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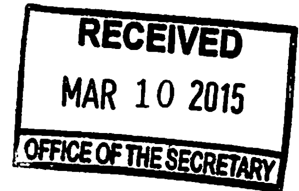

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

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

Respondents.

THE DIVISION OF ENFORCEMENT'S PRE-HEARING MEMORANDUM

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March 9, 2015

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Pursuant to Commission Rule of Practice 222(a)(1) and (2) and the Court's Order Setting Procedural Schedule (the "Scheduling Order"), the Division of Enforcement (the "Division") respectfully submits this memorandum before the hearing scheduled to begin on March 30, 2015. For the reasons set forth below, the Court should find Respondents Gregory T. Bolan, Jr. ("Bolan") and Joseph C. Ruggieri ("Ruggieri") (collectively, "Respondents") liable for insider trading in violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 thereunder. In the public interest, the Court should impose the sanctions and other relief described below.

PRELIMINARY STATEMENT

In the course of a single year, Bolan tipped Ruggieri to at least six of his eight forthcoming ratings changes and tipped Moskowitz to three of the same ratings changes. Ruggieri and Moskowitz then traded on those tips of material, non-public information for an easy profit. No other plausible explanation can exist for why two traders — whose only apparent connection was their friendship with Bolan — traded in the same three stocks in the same direction (long or short) at the same time just after talking to Bolan and just before Bolan's ratings changes on those stocks and then profitably exited their positions afterwards.

In addition to compelling circumstantial evidence that Respondents cannot reasonably dispute — including the timing of Bolan's phone calls with Ruggieri and Moskowitz, the timing of the trades, and the timing of Bolan's ratings changes — other hearing evidence will conclusively demonstrate that Bolan tipped Ruggieri and Moskowitz to his forthcoming ratings changes. First, Ruggieri did not trade ahead of only six of Bolan's eight ratings changes during a one-year period. Ruggieri also traded ahead of a seventh of Bolan's eight ratings changes: further proof that Ruggieri's six trades ahead of Bolan's ratings changes were no coincidence.

Second, as the Division's expert Dr. Edward S. O'Neal will show based on his statistical analysis, Ruggieri's positions ahead of Bolan's six ratings changes could not have resulted from chance. Overall, Ruggieri held overnight positions less than 2% of the time for his trades. Yet he held an overnight position before *each* of the six positions at issue here. Similarly, Ruggieri's rare overnight positions in a stock otherwise coincided only very rarely with Bolan's issuance of a research report on the same stock. Therefore, as Dr. O'Neal has concluded, there is virtually no chance — a .0002% statistical probability — that Ruggieri held overnight positions in the six relevant stocks merely by coincidence.

Third, Bolan has admitted he generally spoke with Moskowitz "a couple of times a month." Yet Bolan spoke with Moskowitz repeatedly in just a one-week period before and after two of Moskowitz's three relevant trades, showing that Bolan tipped Moskowitz in these conversations.

Finally, Bolan's tips were part of a pattern and practice, demonstrating Bolan's motive, opportunity, and intent, of providing Ruggieri and select external clients with previews of his yet-to-be-published research in violation of Wells Fargo's policies. Bolan's junior associate repeatedly confronted Bolan about his compliance violations, yet Bolan brushed him off each time. Wells Fargo later independently discovered several instances of Bolan providing Ruggieri and external clients with previews of his forthcoming research publications. Wells Fargo then began investigating Bolan and Ruggieri. In the process, Wells Fargo compliance officers interviewed Bolan, and Bolan lied to the compliance officers. Wells Fargo soon decided to terminate Bolan and Ruggieri for this similar, yet less serious conduct.

The weight of this and other evidence will demonstrate that Bolan and Ruggieri knowingly or recklessly tipped and traded on, respectively, Wells Fargo's material, non-public information for Bolan's personal benefit in violation of anti-fraud provisions of the securities laws. To prove its claims, the Division intends to call a number of witnesses, including Bolan's supervisor, Todd

Wickwire; Ruggieri's supervisor, Matthew Brown, and his supervisor, Chris Bartlett; Wells Fargo's senior compliance officers for the research department and the trading department, Scott Friedman and Scott Yi, respectively; Bolan's junior associate, Timothy Evans; a Commission employee, Scott Walster, who will summarize voluminous records, including phone and trading records, through summary charts; Dr. O'Neal; and Bolan and Ruggieri themselves. After the Court hears the evidence, it should reach the only plausible conclusion based on the preponderance of the evidence: Bolan unlawfully tipped Ruggieri and Moskowitz, and Ruggieri and Moskowitz unlawfully traded on those tips. The Court should therefore impose appropriate sanctions and other relief.

STATEMENT OF FACTS[1]

I. WELLS FARGO'S RELEVANT BUSINESS

As the Division's hearing evidence will show, Wells Fargo Securities, LLC ("Wells Fargo") is a registered broker-dealer. During the relevant period, Wells Fargo's research department, including the equity research group, did not directly generate any revenue or profit for Wells Fargo. For equity trades, Wells Fargo's institutional clients each paid a certain amount of money (fixed by contract with the client) per share of stock Wells Fargo's traders traded for the client. Research by equity analysts helped generate revenue for Wells Fargo only to the extent the research generated client trades through Wells Fargo. Generally, Wells Fargo clients who were pleased with its research and other sales and trading services directed trading to Wells Fargo, and Wells Fargo therefore earned commissions from the trades.

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[1] The Division expects to prove the facts set forth herein at the hearing through witness testimony, exhibits introduced into evidence, and Respondents' admissions. The Division refers herein to witnesses by their last name. The Division refers herein to its exhibits, which bear the prefix "DIV," as "DIV ___." Pursuant to the Court's Scheduling Order, the Division will provide its exhibits to the Court before the hearing or at any earlier time the Court requests.

Given the parties' extensive recent briefing on the personal benefit element, the Division does not reiterate here its opposition to Respondents' motions for summary disposition and its supplemental submission in their entirety but incorporates those papers by reference.

II. BACKGROUND: BOLAN, RUGGIERI, AND MOSKOWITZ

A. Bolan and Ruggieri

In June 2002, Bolan began working in the securities industry, including with a stint as a trader. (DIV 39 at 9; DIV 110 at 11–12.) In January 2006, he became an associate equity research analyst. (DIV 39 at 8–9; DIV 110 at 11.) In June 2008, he joined Wells Fargo as an equity research analyst and registered representative and worked out of Nashville, Tennessee. (DIV 39 at 8–9; DIV 110 at 10–12, 185.) Bolan focused his research on three niche sub-sectors of the health care industry: pharmaceutical services or contract research organizations, health care information technology, and life science tools. (DIV 110 at 15–18.) While at Wells Fargo, Bolan issued research reports on only seventeen stocks in total. (DIV 133.)

In August 2009, after about eight years of working as an equity trader, Ruggieri joined Wells Fargo in New York as a trader of health care stocks and a registered representative. (DIV 111 at 10, 15–16.) After Ruggieri joined, Wells Fargo had only two health care traders: Ruggieri and a more junior trader, Chip Short. Ruggieri executed customer transactions and placed principal trades on Wells Fargo's behalf. (*Id.* at 17–21.)

For each customer trade Ruggieri placed, Wells Fargo earned a fixed commission. Ruggieri's job primarily entailed generating commissions for Wells Fargo through customer trades and losing as little of these commissions as possible when unwinding the other side of customers' trades. In addition, Ruggieri placed principal trades on Wells Fargo's behalf, in which he bet Wells Fargo's capital on stock positions and turned profits or took losses for Wells Fargo. In return, Wells Fargo paid Ruggieri a salary and approximately 6% of the monthly net profit (customer commissions minus losses plus any profits or losses on Ruggieri's principal trades) in his Wells Fargo trading account. (*Id.* at 23–25.) For one calendar year only, Ruggieri had a verbal compensation guarantee,

apparently undocumented. His supervisor did not expect to provide a second year of guaranteed compensation to Ruggieri.

Unlike Bolan — who focused his research on seventeen companies in three niche subsectors of the healthcare industry — Ruggieri traded stocks on behalf of customers in "all of health care...every sub sector within health care." (DIV 110 at 15–18; DIV 133; DIV 111 at 18.) The total universe of health care stocks may have included about 2,000 stocks, of which Wells Fargo "probably" regularly traded about 500 or 600 for customers. (DIV 111 at 63 (Ruggieri).) Ruggieri was responsible for trading "probably" about 70% of those stocks for customers — a list of over 300 stocks — while Short was responsible for the rest. (*Id.* at 62–64.) For his principal trades for Wells Fargo, Ruggieri could trade any of the health care stocks on his list. (*Id.* at 93–94.)

By October 2009, Bolan and Ruggieri had established a strong relationship and rapport. (DIV 173.) Over his time at Wells Fargo, Bolan spoke to Ruggieri more than any other Wells Fargo trader. (DIV 110 at 54–55 (Bolan).)

Bolan and Ruggieri also became "pretty good friends," as Ruggieri has admitted. (DIV 111 at 51–52.) Bolan and Ruggieri spoke with each other "on a daily basis" and "[o]ften multiple times a day." (*Id.* at 51, 75.) They talked about work and "stuff outside of work" and socialized outside the office when Bolan was in New York. (*Id.* at 51–52; DIV 110 at 29–31, 56.) Indeed, months after Bolan and Ruggieri left Wells Fargo, Bolan invited Ruggieri to his wedding. (DIV 167.)

B. Bolan and Moskowitz

Bolan and Moskowitz were "old," "close" friends, as Bolan has admitted. (DIV 110 at 112–13; DIV 119.) They had met in 2005, when they had worked together on the trading desk at First New York. (DIV 39 at 9; DIV 110 at 110, 112.) From then until Moskowitz's death in 2013, they spoke on the phone "a couple of times a month." (DIV 110 at 113.) Moskowitz suffered from a debilitating chronic disease that rarely permitted him to leave his apartment. (DIV 110 at 110–12;

DIV 136.) From June 2009 through November 2010, Moskowitz was unemployed. (Bolan Summary Disp. Mem. 3.)[2] During that time, Moskowitz traded in his personal brokerage accounts. (DIV 151.)

III. BOLAN'S RESEARCH REPORTS AND RATINGS CHANGES

Wells Fargo published research reports under Bolan's name that detailed his research about public companies in the health care sub-sectors he covered. (DIV 3, DIV 46, DIV 53, DIV 60, DIV 63 & DIV 90.) These reports typically included one of three recommendations about the prospects of the covered company's stock: "outperform," "market perform," or "underperform."(*Id.*) As the reports' appendices made clear, "outperform" meant investors should "buy" the stock, "market perform" meant investors should "hold" the stock, and "underperform" meant investors should "sell" the stock. (*Id.*)

At times, Bolan's research reports changed Wells Fargo's prior rating on a particular company's stock — for instance, from "market perform" to "outperform," or from "hold" to "buy." (DIV 3, DIV 53, DIV 60 & DIV 63.) When Bolan changed his rating, he typically included the word "upgrade" or "downgrade" in the research report's title. (*Id.*) For example, on April 17, 2010, Wells Fargo issued a report about Parexel International Corporation ("Parexel"), traded under the ticker PRXL, that downgraded Parexel to a "market perform" or "hold" rating from its previous rating of "outperform" or "buy." (DIV 46.) The report's title was "PRXL: Downgrading to Market Perform: Optimism Running High and Valuations Running Even Higher." (*Id.*) On occasion, Bolan similarly initiated coverage on a stock for the first time by rating it as outperform/buy or underperform/sell, rather than as market perform/hold. (DIV 90.) Wells Fargo typically issued Bolan's ratings change reports between 4:00 p.m. Eastern time, when the United States stock markets closed, and 9:30 a.m. the next day, when they re-opened. (DIV 133.)

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[2] "Bolan Summary Disp. Mem." refers to Respondent Gregory T. Bolan, Jr.'s Motion for Summary Disposition Against All Claims and Memorandum in Support.

IV. RUGGIERI RARELY HELD OVERNIGHT POSITIONS.

Ruggieri held overnight positions — rather than opening and closing out positions in the same trading day — less than 2% of the time, whether measured by the number of shares or the dollar amounts he traded. (DIV 177 at 15–16.) For the one-year period from March 30, 2010 through March 31, 2011, Ruggieri held overnight positions for only 1.41% of the shares he traded and 1.45% of the dollar amount of his trades. (*Id.*) As Ruggieri has admitted, he very rarely held positions for longer than a few days: "[W]e are traders, we are not...long-term...portfolio managers. We are oftentimes quick during the day, one night, sometimes...I would pair on something longer term or it's very rare that I would have something longer than a few days. I think it was that, trying to minimize your, you know, losses." (DIV 111 at 149–50.)

As Ruggieri has admitted, overnight positions increased his price risk: "I don't trade a ton. I don't take a ton of risk. I try to, you know -- especially if I don't have a story that I'm -- you know, like, or know why we are in that position, I try to keep overnight risk to a minimum." (*Id.* at 33, 67–68.) On the rare occasions when Ruggieri held overnight positions, he typically did so because either he had a "story" or "investment thesis" about the stock or a customer trade "stuck" him with an overnight position. (*Id.*)

V. BOLAN'S INFLUENTIAL RATINGS CHANGES WERE MATERIAL TO INVESTORS, AS BOLAN AND RUGGIERI KNEW.

Wells Fargo treated ratings changes as material information. Wells Fargo's policies on research analyst publications defined a "material research change" to include three research categories, the first of which was "a rating change." (DIV 36 at 28.) For such material changes, Wells Fargo required analysts to publish a note — rather than a less-formal "squawk" or other publication — and to mention the ratings change in the note's "primary title line." (*Id.* (emphasis removed).)

Wells Fargo's institutional clients also treated Bolan's ratings changes as material. Bolan's external clients were "major institutional investors, including large mutual funds and hedge funds"

that followed his reports and ratings. (DIV 27 at 3.) In the niche sub-sectors he covered, Bolan had a reputation as an influential, up-and-coming analyst. (DIV 110 at 25–26 (Bolan); DIV 111 at 51–52 (Ruggieri).) Indeed, Ruggieri often emailed Bolan's published ratings changes to Wells Fargo clients. (DIV 113.) Bolan's reports also garnered widespread praise. For example, in 2010, Bolan's supervisor praised Bolan in his director nomination form: "Greg [Bolan] is viewed by most within the department as a rising star." (DIV 27 at 3.) Also in 2010, a prestigious publication, *Institutional Investor*, named Bolan the "Best up and Comer" equity analyst that year in the health care technology and distribution sectors. (DIV 40.)

Particularly given his reputation, Bolan's ratings changes in fact consistently moved the stock prices of the companies he covered. (DIV 128.) In each of the six instances at issue here, the stock price rose after Bolan's upgrade and fell after Bolan's downgrade. (*Id.*)

Dr. O'Neal — the Division's expert witness and a former assistant professor of finance at Wake Forest University — has determined that Bolan's ratings changes had a material impact on the prices and daily trading volume of the affected stock. (DIV 177.) First, academic literature on ratings changes consistently shows that ratings changes measurably affect stock prices:

> There are hundreds of published peer-reviewed articles that examine how releases of certain non-public information affect the prices of stocks. One strand of this literature focuses specifically on whether analysts' ratings change announcements have a measurable effect on stock prices. The conclusion of almost all researchers that have studied this phenomenon is that analyst ratings changes do have a measureable and significant impact on stock prices. On average, when the announcement is released that an analyst has changed a rating to 'buy' or 'outperform,' the stock's price increases. Similarly, when an analyst downgrades a stock to 'sell' or 'underperform,' the stock's price falls.

(*Id.* at 4–5.) Second, Dr. O'Neal conducted an event study — a standard methodology "used by economists to assess the impact of a broad range of information disclosures on security prices" — on the eighteen ratings change reports Bolan wrote from 2009 through his departure from Wells

Fargo in 2011. (*Id.* at 7–14.) Eight of those reports coincided with other material announcements about the relevant stock, and Dr. O'Neal therefore eliminated those reports from his study to ensure accurate results. (*Id.* at 7–9.) Focusing on the remaining ten ratings changes, Dr. O'Neal concluded that, taken together, "the fact that all 10 of the clean ratings changes are accompanied by abnormal stock price movements in the expected direction (positive for upgrades and negative for downgrades) strongly suggests that Mr. Bolan's ratings changes affect stock prices in a manner consistent with the academic findings in large samples." (*Id.* at 13.)

Similarly, Dr. O'Neal measured the impact of Bolan's ratings changes on the daily volume of trading — the number of shares traded on a given day — in the covered stocks. (*Id.* at 14–15.) He did so because "[a] second way to determine whether Mr. Bolan's ratings changes may have contained important information is to look at whether trading volume in the stocks increased when the announcements were made. More trading suggests that new information has been released and that traders are re-adjusting their holdings in response to the new information." (*Id.* at 14.) After analyzing the trading volume before and after Wells Fargo issued Bolan's ratings changes, Dr. O'Neal concluded: "For the ten clean [ratings change] announcements...on the day of the announcement the [trading] volume was approximately 63% higher than the average volume in the days immediately before and immediately after.... I am 99% confident that trading increases on days where Mr. Bolan was releasing his ratings changes." (*Id.* at 14–15.)

Consistent with Wells Fargo's and financial experts' understanding that ratings changes are material, Bolan and Ruggieri have each admitted that analyst ratings changes — which, of course, often recommend that investors buy or sell stocks — typically move stock prices. As Bolan has admitted, "[W]hen an investment broker changes a rating, they are changing their focus, changing their kind of direction in terms of their thinking. So if I tell you one day I think the stock is a hold and you shouldn't accumulate any more, and then I at some point upgrade to buy, then those

institutional investors will buy the stock because that's my recommendation." (DIV 110 at 43–44.) Ruggieri has similarly admitted: "Typically when any analyst makes a ratings change, I don't want to say always because it doesn't always happen, but typically when any analyst makes a ratings change, it affects the stock." (DIV 111 at 72.)

Consistent with Dr. O'Neal's analysis of Bolan's ratings changes, Bolan and Ruggieri knew that Bolan's ratings changes moved stock prices. For instance, after Wells Fargo published his report upgrading a stock, Bolan emailed a friend: "[G]onna be some unhappy folks today (aka shorties)" — in other words, those holding a short position in the stock would lose money as the stock price rose following Bolan's upgrade. (DIV 43.) In another instance, after Bolan emailed one of his recently-published research reports to Ruggieri, Ruggieri replied: "Still moving stocks." (DIV 114.)

VI. BOLAN'S FORTHCOMING RATINGS CHANGES WERE NON-PUBLIC INFORMATION, AS BOLAN AND RUGGIERI ADMITTED THEY KNEW.

As the Division expects Wickwire to testify, the timing and contents of analyst reports were confidential and non-public until Wells Fargo publicly disseminated the reports through vendors such as Thomson Reuters and Bloomberg. Indeed, Wells Fargo's Equity Research Supervisory Procedures and Compliance Guidelines clearly instructed Bolan and other research analysts as follows: "Confidential information is any nonpublic, 'proprietary' information...created by a firm for public consumption, but not yet disseminated to the public. Examples of proprietary information include, but are not limited to...unpublished research reports." (DIV 98 at 39.) As Bolan and Ruggieri have each admitted, they understood that forthcoming ratings changes were non-public. (DIV 110 at 115 (Bolan) ("Are the contents of a research report nonpublic before the research report is published? A. Yeah, I would say that's an accurate statement."); DIV 111 at 49–50 (Ruggieri) ("Q. Is a research analyst's consideration of possibly doing an upgrade material and nonpublic information? A. Yes. Q. Is a research analyst's consideration of possibly doing a downgrade material and nonpublic information? A. Yes.").)

VII. AS BOLAN AND RUGGIERI ADMIT, THEY KNEW THAT WELLS FARGO PROHIBITED TIPPING AND TRADING AHEAD OF RATINGS CHANGES.

Wells Fargo's compliance polices prohibited employees from tipping or trading on material non-public information. (DIV 17.) The compliance policies also specifically prohibited research analysts from sharing the timing and contents of forthcoming research reports with anyone outside the research department. (DIV 30 at 21–22; DIV 69 at 34–35.)

Wells Fargo held annual, mandatory compliance meetings for its research department. (DIV 31 & DIV 106.) Before each such meeting, Wells Fargo circulated a PowerPoint presentation to research department employees, including Bolan. (DIV 30 & DIV 69.) In both 2009 and 2010, the annual compliance presentation informed research analysts that there should be: (1) "[n]o previewing research/opinion/estimates," (2) "[n]o contradictions or signals indicating a change to published views," and (3) "no discussions on timing and views of reports with anyone outside [the] Research [Department]." (DIV 30 at 22–23; DIV 69 at 35–36.) Bolan received the 2009 and 2010 presentations by email and verified that he had dialed into the meetings. (DIV 31 & DIV 106.)

In April 2009, to reinforce the importance of these compliance policies, Wells Fargo sent Bolan a compliance bulletin. (DIV 7.) The bulletin, entitled "Trading Ahead of Research Reports – FINRA Rule 5280," informed Bolan that Wells Fargo "maintain[ed] Information Barriers to prohibit the flow of information about pending research reports outside of the Global Research Department so as to prevent [Wells Fargo's] Trading Departments from front-running the publication of a research report for the benefit of the firm or its clients." (*Id.*) The bulletin further advised Bolan that Wells Fargo research analysts "MAY NOT preview changes in research opinions or estimates, or contradicting or signaling a change from [their] published views." (*Id.*) In October 2009, Bolan's supervisor reiterated this policy by reminding Bolan and others: "Obviously, if you are contemplating or in the process of changing your rating; [sic] valuation range and/or estimates, you are required to first publish a note before you can discuss those changes with anyone." (DIV 107.)

Similarly, Wells Fargo annually reminded its trading desk employees that it prohibited them from trading ahead of its research reports. In 2009 and 2010, Wells Fargo's annual compliance presentation informed Ruggieri and other traders that "[i]t is the responsibility of each employee and Supervisory Principal of each trading desk to ensure that W[ells] F[argo] S[ecurities] trading team members do not buy or sell positions in anticipation of the dissemination of written research." (DIV 5 at 18; DIV 108 at 49.) In 2009 and 2010, Ruggieri received these presentations and signed attendance sheets verifying that he attended the annual compliance meetings. (DIV 79 & DIV 109.)

As Bolan has admitted, he understood that he was prohibited from communicating the contents of his research reports before they were published. (DIV 110 at 179–87.) Similarly, Ruggieri has admitted that he knew that Wells Fargo prohibited its analysts from discussing forthcoming research reports with traders. (DIV 111 at 48–49 ("Q. While you were at Wells Fargo, were there any topics that you were not permitted to speak to research analysts about? A. I mean, obviously anything, you know, not public material information, clearly that was -- I mean, I know the rules about that. I don't think anything else.... Q. Is a research analyst's consideration of possibly doing an upgrade material and nonpublic information? A. Yes. Q. Is a research analyst's consideration of possibly doing a downgrade material and nonpublic information? A. Yes."). Ruggieri has also admitted that he understood he was prohibited from trading with knowledge of a forthcoming research report. (*Id.* at 165–66.)

VIII. BOLAN REPEATEDLY PREVIEWED HIS RESEARCH SELECTIVELY TO CERTAIN CLIENTS AND DISMISSED HIS JUNIOR ANALYST'S CONCERNS.

In August 2010, Bolan hired Evans as his associate analyst. As the Division expects Evans to testify, he reported directly to Bolan. Evans and Bolan were Wells Fargo's only broker-dealer employees (and the only research analysts) working in Wells Fargo's Nashville office. Soon after he started, Evans became concerned that Bolan was violating Wells Fargo's compliance policies by selectively sharing unpublished research with certain external clients.

Evans raised his concerns with Bolan three times between October 13 and November 12, 2010. (DIV 92, DIV 93 & DIV 94.) Each time, Bolan rebuffed Evans. (*Id.*) Each time, concerned that he might be implicated in Bolan's misconduct, Evans sent himself an email — with the subject line "compliance" — describing his communication with Bolan and Bolan's dismissive response. (*Id.*) On October 13, 2010, Evans wrote to himself: "Tonight I voiced my strong opposition to the channel check emails Greg [Bolan] claims have been cleared through compliance. I said that we need to put them in a [published] note form next quarter. He seemed to blow off my concern." (DIV 92.) On November 3, 2010, Evans wrote: "I raised objections to Greg [Bolan] today regarding how he tends to disseminate material selectively som[e]times. He was noncommittal in his response to me regarding potential remedies." (DIV 93.) On November 12, 2010, Evans wrote: "Spoke to Greg [Bolan] yesterday on trip to Louisville regarding my growing discomfort with his treatment of comp[l]iance rules. He was dismissive. Said he likes to shoot for middle of the road...not too conservative, not too libe[r]al." (DIV 94.)

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

From March 2010 through March 2011, Bolan published eight research reports changing his rating of the covered stock, including one initiation of coverage with an outperform/buy or underperform/sell rating. (DIV 133.) Before at least six of those eight ratings changes (the "Six Ratings Changes"), Bolan tipped Ruggieri to his forthcoming ratings change before Wells Fargo published the report, as described below. Before three of the same ratings changes, Bolan tipped Moskowitz to his forthcoming ratings change. Each time Bolan tipped them, Ruggieri and Moskowitz either purchased the relevant stock ahead of Bolan's upgrades or sold the relevant stock short ahead of Bolan's downgrade. (DIV 194.)

Ruggieri and Moskowitz then held these positions at least overnight. (*Id.*) In fact, Ruggieri twice held a long or short position for a week. (*Id.*) Once Wells Fargo issued Bolan's reports, the

stock prices of the companies Bolan upgraded rose, while the stock price of the company Bolan downgraded sank. (DIV 128.) All six times, Ruggieri and Moskowitz closed out their positions with profitable trades. (DIV 195.) From his trades on Bolan's six tips, Ruggieri generated over $117,000 in illegal profits in his account at Wells Fargo.[3] (*Id.*) Ruggieri's illegal trades allowed him to gain an edge based on material, non-public information and decrease the losses in his trading account while trading in volumes small enough to stay under Wells Fargo's compliance radar. In addition, Moskowitz generated illegal profits of over $10,000 from his trades on Bolan's three tips. (*Id.*)

In his investigative testimony on June 7, 2013, Ruggieri claimed that he could not recall why he took these positions and offered no explanation for them. (DIV 111 at 89–91, 98–100, 108–09, 115–16, 128–29.)

A. Bolan Tipped Ruggieri and Moskowitz to His Downgrade of Parexel.

On or around March 29, 2010, Bolan began drafting a forthcoming research report that would downgrade Parexel. (DIV 47; DIV 110 at 84–85.) Before the market opened on March 30, 2010 and again on the morning of March 31, Bolan spoke with Ruggieri by phone. (DIV 121; DIV 194 at 1.) On both March 30 and 31, Ruggieri sold more Parexel shares than he bought in his Wells Fargo trading account, and he ended March 31 short 10,550 Parexel shares. (DIV 130 at 1; DIV 194 at 1.) On April 5, Ruggieri once again sold more Parexel shares than he bought and ended the day short 27,750 shares. (*Id.*) On the evening of April 5, Ruggieri and Bolan spoke again. (DIV 121; DIV 194 at 1.) The same evening, Bolan spoke with Moskowitz. (DIV 194 at 2.) The next day, Ruggieri sold more Parexel shares short and ended the day short 52,500 shares.[4] (DIV 194 at 1.) The same

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[3] Wells Fargo has agreed to place the amount it received from Ruggieri's trading in reserve pending the adjudication of this matter and has agreed to pay that amount if the Court orders Ruggieri or Bolan to disgorge ill-gotten gains. (DIV 115.)

[4] Although Ruggieri had previously traded Parexel shares, he had held only three overnight positions in Parexel stock in the prior six months. Each prior position was significantly smaller — ranging from 54 shares to 10,000 shares — than his overnight position of 52,500 shares. (DIV 150.)

day, although he had not traded Parexel shares in at least the preceding six months, Moskowitz sold 2,000 Parexel shares short. (DIV 131 at 1; DIV 151; DIV 194 at 2.)

On April 7, 2010, before the market opened, Wells Fargo published Bolan's research report, entitled "PRXL: Downgrading to Market Perform Optimism Running High and Valuation Running Even Higher." (DIV 46.) The report downgraded Wells Fargo's rating on Parexel from outperform/buy to market perform/hold. (*Id.*) When the market opened, Parexel's stock price sank 3.2%. (DIV 128.) Over the course of the day, Parexel's trading volume increased 163% relative to the stock's average daily trading volume on the fifteen days before and after the downgrade. (DIV 197.) When the market closed on April 7, Parexel's stock price had dropped 4.34% from the previous day's closing price. (DIV 128.) On April 7, Ruggieri covered his entire short position in Parexel and generated gains of $24,944, while Moskowitz covered his short position in Parexel for a profit of $1,007. (DIV 194 at 1–2; DIV 195.)

B. Bolan Tipped Ruggieri to His Upgrade of Covance Inc.

On Sunday, June 13, 2010, Bolan obtained approval from his supervisor to upgrade Covance Inc. ("Covance"), traded under the ticker CVD. (DIV 54.) The next morning, on June 14, Bolan spoke with Ruggieri by phone. (DIV 194 at 3.) Later that day, Ruggieri purchased 40,000 shares of Covance stock in his Wells Fargo account and held the position overnight. (*Id.*) Although Ruggieri had previously traded Covance stock, he had only once held an overnight position in Covance — consisting of merely 76 shares — in the previous six months. (DIV 150.)

On June 15, 2010, before the market opened, Wells Fargo published Bolan's research report, entitled "CVD: Opportunities Multiply as CVD Seizes Them – Upgrading Rating Revising Estimates – Increasing Valuation Range." (DIV 53.) Bolan had upgraded his rating from market perform/hold to outperform/buy. (*Id.*) When the market opened, Covance's stock price increased 2.19%. (DIV 128.) Over the course of the day, Covance's trading volume increased 58% relative to

Covance's average daily trading volume on the fifteen days before and after Bolan's upgrade. (DIV 197.) When the market closed on June 15, Covance's stock price had risen 0.55% from the previous day's closing price. (DIV 128.) On June 15 and 16, Ruggieri sold all the 40,000 Covance shares he had accumulated for a profit of $17,445 in his Wells Fargo account. (DIV 194 at 3; DIV 195.)

C. Bolan Tipped Ruggieri and Moskowitz To His Upgrade of Albany Molecular Research, Inc.

By at least July 1, 2010, Bolan had begun drafting a report to upgrade Albany Molecular Research, Inc. ("Albany"), traded under the ticker AMRI. (DIV 56.) On the evening of July 1, 2010, Bolan called Ruggieri, who emailed Bolan, "Call u right back." (DIV 57.) Bolan replied: "Cool – call my home." (*Id.*) The next day, July 2, Ruggieri made net purchases of 35,050 shares of Albany stock in his Wells Fargo trading account and held the position over the next four nights. (DIV 194 at 4.) Although Ruggieri had previously traded Albany stock, in the previous six months he had held only three, much smaller overnight positions in Albany stock: 1 share, 79 shares, and 48 shares of Albany, respectively. (DIV 150.)

On June 30, 2010, after the market had closed, Bolan spoke with Moskowitz. (DIV 194 at 5.) Over the next two days, July 1 and 2, Moskowitz began purchasing Albany shares. (*Id.*) By the market's close on July 2, Moskowitz had amassed 24,252 Albany shares. (*Id.*) In at least the six months before these trades, Moskowitz had not traded Albany shares. (DIV 151.)

Before the market opened on July 6, 2010, the next trading day, Wells Fargo published Bolan's research report, entitled "AMRI: Upgrade R[a]t[in]g & Raise Est[imate] on Three Recent Developments Upgrading to Outperform." (DIV 3.) Bolan had upgraded his rating from market perform/hold to outperform/buy. (*Id.*) When the market opened, Albany's stock price increased

5.36%. (DIV 128.) Over the day's course, Albany's trading volume increased 40% relative to Albany's average daily trading volume on the fifteen days before and after the upgrade.[5] (DIV 197.)

On July 6, Ruggieri sold most of his Albany position. (DIV 194 at 4.) He sold the rest within a week. (*Id.*) In total, his trades generated a profit of $9,334 in his Wells Fargo account. (DIV 195.) Similarly, on July 6, Moskowitz sold most of his long position in Albany. (DIV 194 at 5.) He sold the rest by July 9. (*Id.*) In total, Moskowitz's trades generated a profit of $8,400. (DIV 195.)

D. Bolan Tipped Ruggieri and Moskowitz to His Upgrade of Emdeon Inc.

On August 12, 2010, Bolan requested approval from his supervisor to upgrade Emdeon, Inc. ("Emdeon"), traded under the ticker EM. (DIV 64.) Shortly after the market opened on Friday, August 13, Bolan spoke with Ruggieri. (DIV 194 at 6.) The same morning, Bolan also spoke with Moskowitz. (*Id.* at 7.) That day, after he and Bolan spoke, Ruggieri purchased 10,000 shares of Emdeon stock in his Wells Fargo trading account. (*Id.* at 6.) The same day, Moskowitz purchased 5,000 shares of Emdeon stock. (*Id.* at 7.) Moskowitz had not traded Emdeon shares in at least the preceding six months. (DIV 151.) Although Ruggieri had previously traded Emdeon stock, he had held no overnight positions in Emdeon stock in at least the preceding six months. (DIV 150.) Yet Ruggieri held his 10,000-share Emdeon position over the next three nights. (DIV 194 at 6.)

On August 16, 2010, Wells Fargo published Bolan's research report, entitled "EM: Valuation, Sentiment At Depressed Levels – Upgrading to OP [Outperform]…." (DIV 63.) Bolan had upgraded his rating from market perform/hold to outperform/buy. (*Id.*) When the market opened that morning, Emdeon's stock price rose 1.10%. (DIV 128.) Over the day's course, Emdeon's trading volume increased 107% relative to Emdeon's average daily trading volume on the

[5] When the market closed on July 6, Albany's price had fallen 0.18% from the previous day's closing price. That day, the stock prices of Albany's entire health care subsector declined, but Albany's price declined less than the average of its peers.

fifteen days before and after the upgrade. (DIV 197.) When the market closed on August 16, Emdeon's price had risen 1.38% from the previous day's closing price. (DIV 128.)

On August 16, Ruggieri sold his entire position in Emdeon stock for a profit of $266. (DIV 194 at 6; DIV 195.) The same day, Moskowitz sold his Emdeon position for a profit of $835. (DIV 194 at 7; DIV 195.)

E. Bolan Tipped Ruggieri to His Upgrade of athenahealth, Inc.

Prior to January 2011, Bolan had rated athenahealth, Inc. ("Athena"), traded under the ticker ATHN, as market perform/hold. (DIV 133.) By January 18, 2011, despite his neutral published views, Bolan had told Ruggieri of his bullish (or positive) views of Athena. On January 18, Ruggieri sent an instant message about Bolan's views on Athena to another Wells Fargo employee: "ATHN m[ana]g[e]m[en]t sounds bulled up ... [B]olan getting bullish ... would not be short." (DIV 120.)

On Friday, February 4, 2011, Bolan obtained approval from his supervisor to upgrade Athena. (DIV 61.) Less than two hours later, Bolan called Ruggieri but was unable to reach him. (DIV 125; DIV 194 at 8.) Later that afternoon, Bolan spoke to Ruggieri. (*Id.*)

On Monday, February 7, 2011, the next trading day, Ruggieri purchased Athena shares for a net long position of 13,500 shares. (DIV 194 at 8.) Ruggieri held his 13,500-share net position overnight. (*Id.*) Although Ruggieri had previously traded Athena stock, he had held only one overnight position in Athena stock (a short position ranging from 3600 to 7500 shares) during the preceding six months. (DIV 150.)

On February 8, 2011, before the market opened, Wells Fargo published Bolan's research report, entitled "ATHN: Soaring Into The Clouds – Upgrading to Outperform Significantly Lifting Estimates and Valuation Range." (DIV 60.) Bolan had upgraded his rating from market perform/hold to outperform/buy. (*Id.*) When the market opened that day, Athena's stock price rose 5.66%. (DIV 128.) Over the day's course, Athena's trading volume increased 116% relative to

Athena's average daily trading volume on the fifteen days before and after the upgrade. (DIV 197.) When the market closed on February 8, Athena's price had risen 4.05% from the previous day's closing price. (DIV 128.) On February 8, Ruggieri sold his entire Athena position for a profit of $40,686. (DIV 194 at 8; DIV 195.)

F. Bolan Tipped Ruggieri to His Positive Initiation of Coverage on Bruker Corp.

On March 22, 2011, Bolan obtained approval from his supervisor to initiate his coverage of Bruker Corp. ("Bruker"), traded under the ticker BRKR, with an outperform/buy rating. (DIV 127.) The next day, shortly after the market opened, Bolan spoke with Ruggieri by phone. (DIV 194 at 9.) That day, March 23, Ruggieri purchased Bruker shares for a net long position of 5,000 shares. (*Id.*) From March 24 through March 29, Ruggieri continued to purchase Bruker stock and amassed a long position of 25,000 shares. (*Id.*) Although Ruggieri had previously traded Bruker stock, he had not held any overnight positions in Bruker stock in at least the preceding six months. (DIV 150.)

On March 29, 2011, after the market closed, Wells Fargo initiated coverage of Bruker by publishing Bolan's research report, entitled "BRKR: Initiating Coverage With An Outperform Rating One of the BEST Ways To Harvest Value In A Growing Industry." (DIV 90.) Bolan rated Bruker as outperform/buy. (*Id.*) The next day, when the market opened, Bruker's stock price rose 2.56%. (DIV 128.) Over the day, Bruker's trading volume increased 42% relative to Bruker's average daily trading volume on the fifteen days before and after the report. (DIV 197.) When the market closed on March 30, Bruker's stock had risen 3.36% from its closing price the previous day. (DIV 128.) On March 30, Ruggieri sold his entire position in Bruker for a profit of $24,452 in his Wells Fargo account. (DIV 194 at 9; DIV 195.)

X. RUGGIERI ALSO TRADED AHEAD OF A SEVENTH RATINGS CHANGE.[6]

On January 5, 2011, at approximately 10:20 a.m., Wells Fargo issued Bolan's downgrade of a security traded under the ticker MDAS, one of Bolan's eight ratings changes between March 30, 2010 and March 31, 2011. (DIV 133.) Bolan titled his report: "MDAS: Forward Earnings Risk May Be Growing—Downgrade to MP: Downgrading to Market Perform and Lowering Valuation Range." (*Id.*) In other words, Bolan downgraded MDAS to a market perform/hold rating from an outperform/buy rating. (*Id.*) Unlike the Six Ratings Changes, Wells Fargo issued this ratings change during the trading day, rather than between the market's closure on one day and its opening on the next. (*Id.*) Beginning at approximately 9:34 a.m. that morning — less than an hour before Wells Fargo issued Bolan's report — Ruggieri built a short position in MDAS. (DIV 177 at 18; DIV 147.) After Wells Fargo issued the report, Ruggieri closed out his short position before the trading day ended. (DIV 177 at 18; DIV 147.)

XI. RUGGIERI'S TRADES COULD NOT HAVE OCCURRED BY CHANCE.

To test whether Ruggieri's overnight positions ahead of Bolan's Six Ratings Changes were aberrant or routine, Dr. O'Neal analyzed whether Ruggieri otherwise coincidentally held overnight positions in a stock when Bolan issued a research report on the same stock. (DIV 177 at 16–18.) During the one year from March 30, 2010 through March 31, 2010, Bolan issued a total of 190 research reports, only eight of which were ratings changes, including the Six Ratings Changes. (*Id.*) Some of the 190 research reports covered multiple stocks, so in total the 190 research reports

[6] The OIP does not charge Bolan and Ruggieri with insider trading for this seventh instance. The Division offers it as further circumstantial evidence of Respondents' insider trading on the other Six Ratings Changes during the relevant period and as evidence relating to the appropriate sanctions and other relief the Court should impose.

represented 205 separate instances in which Bolan issued a report on a particular security at a particular time.[7] (*Id.*)

Dr. O'Neal then compared the timing of those research reports — most of which simply confirmed Bolan's prior rating on the stock — to see whether Ruggieri coincidentally held an overnight position in any of these covered stocks when Wells Fargo issued Bolan's report on that stock. (*Id.*) Of the 205 total separate instances, Dr. O'Neal found that on only fourteen of those occasions Ruggieri held a position in a stock covered by a report when the report was issued, including the Six Ratings Changes. (*Id.*) In other words, Ruggieri's overnight positions rarely coincided with Bolan's research reports: only 6.8% of the time — or one out of fifteen times — that Bolan published a research report on a stock, Ruggieri held an overnight position on the same stock when the report was issued.[8] (*Id.* at 17.)

Therefore, if Ruggieri had coincidentally held a position in a stock before Bolan's ratings change, one would expect to see that Ruggieri had held such a position one out of fifteen times, just as with any other research report. Yet Bolan held an overnight position when Bolan issued a ratings change six out of eight times during the same period — or 75% of the time. (*Id.*) Dr. O'Neal therefore calculated the probability of Ruggieri's having held a position ahead of Bolan's six ratings changes merely by coincidence to be .0002% — "for all practical purposes, zero." (*Id.*)

XII. BOLAN BENEFITTED FROM TIPPING RUGGIERI AND MOSKOWITZ.

Bolan tipped Ruggieri repeatedly to help his friend and to curry favor with Ruggieri in a mutual arrangement in which each helped boost the other's career. Indeed, Bolan and Ruggieri

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[7] Dr. O'Neal's initial expert report mistakenly uses the figure 204, when in fact the correct figure is 205. Dr. O'Neal will submit a formal correction at the appropriate time.

[8] Dr. O'Neal assumes that Bolan did not tip Ruggieri on the remaining eight occasions, as Respondents presumably agree. If Bolan in fact previewed his research for Ruggieri on any of those other eight occasions, the probability of Ruggieri's coincidentally holding overnight positions ahead of Bolan's ratings changes would decrease to even less than .0002%. (DIV 177 at 17 n.11.)

viewed themselves as "partners" trying to improve the standing of Wells Fargo's health care research and trading departments to benefit their own careers. (DIV 44.) The profits Ruggieri generated from his illegal, under-the-radar trades boosted the performance of the Wells Fargo account he oversaw (by decreasing its losses) and therefore his career.

Based in part on Bolan's illegal tips — but without disclosing the tips — Ruggieri gave his manager glowing reports of Bolan's performance. (DIV 27 at 5.) Ruggieri's managers in turn provided positive feedback to Bolan's manager when he considered Bolan for a promotion to a director position. (*Id.*) In late 2010 or early 2011, reflecting the trading desk's glowing reviews of Bolan, Wickwire wrote in Bolan's director nomination form: "Greg [Bolan] is among the best analysts in the department in terms of his dialogue with trading. We consistently hear from trading that Greg [Bolan] provides great information flow to the desk and they are able to monetize his efforts. They often hold [him] out as the standard." (*Id.*; DIV 132 at 69–70.) This feedback helped Bolan achieve the promotion and the accompanying raise of $50,000 in approximately March 2011. (DIV 118.) The Division anticipates that Wickwire will testify that the positive feedback from the Wells Fargo trading desk favorably factored into Bolan's promotion.

Meanwhile, Bolan tipped Moskowitz to help a trusted friend, who had worked as a trader but was then unemployed and suffering from a debilitating disease, with a gift of inside information as good as cash. (DIV 110 at 110–12; Bolan Summary Disp. Mem. 3; DIV 136.) Bolan had similarly helped Moskowitz on another occasion. When Moskowitz was looking for a job, Bolan — calling Moskowitz "my very good friend" — recommended him to Wells Fargo's trading desk. (DIV 119.)

XIII. WELLS FARGO INVESTIGATED BOLAN'S PROVISION OF FORTHCOMING RESEARCH TO RUGGIERI AND OTHERS, AND BOLAN LIED.

On March 31, 2011, Friedman, a senior Wells Fargo compliance officer, received an email from a compliance officer at SAC Capital Advisers LP ("SAC"), a prominent hedge fund, alerting him to a "compliance issue." (DIV 15 at 19.) The SAC compliance officer informed Friedman that a

Wells Fargo employee whose screen name was "uncjoewfc" — Ruggieri — appeared to have sent an instant message to a SAC trader about Bolan's unpublished research. (*Id.*) Bolan had then published a research note on the same topic later the same day. (*Id.*)

As the Division expects Friedman and Yi, another Wells Fargo senior compliance officer, to testify, Wells Fargo's compliance department began investigating Ruggieri and Bolan. (DIV 15.) In the process, the compliance department uncovered several instances in which Bolan had shared material, as-yet-unpublished research with Ruggieri and select external clients. (*Id.*) At times, Bolan had shared the same information with over 30 external clients. (*Id.*)

As the Division anticipates Friedman will testify, these and other compliance discoveries concerned Wells Fargo's compliance department. Bolan's communication of non-public research to clients violated Wells Fargo's prohibition against previewing as-yet-unpublished research and the firm's requirement that research be publicly disseminated at the time of its disclosure — not selectively distributed to certain clients first. For purposes of his inquiry, Friedman drafted a chronology of events and assembled problematic emails and instant messages. (DIV 15.)

Separately from this compliance inquiry, Evans again became alarmed on approximately April 1, 2011, when Bolan yet again shared his as-yet-unpublished research with external clients, as the Division anticipates Evans will testify. On approximately April 4, 2011, Evans escalated his concerns directly to Wickwire. (DIV 15 at 4.) Wickwire promptly informed Wells Fargo's compliance department. (*Id.*)

On April 6, 2011, Friedman and other compliance officers questioned Bolan by phone. (DIV 15 at 4.) Bolan falsely claimed that Mike Madsen ("Madsen"), a supervisory analyst in Wells Fargo's research department, had told Bolan that he could email non-public research to fewer than

twenty clients because that did not constitute the dissemination of research.[9] (DIV 15 at 4–5.) As the Division anticipates Madsen will testify, Madsen never provided Bolan with any such guidance, which would have contradicted Wells Fargo's policies. (DIV 15 at 5.)

XIV. WELLS FARGO DECIDED TO TERMINATE BOLAN AND RUGGIERI.

In April 2011, Wells Fargo decided to terminate Bolan, as the Division anticipates Wickwire will testify. Wickwire travelled to Nashville to terminate Bolan in person, but Bolan resigned before Wickwire could do so. On July 8, 2011, Wells Fargo filed a Form U5 disclosing that it had conducted an internal review of Bolan. (DIV 163.) The Form U5 further disclosed Wells Fargo's conclusion following its internal review: "Affirmation of Subject Individual's Selective Dissemination of Information and Failure To Preserve Confidential Information." (*Id.* at 3–4.)

In April 2011, as the Division expects Bartlett to testify, he terminated Ruggieri for cause. (DIV 164 at 1.) On July 8, 2011, Wells Fargo filed a Form U5 disclosing its termination of Ruggieri for "Loss of Confidence Due to Failure To Escalate Issues Regarding the Inappropriate Dissemination of Information." (*Id.*)

Ruggieri is (or recently was) a trader at International Strategy & Investment Group LLC, with his primary office in Raleigh, North Carolina. (DIV 134 at 3.) Bolan is (or recently was) a research analyst at Sterne Agee Group, Inc. in Nashville, Tennessee. (DIV 39 at 8.)

STANDARD OF PROOF

To prove Respondents' liability, the Division need do so only by a preponderance of the evidence. *See, e.g., Steadman v. SEC*, 450 U.S. 91, 102–03 (1981); *Thomas C. Gonnella*, Initial Decision, Rel. No. 706, 2014 WL 5866859, at *1 (Grimes, A.L.J.) (citing *Steadman*).

[9] During his investigative testimony, Bolan changed his story. That time, he falsely claimed that a compliance officer, Dan Hughes ("Hughes"), had given him that advice. (DIV 110 at 192–94.)

ARGUMENT

The hearing evidence will show that Bolan and Ruggieri violated Securities Act Section 17(a) when Bolan tipped Ruggieri and Moskowitz to Bolan's downgrade of Parexel and Ruggieri and Moskowitz then sold Parexel shares. Similarly, the evidence will show that Bolan and Ruggieri violated Exchange Act Section 10(b) and Rule 10b-5 when Bolan tipped Ruggieri and Moskowitz to his downgrade of Parexel and his upgrades of Albany and Emdeon; when Bolan also tipped Ruggieri to his upgrades of Covance, Athena, and Bruker; and when Ruggieri and Moskowitz then sold or purchased before these six ratings changes.[10]

I. BOLAN VIOLATED SECTIONS 17(a) AND 10(b) AND RULE 10b-5 BY TIPPING RUGGIERI AND MOSKOWITZ.

To prove that Bolan violated Sections 17(a) and 10(b) and Rule 10b-5 as a tipper, the Division must show that Bolan "(1) tip[ped] (2) material non-public information (3) in breach of a fiduciary duty of confidentiality owed to...the source of the information (misappropriation theory) (4) for personal benefit to [himself]." *SEC v. Obus*, 693 F.3d 276, 286 (2d Cir. 2012). The Division must also demonstrate Bolan's scienter.[11] *Id.* The hearing evidence will establish each element.[12]

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[10] Section 17(a) covers fraud only "in the offer or sale" of a security, while Section 10(b) and Rule 10b-5 cover fraud in "the purchase or sale" of a security. 15 U.S.C. §§ 77q(a) & 78j(b). Bolan's tips to Ruggieri and Moskowitz of his Parexel downgrade and Ruggieri's and Moskowitz's corresponding sales of Parexel stock to establish short positions are the only conduct here that the Division alleges violated Section 17(a).

[11] While the standard for violations of Section 17(a) and Section 10(b) and Rule 10b-5 is "essentially the same," they differ in one significant respect: Sections 17(a)(2) and 17(a)(3) require no showing of scienter but rather mere negligence. *See, e.g., SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir. 1999) (citing, *inter alia*, *Aaron v. SEC*, 446 U.S. 680, 701–02 (1980)).

[12] Sections 17(a) and 10(b) and Rule 10b-5 also have an interstate commerce element. *See* 15 U.S.C. § 77q(a) ("by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails"); 15 U.S.C. § 78j(b) ("by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange"). Respondents' conduct satisfied that element, based on Ruggieri's and Moskowitz's trades of the relevant stock on "national securities exchange[s]" and Bolan's phone calls with Ruggieri and Moskowitz. *See, e.g., SEC v. Stanard*, 2009 WL 196023, at *25 (S.D.N.Y. Jan. 27, 2009) ("A fraud has been committed 'by the use of any means or instrumentality of interstate commerce' if

A. Bolan Tipped Ruggieri and Moskowitz.

"[A]s courts and commentators have recognized, direct evidence is rarely available in insider trading cases, since usually the only witnesses to the exchange are the insider and the alleged tippee, neither of whom are likely to admit to liability." *SEC v. Roszak*, 495 F. Supp. 2d 875, 887 (N.D. Ill. 2007) (citing authorities). Therefore, "circumstantial evidence such as suspicious timing of trades, contacts between potential tippers and tippees, and incredible reasons for such trades provide an adequate basis for inferring that tipping activity has occurred." *SEC v. Singer*, 786 F. Supp. 1158, 1164–65 (S.D.N.Y. 1992) (citing cases); *see also Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330 (1960) ("Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence."). A pattern of tips and trades therefore supports a finding of liability for insider trading, even in criminal cases. *See SEC v. Warde*, 151 F.3d 42, 47–48 (2d Cir. 1998) (upholding jury verdict) ("[W]e have no doubt the evidence was sufficient to support a jury finding" that a tipper and tippee were liable for insider trading based on "circumstantial evidence," including a "pattern in which [the tipper] received nonpublic information, then communicated with [the tippee], and then both [the tippee] and [the tipper] purchased [the securities]."); *United States v. McDermott*, 245 F.3d 133, 139 (2d Cir. 2001) ("Although the government was unable to produce direct evidence of the content of any conversation during which [the defendant tipper] transferred material, non-public information to [the tippee], we find that rational minds could infer such a conclusion from the above evidence. Circumstantial evidence is a legitimate form of evidence in this Circuit."); *United States v. Riley*, 2015 WL 891675, at *14, 15 (S.D.N.Y. Mar. 3, 2015) (circumstantial evidence of defendant's tips sufficed to support jury verdict finding defendant guilty beyond a reasonable doubt of two criminal counts of insider trading).

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the defendant used some means of interstate communication (such as a telephone call), in some phase.").

Even though Bolan carefully avoided conveying his ratings change tips to Ruggieri and Moskowitz through traceable emails or instant messages, the pattern of tips and trading here will conclusively demonstrate Bolan's tips. Indeed, Bolan's tips are the only plausible explanation for Ruggieri and Moskowitz trading the same stocks in the same direction at the same time on three separate occasions — shortly after each of them spoke to Bolan by phone and shortly before Bolan published a ratings change on each stock. Nor is there any other plausible explanation for Ruggieri's holding a position in the right direction (long before each upgrade and short before each downgrade) in the right security during seven of Bolan's eight ratings changes in a one-year period.

Several other facts will bolster this conclusion at the hearing. First, as described above, Ruggieri held overnight positions less than 2% of the time and admittedly held positions for more than a few days only "very rare[ly]." Yet Ruggieri held overnight positions — two of which he held for one week — before six of Bolan's eight ratings changes. As Dr. O'Neal's analysis shows, there is a virtually zero percent probability (.0002%) that Ruggieri could have held overnight positions in the six stocks at issue here by mere coincidence when Bolan published a ratings change.

Second, Bolan's phone calls to Moskowitz just before and after his ratings changes can be plausibly explained only if Bolan had tipped Moskowitz. As Bolan admits, he and Moskowitz spoke "a couple of times a month." (DIV 110 at 113.) Yet Bolan called Moskowitz twice in two days around Bolan's downgrade of Parexel for two and fourteen minutes, respectively: once the day before, hours before Moskowitz put on a short position in Parexel, and once the day after, hours after Moskowitz exited his position. Similarly, Bolan called Moskowitz twice on the trading day before Bolan's upgrade of Albany. Shortly after these calls and the evening before Moskowitz began purchasing Albany shares, Moskowitz called Bolan back, and they spoke for seventeen minutes. Bolan also called Moskowitz three times the day after Bolan's upgrade, as Moskowitz was unwinding his Albany position. This pattern of phone calls and trading, particularly when Bolan and Moskowitz

ordinarily spoke about twice a month, further demonstrates that Bolan must have tipped Moskowitz.

Finally, Bolan repeatedly provided Ruggieri and important external clients with previews of his to-be-published research in violation of Wells Fargo's compliance policies, as described above. Bolan and Ruggieri knowingly played fast and loose with the policies to benefit their own careers, just as they committed insider trading. They were willing to do so, because — like virtually everyone who violates the law — they did not think they would be caught. Indeed, Ruggieri deliberately traded in amounts that were small enough to avoid triggering any scrutiny from the Compliance Department or supervisors. Together, the strong circumstantial evidence here will conclusively prove Bolan's tips to Ruggieri and Moskowitz.

B. Bolan's Forthcoming Ratings Changes Were Material.

Information is material when there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available" — in other words, when "a substantial likelihood exists that a reasonable investor would consider the information important in making an investment decision." *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (internal quotation marks omitted); *Zacharias v. SEC*, 569 F.3d 458, 468 (D.C. Cir. 2009). To be material, the information does not need to be the type that would cause an investor to change his investment decision by buying or selling the security. *John P. Flannery*, Commission Opinion, Rel. No. 3981, 2014 WL 7145625, at *20 (Dec. 15, 2014); *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 162 (2d Cir. 2000); *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991). Therefore, a company's stock price need not even move after disclosure of the relevant information in order to prove that the information was material. *See United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) ("[W]hether a public company's stock price moves up or down or stays the same . . . does not establish the materiality of

the statements made, though stock movement is a factor the jury may consider relevant."); *cf. Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2413 (2014) ("[Defendant contends that] because market efficiency is not a yes-or-no proposition, a public, material misrepresentation might not affect a stock's price even in a generally efficient market.... *Basic* never suggested otherwise.").

Here, Bolan's ratings changes were material for several reasons. Most importantly, his Six Ratings Changes recommended that Wells Fargo's institutional clients, including large mutual funds and hedge funds, buy or hold the stocks at issue, as described above. Specifically, Bolan recommended that investors buy five of the six stocks (after his previous recommendation that investors merely hold the stocks) and hold the sixth stock (after his previous recommendation that investors buy the stock). Those ratings changes were quintessentially material information — regardless of whether the stock prices moved afterwards — because a reasonable investor would have considered the ratings changes important in making an investment decision. For this very reason, Wells Fargo's policies treated ratings changes as material information. *See, e.g., DeMarco v. Robertson Stephens Inc.*, 318 F. Supp. 2d 110, 120 (S.D.N.Y. 2004) ("An underwriter...that has a research department engaged in the business of analyzing companies in order to disseminate to the public information and opinions about specific securities clearly intends that the market take into account its recommendations to buy or sell such securities."); *In re Credit Suisse-AOL Sec. Litig.*, 465 F. Supp. 2d 34, 52 (D. Mass. 2006) ("Analyst reports are written with the purpose and expectation that the market will take heed of their message.").

Furthermore, Bolan's ratings changes were particularly material because he was an influential, highly-ranked analyst. Indeed, the stock prices of the six stocks at issue rose after Bolan's upgrade or fell after his downgrade. (DIV 128.) As Dr. O'Neal's analysis will establish, Bolan's ratings changes had an empirically material impact on stock prices when taken together. Consistent with this empirical evidence, Bolan and Ruggieri have each admitted that ratings changes are

typically material. And their emails reflect their knowledge that Bolan's ratings changes in particular were material.

C. Bolan's Forthcoming Ratings Changes Were Non-Public.

Information becomes public only when disclosed "'to achieve a broad dissemination to the investing public generally and without favoring any special person or group,' or when, although known only by a few persons, their trading on it 'has caused the information to be fully impounded into the price of the particular'" security. *SEC v. Mayhew*, 121 F.3d 44, 50 (2d Cir. 1997) (*quoting Dirks v. SEC*, 463 U.S. 646, 653 n.12 (1983); *United States v. Libera*, 989 F.2d 596, 601 (2d Cir. 1993)); *see also United States v. Royer*, 549 F.3d 886, 897–98 (2d Cir. 2008) (finding appropriate a jury instruction stating that "the fact that information may be found publicly if one knows where to look does not make the information 'public' for securities trading purposes unless it is readily available, broadly disseminated, or the like").

There can be no dispute here that Bolan's forthcoming ratings changes were non-public. As discussed above, Wells Fargo's policies expressly treated forthcoming research reports as non-public, and Bolan and Ruggieri have admitted that forthcoming ratings changes are non-public.

D. Bolan Breached His Duty to Wells Fargo.

Under the misappropriation theory, a tipper breaches his duty to the source of confidential information when he "is in receipt of material non-public information" and trades or tips on the information without disclosing his trades or tips to the "source of the information." *Obus*, 693 F.3d at 284–85. A tipper's breach of a duty of loyalty and confidentiality to his employer satisfies this requirement. *See United States v. O'Hagan*, 521 U.S. 642, 653–54 (1997) ("A company's confidential information, we recognized in *Carpenter* [*v. United States*, 484 U.S. 19, 25-27 (1987)], qualifies as property to which the company has a right of exclusive use.... The undisclosed misappropriation of such information, in violation of a fiduciary duty ... constitutes fraud akin to embezzlement.") (law

firm partner liable for insider trading where he breached "a duty of trust and confidence" owed to his law firm to keep information concerning firm clients confidential); *SEC v. Yun*, 327 F.3d 1263, 1271 (11th Cir. 2003) ("Certain business relationships, such as attorney-client or employer-employee, clearly provide the requisite duty of loyalty and confidentiality."); *United States v. Chestman*, 947 F.2d 551, 568 (2d Cir. 1991) ("The common law has recognized that some associations are inherently fiduciary. Counted among these hornbook fiduciary relations are those existing between...principal and agent."); *United States v. Carpenter*, 791 F.2d 1024, 1025–27 (2d Cir. 1986) (newspaper employee liable for misappropriating employer's material non-public information, the timing and content of the *Wall Street Journal*'s forthcoming columns about certain stocks, in insider trading scheme).

The hearing evidence will show that Bolan had material non-public information that Wells Fargo required him to treat as confidential: knowledge of his own forthcoming ratings changes. The evidence will further show that Bolan secretly tipped that information to Ruggieri in violation of Wells Fargo's compliance policies, as described above.

E. Bolan Tipped Ruggieri and Moskowitz For Personal Benefit.

For the reasons set forth in the Division's opposition to Respondents' motions for summary disposition and in the Division's supplemental submission on personal benefit, the hearing evidence will show that Bolan tipped for a personal benefit. Since the Court's decision to defer ruling on these motions, another court in the Southern District of New York has clarified the Second Circuit's decision in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014). Denying a defendant's motion for acquittal or a new trial after his criminal conviction, Judge Caproni explained that evidence that tips "maintain[ed] or further[ed] a friendship" satisfied *Newman*'s personal benefit requirement:

> The Newman decision acknowledges — as it must, given *Dirks* — that a tipper has received a personal benefit when there is "'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the latter.'" 773 F.3d at 452 (quoting *Jiau*, 734 F.3d at 153) (alteration omitted). If a tip maintains or furthers a friendship, and is not simply incidental to the

> friendship, that is circumstantial evidence that the friendship is a *quid pro quo* relationship. While a court could rule that merely maintaining or furthering a friendship is not a sufficient personal benefit, it is not 'plain' that the Second Circuit has done so already. *Cf. SEC v. Obus*, 693 F.3d 276, 285 (2d Cir. 2012) ("Personal benefit to the tipper . . . includes . . . the benefit one would obtain from simply 'making a gift of confidential information to a trading relative or friend.'") (quoting *Dirks*, 463 U.S. at 663-64) (alteration omitted).

Riley, 2015 WL 891675, at *5. Judge Caproni further noted that the "personal benefit" requirement "exists to ensure that insiders are tipping in breach of their duties" and that there was therefore "no doubt" that the defendant had disclosed material non-public information "in violation of his duty to [his employer] and not for any legitimate reason." *Id.* at *5 n.6 (citing *Dirks*, 463 U.S. at 667). Finally, Judge Caproni held that "the totality of the circumstances" of the tipper's and tippee's relationship — even if any single benefit was alone insufficient — proved that their relationship was "a *quid pro quo* relationship in which each was trying to help the other." *Id.* at *8.

Judge Caproni's analysis further demonstrates that Bolan's personal benefit suffices under *Newman*. Among other things, the Division's evidence will show that Bolan and Ruggieri had a business relationship and a personal friendship. Bolan's tips served to "maintain[ ] and further[ ]" both aspects of their relationship. Bolan and Ruggieri each also helped the other with his career at Wells Fargo: Bolan provided Ruggieri with valuable tips, and in return Ruggieri sang Bolan's praises to advance Bolan's reputation and help him obtain a valuable promotion. The Division's evidence will also show that, in light of Bolan's close friendship with Moskowitz and Moskowitz's financial need, Bolan's tips similarly served to "maintain[ ] and further[ ]" their friendship. Finally, just as in *Riley*, neither Bolan nor Ruggieri can show any legitimate, non-self-dealing reason for the tips. Far from benefiting Wells Fargo, Bolan's tips violated Wells Fargo's policies. Indeed, Wells Fargo decided to terminate Bolan and Ruggieri for similar, yet less serious conduct.

F. Bolan Tipped With Scienter.

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

> First, the tipper must tip deliberately or recklessly, not through negligence. Second, the tipper must know that the information that is the subject of the tip is non-public and is material for securities trading purposes or act with reckless disregard of the nature of the information. Third, the tipper must know (or be reckless in not knowing) that to disseminate the information would violate a fiduciary duty. While the tipper need not have specific knowledge of the legal nature of a breach of fiduciary duty, he must understand that tipping the information would be violating a confidence.

Obus, 693 F.3d at 286. Finally, under *Newman*, to prove that a tipper knew or recklessly disregarded his breach of duty, the Division must also prove that the tipper knew or recklessly disregarded that he received a personal benefit from his tip. *See Newman*, 2014 WL 6911278, at *6 (in a criminal case, requiring that a tipper know of the personal benefit because, without knowing of the personal benefit, the tipper cannot know of the breach of duty); *Obus*, 693 F.3d at 286 (tipper "must know (or be reckless in not knowing)" of breach of fiduciary duty).[13]

Bolan had the requisite scienter, as the hearing evidence will show. First, Bolan tipped Ruggieri and Moskowitz deliberately or recklessly: he did not mistakenly discuss confidential information within their earshot, for example. *See Obus*, 693 F.3d at 287. In fact, Bolan knew Ruggieri and Moskowitz were traders, and he tipped them while talking to them on the phone. Second, there can be no reasonable dispute that Bolan knew his forthcoming ratings changes were material, non-public information, as his prior admissions establish. Third, Bolan knew that Wells Fargo employed him and knew that Wells Fargo prohibited him from discussing forthcoming ratings

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[13] In criminal securities fraud cases, courts have long required proof that a defendant acted with "a realization on [his] part that he was doing a wrongful act under the securities laws." *Newman*, 2014 WL 6911278, at *5 (citing cases). In civil enforcement actions, the Commission need only show that a defendant acted recklessly, meaning by "conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care...to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Novak v. Kasaks*, 216 F.3d 300, 308 (2d Cir. 2000) (quoting *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978)) (internal quotation marks omitted); *see also Dolphin and Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2008) (recklessness satisfies scienter requirement when it is an "extreme departure from the standards of ordinary care...implying the danger was so obvious that the actor was aware of it and consciously disregarded it").

changes with anyone outside its research department, as its compliance policies and training repeatedly instructed him. He therefore knew that tipping Ruggieri and Moskowitz breached his duty to Wells Fargo. Finally, Bolan knew he tipped Ruggieri and Moskowitz for his own benefit: he knew they were friends and, in Ruggieri's case, also close colleagues who were helping each other's career and that he had no legitimate reason to otherwise tip them.

II. RUGGIERI VIOLATED SECTIONS 17(a) AND 10(b) AND RULE 10b-5 BY TRADING ON BOLAN'S TIPS.

To prove that a tippee violated Sections 17(a) and 10(b) and Rule 10b-5, the Division must show "that (1) the tipper breached a duty by tipping confidential information; (2) the tippee knew or had reason to know that the tippee improperly obtained the information (*i.e.*, that the information was obtained through the tipper's breach); and (3) the tippee, while in knowing possession of the material non-public information, used the information by trading." *Obus*, 693 F.3d at 285, 287. The hearing evidence will prove the first element for the reasons set forth in Section I and the remaining elements for the reasons described below (except that the Division need not prove Ruggieri's scienter for violations of Section 17(a)(2) and (a)(3), as described above in note 11).

A. Ruggieri Knew or Had Reason To Know That Bolan Breached His Duty By Tipping Ruggieri.

Under *Newman*, in order to prove that a tippee knew or had reason to know of the tipper's breach of duty, the Division must also prove that the tippee knew or had reason to know that the tipper received a personal benefit from his tip. *See Newman*, 2014 WL 6911278, at *6 (in a criminal case, requiring that a tippee know of the tipper's personal benefit, because absent such knowledge the tippee cannot know of the tipper's breach of duty); *Dirks*, 463 U.S. at 660 (in an appeal of a Commission administrative proceeding, holding that "a tippee assumes a fiduciary duty...not to trade on material nonpublic information only when the insider has breached his fiduciary duty...by disclosing the information to the tippee and the tippee *knows or should know* that there has been a

breach") (emphasis added); *Obus*, 693 F.3d at 288 (reconciling *Dirks*' "knows or should know" standard with the Second Circuit's civil scienter requirement by requiring a tippee only to "kn[o]w or ha[ve] reason to know" that information was obtained and transmitted in breach of a duty).

The hearing evidence will show both that (1) Ruggieri knew or had reason to know that Bolan had breached his duty to Wells Fargo by tipping Ruggieri to his forthcoming ratings changes and (2) Ruggieri knew or should have known about Bolan's personal benefit. First, there can be no reasonable dispute that Ruggieri knew that Wells Fargo prohibited Bolan from tipping Ruggieri to forthcoming ratings changes. Like Bolan, Ruggieri worked at Wells Fargo and was familiar with Wells Fargo's compliance policies. Ruggieri received annual compliance training that repeatedly informed him that Wells Fargo prohibited its traders from trading ahead of forthcoming research reports. Indeed, Ruggieri has admitted that he knew Wells Fargo prohibited analysts from revealing forthcoming ratings changes to him and that he knew he was prohibited from trading ahead of research reports. Second, Ruggieri knew or should have known that Bolan received a personal benefit from his tips, because Ruggieri was the one providing the benefit: friendship, praise to help Bolan obtain a promotion, and other career and reputational benefits.

B. Ruggieri Traded In Knowing Possession of Material Non-public Information.

As discussed above, the hearing evidence will show that, after Bolan tipped Ruggieri, Ruggieri traded ahead of the Six Ratings Changes by either selling the covered stock before Bolan's downgrade or buying the covered stock before Bolan's upgrade. The hearing evidence will similarly show that Ruggieri knew he had material non-public information, because he admittedly understood that forthcoming ratings changes are non-public and material.

III. THE COURT SHOULD IMPOSE MEANINGFUL REMEDIES.

After hearing the evidence, the Court should impose meaningful sanctions and other remedies against Bolan and Ruggieri.

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

Securities Act Section 8(A) and Exchange Act Section 21C authorize the Court to impose a cease-and-desist order on any person who has violated any provision of the Securities Act, Exchange Act, or the rules thereunder. 15 U.S.C. §§ 77h-1 & 78u-3. The Commission considers the following factors, often termed the "*Steadman* factors," to determine whether a cease-and-desist order is appropriate: (1) the egregiousness of the violator's actions, (2) the isolated or recurrent nature of the violations, (3) the degree of scienter, (4) the sincerity of the violator's assurances against future conduct, (5) the violator's recognition of his wrongful conduct, and (6) the likelihood that the violator's occupation will present opportunities to commit future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (citing *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981); *Steven E. Muth*, Initial Decision, Rel. No. 262, 2004 WL 2270299, at *38 (Oct. 8, 2004) (citing *Steadman*). The Commission further considers the following factors in determining whether to impose a cease-and-desist order: "whether there is a risk of future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *Muth*, 2004 WL 2270299, at *38 (citing *KPMG Peat Marwick LLP*, 74 SEC Docket 384, 436 (Jan. 19, 2001)).

The Court should impose a cease-and-desist order against Respondents. First, the evidence will show that Respondents' actions were egregious and committed with a high degree of scienter, because they each knew that forthcoming ratings changes were material non-public information that analysts were prohibited from revealing, among other things. Second, Respondents' conduct occurred repeatedly: Bolan tipped Ruggieri and Moskowitz nine times in total, and Ruggieri traded on each of the Six Ratings Changes. Indeed, their conduct ceased (less than four years ago) only when Wells Fargo decided to terminate them. In addition, Bolan repeatedly violated Wells Fargo's

prohibitions on selective disclosure by providing Ruggieri and external clients with forthcoming research. Indeed, even after his junior analyst had confronted him with his compliance violations *three times*, Bolan continued to violate Wells Fargo's compliance policies and to tip Ruggieri. Third, Respondents have failed to recognize their unlawful conduct. Bolan even lied to Wells Fargo's compliance officer when faced with evidence of his selective disclosures. Fourth, Respondents seek to continue working in the securities industry, which will provide future opportunities for them to violate the securities laws. Finally, Respondents' conduct posed serious harm to investors because insider trading undermines "honest securities markets." *United States v. O'Hagan,* 521 U.S. 642, 658–59 (1997).

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

Exchange Act Sections 15(b)(6)(A) and 15(b)(4)(D) authorize the Commission to bar or suspend anyone who, while associated with a broker, willfully violated any Securities or Exchange Act provisions or rules. To protect the investing public, bars or suspensions can preclude a respondent from association with any "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization."[14] 15 U.S.C. §§ 78o(b)(6)(A) & 78o(b)(4)(D). The *Steadman* factors should be applied to determine a bar's scope and duration. *See Alfred Clay Ludlum, III*, Commission Opinion, Rel. No. 3628, 2013 WL 3479060, at *4–7 (July 11, 2013); *John W. Lawton*, Commission Opinion, Rel. No. 3513, 2012 WL 6208750, at *10–12 (Dec. 13, 2012).

The Court should permanently and collaterally bar Respondents, who were registered representatives (and therefore associated with) a broker-dealer while they engaged in insider trading. Respondents knowingly or recklessly engaged in a year-long insider trading scheme encompassing

[14] In the context of Exchange Act Section 15(b), "willfully" means that the respondent voluntarily committed the act that constitutes the violation — not that he knew he was violating the law. *Flannery*, 2014 WL 7145625, at *37.

six different stocks. For the same reasons that the *Steadman* factors warrant a cease-and-desist order, they warrant a permanent, collateral bar to protect the public interest. *See Robert Bruce Lohmann*, Commission Opinion, Rel. No. 2141, 2003 WL 21468604, at *5 (June 26, 2003) ("Lohmann's misconduct is serious.... Insider trading constitutes clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public.") (finding permanent broker, dealer, and investment adviser bar warranted even though respondent had no prior disciplinary history); *David W. Baldt*, Initial Decision, Rel. No. 418, 2011 WL 1506757, at *23 (Apr. 21, 2011) ("The Commission treats insider trading cases and breaches of fiduciary duty very seriously.") (permanently barring respondent from association with investment adviser); *cf. Martin B. Sloate*, Commission Opinion, Rel. No. 38373, 1997 WL 126707, at *3 (Mar. 7, 1997) ("A registered securities professional who engages in the serious misconduct of insider trading should be excluded for a longer period of time [than one year].") (finding bar with right to reapply after one year insufficient and imposing bar with right to reapply after five years).

C. The Court Should Order Respondents To Pay Disgorgement.

Securities Act Section 8A(e) and Exchange Act Section 21C(e) authorize the Commission to order disgorgement of ill-gotten gains based on willful violations of any Securities or Exchange Act provisions or rules. *See* 15 U.S.C. §§ 77h-1(e) & 78u-3(e). "Disgorgement is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989) (citing cases). Tippers may therefore be ordered to disgorge their tippees' profits. "It is well settled that a tipper can be required to disgorge his tippees' profits...whether or not the tippees themselves have been found liable." *SEC v. Clark*, 915 F.2d 439, 454 (9th Cir. 1990); *Baldt*, 2011 WL 1506757, at *24 (citing *Clark*, ordering respondent tipper to disgorge his tippees' losses avoided where tippees had not been charged with unlawful conduct). "The value of the rule in preventing misuse of insider

information would be virtually nullified if those in possession of such information, although prohibited from trading for their own accounts, were free to use the inside information on trades to benefit their families, friends, and business associates." *SEC v. Warde*, 151 F.3d 42, 49 (2d Cir. 1998) (citing *Clark*, 915 F.2d at 454). Tippers are therefore liable for their tippees' profits "whenever they are a reasonably foreseeable consequence of the tipper's actions." *Baldt*, 2011 WL 1506757, at *24 (citing *SEC v. Yun*, 148 F.Supp.2d 1287, 1292 (M.D. Fla. 2001)).

The Court should thus order Bolan to disgorge Moskowitz's profit of $10,242 from his trades on Bolan's tips, since the profits were a foreseeable consequence of Bolan's tips. The Court should similarly order Bolan and Ruggieri, jointly and severally, to disgorge the profits from their insider trading scheme. Wells Fargo's payment of $117,127 would satisfy such an order.

D. The Court Should Order Respondents To Pay the Maximum Civil Penalty.

Securities Act Section 8A and Exchange Act Section 21B authorize the Commission to order civil monetary penalties based on willful violations of any Securities or Exchange Act provisions or rules. *See* 15 U.S.C. §§ 77h-1 & 78u-2. To order payment of monetary penalties, the Commission must find that such penalties are in the public interest, based on the following factors: (1) whether the conduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* 15 U.S.C. § 78u-2(c). "Not all factors may be relevant in a given case, and the factors need not all carry equal weight." *Robert G. Weeks*, Initial Decision, Rel. No. 199, 2002 WL 169185, at *58 (Feb. 4, 2002).

A three-tier system identifies the maximum amount of civil penalties, depending on the severity of conduct. *See* 15 U.S.C. §§ 77h-1(g) & 78u-2(b). First-tier penalties are imposed for each statutory violation. *Id.* Second-tier penalties are imposed in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. *Id.* Third-tier penalties

are imposed in cases where such state of mind is present and where the conduct directly or indirectly (i) resulted in substantial losses, (ii) created a significant risk of substantial losses to other persons, or (iii) resulted in substantial pecuniary gain to the person who committed the act. *Id.* For natural persons, $150,000 is the maximum third-tier penalty for each violation occurring after March 3, 2009 and on or before March 5, 2013. *See* 17 C.F.R. 201.1004 (2009 inflation adjustment).

Because Respondents' insider trading involved egregious, intentional fraud that directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to others, the Court should impose the maximum third-tier penalty on Respondents for each of their insider trading violations. *See, e.g., SEC v. Pentagon Capital Mgmt. PLC,* 725 F.3d 279, 288 n.7 (2d Cir. 2013) ("[W]e find no error in the district court's methodology for calculating the maximum penalty by counting each late trade as a separate violation."); *SEC v. Coates*, 137 F. Supp. 2d 413, 428, 430 (S.D.N.Y. 2001) (counting each category of misrepresentations as a separate violation); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) ("multiplying the maximum third tier penalty for natural persons...by the number of investors who actually sent money to [defendant]").

CONCLUSION

For these reasons, the Division respectfully submits that the Court should find Respondents liable after the hearing and impose appropriate sanctions and relief.

DIVISION OF ENFORCEMENT

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