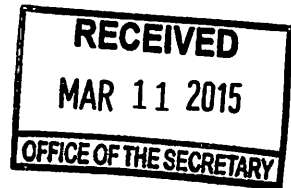


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16178

In the Matter of

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

Respondents.

RESPONDENT RUGGIERI'S PRE-HEARING BRIEF

SERPE RYAN LLP  
Paul W. Ryan  
Silvia L. Serpe  
1115 Broadway, 11<sup>th</sup> Floor  
New York, New York 10010  
(212) 257-5011

*Attorneys for Respondent  
Joseph C. Ruggieri*

## Preliminary Statement

This case is not a close call. Although many insider-trading cases are based on circumstantial evidence, in this case the Division's theory is nothing more than guesswork. Indeed, the Division's case cannot answer the fundamental question of why Mr. Ruggieri – whose compensation the Division finally admits was guaranteed – would make illegal insider trades for the benefit of Wells Fargo or why he would take no steps to conceal his supposedly illegal activity. The Division has asserted that Mr. Ruggieri's motive has nothing to do with this case. But motive is key to the credibility of the Division's accusations. Insider trading requires the existence of a tip, and the tip must be given in exchange for a personal benefit. As we have extensively briefed, the lack of personal benefit to Mr. Bolan is fatal to the Division's case, but the lack of any conceivable benefit to *both* Respondents underscores the fundamental flaws of the Division's case. There was no tip. There was no benefit. Indeed, Mr. Ruggieri did not even "trade in a security"; Wells Fargo did. The Division's case makes no sense.

First, the Division cannot establish that a tip was communicated. The case is based on circumstantial evidence developed from the timing of phone calls between work colleagues who were instructed, as part of their jobs, to speak every day. Moreover, one of the telephone lines at issue was the Wells Fargo trading desk, accessed by seventeen different people. For all but one of the calls in question, the Division will be unable to even establish that the Respondents actually spoke to each other. Similarly, the Division hopes to show by circumstantial evidence that Mr. Ruggieri "rarely" held positions overnight. Under the Division's theory, this supposed rarity makes the trades inherently suspicious and susceptible to no alternative explanation other than insider trading. But the Division's premise is false, derived from slicing and dicing the trading data to a point that it bears no resemblance to reality. Mr. Ruggieri held overnight trades frequently, even holding positions *opposite* to Mr. Bolan's research reports prior to publication.

Finally, the Division's false certainty regarding the trading data led it to conduct a one-sided investigation, and false conclusions were drawn as a result. Rather than examine or even question Mr. Ruggieri about the legitimate explanations for each of the trades at issue, the Division skeptically assumed that there must have been a tip. But while the Division's investigatory focus clearly led it astray, the email and documentary record does not lie. The hearing will demonstrate that Mr. Ruggieri had clear, convincing and legitimate reasons for every trade at issue, and that his daily trading theses were not based in any part on any inside information. Thus, the inferences that the Division wants this Court to draw will fly in the face of the evidence before it.

I. The Division's Case Depends on Implausible Inferences

In the absence of any direct evidence of insider trading, the Division's case depends on the timing of telephone calls and statistical shenanigans about Mr. Ruggieri's purported trading patterns that it hopes will lead the Court to infer that the trades at issue were improper. But the inferences that the Division would have this court draw are unfounded.

A. The Division Cannot Establish That A Tip Was Communicated

1. The Telephone Records Do Not Support the Communication of a Tip

The Division's case rests on inferences the Division draws from telephone records that (1) Mr. Bolan and Mr. Ruggieri spoke prior to the announcements about certain equity research reports, and (2) that, in those calls, Mr. Bolan tipped Mr. Ruggieri as to the fact that the reports were coming out. Wells Fargo did not tape its calls. There are no witnesses to the purported communications of such tips. Thus, the Division will not be able to offer any direct evidence that the Respondents spoke about the pending research reports. Rather, the Division's case depends on the Court inferring this fact merely from the timing of certain calls and their purported proximity to the publication of certain reports. There are many obstacles to drawing this inference. First, the Division will not be able to establish with any certainty that the Respondents even spoke to each other on

most of the questioned calls. This is because for the trades at issue, the OIP alleges – and the telephone records produced by Wells Fargo show – that with respect to 5 of the 6 trades in question (there is no evidence of *any* telephone conversation between the Respondents prior to the Albany Molecular Research (“AMRI”) trade, *see* Section 2 below) all of the questioned calls (except for one) were made from one of Mr. Bolan’s Tennessee-area-code phones to a telephone line associated with the Wells Fargo trading floor. The evidence will show that, as is common with trading floors, Wells Fargo used a Turret system that allowed multiple traders to pick up a line (either individually or simultaneously), and where both incoming and outgoing calls are routed to a general number. Thus, none of these traders had their own dedicated line, and the evidence will show that when a call came in to one trader’s “extension,” it lit up on everyone’s telephone board so that any trader could pick up the call. Thus, the Division will *never* be able to prove from the Wells Fargo telephone records that Mr. Bolan spoke with Mr. Ruggieri at a specific date and time. Moreover, this will be compounded by the fact that Mr. Bolan spoke with other traders as part of his normal job duties. The most that the Division could possibly establish is that Mr. Bolan spoke with someone on the trading floor, not that he spoke directly with Mr. Ruggieri.

Second, even if the Division were able to prove with any certainty that the Respondents spoke at a particular date and time, it will not be reasonable for the Court to infer that a tip was communicated. The evidence will show that the Respondents communicated frequently as part of their routine job duties. Although it may not be possible to prove with any certainty what was discussed in each of the questioned calls, Respondents will testify to their recollection, which will often (but not always) be supported by documentary evidence. For example, on the morning of March 30, 2010, Raymond James, a Wells Fargo competitor, published an upgrade of Parexel (“PRXL”). Mr. Ruggieri emailed the upgrade to Mr. Bolan at 7:07 a.m. The OIP alleges that Mr. Bolan “spoke with Mr. Ruggieri before the market opened on March 30, 2010.” OIP ¶14. In fact,

the phone records show that Mr. Bolan called the Wells Fargo trading desk at 7:10 a.m. – three minutes after he received the Raymond James upgrade. Significantly, this particular purported tip came seven hours *before* Mr. Bolan even sought permission to upgrade PRXL. It certainly makes sense that Mr. Bolan would have called Mr. Ruggieri at this time. It was his job to do so. Mr. Bolan was under instructions from his supervisor that when “news breaks, be certain to call your trader right away” including when “a competitor changes a rating.” Bolan Ex. 2. If Mr. Bolan did speak to Mr. Ruggieri – and not someone else – when he called the trading desk, the inference the Court should draw as to what they spoke about could not be any clearer.

Although it is *not* Respondents’ burden to prove what was discussed in any particular calls, Respondents will demonstrate that the conclusion that tips were communicated defies common sense.

2. The Division Alleged One Tip In The Absence Of *Any* Communication

The Division’s inability to prove the communication of a tip is magnified in the case of one trade at issue: AMRI. With respect to that stock, the Division will not be able to prove that there was *any* communication between Respondents. This hole is glaring, even in the OIP. Thus, with respect to five of the six trades at issue, to establish the inference of a tip, the Division alleged that the Respondents, who live in different states, spoke on the telephone prior to the upgrade or downgrade announcement. OIP ¶¶ 14, 17, 23, 26, and 29. In stark contrast, for Mr. Bolan’s July 6, 2010 AMRI upgrade, this allegation is missing. The reason for this absence is simple: the telephone records show that, from June 24 until after the July 6 upgrade, the Respondents did not speak to each other at all – there were no calls from work, their cellphones, or their home phones. If a tip were communicated, it had to have been via mental telepathy.

The Division tries to obscure the lack of a telephone call, and it instead alleges that, on July 1, 2010, Mr. Ruggieri “emailed Bolan, ‘call you right back’. Bolan responded by email, ‘Cool – call

my home....” OIP ¶ 20; Div. 57. In this way, the Division would like the Court to draw the inference that a telephone call took place, but the records clearly show that none did. The Division and its purported expert have essentially based the case against Respondents on the statistical impossibility of this being anything other than insider trading. But what is impossible is a tip-less insider trade. And that is precisely what the Division has alleged.

#### **B. The Division’s Analysis of Mr. Ruggieri’s Trading is Flawed**

The Division’s case also relies on the false assumption that Mr. Ruggieri rarely held overnight positions at Wells Fargo. In fact, he held them all the time. But by selectively choosing the data that supports its thesis, and ignoring the data that doesn’t, the Division drew the conclusion that Mr. Ruggieri held overnight positions with respect to the stocks at issue *because* he had received a tip. Thus, for each trade date in question, the OIP alleges *only certain* facts regarding the overnight positions that Mr. Ruggieri routinely held:

- PRXL: “Although Ruggieri previously traded PRXL stock, he held only three overnight positions in PRXL stock consisting of 54, 5,000 and 10,000 shares during the six months before his trading ...” OIP ¶ 14.
- Covance (“CVD”): “Although Ruggieri previously traded CVD stock, he held only three overnight positions in PRXL stock consisting of 76 shares in the six months before his trading ...” OIP ¶ 17.
- AMRI: “Although Ruggieri previously traded AMRI stock, he held only three overnight positions in PRXL stock consisting of 1, 79 and 48 shares, respectively, in the six months before his trading ...” OIP ¶ 20.
- Emdeon (“EM”): “Although Ruggieri previously traded EM stock, he held no overnight positions in EM in the six months before his trading ...” OIP ¶ 23.
- Athenahealth (“ATHN”): “Although Ruggieri previously traded ATHN stock, he held only one overnight position in ATHN stock *lasting two weeks* during the six months before his trading ...” OIP ¶ 26 (Emphasis Added).
- Bruker (“BRKR”): “Although Ruggieri previously traded BRKR stock, he held no overnight positions in BRKR stock during the six months before his trading ...” OIP ¶ 29.

The Division arbitrarily chose to look only at Mr. Ruggieri's past trading, and it limited its look-back to six months. This resulted in an incomplete and inaccurate picture of Mr. Ruggieri's overnight trading history. Thus, for example, Mr. Ruggieri held an overnight position in CVD on twelve separate occasions during the *subsequent* 8 months. Similarly, Mr. Ruggieri held an overnight position in PRXL on thirteen separate occasions during the *subsequent* 10 months. Mr. Ruggieri also held an identical overnight position in EM eight months before the one the Division believes is indicative of insider trading.

The Division's formulation with respect to PRXL is additionally problematic, because it obscures the fact that Mr. Ruggieri took virtually identical overnight positions only *one week* before the supposed insider trades. Finally, for the ATHN trades, the Division's "overnight trades lasting two weeks" formulation stands out: In fact, Mr. Ruggieri held an overnight position nine times within a two-week period. But because this trading pattern contradicts the Division's theory, it instead mischaracterized it as "one overnight" "lasting two weeks". The evidence at trial will demonstrate that not only was it not "one overnight", but that the volume of the shares held overnight changed on certain days – meaning, Mr. Ruggieri made daily decisions about what risk and how much risk to bear overnight. Of course, none of the positions detailed above coincide with the publication of an equity research report authored by Mr. Bolan. Because they don't support the Division's theory, the Division excluded them. Thus the lynchpin of the Division's case is the product of distortion, and the Court should not be misled.

Furthermore, the evidence at the hearing will show that Mr. Ruggieri routinely held overnight positions. Over the course of approximately his year-and-a-half tenure at Wells Fargo, consisting of approximately 415 total trading days (excluding vacations), Mr. Ruggieri held a position overnight in a security approximately 320 times. The Division's underlying premise of its entire case is that the overnight positions held in the six stocks at issue were so anomalous as to make them

inherently suspicious. But when the Court sees all of the facts regarding the overnight positions taken by Mr. Ruggieri, it will be clear that the Division reached this premise by confusing correlation with causation. This will be particularly obvious, when the Court sees that on at least five occasions, Mr. Ruggieri took overnight positions that were directly opposite to a pending Bolan-authored equity research report published the following day. The Division has built its case on purely coincidental overnight trades.

**C. Mr. Ruggieri's Trades Were For A Legitimate Business Purpose**

The emails and other documents produced during the investigation demonstrate that Mr. Ruggieri, far from engaging in rogue activity, made trades that were consistent with investment theses having nothing whatsoever to do with Wells Fargo's pending publication of an equity research report. An illustrative example is the PRXL trades in late March and early April 2010. According to the Division's theory, Mr. Bolan first told Mr. Ruggieri about his PRXL downgrade on March 30, 2010. OIP ¶ 14. But by that time, Mr. Ruggieri had been on the record with clients for more than five days that he had a negative view of PRXL. Not only had he been on the record with his clients, he had already held overnight short positions twice in the two weeks before the downgrade. The Division neatly obscured this fact in the OIP with the technically true but misleading allegation that "he held only three overnight positions in PRXL stock consisting of 54, 5,000 and 10,000 shares during the six months before". What the Division's formulation concealed is that Mr. Ruggieri was short 5,000 shares on March 23, and 10,000 shares on March 24 – just two weeks before Mr. Bolan's upgrade, and one week before the first alleged insider trade in PRXL. This should tell the Court all it needs to know about the Division's case.

Furthermore, the thesis that Bolan expressed in his April 7 upgrade was one he had publicly expressed more than two weeks earlier, on March 22, when Wells Fargo published an equity research report by Mr. Bolan to the same effect. JR-14. In addition to that equity research report, the



evidence will show that Mr. Ruggieri and Wells Fargo hosted a dinner on March 22 attended by approximately 15 of Mr. Ruggieri's hedge fund clients. As Mr. Ruggieri circulated widely the next day, the group discussed many themes involving PRXL's sector, leaving Mr. Ruggieri with the clear impression that his clients were bearish about PRXL's short-term prospects. JR-55. Thus, one week before the alleged tip, Mr. Ruggieri's views of PRXL's short-term prospects were fully formed. And he acted on those views: on March 23, following the publication of Mr. Bolan's March 22 equity research report, Mr. Ruggieri maintained a 5,000-share short position overnight, and, on March 24, he added an additional 5,000 shares to his overnight position. These trades were virtually identical to the purportedly illegal trades Mr. Ruggieri made on March 30 and 31. Mr. Ruggieri also shared his views about PRXL with his clients, telling one on March 25, "I like PRXL short here." JR-21. In short, Mr. Ruggieri made the PRXL trades because he had a clear, demonstrated view of the stock and not because Mr. Bolan tipped him. The PRXL trades are not unique in this regard, and if this matter proceeds to Respondents' rebuttal case, we will offer clear and legitimate explanations for every one of the supposedly improper trades. These explanations will be far more plausible than the Division's untenable theory.

### CONCLUSION

For the foregoing reasons, Mr. Ruggieri respectfully requests that the Court enter judgment rejecting all claims and dismissing the Order Instituting Proceedings.

Dated: New York, New York  
March 9, 2014

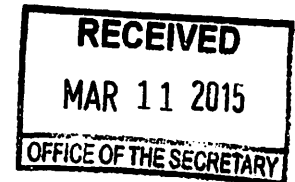
SERPE RYAN LLP

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Silvia L. Serpe  
Paul W. Ryan  
1115 Broadway – 11<sup>th</sup> Floor  
New York, New York 10010  
(212) 257-5010

*Attorneys for Respondent*  
*Joseph C. Ruggieri*



March 9, 2015

**BY FEDERAL EXPRESS**

Brent J. Fields, Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street N.E., Mail Stop 3628  
Washington, DC 20549

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

Dear Mr. Fields:

Please find the attached Pre-Hearing Brief and Pre-Hearing Motions on behalf of Respondent Joseph C. Ruggieri. In accordance with Rule of Practice 152(d), I submit for filing an original and three copies.

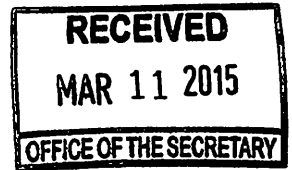
Respectfully,

A handwritten signature in black ink, appearing to read "Paul W. Ryan".

Paul W. Ryan

cc: The Honorable Jason S. Patil (by email to ALJ@sec.gov and Federal Express)  
Sandeep Satwalekar, Division of Enforcement (by email)  
Sam Lieberman, Counsel for Gregory T. Bolan (by email)

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  
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Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I served (i) a copy of Respondent Joseph C. Ruggieri's Pre-Hearing Brief and (ii) a copy of his Pre-Hearing Motions on March 9, 2015 upon the following parties by electronic mail in accordance with the parties' agreement:

Sandeep Satwalekar (satwalekars@sec.gov)

Alexander M. Vasilescu (vasilescua@sec.gov)

Charles Riely (rielyc@sec.gov)

Preethi Krishnamurthy (krishnamurthyp@sec.gov)

Sam Lieberman (sliberman@sglawyers.com) (counsel for Respondent Gregory T. Bolan)

Jennifer Rossan (jrossan@sglawyers.com) (counsel for Respondent Gregory T. Bolan)

Dated: New York, New York  
March 9, 2015

SERPE RYAN LLP

A handwritten signature in cursive script, appearing to read "Paul W. Ryan", written over a horizontal line.

Paul W. Ryan  
Silvia L. Serpe  
Attorneys for Joseph Ruggieri  
1115 Broadway, 11th Floor  
New York, New York 10010  
(212) 257-5011  
pryan@serperyan.com