SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Release No. 10640 / May 30, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 85971 / May 30, 2019

Admin. Proc. File No. 3-16178

In the Matter of

GREGORY T. BOLAN JR.

ORDER DENYING MOTION TO VACATE SETTLED ORDER

Gregory T. Bolan Jr. has filed a motion requesting that we vacate a 2015 Commission order entered against him with his consent[1] based on a subsequent order dismissing proceedings against his co-respondent Joseph C. Ruggieri.[2] The Division of Enforcement opposes Bolan's motion. As we have held previously, in light of our strong interest in the finality of our settlement orders we will not vacate an order entered with the respondent's consent absent a showing of compelling circumstances. Bolan has not demonstrated the requisite compelling circumstances sufficient to vacate his settlement. Accordingly, we deny his motion.

I. Background

On September 29, 2014, we issued an order instituting administrative and cease-and-desist proceedings ("OIP") against Bolan, a former equity research analyst at Wells Fargo Securities, LLC, and Ruggieri, a former Wells Fargo trader, charging them with participating in an insider trading scheme while employed at Wells Fargo.[3] The OIP alleged that between April 2010 and March 2011, Bolan provided notice to Ruggieri of six ratings changes that he had authored, including a downgrade of Parexel International Corporation, before they were made public, and that Ruggieri used this material nonpublic information to profitably trade in an institutional account at Wells Fargo ahead of the ratings changes. By virtue of this conduct, the OIP alleged that Bolan and Ruggieri, acting with scienter, willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5.

1 Exchange Act Release No. 75066, 2015 WL 3413279 (May 28, 2015).

2 Exchange Act Release No. 81143, 2017 WL 2984863 (July 13, 2017).

3 Exchange Act Release No. 73244, 2014 WL 4803778 (Sept. 29, 2014).

On the eve of the hearing before an administrative law judge, Bolan submitted an offer of settlement, which was accepted. As a result, on May 28, 2015, we issued an order holding that Bolan had violated Securities Act Section 17(a)(3) based on findings that he provided notice to Ruggieri about "at least one" forthcoming ratings change before it was made public.[4] The order gave as an "example" Bolan's downgrade of Parexel, noting that Ruggieri sold Parexel stock short ahead of Bolan's ratings downgrade and that doing so generated profits for Wells Fargo.[5] We found further that Bolan "knew or should have known" he was providing notice to Ruggieri of material nonpublic information concerning forthcoming ratings changes he had authored.[6] Without admitting or denying the order's findings (except as to the Commission's jurisdiction over him and the subject matter of the proceeding, which were admitted), Bolan consented to a cease-and-desist order, a civil penalty of $75,000, and an order to disgorge $24,944, plus $4,827.66 prejudgment interest, for a total of $29,231.66, with the disgorgement "deemed satisfied by Wells Fargo's payment of that amount [$29,231.66] to the Commission."[7]

Meanwhile, the hearing proceeded on the OIP's allegations against Ruggieri, and the administrative law judge issued an initial decision on September 14, 2015.[8] The law judge concluded that Bolan tipped Ruggieri about material nonpublic information on four of the six ratings changes alleged in the OIP but not Parexel. The law judge also concluded that although "it [was] possible that Bolan tipped Ruggieri for a personal benefit, . . . the Division ha[d] not met its burden to establish this required element" with regard to the four ratings changes about which he found Bolan tipped Ruggieri.[9] The law judge therefore dismissed the proceedings as to Ruggieri. The law judge noted that the decision would "not become final until the Commission enter[ed] an order of finality,"[10] that if a party filed a petition for review, the initial decision would not become final,[11] and that "[t]his initial decision does not apply to Bolan."[12]

On October 5, 2015, the Division filed a petition for review of the initial decision. The Division did not seek review of the law judge's finding that Bolan did not tip Ruggieri about two of the ratings changes—including Parexel; rather, the Division sought review only with respect to the law judge's ruling that Bolan did not tip Ruggieri about the other four ratings changes in exchange for a personal benefit. On October 14, Ruggieri filed a cross-petition for review. On October 26,

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4 2015 WL 3413279, at *1.

5 *Id.* at *2.

6 *Id*. at *3.

7 *Id*. at *4.

8 Initial Decision No. 877, 2015 WL 5316569 (Sept. 14, 2015).

9 *Id.* at *49.

10 *Id.*

11 *Id.*

12 *Id.* at *1 n.1.

Ruggieri filed a motion for summary affirmance, which the Division opposed. On December 10, 2015, we denied Ruggieri's motion for summary affirmance and granted the petitions for review.[13]

On July 13, 2017, we issued an order dismissing the proceedings as to Ruggieri pursuant to our Rule of Practice 411(f).[14] Rule of Practice 411(f) states that "[i]n the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result."[15] Pursuant to Rule 411(f), the Commission ordered that the proceedings instituted against Ruggieri be dismissed:

> The Order Instituting Proceedings ("OIP") in this matter alleged that Joseph Ruggieri traded while in possession of material nonpublic information on six occasions between April 2010 and March 2011. An administrative law judge dismissed the proceeding, and the Division of Enforcement appealed only with respect to four of the six trades at issue in the OIP. The Commission is evenly divided as to whether the allegations in the OIP with respect to those four trades have been established. Accordingly, it is ORDERED that the proceeding instituted against Joseph Ruggieri be, and it hereby is, dismissed.[16]

On October 23, 2017, Bolan filed his motion requesting that we vacate his 2015 settled order based on "the Commission's subsequent contradictory finding" that Bolan did not tip Ruggieri about Parexel. In its opposition brief, the Division countered that the Commission made no findings in Ruggieri's proceedings that conflicted with Bolan's settled order and that Bolan failed to demonstrate compelling circumstances to justify vacating his settled order.

II. Analysis

A. Bolan does not present compelling circumstances that justify vacating his settlement.

Agreements settling litigation are "solemn undertakings," and public policy "strongly favors" settlements; as such, settlement agreements should "be upheld whenever equitable and policy considerations so permit."[17] As a result, as we have stated previously, a respondent must

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13 *Joseph C. Ruggieri*, Exchange Act Release No. 76614, 2015 WL 8519533, at *2 (Dec. 10, 2015).

14 *Joseph C. Ruggieri*, Exchange Act Release No. 81143, 2017 WL 2984863, at *1 (July 13, 2017).

15 17 C.F.R. § 201.411(f).

16 *Ruggieri*, 2017 WL 2984863, at *1.

17 *Ford Motor Co. v. Mustangs Unlimited*, 487 F.3d 465, 469-70 (6th Cir. 2007) (quoting *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1372 (6th Cir. 1976)).

establish "compelling circumstances" to justify vacating a settled order.[18] Bolan has not shown that he should be granted relief from his settlement. We have held that a more favorable outcome achieved by a non-settling co-respondent does not constitute the compelling circumstances that would justify vacating the settling respondent's settlement.[19]

Bolan asserts that his settled order should be vacated to make the outcome of his settled case consistent with that of Ruggieri's litigated case. But we have held repeatedly that the outcomes of settled and litigated proceedings need not be the same and cannot be compared.[20] In any case, favorable litigation developments affecting non-settling co-respondents do not establish the requisite compelling circumstances to justify vacating a settled order.[21]

Rather, "in all settlements, a party—by forgoing a trial on the merits—relinquishes any possibility of a more favorable outcome."[22] Bolan achieved the benefits of a certain resolution by settling while accepting the risk that a law judge, or the Commission on appeal of an initial decision, might order lesser sanctions against Ruggieri than those to which Bolan agreed.[23] Although Bolan waived the chance of a more favorable outcome, he "achieve[d] the certainty of avoiding a potentially worse outcome, while avoiding the time and expense of additional

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[18] *Richard D. Feldman*, Exchange Act Release No. 77803, 2016 WL 2643450, at *2 (May 10, 2016); *see also, e.g.*, *G.G. Marck and Assocs., Inc. v. Peng*, 309 F. App'x 928, 935 (6th Cir. 2009) (stating that setting aside a settlement "normally would require 'extraordinary or exceptional circumstances'") (citation omitted); *SEC v. Conradt*, 309 F.R.D. 186, 187 (S.D.N.Y. 2015) (denying motions to vacate settlement agreements and consent judgments because a "motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances" and such "exceptional circumstances are not present here").

[19] *Feldman*, 2016 WL 2643450, at *2 (finding that an initial decision that imposed lower disgorgement amounts against co-respondents did not constitute a "compelling circumstance" that warranted modifying the amount of disgorgement respondent agreed to pay in his settled order).

[20] *Id.* at *3; *Joseph John VanCook*, Exchange Act Release No. 61039A, 2009 WL 4026291, at *19 (Nov. 20, 2009), *petition denied*, 653 F.3d 130 (2d Cir. 2011).

[21] *See Ackermann v. United States*, 340 U.S. 193, 198 (1950) (finding that petitioner should not be relieved of his choice not to appeal "because hindsight seems to indicate to him that his decision not to appeal was probably wrong, considering the outcome of [a co-respondent's] case").

[22] *Feldman*, 2016 WL 2643450, at *2 ; *see also, e.g.*, *Conradt*, 309 F.R.D. at 187-188 (denying motion to vacate settlement because the possibility of relief from a judgment under Federal Rule of Civil Procedure 60(b) "is not intended to allow one side of a settlement agreement to obtain the benefits of finality while placing the other side at risk that future judicial decisions will deprive them of the benefit of their bargain"); *id*. at 188 (stating that when "it comes to civil settlements, a deal is a deal, absent far more compelling circumstances than are here presented").

[23] *Feldman*, 2016 WL 2643450, at *2.

litigation."[24] Allowing Bolan to pursue additional proceedings now would "undermine our 'strong interest in the finality of our settlement orders.'"[25] Indeed, it would be "unworkable to allow respondents to settle, forgo proceedings, and then argue that the result obtained by other respondents who did litigate their own cases should be applied to the settling respondents."[26]

Bolan's motion to vacate his settled order fails for the separate and independent reason that he waived his right to further proceedings when he settled.[27] Under our rules, by "submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer: (i) all hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted; (ii) the filing of proposed findings of fact and conclusions of law; (iii) proceedings before, and an initial decision by, a hearing officer; (iv) all post-hearing procedures; and (v) judicial review by any court."[28] Our rules provide further that settlement offers "shall recite or incorporate" these waiver provisions.[29] By his settlement, Bolan waived a hearing and other proceedings before the law judge, post-hearing procedures, and judicial review by a court.[30] Bolan's waiver "precludes him from challenging his settlement" now.[31]

B. Bolan's arguments for vacating his settled order lack merit.

None of Bolan's other arguments for vacating his settled order has merit. First, Bolan argues that the law judge's finding that he did not tip Ruggieri about Parexel became the "final

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[24] *Id.*; *see also Conradt*, 309 F.R.D. at 187-188 (denying motion to vacate settlement because defendants "entered into these agreements voluntarily, in order to secure the benefits thereof, including finality," and "the certainty of the settlement terms in place of the risks of litigation").

[25] *Feldman*, 2016 WL 2643450, at *2 (citation omitted); *see also Ackermann*, 340 U.S. at 198 (finding no basis for relieving petitioner of his decision not to appeal because there "must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from").

[26] *Feldman*, 2016 WL 2643450, at *2 (citing *Michael H. Johnson*, Exchange Act Release No. 75894, 2015 WL 5305993, at *4 (Sept. 10, 2015) (denying motion to vacate a settled order based on facts adduced in a separate litigated proceeding against the president and chief compliance officer of respondent's former firm)). Although Bolan contends that our decisions in *Feldman* and *Johnson* are "plainly inapposite," he fails to provide, and we do not see, any meaningful distinction between the circumstances presented here and those addressed in *Feldman* and *Johnson*.

[27] *Id.* at *3 (stating that respondent who sought to have his settlement vacated "gave up the right to further proceedings when he settled").

[28] Rule of Practice 240(c)(4), 17 C.F.R. § 201.240(c)(4)

[29] Rule of Practice 240(b), 17 C.F.R. § 201.240(b).

[30] *Feldman*, 2016 WL 2643450, at *3.

[31] *Id.*

decision" of the Commission because the Division failed to appeal that finding and the Commission did not review it on its own initiative. But the law judge's initial decision did not apply to Bolan, that decision did not become the final decision of the Commission, and the Commission made no findings about Paraxel stock in the proceeding against Ruggieri (or in any other proceeding) that was contrary to the findings in its settled order against Bolan.

As an initial matter, even if the law judge's finding that Bolan did not tip Ruggieri about Paraxel became the final decision of the Commission, Bolan does not explain why he should receive the benefit of that finding. The law judge's initial decision, including his finding related to Parexel stock, applied only to Ruggeri, who did not settle, and not to Bolan. Indeed, the law judge stated explicitly that his decision did not apply to Bolan.[32] As discussed above, Bolan cannot complain now that the outcome of Ruggieri's hearing should apply to him.[33] Moreover, Bolan waived his right to further proceedings as part of his settlement.[34]

In any case, the initial decision's finding about Paraxel stock did not become the final decision of the Commission. Under Rule of Practice 360(d)(1), an initial decision "shall not become final" "[i]f a party or aggrieved person entitled to review timely files a petition for review."[35] Because the parties timely petitioned for review, the Commission did not issue a finality order under Rule 360(d)(2).[36] The Commission's review of an initial decision permits it to "raise and determine any matters that [it] deem[s] material, whether or not advanced by the parties or decided by the ALJ."[37] As a result, once the parties filed their petitions for review, the law judge's initial decision and factual findings "ceased to have any force or effect."[38]

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32 *See supra* note 12 and accompanying text.

33 *Cf., e.g., United States v. Elliott*, 264 F.3d 1171, 1172-1173 (11th Cir. 2001) (holding that defendant could not appeal the district court's denial of his motion "to withdraw his guilty plea" after his "co-defendant was acquitted of the conspiracy charge to which [he] had pled guilty"); *United States v. Picone*, 773 F.2d 224, 226 (8th Cir. 1985) (affirming denial of defendant's motion to withdraw his guilty plea "because one of his codefendants has since been acquitted").

34 *See supra* note 28 and accompanying text.

35 17 C.F.R. § 201.360(d)(1).

36 *See supra* note 35.

37 *Bennett Grp. Fin. Servs., LLC*, Exchange Act Release No. 80347, 2017 WL 1176053, at *2 n.7 (Mar. 30, 2017); *see* Rule of Practice 411(d), 17 C.F.R. § 201.411(d) (stating that "the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties").

38 *Richard J. Adams*, Exchange Act Release No. 39645, 1998 WL 52044, at *1 n.1 (Feb. 11, 1998).

The Commission did not adopt the law judge's finding as to Paraxel as part of its review of the petitions. Rule of Practice 411(f) provides that where, as here, the Commission grants a petition for review and "a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect."[39] Because the participating Commissioners were evenly divided on the merits of the OIP's allegations against Ruggieri, the initial decision was "of no effect,"[40] and the Commission dismissed the proceeding against Ruggieri without a substantive ruling.[41] As a result, Bolan's description of the dismissal order as "finding insufficient evidence" that Ruggieri violated the federal securities laws is incorrect. So too is Bolan's assertion that the order "admits" the "ongoing validity" of the law judge's finding as to Parexel. The order does not contain such a statement. Bolan cannot rely on the law judge's initial decision to claim that a purported inconsistency with his settlement justifies its vacatur because the Commission issued the settled order against Bolan and the Commission never made a finding about Paraxel stock in the proceeding against Ruggieri (or in any other proceeding) that was contrary to the findings in its settled order against Bolan.

Second, Bolan argues that the statutory basis for his settled order under Securities Act Section 8A has been "eviscerated by the Commission's ultimate finding that Ruggieri did not trade [Parexel stock] based on a Bolan tip—the exact opposite of the [settled] Order." According to Bolan, Section 8A's "plain language" stands for the proposition that "if the Commission finds that the exact allegations underlying a settlement order lack merit, then the settled order loses its statutory authority." We find nothing in the plain language of the statute to support Bolan's position.[42] In any case, as explained above, the Commission did not find that Bolan did not tip Ruggieri about Paraxel. The Commission's findings in its settled order against Bolan, an order to which Bolan consented and which included a finding that Bolan did tip Ruggieri about Paraxel, continue to provide a valid basis for the settled order under Securities Act Section 8A.

Third, Bolan argues that his settled order "should be vacated under Commission precedent vacating orders based on findings that are later rejected." But the authority Bolan cites does not support his argument. Three of the cases Bolan cites involved Commission orders vacating bars after the statutory prerequisites for imposing the bars—criminal convictions or civil

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39 17 C.F.R. § 201.411(f).

40 *Id.*

41 *See supra note* 16 and accompanying text; *cf. Sprint Nextel Corp. v. FCC*, 508 F.3d 1129, 1131-32 (D.C. Cir. 2007) (stating that a tie vote "do[es] not result in Commission action").

42 *See* Securities Act Section 8A, 15 U.S.C. § 77h-1 ("If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule or regulation.").

injunctions—had themselves been vacated.[43] The other authority Bolan cites involved Commission orders vacating bars after the courts of appeals issued decisions clarifying that we lacked the authority to impose the particular type of bar that had been imposed.[44] Here, no statutory prerequisites for imposing the settled order on Bolan have been vacated and no court has held that we lacked authority to impose the settled order's sanctions against Bolan.

Fourth, Bolan argues that we should vacate his settled order to "avoid an arbitrary and capricious result" stemming from "contradictory Commission findings" as to Parexel stock. For the reasons discussed above, however, the Commission made no findings as to Bolan that contradicted the settled order against him. Bolan also fails to explain how it would be arbitrary and capricious for the Commission to hold him to his settlement, which was the product of his own free choice, based on the foreseeable circumstance that Ruggieri might obtain a more favorable outcome through litigation. Although Bolan claims he should obtain the same outcome as Ruggieri based on the Commission's "obligation of treating like cases alike," we have stated that "we are not obligated to make our sanctions uniform, and sanctions in settled and litigated proceedings cannot be meaningfully compared."[45] In any event, by settling, Bolan "waived a hearing and other proceedings before the law judge—such as those that would be necessary to evaluate his argument that he is in the same position as [his] non-settling [co-]respondent[]."[46]

Fifth, Bolan argues that vacating his settled order would be consistent with the doctrine of issue preclusion and that the law judge's initial decision should preclude or estop his settled order. But issue preclusion "bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim."[47] Bolan does not explain how the law judge's initial decision issued after the Commission issued the settled order could preclude or estop the settled order.

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43 *See Sandeep Goyal*, Advisers Act Release No. 4339, 2016 WL 707096 (Feb. 23, 2016) (vacating administrative bar order based on *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), which led to Goyal's criminal conviction and civil injunction being vacated); *Gregg Becker*, Exchange Act Release No. 67795, 2012 WL 3866562 (Sept. 6, 2012) (vacating administrative bar order after a court of appeals reversed the predicate criminal conviction); *Jimmy Dale Swink, Jr.*, Exchange Act Release No. 36042, 1995 WL 467600 (Aug. 1, 1995) (same).

44 *See, e.g.*, *William Masucci*, Exchange Act Release No. 53121, 2005 WL 3662592 (Jan. 13, 2005) (vacating portion of bar order that barred Masucci from association with any investment adviser and investment company in light of *Teicher v. SEC*, 177 F.3d 1016 (D.C. Cir. 1999)).

45 *Feldman*, 2016 WL 2643450, at *3 (footnote omitted).

46 *Id*. (footnote omitted).

47 *Taylor v. Sturgell*, 553 U.S. 880, 892 & n.5 (2008) (quoting *New Hampshire v. Main*, 532 U.S. 742, 748 (2001)).

Finally, Bolan argues that the settled order "has increased his difficulty in finding employment" and "hurt his earning power" and should be vacated "to avoid an unnecessary negative impact on his career" due to the requirement that the findings from his settled order be disclosed publicly. But any negative stigma stemming from the settled order is simply a natural consequence of the action taken against Bolan, and cannot be used to justify the settled order's vacatur.[48] And although Bolan argues that vacating his settled order "would serve as a check to correct the damage done to the careers of securities professionals by the Division bringing allegations before the Commission's ALJs that are ultimately dismissed," the Division's allegations against Bolan were not dismissed. As discussed above, Bolan consented to the sanctions imposed in the Commission's settled order against him.

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Bolan has not demonstrated compelling circumstances to justify vacating his settled order. The proceedings against his co-respondent do not constitute the requisite compelling circumstances. Bolan offers no basis for vacating the settlement which he entered voluntarily.

Accordingly, IT IS ORDERED that the request of Gregory T. Bolan Jr. to vacate his settlement order dated May 28, 2015, is DENIED.

By the Commission.

Vanessa A. Countryman
Acting Secretary

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[48] *First Omaha Secs. Corp.*, Exchange Act Release No. 37654, 1996 WL 506222, at *2 (Sept. 6, 1996); *see also, e.g.*, *Miller v. SEC*, 998 F.2d 62, 64 (2d Cir. 1993) ("[I]t is not enough to merely allege '[c]ontinuing embarrassment . . . in business relationships' as the basis for dissolving or modifying a decree.") (quoting *SEC v. Jan-Dal Oil & Gas, Inc.*, 433 F.2d 304, 306 (10th Cir. 1970)); *Johnson*, 2015 WL 5305993, at *4 n.20 (rejecting argument that settled bar order was inequitable because it placed "unique and severe difficulties" on respondent because such difficulties are among the natural and foreseeable consequences to flow from the settled order).