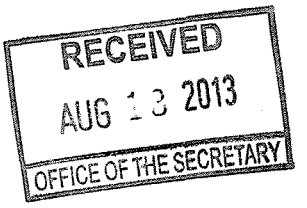
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15211



In the Matter of

GREGG C. LORENZO,
FRANCIS V. LORENZO, and
CHARLES VISTA, LLC,

Respondents.

DIVISION OF ENFORCEMENT'S PREHEARING BRIEF

Jack Kaufman
Alex Janghorbani
Attorneys for the Division of Enforcement
Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281
(212) 336-0106 (Kaufman)
(212) 336-1319 (fax)

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Pursuant to the Court's March 8, 2013 Prehearing Order, the Division of Enforcement of the Securities and Exchange Commission ("Division") respectfully submits this prehearing brief, which summarizes its contentions of fact and law and anticipated trial evidence against respondents Gregg C. Lorenzo, Francis V. Lorenzo, and Charles Vista, LLC (collectively, "Respondents").

PRELIMINARY STATEMENT

This case concerns a series of materially false sales pitches that Gregg Lorenzo and Frank Lorenzo (no relation) made in 2009 and 2010 to customers of Gregg Lorenzo's brokerage firm, Charles Vista, concerning certain 12% debentures (the "Debentures") offered by a start-up company called Waste2Energy Holdings, Inc. ("W2E"). The Debentures were convertible to W2E stock, and the offering limit was $15 million.

The centerpiece of the Division's case against Gregg Lorenzo is a 23-minute recorded telephone conversation between Gregg Lorenzo and investor Bryan Schiff in September 2009, during which Gregg Lorenzo made numerous material false and misleading statements to entice Mr. Schiff to purchase $200,000 in Debentures. For example, Gregg Lorenzo told Mr. Schiff that the Debentures were not "very, very risky," even though -- as he admitted during his investigative testimony -- he knew very well that they were, in fact, "highly risky." In addition, Gregg Lorenzo made material false statements to two other investors, Gary Spiegel and Cary Williams, both of whom also invested in the Debentures. The Debentures, and W2E's stock, ultimately were worthless, and the three investors lost hundreds of thousands of dollars.

Frank Lorenzo, head of investment banking at Charles Vista, is charged with fraud for sending two materially false emails to two potential Debentures investors in October 2009, one of whom subsequently invested. The emails falsely and misleadingly downplayed the riskiness

of the Debentures, claiming that W2E investors would enjoy "three layers of protection." In fact, as Frank Lorenzo knew, the three "layers of protection" described in the emails did not exist. To the contrary, as Frank Lorenzo also knew, the Debentures were, at best, highly risky.

The Commission charges Charles Vista for Gregg and Frank Lorenzo's fraudulent conduct described above, as well as for two additional October 2009 emails to two other prospective investors, identical to the ones Frank Lorenzo sent. Either Gregg Lorenzo or Frank Lorenzo (or both) caused Charles Vista to send the two additional false emails.

For their false and misleading statements, the Commission seeks fraud liability findings against (1) Gregg Lorenzo, Frank Lorenzo, and Charles Vista under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act of 1933 ("Securities Act"); and (2) Charles Vista under Section 15(c)(1) of the Exchange Act and Rule 10b-3 thereunder. The Commission seeks disgorgement of Respondents' ill-gotten gains, civil money penalties, and industry-wide bars. The strongest available relief is particularly appropriate against Gregg Lorenzo, whose customers lost large amounts of money due to his fraudulent conduct, and who is a recidivist securities law violator. Indeed, most recently, the Financial Industry Regulatory Authority ("FINRA") barred Gregg Lorenzo from associating with any member firm for his failure to cooperate with an unrelated FINRA investigation concerning Charles Vista.

CONTENTIONS OF FACT

The following summarizes the facts that the Division intends to prove at trial, which are all indisputable, as they are based either on Respondents' admissions (in their investigative testimony, Answers, telephone recording, or emails); or on W2E filings with the Commission.

I. Gregg Lorenzo False Statements

The following summarizes Gregg Lorenzo's false and misleading statements to W2E investors Bryan Schiff, Cary Williams, and Gary Spiegel to entice them to purchase the W2E Debentures.

A. False Statements to Bryan Schiff

In his September 2009 twenty-three minute recorded telephone call, Gregg Lorenzo repeatedly employed high-pressure sales tactics to convince Mr. Schiff to invest in the Debentures. Along the way, Gregg Lorenzo intentionally made a number of materially false and misleading statements to Mr. Schiff, designed to create: (1) the false impression that the highly speculative Debentures were less risky than they actually were; and (2) false expectations of large future profits through baseless predictions about W2E's future stock price. Detailed below are Gregg Lorenzo's most egregious false and misleading statements to Mr. Schiff.

Gregg Lorenzo falsely told Mr. Schiff that "it's hard to really put [the Debentures] into a very, very risky category despite what those documents say." The "documents" to which Gregg Lorenzo referred were W2E offering documents that Charles Vista sent to prospective W2E investors, which included disclosures that the Debentures were "highly speculative" and "involved a high degree of risk." Thus, by telling Mr. Schiff that the Debentures were not "very, very risky," Gregg Lorenzo was directly contradicting W2E's own written risk warnings. Moreover, in his investigative testimony, Gregg Lorenzo admitted both (1) that the Debentures were, in fact, "highly speculative" and did, in fact, "involve a high degree of risk"; and (2) that he knew they were highly speculative and highly risky when he spoke to Mr. Schiff. Thus, Gregg Lorenzo's statement to Mr. Schiff -- that the Debentures were not "very, very risky" -- was knowingly and materially false.

In addition, Gregg Lorenzo repeatedly and falsely assured Mr. Schiff that W2E would have sufficient cash to repay Debentures holders. For example, Gregg Lorenzo falsely stated that W2E would "have close to $7 million in the bank" (without earning any new revenue) and that, if necessary, Charles Vista would be able to raise any additional funds necessary to repay Debentures holders. Given W2E's poor financial condition, Gregg Lorenzo had no basis for making such statements to Mr. Schiff. W2E's publicly-available information stated that the company had only $28,171 in cash and had been operating at a substantial loss since its inception. Furthermore, the Debentures offering memorandum -- which Gregg Lorenzo admits he reviewed and was familiar with -- stated that W2E had an "aggregate accumulative deficit" of over $7.7 million and monthly operating expenses of $300,000, and that W2E could not begin to repay Debentures holders until it first repaid holders of prior W2E debentures (for which it would have to use the first $4 million raised through the Debentures offering). Finally, Gregg Lorenzo was copied on a September 1, 2009 email from W2E's Chief Executive Officer -- with the subject line "only $90,000 in cash remaining" -- in which the CEO complained about the "never ending loop" caused by W2E's having to constantly issue new debt to repay its old debt and Charles Vista's fees and commissions (which would be at least 18% of the gross proceeds of the Debentures offering). Thus, Gregg Lorenzo knew that W2E did not have anything close to "$7 million in the bank," and he had no basis for assuring Mr. Schiff that it would in the future.

In addition, Gregg Lorenzo falsely told Mr. Schiff that W2E had "a contract that's totaling $100 to $200 million." To the contrary, W2E's CFO Craig Brown is expected to testify that the company's largest (and only significant) contract was with ASCOT Environmental Ltd. ("ASCOT") and was worth less than $10 million. Moreover, by September 2009, when Gregg Lorenzo spoke with Mr. Schiff, W2E already had received all payments due under the ASCOT

contract, and W2E had no significant additional contracts (only potential contracts). Much of this information was available to Gregg Lorenzo in W2E's public filings and offering memorandum, which stated that W2E was "wholly reliant on the net proceeds of the [Debentures] Offering" to fund [its] proposed business" and, furthermore, that it was "dependent on generating substantial revenues from one (1) customer: ASCOT." Moreover, on August 3, 2009, Gregg Lorenzo received an email from Frank Lorenzo describing W2E's projected future revenue stream, which stated that it was based entirely on a number of *potential* future W2E contracts (but no actual contracts).

In addition, Gregg Lorenzo falsely and misleadingly told Mr. Schiff that W2E would "be a NASDAQ trading stock within 12 months" and that its stock "could potentially be $5 to $10 a share within 12 months." To the contrary, Gregg Lorenzo admitted during his investigative testimony that, in fact, at that time, he did not have an opinion regarding whether W2E would ever trade on the NASDAQ and that he did not actually view W2E's potential stock price as a reason to invest in the Debentures. In addition, W2E's offering memorandum stated that because the "sole member of [W2E's] board of directors was a defendant in prior litigation alleging violation of the Federal Securities laws," W2E might not be able to have its stock "listed on "a national exchange and/or NASDAQ."[1] Finally, as explained below, under established Commission precedent, unfounded stock price and listing predictions such as those that Gregg Lorenzo made to Mr. Schiff -- regarding a fledgling and highly speculative start-up company -- are fraudulent as a matter of law. As noted above, Gregg Lorenzo admitted in his investigative testimony that the Debentures were "highly risky" and, thus, he had no basis to predict that they

[1] Also, on September 23, 2009, the very day that Gregg Lorenzo spoke to Mr. Schiff, W2E announced (in a Form 8-K filing) that (1) on August 20, 2009 FINRA had notified W2E that, if it did not file a delinquent Form 10-Q by September 21, it would be delisted from the OTCBB (where it traded at the time).

could profitably be converted to W2E stock.

To further undermine Gregg Lorenzo's credibility, the Division intends to offer a number of materially false statements that Gregg Lorenzo made during his February 10, 2012 investigative testimony. At the commencement of that testimony, Gregg Lorenzo was not aware of Mr. Schiff's telephone recording. Apparently for this reason, he proceeded to make numerous blatant material false statements under oath -- statements plainly contradicted by the Schiff recording. For example, Gregg Lorenzo testified that he never tried to "convince" Mr. Schiff (or anyone else) to invest in the Debentures -- even though the recording is a twenty-three minute high-pressure sales pitch by Gregg Lorenzo to Mr. Schiff. Gregg Lorenzo further falsely testified that he did not discuss W2E's future stock price or potential NASDAQ listing with Mr. Schiff (or anyone else) -- even though he plainly can be heard doing so on the recording. After Gregg Lorenzo made these and other false statements under oath, the Division played for him the telephone recording and, shortly thereafter, his counsel requested an adjournment of the testimony. When the testimony resumed a week later, Gregg Lorenzo asserted his Fifth Amendment privilege in response to all questions concerning the Schiff recording (and all other Division questions), and he likewise asserted his Fifth Amendment privilege in his Answer to the Order instituting this proceeding ("OIP"). Thus, Gregg Lorenzo's credibility, particularly regarding the matters at issue in this case, has been fatally compromised by his false statements under oath.

After hearing Gregg Lorenzo's fraudulent sales pitch, Mr. Schiff invested a total of $200,000 in the Debentures. Although he received some interest payments, he did not receive all interest due, and he has never received any of his principal investment.

In August 2011, certain W2E creditors filed an involuntary Chapter 11 bankruptcy

petition against W2E, which was subsequently converted to a voluntary petition. By Order dated June 6, 2012, the Court-appointed bankruptcy trustee sold W2E's assets to a company called Waste To Energy Canada, Inc. ("WTEC") for $300,000 (in addition to a prior $500,000 WTEC loan to W2E), and W2E has not had any business operations since that time. See In Re Waste2Energy Holdings, Inc., et al., No. 11-12504 (KJC) (Bankr. D. Del.) (Docket #181, 275).

B. False Statements to Cary Williams

In August 2009, Dr. Cary Williams invested a total of $200,000 in the Debentures. Dr. Williams is expected to testify that Gregg Lorenzo personally pitched the Debentures to him and assured Dr. Williams that he would make back several times his money. For the same reasons set forth above, Gregg Lorenzo had no basis to make such a prediction to Dr. Williams, thus rendering it fraudulent. Dr. Williams has received back none of his principal investment.

C. False Statements to Gary Spiegel

In April and May 2010, Gary Spiegel invested a total of $125,000 in the Debentures after speaking with Gregg Lorenzo. Mr. Spiegel is expected to testify that, prior to making his investment, Gregg Lorenzo told him that his principal investment, plus a year's interest, would be guaranteed, and that W2E would be doing very well in a year, at which point he could convert the Debentures to W2E stock. For the same reasons described above, Gregg Lorenzo's statements to Mr. Spiegel were knowingly or recklessly false and misleading. Mr. Spiegel has received back less than half of the interest due on his Debentures and none of his principal investment.

II. Frank Lorenzo False Statements

According to Frank Lorenzo's investigative testimony, he was Charles Vista's "Director of investment banking" from February 2009 through February 2010. He further testified that his

job included performing due diligence on prospective investment banking clients (including reviewing the issuers' financial statements) and, with regard to such clients, preparing "offering documents" and ensuring that all necessary financial disclosures had been made. Thus, by his own admission, Frank Lorenzo's job required him to understand the financial position of Charles Vista investment banking clients such as W2E.

Nonetheless, on October 14, 2009, Frank Lorenzo sent two prospective W2E investors identical emails pitching the Debentures and falsely assuring them that they would enjoy "three layers of protection." The emails described those three "layers" as follows: (1) W2E "has over $10 mm in confirmed assets"; (2) W2E "has purchase orders and [letters of intent] for over $43 mm in orders"; and (3) "Charles Vista has agreed to raise additional monies to repay these Debenture holders (if necessary)." In fact, no such "layers of protection" existed. When Frank Lorenzo sent those emails: (1) W2E's publicly-reported assets were less than $700,000; (2) W2E had a single, non-binding $43 mm letter of intent and, at most, negligible purchase orders; and (3) W2E was mired in debt, and no basis existed for Frank Lorenzo to suggest that Charles Vista could "raise additional monies" to repay Debentures holders.

The indisputable evidence will further demonstrate that Frank Lorenzo either knew or recklessly disregarded that his October 14 emails were false. Frank Lorenzo admitted during investigative testimony that the emails were false and misleading and that he could not deny that he knew of their falsity when he sent them. Moreover, the circumstantial evidence otherwise demonstrates that Frank Lorenzo must have known that the emails were false or, at the very least, that he recklessly disregarded their falsity.

Frank Lorenzo's statement that W2E "has over $10 [million] in confirmed assets" apparently was based on a June 2009 W2E Form 8-K filing with the Commission. That filing

contained an unaudited financial statement claiming that, as of December 31, 2008, W2E had total assets of approximately $14 million, which included "intangibles" of approximately $11 million. However, on October 1, 2009, two weeks prior to Frank Lorenzo's two false emails, W2E issued both an amended Form 8-K and its Form 10-Q (for the period ended June 30, 2009), both of which stated that W2E's assets had been written down to less than $700,000, and both of which explained at length that W2E had written down to zero the value of its previously-reported "intangibles." Frank Lorenzo testified that, as a general matter, he reviewed W2E's SEC filings "within 24 to 48 hours" of their filing. Moreover, on October 1 and 2, Frank Lorenzo sent emails to all of Charles Vista's brokers notifying them of the October 1 W2E filings and including electronic links to the filings. In addition, on October 5, Frank Lorenzo received an email from W2E's CFO Brown again explaining in detail the reasons for the "write off of all of our intangible assets . . . of about $11 million." Thus, well before October 14, 2009, Frank Lorenzo either knew or recklessly disregarded that W2E had no $10 million asset (or anything close to that amount) and certainly did not have any such "confirmed" asset.

Frank Lorenzo likewise admitted during testimony the inaccuracy of his statement that W2E had "over $43 million in orders." Furthermore, as head of investment banking, Frank Lorenzo knew very well that the statement was misleading. Indeed, on August 3, 2009, Frank Lorenzo sent Gregg Lorenzo an email attaching a list of W2E "Projections" for 2009, which listed anticipated orders and contracts for the coming year. As Frank Lorenzo admitted during testimony, and as he knew when he sent his false October 14 emails, that list clearly indicated that W2E had only letters of intent or other indications of potential contracts or orders but no (or only insubstantial) actual "orders."

Finally, Frank Lorenzo also admitted during testimony that the last of the three "layers of

protection" -- that Charles Vista could raise additional money to repay Debentures holders -- could be misleading under the circumstances. Indeed, he knew it was. As head of investment banking, Frank Lorenzo was well aware of W2E's financial difficulties in October 2009, including the fact that the Debentures amounted to an extremely risky attempt to raise desperately-needed capital (facts that are spelled out in W2E's offering documents). Frank Lorenzo also was copied on the September 1, 2009 email from W2E's CEO, which complained of the "never ending loop" of debt that W2E faced at the time. Thus, as Frank Lorenzo knew, no basis existed to tell (or imply to) potential investors that Charles Vista could raise additional funds if necessary to repay Debentures investors.

Indeed, when questioned about these emails during testimony, Frank Lorenzo admitted that he knew them to be false at the time he sent them:

> Q. My question is: Did you know that those statements were inaccurate and misleading?
> A. Yes.
> Q. You knew at the time?
> A. At the time? I can't sit here and say that I didn't know.

When further asked during testimony why he sent his two false emails on October 14, 2009, Frank Lorenzo claimed that he was "mentally not there anymore" but also admitted it was "wrong" to do so, stating:

> I don't have any answer. Maybe my job was on the line. I was probably asked to do it and I did it. And it was wrong. If I had an answer, I would tell you. I don't have an answer.

One of the recipients of Frank Lorenzo's October 14 emails was a Charles Vista client named Vishal Goolcharan. According to Charles Vista records, in December 2009, Mr. Goolcharan and a Roslyn Parmasad of Trinidad and Tobego jointly invested $15,000 in the Debentures.

III. Additional Charles Vista False Statements

In addition to the Gregg and Frank Lorenzo false statements described above, Charles Vista sent two additional false emails on October 2, 2009 to two other prospective investors. On that date, Frank Lorenzo's assistant, Sera-Jane Holmes, sent the emails, which were identical to the ones that Frank Lorenzo later sent on October 14. The October 2 emails likewise contained Frank Lorenzo's signature block and stated that they were "[a]t the request of Gregg Lorenzo." Ms. Holmes is expected to testify that Gregg Lorenzo and/or Frank Lorenzo directed her to send the October 2, 2009 emails. For the same reasons set forth above, the October 2 emails were false and misleading, and both Gregg Lorenzo and Frank Lorenzo knew or recklessly disregarded that they were false. Thus, Charles Vista is liable for their issuance.

CONTENTIONS OF LAW

The Division anticipates making the following contentions of law at trial, based upon the above-described facts.

I. Respondents Committed Securities Fraud

By making the false statements described above, Frank Lorenzo, Gregg Lorenzo, and Charles Vista violated Securities Act Section 17(a) and Exchange Act Section 10(b), and Rule 10b-5 thereunder; and Charles Vista additionally violated Exchange Act Section 15(c)(1) and Rule 10b-3 thereunder.

A. Elements of the Division's Fraud Claims

To establish Respondents' liability under Section 10(b) of the Exchange Act and Rule 10b-5, the Division must prove that Respondents made a material misrepresentation or omission as to which they had a duty to speak, or used a fraudulent device, with scienter, in connection with the purchase or sale of securities or a security. SEC v. Monarch Funding Corp., 192 F.3d

295, 308 (2d Cir. 1999); SEC v. First Jersey Sec.'s Litig., 101 F.3d 1450, 1467 (2d Cir. 1996). Essentially the same elements are required under Section 17(a) of the Securities Act, except that the charged activity must be in the "offer or sale" of a security. Id.[2] The elements of the Division's claim against Charles Vista under Exchange Act Section 15(c)(1)(A) and Rule 10b-3 -- prohibiting a broker-dealer from employing any manipulative, deceptive or other fraudulent device to induce the purchase or sale of a security -- generally are the same. SEC v. Wexler, Fed. Sec. L. Rep. (CCH) ¶ 97,758, 1993 U.S. Dist. LEXIS 12656, at *16 n.6 (S.D.N.Y. Sept. 13, 1993); see also In re Fundamental Portfolio Advisors, Inc., 80 S.E.C. Docket 1851, 2003 WL 21658248, at *8 (July 15, 2003).

For Rule 10b-5 purposes, the "maker" of a false statement is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." Janus Capital Group, Inc. v. First Derivative Traders, 131 S.Ct. 2296, 2302, 2011 WL 2297762, *5 (2011).

A false statement or omission is "material" if a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision. Basic v. Levinson, 485 U.S. 224, 231 (1988). However, the information need not be so important that it would necessarily cause a reasonable investor to change his or her investment decision. SEC v. Meltzer, 440 F.Supp.2d 179, 190 (S.D.N.Y. 2006) (citing Folger Adam Co. v. PMI Industries, Inc., 938 F.2d 1529, 1533 (2d Cir. 1991)). Furthermore, information concerning a company's financial condition is generally considered material. See SEC v. Murphy, 626 F.2d 633, 653 (9th Cir.1980) ("the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge").

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[2] Moreover, the Division need not establish scienter to prove a violation of Section 17(a)(2)-(3). Id.

To establish scienter, the Division need prove only that Respondents either knew of, or recklessly disregarded, the material omission or false statement at issue. A Respondent's "knowledge" of the material facts is sufficient for this purpose. See First Jersey Sec.'s Litig., 101 F.3d at 1467 ("Scienter, as used in connection with the securities fraud statutes, means intent to deceive, manipulate, or defraud, or at least knowing misconduct."); SEC v. U.S. Environmental, Inc., 155 F.3d 107, 111 (2d Cir. 1998) ("It is well-settled that knowledge of the proscribed activity is sufficient scienter under § 10(b)").

In addition to "knowing" conduct, a Respondent's "reckless disregard" for the consequences of his or her actions is also sufficient proof of fraud scienter under Exchange Act Section 10(b) and Securities Act Section 17(a). Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 46 (2d Cir. 1978).

> Reckless conduct is, at the least, conduct which is "highly unreasonable" and which 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."

Id., at 47. "An egregious refusal to see the obvious, or to investigate the doubtful, may in some cases give rise to an inference of . . . recklessness." Chill v. General Elec. Co., 101 F.3d 263, 269 (2d Cir. 1996). Accordingly, a Respondent cannot plead ignorance of the facts where there are "warning signals" or other information that should put him or her on notice of either misrepresented or undisclosed material facts. See Chris-Craft Indus., Inc. v. Piper Aircraft Corp., 480 F.2d 341, 398 (2d Cir. 1973); Novak v. Kasaks, 216 F.3d 300, 308 (2d Cir. 2000) (plaintiff may establish scienter by showing defendant's "knowledge of facts or access to information contradicting [his or her] public statements"). Thus, "[r]epresenting information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy as to belie any genuine belief in its truth, are all circumstances sufficient to

support a conclusion of scienter." SEC v. Universal Express, Inc., 475 F. Supp. 2d 412, 424 (S.D.N.Y. 2007) (Lynch, J.).

For purposes of the anti-fraud provisions of the federal securities laws, a corporate employee's fraudulent activities in the scope of his employment generally are imputed to the corporation. See, e.g., Suez Equity Investors, L.P. v. Toronto-Dominion Bank, 250 F.3d 87, 100–01, 105 (2d Cir. 2001); SEC v. Mgmt. Dynamics, Inc., 515 F.2d 801, 812–13 (2d Cir. 1975); In re Vivendi Universal, S.A. Sec. Litig., 765 F. Supp. 2d 512, 543 (S.D.N.Y. 2011); SEC v. Haligiannis, 470 F. Supp. 2d 373, 382 (S.D.N.Y. 2007); In re Parmalat Sec. Litig., 474 F. Supp. 2d 547, 550 (S.D.N.Y. 2007).

Finally, the Section 10(b) "in connection with" requirement is given a "broad interpretation," Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006), requiring only that the false statement or omissions at issue "somehow touches upon or has some nexus with any securities transaction." SEC v. Stanard, 06 civ. 7736 (GEL), 2009 WL 196023, at *27 (S.D.N.Y. Jan. 27, 2009) (quotation omitted).

Significantly, regarding Gregg Lorenzo's baseless predictions concerning W2E's future stock price and NASDAQ listing, such statements are inherently fraudulent, particularly where they concern a start-up company offering speculative securities such as the W2E Debentures. See, e.g., R.A. Holman & Co., Inc. v. SEC, 366 F.2d 456, 458 (2d Cir. 1966) (short-term predictions about substantial stock price increases are material misrepresentations absent a reasonable basis in fact); SEC v. Hasho, 784 F. Supp. 1059, 1109 (S.D.N.Y. 1992) ("Guarantees and predictions of substantial price rises with respect to securities are actionable absent a reasonable basis for the prediction," and no reasonable basis existed where defendants made such predictions regarding securities of "unprofitable start-up corporations, of which defendants did

no personal research"); In the Matter of Maria T. Giesige, 94 S.E.C. Docket 1019, 2008 WL 4489677, *21 (2008) (in holding respondent broker liable for securities fraud, in part, for making unfounded stock price predictions on a speculative company, ALJ Murray reasoned, "In cases too numerous to cite, the Commission has consistently held that it is inherently fraudulent to predict specific and substantial increases in the price of a speculative security"); In the Matter of Joseph J. Barbato, et al., 63 SEC Docket 509, 1996 WL 664616, at *8 (1996) (in holding boiler-room broker liable for securities fraud, the ALJ's initial decision reasoned, "[t]he Commission has repeatedly held that 'it is inherently fraudulent to predict specific and substantial increases in the price of a speculative security'"; and "[t]he Commission has stated, moreover, that such 'predictions of substantial price increases within relatively short periods of time with respect to a promotional and speculative security of an unseasoned company are a 'hallmark' of fraud and cannot be justified.'").

B. Respondents Committed Securities Fraud

As detailed above, Gregg Lorenzo, Charles Vista's owner and a registered representative of the firm, and Frank Lorenzo, its head of investment banking, knowingly or recklessly made numerous material false and misleading statements concerning the Debentures to a total of five prospective investors, four of whom invested in the Debentures. Thus, Gregg Lorenzo and Frank Lorenzo -- and through them, Charles Vista -- are liable for fraud under Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 thereunder; and Charles Vista is additionally liable under Exchange Act Section 15(c)(1)(A) and Rule 10b-3 thereunder. Charles Vista additionally is liable under those provisions for its false October 2, 1009 emails to two additional prospective W2E investors, as well as under Exchange Act Section 15(c)(1)(A).

II. Relief

The Division intends to seek at trial an order requiring Respondents to cease-and-desist future violations of the federal securities laws; to disgorge their ill-gotten gains (plus prejudgment interest); and to pay civil money penalties. In addition, the Division seeks Orders barring Gregg Lorenzo and Frank Lorenzo from practicing in the securities industry.

A. Cease and Desist Orders

Section 21C of the Exchange Act authorizes the Commission to order any person to cease and desist from violating, or causing any future violation of, any securities law or rule that the person has been found to have violated. In the Matter of Rita J. McConville, Admin. Proc. File No-3-11330, 2005 WL 1560276 at *15 (June 30, 2005). In considering requests for such orders, the Commission considers the following factors: "the risk of future violations, . . . the seriousness of the violation, the isolated or recurrent nature of the violation, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, recognition of the wrongful nature of the conduct, opportunity to commit future violations, and remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding." Id. While the Commission will only impose a cease-and-desist order where it determines that there is some risk of future violation, the risk of future violations required to support a cease-and-desist order "is significantly less than that required for an injunction." Id. at *15 n.66.

A cease and desist Order is appropriate here because Respondents' violations were egregious, recurrent, and extremely harmful to the investors at issue. Respondents made numerous material false statements that went to the heart of the W2E Debentures they were

touting. Perhaps most egregiously, both Gregg Lorenzo and Frank Lorenzo intentionally created the false impression for investors that the W2E Debentures were a safe, protected, investment, when in fact, as they both knew, they were highly risky and speculative.

B. Disgorgement

The Court enjoys broad equitable power to order the defendants to disgorge the profits from their illegal activities. First Jersey Securities Litig., 101 F.3d at 1474. "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." Id. The primary purpose of disgorgement is to deprive violators of their ill-gotten gains, thereby maintaining the deterrent effect of the federal securities laws. Id. The amount of disgorgement ordered "need only be a reasonable approximation of profits causally connected to the violation," and "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created the uncertainty." Id. at 1475 (citations omitted).

The Court should require Charles Vista and Gregg Lorenzo (the firm's owner) to disgorge jointly and severally all fees and commissions that Charles Vista received as a result of the investments by Messrs. Schiff, Spiegel, Williams, Goolcharan, and Duane Meyer.[3] According to the Debentures offering documents, Charles Vista was to receive, among other things: (1) a 10% "commission" on the gross proceeds of all Debentures sales; (2) a 3% "expense allowance" on the same proceeds; and (3) and an "investment banking fee" equal to $125,000 for each $2,500,000 of Debentures sold, up to a total of $750,000. The W2E investors at issue paid a total of $715,000 for the Debentures. Thus, Charles Vista's related fees and expenses were a

[3] Duane Meyer invested a total of $175,000 in the Debentures after receiving one of the false October 2, 2009 emails.

$71,500 commission, a $21,450 "expense allowance," and a $35,750 consulting fee (the pro-rata portion of the $125,000 "investment banking fee" attributable to the $715,000 in investments at issue), and Gregg Lorenzo and Charles Vista should disgorge $128,700, plus prejudgment interest.

As with disgorgement, an award of prejudgment interest (and the rate used) is within the discretion of the Court and is appropriate here. See First Jersey Securities Litig., 101 F.3d at 1476. In deciding whether to award prejudgment interest, the Court should consider the need to fully compensate the wronged investors, the remedial purpose of the statute involved, and other general principles as are deemed relevant by the Court. Id. "In an enforcement action brought by a regulatory agency, the remedial purpose of the statute takes on a special importance." Id. The Division requests the Court impose the IRS underpayment rate, consistent both with what the Commission applies when it orders disgorgement and prior precedent. See id.

C. Civil Money Penalties

Section 8A(g) of the Securities Act [15 U.S.C. § 77hA(g)] and Section 21B(a) of the Exchange Act [15 U.S.C. § 78uB(a)] permit the Court to impose civil monetary penalties that fall into one of three tiers, which increase with the seriousness of the violation. Under the third and highest tier, the Court may award maximum civil penalties of (i) $150,000 for each illegal "act or omission" by an individual respondent; and (ii) $725,000 for each illegal act or omission by an entity respondent, see id.; 17 C.F.R. §§ 201.1003 & 1004, if the Court determines that the act or omission involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and "resulted in . . . substantial losses or created a significant risk of substantial losses to other persons" or resulted in "substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. §§ 77hA(g)(2)(C), 78B(a)(3). "Civil penalties are

designed to punish the violator and deter future violations of the securities laws." SEC v. Opulentica, LLC, 479 F. Supp.2d 319, 331 (S.D.N.Y. 2007). "Disgorgement alone is an insufficient remedy, since there is little deterrent in a rule that allows a violator to keep the profits if [he] is not detected, and requires only a return of ill-gotten gains if [he] is caught." Id. at 331-32 (citation omitted).

Respondents' egregious and repeated frauds, and the consequent extreme harm to their investment advisor clients, warrant the imposition of the maximum-available civil money penalties against them.

D. Industry Bar

Exchange Act Section 15(b)(6)(A), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, authorizes bars from association with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock." 15 U.S.C. § 78o(b)(6)(A). To determine whether such a sanction is in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979).

As explained above, in this case, Gregg Lorenzo's and Frank Lorenzo's conduct was highly egregious and repetitive, and they had full knowledge of their illegal actions. Thus, an industry bar is an appropriate sanction in this case. Given the repetitive and particularly

egregious nature of Gregg Lorenzo's and Frank Lorenzo's fraudulent actions, the Court should protect potential future investors by barring them from participating in the securities industry in the future.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court find Respondents liable for violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Charles Vista additionally liable for violating Section 15(c)(1) of the Exchange Act and Rule 10b-3 thereunder, and grant the relief requested above.

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Jack Kaufman
Alex Janghorbani
Attorneys for the Division of Enforcement
Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281
(212) 336-0106 (Kaufman)
(212) 336-1319 (fax)