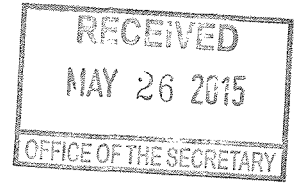


HARD COPY

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 MEMORANDUM OF LAW

Alexander M. Vasilescu
Preethi Krishnamurthy
Sandeep Satwalekar
Securities and Exchange Commission
New York Regional Office
Brookfield Place, 200 Vesey Street, Ste. 400
New York, New York 10281
Tel. (212) 336-0116 (Krishnamurthy)
Fax. (703) 813-3282
VasilescuA@sec.gov
KrishnamurthyP@sec.gov
SatwalekarS@sec.gov

Attorneys for the Division of Enforcement

May 22, 2015

Table of Contents

	Page
PRELIMINARY STATEMENT.....	1
STATEMENT OF FACTS	2
I. WELLS FARGO’S BUSINESS.....	2
II. BACKGROUND: BOLAN, RUGGIERI, AND MOSKOWITZ	3
III. THE RELATIONSHIP BETWEEN BOLAN AND RUGGIERI	4
IV. RUGGIERI’S PROFITABILITY WAS IMPORTANT TO HIS CAREER.	4
V. RUGGIERI’S COMPENSATION AND PROMOTION	5
VI. RUGGIERI RARELY HELD OVERNIGHT POSITIONS.	6
VII. BOLAN’S RESEARCH REPORTS AND RATINGS CHANGES	6
VIII. WELLS FARGO PROHIBITED TIPPING AND TRADING AHEAD OF RATINGS CHANGES, AS BOLAN AND RUGGIERI KNEW.....	7
IX. BOLAN REPEATEDLY PREVIEWED HIS RESEARCH SELECTIVELY.	7
X. THE 6210 NUMBER WAS RUGGIERI’S “SPECIFIC EXTENSION.”	9
XI. RUGGIERI WAS TYPICALLY AT HIS DESK DURING MARKET HOURS.....	9
XII. RUGGIERI THOUGHT THE RISK OF DETECTION WAS LOW.....	9
A. When Ruggieri Spoke to Bolan on the Phone, Nobody Could Hear Bolan.....	9
B. Ruggieri’s Trades Were Unlikely To Draw Suspicions.....	10
XIII. BOLAN REPEATEDLY TIPPED RUGGIERI AND MOSKOWITZ, WHO THEN TRADED ON THE INFORMATION.....	10
XIV. RUGGIERI’S OVERNIGHT POSITIONS DID NOT RESULT FROM CHANCE.	11
XV. RUGGIERI PROVIDED POSITIVE FEEDBACK THAT BENEFITED BOLAN.	11
A. The Analyst Scorecard	11
B. Bolan’s Promotion	12
XVI. WELLS FARGO INVESTIGATED BOLAN AND RUGGIERI.....	13
XVII. WELLS FARGO DECIDED TO TERMINATE BOLAN AND RUGGIERI.	14
XVIII. RUGGIERI CONTINUED TO HELP BOLAN AFTERWARDS.....	14
ARGUMENT.....	15
I. MOST ELEMENTS OF THE DIVISION’S CLAIMS ARE UNDISPUTED.	15
A. Ruggieri Concedes That Bolan’s Ratings Changes Were Material.....	16
B. Bolan’s Forthcoming Ratings Changes Were Undisputedly Non-Public.....	16
C. There Can Be No Dispute That Bolan Breached His Duty to Wells Fargo.....	17
D. There Can Be No Dispute That Bolan Had the Requisite Sciencter.....	17
E. No Genuine Dispute Can Exist as to the Remaining Elements.....	19

II.	BOLAN TIPPED RUGGIERI, AND RUGGIERI TRADED WITH KNOWLEDGE OF BOLAN'S FORTHCOMING RATINGS CHANGES.....	19
A.	Bolan Spoke to Ruggieri Just Before Ruggieri Began Building Each Position, And Ruggieri's Testimony To the Contrary Lacks Credibility.....	20
B.	The Probability That Ruggieri's Trades Occurred By Chance Is Almost Zero.	22
C.	Bolan Tipped Moskowitz to Three of the Same Ratings Changes.....	23
D.	Ruggieri's Overnight Positions Before the Ratings Changes Were Aberrant.....	23
E.	Bolan Had No Qualms About Violating Wells Fargo's Policies.	25
F.	Bolan Told Ruggieri He Was Bullish About Athena Despite a Neutral Rating.....	25
G.	Ruggieri Had a Compelling Motive to Trade on Bolan's Tips.....	26
H.	Ruggieri Never Told His Boss About the Overnight Positions.	27
I.	Ruggieri Did Not Deny Trading in Anticipation of the Ratings Changes In His Investigative Testimony.	28
J.	Ruggieri Helped Bolan After Wells Fargo Terminated Them Both.	29
K.	Ruggieri Recently Invented Explanations for His Overnight Positions, But the Explanations Do Not Match His Trading.	29
III.	BOLAN TIPPED RUGGIERI FOR PERSONAL BENEFIT.....	30
A.	Bolan Tipped Ruggieri To Maintain and Further Their Friendship.....	30
B.	Bolan Tipped Ruggieri In Return for Several Career Benefits That Bolan Expected Would Increase His Compensation.....	32
	1. Bolan tipped Ruggieri for his career mentorship.....	33
	2. Bolan tipped Ruggieri to potentially increase his annual bonus.	34
	3. Bolan tipped Ruggieri to improve his chances of a promotion	35
C.	Bolan Had No Legitimate, Non-Self-Dealing Reason to Tip Ruggieri.	36
IV.	THE COURT SHOULD IMPOSE APPROPRIATE RELIEF.....	37
A.	The Court Should Order Ruggieri To Cease and Desist.	37
B.	The Court Should Bar Ruggieri From the Securities Industry.....	38
C.	The Court Should Order Ruggieri To Pay Disgorgement.....	39
D.	The Court Should Order Ruggieri To Pay a Civil Penalty.....	40
	CONCLUSION.....	40

Table of Authorities

<u>Cases</u>	<u>Page</u>
<i>Aaron v. SEC</i> , 446 U.S. 680 (1980).....	15
<i>Alfred Clay Ludlum, III</i> , Commission Opinion, Rel. No. 3628, 2013 WL 3479060 (July 11, 2013).....	39
<i>David W. Baldt</i> , Initial Decision, Rel. No. 418, 2011 WL 1506757 (Apr. 21, 2011).....	39
<i>Dennis J. Malouf</i> , Initial Decision, SEC Rel. No. 766, 2015 WL 1534396 (Apr. 7, 2015).....	37
<i>Dirks v. SEC</i> , 463 U.S. 646 (1983).....	15,16, 18, 30,31,32,36,37
<i>John P. Flannery</i> , Commission Opinion, Rel. No. 3981, 2014 WL 7145625 (Dec. 15, 2014).....	39
<i>John W. Lawton</i> , Commission Opinion, Rel. No. 3513, 2012 WL 6208750 (Dec. 13, 2012).....	39
<i>Martin B. Sloate</i> , Commission Opinion, Rel. No. 38373, 1997 WL 126707 (Mar. 7, 1997).....	39
<i>Michalich v. Cleveland-Tankers, Inc.</i> , 364 U.S. 325 (1960).....	19
<i>Robert Bruce Lohmann</i> , Commission Opinion, Rel. No. 2141, 2003 WL 21468604 (June 26, 2003).....	39
<i>SEC v. Coates</i> , 137 F. Supp. 2d 413, 428 (S.D.N.Y. 2001).....	46
<i>SEC v. Monarch Funding Corp.</i> , 192 F.3d 295 (2d Cir. 1999).....	15
<i>SEC v. Obus</i> , 693 F.3d 276 (2d Cir. 2012).....	15,16, 17, 18, 19,30,31
<i>SEC v. Payton</i> , ___ F. Supp. 3d ___, 2015 WL 1538454 (S.D.N.Y. Apr. 6, 2015).....	16, 30
<i>SEC v. Pentagon Capital Mgmt. PLC</i> , 725 F.3d 279 2d Cir. 2013).....	40
<i>SEC v. Roszak</i> , 495 F. Supp. 2d 875 (N.D. Ill. 2007).....	19
<i>SEC v. Sabrdaran</i> , 2015 WL 901352 (N.D. Cal. Mar. 2, 2015).....	31,33
<i>SEC v. Singer</i> , 786 F. Supp. 1158 (S.D.N.Y. 1992).....	19
<i>SEC v. Stanard</i> , 2009 WL 196023 (S.D.N.Y. Jan. 27, 2009).....	16
<i>SEC v. Ward</i> , 151 F.3d 42 (2d Cir. 1998).....	20
<i>Steven E. Muth</i> , Initial Decision, Rel. No. 262, 2004 WL 2270299 (Oct. 8, 2004).....	38
<i>United States v. Ballesteros Gutierrez</i> , 181 F. Supp. 2d 350 (S.D.N.Y. 2002).....	23
<i>United States v. Carpenter</i> , 791 F.2d 1024 (2d Cir. 1986).....	17
<i>United States v. Chestman</i> , 947 F.2d 551 (2d Cir. 1991).....	17
<i>United States v. Falcone</i> , 257 F.3d 226 (2d Cir. 2001).....	18,31
<i>United States v. Jian</i> , 734 F.3d 147 (2d Cir. 2013).....	30,33,36
<i>United States v. McDermott</i> , 245 F.3d 133 (2d Cir. 2001).....	20
<i>United States v. Newman</i> , 773 F.3d ___ (2 nd Cir. 2014).....	16, 18,30,31,32,33,36,37
<i>United States v. O'Hagan</i> , 521 U.S. 642 (1997).....	15,17, 19, 38
<i>United States v. Riley</i> , ___ F. Supp. 3d ___, 2015 WL 891675, (S.D.N.Y. Mar. 3, 2015).....	20,26,31,33,37
 <u>Statutes and Rules</u>	
15 U.S.C. § 77q(a).....	15,16
15 U.S.C. §§ 77h-1(g) & 78u-2(b).....	40
15 U.S.C. § 78j(b).....	15,16
15 U.S.C. §§ 78o(b)(6)(A) & 78o(b)(4)(D).....	39
15 U.S.C. § 78u-2(c).....	40
 <u>Other</u>	
Donald C. Langevoort, <i>Insider Trading: Regulation, Enforcement, and Prevention</i> § 4.04[1] (1992 ed.).....	19

The Division of Enforcement (the “Division”) respectfully submits this post-hearing memorandum of law following the hearing as to Respondent Joseph C. Ruggieri (“Ruggieri”).

PRELIMINARY STATEMENT

Over the course of one year, Gregory T. Bolan, Jr. (“Bolan”) tipped Ruggieri to at least six of his eight forthcoming ratings changes and tipped his close friend, Joshua Moskowitz, to three of the same ratings changes. Each time, Ruggieri and Moskowitz engaged in the same pattern. Shortly after speaking to Bolan, Ruggieri and Moskowitz each began building an overnight position in the right stock in the right direction. Their overnight positions peaked the night before Bolan’s ratings change. Wells Fargo published the ratings change before the market opened, and Ruggieri and Moskowitz began liquidating their positions for a profit in the morning. Although Ruggieri very rarely took overnight positions — and when he did, he lost money two-thirds of the time — his overnight positions before these six ratings changes included his three most profitable overnight positions at Wells Fargo. The same year, Bolan also tipped Ruggieri before a seventh ratings change, which Wells Fargo published during market hours. With no need to hold an overnight position to profit, Ruggieri built a 15,000-share short position in the hour before Bolan published a downgrade and covered his entire position in the hour after the downgrade.

Bolan and Ruggieri — an aggressive, ambitious, self-promoting trader — had no qualms about breaking Wells Fargo’s rules on the confidentiality of material, non-public information. Throughout Ruggieri’s tenure at Wells Fargo, Bolan sent Ruggieri and select, high-paying clients “channel check” emails with unpublished information that even Ruggieri concedes was at times material and should have been published. In fact, when a supervisory analyst discovered one such email, he promptly instructed Bolan to publish it. Yet Bolan continued sending out channel checks. When his junior analyst confronted him three times about this conduct, Bolan simply lied and said that he had received approval for his channel check emails.

Bolan tipped Ruggieri — the senior trader on Wells Fargo’s healthcare desk, the only trader who traded Bolan’s stocks, and a rising star who had the ear of Bolan’s boss — because he needed Ruggieri’s help to become a top-ranked analyst. Bolan otherwise had little to offer Ruggieri: Bolan had a prickly personality, ranked below Ruggieri in the firm hierarchy, and had published analyst reports himself for only two years. Bolan knew that his career as an analyst, in a research department that generated no direct revenue for Wells Fargo, would improve if the firms’ star revenue-generating trader helped him. Bolan therefore tipped Ruggieri in return for his friendship, mentorship, and positive feedback, which he hoped would result in a higher bonus and promotion.

This and the other overwhelming circumstantial evidence adduced at the hearing show that Bolan tipped Ruggieri and did so for a personal benefit, the only elements of the Division’s claims genuinely in dispute. The Court should therefore find Ruggieri liable for insider trading in violation of Section 17(a) of the Securities Act of 1933 (the “Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 thereunder. In the public interest, the Court should impose a cease-and-desist order, a permanent industry bar, a disgorgement order to be satisfied by Wells Fargo’s payment, and a civil penalty of \$300,000.

STATEMENT OF FACTS

I. WELLS FARGO’S BUSINESS

Wells Fargo was in a competitive business, with dwindling commission revenue, and did not tolerate underperformers. (¶ 1.)¹ Wells Fargo’s sales and trading department generated profits for the firm through commissions earned by trading. (¶ 2.) Wells Fargo’s institutional clients paid a certain amount of money per share of stock that Wells Fargo traded for the client. (¶ 3.) Wells Fargo’s

¹ Citations to “¶ ___” refer to the Division’s Post-Hearing Proposed Findings of Fact, filed concurrently with this memorandum, and references to the six stocks at issue use the short forms set forth therein. Citations to “Fact Stip.” refer to the parties’ pre-hearing Joint Undisputed Facts, filed on March 23, 2015. Citations to “Law Stip.” refer to the parties’ pre-hearing Joint Stipulated Conclusions of Law, filed on March 23, 2015. Citations to “Tr.” refer to the hearing transcript.

research department, including the equity research group, generated no direct revenue. (¶ 4.)

Analysts' research helped produce revenue only if the research generated client trades through Wells Fargo's traders. (¶ 5.) The sales and trading department paid a portion of the research department's costs, including analysts' salaries, which created tension between the two departments. (¶¶ 6–7.)

II. BACKGROUND: BOLAN, RUGGIERI, AND MOSKOWITZ

In June 2008, after about two years as a junior analyst at another firm, Bolan joined Wells Fargo (then Wachovia) as an equity research analyst in Nashville, Tennessee. (¶¶ 8–9; Fact Stip. ¶¶ 1, 7.) Bolan focused his research on three niche sub-sectors of the health care industry. (¶ 10.)

Between 2004 through 2009, Ruggieri worked at Bank of America as an equity trader and reported to Matt Brown ("Brown") for several of those years. (¶ 12; Fact Stip. ¶ 10.) In about August 2009, Brown recruited Ruggieri to Wells Fargo. (¶ 13; Fact Stip. ¶¶ 11, 19.) Ruggieri and Chip Short ("Short") were Wells Fargo's senior and junior healthcare traders, respectively, and they covered different stocks. (¶¶ 15–16.) Ruggieri's primary job was to execute customer trades in his stocks to generate commissions for Wells Fargo and to lose as little of the commissions as possible when unwinding the other side of customers' trades. (¶¶ 19–20.) Ruggieri also placed principal trades on Wells Fargo's behalf and generated profits or losses for Wells Fargo. (¶ 21.) Although Ruggieri could take principal positions in any of the 277 stocks he covered, Ruggieri made fewer principal trades than some other equity traders. (¶¶ 17, 22–23; Fact Stip. ¶ 23.)

Moskowitz worked with Bolan on the trading floor at First New York in 2005, when they became friends. (¶ 24; Fact Stip. ¶ 201.) From June 2009 through November 2010, Moskowitz was unemployed, suffered from a debilitating disease, and traded in his personal brokerage accounts. (¶ 28; Fact Stip. ¶ 186.) Bolan and Moskowitz were "very good," "close," "trusted" friends, and they spoke regularly by phone. (¶ 27; Fact Stip. ¶¶ 186, 202, 203.)

III. THE RELATIONSHIP BETWEEN BOLAN AND RUGGIERI

From June 2008 until March 2011, Bolan was a vice president, the level below director.

(¶ 31; Fact Stip. ¶ 1.) Bolan was an ambitious, up-and-coming research analyst. (¶ 32.) Yet he was a loner, had a temper, and could not maintain even a cordial working relationship with Bruce Mackle (“Mackle”), the healthcare trading desk analyst. (¶¶ 33–35.)

Ruggieri joined Wells Fargo as a director and remained at that level until March 2011. (¶ 37.)

Ambitious and aggressive, Ruggieri was one of the top-producing traders at Wells Fargo. (¶¶ 38–40.)

Ruggieri was Bolan’s primary contact on the trading desk. (¶ 43.) Ruggieri traded all the stocks Bolan covered; Short did not trade any of them. (¶ 41.) Bolan therefore rarely spoke with Short unless Ruggieri was away from the office, and Bolan kept Mackle out of the loop on many communications with Ruggieri. (¶¶ 36, 42, 44.) Ruggieri spoke to at least seven other healthcare analysts at Wells Fargo but interacted more with Bolan than with any of the others. (¶ 45.)

By at least October 2009, Bolan and Ruggieri had established a rapport. (¶ 46.) Bolan and Ruggieri spoke at least twice a week, “got along really well,” and became “pretty good friends.” (¶¶ 49–51.) When Bolan was in New York, he and Ruggieri occasionally socialized outside the office, typically with other colleagues, and talked about work and family. (¶ 52.) Ruggieri eventually “mentor[ed]” Bolan and tried to “make [him] more commercial.” (¶ 47.) Ruggieri and Bolan viewed themselves as partners trying to lift Wells Fargo’s healthcare business and each hoped to benefit his own career in the process. (¶ 48.)

IV. RUGGIERI’S PROFITABILITY WAS IMPORTANT TO HIS CAREER.

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. (¶ 53.) Wells Fargo calculated for Ruggieri both a net revenue figure (commissions from trades, plus profits or losses on his principal trades) and a loss ratio (the percentage of commissions lost through his trades). (¶¶ 54–

55.) Traders at Wells Fargo typically had an overall loss ratio — that is, Wells Fargo kept less than 100% of the commissions clients paid. (¶ 56.) Wells Fargo’s business was “generating commissions and trying to keep the loss ratio as low as possible.” (¶ 57.)

At Wells Fargo, Ruggieri worked directly for Brown, who mentored Ruggieri. (¶ 58.) Brown’s main supervisory responsibility was to keep an eye on his traders’ profits and losses. (¶ 59.) As Ruggieri knew, Brown expected his traders to alert him to any potential trading loss of \$50,000 or more. (¶ 61.) Brown reported to Chris Bartlett (“Bartlett”), the head of equity sales and trading at Wells Fargo. (¶ 62.) Bartlett was responsible for 300 employees and reported to Wells Fargo’s president, John Shrewsberry (“Shrewsberry”), who evaluated Bartlett’s performance on the profitability and operation of Bartlett’s division. (¶¶ 62–63.) Brown and Bartlett each devoted one of their computer screens to traders’ real-time profit and loss fluctuations. (¶¶ 60, 64.)

A trader’s profit and loss, or profitability on his trades, was an important empirical measurement of a trader’s performance and talent. (¶ 66.) Indeed, the first sentence of the first criterion of Ruggieri’s performance evaluation mentioned “net revenue.” (¶ 67.) By making profitable principal trades, Ruggieri could reduce his loss ratio and generate more net revenue for Wells Fargo. (¶ 68.) Brown encouraged Ruggieri to improve his stock-picking ability when making principal trades and to talk to analysts to do so. (¶ 69.)

V. RUGGIERI’S COMPENSATION AND PROMOTION

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. (¶ 70.) Starting in early 2010, at least one or two competitor firms tried to recruit Ruggieri away from Wells Fargo. (¶ 71.) At the time, Wells Fargo rarely provided compensation guarantees to traders. (¶ 72.) In deciding whether to give a trader a compensation guarantee, Wells Fargo considered the trader’s profitability. (¶ 73.) On or after June 15, 2010, Shrewsberry approved an

unwritten compensation guarantee for Ruggieri — \$1.8 million for 2010 — which made Ruggieri the highest-paid equity trader at Wells Fargo. (¶¶ 74–75.) When Ruggieri’s compensation guarantee expired on January 1, 2011, Wells Fargo paid Ruggieri a salary plus approximately 6% of the monthly net revenue in his Wells Fargo trading accounts. (¶¶ 75, 78, 80; Fact Stip. ¶ 22.) In approximately March 2011, Wells Fargo promoted Ruggieri to managing director. (¶ 81.)

VI. RUGGIERI RARELY HELD OVERNIGHT POSITIONS.

From at least 2009 through 2011, equity traders at Wells Fargo typically tried not to hold positions overnight, because market-moving news could break overnight when traders could not easily exit their positions. (¶¶ 82–83, 235.) As Ruggieri admits, he wanted to keep his overnight risk to a minimum and generally did not hold an overnight position unless he was stuck with the position at the end of the day or had a reason for the position. (¶¶ 84–85.) Over Ruggieri’s 415 trading days at Wells Fargo, he held an overnight position approximately 325 times. (¶ 86; Fact Stip. ¶¶ 25, 183.) From March 30, 2010 through March 31, 2011, Ruggieri held overnight positions less than 1.5% of the time, whether measured in the number of shares or dollar amounts he traded. (¶ 87.)

VII. BOLAN’S RESEARCH REPORTS AND RATINGS CHANGES

The published research reports that Wells Fargo issued under Bolan’s name included one of three recommendations about the covered company’s stock: “outperform,” or buy; “market perform,” or hold; or “underperform,” or sell. (¶¶ 89–90.) At times, Bolan published a ratings change — a report changing his recommendation on a company’s stock. (¶ 91.) Bolan also initiated coverage on twelve stocks, 75% of the time with a neutral, “market perform” rating. (¶¶ 93–97.)

Wells Fargo’s analyst reports remained non-public until they were publicly disseminated through publication. (¶ 137.) Bolan and Ruggieri admittedly knew that Bolan’s forthcoming, unpublished ratings changes were non-public. (¶¶ 136, 138–139.) Wells Fargo typically issued

Bolan's ratings changes and initiations of coverage between 4:00 p.m. Eastern time, when the market closed, and 9:30 a.m. the next trading day, when it re-opened. (¶ 101.)

Bolan and Ruggieri admittedly knew that ratings changes typically moved stock prices. (¶¶ 104–105, 113.) In fact, Bolan's ratings changes had a statistically significant impact on the prices of the affected stocks. (¶¶ 115–126.) Wells Fargo, the securities markets, and academic studies all treated ratings changes as more important than other analyst reports. (¶¶ 130–133.)

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

Wells Fargo prohibited its research analysts from sharing forthcoming research with the firm's traders, clients, or anyone else outside the research department, as its written compliance policies and annual compliance training made clear. (¶¶ 140–158.) In fact, Wells Fargo's 2009 annual compliance training advised Bolan: "No previewing research/opinions/estimates[.] No contradictions or signals indicating a change to published views[.]... No discussions on timing and views of reports with anyone outside Research." (¶ 160.) Bolan and Ruggieri understood that Bolan was prohibited from communicating the contents of his research reports, including ratings changes, before they were published. (¶¶ 166–168.) Ruggieri also knew that he was prohibited from trading on a stock with knowledge of an analyst's forthcoming ratings change on the stock. (¶¶ 169–170.)

IX. BOLAN REPEATEDLY PREVIEWED HIS RESEARCH SELECTIVELY.

On September 17, 2009, Bolan sent a "platinum" client a channel check email about Covance and blind-carbon copied Ruggieri. (¶¶ 173–174.) 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." (¶ 175.) Bolan then opined: "Based on all this, my gut tells me that we will continue to see an incremental improvement through the end of the year.... 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.” (¶ 177.) Ruggieri knew the information was confidential and unpublished and extolled Bolan: “Love Bolan, think he’s our best analyst.” (¶ 178.)

On May 5, 2010, Wells Fargo’s email review program flagged another channel check email that Bolan had sent to “certain clients,” and Mike Madsen (“Madsen”), a supervisory analyst, saw it. (¶ 179.) Madsen promptly told Bolan to publish the channel check, and Bolan did so later that day. (¶¶ 180–182.) Madsen could recall no other time he had had to tell an analyst to publish research that the analyst had already disclosed to certain clients, and it was “exceedingly rare” that Madsen saw a channel check email go out to clients without being published first. (¶ 184.) Because it was not a “run-of-the-mill” event, Madsen flagged the incident to his boss. (¶ 185.) Madsen expected Bolan to comply with Wells Fargo’s policies thereafter and publish his channel checks. (¶ 186.)

Yet even afterwards, and indeed throughout Ruggieri’s tenure at Wells Fargo, Bolan regularly sent Ruggieri channel check emails, which Ruggieri knew contained unpublished information. (¶¶ 178, 183, 187–189, 191–193, 577–596.) As Ruggieri concedes, some of these emails contained information that would probably move the market or be important to certain clients and therefore should have been published. (¶¶ 190–193.)

In August 2010, Evans joined Wells Fargo in Nashville and reported to Bolan. (Fact Stip. ¶¶ 6–7.) By late September 2010, Evans grew concerned that Bolan was violating Wells Fargo’s compliance policies by selectively sharing channel checks with certain clients. (¶ 196.) Evans confronted Bolan three times — on October 13, November 3, and November 12, 2010 — and each time Bolan was dismissive. (¶¶ 198–209.) Bolan claimed that compliance had approved his channel check emails. (¶ 199.) By January 2011, suspicious of Bolan’s claim and concerned that Bolan’s conduct could result in his and Bolan’s terminations, Evans began looking for another job and mentally “checked out” of Wells Fargo. (¶¶ 202, 209–211.)

X. THE 6210 NUMBER WAS RUGGIERI'S "SPECIFIC EXTENSION."

Wells Fargo's trading desk had a main phone line that rang on the desk. (¶ 218.) Although traders did not typically have their own personal phone lines, some desk employees did, in part to have a phone line that others could not listen in on. (¶¶ 220–221.) Employees' personal phone lines did not ring on the desk: they rang only on the employee's own phone turret and the turret of anyone else authorized to have that employee's personal line on his phone. (¶ 222.) If an employee did not have someone else's personal phone line on his own turret, he could not pick up or listen in on a call on that line from his own phone. (¶ 223.) Ruggieri had his own personal phone line — his "specific extension," in his words — at Wells Fargo: 212-214-6210 (the "6210 Line"). (¶¶ 224–227.) Ruggieri's 6210 Line did not ring on Mackle's phone turret but it did ring on Short's turret. (¶¶ 228–230.) Short generally picked up the 6210 Line only when Ruggieri was on another phone line or away from the desk. (¶ 231.) Ruggieri did not receive voicemail on his 6210 Line. (¶ 234.)

XI. RUGGIERI WAS TYPICALLY AT HIS DESK DURING MARKET HOURS.

When Ruggieri was not in the office during market hours, he did not place trades and therefore typically generated less revenue. (¶¶ 235–236.) Like most traders, Ruggieri did not usually schedule client meetings during market hours when he was in New York. (¶ 237.) Similarly, Ruggieri rarely left the trading desk when he was in the office. (¶ 238.) He typically ate his lunch at the desk — often "a handful of cereal" or a delivered lunch. (¶ 239.)

XII. RUGGIERI THOUGHT THE RISK OF DETECTION WAS LOW.

A. When Ruggieri Spoke to Bolan on the Phone, Nobody Could Hear Bolan.

Wells Fargo's trading floor was loud. (¶¶ 240–241.) Short and Mackle sat on either side of Ruggieri, and Brown sat two rows behind them. (¶¶ 242–243.) When Ruggieri was on the phone, Mackle could not hear what Ruggieri's interlocutor was saying. (¶ 245.)

B. Ruggieri's Trades Were Unlikely To Draw Suspicion.

In 2009 through 2011, Wells Fargo had approximately 40 traders. (¶ 246.) Brown supervised the fifteen to twenty equity traders while trading his own pad of technology stocks. (¶¶ 247–248.) Brown's equity traders made thousands of trades, totaling about 75 million shares of stock, each day. (¶¶ 249–250.) As Ruggieri knew, Brown did not review all the trades placed by his equity traders but questioned “outsized profit and loss moves.” (¶¶ 251–252.) Brown trusted Ruggieri and never suspected him of any wrongdoing. (¶ 253.)

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

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”). (¶ 255.) Before at least six and three of the Ratings Changes, respectively, Bolan spoke to Ruggieri and Moskowitz. (DIV 194-A.) In all but one instance, Bolan called the 6210 Line to speak to Ruggieri.² (¶ 260; DIV 194-A.) Shortly afterwards, Ruggieri and Moskowitz began building overnight positions in the stocks in the right direction (short before the downgrade and long before the upgrade) and their positions peaked at the end of the trading day just before Bolan's ratings changes were published. (¶ 258; DIV 194-A.)

Once Wells Fargo issued Bolan's reports, the stock prices of the companies Bolan upgraded increased, and the stock price of the company Bolan downgraded decreased. (¶ 261.) Beginning the morning after each ratings change was published, Ruggieri and Moskowitz began closing out their

² On July 1, 2010, having begun drafting his Albany upgrade, Bolan called Ruggieri's Blackberry for 39.666 seconds (¶¶ 313, 320.) Ruggieri, then speaking to his mother on his cell phone, replied to an unrelated email from Bolan that appeared at the top of Ruggieri's Blackberry email queue and told Bolan he would call him right back. (¶¶ 321–322.) Bolan replied, asking Ruggieri to call Bolan's home number. (¶ 323.) Ruggieri does not remember whether he called Bolan back. (¶ 324.) The Comcast phone records for Bolan's home phone line for that time period are incomplete, and Wells Fargo never produced records for Ruggieri's Blackberry. (¶ 331.)

overnight positions. (¶ 262; DIV 194-A.) Each time, they generated a profit. (¶ 262.) Overall, Ruggieri generated \$117,127 (or \$111,455, depending on the calculation methodology) in illegal profits in his Wells Fargo account. (¶¶ 264–265, 267–269.) Ruggieri’s overnight positions before Bolan’s six Ratings Changes (the “Six Ratings Changes”) included five of his most profitable overnight positions at Wells Fargo: his three most profitable and tenth and sixteenth most profitable overnight positions of the approximately 108 overnight positions he took. (¶¶ 270–271, 290, 308, 340, 379, 395.) Aside from his overnight positions on Bolan’s Six Ratings Changes, Ruggieri generated a profit on only 32.8% of his overnight principal positions while at Wells Fargo. (¶ 263.)

XIV. RUGGIERI’S OVERNIGHT POSITIONS DID NOT RESULT FROM CHANCE.

From March 2010 through March 2011, Ruggieri held overnight positions ahead of six of Bolan’s eight Ratings Changes, a ratio of 75%. (¶ 406.) During the same time, Ruggieri held overnight positions before 14 of Bolan’s 205 research reports, a ratio of 6.8%. (¶ 407.) Using these figures, Dr. O’Neal calculated that the statistical probability that Ruggieri’s overnight positions before Ratings Changes were a product of chance was 0.002%. (¶¶ 408–409.) Even taking into account Ruggieri’s overnight positions during his entire tenure at Wells Fargo, Dr. O’Neal calculated that the same statistical probability was less than 0.1%. (¶ 434.)

XV. RUGGIERI PROVIDED POSITIVE FEEDBACK THAT BENEFITED BOLAN.

A. The Analyst Scorecard

Each year, Wells Fargo ranked its equity research analysts against one another on a scorecard. (¶ 529.) The scorecard used several factors — including client votes, internal sales ranking, and “trading impact” — to calculate a composite weighted score for each analyst. (¶¶ 531, 533.) “Trading impact,” which counted for 5% of the overall score, was based on feedback about the analyst that Wells Fargo’s traders provided. (¶¶ 532, 570.) The higher an analyst’s overall ranking on the scorecard, the higher the analyst’s bonus that year. (¶ 530.) Moving up just one slot — for

example, from the 17th to the 16th best analyst overall — increased an analyst’s bonus by \$50,000 to \$75,000. (¶ 574.) Although Wells Fargo research analysts did not know their precise rankings, they knew where they generally ranked among other analysts on most factors, including “trading impact.” (¶ 575.) On his 2009 analyst scorecard, Wells Fargo ranked Bolan 24th out of 28 Wells Fargo research analysts overall and 3rd out of 28 in terms of “trading impact.” (¶¶ 536–537.)

On October 22, 2009 — about two months after Ruggieri joined Wells Fargo and after Ruggieri had received Bolan’s “very sensitive” Covance channel check to a “platinum” client — Wells Fargo’s management asked Ruggieri and other traders to provide feedback on analysts and informed them it would “accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management.” (¶¶ 173–175, 534; Fact Stip. ¶ 11.) Ruggieri replied that Bolan and two other analysts had been “the most proactive” and that “Bolan’s in a league of his own- great dialogue with clients and gets it.” (¶ 535.) Ruggieri received virtually identical emails seeking analyst feedback on April 15, 2010, after he profitably traded on Bolan’s Parexel tip; on July 20, 2010, after he had also traded profitably on Bolan’s Covance and Albany tips; and on December 6, 2010, after he had further traded profitably on Bolan’s Emdeon tip. (¶¶ 262, 539, 542; DIV 194-A.) In April, Ruggieri merely said that Bolan and two other analysts had been “most helpful.” In July and December, Ruggieri offered the following feedback: “Bolan is far and away the best,” and “Bolan – the best in our space.” (¶¶ 540, 543.) On his 2010 analyst scorecard, Bolan was ranked 16th out of 35 Wells Fargo research analysts overall and 1st out of 35 in terms of “trading impact.” (¶¶ 567–568.) Short played no role in Bolan’s “trading impact” ranking. (¶¶ 545, 569.)

B. Bolan’s Promotion

Wickwire thought Ruggieri was the best equity trader at Wells Fargo. (¶ 550.) Wickwire, who outranked Ruggieri and rarely met with individual traders, repeatedly met with Ruggieri at Brown’s

and Bartlett's request. (¶¶ 549, 552.) Wickwire considered Ruggieri's feedback on the healthcare analysts to be more important than feedback from anyone else on Ruggieri's desk. (¶ 551.)

At the end of every calendar year, Wells Fargo's promotions committee of 24 members, including Bartlett and Wickwire, met to decide on all firm promotions to director or managing director. (¶¶ 554–556.) The committee received a nomination form for each candidate. (¶ 558.) To be promoted, a candidate required a favorable vote from 2/3 of the committee members. (¶ 563.)

As Bolan admitted, he asked Ruggieri to give Wickwire feedback about Bolan's performance because Bolan thought it would improve his chances of being promoted. (¶ 553.) In his meetings with Wickwire, Ruggieri repeatedly conveyed positive feedback about Bolan. (¶ 552.)

In approximately November 2010, Wickwire nominated Bolan for a promotion to director. (¶ 546.) Wickwire wrote in Bolan's nomination form: "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." (¶ 560.) Wickwire received this feedback from Bartlett and Snyder, who in turn passed along feedback from Ruggieri. (¶ 561.) Feedback from Wells Fargo's trading desk was taken into account in analyst promotions and was an important factor in analysts' careers. (¶ 564.) In March 2011, Wells Fargo announced Bolan's promotion, and Bolan's salary increased by \$50,000 to \$100,000. (¶¶ 563, 565.)

XVI. WELLS FARGO INVESTIGATED BOLAN AND RUGGIERI.

On March 31, 2011 at 11:45 a.m., Bolan emailed Ruggieri, Mackle, and Short an unpublished channel check. (¶ 577.) Ruggieri edited Bolan's email by replacing Bolan's references to "I" with "we" to protect Bolan by "masking that Bolan was the author" of the channel check and then emailed the edited channel check to over 35 clients. (¶¶ 582–584.) At 2:14 p.m. that day, Bolan emailed Ruggieri and over 35 clients another unpublished channel check. (¶ 586.) On April 1, 2011,

at 2:01 p.m., Bolan emailed a third unpublished channel check to Ruggieri and a Wells Fargo client. (¶ 592.) Bolan wrote that his channel check findings were “extremely bullish.” (¶¶ 593–594.) On April 1, 2011 at 2:55 p.m., after Evans yet again confronted Bolan about his channel check, Bolan published information from his 2:01 p.m. channel check email as a squawk. (¶¶ 595–596.) Bolan told a client that his channel check squawk was “[s]uper duper ultra mega bullish.” (¶ 598.) Bolan knew that his clients expected to receive his unpublished channel checks. (¶¶ 600–601.)

After SAC Capital referred an unpublished channel check its employee had received from Ruggieri to Scott Friedman (“Friedman”), Wells Fargo’s senior compliance officer, Friedman began a compliance inquiry of Bolan and Ruggieri. (¶¶ 602–604.) On April 6, 2011, Friedman and others questioned Bolan. (¶ 607.) Bolan falsely claimed that Madsen had told him that he could send non-public research to fewer than twenty clients without violating the firm’s policy. (¶¶ 610–611, 613.)

XVII. WELLS FARGO DECIDED TO TERMINATE BOLAN AND RUGGIERI.

In April 2011, Wells Fargo decided to terminate both Bolan and Ruggieri for cause — an extremely rare occurrence. (¶¶ 616, 619–621, 626–627.) On July 8, 2011, Wells Fargo filed a Form U5 disclosing its reason for terminating Bolan: “Affirmation of Subject Individual’s Selective Dissemination of Information and Failure To Preserve Confidential Information.” (¶ 619.) The same day, Wells Fargo filed a Form U5 disclosing its reason for terminating Ruggieri: “Loss of Confidence Due to Failure To Escalate Issues Regarding the Inappropriate Dissemination of Information.” (¶ 621.) Afterwards, Ruggieri joined International Strategy and Investment Group (“ISI”) as a partner and remained there until October 2014. (¶¶ 622, 632, 636.) Bolan was most recently a research analyst at Sterne Agee Group, Inc. in Nashville, Tennessee. (¶ 625.)

XVIII. RUGGIERI CONTINUED TO HELP BOLAN AFTERWARDS.

After their departure from Wells Fargo, Bolan stayed at Ruggieri’s apartment when interviewing for a job, and Ruggieri gave Bolan his apartment keys. (¶¶ 633–635.) Ruggieri also tried

to get Bolan a job ISI. (¶¶ 632, 636.) Months later, Bolan invited Ruggieri to his wedding. (¶ 640.)

ARGUMENT

The parties genuinely dispute only two issues following the hearing: (1) that Bolan tipped Ruggieri to his forthcoming ratings changes; and (2) that Bolan did so in return for a personal benefit. The hearing evidence establishes each of these elements by more than the required preponderance of the evidence for the reasons described below in Parts II and III.

I. MOST ELEMENTS OF THE DIVISION'S CLAIMS ARE UNDISPUTED.

To prove Ruggieri's liability as a tippee, the Division must first prove Bolan's liability as a tipper. *See Dirks v. SEC*, 463 U.S. 646, 659 (1983) (“[T]he tippee’s duty to disclose or abstain is derivative from that of the insider’s duty.”); *United States v. O’Hagan*, 521 U.S. 642, 663 (1997) (“Absent any violation by the tipplers, there could be no derivative liability for the tippee.”). To prove that Bolan violated Sections 17(a) and 10(b) and Rule 10b-5 as a tipper, the Division must show that Bolan “(1) tip[ped] (2) material non-public information (3) in breach of a fiduciary duty of confidentiality owed to...the source of the information (misappropriation theory) (4) for personal benefit to [himself].” (Law Stip. ¶ 5 (quoting *SEC v. Obus*, 693 F.3d 276, 286 (2d Cir. 2012).) The Division must also demonstrate Bolan’s scienter.³ (Law Stip. ¶ 5.)

To prove that Ruggieri violated Sections 17(a) and 10(b) and Rule 10b-5 as a tippee, the Division must show not only that Bolan “breached a duty by tipping confidential information,” as described above, but also that “[Ruggieri] knew or had reason to know that [Bolan] improperly obtained the information (*i.e.*, that the information was obtained through [Bolan]’s breach); and [Ruggieri], while in knowing possession of the material non-public information, used the

³ 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)).

information by trading.” *Obus*, 693 F.3d at 285, 287. The Division must further prove that Ruggieri knew or had reason to know that Bolan tipped for personal benefit. *See Newman*, 773 F.3d 438, 447–50 (2d Cir. 2014) (in a criminal case, requiring that a tippee know of the personal benefit, because absent such knowledge the tippee cannot know of the tipper’s breach of duty); *Dirks*, 463 U.S. at 660 (in appeal of a Commission administrative proceeding, imposing tippee liability only when “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 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); *SEC v. Payton*, ___ F. Supp. 3d ___, 2015 WL 1538454, at *5 (S.D.N.Y. Apr. 6, 2015) (Rakoff, J.) (“The Amended Complaint also alleges that the defendants had knowledge of a benefit sufficient to meet the civil standard of ‘knowing or reckless.’”). Except for Bolan’s tips and personal benefit, these elements are not (or cannot plausibly be) disputed.⁴

A. Ruggieri Concedes That Bolan’s Ratings Changes Were Material.

Ruggieri does not dispute that Bolan’s forthcoming ratings changes were material. (Tr. 1200:23–1201:6 (“MS. SERPE: ... Joseph Ruggieri does not dispute materiality in this case.”).)

B. Bolan’s Forthcoming Ratings Changes Were Undisputedly Non-Public.

Information becomes public only when disclosed “to achieve a broad dissemination to the investing public generally and without favoring any special person or group,” or when, although known only by a few persons, their trading on it ‘has caused the information to be fully impounded into the price’ of the stock. (Law Stip. ¶ 8 (citing cases).) Here, Ruggieri and Bolan have each admitted that Bolan’s ratings changes were non-public before their publication. (¶¶ 136, 138–139.)

⁴ The Division’s claims also have an interstate commerce element. *See* 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b). Bolan’s telephone tips to Ruggieri satisfy this requirement. *See SEC v. Stanard*, 2009 WL 196023, at *25 (S.D.N.Y. Jan. 27, 2009) (“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.”).

C. There Can Be No Dispute That Bolan Breached His Duty to Wells Fargo.

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.” *Obus*, 693 F.3d at 284–85. A tipper’s breach of a duty of loyalty and confidentiality to his employer satisfies this requirement. *See O’Hagan*, 521 U.S. at 653–54 (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); *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).

Assuming that Bolan tipped Ruggieri, as the Court should find, no genuine dispute can exist that Bolan breached his duty to Wells Fargo, his employer. As Ruggieri and Bolan have admitted, Wells Fargo treated forthcoming ratings changes as confidential information and prohibited research analysts from disclosing forthcoming ratings changes to anyone outside the research department, including through written compliance policies and annual compliance training. (¶¶ 136–139.)

D. There Can Be No Dispute That Bolan Had the Requisite Scienter.

To prove a tipper’s scienter, the Division must demonstrate the following:

First, the tipper must tip deliberately or recklessly, not through negligence. Second, the tipper must know that the information that is the subject of the tip is non-public and is material for securities trading purposes or act with reckless disregard of the nature of the information. Third, the tipper must know (or be reckless in not knowing) that to disseminate the information would violate a fiduciary duty.

(Law Stip. ¶ 6 (citing *Obus*)). Finally, to prove that a tipper knew or recklessly disregarded his breach of duty, the Division must also prove that the tipper knew or recklessly disregarded that he received a personal benefit from his tip. (*Id.* at ¶ 7 (citing cases).)

Here, none of these elements of Bolan's scienter are genuinely in dispute, assuming Bolan tipped Ruggieri for a personal benefit, as the Court should find. First, Ruggieri has offered no scenario in which Bolan tipped Ruggieri accidentally. *See Obus*, 693 F.3d at 287 (explaining the difference between negligent and intentional tips). Bolan tipped Ruggieri on phone calls (and likely in person on one occasion). Furthermore, Bolan knew Ruggieri was a trader, just as Bolan knew Moskowitz was a trader. (¶¶ 24, 43.)

Second, there can be no dispute that Bolan knew his forthcoming ratings changes were material, non-public information, because he admitted it. (¶¶ 104, 111, 138.)

Third, there can be no dispute that Bolan knew his tips breached his fiduciary duty to Wells Fargo. "While the tipper need not have specific knowledge of the legal nature of a breach of fiduciary duty, he must understand that tipping the information would be violating a confidence." *Obus*, 693 F.3d at 286. As he admitted, Bolan knew that Wells Fargo prohibited him from communicating the timing and contents of his forthcoming ratings changes with anyone outside his research department. (Fact Stip. ¶ 1; ¶¶ 136–139, 160, 166.)

Finally, assuming Bolan tipped Ruggieri for a personal benefit, as the Court should find, Bolan necessarily knew or recklessly disregarded that he did so. The personal benefit requirement is a motive requirement for the tipper. *See Dirks*, 463 U.S. at 668 (Blackmun, J., dissenting) (disagreeing with the Court's decision requiring the insider to "act from a motive of personal gain"); *Newman*, 773 F.3d at 455 (discussing "inference as to that source's improper motive for disclosure"); *United States v. Falcone*, 257 F.3d 226, 230 (2d Cir. 2001) (explaining that, under *Dirks*, "the key factor was the tipper's intent in providing the information"). If the tipper has the requisite personal benefit motive

— as Bolan did for the reasons described below in Part III — then the requirement that the tipper knew or recklessly disregarded the personal benefit will be satisfied, because the tipper knows what is in his own head. *See Obus*, 693 F.3d at 286 (citing and quoting Donald C. Langevoort, *Insider Trading: Regulation, Enforcement, and Prevention* § 4.04[1] (1992 ed.) (“The requirement that the tipper act with scienter...is effectively subsumed in proof that the insider’s motive was personal benefit.”)).

E. No Genuine Dispute Can Exist as to the Remaining Elements.

Assuming that Bolan tipped Ruggieri for personal benefit, as the Court should find, the remaining elements of Ruggieri’s liability cannot genuinely be disputed. First, Ruggieri knew Bolan breached his duty to Wells Fargo, because Ruggieri admits he knew that Wells Fargo prohibited its analysts from telling its traders about forthcoming ratings changes. (¶¶ 140, 167–168.) Second, Ruggieri knew Bolan’s forthcoming ratings changes were material and non-public, because he admits that he knew that, too. (¶¶ 105–110, 139–143, 147, 153.) Finally, assuming Bolan tipped Ruggieri for personal benefit, as the Court should find, Ruggieri knew or had reason to know of the benefit, because Ruggieri himself provided it. Indeed, as set forth in Part III, Ruggieri knew each benefit he provided Bolan: friendship, mentorship, and positive feedback.

II. BOLAN TIPPED RUGGIERI AND RUGGIERI TRADED WITH KNOWLEDGE OF BOLAN’S FORTHCOMING RATINGS CHANGES.

“[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). Therefore, “circumstantial 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.”). A pattern of tips and trades therefore supports a finding of liability for insider trading, even in criminal cases. *See SEC v. Ward*, 151 F.3d 42, 47–48 (2d Cir. 1998) (upholding jury verdict); *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.”); *United States v. Riley*, ___ F. Supp. 3d ___, 2015 WL 891675, at *14, 15 (S.D.N.Y. Mar. 3, 2015) (Caproni, J.) (circumstantial evidence of tips sufficed to support jury verdict finding defendant guilty of two criminal counts of insider trading). As the strong circumstantial evidence demonstrates here, only one plausible explanation exists for Ruggieri’s precisely-timed, unusually profitable, overnight positions before Bolan’s Six Ratings Changes: Bolan tipped Ruggieri.

A. Bolan Spoke to Ruggieri Just Before Ruggieri Began Building Each Position, And Ruggieri’s Testimony To the Contrary Lacks Credibility.

By testifying that he was away from the trading desk “a lot” when he was in the office — including for daily lunch breaks and weekly client meetings during market hours — Ruggieri tried to distance himself from Bolan’s phone calls. (Tr. 2265:10–2268:19 (Ruggieri).) Yet the hearing evidence demonstrates that Ruggieri was almost always at the desk during market hours, as his colleagues testified, and that Ruggieri spoke to Bolan each relevant time.

As an initial matter, Bolan placed all the phone calls at issue from his office, home, or cell phone. (¶ 260.) No evidence in the record suggests that anyone other than Bolan placed those calls. Next, for all but one of these calls, Bolan dialed Ruggieri’s 6210 Line.⁵ (¶ 260; DIV 194-A.) Ruggieri

⁵ The one time Bolan called Ruggieri’s Blackberry, just before Ruggieri took a long overnight position in Albany, they also spoke. After Bolan called Ruggieri on his Blackberry, Ruggieri told Bolan he would call him back, and Bolan told Ruggieri to call him at home. (¶¶ 320–323.) Given that Ruggieri admits he “had a constant dialogue” with Bolan, spoke to him “regularly,” was “pretty good friends” with Bolan, and viewed Bolan as a partner in Wells Fargo’s healthcare business, it is implausible that Ruggieri did not call Bolan back that evening after telling Bolan he would. (¶¶ 48,

admitted that the 6210 Line was his “specific extension.” (¶¶ 224–228.) It rang only on Ruggieri’s and Short’s phone turrets, and Short generally picked it up only when Ruggieri was away from the trading desk. (¶¶ 224, 228–31.) Furthermore, Ruggieri was in the office — not traveling — on the days Bolan placed each of the calls to Ruggieri’s 6210 Line. Ruggieri’s own summary chart, listing Bolan’s calls to the 6210 Line when Ruggieri was out of the office, concedes this point. (JR REB 67.) Indeed, Ruggieri admits that he was in the office on those days. (¶¶ 280, 299, 349, 370, 385.)

Ruggieri was also at the trading desk when Bolan called the 6210 Line, because, like any good trader, Ruggieri usually remained at the desk during market hours when he was in New York. Ruggieri could only place trades from his desk and thus typically generated less commission revenue when he was off the desk. (¶¶ 235–239.) Short and Mackle — who sat on either side of Ruggieri on the desk — testified that, like the other Wells Fargo traders, Ruggieri typically ate lunch at his desk, often just “a handful of cereal” or a delivered lunch. (¶¶ 239, 242.) As Mackle also testified, Ruggieri, like most traders, also refrained from scheduling client meetings during market hours and instead generally scheduled them before the market opened or after the market closed. (¶ 237.)

Ruggieri’s testimony that he was off the desk “a lot” — because he scheduled weekly client meetings during the trading day and in addition spent 1.5 hours of the trading day on average off the desk — is not credible. (Tr. 2265:10–2268:19 (Ruggieri).) His testimony contradicts Mackle’s and Short’s testimony and defies common sense: no high-performing trader earning \$1.8 million a year would be off the desk for 1.5 hours of the trading day when his job was to generate commission

49, 51, 324–325.) Indeed, Ruggieri does not deny calling Bolan back; he just does not remember. (¶ 324.) No return call appears in the phone records only because they are incomplete. (¶¶ 326–331.)

In another instance, Bolan likely spoke with Ruggieri in person, not only by phone. On Friday, February 4, 2011, the trading day before Ruggieri built a long overnight position in Athena, Bolan called Ruggieri’s 6210 Line in the afternoon for 41 seconds while Ruggieri was in the office. (Fact Stip. ¶¶ 134–135.) At least on the afternoon and evening of Monday, February 7, 2011, Bolan was in Greenwich, Connecticut and New York City for work. (¶¶ 371–372.) Bolan and Ruggieri likely spoke in person at Wells Fargo’s New York office over the weekend or on Monday morning.

revenue by trading for clients. Yet even if, as Ruggieri claimed, he took a lunch break around noon or 1:00 p.m., all but one of the phone calls at issue occurred before noon or after 2:00 p.m., not during lunchtime. (Tr. 2266:7–11 (Ruggieri); ¶ 260; DIV 194-A.) Bolan followed the only lunchtime phone call, on August 12, 2010 at 12:27 p.m., with a three-minute call to Ruggieri’s 6210 Line the next morning — when Ruggieri admits he was at the trading desk — just hours before Ruggieri began building a long overnight position in Emdeon. (¶ 349; DIV 194-A at 6.)

B. The Probability That Ruggieri’s Trades Occurred By Chance Is Almost Zero.

Other than Bolan tipping Ruggieri, no plausible explanation exists for Ruggieri’s precisely timed, directionally-correct positions before seven of Bolan’s eight Ratings Changes in their last year together at Wells Fargo. (DIV 194-A; Fact Stip. ¶¶ 61, 67, 72, 77, 91, 100, 122, 138, 149, 152, 156, 162, 167.) As Ruggieri concedes, he held an overnight position in the same stock in the same direction before six of these eight Ratings Changes. (DIV 194-A; Fact Stip. ¶¶ 61, 67, 72, 77, 91, 100, 122, 138, 149, 152, 156, 162, 167.) Each time, he started building his position shortly after he spoke to Bolan and started liquidating his overnight position in the morning after Wells Fargo issued Bolan’s Ratings Change. (DIV 194-A; Fact Stip. ¶¶ 31, 34, 38-41, 56–57, 61, 84, 87, 88, 91, 95–96, 100, 106, 109, 111, 114, 119, 122, 126, 134, 137–138, 143, 146, 149, 152–153, 156-59, 162, 167, 171; ¶¶ 320–331.) As Ruggieri also concedes, he built a 15,000-share short position in MDAS, a seventh Ratings Change, in the one hour before Bolan’s downgrade and covered his position in the hour after the downgrade. (¶¶ 397–405.) As with the other Ratings Changes, Bolan called Ruggieri’s 6210 Line twice the morning before — when Ruggieri admits he was in New York, and Wells Fargo’s trade records show that Ruggieri placed principal trades in other securities — and tipped him. (¶¶ 398–399.) The statistical probability that Ruggieri held the relevant overnight positions by chance is 0.002% — “for all practical purposes, zero.” (¶¶ 406–410.)

C. Bolan Tipped Moskowitz to Three of the Same Ratings Changes.

Bolan's parallel phone calls to Moskowitz and Moskowitz's parallel trading in three of the Ratings Changes further demonstrate that Bolan tipped Ruggieri. Moskowitz, who was unemployed and trading for himself, had no clients and had not traded in any of these three stocks in at least the six months before each of his overnight positions. (Fact Stip. ¶¶ 186, 203; ¶¶ 278, 319, 353.) Yet, each time, shortly after speaking to Bolan — in one case less than two hours after Bolan spoke to Ruggieri — Moskowitz took overnight positions in the right stock in the right direction before the ratings changes, just like Ruggieri. (DIV 194-A at 2, 5–7; ¶¶ 257–258.) The morning after Wells Fargo published Bolan's ratings changes, Moskowitz began liquidating his positions and turned a profit each time, just like Ruggieri. (DIV 194-A at 2, 5–7; ¶¶ 289, 338, 360; Fact Stip. ¶ 190.) These parallel calls and trades on three of the Ratings Changes are “highly probative” evidence that Bolan tipped Ruggieri. *United States v. Ballesteros Gutierrez*, 181 F. Supp. 2d 350, 356 (S.D.N.Y. 2002) (Kaplan, J.) (“[T]he evidence is highly probative of a common scheme to trade on inside information irrespective of what defendant's brothers [unindicted alleged tippees] might say.”) (denying defendant tippee's motion to exclude evidence that the deceased tipper tipped other tippees).

D. Ruggieri's Overnight Positions Before the Ratings Changes Were Aberrant.

Ruggieri's overnight positions before the Six Ratings Changes were highly atypical for him and could not plausibly have resulted from anything other than Bolan's tips. Like other traders at Wells Fargo, Ruggieri's primary job was to trade for clients and earn commissions. (¶ 19.) He took principal positions less often than other Wells Fargo traders. (¶ 23.) When he did, he rarely held positions overnight, because stock prices could move overnight based on after-hours news but he generally could not exit his position until the markets opened the next morning. (¶¶ 82–88.) In fact, over his time at Wells Fargo, Ruggieri could have held 229,910 overnight positions: the 277 stocks he traded multiplied by his 415 trading days at Wells Fargo multiplied by the two possible directional

trades, long or short. (¶ 17; Fact Stip. ¶ 25.) Yet Ruggieri held only 325 overnight positions, when calculating each trading night as a single position. (Fact Stip. ¶ 183.) Similarly, when measured by the dollar amount or number of shares he traded, Ruggieri held an overnight position less than 1.5% of the time. (¶ 87.) Yet Ruggieri held an overnight position in the right stock in the right direction before six of Bolan's eight Ratings Changes.

Ruggieri's overnight positions around the Ratings Changes were even more aberrant compared to the size and frequency of his other overnight positions in the same stocks. In Bruker, Ruggieri never held any other overnight position while at Wells Fargo. (Fact Stip. ¶ 182.) In Albany, Ruggieri never held another overnight position of more than a *de minimis* 79 shares. (¶ 342.) In Parexel, in which Ruggieri held a 52,500-share short position the night before Bolan's downgrade, Ruggieri held only two other overnight positions of more than 10,000 shares, each less than 31,000 shares. (¶¶ 292–293.) In Covance, in which Ruggieri held a 40,000-share long position the night before Bolan's upgrade, Ruggieri held only one other significant overnight position: a 2,000-share position. (¶ 310.) In Emdeon, Ruggieri took only one other overnight position: on November 11 and 12, 2009, just *after* Bolan published research on Emdeon. (¶ 362.) In Athena, in which Ruggieri held a 13,500-share long position the night before Bolan's upgrade, Ruggieri took only one other overnight position, over several nights, that ranged from -3,600 to -7,500 shares. (¶ 381.)

Furthermore, Ruggieri generated extraordinarily large profits on his overnight positions before the Ratings Changes, compared to his other overnight positions. (¶¶ 270–271.) Of his overnight positions at Wells Fargo, only 32.8% — less than one-third — generated a profit. (¶ 263.) Yet not only were all six of his overnight positions before the Ratings Changes profitable, three of them — in Athena, Parexel, and Bruker, respectively — were Ruggieri's most profitable overnight positions during his entire tenure at Wells Fargo, when measured in dollars. (¶¶ 270–271.)

E. Bolan Had No Qualms About Violating Wells Fargo’s Policies.

Bolan had both the intent and motive to tip Ruggieri, because Bolan knowingly broke the same compliance rules against selective dissemination of research by sharing his unpublished channel checks with certain high-paying clients. (¶¶ 171–217, 577–601.) In May 2010, Madsen discovered one of Bolan’s channel check emails and directed Bolan to immediately publish it — an event so “exceedingly rare” that Madsen never recalled having done so with another analyst and indeed raised the incident to his boss’s attention. (¶¶ 179, 184–185.) Yet even afterwards Bolan defied the policy and Madsen’s instruction and continued to selectively email channel checks to Ruggieri and important clients, who came to expect the information from Bolan. (¶¶ 171–217, 577–601.) When confronted three times by Evans, his new junior analyst, in October and November 2010, Bolan lied and told Evans that Wells Fargo’s compliance department had approved his selective dissemination of channel checks. (¶¶ 198–209.) Bolan knowingly violated Wells Fargo’s policy, lied to Evans, and risked termination — a risk that ultimately came to pass — because Bolan knew clients used his channel checks to trade stocks. (¶¶ 171–217, 577–615.) Bolan knew that, in return, these “platinum” and “gold” clients would rate him highly on Wells Fargo’s analyst surveys and increase Bolan’s internal ranking, compensation, and odds of promotion. (¶¶ 571–575.)

F. Bolan Told Ruggieri He Was Bullish About Athena Despite a Neutral Rating.

As of January 2011, Bolan’s published “market perform” rating on Athena told investors to hold the stock — not to buy or sell. (¶ 364.) As Bolan knew from his annual compliance training, Wells Fargo unequivocally instructed analysts: “No previewing research/opinions/ estimates[.] No contradictions or signals indicating a change to published views.” (¶ 160.) Yet later that month, as Ruggieri’s instant message shows and as Ruggieri admits, Bolan orally told Ruggieri that he was “getting bullish” on Athena. (¶ 366.) Ruggieri in turn told Mackle and warned him not to hold a short position in Athena in his fantasy trading book. (¶¶ 366–367.) Bolan and Ruggieri’s

uncontroverted conversation proves two important facts. First, Bolan verbally shared his changed, unpublished opinion on at least one of the stocks at issue with Ruggieri, even though Bolan knew he was not allowed to do so. Second, Ruggieri knew that Bolan's changed opinion on Athena — less than a month before Bolan upgraded Athena — would eventually impact stock prices when published. Similarly, Bolan tipped Ruggieri to his Six Ratings Changes and Ruggieri traded on them.

G. Ruggieri Had a Compelling Motive to Trade on Bolan's Tips.

To prove Ruggieri's liability, the Division need not show that Ruggieri had a motive. *See, e.g., Riley*, 2015 WL 891675, at *9. Nevertheless, Ruggieri had a compelling motive to trade on Bolan's tips: to get a trading "edge" over other investors, with virtually assured profits on Bolan's tips, and thereby improve his career prospects and compensation.

Wells Fargo operated in a competitive business with dwindling commission revenue and no tolerance for underperformers. (¶¶ 1–3.) Both Brown and his boss, Bartlett, kept a careful eye on the equity traders' profits and losses. (¶¶ 53–69.) Particularly because commission revenue declined at times, Brown encouraged Ruggieri to make profitable principal trades. (¶ 69.) In this climate, Ruggieri knew that the profits he generated for Wells Fargo — not only the commissions he generated but also his loss ratio after profits and losses on his principal positions — played a significant role in his career and performance evaluations. (¶¶ 53–69, 498.) Aggressive and ambitious, Ruggieri wanted to be Wells Fargo's most profitable trader. (¶¶ 38, 39, 54–69.)

Ruggieri also knew that profitable principal trades directly or indirectly increased his compensation. Specifically, during his Parexel and Covance trades in the spring of 2010, Wells Fargo paid him 6% of his net revenue — including the profits on his principal positions — every month. (¶ 70; DIV 194-A; Fact Stip. ¶¶ 54–97.) In addition, Ruggieri was then negotiating a \$1.8 million guaranteed compensation package with Brown, Bartlett, and Shrewsbury, Wells Fargo's president, and Ruggieri knew that the more profitable his trading, the stronger his bargaining power. (¶¶ 72, 75;

DIV 194-A; Fact Stip. ¶¶ 54–97.) During his Albany and Emdeon trades in the summer of 2010, Ruggieri similarly knew that the higher his profits that year, the more likely Wells Fargo would promote him to managing director later that year, which would increase his compensation. (¶ 79; DIV 194-A; Fact Stip. ¶¶ 98–126.) During his Athena and Bruker trades in early 2011, Ruggieri no longer had a compensation guarantee, and Wells Fargo once again paid him a monthly 6% commission on his net revenue, including the profits on his principal trades. (¶ 79; DIV 19-A; Fact Stip. ¶¶ 134–143.) Ruggieri therefore had a significant monetary incentive to trade on Bolan’s tips.

As a trader used to taking calculated risks, Ruggieri thought that the rewards of trading on Bolan’s tips outweighed the risks. Ruggieri knew Bolan’s Ratings Changes were likely to move stock prices. (¶ 105.) In fact, Ruggieri’s overnight positions before the Six Ratings Changes were not only all profitable, but included his first, second, third, tenth, and sixteenth most profitable overnight positions out of over 108 overnight positions he took at Wells Fargo. (¶¶ 270–271.) Ruggieri also concluded that the risk of being caught was low. Ruggieri knew that Brown trusted him, that Brown was busy juggling his own trading responsibilities with supervising fifteen to twenty equity traders, and that Brown did not monitor individual trades but rather traders’ overall profits and losses. (¶¶ 247–254.) To avoid scrutiny, Ruggieri carefully calibrated the sizes of his overnight positions such that they were large enough to give him significant profits but not so large that they would cross Brown’s or the compliance group’s radar. (¶¶ 246–253; JR REB 66.) Finally, Ruggieri knew that Bolan — the friend and business partner Ruggieri mentored (¶¶ 47–52) — would never sell Ruggieri out by admitting the tips, even if Bolan were questioned.

H. Ruggieri Never Told His Boss About the Overnight Positions.

Ruggieri was no ordinary trader: he was an aggressive, ambitious self-promoter who earned \$1.8 million in 2010 after negotiating an unusually lucrative compensation guarantee. (¶¶ 38–39, 45, 71–76, 549.) Although Ruggieri generated substantial commission revenue, he lost money two-thirds

of the time in his overnight principal positions. (¶ 263.) Brown, Ruggieri's boss and mentor, had encouraged Ruggieri to improve his principal trading and to take more principal positions, particularly when commission revenue was slow. (¶¶ 53–69, 498.)

Yet even though each of Ruggieri's overnight positions before Bolan's Ratings Changes was profitable and three of them were his most profitable overnight positions at Wells Fargo, Ruggieri did not tell Brown about these trades afterwards. (¶¶ 270–271, 447, 469, 486, 501, 516, 525.) The only time Ruggieri ever told Brown about his position around a Ratings Change was after Brown asked him for his position in Athena, hours after Bolan's Athena upgrade. (¶¶ 513–516.) Ruggieri told Brown he had a long position but did not mention that he had held an overnight position the night before or had made a substantial profit, because Brown would have become suspicious. (¶¶ 513–517.) Had Ruggieri had an innocent reason for his overnight positions, he would have crowed to Brown afterwards. Ruggieri had every incentive to do so, as described above in Part II.G.

I. Ruggieri Did Not Deny Trading in Anticipation of the Ratings Changes In His Investigative Testimony.

During his investigative testimony, the Division staff asked Ruggieri whether he took five of the six overnight positions at issue in anticipation of Bolan's Ratings Changes. (¶¶ 450, 470, 493, 502, 518.) Ruggieri did not deny doing so. (*Id.*) Instead, for four of his six positions, he merely said he did not recall. (¶¶ 450, 470, 502, 518.) For a fifth position, he first said he did not recall and, in response to a later question, added that Bolan did not tip him. (¶ 493.) Ruggieri did not flatly deny that he traded on inside information when asked because he knew he had done so. No innocent person needs to have seen documents or otherwise have his memory refreshed to deny breaking the law. If Ruggieri had innocent explanations that he could not remember for his trades, he would not have testified that he did not *recall* whether he took positions in anticipation of Bolan's ratings changes. Instead, he would have testified each time that, while he could not remember the reasons for his trades, he certainly did not take his positions in anticipation of Bolan's ratings changes.

J. Ruggieri Helped Bolan After Wells Fargo Terminated Them Both.

After Wells Fargo investigated Bolan's and Ruggieri's conduct, Wells Fargo terminated Ruggieri for "failure to escalate issues regarding the inappropriate dissemination of information" by Bolan. (¶¶ 602–615; 620–621.) Had Ruggieri believed he lost his job as a managing director solely because he had not referred Bolan's selective dissemination of channel checks to the compliance department, Ruggieri would have been furious at Bolan. He would have blamed Bolan for his improper emails, held Bolan responsible for Ruggieri's own downfall, and never have spoken to Bolan again. Instead, Ruggieri went out of his way to help Bolan. Ruggieri, newly employed at ISI, tried to help Bolan get a job there, too — something no responsible employee would do for a person he no longer trusted. (¶¶ 632, 636–637.) Ruggieri even gave Bolan the keys to his apartment and let Bolan stay there while he was looking for a job — again, an action that Ruggieri would not have taken had he been angry at Bolan. (¶¶ 633–635, 638.) Ruggieri went far beyond mere social niceties to help Bolan for one reason: Ruggieri had benefited from Bolan's tips, and Ruggieri wanted to continue helping Bolan in return and make sure Bolan would not tell anyone the truth.

K. Ruggieri Recently Invented Explanations for His Overnight Positions, But the Explanations Do Not Match His Trading.

At the hearing, contending that his memory had been refreshed by the Division's document production, Ruggieri claimed that he had innocent explanations for each of his overnight positions. Yet in each case Ruggieri pointed to emails or other documents that bore no connection to the relevant stocks, did not match the timing of his overnight positions, or had rationales that did not fit his trading. (¶¶ 435–528.) In one case, Ruggieri concocted a rationale for his position that was nonetheless illegal: front-running an issuer client's buyback order. (¶¶ 471–493.) As the Division will explain in more detail in its reply post-hearing brief, Ruggieri's explanations do not match his trades.

III. BOLAN TIPPED RUGGIERI FOR PERSONAL BENEFIT.

A. Bolan Tipped Ruggieri To Maintain and Further Their Friendship.

The Supreme Court first required a showing of personal benefit in *Dirks*, when it hinged liability on proof that “the insider personally will benefit, directly or indirectly, from his disclosure.” 463 U.S. at 662. 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.” *Id.* at 664; *see also, e.g., SEC v. Obus*, 693 F.3d 276, 285 (2d Cir. 2012) (quoting *Dirks*, 463 U.S. at 663–64) (“[P]ersonal 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.’”).

Interpreting *Dirks*, the *Newman* court recently articulated the following guidance:

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)].

(Law Stip. ¶ 9 (quoting *Newman*) (emphases added)); *cf. Payton*, 2015 WL 1538454, at *4 (“Whether this is the required reading of *Dirks* may not be obvious, and it may not be so easy for a lower court, which is bound to follow both decisions [*Newman* and *Dirks*], to reconcile the two.”).

Reconciling *Dirks* and *Newman* after a jury found a defendant guilty of insider trading in a criminal case, one district court in the Second Circuit concluded that evidence that tips “maintain[ed] or further[ed] a friendship” satisfy *Newman*’s personal benefit requirement:

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 *Jian*, 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. Similarly, a federal magistrate judge has concluded that, 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).

Under the *Newman* standard, Bolan’s tips to Ruggieri to maintain and further their friendship therefore suffice to show that Bolan tipped Ruggieri for personal benefit. First, Bolan and Ruggieri were “pretty good friends,” as Ruggieri admits (§ 51), not the sort of “casual or social” friends or “fellow alumn[i] or casual acquaintance[s]” that *Newman* found insufficient. 773 F.3d at 452, 453. They “got along really well,” and they socialized outside the office when Bolan was in New York, where they talked about both work and personal matters. (§§ 50, 52.) Their personal relationship continued even after Wells Fargo terminated them both. Ruggieri let Bolan stay in his apartment and keep his apartment keys for about a month. (§§ 633–635, 638.) Bolan later invited Ruggieri to his wedding, as Bolan’s email to Ruggieri shows despite Ruggieri’s denial. (§ 640 (“[D]id u get our wedding invite yet? Just went out.”); Tr. 2375:20–2376:3 (Ruggieri) (denying he received invitation).)

Second, the personal benefit inquiry focuses on the importance of the friendship from the tipper’s perspective, not the tippee’s. See *Newman*, 773 F.3d at 452 (focusing on “the tipper’s gain”); *id* at 455 (discussing “inference as to that source’s improper *motive* for disclosure”) (emphasis in original); *United States v. Falcone*, 257 F.3d 226, 230 (2d Cir. 2001) (explaining that, under *Dirks*’

personal benefit standard, “the key factor was the tipper’s intent in providing the information”). Particularly given Bolan’s prickly personality — he was a loner, had a temper, and could not maintain even a cordial relationship with Mackle — Bolan’s friendship with Ruggieri was important to Bolan. (¶¶ 33–35, 50–52, 631–640.) Whether their friendship was as important to Ruggieri, who had many “bro’s” and work friends, is irrelevant. (Tr. 2055:8–21, 2475:18–2481:13 (Ruggieri).)

Furthermore, Bolan’s tips helped him maintain and further his friendship with Ruggieri. When Bolan began tipping Ruggieri, they had known each other for six months. (Fact Stip. ¶¶ 1, 11, 56.) To maintain their friendship, Bolan had little else to give Ruggieri: Bolan was less successful than Ruggieri, lived miles away in Tennessee, and had a difficult personality that caused strain in his other office relationships. (¶¶ 9, 31, 33–35, 37.) To deepen and cement his friendship with Wells Fargo’s superstar trader, Bolan repeatedly tipped Ruggieri over the next year.

B. Bolan Tipped Ruggieri In Return for Several Career Benefits That Bolan Expected Would Increase His Compensation.

Even if Bolan’s and Ruggieri’s friendship alone does not satisfy the personal benefit requirement, Bolan’s expectation of positive feedback and mentorship from Ruggieri certainly does. Under *Dirks* and *Newman*, at a minimum the personal benefit standard is satisfied when a tipper tips with the motive or expectation that he will receive a *potentially* pecuniary benefit — including a reputational benefit — in return from the tippee, even if the benefit ultimately does not translate into money. *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.”) (emphasis added) (internal citations omitted); *Newman*, 773 F.3d at 452 (deeming sufficient “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”) (emphasis added); *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).

For this reason, Judge Caproni recently concluded that evidence that the tipper tipped the tippee in return for, among others, two separate benefits — help with both the tipper’s side business and job search — could independently support a jury conviction, even though the side business and job search ended unsuccessfully and resulted in no pecuniary gain to the tipper. *Riley*, 2015 WL 891675, at *6–8 (citing *United States v. Jiao*, 734 F.3d 147, 153 (2d Cir. 2013) (“The fact that [the tipper] did not receive any tips from [the tippee]’s investment club in return for the tips he gave is of no moment. In joining the investment club, [the tipper] entered into a relationship of *quid pro quo* with [the tippee], and thus had the opportunity to access information that could yield future pecuniary gain.”)). Similarly, Bolan tipped Ruggieri for at least three separate benefits, each of which Bolan expected to be consequential and ultimately pecuniary.

1. Bolan tipped Ruggieri for his career mentorship.

Bolan — an up-and-coming analyst with a prickly personality — needed Ruggieri’s help and advice to become a top-ranked analyst. Bolan knew he had little to offer Ruggieri in return: Bolan had published analyst reports for less than two years at Wells Fargo, and he ranked below Ruggieri in the firm hierarchy. (¶¶ 31, 33–35, 37; Fact Stip. ¶ 1.) Ruggieri, Wells Fargo’s best and highest-paid equity trader, needed nothing from Bolan. (¶ 75.) So Bolan gave Ruggieri the only thing Ruggieri could not get from any other analyst: tips on his forthcoming ratings changes, which he knew Ruggieri could turn into profitable trades. In return, Ruggieri “mentor[ed]” Bolan and tried to “make [him] more commercial.” (¶ 47.) And Ruggieri treated Bolan as a partner in improving Wells Fargo’s healthcare business and boosting their own careers in the process. (¶ 48.) This type of “*quid pro quo* relationship [between a tipper and a tippee] in which each was trying to help the other” satisfies the personal benefit requirement. *Riley*, 2015 WL 891675, at *8.

2. Bolan tipped Ruggieri to potentially increase his annual bonus.

Wickwire and his co-head determined analysts' annual bonuses by ranking the analysts on the firm's analyst "scorecard." (¶¶ 529–533.) Given the tensions between the research department, a firm cost center, and the trading department, the firm's revenue engine, the trading desk's feedback on analysts, or "trading impact," played a small (5%) but meaningful role in that ranking, as Bolan knew. (¶¶ 564, 570, 573–575.) An analyst who moved upward on the ranking by just one position (for example, from the 17th best to the 16th best analyst that year) would receive a commensurate \$50,000 to \$75,000 increase in his annual bonus. (¶ 574.)

For Bolan, an up-and-coming analyst, beating other analysts in the middle of the pack was difficult: clients and research management generally rated veteran analysts higher. (¶¶ 529–533, 536–537, 539–543.) Indeed, for 2009, Bolan was ranked 24th out of Wells Fargo's 28 equity research analysts overall and 3rd out of 28 analysts in terms of his trading impact. (¶ 537.) Wickwire told Bolan roughly where he stood among his peers on most factors, including trading impact. (¶ 575.) As Bolan knew, his trading impact score was one of the few factors he could control, through his relationship with the trading desk. He also knew that only one person at Wells Fargo could affect his trading impact score: Ruggieri, the senior trader on the healthcare trading desk and the only trader who traded the stocks Bolan covered. (¶¶ 12, 41, 43, 551.) Yet Wells Fargo had at least seven other healthcare analysts — some very seasoned — whose stocks Ruggieri traded. (¶ 45.) Bolan knew that, to stand out to Ruggieri and get Ruggieri's highest analyst rating, Bolan had to provide Ruggieri with something that the veteran analysts would not: tips on Bolan's forthcoming ratings changes. And Bolan knew that if he tipped Ruggieri, Ruggieri would continue to provide glowing feedback on Bolan, which could help Bolan improve his analyst ranking and his bonus. Indeed, during and after

Bolan's four tips to Ruggieri in 2010, Ruggieri repeatedly provided glowing feedback on Bolan.⁶

(¶¶ 539–540 (“Bolan is far and away the best”); ¶¶ 542–543 (“Bolan-the best in our space.”).)

Afterwards, Bolan improved both his overall ranking and his trading impact score: he ranked 1st out of 35 analysts in his trading impact score and 16th out of 35 analysts overall for 2010. (¶¶ 567, 568.)

3. Bolan tipped Ruggieri to improve his chances of a promotion.

In 2010, as a vice president and up-and-coming analyst who had been at the firm for two years, Bolan hoped that Wickwire would nominate him later that year for a promotion to director and that he would receive the promotion. (¶¶ 547–548.) Bolan knew that, to become a director, he would need favorable input from the trading department, because it generated the firm's revenue and its input was therefore important. (¶¶ 2–6, 564.) Ruggieri was the only trader whose input mattered for Bolan's promotion, as discussed above. (¶¶ 15, 35, 41, 551–552, 561, 569.)

Bolan also knew that Ruggieri had Wickwire's ear. Wickwire not only thought Ruggieri was the firm's best equity trader but repeatedly took time out of his busy schedule to meet one-on-one with Ruggieri, which Wickwire rarely did for other traders. (¶¶ 549–552.) Bolan therefore tipped Ruggieri in March and April, June, July, and August 2010 and Ruggieri traded based on those tips. (DIV 194-A; Fact Stip. ¶¶ 31, 34, 38–41, 56–57, 61, 84, 87, 88, 91, 95–96, 100, 106, 109, 111, 114, 119, 122, 126, 134, 137–138, 143, 146, 149, 152–153, 156–59, 162, 167, 171; ¶¶ 320–31.) In the late summer or fall, Bolan asked Ruggieri to put in a good word for him with Wickwire because Bolan

⁶ Ruggieri first provided positive feedback on Bolan just weeks after Ruggieri arrived at Wells Fargo and before Bolan began tipping him. (¶¶ 534–535; Fact Stip. ¶ 11.) Yet Ruggieri's positive feedback began only after Bolan sent him and a “platinum” client a confidential, unpublished channel check with obviously material information, including Bolan's own changed opinion on Covance. (¶¶ 173–175 (“Very sensitive and somewhat costly data-point to get - please keep this close to the vest... I know this goes against my own past statements and it is surprising to me but... the activity only seems moderate.”).) Evidently pleased with the information, Ruggieri commented: “Love Bolan, think he's our best analyst.” (¶ 178.) As long as Bolan kept supplying material, non-public information, Ruggieri praised Bolan.

“thought it would be helpful” to his promotion prospects, as Bolan admitted. (¶ 553.) In his meetings with Wickwire, Ruggieri accordingly praised Bolan. (¶ 552.)

In November 2010, Wickwire nominated Ruggieri for a promotion to director and wrote on the director nomination form the committee would later consider: “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.” (¶ 560.) Whether Wickwire received this information directly from Ruggieri or indirectly from Bartlett and Snyder or both, Wickwire knew that the information came from Ruggieri. (¶¶ 35, 41, 545, 561.) Indeed, Short did not trade Bolan’s stocks and would have ranked other analysts higher than Bolan, and Mackle did not get along with Bolan. (*Id.*) Although Wickwire did not believe the trading input played as significant a role in Bolan’s promotion as certain other factors, Bartlett — a level above Wickwire, a direct report to the firm’s president, and the head of the firm’s revenue-generating division — understood the importance of the trading desk’s input on an analyst’s career and promotion. (¶¶ 556–557, 564.) Ruggieri’s positive feedback on Bolan contributed to Bolan’s promotion and increased his salary by \$50,000 to \$100,000. (¶¶ 564–566.)

C. Bolan Had No Legitimate, Non-Self-Dealing Reason to Tip Ruggieri.

Dirks and *Newman* were highly unusual cases involving tippers who did not tip in expectation of a personal benefit. *Dirks*, 463 U.S. at 648–50, 659 n.18, 665–67 (“On its facts, this case is the unusual one.”); *Newman*, 773 F.3d at 448, 451–53 (noting “the doctrinal novelty of [the United States Attorney’s] recent insider trading prosecutions, which are increasingly targeted at remote tippees many levels removed from corporate insiders”); *cf. United States v. Jian*, 734 F.3d 147, 153 (2d Cir. 2013) (“The proof required to show personal benefit to the tipper is modest.”). In each case, the court pointed to evidence showing that the tipper had a benevolent or non-self-dealing motive for

tipping, not merely a lack of personal benefit evidence. In *Dirks*, the Supreme Court concluded that a whistleblowing insider who had tipped confidential corporate information to expose his employer's accounting fraud did not tip for personal benefit. 463 U.S. at 648–50. In *Newman*, the Second Circuit pointed to evidence showing that the insiders' corporate employers permitted them to "leak" earnings data before earnings announcements to investment firms that might then buy the company's stock — that is, for the company's benefit, not the tipper's. 773 F.3d at 454–55.

Here, Bolan could have had no motive for tipping Ruggieri other than personal benefit.

Bolan admittedly knew that Wells Fargo prohibited him from selectively disclosing his forthcoming ratings changes before publishing them. (¶¶ 160, 166.) Indeed, Wells Fargo's policy not only conformed to the law but also had an important business purpose: ensuring that all its clients received material information simultaneously. Bolan's lack of any legitimate motive for his tips supports a finding of personal benefit. *See Riley*, 2015 WL 891675, at *18 n.6 ("It is worth noting that the 'personal benefit' requirement exists to ensure that insiders are tipping in breach of their duties.... In this case, there is absolutely no doubt that [the tipper] disclosed MNPI in violation of his duty to [his employer] and not for any legitimate reason.")⁷

IV. THE COURT SHOULD IMPOSE APPROPRIATE RELIEF.

A. The Court Should Order Ruggieri To Cease and Desist.

"In deciding whether to issue a cease-and-desist order, the Commission must consider whether there is a reasonable likelihood of future securities violations." *Dennis J. Malouf*, Initial Decision, SEC Rel. No. 766, 2015 WL 1534396, at *37 (Apr. 7, 2015) (citing cases). The Commission considers the following factors, often termed the "*Steadman* factors," to determine whether a cease-and-desist order is appropriate: (1) the egregiousness of the violator's actions,

⁷ Even if the Court concludes that any one of the personal benefits described above cannot alone satisfy *Newman* — as it should not — "the totality of the circumstances" here supports a finding of personal benefit. *Riley*, 2015 WL 891675, at *8.

(2) the isolated or recurrent nature of the violations, (3) the degree of scienter, (4) the sincerity of the violator's assurances against future conduct, (5) the violator's recognition of his wrongful conduct, and (6) the likelihood that the violator's occupation will present opportunities to commit future violations. (Law Stip. ¶¶ 10–11 (citing statute and cases).) The Court may further consider 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 *39 (Oct. 8, 2004) (Murray, C.A.L.J.).

These factors weigh in favor of a cease-and-desist order. First, Ruggieri's conduct was egregious and involved a high degree of scienter, because he knew that Wells Fargo prohibited him from trading on Bolan's tips. Second, Ruggieri's conduct occurred repeatedly — at least six times — and ceased only when Wells Fargo terminated him and Bolan. Third, Ruggieri has failed to recognize his unlawful conduct and provided incredible hearing testimony, including as to the hours he spent at the trading desk every day and the explanations for his trades. Fourth, Ruggieri seeks to continue working in the securities industry, which will provide opportunities for him to violate the securities laws. Finally, Ruggieri's conduct posed serious harm to investors because insider trading undermines “honest securities markets.” *O'Hagan*, 521 U.S. at 658–59.

B. The Court Should Bar Ruggieri From the Securities Industry.

To protect the investing public, a bar 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.”⁸ 15 U.S.C. §§ 78o(b)(6)(A) & 78o(b)(4)(D).

The *Steadman* factors should be applied to determine a bar’s scope and duration. See *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).

Just as the *Steadman* factors warrant a cease-and-desist order, they warrant a permanent, collateral bar against Ruggieri. Ruggieri, then a registered representative of a broker-dealer (Fact Stip. ¶ 11), knowingly engaged in a year-long insider trading scheme encompassing six different stocks. A permanent industry bar is necessary to protect the public interest. See *Robert Bruce Lobmann*, Commission Opinion, Rel. No. 2141, 2003 WL 21468604, at *5 (June 26, 2003) (“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 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.

“Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws.” (Law Stip. ¶ 13 (citing statutes

⁸ Bars may be applied only when a respondent willfully violated the relevant provisions. (Law Stip. ¶ 12 (statutory basis for bars and suspensions).) In this context, “willfully” means that the respondent voluntarily or intentionally committed the act that constitutes the violation — not that he knew he was violating the law. *John P. Flannery*, Commission Opinion, Rel. No. 3981, 2014 WL 7145625, at *37 (Dec. 15, 2014). Here, Ruggieri traded on Bolan’s tips intentionally and voluntarily.

and cases).) Here, Wells Fargo has agreed to satisfy any disgorgement order against Ruggieri, given that most of the unlawful proceeds flowed to Wells Fargo. (Fact Stip. ¶ 27.) The Court should therefore order Ruggieri to disgorge the profits of \$117,127 from the insider trading scheme, reduced by the amount of any Commission disgorgement Order as to Bolan, and allow Wells Fargo to satisfy payment of the Court's Order.

D. The Court Should Order Ruggieri To Pay a Civil Penalty.

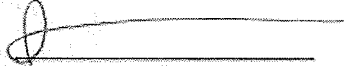
To order civil monetary penalties, the Commission must find that they are in the public interest, based on the following factors: (1) whether the conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. § 78u-2(c). A three-tier system identifies the maximum amount of civil penalties, depending on the severity of conduct. 15 U.S.C. §§ 77h-1(g) & 78u-2(b). Third-tier penalties are appropriate here because Ruggieri knowingly engaged in insider trading, a fraudulent practice, and his 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 himself. *Id.* \$150,000 is the maximum third-tier penalty for each of Ruggieri's violations. *See* 17 C.F.R. 201.1004. Because Ruggieri's insider trading involved six instances of egregious, intentional fraud, the Court should impose a \$300,000 civil 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.”).

CONCLUSION

For these reasons, the Division respectfully submits that the Court should find Ruggieri liable for all the charged violations and impose appropriate relief.

DIVISION OF ENFORCEMENT

By:



Alexander M. Vasilescu

Preethi Krishnamurthy

Sandeep Satwalekar

Securities and Exchange Commission

New York Regional Office

Brookfield Place, 200 Vesey Street, Ste. 400

New York, New York 10281

Tel. (212) 336-0116 (Krishnamurthy)

VasilescuA@sec.gov

KrishnamurthyP@sec.gov

SatwalekarS@sec.gov