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 MEMORANDUM OF LAW IN IN OPPOSITION TO RESPODENT FRANCIS V. LORENZO'S APPEAL, AND IN SUPPORT OF THE DIVISION'S CROSS-APPEAL, FROM INITIAL DECISION RELEASE NO. 544

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Pursuant to the Securities and Exchange Commission's ("Commission") Rule of Practice 450 [17 C.F.R. § 201.450], the Division of Enforcement ("Division") respectfully submits this memorandum of law (1) in opposition to Respondent Francis "Frank" V. Lorenzo's ("Lorenzo" or "Respondent") appeal of Initial Decision No. 544 (the "Initial Decision"), in which Lorenzo seeks a complete reversal of the Initial Decision; and (2) in support of the Division's cross-appeal, which seeks solely to increase the civil money penalties ordered by the Law Judge, from $15,000 to at least $100,000.

PRELIMINARY STATEMENT

The Court below found that Lorenzo's egregiously false statements in two emails to investors warrants the imposition of third-tier penalties; that "no mitigating factors" exist; and that a host of aggravating factors warrant cease-and-desist orders and permanent associational bars. (Initial Decision at 10-12.) The record amply supports these conclusions. As the evidence adduced at the hearing in this case demonstrates, Lorenzo brazenly and falsely described as virtually riskless an extremely risky investment in debentures of a start-up company, Waste2Energy Holdings, Inc. ("W2E"). Specifically, Lorenzo falsely claimed that investors were protected from loss: (1) by the company's alleged $10 million in assets; (2) impressive sales and performance prospects; and (3) the alleged agreement of his own broker-dealer, Charles Vista, LLC, to raise additional funds to repay investors in the event of default. As Lorenzo well knew, however, all of these statements were false: W2E had virtually no assets sales, or real prospects of sales; and not only had Charles Vista not agreed to raise additional funds, but Lorenzo did not even believe it could do so given W2E's dire financial condition. Furthermore, rather than take responsibility for these plain falsehoods, Lorenzo sought at the hearing to deflect blame to W2E and others at Charles Vista, disingenuously characterizing his

knowing false statements as mere errors. And even earlier, when given the opportunity during the staff's investigation of this case to come clean about Charles Vista's "boiler room" operation, Lorenzo chose instead to lie under oath to the Division's staff.

Lorenzo's arguments on appeal—that (1) no evidence exists that his statements were false or intentional; (2) he did not even make the false statements; and (3) he should not be sanctioned at all—are contrary to the record and serve only to demonstrate Lorenzo's continued refusal to accept responsibility for his actions. Accordingly, the Commission should reject his arguments.

Indeed, given Lorenzo's blatant material false statements, his failure to accept responsibility, and his continued association with a registered broker-dealer, the Division respectfully submits that the only error below was the imposition of a civil penalty of only $15,000. The Law Judge acknowledged that Lorenzo's behavior was not mitigated in any way and, thus, warranted third-penalties. Nonetheless, the Law Judge imposed a penalty far lower than the maximum permitted for even a single third-tier violation ($150,000) and – barely higher than a first-tier penalty. A $15,000 penalty is insufficient to punish Lorenzo or to deter future such violations by others and, thus, the Division respectfully requests that the Commission increase it to at least $100,000.

STATEMENT OF FACTS[1]

I. Lorenzo Knew that Charles Vista was a Boiler Room

Lorenzo—a licensed registered representative since 1986—served as the Director of

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[1] References to (1) "Tr." are to the transcript from the September 18-19, 2013 hearing conduct by the Law Judge in New York City; and (2) "Div. Ex." are to the Division's trial exhibits admitted into evidence at the hearing. See Exhibit List Prepared by the Office of Administrative Law Judges Pursuant to Commission Rule of Practice 351, dated November 6, 2013, and the Record Index prepared by the Office of the Secretary, dated November 26, 2013.

Investment Banking at Charles Vista, LLC from February 2009 through February 2010.[2] (Tr. at 181:20-25, 184:8-12, 184:8-190:12, 291:17-23; Div. Ex. 25.) Lorenzo was responsible for raising money by offering securities of issuer clients. (Tr. at 182:7-184:7.) Lorenzo knew that Charles Vista was a boiler room operation. (Id. at 383:7-13, 404:12-18.) Indeed, at least from the summer of 2009, Lorenzo understood that Charles Vista charged its clients "exorbitant" fees and that its registered representatives engaged in high pressure sales tactics, were "not being a hundred percent accurate in their presentations" to brokerage clients, and seemed to be "stretching the truth." (Id. at 295:13-16, 323:23-325:14.)

II. Lorenzo Knew of W2E's Dire Financial Condition

Waste2Energy Holdings, Inc. ("W2E") was an alternative energy company. (Id. at 190:13-18.) Its business was to develop technology to convert solid waste into "clean, renewable energy." (Div. Ex. 3 at 18.) In spring 2009, W2E became an investment banking client of Charles Vista. (Tr. at 191:6-13.) Charles Vista's job was to help W2E market and sell a variety of securities, including equity and debt. (Id. at 77:24-78:3, 191:14-192:4, 194:16-23.) During Lorenzo's tenure as Head of Investment Banking, W2E was Charles Vista's largest client and Lorenzo's sole proprietary investment banking client, for which he worked virtually exclusively. (Id. at 195:3-5, 196:21-197:9.)

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." (Id. at 198:12-199:6.) Indeed, Lorenzo knew that W2E's technology "didn't really work"; while it could incinerate waste, it could not create energy. (Id. at 199:7-20.) In fact, W2E had only one significant

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[2] Charles Vista was owned by Gregg Lorenzo, no relation to Frank Lorenzo. (Div. Ex. 132 at 12:21-22, 13:12-16.) The Commission settled a related fraud action Gregg Lorenzo and Charles Vista on November 20, 2013. See Initial Decision at 1 n.1

contract—with a company named Ascot Environmental Ltd.—which generated "90-plus" percent of W2E's revenue. (Id. 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. (Id. 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. Lorenzo Doubted the Accuracy of W2E's Financial Statements

It was Lorenzo's job to perform due diligence on W2E, including review of the company's SEC filings within 48 hours of their issuance. (Id. 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. (Id. at 231:16-232:9, 241:14-18.)

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.) 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. (Id. at 202:2-22). At the time, Lorenzo thought it significant that W2E's financial statement was unaudited, (id. at 202:23-203:13) because he knew that, absent an audit, W2E would have difficulty selling its securities. Indeed, Lorenzo testified that W2E needed an audit to comfort investors that its financial statements were accurate and that, without an audit, "there is way too much risk for investors." (Id. at 202:23-203:13.)

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. (Id. at 203:21-204:17; Div. Ex. 15 at 63 of 175.) 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. (Id. at 205:10-207:24.) Lorenzo did not believe that the intangible assets offered a significant source of collateral against W2E's defaulting on its debt. (Id. at 207:17-20.)

By at least August 2009, Lorenzo knew that W2E was undergoing an audit, but that it was delinquent in filing completed audited financial statement with the Commission. (Id. at 210:17-19, 332:20-22, 333:24-334:4; Div. Ex. 30 at 1-2.)

IV. The W2E 12% Convertible Debentures Offering

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.) Charles Vista was the exclusive placement agent for the debenture offering, for which it was paid nearly 20% of all of the offering proceeds—an amount Lorenzo understood to be "exorbitant." (Tr. at 212:12-14, 294:22-295:16; Div. Ex. 3 at iii.).[3]

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

[3] 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. (Id. at 295:17-296:2.)

Lorenzo, "it was a material number." (Id. at 216:2-7, 219:9-18.)

- August 26, 2009: Lorenzo emailed Craig Brown, W2E's CFO, 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.)

- September 1, 2009: 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 he no longer had confidence that W2E was valuing the asset at $10 million. (Tr. at 221:5-12.)

W2E did not respond to either of Lorenzo's requests to mention the intangible assets in the PPM. (Id. at 218:21-19:4, 221:13-25.) Ultimately, W2E did not disclose a dollar value for its IP assets in its final PPM, dated September 9, 2009. (Id. 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).

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." (Id. 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.

V. W2E Writes Down its Intangible Assets to Zero

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.[4] (Div. Ex. 16 at 69 of 137; Div. Ex. 22 at 4 of 45.) Both filings also reported that, following the write-off, W2E's total audited assets were only $370,553 as of March 31, 2009.[5] (Div. Exs. 16 at 69 of 137; 22 at 4 of 45.)

Lorenzo admitted that he received and read W2E's Form 10-Q on October 1, 2009. (Tr. at 241:6-13.) Four days later, on October 5, Craig Brown again told Lorenzo, this time in an email, about the total write-off:

> The accumulated deficit we have reported is due to three primary issues [including] . . . . 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).) Lorenzo read Craig Brown's email. (Tr. at 251:9-17, 249:3-4.) Lorenzo admitted that, at least by October 5, 2009, he understood that W2E had written of its $10 million intangible asset. (Id. at 252:13-20.) He further understood that this was "a big deal," a "big kick in the stomach" because it accounted for virtually all of W2E's assets. (Id. at 244:3-11.)

VI. Lorenzo's False Emails to Prospective W2E Investors

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.

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[4] 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.)

[5] The company also reported unaudited assets of $660,408 as of June 30, 2009. (Div. Ex. 22 at 4 of 45.) On November 16, 2009, W2E reported unaudited assets, as of September 30, 2009, of $905,582. (Div. Ex. 46 at 4 of 36.)

(Tr. at 259:16-20.) Lorenzo also admitted that (1) he personally authored the Deal Points Email; (2) the Deal Points Emails contained his signature block; and (3) he sent the emails. (Id. at 257:22-258:19, 261:5-10; Div. Ex. 34.)

A. The Emails Contained False Statements

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 prospective investors 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.) In fact, as Lorenzo knew, none of the purported "3 layers of protection" actually existed and, consequently, his statements were false. Indeed, in his investigative testimony taken in July 2012, 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.)

B. Lorenzo Knew That W2E did not Have $10 Million in Confirmed Assets

As discussed supra, Lorenzo knew—from a host of sources—that W2E had less than $1 million in assets by October 14, 2009 because:

- Brown told Lorenzo in mid-September 2009 that W2E anticipated just such a write-off;
- 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; and

- 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.

Indeed, 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. (Tr. at 205:10-207:24.) At the hearing, Lorenzo admitted that he understood that the intangible assets provided no "protection" to investors—contrary to the express terms of the Deal Points Emails. (Id. at 269:7-18.)

Nonetheless, 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. (Id. at 263:14-19.)

C. Lorenzo Knew That W2E did not Have $43 Million in Purchase Orders and Letters of Intent

Lorenzo was well aware that W2E did not have significant purchase orders. (Id. at 273:14-23.) W2E purchase orders totaled less than $500,000. (Tr. at 52:4-12.)[6] 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. (Id. 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. (Id. at 278:9-12.)

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[6] Lorenzo had only ever seen a list of W2E sales *projections*, which merely identified the company's hopes for potential future sales. (Tr. at 273:20-276:2; Div. Ex. 29.) Lorenzo knew that none of the projections on that list constituted actual sales. (Tr. at 281:20-282:8.)

D. 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

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. (Id. at 284:10-13.) He testified that his statement to the contrary was misleading and that investors could not "hang [their] hat on it." (Id. at 265:20-266:16, 284:20-24.)

First, Lorenzo knew that no written agreement existed contemplating additional securities sales with either W2E or debenture investors. (Id. at 284:10-19.) Second, 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 $15,000,000. (Id. at 285:19-22.) This was because, as Lorenzo believed and testified: (i) W2E was not a "worthwhile" investment (id. at 288:7-11); (ii) it was a "stretch" to believe that that the company would even be able to "repay debenture holders" (id. at 285:23-286:4; see also id. at 289:18-291:2, 293:16-20); and (iii) 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.[7] (Id. at 291:3-16.)

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

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). (Id. 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).)

[7] Lorenzo knew that 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." (Id. at 292:4-20.)

VIII. Francis Lorenzo Misleads the Staff Regarding Charles Vista

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 serious complaints about his tenure there. As Lorenzo testified: (1) he knew that Charles Vista was a boiler room (see supra); (2) 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); (3) he was not proud of the work that Charles Vista was doing in fall 2009 (id. at 300:19-23); and (4) he did not think that Charles Vista was being "handled" as a high-quality investment bank (id. at 300:24-301:5).

Nonetheless, when Lorenzo testified to Division staff under oath and on the record on November 12, 2009, Lorenzo painted a rosy, albeit untrue, picture of Charles Vista's brokerage business. Lorenzo did not disclose any of his above concerns. To the contrary, he testified that (1) Gregg Lorenzo "is a bright guy, honest guy" (id. at 304:24-25); (2) he was proud of Charles Vista (id. 307:6-9); and (3) he and Gregg Lorenzo were currently executing on their "vision" of building Charles Vista's "high quality investment banking Division" (id. at 307:22-24).

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

PROCEDURAL HISTORY

The Commission instituted this proceeding with an Order Instituting Proceedings ("OIP") on February 15, 2013. In the Matter of Gregg C. Lorenzo, SEC Rel. No. 9385, 2013 WL 587864 (Feb. 15, 2013). The Law Judge held an administrative hearing on September 18-19, 2013 in New York City. (Initial Decision at 2.)

On December 31, 2013, Judge Foelak issued the Initial Decision. (Id. at 1.) Judge

Foelak found that Lorenzo—by authoring and sending the Deal Points Emails to two prospective investors—had committed fraud in violation of Securities Act of 1933 Section 17(a) and Securities Exchange Act of 1934 Section 10(b) and Rule 10b-5 thereunder. (Id. at 7.) Specifically, Judge Foelak found that "[t]he falsity of the representations in the emails is staggering." (Id. at 9.) The Law Judge further found that Lorenzo sent the email at the behest of Gregg Lorenzo, who had "drafted" them because he "wanted the emails to come from Charles Vista's investment banking division." (Id. at 5.) "Frank Lorenzo heeded . . . [the] instruction without question . . . ." (Id.) "While Frank Lorenzo knew the truth about W2E's parlous financial condition, the emails contained extensive false information, including regarding the company's 'three layers of protection.'" (Id. at 6.) The Court further held that Lorenzo has taken no personal responsibility for his fraud. (Id. at 6-7.)

As a result of his fraud, the Law Judge ordered that Lorenzo: (1) 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; (2) be barred him from the securities industry; and (3) pay a "third-tier civil penalty of $15,000."[8] (Id. at 9, 11.) In ordering this relief, the Law Judge found that: (1) "[T]here are no mitigating factors" (id. at 11); (2) Lorenzo's actions "involved fraud [and] reckless disregard of a regulatory requirement [and] created a significant risk of substantial losses to other persons" (id.); (3) "Deterrence also requires a substantial penalty" (id.); (4) 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 (5) "Lorenzo has not demonstrated an inability to pay any penalty that may be ordered in this proceeding" (id. at

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

7). The ALJ also found that:

> Combined with the other sanctions ordered, a third-tier penalty of $15,000—less than the maximum and equivalent to the actual loss sustained by [an] investor—is in the public interest.

(Id. at 12.)

On January 27, 2014, Respondent filed a Petition for Review of Initial Decision, arguing that (1) there was no evidence that Lorenzo acted with scienter; and (2) the awarded remedies were unfounded. (See Lorenzo Petition for Review of Initial Decision, Jan. 27, 2014.) On February 20, 2014, the Commission granted Lorenzo's petition to appeal, as well as the Division's petition to cross-appeal the penalty amount. In the Matter of Gregg C. Lorenzo, SEC Rel. No. 71584, 2014 WL 650374 (Feb. 20, 2014). On March 24, 2014, Respondent filed his brief in support of his appeal ("Lorenzo App. Br.").

ARGUMENT

The Commission's review of the Initial Decision's findings of fact and conclusions of law is conducted de novo. See In the Matter of Theodore W. Urban, SEC Rel. No. 63456, 2010 WL 5092728, at *2 (Dec. 7, 2010). For the following reasons, the Commission should affirm the Law Judge's decision, with one exception. The Division respectfully requests that the Commission increase the amount of the awarded penalty from $15,000 to at least $100,000.

I. Lorenzo Made the Materially False Statements Here at Issue

Lorenzo argues that—under the holding of Janus Capital Group, Inc. v. First Derivative Traders, 131 S. Ct. 2296, 2302 (2011)—he did not "make" the statements contained in his Deal Points Emails because Gregg Lorenzo "drafted" the language. (Lorenzo App. Br. at 5.) This argument is without merit for a host of reasons.

As an initial matter, the Commission should deem Lorenzo to have waived his Janus argument by not raising it in his January 27, 2014 Petition for Review of Initial Decision.

Commission Rule of Practice 411(d) limits the Commission's review to "issues specified in the petition for review . . . ." 17 C.F.R. 201.411(d). As the Commission noted in In the Matter of Ross Mandell, "[u]nder Commission Rule of Practice 410(b), we deem any exception to the initial decision not stated in [Respondent's] petition for review waived." SEC Rel. No. 71688, 2014 WL 907416, at *6 n.6 (Mar. 7, 2014). Thus, the Commission should deem Lorenzo to have waived any argument that he was not the "maker" of the Deal Points Emails.

In any event, Lorenzo's Janus argument is contradicted by both the record evidence and the law. First, the Law Judge's finding that Gregg Lorenzo "drafted" the language is contradicted by Francis Lorenzo's own testimony. Lorenzo testified that he: "[A]uthored it and then it was approved by Gregg [Lorenzo] and Mike [Molinaro, Charles Vista's compliance officer]." (Tr. at 261:8-10 (emphasis added).)

Second, regardless of whether Gregg Lorenzo "drafted" the Deal Points Emails, Frank Lorenzo "made" the statements contained therein for Section 10(b) purposes because it was Francis Lorenzo (not Gregg) who pasted them into his own emails (id. at 264:6-8); it was Frank Lorenzo (not Gregg) who sent the emails; and the emails contain the signature block of Frank Lorenzo (not Gregg's). (id. at 257:22-258:8; Div. Ex. 34). Indeed, Lorenzo's argument turns Janus on its head. A central facet of that decision was the distinction the Supreme Court drew between a person who merely drafts a statement and the person who actually "makes" it:

> Even when a speechwriter drafts a speech, the content is entirely within the control of the person who delivers it. And it is the speaker who takes credit—or blame—for what is ultimately said.

131 S.Ct. at 2302.

Thus, 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, 131 S. Ct. at 2302. Such "ultimate authority" is most often

gleaned from whether the statement is attributed to Respondent:

> [I]n the ordinary case, attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by—and only by—the party to whom it is attributed.

Id. Courts readily find such attribution where a defendant signs the false statement at issue.[9] So should the Commission here, where Lorenzo sent the Deal Points Email above his own signature block. Indeed, Francis Lorenzo plainly intended such attribution in this case because—as he testified— he understood that Gregg Lorenzo wanted the email to come from Charles Vista's investment banking division; in other words, from Respondent Francis Lorenzo. (Tr. at 382:9-13.)

Respondent makes much of the fact that he allegedly sent the Deal Points Email "at the request of Gregg Lorenzo." (Lorenzo App. Br. at 5; see also Div. Ex. 34.) This is of no moment. As noted above, even if he did so, Frank Lorenzo still "made" the statements contained in the emails for Janus purposes. Moreover, under Janus, a false statement can have multiple makers where it contains "express or implicit attribution" to those people. See, e.g., City of Roseville Emps. Retirement Sys. v. Energysolutions, Inc., 814 F. Supp. 2d 395, 417 n.9 (finding that Janus "does not imply that there can be only one 'maker' of a statement in the case of express or implicit attribution"). Thus, that Gregg Lorenzo may also be liable as a "maker" of the false Deal Points Emails does nothing to immunize Francis Lorenzo from liability for his

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[9] 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. 102 (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).

own explicitly attributed false statements.

Finally, Respondent urges the Commission to apply Janus to the Division's claims under Section 17(a) of the Securities Act. (Lorenzo App. Br. at 6.) However, because the Janus decision turns on a careful analysis of the word "make," the vast majority of courts have refused to extend its holding to Section 17(a), which does not use that same language.[10]

II. The Law Judge's Findings That Lorenzo Committed Fraud are Amply Supported By The Record

Lorenzo absurdly contends that there is no evidence that he knew or recklessly disregarded that any of the purported "three layers of protection" he cited in the Deal Points Emails were false or misleading. (Lorenzo App. Br. at 7-12.) To the contrary, Lorenzo's own

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[10] See SEC v. Geswein, -- F. Supp. 2d --, 2014 WL 861317, at *4 (N.D. Oh. Mar. 5, 2014) ("The Court will not presume to extend Janus to violations of the Securities Act Section 17(a)"); SEC v. Benger, 931 F. Supp. 2d 904, 905-06 (N.D. Ill. 2013) ("vast majority of courts dealing with the question of whether Janus also applies to claims under Section 17 have answered that question with a resounding 'no.'"); SEC v. Sells, 11 Civ. 4941 (CW), 2012 WL 3242551, at *7 (N.D. Cal. Aug. 10, 2012) ("Janus does not apply to claims premised on § 17(a)"); SEC v. Stoker, 865 F. Supp. 2d 457, 465-66 (S.D.N.Y. 2012) (Janus does not apply to 17(a)); SEC v. Pentagon Capital Mgmt. PLC, 844 F. Supp. 2d 377, 422 (S.D.N.Y. 2012) (same); SEC v. Sentinel Mgmt. Grp., Inc., 07 Civ. 4684 (CPK), 2012 WL 1079961, at *14 (N.D. Ill. Mar. 30, 2012) ("the Supreme Court largely based its holding [in Janus] on the definition of the word 'make,' which is present in Rule 10b-5 but not so in Section 17(a)"); SEC v. Radius Capital Corp., 11 Civ. 116 (JES), 2012 WL 695668, at *7 (M.D. Fla. Mar. 1, 2012) (17(a)(2) covers "use of an untrue statement (regardless of who created or composed the statement)"); SEC v. Mercury Interactive, LLC, 07 Civ. 02822 (WHA), 2011 WL 5871020, at *3 (N.D. Cal. Nov. 22, 2011) ("This Court agrees with those decisions that have concluded that Janus may not be extended to statutes lacking the very language that Janus construed"); SEC v. Daifotis, 11 Civ. 00137 (WHA), 2011 WL 3295139, at *5 (N.D. Cal. Aug. 1, 2011) (finding that Janus does not apply to Section 17(a) claims, "Importantly, the word 'make,' which was the very thing the Supreme Court was interpreting in Janus, is absent from the operative language . . . ."); SEC v. Tambone, 597 F.3d 436, 444 (1st Cir. 2010) ("although section 17(a)(2) may fairly be read to cover the 'use' of an untrue statement to obtain money or property . . . Rule 10b–5(b) is more narrowly crafted").

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); In the Matter of John P. Flannery, SEC. Rel. No. 438, 2011 WL 5130058, at *35 (Oct. 28, 2011) (initial decision of ALK Murray applying Janus to Section 17(a) claims).

admissions demonstrate beyond doubt that he knew his statements were false when he made them. Indeed, his continued efforts to redeploy blame for his own emails to others—such as to the W2E executives (see id. at 9, 11)—reflects not his innocence, but his continued unwillingness to accept any responsibility for his own false statements.

A. The Purported $10 Million Asset

Lorenzo oddly asserts that "Charles Vista was never appropriately notified by W2E of the write down." (Lorenzo App. Br. at 9.) To the contrary, the record is plain that Lorenzo knew that W2E had written off the $10 million asset before he sent the Deal Points Emails on October 14, 2009. As discussed above (see Statement of Facts, § V supra), Lorenzo admitted that he read the October 1 Forms 10-Q and 8-K/A that announced the write-down, and that he received and read an October 5 email from Craig Brown that expressly told him of the "[w]rite off of all of our intangible assets . . . of about $11 million." (Div. Ex. 19 at 1 (emphasis in original).) Indeed, at the hearing, Lorenzo explicitly admitted that he knew that the $10 million in assets had been written off by October 5—nine days before he sent the Deal Points Email:

> 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.)

Furthermore, Lorenzo's claim that he somehow missed the write-down, or was not apprised of it, is belied by his repeated requests to W2E to confirm the $10 million asset (requests W2E repeatedly rebuffed). (See Statement of Facts, § IV supra.) Finally, Lorenzo admitted that, prior to its even being written off by W2E, he did not even believe that the $10 million asset provided any protection to investors; and that it was a "dead asset." (See Statement

of Facts, § III supra.) In other words, Lorenzo "knew that the representations [he] made to investors"—that W2E had $10 million in assets and that those assets provided protection against loss—were "false." Gebhard v. SEC, 595 F.3d 1034, 1041 (9th Cir. 2010) (citation omitted). This constitutes the "familiar definition of scienter in a securities fraud case." Id.

B. The Purported $43 million in Purchase Orders and Letters of Intent

Regarding the October 14 emails' claims of $43 million in W2E "orders and LOI's," Lorenzo asserts that insufficient evidence exists that that statement was actually false or misleading.[11] (Lorenzo App. Br. at 11.) Again, however, Lorenzo's own admissions belie his current position. First, Lorenzo testified that he did not know of any actual sales that W2E had—only sales projections. (Tr. at 273:20-274:2.) Therefore, as far as he knew at the time, his claim of "purchase orders" was flat out false.[12] Second, while a $43 million non-binding LOI did exist, Lorenzo admitted his doubt that any actual sale "was ever going to happen." (Id. at 278:9-12.) Thus, the October 14 emails' statement that such an LOI provided any meaningful "layer of protection" to W2E's debenture investors was, at a minimum, misleading—and knowingly so.

C. Charles Vista Had Not Agreed to Raise Any Additional Funds

Finally, Lorenzo argues that his statement in the October 14 emails that "Charles Vista has agreed to raise additional monies to repay Debenture holders (if necessary)" (Div. Ex. 34 (emphasis added)) was not false merely because Gregg Lorenzo "was in a position to make that

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[11] In his Petition for Review Lorenzo did not challenge the falsity of the Deal Points Emails, only that he had not acted with scienter. Thus, for the reasons set out in Argument, § I supra, the Commission should consider any arguments concerning the falsity of the statements in the Deal Points Emails waived.

[12] The evidence in the record indicates that there were at most less than $500,000 in purchase orders—although Lorenzo did not know of these. (See Statements of Fact, § VI.C supra.)

agreement." (Lorenzo App. Br. at 11.) Lorenzo thus attempts to substitute conjecture for the facts as Francis Lorenzo knew them at the time he sent his emails. As Lorenzo admitted at the hearing, he told investors that such an agreement existed, when he knew that "[t]here was no actual agreement" to raise additional money (Tr. at 284:10-13); that his statement to the contrary was misleading (id. at 284:20-24); and that investors "couldn't hang [their] hat on it" (id.). That Gregg Lorenzo may have changed his mind and attempted to raise money at some point in the future—which he did not—is irrelevant to whether Francis Lorenzo knew at the time he made his statement that it was not true (as he did). Indeed, Francis Lorenzo admitted that he did not even believe that Gregg Lorenzo could raise more money because, in the event of default, there would be no more potential investors to be found. (See Statement of Facts, § VI.D supra.)

III. Permanent Bars, a Cease-and-Desist Order, and a Civil Money Penalty are Warranted Given Lorenzo's Egregious Conduct

Based on Frank Lorenzo's egregious fraudulent conduct, described above, the Law Judge properly imposed a cease and desist order, permanent collateral bars, and a civil money penalty. However, as further explained below, the Division cross-appeals the amount of the penalty award, which we respectfully submit should be raised from $15,000 to at least $100,000.

A. Cease-and-Desist Order

Lorenzo appeals the Law Judge's imposition of a cease-and-desist order against him, essentially on the alleged ground that no evidence exists that he is likely to violate the law in the future. To the contrary, the record contains ample such evidence, particularly concerning Lorenzo's repeated refusal to take responsibility, and to blame others, for his own actions. Moreover, the risk of future violations is only one of several factors the Commission should consider, and the other factors amply support the imposition of a cease-and-desist order against Lorenzo.

Sections 21C of the Exchange Act and 8A of the Securities Act authorize 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, SEC Rel. No. 51950, 2005 WL 1560276, at *15 (June 30, 2005). In determining whether to impose a cease-and-desist order, the Commission 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) the 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. Furthermore, "absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations." In the Matter of David F. Bandimere, SEC Rel. No. 506, 2013 WL 5502550, at *9 (Oct. 4, 2013).

As the Law Judge found, all of these factors support a cease-and-desist order in this case. (Initial Decision at 11.) To begin with, Lorenzo's statements were repeated, entirely false, highly material, and made with a high degree of scienter. As discussed above, in two separate emails, Lorenzo made false statements about fundamental aspects of W2E's business and 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, SEC Rel. No. 9417, 2013 WL 3487076, at *14 (July 12, 2013) (citation and quotation marks omitted).

In addition, Lorenzo also has failed to accept responsibility for his fraud. As the Law Judge found, Lorenzo's "attempt to displace blame onto both [his co-defendant] Gregg Lorenzo and W2E is an aggravating factor." (Initial Decision at 11.) Indeed, Francis Lorenzo made a number of excuses at trial, 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" (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 (id. 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 (id. 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 (through its CFO, Craig Brown), in public filings, and in an email from Brown—that the assets no longer existed. Moreover, Lorenzo admits that, well before September 2009, he doubted the veracity of the asset value. He further 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 had been attempting for months to ascertain the value of W2E's intangible assets. Thus, far from a mere "mistake," the evidence overwhelmingly establishes that Lorenzo purposely defrauded prospective W2E investors.

In addition, by at least the summer of 2009, Lorenzo understood that Charles Vista was a "boiler room," that the firm's owner, 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 stayed on, knowingly participating in Gregg Lorenzo's boiler room by writing and sending false investment solicitations.

Moreover, when presented with the opportunity early on to disclose the truth to the Commission staff, Lorenzo chose instead to testify falsely concerning Charles Vista and its operations. (See Statement of Facts, § VIII supra.) In other words, afforded the opportunity to come clean—before he was caught out—Lorenzo chose to lie.

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, as the Law Judge found, Lorenzo's continued efforts to blame W2E for his own fraud is itself "an aggravating factor." In the Matter of Gualario & Co., LLC, SEC Rel. No. 452, 2012 WL627198, at *16 (Feb. 14, 2012). And Lorenzo's attempts to minimize his misconduct demonstrate that he "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.

Thus, the Law Judge properly imposed cease-and-desist orders against Lorenzo 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

The Law Judge also correctly imposed a permanent industry bars against Lorenzo on the grounds that such bars "are in the public interest and appropriate deterrents":

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

(Initial Decision at 12.). Lorenzo appeals this ruling on the alleged grounds that (1) "Lorenzo did not act with the intent to defraud any investors"; (2) no evidence exists that an investor actually relied upon Lorenzo's false emails; (3) Lorenzo's current employment does not afford him the opportunity to engage in fraud; and (4) a permanent bar is excessive and, thus, violates "the Eighth Amendment's prohibition against excessive punishment." For the reasons set forth above (regarding the imposition of cease-and-desist orders), as well as the additional reasons stated below, Lorenzo's arguments are without merit.

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 . . . and the bar is in the public interest." In the Matter of Richard P. Sandru, SEC 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").

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 (including attempting to shift blame to others); (3) he refused to testify fully and truthfully to Commission staff when initially questioned; and (4) contrary to his current assertion, 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 WL 627198, at *18. Therefore, as the Commission has previously 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).

Lorenzo presently continues to work in the securities industry and, thus, continues to have the opportunity to commit securities fraud. That he may no longer work at a "boiler room," as he appears to claim, is irrelevant. The associational bar does not require a finding that Lorenzo have the opportunity to commit precisely the same type of fraud in precisely the same type of locale. Rather, it is sufficient that he have the opportunity to commit securities fraud in the future, which his current employment plainly presents.

Finally, the Law Judge's imposition of a permanent (as opposed to time-limited) bar is appropriate, given the egregious and brazen nature of Lorenzo's fraud, and his continued refusal to accept responsibility for it. Furthermore, contrary to Lorenzo's assertion, the Eighth Amendment is inapplicable here because, as the Commission previously held, an industry bar does not constitute "punishment within the meaning of the Eighth Amendment." In the Matter of Charles Phillip Elliot, 50 S.E.C. 1273, at 5, 1992 WL 258850, at *4 (Sept. 17, 1992) (citing Flemming v. Nestor, 363 U.S. 603, 613-14 (1960)).

C. The Commission Should Increase the Civil Money Penalty to at least $100,000

Lorenzo also challenges the Law Judge's imposition of a $15,000 civil penalty against Lorenzo as "unwarranted." (Lorenzo App. Br. at 15-16.) To the contrary—while the Law Judge's conclusion that a third-tier penalty was warranted is well-founded—for the reasons set forth above and below, a $15,000 penalty is too low. The Division thus cross-appeals and respectfully requests that the Commission increase the $15,000 penalty to at least $100,000.

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.[13] 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) deterrence; and (6) such other matters as justice may require. In the Matter of Gualario & Co., LLC, 2012 WL627198, at *17. The Court may award third-tier penalties—the highest penalty range—not to exceed $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, SEC Rel. No. 496, 2013 WL

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

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, SEC Rel. No. 292, 2005 WL 1750288, at *68 (July 18, 2005). Thus, the Commission may impose the maximum penalty of $150,000 for each of Lorenzo's false and misleading statements. See SEC v. Pentagon Capital Mgmt. 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); Initial Decision at 11; see also Exchange Act, § 21(b)(b)(3).[14]

Third-tier penalties—as the Law Judge found—are plainly warranted here. Lorenzo's conduct involved fraud. Moreover, given that none of the purported protections he touted existed, there was unquestionably "a significant risk of substantial losses" created by his fraud. Exchange Act, § 21B(b)(3). However, given the ALJ'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 that the Law Judge awarded is too low. Indeed, the $15,000 penalty, although termed a third-tier penalty in the Initial Decision, 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.

Several aggravating factors warrant at least a $100,000 penalty. First, W2E debenture

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[14] While the Law Judge considered both of Lorenzo's 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 Pentagon Capital Mgmt. PLC, 725 F.3d at 288 n.7 (finding no error in a district court counting each late trade as a separate violation).

investors—including Goolcharan—lost their entire principal investment and, thus, were harmed. Id., § 21B(c)(2). Second, Lorenzo solicited investments from two individuals by telling them brazen falsehoods designed to make a highly risky investment appear highly safe. 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"). Thus, a penalty of at least $100,000 is appropriate in this case.

Lorenzo asserts that the Commission should order no penalty whatsoever, essentially because his direct personal monetary gain from his fraud was minimal. If anything, however, Lorenzo's arguments are self-defeating and, indeed, support the Division's request for imposition of a higher penalty. In formulating its $100,000 penalty request, the Division already has factored in the relatively small amount that Lorenzo gained. Indeed, the Division seeks neither disgorgement against Lorenzo nor the maximum available civil penalty (which is at least $300,000). Precisely because no disgorgement is sought, a significant penalty is necessary to deter adequately any such future conduct by Lorenzo. As noted above, Lorenzo repeatedly refused to accept responsibility for his fraudulent actions (or even recognize them), thus demonstrating the likelihood that he will commit fraud in the future if the Commission does not significantly discourage him from doing so.

CONCLUSION

Based on the foregoing, the Division respectfully requests that the Commission (1) modify the Initial Decision by imposing a civil money penalty of at least $100,000; and (2) reject Lorenzo's appeal in its entirety.

Respectfully submitted,

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