

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 OPPOSITION TO RESPONDENT
JOSEPH C. RUGGIERI'S MOTION FOR SUMMARY AFFIRMANCE

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: (212) 336-1319 (Krishnamurthy)
VasilescuA@sec.gov
KrishnamurthyP@sec.gov
SatwalekarS@sec.gov

Attorneys for the Division of Enforcement

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Under Commission Rules of Practice (“Rules”) 411(e) and 154(b), the Division of Enforcement (“Division”) hereby opposes Respondent Joseph C. Ruggieri’s Motion for Summary Affirmance (“Motion”). For the reasons described below and in the Division’s Petition for Review of Initial Decision (“Petition”), filed on October 5, 2015, the Commission should review the Initial Decision’s findings and conclusions that Respondent Joseph C. Ruggieri (“Ruggieri”) did not violate Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] because Respondent Gregory T. Bolan, Jr. (“Bolan”) did not tip Ruggieri for personal benefit.

INTRODUCTION

Ruggieri argues that the Commission should summarily affirm the Initial Decision because it simply applies “the well-settled insider trading law.” According to Ruggieri, the Initial Decision’s application of *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied*, ___ S. Ct. ___, 2015 WL 4575840 (Oct. 5, 2015), is not a legal issue important enough to warrant Commission review.

Ruggieri sang a different tune when he originally moved for summary disposition in this proceeding: he attached as Exhibit A an article headlining the “Changed Landscape in Insider Trading Law: Second Circuit’s *Newman* Decision.” Whether or not *Newman* changed the landscape of insider trading law, however, *Newman*’s conclusions are unquestionably important to the developing law on personal benefit. At the very least, the Commission should review the Initial Decision because no administrative law judge has applied or interpreted *Newman* before.

The Initial Decision particularly warrants the Commission’s review because the decision erroneously concludes under *Newman* that Bolan did not tip Ruggieri for personal benefit, as the Petition describes. Seeking summary affirmance, Ruggieri suggests that the Initial Decision resolves in his favor many “hotly contested” factual disputes that the Commission should not now re-open to give the Division “another bite at the apple.” In fact, as detailed below, Ruggieri did not dispute

most underlying facts relevant to personal benefit (or other issues) at the hearing. He contested primarily the inferences and legal conclusions to be drawn from them. Indeed, the undisputed facts, when analyzed properly under *Newman* and other legal precedent, show that the only plausible reason Bolan knowingly and repeatedly risked his career to tip Ruggieri was to benefit himself. The Commission need not re-open the entire hearing record to correct the Initial Decision's erroneous conclusion.

Ruggieri offers one other overarching argument for summary affirmance: the absence of direct testimony from Bolan (whom neither party called to testify) about his reason for tipping Ruggieri. This misguided argument—echoing the Initial Decision—does not support summary affirmance. The Supreme Court has instructed the Commission to determine personal benefit using objective evidence, not a subjective inquiry into the tipper's mind. The undisputed, objective evidence shows that Ruggieri—Bolan's friend, close co-worker, and mentor—held star status at their firm, had Bolan's supervisor's ear, and could and did help advance Bolan's career. Based on these objective facts, the Initial Decision should have reached the only plausible conclusion: Bolan therefore tipped Ruggieri to benefit himself. Bolan's self-serving testimony to the contrary would have shed no light on the matter. Few tippers in Bolan's shoes will voluntarily admit to a motive that would subject them to civil and criminal liability. The Supreme Court's objective inquiry requires no such admissions to prove personal benefit. To the extent the Initial Decision concludes that it could not find personal benefit without Bolan's testimony, the Commission should review that error, too.

UNDISPUTED RELEVANT FACTS¹

I. Ruggieri Was Bolan's Close Co-Worker, Mentor, and Friend.

Ruggieri, a healthcare trader, and Bolan, a healthcare analyst, both worked at Wells Fargo Securities, LLC (“Wells Fargo”) from August 2009 until Wells Fargo terminated them in April 2011. (Initial Decision at 4, 5, 6 (citing various Adm. FOFs and JFOFs).) During this time, as Ruggieri testified, he and Bolan spoke “regularly” and “had a constant dialogue.” (Tr. 2051:25–2052:7, 2062:24–2063:18.)² Of the eight healthcare analysts Ruggieri spoke to at Wells Fargo, Ruggieri admits he interacted more with Bolan than any other. (Initial Decision at 6 (citing Adm. FOF No. 45).) As Ruggieri’s colleague testified, Ruggieri also mentored Bolan and another junior analyst and “tried to make them more commercial.”³ (Tr. 3215:10–3217:7; Initial Decision at 36; *compare* Div.

¹ The facts set forth in this section are undisputed, unless otherwise noted. Contrary to Ruggieri’s Motion (Mot. at 8 & n.5), he did not dispute most facts relevant to the personal benefit element at the hearing. After the hearing, the Division submitted 640 paragraphs of proposed factual findings, supported by record evidence, with findings relevant to personal benefit woven throughout various sections. (Div.’s Post-Hr’g Proposed Findings of Fact and Conclusions of Law (“Div. Findings”) (May 22, 2015).) Ruggieri admitted approximately 565 of the paragraphs, or 88%. (Resp.’s Response to the Div.’s Post-Hr’g Proposed Findings of Fact and Conclusions of Law (“Ruggieri Response to Div. Findings”) (June 8, 2015).) Even for the relatively few findings Ruggieri claimed to dispute, he often proffered no contradictory evidence, despite an order requiring him to do so. (*E.g., id.* at ¶ 108; Post-Hr’g Order dated Apr. 15, 2015, at ¶ 9 (requiring a party disputing an opposing proposed factual finding to “support[] that counterstatement by citations and quotation(s)”).) The Initial Decision cites the Division’s proposed factual findings admitted by Ruggieri as “Adm. FOF No. ____” and cites the parties’ stipulated joint findings of fact as “JFOF.” (Initial Decision at 2 n.2.)

² “Tr.” refers to the hearing transcript, “Ex.” refers to admitted hearing exhibits, and individuals’ last names serve as short forms throughout this memorandum.

³ Ruggieri alters the hearing transcript to support his claim that he mentored “Bolan *and other analysts.*” (Mot. at 11 (citing Tr. 3215 and inserting words “Bolan and other analysts” in brackets) (emphasis added).) In fact, Bruce Mackle, Ruggieri’s former co-worker, testified that Ruggieri mentored Bolan and one other analyst named Vincent Ricci. (Tr. 3215–16 (“A. ...I think the difference with Greg [Bolan], 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.... 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.”).) Ricci left Wells Fargo in late June or early July 2010—precisely when the Initial Decision concludes that Bolan first began tipping Ruggieri—and Ruggieri then mentored only Bolan. (Tr. 3166, 3215–16; Initial Decision at 19–20, 28.)

Findings ¶ 47 with Ruggieri Response to Div. Findings ¶ 47 (admitting the substance of this testimony and offering no contradictory evidence.) Consistent with Ruggieri's own admissions, Bolan's supervisor characterized Bolan's and Ruggieri's relationship as follows: "a very close relationship that contained a significant amount of dialogue, more than [was] normal for [the research] department, and...was a close relationship of two professionals supporting one another." (Initial Decision at 45 (quoting Tr. 1557–58).)⁴

In addition, Ruggieri and Bolan were "pretty good friends" and "got along really well," as Ruggieri testified. (Initial Decision at 43 (citing Tr. 2055–57, 2470–71).) After Wells Fargo terminated them and Ruggieri found a new job, Ruggieri recommended Bolan for an analyst position at Ruggieri's new firm. (*Id.* at 44; *compare* Div. Findings ¶¶ 632, 636 *with* Ruggieri Response to Div. Findings (admitted).) While interviewing for jobs, Bolan stayed in Ruggieri's apartment for three days, and Ruggieri let Bolan keep a copy of his apartment keys even afterwards. (Initial Decision at 44; *compare* Div. Findings ¶¶ 633–635, 638 *with* Ruggieri Response to Div. Findings (admitted).) Months later, Bolan invited Ruggieri to his wedding, as Ruggieri concedes, although Ruggieri claims that he neither received the invitation nor attended the wedding. (Initial Decision at 44; *compare* Div. Findings ¶ 640 *with* Ruggieri Response to Div. Findings (admitted).)

II. Ruggieri Could and Did Benefit Bolan's Career After Trading on Bolan's Tips.

Wells Fargo was in a competitive business that did not tolerate employees who underperformed. (Initial Decision at 4 (citing Adm. FOF No. 1.) The firm did not generate any direct revenue from research analysts like Bolan. (*Id.* (citing Adm. FOF No. 4).) Instead, research analysts indirectly generated revenue only when clients used Wells Fargo traders like Ruggieri to trade on the firm's research. (*Id.* (citing Adm. FOF No. 5).) Because the firm's trading department

⁴ Ruggieri neither specifically admitted nor specifically refuted this testimony.

paid a portion of the research analysts' salaries, the trading department voiced its displeasure when unsatisfied with the research department's performance. (*Id.* (citing Adm. FOF Nos. 6–7).)

Feedback from Wells Fargo's trading department was "taken into account in analyst promotions and was an important factor in analysts' careers." (Initial Decision at 42 (citing Adm. FOF No. 564).) For example, Wells Fargo determined its analysts' bonuses every year by ranking each analyst relative to his or her peers using a scorecard. (*Id.* at 39 (citing Adm. FOF Nos. 529–30).) An analyst in Bolan's position could increase his annual bonus by \$50,000 to \$75,000 by moving up just one position—for example, from the 17th best to the 16th best analyst—in the rankings. (*Id.* at 40 n.27 (citing Adm. FOF No. 574).) As Bolan's supervisor had informed him, feedback from Wells Fargo's trading department accounted for 5% of his peer ranking each year. (*Id.* at 40; *compare* Div. Findings ¶¶ 531–33, 570, 575 *with* Ruggieri Response to Div. Findings (admitted).)

Ruggieri—the only Wells Fargo trader who traded the stocks Bolan researched and who could therefore generate client revenue from Bolan's research—was one of the top-producing, highest-paid traders on the firm's trading desk. (*Id.* at 4, 6 (citing Adm. FOF Nos. 4–5, 14–18, 40, 41, 75).) Due to his status at Wells Fargo, Ruggieri had an atypical amount of direct access to Bolan's supervisor, compared to other traders. (*Compare* Div. Findings ¶ 549 *with* Ruggieri Response to Div. Findings (admitted).) In fact, Bolan's supervisor considered Ruggieri's feedback on the firm's analysts to be more important than feedback from anyone else on the firm's healthcare trading desk. (*Compare* Div. Findings ¶ 551 *with* Ruggieri Response to Div. Findings (admitted); Initial Decision at 42 ("Wickwire [Bolan's supervisor] valued Ruggieri's opinion".))

Shortly after Ruggieri joined Wells Fargo, Bolan gave Ruggieri and a "big," platinum client "very sensitive" information about a company Bolan covered and asked them to "please keep this close to the vest." (Initial Decision at 5, 48; *compare* Div. Findings ¶¶ 173–77 *with* Ruggieri Response to Div. Findings (admitted).) After that and continuing months later after Ruggieri first profitably

traded on Bolan's tips, Ruggieri provided positive written feedback about Bolan to the research department's supervisors.⁵ (Initial Decision at 37; *compare* Div. Findings ¶¶ 539, 540, 542–43 *with* Ruggieri Response to Div. Findings (admitted).) As Ruggieri admitted, he also said positive things about Bolan directly to Bolan's supervisor. (Initial Decision at 37 (citing in part Tr. 2457–60).)

Months after Ruggieri began profitably trading on Bolan's tips, Bolan's supervisor nominated Bolan for a promotion to director—one year earlier than an analyst would typically receive such a promotion. (*Id.* at 19, 42 (citing Adm. FOF No. 546); *compare* Div. Findings ¶¶ 546–48 *with* Ruggieri Response to Div. Findings (admitted).) In his nomination form, Bolan's supervisor wrote: “[Bolan] is among the best analysts in the department in terms of his dialogue with trading. We consistently hear from trading that [Bolan] provides great information flow to the desk and they are able to monetize his efforts.” (*Id.* at 42; *compare* Div. Findings ¶ 560 *with* Ruggieri Response to Div. Findings (admitted).) Although Ruggieri disputes the source of this feedback, the Initial Decision correctly finds that Bolan's supervisor understood this feedback was based “at least in part[] on Ruggieri's feedback about Bolan.” (Initial Decision at 42.) Bolan later received the promotion. (*Id.* at 5; *compare* Div. Findings ¶ 565 *with* Ruggieri Response to Div. Findings (admitted).) As the Initial Decision concludes based on this and other evidence, at the very least “[i]n an abstract sense, feedback from the trading desk, including Ruggieri, could be viewed as having some potential pecuniary value.” (Initial Decision at 42.)

ARGUMENT

I. The Commission Should Deny Summary Affirmance Because the Initial Decision Applies a New and Important Legal Standard.

As Ruggieri acknowledges (Mot. at 2), under Rule 411(e)(2) the Commission “will decline to grant summary affirmance upon a reasonable showing...that the decision embodies an exercise of

⁵ Although the Initial Decision correctly concludes that Ruggieri profitably traded based on at least four of Bolan's tips (Initial Decision at 9–28), Ruggieri still disputes that issue. (Mot. at 1 n.1.)

discretion or decision of law or policy that is important and that the Commission should review.” 17 C.F.R. § 201.411(e)(2). The Initial Decision applies the Second Circuit’s recent decision in *Newman* for the first time in a Commission administrative proceeding. (Pet. at 1, 3–4.) Earlier this year, the Commission stated that *Newman*’s conclusions on the tipper benefit requirement “involve an issue of exceptional importance.” Br. for SEC as Amicus Curiae Supporting Pet. of the United States for Reh’g or Reh’g En Banc at 2, *United States v. Newman*, No. 13-1837 (2d Cir. Jan. 2015) (“Amicus Brief”). The Initial Decision’s application of this new and important legal standard alone therefore warrants the Commission’s independent, *de novo* review, as described in the Petition. (Pet. at 1–2); *see also Kevin Hall, CPA*, Exchange Act Rel. No. 34-57855, 2008 WL 2167940, at *2 (May 23, 2008) (“We previously have noted that [s]ummary affirmance is rare, given that generally we have an interest in articulating our views on important matters of public interest and the parties have a right to full consideration of those matters.”) (citation omitted).

Ruggieri nevertheless dismisses as a “red-herring” any argument that the Initial Decision’s application of *Newman* presents an important issue that warrants review. (Mot. at 3.) Ruggieri claims that the Initial Decision’s “ultimate holding [that Bolan did not tip Ruggieri for personal benefit] resulted from a straightforward application of the facts to the well-settled insider trading law.” (*Id.*) According to Ruggieri, even aside from *Newman*, the Division could not prove personal benefit “under the law of the Supreme Court...or any other circuit [besides the Second Circuit] for that matter,” and therefore the Initial Decision warrants no review. (*Id.*)

Ruggieri’s argument is wrong and disingenuous. The Initial Decision’s erroneous dismissal of the Division’s claims rests entirely on *Newman*. (Initial Decision at 33–50 (“As I already ruled, I apply *Newman*.”); Pet. at 3–10.) Indeed, before *Newman*, the Supreme Court, the Commission, and every Circuit to have addressed the issue—including the Second Circuit—had held that a tipper’s tip of inside information to a trading friend could alone satisfy the personal benefit requirement. *See Dirks*

v. SEC, 463 U.S. 646, 664 (1983) (personal benefit “also exist[s] when an insider makes a gift of confidential information to a trading relative or friend. The tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient.”); *Robert Bruce Lohmann*, Exchange Act Rel. No. 48092, 2003 WL 21468604, at *4 (June 26, 2003) (tip between “friendly” co-workers sufficed to show personal benefit under *Dirks* because tipper “received the personal satisfaction of his generosity and admiration” of the tippee); (Pet. at 5 (citing Circuit court cases); Div.’s Mem. in Opp’n to Resps.’ Mot. for Summary Disposition (Jan. 22, 2015) at 24–28 (citing additional cases)). Presumably for this reason, when Ruggieri moved before the hearing for summary disposition on personal benefit grounds, he relied only on *Newman*, tried to distinguish *Dirks* in a footnote, and failed even to mention *Lohmann*. (Ruggieri’s Mot. for Summary Disposition (Jan. 8, 2015) at 5–10 & n.6.) Later, at oral argument on that motion, Ruggieri’s counsel conceded that before *Newman* “it used to be that mere friendship was enough.” (Tr. of Feb. 11, 2015 Oral Argument at 58:17–59:11, excerpt attached as Ex. A.) In short, under the well-settled Supreme Court, Commission, and Circuit court precedent before *Newman*, Ruggieri’s admitted friendship with Bolan would alone have satisfied the personal benefit requirement.

Against this background, the Initial Decision expressly applies *Newman*. (Initial Decision at 33–50.) Based on its interpretation of *Newman*, it concludes that Bolan repeatedly and knowingly violated his employer’s policies by giving Ruggieri material, non-public information but that Bolan did so for no personal benefit. (Pet. at 1–13.) The Initial Decision finds Bolan’s and Ruggieri’s friendship and close working and mentor relationship and the career benefits Ruggieri provided to Bolan insufficient, based in part on certain implausible inferences it draws from undisputed facts. (*Id.*; Initial Decision at 33–50.) This erroneous conclusion based on an erroneous application of *Newman*—a new and important legal issue of exceptional importance to the enforcement of the federal securities laws—warrants Commission review, as described further below.

II. The Initial Decision Errs In Applying the Law and Drawing Implausible Inferences.

A. Bolan's Relationship With Ruggieri Satisfies the Personal Benefit Requirement.

The Initial Decision first errs in concluding that Bolan did not tip for personal benefit by tipping Ruggieri—Bolan's friend, mentor, and close co-worker—with market-moving, non-public information, as described in the Petition. (Pet. at 2–6.) Specifically, the Initial Decision interprets *Newman* too narrowly and wrongly concludes that the essentially undisputed facts fail to show a “meaningfully close personal relationship” between Bolan and Ruggieri. (*Id.* at 3–5.) Although this phrase may not yet be “susceptible to a definite legal meaning” (Amicus Br. at 14), it at least encompasses a close relationship like the one between Bolan and Ruggieri, a far closer one than the casual acquaintances *Newman* rejected. (Pet. at 3–5.) If not, then *Newman* conflicts with *Dirks*. (*Id.* at 5.) In that case, the Initial Decision should instead have applied *Dirks* and the Commission's and other Circuits' long-standing interpretations of *Dirks* and concluded that Bolan tipped for personal benefit. (*Id.* at 5–6.) Otherwise, registered representatives in the securities industry will be free to give valuable inside information on which they cannot themselves trade to their co-worker friends and mentors to trade on instead, a result not intended by *Dirks*. Cf. *SEC v. Payton*, ___ F. Supp. 3d ___, 2015 WL 1538454, at *4 (S.D.N.Y. Apr. 6, 2015) (Rakoff, J.) (“[I]t may not be so easy for a lower court, which is bound to follow both [*Newman* and *Dirks*], to reconcile the two.”).

Ruggieri's argument to the contrary primarily boils down to a dispute about what type of relationship constitutes a “meaningfully close personal relationship” under *Newman* and how the undisputed facts about his relationship with Bolan should be characterized. (Mot. at 6–9.) Indeed, Ruggieri concedes that “both *Dirks* and *Newman* counsel that a tipper may be liable for an insider's gift of information to a friend.” (*Id.* at 6.) But he argues that his friendship with Bolan was not close enough under the law for two reasons: (1) he and Bolan “were nothing more than work colleagues

and work friends,” and (2) even if such relationships can suffice to prove personal benefit, they only do so if the tipper belongs to the tippee’s innermost circle of friends. (*Id.* at 8–9.)

These arguments have no merit. First, the undisputed facts described above belie Ruggieri’s characterization of his relationship with Bolan. Ruggieri and Bolan were more than just colleagues and work friends. Even after Wells Fargo terminated them—when they no longer worked together—Ruggieri recommended Bolan for a job at his new firm, let Bolan sleep at his apartment for three nights, and let Bolan keep his apartment keys even afterwards. Months later, Bolan invited Ruggieri to his wedding. Based on the entirety of their relationship, Bolan and Ruggieri had a “meaningfully close personal relationship” under *Newman*.⁶ See, e.g., *SEC v. Megalli*, No. 1:13-cv-3783-AT, slip op. at 2, 15, 17, 20–22 & n.7, *attached to Pet. as Ex. 1* (N.D. Ga. Sept. 24, 2015) (distinguishing the “extremely weak evidence concerning the alleged benefits to the insiders” in *Newman* and finding that the tipper’s gift of inside information to the tippee—with whom the tipper had “a personal and professional” relationship that “included travel, golf outings, lunches and other work and social events” and for whom “he felt bad”—satisfied the personal benefit requirement).

Whether Ruggieri had other, closer friends who did not tip him is irrelevant. The Supreme Court adopted the personal benefit inquiry to distinguish between proper disclosures of confidential information—for example, to benefit the tipper’s employer or reveal a fraud—and improper disclosures made for a self-dealing purpose, like tips to a friend. *Dirks*, 463 U.S. at 659 (“[I]nsiders...may not give such [undisclosed corporate] information to an outsider for the same

⁶ The Initial Decision and Ruggieri incorrectly interpret *Newman*’s term “personal” to mean the opposite of “professional.” (Initial Decision at 45 (finding that Bolan’s supervisor’s characterization of Bolan’s and Ruggieri’s relationship as “very close...relates to a professional, as opposed to personal, relationship”); Mot. at 8–9.) In fact, “personal” also means “done in person without the intervention of others...carried on between individuals directly.” See Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/personal> (last visited Nov. 2, 2015). *Newman* uses the term “personal” in the latter sense to distinguish between “casual or social” acquaintances who “were alumni of the same school or attended the same church”—non-professional but insufficiently direct relationships—and people who have a relationship directly with each other. *Newman*, 773 F.3d at 452.

improper purpose of exploiting the information for their personal gain.”) (citing Exchange Act Section 20(b), 15 U.S.C. § 78t(b)); *see also id.* at 662–64. Even under *Newman*, if Ruggieri had a “meaningfully close personal relationship” with Bolan—as he did—his purportedly closer relationships with other friends and relatives do not matter.

B. The Career Benefits Ruggieri Could and Did Give Bolan Satisfy the Personal Benefit Requirement.

As the Initial Decision finds, at least “[i]n an abstract sense, feedback from the trading desk, including Ruggieri, could be viewed as having some potential pecuniary value.” (Initial Decision at 42.) The Initial Decision nevertheless concludes that the Division could not prove personal benefit because it could not prove that Bolan, in his mind, subjectively intended to tip Ruggieri in order to obtain this feedback. (Initial Decision at 35–36 (“It is more plausible that Ruggieri’s feedback was genuine, and that Bolan sought feedback as a standard practice rather than for an illicit benefit.”).) Ruggieri argues that this conclusion is correct and, echoing the Initial Decision, that the Division could not sustain its burden of proof in part because it did not call Bolan to testify. (*Id.* at 35–36; Mot. at 1, 5, 9–13 & n.8.)

In fact, the Initial Decision errs because, among other things, it applies the wrong legal standard, as the Petition discusses. (Pet. at 7–8.) Under *Dirks*, the Commission must undertake an objective inquiry to determine whether the tipper tipped for personal benefit—it should not try to read the tipper’s mind:

The SEC argues that, if inside-trading liability does not exist when the information is transmitted for a proper purpose but is used for trading, it would be a rare situation when the parties could not fabricate some ostensibly legitimate business justification for transmitting the information. We think the SEC is unduly concerned. In determining whether the insider’s purpose in making a particular disclosure is fraudulent, the SEC and the courts are not required to read the parties’ minds.... 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.

Dirks, 463 U.S. at 663. The undisputed, objective evidence shows that Bolan knew Ruggieri could positively influence Bolan's career and that, after Ruggieri started profitably trading on Bolan's tips, Ruggieri provided positive feedback that in fact helped advance Bolan's career. (Initial Decision at 4, 6, 35–43.) The Initial Decision should have ended its inquiry there and, based on these objective facts, concluded that Bolan tipped for personal benefit.

Bolan's absence at the hearing does not support the Initial Decision's erroneous conclusion.⁷

In his investigative testimony, Bolan steadfastly denied that he had tipped his friend Joshua Moskowitz and Ruggieri. (Ex. DIV 110 at 124–25.) That denial was not credible, and the Initial Decision concluded as much by finding that Bolan repeatedly tipped both Ruggieri and Moskowitz. (Initial Decision at 7, 10–12.) Particularly under these circumstances, any suggestion in the Initial Decision that the Division had to elicit Bolan's testimony in order to prove personal benefit is simply wrong. As described above, *Dirks* requires an objective inquiry into personal benefit, not a subjective one, and therefore Bolan's testimony was unnecessary to prove personal benefit given the overwhelming undisputed evidence. As a practical matter, if the Division cannot prove personal benefit unless a tipper admits that he intended to benefit himself, the Division would routinely need a tipper to potentially incriminate himself before the Division could prove that a tipper or his tippee violated the law. By analogy, in certain criminal trials, prosecutors often prove that a defendant acted

⁷ The Initial Decision's description of Bolan's absence omits some details. (Initial Decision at 35–36 (citing Tr. 1616–24).) The Division had originally sought the hearing subpoena issued to Bolan. (Tr. 1621.) On the business day before the hearing, Bolan and the Division reached a settlement in principle. (Initial Decision at 36 n.21.) Five days into the twelve-day hearing, the Division notified the ALJ and Ruggieri that it had spoken with Bolan's counsel. (Tr. 1617–18.) The Division explained that, according to Bolan's counsel, Bolan would need a few days to travel to New York to testify and had some concern about the fairness of being compelled to testify while the Commission was considering his settlement offer. (*Id.*) The Division stated that, in any event, it had elected not to call Bolan as a witness but noted that Ruggieri was of course free to enforce the Division's subpoena in order to call Bolan as his witness. (Tr. 1619–21.) Ruggieri elected not to do so and instead successfully sought admission of Bolan's investigative testimony. (Tr. 1619–24.) This allowed Ruggieri to obtain the benefit of Bolan's self-serving denial of any wrongdoing without the risk of exposing Bolan to the Division's cross-examination.

with a specific intent—for instance, the “intent to cause the death of another person,” N.Y. Pen. Law § 125.27, to prove first-degree murder—without the defendant’s testimony. For this very reason, *Dirks* requires only an objective inquiry to determine whether personal benefit exists.

Nor does the Initial Decision correctly conclude that Ruggieri “gave the feedback because it was genuine,” not “in exchange for tips,” as Ruggieri contends. (Mot. at 13; Initial Decision at 35.) As the Petition describes, the Initial Decision erroneously relies on the timing of Ruggieri’s positive feedback, some of which preceded Bolan’s tips and some of which followed, and fails to conclude that, at a minimum, Bolan tipped Ruggieri to maintain and further Ruggieri’s positive feedback. (Pet. at 8); *cf. United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998) (“I’ll scratch your back if you scratch mine” arrangements satisfy the *quid pro quo* element of bribery).

Finally, the Initial Decision reaches the entirely implausible conclusion that Bolan tipped Ruggieri for no personal benefit, as the Petition explains. (Pet. at 8–9, 10–13.) Why would an analyst like Bolan knowingly violate Wells Fargo’s policies and risk his career to repeatedly tip a trader like Ruggieri with no expectation of receiving a benefit in return? (Initial Decision at 8–9, 35–36, 47–49.) The Initial Decision offers only this implausible answer: the fact that Ruggieri’s feedback was undisputedly “taken into account in analyst promotions and was an important factor in analysts’ careers,” did not motivate Bolan to tip Ruggieri. (*Id.* at 42 (citing Adm. FOF No. 564).) Rather, Bolan tipped Ruggieri only because Bolan could not “keep his mouth closed.” (*Id.* at 49.) As the Petition describes at length, this inference—particularly in the competitive securities industry—defies reason and finds no support in *Newman*, *Dirks*, or other applicable law. (Pet. at 10–13 (citing cases).) As the Seventh Circuit put it, “[a]bsent some legitimate reason for [the tipper’s] disclosure... the inference that [his] disclosure was an improper gift of confidential corporate information is unassailable. After all, he did not have to make any disclosure, so why tell [the tippee] anything?” *SEC v. Maio*, 51 F.3d 623, 632 (7th Cir. 1995).

III. The Commission Should Review the Initial Decision To Determine Whether Bolan Intended To Benefit Ruggieri.

The Initial Decision declines to reach the issue of whether Bolan tipped for personal benefit because he intended to benefit Ruggieri; it concludes that the Division waived the argument. (Initial Decision at 47.) As the Petition points out—and Ruggieri does not contest—the Division did not waive the argument. (Pet. at 9–10; Mot. at 13 (“[W]hether this issue was waived is of no importance.”).) Nor does Ruggieri argue that a tipper’s intent to benefit his tippee cannot legally suffice to prove personal benefit. (Mot. at 7, 13–15 (making no such argument); Initial Decision at 47 (“*Dirks* suggests that an inference of personal benefit may be drawn based on, *inter alia*, ‘an intention to benefit the particular recipient.’ 463 U.S. at 664.”).) Instead, Ruggieri argues only that the Division failed to *prove* that Bolan intended to benefit Ruggieri. (Mot. at 7, 13–15.) At a minimum, the Commission should review the Initial Decision to consider this factual issue that the Initial Decision never reaches. (Initial Decision at 47.)

In fact, the record evidence shows that Bolan tipped Ruggieri in order to benefit him. Ruggieri’s trades on Bolan’s four tips included three of Ruggieri’s most profitable overnight positions (in dollar terms) during his entire tenure at Wells Fargo—specifically, Ruggieri’s single most profitable and third and sixteenth most profitable of at least 108 such positions. (Initial Decision at 21, 24, 26 (citing Adm. FOF Nos. 340, 379 & 395).) Although the parties dispute to what extent these profits directly increased Ruggieri’s compensation, Ruggieri does not dispute that his overall profit and loss on trades “was an important measure of his performance,” and that his supervisor encouraged him “to improve his stock-picking ability.” (*Compare* Div. Findings ¶¶ 65–69 *with* Ruggieri Response to Div. Findings (admitted).)

Ruggieri points to only one reason that the Division’s proof purportedly fails to show Bolan intended to benefit Ruggieri: the Division did not call Bolan to testify. (Mot. at 13–15.) As discussed above, this argument lacks merit. The objective facts demonstrate that Bolan intended to benefit

Ruggieri, and Bolan's self-serving testimony to the contrary would not alter this analysis. In fact, although Ruggieri attempts to distinguish the Commission's decision in *Lohmann* (Mot. at 14), the Commission found Lohmann tipped for personal benefit even though Lohmann denied it. *Lohmann*, 2003 WL 21468604, at *4. Ruggieri's citation to *United States v. Salman*, 792 F.3d 1087, 1094 (9th Cir. 2015), similarly offers no support. (Mot. at 14.) In *Salman*, the criminal prosecutors elicited testimony from the tipper—a cooperating witness—who admitted his role in the scheme and his intent to benefit his tippee. 792 F.3d at 1089, 1094. Neither *Salman* nor, to the Division's knowledge, any other case holds that a tipper's admissions are necessary to prove his intent to benefit his tippee.

CONCLUSION

For these reasons, the Commission should deny Ruggieri's motion for summary affirmance and grant the Division's Petition.

Dated: November 2, 2015
New York, New York

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

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 OPPOSITION TO RESPONDENT
JOSEPH C. RUGGIERI'S MOTION FOR SUMMARY AFFIRMANCE

EXHIBIT A

Page 1

UNITED STATES OF AMERICA
BEFORE THE SECURITIES AND EXCHANGE
COMMISSION
ADMINISTRATIVE PROCEEDING

In the Matter of:

George T. Bolan, Jr. and FILE NO: 3-16178
Joseph C. Ruggieri,

Respondents.

WEDNESDAY, FEBRUARY 11, 2015
3:00 p.m.

BEFORE:

JASON PATIL
Administrative Law Judge

Page 3

1 PROCEEDINGS
2 THE COURT: Good afternoon,
3 everybody. Just give me a minute to
4 get set up.
5 Thank you.
6 This is an administrative
7 proceeding in the matter of Gregory T.
8 Bolan, Junior and Joseph C. Ruggieri.
9 They are the respondents. The
10 administrative file number is
11 3-161178.
12 I'm the Administrative Law
13 Judge, Jason Patil, and today we're
14 here on a motion of summary
15 disposition brought by both
16 respondents. And unless there are any
17 administrative or technical issues
18 someone would like to raise, how I
19 would proceed is go ahead and invite
20 counsel for Mr. Bolan first to speak.
21 I am going to do one thing
22 though. I'm going to have questions
23 for you that would be questions that
24 would be very applicable to counsel
25 for the other respondent. So what I

Page 2

1 APPEARANCES:

2 UNITED STATES
3 SECURITIES & EXCHANGE COMMISSION
4 Room 400
5 200 Vesey Street,
6 New York, New York 10281-1022
7 BY: PREETHI KRISHMANURTHY, ESQ.
8 ALEXANDER VASILESCU, ESQ.
9 SANDEEP SATWALEKAR, ESQ.

10
11 SADIS GOLDBERG LLP
12 Attorneys for Respondent - Bolan
13 551 Fifth Avenue
14 21st Floor
15 New York, New York 10176
16 BY: SAMUEL J. LIEBERMAN, ESQ.
17 MICHELLE N. TANNEY, ESQ.

18 SERPE & RYAN LLP
19 Attorneys for Respondent - Ruggieri
20 1115 Broadway
21 New York, New York 10010
22 BY: PAUL W. RYAN, ESQ.
23 ERIC B. EINISMAN, ESQ.
24 SILVIA L. SERPE, ESQ.
25

Page 4

1 Proceedings
2 would like to do is rather than have
3 you get up and finish your
4 presentation on particular questions I
5 ask, I'll say is there anything
6 different or supplemental that the
7 other counsel would like to add to
8 sort of get a full and complete sense
9 of that issue right there. And that,
10 in turn, will give the Division an
11 opportunity to sort of have all their
12 notes on that issue in one place.
13 So with the exception of that,
14 after you're complete, I'll let the
15 other moving party speak and deliver a
16 presentation, and after that's
17 finished, I'll let the Division go
18 ahead. I will try not to interrupt
19 you, but I do have a number of
20 questions that I would like answered
21 today, so we will definitely have time
22 for those as well.
23 With that said, Counsel, please
24 proceed.
25 MR. LIEBERMAN: May it please

| | |
|--|---|
| Page 57 | Page 59 |
| <p>1 Proceedings</p> <p>2 lose money, because you could imagine,</p> <p>3 your Honor, if you were a trader and</p> <p>4 you have Blackstone calling and you</p> <p>5 have Fidelity calling, and they want</p> <p>6 to buy Parexel, well, they probably</p> <p>7 have a good reason for doing it, and</p> <p>8 you are just facilitating trades. You</p> <p>9 are not making investment decisions on</p> <p>10 the other side. You're going to lose</p> <p>11 money. The question is how much are</p> <p>12 you going to lose? They are managing</p> <p>13 risk. So just as a background so you</p> <p>14 understand.</p> <p>15 Let's get to the benefit for</p> <p>16 Greg, because that's just as</p> <p>17 important.</p> <p>18 So again getting back to the</p> <p>19 allegations that the Division has</p> <p>20 made. You have two allegations of</p> <p>21 benefit. One, they are friends. They</p> <p>22 are friends. That used to be what</p> <p>23 they could do. It used to be prior to</p> <p>24 Newman unfortunately that the SEC can</p> <p>25 say they are friends, which is</p> | <p>1 Proceedings</p> <p>2 get the quote.</p> <p>3 He says the inference is</p> <p>4 impermissible in the absence of proof</p> <p>5 of a meaningfully close personal</p> <p>6 relationship. And then they get to</p> <p>7 the end where they say there is a quid</p> <p>8 pro quo from the latter or an</p> <p>9 intention to benefit the latter, and</p> <p>10 the Division points to that language</p> <p>11 in their brief. I think --</p> <p>12 THE COURT: I have a question</p> <p>13 for you.</p> <p>14 MR. RYAN: I just want to finish</p> <p>15 answering yours and I'll be real</p> <p>16 quick.</p> <p>17 So I think there is going to be</p> <p>18 places where it is not such an easy</p> <p>19 factual, and there are probably going</p> <p>20 to be some fact issues, well, he is a</p> <p>21 brother, well, he is a cousin, well,</p> <p>22 he is a second cousin, we could do</p> <p>23 that, is it \$10, is it \$5, is it a</p> <p>24 penny. Is he a great friend? Well,</p> <p>25 how good of a friend. I see that and</p> |
| Page 58 | Page 60 |
| <p>1 Proceedings</p> <p>2 shorthand for we don't have to prove</p> <p>3 anything, because I got friends on</p> <p>4 Facebook, I have friends at work,</p> <p>5 pretty good friends. We all get that.</p> <p>6 And Newman -- we can talk about</p> <p>7 Obus, you can talk about Libera,</p> <p>8 whatever the cases are. Newman could</p> <p>9 not be clearer that the mere fact of</p> <p>10 friendship is not enough.</p> <p>11 THE COURT: That's the same</p> <p>12 question I had for counsel for</p> <p>13 Mr. Bolan. Is there any friendship</p> <p>14 relation --</p> <p>15 MR. RYAN: Yes.</p> <p>16 THE COURT: Tell me about it.</p> <p>17 MR. RYAN: I disagree with the</p> <p>18 assessment we just heard. I think</p> <p>19 what Newman is saying, and I'm not</p> <p>20 sure it is the model of clarity, and</p> <p>21 it may be this has to be clarified,</p> <p>22 but they are talking in the context of</p> <p>23 a casual or social relationship. So</p> <p>24 they say, look, it used to be that</p> <p>25 mere friendship was enough, but we'll</p> | <p>1 Proceedings</p> <p>2 I understand that.</p> <p>3 Greg Bolan and Joe Ruggieri,</p> <p>4 your Honor, that one is so far off the</p> <p>5 spectrum it is not really part of this</p> <p>6 conversation.</p> <p>7 THE COURT: I have a question</p> <p>8 along those lines. This is not</p> <p>9 something that was in the briefing.</p> <p>10 I'm looking at the words in the</p> <p>11 proceeding paragraph 35 and I'll quote</p> <p>12 the language for you. It says,</p> <p>13 "Ruggieri gave Bolan the keys to his</p> <p>14 apartment so that he could use it when</p> <p>15 interviewing for positions in New</p> <p>16 York."</p> <p>17 Now, I just pulled that out</p> <p>18 myself. It has not been discussed,</p> <p>19 but does that not suggest a little</p> <p>20 more of a friendship?</p> <p>21 MR. RYAN: Front of the line,</p> <p>22 back of the line, it makes sense.</p> <p>23 Let's look at this one.</p> <p>24 Joe and Greg, they are in a</p> <p>25 room. Joe, I'm going to give you the</p> |

| | |
|--|---|
| Page 61 | Page 63 |
| <p>1 Proceedings</p> <p>2 keys to the kingdom, the six upgrades</p> <p>3 and downgrades are coming your way,</p> <p>4 they are going to make you money. Joe</p> <p>5 loves it. What an opportunity he</p> <p>6 says. I have a guaranteed comp, but</p> <p>7 still I want this. What are you going</p> <p>8 to give me Greg in return? And Greg</p> <p>9 says, well, I can't give you my</p> <p>10 friendship anymore because Newman says</p> <p>11 I can't, but I can give you, well,</p> <p>12 let's say we -- this all goes south</p> <p>13 and we have to leave Wells Fargo, and</p> <p>14 you come to New York because you have</p> <p>15 to get a new job, I'll hook you up</p> <p>16 with my keys.</p> <p>17 Your Honor, that is -- I'm</p> <p>18 sorry, that is -- I don't believe that</p> <p>19 the SEC is even saying that. I think</p> <p>20 what they are trying to say is they</p> <p>21 are friends.</p> <p>22 THE COURT: Maybe it's obviously</p> <p>23 not been amended, but my point was not</p> <p>24 that that was a quid pro quo. I was</p> <p>25 going along the lines of I don't give</p> | <p>1 Proceedings</p> <p>2 is let's think about the allegations</p> <p>3 that there was this feedback.</p> <p>4 Again, they had to think it</p> <p>5 through. Joe, I'm going to give you</p> <p>6 the keys to the kingdom, I'm going to</p> <p>7 give you these analyst reports, what</p> <p>8 do you want. Greg says, well, if you</p> <p>9 can put in a good word to your</p> <p>10 supervisors. So Joe says, okay, I'll</p> <p>11 put in a word to my supervisors, going</p> <p>12 to go up here to the supervisors,</p> <p>13 hopefully, I don't know because I'm</p> <p>14 not in charge of the supervisory</p> <p>15 process, I'm not in charge of the</p> <p>16 promotional process, but hopefully it</p> <p>17 will make it over here to your boss,</p> <p>18 and then as part of the whole mix of</p> <p>19 information where you're looking at</p> <p>20 the sales trading, you're looking at</p> <p>21 the investor relations, you're looking</p> <p>22 at people at all these other offices,</p> <p>23 you're getting feedback from clients,</p> <p>24 all of this is going to get fed into a</p> <p>25 little bit of trail mix and this</p> |
| Page 62 | Page 64 |
| <p>1 Proceedings</p> <p>2 the keys to my house to people unless</p> <p>3 they are pretty good friends.</p> <p>4 MR. RYAN: You read our briefs.</p> <p>5 The first brief we had, we had no</p> <p>6 facts. The second brief, we threw in</p> <p>7 a couple of facts because they threw</p> <p>8 the book at us in terms of the</p> <p>9 underlying facts. But we stipulated,</p> <p>10 they are pretty good friends. They</p> <p>11 are pretty good friends and no one is</p> <p>12 disputing that at this point.</p> <p>13 Now, again, and this is just</p> <p>14 common sense, the first piece of this</p> <p>15 great feedback, they have known each</p> <p>16 other for all of three weeks. The</p> <p>17 first trade, they have known each</p> <p>18 other for all of six months. How</p> <p>19 meaningful was this friendship that</p> <p>20 Greg Bolan is willing to say, you know</p> <p>21 what, I'll do anything for you Joe.</p> <p>22 With respect to the second</p> <p>23 piece, which is, you know, you asked a</p> <p>24 lot of questions and I think you</p> <p>25 deserve answers from me as well, which</p> | <p>1 Proceedings</p> <p>2 little peanut here is going to be part</p> <p>3 of that trail mix, and I think you</p> <p>4 might get that promotion, and Greg</p> <p>5 says, great deal, sounds like I'll do</p> <p>6 it.</p> <p>7 What this goes to, your Honor,</p> <p>8 is the theory is absurd. The theory</p> <p>9 is absurd. No people would make an</p> <p>10 agreement. There must be some other</p> <p>11 explanation for these trades other</p> <p>12 than the nefarious one which makes no</p> <p>13 sense, none. And so this idea that</p> <p>14 there is going to be some material</p> <p>15 fact or some fact that you're going to</p> <p>16 find in the record which would be in</p> <p>17 the record before you if it was so</p> <p>18 sweet, but it is not because it</p> <p>19 doesn't exist.</p> <p>20 THE COURT: Okay. All right.</p> <p>21 If there is anything else that you</p> <p>22 want to add.</p> <p>23 MR. RYAN: They sat on the Wells</p> <p>24 submission for a year. A year. Why</p> <p>25 did they sit on the Wells notices? I</p> |

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served true copies of the Division of Enforcement's Opposition to Respondent Joseph C. Ruggieri's Motion for Summary Affirmance on this 2nd day of November, 2015, on the following by the specified means of delivery:

By Facsimile and UPS:

Brent J. Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street N.E., Mail Stop 1090
Washington, DC 20549
Facsimile: (202) 772-9324

By Email and UPS:

The Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Facsimile: (202) 777-1031
ali@sec.gov

By Facsimile, Email, and UPS:

Paul W. Ryan, Esq.
Sylvia L. Serpe, Esq.
Serpe Ryan LLP
1115 Broadway, 11th Floor
New York, NY 10010
Facsimile: (212) 981-2720
pryan@serperyan.com
sserpe@serperyan.com
(Counsel for Respondent Joseph C. Ruggieri)

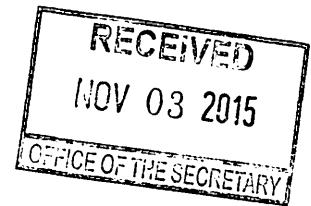
Dated: November 2, 2015

SMS

Sandeep Satwalekar



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
BROOKFIELD PLACE
200 VESEY STREET, SUITE 400
NEW YORK, NEW YORK 10281-1022



SANDEEP SATWALEKAR
(212) 336-0161
satwalekars@sec.gov

November 2, 2015

VIA FACSIMILE AND UPS OVERNIGHT

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 1090
Washington, DC 20549
Fax: (202) 772-9324

Re: *In the Matter of Gregory T. Bolan, Jr. and Joseph C. Ruggieri*, AP File No. 3-16178

Dear Mr. Fields:

The Division of Enforcement respectfully submits the enclosed Opposition to Respondent Joseph C. Ruggieri's Motion for Summary Affirmance and certificate of service. The overnight mail contains the original and 3 copies of each document.

Respectfully submitted,

Sandeep Satwalekar
Division of Enforcement

cc: Judge Jason S. Patil (by UPS and e-mail w/encls.)
Paul Ryan, Esq. (by facsimile, UPS, and e-mail w/ encls.)
Silvia Serpe, Esq. (by facsimile, UPS, and e-mail w/ encls.)