISION RELEASE NO. 544
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15211

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of		
	:	
GREGG C. LORENZO,	:	INITIAL DECISION AS TO
FRANCIS V. LORENZO, and	:	FRANCIS V. LORENZO[1]
CHARLES VISTA, LLC	:	December 31, 2013

APPEARANCES: Alex Janghorbani and Jack Kaufman for the Division of Enforcement, Securities and Exchange Commission

Robert J. Hantman of Hantman & Associates for Respondent Francis V. Lorenzo

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) concludes that Respondent Francis V. Lorenzo (Frank Lorenzo or Respondent) violated the antifraud provisions of the federal securities laws when he sent two potential investors emails containing false and misleading information about his firm's client. The ID orders him to cease and desist from violations of the antifraud provisions, bars him from the securities industry, and orders him to pay a civil money penalty of $15,000.

[1] The proceeding has ended as to Respondents Gregg C. Lorenzo and Charles Vista, LLC, who settled the charges against them. Gregg C. Lorenzo, Securities Act Release No. 9480, 2013 WL 6087352 (Nov. 20, 2013) (Settlement Order). The Settlement Order made various findings, including findings that Francis V. Lorenzo (Frank Lorenzo) engaged in various conduct, including conduct concerning which there was no evidence at Frank Lorenzo's hearing on September 18-19, 2013. It must be stressed that the only basis on which the undersigned or the Securities and Exchange Commission may evaluate Frank Lorenzo's conduct in this proceeding is the evidence adduced at his September 18-19, 2013, hearing.

I. INTRODUCTION

A. Procedural Background

The Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on February 15, 2013, pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Sections 15(b), 21B, and 21C of the Securities Exchange Act of 1934 (Exchange Act). The undersigned held a two-day hearing in New York City on September 18-19, 2013. Three witnesses testified, including Frank Lorenzo, and numerous exhibits were admitted into evidence.[2]

The findings and conclusions in this ID are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the parties' Proposed Findings of Fact and Conclusions of Law[3] were considered. All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns Frank Lorenzo's dealings with customers of Charles Vista, LLC (Charles Vista), a registered broker-dealer owned by Gregg C. Lorenzo (Gregg Lorenzo), during the fall of 2009. The OIP alleges that Lorenzo sent at least two Charles Vista customers emails containing false and misleading statements concerning the assets and business of Waste2Energy Holdings, Inc. (W2E), a start-up waste management company for which Charles Vista was attempting to sell convertible debentures.

The Division of Enforcement (Division) is seeking a cease-and-desist order, a third-tier civil money penalty, and a bar. Respondent argues that the charges are unproven and no sanctions should be imposed.

II. FINDINGS OF FACT

As discussed below, on October 14, 2009, Frank Lorenzo sent two potential investors emails that contained false and misleading information about W2E.

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[2] Citations to the transcript will be noted as "Tr. __." Citations to exhibits offered by the Division of Enforcement (Division) and by Respondent will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively.

[3] Reference to the Division's and Respondent's Proposed Findings of Fact and Conclusions of Law will be noted as "Div. Br." and "Resp. Br.," respectively.

A. Relevant Individuals and Entities

1. Charles Vista, Gregg Lorenzo, and Frank Lorenzo

Charles Vista was a registered broker-dealer that Gregg Lorenzo owned and operated since 2009.[4] Tr. 291; Div. Ex. 132 at 13. Charles Vista and Gregg Lorenzo have settled the charges against them in this proceeding. See Gregg C. Lorenzo, Securities Act Release No. 9480 (Nov. 20, 2013), 2013 WL 6087352 (Settlement Order). According to the Settlement Order, Gregg Lorenzo engaged in numerous fraudulent activities in connection with the business of Charles Vista. His previous ten years as a registered representative, associated with various broker-dealers, were studded with disciplinary issues.[5]

Frank Lorenzo has worked in the securities industry for over twenty-five years. Tr. 185-90; Div. Ex. 25; Resp. Ex. 1 at 4-5. In 2007, he joined Mercer Capital, Ltd. (Mercer Capital), where he was the firm's investment banker.[6] Tr. 187-89; Div. Ex. 25; Resp. Ex. 1 at 4-5. There, he met Gregg Lorenzo. Tr. 304-05; Div. Ex. 132 at 11-13. Frank Lorenzo and Gregg Lorenzo are not related. Tr. 305. Frank Lorenzo followed Gregg Lorenzo to John Thomas Financial, Inc., and then, when he found that firm too stressful, to Charles Vista, in February 2009. Tr. 181, 189-90; Div. Ex. 25 at 1; Resp. Ex. 1 at 4-5.

At Charles Vista, Frank Lorenzo was the director of investment banking. Tr. 66, 89, 181, 403; Div. Ex. 25 at 1. By the summer of 2009, Frank Lorenzo knew that Charles Vista was a "boiler room," as his assistant told him that the firm's brokers were engaged in high-pressure sales and stretching the truth to clients, and by the fall of 2009, he doubted the prudence of how Charles Vista handled clients' money. Tr. 229-30, 291-92, 299-302, 323-24, 383, 404-05. He left Charles Vista in February 2010, and has continued to work in the securities industry, currently at Hunter Wise Securities, LLC, a registered broker-dealer. Tr. 181, 311; Div. Ex. 25 at 1; Resp. Ex. 1 at 4.

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[4] According to Financial Industry Regulatory Authority, Inc. (FINRA), records, Charles Vista withdrew its registration as a broker-dealer on June 17, 2013. Additionally, FINRA cancelled Charles Vista's membership on July 31, 2013, for failure to pay outstanding fees. See http://brokercheck.finra.org (last visited Dec. 3, 2013). Official notice, pursuant to 17 C.F.R. § 201.323, is taken of these records. See Joseph S. Amundsen, Exchange Act Release No. 69406 (Apr. 18, 2013), 2013 SEC Lexis 1148, at *2 n. 1.

[5] According to FINRA records, FINRA permanently barred Gregg Lorenzo from association with any member, effective November 14, 2013, for his refusal to comply with multiple requests to appear for an on-the-record interview; the records also indicate an extensive state disciplinary record, including by the states of Idaho, Iowa, and Montana. See http://brokercheck.finra.org (last visited Dec. 3, 2013).

[6] According to FINRA records, Mercer Capital, Ltd, terminated or withdrew its membership as of January 15, 2010. See http://brokercheck.finra.org (last visited Dec. 3, 2013).

During the time he worked at Charles Vista, Frank Lorenzo was paid about $120,000 but incurred expenses of $60,000 to $80,000 for which he was promised, but did not receive, reimbursement. Tr. 297-98. Except for the events at issue, Frank Lorenzo has had no disciplinary issues as a registered representative. Tr. 336-37.

2. Waste2Energy Holdings, Inc. (W2E)

W2E is central to the events at issue. Tr. passim; Div. Exs. passim. W2E was a renewable energy company, founded in 2007 and made public in early 2009, which engaged Charles Vista for investment banking support. Tr. 42, 66, 77-78, 141; Div. Ex. 3 at 3. In September 2009, W2E was preparing to offer up to $15 million in 12% convertible debentures, and Charles Vista was the placement agent for this offering. Tr. 85-89; Div. Ex. 1 at page 19 of 112; Div. Ex. 3. As placement agent for the offering, Charles Vista was positioned to earn substantial fees, including a 10% commission on sales of the debentures. See Div. Ex. 3 at iii.

W2E was in terrible financial shape during Frank Lorenzo's time at Charles Vista. Tr. 198-99. W2E's technology – aimed at converting solid waste into electricity – did not work. Tr. 42, 190, 199; see Div. Ex. 3 at 3, 21-22 (describing what the company does). W2E was placed into bankruptcy in 2012. Tr. 96, 139-40, 387; Div. Ex. 53 at 3-4.

Part of Frank Lorenzo's job as Charles Vista's head of investment banking was to conduct due diligence of investment banking clients, such as W2E, which included reviewing their filings with the Commission. Tr. 182-83, 197-98, 231-32. As Charles Vista's investment banker, Frank Lorenzo was responsible for overseeing the W2E relationship, and he was W2E's primary point of contact at Charles Vista. Tr. 65-66, 95, 155, 327-28. Indeed, the majority of Frank Lorenzo's responsibilities at Charles Vista related to W2E. Tr. 197.

B. W2E Asset Write-Off

On June 3, 2009, W2E filed a Form 8-K that contained unaudited financial statements as of December 31, 2008; the balance sheet listed about $14 million in total assets, which included about $10 million in "intangibles," and about $470,000 in "goodwill." Tr. 57, 201; Div. Ex. 15[7] at page 63 of 175. The intangibles figure referred to the valuation assigned to the company's intellectual property (essentially the technology to turn waste into energy), and the goodwill figure referred to the valuation assigned to the company's workforce. Tr. 56-57. Frank Lorenzo reviewed this Form 8-K in June 2009. Tr. 121.

W2E filed an amended Form 8-K (8-K/A) on October 1, 2009, with audited March 31, 2009, fiscal year-end financial statements. Tr. 58, 227; Div. Ex. 16. The balance sheet for the year ended March 31, 2009, reported no intangibles; following months of auditing work by W2E's independent accountants, the company had written the intangibles down to zero. Tr. 59-60, 69; Div. Ex. 16 at pages 46, 69 of 137. W2E also had written down the value of the goodwill to zero. Tr. 60, 70. With these substantial supposed assets entirely written down, the Form 8-K/A ultimately

[7] W2E was previously known as Maven Media Holdings. Tr. 54-55.

reflected under $370,600 in audited total assets for the year ended March 31, 2009 – i.e., under 3% of the total assets reflected in the December 31, 2008, balance sheet. Compare Div. Ex. 16 at page 69 of 137 with Div. Ex. 15 at page 63 of 175.

Also on October 1, 2009, W2E filed a Form 10-Q. Tr. 58, 67; Div. Ex. 22. This Form 10-Q, for the quarterly period ended June 30, 2009, again did not list any intangibles, and listed audited total assets under $370,600 for the year ended March 31, 2009. Div. Ex. 22 at page 4 of 45. It further listed audited total liabilities of over $6.6 million for the year ended March 31, 2009. Id.

On October 1, 2009, Frank Lorenzo reviewed both the Form 8-K/A and the Form 10-Q filed on that day. Tr. 231, 241; Div. Ex. 32. Indeed, he shared the filings with all brokers at Charles Vista early on October 2. Tr. 233, 243; Div. Ex. 21. October 2009, however, was not the first time Frank Lorenzo had heard about the write-off of the majority of W2E's claimed assets; he had known about the write-off at least since the prior month. Tr. 116, 144, 154-55, 220-21; Div. Ex. 18. Furthermore, prior to October 2009, Frank Lorenzo had speculated that the intangibles were not in fact worth close to the $10 million W2E has previously claimed. Tr. 268. Frank Lorenzo believed that the amount written off was material, and thought the fact of the write-off was a "big deal." Tr. 216-17, 231, 243-44.

Following his receipt of the Forms 8-K/A and 10-Q, and prior to October 14, 2009, Frank Lorenzo was involved in a discussion between Charles Vista and W2E regarding the asset write-off. Tr. 74-77, 122-23, 249-51; Div. Exs. 19, 42.

C. The Two Emails

On October 14, 2009, Gregg Lorenzo asked Frank Lorenzo to send an email that Gregg Lorenzo had drafted relating to the debenture offering to two Charles Vista clients – William Rothe (Rothe) and Vishal Goolcharan (Goolcharan) – saying that he wanted the emails to come from Charles Vista's investment banking division. Tr. 173, 257-59, 264, 343-44, 346, 381-82; Div. Ex. 49. Frank Lorenzo heeded Gregg Lorenzo's instruction without question, sending an almost identical email to each client on that day.[8] Tr. 176-77, 257-58, 341, 346, 378, 381-82, 403-04; Div. Ex. 34. The email read in full:

> Dear Sir:
>
> At the request of Adam Spero and Gregg Lorenzo, the Investment Banking division of Charles Vista has summarized several key points of the Waste2Energy Holdings, Inc. Debenture Offering.
>
> *** Please read the Offering Memorandum, including all "Risk Factors" ***
>
> 12- month Note, Debenture pays a 12% interest rate, paid quarterly

[8] The email to Goolcharan states that it was sent at the request of Adam Spero and Gregg Lorenzo, while the email to Rothe states that it was sent at the request of Gregg Lorenzo.

A sinking fund has been created, handled by 3rd party (SRFF attorney). Interest payment amount will be held in the sinking fund

This is senior debt. There is no other debt (other than simple debt). These debenture holders have to approve (51%) any other debt.

If there is a liquidation, these debenture holders get paid first.

There are 3 layers of protection:

(I) The Company has over $10 mm in confirmed assets
(II) The Company has purchase orders and LOI's for over $43 mm in orders
(III) Charles Vista has agreed to raise additional monies to repay these Debenture holders (if necessary)

Debenture Holders have the option to convert their debt at $1.00 into common stock. These shares would have been already added to the Registration Statement.

Debenture Holders will receive a 3-year warrant to purchase shares of the company's stock at $2.00 per share. Debenture Holders will receive this warrant regardless if they convert or not.

Please call with any questions-

Truly,

Francis V. Lorenzo
Vice President - Investment Banking
Charles Vista, LLC.
100 William Street
18th Floor, Suite 1820
New York, NY 10038
Direct: 646.422.3113
Toll Free: 800.799.9070
Main: 212.690.6000
Fax: 212.690.6000
…@charlesvista.com

Div. Ex. 34 (emphasis added). While Frank Lorenzo knew the truth about W2E's parlous financial condition, the emails contained extensive false information, including regarding the company's "three layers of protection." Tr. 269, 283-90, 324-25. Frank Lorenzo does not take personal responsibility for having sent false information to potential investors. Rather, he blames both Gregg Lorenzo for having asked him to send the emails, Tr. 261; Div. Ex. 132 at 141, and W2E, for (as Frank Lorenzo contends) having not sufficiently brought the information about the asset write-

off to his attention, Tr. 231, 246-48, 365. Rothe never invested in the debentures,[9] but Goolcharan did, in the amount of $15,000. Tr. 93-94, 177-78, 260; Div. Ex. 54. Lorenzo earned $150 on Goolcharan's investment. Tr. 412.

Frank Lorenzo sent the emails without even thinking about the contents: "I just didn't give it much thought at the time. My boss asked me to send these e-mails out and I sent them out." Tr. 347. "The guy owns the firm. He just asked me to send out an e-mail for him. I am going to tell him no?" Tr. 382. "I didn't really think about it one way or another. Unfortunately, I hit the send button and it's caused me a lot of grief." Tr. 366. The emails were "erased from my memory two seconds after I sent [them]." Id. Frank Lorenzo characterized his actions as a "mistake" numerous times in his testimony. Tr. 260, 264, 269, 294, 298, 365-67, 370-73.

D. Ability to Pay

At the hearing and in his Proposed Findings of Fact and Conclusions of Law, Frank Lorenzo suggested that he is somewhat impecunious. Tr. 297-98, 354, 385, 401; Resp. Br. at 1 n.1, 6-7. However, he has not otherwise affirmatively asserted an inability to pay a civil money penalty. Nor has he introduced evidence such as financial statements to support such an assertion. Accordingly, Frank Lorenzo has not demonstrated an inability to pay any penalty that may be ordered in this proceeding.

III. CONCLUSIONS OF LAW

The OIP charges that Frank Lorenzo willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As discussed below, it is concluded that he willfully violated those provisions.

A. Antifraud Provisions

Frank Lorenzo is charged with willfully violating the antifraud provisions of the Securities and Exchange Acts – Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder – which prohibit essentially the same type of conduct. United States v. Naftalin, 441 U.S. 768, 773 n.4, 778 (1979); SEC v. Pimco Advisors Fund Mgmt. LLC, 341 F. Supp. 2d 454, 469 (S.D.N.Y. 2004).

Section 17(a) of the Securities Act makes it unlawful "in the offer or sale of" securities, by jurisdictional means, to:

> 1) employ any device, scheme, or artifice to defraud;
>
> 2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary to make the statement made not misleading; or

[9] Rothe, however, read Frank Lorenzo's email. Tr. 177-78.

3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Similar proscriptions are contained in Exchange Act Section 10(b) and Rule 10b-5.

Scienter is required to establish violations of Securities Act Section 17(a)(1) and Exchange Act Section 10(b) and Rule 10b-5. Aaron v. SEC, 446 U.S. 680, 690-91, 695-97 (1980); SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." Aaron, 446 U.S. at 686 n.5; Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 & n.12 (1976); SEC v. Steadman, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. See David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997); SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is "conduct which is 'highly unreasonable' and represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., Inc., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Securities Act Section 17(a)(2) or 17(a)(3); a showing of negligence is adequate. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d at 643 & n.5; Steadman v. SEC, 603 F.2d 1126, 1132-34 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Material misrepresentations and omissions violate Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. The standard of materiality is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); SEC v. Steadman, 967 F.2d at 643.

1. Willfulness

In addition to requesting a cease-and-desist order pursuant to Sections 8A of the Securities Act and 21C(a) of the Exchange Act, the Division requests sanctions pursuant to Sections 15(b) and 21B of the Exchange Act. Willful violations by Respondent must be found in order to impose sanctions on them pursuant to those provisions. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d at 1135; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

2. Selective Prosecution

Frank Lorenzo suggests that charging him and not other Charles Vista staffers constitutes selective prosecution. "Selective prosecution," however, is a term of art. "To establish such a claim, a petitioner must demonstrate that he was unfairly singled out for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a

constitutionally protected right." Scott Epstein, Exchange Act Release No. 59328 (Jan. 30, 2009), 95 SEC Docket 13833, 13856; accord Robert Radano, Advisers Act Release No. 2750 (June 30, 2008), 93 SEC Docket 7495, 7510 n.74. No such showing was made here. Rather, the Division's decision to charge Frank Lorenzo and not to charge other individuals was an exercise of prosecutorial discretion. Robert Radano, 93 SEC Docket at 7510 n.74. (citing Dolphin and Bradbury, Inc., Exchange Act Release No. 54143 (July 13, 2006), 88 SEC Docket 1298, 1318, aff'd, 512 F.3d 634 (D.C. Cir. 2008)).

B. Antifraud Violations

The record shows that Frank Lorenzo violated the antifraud provisions by making material misstatements and omissions in the emails. The falsity of the representations in the emails is staggering. The only possible issue is the degree of Frank Lorenzo's culpability. While denying that he intended to defraud, he admits that he was negligent, which as a threshold shows a violation of Securities Act Sections 17(a)(2) and (3). Further, the evidence shows that he was reckless – although he knew that W2E was in terrible financial shape, he sent the emails without thinking. Had he taken a minute to read the text, he would have realized that it was false and misleading and that W2E was not worth anything near what was being represented to potential investors. Also, he cannot escape liability by claiming that Gregg Lorenzo ordered him to send the emails. The fact that Gregg Lorenzo contributed to the misrepresentation does not relieve Frank Lorenzo from responsibility. See James J. Pasztor, 54 S.E.C. 398, 406-07, 411-13 (1999) (supervisor held liable for registered representative's execution of violative directed trades; supervisor had tried to stop the trading but was overruled by broker-dealer's owner who was friendly with the customer); Charles K. Seavey, 56 S.E.C. 357, 364-65, 368 (2003) (associated person found liable where investment adviser required him to sign materially misleading letter), aff'd, 111 F. App'x. 911 (9th Cir. 2004).

In sum, it is concluded that Frank Lorenzo willfully violated the antifraud provisions of the Securities and Exchange Acts by his material misrepresentations and omissions concerning W2E in the emails.

IV. SANCTIONS

The Division requests a cease-and-desist order, a third-tier civil money penalty, and an industry bar.[10] As discussed below, Frank Lorenzo will be ordered to cease and desist from violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, ordered to pay a third-tier civil penalty of $15,000, and barred from the securities industry.[11]

[10] The Division does not seek disgorgement. Div. Br. at 26 n.5.

[11] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which became effective on July 22, 2010, provided collateral bars in each of the several statutes regulating different aspects of the securities industry. Frank Lorenzo's wrongdoing occurred before July 22, 2010. However, the Commission has determined that sanctioning a respondent with a collateral bar for pre-Dodd-Frank wrongdoing is not impermissibly retroactive, but rather provides prospective relief from harm to investors and the markets. John W. Lawton, Advisers

A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman, 603 F.2d at 1140 (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 56 S.E.C. 695, 698 (2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

B. Sanctions

1. Cease and Desist

Securities Act Section 8A and Exchange Act Section 21C(a) authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1185 (2001). Such a showing is "significantly less than that required for an injunction." Id. at 1183-91. In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. See WHX Corp. v. SEC, 362 F.3d 854, 859-61 (D.C. Cir. 2004); KPMG, 54 S.E.C. at 1192.

Act Release No. 3513 (Dec. 13, 2012), 105 SEC Docket 61722, 61737; see also Alfred Clay Ludlum, III, Advisers Act Release No. 3628 (July 11, 2013), 2013 WL 3479060, at *1, 6; Johnny Clifton, Securities Act Release No. 9417 (July 12, 2013), 2013 WL 3487076, at *1, 13; Tzemach David Netzer Korem, Exchange Act Release No. 70044 (July 26, 2013), 2013 WL 3864511, at *1, 7.

Frank Lorenzo's conduct was egregious and repeated – he sent the violative email to two people. The conduct involved at least a reckless degree of scienter. The lack of assurances against future violations and recognition of the wrongful nature of the conduct goes beyond a vigorous defense of the charges. His attempt to displace blame onto both Gregg Lorenzo and W2E is an aggravating factor. His chosen occupation in the financial industry will present opportunities for future violations. The violations were neither recent nor remote in time, having occurred about four years ago. The evidence of record does not quantify the degree of harm to the marketplace in dollars but harm is evident from the dishonest nature of Frank Lorenzo's misconduct. In light of these considerations, a cease-and-desist order is appropriate.

Frank Lorenzo's lack of a disciplinary history does not remove the need for sanctions. Mitchell M. Maynard, Advisers Act Release No. 2875 (May 15, 2009), 95 SEC Docket 16844, 6860 & n.39 ("[T]he absence of disciplinary history is not mitigative as securities professionals should not be rewarded for complying with securities laws.").

2. Civil Money Penalty

Section 21B of the Exchange Act authorizes the Commission to impose civil money penalties for willful violations of the Securities and Exchange Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Section 21B(c) of the Exchange Act; New Allied Dev. Corp., 52 S.E.C. 1119, 1130 n.33 (1996); First Sec. Transfer Sys., Inc., 52 S.E.C. 392, 395-96 (1995); see also Jay Houston Meadows, 52 S.E.C. 778, 787-88 (1996), aff'd, 119 F.3d 1219 (5th Cir. 1997); Consol. Inv. Servs., Inc., 52 S.E.C. 582, 590-91 (1996).

As to Frank Lorenzo, there are no mitigating factors. He violated the antifraud provisions, so his violative actions "involved fraud [and] reckless disregard of a regulatory requirement [and] created a significant risk of substantial losses to other persons" within the meaning of Section 21B of the Exchange Act. Deterrence also requires a substantial penalty against him.

Penalties are in the public interest in this case. Penalties in addition to the other sanctions ordered are necessary for the purpose of deterrence. See Section 21B(c)(5) of the Exchange Act; H.R. Rep. No. 101-616, at 17 (1990), reprinted in 1990 U.S.C.C.A.N. 1379, 1384. The Division requests that Frank Lorenzo be ordered to pay third-tier penalties, without specifying dollar amounts or units of violation. In addition to arguing that there were no violations, Respondent argues that civil penalties are not warranted, much less third-tier penalties. A third-tier penalty, as the Division requests, is appropriate because Frank Lorenzo's violative acts involved fraud and resulted in the risk of substantial losses to other persons. See Section 21B(b)(3) of the Exchange Act. Under that provision, for each violative act or omission during the time at issue the maximum third-tier penalty is $150,000 for a natural person. 17 C.F.R. § 201.1004. The provision, like most civil penalty statutes, leaves the precise unit of violation undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as one course of action, and a third-tier penalty amount of $15,000 will be ordered against Frank Lorenzo. Combined with the other sanctions ordered, a third-tier penalty of $15,000 – less than the maximum and equivalent to the actual loss sustained by investor Goolcharan – is in the public interest.

3. Bar

The Division requests that Frank Lorenzo be barred from the securities industry. Combined with other sanctions ordered, bars are in the public interest and appropriate deterrents. The violations involved scienter. Frank Lorenzo's business provides him with the opportunity to commit violations of the securities laws in the future. The record shows a lack of recognition of the wrongful nature of the violative conduct. His attempts to deflect blame onto others are aggravating factors. In short, it is necessary in the public interest and for the protection of investors that Frank Lorenzo be barred from the industry.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on November 26, 2013, plus Frank Lorenzo's Proposed Findings of Fact and Conclusions of Law, dated November 14, 2013.

VI. ORDER

IT IS ORDERED that, pursuant to Sections 8A of the Securities Act and 21C(a) of the Exchange Act, FRANCIS V. LORENZO CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IT IS FURTHER ORDERED that, pursuant to Section 21B of the Exchange Act, FRANCIS V. LORENZO PAY A CIVIL MONEY PENALTY of $15,000.

IT IS FURTHER ORDERED that, pursuant to Section 15(b) of the Exchange Act, FRANCIS V. LORENZO IS BARRED from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.[12]

Payment of penalties shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange

[12] Thus, he will be barred from acting as a promoter, finder, consultant, or agent; or otherwise engaging in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Exchange Act Section 15(b)(6)(A), (C).

Commission. See 17 C.F.R. § 201.601(a), (c). The payment, and a cover letter identifying the Respondent and Administrative Proceeding No. 3-15211, shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak
Administrative Law Judge