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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 TO RESPONDENT BOLAN'S MOTION TO VACATE THE COMMISSION'S SETTLEMENT ORDER

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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The Division of Enforcement respectfully submits this opposition to Respondent Gregory T. Bolan, Jr.'s Motion to Vacate the May 28, 2015 Order due to the Commission's Subsequent Contradictory Finding That Respondent Bolan Did Not Provide a Tip That Led to Insider Trading by Ruggieri (the "Motion"), filed on October 20, 2017. The Commission should deny the Motion for the reasons described below.

PRELIMINARY STATEMENT

On the eve of his administrative hearing, Respondent Bolan agreed to settle the insider trading proceeding against him on terms the Commission later approved. He consented to findings (without admitting or denying them) that he unlawfully communicated material, non-public information to his co-respondent Joseph Ruggieri at least once. By settling, Bolan avoided an industry bar or suspension. His voluntary decision to settle with the Commission eliminated the risk of a worse litigation outcome, averted the expense of continued proceedings, and ensured his future ability to work in the industry. Meanwhile, Ruggieri decided to litigate. The administrative law judge later found for Ruggieri in an Initial Decision, the Division and Ruggieri petitioned for review, and the evenly divided Commission dismissed the proceeding against Ruggieri. Now, based on the outcome of Ruggieri's proceeding, Bolan seeks to vacate his Commission settlement order.

The Commission should not allow Bolan to wriggle out of his settlement. The Commission has made no findings or determinations in Ruggieri's proceeding that conflict with Bolan's settlement order. Among other reasons, the Initial Decision is not final and has no effect, and the Commission's dismissal resulted from evenly split opinions. But even if the Commission *had* reached a contradictory conclusion in Ruggieri's proceeding, such a conclusion would still not warrant vacating the settlement order. Bolan cites no precedent that would justify releasing one respondent from his settlement agreement because another respondent chooses to litigate and wins. Granting Bolan's Motion would create a "heads I win, tails I win" situation for respondents: they could agree

to a settlement to avoid the risk of a hearing but undo the settlement later if their co-respondents litigate and win. Such a result would leave the Division with no incentive to recommend settlements with fewer than all respondents in a proceeding. Indeed, in criminal cases, federal courts have declined to vacate the guilty pleas of conspirators after a jury acquits their co-conspirators. In short, settlements are final, and Bolan's Motion presents no compelling reason for the Commission to decide otherwise here.

RELEVANT PROCEDURAL HISTORY

I. The Allegations in the Commission's Order Instituting Proceedings

On September 29, 2014, the Commission issued its Order instituting proceedings against Bolan and Ruggieri.[1] The OIP alleged that, between April 2010 and March 2011, Bolan—then an equity research analyst at Wells Fargo Securities, LLC—provided advance notice of six forthcoming ratings changes to Ruggieri, Bolan's trader colleague and friend. (OIP ¶¶ 1–42.) These ratings changes included a downgrade of Parexel International Corporation ("Parexel"). (OIP ¶¶ 12–14.) Ruggieri profitably traded on this material, non-public information. (OIP ¶¶ 8–29, 32–34.) Based on compliance training Wells Fargo provided them, Bolan knew the firm prohibited analysts from previewing their research with traders and Ruggieri knew the firm prohibited traders from trading ahead of analysts' published research. (OIP ¶¶ 9, 37–41.) The OIP therefore alleged that Bolan and Ruggieri willfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5. (OIP ¶¶ 3, 42.)

[1] For brevity, unless citing to a page or section, this opposition does not provide citations for documents clearly identified in the text and available on the Commission's electronic, public docket.

II. The Pre-Hearing Proceedings, Bolan's Settlement, and Bolan's Later Employment

On November 26, 2014, the administrative law judge issued an order scheduling the hearing for March 30, 2015. The order required the parties to work in good faith to reach stipulations and to file joint proposed findings of fact and conclusions of law by March 23, 2015.

For the remaining four months, the Division, Bolan, and Ruggieri vigorously litigated the proceeding. On January 8, 2015, Bolan and Ruggieri moved for summary disposition on all claims against them. The Division timely opposed the motions. On February 25, 2015, after holding oral argument and receiving a supplemental submission, the ALJ deemed the issue "exceedingly close," deferred decision, and ordered the parties to proceed to a hearing. On March 9, 2015, Bolan and Ruggieri moved *in limine* to preclude the Division's expert witness and several categories of evidence. The Division timely opposed their motions. On March 18, 2015, the ALJ denied or deferred decision on each of the motions *in limine* and allowed the Division to put on its requested evidence at the hearing. On March 23, 2015, after extensive discussions, the parties filed joint stipulations, including 203 paragraphs of stipulated facts, 14 paragraphs of stipulated law, and a stipulation by which Bolan withdrew the Ninth Defense listed in his Answer to the OIP.

On March 27, 2015—one business day before the hearing—Bolan and the Division reached a settlement in principle and filed a joint motion to stay the proceedings as to Bolan. The ALJ granted the motion that day.

On April 6, 2015, Bolan signed a notarized settlement offer to the Commission (the "Settlement Offer"). (Ex. 1 (Settlement Offer).)[2] The Settlement Offer included the following language:

> Bolan hereby...consents to the entry of the [settlement] Order, in which the Commission:

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[2] "Ex." refers to exhibits attached to this opposition.

1.e finds that Respondent Bolan violated Section 17(a)(3) of the Securitiese Act;e

2.e orders that Respondent Bolan cease and desist from committing ore causing any violations or future violations of Sections 17(a)(3) of thee Securities Act;e

3.e orders that Respondent Bolan shall pay a civil penalty of $75,000..e;e

4.e orders that Bolan pay $24,944, plus $4,827.66 prejudgment interest, for ae total of $29,231.66, which shall be deemed satisfied by Wells Fargo'se payment of that amount to the Commission.e

(Ex. 1.) The Settlement Offer reflected Bolan's "waiver of those rights specified in Rule[ ] 240(c)(4) ...of the Commission's Rules of Practice."[3] (*Id.*)

On May 28, 2015, the Commission issued its Settlement Order, which imposed the relief listed in Bolan's Settlement Offer and no industry bar or suspension.[4] The Settlement Order states: "Bolan submitted an Offer of Settlement (the 'Offer') which the Commission has determined to accept.... Bolan consents to the entry of this Order...." (Settlement Order § II.)

The Commission's Settlement Order then made findings, which Bolan neither admitted nor denied. (*Id.*) The Settlement Order found that Bolan "provided notice of *at least one* forthcoming ratings change" to Ruggieri, who "traded ahead of a ratings change by selling stock short ahead of one downgrade by Bolan," and that Bolan thereby violated Securities Act Section 17(a)(3). (Settlement Order ¶¶ III.A.1–2 (emphasis added).) The Settlement Order described that example in detail: "Bolan...provided notice to Ruggieri about *at least one* Bolan ratings change before it was made public. *For example*, in March of 2010, Bolan..eprovided notice to Ruggieri about Bolan's

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[3] Rule 240(c)(4) provides that the settling respondent "waives..e(i) [a]ll hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted; (ii) [t]he filing of proposed findings of fact and conclusions of law; (iii) [p]roceedings before, and an initial decision by, a hearing officer; (iv) [a]ll post-hearing procedures; and (v) [j]udicial review by any court." 17 C.F.R. § 201.240(c)(4).e

[4] "Settlement Order" means the Commission's Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 as to Gregory T. Bolan, Jr., dated May 28, 2015.

ratings change downgrade of Parexel." (*Id.* at ¶¶ III.D.6–10 (emphases added).) The Settlement Order also found that Bolan received training on certain Wells Fargo policies prohibiting research analysts from previewing research with anyone outside the research department and "knew or should have known" that he was providing Ruggieri with material nonpublic information. (*Id.* at ¶¶ III.D.15–16.) The Settlement Order noted that violations of Securities Act Section 17(a)(3) may be established by proving negligence rather than scienter. (*Id.* at ¶ IH.D.17 & n.2.)

On July 20, 2015, less than two months after the Commission had issued the Settlement Order, Bolan began working for another registered broker-dealer. (Ex. 2 (excerpt from Bolan's CRD employment history).) He remained in that firm's employ until March 15, 2017. (*Id.*)

III.e The Hearing and Initial Decisione

From March 30 through April 20, 2015, the ALJ held the hearing as to Ruggieri. (Order,e Apr. 27, 2015.) The Division called thirteen witnesses, including Ruggieri and an expert witness. Five days into the hearing, the Division notified the ALJ that the Division had spoken to Bolan's counsel about the possibility of Bolan's testifying at the hearing. (Div.'s Br. on Review of the Initial Decision, Jan. 11, 2016, at 22–23 n.10 (citing Hearing Tr. 1616–24).) Bolan's counsel had expressed some reluctance about Bolan's testifying while the Commission was considering his settlement offer. (*Id.*) Neither the Division nor Ruggieri ultimately called Bolan to testify at the hearing. (*Id.*)

On September 14, 2015, the ALJ issued his Initial Decision, which specified that it did "not apply to Bolan." (Initial Decision at 1 n.1.) The Initial Decision concluded that Bolan had tipped Ruggieri to material, non-public information on four of the six ratings changes alleged in the OIP—and another ratings change not alleged in the OIP—but not Parexel. (*Id.* at 8–28.) The Initial Decision concluded that the evidence "reflects Bolan's longstanding disregard of compliance rules" but that while "it is possible that Bolan tipped Ruggieri for a personal benefit, [ ] the Division has not met its burden to establish this required element." (*Id.* at 49.) The Initial Decision therefore

dismissed the proceeding "as to Joseph C. Ruggieri" and noted that the decision "will not become final until the Commission enters an order of finality." (*Id.* at 50.) The decision explained that if "a party files a petition for review," "the initial decision shall not become final as to that party." (*Id.*)

IV. The Commission's Evenly Divided Opinion Dismissing the Proceedings

On October 5, 2015, the Division filed a petition for review of the Initial Decision. The Division did not seek review of the Initial Decision's conclusion that "Ruggieri did not trade in Parexel [stock] on the basis of a tip." (Div.'s Pet'n for Review of Initial Decision at 1 n.1.) On October 14, 2015, Ruggieri filed a cross-petition for review. On October 26, 2015, Ruggieri moved for summary affirmance of the Initial Decision. The Division timely opposed the motion. On December 10, 2015, the Commission denied Ruggieri's motion for summary affirmance and granted the petitions for review.

On July 13, 2017, after the parties had completed their briefing, the Commission issued an Order Dismissing Proceedings ("Dismissal Order"), citing Commission Rule of Practice 411(f), which ordered "that the proceeding instituted against Joseph Ruggieri be...dismissed." The Dismissal Order explained:

> An administrative law judge dismissed the proceeding, and the Division of Enforcement appealed only with respect to four of the six trades at issue in the OIP. The Commission is evenly divided as to whether the allegations in the OIP with respect to those four trades have been established.

(Dismissal Order at 1.) Commissioner Stein opined: "I believe that there is sufficient evidence to establish, by a preponderance of the evidence, that Ruggieri traded while aware of material nonpublic information on at least one occasion." (Op. of Comm'r Stein.) Commissioner Piwowar opined: "I agree with Ruggieri that the evidence is insufficient to establish that he traded while aware of material nonpublic information." (Op. of Comm'r Piwowar at 1.) "[W]hile certain evidence is consistent with the Division's allegations against Ruggieri,...I conclude that the Division has not

demonstrated by a preponderance of the evidence that Bolan provided nonpublic information to Ruggieri in connection with these four trades." (*Id.* at 5.)

ARGUMENT

The Commission should deny Bolan's Motion because he can present no compelling circumstances to justify vacating the Settlement Order he freely entered into. The Commission has repeatedly expressed its "strong interest in the finality of [its] settlement orders." *Michael H. Johnson*, SEC Rel. No. 31818, 2015 WL 5305993, at *4 (Sept. 10, 2015) (internal quotation marks and citations omitted). "It would be unworkable to allow respondents to settle, forgo proceedings, and then argue that the result obtained by other respondents who did litigate their own cases should be applied to the settling respondents." *Richard D. Feldmann*, SEC Rel. No. 10078, 2016 WL 2643450, at *2 (May 10, 2016). Indeed, "[i]f sanctioned parties easily are able to reopen consent decrees years later, the SEC would have little incentive to enter into such agreements." *Miller v. SEC*, 998 F.2d 62, 65 (2d Cir. 1993) (denying petition for review of Commission order that had denied motion to vacate prior Commission consent order); *cf. SEC v. Conradt*, 309 F.R.D. 186, 188 (S.D.N.Y. 2015) ("[R]elief under [Federal Rule of Civil Procedure] 60(b) is not intended to allow one side of a settlement agreement to obtain the benefits of finality while placing the other side at risk that future judicial decisions will deprive them of the benefit of their bargain. When it comes to civil settlements, a deal is a deal...."), *aff'd*, 696 F. App'x 46 (2d Cir. 2017).

The Commission's consent orders imposing sanctions therefore "remain in place in the usual case and [will] be removed only in compelling circumstances." *Johnson*, 2015 WL 5305993, at *3 (citing *Ciro Cozzolino*, SEC Rel. No. 49001, 2003 WL 23094746, at *3 (Dec. 29, 2003)); *see also Feldmann*, 2016 WL 2643450, at *2 n.24 (requiring circumstances "at least as compelling, if not more so," to alter the terms of a consent order other than a bar); *cf.* 17 C.F.R. § 201.193 ("[T]he

Commission will not consider any application [by a barred individual for consent to associate] that attempts to...collaterally attack the findings that resulted in the Commission's bar order.").

Bolan can show no compelling circumstances that justify vacating the Settlement Order, as discussed below. The outcome of Ruggieri's litigated proceeding does not warrant vacating the Settlement Order, and Bolan cites no case that suggests otherwise. Nor can Bolan show any prospective hardship from the Settlement Order, which imposed no suspension or bar.

I. The Outcome of Ruggieri's Proceeding Presents No Compelling Circumstances.

A. The Initial Decision Is Not Final, Has No Effect, and Therefore Cannot Disturb the Settlement Order.

Bolan claims that the Initial Decision's findings that Ruggieri did not unlawfully trade on Bolan's tips "refute," "contradict," or "preclu[de]" the Settlement Order's findings that Bolan violated Section 17(a)(3) and therefore warrant vacating his Settlement Order. (Mot. at 1, 3 & n.1, 7, 10–11.) Bolan's arguments rest primarily on his assertion that the Initial Decision is final. (Mot. at 1 ("An ALJ's ruling that Ruggieri did not trade ahead of Bolan's [Parexel] research report based on a Bolan tip is now final. This refuted the [Settlement] Order's finding."); *id.* at 3.) Yet Bolan's assertion is wrong: the Initial Decision is not final, has no effect, and therefore offers no compelling reason to vacate the Settlement Order.

In a footnote, Bolan concedes that "the Commission's public docket does not show an order of finality as to the Initial Decision" but claims that "Rule 360(d) is plain that the failure to appeal a portion of a decision renders that portion final." (Mot. at 3 n.1.) To the contrary, Rule 360(d) explains that the Initial Decision "shall not become final" if "a party...entitled to review timely files a petition for review." 17 C.F.R. § 201.360(d)(1). Rule 360(d) further provides that, if no party timely files a petition for review or moves to correct a manifest error of fact and if the Commission does not order review on its own, the Initial Decision "becomes final upon issuance of the [finality] order[,]...[n]otice of [which] shall be published in the SEC Docket and on the SEC Web site." 17

C.F.R. § 201.360(d)(2); *see also Raymond J. Lucia Cos. v. SEC*, 832 F.3d 277, 286 (D.C. Cir. 2016) ("Aso the Commission has emphasized, the initial decision becomes final when, and only when, the Commission issues the finality order, and not before then.... The Commission's final action is either in the form of a new decision after *de novo* review or, by declining to grant or order review, its embrace of the ALJ's initial decision as its own."), *petition for cert. filed* (July 21, 2017) (No. 17-130).

Nor does Rule 360(d) permit one portion of an Initial Decision to become final without a finality order simply because no party seeks review of that portion. 17 C.F.R. § 201.360(d). Such a rule would make no sense in any event. The Commission reviews Initial Decisions *de novo* and "'has all the powers which it would have in making the initial decision,' and even on questions of fact.... '[A]n agency reviewing an ALJ decision is not in a position analogous to a court of appeals reviewing a case tried to a district court.'" *Lucia*, 832 F.3d at 286, 289 (quoting *Kay v. FCC*, 396 F.3d 1184, 1189 (D.C. Cir. 2005)). Put another way, on review of an initial decision, the Commission may address facts and law of which neither side sought review, and Rule 360(d) does not suggest otherwise.

Under Rule 360(d), the Initial Decision is therefore not final. The Division timely filed a petition for review, Ruggieri filed a cross-petition for review, and the Commission decided to grant both petitions for review. The Commission then never issued a finality decision.

The Initial Decision also has no effect. Under Commission Rule of Practice 411(f), if the Commission grants a petition for review and "a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect." 17 C.F.R. § 201.411(f); *cf. FTC v. Flotill Prods., Inc.*, 389 U.S. 179, 183 (1967) ("[I]n the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body."). Because the two Commissioners participating in the Initial Decision's review evenly divided on the merits of the proceeding against Ruggieri, the Initial Decision has no effect.

Similarly, the Initial Decision's findings cannot preclude the Settlement Order under issue preclusion principles, as Bolan contends. (Mot. at 10–11 ("Issue preclusion should be applied here: The ALJ's decision was based on exactly the same facts as Bolan's [Settlement] Order."). Bolan misinterprets issue preclusion. "Collateral estoppel, or issue preclusion, bars the relitigation of issues actually litigated and decided *in the prior proceeding*, as long as that determination was essential to that judgment." *Central Hudson Gas & Elec. Corp.*, 56 F.3d 359, 368 (2d Cir. 1995) (emphasis added). Issue preclusion is "not pertinent until the first lawsuit has been concluded and a second, separate proceeding is underway. Within a particular suit, the correct doctrine to consider is law of the case." *Mizuho Corp. Bank v. Cory & Assocs., Inc.*, 341 F.3d 644, 653 (7th Cir. 2003).[5]

Under these principles, the issue preclusion cases Bolan cites (Mot. 10–11) either apply preclusion to a second lawsuit based on an earlier final decision in the first proceeding or decline to apply issue preclusion at all. *See United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 400–01, 422–23 (1966) (holding that *res judicata* applied to agency findings, which "the parties ha[d] agreed shall be final and conclusive," in a "subsequent suit for breach of contract"); *University of Tennessee v. Elliott*, 478 U.S. 788, 790–92, 798–99 (holding that *res judicata* applied to a state agency ALJ's findings, which the state agency had "affirmed," in a federal civil rights case); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 324–25, 332 (1979) (holding that collateral estoppel applied to defendants in a later class action based on a prior declaratory judgment against them in a Commission enforcement action); *Astoria Fed. Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 106, 109 (1991) (holding that collateral

[5] Nor does the "law of the case" doctrine apply to bind the Commission to an unadopted initial decision. "As most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983). An ALJ's initial decision, when not final and of no effect, makes no legal determination, even assuming the doctrine could apply in the administrative context. *See, e.g., Lockert v. United States Dep't of Labor*, 867 F.2d 513, 518 (9th Cir. 1989) ("[I]t is doubtful that federal courts have the authority to extend the law of the case doctrine to proceedings involving non-judicial decision makers, such as the ALJ.").

estoppel did not apply in a later federal court action based on "judicially unreviewed findings of a state administrative agency").

The Initial Decision therefore cannot preclude or estop the Commission's Settlement Order. The Initial Decision did not arise from a separate proceeding, was not a "prior decision" vis-à-vis the Settlement Order, and makes no final determination that could bind the Commission. The Initial Decision thus provides no compelling reason to grant the Motion.

B. The Commission's Dismissal Order Contains No Findings and Does Not Conflict with the Settlement Order.

Bolan also appears to contend that the Settlement Order should be vacated because the Dismissal Order contradicts the Settlement Order and therefore creates an "arbitrary and capricious" result. (Mot. at 1 ("[T]he Commission itself dismissed all litigated claims that Bolan tipped Ruggieri about his analyst reports due to finding insufficient evidence. Thus, vacating the [Settlement] Order is necessary...to eliminate contradictory Commission findings."); *id.* at 8–9.) Bolan fails to articulate exactly how the Dismissal Order could conflict with the Settlement Order. However, his arguments suggest two possibilities: (1) that the bare dismissal of the proceeding as to Ruggieri conflicts with the Settlement Order's consent findings that Bolan tipped Ruggieri, and (2) that the Commission agreed in the Dismissal Order that Ruggieri did not trade on Bolan's Parexel tip and therefore the Dismissal Order conflicts with the Settlement Order. Neither argument, to the extent Bolan makes it, has any merit.

First, the Dismissal Order makes no findings at all that could conflict with the Settlement Order. When only two Commissioners consider an initial decision on review and disagree on the outcome, the Commission can take no action. *See, e.g., Sprint Nextel Corp. v. FCC*, 508 F.3d 1129, 1131 (D.C. Cir. 2007) ("The deadlocked vote cannot be considered an order of the Commission nor can it constitute agency action. The votes were actions of the individual Commissioners, not the Commission."). Rule 411(f) reflects that administrative principle, as described above in Part I.A. The

Commission's Dismissal Order therefore contains no binding Commission findings because the two presiding Commissioners did not agree on the findings or the outcome. Without findings, a bare dismissal order cannot conflict with the Settlement Order: the consent finding that Bolan unlawfully tipped Ruggieri is consistent with a decision that does not hold Ruggieri liable for trading on those tips. For example, though Bolan unlawfully tipped Ruggieri, the evidence may have been insufficient to prove that Ruggieri traded based on those tips or with the requisite scienter.

Second, even if the Commission's Dismissal Order concludes that Ruggieri did not trade on Bolan's Parexel tip, the Dismissal Order does not conflict with the Settlement Order. As the Settlement Order makes clear, Bolan consented to findings (without admitting or denying them) that he tipped Ruggieri to "at least one" ratings change of which the Parexel tip served only as an "example." (Settlement Order ¶¶ II & III.D.6.) The Dismissal Order contains no decision as to the four tips on which the Division sought review—any one of which could have served as a basis for the Section 17(a)(3) violation to which Bolan consented. (Dismissal Order at 1 ("The Commission is evenly divided as to whether the allegations in the OIP with respect to those four trades have been established.").) In any event, a conclusion that Ruggieri did not trade on Bolan's Parexel tip would still not conflict with the conclusion that Bolan tipped Ruggieri as to Parexel, as explained above.

C. Even a Final Inconsistent Determination as to Ruggieri Would Not Warrant Vacating the Settlement Order.

The Commission has made no determination inconsistent with Bolan's consent findings in the Settlement Order, as the discussion above shows. Yet even if the Commission had determined—when deciding Ruggieri's liability—that the Division failed to prove that Bolan ever unlawfully tipped Ruggieri, such a determination would still provide no compelling reason to vacate the Settlement Order. Indeed, even in criminal cases, federal courts have repeatedly declined to vacate the guilty plea of a conspirator after a jury has acquitted his co-conspirator. *See, e.g., United States v. Stewart*, 306 F.3d 295, 307 (6th Cir. 2002) ("[Defendant] acknowledges that he asks this Court toe

establish a new legal rule holding that courts should dismiss the indictment of a defendant who pleads guilty prior to or after his co-conspirator is acquitted of the same offense by a jury. However...there is no legal precedent that supports his claim."); *Davis v. United States*, 425 F. Supp. 952, 953 (D. Conn. 1976) ("However a convicted conspirator should fare after the acquittal of his co-defendant in a joint or separate trial, the issue here is how he should fare after his own voluntary decision to enter a plea of guilty.... No decision has been found that permits collateral attack of a judgment based on a guilty plea because of a jury's verdict in proceedings against a co-defendant.").

Nor does Bolan cite any precedent for vacating a Commission consent order based on the outcome of a co-respondent's litigation. Bolan cites only four Commission opinions (and one Commission statement) in arguing that the Commission should vacate the Settlement Order "under a long line of Commission precedent vacating Commission orders when subsequent legal proceedings...reject their findings." (Mot. at 4–7.) Three of the opinions vacated follow-on consent orders imposing bars after the statutory prerequisite for the bars—a criminal conviction or a district court injunction—had been vacated. *Sandeep Goyal*, SEC Rel. No. 4339, 2016 WL 707096 (Feb. 23, 2016); *Gregg Becker*, SEC Rel. No. 67795, 2012 WL 3866562 (Sept. 6, 2012); *Jimmy Dale Swink, Jr.*, SEC Rel. No. 36042, 1995 WL 467600 (Aug. 1, 1995). Indeed, in *Swink*, the consent order itself had "provided that the bar would be vacated...if the conviction referenced...were reversed or vacated on appeal." *Swink*, 1995 WL 467600, at *1. Unlike those situations, the Settlement Order's sanctions require no prerequisite, such as an injunction or conviction, beyond the findings to which Bolan consented in the Settlement Order.

The fourth opinion and the Commission statement Bolan cites (Mot. at 6–7) involve later decisions by a United States Court of Appeals clarifying that the Commission did not have authority to impose the particular type of bar contained in a prior consent order. *William Masucci*, SEC Rel. No. 53121, 2005 WL 3662592, at *1–2 & n.1 (Jan. 13, 2005); Commission Statement Regarding

Decision in *Bartko v. SEC*, *available at* https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec.html (Feb. 23, 2017). In those situations, the Commission vacated or suggested it may vacate only the affected bars, because a later decision had clarified that the Commission lacked authority to impose the bars. *See Feldmann*, 2016 WL 2643450, at *3 (distinguishing the Commission's modification of bars after a "post-settlement, judicial determination in light of which the sanctions imposed were no longer authorized by the governing substantive law"). In contrast, Bolan can point to no judicial decision concluding that the Commission lacked authority to impose the Settlement Order's sanctions.

II.e The Settlement Order Imposes No Hardship on Bolan.e

Bolan further contends that the Settlement Order should be vacated "to avoid ane unnecessary negative impact on his career by requiring him (and any employer) to report the findings from his [Settlement] Order on a Form U-4 or similar disclosure form." (Mot. at 9.) Potential reputational harm does not justify vacating the Settlement Order. Any "negative stigma stemming from the [Settlement] Order is simply 'a natural consequence of the action taken against' [Bolan], and cannot be used to justify the [Settlement] Order's vacatur." *First Omaha Secs. Corp.*, SEC Rel. No. 37654, 1996 WL 506222, at *2 (Sept. 6, 1996); *see also Miller*, 998 F.2d at 64 ("In Miller's situation, where there were no longer any present restraints, only the record of a past sanction, the plea for relief is even less compelling."). Furthermore, as the Commission has noted, no "meaningful relief will be afforded" by vacating a settlement order that imposes no bar or suspension. *First Omaha Secs.*, 1996 WL 506222, at *3 ("Even if we vacated the Order..., the fact of the Order's original entry would continue to remain available to the public as part of the Commission's public records. Moreover, Movants would still have to report the prior disciplinary action taken against them on Form BD...and on Form U-4.").

Bolan's final contention that vacating the Settlement Order would "serve as a check to correct" the professional "damage done" to the careers of securities professionals who later prevail in an administrative proceeding offers no further support for his Motion. (Mot. at 9–10.) Bolan did not prevail in his proceeding: he consented to the Settlement Order's sanctions to "achieve the certainty of avoiding a potentially worse outcome, while avoiding the time and expense of additional litigation." *Feldmann*, 2016 WL 2643450, at *2. Whatever Ruggieri's employment status may be, Bolan's decision to settle enabled him to immediately continue his employment in the securities industry. (Ex. 2.) The Settlement Order thus imposes no hardship from which Bolan should be relieved.

CONCLUSION

For these reasons, the Commission should deny Bolan's Motion.

Dated: October 27, 2017
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

SECURITIES ACT OF 1933
Release No.

SECURITIES EXCHANGE ACT OF 1934
Release No.

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of **Gregory T. Bolan, Jr. and Joseph C. Ruggieri,** **Respondents.**	**OFFER OF SETTLEMENT OF GREGORY T. BOLAN, JR.**

I.

Gregory T. Bolan, Jr. ("Bolan" or "Respondent Bolan"), pursuant to Rule 240(a) of the Rules of Practice of the Securities and Exchange Commission ("Commission") [17 C.F.R. § 201.240(a)] submits this Offer of Settlement ("Offer") of the public administrative and cease-and-desist proceedings commenced on September 29, 2014, pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act").

II.

This Offer is submitted solely for the purpose of settling these proceedings, with the express understanding that it will not be used in any way in these or any other proceedings, unless the Offer is accepted by the Commission. If the Offer is not accepted by the Commission, the Offer is withdrawn without prejudice to Respondent Bolan and shall not become a part of the record in these or any other proceedings, except for the waiver expressed in Section V with respect to Rule 240(c)(5) of the Commission's Rules of Practice [17 C.F.R. § 201.240(c)(5)].

III.

Consistent with the provisions of 17 C.F.R. § 202.5(f), Respondent Bolan waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein.

IV.

Respondent Bolan hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Respondent Bolan to defend against this action. For these purposes, Respondent Bolan agrees that Respondent Bolan is not the prevailing party in this action since the parties have reached a good faith settlement.

V.

By submitting this Offer, Respondent Bolan hereby acknowledges his waiver of those rights specified in Rules 240(c)(4) and (5) [17 C.F.R. §201.240(c)(4) and (5)] of the Commission's Rules of Practice. Respondent Bolan also hereby waives service of the Order.

VI.

Respondent Bolan hereby:

A. Admits the jurisdiction of the Commission over him and over the matters set forth in the Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), which is attached;

B. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying the findings contained in the Order, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, consents to the entry of the Order, in which the Commission:

1. finds that Respondent Bolan violated Section 17(a)(3) of the Securities Act;

2. orders that Respondent Bolan cease and desist from committing or causing any violations and any future violations of Sections 17(a)(3) of the Securities Act;

3. orders that Respondent Bolan shall a civil penalty of $75,000, to the Securities and Exchange. Payment shall be made in the following installments: $25,000 shall be due within 14 days of this Order, $25,000 shall be paid within 90 days of this Order and the remaining $25,000 shall be paid in 180 days of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent Bolan may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent Bolan may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent Bolan may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Bolan as a Respondent Bolan in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, New York, 10281.

4. orders that Bolan pay $24,944, plus $4,827.66 prejudgment interest, for a total of $29,231.66, which shall be deemed satisfied by Wells Fargo's payment of that amount to the Commission.

VII.

Respondent Bolan understands and agrees to comply with the terms of 17 C.F.R § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit

the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Respondent Bolan's agreement to comply with the terms of Section 202.5(e), Respondent Bolan: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any finding in the Order or creating the impression that the Order is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Respondent Bolan does not admit the findings of the Order, or that the Offer contains no admission of the findings, without also stating that the Respondent does not deny the findings; and (iii) upon the filing of this Offer of Settlement, Respondent Bolan hereby withdraws any papers previously filed in this proceeding to the extent that they deny, directly or indirectly, any finding in the Order. If Respondent Bolan breaches this agreement, the Division of Enforcement may petition the Commission to vacate the Order and restore this proceeding to its active docket. Nothing in this provision affects Respondent Bolan's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

VIII.

Respondent states that he has read and understands the foregoing Offer, that this Offer is made voluntarily, and that no promises, offers, threats, or inducements of any kind or nature whatsoever have been made by the Commission or any member, officer, employee, agent, or representative of the Commission in consideration of this Offer or otherwise to induce him to submit to this Offer.

6th day of April, 2015

Gregory T. Bolan, Jr.a

STATE OF TENNESSEEa }
} SS:a
COUNTY OF DAVIDSONa }a

The foregoing instrument was acknowledged before me this 6th day of April, 2015, by Gregory T. Bolan, Jr., who is personally known to me or who has produced a DL driver's license as identification and who did take an oath.

Notary Public
Commission Number:
Commission Expiration: Jun 8th 2018

KATHY A. KNOX STATE OF TENNESSEE NOTARY PUBLIC CHEATHAM COUNTY

U4 Employment History

Individual CRD#: 4901541 **Individual Name: BOLAN, GREGORY T**

Office of Employment Address History

From	To	Firm	CRD Branch Number	NYSE Branch Code Number	Firm Billing Code	Address	Type of Office	Private Residence
07/20/2015	03/15/2017	AVONDALE PARTNERS, LLC (46838)	BD Main			3102 WEST END AVENUE SUITE 1100 NASHVILLE, TN 37203, UNITED STATES	Located At	No
10/24/2011	10/16/2014	STERNE, AGEE & LEACH, INC. (791)	173972	39		3100 WEST END AVENUE SUITE 930 NASHVILLE, TN 37203, United States	Located At	No
06/27/2011	10/21/2011	MADISON WILLIAMS AND COMPANY (149530)	BD Main			527 MADISON AVENUE, 14TH FLOOR NEW YORK, NY 10022,	Supervised From	No
08/25/2008	04/25/2011	WELLS FARGO SECURITIES, LLC (126292)	375134	EQRES04		230 4TH AVENUE N NASHVILLE, TN 37219, United States	Located At	No
06/30/2008	04/25/2011	WELLS FARGO SECURITIES, LLC (126292)	201063	HQ	WFS10	301 SOUTH COLLEGE STREET CHARLOTTE, NC 28288, United States	Supervised From	No
01/17/2006	06/16/2008	JEFFERIES & COMPANY, INC. (2347)	172145			2525 WEST END AVENUE SUITE 1150 NASHVILLE, TN 37203, United States	Located At	No
01/06/2005	10/27/2005	FIRST NEW YORK SECURITIES L.L.C. (16362)	Non Registered Location			850 THIRD AVENUE NEW YORK, NY 10022, United States	Located At	No

Please note that data contained in the U4 EMPLOYMENT HISTORY SCREEN is updated only by a U4 and does not reflect any changes made by the filing of a U5.

Employment History

From	To	Name	Investment Related Business?	City	State	Country	Position
10/2014	07/2015	UNEMPLOYED	N	FRANKLIN	TN	United States	NA
10/2011	10/2014	STERNE, AGEE & LEACH, INC.	Y	NASHVILLE	TN	United States	RESEARCH ANALYST
06/2011	10/2011	MADISON WILLIAMS AND COMPANY, LLC	Y	NEW YORK	NY	United States	RESEARCH ANALYST
06/2008	05/2011	WELLS FARGO SECURITIES LLC	Y	NASHVILLE	TN	United States	SR. RESEARCH SALES ANALYST
01/2006	06/2008	JEFFERIES & COMPANY, INC.	Y	NASHVILLE	TN	United States	ASSOCIATE
11/2005	01/2006	OPUS TRADING FUND LLC.	Y	ATLANTA	GA	United States	PROPRIETARY TRADER
01/2005	10/2005	FIRST NEW YORK SECURITIES LLC	Y	NEW YORK	NY	United States	ASSISTANT TRADER
06/2002	01/2005		Y		NY		ANALYST/TRADER

		WESTGATE CAPITAL MANAGEMENT LLC		PEARL RIVER		United States	
07/1998	06/2002	EMORY UNIVERSITY	N	ATLANTA	GA	United States	F/T STUDENT
01/1995	04/1998	U.S. ARMY	N	FT. HOOD	TX	United States	PRIVATE FIRST CLASS

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of October, 2017, I caused to be served true copies of the Division of Enforcement's Opposition to Respondent Bolan's Motion to Vacate the Commission's Settlement Order on the following by the specified means of delivery:

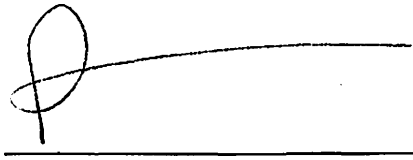
By Facsimile and UPS:
Brent J. Fields, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F Street N.E., Mail Stop 1090
Washington, DC 20549
Facsimile: (202) 772-9324

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
alj@sec.gov

By Facsimile, Email, and UPS:
Sam Lieberman, Esq.
Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176
slieberman@sglawyers.com
Facsimile: (212) 947-3796
(Counsel for Respondent Gregory T. Bolan, Jr.)

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

Dated: October 27, 2017



Preethi Krishnamurthy