UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of **Gregory T. Bolan, Jr. and** **Joseph C. Ruggieri,** **Respondents.**

THE DIVISION OF ENFORCEMENT'S POST-HEARING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Table of Contents

Page

Pursuant to Commission Rule of Practice 340 and the Court's Post-Hearing Order, the Division of Enforcement (the "Division") respectfully submits its post-hearing proposed findings of fact and conclusions of law.

DIVISION'S PROPOSED FINDINGS OF FACTS[1]

I. WELLS FARGO'S RELEVANT BUSINESS

1. Wells Fargo was in a competitive business that did not tolerate underperformers, and its commission revenue was dwindling. (Tr. 1149:19–22 (Bartlett) ("We were in a business that we didn't tolerate underperformers..."); Tr. 1435:8–1436:14 (Wickwire) ("[A]t this time [October 2009], with commissions dwindling, it was an effort to really make sure we were in front of clients to make sure we captured as much commission volume as we could...."); Tr. 3341:14–24 (Short) ("Q. What's your understanding as to why you were let go in 2013? A. They were cutting down on the number of directors is the reason I was given. Q. And did you have any understanding of whether that was a result of any competition in the trading business in general? A. I mean, yeah, I guess you can say

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[1] The Division's proposed findings of fact incorporates by reference the stipulated Joint Findings of Fact filed by the parties on March 23, 2015 ("Joint Factual Stipulations"), but does not otherwise reiterate each of those stipulations herein. Where necessary to lay the foundation for subsequent paragraphs herein, the Division cites to particular paragraphs of the Joint Findings of Fact for the Court's convenience.

"Tr." refers herein to the hearing transcript, as corrected by the Court's Order on Transcript Corrections dated May 12, 2015. References to the transcript include pages and line numbers, the testifying witness's last name in parentheses, and quotations to key portions of the cited transcript lines (not the entire portion cited). For brevity, references to exhibits include the exhibit number without the term "Exhibit." Where exhibit page numbers are cited and the Division's printed page numbers (on the bottom right-hand side of the page) differ from the document's original pagination, the citations refer to the Division's printed page numbers.

All references to time herein are in Eastern time (either Eastern Standard or Eastern Daylight Time, as appropriate), unless otherwise noted.

that. They usually don't cut people that they feel are helping them, you know, are producing to their level of what they're expecting.").)

2. Wells Fargo's sales and trading department generated profits for the firm through commissions earned by trading. (Tr. 679:17–20 (Yi) ("[Q]: How did Wells Fargo make money through trading for clients, if at all? A. Primarily through commissions."); Tr. 917:12–18 (Brown) ("We generated revenue by making markets and securities for customers and getting paid a commission on that."); Tr. 1136:2–11 (Bartlett) ("Q. Did that group [the equity trading desk] generate revenue for the firm? A. Yes. Q. And how did it do that? A. In the form of generating commissions when they executed trades."); Tr. 1321:3–19 (Wickwire) ("[T]he revenue, the commissions that are generated are all housed in the equity sales and trading division.").)

3. For equity trades, Wells Fargo's institutional clients typically paid a certain amount of money (fixed by agreement with the client) per share of stock Wells Fargo's traders traded for the client. (Tr. 679:17–680:9 (Yi) ("So if a client came in and placed an order for 100,000 shares, we would charge them a penny a share, for example, on the order."); Tr. 917:19–918:21 (Brown) ("They can send an order to us. They pay three cents a share. We work the order for them. So if they want to buy 100,000 shares of Microsoft, they send it to us, we work it. If we think the stock is going to go lower, we tell them. We do a good job for them. And at three cents a share, we make $3,000 on that."); Tr. 1136:9–1137:12 (Bartlett) ("Q. In other words, a certain amount of commission per share traded? A. Right. Q. How did the firm determine how much clients would pay? A. It was determined by the clients, not by Wells Fargo. The clients assigned a commission to each trade.").)

4. Wells Fargo's research department, including the equity research group, was a cost center for Wells Fargo. The research department did not directly generate any revenue or profit. (Tr. 91:12–92:4 (Friedman) ("Q. Okay. Now, does Wells Fargo generate any revenue directly from the analyst reports? A. We're not paid for analysts report production per se. Commission revenues,

our trading flow, things of that nature are typically how we would get paid for research generally."); Tr. 1153:2–8 (Bartlett) ("They were a cost center, which means they didn't generate a P&L, any profit and loss, therefore, they were a cost to the business which had to be paid for."); Tr. 1321:3–19 (Wickwire) ("Q. Well, does the research department generate its own revenue? A. It does not.").)

5. Research by equity analysts helped generate revenue for Wells Fargo only to the extent the research generated client trades through Wells Fargo. (Tr. 91:12–92:4 (Friedman) ("Q. Okay. Now, does Wells Fargo generate any revenue directly from the analyst reports? A. We're not paid for analysts report production per se. Commission revenues, our trading flow, things of that nature are typically how we would get paid for research generally. Q. Could you just explain how that works? A. We hope that clients that appreciate the insight and advice and the guidance that we give them vis-a-vis any company is rewarded by a client placing a trade with us, by which we can then capture commissions from facilitating that trade."); Tr. 1321:20–1322:11 (Wickwire) ("Most of the large institutional investors will really run the spectrum providing detailed information around the analyst that they are voting for, essentially saying that that analyst is providing good research product, making good stock calls, good recommendations, and those periodic votes that come out determine how much commission volume they are willing to send to Wells Fargo.").)

6. The sales and trading department allocated a portion of its revenue to pay the research department's costs, including salaries of research department employees. (Tr. 1152:11–1153:16 (Bartlett) ("Tensions would have been born out of the research department was not a profit center, therefore, the trading division was allocated some of the costs of the research division.... Since we generated profits for the firm, commissions for the firm, we were allocated a portion of their costs.... Q. Did that include the salaries of research analysts? A. I don't know how they cut it up. I'm sure it did.").)

7. This created tension between the research department and the sales and trading department, and the sales and trading department was vocal about voicing displeasure if it did not believe the research department was doing a good job. (Tr. 1500:3–1501:8 (Wickwire) ("There's a very combative situation between sales and trading and research, really across Wall Street. The sales and trading folks think that they're important and they drive the business, and the revenue is housed there. We say: Well, we develop all the product and research, and, in fact, we can call the clients without you, so we don't even need you. So there's this combative relationship that needs to be on the table here."); Tr. 1152:11–22 (Bartlett) ("Q. And what sorts of tensions? A. Tensions would have been born[e] out of the research department was not a profit center, therefore, the trading division was allocated some of the costs of the research division. So to the extent that we didn't believe the research [d]ivision was doing a good job, we would be vocal about it.").)

II. BACKGROUND: BOLAN, RUGGIERI, AND MOSKOWITZ

A. Bolan

8. In January 2006, Bolan became an associate to an equity research analyst at Jeffries. (DIV 39 at 8–9 (Bolan's background questionnaire); DIV 110 at 11 (Bolan) ("From First New York, I then went on to Jeffries where I was a senior associate and I assisted the senior equity analyst in writing research reports and generating ideas on a certain coverage list.").)

9. In June 2008, Bolan joined Wells Fargo (then Wachovia) as an equity research analyst and registered representative in Nashville, Tennessee. (DIV 39 at 8–9 (Bolan's background questionnaire); DIV 110 at 10–12, 185 (Bolan) ("I was then recruited by Wachovia Capital in the middle of '08 to be a senior equity analyst.... From Wachovia, what then turned into Wells Fargo."); Tr. 1368:17–20 (Wickwire) ("Q. Was Mr. Bolan in a satellite office? A. Yes. Q. Which satellite office was he in? A. Nashville.").)

10. Bolan focused his research on three niche sub-sectors of the health care industry: pharmaceutical services or contract research organizations, health care information technology, and life science tools. (DIV 110 at 15–18 (Bolan) ("Q. Which sub sectors have you focused on? A. Pharmaceutical services, mostly.... Q. Did you eventually start focusing on any other sub sectors in the health care industry? A. I did. Q. Which ones? A. Health care IT.... Q. While at Wells Fargo, did you conduct research on companies outside of these two sectors? A. At the very end of my tenure at Wells Fargo, I picked up life science tools..."); Tr. 2452:18–23 (Ruggieri) ("[Bolan] made -- you know, his little niche sector of stocks, he knew the stocks well, he knew the drivers..."); Tr. 2506:22–2507:4 (Ruggieri) ("Q. What are pharma services? A. It's a select group of services stock. It was -- I think it's a CRO..."); Tr. 3177:22–3179:2 (Mackle) ("Q. And what subsectors did [Bolan] cover? A. CROs, contract research organizations, and healthcare IT.... Q. And...did you have any understanding of whether there was a category of health stocks called life science tools? A. Yes.... Q. And did you have an understanding of which analyst at Wells Fargo came to cover that area of the healthcare industry? A. Greg Bolan.").)

11. Many of the stocks Bolan covered were small-cap, relatively illiquid stocks. (Tr. 2388:15–2390:19 (Ruggieri) ("[Bolan] covered -- I think it was 17 stocks -- like, a lot of these stocks were small cap, illiquid stocks.... These stocks -- some funds couldn't even own them because they were small cap in nature, and they were so illiquid some people didn't want to bother with them.").)

B. Ruggieri

12. For at least several years between 2004 through 2009, while working at Bank of America as an equity trader, Ruggieri reported to Brown. (Tr. 936:22–937:15 (Brown) ("Q. When did you first meet him? A. I met him at BofA. I don't remember the year, but I met him while I was at BofA, 2004, 2005. Q. How long did you work together at Bank of America? A. Until I left in 2009.... Eventually Joe reported to me in the end."); Tr. 1087:18–20 (Brown) ("Q. Now, Mr.

Ruggieri worked for you for several years at Bank of America, right? A. Yes."); Tr. 2036:3–18 (Ruggieri) ("Q. And from 2001 through 2009 you worked at Bank of America? A. That's correct. Q. During that time you were an equity trader? A. Not for the whole time. Yes. I moved to the trading desk, it was in 2004. Before that, I was in equity capital markets for three years. Q. And from 2004 on you worked with Mr. Brown; right? A. Yes. Q. And for several of those years you worked directly for him? A. I believe so, yes. He was co-head of the desk, I think, when I was there.").)

13. Brown recruited Ruggieri to Wells Fargo in approximately August 2009. (Tr. 1087:18–23 (Brown) ("Q. And you recruited him to join Wells Fargo? A. I did."); Tr. 2036:19–2037:2 (Ruggieri) ("Q. And then Mr. Brown left Bank of America; correct? A. Yes. Q. And he recruited you to Wells Fargo? A. That's correct. Q. And that was in approximately August of 2009? A. Yes.").)

14. After Ruggieri joined, Wells Fargo had only two health care traders: Ruggieri and Chip Short. (Tr. 940:10–14 (Brown) ("Q. Besides Mr. Short and Mr. Ruggieri, did Wells Fargo have any other health care cash traders at that time? A. No traders, no other health care cash traders."); (Tr. 3167:12–3168:11 (Mackle) ("Q. And did you have an idea of who you would be working with at Wells Fargo? A. Yes. Q. What was your understanding of who you would be working with? A. That I would be working with Joe Ruggieri and Chip Short."); Tr. 3335:15–18 (Short) ("Q. And was Mr. Graichen the only other trader at the time, in 2009, who you worked with on the healthcare trading desk? A. Yes."); Tr. 3336:12–3337:10 (Short) ("[Q.] Now, did there come a time in 2009 when Mr. Graichen no longer traded at the healthcare desk? A. Yes. He asked to move over to the coverage side or sales trading side of the business.... Q. And who was he replaced with? A. Joe Ruggieri.").)

15. Ruggieri was the senior healthcare trader, and Short was the junior healthcare trader. (Tr. 939:7–14 (Brown) ("Q. And once Mr. Ruggieri joined, who – I think you said typically one trader was more senior on a sector. Who was more senior[,] Mr. Short or Mr. Ruggieri? A. Joe was

more senior. Q. In other words, Mr. Ruggieri? A. Yes."); Tr. 2019:25–2020:8 (Ruggieri) ("Q. Now, sir, you said you had a partner on the healthcare trading desk? A. Yes. Q. That was Chip Short? A. That's correct. Q. And you were the senior trader covering those stocks; right? A. That's correct."); Tr. 3180:25–3181:8 (Mackle) ("Chip [Short] had been at the firm longer, but Joe [Ruggieri] was clearly seen as the head of the desk.... I mean, he was given I think the respect of that position by everyone in the room, and within, I think the first year I was there, he had got pro[mot]ed to managing director, so by de facto, title-wise he was then more senior than Chip.").)

16. After Ruggieri joined, he and Short divided up the list of healthcare stocks Wells Fargo covered. Ruggieri took more stocks than Short. (Tr. 2020:9–2021:3 (Ruggieri) ("I'm not exactly sure how we split them up, but I definitely had more of the stocks traded, more volume than Chip did. It was probably something -- either 60/40 or 70/30, me to him."); Tr. 3337:16–3338:13 (Short) ("We went in and we discussed it. We had a list in front of us and the list was divided up accordingly.... He had more. I don't know to what extent on a percentage basis that he did, but he had more stocks than I did.").)

17. Ruggieri covered at least 277 healthcare stocks while he was at Wells Fargo. (DIV 225 (list of tickers Ruggieri traded at Wells Fargo); Tr. 1907:5–22 (O'Neal) ("Q. What is the total number of stocks that Mr. Ruggieri traded, based on DIV 225? A. 277."); Tr. 2024:9–12 (Ruggieri) ("Q. Now, in total you had approximately 300 stock tickers that you covered; correct? A. I don't remember the exact number, but it sounds reasonable.").)

18. When Ruggieri was away from the trading desk, Short covered Ruggieri's stocks for him. (Tr. 2426:8–17 (Ruggieri) ("Q. If you were away from the desk, that didn't mean there was no healthcare trading at Wells Fargo that day, did it? A. No, there was still trading there, sure. Q. Who was doing that trading? A. Chip Short."); JR 153 (email from Short to Bolan upon Bolan's departure from Wells Fargo) ("Best of luck to ya Bols!...Thanks for all you[r] help over the years and also

helping to keep me sane whenever I had to jump on and try and hang on for dear life in trading these names when they were in play."); Tr. 3397:7–3398:11 (Short) ("Q. And what were the instances when you had to 'jump on and try to hang on for dear life'? Were they instances when Mr. Ruggieri was away from the trading desk? A. Yes, sir. Q. Or instances when he was also there? A. It would be in his absence.").)

19. Ruggieri's primary job at Wells Fargo was to execute customer transactions in the stocks he covered in order to generate commissions for Wells Fargo. (Tr. 2024:13–2026:14 (Ruggieri) ("Q. Now, sir, your primary job was to trade for customers; right? A. That's right. Q. And your primary job was to generate commissions? A. Yes.").)

20. Ruggieri's job was to lose as little of the commissions as possible when unwinding the other side of customers' trades. (Tr. 2024:23–2025:4 (Ruggieri) ("Q. And your job was to lose as little of those commissions as possible when you traded into and out of positions? A. Manage the risk appropriately, yes. I think that's fair. Try to drive the net revenue number, which was commissions less your P&L.").)

21. In addition, Ruggieri placed principal trades on Wells Fargo's behalf, in which he bet Wells Fargo's capital on stock positions and turned profits or took losses for Wells Fargo. (Tr. 2025:5–2026:14 (Ruggieri) ("Q. ...Now, you also made principal trades from time to time? A. That's correct.... Q. When you took those principal positions, those were positions where Wells Fargo carried risk; correct[ ]? A. Correct. Q. And in those positions, your goal was to maximize gain; correct? A. Yes. Q. And minimize losses? A. That's correct. Q. Your goal was to make money on those trades? A. Make money or lose less money, I guess is the way to put it, sure.").)

22. Ruggieri could take principal positions in any of the stocks he covered. (Tr. 2092:12–19 (Ruggieri) ("Q. Now, with respect to principal trades, you could trade any of the healthcare

stocks that you covered in a principal capacity; right? A. Yes. Q. Meaning you could put the firm's money at risk in any of those stocks? A. As long as they weren't restricted, yes.").)

23. Ruggieri did not make as many principal trades as some of the other equity traders on the trading desk. (Tr. 2094:7–10 (Ruggieri) ("Q. And you didn't make as many principal trades as some of the other equity traders on your desk; right? A. That's right.").)

C. Moskowitz

24. Bolan and Moskowitz became friends in 2005, when they both worked on the trading floor at First New York. (DIV 110 at 112 (Bolan) ("Q. Have you been friends since 2005 with Mr. Moskowitz? A. Uh-hum. Q. Is that a yes? A. Yes. Q. Where did you meet him? A. First New York. Q. How did you come to meet him at First New York? A. He sat two rows away from me trading. I just bumped into him.").)

25. *See* Joint Factual Stipulations ¶¶ 186, 202 and 203 (stipulations concerning Moskowitz's "debilitating disease," unemployment, and the regularity of his phone conversations with Bolan).

26. Bolan and Moskowitz socialized in person from time to time on the "very rare" occasions Moskowitz left his apartment. (DIV 110 at 110–13 (Bolan) ("Q. Have you socialized with Mr. Moskowitz? A. When he comes out of his apartment, yes, which is very rare. Q. Is that because of his illness? A. Yes.").)

27. Bolan and Moskowitz were "very good," "close," "trusted" friends. (DIV 110 at 112–13 (Bolan) ("Q. Are you close friends with Mr. Moskowitz? A. I am good friends with him. Yes, I am close, I think."); DIV 119 at 3 (March 22, 2011 email from Bolan to Bartlett seeking position for Moskowitz) ("Trusted friend looking for trading position on sell-side trading desk.... [M]y very good friend, Josh Moskowitz, is looking to transition over to the sell-side").)

28. From at least June 2009 through November 2010, Moskowitz traded in his personal brokerage accounts. (DIV 151 (Fidelity trade records for Moskowitz); DIV 182 (Fidelity business record certification).)

29. Moskowitz was the subscriber for the landline telephone number 212-316-4576 from at least March 2010 through March 2011. (DIV 152 (Time Warner telephone records for Moskowitz); Tr. 1633:23-1634:17 (Walster) ("Q. Mr. Walster, do you recognize this document? A. Yes. This is a subscriber printout for phone number (212) 316-4576 with a customer name of Joshua Moskowitz. I viewed this before today.").)

30. Moskowitz was the subscriber for the cellular telephone number 917-710-8574 from at least March 2010 through March 2011. (DIV 145 at 8574.pdf (Verizon Wireless telephone records for Moskowitz); Tr. 1631:4-1633:3 (Walster) ("A. There, at the top of this page, there's a number (917) 710-8574. Q. Is that how you identified (917) 710-8574, as being the line associated with Mr. Moskowitz, by looking at this PDF? A. Yes.").)

III. THE RELATIONSHIP BETWEEN BOLAN AND RUGGIERI

31. From the time Bolan joined Wells Fargo until March 2011, Bolan was a vice president, the level below director. (Tr. 1378:24–1379:8 (Wickwire) ("Q. What did he come in as? A. My recollection is, we hired Greg in as a vice president. Q. And at the time, what was the next level up from vice president? A. Director."); DIV 28 (March 16, 2011 email announcing Bolan's promotion to director).)

32. Bolan was an ambitious, up-and-coming research analyst. (Tr. 1371:20–1372:5 (Wickwire) ("I, through some market research, understood that Greg [Bolan] was an up-and-coming analyst covering healthcare information technology and other related industries, and I contacted him and we had a series of meetings, we interviewed Greg and we ultimately hired him."); Tr. 2054:22–2055:7 (Ruggieri) ("Q. And Mr. Bolan, he was an up-and-comer in his analyst group; right? A. He

was an up-and-comer in his sector on the Street, and he was younger than most of the other analysts, but he -- he was developing a leadership role in his respective right as well, I would say."); Tr. 2059:9–19 (Ruggieri) ("Q. And you [and Bolan] were both ambitious in the business; right? A. Yes.").)

33. Yet Bolan was a loner. (Tr. 1292:22–1293:3 (Evans) ("Q. So when you were interviewed by the Division in March of 2013, you told the Division that Mr. Bolan is a loner and he doesn't maintain close relationships; isn't that right? A. Yes.").)

34. Bolan had a temper and got angry with co-workers. (Tr. 1293:13–1294:18 (Evans) ("Q. Now, Mr. Bolan has a temper; isn't that right? A. Yes.... Q. And then when you worked with him at Wells Fargo, you didn't like the way Mr. Bolan treated people; isn't that right? A. Generally speaking, when he got angry at someone, it was something that I was not comfortable with. Q. And that was whether he was angry at support staff, administrative assistants, or even supervisory analysts; isn't that right? A. Correct.").)

35. Bolan could not maintain even a cordial professional relationship with Mackle, despite Mackle's role as Wells Fargo's only healthcare analyst on the trading desk. (Tr. 3209:25–3212:2, 3314:18–3315:11 (Mackle) ("Q. Is it fair to say that regardless of any personal friction that you may have felt with Mr. Bolan around this time, the two of you managed to carry on a cordial and professional relationship in which you both did your jobs? A. No, I wouldn't say it was cordial all the time, no. You're misrepresenting it. THE COURT: Just so I understand, eliminating the word 'cordial' from that question, were you and Mr. Bolan, despite friction, able to carry on a professional relationship for the benefit of Wells Fargo during that time? THE WITNESS: For every e-mail you showed me that he communicated with me, there were ten other things that I was left out of the loop on, so, no, I wouldn't -- it was not a good professional relationship."); Tr. 3167:12–25 (Mackle) ("I was going to be the only salesperson, if you will, that focused specifically on healthcare, so, again,

my job was to talk to a variety of portfolio managers and analysts and traders at institutional clients and promote our ideas, and also promote the product internally to our distribution sales force, marketing the message in a way that they could get out to the broader client base.").)

36. Mackle spoke with Bolan much less frequently toward the end of the year-long period that they both worked at Wells Fargo. (Tr. 3209:15-3210:5 (Mackle) ("I would say initially, when I started, I spoke to him as much as I did the other analysts. But by the end of that time period, much less so. Q. And why is that? A. We just had some friction, just didn't get along for whatever reason."); Tr. 3393:4–3394:15 (Short) ("Q. And did you have any understanding as to how often Mr. Mackle spoke to and interacted with Mr. Bolan compared to the other healthcare analysts? A. I would say it wasn't as much. I don't think they had as much of an interaction in that I just think Greg [Bolan] liked to go directly to Joe [Ruggieri]. . . . Q. Just to be clear, did you observe Mr. Bolan speaking more often to Mr. Ruggieri or Mr. Mackle? A. I would say more to Joe [Ruggieri] than to Bruce [Mackle].").)

37. When Ruggieri joined Wells Fargo, his title was director, and he remained at that level until approximately March 2011. (Tr. 2037:14–19 (Ruggieri) ("Q. When you started working for Mr. Brown, you were a director at Wells Fargo? A. That's correct."); Tr. 2309:10–13 (Ruggieri) ("Q. Now, when you received this compensation statement in March 2010, your title was still director; correct? A. Yes."); Tr. 2310:19–23 (Ruggieri) ("Q. Were you promoted during that time? A. Yes, I was. I was promoted to managing director. Q. And roughly when was that? A. I think it was February or March 2011.").)

38. Like Bolan, Ruggieri was ambitious. (Tr. 2059:9–19 (Ruggieri) ("Q. And you [and Bolan] were both ambitious in the business; right? A. Yes.").)

39. Ruggieri was also aggressive. (Tr. 1498:16–1500:2 (Wickwire) ("Q. What was your impression of him? A. That he was a very good trader; that he was aggressive... Q. What did you

mean when you described Mr. Ruggieri as aggressive? A. I'm the co-head of research. I've got 60 analysts. I deal with the heads of investment banking. I'm talking to CEOs and CFOs every day about what they don't like about our research. I'm a busy guy, not to toot my own horn, and I don't often spend a lot of time with individual traders. If there's a message or communication that needs to get to me, it usually could go up through Matt Brown to Chris Bartlett, who was my counterpart, so I typically don't have time to spend a lot of time two levels down. I get to know the better players and the people that are important. And in my conversations with Matt [Brown] and Jeff [Snyder] and Chris [Bartlett], Joe [Ruggieri] was the guy that I needed to give some airtime to, so I accommodated that.").)

40. Ruggieri was one of the top-producing traders at Wells Fargo. (Tr. 2097:12–17 (Ruggieri) ("Q. And it's fair to say you were a successful trader at Wells Fargo? A. I think that's fair to say. Q. You were one of the top producers there; right? A. Yes.").)

41. Ruggieri traded all the stocks Bolan covered as an analyst; Short did not cover any of Bolan's stocks. (Tr. 2052:12–22 (Ruggieri) ("Q. …And now, Mr. Short did not trade the stocks that Mr. Bolan covered, did he? A. No, he did not. Q. You traded all the stocks that Mr. Bolan covered; correct? A. That was my responsibility, yes."); Tr. 3339:2–6 (Short) ("Q. And after it was divided up, were any of the securities that were in your group healthcare securities that were covered by the analyst Mr. Greg Bolan? A. No.").)

42. Bolan rarely spoke with Short unless Ruggieri was away from the office. (Tr. 3389:13–3390:7 (Short) ("I communicated with Greg [Bolan] very little in the sense that I didn't trade his space, so in the sense that I talked to him any more than -- I talked to my analysts that I traded under more than I did Bolan. Now, if Greg would call the desk and I would happen to pick up the phone, I would talk to him in that way, or I would talk to him in Joe's absence if Joe were to be traveling or off the desk in the restroom or on vacation and something were to happen in this

space, of course he [Bolan] would call the desk and give me the information on what he thinks could occur that particular day off whatever catalysts may be present within his space.").)

43. Ruggieri was Bolan's primary contact on Wells Fargo's trading desk. (DIV 110 at 54–57 (Bolan) ("Q. Who did you speak with on Wells Fargo's trading desk? A. Joe Ruggieri and Chip -- I can't remember his last name, and then Bruce Mackel [*sic*]. Q. Did you speak to one of these individuals more than the other? A. I spoke to Joe probably towards the end just as much as I spoke to Bruce, Joe probably the most over the past couple of years.... Q. How frequently did you communicate with Chip [Short] while you were employed at Wells Fargo? A. Not very frequently. He covered -- he traded another area in health care. I think it was mostly like biotech.... Q. Was Ruggieri your primary contact on Wells Fargo's trading desk? A. He was the senior trader, yes."); Tr. 3393:4–3395:8 (Short) ("Q. Just to be clear, did you observe Mr. Bolan speaking more often to Mr. Ruggieri or Mr. Mackle? A. I would say more to Joe than to Bruce. Q. Did you have any understanding as to whether or not there was any sort of personality issue between Mr. Bolan and Mr. Mackle? A. I don't know if it was a contentious relationship or not, but I just got the sense that Greg would rather talk to Joe."); Tr. 1252:12-19 (Evans) ("Q. How often did you call -- did you have an understanding of Mr. Bolan calling those traders as compared to Mr. Ruggieri? A. I believe he spoke to Mr. Ruggieri the vast amount of the time, but when Mr. Ruggieri was gone or otherwise occupied with something else, it wouldn't be unusual for him to speak to one of the others on the desk.").)

44. Bolan kept Mackle out of the loop on many of Bolan's communications with Ruggieri. (Tr. 3209:25–3212:2, 3314:18–3315:11 (Mackle) ("THE COURT: Just so I understand, eliminating the word 'cordial' from that question, were you and Mr. Bolan, despite friction, able to carry on a professional relationship for the benefit of Wells Fargo during that time? THE WITNESS: For every e-mail you showed me that he communicated with me, there were ten other

things that I was left out of the loop on, so, no, I wouldn't -- it was not a good professional relationship.").)

45. Wells Fargo had at least seven other healthcare analysts to whom Ruggieri spoke, including Peter Costa who Ruggieri considered a "seasoned pro," but Ruggieri interacted more with Bolan than with any other healthcare analyst. (DIV 205 (December 8, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback); Tr. 2049:14–2052:11 (Ruggieri) ("Q. Now, of all the healthcare analysts, you had the most interaction with Mr. Bolan; right? A. Yes... Q. You worked with him more closely than any of the other Wells Fargo healthcare analysts? A. That's correct.").)

46. By at least October 2009, Bolan and Ruggieri had established a rapport. (DIV 173 (Oct. 22, 2009 feedback from Ruggieri on Wells Fargo analysts) ("Greg Bolan[,] Vince Ricci[,] Aaron Reames[.] These guys have been the most proactive and helpful in the few weeks since I joined. Bolan's in a league of his own- great dialogue w/ clients and gets it.").)

47. Ruggieri mentored Bolan and tried to make him more "commercial." (Tr. 3215:10–3217:7 (Mackle) ("Q. Now, did you have an understanding of Mr. Ruggieri's relationship with Mr. Bolan as compared to Mr. Ruggieri's relationship with other healthcare analysts? Did you have a sense of, you know, what was his relationship with Mr. Bolan relative to the other healthcare analysts? Was it the same or was there any difference? A. Joe [Ruggieri] got along with all the analysts as well. I think the difference with Greg, as well as another younger analyst who had left in that interim period, was that Joe tried to mentor them as some of the young, up-and-coming analysts. That would be the only difference of a relationship. Q. So you had an understanding that Mr. Ruggieri was mentoring Mr. Bolan and another young analyst? A. Yes. In terms of trying to, yeah, make them more commercial.").)

48. Ruggieri and Bolan viewed themselves as partners trying to lift Wells Fargo's healthcare business, and in doing so each hoped to benefit his own career. (DIV 44 at 1 (Aug. 2010 email string between Bolan and Ruggieri) ("Bro...We[']re partners. Together, we can lift this sector team and crush it."); JR 92 (July 1, 2010 email string between Bolan and Ruggieri) ("Dude, in 5yrs, I have a feeling we are going to rule the HC world."); Tr. 2059:20–2061:19 (Ruggieri) ("Q. You viewed yourself and Mr. Bolan as partners trying to lift Wells Fargo's business in the healthcare area; right? A. Yes.... Q. All right. In doing that, you wanted to better your career; right? A. Yes. Q. And Mr. Bolan wanted to improve his career; right? A. Sure."); Tr. 1557:22–1558:4 (Wickwire) ("I do believe that Greg and Joe developed a very close relationship that contained a significant amount of dialogue, more than is -- was normal for our department, and that there was a close relationship of two professionals supporting one another. That was my view of it.").)

49. Bolan and Ruggieri spoke "regularly," at least twice a week. (Tr. 2051:25–2052:7, 2062:24–2063:18 (Ruggieri) ("We spoke regularly, whether it was multiple times a day or every day. I know there were some times where we didn't speak for a couple of days. But we spoke regularly.... I don't remember particularly, but we had a constant dialogue."); DIV 110 at 56 (Bolan) ("Q. How frequently did you communicate with Mr. Ruggieri while you were employed at Wells Fargo? A. I would probably say at least a couple of times a week.").)

50. Ruggieri and Bolan "got along really well." (Tr. 2470:20–2471:3 (Ruggieri) ("Q. You liked Greg Bolan? A. Yes.... Q. And you got along really well? A. I did.").)

51. Ruggieri and Bolan became "pretty good friends." (Tr. 2055:8–2057:21 (Ruggieri) ("Q. And you also became pretty good friends with Mr. Bolan, didn't you? A. We were friends, yes. Sure.... [Q.] You and Mr. Bolan were pretty good friends, weren't you? A. Yes."); DIV 110 at 31 (Bolan) ("Q. Did you and Mr. Ruggieri develop a friendship? A. I would say so.").)

52. When Bolan was in New York, he and Ruggieri occasionally socialized outside the office, typically with other colleagues. Bolan and Ruggieri talked about work and family. (DIV 110 at 29–31 (Bolan) ("Q. How frequently did you socialize with Mr. Ruggieri outside of the workplace while employed at Wells Fargo? A. I'd say probably about three times in 2010, maybe, four times. Three or four times. Q. What about in 2009? A. I'd say probably once, maybe twice. Q. And in 2011? A. I'd say zero, maybe once. Q. Take us through what you did at each of these visits with Mr. Ruggieri. A. Well, we would go to the bar and we would discuss work and we'd discuss family, and we just would be guys. Q. Was it just the two of you? A. Typically, no. Q. Typically, who else was there? A. Other colleagues from Wells Fargo.").)

IV. RUGGIERI'S PROFITABILITY AS A TRADER PLAYED AN IMPORTANT ROLE IN HIS PERFORMANCE EVALUATIONS AND CAREER.

53. In March 2010, in his first performance review at Wells Fargo, Ruggieri received a performance rating of 3, where 1 was the lowest and 5 was the highest. (Tr. 2305:15–2306:3 (Ruggieri) ("Q. Mr. Ruggieri, while you were at Wells Fargo, Wells Fargo had an annual performance review cycle; is that right? A. Yes. Q. Was that -- it ended every year around March; is that right? A. Yes. Q. So your first performance cycle ended around March 2010? A. Yes."); DIV 72 (Ruggieri's March 2010 compensation statement) ("Performance Rating – 3"); Tr. 2307:9–2308:12 (Ruggieri) ("Q. And do you see that, it says 3? A. Yes. Q. Was that your performance rating for the March 2010 review cycle? A. I guess it was. Q. So 3 out of 5; right? A. Yes."); DIV 88 (Ruggieri's performance appraisal for 2010) (defining rating scale to include "1. Significantly below all key objectives… 3. Met most and may have exceeded some key objectives… 5. Significantly above all key objectives").)

54. Wells Fargo calculated a net revenue figure for Ruggieri: commissions earned on trades, plus or minus any profits or losses on his principal trades. (Tr. 2026:18–2027:2 (Ruggieri) ("Q. While you were at Wells Fargo, I take it you had a net revenue figure? A. Yes. Q. And that was

calculated by taking the commissions you earned on trades, I think you said this a minute ago, plus or minus any profits or losses on your principal risk on those principal trades? A. Yes.").)

55. Wells Fargo also calculated Ruggieri's loss ratio — the percentage of the commissions lost through his trades. To do so, Wells Fargo calculated his commissions earned and then subtracted any trading losses and added any trading gains, for both his customer trades and principal positions. (Tr. 1140:17–1142:12 (Brown) ("Q. How did Wells Fargo calculate how profitable a trader's position was? A. We would take a look at the commissions generated, and then the profit and loss associated with the production of those commissions. Q. And how would the profit and loss be calculated? A. We called it a loss ratio.... Q. So the loss ratio is the percentage that's lost? A. Versus the commission generated, correct.... Q. What about principal trades, how did that factor into the loss ratio or revenue? A. It factored in because all trades that took place in our desk with a market maker were principal trades, and a principal trade that didn't have an agency component, i.e., we didn't have the other side, there was risk injected, and that risk injected could have created a negative P&L or a positive P&L, which would have impacted the ratio both on the positive and negative. Q. So it is commissions minus losses plus gains? A. Correct.").)

56. Traders at Wells Fargo typically had an overall loss ratio — that is, Wells Fargo kept less than 100% of the commissions clients paid — because Wells Fargo committed capital on behalf of customers. (Tr. 918:22–919:14 (Brown) ("Q. Now, typically at Wells Fargo from, again, 2009 to 2011, did your traders carry any sort of loss ratio? A. Yes, we were committing capital on behalf of customers, so there would be a loss ratio. Q. In other words, if you looked overall at the trades, Wells Fargo didn't get to keep one hundred percent of the commissions? A. That's correct."); Tr. 1144:6–17 (Bartlett) ("Q. Now, if you could just explain[,] why is it that typically there was a loss ratio as opposed to getting to keep all of the profit? A. Because we were market makers, and we sat in the middle of the trade, and to the extent that we executed a trade and didn't have the other side,

took on risk, and associated with that risk at times were losses and/or profits, but our desk ran a loss ratio so we had more losses associated. Which was typical in the industry, we weren't an anomaly."); Tr. 3382:12–3383:13 (Short) ("I never ended the month up profitable, so to speak, but you kept track of that from a personal basis. I can't speak to anybody on the desk, whether they finished a month up or down. I would imagine it was very rare, if ever, just because the desk had an overall loss ratio.").)

57. Wells Fargo's business was "generating commissions and trying to keep the loss ratio as low as possible." (Tr. 987:7–10 (Brown) ("That is what our business is, generating commissions and trying to keep the loss ratio as low as possible.").)

58. At Wells Fargo, Ruggieri worked directly for Brown, who mentored Ruggieri. (Tr. 941:14–22 (Brown) ("Q. How would you describe your relationship with Mr. Ruggieri while he worked for you at Wells Fargo? A. We got along well. We were pretty friendly. We didn't hang out on the weekend. I had kids, he didn't have kids at the time, but he was somebody that I took an interest in in BofA, that I mentored, that I brought along, that I had [a] lot of time for."); Tr. 2037:6–13 (Ruggieri) ("Q. And when you joined Wells Fargo, you directly worked for Mr. Brown? A. That's correct. Q. And Mr. Brown mentored you, didn't he? A. That's fair to say.").)

59. Brown's main supervisory responsibility was to keep an eye on his traders' profits and losses. (Tr. 928:15–929:4 (Brown) ("Q. Now, during that time, what were your supervisory duties with respect to cash traders? A. I mean the main thing was to keep an eye on the P&L, make sure I understood all of the biggest risk situations involved in those. That would be the main responsibility, kind of by an outlier P&L wise…."); Tr. 3383:14–3384:11 (Short) ("Q. What sort of feedback did you get from your supervisor regarding the loss ratio? A. If it got too high, I was managed to keep it down or manage it better from my perspective in the sense that maybe not be as careless with capital; maybe from the way I was told not outsize markets; maybe instead of offering

100,000 shares, offer 50. Try to manage it and keep it as low as possible, but they understood that's the cost of doing business. You're going to have losses. That's just part of the game.").)

60. On one of Brown's six or eight computer screens, he had a management page that showed the profit and loss fluctuations for his traders in real time. (Tr. 926:16–928:5 (Brown) ("Q. How many monitors did you personally have? A. Oh, I don't know, six or eight.... I kind of had a management page which had all of the different sectors broken up, the stocks, so I could identify the risk, which is really how I managed the day-to-day by looking at the risk. The managing really came in monitoring P&L fluctuations, profit and loss fluctuations.... Q. So you could see all of your traders' profit and loss positions on that monitor? A. I could see, yes, the positions and the corresponding P&L. Q. Could you see that in real time? A. Yes.").)

61. As Ruggieri knew, Brown expected his traders to alert him to any potential trading loss of $50,000 or more. (Tr. 931:2–932:13 (Brown) ("Q. What size of loss did you expect traders to tell you about? A. 50 was the unwritten rule, $50,000. Q. And just to be clear, when you [say] $50,000, are you talking about the size of the position or the size of the potential loss? A. The size of the potential dollar loss."); Tr. 2100:5–2101:5 (Ruggieri) ("Q. You understood that that was sort of the size of loss that Mr. Bartlett would care about; right? A. Yes. I think as Matt [Brown] may have said, I think anything over 50 or so is kind of threshold. If you lost, you would want to alert Matt Brown, who was my boss.... Q. Well, you said the level you needed to alert Mr. Brown to was $50,000; right? A. I don't know if it was a rule. It was more like if you had a loss that got to that point and you needed to bring somebody into the situation, then you wanted to give them the heads-up. No boss likes to be blind-sided with a $200,000 loss if he didn't know what was going on, so...").)

62. Brown reported to Chris Bartlett, the head of equity sales and trading at Wells Fargo. Bartlett was responsible for 300 employees and reported to Wells Fargo's president, John

Shrewsberry. (Tr. 1130:3–7, 1130:22–1131:8 (Bartlett) ("Q. Now, just to focus on your role at Wells Fargo from 2009 to 2011 . . . What was your title during that time? A. The same, head of equity sales and trading. . . . Q. In other words, you were responsible for 300 people? A. Correct."); Tr. 1131:9–23 (Bartlett) ("Q. Now, did any of the people who directly reported to you manage equity trading? A. Yes. Q. Who was that? A. Matt Brown. . . . Q. Now, who did you report to at that time? A. John Shrewsberry. He was president of Wells Fargo Securities at the time.").)

63. Shrewsberry evaluated Bartlett's performance on the profitability and operation of Bartlett's division. (Tr. 1145:14–18 (Bartlett) ("Q. And what factors were you evaluated on by your boss, the president of the firm? A. Evaluated on the profitability and the operation and the operating of the equity division.").)

64. On one of his five computer screens, Bartlett typically had the firm's order management system running. The system allowed Bartlett to view "all of our traders' positions, their P&Ls, and the capital committed second by second." (Tr. 1132:11–13 (Bartlett) ("Q. And how many computer monitors did you have? A. I had five."); Tr. 1132:14–1134:5 (Bartlett) ("When you said the risk positioning, what was it that you saw on your screen? A. We had something called an order management system that allowed me to view all of our traders' positions, their P&Ls, and the capital committed second by second. . . . [Q.] Now was that P&L information up on one of your monitors? A. Yes. Q. And so did you typically have that running on your screen during the day? A. Yes.").)

65. Bartlett monitored the traders' profit and loss daily, because he wanted to monitor the firm's risk and see which traders were performing well and which were not. (Tr. 1143:9–25 (Bartlett) ("Q. Did you typically look at the P&L of traders on your system on your monitor? A. Absolutely. Q. How often? A. Daily. Q. And why? A. Because I was monitoring the risk the desk was taking, and I wanted to see who was performing and who wasn't.").)

66. A trader's profit and loss, or profitability on his trades, was an important measure of his performance, because it was an empirical measurement of a trader's talent. (Tr. 1143:18–1145:13 (Bartlett) ("Q. How did Wells Fargo measure an equity trader's job performance? A. There was a host of things that ranged from clearly profitability, to being a good team player, to managing risk properly, to interacting favorably with clients and knowing their space in terms of knowing their sector, and being viewed as an expert in that sector by the Street. Those were all criteria that we would have [e]valuated a trader. Q. And in terms of those criteria, how important was P&L or profitability? A. It was important. Q. And why? A. Because in an empirical sense, it was one of the easiest ways to evaluate the talent of the trader. It was their ability to turn their market making into commissions for the firm."); Tr. 2092:6–11 (Ruggieri) ("Q. So the commissions minus profits or losses. That's your productivity; right? A. Right. Q. And that was one of the most important pieces of your performance; right? A. Yes."); Tr. 3383:20–3385:9 (Short) ("Q. And did you have any understanding in performing your work as a trader if keeping down the loss ratio was a factor in your supervisor's reviewing you? A. Yeah, I would have thought it had something to do with their overall evaluation of my ability and my talent. Q. And why was that? A. Well, it's just, it's a big part of what we do. We're offering up our capital to our clients in a facilitating way, and you have to make sure you're offering your capital to the right clients, the right people, people that can pay you back. Returning customers. I was told quite often our capital is not for everybody. It's for, you know, some of our best customers. That being said, you have to manage risk properly in order to, you know, show your ability and -- and for them to evaluate your talent and how you generate business and what you do when -- your actions when you do that.").)

67. The very first sentence of the very first criterion of Ruggieri's performance evaluation mentioned "net revenue." (DIV 88 at 1 (Ruggieri's performance appraisal for 2010)

("**Productivity & Execution**—Generate value added commissions that translate to net revenues for the desk.") (bold type in original).)

68. By making profitable principal trades, Ruggieri could reduce his loss ratio and generate more net revenue for Wells Fargo. (Tr. 923:2–18 (Brown) ("Q. And when a trader takes a principal position and makes money on that position, how does it affect the loss ratio, if at all? A. It reduces it. Q. In other words, is that more commissions for Wells Fargo or less? A. It would be more net revenue. . . .").)

69. Brown encouraged Ruggieri to improve his stock-picking ability when making principal trades and to talk to analysts to do so. (Tr. 2093:4–12 (Ruggieri) ("Q. And when things were slow, your boss, Mr. Brown, would often encourage you to make principal trades; right? A. Yes. Q. And he would encourage you to talk to analysts; right? A. Yes. Q. To generate revenue? A. That's right."); Tr. 2101:6–2102:19 (Ruggieri) ("Q. And one of the things for the year 2010, one of the areas that Mr. Brown told you you needed to improve in was alpha generation; right? A. Yes. Q. Idea generation? A. Right. Q. You needed to get better at picking stocks? A. Yes. I mean -- I think picking stocks, coming up with ideas to make customers money too. Just generally, like, you know, I was a specialist in that sector, and I knew the stocks well. So he would expect that, you know, we should use that more often to generate revenue, whether it's principally or coming up with ideas for customers."); Tr. 2426:21–2427:14 (Ruggieri) ("Q. In terms of developing your own thesis for trades, that was something you were encouraged to do by Mr. Brown; correct? A. Yes. Q. What did he say? A. Idea generation, alpha generation was something that I could improve on. That I had an expertise on the sector. It was not something that I focused a lot on in my prior firms, because I really just focused on client commission business, and didn't trade a lot of my ideas or thoughts. And he said, 'You're the expert. You're seeing day to day what is going on in the market. You're talking to clients, you're talking to analysts.' You know, it's something I could improve on.");

DIV 88 at 2 (Ruggieri's performance appraisal for 2010) ("Developmental Areas[:] Improve alpha generation").)

V. RUGGIERI'S COMPENSATION AND PROMOTION

70. When Ruggieri joined Wells Fargo, Wells Fargo paid Ruggieri a salary plus approximately 6% of the monthly net revenue in his Wells Fargo trading accounts plus a guaranteed bonus of $400,000. (Tr. 2027:3–2029:11 (Ruggieri) ("Q. And you were paid, at least initially, under the compensation plan that Wells Fargo had in place; correct? A. Yes. Q. That was, just to be clear, salary plus a percentage of your net revenue? A. Correct. Q. Okay. Plus a discretionary bonus? A. That's correct. Q. And the $400,000 that you're talking about, that was your bonus; right? A. That's correct. Q. So it didn't affect the commission portion of your compensation? A. Right. Q. Now, the commission part of your compensation, that was based on 6 percent of your net revenue; right, sir? A. That's correct. Q. So commissions plus or minus profit or loss, that was your net revenue figure? A. Yes. Q. So 6 percent of that is what you received in commissions every month; correct? A. That's correct.").)

71. Starting in early 2010, at least one or two competitor firms tried to recruit Ruggieri away from Wells Fargo. (Tr. 948:7–13 (Brown) ("Q. At any time, did he have any other sort of compensation arrangement? A. There was a year where he was recruited from a competitor, so he came back to us and we stopped him. So we promised him we would pay him that same amount of money during that year."); Tr. 1162:19–1163:2 (Bartlett) ("Mr. Ruggieri, as I said, was a talented trader, was sought after, and was offered an opportunity by a competitor, and we chose to match that opportunity and we guaranteed his compensation for a period of time."); Tr. 2394:15–2395:10 (Ruggieri) ("So when these firms started approaching me in early 2010, I hadn't even been at Wells Fargo for six months.... Matt Brown knew about all of these conversations. I told him from the get-go, and he said, 'You have to do what's best for your family. Go talk to these firms, and if

it's the right thing to do, go. We'll do everything we can to keep you, but'... Anyway, that's -- I ended up getting two offers from these firms and stayed.").)

72. At the time, Wells Fargo rarely provided compensation guarantees to traders. (Tr. 952:9–15 (Brown) ("Q. Was Mr. Ruggieri the only trader at Wells Fargo at that time, 2010, with a verbal compensation guarantee? A. Yes. Q. . . . [W]ere there other people who asked for a guarantee? A. Not at Wells, no."); Tr. 1147:2–8 (Bartlett) ("Q. Now, again, during the same time period, did Wells Fargo ever give any of its traders sort of a guaranteed compensation deal? A. Yes. Q. How often did that happen? A. It didn't happen too often[ ].").

73. In deciding whether to give a trader a compensation guarantee, Wells Fargo considered the trader's profitability. (Tr. 1148:19–1149:11 (Bartlett) ("Q. When you were considering whether to give a guarantee to a trader, what sorts of things did you -- what sorts of factors did you consider? A. Most of it would have to do with their reputation as a generator of commissions, somebody who was respected in the Street for their knowledge of an industry group, and their impact on our clients. So we would talk to clients, and it was known, it was a fairly small community. So you knew what traders at what firms were deemed to be the best in their field. Q. Have you ever approved a guarantee to a trader whose profitability wasn't very good in your view? A. No.").)

74. On or after June 15, 2010, Shrewsberry, Wells Fargo's president, approved an unwritten compensation guarantee for Ruggieri. (Tr. 2030:6–2031:9 (Ruggieri) ("Q. And Mr. Shrewsberry had to approve that; correct? A. I believe so, yes. Q. And he was the president of Wells Fargo Securities? A. That's right. Q. And he was Mr. Bartlett's boss? A. Yes. Q. So you needed three levels of approval to get a guarantee that year? A. I don't know who had approved it, but I spoke to all three of those through the process, yes. Q. And certainly if Mr. Shrewsberry had said no, you wouldn't have received a guaranteed compensation -- A. Yes."); Tr. 1148:3–12 (Bartlett) ("Q. And

who had to approve such guarantees? A. It would have been myself. It would have been -- in this case, Matt Brown would have been involved, and then my boss would have been involved depending upon the threshold of the guarantee. If it was a smaller amount of income involved, it probably wouldn't go to my boss. The larger, it would have."); JR 86 (June 16, 2010 email from Ruggieri to Brown) ("Met w/ [S]hrewsberry yesterday- like him, good dude. Supportive of the comp, our biz, nc move, expanding role/leadership, etc. sensitive to put in writing which I hear but am struggling with."); JR 86 (June 17, 2010 email from Ruggieri to Brown) ("Not particular to me just precedent- has tried to avoid habit of writing guarantees in the past. I respect that but would make things a lot easier. Barts thought may be able to get if needed it- just trying to decide or let it go and move on."); JR 86 (June 17, 2010 email from Brown to Ruggieri) ("I know not particular to you. But why avoiding? We are not talking about writing them for everyone. They r always just one offs. I don't think a huge deal. A risk, no doubt."); Tr. 949:14–951:22 (Brown) ("Q. What is this e-mail chain [JR 86] about? A. I think it is when we were negotiating with Joe to try and keep him to go, whether it would be a guarantee, meaning in writing or just a verbal guarantee. Q. So is it fair to say that on June 17, 2010, you were still negotiating the terms of that guarantee with Mr. Ruggieri? A. Yes."); Tr. 1163:22–1164:15 (Bartlett) ("Q.... Do you recall when it was that he got that guaranteed compensation? A. I don't. I would say it was somewhere -- it was midterm of his employment with us.... [Q.] Does [seeing JR 86] refresh your recollection at all about when that guarantee may have taken effect? A. Yes. It looks like this would happen in June of 2010."); Tr. 2033:10–18 (Ruggieri) ("Q. Sir, so you said here you had met with Mr. Shrewsberry yesterday; right? A. Correct. Q. So you met with him on June 15th; correct? A. That's right. Q. And on June 15th he told you he was supportive of the guarantee; correct? A. Yes."); Tr. 1162:19–1163:5 (Bartlett) ("Q. Was that [guarantee] in writing or was it just verbally? A. I believe it was verbal.").)

75. Ruggieri's guaranteed compensation for 2010 was $1.8 million, which made Ruggieri the highest-paid equity trader at Wells Fargo. (Tr. 953:9–15 (Brown) ("Q. About how much did Mr. Ruggieri earn for that guarantee year? A. I think the number was 1.7 million or 1.8, right around that ballpark. Q. And how did his pay compare to the pay of the other traders in your group? A. It was higher."); Tr. 2371:16–23 (Ruggieri) (" Q. You made, I think you said, $1.8 million in your last year there [at Wells Fargo]? A. Yes, I did. Q. You were one of the highest paid equity traders there? A. Yes. Q. If not the highest paid; correct? A. Correct.").)

76. Wells Fargo would not have given Ruggieri a compensation guarantee if Brown and Bartlett had thought Ruggieri's performance would slack off during the term of the guarantee. (Tr. 952:25–953:8 (Brown) ("Q. Did you expect him to slack off because he had a guarantee? A. No, I did not. We would not have given him a guarantee if we expected that."); Tr. 1149:12–22 (Bartlett) ("Q. Now, once a trader got a guarantee, how did you expect the person to perform? A. Like any other employee, they needed to work hard and be a good team player and live up to their standards. Q. You didn't expect them to slack off? A. Correct.").)

77. Had Ruggieri's performance deteriorated, Wells Fargo may have fired him. (Tr. 1149:12–22 (Bartlett) ("Q. You didn't expect them to slack off? A. Correct. Q. And why not? A. It just wasn't the common practice. We were in a business that we didn't tolerate underperformers, so --.").)

78. As Ruggieri understood, he was not likely to obtain a compensation guarantee for the following year. (Tr. 952:16–24 (Brown) ("Q. Now, did you expect to give Mr. Ruggieri a guarantee for a second year? A. I did not. Q. Why not? A. Just wasn't industry practice. Q. How did you expect he would be compensated for the following year? A. The same as everyone else, on the commission plan or if we were off commission."); Tr. 1149:25–1150:19 (Bartlett) ("Did you typically -- for whatever length of time a trader had a guarantee, after that time elapsed, did you typically

provide a subsequent guarantee to the trader? A. Very rarely. Q. Why is that? A. At the end of the day, and we wanted people to be in our firm that wanted to be there, and after the guarantee was up, if they didn't trust us to take care of them, then perhaps they weren't part of the team that we wanted. That was rare, and I would have driven a lot of that personally. Q. What do you mean by that? A. Well, the team that I assembled and I worked with, we wanted people there that wanted to be there. It wasn't a mercenary mentality. After a certain time, either you trust us or you don't."); Tr. 2444:8–21 (Ruggieri) ("Q. And that was when you met with Mr. Brown in February or March of 2011? A. Correct.... Q. Did you and Mr. Brown talk about your 2011 compensation? A. Yes. Q. Did you ask for a guarantee? A. No. Q. Why not? A. Because I trusted that they were going to do the right thing by me.").)

79. On October 26, 2010, Ruggieri asked Wickwire if Wickwire would serve as a reference for Ruggieri's nomination to managing director. (JR REB 87 at 1–2 (Oct. 26, 2010 emails between Ruggieri and Wickwire) ("Todd-would you mind if I used you as a reference for MD nomination form? Much appreciated and thanks for everything. Joe[.]").)

80. Starting in Jan. 1, 2011, Wells Fargo paid Ruggieri a salary plus approximately 6% of the monthly net revenue in his Wells Fargo trading accounts. (DIV 86 at 10 & 12 (sales and trading commission bonus plan); Tr. 952:16–24 (Brown) ("Q. Now, did you expect to give Mr. Ruggieri a guarantee for a second year? A. I did not. Q. Why not? A. Just wasn't industry practice. Q. How did you expect he would be compensated for the following year? A. The same as everyone else, on the commission plan or if we were off commission.").)

81. In approximately February or March 2011, Wells Fargo promoted Ruggieri to managing director. (Tr. 2310:19-23 (Ruggieri) ("Q. Were you promoted during that time? A. Yes, I was. I was promoted to managing director. Q. And roughly when was that? A. I think it was February or March 2011.").)

VI. RUGGIERI HELD OVERNIGHT POSITIONS RARELY AND ONLY WHEN A CLIENT STUCK HIM WITH A POSITION OR HE HAD A REASON FOR IT.

82. When traders held long or short positions overnight, their positions carried the added risk of news breaking overnight (between the market's close on one day and the market's opening on the next trading day) that would cause the stock price to move against the trader. (Tr. 936:5–16 (Brown) ("Q. And why did traders more often not have positions [at the end of the day]? A. They might not have wanted the position. They might not have wanted the risk associated with the potential loss. Q. Why is there -- why is there risk associated with an overnight position? A. Because something can happen overnight news-wise that could affect things."); Tr. 2105:16–2106:8, 2416:3–18 (Ruggieri) ("Q. That's because you viewed overnight positions as more risky than positions you only held during the day? A. It depends on the situation, but, sure -- I mean, like, there is market risk during the day as well, and just overnight the market is closed between 4 and 9:30, so, you know, generally that's a fair statement, but it depends on the stock and the situation."); Tr. 3375:13–3379:4 (Short) ("Q. And why were you trying to generally be flat at the end of the day? A. It just takes a lot of overnight risk out of the equation in that if a headline comes out -- if I'm long a particular stock, and a negative headline comes out at 7 o'clock at night, there isn't a whole lot I can do about it until the next morning.").)

83. From 2009 through 2011, equity traders at Wells Fargo typically tried to end each trading day flat — with no long or short positions — and typically did not hold overnight positions. (Tr. 771:2–772:7 (Yi) ("Q. Based on your general knowledge, do Wells Fargo position traders typically maintain overnight positions in principal trades?... A. I would say generally speaking, they don't take home overnight positions. Q. Why not? A. It's risk. I don't think you want to be – I'm not the trader, but I don't think you want to be subject to overnight risk on a particular position. So I think that the general practice was to remain flat, if possible. Q. Was that true as well from 2009 to 2011 or was it different? A. I think it was still true back then."); Tr. 935:12–936:9 (Brown) ("Did

your traders have any practice then as to whether or not they held positions when the market closed each day? A. There was no firm rule. It really depended on the situation. So there was no -- nothing in writing saying you had to be flat. Never worked at a firm that had that requirement and Wells Fargo never had that rule so they could have positions. Q. Would you say they more often had positions or they more often did not? A. I would say they more often did not, but it varied depending on the customer that came and the time of the market. So generally we ran a smaller book."); Tr. 3375:13–3377:3 (Short) ("My overall philosophy, I tried to stay flat when I went home at night, meaning not having any positions if at all possible, but I wouldn't just get myself flat for the sake of getting flat, if I -- I wouldn't just sell something to take a loss if the liquidity wasn't there just for the sake of being flat.").)

84. Ruggieri wanted to keep his overnight risk to a minimum. (Tr. 2105:12–2106:8 (Ruggieri) ("My point was just you didn't have multiple overnight positions every day? A. Right. Q. And the reason for that was because you wanted to keep overnight risk to a minimum? A. Yes. If that was -- where I was trading principally -- if I was trading 3 to 5 million shares during the day, I wasn't going to keep that kind of risk overnight. So, yes, I didn't keep an outsized amount of overnight risk.").)

85. Ruggieri generally did not hold an overnight position unless he was stuck with the position at the end of the day or he had a reason for the position. (Tr. 2416:19–2417:7 (Ruggieri) ("Q. And you were, relatively speaking, at the end of every day, flat? A. Correct. Q. Because even if you had a 10,000-share position in a stock, you'd have to compare that to the 3 or 4 million shares that you traded? A. Yes, exactly. Q. So it's a tiny percentage? A. I mean, you're trading in and out of stocks all day long, and unless you have that position for a reason, or you're stuck with it, you're probably going to be flat at the end of the day. That's fair to say.").)

86. On average, during each of his trading days at Wells Fargo, Ruggieri held an overnight position in less than 1 of the 277 stocks he traded. (Tr. 2104:13–2105:15 (Ruggieri) ("Q. Now, sir, you stipulated that you worked at Wells Fargo for 415 trading days; correct? A. Yes. Q. And that you held approximately 325 overnight positions during that time? A. Yes. Q. And each of those positions was in a single stock? A. Yes. Q. So you agree with me that that's less than one overnight position in one stock each night? A. Correct."); DIV 225 (list of 277 tickers Ruggieri traded at Wells Fargo).)

87. For the period from March 30, 2010 through March 31, 2011, Ruggieri held overnight positions for only 1.41% of the shares he traded and 1.45% of the dollar amount of his trades. (DIV 177 at 15–16 (expert report) ("I have analyzed the trading records of Mr. Ruggieri over the period March 30, 2010 through March 31, 2011.... Over this period, Mr. Ruggieri placed long or short positions that totaled 289,910,241 shares. The positions represented by 285,827,076 of these shares were closed out the same day they were originally placed. The positions represented by 4,083,165 shares were held overnight. Mr. Ruggieri therefore held only 1.41% of his trades overnight if we measure the trades by the number of shares. I also analyzed the trading by dollar amount. Over the period March 30, 2010 through March 31, 2011, Mr. Ruggieri placed trades that totaled $6.11 billion. Of these trades, $88.9 million in positions were held overnight. This represents 1.45% of all trades when measured by dollar amount."); Tr. 1887:3–15 (O'Neal) ("Whether you measure by shares or by dollars, it's really the same result. All it shows is that 98-1/2 percent of the time [Ruggieri's] positions were opened and closed in the same day. 1-1/2 percent of the time those positions remained overnight.").)

88. When Ruggieri did hold an overnight position, it was "very rare" that he held a position for longer than a few days. (Tr. 2103:16–2104:6 (Ruggieri) ("Q. You did not often hold a principal position for an extended amount of time; right? A. I think that's fair to say. Q. You tried

not to get married to positions? A. Yes. Q. In fact, it was very rare that you would hold a position for longer than a few days? A. Yes.").)

VII. BOLAN'S RESEARCH REPORTS AND RATINGS CHANGES

89. The published research reports that Wells Fargo issued under Bolan's name typically included one of three recommendations about the prospects of the covered company's stock: "outperform," "market perform," or "underperform." (Tr. 92:10–17 (Friedman) ("Q. What sorts of recommendations? A. Our current ratings methodology or definitions are market perform, outperform or underperform. What that typically means is based on the next 6 to 12 months would a specific company outperform the market or underperform or stay even."); DIV 133 (list of Bolan's published research at Wells Fargo); Tr. 581:24–582:15 (Madsen) (identifying DIV 133 as a list of all Wells Fargo research reports published by Bolan).)

90. As the reports' appendices made clear, "outperform" meant investors should "buy" the stock, "market perform" meant investors should "hold" the stock, and "underperform" meant investors should "sell" the stock. (DIV 3 at 8 (Bolan's Albany upgrade) ("1=Outperform: The stock appears attractively valued, and we believe the stocks total return will exceed that of the market over the next 12 months. BUY[.] 2=Market Perform: The stock appears appropriately valued, and we believe the stock's total return will be in line with the market over the next 12 months. HOLD[.] 3=Underperform: The stock appears overvalued, and we believe the stock's total return will be below the market over the next 12 months. SELL[.]") (bold type in original); DIV 46 at 6 (Bolan's Parexel downgrade) (same); DIV 53 at 8 (Bolan's Covance upgrade) (same); DIV 60 at 8 (Bolan's Athena upgrade) (same); DIV 63 at 5 (Bolan's Emdeon upgrade) (same); DIV 212 at 55 (Bolan's Bruker initiation of coverage) (same); Tr. 581:10–17 (Madsen) ("Q. What did the term outperform communicate to clients of Wells Fargo? A. Outperform was equivalent to a buy actually. Q. And

how about underperform? A. That would be the sell equivalent. Q. And how about market perform? A. That is the hold.").)

91. At times, Bolan published a ratings change — a report that changed his prior rating on a particular company's stock — for instance, from "market perform" to "outperform," or from "hold" to "buy." (DIV 3 (Bolan's Albany upgrade); DIV 53 (Bolan's Covance upgrade); DIV 60 (Bolan's Athena upgrade); DIV 63 (Bolan's Emdeon upgrade); Tr. 102:25–103:23 (Friedman) ("Q. Now, Mr. Friedman, are you familiar with the term 'ratings change'? A. Yes. Q. What do you understand that to mean? A. When the -- when the 6 to 12 month outlook changes in an analyst's mind based on market conditions or prospects of an individual company, he or she may decide that the market -- the security will underperform relative to what they have currently rated the security, will outperform, or will market perform. Their views are always emerging and could always potentially change, and when that happens, they issue a report indicating to the investing public the rationale behind their change, whether it is upgrade, downgrade, what have you.").)

92. When Bolan changed his rating on a stock, he included the word "upgrading" or "downgrading" in the research report's title. (DIV 3 (Bolan's Albany upgrade); DIV 46 (Bolan's Parexel downgrade); DIV 53 (Bolan's Covance upgrade); DIV 60 (Bolan's Athena upgrade); DIV 63 (Bolan's Emdeon upgrade); DIV 36 at 28 (Wells Fargo equity research manual) ("Rating and material estimate changes MUST be mentioned in the primary title line of the First Call."); DIV 133 (list of Bolan's published research at Wells Fargo).)

93. While at Wells Fargo, Bolan initiated coverage on twelve stocks. (DIV 133 (list of Bolan's published research at Wells Fargo).)

94. On nine of his twelve initiations of coverage, Bolan's initial rating on the stock was "market perform." (DIV 133 (list of Bolan's published research at Wells Fargo).)

95. "Market perform" was a neutral rating. (Tr. 2270:17–23 (Ruggieri) ("Q. What was his rating prior to the upgrade? A. That would be market perform. Q. So that's like a hold rating? A. Right. Q. A neutral rating? A. Right.").)

96. On only three of his twelve initiations of coverage did Bolan rate a stock as "outperform." (DIV 133 (list of Bolan's published research at Wells Fargo).)

97. Bolan never initiated coverage of a stock with an "underperform" rating. (DIV 133 (list of Bolan's published research at Wells Fargo).)

98. At competitor Wall Street firms that required analysts to obtain supervisory approval for ratings changes, the approval process was simply "a rubber stamp" that resulted in "almost a blanket approval." (Tr. 1352:25–1353:25 (Wickwire) ("Wall Street research departments have tried to put in a convention where all ratings changes are approved prior to them happening, and essentially what will happen, for the most part, is a rating change will be decided late into the evening, 10, 11 o'clock, and what we found in talking to a number of Wall Street firms is it's almost a blanket approval. A junior director of research will get a call at midnight and be half asleep and say, 'Yes, you can go ahead.' What we found out, it was really a rubber stamp operation, so we just decided not to do it and allow the analyst to make ratings changes without preapproval.").)

99. For that reason, Wells Fargo did not require any supervisory approval before an analyst like Bolan could publish a ratings change, although analysts did need approval to initiate coverage on a stock. (Tr. 1352:25–1353:25 (Wickwire) ("Q. And in terms of an analyst in your group during that time period wanting to make a ratings change, were you generally informed of that desire? A. Generally, no, no. And I can elaborate if you'd like. Q. Absolutely. A. Wall Street research departments have tried to put in a convention where all ratings changes are approved prior to them happening, and essentially what will happen, for the most part, is a rating change will be decided late into the evening, 10, 11 o'clock, and what we found in talking to a number of Wall Street firms is it's

almost a blanket approval. A junior director of research will get a call at midnight and be half asleep and say, 'Yes, you can go ahead.' What we found out, it was really a rubber stamp operation, so we just decided not to do it and allow the analyst to make ratings changes without preapproval. That's for existing research. For launching of coverage, the new coverage, those all had to be approved."); Tr. 1561:18–1562:17 (Wickwire) ("Q. And you did not believe that he needed your approval. A. There is no firm mandate that an analyst needs approval for a ratings change other than an initiation of coverage.").)

100. Bolan's supervisors told him that, if he wanted to do so, he could let them know about his theories and thesis for a forthcoming ratings change, even though no approval was required. (Tr. 1561:18–1562:17 (Wickwire) ("Q. And you did not believe that he needed your approval. A. There is no firm mandate that an analyst needs approval for a ratings change other than an initiation of coverage. Q. But Mr. Bolan seemed to believe that he needed your approval, because he asked for it with respect to each of the ratings change at issue in this case; is that true? A. Very good question. We've told analysts if they are unsure or feel as if they need some sounding board, that we're very open to listening to their theories and thesis around the rating changes. That happens, out of ten ratings changes, it[ ] probably happens two out of every ten. It's typically the more junior people that say: This is what I'm thinking. It's not really an approval. It's more of a: Is this something that you think makes sense.").)

101. Between September 2009 and March 2011, Wells Fargo typically issued Bolan's ratings change reports and initiations of coverage between 4:00 p.m. Eastern time, when the United States stock markets closed, and 9:30 a.m. the next trading day, when they re-opened. (DIV 133 (list of Bolan's published research at Wells Fargo); Tr. 575:12–577:13 (Madsen) ("Q. Now, in terms of when research reports that contain ratings changes are issued by Wells Fargo, is there any particular time of the day when they are issued? A. We'll issue them starting at midnight and through on until

market open.… Q. So even if you had reviewed it and approved it after the market closed during the day, was it the general practice to issue them after midnight before the market open the next day? A. Yes, they would be ready for the market open the next day."); Tr. 1472:19–1473:23 (Wickwire) ("The analyst's best practice is to go back to their desk -- well, their best practice is to get in at 6 a.m. and make a hundred calls out to clients, talking about this research report -- which has been published at 5:00 a.m., anywhere from midnight and 5:00 a.m. so it's out in the market."); Tr. 2131:21–25 (Ruggieri) ("Q. Did you notice any kind of custom or practice as to when during the day those ratings changes were issued? A. As a custom or a practice? I mean, typically after the close or before the open."); Tr. 2405:9–17 (Ruggieri) ("9:30 to 4:00, the market is open, obviously.").)

VIII. BOLAN'S RATINGS CHANGES WERE MATERIAL AND MOVED STOCK PRICES, AS BOLAN AND RUGGIERI KNEW.

A. Bolan and Ruggieri Knew That Bolan's Ratings Changes Were Material To Investors and Typically Moved Stock Prices.

102. There is no dispute that Bolan's ratings changes were material. (Tr. 1200:23–1201:6 (stipulation) ("MS. SERPE: While they are getting the next witness, I thought we would raise one quick issue, which is that Joseph Ruggieri does not dispute materiality in this case. So that's just one element of the test, particularly liability, that we are not disputing in this matter. I wanted to put that on the record.").)

103. Wells Fargo's policies on research analyst publications defined a "material research change" to include three research categories: "(1) a rating change; (2) a valuation range change; or (3) a full-year EPS, FFO per share, etc., estimate change of 5+%." (DIV 36 at 28 (Wells Fargo equity research manual).)

104. Bolan knew that ratings changes — which change an analyst's recommendation to buy, sell, or hold a stock — typically moved stock prices. (DIV 110 at 43–44 (Bolan) ("Q.… [T]here were some instances where the price of the security went up after an upgrade; correct? A. Uh-hum.

Q. Did that surprise you? A. No, because when an investment broker changes a rating, they are changing their focus, changing their kind of direction in terms of their thinking. So if I tell you one day I think the stock is a hold and you shouldn't accumulate any more, and then I at some point upgrade to buy, then those institutional investors will buy the stock because that's my recommendation.").)

105. Ruggieri knew that ratings changes typically moved stock prices. (Tr. 2041:16–2042:6 (Ruggieri) ("Q. And generally when an analyst makes a ratings change, you observed that it typically affects the stock price; correct? A. It depends on the circumstance, the analyst, the context of the situation. I think whether --- I think Mr. Wickwire said the same thing – whether it was reactive or proactive, if it was related to any -- what was going on in the market or if it was some new thesis or something, it just depended on the context of the situation. Q. Sir, my question to you is: Typically when an analyst makes a ratings change it affects the stock; correct? A. Typically, sure.").)

106. Ruggieri knew that a research analyst's forthcoming ratings changes were material. (Tr. 2047:17–2048:18 (Ruggieri) ("Q. Now, you also understood that if an analyst was considering upgrading a rating on a stock, that was material nonpublic information? A. Yes. Q. And you understood that if an analyst was considering downgrading a rating on a stock, that was also material nonpublic information? A. Yes. Q. And you knew that while you worked at Wells Fargo; correct, sir? A. Yes.").)

107. Ruggieri knew that if an investor successfully predicted when a research analyst was going to upgrade a stock, that would help the investor make money. (Tr. 2046:17–21 (Ruggieri) ("Q. Mr. Ruggieri, if an investor successfully predicted when a research analyst was going to upgrade a stock, that would help an investor make money; right? A. Sure."); DIV 177 at 5 (expert report) ("Advance knowledge of a forthcoming ratings change could be used to trade profitably ahead of other traders in the market.").)

108. Ruggieri knew that if an investor successfully predicted when a research analyst was going to downgrade a stock, that would help the investor make money. (Tr. 2046:22–2047:2 (Ruggieri) ("Q. And if an investor successfully predicted when a research analyst was going to downgrade a stock, that would also help the investor make money; correct? A. Generally, yes."); DIV 177 at 5 (expert report) ("Advance knowledge of a forthcoming ratings change could be used to trade profitably ahead of other traders in the market.").)

109. In the sub-sectors he covered, Bolan had a reputation as an influential, up-and-coming analyst. (DIV 40 (Oct. 12, 2010 emails from client to Bolan and Ruggieri congratulating Bolan for making 2010 *Institutional Investor* All-American list of top up-and-coming equity analysts)); DIV 25 (Mar. 18, 2011 email to Bolan informing him that Wells Fargo management was working on having clients recognize Bolan and other top analysts by voting for him); DIV 110 at 25–26 (Bolan) ("Q. Tyrmand states, 'No brainer on best up and comer fellah and No. 1 in CROs in my book.' What does that mean? A. He is congratulating me and he believes that I am No. 1 in CROs. Q. Is that the pharmaceutical services sector? A. Correct.... Q. Have other clients of firms that you've worked at expressed a view that you were the No. 1 analyst in the CRO space? A. They have expressed that I am certainly one of the best covering CROs. Q. Who has expressed that? A. Clients."); Tr. 1376:19-1377:5 (Wickwire) ("I would say at the time Greg was viewed as, not an up-and-comer, but slightly better than that. He was one of the rising stars within the department. You think about our department, we've got some very senior established analysts who have been doing it for 15 or 20 years, and then there's a group below them who are really moving up the ranks based on their tenure and continuing to build their franchise, and Greg was really at the top of that emerging group.").)

110. Ruggieri knew that Bolan was an influential analyst in his subsectors of the healthcare industry. (Tr. 2042:20–2043:8 (Ruggieri) ("Q. You knew in October 2010 that Mr. Bolan

was ranked the best up-and-comer analyst in the healthcare technology and distribution subsector; right? A. Yes. Q. That was by *Institutional Investor*? A. That's right. Q. And it was based on *Institutional Investor*'s All-America Survey of U.S. Equity Analysts? A. Yes. Q. That was prestigious; right? A. It was a good honor, yes.").)

111. Bolan knew that his ratings changes moved stock prices. (DIV 43 (Feb. 8, 2011 email from Bolan to client after Bolan's upgrade) ("[G]onna be some unhappy folks today (aka shorties).").)

112. Ruggieri knew that Wells Fargo's clients actually used Bolan's research to trade. (Tr. 2042:7–11 (Ruggieri) ("Q. Sir, you knew that clients actually used Mr. Bolan's research to trade; right? A. Yes. Q. That was his job, wasn't it, sir? A. It was.").)

113. Ruggieri paid attention to Bolan's ratings changes and observed that Bolan's rating changes typically moved stock prices. (Tr. 2040:21–2041:15 (Ruggieri) ("Q. Now, sir, you paid attention when a healthcare analyst upgraded or downgraded a stock you covered; correct? A. Yes, [] that was part of my job. Q. And that was true of Mr. Bolan's ratings changes too? A. Yes. Q. You paid attention to those? A. Yes. Q. And you observed that when he changed a rating on the stock, the stock priced changed; correct? A. Not always. But, yes, it did. Q. And you saw that Mr. Bolan's ratings changes typically moved the stock price; correct? Q. Typically. I don't remember each circumstance. But it typically probably did, sure."); DIV 114 (Aug. 23, 2011 email from Ruggieri in response to Bolan email distributing his recently published research) ("Still moving stocks.").)

B. Bolan's Ratings Changes Had a Measurable Impact on Stock Prices.

114. There is a consensus in the academic literature that stock prices react significantly to analysts' ratings changes. (DIV 177 at 4 (expert report) ("There are hundreds of published peer-reviewed articles that examine how releases of certain non-public information affect the prices of stocks. One strand of this literature focuses specifically on whether analysts' ratings change

announcements have a measurable effect on stock prices. The conclusion of almost all researchers that have studied this phenomenon is that analyst ratings changes do have a measureable and significant impact on stock prices."); Tr. 1870:10–1871:21 (O'Neal) ("This is a strand of literature that dates back probably 20 years, and by and large, authors who look at that particular type of announcement, a rating change, have found that in the aggregate those announcements have a significant effect on the stock prices that the announcements pertain to.").)

115. Bolan's ratings changes had a statistically significant impact on the stock prices of the securities being rated. (DIV 177 at 13–14 (expert report) ("I also calculate a standard statistical significance test on the average abnormal returns on the ten announcements .... [W]e are confident at the 99.5% level that the abnormal returns indicate informational content.").)

116. For purposes of Dr. O'Neal's analysis, an initiation of coverage with an outperform or underperform rating was included within the category of ratings changes. (Tr. 1872:7–1873:15 (O'Neal) ("The next thing that I did was to look at the specific instances of Mr. Bolan's ratings changes. We had a sample of 18 instances where Mr. Bolan either changed a rating or initiated coverage with an outperform or underperform, and the idea was to look at those 18 -- I'm going to call ratings changes and initiations of coverage with an outperform or underperform rating just generally ratings changes, but realizing that some of them can be just outperform -- I'm sorry, initiation with an outperform or underperform. So what I wanted to do was look at that sample of 18 ratings changes and see how those stocks reacted to Mr. Bolan's ratings changes.").)

117. Ten out of Bolan's eighteen ratings changes at Wells Fargo were not preceded by news that may be interpreted as being the cause of subsequent stock price movement. (DIV 177 at 13 & n.10 (expert report).)

118. Excluding ratings changes that may be accompanied by confounding news is a standard statistical practice that is aimed at protecting the integrity of the statistical analysis.

(DIV 177 at 13 & n.10 (expert report) ("The elimination of confounded announcements is standard event-study practice.").)

119. It is more difficult to find statistical significance in smaller samples of data. (DIV 177 at 13 (expert report) ("Typically, it is more difficult to find statistical significance in smaller samples.").)

120. Dr. O'Neal found Bolan's ratings changes to be statistically significant despite the difficulty with finding statistical significance when analyzing small samples of data. (DIV 177 at 13 (expert report); Tr. 1882:6–1884:20 (O'Neal) ("Q. Despite having a small sample size in this case, were you still able to determine the statistical significance of Mr. Bolan's ratings changes? A. Yes. I performed what we call a binomial test on the ten stock price reactions, and found that from a statistical standpoint we're 99 percent confident that those reactions are different from zero and in the correct direction, and also performed a statistical analysis of the average stock price reaction and found, with also approximately 99 percent confidence, that there was a statistically significant reaction.").)

121. When analyzed individually, Bolan's ten ratings changes not preceded by confounding news moved the stock prices of the rated securities in the same direction as the ratings change, *i.e.*, up after an upgrade and down after a downgrade. (DIV 177 at 13 (expert report) ("[T]he fact that all 10 of the clean ratings changes are accompanied by abnormal stock price movements in the expected direction (positive for upgrades and negative for downgrades) strongly suggests that Mr. Bolan's ratings changes affect stock prices in a manner consistent with the academic findings in large samples."); DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data); Tr. 1906:4–12 (O'Neal) ("On the ten non-confounded Bolan's ratings changes, they all moved in the direction of Mr. Bolan's rating change; up for an upgrade and down for a downgrade.").)

122. There is a 0.1% probability that stock prices moved in the same direction as Bolan's ten ratings changes without those ratings changes being significant to the market. (DIV 177 at 13 (expert report) ("The probability is only .1% that we would observe abnormal returns in the correct direction in all ten cases if Mr. Bolan's ratings changes did not contain material information. The strong inference is that Mr. Bolan's ratings changes did in fact contain information that was material to the market.").)

123. This probability is the same as the probability of flipping an equally-weighted coin ten consecutive times and obtaining the same side of the coin on each flip. (DIV 177 at 13 (expert report) ("I performed a binomial test to determine the likelihood of observing ten out of ten correct directional abnormal returns if there is no information content in Bolan's ratings changes. This test is similar to trying to figure out the likelihood of flipping ten straight heads if a coin is fair. In this case, the calculation is quite simple: (.5)10 = .001.").)

124. Dr. O'Neal analyzed all eighteen of Bolan's ratings changes while he was employed at Wells Fargo, including the eight ratings changes that may be accompanied by confounding news. (DIV 177 at 13, fn. 10 (expert report).)

125. Fifteen out of these eighteen ratings changes resulted in abnormal stock price movements on the day after their publication. (DIV 177 at 13 (expert report) ("[I]f we consider all 18 announcements, 15 of the 18 announcements were accompanied by abnormal stock returns in the direction expected given the direction of the ratings changes.").)

126. The probability that fifteen out of Bolan's eighteen ratings changes resulted in abnormal stock price movements by chance is 0.4%. (DIV 177 at 13 (expert report).)

127. On the trading day after Bolan's six ratings changes at issue were published, the trading volume of the rated securities was 60% higher, on average, than their respective 30-day average trading volumes. (DIV 177 at 14 (expert report); DIV 197 (summary chart of trading

volume on days after Bolan's ratings changes); Tr. 1884:21–1885:9 (O'Neal) ("I simply looked at whether the volume in the stocks tended to spike when Mr. Bolan released a ratings change. And what I found was that on average the volume was 60% higher on the day when he released a rating change than it was in the days leading up or the days after.").)

128. For each of Bolan's six ratings changes at issue, the rated security's trading volume on the day after publication was between 42% and 163% higher than the its average trading volume during the thirty days around each publication. (DIV 197 (summary chart showing trading volume around Bolan's ratings changes).)

129. There were no earnings announcements in the rated security during the week preceding or following the publication of each of Bolan's six ratings changes. (DIV 198 (chart showing the date of the earnings releases just before and after each ratings change); Tr. 1727:4–21 (Walster) ("No research – I'm sorry – no earnings events occurred within the week immediately preceding or following all six of the events in question here.").)

IX. RATINGS CHANGES ARE MORE LIKELY TO MOVE STOCK PRICES THAN OTHER RESEARCH.

130. Ratings changes are more likely to move stock prices than other research reports — including valuation and earnings estimate changes — because ratings changes tell investors to buy, sell, or stop buying or selling a stock. (DIV 213 at 7 (expert rebuttal report) ("Notably, the research reports that Mr. Bolan cited contained earnings or valuation changes that did not rise to the level of causing Mr. Bolan to change his rating on the company. A ratings change conveys a greater level of change in an analyst's opinion than a revision in earnings or valuation absent a ratings change and is clearly more likely to move the price of the stock."); Tr. 1898:24–1901:4 (O'Neal) ("In my opinion, the rating change or the recommendation change is a stronger piece of information, a more important piece of infōrmation, because it's really giving investors instructions about whether to buy or sell a stock.").)

131. Wells Fargo placed greater trading restrictions before the publication of (a) ratings changes, (b) earnings estimate changes of 10% or more, and (c) coverage initiations with a positive or negative recommendation than before the publication of other research, including valuation changes and smaller earnings estimate changes. (DIV 98 at 35 (Wells Fargo equity research supervisory procedures) ("[B]uy and sell restrictions apply in the direction of the recommendation or action, as follows: Buy restrictions: increase in ratings or recommendations, increase in EPS estimates of 10% or greater, research coverage is initiated with a positive recommendation (*e.g.* buy, outperform, overweight), issuer is added to a Firm recognized recommendation list. Sale restrictions: decrease in ratings or recommendations, decrease in EPS estimates of 10% or greater, research coverage is initiated with a negative recommendation (e.g. sell, underperform, underweight), issuer is deleted from a Firm recognized recommendation list.").)

132. The academic paper offered by Ruggieri premises its findings on the fact that ratings changes impact stock prices and attempts to determine the additional impact of other types of research such as earnings revisions and target revisions. (JR REB 103 (academic paper entitled "Information Content of Equity Analyst Reports"); Tr. 1976:17–1984:12 (O'Neal) ("Q. And what does that paper state? A. Well, it obviously states a lot, but generally, after having read the article, what this article is attempting to do is, it sort of jumps off from the point of, we know for certain that ratings upgrades and ratings downgrades have an impact on stock price. The question they're attempting to answer is, over and above that, do earnings revisions or valuation changes also have an effect on stock price. And we were shown Table 2 yesterday, but that was the only table we were shown. And what that table basically shows is that all of this information could be important to investors. But the next section of the paper, which is Table 3, basically looks at -- first of all, the first premise is that upgrades and downgrades are extremely important. In the presence of an upgrade or a downgrade, do earnings revisions and target revisions have an impact. And what this article says is

that if there's an upgrade, earnings revisions and target price revisions have no additional impact. So it's very clear from the results of this article that the upgrade is what is the important aspect of an analyst report that actually has an upgrade….").)

133. Wells Fargo research analysts and supervisory analysts understood that ratings changes and earnings estimate changes of 10% or more were more important to investors than other research, including valuation changes and smaller earnings estimate changes. (Tr. 613:21–614:13 (Madsen) ("Q. In these different categories, is there a certain category that is more material than the others? A. Some of them are, yes. Q. Like which ones? A. The ratings change, and if the estimate change was even greater to the level of 10 percent, we had different rules that would follow. Q. And how about valuation range change, [w]here does that rank in terms of materiality compared to ratings change? A. Lower. Q. Why is that? A. I think the rating change is the top level element, and you can maintain your rating while changing valuation range."); Tr. 1244:17–1245:16 (Evans) ("Q. And are you familiar with the term 'information that is material'? A. Yes. Q. And in terms of the various types of research that were published by Wells Fargo coming out of your operation in Nashville at that time, the ratings changes that were issued, where would you put them in the range of materiality of the various reports that you issued? A. It can vary widely depending on the circumstances that prompted the ratings change, the notoriety of the analyst within that particular field, whether the ratings change was proactive or whether it was reactive. So there is a variety of things that can influence that. Q. Right. I'm comparing it to the other research products that were generated by your group, such as squawks. A. Generally ratings changes would be considered more material than other notes.").)

134. Published research that reacts to publicly available news such as earnings announcements ("reactive" research) is less important to investors than published research that is prospective and based on nonpublic research conducted by the research analyst ("proactive"

research). (Tr. 1327:2–24 (Wickwire) ("Q. And there are other ratings changes that are not based on a company issuing public information; is that right? A. Correct. Q. And what is your sense of what percentage of the ratings changes are based on a company just issuing new guidance as opposed to new information that is obtained by an analyst? A. By the analyst? That's a good question. So one responding to company news – I'd have to go back and look. I would say – I would say, unfortunately, probably more than 50 percent are probably a reaction to a company announcement. Q. And how about is there a difference in that percentage among the better analysts than the ones that are not as good? A. Oh, yes, absolutely. Q. What is the difference? A. The better analyst will actually be proactive and will not be reacting to news."); Tr. 3204:19–3206:4 (Mackle) ("Q. Mr. Mackle, have you heard of the difference in ratings changes between ones that are reactive and ones that are prospective? A. Yes. Q. And what is the difference? A. The reactive ratings changes are typically done after a stock has already made a huge move to the upside or to the downside, and the analyst is coming in after the fact to change his or her rating. Q. So, for example, have you heard of ratings downgrades that have followed a company, a public company, giving revenue guidance or profit guidance that was going to be less than previously expected? A. Yes. Q. And is that a reactive or prospective ratings change when that happens? A. Reactive. Q. Let's take the ones that are prospective. Have you ever heard of prospective ratings changes being done not based on publicly available news from a public company being covered, but from research being conducted by a research analyst? A. Yes. Q. Is it fair to say that those are generally prospective? A. Yes. Q. And are the prospective ratings changes generally more material to investors than the reactive ratings changes? A. Yes.").)

135. During the one-year period that Ruggieri traded ahead of Bolan's ratings changes, only 4% of Bolan's research reports contained ratings changes. (DIV 196 (pie chart showing percentage of Bolan's research that included a ratings change); Tr. 1723:10–20 (Walster) ("I

calculated the percentage of reports that didn't have a ratings change as I described, that was 96 percent of the reports, and then 4 percent of the reports during this time period included a ratings change or initiation of coverage not at market perform.").)

X. BOLAN'S FORTHCOMING RATINGS CHANGES WERE NON-PUBLIC INFORMATION, AS BOLAN AND RUGGIERI KNEW.

136. As Wells Fargo made clear to its analysts, the firm's unpublished research reports were confidential, non-public information. (DIV 98 at 39 (Wells Fargo's Equity Research Supervisory Procedures and Compliance Guidelines) ("Confidential information is any nonpublic, 'proprietary' information… created by a firm for public consumption, but not yet disseminated to the public. Examples of proprietary information include, but are not limited to…unpublished research reports.").)

137. Wells Fargo's analyst reports remained non-public until they were publicly disseminated through the firm's website and vendors such as Bloomberg. (Tr. 137:6–138:21 (Friedman) ("Q. And generally what is this paragraph talking about? A. Well, it is stating that – I guess the way to put it is that unless it has been broadly disseminated through some type of public filing or in the news with reputable news agencies that the information should be considered nonpublic."); Tr. 572:14–574:2 (Madsen) ("Q. What is that end point distribution [of Wells Fargo analyst reports]? A. That would be to our research website and various vendors that we have. Q. And when it is distributed to the website at the different vendors, who does it go to in terms of the clients of Wells Fargo? A. Once it is on the website, anyone who is a registered client can view it. If you have entitlement access to a select certain vendor, once it is posted, you would be able to see it there as well. Q. And some of the entities that get it when it is distributed, are any of them entities that then make it public, such as Bloomberg? A. It is available on Bloomberg. I believe Bloomberg has an entitlement system, so we have to agree that firm X could then view our research on Bloomberg."); Tr. 693:6–694:5, 719:16–21 (Yi) ("Q. Just to be clear, I meant sort of forthcoming

unpublished ratings changes. A. Right. I mean so forthcoming unpublished research ratings changes are not public, so they would be deemed nonpublic. That would be deemed nonpublic information."); Tr. 1438:3–11 (Wickwire) ("Q. What did you mean by you were required to first publish a note before you can discuss those changes with anyone? A. Essentially, publishing a note disseminates it fairly across, it goes out on Bloomberg and First Call. It's a complete public dissemination of the report such that no one has that report in advance of its publication and can act on it.").)

138. Bolan knew that his forthcoming, unpublished ratings changes were non-public. (DIV 110 at 115 (Bolan) ("[Q.] Are the contents of a research report nonpublic before the research report is published? A. Yeah, I would say that's an accurate statement.").)

139. Ruggieri knew that Bolan's forthcoming, unpublished ratings changes were non-public. (Tr. 2047:17–2048:18 (Ruggieri) ("Q. Now, you also understood that if an analyst was considering upgrading a rating on a stock, that was material nonpublic information? A. Yes. Q. And you understood that if an analyst was considering downgrading a rating on a stock, that was also material nonpublic information? A. Yes. Q. And you knew that while you worked at Wells Fargo; correct, sir? A. Yes.").)

XI. WELLS FARGO PROHIBITED TIPPING AND TRADING AHEAD OF RATINGS CHANGES, AS BOLAN AND RUGGIERI KNEW.

A. The Relevant Compliance Policies

140. Wells Fargo prohibited its research analysts from sharing forthcoming research with the firm's traders, clients, or anyone else outside the research department. (Tr. 108:25–112:13, 116:10–20 (Friedman) ("Q. And now, again, same time, 2010 to 2011, did Wells Fargo's policies place any limitations on what research analysts could discuss with the firm's traders? A. Yes, it did. Q. What were those? A. The policies during that time covered prepublished research or research work product, and the concept of confidentiality around your prepublished or anyone's

prepublished research. . . . [R]esearch analyst's work product would be something where you would not be permitted to discuss such unless you were a member of the research department and had a need to know."); Tr. 697:17–698:10 (Yi) ("[Q.] And did Wells Fargo during that time place any restrictions on what traders and research analysts could talk about? A. Research analysts couldn't discuss pending research or unpublished research. That was -- they couldn't discuss that with traders or anyone outside of the research department.").)

141. The main reason for the policy was to prevent select investors from obtaining "an edge" over other investors. (Tr. 108:25–112:13 (Friedman) ("Q. And what is the purpose of that policy as you understand it? A. There are a few principles. One is that research analyst[s] in the development of their research product might have information that is actionable material to investors, and giving – being sloppy with that, providing that information to investors could give an investor an edge, which is why we say don't give to it to any single individual, you have to publish on it. The principle about -- so there is a principle of confidentiality as well in the sense that you don't really know what the impact of your research is going to have on the general marketplace. You may think it is actionable and it is not, or you may underestimate how actionable it might be. The mere fact that you don't have total knowledge of the marketplace at any given time, as a precaution we ask you not to discuss that matter outside of the research department because investors, unbeknownst to you, might find it to be actionable.").)

142. This was a standard policy among broker-dealers. (Tr. 116:21–117:10 (Friedman) ("Q. Now, these policies that we have been talking about, based on your experience at other firms and talking to compliance officers in other firms, these policies, were they unusual in 2010 through 2011 among broker-dealers?. . . A. Typically the policies that Wells Fargo had at the time were similar to those that I was familiar with at other places and through discussions with other people.").)

143. At a minimum, Wells Fargo's policies dictated that clients had to have simultaneous access to any material information. (Ruggieri's Post-Trial Proposed Findings of Fact ¶ 130 ("Internal policies dictated that clients had to have access to any information that was material simultaneously."); Tr. 1249:9–14 (Evans) ("Q. Why was the process that distribution went to all clients as opposed to a subgroup first? A. It was a policy that clients need to have access to anything that would be deemed material simultaneously.").)

144. From at least 2009 through the first half of 2011, Wells Fargo's policies prohibited research analysts from sharing unpublished channel checks with anyone outside the research department, including clients and traders. (Tr. 115:5–116:9 (Friedman) ("First in 2010 through the first half of 2011, were analysts free to disseminate channel checks to anyone outside the research department? A. No, they were not. Q. Why not? A. They don't know the information collected, whether the information collected from a channel check is significant or important. If you're conducting these channel checks, it's your hope that you're going to take that information and then draw a conclusion and disseminate it to your clients. But the idea that you don't know until you have done all your channel checks, how you think, you know, it opens up the door that it might be significant or it might not be significant, which is why we tell analysts to not disclose the nature of their research products prior to it being formulated and disseminated to all of our clients. Q. Okay. In other words through publishing it? A. Through publishing it, yes."); Tr. 701:4–17 (Yi) ("Q. Now, from 2009 to the first half of 2011, did Wells Fargo allow analysts to share forthcoming but unpublished channel checks with traders? A. I believe the policy was not to permit that. Q. And why was that? A. Well, I think the information gleaned from channel checks could be viewed as material, so -- it may not, but I think that was for the research analyst to digest first. To the extent that it would become material, they would have to publish it in a research report.").)

145. In April 2009, Wells Fargo issued a two-page compliance bulletin entitled "Trading Ahead of Research Reports — FINRA Rule 5280" ("the Compliance Bulletin"). (DIV 7 (Trading Ahead Compliance Bulletin).)

146. The Compliance Bulletin was directed at both research and trading employees. (Tr. 557:7–559:5 (Friedman) ("Q. And then the very first headline there, 'Trading Ahead of Research Reports, FINRA Rule 5280'? A. Yes. Q. Who did you understand that to be targeted to? A. I didn't write this policy, but it suggests traders."); Tr. 722:14–723:2 (Yi) ("Q. And who was this bulletin designed to inform? A. I think it was designed to inform both the research group and the sales and trading groups. There is some content in here that is, I think, addressed specifically for research analysts.").)

147. The Compliance Bulletin informed employees that Wells Fargo "maintain[ed] Information Barriers to prohibit the flow of information about pending research reports outside of the Global Research Department so as to prevent [Wells Fargo's] Trading Departments from front-running the publication of a research report for the benefit of the firm or its clients." (DIV 7 at 1 (Trading Ahead Compliance Bulletin).)

148. The Compliance Bulletin also stated: "Personnel of the Global Research Department are reminded of the following policies and procedures relating to the publication of research: You MAY NOT preview changes in research opinions or estimates, or contradicting or signaling a change from [their] published views. All communications, whether verbal or in writing must be consistent with your current published views. You MAY NOT preview initiations of research coverage.... All research MUST be adequately disseminated on a contemporaneous basis to all customers who hav[e] a perceived interest in the report." (DIV 7 at 2 (Trading Ahead Compliance Bulletin).)

149. Once issued, the Compliance Bulletin became a part of Wells Fargo's policies and procedures. (Tr. 721:21–722:6 (Yi) ("Q. Now, just stepping back for a moment, what is a compliance bulletin? A. It is effectively a compliance policy, but sometimes it is easier to issue a bulletin because -- they may issue it because there is a change in a rule or maybe there is a change in the stance in the policy. So effectively the compliance bulletin becomes a part of the firm's policies and procedures.").)

150. In October 2009, Bolan's supervisor, Wickwire, reiterated this policy by reminding Bolan and others: "Obviously, if you are contemplating or in the process of changing your rating; [sic] valuation range and/or estimates, you are required to first publish a note before you can discuss those changes with anyone." (DIV 107 (Oct. 7, 2009 email from Wickwire to all equity research analysts); Tr. 1437:11–1438:11 (Wickwire) ("Essentially if the analyst was contemplating and/or unsure as to whether there was a pending change in rating, valuation range, thesis or estimates, that they were not to preview that, and his [Micchiche's] intent here was essentially you should not be having dialogue if you're in that -- if you're in that state of mind.").)

151. Wells Fargo's Information Barriers and Client Management Policy, which became effective on October 31, 2009, expressly prohibited employees from tipping or trading on material non-public information. (DIV 17 at 6–7 (Information Barriers and Client Management Policy) ("The misuse of material, nonpublic information, or inside information in the purchase or sale of securities can constitute fraud under the securities laws of the United States and many other countries. Fraudulent misuse of inside information includes buying or selling securities while aware of material, nonpublic information for a team member or a team member-related account, for a Company or WFS/WFIS proprietary account, or for the account of any customer. Fraudulent misuse of inside information also includes disclosing or tipping such information to someone else who then trades on it, or using such information as a basis for recommending the purchase or sale of a security.... In

no event may any team member who receives inside information use that information to trade or recommend securities affected by such inside information for personal benefit, the benefit of the Company, WFS/WFIS, any customer of the Company or WFS/WFIS or any other third party.").)

152. By at least December 28, 2009, Bolan had read and understood Wells Fargo's Information Barriers and Client Management Policy. (DIV 68 at 2 (Bolan's 2009 team member information attestation) ("I have read and understand the Firm's Information Barriers & Client Management [Policy] and will abide by these policies and procedures."); Tr. 158:5–159:5 (counsel for Ruggieri) ("Your Honor, we will stipulate to the fact that Greg Bolan attended compliance policies and attested to them. I don't know whether Mr. Lieberman, Mr. Bolan's lawyer, had stipulated to them. We stipulated to them for Joe that he did take these policies. We're not claiming that no one was aware of the existence of these policies. It is not an issue in this case. It is not an issue with respect to Mr. Bolan, so we'll stipulate to it.").)

153. By at least December 28, 2009, Ruggieri had also read and understood Wells Fargo's Information Barriers and Client Management Policy. (DIV 16 at 2 (Ruggieri's 2009 team member information attestation) ("I have read and understand the Firm's Information Barriers & Client Management [Policy] and will abide by these policies and procedures."); Tr. 158:5–159:5 (counsel for Ruggieri) ("Your Honor, we will stipulate to the fact that Greg Bolan attended compliance policies and attested to them. I don't know whether Mr. Lieberman, Mr. Bolan's lawyer, had stipulated to them. We stipulated to them for Joe that he did take these policies. We're not claiming that no one was aware of the existence of these policies. It is not an issue in this case. It is not an issue with respect to Mr. Bolan, so we'll stipulate to it.").)

154. Wells Fargo's Team Member Conduct Policy, which became effective on October 31, 2009, expressly prohibited employees from front-running, or knowingly trading ahead of, the publication of a Wells Fargo research report. (DIV 6 at 1, 12–13 (Wells Fargo Team Member

Conduct Policy) ("'Front-running' involves the practice of knowingly trading ahead of customer interest to buy or sell a security or related instrument, and has traditionally been described in two contexts: front-running block orders of a security or related instrument (generally, in anticipation of expected price movements), and front-running research. In either context, front-running violates exchange rules, FINRA just and equitable principles of trade, and WFS/WFIS's policies.... Accordingly, team members may not trade ahead of any customer order or research - personally or in a proprietary trading manner.... A WFS/WFIS team member may be considered to have violated just and equitable principles of trade if he or she engages in a personal or Firm transaction in a security prior to WFS's release of a material research report (i.e., research which could reasonably be expected to affect the price of the security) if the team member knew of the imminent research release.").)

155. By at least December 28, 2009, Bolan had read and understood Wells Fargo's Team Member Conduct Policy. (DIV 68 at 2 (Bolan's 2009 team member information attestation) ("I have read and understand the Team Member Conduct Policy and will abide by these policies and procedures."); Tr. 158:5–159:5 (counsel for Ruggieri) (stipulation).)

156. By at least December 28, 2009, Ruggieri had also read and understood Wells Fargo's Team Member Conduct Policy. (DIV 16 at 2 (Ruggieri's 2009 team member information attestation) ("I have read and understand the Team Member Conduct Policy and will abide by these policies and procedures."); Tr. 158:5–159:5 (counsel for Ruggieri) (stipulation).)

157. On September 30, 2010, Wells Fargo's research compliance group issued a consolidated compliance manual, the Equity Research Supervisory Procedures and Compliance Guidelines, to consolidate and synthesize the prior Wachovia and Wells Fargo compliance policies. (DIV 98; Tr. 142:13–146:13 (Friedman) ("My group was part of a compliance department general initiative that sought to synthesize Wachovia policies to that of Wells Fargo generally into a

successor document post[-]merger.... This [DIV 98] looks like the successor document of consolidation of synthesis process covering equity research at least. And on the date of 9-30-2010, this policy would have governed all of the supervision and compliance functions.").)

158. The Equity Research Supervisory Procedures and Compliance Guidelines contained similar prohibitions on tipping or trading on material, non-public information and front-running research reports. (DIV 98 at 36 ("Front-running involves the practice of knowingly trading ahead of customer interest to buy or sell a security or related security, and has traditionally been described in two contexts: front-running block orders of a security or a related security (generally, in anticipation of expected price movements), and front-running research.... Team members may not engage in a personal transaction in a security prior to the Firm's release of a material research report (i.e., research which could reasonably be expected to affect the price of the security) if the team member knew of the imminent research release.... Under U.S. securities laws (as well as the laws of many foreign countries in which the Company does business) and Wells Fargo policy, no team member shall purchase, sell, or recommend the securities of an issuer for any proprietary, customer, personal or other account while aware of material, nonpublic information or confidential information regarding the issuer.").)

B. The Annual Compliance Training

159. Wells Fargo provided annual, mandatory compliance training to research analysts and traders. (Tr. 164:8–166:11 (Friedman) ("Q. And now in 2010, was that annual training mandatory or voluntary for the people in the department, the research department? A. The annual compliance training was mandatory."); Tr. 731:13–733:24 (Yi) ("Q. From 2009 through 2011, did Wells Fargo's compliance department conduct any training to educate its employees on compliance policies? A. Yes. There would be various training held throughout the year, and at a minimum, there

would be an annual compliance training.... [Q.] And is that a mandatory training or is it voluntary for the traders? A. The annual is mandatory, but we would view the *ad hoc* as mandatory too....").)

160. On December 18, 2009, Wells Fargo's annual compliance training advised Bolan: "No previewing research/opinions/estimates[.] No contradictions or signals indicating a change to published views[.] If views have changed, issue a research report[.] Do not communicate short-term views unless they are published... No discussions on timing and views of reports with anyone outside Research." (DIV 30 at 22–23 (2009 annual compliance training slides for equity research); DIV 31 (participant report for 2009 annual compliance training for equity research) (Bolan attended all of 2009 compliance presentation except for first 3 minutes and 23 seconds); Tr. 1214:7–1218:18 (Hughes) ("Q. And [Bolan's] finish time, how does that relate to when you finished? A. That is consistent with when I finished. Q. So is it fair to say that Mr. Boyland [*sic*], who is Mr. Bolan, was present when you went over the training that [is] in slide 21 and 22? A. That would be fair to say.").)

161. In December 2009 and 2010, Ruggieri attended Wells Fargo's annual compliance training presentation for sales and trading employees. (DIV 108 (slides for 2009 annual compliance training for sales and trading division); DIV 5 (slides for 2010 annual compliance training for sales and trading division); DIV 79 (sign-in sheet for 2009 annual compliance training for sales and trading division); DIV 109 (sign-in sheet for 2010 annual compliance training for sales and trading division).)

162. In 2009, Wells Fargo reminded Ruggieri that he was responsible "for being familiar with, and complying with" the "Applicable Compliance Bulletins," among other things, and gave him the link to the Wells Fargo intranet site where they were maintained. The applicable compliance bulletins included the Compliance Bulletin. (DIV 108 at 5 (slides for 2009 annual compliance training for sales and trading division); Tr. 742:16–22 (Yi) ("Q. Now, Mr. Yi, the applicable compliance bulletins that are mentioned here, did that include the compliance bulletin that we

looked at this morning on trading ahead of research reports? A. Based upon the timing of the publication of that compliance bulletin, yes.").)

163. In both the 2009 and 2010 annual compliance presentations, Wells Fargo informed Ruggieri that "[t]rading when AWARE of material nonpublic information (or tipping) may subject you to civil and criminal penalties & firm disciplinary action: Prison[,] Injunctions[,] Bars or suspensions[,] Disgorgement to the tipper/tippee...." (DIV 108 at 62 (slides for 2009 annual compliance training for sales and trading division); DIV 5 at 20 (slides for 2010 annual compliance training for sales and trading division).)

164. In both the 2009 and 2010 annual compliance presentations, Wells Fargo informed Ruggieri that "[i]t is the responsibility of each employee and Supervisory Principal of each trading desk to ensure that W[ells] F[argo] S[ecurities] trading team members do not buy or sell positions in anticipation of the dissemination of written research." (DIV 108 at 49 (slides for 2009 annual compliance training for sales and trading division); DIV 5 at 18 (slides for 2010 annual compliance training for sales and trading division).)

165. In both the 2009 and 2010 annual compliance presentations, Wells Fargo informed Ruggieri that he should notify compliance when: "You are unsure if an action would violate procedures, industry regulations, or ethical standards [or y]ou become aware of business conduct that violate[s] procedures, industry regulations, or ethical standards." (DIV 108 at 6 (slides for 2009 annual compliance training for sales and trading division); DIV 5 at 3 (slides for 2010 annual compliance training for sales and trading division).)

C. Bolan and Ruggieri Understood the Prohibitions on Tipping on and Trading Ahead of Published Research, Including Bolan's Ratings Changes.

166. Bolan understood that he was prohibited from communicating the contents of his research reports before they were published. (DIV 110 at 179–87 (Bolan) ("Q. At the time that you were employed at Wells Fargo, did you know it had a policy against the previewing of research? A.

Again, yes. I mean, it would be a general policy. So, yes, a standard operating procedure, if you will.... Q. At the time you were employed at Wells Fargo, did you know that Wells Fargo had a policy against the discussion on timing and views of reports with anyone outside of research? A. I have not seen this, but as a general policy, I understood it to be a standard operating procedure.").)

167. Ruggieri knew that Wells Fargo prohibited its analysts from discussing forthcoming research reports with traders. (Tr. 2047:9–2048:18 (Ruggieri) ("Q. You understood that analysts were not allowed to talk to you about research reports they were working on; correct? A. Yes. Q. You understood that analysts were not allowed to talk to you about research that hadn't been published yet? A. That's correct. Q. Those are all things you knew while you were there? A. Yes.").)

168. Ruggieri knew that Wells Fargo prohibited its analysts from telling him about forthcoming ratings changes. (Tr. 2048:11–18 (Ruggieri) ("Q. You understood that analysts were not allowed to tell you that they were going to upgrade a rating on a stock? A. Of course not. Q. And you understood that analysts were not allowed to tell you that they were going to downgrade a rating on a stock? A. Absolutely not.").)

169. Ruggieri knew that he was prohibited from trading on a stock in anticipation of a forthcoming research report. (Tr. 2048:23–2049:3 (Ruggieri) ("Q. Now, you also understood that you were not allowed to buy or sell positions in anticipation of the dissemination of written research? A. Right.").)

170. Ruggieri knew that he was prohibited from trading on a stock with knowledge that an analyst was going to upgrade or downgrade his rating on the stock. (Tr. 2049:3–13 (Ruggieri) ("Q. You understood that you were not allowed to trade on a stock if you had advance notice that an analyst was going to upgrade a stock; correct? A. Yes. Q. And you understood that you were not allowed to trade on a stock if you had advance notice that an analyst was going to downgrade the stock; right? A. Yes.").)

XII. BOLAN REPEATEDLY PREVIEWED HIS RESEARCH SELECTIVELY AND DISMISSED HIS JUNIOR ANALYST'S CONCERNS.

171. Lisa Hausner was Wells Fargo's global publishing director and the supervisor of its research supervisory analysts, including Mike Madsen. (Tr. 587:7–11 (Madsen) ("Q. And Lisa Hausner? A. She is still the global publishing director. Q. And who is your supervisor? A. Lisa Hausner.").)

172. On February 9, 2009, after Hausner learned that Bolan had shared his views on AMRI with a reporter before publishing his views, she directed Bolan to publish his comments immediately and to refrain from speaking to a reporter again on any topic on which he had not published. She warned Bolan that it was a "selective dissemination issue." (DIV 37 (Feb. 9, 2009 email from Hausner to Bolan) ("Greg, you CANNOT speak to reporters without prior SA approval, and you MUST only speak on published comments. Please publish on your comments/topic that you discussed [with] the reporter immediately. This is a selective dissemination issue."); Tr. 596:11–602:23 (Madsen) ("Q. What does Ms. Hausner write back to Mr. Bolan? A. She informs him that he can't speak to reporters without prior approval and that he can only speak on published comments. He needs to publish on those comments immediately. Q. And then the last sentence says 'This is a selective dissemination issue'? A. Yes. Q. Did you have an understanding of what selective dissemination issue was? A. Yes. It is where you have communicated your research thoughts to certain persons, but not all.").)

173. On September 17, 2009, Bolan blind-copied Ruggieri on a channel check email concerning Covance. (JR 5 (Sept. 17, 2009 email from Bolan); Tr. 2070:24–2071:6 (Ruggieri) ("[Q.] Now, this particular e-mail you received on Thursday, September 17, 2009 through a blind-carbon copy; right? A. It looks that way, yes.").)

174. Bolan sent the email to two people at Capital World, a "big," platinum client of Wells Fargo. (Tr. 2070:3–13 (Ruggieri) ("Q. And Capital World was a client? A. Yes. Q. A premiere

client; right? A. They were a big client, yes."); DIV 15 at 12 (list of Wells Fargo platinum and gold clients) (Capital World listed as number 1); Tr. 269:10–270:7 (Friedman) ("Q. And so this is page 12 [of DIV 15] and what was this? A. So just because I said I would, the 5 is in my handwriting. The rest of the handwriting on this page is I believe Mr. Forback or Mr. Yi's handwriting, but it is a list from them of our platinum and gold accounts, let's say, in the health care area, although I can't say for sure. But it is 38 gold and platinum accounts with the contact information and e-mail addresses and the sales contact associated with the account. Q. Okay. So first of all, what is a gold or platinum account? A. I can't really speak to the actual what the qualifications are, but they would denote important clients for purposes of perhaps commission dollars or other import, but I don't – I'm not in the -- that end of classification so to speak.").)

175. Bolan said that the information was "very sensitive and [a] somewhat costly data-point to get" and asked the recipients to "please keep this close to the vest." (JR 5 (Sept. 17, 2009 email from Bolan).)

176. Bolan provided a number of data points about Covance's toxicology facility, which he obtained from his toxicology consultant. (JR 5 (Sept. 17, 2009 email from Bolan).)

177. Bolan then conveyed his own opinion: "Based on all this, my gut tells me that we will continue to see an incremental improvement through the end of the year and the more robust demand will return in Q1 or Q2. I know this goes against my past statements and it is surprising to me but we are nearly in Q4 and the activity only seems moderate. Especially with the holidays, I would expect it to be busier now for starting studies in Q4." (JR 5 (Sept. 17, 2009 email from Bolan); Tr. 2077:5–24 (Ruggieri) ("Q. And then that last paragraph in this e-mail Mr. Bolan writes: 'Based on all of this, my gut tells me that we will continue to see an incremental improvement through the end of the year and the more robust demand will return in Q1 or Q2. 'I know this goes against my past statements, and is surprising to me, but we are nearly in Q4 and the activity only

seems moderate. Especially with the holidays, I would expect it to be busier now for starting studies in Q4. I bounced this off another consultant and it jives with what he has seen.' Do you see that? A. Yes. Q. Those are Mr. Bolan's conclusions; right? A. Right. Q. Not the consultant's? A. Yes.").)

178. Ruggieri knew that the information was confidential and had not been published, and Ruggieri commented, "Love Bolan, think he's our best analyst." (Tr. 2072:21–2073:6 (Ruggieri) ("Q. Sir, he said: 'Please keep this close to the vest.' Right? A. Yes. Q. Don't those words mean to you, keep it confidential? A. I don't think, if he sent an e-mail to clients, that that meant keep it confidential, but I don't know what else that could mean, but..."); Tr. 2386:8–12 (Ruggieri) ("Q. Was Mr. Bolan instructing you to keep it close to the vest or was he instructing the client to keep it close to the vest? A. To my understanding, it was to the client."); DIV 133 at 2–3 (list of Bolan's published research at Wells Fargo) (showing no published research on CVD between July 31 and September 20, 2009); Tr. 2131:15–17 (Ruggieri) ("Q. I think you said earlier you paid attention to Mr. Bolan's reports; right? A. As part of my job, yes.").)

179. On May 5, 2010, Wells Fargo's email review program, Assentor, flagged a channel check email that Bolan had sent to "certain clients," and Madsen reviewed the email. (DIV 221 (May 5, 2010 channel check email from Bolan to Surdez with subject "fyi – I sent this to certain clients yesterday"); DIV 34 (May 5, 2010 email chain between Madsen and Bolan) ("This message was quarantined in Assentor. Was this material published via a squawk?"); Tr. 606:5–25 (Madsen) ("Q. . . . [W]hat was your understanding of what Mr. Bolan was conveying to Mr. Surdez in the subject line? A. He is alerting this man that this information below has been sent to clients. Q. And the information below, what was your understanding of the information below, was that research? A. Yes. Q. And is that research --- at the time, was such research allowed to be sent to just select clients? A. No. Q. And why not? A. It is in order to ensure fair dissemination to our clients."); Tr. 577:14–578:13 (Madsen) ("Q. Now, in addition to reviewing analyst reports before they are

distributed, did you also engage in any review of e-mail generated by analysts? A. I did. Q. And what was the process for that; did you review every e-mail that went out? A. No. There was a program that the company had engaged with that would quarantine into a queue selected e-mails, and we would go in there and review a portion of them. Q. What was the name of that program? A. Assentor. Q. And did you have an understanding of how Assentor selected what e-mails to go into your queue to be reviewed? A. There was something called a lexicon, which basically as I understand it had like selected phrases or words that would be of supposedly interest, and then they would get -- if they hit some threshold, they would wind up in our queue.").)

180. Later the same day, Madsen spoke with Bolan and told him that he needed to publish the channel check in a squawk without identifying statistics and names. (DIV 35 (May 5, 2010 email from Madsen to Bolan) ("I confirmed that this kind of research would need to go out in a published form. You should do a squawk on this one. As we discussed, you can just cite channel checks and remove any identifying statistics/names/etc."); Tr. 609:18–610:20 (Madsen) ("Q. And by the way, in your statement to him, did you give him sort of any indication that it was okay for him to give channel check information to select clients? A. No. Q. In fact, at that time, was there any policy that you were aware of that allowed analysts like Mr. Bolan to take channel check research that hadn't been published yet and give it to just select clients? A. No.").)

181. In his conversation with Madsen, Bolan did not claim that he thought he was allowed to convey such information to select clients without publishing it first. (Tr. 609:18–610:20 (Madsen) ("Q. In fact, in your communication with Mr. Bolan at the time, this is in May of 2010, did he come to you and say, why do I have to publish this as a squawk, I'm al[lowed] to just give it to select clients? A. No.").)

182. On May 5, 2010, at 4:00 p.m., Bolan e-mailed his channel check to the Equity Squawks mailbox to be published, and Wells Fargo published Bolan's channel check squawk at 4:22

p.m. that day. (JR REB 113 (May 5, 2010 email from Bolan to Equity Squawks); DIV 133 at 4 (list of Bolan's published research at Wells Fargo) (listing publication at 4:22 p.m. on May 5, 2010 of research entitled "CRL and CVD: Notes From a Recent Industry Channel Check").)

183. That was the only time Bolan published research at Wells Fargo with the terms "channel," "check," or "channel check" in the title of his research. (DIV 133 (list of Bolan's published research at Wells Fargo) (search for terms results in only that one publication).)

184. In Madsen's years as a supervisory analyst, he did not recall any other instances in which he had told an analyst he had to publish research that he had already selectively disclosed to certain clients, and it was "exceedingly rare" that he saw a channel check email go out to clients without being published first. (Tr. 627:9–15 (Madsen) ("Q. Telling Mr. Bolan that he needed to put content into a squawk, was that the first time you have ever told an analyst in your entire tenure as a supervisor analyst that content needed to be put into a squawk? A. I can't say for certain, but that was a very rare occasion."); Tr. 652:6–25 (Madsen) ("Q. In 2010, you flagged this email of Bolan sending information to select clients regarding the channel check. Do you recall in 2010 you found other analysts doing the same thing through your email review? A. I don't recall, but it stuck in my mind because it was exceedingly rare. Q. So this was a rare thing that you saw in your years as a supervisory analyst; isn't that right? A. Yes."); DIV 221 (May 5, 2010 channel check email from Bolan to Surdez with subject "fyi – I sent this to certain clients yesterday"); DIV 34 (May 5, 2010 email chain between Madsen and Bolan) ("This message was quarantined in Assentor. Was this material published via a squawk?"); DIV 35 (May 5, 2010 email from Madsen to Bolan) ("I confirmed that this kind of research would need to go out in a published form. You should do a squawk on this one. As we discussed, you can just cite channel checks and remove any identifying statistics/names/etc.").)

185. Because it was not a "run-of-the-mill" event, Madsen flagged the incident to his boss. (Tr. 627:9–23 (Madsen) ("Q. It was a rare occasion, but not one that would rise to an incident, was it? A. I flagged it to my boss, so it is beyond just pure run-of-the-mill.").)

186. After his May 2010 conversation with Bolan, Madsen thought Bolan would subsequently comply with Wells Fargo's publication policies and publish his channel checks in a squawk or note. (Tr. 610:21–611:11 (Madsen) ("Q. What was your understanding of what Mr. Bolan was going to do in terms of complying with the publication rules after this exchange of e-mail with you? A. He was going to publish it as a squawk. Q. Did you have an understanding...of whether he understood what the rules were at that point after that e-mail exchange with you regarding how channel check information should be published? A. Yes. Q. What was your understanding? A. That it would be published via the squawk or note channel.").)

187. Throughout Ruggieri's tenure at Wells Fargo, Bolan regularly sent Ruggieri channel check emails. (Tr. 2382:21–24 (Ruggieri) ("Q. Had you been getting these channel check e-mails from Mr. Bolan throughout your tenure at Wells Fargo? A. Yes, I was."); Tr. 2078:20–22 (Ruggieri) ("Q. You regularly got channel check e-mails from Mr. Bolan; right? A. Yes.").)

188. Bolan typically blind-carbon-copied Ruggieri on Bolan's emails to clients who traded through Ruggieri. (Tr. 2070:14–22 (Ruggieri) ("Q. It was Mr. Bolan's typical practice to blind-carbon copy you on e-mails to clients in your space; right? A. Yes. That's a practice that we try to institute with other analysts, where if he e-mails a client, copy the salesperson and the trader so they're in the flow of information and they know what feedback is being discussed between the client and the analyst.").)

189. Ruggieri knew that Bolan's channel checks contained unpublished information. (Tr. 2382:21–2383:18 (Ruggieri) ("Q. Had you been getting these channel check e-mails from Mr. Bolan throughout your tenure at Wells Fargo? A. Yes, I was.... Q. Did you understand, when Mr.

Bolan sent you a channel check, whether they were going to be published at a later date or a later time? A. No. I assume when he sent me the channel check, he was sending it to -- if he was sending it in an e-mail, he was sending it to clients as well, and that was it. You know, I never expected that to be a published note later, ever."); Tr. 2384:21–2385:17 (Ruggieri) ("Q. It's fair to say, when you go back and look at some of Mr. Bolan's nonpublished channel checks that he sent to select clients, that that information, at times, was probably going to move the market, or probably be important to certain clients? A. Sure. Q. And that's a no-no in the analyst world; isn't it? A. I guess so.... Q. But if you look back and really parse some of what Mr. Bolan was saying, he clearly thought that some of this information might be somewhat important to some of his clients; correct? A. Right. Q. And that probably should have been in a regular analyst report? A. In hindsight, probably.").)

190. From the face of the channel check emails Ruggieri received, some of them clearly contained information that would probably move the market or probably be important to certain clients and that Bolan thought would be important to his clients. (Tr. 2384:21–2385:17 (Ruggieri) ("Q. It's fair to say, when you go back and look at some of Mr. Bolan's nonpublished channel checks that he sent to select clients, that that information, at times, was probably going to move the market, or probably be important to certain clients? A. Sure. Q. And that's a no-no in the analyst world; isn't it? A. I guess so.... Q. But if you look back and really parse some of what Mr. Bolan was saying, he clearly thought that some of this information might be somewhat important to some of his clients; correct? A. Right. Q. And that probably should have been in a regular analyst report? A. In hindsight, probably."); Tr. 2391:19–2392:16 (Ruggieri) ("I think a lot of people discounted the channel checks, and thought it was noise. And some people found it was valuable for the tidbit data point that might move the stock that day, but in the grand scheme over time, I don't know how valuable they actually were.").)

191. On June 9, 2010, Bolan sent Ruggieri a channel check email on Covance. (JR 70 (June 9, 2010 email from Bolan to Toulouse cc'ing Ruggieri) ("Subject: recent channel check from my tox consultant's visit to Covance Madison facility – relevant to CVD and CRL").)

192. In the email, Bolan said that Covance's vice president of program management, who was usually bullish about Covance, was not as bullish then. (JR 70 (June 9, 2010 email from Bolan to Toulouse cc'ing Ruggieri) ("While WIL and HLS are swamped with work, Madison isn't. Spoke to a VP of program management, who reports up through sales, and he said that demand is 'coming back.' This guy is normally very bullish and doesn't hesitate to brag about his accomplishments, but he was very humble and reserved."); Tr. 2080:11–25 (Ruggieri) ("Q. In other words, sir, Mr. Bolan was saying here that the VP of program management, who is usually bullish about Covance, right, was not as bullish this time? A. Right.").)

193. Bolan said that the Covance facility did not have a lot of work. (JR 70 (June 9, 2010 email from Bolan to Toulouse cc'ing Ruggieri) ("Spoke with three study directors and they clearly weren't swamped with work."); Tr. 2081:2–11 (Ruggieri) ("Q. Again, what he was saying was, Covance, this facility, not swamped; right? A. Yes. Q. Not a lot of work? A. Right.").)

194. *See* Joint Factual Stipulations ¶¶ 9 through 10 for Evans' start date at Wells Fargo, reporting line, and geographical location.

195. Evans received his compliance orientation training on or around September 25, 2010. (JR REB 76 (Sept. 22, 2010 email from Hughes to Evans and others) ("Tim – I am not sure how I missed your compliance orientation session. Can you set aside some time this Friday (30 min) and we will conduct it via conference call?").)

196. By late September 2010, Evans had become concerned that Bolan was violating Wells Fargo's compliance policies by selectively sharing unpublished, potentially material channel check research with certain high-paying clients. (Tr. 1254:17–1255:17 (Evans) ("Q. Now, did there

come a time after you started working there where you had any concerns regarding Mr. Bolan's compliance with the compliance rules of Wells Fargo? A. Yes. Q. When did you have your first concern? A. It was towards the end of the calendar third quarter, during which time he conducted checks with competitors in the sector that we follow, and he described to me how he would distribute the notes from those calls to a select group of clients who tended to be the clients who paid the firm the most effectively. Q. So was this --- when you say the third quarter, this was the third quarter of 2010? A. Correct. Q. And what about that information concerned you? A. It was not clear to me whether the material that he was sending to these clients would have been considered immaterial. So I was concerned that it might be --- it might be some sort of selective dissemination problem.").)

197. It was difficult for Evans to raise his concerns with Bolan, because Bolan was his boss and Evans had to maintain a good working relationship with Bolan. (Tr. 1258:6–23 (Evans) ("Q. And at the time when you approached Mr. Bolan to raise this concern, was that an easy thing to do? A. Not particularly, no .... Q. Why was it hard for you? A. It was hard because Mr. Bolan was my boss, period. I wasn't working for anybody else. There was no option to work for anybody else, so we had to maintain a good working relationship.").)

198. On October 13, 2010, Evans raised his concerns with Bolan for the first time and told Bolan they should publish the channel check information in a research note or squawk. (DIV 92 (Oct. 13, 2010 email from Evans to himself) ("Tonight I voiced my strong opposition to the channel check emails Greg [Bolan] claims have been cleared through compliance. I said that we need to put them in a [published] note form next quarter. He seemed to blow off my concern."); Tr. 1255:25–1256:5 (Evans) ("Q. And what did you say? A. I don't remember the exact words of the conversation, but I suggested to him that this was something that we should put into a regular research note or squawk, either way.").)

199. Bolan dismissed Evans' concerns and told Evans that Wells Fargo's compliance department had "cleared" Bolan's channel check emails. (DIV 92 (Oct. 13, 2010 email from Evans to himself) ("Tonight I voiced my strong opposition to the channel check emails Greg [Bolan] claims have been cleared through compliance…. He seemed to blow off my concern."); Tr. 1256:6–9 (Evans) ("Q. And what did he say back to you? A. Again, I don't recall the exact words, but my impression was that he was dismissive of the suggestion.").)

200. Evans documented his conversation with Bolan in an email to himself with the subject line "Compliance." (DIV 92 (Oct. 13, 2010 email from Evans to himself); Tr. 1256:16–1257:3 (Evans) ("Q. Why did you send it [DIV 92] to yourself. Q. I wasn't sure, again, whether this was definitely a problem that needed to be raised with compliance, but I at least wanted to document that I had voiced my concerns to Greg [Bolan].").)

201. On November 3, 2010, Evans raised his concerns with Bolan again. (DIV 93 (Nov. 3, 2010 email from Evans to himself) ("I raised objections to Greg [Bolan] today regarding how he tends to disseminate material selectively som[e]times. He was noncommittal in his response to me regarding potential remedies."); Tr. 1259:11–21 (Evans) ("Q. And did you raise a concern again with him? A. Yes. Q. And let's take a look at Division Exhibit 93, dated November 3, 2010. Do you recognize this document? A. Yes. Q. And what is it? A. That is another email that I sent to myself on November 3 of 2010 following a similar conversation.").)

202. By this time, Evans was not satisfied with Bolan's representation that he had cleared his channel check emails through Wells Fargo's compliance department and was "unclear whether [Bolan] had accurately represented what he was doing to someone in either an S[upervisory] A[nalyst] role or a compliance role, if indeed he had talked to someone." (Tr. 1260:12–16 (Evans) ("Q. Now, is it fair to say that you raised this -- you weren't satisfied with his representation earlier that he checked with compliance? A. Correct."); Tr. 1307:4–22 (Evans) ("Q. By the time you sent

this second email to yourself, you had talked to Mr. Bolan. At that point, you're pretty sure he didn't check with someone in compliance; isn't that right? A. No, I was still uncertain. I was -- I was unclear whether he had accurately represented what he was doing to someone in either an SA role or a compliance role, if indeed he had talked to someone. Q. But it is fair to say at the time that you sent the second -- why is that? Why did you have that belief? A. Why was I uncertain about that? Because in my view, our compliance department or SA department are fairly conservative, and I didn't think that they would be okay with these types of emails.").)

203. Bolan would not agree to publish his channel checks. (DIV 93 (Nov. 3, 2010 email from Evans to himself) ("He was noncommittal in his response to me regarding potential remedies."); Tr. 1260:17–22 (Evans) ("Q. And what did you mean by saying he was noncommittal in his response? A. I was hoping that he would say, okay, we'll put them in note form next time or publish them as a squawk. He would not commit to doing that.").)

204. Evans documented his conversation with Bolan in an email to himself with the subject line "Compliance." (DIV 93 (Nov. 3, 2010 email from Evans to himself).)

205. On November 12, 2010, Evans raised his concerns with Bolan a third time. (DIV 94 (Nov. 12, 2010 email from Evans to himself) ("Spoke to Greg [Bolan] yesterday on trip to Louisville regarding my growing discomfort with his treatment of comp[l]iance rules. He was dismissive. Said he likes to shoot for middle of the road…not too conservative, not too libe[r]al."); Tr. 1260:23–1261:11 (Evans) ("Q. And what was --- what is this [DIV 94]? A. This is the third email that I sent to myself to document another similar conversation.").)

206. Evans told Bolan that he was not being careful about the compliance rules. (Tr. 1261:15–1262:5 (Evans) ("I tend to take a very strict interpretation of rules. I tend to be very cautious. And the gist of this conversation was that I felt that he was not being cautious, not being careful, and it made me uncomfortable.").)

207. Bolan was dismissive. (DIV 94 (Nov. 12, 2010 email from Evans to himself) ("Spoke to Greg [Bolan] yesterday on trip to Louisville regarding my growing discomfort with his treatment of comp[l]iance rules. He was dismissive. Said he likes to shoot for middle of the road...not too conservative, not too libe[r]al.").)

208. Evans documented his conversation with Bolan in an email to himself with the subject line "Compliance." (DIV 94 (Nov. 12, 2010 email from Evans to himself).)

209. After these three conversations with Bolan, Evans realized that Bolan was not going to change his practices. (Tr. 1262:14–25 (Evans) ("Q. What was your reaction to what he said to you on that --- in this documentation? A. I didn't immediately react at all to him. After three emails like this or three conversations like this, I realized that the situation was not going to change....").)

210. Evans felt that Bolan's behavior violated Wells Fargo's policy and could result in Bolan's and Evans' termination. Uncomfortable with that risk, Evans decided to look for another job. (Tr. 1262:14–1263:10 (Evans) ("Q. What was your reaction to what he said to you on that --- in this documentation? A. I didn't immediately react at all to him. After three emails like this or three conversations like this, I realized that the situation was not going to change and I began to look for other jobs. Q. So were you -- why were you looking for other jobs? A. I felt like his behavior put my job at Wells Fargo at risk, and it was not a risk that I was comfortable with.... Q. In what way did his conduct, did you feel, put your job at risk? A. I feel the violation of the policy of the firm that could have risen to the level of termination.").)

211. By January 2011, Evans had begun looking for another job and had mentally "checked out" of his job at Wells Fargo. (Tr. 1297:16–21 (Evans) ("Q. But by January 2011, you had already checked out; isn't that right? A. Yes. Q. You had started looking for another job, right? A. Right.").)

212. On February 3, 2011, Bolan wrote to Ruggieri over several instant messages: "[W]e just conducted our last 4Q preclinical check… bullish…writing up now…will send." (JR 126 (Feb. 3, 2011 instant messages between Bolan and Ruggieri); Tr. 2082:9–12 (Ruggieri) ("Q. Let's take a look at that, JR 126. These are instant messages between you and Mr. Bolan; correct? A. That's correct.").)

213. Bolan meant that he was bullish about the channel check. (Tr. 2082:23–2083:3 (Ruggieri) ("Q. Meaning he was bullish about the check; right? A. That's what I think it means, yes.").)

214. Ruggieri understood that Bolan was going to write up the channel check in an email. (Tr. 2083:11–13 (Ruggieri) ("Q. And you understood he was going to write up that channel check in an e-mail; right? A. Right.").)

215. The same day, February 3, 2011, Bolan told Ruggieri that he had a client named Gilliam on the telephone line during the channel check. (Tr. 2083:14–17 (Ruggieri) ("Q. Now, that very same day, February 3, 2011, Mr. Bolan told you he had a client on the telephone line for the channel check; right? A. Yes."); JR 128 (Feb. 3, 2011 instant messages between Bolan and Ruggieri) (Bolan: "are u seeing channel check emails?...this was a late one…had Gilliam on the line with me"; Ruggieri: "ha shocker"; Bolan: "lol"; Ruggieri: "dude better start paying!"); Tr. 2085:19–20 (Ruggieri) ("Q. Now, Mr. Gilliam was a client; right? A. Yes.").)

216. Ruggieri was not surprised to hear that. (JR 128 (Feb. 3, 2011 instant messages between Bolan and Ruggieri) (Bolan: "are u seeing channel check emails?...this was a late one…had Gilliam on the line with me"; Ruggieri: "ha shocker"); Tr. 2087:2–16 (Ruggieri) ("Q. And you said 'Ha, shocker'? A. Right. Q. That was sarcastic; right? A. Was it sarcastic? Sure. Q. In other words, you weren't surprised? A. Right. I wasn't surprised because Rob Gilliam knew the space well, he talked to Greg a lot, from my understanding, about the space, and, you know, I didn't know if he

was on the phone with some of these checks before – I wasn't sure if -- the 'Ha, shocker,' I think it wasn't surprising that Gilliam, because he talked to Greg about CROs quite a bit, it wasn't a surprise that he would care about something like this.").)

217. Gilliam worked at a firm called Decade Capital, which was a fund within a larger umbrella fund family called Millennium. Decade and/or Millennium were platinum clients — a "very important client" that generated a lot of money for Wells Fargo. (DIV 15 at 12 (list of Wells Fargo platinum and gold clients) (Decade listed as number 7 with Gilliam's contact information); Tr. 269:10–270:7 (Friedman) ("Q. And so this is page 12 [of DIV 15] and what was this? A. So just because I said I would, the 5 is in my handwriting. The rest of the handwriting on this page is I believe Mr. Forback or Mr. Yi's handwriting, but it is a list from them of our platinum and gold accounts, let's say, in the health care area, although I can't say for sure. But it is 38 gold and platinum accounts with the contact information and e-mail addresses and the sales contact associated with the account. Q. Okay. So first of all, what is a gold or platinum account? A. I can't really speak to the actual what the qualifications are, but they would denote important clients for purposes of perhaps commission dollars or other import, but I don't – I'm not in the -- that end of classification so to speak."); Tr. 2085:21–2086:19 (Ruggieri) ("Q. And he was at a firm that was one of the platinum clients; right? A. He was -- well, Millennium I'm sure is a platinum client. Decade, where he worked, was -- well, Millennium has something like 15 healthcare funds within Millennium, so Decade was one of the funds within Millennium, so I think they -- he got platinum access, but he was -- I don't know what he paid. He – Decade was one of the funds under Millennium. So I guess, Millennium, yes, was a platinum account. Q. A very important client? A. Sure. Q. One that generated a lot of money for Wells Fargo? A. Decade didn't generate a lot of money for us, but Millennium did. Q. In other words, the bigger fund did; right? A. Right. Q. And you're saying Decade was one of the funds under the Millennium umbrella? A. Correct.").)

XIII. THE 6210 NUMBER WAS RUGGIERI'S PERSONAL PHONE LINE.

218. Wells Fargo's trading desk had at least one main phone line that rang on the trading desk: 212-214-6201 (the "6201 Line"). All the traders' phones generally lit up when that number rang, and any trader could pick up that number. (Tr. 2108:10–19 (Ruggieri) ("Q. There was a trading floor phone line; right? A. Yes. Q. That rang on the desk? A. Yes. Q. And that number was (212) 214-6201? A. Yes. Q. Multiple people's phones lit up when that general number was called? A. Yes."); Tr. 2109:25–2110:8 (Ruggieri) ("Q. You didn't write down the 6201 desk line, did you? A. I didn't at the time. That's the general trading line. It could access anybody on the trading desk. . . ."); Tr. 3193:21–25 (Mackle) ("Q. Like, for example, did you understand that there was a phone number with the ending 6201? A. That was one of the main trading desk lines, yes.").)

219. In addition, most Wells Fargo clients had separate, direct lines to reach the trading desk. (Tr. 3192:2–9 (Mackle) ("I had a personal line that only rang on my turret, but my phone, which they called a turret, had dozens of lines. There were a couple of main lines for the trading floor, and then there were what they call direct lines that go right to clients."); Tr. 3192:18–3193:12 (Mackle) ("I think the main reason why traders don't typically have their own line is, first of all, as I said, most customers we have direct lines with. . . ."); Tr. 3280:16–25 (Mackle) ("Because if it's a customer calling about a trade, I think I made it clear, we have direct customer lights or they call the main number.").)

220. Wells Fargo traders did not typically have their own personal phone lines at work. (Tr. 973:22–974:18 (Brown) ("Some of the traders at Wells have personal lights. I don't."); Tr. 2111:10–12 (Ruggieri) ("Q. Sir, not everyone on the trading line had a personal number; right? A. I don't think so."); Tr. 3192:15–3194:7 (Mackle) ("Q. And do you know, did everyone in the trading department have a personal line? A. No. Q. And why did you get a personal line? A. I think the main

reason why traders don't typically have their own line is, first of all, as I said, most customers we have direct lines with....").)

221. Some employees on the trading desk did have their own personal lines, at least in part because they wanted a phone line that others on the desk could not listen in on. (Tr. 3192:18–3194:7 (Mackle) ("Q. And why did you get a personal line? A. I think the main reason why traders don't typically have their own line is, first of all, as I said, most customers we have direct lines with, but if someone is calling and a trader happens to be off the desk, if it's ringing on the main line, it gets picked up within a couple of rings. I believe it was just common practice when I started, and I started at the exact same time as two other desk analysts that were doing my exact job on other trading desks, we got our own line because, you know, we make a lot of client calls that were not accessible via the direct client lines that were on our turrets, because those only went to the trading floor, because I was calling portfolio managers and analysts as well, so I wanted a line that people couldn't just tap into. Q. Could you explain that? Why could not people just tap into your own line? A. Well, if it's not on anybody else's phone, they can't just hop on. You can't tell -- unless you hit a button that says 'Privacy,' and no one can tap on, you can't tell anyone is listening on your line, so that's another reason why I got it.").)

222. Trading desk employees' personal lines did not ring on the desk. An employee's personal line only rang on his individual phone turret and the turret of anyone else authorized to have the other employee's personal line on his phone. (Tr. 973:22–974:12 (Brown) ("Q. Let's say Greg Bolan dials the trading floor. How does it work? A. Depends what number he calls on. Some of the traders at Wells have personal lights. I don't. Our phones are turrets so it is not a single phone, it is a big turret system where multiple people can pick up any light at a given time. Q. So that's true for either the personal number or the trading desk number? A. I can't speak to the personal number, but just the trading desk number, yes. Q. So the personal number, you don't know

whether or not anybody can pick it up? A. I don't know."); Tr. 3192:2–9 (Mackle) ("I had a personal line that only ring on my turret. . . ."); Tr. 3196:20–3197:10 (Mackle) ("Q. Now, this personal line, did you have an understanding -- you mentioned something about people being able to go into your personal line when you were on it. Were people able to do that? A. If someone had my line on their turret, yes, they were allowed to. Q. And did somebody else have your line on their turret? A. Again, I can't remember whether Joe and Chip had their line on my turret or not. Q. Other than them, was there anyone else who could have had their line on your turret? A. No one else other than those two would have had my line on their turret, no.").)

223. If an employee did not have a phone line ring on his phone turret, he could not listen in on a call on that phone line or answer that phone line when it rang, unless he walked over to the desk of the other employee who had the line and picked up the line at that employee's desk. (Tr. 3196:20–3197:2 (Mackle) ("Q. Now, this personal line, did you have an understanding -- you mentioned something about people being able to go into your personal line when you were on it. Were people able to do that? A. If someone had my line on their turret, yes, they were allowed to."); Tr. 3279:12–3280:6 (Mackle) ("THE COURT: Excuse me, who else other than the healthcare desk staff when Mr. Ruggieri is out would be on the line 6210? THE WITNESS: Again, I can't remember whether I was asked this earlier or not, but I can't recall whether Mr. Ruggieri's 6210 personal number was on anybody else's phone turret. So if it was not on anyone else's phone turret, it can only be picked up if you literally pressed a button on his desk alone and picked up the receiver. THE COURT: Right. So my question is, who, when he's gone -- say he's in Boston, who would be able to, in the trading area, pick up the 6210 calls when he wasn't there? THE WITNESS: Anyone can go to his empty desk and his line and pick it up, if that's what you're asking.").)

224. Ruggieri had his own personal phone line — his "specific extension" — at Wells Fargo: 212-214-6210 (the "6210 Line"). (Tr. 2108:20–2110:8 (Ruggieri) ("Q. And, sir, what number

did you write down on that? A. (212)214-6210. Q. That was your personal line; right? A. Yes.... [Y]es, 6210 was my specific extension."); Tr. 2409:8–15 (Ruggieri) ("Q. If you're on the phone, and you have this -- 6210 was your direct line? A. That's right. Q. So the person who wanted to speak to you would be best served dialing 6210? A. That's correct. Q. Because that's your line? A. That's right.").)

225. Ruggieri was the only person who made calls from the 6210 Line. (Tr. 2235:5–9 (Ruggieri) ("THE COURT: Who, if anyone, made calls from 6210 other than you, if anyone? THE WITNESS: From 6210? I don't know if anybody made calls from 6210 other than me.").)

226. When the Division asked Ruggieri during its investigation to provide all the telephone numbers he used in the preceding three years on a background questionnaire, Ruggieri wrote down his 6210 Line and not the 6201 Line. (DIV 77 at 2 (Ruggieri's background questionnaire) ("Wells Fargo work line – 212-214-6210"); Tr. 2109:15–2110:8 (Ruggieri) ("Q. And one of the questions that the Division asked you [in the background questionnaire] was to identify your Wells Fargo work line. Do you remember that? A. Yes. Q. And, sir, what number did you write down on that? A. (212) 214-6210.").)

227. In emails, Bolan's signature block listed not only Bolan's name and contact information but also Ruggieri's name and the 6210 Line for Ruggieri's contact information, along with Short's name and the 6201 Line for Short's contact information. (DIV 102 at 2–3 (Jan. 11, 2011 email from Bolan to others, copying Ruggieri, with signature block).)

228. Ruggieri's 6210 Line did not ring on the trading desk. (Tr. 3368:12–19 (Short) ("Q. Are you familiar with the phone number (212) 214-6210? In other words, ending 6210 and not 6201? A. 6210 -- I mean, familiar in a sense that it was probably someone's number. It's not a – that's not a number that went to the desk that I remember, the overall desk where anyone could have hit the light or answered the phone.").)

229. Ruggieri's 6210 Line did not ring on Mackle's phone turret. (Tr. 3194:17–25 (Mackle) ("Q. Did 6210 also ring on your phone? A. I don't recall it ringing on my phone. Q. Well, do you have any recollection of a line specifically assigned to Mr. Ruggieri also ringing on your phone so you could pick it up for him? A. My recollection is at the time I didn't have a line for Joe Ruggieri or Chip Short on my turret."); Tr. 3369:14–21 (Short) ("Q. And do you know if Mr. Ruggieri's phone number that Wells Fargo gave him, if it rang on any other phone other than his phone turret and your phone turret? A. I would imagine it rang on Bruce's as well. Q. But do you know one way or the other? A. Not for certain.").)

230. Ruggieri's 6210 Line did ring on Short's phone turret. (Tr. 3368:20–3369:4 (Short) ("Q. And did his [Ruggieri's] phone number also ring on your phone turret? A. It did, yes.").)

231. Short generally picked up Ruggieri's 6210 Line when Ruggieri was on another phone line or away from the desk. (Tr. 3395:9–21 (Short) ("Q. Did you ever pick up Mr. Ruggieri's 6210 line? A. Yes. Q. And how often did you pick it up? A. If he was tied up and doing something else, I would pick it up. If he was on another line or if he was off the desk. Q. And why did you pick it up when he was busy on something else or he was away from the desk? A. Because it was on my board and it was ringing. Sometimes it would be an analyst or his wife or a friend.").)

232. During his approximately one-and-a-half-year tenure at Wells Fargo, Ruggieri dialed his 6210 Line only three times from his personal cell phone. (Tr. 2938:16–2944:2 (Ruggieri) ("Q. So in your year and-a-half at Wells Fargo, is it fair to say that from your cell phone, you called the 6210 number three times? A. It looks like it, yes. From my personal cell phone.").)

233. Bolan called the 6210 Line approximately nine times more often than he called the 6201 Line. (Tr. 1655:24–1656:19 (Walster) ("Mr. Bolan, in terms of the phone numbers related to Mr. Ruggieri that he was calling at Wells Fargo, there's the 6210 line and there was many hundreds of calls. I think it was well over 400 calls made to that line over the course of the entire set of

records that we had. And then in terms of the 6201 number, there was maybe less than 50 calls total made to that line.").)

234. Ruggieri did not receive voicemail on the 6210 Line. (Tr. 2411:9-10 (Ruggieri) ("Q. Did you get voicemail on 6210? A. No, I don't think so.").)

XIV. WHEN RUGGIERI WAS IN THE OFFICE, HE WAS TYPICALLY AT HIS DESK DURING MARKET HOURS.

235. When Ruggieri was not in the office, he did not place trades. (Tr. 2065:13–16 (Ruggieri) ("Q. Now, when you weren't in the office, Mr. Ruggieri, you weren't personally placing trades; right? A. That's right.").)

236. Ruggieri typically generated less revenue when he was away from the office while the stock market was open. (Tr. 2065:13–2066:7 (Ruggieri) ("Q. So when you weren't in the office, you were potentially losing commissions; right? A. That's fair to say -- well, I mean, the desk still operated on its own. Chip would trade in my absence and I wanted to keep things seamless. That's why we kept each other up on situations or if – you know, on the phone, if somebody called, I wanted him to be abreast of any clients that may be trading in a name we're active in. But we did less business, I'm sure, when I was out of the office. Q. So the more you were in the office, typically, the more revenue you were generating? A. Right.").)

237. Like most traders, Ruggieri did not typically schedule client meetings during the hours the market was open, at least when he was in New York. (Tr. 3207:2–19 (Mackle) ("THE COURT: How often did he have client meetings, approximately? THE WITNESS: I mean, most people -- especially traders -- have the client meetings outside of market hours. There are times when there are breakfasts, for instance, that may run over a little bit, but -- traders don't typically do meetings between 9:30 and 4 unless they have to travel somewhere. BY MR. VASILESCU: Q. Well, when he wasn't traveling somewhere, when he was in the office working, on the days that he had a

client meeting, was his practice similar to other traders', in having those meetings before trading started or after trading ended? A. Yes.").)

238. Like most traders, Ruggieri did not leave the desk very often or for long periods of time when he was in the office. (Tr. 3206:16–22 (Mackle) ("Q. So in a typical trading day when he was in the office, during the times between 9:30, when trading started, and 4 o'clock, how often did he leave the desk? A. Not very often. Just, like -- yeah, most traders don't leave the desk for long periods of time."); Tr. 3345:3–3346:3 (Short) ("Q. And is it fair to say that those [stock] exchanges did not take a lunch break between noon and 2 o'clock? A. Yeah, I think it's fair to say that. Q. Is that one of the reasons that your group didn't take a lunch break, is because trading did not take a lunch break? A. Yes, correct.").)

239. Ruggieri typically ate his lunch at the desk and worked through lunch. He usually ate either a handful of cereal for lunch or had someone else bring lunch back to the desk for him. (Tr. 3206:5–25 (Mackle) ("Q. Now, during this trading day, on days when you were there, and Mr. Ruggieri was there, what did you guys do for lunch? A. Joe didn't eat a normal lunch most of the times. He would have a handful of cereal or something like that. But when he did have lunch, he would either have -- he may run out to get it, but most likely he'll have someone bring something back for him and -- regardless of how we got our lunch, we all ate on the desk.... Q. And is it fair to say he worked through lunch typically? A. Yes. Unless he had a client meeting."); Tr. 3344:5–3346:7 (Short) ("Q. What did you do for lunch, generally? A. We ate at our desk, and you either hopped out of the office real quick to go get it, or it was delivered to the lobby and you went down to pick it up and pay. Q. When you say 'we ate at our desks,' who are you referring to? A. There was no lunch break or no lunch hour. I'm saying we, as a unit, a group, a department, ate at our desk. Q. So the whole department generally at their desk? A. Generally, yes. Q. And why was that? A. That's just the way it is. Not to say that people never took a lunch. Sometimes you would take lunch over to a

customer or a client or -- there may be a one-off would where you would go have a lunch -- an analyst might be sponsoring a lunch and you would step off to go attend that. But generally you ate at your desk.... Q. Now, when you say 'we,' the group, didn't take a lunch break, was that Mr. Ruggieri's practice also? A. Yes.").)

XV. RUGGIERI THOUGHT THE RISK THAT HIS INSIDER TRADING WOULD BE DETECTED WAS LOW.

A. When Ruggieri Spoke on the Phone at Work, Nobody Else Could Hear His Interlocutor.

240. Wells Fargo's trading floor was loud. (Tr. 2925:10–2926:2 (Ruggieri) ("Q. The trading desk was loud; right? A. Yes."); Tr. 3198:18–3199:8 (Mackle) ("Q. Now, when you were sitting next to Mr. Ruggieri in the course of that year, could you hear him talking on the phone? A. Sometimes. Q. And was it -- how often did you listen in to what he was saying as opposed to doing your other work? A. I think it's impossible to put a percentage on that. I mean, the open floor on a trading floor is very loud and it's surprising how much stuff just gets blocked out by all the white noise.").)

241. Other people on the trading desk were regularly talking on the phone. (Tr. 2925:18–24 (Ruggieri) ("Q. People on the trading desk were regularly on the telephone; correct? A. Yes, the good ones. Q. Talking to clients; right? A. Correct. Q. Talking to analysts, right? A. Yes.").)

242. Mackle and Short sat on either side of Ruggieri. (Tr. 3183:5–17 (Mackle) ("Q. And who were you sitting next to during that time? A. I was to Joe Ruggieri's immediate left."); JR REB 59 (seating chart of Wells Fargo trading desk).)

243. Just behind Mackle and Brown, the trading floor had an aisle, and then two additional rows of seating. Brown sat two rows behind Ruggieri and Mackle. (Tr. 3183:23–9 (Mackle) ("Q. And where did Mr. Brown sit? A. We moved around a lot so I'm trying to figure it out. I believe for most of that time period Mr. Brown sat behind -- in the row behind us. Q. Okay.

Immediately behind you or down the row somewhere? A. No. So it would have been, you know, two rows behind us and back to the left a little bit, I believe."); JR REB 59 (seating chart).)

244. When Mackle was on the phone, Brown could not hear what Mackle was saying, unless Mackle was yelling. (Tr. 3184:10–16 (Mackle) ("Q. And do you know, from where he was located, could he hear any conversations you had on the phone? Mr. Brown? A. Not unless I was yelling.").)

245. When Ruggieri was on the phone, Mackle could not hear what Ruggieri's interlocutor was saying. (Tr. 3197:11–3198:17 (Mackle) ("[Q.] Did [Ruggieri and Short] use speakerphone, did they use a headset?... A. A normal telephone, like that. Q. Like a regular pick-up phone? A. Yes. They did not use a headset and they did not talk on a speakerphone. Q. And because they were using a handset, is it fair to say you couldn't hear what people were ever saying to them when they were speaking on the phone? A. Yes.").)

B. Ruggieri's Trades Were Unlikely To Look Suspicious Given the Volume of Trading at Wells Fargo.

246. In 2009 through 2011, Wells Fargo had approximately 40 traders in total, including on its convertible trading desk, options desk, and structured product desk. (Tr. 1134:8–1135:19 (Bartlett) ("Q. Under your bailiwick, was it just equity trading or were there other traders as well? A. There were other traders as well. Q. If you could give us some examples? A. We had a convertible trading desk that reported into me. We had a structured product desk that reported into me. An options desk that reported in to me.... Q. Now, in total, I think you said there were 300 people underneath you. How many of them were traders? A. In the equity division? Q. No, just overall. A. 40.").)

247. Brown supervised Wells Fargo's approximately fifteen to twenty equity traders from 2009 through 2011. (Tr. 712:8–13 (Yi) ("Q. ...From 2009 to 2011, who was that supervisory principal for the equity traders? A. For the cash desk, it was Matt Brown."); Tr. 915:21–24 (Brown)

("Q. And how many people did you supervise during that time? A. I don't even know. 15 or 20, I don't know the exact number."); Tr. 1135:10–19 (Bartlett) ("And how many equity traders? A. At the time, I believe it was about 17.").)

248. From 2009 through 2011, Brown was responsible not only for supervising his equity traders but also for trading his own pad of technology stocks. (Tr. 914:20–917:17 (Brown) ("Q. And when you began at Wells Fargo, did you have any trading responsibilities yourself? A. Yes, initially I traded a group of tech stocks. Q. Did that change over time? A. Yes, I stopped trading a pad last year or two.... I stopped trading a pad in 2013. Up until then, I had sector trading responsibilities as well as managerial responsibilities.").)

249. Brown's equity traders made thousands of trades a day. (Tr. 928:6–14 (Brown) ("Q. Now, during that period 2009 through 2011, just ballpark, roughly how many trades a day did your entire group of traders make? A. I couldn't even give you a ballpark. I have no idea. Q. Was it more than ten? A. Yes, yes, yes. It would be in the thousands I would think, but I don't know for sure."); Tr. 1103:9–11 (Brown) ("Q. Now, Mr. Brown, you saw thousands of trades on your screen every day, did you not? A. I did.").)

250. The equity traders traded about 75 million shares of stock a day. (Tr. 1143:2–6 (Bartlett) ("Q. Roughly how many shares a day did Wells Fargo's equity traders trade at that time? A. In the ballpark of about 75 million shares a day.").)

251. Ruggieri knew that Brown did not review all the trades placed by his equity traders. (Tr. 1103:9–21 (Brown) ("Q. Did you review every trade? A. I did not. Q. Did anyone that worked for you think that you reviewed every trade? A. No."); Tr. 2971:10–20 (Ruggieri) ("Q. Now, you also knew that Mr. Brown could see your P&L on your trades; right? A. Yes. Q. He had all the P&L on his monitor for all the traders on the desk; right? A. Yes. Q. And I think he said thousands -- or at

least a thousand trades a day. Do you remember him saying that? A. Yes. I don't know that he sees all the trades, but he sees the P&L.").)

252. Brown could see his equity traders' positions and questioned "outsized profit and loss moves," as his traders knew. (Tr. 1103:22–25 (Brown) ("Q. They knew you could see some things, right? A. They knew I could see positions and I would question outsized profit and loss moves.").)

253. Brown trusted Ruggieri and never suspected him of any wrongdoing. (Tr. 1088:10–11 (Brown) ("Q. You trusted him? A. I definitely trusted him."); Tr. 1090:11–17 (Brown) ("Q. Now, Mr. Ryan asked you whether you ever had any suspicions about Mr. Ruggieri's trading. Remember that? A. Yes. Q. And I think you said no, right? A. That's correct, I had not."); Tr. 1118:22–1119:4 (Brown) ("Q. And isn't the reason that you, having seen the Athena upgrade, were clearly not concerned about the fact that Joe had a long position, because it would never occur to you to think that that's what Joe was doing, trading ahead of research; isn't that right? A. It would not have occurred to me.").)

254. From 2009 through 2011, Brown spent only about one to one-and-a-half hours each month reviewing a random selection of emails and instant messages to or from his traders that Wells Fargo's electronic system chose for his review. (Tr. 933:15–935:6 (Brown) ("Q. And during that time, 2009 to 2011, about how much time every month did you review e-mails and instant messages? A. Probably spent, I don't know, an hour, hour-and-a-half a month.... Q. In other words, you were reviewing all of your traders' e-mails and instant messages in the one-and-a-half hours every month, all of the ones that the system sent you or all of the ones they generated? A. Just the ones that the system generated."); Tr. 977:19–978:6 (Brown) ("Q. You were able to view all of Joe's e-mails and IMs? A. Not all. The e-mail and the IM system, remember it selected a few, so I didn't view all of everyone's that I managed e-mails and IMs. Technology system selected a few that I randomly

looked at. Q. If you wanted to, you could look at every e-mail and IM that was sent? A. I'm sure I could. I don't know. I never thought about that. Trying to get fewer, not more.").)

XVI. BOLAN REPEATEDLY TIPPED RUGGIERI AND MOSKOWITZ, WHO THEN TRADED ON THE INFORMATION.

255. From March 2010 through March 2011, Bolan published eight research reports changing his rating of the covered stock, including one initiation of coverage with an outperform/ buy or underperform/sell rating (together, the "Ratings Changes"). (DIV 133 (list of Bolan's published research at Wells Fargo).)

256. Before at least six of those eight ratings changes (the "Six Ratings Changes"), Bolan tipped Ruggieri to his forthcoming ratings changes before Wells Fargo published the report by conveying, in words or in substance, material nonpublic information concerning the timing and content of his ratings changes. (DIV 194-A (summary chart of key phone calls and positions).)

257. Before three of the Six Ratings Changes, Bolan tipped Moskowitz to his forthcoming ratings changes by conveying, in words or substance, material nonpublic information concerning the timing and content of his ratings changes. (DIV 194-A (summary chart of key phone calls and trades).)

258. Each time Bolan tipped them, Ruggieri and Moskowitz either purchased the relevant stock ahead of Bolan's upgrades or sold the relevant stock short ahead of Bolan's downgrade. (DIV 194-A (summary chart of key phone calls and positions).)

259. Ruggieri and Moskowitz then held these positions at least overnight. (DIV 194-A (summary chart of key phone calls and positions).) In fact, Ruggieri twice held a long or short position for approximately a week. (*Id.* at 1, 9.)

260. Before five of the Six Ratings Changes, one of Bolan's phone lines called the 6210 Line before Ruggieri began building an overnight position. Every such phone call except one — a

call on August 12, 2010, at 12:27 p.m. — occurred before noon or after 2:00 p.m. (DIV 194-A (summary chart of key phone calls and positions).)

261. Once Wells Fargo issued Bolan's reports, the stock prices of the companies Bolan upgraded increased, while the stock price of the company Bolan downgraded decreased. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

262. All six times, Ruggieri and Moskowitz began to close their overnight positions on the morning after the ratings change publication and made a profit from closing these positions. (DIV 194-A (summary chart of key phone calls and positions); DIV 195 (summary chart showing profits); DIV REB 132 (summary table of overnight positions and their profits or losses); Tr. 1716:6–14 (Walster) ("Q. Did Mr. Ruggieri have any losses from positions that he held from before to after a Bolan rating event? A. No. Q. Were all the positions that he held profitable? A. Yes. In each instance, on the aggregate shares traded, for each six of these events in question, there were profits."); Tr. 3049:23–3051:2 (Walster) ("All six of them had a profit, so the percentage of overnight positions with a profit is 100 percent."); Tr. 1715:6–12 (Walster) ("Q. For those three rating events in question, did Mr. Moskowitz have any losses from trading around those events? A. No. Q. Were all of the positions that he held around those three events profitable? A. Yes.").)

263. Other than his overnight positions on Bolan's Six Ratings Changes, 32.8% of Ruggieri's overnight principal positions during his tenure at Wells Fargo were profitable. In other words, Ruggieri lost money on his overnight principal positions over two-thirds of the time and gained money less than one-third of the time. (DIV REB 132-A (summary chart showing Ruggieri's realized profit and loss on overnight positions); Tr. 3053:16–3054:9 (Walster) ("The percentage of overnight positions with a profit that are included in the table above shows that 38.9 percent of them, of the 108, had a profit. If we included the additional transactions from JR REB[-]200 that had a profit of less than $200 or a loss, that would change that percentage from 38.9 to 32.8.").)

264. One method of calculating Ruggieri's trading profits or losses is to use a use a first in/first out ("FIFO") inventory method to calculate the profits from the shares that Ruggieri carried over from the trading day before the publication of Bolan's ratings changes to the trading day after their publication. (DIV 130 (summary chart of overnight positions and profits); DIV 195 at 1 (summary table of profits); Tr. 1700:15–1701:11 (Walster) ("Q. Returning to DIV 130, Mr. Walster, what does the figure next to 'Profit' on each of the pages of DIV 130 concern? A. That's the profit directly related to the position that was held as of the time of the Bolan rating event. So those were profits related to that position, carried through the time of Bolan event. So it would be those shares held at the end of the day on April 6, 2010, and held into the start of trading on April 7th .... We would establish a cost basis for that position and you do that using – inventory method we used, first in/first out.").)

265. Based on this methodology, calculating only profits and losses on Ruggieri's overnight positions (not including intraday profits or losses), Ruggieri generated $117,127 in illegal profits in his account at Wells Fargo in connection with his trades surrounding Bolan's Six Ratings Changes. (DIV 130 (summary chart of overnight positions and profits); DIV 195 at 1 (summary table of profits); Tr. 1709:19–1716:20 (Walster); Tr. 3051:3–21, 3052:24–3053:6 (Walster) ("Q. Do the profit figures in DIV 195 include intraday profit and losses? A. No. Q. What do they include? A. They include just the profit and loss on the shares that were held overnight through the Bolan rating event.").)

266. Based on the same methodology, Moskowitz generated $10,242 in illegal profits in connection with his trades surrounding three of Bolan's Ratings Changes. (DIV 131 (summary chart of overnight positions and profits); DIV 195 at 2 (summary table of profits); Tr. 1714:3–1715:12 (Walster) ("The difference between the cost of opening the position and -- the difference between

the price paid to open the position and the price paid to close the position multiplied by the number of shares gets you to the P&L figure.").)

267. Another method of calculating Ruggieri's profits and losses is to start with the profits and losses — including intraday profits and losses — that Wells Fargo itself calculated and use a first in/first out ("FIFO") inventory method covering the entire amount of time Ruggieri held a position before and after the Six Ratings Changes. (Tr. 3044:4–3053:6 (Walster) ("Q. And why did you choose to use a different methodology for calculating profits associated with Bolan's ratings change positions in DIV REB 132 from the methodology in Division Exhibit 195? A. It allowed us to use JR REB 200 and the realized profit and loss figures from there, and that way we'd be able to compare all of his other overnight positions to the six ratings events. So it eased the burden of having to calculate the profit and loss on our own as opposed to relying just on Wells Fargo's data as they reported it. Q. I believe you said previously that the profits and losses in DIV REB 132 include intraday profit and losses; right? A. Yes."); Tr. 3120:8–3121:12 (Walster) ("Q. How did you decide to do the inventory method? A. FIFO is a commonly used practice in sort of coming up with trading profits and losses .... Q. Was there any consideration to using a different method? A. No. You know, it's commonly used to use FIFO and it's a well[-]regarded, accepted methodology for inventory matching.").)

268. Using this methodology, Ruggieri generated $111,455 in illegal profits in his account at Wells Fargo in connection with his trades surrounding Bolan's Six Ratings Changes. (DIV REB 132 (summary table of overnight positions and their profits or losses); Tr. 3051:22–25 (Walster) ("Q. And the total profits listed here under the Bolan ratings change positions [are] a little over $111,000; is that right? A. Correct.").)

269. Both methodologies are correct. (Tr. 3129:18–3130:6 (Walster) ("Q. What are his aggregate profits for [DIV REB-]132-A? A. $111,455. Q. And it's how much for [DIV REB 132-]C?

A. 117,000 -- I don't remember the exact dollar amount. Q. Which one is right? A. Depending on the analysis that's being performed, I believe they're both correct.").)

270. Ruggieri's overnight positions before Bolan's Six Ratings Changes included five of his most profitable overnight positions while at Wells Fargo. Specifically, when measured in dollars and compared to the dollar amount of his profits or losses on the rest of his 114 overnight positions with profits or losses of over $200, Ruggieri's profits on his overnight positions ahead of the Six Ratings Changes included his three most profitable overnight positions, his tenth most profitable overnight position, and his sixteenth most profitable overnight position. (DIV REB 132 (summary list of Ruggieri's overnight positions and realized profit and loss); DIV REB 132-A (summary chart showing Ruggieri's realized profit and loss on overnight positions); Tr. 3085:5–18 (Walster) ("This [DIV REB 132-A] is a graph that I prepared that shows the profit and loss figures from the previous exhibit that we've been talking about [DIV REB 132]."); Tr. 3087:12–3088:24 (Walster) ("Q. What are the most profitable [overnight] positions that Mr. Ruggieri maintained, in rank order by the first three? A. The highest, the most profitable one, was [A]thena [H]ealthcare. The second most profitable was Parexel and the third was Bruker. Q. Is that in dollar amounts, Mr. Walster? A. Yes. Q. Take us through where the remaining profits relating to the Bolan rating events trading are in this chart. A. The CVD event is ranked I think close to 10th on this list, approximately 10th; the AMRI is approximately 16th; and the EM – I don't know the exact ranking, but it's further down the line. It should be over 30th. Q. Mr. Walster, do you have an understanding of the total number of observations that are represented in this exhibit? A. 114.").)

271. When measured instead in terms of the percentage amount of realized returns, Ruggieri's overnight positions before Bolan's Six Ratings Changes still included five of his most profitable overnight positions while at Wells Fargo. Specifically, when measured by percentage return and compared to his percentage return on the rest of his 114 overnight positions with profits

or losses of over $200, Ruggieri's six overnight positions around the Six Ratings Changes included his second, fourth, and sixth most profitable overnight positions. The remaining three positions were in Ruggieri's thirty most profitable overnight positions. (DIV REB 132-B (summary chart showing Ruggieri's realized returns on overnight positions); Tr. 3088:25–3090:9 (Walster) ("Three of the six most profitable overnight positions on a return basis were related to Bruker, AMRI and [A]thena. They rank 2nd, 4th and 6th, in that order. And then further down the line, on the profit end of things, Parexel, CVD and EM all experienced a gain. It was less than the other three events.").)

A. Bolan Tipped Ruggieri and Moskowitz to His Downgrade of Parexel.

272. On or before March 29, 2010, Bolan began drafting a forthcoming research report that would downgrade Parexel Corp. ("Parexel"). (DIV 47 (April 6, 2010 email from Bolan to his personal email address forwarding himself his draft Parexel downgrade report dated March 29, 2010); DIV 110 at 84–85 (Bolan) ("Q. So as of the sending of this e-mail [DIV 47] on April 6, 2010, the last time you had worked on the PAREXEL report was March 29, 2010? A. Yeah. I was still working on it, yeah. Q. So were you working on the PAREXEL downgrade on or about March 29, 2010? A. It looks like it, yeah.").)

273. Parexel traded under the ticker PRXL. (DIV 46 (Bolan's Parexel downgrade report).)

274. On March 30, 2010, at 2:23 p.m., Bolan sent Pearlstein a two-paragraph email with his rationale for downgrading Parexel and the subject line: "request to downgrade PRXL share to Market Perform." (DIV 48 (March 30, 2010 email from Bolan to supervisor about Parexel downgrade).)

275. Eleven minutes later, Pearlstein replied: "Ok by me." (DIV 48 (March 30, 2010 email from Bolan to supervisor about Parexel downgrade).)

276. On April 5, 2010, at 5:53 p.m., Bolan used his cell phone to call Moskowitz's cell phone. (DIV 194-A at 2 (summary chart of key phone calls and positions); DIV 145 (Verizon phone records); *cf.* Tr. 1095:15–1096:18 (colloquy) ("THE COURT: Okay. Thank you for that clarification. From my perspective, based on the pre-trial filing, it seems I'm more concerned with Ruggieri's numbers. I mean I don't understand the parties to be arguing someone else from Bolan's cell phone or desk would typically be talking to Ruggieri, or are you? MS. SERPE: Well, certainly with the cell phone to cell phone, there is no argument, but from the office phone, absolutely. . . .").)

277. *See* Joint Factual Stipulations ¶ 195 (stipulation that the April 5, 2010 call at 5:53 p.m. lasted two minutes).

278. The same day, April 6, 2010, although he had not traded Parexel shares in at least the preceding six months, Moskowitz sold 2,000 Parexel shares short. (DIV 194-A at 2 (summary chart of key phone calls and positions); DIV 151 (Fidelity brokerage account records for Moskowitz).)

279. *See* Joint Factual Stipulations ¶¶ 54 through 86 (stipulations concerning the times and duration of phone calls between phone lines associated with Bolan and Ruggieri, respectively, including the 6210 Line; Ruggieri's trades and end-of-day positions in Parexel; and the title and publication date of Bolan's downgrade of Parexel, among other things).

280. For all of the calls from Bolan's phone to the 6210 Line set forth in the Joint Factual Stipulations ¶¶ 56, 57, 62, 63 and 74, Ruggieri was in New York and in the office. (JR REB 67 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between March 12 and April 18, 2010); Tr. 2229:11–18 (Ruggieri) ("Q. And if you take a look, just so I understand, what do you understand this to be, Mr. Ruggieri, JR REB 67? A. I took this to be a chart I think matched up with my expense records, maybe, and my cell phone records when I was traveling on vacation or traveling for clients -- I don't know exactly."); Tr. 2120:14–20 (Ruggieri) ("Q. Now, Mr. Ruggieri, on that day, March 30, 2010, were you in New York? A. I believe I was, yes. Q. You

remember that? A. I don't remember for sure, but I remember trading this stock over a period of a week or two, so, yes."); Tr. 2121:14–2122:2 (Ruggieri) ("[Q.] Again, Mr. Ruggieri, would you agree with me that you stipulated that on March 31, 2010 at 11:28 a.m. Mr. Bolan's cell phone called your 6210 line at Wells Fargo? A. Yes.... Q. Now, sir, you were in New York that day too; right? A. That's my understanding, yes."); Tr. 2126:10–24 (Ruggieri) ("Q. And if we look at paragraph 74, do you see, sir, that you stipulated that the next day, April 6, 2010, at 2:21 p.m. Mr. Bolan called your 6210 line at Wells Fargo? A. Yes.... Q. You were in New York that day too; right? A. That is my understanding, yes. Q. And just to be clear, when I say you were in New York, you were in the Wells Fargo office that day; right? A. As far as I know. Yes.").)

281. On the approximately six-minute call on April 6, 2010 at 6:58 p.m. set forth in Joint Factual Stipulations ¶ 78, Ruggieri spoke with Bolan. (Tr. 2129:3–14 (Ruggieri) ("Q. Mr. Ruggieri, on April 6, 2010 at 6:58 p.m. your cell phone called Mr. Bolan's number; correct? A. Yes.... Q. Sir, do you have any reason to believe you didn't speak to Mr. Bolan? A. I can't be for sure, but I don't have a reason to believe I didn't.").)

282. On the approximately sixteen-minute call on April 6, 2010 at 7:05 p.m. set forth in Joint Factual Stipulations ¶ 80, Ruggieri spoke with Bolan. (Tr. 2130:9–18 (Ruggieri) ("Q. You agree that on April 6, 2010 at 7:05 p.m. a call was made from your cell phone to Mr. Bolan's number; right? A. Yes.... Q. Sir, do you have any reason to believe you didn't speak to Mr. Bolan? A. No.").)

283. Before Wells Fargo published the Parexel downgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Parexel downgrade to Ruggieri and Moskowitz. (DIV 194-A (summary chart of key phone calls and positions); Tr. 2163:8–2164:6 (Ruggieri) ("Q. Sir, I'll ask you again, were you asked these questions [two years before in investigative testimony], did you give these answers. Okay? 'Question: Is it a coincidence you made short trades on the trading day before Mr. Bolan downgraded Parexel?

'Answer: I mean it -- it – I don't -- I don't remember. I don't want to speculate what the exact situation is without -- I mean, clearly singling this situation out and the phone calls and the trades, but I don't remember the circumstances of what else was going on on the desk. **Again, I obviously spoke to Greg and I have my own opinion, or by speaking to him something changed sentiment-wise or whatever,** I don't remember the exact situation.' Sir, were you asked those questions and did you give those answers? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.") (emphasis added).)

284. On April 7, 2010, at 5:52 a.m., Wells Fargo published Bolan's research report downgrading Parexel from outperform/buy to market perform/hold. (DIV 133 (list of Bolan's published research at Wells Fargo); DIV 46 (Bolan's Parexel downgrade report).)

285. When the market opened on April 7, 2010, Parexel's stock price sank 3.2% from its closing price the previous day. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)[2]

286. Over the course of the same day, Parexel's trading volume increased 163% relative to the stock's average daily trading volume on the fifteen days before and after the downgrade. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

287. When the market closed on April 7, 2010, Parexel's stock price had dropped 4.34% from the previous day's closing price. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

288. On April 7, 2010, Ruggieri covered his entire short position in Parexel and generated gains of either $24,944 or $29,032, depending on the calculation method. (DIV 194-A at 1 (summary chart of key phone calls and positions); DIV 195 (summary chart of profits); DIV REB 132

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[2] For all price percentage differences, the Division has calculated the percentage difference by taking the difference between the two relevant prices and dividing that difference by the earlier price.

(summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more).)

289. On April 7, 2010, Moskowitz covered his short position in Parexel for a profit of $1,007. (DIV 194-A at 2 (summary chart of key phone calls and positions); DIV 195 at 2 (summary chart of profits).)

290. When measured by dollar amount, Ruggieri's Parexel overnight position before Bolan's downgrade was the second-most profitable overnight position Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions).)

291. When measured by percentage return on investment, Ruggieri's Parexel overnight position before Bolan's downgrade was in the top 25 most profitable overnight positions (out of at least 108 overnight positions) Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

292. Other than between March 29 and April 6, 2010, Ruggieri never held an overnight position in Parexel for more than two trading days in a row while at Wells Fargo, at least not one with a cost basis of $25,000 or more or a profit of more than $200. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR REB 66 (summary chart of Ruggieri's

overnight positions with a cost basis of $25,000 or more); Tr. 2146:19– 2147:9 (Ruggieri) ("Q. Sir, having run through these numbers on your counsel's chart, would you agree with me that other than from March 30th through April 6, 2010, you never held an overnight position in Parexel for more than two nights in a row, at least not one that had a cost basis of $25,000 or above? A. For more than two nights in a row was your question? Q. For more than two nights in a row. A. Yes, that's correct. Q. So the longest you held an overnight position based on these figures was two nights in a row? A. Yes, it looks right.").)

293. Other than between March 29 and April 6, 2010, Ruggieri held an overnight position in Parexel of more than 10,000 shares only twice during his tenure at Wells Fargo: (1) on June 2, 2010, when he was long 30,922 shares, and (2) on October 6, 2010, when he was short 23,353 shares. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR REB 66 (summary chart of Ruggieri's overnight positions with a cost basis of $25,000 or more); JR 56 (Parexel price data) (showing that the intraday low price of Parexel was never below $2.50 per share such that a 10,000-share position would always have cost over $25,000 during Ruggieri's tenure at Wells Fargo).)

B. Bolan Tipped Ruggieri to His Upgrade of Covance Inc.

294. After his Parexel downgrade, Bolan's next Ratings Change was on Covance, Inc. ("Covance"). (DIV 133 (list of Bolan's published research at Wells Fargo); Tr. 2164:20–2167:3 (Ruggieri) ("Q. So you agree with me, sir, that Covance was the very next ratings change that Mr. Bolan published? A. Yes.").)

295. Covance traded under the ticker CVD. (DIV 53 (Bolan's Covance upgrade).)

296. On Sunday, June 13, 2010, Bolan sent one of his supervisors, Sam Pearlstein, a two-paragraph email saying that he wanted to upgrade Covance and provided his reasons. (DIV 54 (June

13, 2010 email from Bolan to Pearlstein) ("Hey, Sam, we would like to upgrade CVD shares to Outperform from Market Perform….").)

297. Approximately one hour later, Pearlstein wrote: "Ok with me." (DIV 54 (June 13, 2010 email from Pearlstein to Bolan).)

298. *See* Joint Factual Stipulations ¶¶ 87 through 97 (stipulations concerning the times and duration of phone calls between phone lines associated with Bolan and Ruggieri, respectively, including the 6210 Line; Ruggieri's trades and end-of-day positions in Covance; and the title and publication date of Bolan's Covance upgrade, among other things).

299. For the two calls on June 14, 2010 from Bolan's phone to the 6210 Line set forth in the Joint Factual Stipulations ¶¶ 87 and 88, Ruggieri was in New York and in the office. (JR REB 67 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between June 4 and June 22, 2010); Tr. 2169:11–22 (Ruggieri) ("Q. Now, sir, that day, June 14, 2010, you were in New York; right? A. As far as I know, yes. Q. In fact, you were in the office that day? A. Yes. As far as I remember -- not that I remember, but from reviewing the documents and e-mails and things, I think I was on the desk that day, yes. Q. You don't have any reason to believe you weren't? A. Correct.").)

300. Before Wells Fargo published the Covance upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Covance upgrade to Ruggieri. (DIV 194-A at 3 (summary chart of key phone calls and positions); Tr. 2192:12–2193:6 (Ruggieri) ("Q. Once again, Mr. Ruggieri, were you asked the following questions, did you give the following answers, starting on line 9: 'Question: Did you make this 40,000-share trade in Covance in anticipation of any research that was going to be issued by Mr. Bolan? 'Answer: I don't -- I don't remember the particular circumstances of this trade. I'm sorry. I didn't mean to apologize again, but – 'Question: You can't remember one way or other? 'Answer: I

can't remember exactly.' Were you asked those questions, and did you give that answer, sir? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.").)

301. On June 15, 2010, at 12:00 a.m., Wells Fargo published Bolan's report upgrading Covance's rating from market perform/hold to outperform/buy. (DIV 133 at 5 (list of Bolan's published research at Wells Fargo); DIV 53 (Bolan's Covance upgrade report).)

302. When the market opened, Covance's stock price increased 2.19%. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

303. Over the course of the day, Covance's trading volume increased 58% relative to Covance's average daily trading volume on the fifteen days before and after Bolan's upgrade. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

304. On June 15, 2010, Ruggieri sold his entire 40,000-share Covance position by early afternoon. (DIV 194-A at 3 (summary chart of key phone calls and positions); Tr. 2173:17–2174:10 (Ruggieri) ("Q. Now, that day, sir, what did you do with your Covance position? A. I sold the Covance position and I believe I traded in a principal capacity for a client that left me long 10,000 shares I think at the close that day.").)

305. Towards the close of the trading day on June 15, 2010, Ruggieri traded in Covance in a principal capacity for a Wells Fargo client, and the client left him with a 10,000-share long position in Covance at the end of the day. (Joint Factual Stipulations ¶ 95; DIV 194-A at 3 (summary chart of key phone calls and positions); Tr. 2173:17–2174:10 (Ruggieri) ("Q. Now, that day, sir, what did you do with your Covance position? A. I sold the Covance position and I believe I traded in a principal capacity for a client that left me long 10,000 shares I think at the close that day. Q. So in other words, you sold off that whole 40,000 share position you had held overnight? A. Yes. Q. And then you had built up another position with respect to a client? A. Yes. Q. Now, that position, was it 10,000 shares? A. Yes. Q. And you held that one overnight? A. Yes.").)

306. When the market closed on June 15, 2010, Covance's stock price had risen 0.55% from the previous day's closing price. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

307. Ruggieri's trades in Covance around Bolan's upgrade generated a profit of $17,445 or $14,144, depending on the calculation method. (DIV 194-A at 1 (summary chart of key phone calls and positions); DIV 195 (summary chart of profits); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more).)

308. When measured by dollar amount, Ruggieri's Covance overnight position before Bolan's upgrade was the tenth-most profitable overnight position Ruggieri held (out of at least 108 overnight positions) during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

309. When measured by percentage return on investment, Ruggieri's Covance overnight position before Bolan's upgrade was in the top 25 most profitable overnight positions (out of at least 108 overnight positions) Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

310. Other than on June 14 and 15, 2010, Ruggieri held only one long overnight position in Covance with a cost basis of $25,000 or more: a 2,000-share long overnight position on January 20, 2011. (JR REB 66 (summary chart of Ruggieri's overnight positions with a cost basis of $25,000 or more); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); Tr. 2174:17–2180:6 (Ruggieri) ("Q. There are only three long positions that we looked at; right? A. Yes. Q. One of them was the 2,000-share position on January 20, 2011; right? A. Yes. Q. And then the other two were the ones that we just talked about, on June 14, which was 40,000 shares long; right? A. Correct. Q. And the next day, June 15th, which was 10,000 shares, for a client facilitation? A. Yes.").)

C. Bolan Tipped Ruggieri and Moskowitz To His Upgrade of Albany Research, Inc.

311. After his Covance upgrade, Bolan's next Ratings Change was on Albany Research, Inc. ("Albany"). (DIV 133 (list of Bolan's published research at Wells Fargo); Tr. 2193:10–2194:16 (Ruggieri) ("Q. And then if you scroll back to the right, you'll see that was AMRI; right? A. Yes. Q. So you agree with me that was the next ratings change that Mr. Bolan issued? A. Yes.").)

312. Albany traded under the ticker AMRI. (DIV 3 (Bolan's Albany upgrade).)

313. By at least July 1, 2010, Bolan had begun drafting a report to upgrade Albany. (DIV 56 (July 1, 2010 email from Bolan to his personal email address forwarding a summary of Albany's earnings call dated May 5, 2010).)

1. Bolan Tipped Moskowitz and Moskowitz Traded on Bolan's Tip.

314. On June 30, 2010, at 5:07 p.m., Bolan used his cell phone to call Moskowitz's home phone number, and the call lasted 1 minute. (DIV 194-A at 5 (summary chart of key phone calls and positions); DIV 145, Folder "calls 9742" (pdf) at 48 (Verizon phone records for Bolan).)

315. One minute later, at 5:08 p.m., Bolan used his cell phone to call Moskowitz's cell phone number, and the call lasted 1 minute. (DIV 194-A at 5 (summary chart of key phone calls and positions); DIV 145 Folder "calls 9742" (pdf) at 48 (Verizon phone records).)

316. Less than two hours later, at 6:56 p.m., Moskowitz called Bolan's cell phone from his home phone, and the call lasted 17 minutes. (DIV 194-A at 5 (summary chart of key phone calls and positions); DIV 145 Folder "calls 9742" (pdf) at 48 (Verizon phone records).)

317. *See* Joint Factual Stipulations ¶ 189 (stipulation concerning Moskowitz's purchases of Albany stock on July 1 and 2, 2010).

318. By the market's close on July 2, 2010, Moskowitz held a long position of 24,252 Albany shares. (DIV 194-A at 5 (summary chart of key phone calls and positions).)

319. In at least the six months before these trades, Moskowitz had not traded any Albany shares. (DIV 151 (Fidelity brokerage account records for Moskowitz).)

2. Bolan Tipped Ruggieri and Ruggieri Traded on Bolan's Tip.

320. On July 1, 2010, at 6:15 p.m., Bolan called Ruggieri's Wells Fargo Blackberry and the call lasted 39.666 seconds. (DIV 220 at line 238 (Comcast phone records for Bolan's cell phone) (showing call from 615-457-2142 to 347-609-3443 on July 1, 2010 at 22:15:30); Tr. 1606:13–22 (stipulation) ("MR. RYAN: And we will stipulate for the record that (347) 609-3443 is Mr. Ruggieri's Wells Fargo BlackBerry."); Tr. 1606:5–10, 1606:25–1608:2 (Padgett) ("So this call, is there any way to know what Greenwich Mean Time would have been for July 1, 2010? A. That's July, so it would have been Daylight Savings Time. Q. So what time was that call? A. So I believe it would have been four hours' difference, so subtract four from 22, and you get 18:15:30. Q. So 6:15 and 30 seconds; is that right? A. Yes, uh-huh.").)

321. The same evening, from 6:08 p.m. until 6:18 p.m., Ruggieri was speaking on his personal cell phone to his mother about his wedding ceremony, a conversation to which he was

paying attention. (Tr. 2197:9–2200:4 (Ruggieri) ("Q. So in other words, from 6:08 p.m. until 6:18 p.m. you were on your iPhone speaking to your mother? A. Yes. Q. So, sir, when Mr. Bolan's telephone line called your BlackBerry, just to be clear, you were still on the phone with your mother; right? A. Yes."); DIV 145, Folder No. 7591 at 131 (Verizon Wireless phone records for Ruggieri's personal cell phone); Tr. 2521:16–2522:7 (Ruggieri) ("Q. Incidentally, do you remember what you were talking to your mother about? A. I didn't, but my wife reminded me that we had our Catholic wedding ceremony, I think the previous day or two. My parents were here and flew back to North Carolina that morning."); Tr. 2822:12–2823:20 (Ruggieri) ("Q. My point was, you were presumably paying attention to what your mother was saying when it involved your Catholic wedding ceremony; correct? A. Yes.").)

322. At 6:16 p.m., while he was on talking to his mother on his cell phone, Ruggieri emailed Bolan from his Blackberry — replying to a 6:14 p.m. email from Bolan to a client, on which Ruggieri was blind-copied, and which was then at the top of the email queue on Ruggieri's Blackberry — and wrote: "Call u right back." (DIV 57 (email from Ruggieri to Bolan on July 1, 2010 at 6:16 p.m.); Tr. 2822:4–2823:2 ("[Q.] Now, your BlackBerry, are the e-mails arranged in your BlackBerry with the most recent e-mails at the top? A. I would assume so, yes. Q. That's how they usually work; right? A. Yes. Q. So in other words, you get this call from Mr. Bolan on your BlackBerry, you're on the call with your mother discussing your Catholic wedding ceremony; right? A. Yes. Q. One of the very top e-mails on your screen is the e-mail from Mr. Bolan to Mr. Gilliam, at 6:14 p.m. that evening; right? A. Right. Q. Which he blind carbon copied you on? A. Yes. Q. So you just hit reply and said, 'Call you right back' after his call came on in your BlackBerry; right? A. Yes.").)

323. Two minutes later, at 6:18 p.m., Bolan replied: "Cool – call my home – 615 457 2142." (DIV 57 (email from Bolan to Ruggieri on July 1, 2010 at 6:18 p.m.).)

324. Ruggieri does not remember one way or the other whether he called Bolan back that evening. (Tr. 2203:2–19 (Ruggieri) ("Q. You didn't ignore his call, did you, sir? A. No, I didn't -- it doesn't seem like I answered it. I told him I'd call him back. Q.... Do you have any memory one way or the other as to whether you called Mr. Bolan back that night? A. I don't."); Tr. 2824:3–9 (Ruggieri) ("Do you remember, one way or the other, whether you, in fact, called Mr. Bolan back? A. I think I've already testified to this. I do not.... I do not remember.").)

325. Ruggieri called Bolan back that evening. (DIV 57 (email from Ruggieri to Bolan on July 1, 2010 at 6:16 p.m.) ("Call u right back."); Tr. 2203:2–15 (Ruggieri) ("Q. You didn't ignore his call, did you, sir? A. No, I didn't -- it doesn't seem like I answered it. I told him I'd call him back.").)

326. Comcast produced two sets of phone records for Bolan's home telephone line. (DIV 144; DIV 220.)

327. The initial production of phone records by Comcast covers the period August 2010 through September 2012 and contains records that were less than 24 months old at the time of production. (DIV 144; Tr. 1592:3–1593:9 (Padgett) ("Q. Mr. Padgett, do you have an understanding of when the document[s] in DIV 144 were produced, and who they were produced to? A. Yes, I do. Q. Who were they produced to? A. They were produced to the Securities and Exchange Commission. Q. And when were they produced to the Securities and Exchange Commission? A. In September of 2012, I believe. Q. We went over the bills that start sometime in 2009, but it appears based on the title of these call details that the call details start in August 2010. Is that right? A. Yes, it is. Q. Do you have an understanding of why that is? A. Yes. Q. Please explain. A. Comcast maintains call detail records easily accessible in electronic format for the most recent two-year period, so these records would have reflected the two-year period immediately preceding the production of these records. Q. So essentially counting 24 months back from the date of retrieval is

sort of the date range for which Comcast has readily available phone records; is that right? A. That's correct.").)

328. Comcast's telephone records custodian has never encountered a situation in which Comcast telephone records that were less than 24 months old were lost. (Tr. 1596:9–1596:16 (Padgett) ("Q. Mr. Padgett, for call records that are less than 24 months old at the time of retrieval, have you ever encountered circumstances in your time at Comcast in which call detail records for that period have been lost? A. For the most recent 24-month period, no, I have not.").)

329. A subsequent production of phone records by Comcast covers the period January 2009 through July 2010 and contains records that were more than 24 months old at the time of production. (DIV 220; Tr. 1615:2–1615:7 (Padgett) ("Q. Just to be clear; DIV 220, which consists of call records over 24 months, pulled at the time of retrieval, contained about, less than 10 incoming calls for an over six-month period; right? A. Correct.").)

330. Comcast's telephone records that are more than are over 24 months old at the time of production are often incomplete. (Tr. 1596:9–25 (Padgett) ("Q. Now, for call detail records that are over 24 months old at the time that they are retrieved, have you ever encountered circumstances during your time at Comcast when call detail records were incomplete? A. Yes. Q. How often has that occurred? A. It's happened enough that I've noticed it, but I couldn't give you a percentage.").)

331. In fact, for Bolan's home telephone line, the call records less than 24 months old at the time of production show over 900 incoming calls in a 5-month period at the end of 2010, while the telephone records more than 24 months old at the time of production show less than 10 incoming calls to Bolan during the first seven months of 2010. (Tr. 1615:2–17 (Padgett) ("Q. Just to be clear; DIV 220, which consists of call records over 24 months, pulled at the time of retrieval, contained about, less than 10 incoming calls for an over six-month period; right? A. Correct. Q. And DIV 220, which contains calls that are less than 24 months old at the time of retrieval, contains over

900 calls for a period of August through December 2010, which is about five months; right? A. Correct. Q. And both DIV 220 and DIV 144 are call records for the same telephone number, right, Mr. Bolan's line? A. That's correct.").)

332. *See* Joint Factual Stipulations ¶¶ 98 through 114 (stipulations concerning Ruggieri's trades and end-of-day positions in Albany and the title and publication date of Bolan's Albany upgrade, among other things).

333. Before Wells Fargo published the Albany upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Albany upgrade to Ruggieri and Moskowitz. (DIV 194-A at 4, 5.)

3. Moskowitz and Ruggieri Liquidated Their Positions After Bolan's Upgrade of Albany.

334. On July 6, 2010, at 12:03 a.m., Wells Fargo published Bolan's research report upgrading his rating on Albany from market perform to outperform. (DIV 133 (list of Bolan's published research at Wells Fargo); DIV 3 (Bolan's Albany upgrade report).)

335. When the market opened on July 6, 2010, Albany's stock price increased 5.36%. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

336. Over the day's course, Albany's trading volume increased 40% relative to Albany's average daily trading volume on the fifteen days before and after the upgrade. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

337. *See* Joint Factual Stipulations ¶¶ 190 through 194 (stipulations concerning Moskowitz's sales and end-of-day positions in Albany on July 6 through 9, 2010).

338. Moskowitz's Albany trades generated a profit of $8,400. (DIV 195 at 2 (summary chart of profits).)

339. Ruggieri's trades in Albany around Bolan's upgrade generated a profit of $9,334 or $9,384, depending on the calculation method. (DIV 194-A at 4 (summary chart of key phone calls and positions); DIV 195 (summary chart of profits); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more).)

340. When measured by dollar amount, Ruggieri's Albany overnight position before Bolan's upgrade was approximately the sixteenth-most profitable overnight position Ruggieri held (out of at least 108 overnight positions) during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

341. When measured by percentage return on investment, Ruggieri's Albany overnight position before Bolan's upgrade was Ruggieri's fourth most profitable overnight position (out of at least 108 overnight positions) during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

342. Other than his overnight positions in Albany from July 2 through July 9, 2010, Ruggieri never held an overnight position in AMRI of more than 79 shares during his tenure at Wells Fargo. (*Compare* Joint Factual Stipulations ¶ 179 ("In addition to the overnight positions

preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in AMRI stock on approximately 2 trading days while he was employed by Wells Fargo.") (emphasis added) *with* DIV-194-A at 4 (summary chart of key phone calls and positions) (showing Ruggieri's overnight positions just after Bolan's Ratings Change); *see also* JR REB 66 (summary chart of Ruggieri's overnight positions with a cost basis of $25,000 or more) (showing no other overnight positions in Albany); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more) (showing no other overnight positions in Albany); Tr. 2214:7–2217:10 (Ruggieri) ("Q. But my question was just, other than these trades that we talked about from July 2nd through July 9, 2010, does this chart [DIV REB 66-A] show that you ever held an overnight position in Albany Medical during your 415 trading days at Wells Fargo? A. I understand your question. It does not."); DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change) (showing no overnight position in Albany of over 79 shares); Tr. 873:13–24 (Yi) ("Q. This [DIV 150] is the document that shows the overnight positions going back six months; is that correct? A. Yes. Q. And you were tasked with finding overnight positions in each of these six securities or seven securities, which are the securities at issue here, for six months prior to the trade in question, correct? A. I believe so, yes.").)

343. Although Ruggieri had held three overnight positions in Albany, each such position was minimal: 1 share, 79 shares, and 48 shares of Albany, respectively. (DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change); Tr. 873:13–24 (Yi) ("Q. This [DIV 150] is the document that shows the overnight positions going back six months; is that correct? A. Yes. Q. And you were tasked with finding overnight positions in each of these six securities or seven securities, which are the securities at issue here, for six months prior to the trade in question, correct? A. I believe so, yes.").)

D. Bolan Tipped Ruggieri and Moskowitz to His Upgrade of Emdeon Inc.

344. After his Albany upgrade, Bolan's next Ratings Change was on Emdeon Inc. ("Emdeon"). (DIV 133 (list of Bolan's published research at Wells Fargo); Tr. 2225:11–2226:10 (Ruggieri) ("Q. And after that [Albany] upgrade by Mr. Bolan, do you remember what his next ratings change was? A. I think it was Emdeon, EM.").)

345. Emdeon trader under the ticker EM. (DIV 63 (Bolan's Emdeon upgrade).)

346. On the evening of August 12, 2010, Bolan sent Pearlstein an email about upgrading Emdeon. Bolan pasted into his email a paragraph from his draft ratings change report that described his reasons for the upgrade. (JR REB 20 (Aug. 12, 2010 email from Bolan to Pearlstein) ("[H]ere is basically the crux of the call on EM – just pasted in some of the note so you could see it.").)

347. Later that evening, Pearlstein e-mailed Bolan back and wrote: "Ok with me." (JR REB 20 (Aug. 12, 2010 email from Pearlstein to Bolan).)

348. *See* Joint Factual Stipulations ¶¶ 117 through 126 (stipulations concerning the times and duration of phone calls between phone lines associated with Bolan and Ruggieri, respectively, including the 6210 Line; Ruggieri's trades and end-of-day positions in Emdeon; and the title and publication date of Bolan's Emdeon upgrade, among other things).

349. For the two calls on August 13, 2010 from Bolan's phone to the 6210 Line set forth in the Joint Factual Stipulations ¶¶ 119 and 123, which lasted approximately three minutes and two minutes respectively, Ruggieri was in New York and in the office. (JR REB 67 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between August 6 and 27, 2010); Tr. 2228:10–2232:18 (Ruggieri) ("Q. Now, sir, you were, on those two days, August 12th and August 13, 2010, you were in New York; right? A. That's my understanding. Q. And you were in the office those days? A. I think [on] the 12th there are some calls from my cell phone to the office, so it seems I was out of the office for part of that day, but I assume I was in the office for those days at

some -- I mean, for most of the day, I would think. I don't remember exactly, but...."); Tr. 2889:3–2891:22 (Ruggieri) ("Q. So, once again, I take it you were in the office on April 13th, the morning of April 13, 2010; right? A. Yes."); JR REB 77 (August 13, 2010 instant messages between Bolan and Ruggieri's Wells Fargo instant message account — "uncjoewfc" — from 10:24 a.m. through 10:57 a.m.); JR 104 (Ruggieri receives an email on August 13, 2010 at 10:05 a.m. and forwards it two minutes later at 10:07 a.m.); Tr. 207:2–23 (Friedman) ("Q. Now, I think you mentioned earlier after you got it, you asked one of your colleagues to find out who UNCJOEWFC was; is that right? A. Yes. Q. And did you learn that at some point? A. Yes, my colleague was able to determine that this was Joe Ruggieri. Q. And how was compliance able to determine that? A. The instant messaging system that we have has unique identifiers that are issued to individuals that are permitted to have the instant message tool, and it has to be properly recorded and tracked with the firm's record retention system and such. So we knew that this was someone at Wells Fargo, but we didn't know who, and that work had to be done. And that's how I learned that it was Mr. Ruggieri.").)

350. On August 13, 2010, at 11:23 a.m., Bolan used his home phone number to call Moskowitz's home number, and the call lasted 11 minutes. (DIV 194-A at 7 (summary chart of key phone calls and positions); DIV 144, Folder "From," at line 57(Comcast phone records).)

351. On the afternoon of August 13, 2010 — after Bolan's three-minute morning call to the 6210 Line — Ruggieri purchased 10,000 shares of Emdeon stock in his Wells Fargo trading account and held the position overnight. (DIV 194-A at 6 (summary chart of key phone calls and positions).)

352. Also on the afternoon of August 13, 2010, Moskowitz purchased 5,000 shares of Emdeon stock and held the position overnight. (DIV 194-A at 7 (summary chart of key phone calls and positions).)

353. Moskowitz had not traded Emdeon shares in at least the preceding six months. (DIV 151 (Fidelity trade records for Moskowitz).)

354. Before Wells Fargo published the Emdeon upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Emdeon upgrade to Ruggieri and Moskowitz. (DIV 194-A at 6, 7 (summary chart of key phone calls and positions); Tr. 2239:3–2240:7 (Ruggieri) ("Q. Once again, Mr. Ruggieri, I'll ask you at the end, were you asked the following questions [in your investigative testimony], did you give the following answers: . . . 'Question: Sitting here today, do you know whether or not part of your investment thesis as to why Emdeon was a good buy was because you thought Mr. Bolan may be about to upgrade Emdeon? 'Answer: I can't -- I don't want to speculate. I can't remember this particular situation. 'Question: You can't remember one way or the other? 'Answer: I cannot. 'Question: Did the fact that you made this transaction have any relation to the fact that Bolan was about to upgrade Emdeon? 'Answer: I don't recall the situation in particular.' Sir, were you asked those questions, did you give those answers? A. I did. Q. Was that truthful testimony when you gave it, sir? A. Yes.").)

355. On August 16, 2010, at 12:02 a.m., Wells Fargo published Bolan's research report upgrading Emdeon from market perform to outperform. (DIV 133 (list of Bolan's published research at Wells Fargo); DIV 63 (Bolan's report upgrading Emdeon).)

356. When the market opened that morning, Emdeon's stock price rose 1.10%. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

357. Over the day's course, Emdeon's trading volume increased 107% relative to Emdeon's average daily trading volume on the fifteen days before and after the upgrade. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

358. When the market closed on August 16, 2010, Emdeon's price had risen 1.38% from the previous day's closing price. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

359. Bolan was disappointed that Emdeon's stock price did not move up as much as he had hoped after his upgrade. (Tr. 2236:24–2237:5 (Ruggieri) ("Q. And you understood that Mr. Bolan was disappointed that the stock price [of Emdeon] didn't move as much as he'd hoped? A. I'm sure. Most analysts hope that their ratings changes are the reason that stock prices move."); JR 108 (August 16, 2010 instant messages between Bolan and Ruggieri) ("[M]y EM upgrade = mouse fart in the wind.").)

360. On August 16, 2010, Moskowitz sold his entire Emdeon position for a profit of $835. (DIV 194-A at 7 (summary chart of key phone calls and positions); DIV 195 (summary table of profits).)

361. On August 16, 2010, Ruggieri sold his entire position in Emdeon stock for a profit of $266 or $267, depending on the calculation method. (DIV 194-A at 6 (summary chart of key phone calls and positions); DIV 195 (summary table of profits); DIV REB 132 (summary table of overnight positions and their profits or losses).)

362. Other than his overnight position in Emdeon on August 13, 2010, Ruggieri held an overnight position in Emdeon with a cost basis of $25,000 or more only once during his tenure at Wells Fargo: on November 11 and 12, 2009, when he held an overnight position of 12,700 shares and 12,500 shares, respectively. (JR REB 66 (summary chart of Ruggieri's overnight positions with a cost basis of $25,000 or more); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); Tr. 2240:11–2244:11 (Ruggieri) ("Q. Mr. Ruggieri, other than that night that we talked about, August 1[3], 2010, did you ever hold an overnight position in Emdeon? A. I did. I

had a position of similar size, I think. Something like 12,500 or 12,700 shares, I think, for a couple of nights in 2009.").)

363. Ruggieri took his only other overnight position in Emdeon on the trading day just after Bolan issued a research report on Emdeon following Emdeon's own reporting of its earnings. (DIV 133 at 2 (list of Bolan's published research at Wells Fargo) (listing Bolan publication on November 11, 2009 at 1:16 a.m. entitled "EM: Our First Impression of Q3 2009 Results"); Tr. 2242:22–2244:11 (Ruggieri) ("Q. Sir, just to be clear, your only other overnight positions in Emdeon, according to your chart, were the day of and day after Mr. Bolan issued an earnings estimate on Emdeon; is that right? Not before, but after. A. Right, it looks like they reported earnings, so it would be after they reported earnings.").)

E. Bolan Tipped Ruggieri to His Upgrade of Athena, Inc.

364. Prior to January 2011, Bolan had rated athenahealth, Inc. ("Athena"), traded under the ticker ATHN, as market perform/hold. (DIV 133 at 6 (list of Bolan's published research at Wells Fargo) (listing Oct. 25, 2010 report entitled "ATHN: Final Thoughts on Q3 Results – Raising Ests: Maintain Market Perform – Lifting Valuation Range").

365. Athena traded under the ticker ATHN. (DIV 60 (Bolan's Athena upgrade).)

366. By January 18, 2011, despite his neutral published views, Bolan had told Ruggieri of his bullish views on Athena. (DIV 120 (Jan. 18, 2011 instant message from Ruggieri to Mackle) ("ATHN m[ana]g[e]m[en]t sounds bulled up … [B]olan getting bullish[.] dont think run over[.] would not be short."); Tr. 2274:6–2275:7 (Ruggieri) ("Q. Just to be clear, Mr. Bolan conveyed to you that he was bullish on a stock where his current rating was neutral; correct, sir? A. Yes, I think at the time there were some things going on in the marketplace that was around this time. I think the – Athena presented a bullish presentation at the JPMorgan healthcare conference in January, which is the most widely attended and most important healthcare conference of the year,

and the stock, I think it was up something like 10 percent in a week or two, and there was also some M&A speculation out there of Athena possibly getting bought. This was a very crowded short. Probably the most crowded short in all of healthcare at the time. So there was a lot -- I don't want to say animosity, but the clients that were short were frustrated and the stock was moving higher and some of this was in that context of some of the things that were going on. But analysts wax and wane within their ratings for long periods of time, and the fact that he was getting bullish didn't indicate to me at all that he was upgrading the stock."); Tr. 3252:19–3254:2 (Mackle) ("You know, specifically referring to the last line there [of DIV 120], I mean, obviously he's passing along a more positive sentiment on the company athena from Greg Bolan.").)

367. Mackle did not take actual positions in securities, but rather had a virtual trading book in which he placed fantasy trades that were not executed. (Tr. 3249:12–3250:19 (Mackle) ("Just to be clear, these trading systems, did you ever make money on these trading systems?
A. No. Just on paper. Q. Is it analogous to sort of like, you know, fantasy baseball leagues?
A. Yes.").)

368. On February 4, 2011, Wickwire granted Bolan's "request to change [his] rating on ATHN." (DIV 32 (Feb. 4, 2011 email exchange between Wickwire and Bolan about Athena upgrade).)

369. *See* Joint Factual Stipulations ¶¶ 135 through 143 (stipulations concerning the times and duration of phone calls between phone lines associated with Bolan and Ruggieri, respectively, including the 6210 Line; Ruggieri's trades and end-of-day positions in Athena; and the title and publication date of Bolan's Athena upgrade, among other things).

370. For the calls on February 4 and 7, 2011, from Bolan's phone to the 6210 Line set forth in Joint Factual Stipulations ¶¶ 134, 137, and 138 — lasting 41 seconds, approximately 7 minutes, and approximately 1 minute, respectively — Ruggieri was in New York and in the office.

(JR REB 67 at 2 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between December 22, 2010 and February 17, 2011); Tr. 2278:23–2279:4 (Ruggieri) ("Q. Now, sir, you were in New York on February 4th and February 7th; correct? A. I think that's right. Q. And you were in the office both of those days? A. I think so, yes. Q. Now, do you have any reason to believe that you did not speak to Mr. Bolan on February 4th and February 7, 2011? A. I don't know one way or the other.").)

371. Bolan was in Greenwich, Connecticut and then New Rochelle, New York during the afternoon on Monday, February 7, 2011, and he placed his calls to the 6210 Line that afternoon from his cell phone. (DIV 194-A at 8 (summary chart of key phone calls and positions); DIV 145, Folder "text 9742" (pdf) at 93 (Verizon Wireless telephone records for Bolan).)

372. Bolan was in New York City in the evening on Monday, February 7, 2011. (DIV 190 (Feb. 4, 2011 email from Bolan to client) (Bolan writes "See you then!" in response to reminder about client cocktail party on Feb. 7, 2011 at 6 p.m. in New York City); Tr. 2343:25–2344:9 (Ruggieri) ("Q. And do you remember, one way or the other, whether Mr. Bolan was in New York that weekend? A. No, I don't.").)

373. Before Wells Fargo published his upgrade of Athena, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Athena upgrade to Ruggieri. (DIV 194-A at 8 (summary chart of key phone calls and positions); Tr. 2284:22–2286:13 (Ruggieri) ("Q. Once again, I'm going to ask you[,] were you asked the following questions, did you give the following answers [in your investigative testimony]: 'Question: Were you -- was it part of your investment thesis that athena may go up because Mr. Bolan was about to upgrade athena? 'Answer: I don't remember the situation in particular. 'Question: So you don't recall one way or the other? 'Answer: I do not.' Do you see that, sir? A. I do.... Q. Sir, were you asked those questions and did you give those answers? A. Yes, I did.... Q. Once again, were you

asked the following questions and did you give the following answers: 'Question: Did Mr. Bolan signal in any way that he intended to upgrade athena? 'Answer: I don't recall.' Sir, were you asked that question and did you give that answer? A. Yes. Q. Was it truthful testimony at the time? A. Yes. Q. I should have asked you with respect to the other passage we looked at, was that truthful testimony at the time? A. Yes.").)

374. On February 8, 2011, at 12:13 a.m., Wells Fargo published Bolan's report upgrading Athena from market perform to outperform. (DIV 133 (list of Bolan's published research at Wells Fargo); DIV 60 (Bolan's report upgrading Athena).)

375. When the market opened that day, Athena's stock price rose 5.66%. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

376. Over the day's course, Athena's trading volume increased 116% relative to Athena's average daily trading volume on the fifteen days before and after the upgrade. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

377. When the market closed on February 8, 2011, Athena's price had risen 4.05% from the previous day's closing price. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

378. On February 8, 2011, in the first two hours after the market opened, Ruggieri sold his entire Athena position for a profit of $40,686 or $34,176, depending on the calculation method. (DIV 194-A at 8 (summary chart of key phone calls and positions); DIV 195 (summary table of profits); DIV REB 132 (summary list of Ruggieri's overnight positions and realized profit and loss).)

379. When measured by dollar amount, Ruggieri's Athena overnight position before Bolan's upgrade was the single most profitable overnight position Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or

more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 2282:25–2283:11 (Ruggieri) ("Q. This was a pretty big profit in an overnight position for you, was it not? A. It was."); Tr. 2283:21–25 (Ruggieri) ("Q. Do you have any reason to dispute that your position in -- your overnight position in [A]thena was your largest overnight profit during that period in dollar amounts? A. No.").)

380. When measured by percentage return on investment, Ruggieri's Athena overnight position before Bolan's upgrade was the sixth-most profitable overnight position (out of at least 108 overnight positions) Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

381. Other than his overnight position on February 7, 2011, Ruggieri held an overnight position in Athena with a cost basis of $25,000 or more only once during his tenure at Wells Fargo: from November 9 through November 19, 2010, when Ruggieri held a short overnight position that ranged from -3,600 shares to -7,500 shares. (JR REB 66 (summary chart of Ruggieri's overnight positions with a cost basis of $25,000 or more); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); Tr. 2279:23–2282:4 (Ruggieri) ("Q. So it sounds like you had sort of a continuing short position in November [2010]? A. That's right. Q. That's the only other time that you had an overnight position in athena, correct? A. Correct. Q. And that the whole time was a short position; right? A. That's right.").)

F. Bolan Tipped Ruggieri to His Positive Initiation of Coverage on Bruker Corp.

382. On Thursday, March 17, 2011, Bolan e-mailed Wickwire and sought his approval for initiating coverage on two companies: (1) Bruker Corp. ("Bruker"), which traded under the ticker BRKR, and (2) Waters, which traded under the ticker WAT ("WAT"). (DIV 127 (March 17, 2011 email from Bolan to Wickwire).)

383. On Tuesday, March 22, 2011, Wickwire approved the initiations of coverage: "These are approved. Very well done." (DIV 127 (March 22, 2011 e-mail from Wickwire to Bolan).)

384. *See* Joint Factual Stipulations ¶¶ 146 through 171 (stipulations concerning the times and duration of phone calls between phone lines associated with Bolan and Ruggieri, respectively, including the 6210 Line; Ruggieri's trades and end-of-day positions in Bruker; and the title and publication date of Bolan's initiation of coverage on Bruker).

385. For each of the calls on March 23 through March 29, 2011 from Bolan's phone to the 6210 Line set forth in Joint Factual Stipulations ¶¶ 146, 153, 157, 158, 159, and 163 — lasting, respectively, 5 minutes; 4 minutes and 37 seconds; approximately 48 seconds; approximately 1 minute and 12 seconds; approximately 1 minute and 54 seconds; and 2 minutes and 12 seconds — Ruggieri was in New York and in the office. (JR REB 67 at 2 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between March 16 and April 4, 2011); Tr. 2298:16–2299:9 (Ruggieri) ("Q. Sir, we saw phone calls from Mr. Bolan's phone line to your 6210 number on -- just going through the dates -- on Wednesday, March 23, 2011; right? A. Yes. Q. On Friday, March 25, 2011? A. Yes. Q. On Monday, March 28, 2011? A. Yes. Q. And on Tuesday, March 29, 2011; correct? A. Yes. Q. Now, sir, those days were you in New York? A. Yes, as far as I know, yes. Q. And you were in the office on those days; correct? A. I believe so, yes.").)

386. On March 23, 2011, Ruggieri began purchasing shares of Bruker in a principal capacity, in the amount set forth in Joint Factual Stipulations ¶ 148, at 10:10 a.m. — less than half an

hour after Bolan's five-minute call to the 6210 Line at 9:46 a.m. set forth in Joint Factual Stipulations ¶ 146. (DIV 194-A at 9 (summary chart of key phone calls and positions); DIV 193 (trade data for Ruggieri's Bruker trades) (showing a trade time of 10:10:11 for Ruggieri's first purchase of Bruker on March 23, 2011).)

387. Before Wells Fargo published the Bruker upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Bruker upgrade to Ruggieri. (DIV 194-A at 9 (summary chart of key phone calls and positions).)

388. On March 29, 2011, at 4:20 p.m. — after the market had closed for the day — Wells Fargo initiated coverage on WAT by publishing Bolan's research report rating WAT as market perform/hold. (DIV 133 (list of Bolan's published research at Wells Fargo).)

389. Ruggieri did not hold an overnight position in WAT before Bolan's initiation of coverage on the company. (Tr. 2602:11–16 (Ruggieri) ("Q. Did you trade in WAT, the other initiation of coverage? A. Have I traded in it before? Q. The night before his initiation of coverage. A. No.").)

390. On March 29, 2011, at 4:22 p.m., Wells Fargo initiated coverage of Bruker by publishing Bolan's research report rating Bruker as outperform/buy. (DIV 133 (list of Bolan's published research at Wells Fargo); DIV 212 (Bolan's report initiating coverage of Bruker); Tr. 2300:5–12 (Ruggieri) ("Q. And the report was issued at 4:22 p.m. that day? A. That's right. Q. Was that before or after the market closed that day? A. After the market closed. Q. The market closes at 4; right? A. Yes.").)

391. The next day, when the market opened, Bruker's stock price rose 2.56%. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

392. Over the day, Bruker's trading volume increased 42% relative to Bruker's average daily trading volume on the fifteen days before and after the report. (DIV 197 (summary chart of trading volume around Bolan's Ratings Changes).)

393. When the market closed on March 30, 2011, Bruker's stock price had risen 3.36% from its closing price the previous day. (DIV 128 (chart showing stock prices before and after Bolan's ratings changes from Bloomberg data).)

394. On March 30, 2011, in the morning after the market opened, Ruggieri sold his entire Bruker position for a profit of $24,452 or $24,453, depending on the calculation method. (DIV 194-A at 9 (summary chart of key phone calls and positions); DIV 195 (summary table of profits); DIV REB 132 (summary list of Ruggieri's overnight positions and realized profit and loss).)

395. When measured by dollar amount, Ruggieri's Bruker overnight position before Bolan's initiation of coverage was the third most profitable overnight position Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions).)

396. When measured by percentage return on investment, Ruggieri's Bruker overnight position before Bolan's initiation of coverage was the second-most profitable overnight position (out of at least 108 overnight positions) Ruggieri held during his tenure at Wells Fargo. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); DIV REB 132-A (histogram showing Ruggieri's realized profits and losses on overnight positions); Tr. 3049:20–3051:2 (Walster) ("The second table on this page, 'Other Positions,' summarizes the profits and loss on the 108 other overnight position windows that were analyzed.").)

XVII. BOLAN TIPPED RUGGIERI TO A SEVENTH RATINGS CHANGE, AND RUGGIERI TRADED AHEAD OF IT.

397. On the morning of January 4, 2011, while the market was open, Ruggieri was in New York and at the trading desk. (JR REB 67 at 2 (list of calls to 6210 or 6201 Line when Ruggieri was out of the office) (listing no calls between December 22, 2010 and February 17, 2011); Tr. 2259:24–2262:25 (Ruggieri) ("Q. So Mr. Ruggieri, we just looked at two phone calls in the Wells Fargo phone chart [DIV 146-A]; right? A. Right. Q. And those two calls were on January 4, 2011? A. Correct. Q. And those were to your 6210 number; correct? A. Yes. Q. And if you look at this chart, JR REB 67, sir, there's no listing on this chart for January 4, 2011; correct? A. That is correct. Q. So at least according to this chart, on January 4, 2011, when the 6210 line received those two calls, you were in the office; correct? A. In New York. Yes. I don't know for sure I was in the office, but it's fair to say I was in New York."); DIV 147, Folder No. WF-002847677, Rows 7850–10265 (trade data for Ruggieri's trades) (showing that on Jan. 4, 2011, Ruggieri made principal trades in various securities from 9:30:00 a.m. through 12:00:01 p.m.).)

398. On January 4, 2011, at 8:38 a.m., Bolan called the 6210 Line from his office number, and the call lasted 48 seconds. (DIV 146-A, Folder No. WF-284316, Row 4980 (Wells Fargo telephone records) (showing phone call from (615) 525-2418 to the 6210 Line on Jan. 4, 2011, at 8:38 a.m. lasting 48 seconds); Joint Factual Stipulations ¶ 34 ("615-525-2418 was a Wells Fargo telephone line associated with Bolan."); DIV 102 at 1 (Jan. 11, 2011 email from Bolan with a signature block listing 615-525-2418 as his "Office" number).)

399. On January 4, 2011, at 10:13 a.m., Bolan called the 6210 Line from his office number, and the call lasted 3 minutes and 12 seconds. (DIV 146-A, Folder No. WF-284316, Row 4984 (Wells Fargo telephone records) (showing phone call from (615) 525-2418 to the 6210 Line on Jan. 4, 2011, at 10:13 a.m. lasting 3 minutes and 12 seconds); Joint Factual Stipulations ¶ 34 ("615-

525-2418 was a Wells Fargo telephone line associated with Bolan."); DIV 102 at 1 (Jan. 11, 2011 email from Bolan with a signature block listing 615-525-2418 as his "Office" number).)

400. On January 5, 2011, from 9:34 a.m. until 10:11 a.m., Ruggieri built a 15,000-share short position in MDAS in a principal capacity. (DIV 147, Folder No. WF-002847677 (trade data for Ruggieri's trades) (showing Ruggieri's principal sales of MDAS from 9:34:11 until 10:11:52); Tr. 2247:19–2252:5 (Ruggieri) ("Q. Sir, you agree on that morning, January 5, 2011, you sold 15,000 shares of MDAS? A. I do, yes. Q. And just to be clear, that was between 9:34 a.m. and 10:11 a.m. that day; correct? A. Correct.... Q. And we looked at the chart. Those were all principal trades; right? A. Correct.").)

401. On January 5, 2011, at 9:47 a.m., Bolan called the 6210 Line from his home number, and the call lasted 1 minute and 37 seconds. (DIV 144, "From" Folder, Row 1203 (Comcast phone records) (showing call from 615-457-2142 to 6210 Line at "8:47:55" a.m. lasting 1 minute and 37 seconds); Joint Factual Stipulations ¶ 40 ("Bolan was a subscriber for the landline telephone number 615-457-2142."); (DIV 57 (July 1, 2010 email from Bolan to Ruggieri) ("Cool – call my home – 615 457 2142."); Tr. 1593:10–20 (Padgett) ("Q. Do you see the connect time field in this spreadsheet [DIV 144]? A. Yes. Q. Do you have an understanding of the time zone in which that time information is contained? A. I do. Q. What is that time zone? A. This is in the local time zone of this telephone number, so this would be Central Time zone."); Tr. 2263:17–2264:14 (Ruggieri) ("Q. And then the connect time, 8:47:55; right? A. Yes. Q. So that's Central Time, so you agree with me Eastern Time that's 9:47:55? A. Yes.").)

402. On January 5, 2011, at 10:23 a.m., Wells Fargo issued Bolan's downgrade of MedAssets, Inc., traded under the ticker MDAS, one of Bolan's eight Ratings Changes between March 30, 2010 and March 31, 2011. (DIV 133 (list of Bolan's published research at Wells Fargo); JR REB 53 (press release on MedAssets, Inc.) (noting company's ticker as "MDAS").)

403. Bolan downgraded MDAS to a market perform/hold rating from an outperform/ buy rating. (DIV 133 (list of Bolan's published research at Wells Fargo).)

404. Unlike the Six Ratings Changes, Wells Fargo issued Bolan's MDAS ratings change during the trading day, rather than between the market's closure on one day and its opening on the next. (DIV 133 at 6 (list of Bolan's published research at Wells Fargo); Tr. 2247:2–8 (Ruggieri) ("Q. Now, the other ratings changes that we talked about, those all took place between the market close on one day and the market open on another; right? A. Correct. Q. This one [MDAS] did not; correct? A. Right.").)

405. Within one hour after Wells Fargo published Bolan's downgrade at 10:23 a.m., Ruggieri covered his entire 15,000-share short position by buying 15,000 shares in a principal capacity between 10:31 a.m. and 11:10 a.m. that day. (DIV 133 at 6 (list of Bolan's published research at Wells Fargo); DIV 147, Folder No. WF-002847677 (trade data for Ruggieri's trades) (showing Ruggieri's principal purchases of 15,000 shares of MDAS from 10:31:20 to 11:10:46); Tr. 2252:6–2255:24 (Ruggieri) ("[Q.] In the hour after Mr. Bolan's downgrade you covered your entire 15,000-share short position that you built the hour before his downgrade; is that right? A. That's right.").)

XVIII. RUGGIERI'S OVERNIGHT POSITIONS BEFORE BOLAN'S RATINGS CHANGES DID NOT RESULT FROM CHANCE OR COINCIDENCE.

A. The Probability that Ruggieri's Overnight Positions Were a Product of Chance Is Virtually Zero.

406. From March 2010 through March 2011, Ruggieri had overnight positions ahead of six of eight of Bolan's Ratings Changes, a ratio of 75%. (DIV 177 at 17 (expert report).)

407. From March 2010 through March 2011, Ruggieri had overnight positions before approximately 14 out of 205 of Bolan's research reports, a ratio of 6.8%. (DIV 177 at 17 (expert report).)

408. To calculate the probability of Ruggieri holding an overnight position by chance ahead of 75% of Bolan's Ratings Changes within one year, Dr. O'Neal compared the likelihood of Ruggieri having overnight positions ahead of Bolan's ratings changes at a rate of 75% against the baseline of Ruggieri having an overnight position ahead of all of Bolan's research reports at a rate less than 7%. (DIV 177 at 17 (expert report) ("The likelihood of observing Mr. Ruggieri holding overnight positions in 75% of eight particular research reports simply by chance when the likelihood of that happening by chance on any particular report date is 6.8% is, for all practical purposes, zero.").)

409. Based on this calculation, there is an approximately .002% probability that Ruggieri's overnight positions ahead of Ratings Changes were a product of chance when comparing the frequency of those positions to Ruggieri's overnight positions ahead of all of Bolan's research reports from March 2010 through March 2011. (DIV 177 at 17 (expert report) ("A binomial test observing 6 out of 8 overnight trades when the probability of an overnight trade is 6.8% yields a p-value of .000002. This means that the probability is .0002% that I would see 6 or more out of 8 trades being held overnight if it was simply by chance."); Tr. (1932:17–1934:6 (O'Neal) ("Q. Yes. What do you do as a scientist when you say, there is not a shadow of a doubt that this happened, and then I show you a picture of actually, yeah, it did happen. A. I mean, I don't really have an answer for that question. I guess I would be skeptical about your pictures you showed me. Q. So you would doubt the pictures before you even doubted yourself? A. Actually, I'm doubting you before I would doubt myself.").) This probability calculation is unaffected by whether Ruggieri generated profits or losses from his overnight positions ahead of Bolan's ratings changes. (Tr. 1988:10–24 (O'Neal) ("Q. Would that profitability calculation have changed your analysis in any way? A. No.").)

410. The stipulated fact that Ruggieri maintained approximately 325 overnight positions during the 415 trading days that he traded at Wells Fargo does not impact Dr. O'Neal's conclusion that Ruggieri's positions ahead of Bolan's ratings change was not a product of chance. (Tr. 1996:9–1997:16 (O'Neal) ("What's important to me is that Mr. Bolan releases reports. Mr. Ruggieri could potentially trade on those reports by chance. By chance he appears to do it either 6 percent of the time or 12 percent of the time, depending on what type of report you're looking at. But yet when the rating changes were coming out, he's trading on 75 percent of those."); Joint Factual Stipulations ¶¶ 25 & 183 (stipulation as to Ruggieri's approximately 415 trading days at Wells Fargo and 325 overnight positions).)

B. The Fact that Ruggieri Had Overnight Positions Ahead of Five of Bolan's Valuation and Earnings Estimate Changes Does Not Change the Fact that Ruggieri's Positions Ahead of Bolan's Ratings Changes Were Not a Product of Chance.

411. In addition to Ruggieri's positions ahead of 6 of Bolan's ratings changes, Ruggieri held 8 additional overnight positions ahead of Bolan's research reports for a total of 14 overnight positions ahead of Bolan's research. (DIV 177 at 17 (expert report).)

412. Ruggieri generated profits from trading ahead of Bolan's rating changes, but suffered losses from his positions ahead of all other Bolan research, including valuation and earnings estimate changes. (JR REB 301 (Ruggieri histogram of returns from overnight positions).)

413. 5 of Ruggieri's overnight positions ahead of Bolan's research reports were ahead of valuation or earnings estimate changes. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

414. Only one of these 5 research reports, Bolan's November 29, 2010 report ICON PLC ("ICON"), contained an earnings estimate change. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).

415. Bolan's ICON earnings estimate change was below 10%. (November 29, 2010 earnings estimate change for ICON.) Bolan revised his earnings estimate for ICON by 8% from $1.58 to $1.45 per share. *Id.*

416. On August 9, 2010 at 4:01 p.m., Parexel reported its fourth quarter and fiscal year results for 2010. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

417. On August 10, 2010, Ruggieri ended the day with a 1,379-share long position in Parexel. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

418. On August 11, 2010 at 9:09 a.m., Wells Fargo published a research report in which Bolan decreased his valuation range for Parexel by $1.50 per share. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

419. On September 28, 2010 at 4:10 p.m., Covance announced that its board had authorized a $250 million share buyback. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

420. On September 30, 2010 at 5:00 a.m., Covance and Sanofi-Aventis, a large global health care company, announced that they had signed an agreement for a ten-year strategic research and development alliance. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

421. On September 30, 2010, Ruggieri ended the day with a 17,500-share short position in Covance. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

422. On September 30, 2010 at 4:03 p.m., Wells Fargo published a research report in which Bolan increased his valuation range for Covance by $4 to $5 per share. (DIV 217 (chart

showing news releases before Bolan's valuation and earnings estimate changes at issue); JR REB 4 (September 30, 2010 Covance research report changing valuation range.)

423. On November 26, 2010, Ruggieri ended the day with a 5,000-share long position in ICON. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

424. On November 26, 2010 at 12:14 a.m., Wells Fargo published a research report in which Bolan decreased his earnings estimates for ICON by $0.13 per share, which was less than 10% of ICON share price of $20.36 per share. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue); BRX 10 at 1 (November 29, 2010 ICON research report changing valuation range).)

425. On January 31, 2011 at 4:01 p.m., Parexel reported its second quarter financial results for 2011. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

426. On February 1, 2011, Ruggieri ended the day with a 1,876-share long position in Parexel. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

427. On February 2, 2011 at 12:12 a.m., Wells Fargo published a research report in which Bolan decreased his valuation range for Parexel by $1 per share. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue); BRX 11 (February 2, 2011 Parexel research report changing valuation range.)

428. On February 24, 2011 at 6:00 a.m., ICON reported its full-year revenue and earnings per share. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

429. On February 24, 2011, Ruggieri ended the day with a 66,052-share long position in ICON. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue).)

430. On February 25, 2011 at 12:38 a.m., Wells Fargo published a research report in which Bolan decreased his valuation range for ICON by $1 per share. (DIV 217 (chart showing news releases before Bolan's valuation and earnings estimate changes at issue); BRX 12 (February 25, 2011 ICON research report changing valuation range).)

431. From March 2010 through March 2011, Ruggieri had overnight positions ahead of less than 10% of Bolan's valuation and earnings estimate changes. (Tr. 1892:14–1893:5 (O'Neal) ("Because if you actually take the overall sample of Mr. Bolan's research reports and just look instead at those that only included either earnings estimates changes or valuation range changes, the baseline is still around 10 percent that Mr. Ruggieri held a position ahead of Mr. Bolan's research reports that included a valuation change or an earnings change, that happened about 10 percent of the time.").)

432. The fact that Ruggieri also had overnight positions ahead of Bolan's valuation or earnings estimates changes does not significantly impact the extremely low probability that Ruggieri's overnight positions ahead of ratings changes were a product of chance. (Tr. 1893:6–1896:15 (O'Neal) ("Q. Did you come up with a percentage probability of Mr. Ruggieri's positions ahead of the six out of eight ratings changes being a product of chance when comparing them to his positions in front of valuations and earnings estimate changes? A. Yes. Again, it was a fraction of 1 percent. Q. Was it below 1/10th of 1 percent? A. Yes.").)

433. Dr. O'Neal compared the likelihood of Ruggieri having overnight positions ahead of Bolan's ratings changes at a rate of 75% against the baseline of Ruggieri having an overnight position ahead of Bolan's ratings, valuation, and earnings estimate changes of less than 10%.

(Tr. 1892:14–1893:5 (O'Neal) ("So, again, the difference between 10 percent and 75 percent is highly significantly different.").)

434. There is less than a 0.1% probability that Ruggieri's overnight positions ahead of ratings changes were a product of chance when comparing the frequency of those positions to Ruggieri's overnight positions ahead of all of Bolan's research reports published during Ruggieri's entire tenure at Wells Fargo. (Tr. 1893:16–1896:11 (O'Neal) ("Q. Looking at the entire period that Mr. Ruggieri was employed at Wells Fargo, did you develop a probability or a statistic that described the chance that Mr. Ruggieri's overnight positions ahead of six out of 12 of Mr. Bolan's ratings changes was a product of pure chance? A. Yes. I think that was the question that we just talked about, and I found that the -- the likelihood of that occurring by chance is less than a 10th of a percent.").)

XIX. RUGGIERI INVENTED EXPLANATIONS FOR HIS OVERNIGHT POSITIONS FOR THIS LITIGATION, AND THE EXPLANATIONS ARE NOT CREDIBLE.

435. Information moves quickly. (Tr. 2743:4–9 (Ruggieri) ("Q. We have, is it fair to say, a world where information moves quickly. A. Yes.").)

436. News quickly becomes impounded into stock prices. (Tr. 2742:8–2743:10, 2743:25–2745:5 (Ruggieri) ("Q. And that's just generally because news is impounded quickly into stock prices; correct? A. Right. Q.... Q. So what I was talking about in terms of the price movement and impounding the price was, the morning -- the day starting the morning after the ratings change, does that make sense? So if the ratings change came out on Tuesday night, after the market was closed, it's going to have -- to the extent it has an impact on market price, it's going to have the most impact the following Wednesday? A. The trading day after the ratings change. Q. We're on the same page about that. A. Yes. Q. So after that, the effect kind of dissipates; right? A. It depends on the

situation, but... Q. Typically, yes; right? A. Sure. Q. Because news, the market moves quickly, it reacts to news quickly; is it fair to say? A. Right.").)

A. Parexel

437. On March 30, 2010, Ruggieri emailed Bolan an upgrade of Parexel published by Raymond James, another brokerage firm. (JR 26 (March 30, 2010 email from Ruggieri to Bolan containing Raymond James upgrade of Parexel); Tr. 2708:21–2709:3 (Ruggieri) ("Raymond James, which was a competitor, upgraded PRXL to strong buy.").)

438. The same day, Ruggieri emailed a client: "Ray Jay upgrading PRXL this morning to strong buy from outperform. I was very active yesterday, traded 500k for more than 10 players went out better for sale and think guys will take advantage of a pop today to sell more." (JR 30 (March 30, 2010 email from Ruggieri to client about Parexel).)

439. On April 6, 2010, a colleague at Wells Fargo asked Ruggieri for "[a]ny thoughts on ICLR and PPDI? I have been hearing better things about PPDI...and also hearing that ICLR's bookings are at the lower end of their guidance." (JR 53 (Apr. 6, 2010 email exchange between Ruggieri and client); Tr. 2729:17–24 (Ruggieri) ("Craig Weingart is the head of the research sales office in San Francisco, so he covers a lot of the clients that I would be out there to see.").)

440. Ruggieri replied: "Hearing the same sentiment getting more positive PPDI[,] Craig. Mgmt's been bullish on the q I hear. Agree ICLR/PRXL expectations too high going into quarter." Ruggieri thought that when ICLR and Parexel announced earnings, the earnings would be lower than what people expected and therefore their stock price would go down after their earnings announcements. (JR 53 (Apr. 6, 2010 email exchange between Ruggieri and client); Tr. 2849:4–14 (Ruggieri) ("Q. In other words, when the company announced earnings, the earnings were going to be lower than what people thought? A. Right. Q. So the stock price would go down after the earnings announcement? A. Right.").)

441. On the same day, another client emailed Ruggieri for stock suggestions: "Any suggestions – who you like and don't like going into the 2q EPS season and given the HC flows you are seeing?" (JR 51 (Apr. 6, 2010 email exchange between Ruggieri and client about multiple securities) (all-caps altered to lowercase); Tr. 2731:8–12 (Ruggieri) ("Q. You told another client on JR 51 that you liked the Parexel short, didn't you? A. Yes.").)

442. Ruggieri replied: "Like PPDI, do not like PRXL, ICLR w/in CROs into the q," meaning into the upcoming earnings announcement. (JR 51 (Apr. 6, 2010 email exchange between Ruggieri and client about multiple securities); Tr. 2851:14–22 (Ruggieri) ("Q. Okay. And then you respond to her: 'Like PPDI. Do not like PRXL, ICLR within CROs into the quarter.' Right? A. Correct. Q. In other words, into the upcoming earnings announcement? A. Right.").)

443. In the same email, Ruggieri mentioned at least seven other securities. (JR 51 (Apr. 6, 2010 email exchange between Ruggieri and client about multiple securities).)

444. On April 6, 2010, Ruggieri did not hold an overnight position in PPDI, ICLR, or any other security he discussed in JR 51 or JR 53. (DIV REB 132 (summary table of overnight positions and their profits or losses); JR 200 (list of overnight positions); Tr. 2853:9–25 (Ruggieri) ("Q. If you take a look there, sir, on April 6th, once again, the only overnight position you held was in Parexel. A. That's right…").)

445. On April 7, 2010, at 6:54 a.m., Ruggieri forwarded Bolan's downgrade of Parexel to dozens of Wells Fargo employees, including Brown. (JR REB 100 (Apr. 7, 2010 email from Ruggieri to a list of over two pages of recipients); Tr. 2971:3–9 (Ruggieri) ("Q. Mr. Ruggieri, do you see you sent this downgrade to dozens of people besides Mr. Brown; fair to say? A. Yes. Q. It would have been a little strange if you'd left your boss off the e-mail; right? A. Sure. He was on the list.").)

446. Brown could independently see Bolan's published ratings changes when they occurred, if Brown looked. (Tr. 1093:5–11 (Brown) ("Q. So, once again, you would agree with me

that that meant that was the time the upgrade became public; is that right? A. Correct. Q. And so you could have seen it that morning too if you wanted to? A. Yes.").)

447. After Wells Fargo issued Bolan's downgrade, Ruggieri did not tell Brown about his Parexel overnight position or his profit on the position. (Tr. 1092:4–18 (Brown) ("Q. Now, after that [Parexel] downgrade, did Mr. Ruggieri come to you and ever tell you, I'm holding a short position and this downgrade was published, but it was just a coincidence? A. No, not that I can recall. Q. Did he ever flag it to you at all? A. No.... Q. Did he explain to you anything about why he might have a position that was a short position at 52,500 shares just before a downgrade? A. No."); Tr. 2972:12–2973:21 (Ruggieri) ("Q. Now, on or around April 7th, sir, you didn't tell Mr. Brown that you had an overnight short position in Parexel before Mr. Bolan's downgrade, did you? A. On or about April 7th? I don't remember if I told him or not.... Q. You made more than a $25,000 profit on this Parexel trade, did you not? A. Yes. Q. You didn't tell Mr. Brown about it, did you, sir? A. I don't remember if I did or not. Q. Okay. And did you tell him about the great idea you had on Parexel? A. No. Q. Did you tell him that it was just a coincidence that you held a 52,500-share short position before Mr. Bolan's downgrade? A. I don't remember any conversation I had with Matt Brown regarding my position or the note that day in particular.").)

448. On April 27, 2010, Parexel announced its quarterly earnings. (DIV 198 (summary table of earnings announcements); Tr. 2855:23–2856:18 (Ruggieri) ("Q. And the earnings announcement following Mr. Bolan's downgrade was April 27, 2010? A. That's right. Q. That's when the world would find out about PRXL's first-quarter performance; right? A. Right.").)

449. Over the twelve trading days between April 10 and April 27, 2010, Ruggieri held no overnight positions in Parexel. (DIV REB 132 (summary table of overnight positions and their profits or losses); JR 200 (list of overnight positions); Tr. 2862:19–23 (Ruggieri) ("Q. So in between

that time, April 10th, and April 30th, right -- let's say April 29th, you had no overnight position in Parexel; correct? A. Correct.").)

450. During his investigative testimony, Ruggieri was questioned about whether he took his overnight position in Parexel because he thought Bolan would downgrade Parexel or in anticipation of Bolan's downgrade. Ruggieri did not deny it and merely claimed that he did not recall. (Tr. 2161:10–2162:16 (Ruggieri) ("Q. Now, sir, my simple question to you -- I'm going to read this -- were you asked these questions and did you give these answers: 'Question: Why did you take a short position in Parexel, 52,500, on April 6, 2010? Answer: I don't remember the exact circumstances. I don't know if that was – I mean -- I don't remember if that was a pure proprietary position or it was partly principal or what, but I don't remember the details. Question: Do you remember whether or not a part of the reason why you took the short position of 52,500 in Parexel on Tuesday, April 6, 2010 is because you thought Mr. Bolan may be about to downgrade Parexel? Answer: I don't recall that specific situation. I can't, I mean -- Question: So you can't say yes or no? Answer: I don't -- I don't remember. Question: Did you make these trades in anticipation of possible research being issued by Mr. Bolan? Answer: I don't recall the particular situation.' Sir, were you asked those questions; did you give those answers? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.").)

B. Covance

451. On April 29, 2010, Bolan emailed a public call to clients and Ruggieri stating that "CVD: Low 50's get interested - here not as interested." (JR 64 (Apr. 29, 2010 email from Ruggieri to multiple clients about Bolan's discussion of Covance).)

452. Ruggieri understood low 50's to mean anything below $54. (Tr. 2868:18–24 (Ruggieri) ("Q. And you see there the stock price of Covance opens at $53.25? A. Yes. Q. Would

you agree with me that's the low 50s? A. I mean, low, mid -- yeah, 52, 53, 51. It's all low 50s, sure.").)

453. On June 9, 2010, in an instant message to Ruggieri about over ten different stocks, a client wrote: "CVD <50? brrrrring it!" (JR 71 (June 9, 2010 IM exchange between Ruggieri and client about several tickers); Tr. 2619:5–2620:13 (Ruggieri) ("Q. June 9th. And who are you IM'ing with? Is that the right term? A. Yes. This is Susie Eilenberg, the trader for DE Shaw.... [S]he was a good client.").)

454. On June 10, 2010, a Wells Fargo salesperson emailed Ruggieri stating that a client was "going to add a lot more to their CVD position" and was selling PPDI. (JR 73 (June 10, 2010 email exchange between Ruggieri).)

455. According to Ruggieri, that was an important data point for him. (Tr. 2872:9–20 (Ruggieri) ("Q. And Mr. Weingart continued: 'He thinks they are selling PPDI, if they haven't sold them already, and they are going to add a lot more to their CVD position.' Do you see that, sir? A. Yes. Q. And you testified that this was an important data point to you; is that right? A. Sure.").)

456. On June 10, 2011, Ruggieri did not hold an overnight position in PPDI. (Tr. 2873:3–8 (Ruggieri) ("Q. And Mr. Weingart mentions that Cap World is selling PPDI? A. Yes. Q. Did you take an overnight position in PPDI that night? A. Not this night, no.").)

457. On June 11, 2010, Ruggieri wrote in an instant message that Covance was covering into a Goldman Sachs conference — in other words, people were buying Covance on June 11, before the conference, in order to cover their short positions. (JR 72 (June 11, 2010 IM exchange between Ruggieri and client about several tickers); Tr. 2874:8–13 (Ruggieri) ("Q. In other words, people were buying Covance on June 11th, before the conference, in order to cover their short positions? A. Correct.").)

458. On June 11, 2010 at 12:33 p.m., Ruggieri sent a client an instant message about CVD and other stocks: "CROs acting better this week—CVD big support near $50- some concerned they may cut guidance or clarify/raise FX impact at goldman next week.- think stock gets hit near 50 again we see buyers step." In this and instant messages around the same time, Ruggieri provided positive or negative data points about other stocks: CELG, GILD, DNDN, ALTH, HGSI, ALXN, CRL, PPDI, MDT, STJ, CVS, WAG, WHE, and MCK. (JR 74 (June 11, 2010 instant messages between Ruggieri and Tom Keyes about various stocks); Tr. 2875:2–11 (Ruggieri) ("Q. And she covered Zweig? A. Correct. Q. And that was a client; correct? A. Yes. Q. And Tom Keyes was a portfolio manager at Zweig? A. Correct.").)

459. Ruggieri meant that, if Covance cut guidance or raised their foreign exchange impact at the Goldman event the following week, that would be negative news that would cause Covance's stock price to fall. (Tr. 2875:24–2977:19 (Ruggieri) ("Q. So just to be clear, the risk there, if CVD cut guidance, right, or raised their foreign exchange impact, those were bad things; right? A. Correct. Q. In other words, CVD's stock price would fall if those things happened? A. Yes. I mean -- yes, theoretically, I think. It depends on the situation, that this is a crowded short, so sometimes you get negative news and the stock trades up because everybody shorts the stock and they're expecting it to happen, and expecting the stock to come down….").)

460. On June 11, 2010, Ruggieri held an overnight position in neither Covance nor any other stock he discussed in these instant messages. (JR 74 (June 11, 2010 instant messages between Ruggieri and Tom Keyes about various stocks); Tr. 2877:21–2881:12 (Ruggieri) (admitting he did not hold an overnight position in any of the stocks listed in his instant messages); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR 200 (list of overnight positions).)

461. On 22 out of the 31 trading days from April 29 through June 11, 2010, Covance traded at an intraday low below $54 per share. (JR 81 (Covance price data).)

462. Over the 31 trading days from April 29 through June 11, 2010, Ruggieri held only a single overnight position in Covance: a long position of 76 shares that Ruggieri held on just one night, May 3, 2010. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR 200 (Wells Fargo list of overnight positions); DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change).)

463. On June 14, 2010, Bristol-Meyers announced a strategic clinical development agreement with Parexel and another issuer, ICON, traded under the ticker ICLR (JR 78 (Bristol-Myers press release); Tr. 2882:20–24 (Ruggieri) ("Q. And this e-mail here says -- it talks about ICON; right? A. Yes. Q. Is that a ticker? A. Yes, it is. ICLR.").)

464. This was good news for Parexel. (Tr. 2883:5–24 (Ruggieri) ("Q. So just so we're clear, sir, this was good news, as you understood it, for Parexel and PPDI; right? A. Not PPDI. It was good news for PRXL. Bad news for PPDI.").)

465. Ruggieri did not believe this Bristol-Meyers announcement was relevant to Covance. (Tr. 2628:25–2629:2 (Ruggieri) ("Q. Did you view this as being potentially important for CVD? A. Not necessarily, no. It wasn't really relevant particularly to CVD.").)

466. On June 14, 2010, a client forwarded Ruggieri an email about ICON, Parexel and Bristol-Myers, but the email said nothing about Covance. (JR REB 17 (June 14, 2010 emails between Ruggieri and client).)

467. On June 14, 2010, Ruggieri held only three overnight positions: (1) a short overnight position of 7,300 shares in Parexel, (2) a short overnight position of 8,000 shares in PPDI, and (3) a long 40,000-share position in Covance. (Tr. 2887:14–2888:13 (Ruggieri) ("Q. Sir, those were the

three overnight positions you held on June 14, 2010; is that right? A. That's right. Q. Were these all three CROs? A. They were. Q. And we talked about Parexel, right, you held a short position of 7,300 shares of Parexel overnight in Parexel; correct? A. Correct. Q. And you held a short position of 8,000 shares of PPDI? A. Yes. Q. And you held a long position of 40,000 shares in CVD that night; correct? A. Correct. Q. So not only was it the CVD position in a different direction, right? A. Yes. Q. But it was also, in terms of the number of shares, more than four times as large as either your PRXL or your PPDI position that night; correct? A. That's correct."); DIV REB 132 (summary table of overnight positions and their profits or losses).)

468. On June 15, 2010, at 7:26 a.m., Ruggieri forwarded Bolan's upgrade of Covance to dozens of Wells Fargo employees, including Brown. (JR REB 98 (June 15, 2010 email from Ruggieri to multiple clients and coworkers about Bolan's upgrade of Covance); Tr. 2975:3–12 (Ruggieri) ("Q. Now, once again, sir, you knew that once Mr. Bolan's upgrade was published it was public; right? A. Correct. Q. And you knew Mr. Brown could see that upgrade too; correct? A. Yes. Q. And in fact you sent Mr. Brown the upgrade; correct? A. Yes.").)

469. After Wells Fargo issued Bolan's upgrade, Ruggieri did not tell Brown about his Covance overnight position or his profit on that position. (Tr. 2976:9–13 (Ruggieri) ("Q. Now, you didn't tell Mr. Brown on or around June 15th that you had an overnight position in Covance just before the upgrade, did you? A. I don't remember if I did or not."); Tr. 1092:21–19 (Brown) ("Q. And now, the morning after that [Covance] upgrade, did Mr. Ruggieri ever come to you and say, you know, I just got to tell you, I have a long position into the upgrade and it was just a coincidence? A. Not that I recall, no. Q. Did he ever flag the trade for you. A. No.").).

470. During his investigative testimony, Ruggieri was asked whether he took his overnight position in Covance in anticipation of Bolan's upgrade. Ruggieri did not deny that he did and merely claimed that he did not recall. (Tr. 2192:12–2193:6 (Ruggieri) ("Q. Once again, Mr. Ruggieri, were

you asked the following questions, did you give the following answers, starting on line 9: 'Question: Did you make this 40,000-share trade in Covance in anticipation of any research that was going to be issued by Mr. Bolan? Answer: I don't -- I don't remember the particular circumstances of this trade. I'm sorry. I didn't mean to apologize again, but -- Question: You can't remember one way or other? Answer: I can't remember exactly.' Were you asked those questions, and did you give that answer, sir? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.").)

C. Albany

471. On June 23, 2010, Bolan published a squawk stating that Albany had announced a $10 million stock buyback. (DIV 133 at 5 (list of Bolan's published research at Wells Fargo) (listing research issued on June 23, 2010: "AMRI: Quick Takes from the Healthcare Conference"); JR 87 (June 23, 2010 email from Hebert to Bolan with text of squawk with same title)).)

472. Albany's number of outstanding shares (its "float") and the fact that its stock was thinly-traded was public information. (Tr. 2788:10–2789:24 (Ruggieri) ("Q. And the market knows the float of the company, knows how many outstanding shares the company has; right? A. Correct. Q. So if it's a thinly traded company, the market knows it's a thinly traded company; right? A. Correct…. Q. [AMRI] was a thinly-traded company, too, right? A. Correct. Q. But the market knew that? A. Correct.").)

473. Albany's buyback announcement was quickly priced into Albany's stock price. (Tr. 2789:6–12 (Ruggieri) ("Q. Once the buyback is announced, you agreed with me earlier, that news gets disseminated quickly; right? A. Right. Q. And news gets factored into the stock price quickly; right? A. Right.").)

474. On June 24, 2010, Ruggieri learned that Albany had decided to use Wells Fargo's New York City trading desk to execute Albany's share repurchases. (JR 87 (June 24, 2010 email to Bolan that Bolan forwards to Ruggieri) (Peter Jerome at Albany writes: "Also, wanted to let you guys

know we will be using your trading desk in NYC to execute the repurchase program"); Tr. 2746:23–2747:19 (Ruggieri) ("I think what I meant by that was we were controlling the buyback, and that was my understanding, that the buyback was in the market, and I think that was the only time that we had the buyback.").)

475. As Ruggieri understood, Albany was Wells Fargo's client, and Wells Fargo acted as Albany's broker to execute Albany's repurchases of its own stock from the market. (Tr. 2783:8–2784:21 (Ruggieri) ("Q. For share buybacks, the client would be the company, right, the issuer? A. Yes, we controlled that. Q. So in other words, when a company wants to buy back its shares, it needs to find a firm who will take care of executing those trades on its behalf? A. Right. Q. So any time there's a share buyback, the issuer will have a brokerage firm handle its buybacks; right? A. Yes.").)

476. Ruggieri did not interact directly with Albany. Instead, Wells Fargo's buyback desk communicated with Albany. (Tr. 2782:24–2784:21 (Ruggieri) ("Q. Mr. Ruggieri, what did this share buyback desk do at Wells Fargo while you were there? A. The share buyback desk? They helped execute buybacks, and I think it was called the special equities desk and some other special situations, they would manage those from their desk.... Q. So when Wells Fargo had an issuer client that wanted to buyback shares, it's the buyback desk at Wells Fargo that would handle the client; is that right? A. They would manage the situation and let us know if we found a seller, or we could sell stock to them at any point, then we could let them know, or if they were going to be in the marketplace, they would let us know. So if we could cross stock or trade stock with them in the buyback, we could accommodate them."); Tr. 2786:21–25 (Ruggieri) ("Q. So you didn't have any direct interaction with the issuer, I take it? A. Correct. Q. You just talked to the buyback desk? A. Right.").)

477. On June 25, 2010, Ruggieri emailed the Wells Fargo buyback desk to "[k]eep an eye out for AMRI." (JR 89 (June 25, 2010 email from Ruggieri to Jennifer Lynch in Special Equities seeking information on AMRI buyback); Tr. 2801:13–23 (Ruggieri) ("Now, the very top of this document, sir, it's your e-mail to Jennifer Lynch. Do you see that? A. I do. Q. And it says [there] special equities.' What's that? A. That's the buyback desk. Q. So you are talking to Wells Fargo's buyback desk; is that right? A. Correct.").)

478. Although the issuer's plan to buy back stock was public, Ruggieri knew that, when the issuer told its broker-dealer to actually begin placing orders to repurchase a certain number of shares in the marketplace, that information was non-public. (Tr. 2790:13–2793:20 (Ruggieri) ("Q. So my question, sir, is: What informational advantage did that give you? Why trade in that particular situation as opposed to other situations where Wells Fargo didn't control the buyback? A. Well, I think any situation where you have buyers and sellers, there's a bit of information that you have that the rest of the market doesn't. If -- in PRXL, for example, if I have ten sellers and two buyers, I might be marketing the sellers to the Street, as I was with this AMRI situation. Just because I'm telling the Street we're a buyer over the day, that doesn't mean the whole world and market is going to know that. But that's how every buyback on any brokerage desk is run. When they are in the market buying the stock, we usually market that we're a buyer over the day, but that's why the announcement, the market knows they're going to be buying stock over a period of time, and the company isn't going to put a press release out when they start actually buying the stock. That's something that the broker controls[.]...Q. Okay. So let me just make sure I understand. In other words, you know, because Wells Fargo is controlling the buyback, that orders are coming; right? A. Right. Q. I think you just explained, the buyback desk comes to you is and says: Look out for us, right, we have an issuer who is going to be buying back X amount over X period of time, so if

there's liquidity, let us know; right? A. Right. Q. So you have that information; right? A. Right. Q. The market doesn't have that information; right? A. That's how buybacks are run, yes.").)

479. From June 23 through July 1, 2010, Ruggieri did not hold an overnight position in Albany. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR 200 (Wells Fargo list of overnight positions); DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change).)

480. Wells Fargo's compliance policies strictly prohibited trading ahead of customer orders, including an issuer client's buyback orders. (DIV 6 at 12 (Team Member Conduct Policy) ("'Front-running' involves the practice of knowingly trading ahead of customer interest to buy or sell a security or related instrument, and has traditionally been described in two contexts: front-running block orders of a security or related instrument (generally, in anticipation of expected price movements), and front-running research. In either context, frontrunning violates exchange rules, FINRA just and equitable principles of trade, and WFS/WFIS's policies. Further, frontrunning is considered to be one of the most egregious offenses because it violates our customers' trust and confidence in placing orders with us. Accordingly, team members may not trade ahead of any customer order or research - personally or in a proprietary trading manner.... Front-running Customer Orders: General Prohibition: A WFS/WFIS team member may not execute a transaction for his or her personal account or for a WFS/WFIS Firm account when he or she has knowledge of the imminent execution of a customer's block transaction in that security or related instrument. Moreover, trading ahead of any customer order is prohibited, whether a block or smaller order, and whether the anticipated transaction is for a WFS/WFIS customer or the customer of another firm. These prohibitions apply even if the WFS/WFIS team member trades based on knowledge of less than all of the terms of the customer transaction, as long as there is knowledge that all the material

terms of the transaction have been or will be agreed upon imminently. Consistent with this policy, WFS/WFIS team members may not make any disclosure or recommendation related to nonpublic trading activity, trading intentions, or pending or contemplated customer orders with anyone, unless there is a legitimate need, the customer has expressly authorized the disclosure, and the team member's Supervisory Principal and Compliance have approved the disclosure."); Tr. 705:6–16 (Yi) ("Front running can take different forms, but so trading ahead of information or training ahead of client orders would be defined as front running."); Tr. 3360:25–3361:7 (Short) ("Q. When you said earlier that clients' orders could not be front-run, did that include also orders associated with the buyback desk? … A. Yes. I would say that would mean on a true front-run basis, yes.").)

481. On July 2, 2010, at 9:42 a.m., Ruggieri began amassing his long overnight position in Albany. (DIV 194-A at 4 (summary chart of key phone calls and positions); DIV 12 at 7 (trade record excerpts); Tr. 2806:7–2807:3 (Ruggieri) ("Q. And you'll see your first purchase of 1,200 shares was at 9:42 in the morning? A. Yes. Q. So at 9:42 in the morning, you started buying shares of AMRI that day; is that right? A. Yes.").)

482. On July 2, 2010, beginning at 1:21 p.m. and continuing through 4:26 p.m., Ruggieri listed trading flows for approximately eighteen securities — specifically, JNJ, CVS, KNDL, Albany, PFE, HMA, ABT, GENZ, AGN, LPNT, LNCR, GILD, WCRX, BMY, BSX, CELG, HNT, and STJ — in instant messages. (JR 91 (July 2, 2010 instant messages from Ruggieri discussing Albany and other securities).)

483. On July 2, 2010, Ruggieri did not hold an overnight position in any of these securities, except Albany. (JR 91(July 2, 2010 instant message from Ruggieri discussing Albany and other securities); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or

more); JR 200 (Wells Fargo list of overnight positions); DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change).)

484. Nor did Ruggieri's instant messages mention any buyback with respect to Albany. (JR 91 (July 2, 2010 instant messages from Ruggieri discussing Albany and other securities); Tr. 2807:4–18 (Ruggieri) ("Q. If we could just go back to JR 91, please.... Q. You said earlier that these documents refreshed your recollection; right? A. Yes. Q. Is there anything in here about a share buyback? A. No.").)

485. On July 6, 2010, at 6:53 a.m., Ruggieri forwarded Bolan's upgrade of Albany to dozens of Wells Fargo employees, including Brown. (JR REB 96 (Apr. 7, 2010 email from Ruggieri to a list of over two pages of recipients).

486. After Wells Fargo issued Bolan's upgrade of Albany, Ruggieri did not tell Brown about his Albany overnight position or his profit on that position. (Tr. 2979:13–22 (Ruggieri) ("Q. And now, on or around July 6, 2010, you didn't tell Mr. Brown that you had an overnight position just before Mr. Bolan's [Albany] upgrade, did you, sir? A. I don't remember if we talked about any of these positions. The only one that I recall from the documents was athena, when you asked me about that particular position. But I don't remember if we talked about the P&L or positions on any of these."); Tr. 1098:13–1099:14 (Brown) (Q. And now that morning after the [Albany] upgrade, did Mr. Ruggieri come to you and tell you that, you know, coincidentally he had a long position in the same stock going into the upgrade? A. No, not that I can recall. Q. He didn't flag that issue for you at all? A. No. Q. Did he explain to you anything about why he held that position? A. No.").)

487. Albany's buyback ended on or around August 13, 2010. (JR REB 77 (Aug. 13, 2010 instant messages between Ruggieri and Bolan) (Ruggieri writes: "I guess amri not buying stock anymore?"; Bolan writes: "stock is just collapsing"); Tr. 2542:2–2543:1 (Ruggieri) ("Q. What happened when AMRI stopped buying the stock back? A. I think the stock collapsed or went lower

or something. Q. And this was something you paid attention to? A. Yes, definitely. MR. RYAN: If we can pull up JR Rebuttal [77] and go to page 2 of that document. Q. This is dated August 13th, so we talked about the buyback and how long it would take to buy back 10 million shares. I think it's about a month that it would take, or more? A. Yes, something like that, yes, at least."); Tr. 2814:23–2815:17 (Ruggieri) ("Q. Now, Mr. Ryan asked you some questions about AMRI not buying back stock anymore. Do you remember that? A. Right. Q. That was August 13th, 2010? A. Right.").)

488. Ruggieri did not hold an overnight position in Albany on any of the 23 trading days from July 12, 2010 through August 13, 2010. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR 200; Tr. 2815:7–17 (Ruggieri) ("Q. Now, between the dates we just looked at, July 12, 2010, and August 13, 2010, when you learned, in your words, that AMRI wasn't buying back any stock anymore, did you hold any overnight position in AMRI during that time, sir? A. I don't think I did. Q. In fact, for the remainder of your time at Wells Fargo, did you ever hold an overnight position in AMRI again? A. I don't think so.").)

489. During Ruggieri's tenure at Wells Fargo, at least 43 of the 277 companies whose stock Ruggieri traded announced share buybacks. (DIV REB 68 through DIV REB 129 (buyback announcements); DIV 225 (list of 277 tickers Ruggieri traded at Wells Fargo).)

490. A share buyback announcement was the type of good news that Ruggieri paid attention to while at Wells Fargo. (Tr. 2749:12–15 (Ruggieri) ("Q. Is a share buyback the sort of good news you paid attention to while you were at Wells Fargo with respect to other companies? A. Sure.").)

491. Although share prices often rise after a share buyback, sometimes prices fall after a share buyback. (Tr. 1085:7–18 (Brown) ("Q. Now, Mr. Ryan asked you some questions about share buybacks. And he asked you are share buybacks likely to raise prices of a stock. And I think you said

they are likely to, right? A. Yes. Q. Is it certain to? A. No, it is not certain. Q. Sometimes actually prices go down after a share buyback, right? A. They certainly can.").)

492. During his tenure at Wells Fargo, Ruggieri never held an overnight position during any of the three trading days after a company announced a share buyback. (DIV REB 68 through DIV REB 129 (buyback announcements); DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight positions with a profit of $200 or more); JR 200 (list of overnight positions); Tr. 2780:16–22 (Ruggieri) ("Q. In the day or two or three after each of those share buyback announcements, did you hold an overnight position in any of those stocks? A. No. I don't think I had an overnight position in the day or two or three after AMRI's announcement either.").)

493. During his investigative testimony, Ruggieri was specifically asked whether he took his overnight position before Bolan's Albany upgrade in anticipation of the upgrade, and Ruggieri testified that he did not remember. (Tr. 2222:12–2224:12 (Ruggieri) ("Q. And, sir, I'll ask again, were you asked the following questions and did you give the following answers: 'Question: The summary reflects that you took a long position in AMRI, 35,050 shares. Do you see that? A. I do. Q. Answer: I do. Question: This position was taken the trading day before Bolan upgraded the stock? Answer: Right. Question: Why did you make this purchase? Answer: Again, I don't recall the particular circumstances of that situation and what investment factors were involved, or what trades we had in the stock that day, or the days prior, or that would have, you know, possibly contributed to that. I don't recall. Question: Did you make this trade in anticipation of Bolan's upgrade of AMRI? Answer: Not that I remember. Question: Do you remember one way or the other? Answer: I don't.' Sir, were you asked those questions, did you give those answers? Mr. Ryan: For purposes of completeness, can we just read the next question and answer, please? The Court: I won't require it. You're welcome to do it on cross. Ms. Krishmanurthy [sic]: I'm happy to read it, your Honor. The

Court: Go Ahead. By Ms. Krishmanurthy [*sic*]: Q. 'Question: Did the fact that Bolan was about to issue an upgrade of AMRI factor into your investment decision? Answer: No. I mean, I -- again, I may have spoken to him and -- and other people. It was part of the process. But I don't remember particulars of the circumstances. But in no way did he tell me he was upgrading or downgrading the stock or did he infer that he was doing that.' Now, once again, all that testimony that I just read, Mr. Ruggieri, was that truthful testimony? A. It was.").)

D. Emdeon

494. On August 6, 2010, the brokerage firm Piper Jaffray issued a research report about Emdeon's earnings announcement. (JR 100 (Piper Jaffray research report on Emdeon).)

495. Piper Jaffray's report had a neutral or hold rating for Emdeon. (JR 100 (Piper Jaffray research report on Emdeon).)

496. Ruggieri did not hold an overnight position in Emdeon from August 6through August 12, 2010. (DIV REB 132 (summary table of overnight positions and their profits or losses); JR 200 (list of overnight positions).)

497. Friday, August 13, 2010 was "a very, very slow time of the year" in terms of Ruggieri's trading activity. (Tr. 2666:13–15 (Ruggieri); Tr. 2891:23–2892:12 (Ruggieri) ("Q. You testified that April 13, 2010, was a slow day; right? A. Correct. Q. Was it a Friday? A. Yes. Q. In August; right? A. Yes. Q. Lots of people on vacation? A. Correct. Q. Not much happening; right? A. Correct. Q. And you said you traded less than 1 million shares that day? A. Correct. Q. And that's both for clients and in a principal capacity; right? A. Yes.").)

498. Brown had encouraged Ruggieri to take principal positions on slow days. (Tr. 2892:16–19 (Ruggieri) ("Q. Now, you also testified that Mr. Brown encouraged you to take principal positions when it was a slow day; right? A. Right.").)

499. Of the 277 stocks Ruggieri traded, he held only one overnight position on August 13, 2010: a 10-,000-share long position in Emdeon. (DIV REB 132 (summary table of overnight positions and their profits or losses); JR 200 (list of overnight positions); DIV 225 (list of 277 stocks Ruggieri traded); Tr. 2893:9–2894:3 (Ruggieri) ("Q. On April 13, 2010, how many stocks did you hold an overnight position in?...On August 13, 2010. Sorry. A. I think maybe one. I'm not 100 percent sure if that was the only one. Q. If we could go to DIV REB 66-B, please. And if we could go to August 13, 2010. A. Yes. Q. Do you see there, sir, the only stock you held [a]n overnight position that night was Emdeon? A. Yes.").)

500. On August 16, 2010, at 8:05 a.m., Ruggieri forwarded Bolan's upgrade of Emdeon to Brown and Mackle. (JR REB 99 (August 16, 2010 email from Ruggieri to Brown and Mackle containing Bolan's upgrade of Emdeon).)

501. After Wells Fargo issued Bolan's upgrade of Emdeon, Ruggieri did not tell Brown about his Emdeon overnight position or his profit on the position. (Tr. 2984:22–2985:8 (Ruggieri) ("Q. Sir, you didn't tell Mr. Brown on or around August 16, 2010 that you held an overnight long position just before Mr. Bolan's upgrade of Emdeon, did you, sir? A. I don't know if I did or if I didn't. Q. You didn't flag it for him, did you, sir? A. I don't remember if I did or not. Q. You didn't tell him it was just a coincidence, did you, sir? A. I don't know."); Tr. 1099:22–1100:19 (Brown) (Q. And now, did Mr. Ruggieri come to you that next morning and tell you, I have this long position going into an upgrade [of Emdeon], but, gee, it was just a coincidence? A. No, not that I can recall. Q. Did he ever flag that trade for you? A. No. Q. Did he ever explain anything about why he had that position?
A. No.").)

502. During his investigative testimony, Ruggieri was asked whether Bolan's upgrade of Emdeon was part of his investment thesis to purchase Emdeon before the upgrade. Ruggieri did not

deny that it was and merely claimed that he did not remember. (Tr. 2238:18–2240:7 (Ruggieri) ("And, sir, was part of your investment thesis as to why Emdeon was a good buy because you thought Mr. Bolan may be about to upgrade the stock? A. No. Absolutely not .... Q. Once again, Mr. Ruggieri, I'll ask you at the end, were you asked the following questions, did you give the following answers: 'Question: Why did you make this trade in Emdeon? Answer: I don't recall why, how or -- I don't remember. Question: Sitting here today, do you know whether or not part of your investment thesis as to why Emdeon was a good buy was because you thought Mr. Bolan may be about to upgrade Emdeon? Answer: I can't -- I don't want to speculate. I can't remember this particular situation. Question: You can't remember one way or the other? Answer: I cannot. Question: Did the fact that you made this transaction have any relation to the fact that Bolan was about to upgrade Emdeon? Answer: I don't recall the situation in particular. Sir, were you asked those questions, did you give those answers? A. I did. Q. Was that truthful testimony when you gave it, sir? A. Yes.").)

E. Athena

503. On January 7, 2011, Bolan issued a squawk stating that he had "limited visibility on short-term net new physician additions" for Athena and discussing four other securities. (JR 120 (Jan. 7, 2011 squawk).)

504. On January 11, 2011, Bolan emailed Ruggieri and listed Athena as the "most crowded short" and another security as the "most crowded long." (JR REB 2 (January 11, 2011 email from Bolan to Ruggieri listing crowded shorts and longs); Tr. 2908:9–12 (Ruggieri) ("Q. And [Bolan] says: 'ATHN equals 1.' Right? A. Yes. Q. Meaning that's the most crowded short; correct? A. Correct. Q. And then CRL, that's the most crowded long? A. Right.").)

505. On January 14, 2011, Piper Jaffray published a research report on Athena entitled "Improvements to Enterprise Strategy Bodes [sic] Well for 2011 Growth." (JR 123 (Piper Jaffray research report on Athena).)

506. In Ruggieri's view, the Piper Jaffray report was an "incremental positive" piece of data. (Tr. 2557:21–2558:8 (Ruggieri) ("Q. On its own, is this Piper Jaffray research note a huge deal? A. No. But it's an incremental positive, especially when the marketplace is negative. I think that a lot of sell side had negative ratings, too. But this may have been after the JPMorgan conference, or they may met with them at the JPMorgan conference, so... It's consistent with the feedback from -- that we were getting from the JPMorgan conference as well with respect to the management's comments.").)

507. On January 18, 2011, Ruggieri told Mackle in instant messages: "ATHN mgmt sounds bulled up, have bunch of enterprise physician practice deals in pipeline. . . 52 vs 2 last year… Bolan getting bullish…don't think run over…would not be short." (DIV 120 (January 18, 2011 IM exchange between Ruggieri, Mackle, and Brown).)

508. On February 4, 2011, before the market opened, Athena announced the addition of a new physician practice. (JR 130 (article referencing Athena announcement).)

509. That morning, when the market opened, Athena's stock price was up .07%, compared to the previous day's closing price. (JR 134 (Athena price data).)

510. On February 4, 2011, Wickwire granted Bolan's "request to change [his] rating on ATHN." (DIV 32 (Feb. 4, 2011 email exchange between Wickwire and Bolan about Athena upgrade).)

511. Over the twenty trading days from January 7 through February 4, 2011, Ruggieri did not hold a single overnight position in Athena. (DIV REB 132 (summary chart of profits and losses of overnight positions from JR REB 66 corrected against trade data plus all other overnight

positions with a profit of $200 or more); JR 200 (list of overnight positions); DIV 150 (Ruggieri's corrected end-of-day positions for the six months preceding each Ratings Change.).)

512. On February 8, 2011, at 6:15 a.m., Ruggieri forwarded Bolan's upgrade of Athena to Brown and Mackle. (JR REB 3 (February 8, 2011 email from Ruggieri to Brown and Mackle containing Athena upgrade); Tr. 2986:24–2987:2 (Ruggieri) ("Q. You sent Mr. Brown information about Mr. Bolan's upgrade of athena? A. Yes.").)

513. Over three hours later, after noticing that Wells Fargo had published a ratings change on Athena, Brown asked Ruggieri: "what is ATHN p?" (JR 139 (Feb. 8, 2011 instant messages between Brown and Ruggieri); Tr. 957:6–10 (Brown) ("Q. Mr. Brown, if you take a look at the very top there, it says from KidMBrown@AIM. Does that -- do you recognize that? A. Yes. That's my AOL IM. That's my IM name, KidMBrown."); Tr. 960:4–9 (Brown) ("Q. Any particular reason you were asking about that security on that day? A. Yes. I think that was the security that I noticed afterwards that we had published research either the night before or that day.").

514. Ruggieri replied: "position...bruce and i both long." (JR 139 (Feb. 8, 2011 instant messages between Brown and Ruggieri).)

515. Happy that Ruggieri had made a profit, Brown answered: "nice...what I wanted to hear." (JR 139 (Feb. 8, 2011 instant messages between Brown and Ruggieri); Tr. 1118:12–21 (Brown) ("Given your experience as a trader and as Joe's boss, do you think that you were seeing that Joe had a P&L gain and were happy about it? A. Yes.").)

516. Ruggieri did not tell Brown that he had had an overnight position in Athena the night before Bolan's upgrade or how much profit he made on the position. (JR REB 3 (Feb. 8, 2011 email from Ruggieri to Mackle about Bolan's upgrade of Athena); JR 139 (Feb. 8, 2011 IM exchange between Brown and Ruggieri concerning Athena position); Tr. 2988:22–2989:18 (Ruggieri) ("Q. And now, you didn't explain to him why you had a long position before the [Athena] upgrade, did you,

sir? A. Not in this IM, no."); Tr. 1100:25–1102:3 (Brown) ("Q. Now, did Mr. Ruggieri come to you that morning or that day, flag the trade for you, and say, you know, Mr. Brown, I have this long position, Bolan published an upgrade [of Athena], it is just a coincidence? A. No, not that I recall. Q. Did he ever explain to you this position? A No. Q. Did he know that you could see this position among all of his others? A. Yes.").)

517. If Brown had known that Ruggieri had held an overnight position in the same stock and in the right direction the night before even one of Bolan's ratings changes, Brown would have been concerned. (Tr. 1052:5–12 (Brown) ("Q. Would it cause you concern to learn that a trader had a position in front of an analyst report when he worked with that analyst? A. That would cause me concern, yes. Q. Because you would want to know did you have a reason or did you get previewed, right? A. Yes."); Tr. 1089:10–25 (Brown) ("Q. Is that -- now, Mr. Ryan also asked you, would it cause you concern if you saw a trader with a position in the right direction before a ratings change. And I think you said -- I'm summarizing, I don't have a transcript, so if you disagree with me, tell me. A. I will. That would cause me concern. Q. Okay. Would it cause you concern if you only saw it one time? A. Yes. Q. And I think you said if you saw it, you would question the trader about it, right? A. That's correct.").)

518. During his investigative testimony, Ruggieri was asked whether Bolan's upgrade of Athena was part of his investment thesis to purchase Athena before the upgrade. Ruggieri did not deny it and simply claimed that he did not remember. (Tr. 2284:6–2285:16 (Ruggieri) ("Q. Now, sir, as you sit here today, do you remember whether part of your investment thesis in athena, the February 7th position that we talked about, was because Mr. Bolan was about to upgrade athena? A. No. It was not the reason. Q. Your testimony today is that was not the reason you held the position? A. That's correct. Q. Once again, I'm going to ask you were you asked the following questions, did you give the following answers: 'Question: Were you -- was it part of your investment thesis that

athena may go up because Mr. Bolan was about to upgrade athena? Answer: I don't remember the situation in particular. Question: So you don't recall one way or the other? Answer: I do not.' Do you see that, sir? A. I do. Can you just scroll up one second to these questions about athena as well? I just wanted to see -- Q. Sir, were you asked those questions and did you give those answers? A. Yes, I did.").)

F. Bruker

519. On March 14, 2011, UBS Securities published an analyst report on Pittcon, a medical instrument tradeshow. (JR 145 (UBS research report on Pittcon trade show).)

520. The report mentioned the tickers A, BRKR, DNEX, TMO, and WAT, and stated: "Companies rolled out many interesting new products, but at first glance there appear to be no 'killer' launches." (JR 145 at 1 (UBS research report on Pittcon trade show).)

521. On March 16, 2011, J.P. Morgan Securities published an analyst report, entitled "Pittcon 2011: Lukewarm in Hotlanta," on the same Pittcon conference and mentioned BRKR and seven other securities. (JR 147 (JP Morgan research report on Pittcon trade show).)

522. Ruggieri does not know whether he read the J.P. Morgan report, JR 147, at the time. (Tr. 2918:2–7 (Ruggieri) ("Q. But you testified that you don't know if you read this report at the time; right? A. No, I do not know for sure. Q. You said you would have picked up the sentiment? A. Correct.").)

523. *See* Joint Factual Stipulations ¶ 182 (stipulation stating that before March 23, 2011, Ruggieri never held an overnight position in Bruker).

524. On March 29, 2011, at 4:51 p.m., Ruggieri forwarded Bolan's initiation with outperform rating of Bruker to Brown. (JR REB 97 (March 29, 2011 email from Ruggieri to Brown containing Bolan's initation of Bruker and Waters Corp).)

525. After Wells Fargo issued Bolan's initiation with outperform rating of Bruker, Ruggieri did not tell Brown about his Bruker overnight position or his profit on that position. (JR REB 97 (March 29, 2011 email from Ruggieri to Brown containing Bolan's initation of Bruker and Waters Corp); Tr. 1102:6–1103:8 (Brown) ("Did Mr. Ruggieri come to you and say to you, look, you know, I have this long position going into this initiation of coverage with an outperform rating [of Bruker], just a coincidence? A. Not that I recall. Q. Did he flag that issue for you at all? A. No. Q. Did he ever explain this trade to you? A. No. Q. Now, he knew you could see that trade too on your screen, right? A. I could."); Tr. 2992:23—2993:14 (Ruggieri) ("Q. Now, sir, did you tell Mr. Brown on or around March 30, 2011, that you held an overnight position in Bruker the night before? A. I have no idea. Q. Did you tell him that you had an overnight position in Bruker, a long position, when Mr. Bolan published his initiation of coverage? A. I don't know. Q. Did you tell him about the great ideas you had on Bruker, sir? A. I don't know. Q. Did you tell him that it was a just a coincidence that you held those overnight positions, sir? A. I don't remember.").).

G. MedAssets

526. On January 4, 2011, after the market closed, MedAssets issued a press release announcing its promotion of its senior vice president of corporate development to chief financial officer and its assignment of its then-chief financial officer and president of revenue cycle technology to the full-time role of president of revenue cycle technology. (JR REB 53 (MedAssets press announcement); Tr. 2898:15–24 (Ruggieri) ("Q. So in other words, prior to becoming the CFO, Mr. Garner had been a senior vice president of corporate development; correct? A. Correct. Q. So is it fair to say this was a promotion announcements? A. The change in CFO, yes. Q. But a promotion for someone who was already at the company; right, sir? A. Right.").)

527. On January 5, 2011, when the stock market opened, MedAssets' stock price had risen to $19.79 per share from its closing price the day before of $19.61. (Tr. 2738:6–23 (Counsel for

Ruggieri) ("With respect to the MDAS trading volume, the January 4, 2011, the stock opened at $20.56; traded at a high of $20.77; a low of $19.01 -- MS. KRISHNAMURTHY: No, no. MR. RYAN: $19.10, sorry. And closed at $19.61. And the volume was 1,649,300 shares, and the adjusted close was 19.61. On the 5th, 2011, it opened at $19.79; traded at a high of $20.39; a low of $19.30; and closed at $19.60. And the volume on the 5th was 1,058,600 shares, and the adjusted close was $19.60. MS. KRISHNAMURTHY: We so stipulate, your Honor. THE COURT: Okay. I'll make that a finding.").)

528. At the time, Ruggieri saw the stock price go up $0.18 between the market close on January 4 and the market open on January 5, 2011. (Tr. 2903:13–19 (Ruggieri) ("Q. And so you saw the stock price go up $0.18 between the close on January 4th and the open on January 5th; right? A. Right.").)

XX. RUGGIERI PROVIDED POSITIVE FEEDBACK THAT BENEFITED BOLAN.

529. Research analyst bonuses at Wells Fargo are determined each year by how they rank on an analyst scorecard relative to their peers. (JR REB 106 (2009 and 2010 equity scorecard); Tr. 1412:15–1414:9 (Wickwire) ("So there is a cross-section of information that we pulled approximately together for this scorecard, and we rank the analysts based on their composite score, again, 1 through 63, and then the bonus pool is allocated based on those ranks. So as an analyst, you want to continue to drive your overall scorecard ranking as high as you can because that would mean a better bonus for you essentially."); Tr. 1530:1–20 (Wickwire) (We, through the fall, are given an updated bonus pool from the heavens, from Wells Fargo, and once I have -- I, myself, and Sam have that pool, we basically have to allocate it across this group. And you start with number 1 and you say number 1 made X last year, he had an even better this year. We know the market rate for X analyst is this. We put his number in, and you go on down the line. And it's better to be at the top of the scorecard than the bottom. So that's essentially how this dictates compensation.").)

530. Those analysts who have a higher overall ranking on this scorecard receive a higher bonus. (JR REB 106 (2009 and 2010 equity scorecard); Tr. 1412:15–1414:9 (Wickwire) ("So as an analyst, you want to continue to drive your overall scorecard ranking as high as you can because that would mean a better bonus for you essentially.").)

531. There are several components to the analyst scorecard, including client votes, internal sales ranking, and trading impact. (JR REB 106 (2009 and 2010 equity scorecard).)

532. Trading impact was the feedback that Bolan's managers received from Wells Fargo traders. (Tr. 1518:6–13 (Wickwire) ("A. Trading impact is the feedback that we received from traders directly and anecdotally, and that basically indicates how well they're working with their trading, the dialogue, does trading feel like it's helping impact their business.").)

533. Wells Fargo research analysts received a ranking for each component and an overall ranking based on a weight that is assigned to each component. (JR REB 106 (2009 and 2010 equity scorecard); Tr. 1412:15–1414:9 (Wickwire) ("So you can see on page -- wherever the ranks were, page 5, Greg's sales rank at number 8 and impact rank at number 14, we produce an annual scorecard at the end of the year for all the analysts, and they're evaluated on where they rank with sales, what their impact rank is, how their stock picking has been – we use a service that says they're a good stock picker, bad stock picker. We also look at the volume of research they actually publish, and we actually then dissect that to say how much is reacting to news versus how much is proactive, and we obviously want them a lot more proactive. If an analyst writes 200 reports a year and 199 are reactive, that is a low score. We want them to actually be outproducing research. They're also given a score based on their tenure and their retention value, so right now, for example, the biotech market is exploding, and a biotech analyst, if reviewed today, would have a very high retention score because of the level of interest in that. So there is a cross-section of information that we pulled

approximately together for this scorecard, and we rank the analysts based on their composite score, again, 1 through 63, and then the bonus pool is allocated based on those ranks.".)

534. On October 22, 2009, Ruggieri received an email from Geoffrey Snyder, the head of Wells Fargo's institutional sales and a direct report to Bartlett, requesting feedback on analysts: "We would like for each of you to have the opportunity to comment on the analysts who you believe have been the most helpful during the 3Q .... We will accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management." (DIV 173 (Oct. 22, 2009 email exchange between Ruggieri and Snyder on analyst feedback); Tr. 1156:25–1157:10 ("Q. And who is Mr. Snyder? A. Geoffrey Snyder at the time was head of institutional sales and sales coverage trading. Q. Now, does he have any reporting relationship with respect to you? A. He did. Q. What was that? A. He was a direct report. Q. He reported to you? A. Yes."))

535. On October 22, 2009, Ruggieri replied to the email and wrote: "Greg Bolan[,] Vince Ricci[,] Aaron Reames [--] These guys have been the most proactive and helpful in the few weeks since I joined. Bolan's in a league of his own – great dialogue with clients and get it. Reames very smart, probably underappreciated on the street but solid – needs to be more visible and probably meet more clients – great asset. Vince Ricci has been solid, would love to see him pick up some names. James Omstrom has also been helpful lately with some of Tong's names." (DIV 173 (Oct. 22, 2009 email exchange between Ruggieri and Snyder on analyst feedback).)

536. On his 2009 analyst scorecard, Bolan was ranked 24th out of 28 Wells Fargo research analysts. (JR REB 106 at 1 (2009 and 2010 equity scorecard).)

537. On his 2009 analyst scorecard, in terms of feedback from Wells Fargo's trading desk, Bolan was ranked 3rd out of 28 Wells Fargo research analysts. (JR REB 106 at 1 (2009 and 2010 equity scorecard).)

538. On his year-end 2009 performance appraisal, Bolan received a rating of 3 out of 5 on his year-end 2009 performance appraisal, where 1 is the lowest rating and 5 is the highest rating. (DIV 223 at 1 (2009 performance appraisal for Bolan).) A rating of 3 indicates that a research analyst has met all and may have exceeded some key objectives. (*Id.*)

539. On April 15, 2010 and July 20, 2010, Ruggieri received emails from Snyder requesting feedback on analysts and both stating: "We would like for each of you to have the opportunity to comment on the analysts who you believe have been the most helpful .... We will accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management." (JR 63 (April 15, 2010 and April 16, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback); DIV 204 (July 20, 2010 and July 21, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback).)

540. On April 16, 2010, Ruggieri replied: "Bolan[,] Ricci[, and] Reames. These three have been most helpful with communication, making strides to keep us in the loop on dialogue with clients, stories, etc. Sorry not more detailed here, traveling back from Cali[fornia] but wanted to make sure you got something from me before close ...." (JR 63 (April 15, 2010 and April 16, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback). On July 21, 2010, Ruggieri replied: "Bolan is far and away the best. And Costa getting off the ground has been very helpful as well. I'd put Biegelsen 3rd but have to get on the same page with communication and think that is where our biggest opportunity is...." (DIV 204 (July 20, 2010 and July 21, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback).)

541. On his mid-year 2010 performance appraisal in July or August 2010, Bolan received a rating of 3 out of 5. (DIV 224 at 1 (2010 Bolan performance appraisal).)

542. On December 8, 2010, Ruggieri received another email from Snyder requesting feedback on analysts: "We would like for each of you to have the opportunity to comment on the

analysts who you believe have been the most helpful during the 3Q .... We will accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management." (DIV 205 (December 8, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback).)

543. On December 8, 2010, Ruggieri replied to the email and wrote: "Bolan-the best in our space. Proactive, great dialogue/traction with clients, communication with the desk is excellent and the business in his names are the example...." (DIV 205 (Dec. 8, 2010 email exchange between Snyder and Ruggieri concerning analyst feedback).)

544. When Mackle began working at Wells Fargo, he spoke with Bolan as frequently as he spoke with other health care analysts, but over time, he spoke with Bolan "much less" because of friction between them. (Tr. 3209:15–3210:5 (Mackle) ("We just had some friction, just didn't get along for whatever reason. I don't think there was an individual event that I can point to, but we just -- you know, he would tend to pass me off to his associate or just – so ....").)

545. Short would have ranked the analysts who covered the stocks that he traded higher than he ranked Bolan. (Tr. 3400:18–3401:16 (Short) ("And do you have any understanding in your mind back then if you ranked Mr. Bolan higher, in terms of your personal opinion, compared to those two individuals? A. I wouldn't have because he's not my analyst. I mean -- but, again, I don't recall in the sense of how we had to rank these guys, but I -- you know, I would have had a higher opinion on the guys I talked to more. That's not to say Greg Bolan wasn't a great analyst, or an analyst maybe that just was assigned to Joe was also great – it's just the ones I talked to were the ones that I had more of an opinion of.").)

546. In or around November 2010, Wickwire nominated Bolan for a promotion from vice president to director. (DIV 27 at 1–2 (Bolan's Director Nomination Form) ("2010 Mid-year Rating: 4 ... Mid-February 2011: Promotions communicated to team members"); Tr. 1393:21–

1395:2 (Wickwire) ("Yes. This was actually a 2010 nomination form, and I'm guilty of probably being lazy and grabbing the old 2009 form, but it is a 2010 form for promotion in 2011 …. Correct. This form would have been filled out -- the director nomination process occurs in November, so this form would have been filled out in November of 2010.").)

547. Research analysts were typically promoted to director after working at Wells Fargo for three years. (Tr. 1548:9–1549:6 (Wickwire) ("To get promoted to managing director, it would have to be a 4 or a 5. But a director promotion, much like a VP promotion, there's a lot of time and title, three years if you're doing your job and you're having some success, you can pretty much be assured you'll make it to director, as long as you're not a 2.").)

548. By late 2010, Bolan had only been at Wells Fargo for two years. (*See* Joint Factual Stipulations ¶ 1 (stipulating that Bolan started working at Wells Fargo in June 2008)).

549. Compared to other traders, Ruggieri had an atypical degree of direct access to Wickwire — who was above Ruggieri in Wells Fargo's hierarchy — because of Ruggieri's status at Wells Fargo. (Tr. 1493:12–18 (Wickwire) ("Q. And, again, did you think there was anything unusual about Mr. Ruggieri requesting to meet with you? A. No. I wouldn't say 'unusual.' It was not typical for traders to reach out to me to ask for individual time with me."); Tr. 1498:22–1501:8 (Wickwire) ("Q. What did you mean when you described Mr. Ruggieri as aggressive? A. I'm the co-head of research. I've got 60 analysts. I deal with the heads of investment banking. I'm talking to CEOs and CFOs every day about what they don't like about our research. I'm a busy guy, not to toot my own horn, and I don't often spend a lot of time with individual traders. If there's a message or communication that needs to get to me, it usually could go up through Matt Brown to Chris Bartlett, who was my counterpart, so I typically don't have time to spend a lot of time two levels down. I get to know the better players and the people that are important. And in my conversations with Matt [Brown] and Jeff [Snyder] and Chris [Bartlett], Joe [Ruggieri] was the guy that I needed to give some

airtime to, so I accommodated that."); Tr. 2457:22–2459:13 (Ruggieri) ("I mean, I met with Mr. Wickwire a handful of times, at least, for various reasons."); DIV 29 (Apr. 8, 2011 email from Ruggieri to Wickwire) ("Have you talked to Bolan today?").)

550. Wickwire thought Ruggieri was the best sector trader at Wells Fargo, and in late 2010 Ruggieri asked Wickwire to support his promotion to managing director, and Wickwire enthusiastically agreed. (JR REB 87 (Oct. 26, 2010 emails between Ruggieri and Wickwire) (Ruggieri: "Todd-would you mind if I used you as a reference for MD nomination form? Much appreciated and thanks for everything. Joe[.]" Wickwire: "Absolutely: MD promo for who?" Ruggieri: "Me[.] Thanks man[.]" Wickwire: "WHAT?? Dude, how is the best trader not a Sr. MD????? Done and done."); Tr. 1501:24–1503:14 (Wickwire) ("Q. Is it fair to say that you were enthusiastically going to support Mr. Ruggieri's nomination to managing director? A. Joe [Ruggieri] was the best sales trader, best sales sector trader, and there were managing directors in the sector trader areas that Joe ran circles around, so absolutely he was the best sector trader.").)

551. Wickwire considered Ruggieri's feedback on Wells Fargo's healthcare analysts to be more important than feedback from anyone else on the healthcare trading desk. (Tr. 1384:23–1385:20 (Wickwire) ("Q. And how about feedback from someone who is a director as compared to somebody who is just a vice president, were they given equal weight or were they also sort of weighted more? A. They weren't formally weighted, but we would look at that and qualitatively understand that a director's feedback was more important to us.... Q. And so feedback from traders who were considered high performers, were they given equal weight as feedback from traders who were not considered high performers? A. No, no.").)

552. Wickwire met with Ruggieri in person repeatedly and their primary topic of conversation was Ruggieri's positive feedback on Bolan. (Tr. 1493:19–1494:9 (Wickwire) ("Q. Sitting here today, do you have any reason to believe that every time you met with Mr. Ruggieri, the only

thing you were discussing was positive feedback about Mr. Bolan? A. It wouldn't have been the only thing, but I think it would have been a primary topic for us."); Tr. 2457:22–2459:13 (Ruggieri) ("Q. And Mr. Wickwire said that these meetings were about -- to some part, about you being there to praise Mr. Bolan. Do you remember that? A. Right. Q. Do you think that that was an accurate description of why you met with Mr. Wickwire? A. No. I mean, I met with Mr. Wickwire a handful of times, at least, for various reasons. But the general theme always was to build the healthcare franchise, to make it better, how can we make it better, what subsectors we didn't cover that we're looking to hire that would be helpful to us if we had an analyst in that subsector. And I did talk to him at least on one or two occasions about best practices, so something I thought that all analysts, not just healthcare, could benefit from.... Q. And so what was your purpose then in bringing out Mr. Bolan at these meetings with Mr. Wickwire? A. The purpose was, Mr. Bolan put this in practice and it was helping us drive more commission business in his stocks. I felt it was something that could be replicated to, not just analysts and healthcare, which we did and some started doing, I think, but also other sectors, because I felt it was something that the firm could do."); Tr. 2459:23–2460:2 (Ruggieri) (Q. So you saw Mr. Bolan as an example of a really strong analyst, that Mr. Wickwire can help build the rest of the franchise around? A. Yes.).)

553. In the context of being considered for a promotion, Bolan asked Ruggieri to provide feedback about Bolan's performance to Wickwire because Bolan thought it would improve his chances of being promoted. (DIV 110 at 65–66 (Bolan) ("Q. Did you ask Ruggieri to provide feedback to Mr. Wickwire about your performance in order to improve your chances of being promoted at Wells Fargo? A. I thought it would be helpful. Q. So did you ask Mr. Ruggieri to provide feedback to Mr. Wickwire in order to improve your chances of being promoted? A. Like I said, I thought it would be helpful.").)

554. Wells Fargo had a committee of senior executives who decided on all firm promotions to director or managing director. (Tr. 1168:8–1169:4 (Bartlett) ("Now, did you play any role in promotions from the vice-president level to that next director level? A. I did. Q. What was your role? A. As the leader of the division, I would weigh in on any and all promotions within the division. Q. When you say "the division", what do you mean by that? A. The equity division, equity sales and trading, the division that I oversaw. Q. Did you sit on any committee that participated in promotions? A. I did. I sat on the Wells Fargo Securities division promotion committee. Q. And what was the function of that committee? A. That committee was to review and vote on candidates for director and managing director on an annual basis.").)

555. The promotions committee met every year at the end of the year to decide all such firm promotions. (Tr. 1171:9–15 (Bartlett) ("Q. How often did that off-site meeting occur? A. Once a year. Q. Was it at any particular time of year? A. It was always toward the end of the fourth quarter, as we promoted in the beginning of the following year.").)

556. The committee had approximately 24 people, including Bartlett and Wickwire. (Tr. 1168:20–1170:8 (Bartlett) ("Q. You said there were 24 members; is that right? A. Yes. About 24 members, right."); Tr. 1396:11–1397:12 (Wickwire) ("Again, as we go through the promotion process, we're asked to provide references, independent references that will provide feedback to the Director Nomination Committee, which I sit on.").)

557. Of those 24 people, Bartlett and about five to seven other members of the committee reported directly to Shrewsberry and were the most senior members, and the remaining committee members, including Wickwire, were below Bartlett's level. (Tr. 1169:16–1170:17 (Bartlett) ("Q. And now were there any people on that committee who were your peers in terms of the hierarchy? A. Yes. Q. And who were those people? A. They would have been other members of John Shrewsberry's executive -- or his senior securities management team. Diane, the heads of

investment banking, the heads of other areas under John . . . . Q. And was there anybody on the committee who was below you in the hierarchy? A. Yes. Q. About how many people? A. I would say that 18-ish of the – or 15."); Tr. 1151:18–1152:2 (Bartlett) ("Q. Are you familiar with someone called Todd Wickwire? A. I am. Q. And who was he? A. He was co-director of research, reporting to Diane. Q. So he, I take it, was sort of a level below you in the hierarchy? A. Yes.").)

558. As part of the promotions process, the committee considered a nomination form for each candidate in order to obtain feedback from outside that candidate's "immediate area." (Tr. 1194:12–1195:7 (Bartlett) ("So part of the process for promotion was to get a cross section of opinions and feedback on a candidate. And we didn't want to have just feedback from a candidate's direct line of business.").)

559. The forms required references from four managing directors outside the candidate's line of supervision. (1194:12–1195:7 (Bartlett) ("Part of reaching the level of managing director, meaning you had to have an impact outside of just your immediate area. So this is consistent with every application. We would have gone to – the sponsor would go to four or five outside parties, senior people, and ask their opinion of this candidate.").)

560. Wickwire filled out Bolan's director nomination form in 2010 and wrote: "Greg [Bolan] is among the best analysts in the department in terms of his dialogue with trading. We consistently hear from trading that Greg [Bolan] provides great information flow to the desk and they are able to monetize his efforts. They often hold [him] out as the standard." (DIV 27 at 5 (Bolan's director nomination form); Tr. 1394:10–17 (Wickwire) ("Yes. This was actually a 2010 nomination form, and I'm guilty of probably being lazy and grabbing the old 2009 form, but it is a 2010 form for promotion in 2011.").)

561. Wickwire received this feedback from Bartlett and Snyder, who passed along feedback from Ruggieri. (Tr. 1400:23–1402:13 (Wickwire) ("Q. But in terms of getting feedback in

your decisionmaking to nominate Mr. Bolan as a director, did you consider feedback from the trading department? A. Yes. Q. And in terms of feedback from the trading department, whose feedback in particular did you rely on? A. Again, it would have been feedback that I was receiving from Mr. Bartlett and Mr. Snyder, the feedback they were providing for Mr. Ruggieri and his team. Q. Did you have an understanding that feedback came from -- that it included feedback from the senior trader in the healthcare department, Mr. Ruggieri? A. Yes."); Tr. 1389:3–16 (Wickwire) ("Q. And in terms of getting feedback from the trading department for analysts, were the feedback from the senior traders equal in weight to the feedback from the junior traders, or were they weighted greater? A. I would say the feedback was, for the most part, just from the senior traders, because a lot of that is communicated to me from the head of trading, head of sales and trading back then, and that's where I had a lot of my dialogue and input, on how various analysts were doing with trading, and that was a weekly meeting I would have with the head of sales and trading."); Tr. 1408:12–1409:16 (Wickwire) ("Q. And who was it coming from? A. Directly coming from Mr. Bartlett and Mr. Snyder to me. Q. But did they have daily interaction with Mr. Bolan? A. They did not. Q. So did you have an understanding of where they got the information? A. Yes. Q. And where did they get the information? A. That came from the healthcare trading desk. Q. And at the time, who was in the healthcare trading desk? A. Joe Ruggieri and Chip Short."); Tr. 1478:3–17 (Wickwire) ("Mr. Ruggieri was cc'd on this e-mail, as he was, I think, the -- the relationship that Mr. Bolan and Mr. Ruggieri had, in terms of the dialogue, was sort of the model, and my view -- and I recognize he was providing a lot of that feedback to Mr. Brown, Mr. Snyder and Mr. Bartlett.").)

562. Bolan's director nomination form listed four references at the managing director level, none of whom were traders at Wells Fargo. (DIV 27 at 1 (Bolan's director nomination form); Tr. 1396:11–1397:12 (Wickwire) ("Beau Volley is a managing director in the institutional equity sales department. Mike Micciche was head of product marketing, the individual with responsibility of

disseminating all of our research out to both sales and clients on a daily basis. Gary Leiberman is a managing director in the healthcare research department. He covers hospitals and other healthcare facilities. And Peter Costa is also a managing director in the equity research department, and he covers managed care companies, HMOs.").)

563. To be promoted, a candidate required two-thirds of the committee to vote in favor of promotion. (Tr. 1170:21–1171:6 (Bartlett) ("Q. How did the committee decide who to promote? A. We had a day-and-a-half off-site where people presented each candidate pretty deliberately, and then we would have a vote, and that vote required a two-thirds majority to promote. Q. And, in other words, two-thirds of the members of the committee? A. Had to vote in favor of the candidate to get through, yes.".)

564. Feedback from Wells Fargo's trading desk was taken into account in analyst promotions and was an important factor in analysts' careers. (Tr. 1199:7–1200:4 (Bartlett) ("Q. In the scheme of things, how important was it that the traders valued the analyst that covered their space? A. It was important .... Q. Because he was -- just to be clear, because he was helping the traders generate revenue in part? A. Helping the traders generate revenue was a byproduct of him doing a good research job that was valued by the buy side."); Tr. 1555:10–22 (Wickwire) ("Q. You also described under oath that, 'The feedback from the trading desk was a piece of the determination.' That's how you referred to it; isn't that right? A. A piece of determination for promotion? Q. Yes. A. Yes. Q. But you explained that the sales rank and the impact rank are much more important. A. By their weighting on the scorecard, yes, I think that's obvious."); Tr. 1506:3–6 (Wickwire) ("Q. The scorecard, would that have been taken into account with respect to Mr. Bolan's promotion to director? A. Yes.").)

565. On March 16, 2011, Wells Fargo announced Bolan's promotion to director. (DIV 28 (March 16, 2011 email exchange including email from Schumaker to Wells Fargo research department announcing Bolan's promotion to director).)

566. Bolan's salary increased by $50,000 to $100,000 due to his promotion. (Tr. 1381:18–23 (Wickwire) ("As analysts are promoted from vice president, to director, to managing director, they receive an increase in salary. Not bonus, but salary); Tr. 1387:4–1388:7 (Wickwire) ("A. I want to say that as a vice president, his salary was probably 150, and I think he went to 250. And we were undergoing sort of a regime change in terms of how we were paying salaries. Wall Street wasn't, there was a recess, but I want to say he was somewhere in the 150 range, up to 250.
Q. So is it fair to say that the salary increase for Mr. Bolan was a significant increase? A. Yes.
Q. Now, is it possible that his salary increase was $50,000? A. I don't recall. I do recall there was a period of time where analysts were promoted, but then we also had a complete reset in terms of what Wells Fargo wanted to compensate a vice president, a director, a managing director. My salary went up as well just based on the new structure. But a merit increase before that, it's likely that it was $50,000. Q. So just to be clear, so in addition to any increase that Mr. Bolan got for going from vice president to director, he also got an additional increase as part of this reset for all analysts?
A. Correct.").)

567. On his 2010 analyst scorecard, Bolan was ranked 16th out of 35 Wells Fargo research analysts overall. (JR REB 106 at 2 (2009 and 2010 equity scorecard).)

568. On his 2010 analyst scorecard, Bolan was ranked first out of 35 Wells Fargo research analysts in terms of feedback from Wells Fargo's trading desk. (JR REB 106 at 2 (2009 and 2010 equity scorecard).)

569. Short played no role in the trading department's ranking of Bolan as Wells Fargo's best research analyst. (Tr. 1389:3–16 (Wickwire) ("Q. And in terms of getting feedback from the

trading department for analysts, were the feedback from the senior traders equal in weight to the feedback from the junior traders, or were they weighted greater? A. I would say the feedback was, for the most part, just from the senior traders, because a lot of that is communicated to me from the head of trading, head of sales and trading back then, and that's where I had a lot of my dialogue and input, on how various analysts were doing with trading, and that was a weekly meeting I would have with the head of sales and trading."); Tr. 3401:8–16 (Short) ("Q. To the extent that there are any records that would indicate that in 2010 Mr. Bolan internally, in terms of the scoring, Mr. Bolan relative to the analysts, that he was ranked number 1 in terms of dealing with the trading department, do you know to what extent you had a role in making that ranking? A. I didn't have a role in making that ranking.").)

570. For each research analyst, feedback from Wells Fargo's trading desk contributed 5% to that research analyst's overall ranking on the analyst scorecard. (JR REB 106 (2009 and 2010 equity scorecard).)

571. For each research analyst, feedback from Wells Fargo's client votes contributed 15% to that research analyst's overall ranking on the analyst scorecard. (JR REB 106 (2009 and 2010 equity scorecard).)

572. Client votes consist of feedback directly from Wells Fargo's institutional investors. (Tr. 1377:10–18 (Wickwire) (We received direct votes from the institutional investors. They will vote each account -- at Fidelity, for example, T. Rowe Price will provide a vote to say this analyst is an A, a B, or is receiving a vote, and that's an indication for us that they're having impact at that institution. The individual responsible for investing in that sector is relying on the analyst and is using their research.").)

573. Feedback from Wells Fargo's trading desk had the potential to move an analyst up or down one to two slots in that analyst's overall ranking on the analyst scorecard. (Tr. 1534:21–1535:5

(Wickwire) ("THE COURT: Can you tell by looking at this, would it have made a difference at all in his overall ranking, or -- I guess I'm more concerned about, would it move him up into the THE WITNESS: No, he would move – on a 5 percent going from 3 to 1, he probably would have moved up from 16 maybe to 15, 14, just given the weight of that ranking.")

574. A movement up or down one slot on the analyst scorecard in the middle of the ranking — where Bolan was — had an approximately $50,000 to $75,000 impact on that research analyst's bonus. (Tr. 1535:6–11 (Wickwire) ("THE COURT: What difference, if any, does that make to bonuses and compensation? THE WITNESS: I would say – that's a very good question – they'll scale typically about 50 to 75,000 as you move up in terms of the increase.").)

575. Each Wells Fargo research analyst knew where he/she ranked on each component of the scorecard, with the exception of the corporate leadership, retention marketability, and quality and productivity components. (Tr. 1529:2–22 (Wickwire) ("Yes. So we, at the end of the year, we basically sit down with the analyst and, again, they receive their impact ranking, they receive their sales ranking, they receive their client votes. All of this information they have seen just for themselves. We don't actually share the right part, which we view as sort of the management piece, the corporate leadership, retention marketability and quality and productivity. We don't share that with them directly. We share everything else.").) Each analyst also knew where he/she generally ranked overall among other analysts, but did not know their precise ranking. (Tr. 1529:2–22 (Wickwire) ("And they're basically told, you rank roughly in this area. We don't specifically give them their rank. We say you're in the top 5, you're in the 5 through 10 range, you're 7 to 9.").)

576. On his year-end 2010 performance appraisal, Bolan received a rating of 5 out of 5 — the highest rating. (DIV 224 at 1 (2010 Bolan performance appraisal).)

XXI. WELLS FARGO INVESTIGATED BOLAN'S PROVISION OF FORTHCOMING RESEARCH TO RUGGIERI AND OTHERS, AND BOLAN LIED.

A. Ruggieri Sends Bolan's Unpublished Channel Check to Clients

577. On March 31, 2011 at 11:45 a.m., Bolan emailed Ruggieri, Mackle, and Short an unpublished channel check from his discussions with Covance's CEO and the management of Quintiles, a private company that is in the same sub-sector Covance. (DIV 15 at 9 (March 31, 2011 email from Bolan to Ruggieri, Mackle, and Short about Bolan's unpublished channel check).)

578. Within minutes of sending this email, Bolan wrote in an instant message to Ruggieri, "[i]f that doesn't get traction I don't know what will." (DIV 15 at 7 (March 31, 2011 instant message exchange between Bolan and Ruggieri).)

579. Bolan recognized that this unpublished channel check contained important information. (Tr. 246:4-15 (Friedman) ("Q. And then the second, your second bullet point there, what did you mean there? A. This was more in response to the comment about 'if that doesn't get traction, I don't know what will.' That's from an instant messaging conversation, and it just, in my opinion, showed that Mr. Bolan thought that some of this information was important, significant material perhaps, despite what he had said when asked about it.").)

580. Ruggieri responded to Bolan's instant message, "BOOM." (DIV 15 at 7 (March 31, 2011 instant message exchange between Bolan and Ruggieri).)

581. Ruggieri recognized Bolan's unpublished channel check contained important information. (Tr. 2384:21–2385:17 (Ruggieri) ("Q. It's fair to say, when you go back and look at some of Mr. Bolan's nonpublished channel checks that he sent to select clients, that that information, at times, was probably going to move the market, or probably be important to certain clients? A. Sure. Q. And that's a no-no in the analyst world; isn't it? A. I guess so.... Q. But if you look back and really parse some of what Mr. Bolan was saying, he clearly thought that some of this

information might be somewhat important to some of his clients; correct? A. Right. Q. And that probably should have been in a regular analyst report? A. In hindsight, probably.").)

582. Ruggieri edited the email that Bolan sent him in DIV 15 at 9 by replacing Bolan's references to "I" to "we" in order to protect Bolan. (DIV 15 at 7–8 (March 31, 2011 instant message between Ruggieri and Bolan concerning Ruggieri's edits to Bolan's research) ("trying to take the I out … protecting u"); DIV 15 at 9 (March 31, 2011 email from Bolan to Ruggieri containing Bolan's research in which Bolan refers to himself in the first person); DIV 15 at 10 (March 31, 2011 email from Ruggieri to clients including Bolan's research).)

583. By changing the "I" to "we" in Bolan's unpublished channel check, Ruggieri "masked that Bolan was the author" of the channel check. (Tr. 851:24-853:25 (Yi) ("Q. Mr. Friedman actually went so far as to conclude that Mr. Ruggieri had ghost written or Mr. Bolan had ghost written an e-mail for Mr. Ruggieri to send out to clients. Do you agree with that conclusion? A. I would agree that Mr. Bolan did write an e-mail that was subsequently forwarded by Mr. Ruggieri with certain changes that I think masked that Mr. Bolan was the author of the content …. Q. Doesn't the fact that he has included the thoughts from clients and Bolan below make it clear that he was including the thoughts of Mr. Bolan? A. I think that it would be confusing to parse out what Mr. Bolan's opinions are relative to Mr. Ruggieri's opinions because of the wording using the 'we' context.").)

584. On March 31, 2011 at 11:52 a.m., Ruggieri emailed approximately 35-45 clients Bolan's unpublished channel check that included the changes that Ruggieri made to Bolan's original draft. (DIV 15 at 10 (March 31, 2011 email from Ruggieri to clients including Bolan's research); Tr. 255:11-24 (Friedman) (Q. What is this document? A. This was a note -- not a note, an e-mail that Mr. Ruggieri sent out to, according to my notes, approximately 35 to 45 clients with information that came directly from notes or information generated by Mr. Bolan.").) Tr. 3318:25-3319:7 (Mackle) ("Q. In any of those situations, when you disseminated data in a channel check that you

got in an e-mail from Mr. Bolan, in any of those occasions, did you ever forward those e-mails and rewrite them in any way to not make it clear that it came from Mr. Bolan? A. I don't believe so, no.").)

585. Ruggieri's sending of this email and the instant message that preceded it evidenced that Bolan and Ruggieri coordinated the dissemination of an unpublished channel check to a group of Wells Fargo clients. (Tr. 512:5-13 (Friedman) ("What I'm saying is it seemed to be that Mr. Bolan was coordinating with Mr. Ruggieri about the dissemination of his research, but I didn't conclude that. I mean I simply made that observation that that's what it appeared to me."); Tr. 255:11-24 (Friedman) (Q. What is this document? A. This was a note -- not a note, an e-mail that Mr. Ruggieri sent out to, according to my notes, approximately 35 to 45 clients with information that came directly from notes or information generated by Mr. Bolan.").)

B. Bolan Communicated An Unpublished Channel Check to Ruggieri and Select Clients

586. On March 31, 2011 at 2:14 p.m., Bolan emailed Ruggieri and between 35-45 clients an unpublished channel check based on a conversation that Bolan had with a "high-ranking executive at a top-5 preclinical CRO [contract research organization]." (DIV 15 at 11 (March 31, 2011 email from Bolan to Ruggieri and between 35-45 clients about channel check); DIV 15 at 12-13 (address list for email contained in DIV 15 at 11); Tr. 265:3-16 (Friedman) ("This is a document that contains -- excuse me, that was sent to approximately 35 to 45 clients of the firm containing information that was not yet published, but that would be published.").)

587. Shortly thereafter on March 31, 2011, two individuals who worked for one of Bolan's clients, 1788, replied to Bolan's email and asked whether it was "time to wade into CRL," a publicly-traded CRO. (DIV 15 at 14-16 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client); Tr. 278:11-279:6 (Friedman) (A. It could be 1788. It's hard to read my own handwriting here. Sorry. Q. Not at all. What does that refer to? A. That is the name of a client or a firm.").)

588. Bolan responded, "YESSSSSSSSSS! High conviction .... I think Street doesn't see this coming. Hell, I didn't see this coming." (DIV 15 at 14 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client).)

589. Bolan recognized that the unpublished preclinical CRO channel check that he emailed to certain clients in DIV 15 at 11 was important and that the channel check findings caught him off guard. (Tr. 273:14-275: 10 (Friedman) ("This is about the fact that certain clients received certain information, but more importantly that Mr. -- in Mr. Boland's [*sic*] own words, he was indicating the importance of the information with these descriptors, 'Yes, high conviction' .... Mr. Bolan is thinking that this is something that he didn't account for, that he did not publish on, he did not, it caught him off guard, and yet here he was having a conversation with one person about that surprise as opposed to pushing to all of his clients stating that he didn't see this coming, giving his client that benefit.").)

590. Ruggieri, who received Bolan's response that included the statement "YESSSSSSSSSS! High conviction," knew that Bolan considered his preclinical CRO channel check to be important. (DIV 15 at 14 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client).)

C. Bolan Communicated a Second Unpublished Channel Check to Ruggieri and Select Clients

591. On April 1, 2011 at 11:32 a.m., Bolan sent an instant message to Ruggieri, stating "[h]ugely positive channel check on preclinical," and referenced two companies, MPI and WIL. (DIV 15 at 17-18 (April 1, 2011 email from Bolan to Ruggieri about positive channel checks).) Bolan previously referred to CROs as being "preclinical." (DIV 15 at 11 (March 31, 2011 email from Bolan to Ruggieri and between 35-45 clients about channel check).

592. On April 1, 2011 at 2:01 p.m., Bolan emailed an unpublished channel check concerning a "preclinical CRO" to Ruggieri and the two individuals who worked at Wells Fargo's client 1788. (DIV 15 at 20 (April 1, 2011 email from Bolan to Ruggieri and Wells Fargo client about

unpublished channel check); Tr. 278:11-279:6 (Friedman) (A. It could be 1788. It's hard to read my own handwriting here. Sorry. Q. Not at all. What does that refer to? A. That is the name of a client or a firm.").)

593. Bolan recognized that the information that he sent to Ruggieri and the Wells Fargo client was "extremely bullish." (DIV 15 at 20 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client about unpublished channel check); Tr. 302:10–24 (Friedman) ("A. It indicated that the author felt that this was an important piece of information, extremely bullish being important contradicting, in my view, the first statement that it was immaterial.").)

594. Ruggieri knew that Bolan considered his preclinical CRO channel check to be important, having received the email from Bolan containing his channel check and Bolan's characterization of it as "extremely bullish." (DIV 15 at 20 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client about unpublished channel check).)

595. After Evans and Wells Fargo clients noticed that the stock prices of CROs were moving following Bolan's channel check emails to Ruggieri and select clients, Bolan, on April 1, 2011 at 2:55 p.m., distributed a squawk by email concerning a preclinical channel check that was "[v]astly [p]ositive" for Covance and Charles River. (Tr. 1267:7–1271:15 (Evans) ("Q Now, you mentioned that on that Friday, some clients were calling up and you answered the phone; is that right? A Yes. Q Was one of the concerns that the clients raised that the stock price of these securities had moved? A They just wanted to know if I knew why they might be moving. Q And at the time, did you have a concern that the selective dissemination to some of the clients had caused stock activity? A That was my concern. Q And is that one of the reasons that you went to Mr. Bolan again? A Yes. Q And what happened next? A He and I had a brief, but somewhat heated exchange about the necessity of putting this kind of stuff in a squawk or a research note form. And he then subsequently put the material in a squawk and sent it out again in an edited

form."); DIV 15 at 21-22 (April 1, 2011 email from Bolan distributing channel check squawk); Tr. 299:22–302:3 (Friedman) ("This was an e-mail that evidenced to me the official distribution of the report. It is not necessarily the time that -- the exact time, but the first communication. I don't know that. But basically the content of a research report disseminated to our client base in accordance with policies and procedures finally occurred at 2:55-ish on April 1, 2011.").)

596. Bolan's squawk at 2:55 p.m. on April 1, 2011 contained information that Bolan previously sent to a Wells Fargo client and Ruggieri at 2:01 p.m. (Tr. 295:24–298:4 (Friedman) ("Q. And any particular reason you underlined these passages? A. Two main reasons. One is that it seemed to be verbatim content from a not yet published research report. And then the other thing that was important here was that the level of description that Mr. Bolan ascribed to the communication seemed to be -- he used the words highest confidence in nearly 3 years, recovery, upside. You know, terms that would connote something important he was conveying, which would then go to the question of how material this ultimately was."); Tr. 299:22–302:3 (Friedman) ("Q. And your handwriting on the right-hand side there, if you could just read that? A. "Squawk content only after e-mail." Q. And what did you mean there? A. That the squawk went out in accordance with standard operating and procedures, and I was noting that this occurred after the e-mail activity that we had just been talking about. This was -- this squawk was the dissemination of research.").)

597. Shortly after Bolan distributed the squawk by email, on April 1, 2011, a Wells Fargo client asked Bolan: "They are always bullish. Was this normal MPI bullish, or were they super mega awesome bullish now?" (DIV 15 at 26 (April 1, 2011 email exchange between Bolan and Wells Fargo client D.E. Shaw about Bolan published squawk concerning CRO channel check).)

598. Bolan then responded, "[s]uper duper ultra mega bullish." (DIV 15 at 25 (April 1, 2011 email exchange between Bolan and Wells Fargo client about Bolan published squawk concerning CRO channel check).)

599. Bolan knew that this channel check was material. (Tr. 316:22–317:20 (Friedman) ("The super duper ultra mega bullish was on the client's requested scale on the higher end of how important or significant this information was. It was not routine in terms of Mr. Bolan's own written observation.").)

600. On April 1, 2011, Bolan further replied, "[d]id you get my channel check notes this morning," even though he distributed his channel check findings by squawk in the afternoon on April 1, 2011. (DIV 15 at 25 (April 1, 2011 email exchange between Bolan and Wells Fargo client about Bolan published squawk concerning CRO channel check); Tr. 316:22–317:20 (Friedman) ("But then it also introduces the topic of did you get my channel check notes this morning. So it both goes to the way Mr. Bolan viewed the communication, and then it opened up the fact that there was an earlier set of information ahead of the research report that Mr. Bolan sent to several clients, and Mr. Bolan is asking, hey, did you get that communication from me.").)

601. The Wells Fargo client expected to receive unpublished channel check notes from Bolan and Bolan apologized for not sending them to the client. (DIV 15 at 24 (April 1, 2011 email exchange between Bolan and Wells Fargo client about Bolan published squawk concerning CRO channel check); Tr. 319:10–23 (Friedman) ("And that first line there, 'OMG, I am so sorry. Here are the notes.' And what did you understand that to mean? A. Well, I understood this to mean that Mr. Bolan was apologizing to Mr. Harrington for not receiving the prepublished research in advance, meaning that it was an oversight by Mr. Bolan that he did not preview his research with Mr. Harrington as he intended, and this was the summary of those notes that Mr. Harrington should have gotten.").)

D. Wells Fargo Conducted an Internal Inquiry

602. On April 1, 2011 at 3:47 p.m., Friedman, a senior Wells Fargo compliance officer, received an email from a compliance officer at SAC Capital Advisers LP ("SAC"), a prominent

hedge fund, alerting him to a "compliance issue." (DIV 15 at 19 (April 1, 2011 email from SAC compliance officer to Friedman).)

603. The SAC compliance officer informed Friedman that a Wells Fargo employee whose screen name was "uncjoewfc" — Ruggieri — appeared to have sent an instant message to a SAC trader at 11:55 a.m. about Bolan's unpublished research on Bolan's "preclinical channel checks" concerning CROs. (DIV 15 at 19 (April 1, 2011 email from SAC compliance officer to Friedman); Tr. 321:10-14 (Friedman) ("Q. Maybe just to be clear, so it was the SAC -- was the e-mail to SAC about the same one or more of the same two channel checks that we have been talking about this afternoon? A. Yes."); Tr. 200:5–204:3 (Friedman) ("Q. And then the next paragraph there, 'Would you be able to review the messages and let us know if we received any advance notice of our research?' A. Yes. Q. And what did you take that to mean? A. Did this conversation occur prior to the release of the research report that was attached.").)

604. As a result of this email from SAC Capital, Wells Fargo's compliance department began investigating Ruggieri and Bolan. (DIV 15 (chronology of events collected by Friedman covering the non-privileged portions of Wells Fargo's internal inquiry of Bolan and Ruggieri); Tr. 199:18–200:4 (Friedman) ("Q. Now, what prompted you to conduct that review? A. Approximately maybe April of 2011, I received an e-mail from a compliance officer from a client hedge fund known as SAC Capital. In the e-mail sent to me, at the time I was out in San Francisco, the e-mail alerted me to a matter involving a conversation and a research report, and that's how I initially became aware of the matter.").)

605. On or around April 5, 2011, Evans escalated concerns he had about Bolan directly to Wickwire. (DIV 15 at 4; Tr. 1447:10–15 (Wickwire) ("Q. When did Mr. Evans contact you regarding Mr. Bolan in relation to this April 5th date? A. I don't recall exactly, but it was sometime after that, and he was very upset and concerned."); Tr. 1272:23–1275:8 (Evans) ("Q. And so did there come a

time when you actually spoke to Mr. Wickwire regarding this event? A. Yes. Q. What did you tell him? A. Told him that I had concerns about these channel check e-mails that were being selectively disseminated.").)

606. When Evans raised his concerns to Wickwire, he was unaware of the compliance inquiry into Bolan and Ruggieri. (Tr. 1273:15–20 (Evans) ("Q. At the time that you contacted Mr. Wickwire, did you have any understanding prior to contacting Mr. Wickwire that compliance was looking at these issues and Mr. Bolan? A. No.").)

607. On April 6, 2011, Friedman and other compliance officers questioned Bolan by phone. (DIV 14 (summary of Wells Fargo compliance interview of Bolan).)

608. In the compliance interview, Bolan avoided answering questions directly when he was asked about channel checks being communicated with Ruggieri and others. (DIV 14 (summary of Wells Fargo compliance interview of Bolan); Tr. 229:17–230:9 (Friedman) ("Mr. Bolan had avoided answering the question directly. He indicated that he had spoken to Mr. Ruggieri throughout the day prior to publication, but was not clear about exactly what in that entry.").)

609. In the compliance interview, Bolan claimed that the channel check information previewed to Ruggieri and select clients and then published in the April 1, 2011 squawk was immaterial or not important. (DIV 14 (summary of Wells Fargo compliance interview of Bolan); Tr. 233:9–234:14 (Friedman) ("We continued to try and establish whether the information in his mind was material. Did he think that the information was important; did he think that the information was significant, something that an investor would be interested in. And he would respond sometimes that this was not important stuff, or this was immaterial, whatever words he used to lessen the impact. And we asked him, you know, but in this e-mail, you said this. And then he would not then address the fact that in his own e-mails, those quotes come from his e-mails, and we were just trying

to ask how do you reconcile what 'hugely positive' means with the fact that the stuff that you were writing or sending out wasn't very important.").)

610. Bolan falsely claimed that Madsen, a supervisory analyst in Wells Fargo's research department, had told Bolan that he could email non-public research to fewer than twenty clients because that did not constitute the dissemination of research.3 (DIV 14 (summary of Wells Fargo compliance interview of Bolan); Tr. 234:15–235:6 (Friedman) ("Q. And then the next, the next bullet point there, 'We asked about the e-mail' -- it continues – 'that was sent to a client on 3-31.' What did you mean there? A. We tried to ask questions about what his typical process is in the production of research reports and generally speaking channel checks, and, you know, how is it that clients were getting excerpts, direct excerpts from a not yet published report. And this is where he injected the fact that he was coached in terms of the company's policy by Mike Madison with regard to sending it to less than 20 people was okay.").)

611. Madsen never provided Bolan with any such guidance, which would have contradicted Wells Fargo's policies. (Tr. 611:12-23 (Madsen) ("Q. Now, in all the time that you were there overlapping with Mr. Bolan, did you ever give him any guidance that it was okay to share unpublished research with clients as long as it is less than 20 or less fewer clients? A. Never. Q. Did you ever tell him at any point in time that it was okay to select -- to share with only certain clients unpublished research? A. No."); Tr. 236:16–237:21 (Friedman) ("A. Mr. Hays said that Mr. Madison [*sic*] denied giving him that guidance the way Mr. Bolan explained it. Mr. Madison [*sic*] disputed it. Q. Did that make any sense to you? A. It made sense that Mr. Madison [*sic*]would dispute that assertion, and it was consistent with what I would assume Mr. Madison [*sic*] to have

3 During his investigative testimony, Bolan changed his story. That time, he falsely claimed that a compliance officer, Dan Hughes ("Hughes"), had given him that advice. (DIV 110 at 192–94.)

said. There was no reason not to believe Mr. Madison [*sic*]. I had been working with him for sometime.").)

612. As part of its compliance review, the compliance department became concerned by several instances in which Bolan had shared material, as-yet-unpublished research with Ruggieri and select external clients. (DIV 15 at 11, 17-18, 20, 21-22, and 24 (Bolan emails to Ruggieri, Mackle, Short and/or Wells Fargo clients containing unpublished research from channel checks); Tr. 319:3–320:8 (Friedman) ("Q. Now, did that concern you? A. It did, yes. Q. And why? A. It concerns me because it began to emerge from evidence that typically Mr. Bolan distributes some of his prepublished research to certain clients, and it was -- it was dawning on me that this may not be limited to one incident.").)

613. Yi did not dispute any of Friedman's factual findings as part of the internal inquiry of Bolan and Friedman that Friedman memorialized in DIV 15. (Tr. 794:7–797:6 (Yi) ("Were there any facts in this document that you disagreed with? A. I think, generally speaking, I did not disagree with the factual nature of the documents.").)

614. Wells Fargo concluded that Bolan's communication of non-public research to clients violated Wells Fargo's prohibition against previewing as-yet-unpublished research and the firm's requirement that research be publicly disseminated at the time of its disclosure — not selectively distributed to certain clients first. (DIV 163 (Bolan Form U-5); Tr. 372:14–373:9 (Friedman) ("In very brief form, that Mr. Bolan, the review that was undertaken discovered breaches in principles and rules regarding selective dissemination and policies and procedures surrounding failure to preserve confidential information. That was the subject of the review and those are the areas that were breached.")

615. Bolan's separation of employment from Wells Fargo was pursuant to Wells Fargo's internal review of Bolan. (DIV 163 (Bolan Form U-5); Tr. 372:14–23 (Friedman) ("Q. What is that

section about as you understood it? A. The fact that the separation of employment was pursuant to an internal review of some matter is evidenced by a 7B check.").

XXII. WELLS FARGO DECIDED TO TERMINATE BOLAN AND RUGGIERI.

616. In April 2011, Wells Fargo decided to terminate Bolan. (Tr. 368:11–15 (Friedman) ("Q. What did Wells Fargo ultimately decide to do with Mr. Bolan? A. Wells Fargo decided to terminate Mr. Bolan's employment with Wells Fargo Securities."); Tr. 1448:1–7 (Wickwire) ("Q. And what happened after that, not including any discussions with attorneys? A. After the work I was part of with -- no specifics -- but after the work done with the attorneys and compliance, and reviewing the situation and all available documents, I concluded that I needed to -- that Mr. Bolan needed to be terminated.").)

617. Wickwire travelled to Nashville to terminate Bolan in person, but Bolan resigned before Wickwire could do so. (Tr. 1448:12–18 (Wickwire) ("Q. Did you undertake any actions to terminate him? A. I did. Q. What was the action that you undertook? A. I flew to Nashville to meet with Greg to terminate him face to face .... Q. Is it fair to say that your communicating to him that you are flying out to Nashville to meet with him conveyed that it was a serious issue? A. Yes. Q. And when you arrived in Nashville, what did you do? A. I called Greg and said, 'I'm at the airport. I'll be there in 20 minutes and please be in your office.' Q. Did he say anything back to you? A. He did. Q. What did he say? A. He resigned. Q. Did you have an understanding of why he resigned? A. My sense is, he resigned because he knew I was coming to the office to terminate him, and just knowing the business, it's much better to resign in lieu of termination than to be terminated. I don't know why, but that's what people prefer. Q. So that's something that you've seen in your years in the securities business? A. Yes. Q. Which is that, in lieu of being fired, some in the industry choose to voluntarily resign before being fired? A. Yes, in lieu of termination, correct.")

618. On July 8, 2011, Wells Fargo filed a Form U5 disclosing that it had conducted an internal review of Bolan. (DIV 163 (Bolan U5).)

619. The Form U5 further disclosed Wells Fargo's conclusion following its internal review: "Affirmation of Subject Individual's Selective Dissemination of Information and Failure To Preserve Confidential Information." (DIV 163 at 3-4 (Bolan U5).)

620. In April 2011, Bartlett terminated Ruggieri for cause. (DIV 164 at 1 (Ruggieri U5) ; Tr. 1182:9–14 (Bartlett) ("Q. Was Mr. Ruggieri actually terminated? A. He was. Q. And who actually terminated him? A. Physically? Q. Yes. A. I did.").)

621. On July 8, 2011, Wells Fargo filed a Form U5 disclosing its termination of Ruggieri for "Loss of Confidence Due to Failure To Escalate Issues Regarding the Inappropriate Dissemination of Information." (DIV 164 at 1 (Ruggieri U5).)

622. After Wells Fargo terminated Ruggieri, he worked as a trader at International Strategy and Investment Group ("ISI") until October 2014. (Tr. 2399:6–2400:4 (Ruggieri) ("And left Wells Fargo April 25th of 2011. I'll never forgot [*sic*] that date, and started at ISI, International Strategy and Investment Group. I think my start date was June 5th or so, 2011, until October 2014.").)

623. Ruggieri worked out of Raleigh, North Carolina. (DIV 134 at 3 (CRD report) (showing Ruggieri's "branch" as Raleigh, North Carolina); Tr. 2739:23–25 (Ruggieri) ("I was able to move my family to North Carolina, which was a dream I was planning to do at Wells Fargo.").)

624. ISI and its traders, including Ruggieri, did not make any principal or proprietary trades. (Tr. 2390:13–18 (Ruggieri) ("ISI is an agency-only shop. That means there's no capital, there's no balance sheet, there's no prop trading, there's no principal trading. ").)

625. Bolan is (or recently was) a research analyst at Sterne Agee Group, Inc. in Nashville, Tennessee. (DIV 39 at 8.)

626. Wall Street firms rarely terminate research analysts for compliance reasons. (Tr. 377:3–7 (Friedman) ("Q. How many times in your career has a compliance inquiry led to a decision to terminate an employee? A. In the 15 or so years, this might have been my second occasion.").)

627. Wall Street firms rarely terminate traders for compliance reasons. (Tr. 1183:24–1184:7 (Bartlett) ("Q. Now, Mr. Bartlett, just roughly over the course of your career, how many people have worked underneath you in your chain of command? A. A couple thousand. Q. Other than Mr. Ruggieri, have you ever terminated someone for compliance reasons? A. No.").)

628. In August 2011, Wells Fargo published a policy that reiterated the existing prohibition against selective dissemination of research by specifically stating that channel checks cannot be selectively disseminated to clients. (DIV 105 at 4; Tr. 397:25–399:19 (Friedman) ("Well, what we trying to underscore is that we've always had a confidentiality provisions that covered prepublication activities, and that nothing in this policy was meant to undo anything that existed prior to that. And quite the opposite. This was -- there were several activities contemplated in this policy that we clarified that were not necessarily the subject of our review, and this was just a way of indicating to people that all these policies here are prepublication and to be treated as confidential, and nothing is meant to reverse anything that we had previously understood as departmental policy regarding confidentiality. Q. Now, did any of the material that we just looked at, the two bullet points in this section, did any of those alter in any respect the previous Wells Fargo policies we talked about in terms of dissemination of unpublished research? A. It did not alter, but it did revise and clarify what we considered to be pre-existing policies.")

XXIII. RUGGIERI AND MOSKOWITZ CONTINUED TO HELP BOLAN AFTERWARDS.

629. Moskowitz referred Bolan to the law firm of Sadis & Goldberg after Wells Fargo terminated Bolan. (DIV 110 at 110–11 (Bolan) ("When I got into the employment issue with Wells Fargo, I had asked for a reference for a lawyer. Moskowitz had referred Ron, I think Geffner and

Ron Geffner is at Sadis & Goldberg. That's how I hooked up with Dan Viola in this employment issue.").)

630. Later, when Bolan received an investigative subpoena from the Division, Bolan told Moskowitz, and Moskowitz again recommended Sadis & Goldberg. (DIV 110 at 110–11 (Bolan) ("What did you talk about when you communicated with Mr. Moskowitz a month and a half ago? A. Well, I received the Subpoena from you guys. When I got into the employment issue with Wells Fargo, I had asked for a reference for a lawyer. Moskowitz had referred Ron, I think Geffner and Ron Geffner is at Sadis & Goldberg. That's how I hooked up with Dan Viola in this employment issue. And I called Moskowitz to tell him that I had received a Subpoena and it's entirely vague and that, you know, that he felt that Dan was a good lawyer, as relates to SEC matters. Q. Did Mr. Moskowitz say anything else? A. No. He said -- he felt like that Sadis and Goldberg was a strong firm.").)

631. After their departure from Wells Fargo, Bolan, Ruggieri, Mackle and Short met at a bar in New York City. (Tr. 3259:23–3260:9 (Mackle) ("Q. At any time subsequent to his departure, did you speak to Mr. Bolan? A. Yes. Q. When did that occur? A. It was the same meeting that I met with Joe Ruggieri. Q. And where was that meeting held? A. In a bar on the Upper West Side, I think. Q. And who else was there? A. Chip Short.").)

632. After their departure from Wells Fargo, Ruggieri helped Bolan in his search for a job by recommending Bolan to Ruggieri's employer at that time, ISI Group. (Tr. 2388:10–2390:19 (Ruggieri) ("And I would say the reason Greg – I recommended for a job at ISI is because I thought he was a good analyst and he could help -- at the time, we only had one healthcare analyst at ISI and I thought we could build a franchise here as we did in our other place.").)

633. Ruggieri gave Bolan the keys to his apartment so that Bolan could use it when interviewing for positions in New York. (Tr. 2375:5–10 (Ruggieri) ("Q. You gave him the keys to

your apartment in New York City; correct? A. To stay with me when he was interviewing once, yes. Q. Interviewing for a job? A. Yes."); DIV 45 (May 21, 2011 email exchange between Ruggieri and Bolan); DIV 110 at 71 (Bolan) ("Q. You state in the third e-mail down, 'Si, yeah, I still have the keys.' Is that a reference to having the keys to Mr. Ruggieri's apartment? A. Yes, because I had stayed there once before. Q. When was that? A. Right after the Wells Fargo event, so it would have been probably late April. Q. Why did you stay at Mr. Ruggieri's place in late April? A. Interviewing, to save on a hotel cost.").)

634. In late April 2011, Bolan stayed at Ruggieri's apartment. (DIV 110 at 71 (Bolan) ("Q. You state in the third e-mail down, 'Si, yeah, I still have the keys.' Is that a reference to having the keys to Mr. Ruggieri's apartment? A. Yes, because I had stayed there once before. Q. When was that? A. Right after the Wells Fargo event, so it would have been probably late April. Q. Why did you stay at Mr. Ruggieri's place in late April? A. Interviewing, to save on a hotel cost.").)

635. Ruggieri let Bolan keep a copy of the keys until at least the next month. (DIV 45 (May 21, 2011 email exchange between Ruggieri and Bolan); DIV 110 at 71 (Bolan) ("Q. You state in the third e-mail down, 'Si, yeah, I still have the keys.' Is that a reference to having the keys to Mr. Ruggieri's apartment? A. Yes, because I had stayed there once before. Q. When was that? A. Right after the Wells Fargo event, so it would have been probably late April. Q. Why did you stay at Mr. Ruggieri's place in late April? A. Interviewing, to save on a hotel cost.").)

636. In approximately early May 2011, Ruggieri recommended Bolan for an analyst position at International Strategy & Investment ("ISI"), where Ruggieri became a partner the following month. (Tr. 2375:11–14 (Ruggieri) ("Q. You helped him with a job application, right? A. Yes, I recommended him to a job at my firm."); DIV 110A at 69 (Bolan) ("Q. Did Mr. Ruggieri ever recommend you for a job? A. Yes. Q. Describe that. A. He recommended me for an analyst role at ISI. Q. What is ISI? A. I think it stands for International Strategy something. Q. Who

did he recommend you to? Mark Schoenbaum who runs health care research at ISI."); DIV 168 (May 12, 2011 email exchange between Ruggieri and Bolan) ("Mark already emailed me back and said they would review 'asap'); DIV 77 at 8 (Ruggieri background questionnaire).)

637. Ruggieri reviewed and commented on Bolan's job application. (DIV 168 (May 12, 2011 email exchange between Ruggieri and Bolan).)

638. In late May 2011, Ruggieri offered to let Bolan stay at his apartment again with Ruggieri and his wife, whom Bolan had not met before. (DIV 45 (May 21, 2011 email exchange between Ruggieri and Bolan); DIV 110 at 71 (Bolan).)

639. In early June 2011, after Bolan seemed to have secured a job at another firm, Ruggieri enthusiastically congratulated him: "Congrats on the offer as well. Awesome stuff now go drink 4 bourbons for me! Just had 2 red stripes in your honor." (DIV 169 at 2 (June 2, 2011 email exchange including Bolan and Ruggieri.); Tr. 2375:15–19 (Ruggieri) ("Q. And you congratulated him when he got a job offer; didn't you? A. Yes. Q. You were happy for him? A. Yes.").)

640. Months after Bolan and Ruggieri left Wells Fargo, Bolan invited Ruggieri to his wedding. (DIV 167 at 4 (September 1, 2011 email exchange between Bolan and Ruggieri) ("[D]id u get our wedding invite yet? Just went out.").)

DIVISION'S PROPOSED POST-HEARING CONCLUSIONS OF LAW

I. PREPONDERANCE-OF-THE-EVIDENCE STANDARD

1. *See* Parties' Pre-Hearing Joint Stipulated Conclusions of Law ("Joint Legal Stipulations") ¶ 1, filed on March 23, 2015, for the preponderance-of-the-evidence standard.

II. BOLAN VIOLATED SECTIONS 17(a) AND 10(b) AND RULE 10b-5 BY TIPPING RUGGIERI AND MOSKOWITZ.

2. Insider trading "is a form of cheating, of using purloined or embezzled information to gain an unfair trading advantage. The Unites States securities markets—the comparative honesty of which is one of our nation's great business assets—cannot tolerate such cheating if those markets are to retain the confidence of investors and the public alike." *SEC v. Payton*, __ F. Supp. 3d __, 2015 WL 1538454, at *1 (S.D.N.Y. Apr. 6, 2015) (Rakoff, J.).

3. *See* Joint Legal Stipulations ¶¶ 2–5 for statutory basis for insider trading violations and elements of tipper liability.

4. While the standard for violations of Section 17(a) and Section 10(b) and Rule 10b-5 is "essentially the same," they differ in one significant respect: Sections 17(a)(2) and 17(a)(3) require no showing of scienter but rather mere negligence. *See, e.g., SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999) (citing, *inter alia*, *Aaron v. SEC*, 446 U.S. 680, 701–02 (1980)); *Dennis J. Malouf*, Initial Decision, SEC Rel. No. 766, 2015 WL 1534396, at *27 (Apr. 7, 2015) ("[A] showing of negligence is sufficient to establish violations of Securities Act Section 17(a)(3).").

5. Sections 17(a) and 10(b) and Rule 10b-5 also have an interstate commerce element. *See* 15 U.S.C. § 77q(a) ("by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails"); 15 U.S.C. § 78j(b) ("by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange").

6. "A fraud has been committed 'by the use of any means or instrumentality of interstate commerce' if the defendant used some means of interstate communication (such as a telephone call), in some phase." *SEC v. Stanard*, 2009 WL 196023, at *25 (S.D.N.Y. Jan. 27, 2009).

A. Bolan Tipped Ruggieri and Moskowitz.

7. "[A]s courts and commentators have recognized, direct evidence is rarely available in insider trading cases, since usually the only witnesses to the exchange are the insider and the alleged tippee, neither of whom are likely to admit to liability." *SEC v. Roszak*, 495 F. Supp. 2d 875, 887 (N.D. Ill. 2007) (citing authorities).

8. "[C]ircumstantial evidence such as suspicious timing of trades, contacts between potential tippers and tippees, and incredible reasons for such trades provide an adequate basis for inferring that tipping activity has occurred." *SEC v. Singer*, 786 F. Supp. 1158, 1164–65 (S.D.N.Y. 1992) (citing cases); *see also Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330 (1960) ("Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.").

9. A pattern of tips and trades therefore supports a finding of liability for insider trading, even in criminal cases. *See SEC v. Warde*, 151 F.3d 42, 47–48 (2d Cir. 1998) (upholding jury verdict) ("[W]e have no doubt the evidence was sufficient to support a jury finding" that a tipper and tippee were liable for insider trading based on "circumstantial evidence," including a "pattern in which [the tipper] received nonpublic information, then communicated with [the tippee], and then both [the tippee] and [the tipper] purchased [the securities]."); *United States v. McDermott*, 245 F.3d 133, 139 (2d Cir. 2001) ("Although the government was unable to produce direct evidence of the content of any conversation during which [the defendant tipper] transferred material, non-public information to [the tippee], we find that rational minds could infer such a conclusion from the above evidence. Circumstantial evidence is a legitimate form of evidence in this Circuit."); *United States v. Riley*, 2015 WL 891675, at *14, 15 (S.D.N.Y. Mar. 3, 2015) (circumstantial evidence of defendant's tips sufficed to support jury verdict finding defendant guilty beyond a reasonable doubt of two criminal counts of insider trading).

B. Bolan's Forthcoming Ratings Changes Were Material.

10. Information is material when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available" — in other words, when "a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision." *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (internal quotation marks omitted); *Zacharias v. SEC*, 569 F.3d 458, 468 (D.C. Cir. 2009).

11. To be material, the information does not need to be the type that would cause an investor to change his investment decision by buying or selling the security. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) ("An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.... It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote."); *John P. Flannery*, Commission Opinion, Rel. No. 3981, 2014 WL 7145625, at *20 (Dec. 15, 2014) ("[A] misrepresentation can be material as long as a reasonable shareholder would deem it 'important' to his deliberations; the standard does not require proof 'that disclosure of the omitted fact would have caused the reasonable investor to change' his behavior.") (citations omitted); *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 162 (2d Cir. 2000) ("[I]t is not necessary to assert that the investor would have acted differently if an accurate disclosure was made."); *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991) ("No matter how stated, however, it is well-established that a material fact need not be outcome-determinative; that is, it need not be important enough that it 'would have caused the reasonable investor to change his vote.'... Rather, the information need only be important enough that it 'would have assumed actual significance in the deliberations of the reasonable shareholder.'") (quoting *TSC Indus. Inc.*, 426 U.S. at 449).

12. Therefore, the Division does not need to show that a company's stock price moved after disclosure of the relevant information in order to prove that the information was material. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2413 (2014) ("[Defendant contends that] because market efficiency is not a yes-or-no proposition, a public, material misrepresentation might not affect a stock's price even in a generally efficient market.... *Basic* never suggested otherwise."); *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) ("[W]hether a public company's stock price moves up or down or stays the same ... does not establish the materiality of the statements made, though stock movement is a factor the jury may consider relevant."); *DeMarco v. Lehman Bros., Inc.*, 222 F.R.D. 243, 245 (S.D.N.Y. 2004) ("In [*United States v. Carpenter*], however, the [Supreme] Court further noted that the district court had found that the [newspaper] column's impact on the market was 'difficult ... to quantify in any particular case.' [484 U.S. 19, 23 (1987)], quoting *United States v. Winans*, 612 F.Supp. 827, 830 (S.D.N.Y.1985). As it happens, this inability to quantify was irrelevant to the decision in *Carpenter*, both because *Carpenter* was a criminal case in which proof of reliance was unnecessary...and because, since the column was found to reflect the columnist's honest opinions, *id.* at 22–23,...the case was analyzed in terms of misappropriation of information from the columnist's employer rather than in terms of fraud on a purchaser or seller of securities, *id.* at 22–25.").

13. Analyst reports recommending that investors buy or sell a security are presumptively material. *See, e.g., DeMarco v. Robertson Stephens Inc.*, 318 F. Supp. 2d 110, 120 (S.D.N.Y. 2004) ("An underwriter...that has a research department engaged in the business of analyzing companies in order to disseminate to the public information and opinions about specific securities clearly intends that the market take into account its recommendations to buy or sell such securities."); *In re Credit Suisse-AOL Sec. Litig.*, 465 F. Supp. 2d 34, 52 (D. Mass. 2006) ("Analyst reports are written with the purpose and expectation that the market will take heed of their message.").

C. Bolan's Forthcoming Ratings Changes Were Non-Public.

14. *See* Joint Legal Stipulations ¶ 8 for the legal standard for non-public information.

D. Bolan Breached His Duty to Wells Fargo.

15. Under the misappropriation theory, a tipper breaches his duty to the source of confidential information when he "is in receipt of material non-public information" and trades or tips on the information without disclosing his trades or tips to the "source of the information." *SEC v. Obus*, 693 F.3d 276, 284–85 (2d Cir. 2012).

16. A tipper's breach of a duty of loyalty and confidentiality to his employer satisfies this requirement. *See United States v. O'Hagan*, 521 U.S. 642, 653–54 (1997) ("A company's confidential information, we recognized in *Carpenter* [*v. United States*, 484 U.S. 19, 25–27 (1987)], qualifies as property to which the company has a right of exclusive use.... The undisclosed misappropriation of such information, in violation of a fiduciary duty ... constitutes fraud akin to embezzlement.") (law firm partner liable for insider trading where he breached "a duty of trust and confidence" owed to his law firm to keep information concerning firm clients confidential); *SEC v. Yun*, 327 F.3d 1263, 1271 (11th Cir. 2003) ("Certain business relationships, such as attorney-client or employer-employee, clearly provide the requisite duty of loyalty and confidentiality."); *United States v. Chestman*, 947 F.2d 551, 568 (2d Cir. 1991) ("The common law has recognized that some associations are inherently fiduciary. Counted among these hornbook fiduciary relations are those existing between...principal and agent."); *United States v. Carpenter*, 791 F.2d 1024, 1025–27 (2d Cir. 1986) (newspaper employee liable for misappropriating employer's material non-public information, the timing and content of the *Wall Street Journal*'s forthcoming columns about certain stocks, in insider trading scheme).

E. Bolan Tipped Ruggieri and Moskowitz For Personal Benefit.[4]

1. Bolan's Friendship with Ruggieri Satisfies the *Newman* Standard.

17. The Supreme Court first required a showing of personal benefit in *Dirks v. SEC*, when it hinged liability on proof that "the insider personally will benefit, directly or indirectly, from his disclosure." *Dirks v. SEC*, 463 U.S. 646, 662 (1983).

18. "Since there are legitimate reasons why an insider might disclose inside information to an outsider—*e.g.*, a whistleblower disclosing a fraud, or simply an executive carrying out his company's policy of 'priming the market' by making disclosures to analysts before a public announcement—the Supreme Court long ago [in *Dirks*] determined that no fraud has occurred in the classical situation unless the insider is receiving a personal benefit for disclosing the information." *Payton*, 2015 WL 1538454, at *3; *see also United States v. Riley*, __ F. Supp. 3d __, 2015 WL 891675, at *5 n.6 (S.D.N.Y. Mar. 3, 2015) (citing *Dirks*, 463 U.S. at 667) (noting that the personal benefit requirement "exists to ensure that insiders are tipping in breach of their duties" and that there was therefore "no doubt" that the defendant had disclosed material non-public information "in violation of his duty to [his employer] and not for any legitimate reason").

19. A personal benefit "exist[s] when a [tipper] makes a gift of confidential information to a trading relative or friend. The tip and trade resemble trading by the [tipper] himself followed by a gift of the profits to the recipient." *Dirks*, 463 U.S. at 664.

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4 The Division does not concede that the personal benefit standard articulated by the United States Court of Appeals for the Second Circuit in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), is the correct standard or that it applies to this administrative proceeding. The Division preserves herein the arguments set forth in its memorandum of law in opposition to Respondents' motions for summary disposition, dated January 22, 2015. Indeed, it appears that Ruggieri is likely to have no right to appeal any Commission decision to the Second Circuit, based on his current residence in North Carolina. Nevertheless, based on the Court's Order dated Feb. 12, 2015, and Order on Motions for Summary Disposition dated February 25, 2015 (the "Summary Disposition Order"), which apply the *Newman* personal benefit standard, the Division limits its proposed conclusions of law herein to the applicable legal standards consistent with *Newman*.

20. A "personal benefit to the tipper" includes "not only 'pecuniary gain,' such as a cut of the take or a gratuity from the tippee, but also a 'reputational benefit' or the benefit one would obtain from simply 'mak[ing] a gift of confidential information to a trading relative or friend.'" *SEC v. Obus*, 693 F.3d 276, 285 (2d Cir. 2012) (quoting *Dirks*, 463 U.S. at 663–64); *see also id.* at 291 ("*Dirks* defined 'personal benefit' to include making a gift of information to a friend.... [T]he undisputed fact that [the tipper] and [tippee] were friends from college is sufficient to send to the jury the question of whether [the tipper] received a benefit from tipping."); *United States v. Jiau*, 734 F.3d 147, 153 (2d Cir. 2013) (concluding that a tipper obtains a personal benefit if he has "an intention to benefit the [recipient]," such as by "'mak[ing] a gift of confidential information to a trading relative or friend'") (quoting, directly and indirectly, *Dirks*, 463 U.S. at 664); *SEC v. Warde*, 151 F.3d 42, 48–49 (2d Cir. 1998) ("[T]he Supreme Court has made plain that to prove a § 10(b) violation, the SEC need not show that the tipper expected or received a specific or tangible benefit in exchange for the tip.... Rather, the 'benefit' element of § 10(b) is satisfied when the tipper 'intend[s] to benefit the...recipient' or 'makes a gift of confidential information to a trading relative or friend.'") (citing and quoting *Dirks*, 463 U.S. at 664); *see also SEC v. Rocklage*, 470 F.3d 1, 7 n.4 (1st Cir. 2006) ("Even if there is a requirement that the tipper receive a personal benefit [in a misappropriation case], the mere giving of a gift to a relative or friend is a sufficient personal benefit."); *SEC v. Cuban*, 620 F.3d 551, 558 n. 38 (5th Cir. 2010) ("[A] gift to a trading friend or relative" could "suffice to show the tipper personally benefitted.") (quoting *Yun*, 327 F.3d at 1277); *United States v. Evans*, 486 F.3d 315, 321 (7th Cir. 2007) ("[T]he concept of gain is a broad one, which can include a 'gift of confidential information to a trading relative or friend.'") (quoting *Dirks*, 463 U.S. at 664); *SEC v. Clark*, 915 F.2d 439, 454 (9th Cir. 1990) ("(1) [E]nriching a friend or relative; *or* (2) tipping others with the expectation of reciprocity" gives rise to Rule 10b-5 liability) (emphasis added); *Yun*, 327 F.3d at 1275 ("[T]he gain does not always have to be pecuniary.... [A] gift to a

trading friend or relative [can] suffice to show that the tipper personally benefitted.") (summarizing *Dirks*).

21. "The proof required to show personal benefit to the tipper is modest." *Jiau*, 734 F.3d at 153.

22. In *Newman*, the Second Circuit articulated the following standard for personal benefit:

> We have observed that '[p]ersonal benefit is broadly defined to include not only pecuniary gain, but also, *inter alia,* any reputational benefit that will translate into future earnings and the benefit one would obtain from simply making a gift of confidential information to a trading relative or friend.' *Jiau*, 734 F.3d at 153 (internal citations, alterations, and quotation marks deleted) [(quoting, in substantive part, *Dirks*, 463 U.S. at 663, 664)]. This standard, although permissive, does not suggest that the Government may prove the receipt of a personal benefit by the mere fact of a friendship, particularly of a casual or social nature. If that were true, and the Government was allowed to meet its burden by proving that two individuals were alumni of the same school or attended the same church, the personal benefit requirement would be a nullity. To the extent *Dirks* suggests that a personal benefit may be inferred from a personal relationship between the tipper and tippee, where the tippee's trades 'resemble trading by the insider himself followed by a gift of the profits to the recipient,' *see* 463 U.S. at 664, ...we hold that such an inference is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature. In other words, as Judge Walker noted in *Jiau,* this requires evidence of 'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the [latter].' *Jiau*, 734 F.3d at 153 [(quoting *Dirks*, 463 U.S. at 664)].

United States v. Newman, 773 F.3d 438, 452 (2d Cir. 2014); *see also* Joint Legal Stipulations ¶ 9; Order dated Feb. 12, 2015 at 2–3 (quoting *Newman*).

23. "Whether this is the required reading of *Dirks* may not be obvious, and it may not be so easy for a lower court [in the Second Circuit], which is bound to follow both decisions [*Newman* and *Dirks*], to reconcile the two." *Payton*, 2015 WL 1538454, at *4.

24. As the Commission held long before *Newman*, even in the absence of any "economic benefit" to a tipper resulting from his tip, a tipper's office friendship with his tippee satisfies the personal benefit requirement under *Dirks*. *See Robert Bruce Lohmann*, Commission Opinion, SEC Rel. No. 2141, 2003 WL 21468604, at *4 (June 26, 2003) ("Here, Lohmann received no economic benefit from the tip he provided to [the tippee]…. Lohmann claims that [the tippee] was a mere acquaintance rather than a friend and that therefore their relationship was too attenuated for his tip to constitute a gift to a friend under the Dirks benefit test…. We reject Lohmann's contention…. It is sufficient, as the law judge found, that Lohmann and [the tippee] were 'friendly, if casual, office acquaintances.' [The tippee] sought Lohmann's advice and found Lohmann to be helpful. Lohmann offered the tip to help the young [tippee]. In return, Lohmann received the personal satisfaction of his generosity and the admiration of [the tippee]. We believe this is one type of benefit envisioned by *Dirks*.").

25. Similarly, under *Newman*, the personal benefit "need not be financial, so long as it is 'of some consequence.'" *SEC v. Sabrdaran*, 2015 WL 901352, at *15 (N.D. Cal. Mar. 2, 2015) (quoting *Newman*, 773 F.3d at 452).

26. Evidence that tips "maintain[ed] or further[ed] a friendship" satisfy the personal benefit requirement under *Newman*:

> The *Newman* decision acknowledges — as it must, given *Dirks* — that a tipper has received a personal benefit when there is "'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the latter.'" 773 F.3d at 452 (quoting *Jiau*, 734 F.3d at 153) (alteration omitted). If a tip maintains or furthers a friendship, and is not simply incidental to the friendship, that is circumstantial evidence that the friendship is a *quid pro quo* relationship. While a court could rule that merely maintaining or furthering a friendship is not a sufficient personal benefit, it is not 'plain' that the Second Circuit has done so already. *Cf. SEC v. Obus*, 693 F.3d 276, 285 (2d Cir. 2012) ("Personal benefit to the tipper . . . includes . . . the benefit one would obtain from simply 'making a gift

> of confidential information to a trading relative or friend.'") (quoting *Dirks*, 463 U.S. at 663–64) (alteration omitted).

Riley, 2015 WL 891675, at *5.

2. Tipping an Influential Senior Colleague For Career Advancement Satisfies the Personal Benefit Requirement Under *Newman*.

27. As *Newman* makes clear, there are at least two ways to satisfy its standard: (1) "a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least *a potential gain of a pecuniary or similarly valuable nature*," or (2) "a relationship between the insider and the recipient that suggests...an intention to benefit the [latter]." *Newman*, 773 F.3d at 452 (emphasis added) (brackets in original).

28. *Dirks'* personal benefit inquiry addresses the tipper's "intention to benefit" the recipient — the very phrase *Newman* quotes — and requires no resulting pecuniary exchange from the tippee to the tipper. *See Dirks*, 463 U.S. at 664–65 ("This requires courts to focus on objective criteria, *i.e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain *or a reputational benefit that will translate into future earnings*.... For example, there may be a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, *or an intention to benefit the particular recipient*.") (emphases added) (internal citations omitted); *Newman*, 773 F.3d at 452.

29. Nor does *Newman* otherwise require a pecuniary exchange to prove a personal benefit. *Newman*, 773 F.3d at 452 ("While our case law at times emphasizes language from *Dirks* indicating that the tipper's gain need not be *immediately* pecuniary, it does not erode the fundamental insight that, in order to form the basis for a fraudulent breach, the personal benefit received in exchange for confidential information must be of some consequence.") (emphasis in original); *Sabrdaran*, 2015 WL 901352, at *15 ("[T]he benefit need not be financial, so long as it is 'of some consequence.'") (quoting *Newman*, 773 F.3d at 452).

30. "[A] *quid pro quo* relationship [between a tipper and a tippee] in which each was trying to help the other" satisfies *Newman*'s personal benefit requirement. *Riley*, 2015 WL 891675, at *8.

31. "The precise exchange need not be known by the parties at the time of the tip, so long as the tip leads to a 'reputational benefit that will translate into future earnings.'" *Riley*, 2015 WL 891675, at *4 (quoting *Jiau*, 734 F.3d at 153 (quoting *Dirks*, 463 U.S. at 663)).

32. Such a reputational benefit need not result in future earnings; the potential for increased future earnings suffices to prove personal benefit. *See Riley*, 2015 WL 891675, at *6, 7 ("At a minimum, [the tipper] obtained three concrete personal benefits that were 'objective, consequential, and represent[ed] at least a potential gain of a pecuniary or similarly valuable nature'... [including that] iii. [the tipper] Obtained Help in Securing His Next Job.... Although [the tipper] did not ultimately obtain a job with Marvell, [the tippee]'s assistance assuredly contributed to the likelihood [the tipper] would be successful; it therefore carried with it a potential pecuniary gain.").

33. For example, when a tipper "[o]btain[s] [h]elp in [s]ecuring [h]is [n]ext [j]ob" in return for his tips — even when the tippee's help does not result in the tipper's obtaining the job — such conduct constitutes a personal benefit under *Newman*. *Riley*, 2015 WL 891675, at *6, 7 ("At a minimum, [the tipper] obtained three concrete personal benefits that were 'objective, consequential, and represent[ed] at least a potential gain of a pecuniary or similarly valuable nature'... [including that] iii. [the tipper] Obtained Help in Securing His Next Job.... Although [the tipper] did not ultimately obtain a job with Marvell, [the tippee]'s assistance assuredly contributed to the likelihood [the tipper] would be successful; it therefore carried with it a potential pecuniary gain.").

34. Finally, even if any single benefit alone is insufficient to prove personal benefit, the "the totality of the circumstances" can prove that a tipper's relationship with a tippee was "a *quid pro*

quo relationship in which each was trying to help the other" and thus satisfy *Newman*'s personal benefit standard. *Riley*, 2015 WL 891675, at *8.

F. Bolan Tipped With Scienter.

35. *See* Joint Legal Stipulations ¶¶ 6–7 for elements of the tipper's scienter.

36. In criminal securities fraud cases, courts have long required proof that a defendant acted with "a realization on [his] part that he was doing a wrongful act under the securities laws." *Newman*, 773 F.3d 447 (citing cases).

37. In civil enforcement actions, the Commission need only show that a defendant acted recklessly, meaning by "conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care…to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000) (quoting *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978)) (internal quotation marks omitted); *see also Dolphin and Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (recklessness satisfies scienter requirement when it is an "extreme departure from the standards of ordinary care…implying the danger was so obvious that the actor was aware of it and consciously disregarded it").

III. RUGGIERI VIOLATED SECTIONS 17(a) AND 10(b) AND RULE 10b-5 BY TRADING ON BOLAN'S TIPS.

38. To prove that a tippee violated Sections 17(a) and 10(b) and Rule 10b-5, the Division must show "that (1) the tipper breached a duty by tipping confidential information; (2) the tippee knew or had reason to know that the tippee improperly obtained the information (*i.e.*, that the information was obtained through the tipper's breach); and (3) the tippee, while in knowing possession of the material non-public information, used the information by trading." *Obus*, 693 F.3d at 285, 287.

39. Under *Newman*, in order to prove that a tippee knew or had reason to know of the tipper's breach of duty, the Division must also prove that the tippee knew or had reason to know that the tipper received a personal benefit from his tip. *See Newman*, 773 F.3d at 447–50 (in a criminal case, requiring that a tippee know of the tipper's personal benefit, because absent such knowledge the tippee cannot know of the tipper's breach of duty); *Dirks*, 463 U.S. at 660 (in an appeal of a Commission administrative proceeding, holding that "a tippee assumes a fiduciary duty…not to trade on material nonpublic information only when the insider has breached his fiduciary duty…by disclosing the information to the tippee and the tippee *knows or should know* that there has been a breach") (emphasis added); *Obus*, 693 F.3d at 288 (reconciling *Dirks*' "knows or should know" standard with the Second Circuit's civil scienter requirement by requiring a tippee only to "kn[o]w or ha[ve] reason to know" that information was obtained and transmitted in breach of a duty); *Payton*, 2015 WL 1538454, at *5 ("The Amended Complaint also alleges that the defendants had knowledge of a benefit sufficient to meet the civil standard of 'knowing or reckless.'").

IV. THE COURT SHOULD IMPOSE MEANINGFUL REMEDIES.

A. The Court Should Order Ruggieri To Cease and Desist.

40. *See* Joint Legal Stipulations ¶¶ 10–11 for statutory basis for cease-and-desist orders and factors Court should consider under *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (citing *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981), to determine appropriateness of a cease-and-desist order.

41. The Commission further considers the following factors in determining whether to impose a cease-and-desist order: "whether there is a risk of future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions

being sought in the same proceedings." *Steven E. Muth*, Initial Decision, Rel. No. 262, 2004 WL 2270299, at *38 (citing *KPMG Peat Marwick LLP*, 74 SEC Docket 384, 436 (Jan. 19, 2001)); *Malouf*, 2015 WL 1534396, at *38.

B. The Court Should Bar Ruggieri From the Securities Industry.

42. See Joint Legal Stipulations ¶ 12 for statutory basis for industry bars or suspensions.

43. To protect the investing public, bars or suspensions can preclude a respondent from association with any "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization."[5] 15 U.S.C. §§ 78o(b)(6)(A) & 78o(b)(4)(D).

44. In determining whether a bar or suspension is appropriate in the public interest, "the Commission has considered the following factors: 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 or her conduct, the likelihood that the respondent's occupation will present opportunities for future violations, the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and, in conjunction with other factors, the extent to which the sanction will have a deterrent effect." *Malouf*, 2015 WL 1534396, at *39 (citing cases); *see also Alfred Clay Ludlum, III*, Commission Opinion, Rel. No. 3628, 2013 WL 3479060, at *4–7 (July 11, 2013); *John W. Lawton*, Commission Opinion, Rel. No. 3513, 2012 WL 6208750, at *10–12 (Dec. 13, 2012).

45. Insider trading warrants a permanent industry bar to protect the public interest even when a respondent has no prior disciplinary history. *See Robert Bruce Lohmann*, Commission Opinion,

[5] In the context of Exchange Act Section 15(b), "willfully" means that the respondent voluntarily committed the act that constitutes the violation — not that he knew he was violating the law. *Flannery*, 2014 WL 7145625, at *37.

Rel. No. 2141, 2003 WL 21468604, at *5 (June 26, 2003) ("Lohmann's misconduct is serious.... Insider trading constitutes clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public.") (finding permanent broker, dealer, and investment adviser bar warranted even though respondent had no prior disciplinary history); *David W. Baldt*, Initial Decision, Rel. No. 418, 2011 WL 1506757, at *23 (Apr. 21, 2011) ("The Commission treats insider trading cases and breaches of fiduciary duty very seriously.") (permanently barring respondent from association with investment adviser); *cf. Martin B. Sloate*, Commission Opinion, Rel. No. 38373, 1997 WL 126707, at *3 (Mar. 7, 1997) ("A registered securities professional who engages in the serious misconduct of insider trading should be excluded for a longer period of time [than one year].") (finding bar with right to reapply after one year insufficient and imposing bar with right to reapply after five years).

C. The Court Should Order Ruggieri To Pay Disgorgement.

46. *See* Joint Legal Stipulations ¶ 13 for statutory basis for and purpose of disgorgement.

D. The Court Should Order Ruggieri To Pay the Maximum Civil Penalty.

47. *See* Joint Legal Stipulations ¶ 14 for statutory basis for civil money penalties.

48. To order payment of monetary penalties, the Commission must find that such penalties are in the public interest, based on the following factors: (1) whether the conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. § 78u-2(c); *see also Malouf*, 2015 WL 1534396, at *42 ("To determine whether a penalty is in the public interest, Exchange Act Section 21B [and other provisions] call for consideration of: (1) whether the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm caused to others; (3) unjust

enrichment, taking into account restitution made; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require.").

49. A three-tier system identifies the maximum amount of civil penalties, depending on the severity of conduct. *See* 15 U.S.C. §§ 77h-1(g) & 78u-2(b). First-tier penalties are imposed for each statutory violation. *Id.* Second-tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. *Id.* Third-tier penalties are imposed in cases where such state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act. *Id.*

50. For natural persons, $150,000 is the maximum third-tier penalty for each violation occurring after March 3, 2009 and on or before March 5, 2013. *See* 17 C.F.R. 201.1004 (2009 inflation adjustment).

51. Each insider trading instance can be counted as a separate violation requiring a penalty. *See, e.g., SEC v. Pentagon Capital Mgmt. PLC,* 725 F.3d 279, 288 n.7 (2d Cir. 2013) ("[W]e find no error in the district court's methodology for calculating the maximum penalty by counting each late trade as a separate violation."); *cf. SEC v. Coates*, 137 F. Supp. 2d 413, 428, 430 (S.D.N.Y. 2001) (counting each category of misrepresentations as a separate violation); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) ("multiplying the maximum third tier penalty for natural persons…by the number of investors who actually sent money to [defendant]").

DIVISION OF ENFORCEMENT

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served true copies of the Division of Enforcement's Post-Hearing Proposed Findings of Fact and Conclusions of Law on this 22d day of May, 2015, on the following by the specified means of delivery:

By hand:

Brent J. Fields, Secretary
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May 22, 2015

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Re: *In the Matter of Gregory T. Bolan, Jr. and Joseph C. Ruggieri*, AP File No. 3-16178

Dear Mr. Fields:

Please find attached for filing the Division of Enforcement's Post-Hearing Proposed Findings of Fact and Conclusions of Law, and a certificate of service. The hand delivery contains the original and 3 copies of each document.

Respectfully submitted,

SMS

Sandeep Satwalekar
Division of Enforcement

cc: Judge Jason S. Patil (by e-mail w/encls.)
Paul Ryan, Esq. (by e-mail w/ encls.)
Silvia Serpe, Esq. (by e-mail w/ encls.)

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