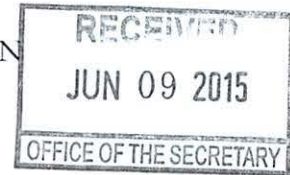


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16178



In the Matter of

Gregory T. Mr. Bolan, Jr. and  
Joseph C. Mr. Ruggieri,

Respondents.

**RESPONDENT'S RESPONSE TO THE DIVISION OF ENFORCEMENT'S POST-HEARING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the Court's Post-Hearing Order, Respondent respectfully disputes the following of the Division's post-hearing proposed findings of fact (listed by paragraph number). All other proposed findings of fact are admitted.

**DISPUTED FINDINGS OF FACTS**

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

“I was going to be the only salesperson, if you will, that focused specifically on healthcare, so, again, my job was to talk to a variety of portfolio managers and analysts and traders at institutional clients and promote our ideas, and also promote the product internally to our distribution sales force, marketing the message in a way that they could get out to the broader client base.”.) **DISPUTED: Mackle was shown multiple emails that belie any purported friction between him and Bolan. JR-REB 121, 128, 129, 130, 237, 239, 240, 241, 242, 243, 244, 245.**

45. Mackle spoke with Bolan much less frequently toward the end of the year-long period that they both worked at Wells Fargo. (Tr. 3209:15-3210:5 (Mackle) (“I would say initially, when I started, I spoke to him as much as I did the other analysts. But by the end of that time period, much less so. Q. And why is that? A. We just had some friction, just didn’t get along for whatever reason.”); Tr. 3393:4–3394:15 (Short) (“Q. And did you have any understanding as to how often Mr. Mackle spoke to and interacted with Mr. Bolan compared to the other healthcare analysts? A. I would say it wasn’t as much. I don’t think they had as much of an interaction in that I just think Greg [Bolan] liked to go directly to Joe [Ruggieri].... Q. Just to be clear, did you observe Mr. Bolan speaking more often to Mr. Ruggieri or Mr. Mackle? A. I would say more to Joe [Ruggieri] than to Bruce [Mackle].”.) **DISPUTED: The Division chose not to call Mr. Bolan, who testified in his investigative testimony that he spoke to Bolan at least “a couple times a week”, even at the end of his tenure at Wells Fargo. See DIV 110 (Bolan Testimony Transcript) at 56:9-12.**

39. Ruggieri was also aggressive. (Tr. 1498:16–1500:2 (Wickwire) (“Q. What was your impression of him? A. That he was a very good trader; that he was aggressive... Q. What did you mean when you described Mr. Ruggieri as aggressive? A. I’m the co-head of research. I’ve got 60 analysts. I deal with the heads of investment banking. I’m talking to CEOs and CFOs every day about what they don’t like about our research. I’m a busy guy, not to toot my own horn, and I

don't often spend a lot of time with individual traders. If there's a message or communication that needs to get to me, it usually could go up through Matt Brown to Chris Bartlett, who was my counterpart, so I typically don't have time to spend a lot of time two levels down. I get to know the better players and the people that are important. And in my conversations with Matt [Brown] and Jeff [Snyder] and Chris [Bartlett], Joe [Ruggieri] was the guy that I needed to give some airtime to, so I accommodated that.") **DISPUTED: the Division's description mischaracterizes the evidence, plucking a single word spoken by Mr. Wickwire from 10 days of testimony.**

46. Bolan kept Mackle out of the loop on many of Bolan's communications with Ruggieri. (Tr. 3209:25-3212:2, 3314:18-3315:11 (Mackle) ("THE COURT: Just so I understand, eliminating the word 'cordial' from that question, were you and Mr. Bolan, despite friction, able to carry on a professional relationship for the benefit of Wells Fargo during that time? THE WITNESS: For every e-mail you showed me that he communicated with me, there were ten other things that I was left out of the loop on, so, no, I wouldn't -- it was not a good professional relationship.")) **DISPUTED: Mackle was shown multiple emails that belie that Bolan kept Mackle out of the loop. JR-REB 121, 128, 129, 130, 237, 239, 240, 241, 242, 243, 244, 245. Moreover, the evidence showed that it was Bolan who proposed a system to increase communication with the healthcare trading desk, including Mackle. JR-114; Tr. 3437:20-3439:14 (Mackle).**

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

47. Ruggieri mentored Bolan and tried to make him more “commercial.” (Tr. 3215:10–3217:7 (Mackle) (“Q. Now, did you have an understanding of Mr. Ruggieri’s relationship with Mr. Bolan as compared to Mr. Ruggieri’s relationship with other healthcare analysts? Did you have a sense of, you know, what was his relationship with Mr. Bolan relative to the other healthcare analysts? Was it the same or was there any difference? A. Joe [Ruggieri] got along with all the analysts as well. I think the difference with Greg, as well as another younger analyst who had left in that interim period, was that Joe tried to mentor them as some of the young, up-and-coming analysts. That would be the only difference of a relationship. Q. So you had an understanding that Mr. Ruggieri was mentoring Mr. Bolan and another young analyst? A. Yes. In terms of trying to, yeah, make them more commercial.”). **DISPUTED: Mackle was the sole witness to testify as to a purported mentor relationship. Moreover, Mackle testified that Mr. Ruggieri “tried to mentor not only Bolan, but also another younger analyst.” Tr. 3215:17-23 (Mackle).**

49. Bolan and Ruggieri spoke “regularly,” at least twice a week. (Tr. 2051:25–2052:7, 2062:24–2063:18 (Ruggieri) (“We spoke regularly, whether it was multiple times a day or every day. I know there were some times where we didn’t speak for a couple of days. But we spoke regularly.... I don’t remember particularly, but we had a constant dialogue.”); DIV 110 at 56 (Bolan) (“Q. How frequently did you communicate with Mr. Ruggieri while you were employed at Wells Fargo? A. I would probably say at least a couple of times a week.”).) **DISPUTED: The telephone records speak for themselves and show that on multiple instances, including the greater than one-week time period prior to the AMRI trade on July 2, 2010, Mr. Ruggieri not speak to Mr. Bolan at all.**

52. When Bolan was in New York, he and Ruggieri occasionally socialized outside the office, typically with other colleagues. Bolan and Ruggieri talked about work and family. (DIV 110 at 29–31 (Bolan) (“Q. How frequently did you socialize with Mr. Ruggieri outside of the workplace

while employed at Wells Fargo? A. I'd say probably about three times in 2010, maybe, four times. Three or four times. Q. What about in 2009? A. I'd say probably once, maybe twice. Q. And in 2011? A. I'd say zero, maybe once. Q. Take us through what you did at each of these visits with Mr. Ruggieri. A. Well, we would go to the bar and we would discuss work and we'd discuss family, and we just would be guys. Q. Was it just the two of you? A. Typically, no. Q. Typically, who else was there? A. Other colleagues from Wells Fargo.”). **DISPUTED: The socializing was always in context of Wells Fargo. See Ruggieri Proposed Findings of Fact (FOF) ¶ 325.**

104. Bolan knew that ratings changes — which change an analyst's recommendation to buy, sell, or hold a stock — typically moved stock prices. (DIV 110 at 43–44 (Bolan) (“Q. . . . [T]here were some instances where the price of the security went up after an upgrade; correct? A. Uh-hum. Q. Did that surprise you? A. No, because when an investment broker changes a rating, they are changing their focus, changing their kind of direction in terms of their thinking. So if I tell you one day I think the stock is a hold and you shouldn't accumulate any more, and then I at some point upgrade to buy, then those institutional investors will buy the stock because that's my recommendation.”).) **DISPUTED: the Division's description mischaracterizes the cited evidence.**

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

109. In the sub-sectors he covered, Bolan had a reputation as an influential, up-and-coming analyst. (DIV 40 (Oct. 12, 2010 emails from client to Bolan and Ruggieri congratulating Bolan for making 2010 *Institutional Investor* All-American list of top up-and-coming equity analysts)); DIV 25 (Mar. 18, 2011 email to Bolan informing him that Wells Fargo management was working on having clients recognize Bolan and other top analysts by voting for him); DIV 110 at 25–26 (Bolan (“Q. Tyrmand states, ‘No brainer on best up and comer fellah and No. 1 in CROs in my book.’ What does that mean? A. He is congratulating me and he believes that I am No. 1 in CROs. Q. Is that the pharmaceutical services sector? A. Correct.... Q. Have other clients of firms that you’ve worked at expressed a view that you were the No. 1 analyst in the CRO space? A. They have expressed that I am certainly one of the best covering CROs. Q. Who has expressed that? A. Clients.”); Tr. 1376:19-1377:5 (Wickwire) (“I would say at the time Greg was viewed as, not an up-and-comer, but slightly better than that. He was one of the rising stars within the department. You think about our department, we’ve got some very senior established analysts who have been doing it for 15 or 20 years, and then there’s a group below them who are really moving up the ranks based on their tenure and continuing to build their franchise, and Greg was really at the top of that emerging group.”). **DISPUTED: See Ruggieri FOF ¶ 309.**

110. Ruggieri knew that Bolan was an influential analyst in his subsectors of the healthcare industry. (Tr. 2042:20–2043:8 (Ruggieri) (“Q. You knew in October 2010 that Mr. Bolan was ranked the best up-and-comer analyst in the healthcare technology and distribution subsector; right? A. Yes. Q. That was by *Institutional Investor*? A. That’s right. Q. And it was based on *Institutional Investor’s* All-America Survey of U.S. Equity Analysts? A. Yes. Q. That was prestigious; right? A. It was a good honor, yes.”). **DISPUTED: Evans testified that Mr. Bolan was “virtually irrelevant” in the Life Sciences sector, Tr. 12814:14-20, and that Bolan was more important in**

CROs, Tr. 1283:23-1284:2, and that even for CROs, Bolan was an up and comer with an “average” level of influence. Tr. 1284:4-13.

111. Bolan knew that his ratings changes moved stock prices. (DIV 43 (Feb. 8, 2011 email from Bolan to client after Bolan’s upgrade) (“[G]onna be some unhappy folks today (aka shorties).”)) **DISPUTED: the Division’s description mischaracterizes the cited evidence, and the Division chose not to call Mr. Bolan.**

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

122. There is a 0.1% probability that stock prices moved in the same direction as Bolan’s ten ratings changes without those ratings changes being significant to the market. (DIV 177 at 13 (expert report) (“The probability is only .1% that we would observe abnormal returns in the correct direction in all ten cases if Mr. Bolan’s ratings changes did not contain material information. The strong inference is that Mr. Bolan’s ratings changes did in fact contain information that was material to the market.”)) **DISPUTED: This is O’Neil’s characterization based on false assumptions and cherry-picked data.**



123. This probability is the same as the probability of flipping an equally-weighted coin ten consecutive times and obtaining the same side of the coin on each flip. (DIV 177 at 13 (expert report) (“I performed a binomial test to determine the likelihood of observing ten out of ten correct directional abnormal returns if there is no information content in Bolan’s ratings changes. This test is similar to trying to figure out the likelihood of flipping ten straight heads if a coin is fair. In this case, the calculation is quite simple:  $(.5)^{10} = .001$ .”).) **DISPUTED: This is O’Neil’s characterization based on false assumptions and cherry-picked data.**

126. The probability that fifteen out of Bolan’s eighteen ratings changes resulted in abnormal stock price movements by chance is 0.4%. (DIV 177 at 13 (expert report).) **DISPUTED: This is O’Neil’s characterization based on false assumptions and cherry-picked data.**

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

132. The academic paper offered by Ruggieri premises its findings on the fact that ratings changes impact stock prices and attempts to determine the additional impact of other types of research such as earnings revisions and target revisions. (JR REB 103 (academic paper entitled



“Information Content of Equity Analyst Reports”); Tr. 1976:17–1984:12 (O’Neal) (“Q. And what does that paper state? A. Well, it obviously states a lot, but generally, after having read the article, what this article is attempting to do is, it sort of jumps off from the point of, we know for certain that ratings upgrades and ratings downgrades have an impact on stock price. The question they’re attempting to answer is, over and above that, do earnings revisions or valuation changes also have an effect on stock price. And we were shown Table 2 yesterday, but that was the only table we were shown. And what that table basically shows is that all of this information could be important to investors. But the next section of the paper, which is Table 3, basically looks at -- first of all, the first premise is that upgrades and downgrades are extremely important. In the presence of an upgrade or a downgrade, do earnings revisions and target revisions have an impact. And what this article says is that if there’s an upgrade, earnings revisions and target price revisions have no additional impact. So it’s very clear from the results of this article that the upgrade is what is the important aspect of an analyst report that actually has an upgrade....”) **DISPUTED: the Division’s description mischaracterizes the cited evidence. See JR-REB 103.**

133. Wells Fargo research analysts and supervisory analysts understood that ratings changes and earnings estimate changes of 10% or more were more important to investors than other research, including valuation changes and smaller earnings estimate changes. (Tr. 613:21–614:13 (Madsen) (“Q. In these different categories, is there a certain category that is more material than the others? A. Some of them are, yes. Q. Like which ones? A. The ratings change, and if the estimate change was even greater to the level of 10 percent, we had different rules that would follow. Q. And how about valuation range change, [w]here does that rank in terms of materiality compared to ratings change? A. Lower. Q. Why is that? A. I think the rating change is the top level element, and you can maintain your rating while changing valuation range.”); Tr. 1244:17–1245:16 (Evans) (“Q. And are you familiar with the term ‘information that is material’? A. Yes. Q. And in terms of

the various types of research that were published by Wells Fargo coming out of your operation in Nashville at that time, the ratings changes that were issued, where would you put them in the range of materiality of the various reports that you issued? A. It can vary widely depending on the circumstances that prompted the ratings change, the notoriety of the analyst within that particular field, whether the ratings change was proactive or whether it was reactive. So there is a variety of things that can influence that. Q. Right. I'm comparing it to the other research products that were generated by your group, such as squawks. A. Generally ratings changes would be considered more material than other notes.”.) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

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

so -- it may not, but I think that was for the research analyst to digest first. To the extent that it would become material, they would have to publish it in a research report.”.) **DISPUTED: Wells Fargo did not have a channel check policy until August 2010, and analysts could share non-material information with clients and others at all times, including under the August 2010 channel check policy.**

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

189. Ruggieri knew that Bolan’s channel checks contained unpublished information. (Tr. 2382:21–2383:18 (Ruggieri) (“Q. Had you been getting these channel check e-mails from Mr. Bolan throughout your tenure at Wells Fargo? A. Yes, I was. . . . Q. Did you understand, when Mr. Bolan sent you a channel check, whether they were going to be published at a later date or a later time? A. No. I assume when he sent me the channel check, he was sending it to -- if he was sending it in an e-mail, he was sending it to clients as well, and that was it. You know, I never expected that to be a published note later, ever.”); Tr. 2384:21–2385:17 (Ruggieri) (“Q. It’s fair to say, when you

go back and look at some of Mr. Bolan's nonpublished channel checks that he sent to select clients, that that information, at times, was probably going to move the market, or probably be important to certain clients? A. Sure. Q. And that's a no-no in the analyst world; isn't it? A. I guess so.... Q. But if you look back and really parse some of what Mr. Bolan was saying, he clearly thought that some of this information might be somewhat important to some of his clients; correct? A. Right. Q. And that probably should have been in a regular analyst report? A. In hindsight, probably.”.) **DISPUTED: the Division's description mischaracterizes the cited evidence.**

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

203. Bolan would not agree to publish his channel checks. (DIV 93 (Nov. 3, 2010 email from Evans to himself) (“He was noncommittal in his response to me regarding potential remedies.”); Tr. 1260:17–22 (Evans) (“Q. And what did you mean by saying he was noncommittal in

his response? A. I was hoping that he would say, okay, we'll put them in note form next time or publish them as a squawk. He would not commit to doing that.”.) **DISPUTED: Mr. Evans admitted that the decision about whether to publish a channel check is a grey area and that only material information needs to be published. Tr. 1300:11 – 1301:13 (Evans).**

207. Bolan was dismissive. (DIV 94 (Nov. 12, 2010 email from Evans to himself) (“Spoke to Greg [Bolan] yesterday on trip to Louisville regarding my growing discomfort with his treatment of comp[li]ance rules. He was dismissive. Said he likes to shoot for middle of the road...not too conservative, not too libe[r]al.”).) **DISPUTED: the Division’s description mischaracterizes the cited evidence. This was Evans’ opinion, and the Division chose not to call Mr. Bolan.**

213. Bolan meant that he was bullish about the channel check. (Tr. 2082:23–2083:3 (Ruggieri) (“Q. Meaning he was bullish about the check; right? A. That’s what I think it means, yes.”).) **DISPUTED: What Mr. Ruggieri thought Bolan meant by an email does not establish Bolan’s state of mind, and the Division chose not to call Mr. Bolan.**

220. Wells Fargo traders did not typically have their own personal phone lines at work. (Tr. 973:22–974:18 (Brown) (“Some of the traders at Wells have personal lights. I don’t.”); Tr. 2111:10–12 (Ruggieri) (“Q. Sir, not everyone on the trading line had a personal number; right? A. I don’t think so.”); Tr. 3192:15–3194:7 (Mackle) (“Q. And do you know, did everyone in the trading department have a personal line? A. No. Q. And why did you get a personal line? A. I think the main reason why traders don’t typically have their own line is, first of all, as I said, most customers we have direct lines with....”).) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

221. Some employees on the trading desk did have their own personal lines, at least in part because they wanted a phone line that others on the desk could not listen in on. (Tr. 3192:18–3194:7 (Mackle) (“Q. And why did you get a personal line? A. I think the main reason why traders

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

222. Trading desk employees' personal lines did not ring on the desk. An employee's personal line only rang on his individual phone turret and the turret of anyone else authorized to have the other employee's personal line on his phone. (Tr. 973:22-974:12 (Brown) ("Q. Let's say Greg Bolan dials the trading floor. How does it work? A. Depends what number he calls on. Some of the traders at Wells have personal lights. I don't. Our phones are turrets so it is not a single phone, it is a big turret system where multiple people can pick up any light at a given time. Q. So that's true for either the personal number or the trading desk number? A. I can't speak to the personal number, but just the trading desk number, yes. Q. So the personal number, you don't know whether or not anybody can pick it up? A. I don't know."); Tr. 3192:2-9 (Mackle) ("I had a personal line that only rang on my turret. ..."); Tr. 3196:20-3197:10 (Mackle) ("Q. Now, this personal line, did you have an understanding -- you mentioned something about people being able to go into your personal line when you were on it. Were people able to do that? A. If someone had my line on their

turret, yes, they were allowed to. Q. And did somebody else have your line on their turret? A. Again, I can't remember whether Joe and Chip had their line on my turret or not. Q. Other than them, was there anyone else who could have had their line on your turret? A. No one else other than those two would have had my line on their turret, no.”.) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

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

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

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



all the trades, but he sees the P&L.”.) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

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

**DISPUTED: There was no tip.**

257. Before three of the Six Ratings Changes, Bolan tipped Moskowitz to his forthcoming ratings changes by conveying, in words or substance, material nonpublic information concerning the timing and content of his ratings changes. (DIV 194-A (summary chart of key phone calls and trades).) **DISPUTED: There was no tip.**

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

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

266. Based on the same methodology, Moskowitz generated \$10,242 in illegal profits in connection with his trades surrounding three of Bolan’s Ratings Changes. (DIV 131 (summary chart

of overnight positions and profits); DIV 195 at 2 (summary table of profits); Tr. 1714:3–1715:12 (Walster) (“The difference between the cost of opening the position and -- the difference between the price paid to open the position and the price paid to close the position multiplied by the number of shares gets you to the P&L figure.”).) **DISPUTED: there was no illegal activity.**

268. Using this methodology, Ruggieri generated \$111,455 in illegal profits in his account at Wells Fargo in connection with his trades surrounding Bolan’s Six Ratings Changes. (DIV REB 132 (summary table of overnight positions and their profits or losses); Tr. 3051:22–25 (Walster) (“Q. And the total profits listed here under the Bolan ratings change positions [are] a little over \$111,000; is that right? A. Correct.”).) **DISPUTED: there was no illegal activity.**

283. Both methodologies are correct. (Tr. 3129:18–3130:6 (Walster) (“Q. What are his aggregate profits for [DIV REB-]132-A? A. \$111,455. Q. And it’s how much for [DIV REB 132-]C? A. 117,000 -- I don’t remember the exact dollar amount. Q. Which one is right? A. Depending on the analysis that’s being performed, I believe they’re both correct.”).) **DISPUTED: This is only Walster’s opinion, and the work Walster performed did not even require his degree in economics. Tr. 3149:19-22 (Walster).**

284. Before Wells Fargo published the Parexel downgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Parexel downgrade to Ruggieri and Moskowitz. (DIV 194-A (summary chart of key phone calls and positions); Tr. 2163:8–2164:6 (Ruggieri) (“Q. Sir, I’ll ask you again, were you asked these questions [two years before in investigative testimony], did you give these answers. Okay? ‘Question: Is it a coincidence you made short trades on the trading day before Mr. Bolan downgraded Parexel? ‘Answer: I mean it -- it – I don’t -- I don’t remember. I don’t want to speculate what the exact situation is without -- I mean, clearly singling this situation out and the phone calls and the trades, but I don’t remember the circumstances of what else was going on on the desk. **Again, I obviously**

spoke to Greg and I have my own opinion, or by speaking to him something changed sentiment-wise or whatever, I don't remember the exact situation.' Sir, were you asked those questions and did you give those answers? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.") (emphasis added.) **DISPUTED: the Division's description mischaracterizes the cited evidence.**

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

333. Before Wells Fargo published the Albany upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Albany upgrade to Ruggieri and Moskowitz. (DIV 194-A at 4, 5.) **DISPUTED: There was no tip.**

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

you give those answers? A. I did. Q. Was that truthful testimony when you gave it, sir? A. Yes.”.)

**DISPUTED: the Division’s description mischaracterizes the cited evidence.**

366. By January 18, 2011, despite his neutral published views, Bolan had told Ruggieri of his bullish views on Athena. (DIV 120 (Jan. 18, 2011 instant message from Ruggieri to Mackle) (“ATHN m[ana]g[e]m[en]t sounds bulled up ... [B]olan getting bullish[,] dont think run over[,] would not be short.”); Tr. 2274:6–2275:7 (Ruggieri) (“Q. Just to be clear, Mr. Bolan conveyed to you that he was bullish on a stock where his current rating was neutral; correct, sir? A. Yes, I think at the time there were some things going on in the marketplace that was around this time. I think the – Athena presented a bullish presentation at the JPMorgan healthcare conference in January, which is the most widely attended and most important healthcare conference of the year, and the stock, I think it was up something like 10 percent in a week or two, and there was also some M&A speculation out there of Athena possibly getting bought. This was a very crowded short. Probably the most crowded short in all of healthcare at the time. So there was a lot -- I don’t want to say animosity, but the clients that were short were frustrated and the stock was moving higher and some of this was in that context of some of the things that were going on. But analysts wax and wane within their ratings for long periods of time, and the fact that he was getting bullish didn’t indicate to me at all that he was upgrading the stock.”); Tr. 3252:19–3254:2 (Mackle) (“You know, specifically referring to the last line there [of DIV 120], I mean, obviously he’s passing along a more positive sentiment on the company athena from Greg Bolan.”).) **DISPUTED: As Mackle testified, an analyst could change his views about a stock within a particular rating.**

**Ruggieri FOF ¶ 295.**

373. Before Wells Fargo published his upgrade of Athena, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Athena upgrade to Ruggieri. (DIV 194-A at 8 (summary chart of key phone calls and positions);

Tr. 2284:22–2286:13 (Ruggieri) (“Q. Once again, I’m going to ask you[,] were you asked the following questions, did you give the following answers [in your investigative testimony]: ‘Question: Were you -- was it part of your investment thesis that athena may go up because Mr. Bolan was about to upgrade athena? ‘Answer: I don’t remember the situation in particular. ‘Question: So you don’t recall one way or the other? ‘Answer: I do not.’ Do you see that, sir? A. I do.... Q. Sir, were you asked those questions and did you give those answers? A. Yes, I did.... Q. Once again, were you asked the following questions and did you give the following answers: ‘Question: Did Mr. Bolan signal in any way that he intended to upgrade athena? ‘Answer: I don’t recall.’ Sir, were you asked that question and did you give that answer? A. Yes. Q. Was it truthful testimony at the time? A. Yes. Q. I should have asked you with respect to the other passage we looked at, was that truthful testimony at the time? A. Yes.”).) **DISPUTED: There was no tip.**

387. Before Wells Fargo published the Bruker upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Bruker upgrade to Ruggieri. (DIV 194-A at 9 (summary chart of key phone calls and positions).) **DISPUTED: There was no tip.**

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

overnight positions).) **DISPUTED: This is O'Neil's characterization based on false assumptions and cherry-picked data.**

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

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

450. During his investigative testimony, Ruggieri was questioned about whether he took his overnight position in Parexel because he thought Bolan would downgrade Parexel or in anticipation of Bolan's downgrade. Ruggieri did not deny it and merely claimed that he did not recall. (Tr. 2161:10–2162:16 (Ruggieri) (“Q. Now, sir, my simple question to you -- I'm going to read

this -- were you asked these questions and did you give these answers: 'Question: Why did you take a short position in Parexel, 52,500, on April 6, 2010? Answer: I don't remember the exact circumstances. I don't know if that was -- I mean -- I don't remember if that was a pure proprietary position or it was partly principal or what, but I don't remember the details. Question: Do you remember whether or not a part of the reason why you took the short position of 52,500 in Parexel on Tuesday, April 6, 2010 is because you thought Mr. Bolan may be about to downgrade Parexel? Answer: I don't recall that specific situation. I can't, I mean -- Question: So you can't say yes or no? Answer: I don't -- I don't remember. Question: Did you make these trades in anticipation of possible research being issued by Mr. Bolan? Answer: I don't recall the particular situation.' Sir, were you asked those questions; did you give those answers? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.”.) **DISPUTED: the Division’s description mischaracterizes the evidence. During his investigative testimony, Ruggieri emphatically denied having knowingly traded on the basis of material nonpublic information. DIV. 111 (Ruggieri Testimony Transcript) at 74:11-75:8; 75:12-25; 76:4-7; 78:15-17; 80:14-18; 82:9-11; 84:11-16; 104:12-21; 109:9-16; 125:15-19; 126:2-18; 128:12-20; 143:1-144:4; 152:25-153:6; 168:15-25; 174:3-15.**

465. Ruggieri did not believe this Bristol-Meyers announcement was relevant to Covance. (Tr. 2628:25–2629:2 (Ruggieri) (“Q. Did you view this as being potentially important for CVD? A. Not necessarily, no. It wasn’t really relevant particularly to CVD.”).) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

470. During his investigative testimony, Ruggieri was asked whether he took his overnight position in Covance in anticipation of Bolan’s upgrade. Ruggieri did not deny that he did and merely claimed that he did not recall. (Tr. 2192:12–2193:6 (Ruggieri) (“Q. Once again, Mr. Ruggieri, were you asked the following questions, did you give the following answers, starting on line 9: ‘Question: Did you make this 40,000-share trade in Covance in anticipation of any research that was going to



be issued by Mr. Bolan? Answer: I don't -- I don't remember the particular circumstances of this trade. I'm sorry. I didn't mean to apologize again, but -- Question: You can't remember one way or other? Answer: I can't remember exactly.' Were you asked those questions, and did you give that answer, sir? A. Yes. Q. Was that truthful testimony at the time, sir? A. At the time, yes.”.)

**DISPUTED: the Division’s description mischaracterizes the evidence. During his investigative testimony, Ruggieri emphatically denied having knowingly traded on the basis of material nonpublic information. DIV. 111 (Ruggieri Testimony Transcript) at 74:11-75:8; 75:12-25; 76:4-7; 78:15-17; 80:14-18; 82:9-11; 84:11-16; 104:12-21; 109:9-16; 125:15-19; 126:2-18; 128:12-20; 143:1-144:4; 152:25-153:6; 168:15-25; 174:3-15.**

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

issue an upgrade of AMRI factor into your investment decision? Answer: No. I mean, I -- again, I may have spoken to him and -- and other people. It was part of the process. But I don't remember particulars of the circumstances. But in no way did he tell me he was upgrading or downgrading the stock or did he infer that he was doing that.' Now, once again, all that testimony that I just read, Mr. Ruggieri, was that truthful testimony? A. It was.") **DISPUTED: the Division's description mischaracterizes the evidence. During his investigative testimony, Ruggieri emphatically denied having knowingly traded on the basis of material nonpublic information. DIV. 111 (Ruggieri Testimony Transcript) at 74:11-75:8; 75:12-25; 76:4-7; 78:15-17; 80:14-18; 82:9-11; 84:11-16; 104:12-21; 109:9-16; 125:15-19; 126:2-18; 128:12-20; 143:1-144:4; 152:25-153:6; 168:15-25; 174:3-15.**

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

it, sir? A. Yes.”.) **DISPUTED: the Division’s description mischaracterizes the evidence.**

**During his investigative testimony, Ruggieri emphatically denied having knowingly traded on the basis of material nonpublic information. DIV. 111 (Ruggieri Testimony Transcript) at 74:11-75:8; 75:12-25; 76:4-7; 78:15-17; 80:14-18; 82:9-11; 84:11-16; 104:12-21; 109:9-16; 125:15-19; 126:2-18; 128:12-20; 143:1-144:4; 152:25-153:6; 168:15-25; 174:3-15.**

518. During his investigative testimony, Ruggieri was asked whether Bolan’s upgrade of Athena was part of his investment thesis to purchase Athena before the upgrade. Ruggieri did not deny it and simply claimed that he did not remember. (Tr. 2284:6–2285:16 (Ruggieri) (“Q. Now, sir, as you sit here today, do you remember whether part of your investment thesis in athena, the February 7th position that we talked about, was because Mr. Bolan was about to upgrade athena? A. No. It was not the reason. Q. Your testimony today is that was not the reason you held the position? A. That's correct. Q. Once again, I'm going to ask you were you asked the following questions, did you give the following answers: ‘Question: Were you -- was it part of your investment thesis that athena may go up because Mr. Bolan was about to upgrade athena? Answer: I don't remember the situation in particular. Question: So you don't recall one way or the other? Answer: I do not.’ Do you see that, sir? A. I do. Can you just scroll up one second to these questions about athena as well? I just wanted to see -- Q. Sir, were you asked those questions and did you give those answers? A.

Yes, I did.”.) **DISPUTED: the Division’s description mischaracterizes the evidence. During his investigative testimony, Ruggieri emphatically denied having knowingly traded on the basis of material nonpublic information. DIV. 111 (Ruggieri Testimony Transcript) at 74:11-75:8; 75:12-25; 76:4-7; 78:15-17; 80:14-18; 82:9-11; 84:11-16; 104:12-21; 109:9-16; 125:15-19; 126:2-18; 128:12-20; 143:1-144:4; 152:25-153:6; 168:15-25; 174:3-15.**

544. When Mackle began working at Wells Fargo, he spoke with Bolan as frequently as he spoke with other health care analysts, but over time, he spoke with Bolan “much less” because of

friction between them. (Tr. 3209:15–3210:5 (Mackle) (“We just had some friction, just didn’t get along for whatever reason. I don’t think there was an individual event that I can point to, but we just -- you know, he would tend to pass me off to his associate or just – so ....”).) **DISPUTED: Mackle was shown multiple emails that belie any purported friction between him and Bolan. JR-REB 121, 128, 129, 130, 237, 239, 240, 241, 242, 243, 244, 245.**

545. Short would have ranked the analysts who covered the stocks that he traded higher than he ranked Bolan. (Tr. 3400:18–3401:16 (Short) (“And do you have any understanding in your mind back then if you ranked Mr. Bolan higher, in terms of your personal opinion, compared to those two individuals? A. I wouldn’t have because he’s not my analyst. I mean -- but, again, I don’t recall in the sense of how we had to rank these guys, but I -- you know, I would have had a higher opinion on the guys I talked to more. That’s not to say Greg Bolan wasn’t a great analyst, or an analyst maybe that just was assigned to Joe was also great – it’s just the ones I talked to were the ones that I had more of an opinion of.”). **DISPUTED: the Division’s description mischaracterizes the cited evidence. See FOF ¶¶ 342 and 355.**

552. Wickwire met with Ruggieri in person repeatedly and their primary topic of conversation was Ruggieri’s positive feedback on Bolan. (Tr. 1493:19–1494:9 (Wickwire) (“Q. Sitting here today, do you have any reason to believe that every time you met with Mr. Ruggieri, the only thing you were discussing was positive feedback about Mr. Bolan? A. It wouldn’t have been the only thing, but I think it would have been a primary topic for us.”); Tr. 2457:22–2459:13 (Ruggieri) (“Q. And Mr. Wickwire said that these meetings were about -- to some part, about you being there to praise Mr. Bolan. Do you remember that? A. Right. Q. Do you think that that was an accurate description of why you met with Mr. Wickwire? A. No. I mean, I met with Mr. Wickwire a handful of times, at least, for various reasons. But the general theme always was to build the healthcare franchise, to make it better, how can we make it better, what subsectors we didn’t cover that we’re

looking to hire that would be helpful to us if we had an analyst in that subsector. And I did talk to him at least on one or two occasions about best practices, so something I thought that all analysts, not just healthcare, could benefit from.... Q. And so what was your purpose then in bringing out Mr. Bolan at these meetings with Mr. Wickwire? A. The purpose was, Mr. Bolan put this in practice and it was helping us drive more commission business in his stocks. I felt it was something that could be replicated to, not just analysts and healthcare, which we did and some started doing, I think, but also other sectors, because I felt it was something that the firm could do.”); Tr. 2459:23–2460:2 (Ruggieri) (Q. So you saw Mr. Bolan as an example of a really strong analyst, that Mr. Wickwire can help build the rest of the franchise around? A. Yes.) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

561. Wickwire received this feedback from Bartlett and Snyder, who passed along feedback from Ruggieri. (Tr. 1400:23–1402:13 (Wickwire) (“Q. But in terms of getting feedback in your decisionmaking to nominate Mr. Bolan as a director, did you consider feedback from the trading department? A. Yes. Q. And in terms of feedback from the trading department, whose feedback in particular did you rely on? A. Again, it would have been feedback that I was receiving from Mr. Bartlett and Mr. Snyder, the feedback they were providing for Mr. Ruggieri and his team. Q. Did you have an understanding that feedback came from -- that it included feedback from the senior trader in the healthcare department, Mr. Ruggieri? A. Yes.”); Tr. 1389:3–16 (Wickwire) (“Q. And in terms of getting feedback from the trading department for analysts, were the feedback from the senior traders equal in weight to the feedback from the junior traders, or were they weighted greater? A. I would say the feedback was, for the most part, just from the senior traders, because a lot of that is communicated to me from the head of trading, head of sales and trading back then, and that’s where I had a lot of my dialogue and input, on how various analysts were doing with trading, and that was a weekly meeting I would have with the head of sales and trading.”);

Tr. 1408:12–1409:16 (Wickwire) (“Q. And who was it coming from? A. Directly coming from Mr. Bartlett and Mr. Snyder to me. Q. But did they have daily interaction with Mr. Bolan? A. They did not. Q. So did you have an understanding of where they got the information? A. Yes. Q. And where did they get the information? A. That came from the healthcare trading desk. Q. And at the time, who was in the healthcare trading desk? A. Joe Ruggieri and Chip Short.”); Tr. 1478:3–17 (Wickwire) (“Mr. Ruggieri was cc'd on this e-mail, as he was, I think, the -- the relationship that Mr. Bolan and Mr. Ruggieri had, in terms of the dialogue, was sort of the model, and my view -- and I recognize he was providing a lot of that feedback to Mr. Brown, Mr. Snyder and Mr. Bartlett.”). **DISPUTED: the Division’s description mischaracterizes the evidence. Bartlett gave positive feedback to Wickwire based on his own impressions of Bolan. See FOF ¶ 357.**

569. Short played no role in the trading department’s ranking of Bolan as Wells Fargo’s best research analyst. (Tr. 1389:3–16 (Wickwire) (“Q. And in terms of getting feedback from the trading department for analysts, were the feedback from the senior traders equal in weight to the feedback from the junior traders, or were they weighted greater? A. I would say the feedback was, for the most part, just from the senior traders, because a lot of that is communicated to me from the head of trading, head of sales and trading back then, and that's where I had a lot of my dialogue and input, on how various analysts were doing with trading, and that was a weekly meeting I would have with the head of sales and trading.”); Tr. 3401:8–16 (Short) (“Q. To the extent that there are any records that would indicate that in 2010 Mr. Bolan internally, in terms of the scoring, Mr. Bolan relative to the analysts, that he was ranked number 1 in terms of dealing with the trading department, do you know to what extent you had a role in making that ranking? A. I didn’t have a role in making that ranking.”). **DISPUTED: the Division’s description mischaracterizes the cited evidence. See FOF ¶ 355.**

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

581. Ruggieri recognized Bolan’s unpublished channel check contained important information. (Tr. 2384:21–2385:17 (Ruggieri) (“Q. It’s fair to say, when you go back and look at some of Mr. Bolan’s nonpublished channel checks that he sent to select clients, that that information, at times, was probably going to move the market, or probably be important to certain clients? A. Sure. Q. And that’s a no-no in the analyst world; isn’t it? A. I guess so.... Q. But if you look back and really parse some of what Mr. Bolan was saying, he clearly thought that some of this information might be somewhat important to some of his clients; correct? A. Right. Q. And that probably should have been in a regular analyst report? A. In hindsight, probably.”).) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

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



opinions are relative to Mr. Ruggieri's opinions because of the wording using the 'we' context.”.)

**DISPUTED: the Division’s description mischaracterizes the cited evidence.**

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

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

590. Ruggieri, who received Bolan’s response that included the statement “YESSSSSSSSSS! High conviction,” knew that Bolan considered his preclinical CRO channel check to be important.

(DIV 15 at 14 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client).) **DISPUTED: the Division’s description mischaracterizes the evidence.**

593. Bolan recognized that the information that he sent to Ruggieri and the Wells Fargo client was “extremely bullish.” (DIV 15 at 20 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client about unpublished channel check); Tr. 302:10–24 (Friedman) (“A. It indicated that the author felt that this was an important piece of information, extremely bullish being important contradicting, in my view, the first statement that it was immaterial.”).) **DISPUTED: Friedman can’t testify as to Bolan’s state of mind, and the Division chose not to call Mr. Bolan.**

594. Ruggieri knew that Bolan considered his preclinical CRO channel check to be important, having received the email from Bolan containing his channel check and Bolan’s characterization of it as “extremely bullish.” (DIV 15 at 20 (March 31, 2011 email from Bolan to Ruggieri and Wells Fargo client about unpublished channel check).) **DISPUTED: the Division’s description mischaracterizes the cited evidence.**

599. Bolan knew that this channel check was material. (Tr. 316:22–317:20 (Friedman) (“The super duper ultra mega bullish was on the client’s requested scale on the higher end of how important or significant this information was. It was not routine in terms of Mr. Bolan’s own written observation.”).) **DISPUTED: Friedman can’t testify as to Bolan’s state of mind, and the Division chose not to call Mr. Bolan.**

606. When Evans raised his concerns to Wickwire, he was unaware of the compliance inquiry into Bolan and Ruggieri. (Tr. 1273:15–20 (Evans) (“Q. At the time that you contacted Mr. Wickwire, did you have any understanding prior to contacting Mr. Wickwire that compliance was looking at these issues and Mr. Bolan? A. No.”).) **DISPUTED: Wickwire directly contradicted Evans on this point. Tr. 1447:10-23 (Wickwire).**

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

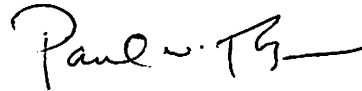
610. Bolan falsely claimed that Mike Madsen (“Madsen”), a supervisory analyst in Wells Fargo’s research department, had told Bolan that he could email non-public research to fewer than twenty clients because that did not constitute the dissemination of research. (DIV 14 (summary of Wells Fargo compliance interview of Bolan); Tr. 234:15–235:6 (Friedman) (“Q. And then the next, the next bullet point there, ‘We asked about the e-mail’ -- it continues – ‘that was sent to a client on 3-31.’ What did you mean there? A. We tried to ask questions about what his typical process is in the production of research reports and generally speaking channel checks, and, you know, how is it that clients were getting excerpts, direct excerpts from a not yet published report. And this is where he injected the fact that he was coached in terms of the company's policy by Mike Madison with regard to sending it to less than 20 people was okay.”).) **DISPUTED: multiple witnesses testified to an understanding of a selected disclosure rule, including Wickwire and Mackle. Tr. 1357:21-1358:13 (Wickwire); 3292:22-3293:20 (Mackle).**

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

628. In August 2011, Wells Fargo published a policy that reiterated the existing prohibition against selective dissemination of research by specifically stating that channel checks cannot be selectively disseminated to clients. (DIV 105 at 4; Tr. 397:25–399:19 (Friedman) (“Well, what we trying to underscore is that we've always had a confidentiality provisions that covered prepublication activities, and that nothing in this policy was meant to undo anything that existed prior to that. And quite the opposite. This was -- there were several activities contemplated in this policy that we clarified that were not necessarily the subject of our review, and this was just a way of indicating to people that all these policies here are prepublication and to be treated as confidential, and nothing is meant to reverse anything that we had previously understood as departmental policy regarding confidentiality. Q. Now, did any of the material that we just looked at, the two bullet points in this section, did any of those alter in any respect the previous Wells Fargo policies we talked about in terms of dissemination of unpublished research? A. It did not alter, but it did revise and clarify what we considered to be pre-existing policies.”) **DISPUTED: the Division’s description mischaracterizes the cited evidence. Wells Fargo did not have a channel check policy in place until August 2010.**

Dated: New York, New York  
June 8, 2015

SERPE RYAN LLP

A handwritten signature in black ink that reads "Paul W. Ryan" with a horizontal line extending to the right.

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