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 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Pursuant to Rule 340 of the Securities and Exchange Commission's Rules of Practice, and the Court's September 19, 2013 directive at the close of the hearing in this matter, the Division of Enforcement respectfully submits its Proposed Findings of Fact and Conclusions of Law in support of its claims against respondent Francis V. Lorenzo.

PROPOSED FINDINGS OF FACT

I. Background

1. Lorenzo—who has a Series 7 license—is an experienced investment banker, having worked in the financial services industry since 1986. (Tr. at 184:8-190:12; Div. Ex. 25.)[1] During his career, Lorenzo advised companies on how to raise capital through the offer of securities to the public and in private placement transactions. (Tr. at 184:8-190:12.)

2. From February 2009 through February 2010, Lorenzo was the Director of Investment Banking and a registered representative at Charles Vista, LLC, a registered broker-dealer. (Tr. at 181:20-25, 184:8-12, 291:17-23; Div. Ex. 25.) As Director of Investment Banking, Lorenzo helped Charles Vista's clients raise money by offering securities. (Tr. at 182:7-15.) In that role, it was his job to understand his clients' businesses and finances. Specifically, Lorenzo undertook due diligence on the bank's clients, including reviewing their financial statements, assets and liabilities, and SEC filings. (Tr. at 182:16-183:17.) Lorenzo also assisted clients in preparing offering documents and ensured that his clients had made all material disclosures to prospective investors. (Tr. at 183:21-184:7.)

3. Charles Vista was owned by Gregg Lorenzo, no relation to Frank Lorenzo. (Div. Ex. 132 at 12:21-22, 13:12-16.) Charles Vista was a boiler room operation, a fact Lorenzo well

[1] All references to (1) "Tr." are to the transcript of the September 18-19, 2013 hearing; and (2) "Div. Ex." are to the Division's admitted exhibits.

knew. (Tr. at 383:7-13, 404:12-18.) He understood—as he testified—that Charles Vista's registered representatives engaged in high pressure sales tactics and that its fees were "exorbitant." (Tr. at 295:13-16, 323:23-324:8, 324:14-16.)

4. Indeed, Lorenzo testified that, in summer 2009, his assistant Sera Holmes told him that Charles Vista's registered representatives were "not being a hundred percent accurate in their presentations" to brokerage clients and that they seemed to be "stretching the truth." (Tr. at 323:14-324:8.) However, Lorenzo did not ask Ms. Holmes for any specifics about the registered representatives' inaccurate statements to brokerage clients. (Tr. 324:9-10, 324:24-325:14.) Rather, Lorenzo testified, he merely "shut [his] door most of the time." (Tr. at 383:18-19.)

II. Waste2 Energy Holdings, Inc. Becomes A Charles Vista Client

5. Waste2Energy Holdings, Inc. ("W2E") was an alternative energy company. (Tr. at 190:13-18.) Its business was to develop technology to convert solid waste into "clean, renewable energy." (Div. Ex. 3 at 18.)

6. In May 2009, W2E became a public company through a reverse merger with a public shell company called Maven Media Holdings, Inc. (Tr. at 42:5-8, 54:24-55:8; Div. Ex. 15 at 1 of 175, 3 of 175 (describing reverse merger).)

7. In spring 2009, W2E became an investment banking client of Charles Vista's. (Tr. at 191:6-13.) Charles Vista's job was to help W2E market and sell a variety of securities, including equity and debt. (Tr. at 77:24-78:3, 191:14-192:4, 194:16-23.)

8. During Lorenzo's tenure, W2E was Charles Vista's largest client. (Tr. at 195:3-5.) Indeed, W2E was Lorenzo's sole proprietary investment banking client, for which he worked virtually exclusively while at Charles Vista. (Tr. at 196:21-197:9.)

9. It was Lorenzo's job to perform due diligence on W2E, including to review the

company's SEC filings within 48 hours of their issuance. (Tr. at 197:10-198:11.) In fact, Lorenzo understood that, as Charles Vista's head of investment banking, he was obligated to read W2E's public filings, including its Forms 10-Q and 8-K. (Tr. at 231:16-232:9, 241:14-18.)

10. Lorenzo was one of two "point persons" at Charles Vista responsible for communications with W2E concerning proposed financings. (Tr. at 66:9-21; see also Tr. at 76:16-77: 4 (noting that Lorenzo was "typically" copied on all emails "involving [W2E's] financial questions or issues").)

11. While at Charles Vista, Lorenzo understood that W2E was an unprofitable start-up company and that, in his words, its "financial well-being was horrible." (Tr. at 198:12-199:6, see also Tr. at 41:12-15 (CFO Craig Brown confirming that W2E's financial condition was "very, very poor").) Indeed, Lorenzo knew that W2E's technology "didn't really work"; while it could incinerate waste, it could not create energy. (Tr. at 199:7-20.)

12. W2E had only one significant contract—with a company named Ascot Environmental Ltd.—which generated "90-plus" percent of W2E's revenue. (Tr. at 43:19-44:18; Div. Ex. 55 (contract with Ascot).) By September 2009, no additional monies were due W2E under the Ascot agreement. (Tr. at 49:18-50:22; Div. Ex. 46 at 13 of 36.) By that time, W2E had outstanding receivables of less than $500,000 and no other contracts in progress. (Tr. at 51:8-52: 12.) W2E therefore relied on debt financings to continue its operations. (Tr. at 77:18-23, 78:21-79:5, 80:2-9; Div. Ex. 7 (email from Peter Bohan noting that W2E only had $90,000 in cash left as of September 1, 2009).)

III. W2E Files A Form 8-K With Unaudited Financial Statements For The Year Ending December 31, 2008

13. On June 3, 2009, W2E filed a Form 8-K—containing unaudited financial statements—with the Commission. (Div. Ex. 15.) Lorenzo first saw the unaudited 8-K shortly

after it was issued in early June 2009. (Tr. at 201:9-13.)

14. As Lorenzo knew in June 2009, W2E's Form 8-K financial statements were unaudited, meaning that no qualified auditor had made any representation about their accuracy. (Tr. at 202:2-22). At the time, Lorenzo thought it was significant that W2E's financial statement was unaudited. (Tr. at 202:23-203:13.) This was because he knew that, absent an audit, W2E would have difficulty selling its securities. Lorenzo testified that W2E needed an audit to give comfort to investors that its financial statements were accurate and that without an audit, "there is way too much risk for investors." (Tr. at 202:23-203:13.)

15. As Lorenzo also knew, W2E's June 3 Form 8-K reported that the company had total assets of $13,987,764 as of December 31, 2008; and that $10,038,558 of those assets were "intangibles" consisting of purported intellectual property. (Tr. at 203:21-204:17; Div. Ex. 15 at 63 of 175.)

16. Since at least April 2009, Lorenzo had been asking W2E about the origin of its purported "intangible" assets. (Tr. at 331:8-20; Div. Ex. 27.) For example, on April 29, 2009, Lorenzo emailed W2E executives about the "Approximately $10mm" of "intangibles" and asked "[c]an someone tell me what this is?" (Div. Ex. 27 at 2.)

17. Furthermore, from the very beginning of Charles Vista's relationship with W2E, Lorenzo doubted the accuracy of W2E's unaudited balance sheet. In June 2009, he was concerned specifically that W2E's purported intangible assets were not actually worth $10 million. (Tr. at 204:18-21.) Indeed, he believed that the intangibles were a "dead asset," that W2E would not be able to sell them for anywhere near $10 million, and that it would be lucky to receive even $1 million for them. (Tr. at 205:10-207:24.) Moreover, Lorenzo did not believe that the intangible assets offered a significant source of collateral against W2E's defaulting on its

debt. (Tr. at 207:17-20.)

IV. W2E Undergoes An Audit

18. During the summer of 2009, W2E was being audited by its accounting firm, Marcum Kliegman. (Tr. at 202:8-14, 207:25-208:6, 210:13-16; Div. Ex. 132 at 62:21-22.) By at least August 2009, Lorenzo knew that the audit was ongoing and that, when completed, W2E planned to file audited financial statements in a Form 10-Q with the SEC. (Tr. at 207:25-208:19.)

19. Lorenzo also knew by mid-August 2009 that W2E was delinquent in filing its audited financial statements. (Tr. at 210:17-19.) On August 19, he received an email from W2E's Chief Financial Officer, Craig Brown, that the company was "continuing to work on 3/31 numbers." Brown's email also forwarded another email from one of W2E's attorneys noting that the company was not "current in its filings." (Div. Ex. 30 at 1-2.) Lorenzo was one of two Charles Vista executives primarily responsible for interacting with W2E, and Brown sent him the emails so that Charles Vista would "be current in terms of where [W2E] stood" in completing its audit. (Tr. at 65:25-66:2, 66:7-11.)

20. On September 22, 2009, W2E filed a Form 10-Q with the SEC, announcing that the Financial Industry Regulatory Authority:

> [N]otified Waste2Energy Holdings, Inc. . . . on August 20, 2009, that it is delinquent in filing its 10-Q for the period ending June 30, 2009 and, as a result, it is not current in its reporting obligations

(Div. Ex. 66 at 2.) Lorenzo read the Form 10-Q the day it was issued and understood from it that W2E was delinquent in filing its audited numbers. (Tr. at 332:20-22, 333:24-334:4.)

V. W2E Prepares To Issue 12% Convertible Debentures

21. Also during the summer of 2009—at the same time that it was finalizing its audit—W2E was preparing a private placement memorandum to offer up to $15,000,000 in 12%

convertible debentures ("PPM"). (Tr. at 211:5-212:11; Div. Ex. 3.)

22. Charles Vista was the exclusive placement agent for the debenture offering, for which it was paid nearly 20% of all of the offering proceeds. (Tr. at 212:12-14, Div. Ex. 3 at iii.). Lorenzo understood this amount to be "exorbitant." (Tr. at 294:22-295:16; Div. Ex. 3 at iii.) Gregg Lorenzo had promised Lorenzo that he would receive between 7 and 9 percent of any money he was able to raise. (Tr. at 296:3-10.) Lorenzo testified that he received a total of 1 percent of the money raised. (Tr. at 295:17-296:2.)

23. In August and September 2009, Lorenzo helped W2E prepare its PPM, proposing edits to W2E and its attorneys. (Tr. at 212:18-24.) On at least two occasions during preparation of the PPM, Lorenzo asked W2E to disclose its intangible assets in the PPM because, according to Lorenzo, "it was a material number." (Tr. at 216:2-7, 219:9-18.) Thus, on August 26, 2009, Lorenzo emailed Craig Brown and others his edits and comments regarding the draft PPM, including that, "[w]e want to mention that the company has IP and Intangibles valued at $10,038,558." (Div. Ex. 17 at 3 (emphasis in original).) Lorenzo based that number on the unaudited intangible assets reported in W2E's June 3 Form 8-K. (Tr. at 215:14-16.) W2E did not respond to Lorenzo's August 26 request to mention the intangible assets in the PPM. (Tr. at 218:21-19:4.)

24. A week later, on September 1, Lorenzo emailed Craig Brown (among others) with additional edits to the draft PPM. (Tr. at 220:6-18; Div. Ex. 18.) He again asked W2E to include a reference to the company's intangible assets. (Tr. at 220:19-221:4.) However, this time he left the value of those assets blank, writing:

> IP (Intangibles) as an asset valued at $ on the last audit (date) (page).

(Div. Ex. 18.) Lorenzo left the IP value blank because, as he testified, following the company's

failure to respond to his August 26 email, he no longer had confidence that W2E was valuing the asset at $10 million. (Tr. at 221:5-12.) W2E also did not respond to Lorenzo's September 1 email, and Lorenzo admits that he never spoke with anyone at the company about the asset's value. (Tr. at 221:13-25.)

25. W2E did not disclose a dollar value for its IP assets in its final PPM, dated September 9, 2009. (Tr. at 222:7-223:20; see also Div. Ex. 3 at 31 (discussing W2E's intellectual property without mentioning any dollar value).) Lorenzo received the final PPM and read it, including the section discussing the company's intellectual property (Tr. at 222:20-223:16). He thus understood that, contrary to his earlier requests, W2E had not included a dollar value for its intangible assets in the PPM. This omission was a further indication to Lorenzo regarding the uncertainty of the dollar value of W2E's purported intellectual property asset.

26. In addition, in mid-September 2009, Craig Brown told Lorenzo on "at least" one occasion that the company "had a pretty significant" issue with its audit, having "to do with the impairment of [its intangible] assets," and that a write-off of those assets "was the key to finalizing the audit." (Tr. at 115:24-116:17, 120:14-21.) Thus, at least by September 2009, Lorenzo knew that W2E was strongly considering writing off its reported $10 million asset.

VI. W2E Writes Down Its Intangible Assets To Zero

27. On October 1, 2009, W2E issued a Form 10-Q and a Form 8-K/A, the latter amending the June 3 Form 8-K. (Div. Exs. 16, 22.) Those filings contained audited financial statements—including an audited balance sheet as of March 31, 2009—and announced a complete write-off of W2E's $10 million intellectual property asset.[2] (Div. Ex. 16 at 69 of 137;

[2] W2E also wrote off just under $500,000 in good will. (Div. Ex. 16 at 46 of 137; Div. Ex. 22 at 4 of 45.)

Div. Ex. 22 at 4 of 45; see also Tr. at 60:11-21, 69:22-70:6 (Brown testifying about write off).) In its Form 8-K/A, W2E described the write-off, noting that the company's IP platform needed to be entirely redesigned:

> [M]anagement made a determination that the value of the assets acquired were of no value and the Company's IP platform would be built on a new set of plans, design specifications and technology that was developed starting in January through the expected conclusion of the project in late 2009. As a result, an impairment charge in the amount of $10,538,029 was recorded to write-off the value of the technology.

(Dix. Ex. 16 at 46 of 137 (emphasis added).) Both filings also reported that, following the write-off, W2E's total audited assets were only $370,553 as of March 31, 2009. (Div. Exs. 16 at 69 of 137; 22 at 4 of 45.) The company also reported unaudited assets of $660,408 as of June 30, 2009. (Div. Ex. 22 at 4 of 45.)[3]

28. On October 1, 2009, the same day that W2E filed its Form 8-K/A with the SEC, Lorenzo's assistant, Sera Holmes, emailed Lorenzo the Form 8-K/A. (Tr. at 228:16-231:15; Div. Ex. 32 at 1.) Lorenzo read the Form 8-K/A sometime that day. (Tr. at 231:15-232:15).) He did so because, as he testified, it was a material document. (Tr. at 231:22-232:25.) Indeed, the Form 8-K/A was so important that, four minutes after receiving it from Ms. Holmes, Lorenzo emailed it to all Charles Vista brokers. (Tr. at 233:2-234:8; Div. Ex. 32 at 3.)

29. Also on October 1, 2009, Lorenzo received and read W2E's Form 10-Q. (Tr. at 241:6-13.) On October 2, Lorenzo also sent the Form 10-Q to all Charles Vista registered representatives, also because he believed it was an important document. (Tr. at 241:19-242:21; Div. Ex. 21.)

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[3] On November 16, 2009, W2E reported unaudited assets, as of September 30, 2009, of $905,582. (Div. Ex. 46 at 4 of 36.)

30. Four days later, on October 5, 2009, Craig Brown sent Lorenzo a one-page email, again informing him that W2E had written off virtually all of its assets. (Tr. at 244:25-245:16, 248:24-249:4, 251:9-17; Div. Ex. 19; Div. Ex. 42.) Mr. Brown wrote that:

> The accumulated deficit we have reported is due to three primary issues . . . Write off of all of our intangible assets that were tied to our purchase of Enerwaste Europe in 3/31 period of about $11 million.

(Div. Ex. 19 at 1; Div. Ex. 42 at 1 (emphasis in original).) According to Brown, he sent the email to:

> [H]ighlight for those individuals copied on the e-mail the key reasons why there was deficit and why the losses were so significant, which we had already . . . reported in the filings that we had made publicly.

(Tr. at 76:4-9.)

31. Lorenzo received, read, and understood the import of Craig Brown's October 5 email. During his sworn investigative testimony, Lorenzo admitted receiving and reading Mr. Brown's email.

> Q. Do you remember seeing this information, getting this e-mail and learning about this on October 5, 2009?
> A. It's obvious I got the e-mail. I remember reviewing it. Okay. Yes. I do remember reviewing this.

(Tr. at 251:9-17.) At the hearing, Lorenzo again admitted that he "reviewed" the email. (Tr. at 249:3-4.)

32. As Lorenzo testified, by at least October 5, 2009, he understood that W2E had written off its $10 million intangible asset:

> Q. So it is fair to say, isn't it, sir, that on October 5, 2005, you were aware that the $10 million asset had been written off by Waste2Energy. Correct?
> A. Okay. I will agree to that. That's correct.
> Q. That is a fair statement?
> A. Yes.

(Tr. at 252:13-20.)

33. Lorenzo further admitted during the investigation that no one ever gave him inaccurate information about the $10 million asset. (Tr. 253:20-254:2.)

34. Lorenzo also admitted that W2E's write-off of its intellectual property was "a big deal," a "big kick in the stomach" because it accounted for virtually all of W2E's assets. (Tr. at 244:3-11.)

VII. Lorenzo Sends The False Deal Points Email To Two Prospective Investors

35. On October 14, 2009, Lorenzo sent emails to two prospective investors—Vishal Goolcharan and William Rothe—entitled "W2E Debenture Deal Points" (the "Deal Points Emails") (Div. Ex. 34; Tr. at 257:22-258:19.) Lorenzo sent the Deal Points Emails to "summarize[] several key points" of W2E's 12% debenture offering. (Div. Ex. 34.) At the time he sent them, Lorenzo knew that his emails contained material information about the offering. (Tr. at 259:16-20.)

36. At the time he sent the Deal Points Emails, Lorenzo believed that both Rothe and Goolcharan were Charles Vista brokerage clients. Lorenzo admitted at trial that he assumed Rothe was a Charles Vista brokerage client. (Tr. 173:19-174:25, 343:2-4; Div. Ex. 49.) He also understood that both Rothe and Goolcharan had been assigned registered representatives at Charles Vista. (Tr. at 348:6-13.) Also, Lorenzo had met Goolcharan prior to October 14, 2009, to discuss the possibility of opening a Charles Vista branch office in Central America. (Tr. at 343:12-19.)

37. Lorenzo personally authored and emailed the Deal Points Emails, which contained his own signature block. (Tr. at 257:22-258:19, 261:5-10; Div. Ex. 34.)

38. Lorenzo did not discuss the Deal Points Emails, or their subject matter, with Gregg Lorenzo. (Tr. at 262:13-25.)

39. In the Deal Points Emails, Lorenzo began by describing in general the terms of the 12% debenture offering, including the debenture term and the interest rate. (Div. Ex. 34.) He then assured Goolcharan and Rothe that:

> 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)

(Div. Ex. 34.)

40. Contrary to the Deal Points Emails, Lorenzo knew that W2E's debentures were highly speculative and involved a high degree of risk. (Tr. at 259:9-15.) Indeed, W2E disclosed that fact in its PPM, which Lorenzo helped write. (Div. Ex. 3 at iii ("THE SECURITIES OFFERED HEREBY ARE HIGHLY SPECULATIVE, INVOLVE A HIGH DEGREE OF RISK . . . .").)

41. Moreover, Lorenzo knew that none of the purported "3 layers of protection" actually existed and that, consequently, his statements were false. During his July 2012 investigative testimony, Lorenzo admitted as much:

> 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.

(Tr. at 271:19-272:3.)

VIII. Lorenzo Knew That W2E Did Not Have $10 Million In Confirmed Assets

42. Lorenzo intended the first "layer of protection" in his Deal Points Emails—the purported $10 million asset—to convey to potential investors that their debenture investment was protected from loss because W2E had $10 million in intangible assets. (Tr. at 263:14-19.)

43. However, W2E had less than $1 million in assets by October 14, 2009. As discussed above, Lorenzo knew this to be the case for several reasons. First, Brown testified that he told Lorenzo in mid-September 2009 that W2E anticipated just such a write-off in its upcoming Form 10-Q filing. Second, Lorenzo admitted that, on October 1, 2009, he received and read the Forms 10-Q and 8-K/A, which plainly disclose and explain the write-off. Third, Lorenzo admitted that, on October 5, he received, read, and understood Brown's email, which again told him directly and unambiguously of the write-off.

44. Moreover, even before the October 1 write-off, Lorenzo knew that—contrary to the express language of the Deal Points Emails—W2E's purported $10 million asset provided no "protection" to investors and had not been "confirmed" by anyone. First, Lorenzo admitted that he based the $10 million figure on W2E's December 2008 unaudited financial statement (reported in W2E's June 3, 2009 Form 8-K). (Tr. at 266:25-267:3.) Lorenzo further admitted that he knew that that number had not been confirmed by an auditor and that, despite his repeated requests to W2E in August and September 2009, the company had not confirmed the accuracy of the reported $10 million figure. (Tr. at 267:4-14.) Second, as discussed above, Lorenzo believed that W2E's reported $10 million in "intangibles" was a "dead asset" and that W2E would be "lucky" to sell it for even $1 million. Indeed, Lorenzo admitted at trial that the asset provided no "protection" to investors:

> Q. And that is because you knew that this $10 million asset provided no protection. Correct?
> A. That is correct.
> Q. And you understood, didn't you, that if there was a default on a debenture, clients would not be able to recoup their money based on a liquidation of this asset. Correct?
> A. Recoup all of their money? Any of their money?
> I would say your statement is accurate.

(Tr. at 269:7-18.)

IX. Lorenzo Knew That W2E Did Not Have $43 Million In Purchase Orders And Letters of Intent

45. Also contrary to his assurances in the Deal Points Emails, Lorenzo was well aware that W2E did not have significant purchase orders. (Tr. at 273:14-23.) W2E had minimal purchase orders, totaling less than $500,000, (Tr. at 52:4-12), and Lorenzo had no reason to believe that the company had more sales. Indeed, He had only ever seen a list of W2E sales *projections*, which merely identified the company's hopes for potential future sales. (Tr. at 273:20-274:2; Div. Ex. 29.) On August 3, 2009, Lorenzo attached that list to an email he sent, entitled "Waste2Energy Projections 2009." (Div. Ex. 29 at 1; Tr. at 274:14-276:2.) Lorenzo admitted that none of the projections on that list constituted actual sales. (Tr. at 281:20-282:8.)

46. Lorenzo based the $43 million sales figure in his Deal Points Emails on a single, non-binding, letter-of-intent ("LOI") that W2E had received from a St. Martin company. (Tr. at 274:3-7.) However, Lorenzo knew that this LOI did not obligate the potential purchaser (or W2E) to do anything and, thus, provided no protection to debenture investors. (Tr. at 270:15-19, 277:2-10.) Moreover, Lorenzo testified that, by September 2009, he did not even believe that the LOI would lead to any W2E sales. (Tr. at 278:9-12.)

X. Lorenzo Knew That Charles Vista Had Not Agreed—Indeed, Was Not Able—To Raise Up To $15 million In Additional Money To Pay Back Debenture Investors If Necessary

47. Also contrary to the Deal Points Emails, Lorenzo knew that Charles Vista had not agreed to raise any additional money to repay debenture investors in the event it defaulted on its 12% debentures. (Tr. at 284:10-13.) To the contrary, he admitted that the statement was misleading and that investors could not "hang [their] hat on it." (Tr. at 265:20-266:16, 284:20-24.)

48. Lorenzo knew that no such written agreement existed with either W2E or

debenture investors. (Tr. at 284:10-19; see also Tr. at 90:13-22 (Brown testifying that no such agreement existed).)

49. Furthermore, at the time Lorenzo sent the Deal Points Emails, he did not believe that Charles Vista even could raise additional money, let alone up to the $15,000,000 he had claimed it could in his Deal Points Emails:

> Q. Meaning you didn't think that Charles Vista would be able to raise additional money to repay debenture holders. Correct?
> A. I'd say that that's accurate, yes.

(Tr. at 285:19-22.) This was because, as Lorenzo knew, (1) the W2E debentures were a highly risky investment; (2) Charles Vista's clients were already over-invested in the company; and (3) a debenture default would make it even harder for W2E to find additional investors willing to put up new money.

50. First, Lorenzo did not think that W2E was a "worthwhile" investment. (Tr. at 288:7-11.) He testified that it was a "stretch" to believe that that the company would even be able to "repay debenture holders." (Tr. at 285:23-286:4; see also 289:18-291:2, 293:16-20.) Indeed, as disclosed in the PPM, W2E planned to use $4 million—over 25% of the total offering amount in the initial debenture raise—just to pay back old debt. (Div. Ex. 3 at 9 ("If we don't sell at least $4,000,000 of Debentures, we will not be able to repay" outstanding debt).)

51. Second, Lorenzo also understood that, in the event of default, Charles Vista would not be able to find additional investors willing to loan even more money to a company that had just defaulted:

> Q. Didn't you also know in October 2009 that if Waste2Energy defaulted on its 12-percent debentures it would be very difficult for it to raise additional money?
> A. Absolutely, yes, I knew.
> Q. It would severely compromise Waste2Energy's ability to raise more money. Right?
> A. I knew that long before October, yes. Go ahead.

Q. Why would you lend money to a company that was unable to pay back its prior investors; right?
A. That is correct.

(Tr. at 291:3-16.)

52. Third, Lorenzo knew it would be particularly difficult to raise additional money because Charles Vista already had invested 70% of all of its brokerage clients' money in W2E, an amount Lorenzo knew at the time was "way too much." (Tr. at 292:4-20.)

XI. Vishal Goolcharan Invests $15,000 In W2E's 12% Convertible Debentures

53. On December 18, 2009, one of the recipients of Lorenzo's Deal Points Emails, Vishal Goolcharan, invested $15,000 in W2E's 12% Debentures (jointly with Roslyn Parmasad). (Tr. at 92:20-93:17, 94:7-95:5; Div. Ex. 54 at 2 (offering documents listing Goolcharan and Parmasad as "Subscriber(s)"); Div. Ex. 65 at 2 (showing list of debenture investors and date of purchase).)

54. W2E did not repay the principal investment of any of the debenture investors, including Goolcharan and Parmasad. (Tr. at 90:8-12.)

XII. Lorenzo Leaves Charles Vista

55. In November 2009, Lorenzo began looking for a new job because he was unhappy at Charles Vista. (Tr. at 405:10-18) Lorenzo had a host of complaints about his tenure there. As Lorenzo testified:

a. He argued every day with Gregg Lorenzo (Tr. at 395:2-4, 405:405:7-9);

b. By November 2009 "there [was] no way on God's green earth [he] thought Gregg Lorenzo was an honest guy" (Tr. at 302:18-20);

c. He was not proud of the work that Charles Vista was doing in fall 2009 (Tr. at 300:19-23); and

d. He did not think that Charles Vista was being "handled" as a high-quality investment bank (Tr. at 300:24-301:5).

Indeed, as discussed above, Lorenzo had known from at least summer 2009 that Charles Vista was a "boiler room."

56. On November 12, 2009, Lorenzo testified before Commission staff under oath and on the record. (Tr. at 301:14-21.) In response to questions from the staff concerning his experiences at Charles Vista, Lorenzo did not disclose any of his concerns with W2E's securities offerings and business, Charles Vista's business practices, or Gregg Lorenzo's probity. To the contrary, he testified that:

a. He was in the "middle of working on Waste2Energy" and that he still "believe[d] in the project" (Tr. at 303:22-24);

b. Gregg Lorenzo "is a bright guy, honest guy" (Tr. at 304:24-25);

c. He was proud of Charles Vista (Tr. 307:6-9); and

d. He and Gregg Lorenzo were currently executing on their "vision" of building Charles Vista's "high quality investment banking Division" (Tr. at 307:22-24).

57. Lorenzo left Charles Vista in February 2010 but has continued to work in investment banking since then. (Div. Ex. 25, Tr. at 181:20-22, 311:2-17.) Since November 2010, Lorenzo has been a managing director at broker-dealer Hunter Wise, where he focuses primarily on arranging funding for both public and private companies. (Tr. at 311:13-312:6.)

PROPOSED CONCLUSIONS OF LAW

I. Introduction

1. By making the numerous, blatant false statements in his two Deal Points Emails described above, Lorenzo violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder. Specifically, Lorenzo's claimed "3 layers of protection" were entirely fictitious. As he knew at the time, and contrary to his promises in the Deal Points Emails, on October 14,

2009: (1) W2E had less $1 million in assets; (2) W2E had virtually no purchase orders and only one, non-binding letter of intent; and (3) Charles Vista had neither agreed to, nor could, raise additional money to repay investors in the event that W2E defaulted on its 12% Convertible Debentures.

II. Elements Of The Division's Claims

A. Section 10(b) And Rule 10b-5

2. To establish Respondent's liability under Exchange Act Section 10(b) and Rule 10b-5, the Division must prove by a preponderance of the evidence, Gonchar v. SEC, 409 Fed. Appx. 396, 399 (2d Cir. 2010), that Lorenzo: (1) made a material misrepresentation or a material omission as to which he had a duty to speak, or used a fraudulent device; (2) with scienter; (3) in connection with the purchase or sale of securities. SEC v. Monarch Funding Corp., 192 F.3d 295, 308 (2d Cir. 1999).

3. The "maker" of a false statement—for purposes of Section 10(b) and Rule 10b-5—is "the person . . . 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). "[A]ttribution within a statement or implicit from its surrounding circumstances is strong evidence that a statement was made by . . . the party to whom it is attributed." Id. Such attribution is present, for example, where Respondent signs the statements at issue. See, e.g., Louisiana Mun. Police Employee Retirement System v. KPMG, LLP, 10 Civ. 1461 (BYP), 2012 WL 3903335, at *5 (N.D. Oh. Aug. 31, 2012) (finding that "Subsequent courts have interpreted the attribution element of Janus to reach corporate officers who sign statements filed with the SEC"); SEC v. Das, 10 Civ. 101 (LSC), 2011 WL 4375787, at *6 (D. Neb. Sept. 20, 2011) (finding officers who signed Forms 10-K and 10-Q to be "makers"); City of Roseville Employees Ret. Sys. v. Energysolutions, Inc., 814 F.Supp.2d 395, 417 (S.D.N.Y.

2011) (same); In re Smith Barney Transfer Agent Litig., 884 F. Supp. 2d 152, 163-64 (S.D.N.Y. 2012) (same).

4. As well as outright falsehoods, Section 10(b) also prohibits "half-truths—literally true statements that create a materially misleading impression." SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011) (rev'd on other grounds by Gabelli v. SEC, 133 S. Ct. 1216 (2013)). Thus, "a statement which is literally true, if susceptible to quite another interpretation by the reasonable investor . . . may properly . . . be considered a material misrepresentation." SEC v. First Am. Bank & Trust Co., 481 F.2d 673, 678 (8th Cir. 1973).

5. 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 investment decision. SEC v. Meltzer, 440 F. Supp. 179, 190 (E.D.N.Y. 2006) (citing Folger Adam Co. v. PMI Indus., Inc., 938 F.2d 1529, 1533 (2d Cir. 1991)).

6. To establish scienter, the Division need prove only that Respondent either knew of, or recklessly disregarded, the false or misleading statements at issue. Lorenzo's actual "knowledge" of the material facts is sufficient for this purpose. SEC v. First New Jersey Sec.'s Litig., 101 F.3d 1450, 1467 (2d Cir. 1996) ("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)").

7. In addition to "knowing" conduct, Respondent's "reckless disregard" for the falsity of his statements is also sufficient proof of fraud scienter. Rolf v. Blyth, Eastman Dillon

& Co., 570 F.2d 38, 46 (2d Cir. 1978).

8. Reckless conduct:

> [I]s an extreme departure from the standards of ordinary care . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it . . . It is, in fact, a lesser form of intent . . . implying the danger was so obvious that the actor was aware of it and consciously disregarded it.

Dolphin and Bradbury, Inc. v. SEC, 512 F.3d 634, 639 (D.C. Cir. 2008) (quotation marks and citations omitted). "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) (citation and quotation marks omitted). A respondent cannot, therefore, plead ignorance of facts where there are "warning signals" or other information that should put him 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). 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.).

9. Finally, Section 10(b)'s "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 fraud "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 marks and citation omitted). The Division need only show "deception in 'connection with the purchase or sale of any security,' not deception of an identifiable purchaser or seller." Dabit, 547 U.S. at 85 (citation and quotation marks omitted). Thus, as long as

"someone buy[s] or sell[s] the security during the period of allegedly fraudulent conduct," the element is satisfied. 8 Louis Loss & Joel Seligman, Securities Regulation 3721 (3d ed. 2004); see also SEC v. Mannion, 789 F. Supp. 2d 1321, 1332-33 (N.D. Ga. 2011) (single purchase made after distribution of misleading disclosure, even if purchaser did not rely on it, was sufficient to establish "in connection with").

10. The Division need not demonstrate that any investor actually relied on Respondent's false statements. SEC v. Morgan Keegan & Co., Inc., 678 F.3d 1233, 1244 (11th Cir. 2012) ("'Justifiable reliance,' however, is not an element of an SEC enforcement action because Congress designated the SEC as the primary enforcer of the securities laws, and a private plaintiff's 'reliance' does not bear on the determination of whether the securities laws were violated . . . ."); SEC v. North Am. Research & Development Corp., 424 F.2d 63, 85 (2d Cir. 1970) ("reliance is immaterial because it is not an element of fraudulent representation under Rule 10b-5 in the context of an SEC proceeding against a broker . . . .").

B. Section 17(a)

11. The elements of a Securities Act Section 17(a) violation are essentially the same as those for Exchange Act Section 10(b), with two relevant distinctions.[4] First, the misrepresentations at issue must be "in the offer or sale" of a security, rather than "in connection with the purchase or sale" of such security. Thus, the Division must demonstrate only that securities were offered for sale during the time of the fraud, but need not show that any actual

[4] In addition—while there is no question that Lorenzo was the maker of the his statements in the Deal Points Emails—the vast majority of courts to consider the issue have held that Janus is inapplicable to SEC cases under Securities Act Section 17(a). See, e.g., SEC v. Benger, 931 F. Supp. 2d 904, 905-907 (N.D. Ill. 2013) (Janus does not apply to 17(a) and collecting cases); SEC v. Stoker, 865 F. Supp. 2d 457, 466-67 (S.D.N.Y. 2012) (same); but see SEC v. Perry, 11 Civ. 1309 (MLR), 2012 WL 1959566, at *8 (C.D. Cal. May 31, 2012) (applying Janus to Section 17(a)); SEC v. Kelly, 817 F. Supp. 2d 340, 345 (S.D.N.Y. 2011) (same).

purchases occurred. See SEC v. Tambone, 550 F.3d 106, 122 (1st Cir. 2008) ("[B]ecause section 17(a) applies to both sales and offers to sell securities, the SEC need not base its claim of liability on any completed transaction at all.") (vacated en banc on other grounds by SEC v. Tambone, 597 F.3d 436 (1st Cir. 2010)); SEC v. Goldman Sachs & Co., 790 F. Supp. 2d 147, 164 (S.D.N.Y. 2011) (holding "actual sales [are] not essential" for a Section 17(a) claim).

12. Second, Section 17(a)(2)-(3) does not require that Respondent acted with scienter, but only negligently. Monarch Funding Corp., 192 F.3d at 308.

III. Lorenzo Committed Securities Fraud

13. Lorenzo committed securities fraud—in violation of both the Securities Act and Exchange Act—by making multiple, and material, false and misleading statements in the Deal Points Emails to two prospective W2E Debenture investors on October 14, 2009. Indeed, Lorenzo—who knew that the true facts of W2E's business condition and debenture offerings sharply contradicted his own statements—acted with a high degree of scienter.

A. Each Of Lorenzo's So-Called "Layers of Protection" Was False

14. Lorenzo made the statements in the Deal Points Emails. He admitted authoring the emails. Moreover, he sent the emails from his email account and over his signature block. Thus, there can be no question that the statements were attributed to, and signed by, him.

15. There is likewise no question that each alleged "layer of protection" that Lorenzo identified in the Deal Points Emails was fictional. Contrary to Lorenzo's claim of over $10 million in assets, W2E had under $1 million, according to its financial statements. Rather than tens of millions of dollars in multiple purchase orders and letters of intent, W2E had less than $500,000 in actual orders, and only one non-binding letter of intent (which Lorenzo thought was unlikely to ever result in sales). Contrary to Charles Vista's alleged promise to raise up to $15 million to repay debenture investors in the event of default, W2E had made no such agreement

and had already borrowed as much as it could. Indeed, as Lorenzo well knew, far from affording any protection, the W2E debentures were a highly-speculative investment.

B. Lorenzo Acted With A High Degree of Scienter

16. There is also no question that, at the time Lorenzo sent the Deal Points Emails, he knew that each of the three statements at issue was false.

17. As discussed above, several times well prior to sending the October 14, 2009 Deal Points Emails, Lorenzo received plain and unambiguous information that W2E had written off all of its intangible assets. In mid-September 2009, Brown told Lorenzo by telephone that W2E intended to write off its intangible assets. Lorenzo also admits that, on October 1, he received and read W2E's Forms 10-Q and 8-K/A, which announced the write-off. On October 5, Craig Brown again told Lorenzo—this time by email—that W2E had written off all of its intangible assets. Lorenzo testified that he received and read Brown's email and that he thus understood by October 5, 2009 that W2E had written off its intangible assets. Therefore, at the time he sent the Deal Points Emails, Lorenzo had actual "knowledge of facts . . . contradicting [his] public statements." Novak v. Kasaks, 216 F.3d 300, 308 (2d Cir. 2000).

18. Lorenzo's current protestation that he simply "missed" the write-down is not credible. (See infra at 27.) Lorenzo admitted—both on the stand and in his prior sworn investigative testimony—that he read W2E's filings and that he understood (from Brown's October 5 email) that W2E had written off its intangible assets. Thus, even if Lorenzo somehow "missed" W2E's filing disclosures, no question exists that he knew the truth by October 5, ten days prior to sending the false Deal Points Emails. Moreover, it is simply not credible that Lorenzo "missed" W2E's announcement of the write off in the 10-Q and 8-K/A. As described above, reviewing SEC filings was central to his role as head of investment banking at Charles

Vista. Consistent with that role, Lorenzo admits that he closely followed the progress of W2E's audit over the summer and fall of 2009, which he knew would result in W2E's first public audited financial statement. Moreover, Lorenzo followed the audit precisely because he understood how critical the intangible assets were to those anticipated financial statements and, consequently, to W2E's and Charles Vista's ability to sell debentures.

19. Furthermore, even if Lorenzo somehow "missed" all of W2E's disclosures described above, he otherwise knew well before October 14, 2009 that W2E's previously-reported $10 million "intangible" assets (1) provided no "protection" for prospective W2E debenture holders; and (2) were by no means "confirmed." As discussed above, Lorenzo never believed that the intangible assets were worth anywhere near $10 million. He testified that they were a "dead asset," that he thought W2E would be "lucky" to get even $1 million for them, and that they did not offer a significant source of collateral against W2E's defaulting on its debt. Moreover, despite his repeated attempts, Lorenzo never received any confirmation that the asset actually existed. First, he understood all along that the June 2009 Form 8-K was unaudited and, thus, that no accounting firm had ever confirmed the intangible assets. Moreover, over the summer and fall of 2009, W2E repeatedly refused to confirm that the $10 million still existed. As discussed above, Lorenzo asked W2E twice—on August 26 and again on September 1—to confirm the asset. Indeed, the second time, he left the dollar-value blank because, by his own admission, he was not "sure what this was worth anymore." (Tr. at 221:10-12.) Thereafter, on or about September 9, 2009, Lorenzo received and read the PPM, including the section that addressed the IP assets, which also failed to assign any dollar value to them. Thus, he knew by October 14, 2009 that the $10 million intangible assets were neither "confirmed" nor provided any "protection" against a default.

20. Finally, there can be no question that, at a minimum, Lorenzo acted recklessly. He knew (1) that the asset valuation was, at best, highly speculative well before October 14; and (2) that W2E repeatedly refused to confirm its existence. Yet he nonetheless assured investors not only that W2E had millions in assets, but that those assets protected any investment from default. Lorenzo's actions thus far exceeded a refusal "to investigate the doubtful," the most basic recklessness test. Chill, 101 F.3d at 269. Indeed, Lorenzo had no basis whatsoever for making his $10 million statement in the Deal Points Emails. He thus chose to "assert[] an opinion on grounds so flimsy as to belie any genuine belief in its truth," the definition of extreme recklessness. Universal Express, Inc., 475 F. Supp. 2d at 424.

21. Likewise, Lorenzo knew that the other two alleged "layers of protection" identified in the Deal Points Emails were fictitious. First, Lorenzo knew that W2E had minimal purchase orders. Moreover, he understood that the entire $43 million in purported "purchase orders and [letters of intent]" (Div. Ex. 34) was based on a single, non-binding letter of intent, which Lorenzo himself did not believe would ever result in sales. Therefore, Lorenzo knew that W2E's investors were not protected by any likely W2E sales.

22. Second, Lorenzo had no basis to claim that Charles Vista had agreed to raise additional money to repay Debenture investors in the event of default. He knew no such agreement existed. Moreover, he did not believe that Charles Vista could find more buyers, especially in the event of default. Indeed, at the hearing, Lorenzo was unable to articulate any basis for his statement, thus likewise rendering it "so flimsy as to belie any genuine belief in its truth." Universal Express, Inc., 475 F. Supp. 2d at 424.

C. Lorenzo's False Statements Were Highly Material

23. Lorenzo's false statements were highly material. At a time when W2E's financial

condition was dire, Lorenzo fabricated millions of dollars in assets and sales and painted the utterly false picture of a valuable company with a healthy customer base. Such lies—concerning a company's financial condition—are material as a matter of law. 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"). In addition, Lorenzo claimed that, even if W2E's positive financial condition did not protect an investor from loss, Charles Vista would make them whole by raising more money. In other words, Lorenzo essentially told investors that their investments were guaranteed by multiple layers of security, when they were anything but.

24. Lorenzo does not dispute that his statements were material. To the contrary, he (and Brown) testified that the asset statements were material, and Lorenzo testified that his Deal Points Emails conveyed material information about the debenture offering. (Tr. at 259:16-20.)

D. The Deal Points Emails Were Both "In Connection With The Purchase And Sale" And "In the Offer Or Sale" Of The 12% Debentures

25. The Deal Points Emails—which provided information about the debenture offerings and invited interested investors to call Charles Vista with any questions—were plainly part of an offer to sell debentures. Securities Act, § 2 ("the term 'offer to sell', 'offer for sale,' or 'offer' shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security . . . ."). Indeed, Lorenzo assumed that both Rothe and Goolcharan already had registered representatives at Charles Vista and were, thus, potential investors.

26. Moreover, because Goolcharan actually invested $15,000 in the W2E debentures after receiving the Deal Points Email, Lorenzo's fraud was "in connection with" a purchase or sale.

IV. Relief

27. The Division seeks against Respondent Lorenzo (1) cease-and-desist orders

prohibiting him from future violations of Securities Act Section 17(a), and Exchange Act Section 10(b) and Rule 10b-5 thereunder; (2) a bar from practicing in the securities industry; and (3) civil money penalties.[5] For the following reasons, the Division's application is granted.

A. Cease-and-Desist Orders

28. 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, Rel. No. 51950, 2005 WL 1560276, at *15 (June 30, 2005). In determining whether to impose a cease-and-desist order, the Court considers a number of factors: (1) the risk of future violations; (2) the seriousness of the violation; (3) the isolated or recurrent nature of the violation; (4) whether the violation is recent; (5) the degree of harm to investors or the marketplace resulting from the violation; (6) the respondent's state of mind; (7) the sincerity of assurances against future violations; (8) recognition of the wrongful nature of the conduct; (9) opportunity to commit future violations; and (10) remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. Id. The risk of future violations required to support a cease-and-desist order is significantly less than that required for an injunction. Id., 2005 WL 1560276, at *15 n.66. "[A]bsent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations." In the Matter of David F. Bandimere, Rel. No. 506, 2013 WL 5502550, at *9 (Oct. 4, 2013).

29. Here, Lorenzo sent false emails to two prospective investors, one of whom invested $15,000. Lorenzo has not previously been found to have violated the federal securities laws.

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[5] The Division is not seeking disgorgement against Lorenzo in this case.

30. Nonetheless, the entry of cease-and-desist orders is an appropriate remedy in this case because Lorenzo's statements were blatantly and entirely false, highly material, and he made them with a high degree of scienter. As discussed at length above, Lorenzo falsified statements about fundamental aspects of W2E's business and about the safety of its debenture offering. He plainly knew his statements were false when he made them, and he did so to sell securities (from which, in his own words, Charles Vista reaped an "exorbitant" fee). As the Commission has held, "fraud is especially serious and subject to the severest of sanctions." In the Matter of Johnny Clifton, Rel. No. 9417, 2013 WL 3487076, at *14 (July 12, 2013) (citation and quotation marks omitted).

31. Lorenzo has also failed to accept any responsibility for his fraud. To the contrary, he has made a number of excuses, each of which is nonsensical and contradicted by the evidence (including his own testimony). Far from admitting wrongdoing, he repeatedly testified that: (1) his email was an unintentional "mistake" (see, e.g., Tr. at 260:6, 264:4-265:5, 294:7-21, 298:23-25, 364:20-22, 365:9-10, 365:19-21, 366:25-367:3); (2) he simply "missed" the write down (see, e.g., Tr. at 232:16-19, 298:25, 356:16-19, 364:20, 365:13-19, 370:6-22); and (3) W2E, not Lorenzo, was to blame for failing to apprise him of the write down (Tr. at 246:6-21, 247:8-248:7, 365:16-21, 368:25-373:7). But these claims are untrue and irrelevant. W2E told Lorenzo on at least four occasions in September and October 2009—on the phone, in public filings, and in an email from Brown—that the assets no longer existed. Moreover, well before September 2009, Lorenzo doubted the veracity of the asset value. Furthermore, he admits having read the Forms 10-Q and 8-K/A, and Brown's October 5 email, each of which clearly described the write-down. He admits that he knew about the write-down (from Brown's email) but, incredibly, denies that he learned about it from W2E's October 1 Forms 10-Q and 8-K/A. Any such claim is

unbelievable, given that Lorenzo understood the essential importance of those filings, had been following the progress of the W2E audit from at least August through September, and, indeed, had been trying to ascertain the value of W2E's intangible assets for months. Thus, far from suggesting a mere "mistake," the evidence overwhelmingly establishes that Lorenzo purposely defrauded prospective W2E investors.

32. In addition, by at least the summer of 2009, Lorenzo understood that Charles Vista was a boiler room, that Gregg Lorenzo was dishonest, and that Gregg Lorenzo and his salespersons were making false and misleading statements to the firm's brokerage customers. Yet Lorenzo did not leave. To the contrary, he knowingly participated in Gregg Lorenzo's boiler room by writing and sending false investment solicitations.

33. Moreover, when presented with the opportunity early on to tell the Commission staff the truth, Lorenzo testified falsely about Charles Vista and its operations. Lorenzo first testified on November 12, 2009, less than a month after he committed the fraud at issue in this case. By that time, Lorenzo knew: (1) that Charles Vista was a boiler room; (2) that Gregg Lorenzo was dishonest; (3) that W2E's securities offerings were not worthwhile investments; (4) that investors were being misled; (5) that W2E was being charged "exorbitant" fees; and (6) that he personally had sent false emails. Nonetheless, when the staff asked him his opinion of Charles Vista, Gregg Lorenzo, and W2E's offerings, Lorenzo falsely testified that Charles Vista was a high-quality investment bank, that W2E's securities offerings were proceeding appropriately, and that Gregg Lorenzo was an honest colleague. In other words, afforded the opportunity to come clean—before he was caught out—Lorenzo chose to lie.

34. Lorenzo's refusal to accept his wrongdoing also undermines his claim that he will refrain from violating the federal securities laws in the future. Indeed, Lorenzo's continued

efforts to blame W2E for his own fraud is itself "an aggravating factor." In the Matter of Gualario & Co., LLC, Rel. No. 452, 2012 WL627198, at *16 (Feb. 14, 2012). And Lorenzo's attempts to minimize his misconduct demonstrate that Lorenzo "does not fully understand the seriousness of his misconduct and how it violated the duties of a securities professional" and, thus, "presents a significant risk that, given th[e] opportunity, he would commit further misconduct in the future." In the Matter of Johnny Clifton, 2013 WL 3487076, at *14 (citations omitted). This factor is particularly significant in this case, as Lorenzo continues to work at a registered broker-dealer and continues to enjoy ample opportunity to violate those laws.

35. Therefore, it is appropriate and necessary for the Court to issue against Lorenzo cease-and-desist orders against future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Industry Bars

36. Exchange Act Section 15(b)(6) authorizes the Commission to bar a Respondent from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization, and from participating in an offering of penny stock "if that person has willfully violated any provision of the Exchange Act or [the Securities Act], and the bar is in the public interest." In the Matter of Richard P. Sandru, Rel. No. 3646, 2013 WL 4049928, *7 (Aug. 12, 2013); see also In the Matter of Johnny Clifton, 2013 WL 3487076, at *13 (full range of collateral bars imposed pursuant to § 925 of Dodd-Frank are not impermissibly retroactive). Consideration of whether bars are in the public interest requires a similar analysis as the determination regarding whether to enter cease-and-desist orders. See In the Matter of Johnny Clifton, 2013 WL 3487076, at *13 ("In assessing the need for sanctions in the public interest, we consider, among other things, the egregiousness

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

37. Here, imposition of the full range of bars is appropriate. As discussed above: (1) Lorenzo's fraud was brazen and committed with a high degree of scienter; (2) he is unwilling to accept responsibility for his actions, has attempted to shift blame to others, and refused to testify fully and truthfully to Commission staff when initially questioned; and (3) his business provides him "with the opportunity to commit violations of the securities laws in the future." In the Matter of Gualario & Co., LLC, 2012 WL627198, at *18. Therefore, as the Commission has held:

> Imposing a full collateral bar will protect the investing public from the likelihood that [respondent] will commit future violations of the federal securities laws. A bar will also have the salutary effect of deterring others from engaging in the same serious misconduct.

In the Matter of Johnny Clifton, 2013 WL 3487076, at *15 (quotation marks and citations omitted).

C. Civil Money Penalties

38. Section 21B of the Exchange Act authorizes the Commission to impose civil money penalties for willful violations of the Securities Act and the Exchange Act.[6] In determining whether a penalty is appropriate in the public interest, the Court considers six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5)

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[6] "A finding of willfulness does not require evidence of intent to violate, but merely intent to do the act that constitutes a violation." In the Matter of Gualario & Co., LLC, 2012 WL 627198, at *12 (citations omitted).

deterrence; and (6) such other matters as justice may require. In the Matter of Gualario & Co., LLC, 2012 WL627198, at *17.

39. The Court may award third-tier penalties—the highest penalty range—of $150,000 for a natural person "for each" violative "act or omission." Exchange Act, § 21B(b)(3); see also In the Matter of Walter V. Gerasimowicz, Rel. No. 496, 2013 WL 3487073, *6 (July 12, 2013) (assessing third-party penalties at $150,000). A third-tier penalty is appropriate, inter alia, where a respondent's violation involved "fraud" and "resulted in substantial losses or created a significant risk of substantial losses." Exchange Act, § 21B(b)(3). Moreover, "[t]he adjusted statutory maximum amount is not an overall limitation, but a limitation per violation." In the Matter of John A. Carley, Rel. No. 292, 2005 WL 1750288, at *68 (July 18, 2005). Thus, the Court may impose the maximum penalty for each of Lorenzo's false and misleading statements. See SEC v. Pentagon Management PLC, 725 F.3d 279, 288 n.7 (2d Cir. 2013) (affirming district court's imposition of third-tier penalties by counting each late trade as a separate violation).

40. Because there are several aggravating factors present here, Lorenzo's fraud warrants the imposition of third-tier penalties against him. First, Lorenzo's violations "involved fraud." Exchange Act, § 21B(c)(1). Second, W2E debenture investors—including Goolcharan—lost their entire principal investment and, thus, were harmed. Id., § 21B(c)(2). Moreover, Lorenzo solicited investments from two individuals by telling them brazen falsehoods designed to make a highly risky investment appear highly safe. Thus, in addition to actual losses, his fraud "created a significant risk of substantial losses." Id., § 21B(b)(3). Third, Lorenzo's fraud helped to enrich his employer, Charles Vista, which received "exorbitant" fees from its W2E securities offerings. Id., § 21B(c)(3) (Courts are to consider "the extent to which

any person was unjustly enriched" by the fraud) (emphasis added). Fourth, deterrence requires substantial penalties, given the brazen nature of Lorenzo's false statements. Id., § 21B(c)(5); see also In the Matter of Gualario & Co., LLC, 2012 WL 627198, at *18 ("Penalties in addition to other sanctions ordered are necessary for the purpose of deterrence"). Third-tier penalties are, therefore, appropriate in this case.

Respectfully submitted,

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