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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 AND REPLY BRIEF
ON REVIEW OF THE INITIAL DECISION

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Pursuant to the Commission's Order dated December 10, 2015, the Division respectfully submits this brief (i) in opposition to Respondent Joseph C. Ruggieri's Brief In Support of His Cross-Petition and In Opposition to the Division's Brief In Support of Its Petition for Review ("Ruggieri's Brief") regarding Ruggieri's trades on Bolan's tips and (ii) in reply to Ruggieri's Brief and further support of the Division's Brief on Review of the Initial Decision ("Opening Brief") regarding Bolan's personal benefit.¹

PRELIMINARY STATEMENT

The Initial Decision correctly finds—based on the overwhelming circumstantial evidence and Ruggieri's lack of credibility—that Bolan repeatedly tipped Ruggieri and that Ruggieri repeatedly traded on the tips. Devoting most of his brief to arguing otherwise, Ruggieri distorts the facts and recycles the unpersuasive arguments he made below. The Commission should lend no more credence to his arguments than the Initial Decision does.

Ruggieri devotes much less of his brief to the personal benefit element and fails to address many of the Opening Brief's facts and arguments. He concedes that the Initial Decision *speculates* that Bolan tipped because he could not "keep his mouth closed." Yet Ruggieri proffers no legitimate reason for Bolan's tips. Instead, Ruggieri argues that "all this speculation" about Bolan's motive arises because Bolan did not tip Ruggieri. He has the proposition backwards. If Ruggieri traded on Bolan's tips—as the Initial Decision finds and the Commission should, too—then there is no need for speculation: Bolan would not have risked his career to tip Ruggieri without expecting some personal benefit in return. The Commission should find Ruggieri liable for insider trading.

¹ This brief uses the Opening Brief's abbreviations. Also, "Ruggieri's Post-Hr'g Br." refers to Respondent Joseph C. Ruggieri's Post Hearing Brief; "Ruggieri's Post-Hr'g Reply" refers to Ruggieri's Reply to the Division of Enforcement's Post-Hearing Memorandum of Law; "Division's Post-Hr'g Br." refers to the Division's Post-Hearing Memorandum of Law; and "Division's Post-Hr'g Reply" refers to the Division's Post-Hearing Reply Memorandum of Law.

STATEMENT OF ADDITIONAL UNDISPUTED FACTS²

I. Bolan's Relevant Calls to Ruggieri's Wells Fargo Extension Reached Only Ruggieri.

A. At Wells Fargo, Ruggieri had a personal phone line, unlike most traders.

Wells Fargo's trading desk had a main phone line that rang on the desk. (Adm. FOF ¶ 218.)

All traders' phones generally lit up when that main number rang, and any trader could pick up a call on that number. (*Id.*)

Although employees on the trading desk did not typically have their own personal phone lines, some desk employees did, partly to have a phone line that others could not listen in on. (*Compare* Div. Findings ¶¶ 220–21 *with* Ruggieri Response ¶¶ 220–21 (disputing but citing no counter-evidence).) Employees' personal phone lines did not ring throughout the trading desk: they rang only on the employee's own phone and the phone of anyone else authorized to have that employee's personal line on his phone. (Adm. FOF ¶¶ 224, 228; *compare* Div. Findings ¶ 222 *with* Ruggieri Response ¶¶ 222 (disputing but citing no counter-evidence).) If an employee did not have someone else's personal phone line on his own phone, he could not pick up or listen in on a call on that line from his phone. (Adm. FOF ¶ 223.)

Ruggieri had his own personal phone line—his “specific extension”—at Wells Fargo: 212-214-6210 (the “6210 Line”). (Adm. FOF ¶¶ 224–27.) Ruggieri's 6210 Line did not ring on the phone of Bruce Mackle, the healthcare trading desk analyst, but it did ring on the phone of Chip Short, the junior healthcare trader. (Adm. FOF ¶¶ 228, 230; *compare* Div. Findings ¶ 229 *with* Ruggieri Response ¶ 229 (disputing but citing no counter-evidence).) Short generally picked up Ruggieri's 6210 Line

² This section supplements the Opening Brief's Statement of Undisputed Facts with additional facts, undisputed unless otherwise noted, relevant to Ruggieri's cross-petition for review.

when Ruggieri was on another phone line or away from the desk. (Adm. FOF ¶ 231.) Short rarely spoke to Bolan unless Ruggieri was away from the office.³ (Adm. FOF ¶ 42.)

Ruggieri did not receive voicemail on his 6210 Line. (Adm. FOF ¶ 234.) Wells Fargo did not tape the trading desk's phone calls. (JFOF ¶ 37.)

B. When Ruggieri was not traveling, he typically stayed at the trading desk while the stock markets were open.

When Ruggieri was away from the office, he did not place trades and thus typically generated less revenue. (Adm. FOF ¶¶ 235–36.) Therefore, like most traders, Ruggieri did not usually schedule client meetings during market hours when he was in New York. (Adm. FOF ¶ 237.) In fact, when he was in the office during market hours, Ruggieri rarely left the trading desk. (Adm. FOF ¶ 238.) He typically ate his lunch at the desk.⁴ (Adm. FOF ¶ 239.)

³ Ruggieri incorrectly claims that it was “common for Mackle and Short to pick up Ruggieri’s line and listen in on his calls with Bolan.” (Ruggieri’s Br. at 12 (citing only Tr. 3393–94 (Short)).) This could not have happened. First, Mackle did not have the 6210 Line on his phone, so he could not have listened in on calls on the 6210 Line from his own phone. (Tr. 3194 (Mackle) (testifying that Ruggieri’s 6210 Line did not ring on his phone); Tr. 3369 (Short) (acknowledging that he did not know for certain whether the 6210 Line rang on Mackle’s phone); *compare* Div. Findings ¶ 229 *with* Ruggieri Response ¶ 229 (disputing but citing no counter-evidence).) Second, Short did *not* testify that he listened in on calls between Bolan and Ruggieri on Ruggieri’s 6210 Line. (Tr. 3393–94.) Rather, Short testified that he listened in on analysts’ calls *to the trading desk* when analysts called to talk about stocks Short traded. (*Id.*) Short did not trade any stocks that Bolan covered. (Adm. FOF ¶ 41.)

⁴ Ruggieri’s story has fluctuated. At the hearing, Ruggieri testified that he was away from the trading desk during market hours “a lot.” (Tr. 2265–68.) Ruggieri claimed that “on average” he spent only five hours of the six-and-a-half-hour trading day on the desk and even less time on the desk when he had a client meeting. (Tr. 2267–68.) In contrast, Mackle and Short—who sat on either side of Ruggieri on the trading desk—testified that, like most traders, Ruggieri rarely left the trading desk while the markets were open. (Adm. FOF ¶ 242; Tr. 3206–07 (Mackle); Tr. 3344–46 (Short).) After the hearing, Ruggieri abandoned his testimony and conceded that he rarely left the trading desk during market hours. (Adm. FOF ¶¶ 237–39.)

II. Ruggieri and Moskowitz Spoke to Bolan and Traded Ahead of Ratings Changes.⁵

A. Parexel

By March 29, 2010, Bolan had begun drafting a forthcoming research report that would downgrade Parexel. (Adm. FOF ¶ 272.) On March 30 and 31, Ruggieri was working on the trading desk, not traveling. (Adm. FOF ¶ 280; JFOF ¶¶ 56–57, 62–63.) Before and after the market opened on March 30 and again on the morning of March 31, Bolan called Ruggieri’s 6210 Line. (JFOF ¶¶ 39, 56–57, 62–63.) Each call lasted at least two minutes. (*Id.*) On both March 30 and 31, Ruggieri sold more Parexel shares than he bought, and he ended March 31 short 10,550 Parexel shares.⁶ (JFOF ¶¶ 59–61, 65–67.) On Monday, April 5, Ruggieri again sold more Parexel shares than he bought and ended the day short 27,750 shares.⁷ (JFOF ¶¶ 68, 69, 72.)

On April 5, 2010, at 5:53 p.m., Bolan called Moskowitz, and the call lasted two minutes. (Adm. FOF ¶ 276; JFOF ¶ 195.) Less than two hours later, Bolan called Ruggieri’s cell phone, and the call lasted approximately 18 minutes. (JFOF ¶¶ 40, 41, 73.) The next day, Ruggieri sold more Parexel shares short and ended the day short 52,500 shares. (JFOF ¶¶ 76, 77.) The same day, Moskowitz sold 2,000 Parexel shares short. (Adm. FOF ¶ 278.)

⁵ The Initial Decision concludes that, while it was “just as plausible” or “possible” that Ruggieri traded on Bolan’s Parexel and Covance tips, the Division did not meet its burden in proving it. (Initial Decision at 16, 19.) The Division includes those trades here to show the pattern of Ruggieri’s trades surrounding Bolan’s ratings changes.

⁶ Throughout his tenure at Wells Fargo, Ruggieri made other purchases and sales of the relevant stocks on behalf of clients. Those client trades are irrelevant here. This brief therefore references only trades Ruggieri made in a principal capacity on Wells Fargo’s behalf.

⁷ The markets were closed on April 2–4, 2010. (Tr. 1676 (Walster); Tr. 2123–24 (Ruggieri); JFOF ¶ 68.)

On April 7, 2010, at 5:52 a.m., Wells Fargo published Bolan's research report downgrading Parexel. (Adm. FOF ¶ 284.)⁸ When the market opened later that morning, Parexel's stock price fell 3.2% from its closing price the previous day. (Adm. FOF ¶ 285.) On April 7, Ruggieri covered his entire short position in Parexel and generated gains of at least \$24,944. (Adm. FOF ¶ 288.) The same day, Moskowitz covered his short position in Parexel for a profit of \$1,007. (Adm. FOF ¶ 289.) Ruggieri's Parexel position was the second-most profitable overnight position (out of at least 108 overnight positions) he held at Wells Fargo, measured in dollars. (Adm. FOF ¶¶ 290–91.)

B. Covance

On Sunday, June 13, 2010, Bolan sent his supervisor an email saying he wanted to upgrade Covance, and an hour later his supervisor wrote: "Ok with me." (Adm. FOF ¶¶ 296–97.) On Monday, June 14, Bolan called Ruggieri's 6210 Line at 10:43 a.m., and the call lasted over three minutes. (JFOF ¶¶ 34, 87.) Ruggieri was working in the office, not traveling, that day. (Adm. FOF ¶ 299.) Later that day, Ruggieri bought 40,000 shares of Covance stock and held the position overnight. (JFOF ¶¶ 89, 91.)

Just hours later, on June 15, 2010, at 12:00 a.m., Wells Fargo published Bolan's report upgrading Covance. (Adm. FOF ¶ 301.) When the market opened in the morning, Covance's stock price increased 2.19%. (Adm. FOF ¶ 302.) By early afternoon that day, Ruggieri had sold his entire 40,000-share Covance position and generated a profit of at least \$14,144. (Adm. FOF ¶¶ 304, 307.) Measured in dollars, the Covance position was Ruggieri's tenth-most profitable overnight position at Wells Fargo. (Adm. FOF ¶ 308.)

⁸ Although Ruggieri seems to dispute Division Findings ¶ 284 due to a numbering error, he actually disputes ¶ 283, not ¶ 284. (*Compare* Div. Findings ¶¶ 283–84 *with* Ruggieri Response ¶¶ 283–84.)

C. Albany

By at least July 1, 2010, Bolan had begun drafting a report to upgrade his rating on Albany, Bolan's next ratings change after Covance. (Adm. FOF ¶¶ 311, 313.) Albany was a "very illiquid," "microcap" stock. (Tr. 2752 (Ruggieri).)

On June 30, 2010, at 5:07 p.m. and 5:08 p.m., respectively, Bolan called Moskowitz's home phone and cell phone numbers. (Adm. FOF ¶¶ 314–15.) At 6:56 p.m., Moskowitz called Bolan, and the call lasted 17 minutes. (Adm. FOF ¶ 316.) Over the next two days, July 1 and 2, Moskowitz purchased 24,252 Albany shares. (JFOF ¶¶ 101–02, 189.) In at least the six months before these trades, Moskowitz had not traded any Albany shares. (Adm. FOF ¶ 319.)

On July 1, 2010, from 6:08 p.m. until 6:18 p.m., Ruggieri was talking to his mother on his personal cell phone. (Adm. FOF ¶ 321.) During this call, Bolan called Ruggieri's Wells Fargo Blackberry. (Adm. FOF ¶ 320.) One minute later, while still on the phone with his mother, Ruggieri emailed Bolan from his Blackberry: "Call u right back." (Adm. FOF ¶ 322.) Two minutes later, Bolan replied: "Cool – call my home – 615 457 2142." (Adm. FOF ¶ 323.) That evening, Ruggieri called Bolan back. (*Compare* Div. Findings ¶ 325 *with* Ruggieri Response ¶ 325 (disputing but citing no counter-evidence); *see also* Opening Br. at 12 n.7.) The next day, July 2, Ruggieri made net purchases of 35,050 shares of Albany stock and held the position over the next four nights, while the markets were closed. (JFOF ¶¶ 99–101.)

On July 6, 2010, at 12:03 a.m., Wells Fargo published Bolan's research report upgrading his rating on Albany from hold to buy. (Adm. FOF ¶¶ 90, 334.) When the markets opened later that morning, Albany's stock price rose 5.36%. (Adm. FOF ¶ 335.)

That day, Ruggieri sold most of his Albany position. (JFOF ¶¶ 100, 106.) He sold the rest within a week. (JFOF ¶¶ 107–14.) In total, his Albany position generated a profit of at least \$9,334. (Adm. FOF ¶ 339.) Measured in dollars, Ruggieri's Albany position was approximately the sixteenth-

most profitable overnight position he held at Wells Fargo. (Adm. FOF ¶ 340.) Other than this overnight position, Ruggieri never held an overnight position in Albany of more than 79 shares at Wells Fargo. (Adm. FOF ¶ 342.) Although Matt Brown—Ruggieri’s boss and mentor—had encouraged Ruggieri to improve his stock-picking ability when making principal trades, Ruggieri did not tell Brown about his profitable Albany position. (Adm. FOF ¶¶ 53–69, 486.)

Like Ruggieri, Moskowitz sold most of his Albany position on July 6, 2010. (JFOF ¶¶ 100, 106, 189–90.) He sold the rest by July 9. (JFOF ¶¶ 191–94.) Moskowitz’s Albany trades generated a profit of \$8,400. (Adm. FOF ¶ 338.)

D. Emdeon

On the evening of August 12, 2010, Bolan emailed his supervisor about upgrading his rating on Emdeon—Bolan’s next ratings change after Albany—and included a paragraph from his draft ratings change report. (Adm. FOF ¶¶ 344, 346.) The next day, August 13, Bolan called Ruggieri’s 6210 Line at 9:32 a.m., and the call lasted approximately three minutes. (JFOF ¶¶ 39, 119.) Ruggieri was in the office that morning, not traveling. (Adm. FOF ¶ 349.) The same morning, at 11:23 a.m., Bolan called Moskowitz, and the call lasted eleven minutes. (Adm. FOF ¶ 350.)

That afternoon, Ruggieri bought 10,000 shares of Emdeon stock and held the position overnight. (Adm. FOF ¶ 351.) The same afternoon, Moskowitz bought 5,000 shares of Emdeon stock and held the stock overnight. (Adm. FOF ¶ 352.)

On Monday, August 16, 2010, at 12:02 a.m., Wells Fargo published Bolan’s research report upgrading Emdeon from hold to buy. (Adm. FOF ¶¶ 90, 355; Tr. 2235 (Ruggieri).) When the market opened that morning, Emdeon’s stock price rose 1.1%. (Adm. FOF ¶ 356.) Bolan was disappointed that the price did not rise further. (Adm. FOF ¶ 359.) That day, Ruggieri and Moskowitz both sold their Emdeon positions for profits of approximately \$266 and \$835, respectively. (Adm. FOF ¶¶ 360–61.)

Before taking his Emdeon position, Moskowitz had not traded Emdeon shares in at least the preceding six months. (Adm. FOF ¶ 353.) Ruggieri took only one other significant overnight position in Emdeon at Wells Fargo: on the trading day just *after* Bolan issued other research on Emdeon. (Adm. FOF ¶¶ 362–63.)

E. Athena

Before January 2011, Bolan had rated Athena as a stock to hold, rather than buy or sell. (Adm. FOF ¶¶ 89–90, 364.) By January 18, 2011, despite this neutral published view, Bolan had told Ruggieri of his bullish views on Athena. (Adm. FOF ¶¶ 90, 95; *compare* Div. Findings ¶ 366 *with* Ruggieri Findings ¶ 366 (not disputing this communication but disputing only its impropriety).)

On Friday, February 4, 2011, at 10:41 a.m., Todd Wickwire, Bolan’s supervisor, granted Bolan’s “request” to change his rating on Athena. (Adm. FOF ¶ 368; Ex. DIV 32.) That afternoon, at 3:10 p.m., Bolan called Ruggieri’s 6210 Line, and the call lasted 41 seconds. (JFOF ¶¶ 40, 134.) Ruggieri was in the office, not traveling, that day. (Adm. FOF ¶ 370.) On Monday, February 7, Ruggieri bought 13,500 shares of Athena and held the position overnight. (JFOF ¶¶ 135, 138.)

On Tuesday, February 8, 2011, at 12:13 a.m., Wells Fargo published Bolan’s report upgrading Athena from hold to buy. (Adm. FOF ¶¶ 90, 374.) Brown and others could see the now-public upgrade, and, consistent with Ruggieri’s practice, Ruggieri emailed the upgrade to dozens of people, including Brown. (Tr. 2970–71, 2975–76 (Ruggieri).) When the market opened later that morning, Athena’s stock price rose 5.66%. (Adm. FOF ¶ 375.) Over the next two hours, Ruggieri sold his entire Athena position for a profit of at least \$34,176. (Adm. FOF ¶ 378.) In dollar terms, this was the single most profitable overnight position Ruggieri held at Wells Fargo. (Adm. FOF ¶ 379.)

The morning of the upgrade, after noticing that Wells Fargo had changed its rating on Athena, Brown asked Ruggieri: “what is [Athena] p?” (Adm. FOF ¶ 513.) Ruggieri replied that he

and Mackle—who did not trade stocks but made fantasy trades in a virtual trading book—were both “long” Athena. (Adm. FOF ¶¶ 367, 514.) Happy that Ruggieri had made a profit, Brown answered: “nice...what I wanted to hear.” (Adm. FOF ¶ 515.) Ruggieri did not tell Brown that Ruggieri had held an overnight position in Athena the night before the upgrade or how much profit he had made on the position. (Adm. FOF ¶ 516.) If Brown had known that Ruggieri had held an overnight position in the same stock and in the right direction the night before this or another of Bolan’s ratings changes, Brown would have been concerned. (Adm. FOF ¶ 517.) Other than this Athena position, Ruggieri held a significant overnight position in Athena only once at Wells Fargo. (Adm. FOF ¶ 381.)

F. Bruker

On Thursday, March 17, 2011, Bolan e-mailed Wickwire to seek approval for initiating coverage of Bruker. (Adm. FOF ¶ 382.) On Tuesday, March 22, Wickwire approved. (Adm. FOF ¶ 383.)

The next day, Wednesday, March 23, 2011, at 9:46 a.m., Bolan called Ruggieri’s 6210 Line, and the call lasted five minutes. (JFOF ¶¶ 40, 146.) Ruggieri was in the office, not traveling, that day. (Adm. FOF ¶ 385.) Less than half an hour after Bolan’s call, Ruggieri began purchasing shares of Bruker and ended the day with a 5,000-share long position. (Adm. FOF ¶ 386; JFOF ¶¶ 148–49.) The day after that, Ruggieri bought another 5,000 shares of Bruker. (JFOF ¶¶ 151–52.) The next day, Friday, March 25, at 11:39 a.m., Bolan called Ruggieri’s 6210 Line, and the call lasted over four minutes. (JFOF ¶ 153.) That day, Ruggieri bought yet another 5,000 shares of Bruker. (JFOF ¶¶ 155–56.) Bolan called Ruggieri’s 6210 Line several times on Monday, March 28, and Tuesday, March 29, and Ruggieri again bought 5,000 shares of Bruker each day. (JFOF ¶¶ 157–59, 161–63, 165.) When the markets closed on March 29, Ruggieri held 25,000 Bruker shares. (JFOF ¶ 167.)

That day, at 4:22 p.m., Bolan initiated coverage of Bruker with a positive “buy” rating. (Adm. FOF ¶ 390.) When the markets opened the next day, March 30, 2011, Bruker’s stock price rose 2.56%. (Adm. FOF ¶ 391.) That morning, Ruggieri sold his entire Bruker position for a profit of at least \$24,452. (Adm. FOF ¶ 394.) It was his third most profitable overnight position at Wells Fargo in dollars. (Adm. FOF ¶ 395.)

Ruggieri did not tell Brown about his Bruker position or profits. (Adm. FOF ¶ 525.) Other than this position, Ruggieri never held an overnight position in Bruker at Wells Fargo. (Tr. 2305 (Ruggieri).)

III. Ruggieri Traded Ahead of a Seventh Ratings Change.

On January 4, 2011, at 10:13 a.m., Bolan called the 6210 Line, and the call lasted over three minutes. (Adm. FOF ¶ 399.) That morning, Ruggieri was at the trading desk, not traveling. (Adm. FOF ¶ 397.) The next day, January 5, from 9:34 a.m. until 10:11 a.m., Ruggieri built a 15,000-share short position in MedAssets, Inc. (“MedAssets”). (Adm. FOF ¶¶ 400, 402.) Twelve minutes later, at 10:23 a.m., Wells Fargo issued Bolan’s ratings change on MedAssets: a downgrade from buy to hold. (Adm. FOF ¶¶ 402–03.) Over the next hour, Ruggieri covered his entire 15,000-share short position in MedAssets. (Adm. FOF ¶ 405.)

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

In early April 2013, during the Division’s investigation, Ruggieri received the Division’s testimony subpoena. (Tr. 2157–58 (Ruggieri).) About two months later—and almost two years before the hearing—Ruggieri testified with his counsel beside him. (Tr. 2157–61 (Ruggieri).) The Division asked Ruggieri whether he had taken his relevant overnight positions in Parexel, Covance, Albany, Emdeon, and Athena in anticipation of Bolan’s ratings changes. (Tr. 2161–62, 2192–93, 2222–24, 2238–40, 2284–85 (Ruggieri).) Each time, Ruggieri testified that he did not recall why he had taken those positions. (*Id.*) Four of the five times, Ruggieri did not deny having taken his

positions in anticipation of Bolan's ratings changes and testified that he did not recall whether he had done so. (Tr. 2161–62, 2192–93, 2238–40, 2284–85.) As to his Albany position, Ruggieri first said he did not recall why he had taken the position or whether he had taken it in anticipation of Bolan's upgrade and added, after a later question, that Bolan had not tipped him. (Tr. 2222–24.)

ARGUMENT

I. Bolan Tipped Ruggieri.

The Initial Decision exhaustively analyzes the facts, carefully considers but largely discredits Ruggieri's hearing testimony, and correctly concludes that Ruggieri traded on Bolan's tips at least four times. (Initial Decision at 9–28.) Mainly recycling arguments the Initial Decision rightly rejects as unpersuasive, Ruggieri contends that the Initial Decision errs. His arguments have no more merit now than they did six months ago, and the Commission should reject his arguments.

A. The Initial Decision's Parexel and Covance findings do not eliminate the pattern of insider trading.

Although his brief never mentions the fifth instance of his insider trading (MedAssets), Ruggieri claims that the Initial Decision's conclusions on Parexel and Covance eliminate any insider trading pattern. (Ruggieri's Br. at 23.) The Initial Decision implicitly rejects that argument by providing detailed reasons for its mixed conclusion. (Initial Decision at 9–28.) Indeed, the Initial Decision gives Ruggieri the benefit of the doubt on Parexel and Covance and still reaches the only plausible conclusion on the other five trades: the circumstantial evidence proves that Ruggieri traded on Bolan's tips, and Ruggieri's explanations lack credibility. (*Id.* at 9–12, 21, 23, 27.)

B. The Initial Decision correctly rejects Ruggieri's implausible explanations for his four relevant trades.

1. Albany

Unable to invent an innocent explanation for his Albany position, Ruggieri essentially testified that he engaged in a different type of illegal insider trading: front-running a client's order.

Ruggieri claims he took his Albany position because he had non-public information that Albany—Wells Fargo’s client—would soon be placing stock buyback orders in its own illiquid stock and that the orders “would increase the share price.” (Ruggieri’s Br. at 23–24; Tr. 2789–93 (Ruggieri).) Yet, as Ruggieri admittedly knew from policies he had read and understood, Wells Fargo strictly prohibited traders from front-running client orders and “considered [front-running] to be one of the most egregious offenses because it violates our customers’ trust and confidence in placing orders with us.” (Adm. FOF ¶¶ 154, 156, 480; Ex. DIV 6 at 12; Tr. 2775 (Ruggieri).) Strange as Ruggieri’s explanation therefore is, it is even less credible given the undisputed documentary evidence and Bolan’s parallel calls to Moskowitz and Moskowitz’s parallel trading, as the Initial Decision finds. (Initial Decision at 21.) Ruggieri nevertheless claims that the Initial Decision errs for three reasons.

First, Ruggieri attacks the Initial Decision’s conclusion that “Ruggieri began building the long position [in Albany] two hours before any evidence suggests that he knew the buyback had commenced.” (Initial Decision at 21; Ruggieri’s Br. at 24–25.) Ruggieri contends that the ALJ “ignored” Exhibit JR 93—an exhibit so irrelevant that Ruggieri did not cite it in his post-hearing briefs. (Ruggieri’s Br. at 24–25; Ruggieri’s Post-Hr’g Br. (no mention of Ex. JR 93); Ruggieri’s Post-Hr’g Reply (same).)

As background, on June 23, 2010, Bolan publicly noted that Albany had announced a \$10 million stock buyback, that announcement was quickly priced into Albany’s stock price, and Ruggieri learned the next day that Albany had decided to use Wells Fargo to execute the share repurchases. (Adm. FOF ¶¶ 471–74.) Yet from June 23 through July 1, Ruggieri held no overnight positions in Albany. (Adm. FOF ¶ 479.) Only on July 2, at 9:42 a.m.—the last trading day before Bolan’s upgrade—did Ruggieri begin building his position in Albany. (Adm. FOF ¶¶ 334, 481; JFOF ¶ 101.) At the hearing, Ruggieri claimed that his July 2 instant message saying only “AMRI [Albany] 25k to buy”—which he admits did not mention any buyback—shows that July 2 was the day Albany

actually began placing its buyback orders. (Tr. 2516–17 (discussing Ex. JR 91); Adm. FOF ¶ 484.) Yet Ruggieri sent that instant message at 12:16 p.m. on July 2—over two hours after he began building his Albany position. (Initial Decision at 21; Ex. JR 91; Adm. FOF ¶ 481.)

Ruggieri now claims that a July 6 instant message shows he knew Albany had begun placing buyback orders before his trades on the morning of July 2. (Ruggieri’s Br. at 24–25 (citing Ex. JR 93).) In the relevant portion, Ruggieri writes: “We’ve been an otd buyer [of Albany] past couple days.” (Ruggieri’s Br. at 24–25; Ex. JR 93.) As Ruggieri testified, “otd” means “over the day,” and he used that terminology to describe stock purchases and even *sales* over the day in any context—not specifically share buybacks. (Tr. 2808–09.) In fact, this message does not refer to buyback orders at all: it neither mentions a buyback nor suggests that Wells Fargo made the trades on behalf of Albany, rather than another client. (Ex. JR 93 (noting many other stock tickers for which an “otd” buyer or seller existed that day).) Nor does the message suggest that Ruggieri knew of any buyback orders before his first Albany trade at 9:42 a.m. on July 2, because “couple days” presumably refers to July 6 and July 2, not July 1. Indeed, Ruggieri never testified to the contrary. (Ruggieri’s Br. at 24–25 (citing no testimony); Tr. 2803–04 (testifying that he did not “know for sure” whether Ex. JR 91 reflected the first time he understood Albany’s buyback had begun).) The July 6 instant message is therefore irrelevant: it does not contradict the Initial Decision’s conclusion that Ruggieri knew of no Albany buyback orders before placing his first Albany trades on July 2.

Second, Ruggieri claims that his failure to sell his entire Albany position on July 6 after Bolan’s upgrade is “not consistent with an insider-trading scheme.” (Ruggieri’s Br. at 25.) Yet, as Ruggieri admits, he sold most of his Albany position on July 6 and the rest within a week. (JFOF ¶¶ 100, 106, 114.) Ruggieri had a compelling reason not to sell his entire position on one day: selling all 35,050 shares would have driven down Albany’s stock price. (JFOF ¶ 100; Tr. 2752 (Ruggieri) (“[Albany]...traded a hundred thousand shares a day, and buying that stock is much more impactful

than ABC buying their stock.”.) Driving a client’s stock price down during the client’s own buyback program could only have attracted unwanted attention to Ruggieri’s trades.

Third, Ruggieri hypothesizes that Bolan “more than likely learned about the commencement of [Albany’s] repurchase program from Ruggieri” and “timed the release of his upgrade to that event” and that Ruggieri’s position coincided with Bolan’s upgrade for the same reason. (Ruggieri’s Br. at 6–7, 25–26.) Ruggieri cites no evidence—not even testimony from himself or Bolan—in support. (*Id.*) Furthermore, Bolan’s report upgrading Albany does not mention the buyback program. (Ex. DIV 3.) This undercuts Ruggieri’s hypothesis.

2. Emdeon

Lacking any documentary evidence to support his explanation, Ruggieri testified that he bought 10,000 shares of Emdeon because it was a “slow” Friday in August and Emdeon was undervalued. (Tr. 2237–38; *cf.* Ruggieri’s Br. at 29 (“The documentary record with respect to the E[mdeon] trade at issue was less substantial.”).) Ruggieri apparently found his own explanation underwhelming: he did not discuss it in his post-hearing brief. (Ruggieri’s Post-Hr’g Br. at 10–14.) As the Initial Decision correctly finds, Ruggieri’s explanation “fails to credibly explain” the perfect timing of Ruggieri’s position the day before Bolan’s upgrade. (Initial Decision at 23.) It also fails to explain Bolan’s calls to Ruggieri and Moskowitz within the space of two hours, their parallel overnight positions, and their parallel exit of their positions after Bolan’s upgrade. (*Id.* at 22–23.) Ruggieri now attacks the Initial Decision’s finding on two meritless grounds.

First, Ruggieri contends that he could not have traded on Bolan’s upgrade tip because “no experienced trader would have believed that [Bolan’s upgrade] would have any effect on E[mdeon]’s share price.” (Ruggieri’s Br. at 29.) In support, Ruggieri argues that Bolan’s upgrade report contained some negative information and that Ruggieri’s Emdeon position resulted in a profit of only \$266. (*Id.*) Ruggieri’s after-the-fact explanation makes no sense. As Ruggieri admits, he knew that analysts’

ratings changes typically moved stock prices. (Adm. FOF ¶ 105.) When he took his position before the upgrade, Ruggieri could not have predicted exactly how much Bolan's upgrade would increase Emdeon's stock price. Indeed, Bolan thought his upgrade would have a greater price impact; he was disappointed when the price did not rise further. (Adm. FOF ¶ 359.) Ruggieri placed his position in Emdeon after Bolan tipped him because, as an experienced trader, he knew he was likely to make some money and almost certain not to lose money. He was right.

Second, Ruggieri argues that the Initial Decision does not properly weigh his "identical overnight trade in E[mdeon] the year before," which he claims renders his relevant Emdeon position "not atypical." (Ruggieri's Br. at 29–30.) He argues that the decision reaches an inconsistent result: it finds that his two other overnight Parexel positions support his innocent explanation for his relevant Parexel trades but declines to find that his one other Emdeon overnight position supports an innocent explanation for his relevant Emdeon trades. (*Id.*; Initial Decision at 23.) Perhaps in a vacuum, these arguments might have some minimal force. But the Initial Decision considers Ruggieri's one or two other overnight positions in the same stocks during an eighteen-month period with all the other evidence—including Bolan's calls to Ruggieri and Moskowitz, their parallel positions, the timing of Ruggieri's trades vis-à-vis Bolan's ratings changes, and Ruggieri's explanations. (Initial Decision at 12–15, 21–23; Adm. FOF ¶¶ 224–27, 350–52, 355, 360–61; JFOF ¶¶ 11, 39, 119.) Furthermore, Brown encouraged Ruggieri to make principal trades on slow days. (Initial Decision at 22; Adm. FOF ¶ 498.) Yet on the slow day in August when Ruggieri took his Emdeon position, he took no overnight positions in any of the other 276 stocks he traded. (Adm. FOF ¶¶ 497, 499.) The totality of the circumstantial evidence leads to only one plausible conclusion: Ruggieri took his Emdeon position based on Bolan's tip.

3. Athena

Ruggieri claims he took his overnight position in Athena on Monday, February 7, 2011—the day before Bolan’s upgrade—based on positive news about Athena’s addition of physician group practices. (Ruggieri’s Br. at 26; JFOF ¶¶ 135, 138; Adm. FOF ¶ 374.) The Initial Decision correctly dismisses that explanation as unpersuasive, largely because Athena announced the positive news before the market opened on Friday, February 4, 2011, the market quickly incorporated the news into Athena’s stock price, and yet Ruggieri took no overnight position in Athena until the next trading day, Monday, February 7. (Initial Decision at 24–25.) Ruggieri nevertheless attacks this conclusion on three grounds.

First, Ruggieri contends that the Commission should credit his testimony about why he did not purchase Athena on February 4—he purportedly thought Athena’s price increase that day was temporary—despite Athena’s announcement that morning. (Ruggieri’s Br. at 8, 26–27.) As the Initial Decision finds, his testimony is implausible and the timing of his trades belies his explanation. (Initial Decision at 25.) Days earlier, on January 18, Bolan told Ruggieri that Bolan was “bullish” on Athena—despite his then-neutral rating—because Athena had “physician practice deals in pipeline.” (Adm. FOF ¶¶ 95, 364, 507; *compare* Div. Findings ¶ 366 *with* Ruggieri Findings ¶ 366.) Although Ruggieri claims the physician practices were “the key metric” for Athena’s stock price, he held no overnight position in Athena between January 18 and February 4. (Ruggieri’s Br. at 26; Adm. FOF ¶ 511.) Instead, Ruggieri waited until the day before Bolan’s upgrade to take his overnight position, and Bolan’s tip can be the only plausible reason. (Adm. FOF ¶ 511; JFOF ¶¶ 135, 138.)

Second, Ruggieri argues that the timing of Bolan’s phone call to him suggests that Bolan did not tip him. Ruggieri contends that, because Wickwire consented to Bolan’s Athena upgrade at 10:41 a.m. on February 4, Bolan’s phone call to Ruggieri a few hours later at 3:10 p.m. could not have been a tip. (Ruggieri’s Br. at 27.) Ruggieri asks: “[W]hy wouldn’t Bolan call Ruggieri

immediately[?]" (*Id.*) The answer is obvious: Bolan was busy during the intervening hours or wanted to confirm exactly when Wells Fargo would issue his upgrade report.⁹ Ruggieri next asks: "[W]hy wouldn't Ruggieri trade on the day he supposedly received the tip?" (*Id.*) This answer, too, is obvious: to minimize market risk, Ruggieri wanted to hold an overnight position only on the night before the upgrade. (Adm. FOF ¶¶ 82–85.)

Third, Ruggieri asks the Commission to find that "it is far more reasonable to infer" that Bolan called Ruggieri on February 4 to talk to him about Athena's addition of physician practices than to tip him. (Ruggieri's Br. at 27.) This argument defies Ruggieri's own logic. On the one hand, Ruggieri claims the four-and-a-half-hour gap between the supervisory approval for Bolan's upgrade and Bolan's phone call shows that Bolan did not tip Ruggieri on the call. (*Id.*) Yet on the other hand, Ruggieri claims that Athena's positive announcement *over six hours before* triggered Bolan's phone call, not the later upgrade approval. (*Id.*; Ex. JR 130 (announcement at 9:02 a.m.); JFOF ¶¶ 40, 134 (Bolan's call at 3:10 p.m.)) Ruggieri's argument is baseless.

4. Bruker

Ruggieri finally claims he took an overnight position in Bruker—a stock he otherwise never held overnight at Wells Fargo—because, two weeks before he took his position, he had attended a trade conference and a client had told him Bruker was the client's favorite stock idea.¹⁰ (Ruggieri's Br. at 9, 28; Tr. 2305, 2590–91.) Ruggieri also claims he would never have taken an overnight position in Bruker based on Bolan's initiation of coverage with a buy rating because Bolan had never

⁹ Bolan was working from home that day. He placed his phone call to Ruggieri from his own landline, not a Wells Fargo number. (JFOF ¶¶ 40, 134.)

¹⁰ On March 14 and 16, 2011, two other analysts published reports on the tradeshow, which included Bruker, and described the tradeshow as "[l]ukewarm" and offering "no 'killer' launches." (Adm. FOF ¶¶ 519–21.) Ruggieri claims he used the two weeks between the tradeshow and his first overnight position on March 23 to conduct "follow-up" research on Bruker. (Ruggieri's Br. at 9.) Yet Ruggieri does not know whether he even read the March 16 analyst report mentioning Bruker. (Adm. FOF ¶¶ 521–22.)

covered a stock in Bruker's sector before. (*Id.*) The Initial Decision correctly dismisses Ruggieri's testimony and concludes that Ruggieri took his Bruker position based on Bolan's tip. (Initial Decision at 27–28.) Although he did not even discuss his Bruker explanation in his post-hearing brief, Ruggieri now attacks the Initial Decision's conclusion on two grounds. (Ruggieri's Post-Hr'g Br. at 10–14.)

First, Ruggieri contends that the Initial Decision wrongly finds “there was no evidence suggesting that an initiation of coverage with an outperform/buy rating would have any effect other than increasing the price.” (Ruggieri Br. at 28; Initial Decision at 27.) Ruggieri cites evidence purportedly showing that Bolan's lack of prior coverage in Bruker's sector rendered his initiation of coverage “virtually irrelevant” or “not impactful on the market”—that is, not material. (Ruggieri Br. at 28.) The Initial Decision correctly ignores that one-sided evidence because Ruggieri conceded the materiality of the relevant ratings changes, including Bruker. (Tr. 1200–01.) Indeed, as an experienced trader, Ruggieri knew he was likely to make money and almost certain not to lose money by holding an overnight position when Bolan published his positive initiation of coverage on Bruker. And Ruggieri was right: Bruker's stock price rose 2.56% after Bolan's report and Ruggieri sold his Bruker position for a profit of over \$24,000—his third most profitable overnight position at Wells Fargo. (Adm. FOF ¶¶ 391, 394–95.)

Second, Ruggieri argues that he held an overnight position in Bruker for several days before Bolan's initiation of coverage and that this pattern “undermined the Division's tipping theory.” (Ruggieri's Br. at 28.) In fact, Ruggieri methodically built his overnight position over five days by purchasing exactly 5,000 shares each day. (JFOF ¶¶ 148–49, 151–52, 155–56, 161–62, 165, 167.) As the Initial Decision correctly infers, “Ruggieri may have structured the building of his position so it did not clearly resemble insider trading, perhaps in an attempt to avoid detection.” (Initial Decision at 27.) Although Ruggieri attacks that inference as “unsupported,” he ignores the evidence

reinforcing it: just the month before, Brown had questioned Ruggieri's position after Bolan's Athena upgrade. (Ruggieri's Br. at 28; Adm. FOF ¶¶ 513–17.) Ruggieri therefore structured his Bruker position to ensure that, if Brown looked, he would not see just one overnight position perfectly timed to Bolan's upgrade, like Ruggieri's Athena position.

C. The circumstantial evidence demonstrates the tips.

Despite the overwhelming circumstantial evidence showing that Ruggieri repeatedly traded on Bolan's tips, Ruggieri claims the circumstantial evidence supports the opposite conclusion. (Initial Decision at 9–12, 19–28; Ruggieri's Br. at 30.) He repeats nine arguments he made below, many of which the Initial Decision explicitly rejects. (Ruggieri's Br. at 30–39.) The Commission should reject them all.

1. Ruggieri had a compelling motive to trade on tips.

Ruggieri contends he had no motive to trade illegally. (Ruggieri's Br. at 30.) Although the Division need not prove that Ruggieri had a motive to prevail on its claim, *see United States v. Riley*, 90 F. Supp. 3d 176, 190–91 (S.D.N.Y. 2015), *aff'd*, 2016 WL 158464, at *3 (2d Cir. Jan. 14, 2016) (summary order), Ruggieri had a compelling motive. He sought a trading “edge” to improve his overall profitability for Wells Fargo and thereby boost his career and future compensation in a highly competitive business, and he knew his compensation guarantee was short-lived. (Opening Br. at 4, 7–9, 13; Division's Post-Hr'g Br. at 26–27.) Indeed, the four relevant positions included Ruggieri's first, third, and sixteenth-most profitable overnight positions (of approximately 108) at Wells Fargo. (Adm. FOF ¶¶ 340, 379, 395.)

2. Bolan had a compelling motive to tip.

Bolan tipped to benefit himself and Ruggieri, as described in Section II below and the Opening Brief.

3. Ruggieri concealed his profitable trades from his boss.

Ruggieri contends that he made his trades in “heavily monitored accounts” and that “no evidence of any deceptive conduct” exists. (Ruggieri’s Br. at 31.) In fact, given that his equity traders made thousands of trades daily, Brown could not and did not review every trade, and he trusted Ruggieri. (Opening Br. at 14–15.) Furthermore, Ruggieri never told Brown about his overnight positions ahead of the ratings changes or his outsized profits, even the one time Brown questioned him. (Adm. FOF ¶¶ 53–69, 340, 379, 395, 486, 516–17, 525; Division’s Post-Hr’g Br. at 27–28.) Finally, Ruggieri’s “interce[ssion]” with Wickwire on Bolan’s behalf during Wells Fargo’s internal investigation evidences Ruggieri’s guilt, not his innocence. (Ruggieri’s Br. at 11–12; Division’s Post-Hr’g Reply at 16.)

4. The phone records support a finding that Bolan tipped Ruggieri.

Ruggieri argues that the phone records fail to show that he and Bolan spoke alone during the relevant calls and that Bolan tipped him. (Ruggieri’s Br. at 32–34.) As Parts I and II of the facts section above describe, Ruggieri distorts the facts, and the Initial Decision correctly dismisses Ruggieri’s arguments. (Initial Decision at 10; Division’s Post-Hr’g Br. at 20–22); *see also United States v. McDermott*, 245 F.3d 133, 139 (2d Cir. 2001) (affirming insider trading conviction although “the government was unable to produce direct evidence of the content of any conversation” containing a tip).

5. Ruggieri traded ahead of seven of Bolan’s eight ratings changes during the Relevant Period.

Ruggieri contends that he traded ahead of only about “half” of Bolan’s ratings changes: he traded ahead of none of Bolan’s four ratings changes (including non-neutral initiations of coverage) between August 2009 and February 2010 but traded ahead of seven of Bolan’s eight ratings changes between March 2010 and March 2011. (Ruggieri’s Br. at 34–35 & n.10; Ex. DIV 133; Ltr. from Paul Ryan to Brent J. Fields dated March 9, 2016.) Had Ruggieri’s positions around the ratings changes

resulted from coincidence, as he suggests, the ratings changes he traded on would have been randomly distributed across his tenure. Instead, this pattern shows that Bolan did not initially tip Ruggieri and then began tipping him in 2010.

6. Bolan did not tip Ruggieri to research other than ratings changes.

Ruggieri argues that, if Bolan had tipped him, Ruggieri would not have twice traded ahead of Bolan's other research—valuation range and estimate changes—in the wrong direction. (Ruggieri's Br. at 13, 35.) But such other research occurs much more often than ratings changes and, because it does not alter recommendations to buy or sell a stock, has less impact on stock prices. (Adm. FOF ¶¶ 131, 135; *compare* Div. Findings ¶¶ 130, 132–33 *with* Ruggieri Response ¶¶ 130, 132–33 (disputing but citing no counter-evidence).) Bolan therefore had no reason to tip Ruggieri to research other than ratings changes. (Initial Decision at 12.)

7. Ruggieri can identify no flaw in the expert's statistical analysis.

Ruggieri—who declined to call a rebuttal expert even after the ALJ invited him to belatedly do so—asserts that the Division expert's testimony relied on flawed assumptions. (Tr. 2641–45, 3155–57, 3461; Ruggieri's Br. at 36–37.) Ruggieri made the same arguments below, and the Division showed that Ruggieri had misconstrued the expert's analysis. (Division's Post-Hr'g Reply at 13–15.) Rejecting Ruggieri's arguments, the Initial Decision correctly finds that the expert analysis “is on point: it is improbable” that Ruggieri took his positions around Bolan's ratings changes by chance. (Initial Decision at 10–11; *see also* Opening Br. at 14.)

8. The Initial Decision properly weighs Moskowitz's trading.

Ruggieri argues that Moskowitz's parallel trades are “irrelevant.” (Ruggieri's Br. at 37–38.) Ruggieri attacks the Initial Decision's inference that Bolan tipped Moskowitz as “speculat[ion]” but provides no other explanation for Moskowitz's parallel trades. (*Id.*; Initial Decision at 11.) Because evidence of an uncharged tippee's parallel trades bears on the tipper's credibility and other issues,

district courts often admit such evidence even in criminal jury trials. See *United States v. Contorinis*, 692 F.3d 136, 144 (2d Cir. 2012); *United States v. Ballesteros Gutierrez*, 181 F. Supp. 2d 350, 351–52, 354 (S.D.N.Y. 2002). The Commission should weigh this probative evidence heavily.

9. The channel check evidence shows Bolan’s motive and intent.

Ruggieri similarly argues that the channel check evidence is “[i]rrelevant.” (Ruggieri’s Br. at 38–39.) He contends that the evidence fails to show Bolan broke any Wells Fargo rules—citing Bolan’s own self-serving testimony—and that the Commission should ignore the evidence as improper “bad acts” evidence. (*Id.* at 16, 39 & n.11 (citing Ex. DIV 110 at 194–96); Ruggieri’s Br. at 38–39 (citing Fed. R. Evid. 404(b)(1)).) Yet the evidence properly shows Bolan’s “motive” and “intent” to tip Ruggieri. Fed. R. Evid. 404(b)(2). Even after warnings from both a supervisory and junior analyst, Bolan violated Wells Fargo’s prohibitions by giving high-paying clients unpublished channel check information for the same reason he tipped Ruggieri: to benefit Bolan’s own career.¹¹ (Opening Br. at 9–12, 38–39.)

II. Bolan Tipped Ruggieri for Personal Benefit.

A. Ruggieri offers no genuine argument disputing that he and Bolan shared a meaningfully close personal relationship.

As the Opening Brief explains, every decision interpreting *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), has read it to require no more than a “meaningfully close personal relationship” between the tipper and tippee to prove personal benefit, to the Division’s knowledge. (Opening Br. at 26–28.) *Newman* requires no additional *quid pro quo* where such a relationship exists, because the tipper’s intention to benefit the tippee can be inferred from such a relationship. (*Id.*)

¹¹ Ruggieri tries to re-litigate his unsuccessful motion *in limine* to preclude evidence of Moskowitz’s trading and Bolan’s improper dissemination of channel checks. The Division’s Memorandum in Opposition to Respondents’ Motions in Limine describes in detail why federal courts admit, and why the Commission should consider, such evidence.

Ruggieri seems to dispute this standard and claims that “an inference of benefit is inappropriate unless there is evidence of a *quid pro quo* that is material.” (Ruggieri’s Br. at 40.) But he confuses the issue: as the two cases he cites point out, *Newman* views “meaningfully close personal relationships” as *quid pro quo* relationships. See *SEC v. Payton*, 97 F. Supp. 3d 558, 563 n.2 (S.D.N.Y. 2015) (“[T]he *Dirks* decision seems to distinguish a *quid pro quo* relationship from instances where an insider makes a ‘gift’ of confidential information to a relative or friend; whereas, the *Newman* decision suggests that the latter type of relationship (i.e. mere friendship) can lead to an inference of personal benefit only where there is evidence that *it is generally akin to quid pro quo.*”) (emphasis added); *Riley*, 90 F. Supp. at 186 (“If a tip maintains or furthers a friendship . . . that is circumstantial evidence that the friendship is a *quid pro quo* relationship.”). This explains why *Newman* requires no additional proof of a *quid pro quo* when such relationships exist. See *SEC v. Andrade*, 2016 WL 199423, at *4 (D.R.I. Jan. 15, 2016) (“[P]eople are unlikely to take the risk of disclosing confidential information to a mere casual acquaintance unless there is something in it for them; however, they might take that risk for a close friend or family member solely with the intention to benefit that person.”). Ruggieri cites no contrary case.

Ruggieri next offers only a few perfunctory sentences contending, without any factual analysis, that he and Bolan “were nothing more than work colleagues and work friends” and therefore did not share a meaningfully close personal relationship. (Ruggieri’s Br. at 40–41.) Ruggieri does not explain why, if they shared only an office relationship, Bolan invited Ruggieri to his wedding, Bolan stayed at Ruggieri’s apartment, and Ruggieri recommended Bolan for a job at Ruggieri’s new firm—each time, after they had left Wells Fargo. (Opening Br. at 19, 28–29.) Nor does Ruggieri argue against the logical conclusion that even close professional relationships—such as Ruggieri’s mentorship of Bolan—can satisfy *Newman*’s standard. (*Id.* at 5–7, 29–30; Ruggieri’s Br.

at 40–41.) Ruggieri offers no genuine argument because he cannot: the undisputed evidence shows that he and Bolan had a meaningfully close personal relationship.¹²

B. Bolan’s testimony would have shed no light on his intent to benefit Ruggieri.

As the Opening Brief explains, Bolan intended to benefit Ruggieri by tipping him because Bolan knew Ruggieri traded stocks, Bolan repeatedly gave Ruggieri confidential, market-moving information, and Ruggieri earned profits for Wells Fargo each time. (Opening Br. at 31–32.) Ruggieri addresses none of this evidence. (Ruggieri’s Br. at 43–44.)

Echoing the Initial Decision, he offers only one argument in response: the Division did not call Bolan to testify and, if it had, Bolan would have testified that he did not intend to benefit Ruggieri. (*Id.* (citing Initial Decision at 35–36).) Ruggieri’s argument suffers from three fatal problems. First, *Dirks* instructs the Commission to focus on objective evidence of a tipper’s intention, not a tipper’s easily “fabricated,” subjective intent. (Opening Br. at 32–33.) Bolan’s testimony would therefore have served no genuine purpose. Second, had the Division called Bolan, no reasonable factfinder could have credited his testimony. Indeed, the Initial Decision implicitly finds that Bolan lied in his investigative testimony: Bolan claimed he did not tip Ruggieri, but the decision nevertheless concludes that Ruggieri repeatedly traded on Bolan’s tips. (Ex. DIV 110 at 124–25; Initial Decision at 9–12.) Third, if called to testify, Bolan could have offered no probative testimony on the subject. Only a hypothetical question could have elicited from Bolan his motive for

¹² As Ruggieri notes, the Supreme Court recently granted *certiorari* in *United States v. Salman*, 792 F.3d 1087, 1093–94 (9th Cir. 2015), *cert. granted*, 136 S. Ct. 899 (2016). (Ruggieri’s Br. at 41.) Arguing that the “narrow” question presented in *Salman* “will not impact this case,” Ruggieri quotes only the question’s second clause and omits its first clause: “Does the personal benefit to the insider that is necessary to establish insider trading under *Dirks v. SEC*, 463 U.S. 646 (1983), require proof of ‘an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature,’ as the Second Circuit held in...*Newman*...?” *See* <http://www.supremecourt.gov/qp/15-00628qp.pdf>; (Ruggieri’s Br. at 41). As this clause shows, the Court will likely decide in *Salman* whether *Newman*’s standard is correct. If the Court concludes that *Newman* impermissibly narrows *Dirks*’ standard, no genuine dispute can exist that Ruggieri’s and Bolan’s friendship suffices to prove personal benefit. (Opening Br. at 28 n.13.)

tipping when he categorically denied tipping. Any possible answer from Bolan could have received no weight. *See, e.g., United States v. Dukas*, 242 Fed. Appx. 37, 46 (4th Cir. July 3, 2007) (noting the “guilt-assuming hypothetical questions proscribed by courts”); *AVM Tech., LLC v. Intel Corp.*, 927 F. Supp. 2d 139, 146 (D. Del. 2013) (noting that hypothetical testimony is not based on personal knowledge).

As these problems demonstrate, Ruggieri’s argument is untenable. If the Division cannot prove personal benefit unless a tipper admits he intended to benefit himself or his tippee, the Division would routinely need a tipper to confess before it could prove insider trading. By analogy, prosecutors in criminal cases routinely prove, without the defendant’s testimony, that the defendant acted with a specific intent—for instance, for first-degree murder, the “intent to cause the death of another person.” N.Y. Penal Law § 125.27. Similarly, the Division need not proffer a cooperating tipper to prove personal benefit where the objective circumstantial evidence supports such a conclusion, as it does here.

C. Ruggieri cannot sidestep the objective *quid pro quo* evidence.

The Opening Brief summarizes the objective evidence of *quid pro quo*: Ruggieri provided positive feedback about Bolan, which helped Bolan obtain a promotion and could have helped him obtain a higher bonus. (Opening Br. at 32–36.) Ruggieri offers only one new argument in response. He contends that Bolan “would have been promoted regardless of Ruggieri’s feedback.” (Ruggieri’s Br. at 42 & n.14.) Ruggieri cites Wickwire’s testimony that Bolan’s movement from the third- to the first-highest ranked analyst in “trading impact” on the analyst scorecard—due to Ruggieri’s positive feedback—had little or no impact on Bolan’s promotion. (*Id.* (citing Tr. 1549).) But Ruggieri provided two forms of positive feedback about Bolan: (1) quarterly written feedback that factored into the analyst scorecard, and (2) direct, oral praise of Bolan to Wickwire. (Opening Br. at 15–18.) Wickwire never suggested that this latter, direct feedback did not factor into Bolan’s promotion. In

fact, in nominating Bolan for the promotion, Wickwire cited positive feedback from “trading,” including direct feedback from Ruggieri.¹³ (*Id.* at 15–16.)

D. Ruggieri proffers no legitimate reason for Bolan’s tips.

The Opening Brief explains that, absent a legitimate reason for Bolan’s tips, no reasonable factfinder could infer that Bolan tipped for any reason other than personal benefit. (Opening Br. at 36–39.) The brief also explains why the Initial Decision’s speculative theory that Bolan tipped Ruggieri because he could not “keep his mouth closed” is implausible on these facts. (*Id.*) Ruggieri offers no contrary argument and concedes that the Initial Decision’s theory is mere speculation. (Ruggieri’s Br. at 44.) Unable to proffer any legitimate reason for Bolan’s tips, Ruggieri argues that the Division cannot prove personal benefit because Bolan did not tip Ruggieri. (*Id.* (“The basis for all this speculation is the absence of a tip.”)) Ruggieri’s argument underscores the Division’s point. If Ruggieri traded on Bolan’s tips—as the Initial Decision correctly finds and the Commission should find, too—then Bolan risked his career to repeatedly tip Ruggieri for only one plausible reason: personal benefit.

¹³ Parroting the Initial Decision’s flawed reasoning, Ruggieri repeats two arguments that the Division addresses in its Opening Brief. First, Ruggieri contends that none of the objective *quid pro quo* evidence proves that Bolan tipped Ruggieri in exchange for Ruggieri’s positive feedback. (Ruggieri’s Br. at 42.) Second, Ruggieri argues that the timing of his feedback vis-à-vis Bolan’s tips shows that Ruggieri’s feedback was genuine. (*Id.* at 42–43.) Neither argument makes sense. (Opening Br. at 34–39.)

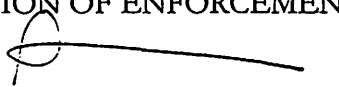
CONCLUSION

For these reasons, the Commission should find Ruggieri liable for violations of Section 10(b) and Rule 10b-5 and impose appropriate sanctions and relief.

Dated: March 11, 2016
New York, New York

DIVISION OF ENFORCEMENT

By:



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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

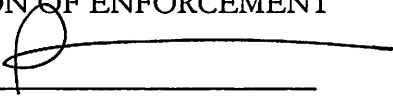
DIVISION OF ENFORCEMENT'S CERTIFICATE OF COMPLIANCE

Under Commission Rule of Practice 450(d), the Division certifies that its Opposition and Reply Brief on Review of the Initial Decision (the "Brief") complies with the 9,000-word limit set forth in the Commission's Order Denying Motion for Summary Affirmance, Granting Petitions for Review, and Scheduling Briefs, dated December 10, 2015. Excluding the Brief's tables of contents and of authorities, the Brief contains 8,999 words, based on Microsoft Word's word count.

Dated: March 11, 2016
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CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of March, 2016, I caused to be served true copies of
(i) the Division of Enforcement's Opposition and Reply Brief on Review of the Initial Decision and
(ii) the Division of Enforcement's Certificate of Compliance on the following by the specified means of delivery:

By Facsimile and UPS:

Brent J. Fields, Secretary
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Securities and Exchange Commission
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Facsimile: (202) 772-9324

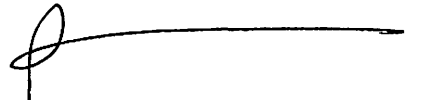
By Email and UPS:

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