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 OPPOSITION TO RESPONDENT FRANCIS V. LORENZO'S BRIEF REGARDING SANCTIONS

January 26, 2018

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Pursuant to the Commission's December 12, 2017 Order, the Division of Enforcement ("Division") respectfully submits this opposition to the Respondent Francis V. Lorenzo's ("Lorenzo") brief regarding sanctions. For the following reasons, the Division respectfully requests that the Commission impose the same sanctions against Lorenzo that it previously imposed – a cease and desist order, an industry bar, and a $15,000 civil money penalty.

PRELIMINARY STATEMENT

On October 14, 2009, respondent Lorenzo purposely sent two emails to two prospective investors in a company called Waste2Energy – for which Lorenzo's employer, the brokerage firm Charles Vista, was selling debentures. All prior rulings in this case – the Initial Decision, the Commission opinion, and the D.C. Circuit decision – agree that those emails contained material false and misleading statements; that Lorenzo sent them with intent to defraud the investors; and that Lorenzo was responsible for their content. Indeed, Lorenzo's responsibility is clear on the face of his emails – which claim to provide information "summarized" by Lorenzo's "Investment Banking division," and conclude with Lorenzo's signature and personal invitation to "please call with any questions." (Exhibit 1 hereto.)

Accordingly, all prior decisions in this case found Lorenzo liable for securities fraud, in violation of Sections 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The D.C. Circuit, unlike the Commission, found Lorenzo liable under Exchange Act Rules 10b-5(a) and (c), not Rule 10b-5(b). Solely for this reason, the Circuit Court remanded the case to the Commission, solely to reconsider appropriate sanctions against Lorenzo.

The D.C. Circuit's limited revision of the Commission's prior ruling does not warrant a departure from its previous sanctions against Lorenzo. To the contrary, the Circuit Court's

affirmance of Lorenzo's fraud supports those sanctions under the particular circumstances of this case. Given the seriousness of Lorenzo's violations, his high degree of scienter, his deception of the Commission staff during its investigation of this case, and his unwillingness to accept responsibility, the Division respectfully requests that the Commission maintain the sanctions that it previously imposed.

In his opening brief, Lorenzo ignores the D.C. Circuit decision entirely, asking instead "that the Commission adopt Judge Kavanaugh's dissenting opinion" and "dismiss this case without imposing any sanctions on Lorenzo." The Commission should deny Lorenzo's odd request as contrary to the D.C. Circuit decision (which expressly rejects Judge Kavanaugh's dissent), the factual record, applicable law, public policy, and common sense. Lorenzo's argument rests entirely upon the erroneous proposition – expressly rejected by the D.C. Circuit – that he sent his emails without thinking about them (at his boss's request). Even if true, any such finding is immaterial to Lorenzo's culpability – Lorenzo expressly adopted the emails' contents as his own, and ignoring their contents would have been patently reckless. In any event, as the D.C. Circuit found, Lorenzo concededly knew the contents of his emails. Moreover, Lorenzo was not a low-level employee carrying out a ministerial task. To the contrary, he was Charles Vista's Vice President in charge of "Investment Banking" and, as such, was responsible for precisely the sort of information contained in those emails. Indeed, as the D.C. Circuit also found, Lorenzo's boss asked *Lorenzo* to send the emails (rather than do so himself) precisely to stamp them with the imprimatur of Lorenzo and his "Investment Banking division."

For these reasons, the Division respectfully requests that the Commission follow the D.C. Circuit's fraud liability findings against Lorenzo and maintain the Commission's prior sanctions against him.

PROCEDURAL HISTORY

This section summarizes the prior decisions against Lorenzo in this case, focusing on Lorenzo's responsibility and scienter regarding his false and misleading emails, and the bases for the sanctions previously imposed against him.

I. Initial Decision

The Commission's Order Instituting Proceedings in this case alleges that that Lorenzo made material false statements in two emails, regarding three supposed "layers of protection" for investors in Waste2Energy debentures. The Initial Decision found that, in fact, no such "layers of protection" existed, and that Lorenzo recklessly disregarded those falsities. *In the Matter of Gregg C. Lorenzo, et al.*, SEC Release No. 544, 2013 WL 6858820, *4, *7 (Initial Decision, Dec. 31, 2013). Accordingly, the Initial Decision ruled that "Lorenzo violated the antifraud provisions [of the Securities Act and Exchange Act] by making material misstatements and omissions in the emails"; that the "falsity of the representations in the emails is staggering"; and that Lorenzo sent them recklessly ("without thinking"). *Lorenzo*, 2013 WL 6858820, *7. The Initial Decision further found that Lorenzo's boss "asked . . . Lorenzo to send" the emails (which Lorenzo's boss "had drafted"), but that Lorenzo "cannot escape liability by claiming that [his boss] ordered him to send the emails. The fact that [his boss] contributed to the misrepresentation does not relieve Frank Lorenzo from responsibility." *Id.* at *4, *7.

Regarding sanctions, the Initial Decision called for a cease-and-desist order, an industry bar, and a $15,000 civil money penalty. *Id.* at *7-9. The Initial Decision ordered those sanctions because, *inter alia*, "Lorenzo's conduct was egregious and repeated"; he "sent the violative email to two people"; the "conduct involved at least a reckless degree of scienter"; and his "lack of assurances against future violations and recognition of the wrongful nature of the conduct goes

beyond a vigorous defense of the charges." *Id.* at *7-9. In particular, Lorenzo's "attempt to displace blame onto both [his boss and Waste2Energy] is an aggravating factor." *Id.* at *8.

II. Commission Opinion

The Commission affirmed the Initial Decision's findings regarding the falsity and materiality of Lorenzo's emails, and his intent to defraud their recipients. The Commission relied primarily upon Lorenzo's own trial and investigative testimony, during which he effectively admitted those elements. *In the Matter of Gregg C. Lorenzo, et al.*, SEC Release No. 9762, 2015 WL 1927763, *6-9 (Commission Opinion, April 29, 2015). Unlike the Initial Decision, however, the Commission found that Lorenzo knowingly sent his false emails and was aware of their contents. *Id.* at *9. The Commission added, however, that even "if Lorenzo did send the emails without 'think[ing] about it one way or the other,' as he claims, such a dismissive attitude toward investors' interests would be equally troubling and still constitute acting with extreme recklessness." *Id.*

Regarding Lorenzo's alleged violation of Exchange Act Rule 10b-5(b), the Commission ruled that Lorenzo "made" the false statements at issue, noting that Lorenzo testified at the hearing that he "authored" the emails, which were then approved by his boss and Charles Vista's compliance officer. *Id.* at *10. The Commission further noted in this regard:

> Lorenzo also put his own name and direct phone number at the end of the emails, and he sent the emails from his own account. Lorenzo further testified that he understood that [his boss] wanted the emails to come from the investment banking division (which Lorenzo oversaw) and that, by sending the emails, Lorenzo was putting his own reputation on the line.

Accordingly, the Commission found Lorenzo liable for violating Exchange Act Section 10(b) and Rule 10b-5(b) thereunder. *Id.*

In addition, the Commission found Lorenzo liable for violating Exchange Act Rules 10b-5(a) and (c), and Securities Act Section 17(a):

> We also find that Lorenzo employed a 'device, scheme, or artifice to defraud,' in violation of Section 17(a)(1) and Rule 10b-5(a); that he engaged in an 'act' that would operate as a fraud in violation of Rule 10b-5(c); and that his conduct was deceptive, as required by Section 10(b). Independently of whether Lorenzo's involvement in the emails amounted to 'making' the misstatements for purposes of Rule 10b-5(b), he knowingly sent materially misleading language from his own email account to prospective investors. Lorenzo's role in producing and sending the emails constituted employing a deceptive 'device,' 'act,' or 'artifice to defraud' for purposes of liability under Section 10(b), Rule 10b-5(a) and (c), and Section 17(a)(1).

Id. at *11.

The Commission also affirmed the Initial Decision's sanctions,[1] finding that "Lorenzo's conduct was egregious" in that he "demonstrated a complete disregard" of proper business ethics "by grossly misleading, if not outright lying to, retail customers about the significant risks involved in purchasing [Waste2Energy's] debentures." *Id.* at *12.

The Commission further found that "Lorenzo has . . . displayed troubling dishonesty." For example, the Commission noted, "while Lorenzo seeks credit for voluntarily testifying to commission staff during its investigation, his testimony painted a notably misleading picture of his employer and [Waste2Energy's] offering." *Id.* at *13. The Commission went on to provide detailed examples of Lorenzo's dishonesty during the Commission investigation:

> For example, while Lorenzo initially described [his boss] to Commission staff as an 'honest guy,' he later admitted at the hearing that 'there [wa]s no way on God's green earth I thought [my boss] was an honest guy. Lorenzo similarly described [Waste2Energy's] debt offering as a high quality project during the investigation but later admitted that he thought the offering was 'a toxic convertible debt spiral.'

Id.

[1]The Commission denied the Division's cross-appeal seeking a higher civil money penalty. *Id.* at *17.

The Commission further found that Lorenzo "acted with a high degree of scienter," noting that:

> Lorenzo knew, when he sent his emails to customers, that he was misstating critical facts about [Waste2Energy] and the safety of its debenture offering. That Lorenzo so blatantly ignored the importance of communicating truthfully with potential investors creates a significant risk that he will engage in similar misconduct in the future and demonstrates his unfitness to participate in the securities industry.

Id.

The Commission also found that "Lorenzo's unwillingness to accept responsibility for this misconduct further weighs in favor of a bar," and was "particularly troubled by Lorenzo's continued attempts to shift blame onto [Waste2Energy] for not" making more fulsome disclosures regarding its financial condition. *Id.*

The Commission also rejected Lorenzo's Eighth Amendment argument – *i.e.*, his claim that the sanctions were "grossly disproportionate to the offense at issue, particularly given Mr. Lorenzo's long unblemished career in the securities industry":

> Although some mitigating factors exist, including that Lorenzo has a relatively clean disciplinary record, that he claims to have made some effort at assisting defrauded investors, and that he earned relatively little profit from his misconduct, his claims of mitigation are far outweighed by the gravity of his violations and the risk of his committing future violations. Our intent in ordering that Lorenzo be barred from the industry is to protect the investing public from further harm, not to punish Lorenzo. And the Exchange Act specifically authorizes us to impose such an industry-wide bar. Barring him from the industry is therefore not a punishment within the meaning of the Eighth Amendment.

Id. at *14.

Finally, the Commission found the sanctions it imposed against Lorenzo "consistent" with its prior "repeated holding that conduct that violates the antifraud provisions of the

securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Id.* at *15 (internal quotation omitted).

III. D.C. Circuit Decision

Lorenzo appealed the Commission Order to the D.C. Circuit, which affirmed in part, reversed in part, vacated the Order, and remanded to the Commission solely to reconsider sanctions. *Lorenzo v. SEC*, 872 F.3d 578, 596 (D.C. Cir. 2017).

The D.C. Circuit affirmed the Commission's finding that Lorenzo had committed securities fraud under Exchange Act Section 10(b) and Securities Act Section 17(a). In so doing, the Court upheld the Commission's findings that the "3 layers of protection" statements in Lorenzo's emails were false and misleading, and that Lorenzo possessed the requisite fraudulent intent when he sent the emails. *Id.* at 582-86.

The D.C Circuit, however, disagreed with the Commission's finding that Lorenzo "made" the false statements for Rule 10b-5(b) purposes, finding instead that Lorenzo's boss (not Lorenzo) had "ultimate authority" over those statements. *Id.* at 586-88. The Court reasoned that Lorenzo "populated the [email] messages with content sent by [Lorenzo's boss]"; that Lorenzo sought and received approval from his boss before sending the emails; and that Lorenzo's boss asked Lorenzo to send the emails. *Id.*

The D.C. Circuit nonetheless affirmed the Commission's findings that Lorenzo violated Rules 10b-5(a) and (c), and Securities Act Section 17(a)(1). The Court reasoned that, while not technically the "maker" of the false statements, Lorenzo nonetheless plainly was responsible for their fraudulent dissemination:

> At least in the circumstances of this case, in which Lorenzo produced email messages containing false statements and sent them directly to potential investors expressly in his capacity as head of the Investment Banking Division – and did so with scienter – he can be found to have

> infringed Section 10(b), Rules 10b-5(a) and (c), and Section 17(a)(1), regardless of whether he was the 'maker' of the false statements for purposes of Rule 10b-5(b).
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> * * *
>
> [Based on the record], [w]e therefore consider the case on the understanding that Lorenzo, having taken stock of the emails' content and having formed the requisite intent to deceive, conveyed materially false information to prospective investors about a pending securities offering backed by the weight of his office as director of investment banking. On that understanding, the language of Sections 10(b) and 17(a)(1), and of Rules 10b-5(a) and (c), readily encompasses Lorenzo's actions.
>
> * * *
>
> In this case . . . Lorenzo's role was not 'undisclosed' to investors. The recipients were fully alerted to his involvement: Lorenzo sent the emails from his account and under his name, in his capacity as director of investment banking at Charles Vista. While [Lorenzo's boss] supplied the content of the false statements for inclusion in Lorenzo's email messages, Lorenzo effectively vouched for the emails' contents and put his reputation on the line by listing his personal phone number and inviting the recipients to 'call with any questions.' Nor did the dissemination of the false statements to investors result only from the separate 'decision of an independent entity.' Lorenzo himself communicated with investors, directly emailing them misstatements about the debenture offering.

Id. at *588-91 (citations omitted).[2]

Having revised somewhat the legal basis for Lorenzo's liability, the D.C. Circuit vacated the Commission's prior Order, remanding the case to the Commission solely for its reconsideration of the appropriate sanctions against Lorenzo:

> We decline to reach the merits of Lorenzo's [sanctions] challenges. The

[2]In thus finding Lorenzo liable under Exchange Act Rules 10b-5(a) and (c), the D.C. Circuit agreed with the Commission's long-held view that Rule 10b-5's subdivisions are not mutually exclusive – *e.g.*, that the Commission can allege fraud claims under Rules 10b-5(a) and (c) based solely on false statements or material omissions, even where a defendant did not "make" a false statement for rule 10b-5(b) purposes. *See id.* at 591 ("We know of no blanket reason . . . to treat the various provisions [of Rule 10b-5] as occupying mutually exclusive territory, such that false-statement cases must reside exclusively within the province of Rule 10b-5(b)").

> Commission chose the level of sanctions based in part on a misimpression that Lorenzo was the 'maker' of false statements in violation of Rule 10b-5(b). Because we have now overturned the Commission's finding of liability under Rule 10b-5(b), we vacate the sanctions and remand the matter to enable the Commission to reconsider the appropriate penalties.

Id. at 595. The D.C. Circuit further stated that, in reconsidering sanctions, the Commission "can assess whether the sanction is out of line with the agency's decisions in other cases involving comparable misconduct – which, as we have observed is one consideration informing review of penalties for arbitrariness and capriciousness." *Id.* at 596 (internal quotations omitted).

ARGUMENT

For the following reasons, the Division respectfully requests that the Commission (1) follow the D.C. Circuit's decision regarding respondent Lorenzo's fraud liability in this case; (2) deny Lorenzo's request that the Commission instead follow Judge Kavanaugh's dissent and dismiss this proceeding; and (3) impose the same sanctions against Lorenzo that it previously imposed – a cease and desist order, a permanent industry bar, and a $15,000 civil money penalty.

I. Lorenzo Is Liable For Securities Fraud

As explained above, the D.C. Circuit upheld the Commission's finding of securities fraud liability against Lorenzo, and no reason exists for the Commission to alter that ruling. As the Commission previously found, and the D.C. Circuit affirmed, Lorenzo purposefully, and with intent to defraud, sent two materially false and misleading emails to two prospective investors in Waste2Energy. As explained above, the overwhelming evidence – including Lorenzo's own testimony and other admissions – establishes those facts. Furthermore, the emails themselves firmly establish Lorenzo's responsibility for their content, and Lorenzo's testimony only reinforces that conclusion. *See* Exhibit 1 hereto; *Lorenzo*, 872 F.3d at 582-91.

In his opening brief, Lorenzo ignores entirely the D.C. Circuit rulings in this case, choosing instead to rely solely upon Judge Kavanaugh's dissent. The D.C. Circuit, however, expressly rejected Judge Kavanaugh's reasoning as contrary to the evidence (much of it undisputed), as should the Commission.

According to the D.C. Circuit majority opinion, the "dissent's central submission is that Lorenzo acted without any intent to deceive or defraud. As [Judge Kavanaugh] sees things, Lorenzo simply transmitted false statements supplied by [his boss] without giving any thought to their content." *Lorenzo*, 872 F.3d at 592. The D.C. Circuit rejected this conclusion as contrary to the objective record, reasoning that Lorenzo himself conceded that he was well aware of the contents of his two emails:

> The dissent's . . . factual understanding . . . is contradicted by Lorenzo's own account of his mental state to this court. Lorenzo raises no challenge to the Commission's rejection of any notion that he paid no heed to his messages' content. What is more, his argument on the issue of scienter rests on his affirmative contemplation—indeed, his ratification—of the content of his emails.
>
> Unlike in his arguments before the ALJ and Commission, Lorenzo, in this court, does not take the position that he simply passed along statements supplied by [his boss] without thinking about them. Such a suggestion appears nowhere in his briefing. To the contrary, he argues that, '[a]t the time the email was sent [he] *believed the statements to be true* and he did not act with scienter.' He further asserts that he '*had a good faith belief in the veracity of the statements* contained in the email that was drafted by [his boss].' He then attempts to explain why he could have believed the truth of the materially misleading statements contained in his email messages . . .
>
> For present purposes, what matters is that a person cannot have 'believed statements to be true' at the time he sent them, or possessed a 'good faith belief in their veracity,' if he had given no thought to their content in the first place.
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> * * *
>
> Lorenzo [thus] now takes the position that he took stock of the content of

> the statements, so much so that he formed a belief as to their truthfulness. And we are in no position to embrace an understanding of Lorenzo's mental state that is disclaimed by Lorenzo himself.
>
> To be clear, the point here is not that Lorenzo failed to preserve an argument about scienter. Lorenzo devoted considerable attention to the issue of scienter in his briefing. But Lorenzo's arguments on the issue contain no suggestion that he sent his emails without giving thought to their contents. He instead contends he *did* think about the contents (and reasonably believed them to be truthful). In those circumstances, we do not so much defer to the *Commission*'s assessment of Lorenzo's state of mind over the ALJ's finding that Lorenzo gave no thought to his emails' content. Rather, we accede to *Lorenzo*'s account of his own mental state, which is incompatible with the finding of the ALJ.

Id. at 593 (citations omitted; emphasis supplied by D.C. Circuit).

In any event, as the Commission previously found, even if Lorenzo had ignored the content of his own emails, any such conduct would have been patently reckless. *See Lorenzo,* 2015 WL 1927763, at *9 (Commission opinion). As explained above, Lorenzo headed Charles Vista's Investment Banking division, and he sent his two emails under the aegis of that division, under his own name. Any person in such a prominent position at a brokerage firm who so carelessly would send material false statements to potential investors plainly has committed fraud (and does not belong in the securities industry). Thus, regardless of whether Lorenzo paid attention to the content of his emails, he properly was found liable for securities fraud in this case.

II. The Commission Should Reinstate Its Prior Sanctions Against Lorenzo

The Commission should reinstate its prior sanctions against Lorenzo – for the same reasons it previously imposed them: Lorenzo's false statements were highly material; he sent them to two different perspective investors, with a high degree of scienter; he intentionally misled the Division during its pre-litigation investigation of this case; and he has yet to take responsibility for his actions (instead attempting to shift blame to Waste2Energy). In his opening

brief, Lorenzo does not even address the appropriate level of sanctions for his already well-established fraud liability – he simply (and crudely) insists on his complete innocence. Lorenzo's insouciance regarding the matter actually at issue on this remand – *i.e.*, the appropriate level of sanctions to impose against him – serves only to demonstrate further why the Commission should reinstate its prior sanctions against him in this case.

The D.C. Circuit directed that, on remand, the Commission "assess whether the sanction [it imposes] is out of line with the agency's decisions in other cases involving comparable misconduct." Applicable precedent, including from the D.C. Circuit, establishes that the Commission's prior sanctions in this case are consistent with its earlier decisions involving comparable conduct.

For example, in *Kornman v. SEC*, 592 F.3d 173 (D.C. Cir. 2010), the D.C. Circuit upheld a Commission permanent industry bar on facts strikingly analogous to this case. The respondent in *Kornman* had pleaded guilty in Federal Court to a single criminal charge of making a single false statement to the Commission during an insider trading investigation. Kornman had misleadingly told Commission investigators that he did not know who possessed trading authority over a particular securities trading account (in fact, Kornman possessed that authority). Kornman was sentenced to two years' supervised probation and ordered to pay a $143,465 fine (the amount he allegedly made through insider trading). *Kornman*, 592 F.3d at 176. Based on his criminal conviction (and related admissions in the criminal proceeding), the Commission instituted an administrative proceeding against him, and the Division sought an industry bar. The Law Judge issued a permanent industry bar against Kornman, and the Commission affirmed. *Id.* at 176-81.

The D.C. Circuit upheld the Commission's permanent bar against Kornman, noting that the Commission enjoys discretion in this area, and that it consistently has imposed harsh penalties where a respondent's professional credibility is in question:

> The Commission explained why, as a matter of policy, Kornman's particular misconduct warranted a bar: his conviction indicated his dishonesty was egregious because he admitted it was knowing and intentional, and, moreover, his false statement was made in the course of the Commission's investigation of wrongdoing in the industry. The Commission observed that 'the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business.' Further, the Commission noted it has 'consistently held that deliberate deception of regulatory authorities justifies the severest of sanctions.' The Commission acknowledged Kornman's prior unblemished business record, his regret about making the false statement, his vow not to do so again, and even that he was personally convinced he would not repeat his misconduct. However the Commission emphasized that '[t]he securities industry presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants.'
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> * * *
>
> As to other mitigation arguments – that Kornman was 63 years old, winding down his professional career, and had no prior criminal or disciplinary history – the Commission explained they did not alleviate its concern that his occupation presented opportunities for future misconduct. The Commission was also unpersuaded that, as Kornman argued, neither the Commission nor the public suffered any harm as a result of his misconduct, given the importance of integrity to the regulatory process. Neither, in the Commission's view, did Kornman's substantial financial losses mitigate the gravity of his conduct, particularly because the district court in sentencing him had taken into account that a permanent bar would likely be sought in the administrative hearings before the Commission.

Id. at 187-88 (citations omitted). The D.C. Circuit concluded in favor of the Commission:

> On this record, Kornman cannot show either that the Commission's chosen remedy was unwarranted as a matter of policy or without justification in fact, or that the Commission gave inadequate consideration to the evidence offered in mitigation. Although having discretion to impose a lesser sanction, the Commission is not obligated to make its sanctions uniform, and the court will not compare this sanction to those imposed in previous cases.

Id. at 188.

Thus, notwithstanding that the permanent bar against Komman was based on a conviction for a single false statement, that that false statement was to Commission staff (not to potential investors or the public), and that Komman otherwise had an unblemished record, the D.C. Circuit upheld the Commission's imposition of a permanent industry bar in that case. Lorenzo's fraudulent activities in this case were at least as egregious as Komman's and, thus, warrant sanctions at least as strong as those imposed against Komman, particularly given that Lorenzo communicated his material false statements directly to potential investors. Furthermore, Lorenzo, like Komman, lied to the Commission staff during the Waste2Energy investigation, a matter that the Commission consistently has taken extremely seriously in imposing administrative sanctions (as described above).

In *In the Matter of Siming Yang*, SEC Release No. 788, 2015 WL 2088468 (Initial Decision May 6, 2015), the Law Judge likewise imposed a permanent industry barred against respondent Yang based on relatively limited fraudulent conduct. The *Yang* Initial Decision was premised on a Federal District Court Order enjoining Yang from future violations of the anti-fraud and reporting provisions of the federal securities laws. Yang, 2015 WL 2088468, *1. His underlying fraud involved "a single course of conduct" (*i.e.*, purchasing certain securities for his own account before purchasing them for his investment firm employer); there "was no specific harm to investors or [his firm]"; and "the degree of harm to the market was not great due to Yang's limited purchases." *Id.* at *2. The Initial Decision (which Yang did not appeal) nonetheless imposed a permanent industry bar against Yang, reasoning as follows:

> As described in detail in the Findings of Fact, Yang's conduct was not recurrent, but it was egregious and involved a high degree of scienter, as shown by his violation of the antifraud provisions. His previous

> occupation, if he were allowed to continue it in the future, would present opportunities for future violations. Absent a bar, he could re-enter the securities industry in the United States. The violations are recent. Consistent with a vigorous defense of the charges, Yang has not recognized the wrongful nature of his conduct. There was no direct financial harm to investors, but, as the Commission has often emphasized, the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. Misconduct involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.

Id. at *4 (citations omitted). Again, Lorenzo's fraud was at least as egregious as Yang's, if not more so, in that Lorenzo directly defrauded potential investors (one of whom invested in Waste2Energy). Thus, a permanent industry bar is equally warranted in this case.

As described at pages 5-7 above, the Commission in it prior decision in this case carefully enumerated its bases for imposing a permanent industry bar against Lorenzo. *Lorenzo,* 2015 WL 1927763 at *12-15. Similar to the respondents in *Kornman* and *Yang*, the Commission found that Lorenzo's fraud was "egregious"; that he "displayed troubling dishonesty" (regarding both his false emails and his false statements to the Commission staff); that he "acted with a high degree of scienter" (knowingly sending his false emails); that he was unwilling "to accept responsibility for [his] misconduct" (and instead blamed Waste2Energy and his boss); and that a bar "is necessary to prevent Lorenzo from putting investors at further risk and will deter other market professionals from engaging in similar misconduct." *Id.* The Commission also determined that imposing a permanent industry bar against Lorenzo would be consistent with its own precedent. *Id.* at *15.

In his opening brief, Lorenzo does not cite any precedent (judicial or administrative) suggesting that the Commission's prior sanctions against him were inappropriate based on the his fraud liability (which the D.C. Circuit affirmed) and the other circumstances of this case

enumerated above. Also, in his D.C. Circuit appeal, Lorenzo did not challenge the Commission's prior cease-and-desist order, Lorenzo, 592 F.3d at 582. Thus, for the reasons set forth above, the Commission should reinstate a permanent industry bar and a cease-and-desist order against Lorenzo. Likewise, a relatively small $15,000 money penalty is warranted in this case, taking into account all circumstances, including Lorenzo's personal financial condition.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Commission impose against respondent Lorenzo a permanent industry bar, a cease-and-desist order, and a $15,000 civil money penalty.

Respectfully submitted,

Dated: January 26, 2018

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EXHIBIT 1

From: Francis Lorenzo [Florenzo@charlesvista.com] on behalf of investmentbanking [investmentbanking@charlesvista.com]
Sent: Wednesday, October 14, 2009 3:33 PM
To: vishal.goolcharan@[redacted]
Subject: W2E Debenture Deal Points

Dear Sir:

At the request of Adam Spero and Gregg Lorenzo, the Investment Banking division of Charles Vista has summarized several key points of the Waste2Energy Holdings, Inc. Debenture Offering.

****Please read the Offering Memorandum, including all "Risk Factors"****

12- month Note, Debenture pays a 12% interest rate, paid quarterly

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

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

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

There are 3 layers of protection:

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

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

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

Please call with any questions-

Truly,

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

Div. Ex. 34

EXHIBIT 115 7-26-10

Fax: 212.248.1110
florenzo@charlesvista.com

Charles Vista
MEMBER FINRA/SIPC

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From: Francis Lorenzo [Florenzo@charlesvista.com]
Sent: Wednesday, October 14, 2009 3:37 PM
To: wsrothe@[redacted]
Subject: W2E Debenture Deal Points
Attachments: image001.gif

Dear Sir:

At the request of Gregg Lorenzo, the Investment Banking division of Charles Vista has summarized several key points of the Waste2Energy Holdings, Inc. Debenture Offering.

******Please read the Offering Memorandum, including all "Risk Factors"******

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

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

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

There are 3 layers of protection:

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

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

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

Please call with any questions-

Truly,

Francis V. Lorenzo
Vice President - Investment Banking
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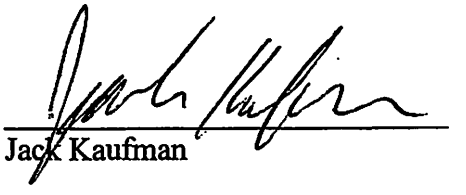
CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of January, 2018, I served the foregoing DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENT FRANCIS V. LORENZO'S BRIEF REGARDING SANCTIONS by email (where indicated) and United Parcel Service on:

Robert G. Heim, Esq.
Meyers & Heim LLP
444 Madison Avenue, 30th Floor
New York, N.Y. 10022
RHeim@meyersandheim.com

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549



Jack Kaufman