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 CROSS PETITION FOR REVIEW OF INITIAL DECISION

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Pursuant to the Commission's Rule of Practice 410(b), the Division of Enforcement ("Division") cross-petitions for Commission review of the Initial Decision entered by Administrative Law Judge Foelak on December 31, 2013. The Division seeks review under Rule of Practice 411(b)(2)(ii) of the civil monetary penalties that the law judge ordered against Respondent Francis V. Lorenzo.[1] Specifically, the Division would challenge as too low the Law Judge's imposition of a $15,000 penalty under the circumstances of this case.

The Court below found that Lorenzo's egregiously false statements warranted the imposition of third-tier penalties and that there were "no mitigating factors." (Initial Decision at 11-12.) Nonetheless, the Court awarded civil penalties of only $15,000—$135,000 less than the per violation maximum for a single third-tier penalty. Given that Lorenzo's fraud involved several blatant false statements, his near total failure to accept responsibility, and his continued association with a registered broker-dealer, the Division, respectfully, submits that a civil penalty of at least $100,000 is necessary in this case.

FACTS

Each of the below facts is taken from the Initial Decision or transcript of the Hearing held before Judge Foelak on September 18-19, 2013.[2]

I. Lorenzo's Fraud

From February 2009 through February 2010, Lorenzo was head of Investment Banking at Charles Vista, LLC, a registered broker-dealer. (Initial Decision at 3.) Lorenzo knew that (1)

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[1] On January 27, 2014, Lorenzo petitioned for review of the Initial Decision's (1) findings that he violated the antifraud provisions of the federal securities laws; and (2) orders of monetary and non-monetary relief. Lorenzo's arguments are without merit, and the Division will oppose his application once the Commission sets a briefing schedule in accordance with Rule 450(a)

[2] All citations to the "Hearing Tr." are to the Hearing transcripts, which form part of the record index prepared by the Office of the Secretary.

Charles Vista was a "boiler room"; (2) "that the firm's brokers were engaged in high-pressure sales"; and (3) that it "stretched the truth to clients." (Id.) Furthermore, by the fall of 2009, Lorenzo "doubted the prudence of how Charles Vista handled clients' money." (Id.)

Part of Lorenzo's job was to conduct due diligence regarding Charles Vista's investment banking clients, including Waste2Energy Holdings, Inc. ("W2E"), a renewable energy company that was selling 12% convertible debentures. (Id. at 4.) The majority of Lorenzo's responsibilities at Charles Vista related to W2E. (Id.) Lorenzo knew that W2E had written off nearly $10.5 million in intangible assets and good will on October 1, 2009, which amounted to nearly all of W2E's reported assets. (Id. at 4-5) Indeed, Lorenzo had known about the write-off since at least September 2009. (Id. 5.) W2E announced the write-off in Forms 10-Q and 8-K on October 1, 2009. (Id. at 4-5.) W2E also announced that it had total assets of less than $370,600. (Id. at 5.) Lorenzo read both Forms the day they were filed. (Id.) Moreover, following his receipt of the Forms 10-Q and 8-K, Lorenzo was involved in discussions with W2E concerning the asset write-off. (Id.)

Nonetheless, on October 14, 2009, Lorenzo sent nearly-identical emails to two Charles Vista brokerage clients, stating that investments in W2E's debt securities were shielded from default by "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)

(Id. at 6.)

Judge Foelak found that "[t]he falsity of the representations in the emails is staggering." (Id. at 9.) First, Lorenzo knew that W2E had virtually no assets. (Id. at 4-5.) Second, as he admitted at the Hearing, Lorenzo had no basis to believe that W2E had any significant purchase

orders, let alone $43 million. (Hearing Tr. at 273:14-274:2.) Rather, Lorenzo based the $43 million figure on a single, non-binding letter of intent. (Id. at 274:3-7.) Lorenzo knew that the letter of intent did not obligate anyone to purchase any W2E products, nor did he even believe at the time that it would lead to any such sales. (Id. at 274:3-7; 278:9-12.) Finally, Lorenzo knew that Charles Vista had not agreed to raise any additional money to repay debenture investors in the event W2E defaulted. (Id. at 284:10-13.) To the contrary, he admitted that the statement was misleading and that investors could not "hang [their] hat on it." (Id. at 265:20-266:16, 284:20-24.)

Judge Foelak found that Lorenzo sent the false emails at the behest of his boss, Gregg Lorenzo (no relation), and that he "sent the emails without even thinking about the contents" and "without question."[3] (Initial Decision at 5, 6-7.) The Court further found that Gregg Lorenzo originally drafted the contents of the email and asked Lorenzo to send them out under his name because he "wanted the emails to come from Charles Vista's investment banking division." (Id. at 5.) As a result, the Court found that Lorenzo acted at least recklessly:

> [A]lthough he knew that W2E was in terrible financial shape, he sent the emails without thinking. Had he taken a minute to read the text, he would have realized that it was false and misleading and that W2E was not worth anything near what was being represented to potential investors.

(Id. at 9; 11 ("The conduct involved at least a reckless degree of scienter").) In any event, the weight of the evidence shows that Lorenzo actually wrote the emails himself. Indeed, Lorenzo admitted at the Hearing that he personally authored the false emails:

> If memory serves me—I think I authored it and then it was approved by Gregg [Lorenzo] and Mike [Molinaro, Chief

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[3] The Commission settled fraud charges against Gregg C. Lorenzo and Charles Vista, LLC on November 20, 2013, prior to the hearing. (See Initial Decision at 1 n.1.)

Compliance Officer].

(Hearing Tr. at 261:8-10.) Thus, there can be no question that Lorenzo acted at least highly recklessly, if not with outright awareness that his statements were false.

One of the two clients who received the false emails, Vishal Goolcharan, invested $15,000 in the Debentures. (Initial Decision at 7.) Ultimately, W2E failed to repay any debentures investors, including Goolcharan. (Hearing Tr. at 90:8-12.)

II. The Ordered Relief

The Court (1) ordered Lorenzo to cease and desist from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder; and (2) barred him from the securities industry.[4] (Initial Decision at 9.) In addition, the Court ordered him to pay a "third-tier civil penalty of $15,000." (Id.) In ordering the relief, Judge Foelak found that:

- "[T]here are no mitigating factors" (id. at 11);
- Lorenzo's actions "involved fraud [and] reckless disregard of a regulatory requirement [and] created a significant risk of substantial losses to other persons" (id.);
- "Deterrence also requires a substantial penalty" (id.);
- Lorenzo's "lack of assurances against future violations and recognition of the wrongful nature of the conduct goes beyond a vigorous defense of the charges" (id.); and
- "Lorenzo has not demonstrated an inability to pay any penalty that may be ordered in this proceeding" (id. at 7).

The Court also found that "[c]ombined with the other sanctions ordered, a third-tier penalty of $15,000—less than the maximum and equivalent to the actual loss sustained by [an] investor—is

[4] The Division did not seek disgorgement and the evidence adduced at trial shows that Lorenzo earned only $150 in connection with his fraud. (Initial Decision at 7.)

in the public interest." (Id. at 12.)

ARGUMENT

Given the Court's other findings—that Lorenzo's brazen fraud warranted third-tier penalties, his total failure to accept responsibility, and the risk of loss he created—the $15,000 penalty is too low. Indeed, the $15,000 penalty, although termed a third-tier penalty by the Court, is actually not much greater than a first-tier penalty, and, thus, is insufficient either to punish Lorenzo's conduct or to deter future scienter-based violations. The Court is authorized to impose third-tier penalties of up to $150,000 "for each violative act or omission."[5] (Initial Decision at 11; see also Exchange Act, § 21(b)(b)(3).) In light of Lorenzo's conduct, the Division respectfully requests that the Commission grant the Division leave to cross appeal the Initial Decision to increase Lorenzo's penalty to at least $100,000.

Respectfully submitted,

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[5] While the Court considered both emails to be "one course of action" (id. at 12), the Commission may impose the maximum penalty for each of Lorenzo's false emails to investors. See SEC v. Pentagon Management PLC, 725 F.3d 279, 288 n.7 (2d Cir. 2013) (finding no error in a district court counting each late trade as a separate violation).