

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2437/ March 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

GREGORY T. BOLAN, JR. AND
JOSEPH C. RUGGIERI

ORDER ON MOTIONS IN LIMINE AND
SCHEDULING

In March 2015, Respondents each filed motions in limine, and the Division of Enforcement filed a response to these motions. On March 17, 2015, I held oral argument and made rulings on Respondents' motions. I memorialize those rulings below.

Respondents claim that the Division's proposed expert witness, Dr. Edward S. O'Neal, should be excluded because 1) his methodology is unreliable under the standard applied in *Daubert v. Merrill Dow Pharms., Inc.*, 509 U.S. 579, 592-93 (1993), and 2) his opinion is conflicted because he engaged in discussions to serve as an expert witness for Bolan prior to his engagement by the Commission in this matter. On the *Daubert* issue, I DEFER Respondents' motion at least until after Dr. O'Neal has finished testifying at the hearing, which will permit the parties to develop their arguments on this issue. *See City of Anaheim*, Exchange Act Release No. 42140, 1999 WL 1034489, at *2 (Nov. 16, 1999); *see also H.J. Meyers & Co.*, Initial Decision No. 211, 2002 WL 1828078, at *46 (Aug. 9, 2002); *WSF Corp.*, Initial Decision No. 204, 2002 WL 917293, at *3-4 (May 8, 2002). On the conflict issue, I DENY Respondents' motion because I find that the emails and voicemail audiotape discussed at oral argument do not establish that a confidential relationship existed between Bolan and Dr. O'Neal. *See Medeva Pharma Suisse AG v. Roxane Labs., Inc.*, No. 07-cv-5165, 2008 WL 5500965, at *2 (D.N.J. Oct. 10, 2008) (citations omitted).

Respondents also seek to exclude evidence that they also allegedly violated various Wells Fargo internal policies because such evidence is irrelevant to this proceeding and would require lengthy argument and testimony at the hearing to resolve. I DENY IN PART Respondents' motion, because evidence of other violations may be relevant for a determination of remedies. *See John Joseph Plunkett*, Securities Exchange Act of 1934 Release No. 69766, 2013 SEC LEXIS 1699, at *47 (June 14, 2013); *see also City of Anaheim*, 1999 WL 1034489, at *2. However, to the extent the Division seeks to introduce this evidence to demonstrate Respondents' liability, I DEFER my ruling on this evidence at least until the parties have had an opportunity to develop their arguments on this issue at the hearing. Moreover, I grant

Respondents leave until March 23, 2015, to file subpoenas and designate additional witnesses to respond to the evidence of these alleged violations.

Ruggieri seeks to exclude, as to him, evidence regarding Bolan's alleged tip to "Trader A." I DEFER this motion until the parties have had an opportunity to develop their arguments on this issue at the hearing. I also DEFER Respondents' objections to specific exhibits until such exhibits are offered into evidence at the hearing.

No hearing will be held on Friday, April 10, 2015. Parties should be prepared, if necessary, to continue the hearing into the week of April 13. Absent uniform agreement by all parties, a full hearing session will be held on Friday, April 3, 2015.

SO ORDERED.

Jason S. Patil
Administrative Law Judge