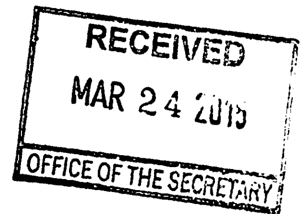
UNITED STATES OF AMERICA
Before the

SECURITIES AND EXCHANGE COMMISSION




ADMINISTRATIVE PROCEEDING

File No. 3-16178

In the Matter of

Gregory T. Bolan, Jr. and

Joseph C. Ruggieri,

Respondents.

**JOINT SUBMISSION OF (I) JOINT, AND (II) DISPUTED, FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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## Undisputed Facts

## I. Background

### A. Gregory Bolan

1. Gregory T. Bolan, Jr. ("Bolan") was a Senior Equity Research Analyst at Wells Fargo Securities ("Wells Fargo") from June 2008 to April 25, 2011.

2. Prior to his work in the securities industry, Bolan served in the United States Army from 1996 to 1998, and received an honorable discharge on April 14, 1998.

3. Over the course of his entire tenure at Wells Fargo, Bolan covered approximately seventeen stocks in the Healthcare Industry. Starting in September 2008, Bolan covered the "Pharmaceutical Services" sector – also referred to as "CRO." This included the stocks Albany Medical Research Inc. ("AMRI"), Covance ("CVD"), Parexel ("PRXL"), CRL, ICLR, KNDL, PDGI, and PPDI.

4. Starting in September 2009, Bolan began covering the Healthcare Information Technology ("Healthcare IT") sector, which included Emdeon ("EM"), CERN, MDAS, MDRX, QSII, and athenahealth ("ATHN"), which Bolan started covering on July 15, 2010.

5. Bolan initiated coverage on the Life Science Tools sector, including Bruker ("BRKR") and WAT, on March 29, 2011.

6. In August 2010, Bolan hired Evans as his associate analyst. Evans reported directly to Bolan.

7. Evans and Bolan were Wells Fargo's only broker-dealer employees (and the only research analysts) working in Wells Fargo's Nashville office.

8. After leaving Wells Fargo, Bolan worked for an additional three years in the securities industry, primarily at Sterne Agee & Co., as a Senior Equity Research Analyst.

9. In June 2002, Bolan began working in the securities industry, including with a stint as a trader.

### B. Joseph C. Ruggieri

10. Prior to joining Wells Fargo, from June 2001 to August 2009, Ruggieri was first an analyst and then a trader at Bank of America Securities LLC.

11. Ruggieri was a senior trader of health care stocks in Wells Fargo's trading department in New York, from August 2009 to April 2011. Ruggieri was a registered representative at Wells Fargo and executed customer transactions and placed trades on behalf of Wells Fargo by putting Wells Fargo's money at risk ("in a principal capacity").

12. As a trader, Ruggieri worked in Trading, a different department than Bolan, who worked in Wells Fargo's Equity Research department.

13. Ruggieri was not Bolan's supervisor.

14. Wells Fargo terminated Ruggieri in April 2011.

15. After Ruggieri's termination, Wells Fargo filed a U5 with the following statement: "Loss of confidence due to failure to escalate issues regarding the inappropriate dissemination of information."

16. Ruggieri was a trader of health care stocks at International Strategy & Investment Group LLC from 2011 through 2014.

17. Ruggieri and Bolan have not been the subject of any securities regulatory proceeding except for this case.

18. There is no allegation of insider trading in this action prior to March 30, 2010.

19. 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.

20. Among his job duties, Ruggieri executed customer transactions and placed trades in a principal or riskless principal capacity.

21. For each customer trade Ruggieri placed, Wells Fargo earned a fixed commission.

22. For 2010, Ruggieri's compensation was guaranteed pursuant to a verbal agreement.

23. For his trades in a principal capacity, Ruggieri could trade any of the health care stocks on his list.

## C. Wells Fargo

24. Wells Fargo Securities, LLC ("Wells Fargo") is a registered broker-dealer headquartered in Charlotte, North Carolina. Wells Fargo provides a broad range of brokerage services to retail and institutional customers, including institutional equities trading and equity research.

25. Ruggieri's tenure at Wells Fargo spanned approximately 415 trading days.

26. During the time period that Ruggieri and Bolan overlapped at Wells Fargo, Wells Fargo published approximately 285 equity research reports by Bolan.

27. The trades at issue involving Ruggieri generated profits for Wells Fargo. Wells Fargo has agreed to place $117,000 in reserve pending the adjudication of this matter and has agreed to pay that amount if there is an order requiring the payment of disgorgement by Ruggieri or Bolan.

28. 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.

29. Wells Fargo held annual, mandatory compliance meetings for its research department.

## II. Document and Witness Stipulations

30. The phone number associated with the Wells Fargo Trading Desk at which Ruggieri traded was 212-214-6201 ("the Trading Desk Line").

31. 212-214-6210 was a Wells Fargo telephone line associated with Ruggieri.

32. Wells Fargo did not locate any telephone records for 212-214-6210.

33. According to Verizon, there were no subscribers, documents, records, or other materials associated with the number 212-214-6210, as of approximately December 2014.

34. 615-525-2418 was a Wells Fargo telephone line associated with Bolan.

35. Wells Fargo telephone records produced in this action for the Trading Desk Line and 615-525-2418 only list outgoing calls.

36. Wells Fargo did not produce any incoming phone calls in this matter, including for the Trading Desk Line and 615-525-2418.

37. Wells Fargo did not tape calls on the trading desk during Ruggieri's tenure with the company.

38. Bolan was a subscriber for the cellular telephone number

39. Bolan was a subscriber for the cellular telephone number

40. Bolan was a subscriber for the landline telephone number

41. Ruggieri was a subscriber for the cellular telephone number .

42. DIV 39 is a background questionnaire that the Division supplied to Bolan and that Bolan filled out in his own handwriting.

43. DIV 77 is a background questionnaire that the Division supplied to Ruggieri and that Ruggieri filled out in his own handwriting.

44. The time information contained in the landline telephone records contained in DIV 144 is displayed in Central Time.

45. The time information contained in the cellular telephone records contained in DIV 145 is based on the location of the telephone subscriber at the time the call was placed or received by that subscriber.

46. For the Wells Fargo telephone records contained in DIV 146-A, the time information for calls from the telephone number 615-525-2418 is displayed in Central Time.

## III. Ruggieri's Responsibilities

47. The primary source of revenue generated by Ruggieri for Wells Fargo was from commissions generated from trading on behalf of Wells Fargo's clients.

## IV. Trading History

48. PRXL is a healthcare company in the Contract Research Sector ("CRO").

49. Wells Fargo's trade reports show that on March 23, 2010, Ruggieri purchased 20,366 shares of PRXL in a principal capacity.[1]

50. Wells Fargo's trade reports show that on March 23, 2010, Ruggieri sold 25,366 shares of PRXL in a principal capacity.

51. Wells Fargo's trade reports show that at the market close on March 23, 2010, Ruggieri's Wells Fargo trading book held a 5,000-share short position in PRXL.

52. Wells Fargo's trade reports show that on March 24, 2010, Ruggieri purchased 8,300 shares of PRXL in a principal capacity.

53. Wells Fargo's trade reports show that on March 24, 2010, Ruggieri sold 13,300 shares of PRXL in a principal capacity.

54. Wells Fargo's trade reports show that at the market close on March 24, 2010, Ruggieri's Wells Fargo trading book held a 10,000-share short position in PRXL.

55. Wells Fargo's trade reports show that at the market close on March 29, 2010, Ruggieri's Wells Fargo trading book held a 54-share short position in PRXL.

56. On March 30, 2010 at 7:10 a.m., a call was made from [redacted] to [redacted] The call lasted 2 minutes.

57. On March 30, 2010 at 11:20 a.m., a call was made from [redacted] to [redacted] The call lasted approximately 2 minutes.

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[1] Respondents stipulate to the contents of trade reports produced by Wells Fargo. But Respondents reserve the right to challenge the accuracy of such reports.

58. Wells Fargo's trade reports show that on March 30, 2010, Ruggieri sold approximately 322,495 shares of PRXL on behalf of Wells Fargo's clients.

59. Wells Fargo's trade reports show that on March 30, 2010 Ruggieri purchased approximately 91,898 shares of PRXL in a principal or riskless principal capacity.

60. Wells Fargo's trade reports show that on March 30, 2010, Ruggieri sold approximately 96,844 shares of PRXL in a principal or riskless principal capacity.

61. Wells Fargo's trade reports show that on the market close on March 30, 2010, Ruggieri's Wells Fargo trading book held a 5,000-share short position in PRXL.

62. On March 30, 2010 at 4:15 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 2 minutes.

63. On March 31, 2010 at 11:28 a.m., a call was made from [redacted] to [redacted]. The call lasted approximately 4 minutes.

64. Wells Fargo's trade reports show that on March 31, 2010, Ruggieri purchased approximately 190,494 shares of PRXL on behalf of Wells Fargo's clients.

65. Wells Fargo's trade reports show that on March 31, 2010, Ruggieri purchased approximately 108,956 shares of PRXL in a principal or riskless principal capacity.

66. Wells Fargo's trade reports show that on March 31, 2010, Ruggieri sold approximately 114,506 shares of PRXL in a principal or riskless principal capacity.

67. Wells Fargo's trade reports show that at the market close on March 31, 2010, Ruggieri's Wells Fargo trading book held a 10,550-share short position in PRXL.

68. Wells Fargo's trade reports show that Ruggieri did not engage in trading of PRXL in a principal or riskless principal capacity from April 1 through 4, 2010. April 3, 2010 and April 4, 2010 were a Saturday and Sunday, respectively, and the markets were closed.

69. Wells Fargo's trade reports show that on April 5, 2010, Ruggieri sold approximately 17,200 shares of PRXL in a principal capacity. He made no purchases in a principal capacity.

70. Wells Fargo's trade reports show that on April 5, 2010, Ruggieri purchased approximately 9,510 shares of PRXL on behalf of Wells Fargo's clients.

71. Wells Fargo's trade reports show that on April 5, 2010, Ruggieri sold approximately 19,500 shares of PRXL on behalf of Wells Fargo's clients.

72. Wells Fargo's trade reports show that at the market close on April 5, 2010, Ruggieri's Wells Fargo trading book held a 27,750-share short position in PRXL.

73. On April 5, 2010 at 7:39 p.m., a call was made from [redacted] to [redacted]. The call lasted approximately 18 minutes.

74. On April 6, 2010 at 2:21 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 3 minutes.

75. Wells Fargo's trade reports show that on April 6, 2010, Ruggieri purchased approximately 64,600 shares of PRXL on behalf of Wells Fargo's clients.

76. Wells Fargo's trade reports show that on April 6, 2010, Ruggieri sold approximately 24,750 shares of PRXL in a principal capacity. On the same day, he made no purchases of PRXL in a principal capacity.

77. Wells Fargo's trade reports show that at the market close on April 6, 2010, Ruggieri's Wells Fargo trading book held a 52,500-share short position in PRXL.

78. On April 6, 2010 at 6:58 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 6 minutes.

79. On April 6, 2010 at 7:04 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 1 minute.

80. On April 6, 2010 at 7:05 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 16 minutes.

81. On April 7, 2010, Wells Fargo published Bolan's equity research report titled "PRXL: Downgrading to Market Perform Optimism Running High and Valuation Running Even Higher."

82. Wells Fargo's trade reports show that on April 7, 2010, Ruggieri purchased approximately 115,716 shares of PRXL in a principal or riskless principal capacity.

83. Wells Fargo's trade reports show that on April 7, 2010, Ruggieri sold approximately 63,216 shares of PRXL in a principal or riskless principal capacity.

84. Wells Fargo's trade reports show that on April 7, 2010, Ruggieri's Wells Fargo trading book made net purchases of 52,500 shares of PRXL, ending the day flat in PRXL.

85. On April 7, 2010, PRXL's stock price opened at $23.89, traded at a high of $24.25, and a low of $23.11, and closed at $23.61.

86. Wells Fargo's trade reports show that the gains by Ruggieri's trades in PRXL resulted in a profit for Wells Fargo.

87. On June 14, 2010, at 10:43 a.m., Wells Fargo phone records indicate a call was made from 615-525-2418 to 212-214-6210. The call lasted 3 minutes and 24 seconds.

88. On June 14, 2010, at 3:11 p.m., Wells Fargo phone records indicate a call was made from [redacted] The call lasted 24 seconds.

89. Wells Fargo's trade reports show that on June 14, 2010, Ruggieri purchased approximately 40,000 shares of CVD in a principal capacity. On the same day, he did not have any sales in a principal capacity.

90. Wells Fargo's trade reports show that on June 14, 2010, Ruggieri made no purchases or sales of CVD on behalf of Wells Fargo's clients.

91. Wells Fargo's trade reports show that at the market close on June 14, 2010, Ruggieri's Wells Fargo trading book held 40,000 shares of CVD.

92. On June 15, 2010, Wells Fargo published Bolan's equity research report titled "CVD: Opportunities Multiply as CVD Seizes Them – Upgrading Rating Revising Estimates – Increasing Valuation Range."

93. Wells Fargo's trade reports show that on June 15, 2010, Ruggieri made purchases of approximately 40,900 shares of CVD in a principal capacity.

94. Wells Fargo's trade reports show that on June 15, 2010, Ruggieri sold approximately 70,900 shares of CVD in a principal capacity.

95. Wells Fargo's trade reports show that at the market close on June 15, 2010, Ruggieri's Wells Fargo trading book held 10,000 shares of CVD.

96. Wells Fargo's trade reports show that on June 16, 2010, Ruggieri sold approximately 10,000 shares of CVD in a principal capacity and made no purchases in CVD, ending the day flat in CVD.

97. On June 15, 2010, CVD stock price opened at $55.48, traded at a high of $55.85, a low of $53.85 and closed at $54.59.

98. Wells Fargo's trade reports show that on July 2, 2010, Ruggieri placed no trades in AMRI on behalf of Wells Fargo's clients.

99. Wells Fargo's trade reports show that on July 2, 2010, Ruggieri purchased approximately 36,250 shares of AMRI. On the same day, he sold 1,200 shares of AMRI. His final order was placed at 3:42 p.m.

100. Wells Fargo's trade reports show that at the market close on July 2, 2010, Ruggieri's Wells Fargo trading book held 35,050 shares of AMRI.

101. The markets were closed from July 3, 2010 to July 5, 2010 for the Independence Day long weekend.

102. On July 6, 2010, Wells Fargo published Bolan's equity research report titled "AMRI: Upgrade Rtg & Raise Est on Three Recent Developments Upgrading to Outperform."

103. On July 2, 2010, AMRI's closing price was $5.41, and on July 6, 2010 AMRI's stock price opened at $5.70, traded at a high of $5.70, and a low of $5.38 and closed at $5.40.

104. Wells Fargo's trade reports show that on July 6, 2010, Ruggieri sold approximately 19,783 shares of AMRI in a principal capacity. On the same day, Ruggieri made no purchases of AMRI in a principal capacity.

105. Wells Fargo's trade reports show that on July 6, 2010, Ruggieri placed no trades in AMRI on behalf of Wells Fargo's clients.

106. Wells Fargo's trade reports show that at the market close on July 6, 2010, Ruggieri's Wells Fargo trading book held 15,267 shares of AMRI.

107. Wells Fargo's trade reports show that at the market close on July 7, 2010, Ruggieri's Wells Fargo trading book held 15,267 shares of AMRI.

108. Wells Fargo's trade reports show that on July 8, 2010, Ruggieri sold approximately 5,267 shares of AMRI in a principal capacity. Wells Fargo's trade reports show that on the same day, Ruggieri made no purchases in a principal capacity.

109. Wells Fargo's trade reports show that at the market close on July 8, 2010, Ruggieri's Wells Fargo trading book held 10,000 shares of AMRI.

110. Wells Fargo's trade reports show that on July 9, 2010, Ruggieri sold approximately 5,000 shares of AMRI in a principal capacity. On the same day, he made no purchases of AMRI in a principal capacity.

111. Wells Fargo's trade reports show that at the market close on July 9, 2010, Ruggieri's Wells Fargo trading book held 5,000 shares of AMRI.

112. Wells Fargo's trade reports show that on July 12, 2010, Ruggieri purchased approximately 1,700 shares of AMRI in a principal capacity.

113. Wells Fargo's trade reports show that on July 12, 2010, Ruggieri sold approximately 6,700 shares of AMRI in a principal capacity.

114. At the market close on July 12, 2010, Ruggieri's Wells Fargo trading book had no position in AMRI.

115. Wells Fargo's trade reports show that at the market close on August 10, 2010, Ruggieri's Wells Fargo trading book held 1,379 shares of PRXL.

116. On August 11, 2010, Wells Fargo published Bolan's equity research report "PRXL: Final Thoughts on FQ4 Results," in which Bolan reduced his valuation range of PRXL.

117. On Thursday, August 12, 2010, at 12:27 p.m., a call was made from [redacted] to [redacted] The call lasted approximately 4 minutes.

118. Wells Fargo's trade reports show that on August 13, 2010, Ruggieri purchased and sold a total of 995,323 shares of securities. Of those shares, 745,967 were on behalf of Wells Fargo's clients, and 249,356 were in a principal capacity.

119. On August 13, 2010 at 9:32 a.m., a call was made from [redacted] to [redacted] The call lasted approximately 3 minutes.

120. Wells Fargo's trade reports show that on August 13, 2010, Ruggieri placed no trades in EM on behalf of Wells Fargo's clients.

121. Wells Fargo's trade reports show that on August 13, 2010, Ruggieri purchased approximately 10,000 shares of EM stock in a principal capacity. On the same day, he did not have any sales of EM in a principal capacity.

122. Wells Fargo's trade reports show that at the market close on August 13, 2010, Ruggieri's Wells Fargo trading book held 10,000 shares of EM.

123. On August 13, 2010 at 4:11 p.m., a call was made from [redacted] to [redacted] [redacted] The call lasted approximately 2 minutes.

124. On August 16, 2010, before the market opened, Wells Fargo published Bolan's Equity research report titled "EM: Valuation, Sentiment At Depressed Levels – Upgrading to OP [Outperform]. . . ."

125. On August 16 2010, EM's stock price opened at $11.01, traded at a high of $11.19, and a low of $10.83 and closed at $11.04, on volume of 272,800 shares.

126. Wells Fargo's trade reports show that on August 16, 2010, Ruggieri sold approximately 10,000 shares of EM stock in a principal capacity.

127. Wells Fargo's trade reports show that at the market close on September 30, 2010, Ruggieri's Wells Fargo trading book held a 17,500-share short position in CVD.

128. On September 30, 2010, after the market closed, Wells Fargo published Bolan's equity research report "CVD: Sanofi Deal Increases Comfort With Estimates; Raising Ests Maintain Outperform And Raise Valuation Range," in which he increased his earnings estimate and valuation range.

129. Wells Fargo's trade reports show that at the market close on Friday, November 26, 2010, Ruggieri's Wells Fargo trading book held a long position of 5,000 shares of ICLR.

130. On November 29, 2010, Wells Fargo published Bolan's equity research report "ICLR: Focus Moves To CY2012 – Lowering CY2011 Estimates Reiterate Outperform."

131. On January 7, 2011, Wells Fargo published an equity research report by Bolan, which, among other things, increased his valuation range for ATHN.

132. Wells Fargo's trade reports show that at the market close on February 1, 2011, Ruggieri's Wells Fargo trading book held a long position of 1,876 shares of PRXL.

133. On February 2, 2011, Wells Fargo published an equity research report by Bolan, "PRXL: Reducing Estimates and Lowering Top End Valuation Range Reiterate Underperform Rating."

134. On February 4, 2011, at 3:10 p.m., a call was made from [redacted] The call lasted 41 seconds.

135. Wells Fargo's trade reports show that on February 7, 2011, Ruggieri purchased 13,500 shares of ATHN in a principal capacity. Wells Fargo's trade reports show that on the same day, he made no sales of ATHN in a principal capacity.

136. Wells Fargo's trade reports show that on February 7, 2011, Ruggieri placed no trades in ATHN on behalf of Wells Fargo's clients.

137. On February 7, 2011 at 2:03 p.m., a call was made from [redacted]. The call lasted approximately 7 minutes.

138. On February 7, 2011 at 2:20 p.m., a call was made from [redacted] The call lasted approximately 1 minute.Wells Fargo's trade reports show that at the market close on February 7, 2011, Ruggieri's Wells Fargo trading book held 13,500 shares of ATHN.

139. On February 8, 2011, Wells Fargo published Bolan's equity research report "ATHN: Soaring into the Clouds – Upgrading to Outperform Significantly Lifting Estimates and Valuation Range."

140. On February 8, 2011, ATHN stock price opened at $48.74 closed at $48, on volume of 1,037,600 shares, after closing at $46.13 the day before.

141. On February 8, 2011, Ruggieri purchased 4,124 shares of ATHN in a principal capacity.

142. On February 8, 2011, Ruggieri sold 17,624 shares of ATHN in a principal capacity.

143. On February 8, 2011, Ruggieri's Wells Fargo trading book ended the day flat in ATHN.

144. Wells Fargo's trade reports show that at the market close on February 24, 2011, Ruggieri's Wells Fargo trading book held 66,052 shares of ICLR.

145. On February 25, 2011, Wells Fargo published Bolan's equity research report lowering the valuation range and earnings estimates on ICLR.

146. On March 23, 2011, at 9:46 a.m., a call was made from [redacted] The call lasted 5 minutes.

147. Wells Fargo's trade reports show that on March 23, 2011, Ruggieri placed no trades in BRKR on behalf of Wells Fargo's clients.

148. Wells Fargo's trade reports show that on March 23, 2011, Ruggieri purchased 5,300 shares of BRKR in a principal capacity. On the same day, he sold 300 shares of BRKR in a principal capacity..

149. Wells Fargo's trade reports show that at the market close on March 23, 2011, Ruggieri's Wells Fargo trading book held 5,000 shares of BRKR.

150. Wells Fargo's trade reports show that on March 24, 2011, Ruggieri placed no trades in BRKR on behalf of Wells Fargo's clients.

151. Wells Fargo's trade reports show that on March 24, 2011, Ruggieri purchased 5,000 shares of BRKR in a principal capacity. On the same day, he made no sales of BRKR.

152. Wells Fargo's trade reports show that at the market close on March 24, 2011, Ruggieri's Wells Fargo trading book held 10,000 shares of BRKR.

153. On March 25, 2011, at 11:39 a.m., a call was made from [redacted] The call lasted 4 minutes and 37 seconds.

154. On March 25, 2011, Ruggieri sold 20,309 shares of BRKR on behalf of Wells Fargo's clients.

155. Wells Fargo's trade reports show that on March 25, 2011, Ruggieri purchased 5,000 shares of BRKR in a principal activity. On the same day, he made no sales of BRKR.

156. Wells Fargo's trade reports show that at the market close on March 25, 2011, Ruggieri's Wells Fargo trading book held 15,000 shares of BRKR.

157. On March 28, 2011 at 2:55 p.m., a call was made from The call lasted approximately 48 seconds.

158. On March 28, 2011 at 3:22 p.m., a call was made from The call lasted approximately 1 minute 12 seconds.

159. On March 28, 2011 at 3:44 p.m., a call was made from The call lasted approximately 1 minute 54 seconds.

160. Wells Fargo's trade reports show that on March 28, 2011, Ruggieri placed no trades in BRKR on behalf of Wells Fargo's clients.

161. Wells Fargo's trade reports show that on March 28, 2011, Ruggieri purchased 5,000 shares of BRKR in a principal capacity. On the same day, he made no sales of BRKR.

162. Wells Fargo's trade reports show that at the market close on March 28, 2011, Ruggieri's Wells Fargo trading book held 20,000 shares of BRKR.

163. On March 29, 2011 at 3:31 p.m., a call was made from The call lasted approximately 2 minutes 12 seconds.

164. Wells Fargo's trade reports show that on March 29, 2011, Ruggieri placed no trades in BRKR on behalf of Wells Fargo's clients.

165. Wells Fargo's trade reports show that on March 29, 2011, Ruggieri purchased 5,000 shares of BRKR in a principal capacity. On the same day, he made no sales of BRKR.

166. Wells Fargo's trade reports show that on March 29, 2011, Ruggieri sold approximately 70,650 shares of BRKR on behalf of Wells Fargo's clients.

167. Wells Fargo's trade reports show that at the market close on March 29, 2011, Ruggieri's Wells Fargo trading book held 25,000 shares of BRKR.

168. On March 29, 2011, after the market close, Wells Fargo published Bolan's equity research report titled, "BRKR: Initiating Coverage with an Outperform Rating on of the BEST Ways to Harvest Value in A Growing Industry."

169. Bolan was also initiating coverage for the Life Sciences sector itself, and thus he had not previously issued a report on that sector during his tenure at Wells Fargo.

170. Wells Fargo's trade reports show that on March 30, 2011, Ruggieri sold 25,100 shares of BRKR in a principal capacity, and purchased 100 shares of BRKR in a principal capacity.

171. Wells Fargo's trade reports show that on March 30, 2011, Ruggieri's Wells Fargo trading book ended the day flat in BRKR.

## V. Wells Fargo's Internal Investigation

172. On or about April 4, 2011, Wells Fargo began an investigation into whether Respondents violated Wells Fargo policies.

173. On July 8, 2011, Wells Fargo filed a Form U5 disclosing that it had conducted an internal review of Bolan. (DIV 163.)

## VI. Additional Facts Regarding Trading Activity

174. During Ruggieri's tenure at Wells Fargo, Bolan issued three ratings changes before March 30, 2010,two upgrades and one downgrade. Ruggieri did not hold an overnight position in advance of any of three ratings changes.

175. During Ruggieri's tenure at Wells Fargo, Bolan issued seven coverage initiations between September 21, 2009 and March 29, 2011, besides the coverage initiation involving Bruker.

The March 29, 2011 initiation was for Waters Corporation. Ruggieri did not hold an overnight position in advance of any of these seven coverage initiations.

176. Wells Fargo published research reports under Bolan's name that detailed his research about public companies in the health care sub-sectors he covered.

177. In addition to the overnight positions preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in PRXL stock on approximately 15 trading days while he was employed by Wells Fargo.

178. In addition to the overnight positions preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in CVD stock on approximately 15 trading days while he was employed by Wells Fargo.

179. In addition to the overnight positions preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in AMRI stock on approximately 2 trading days while he was employed by Wells Fargo.

180. In addition to the overnight positions preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in EM stock on approximately 2 trading days while he was employed by Wells Fargo.

181. In addition to the overnight positions preceding the ratings change at issue, Ruggieri's Wells Fargo trading book held an overnight position in ATHN stock on approximately 9 trading days while he was employed by Wells Fargo.

182. Ruggieri's Wells Fargo trading book held no overnight positions in BRKR stock other than those preceding the research report at issue.

183. During his tenure at Wells Fargo, Ruggieri's Wells Fargo trading book held overnight positions on approximately 325 instances.

184. During the Division's investigation, Wells Fargo provided trading reports for Ruggieri's Wells Fargo trading book. These trading reports contained certain errors. At the Division's request, Wells Fargo corrected the trading reports for the six securities at issue for a period of six months before each of the six respective research reports at issue. At the Division's request, Wells Fargo also analyzed certain overnight positions from March 30, 2010 through March 31, 2011 that did not appear to close out during the duration of Ruggieri's trading at Wells Fargo and corrected such positions that were erroneously reported in Ruggieri's trade records Bates-labeled WF-002847663 through WF-002847678.

## VII. Trader A

185. Trader A died in May 2013.

186. Trader A was unemployed from June 2009 through November 2010 and suffered from a debilitating disease.

187. Trader A was one of many people on the distribution list for Bolan's published research reports.

188. Bolan and Trader A lived in different states – Bolan worked in Nashville, Tennessee, and Trader A lived in New York City, New York.

189. Trader A began buying AMRI shares at 9:41 a.m. on July 1, 2010. Trader A bought 13,726 shares on that day, and 10,526 shares on the trading day before Bolan published his AMRI upgrade.

190. On July 6, 2010, Trader A sold 20,252 shares of AMRI stock.

191. Trader A retained 4,000 shares of AMRI stock at the end of trading on July 6, 2010.

192. Trader A retained 3,600 shares of AMRI at the end of the day on July 7, 2010.

193. Trader A retained 2,853 shares of AMRI at the close of trading on July 8, 2010.

194. Trader A did not fully liquidate his AMRI position until July 9, 2010.

195. Produced phone records show a call between a Bolan-associated phone and Trader A on April 5, 2010 at 5:53 p.m., lasting two minutes.

196. There is no phone record of Bolan and Trader A speaking on April 5, 2010 after the 5:53 p.m. call.

197. On March 22, 2010, Bolan published a research squawk "CRO's: Stronger USD Creates Headwind."

198. On August 10, 2010 Bolan issued a report on MDAS.

199. Wickwire completed a director nomination form (the "Nomination Form") that he then submitted to the research department's management committee, comprising his supervisor, himself, and the heads of the other research groups.

200. In late April 2011, Bolan stayed at Ruggieri's apartment.

201. Bolan and Moskowitz met in 2005, when they had worked together on the trading desk at First New York.

202. From then until Moskowitz's death, they spoke on the phone "a couple of times a month."

203. From at least June 2009 through November 2010, Moskowitz was unemployed. Around the time Wells Fargo was conducting its internal inquiry into Bolan's conduct, Bolan asked Moskowitz for a reference for a lawyer.

VIII. Exhibits and Defenses

204. The parties stipulate to the authenticity and admissibility of all exhibits exchanged by today's date, specifically DIV 3 to DIV 211, BX-1 to BX-104, and JR-1 to JR-216 without regard to any gaps, except for:

a. BX-101;

b. Respondents do not stipulate to the authenticity of Exhibits DIV 92 to DIV 94; and

c. Respondents do not stipulate to the admissibility of Exhibits DIV 14, 15, 34-35, 37, 51, 70, 75-76, 91-97, 102-04, 110-13, 116, 122, 128-32, 137-43, 154-59, 177-79, and 193-98.

205. Bolan has withdrawn the Ninth Defense in his answer, dated November 17, 2014; Exhibit 101 from his Exhibit List; and Dr. Joseph Sharpe from his witness list. Bolan will not testify about facts nor submit exhibits related to his withdrawn Ninth Defense, in his case-in-chief or otherwise, unless the Division puts such facts into issue.

## IX. Parties' Joint Stipulated Conclusions of Law

1. To prove Respondents' liability, the Division must prove each element of a cause of action 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*).

2. Insider trading is a type of securities fraud proscribed by Section 10(b) and Rule 10(b)(5) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b). *See Chiarella v. United States*, 445 U.S. 222, 226-30 (1980).

3. Under the misappropriation theory, "a person commits fraud 'in connection with' a securities transactions, and thereby violates § 10(b) and Rule 10b-5, when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information. . . Under this theory, a fiduciary's undisclosed, self-serving use of a principal's information to purchase or sell securities, in breach of a duty of loyalty and confidentiality, defrauds the principal of the exclusive use of that information." *United States v. O'Hagan*, 521 U.S. 642, 652 (1997).

4. The elements for tipper liability are the same, regardless of whether the duty arises under either the "classical" or the "misappropriation" theory. *Obus*, 693 F.3d at 285-86; Order, dated February 12, 2015, at 2.[2]

5. 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 prove Bolan's scienter. *Id.*

6. 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.

7. 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 United States v. Newman*, __ F.3d __, 2014 WL 6911278, at *6 (2d Cir. Dec. 10, 2014) (requiring that a tipper know of the personal benefit because, without knowing

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[2] The Division agrees to this legal standard at the present time, based on the Court's Order dated February 12, 2015, resolving this issue. The Division does not concede that this is the correct standard. The Division reserves its right to later argue in this proceeding that the elements of tipper liability are different in classical and misappropriation theory cases based on any future legal decisions on this issue. The Division further reserves its right to argue on any appeal in this proceeding that the elements are different in classical and misappropriation theory cases based on now-existing or future legal decisions on this issue. The Division further reserves its right to argue that the elements are different in other administrative or federal court proceedings not involving these Respondents.

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).[3]

8. 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").

9. The Newman court articulated the following guidance for personal benefit:

> We have observed that '[p]ersonal benefit is broadly defined to include not only pecuniary gain, but also, *inter alia*, any reputational benefit that will translate into future earnings and the benefit one would obtain from simply making a gift of confidential information to a trading relative or friend.' *Jiau*, 734 F.3d at 153 (internal citations, alterations, and quotation marks deleted) [(quoting, in substantive part, *Dirks*, 463 U.S. at 663, 664)]. This standard, although permissive, does not suggest that the Government may prove the receipt of a personal benefit by the mere fact of a friendship, particularly of a casual or social nature. If that were true, and the Government was allowed to meet its burden by proving that two individuals were alumni of the same school or attended the same church, the personal benefit requirement would be a nullity. To the extent *Dirks* suggests that a personal benefit may be inferred from a personal relationship between the tipper and tippee, where the tippee's trades 'resemble trading by the insider himself followed by a gift of the profits to the recipient,' *see*

[3] The Division agrees to the application of *Newman* at the present time, based on the Court's Order dated February 12, 2015, resolving this issue. The Division does not concede that this is the correct standard. The Division reserves its right to later argue in this proceeding that *Newman* does not apply based on any future legal decisions in *Newman* or otherwise, including any decision by the Second Circuit to amend its opinion or grant the pending petition for rehearing. The Division further reserves its right to argue on any appeal in this proceeding that *Newman* does not apply. The Division further reserves its right to argue that *Newman* does not apply in other administrative or federal court proceedings not involving these Respondents.

> 463 U.S. at 664, ...we hold that such an inference is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature. In other words, as Judge Walker noted in *Jiau*, this requires evidence of 'a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the [latter].' *Jiau*, 734 F.3d at 153 [(quoting *Dirks*, 463 U.S. at 664)].
> *Newman*, 2014 WL 6911278, at *10.

10. 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.

11. 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*).

12. 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.

13. 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).

14. 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.

STIPULATED AND AGREED TO BY:

Date: 3/23/15

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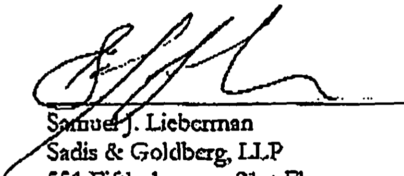

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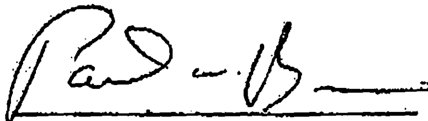

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SO ORDERED.

Date: ____________________

____________________________

Administrative Law Judge Jason S. Patil

## THE DIVISION OF ENFORCEMENT'S PRE-HEARING DISPUTED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Commission Rule of Practice 340 and the Court's Order Setting Procedural Schedule (the "Scheduling Order"), the Division of Enforcement (the "Division") respectfully submits its pre-hearing disputed proposed findings of fact and conclusions of law before the hearing scheduled to begin on March 30, 2015. The Division may supplement or modify these proposed findings and conclusions after the hearing concludes, depending on the evidence adduced at the hearing.

### DIVISION'S DISPUTED PROPOSED FINDINGS OF FACTS[4]

### I. WELLS FARGO'S RELEVANT BUSINESS

1. 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.

2. 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.

3. Research by equity analysts helped generate revenue for Wells Fargo only to the extent the research generated client trades through Wells Fargo.

### II. BACKGROUND: BOLAN, RUGGIERI, AND MOSKOWITZ

#### A. Bolan and Ruggieri

4. In January 2006, Bolan became an associate to an equity research analyst. (DIV 39 at 8–9; DIV 110 at 11.)

[4] 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.

5. In June 2008, Bolan 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.)

6. 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.)

7. While at Wells Fargo, Bolan issued research reports on only sixteen stocks in total. (DIV 133.)

8. After Ruggieri joined, Wells Fargo had only two health care traders: Ruggieri and a more junior trader, Chip Short.

9. Short generally traded different stocks than Ruggieri while they were employed at Wells Fargo.

10. Ruggieri executed customer transactions and placed principal trades on Wells Fargo's behalf. (DIV 111 at 17–21.)

11. 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.

12. 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.

13. 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. (DIV 111 at 23–25.)

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

15. 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.)

16. 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.)

17. 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. (DIV 111 at 62–64.)

18. By October 2009, Bolan and Ruggieri had established a strong relationship and rapport. (DIV 173.)

19. Over his time at Wells Fargo, Bolan spoke to Ruggieri more than any other Wells Fargo trader. (DIV 110 at 54–55.)_Bolan and Ruggieri also became "pretty good friends," as Ruggieri has admitted. (DIV 111 at 51–52.)

20. Bolan and Ruggieri spoke with each other "on a daily basis" and "[o]ften multiple times a day." (DIV 111 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.)

21. Months after Bolan and Ruggieri left Wells Fargo, Bolan invited Ruggieri to his wedding. (DIV 167.)

**B. Bolan and Moskowitz**

22. Bolan and Moskowitz were "old," "close" friends, as Bolan has admitted. (DIV 110 at 112–13; DIV 119.)

23. Moskowitz suffered from a debilitating chronic disease that rarely permitted him to leave his apartment. (DIV 110 at 110–12; DIV 136.)

24. From June 2009 through November 2010, Moskowitz was unemployed.

25. During that time, Moskowitz traded in his personal brokerage accounts. (DIV 151.)

## III. BOLAN'S RESEARCH REPORTS AND RATINGS CHANGES

26. The published research reports that Wells Fargo issued under Bolan's name typically included one of three recommendations about the prospects of the covered company's stock: "outperform," "market perform," or "underperform."(*Id.*)

27. 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.*)

28. 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.)

29. When Bolan changed his rating, he typically included the word "upgrade" or "downgrade" in the research report's title. (DIV 3, DIV 36 at 28, DIV 53, DIV 60 & DIV 63.)

30. On April 7, 2010, Wells Fargo issued a report about Parexel International Corporation ("Parexel"), traded under the ticker PRXL, that downgraded Parexel to a "market perform" or "rating from its previous rating of "outperform" or "buy." (DIV 46.)

31. The report's title was "PRXL: Downgrading to Market Perform: Optimism Running High and Valuations Running Even Higher." (*Id.*)

32. 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.)

33. 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.)

## IV. RUGGIERI RARELY HELD OVERNIGHT POSITIONS.

34. 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.)

35. 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. (DIV 177 at 15–16.)

36. 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.)

37. 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." (DIV 111 at 33, 67–68.)

38. 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. (DIV 111.)

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

39. 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.)

40. 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." (DIV 36 at 28 (emphasis removed).)

41. Wells Fargo's institutional clients also treated Bolan's ratings changes as material.

42. 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.)

43. In the niche sub-sectors he covered, Bolan had a reputation as an influential, up-and-coming analyst. (DIV 110 at 25–26; DIV 111 at 51–52.)

44. Ruggieri often emailed Bolan's published ratings changes to Wells Fargo clients. (DIV 113.)

45. Bolan's reports 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.)

46. 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.)

47. Particularly given his reputation, Bolan's ratings changes in fact consistently moved the stock prices of the companies he covered. (DIV 128.)

48. In each of the six instances at issue here, the stock price rose after Bolan's upgrade and fell after Bolan's downgrade. (DIV 128)

49. 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.

50. 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.)

51. 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.)

52. Bolan and Ruggieri knew that Bolan's ratings changes moved stock prices.

53. 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.)

54. 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.

55. 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.

56. 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.)

57. 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.

58. Wells Fargo's compliance polices prohibited employees from tipping or trading on material non-public information. (DIV 17.)

59. 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.)

60. Before each such meeting, Wells Fargo circulated a PowerPoint presentation to research department employees, including Bolan. (DIV 30 & DIV 69.)

61. 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.)

62. Bolan received the 2009 and 2010 presentations by email and verified that he had dialed into the meetings. (DIV 31 & DIV 106.)

63. In April 2009, to reinforce the importance of these compliance policies, Wells Fargo sent Bolan a compliance bulletin. (DIV 7.)

64. 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.*)

65. The bulletin 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.*)

66. 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.)

67. Wells Fargo annually reminded its trading desk employees that it prohibited them from trading ahead of its research reports.

68. 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.)

69. In 2009 and 2010, Ruggieri received these presentations and signed attendance sheets verifying that he attended the annual compliance meetings. (DIV 79 & DIV 109.)

70. Bolan understood that he was prohibited from communicating the contents of his research reports before they were published. (DIV 110 at 179–87.)

71. Ruggieri 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.").

72. Ruggieri understood that he was prohibited from trading with knowledge of a forthcoming research report. (DIV 111 at 165–66.)

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

73. 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.

74. Evans raised his concerns with Bolan three times between October 13 and November 12, 2010. (DIV 92, DIV 93 & DIV 94.)

75. Each time, Bolan rebuffed Evans. (DIV 92, DIV 93 & DIV 94.)

76. 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. (DIV 92, DIV 93 & DIV 94.)

77. 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.)

78. On November 3, 2010, Evans wrote to himself: "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.)

79. On November 12, 2010, Evans wrote to himself: "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.

80. 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.)

81. Before at least six of those eight ratings changes (the "Six Ratings Changes"), Bolan tipped Ruggieri to his forthcoming ratings changes before Wells Fargo published the report by conveying, in words or in substance, material nonpublic information concerning the timing and content of his ratings changes.

82. Before three of the same ratings changes, Bolan tipped Moskowitz to his forthcoming ratings changes by conveying, in words or substance, material nonpublic information concerning the timing and content of his ratings changes.

83. 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.)

84. Ruggieri and Moskowitz then held these positions at least overnight. (DIV 194.) In fact, Ruggieri twice held a long or short position for a week. (*Id.*)

85. 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.)

86. All six times, Ruggieri and Moskowitz closed out their positions with profitable trades. (DIV 195.)

87. From his trades on Bolan's six tips, Ruggieri generated over $117,000 in illegal profits in his account at Wells Fargo. (*Id.*)

88. 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.

89. Moskowitz generated illegal profits of over $10,000 from his trades on Bolan's three tips. (*Id.*)

90. 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.**

91. On or around March 29, 2010, Bolan began drafting a forthcoming research report that would downgrade Parexel. (DIV 47; DIV 110 at 84–85.)

92. Before Wells Fargo published the Parexel downgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Parexel downgrade to Ruggieri and Moskowitz.

93. 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.)

94. On both March 30 and 31, 2010, 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.)

95. On April 5, 2010, Ruggieri once again sold more Parexel shares than he bought and ended the day short 27,750 shares. (*Id.*)

96. On the evening of April 5, 2010, Ruggieri and Bolan spoke again. (DIV 121; DIV 194 at 1.)

97. In the evening on April 5, 2010, Bolan spoke with Moskowitz. (DIV 194 at 2.)

98. The next day, April 6, 2010, Ruggieri sold more Parexel shares short and ended the day short 52,500 shares. (DIV 194 at 1.)

99. 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.)

100. The same day, April 6, 2010, 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.)

101. 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.*)

102. When the market opened, Parexel's stock price sank 3.2%. (DIV 128.)

103. 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.)

104. When the market closed on April 7, Parexel's stock price had dropped 4.34% from the previous day's closing price. (DIV 128.)

105. 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.)

106. On Thursday, August 12, 2010, at 12:27 p.m., a call was made from 615-525-2418 to 212-214-6210. The call lasted 4 minutes.

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

107. On Sunday, June 13, 2010, Bolan obtained approval from his supervisor to upgrade Covance Inc. ("Covance"), traded under the ticker CVD. (DIV 54.)

108. Bolan was not required to obtain his supervisor's approval to publish a ratings change.

109. Before Wells Fargo published the Covance upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Covance upgrade to Ruggieri.

110. The next morning, on June 14, Bolan spoke with Ruggieri by phone. (DIV 194 at 3.)

111. Later that day, Ruggieri purchased 40,000 shares of Covance stock in his Wells Fargo account and held the position overnight. (DIV 194 at 3.)

112. 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.)

113. On June 15, 2010, before the market opened, Wells Fargo published Bolan's research report, entitled "CVD: Opportunities Multiply 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.)

114. When the market opened, Covance's stock price increased 2.19%. (DIV 128.)

115. 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.)

116. When the market closed on June 15, 2010, Covance's stock price had risen 0.55% from the previous day's closing price. (DIV 128.)

117. On June 15 and 16, 2010, 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.)

118. 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.*)

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

119. 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.)

120. Before Wells Fargo published the Albany upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Albany upgrade to Ruggieri and Moskowitz.

121. 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.*)

122. 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.)

123. 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.)

124. On June 30, 2010, after the market had closed, Bolan spoke with Moskowitz. (DIV 194 at 5.)

125. Over the next two days, July 1 and 2, Moskowitz began purchasing Albany shares. (DIV 194 at 5.) By the market's close on July 2, Moskowitz had amassed 24,252 Albany shares. (DIV 194 at 5.)

126. In at least the six months before these trades, Moskowitz had not traded Albany shares. (DIV 151.)

127. 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 to outperform *(Id)*

128. When the market opened, Albany's stock price increased 5.36%. (DIV 128.)

129. 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.)

130. On July 6, Ruggieri sold most of his Albany position. (DIV 194 at 4.) He sold the rest within a week. *(Id.)*

131. On July 6, 2010 at 3:48 p.m., a call was made from (

The call lasted approximately 3 minutes.

132. In total, his trades generated a profit of $9,334 in his Wells Fargo account. (DIV 195.)

133. 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.)*

134. On July 7, 2010 at 2:14 p.m, a call was made from (

The call lasted approximately 5 minutes 18 seconds.

135. On July 12, 2010 at 12:45 p.m., a call was made from

The call lasted approximately 1 minute 54 seconds.

136. In total, Moskowitz's trades generated a profit of $8,400. (DIV 195.)

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[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.

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

137. Before Wells Fargo published the Emdeon upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Emdeon upgrade to Ruggieri and Moskowitz.

138. On August 12, Bolan communicated with his supervisor regarding upgrading Emdeon.

139. 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.)

140. That day, after he and Bolan spoke, Ruggieri purchased 10,000 shares of Emdeon stock in his Wells Fargo trading account. (DIV 194 at 6.)

141. The same day, Moskowitz purchased 5,000 shares of Emdeon stock. (DIV 194 at 7.)

142. Moskowitz had not traded Emdeon shares in at least the preceding six months. (DIV 151.)

143. 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.)

144. Yet Ruggieri held his 10,000-share Emdeon position over the next three nights. (DIV 194 at 6.)

145. 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 to outperform. (*Id.*)

146. When the market opened that morning, Emdeon's stock price rose 1.10%. (DIV 128.)

147. Over the day's course, Emdeon's trading volume increased 107% relative to Emdeon's average daily trading volume on the fifteen days before and after the upgrade. (DIV 197.)

148. When the market closed on August 16, Emdeon's price had risen 1.38% from the previous day's closing price. (DIV 128.)

149. On August 16, Ruggieri sold his entire position in Emdeon stock for a profit of $266. (DIV 194 at 6; DIV 195.)

150. 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.**

151. Prior to January 2011, Bolan had rated athenahealth, Inc. ("Athena"), traded under the ticker ATHN, as market perform/hold. (DIV 133.)

152. By January 18, 2011, despite his neutral published views, Bolan had told Ruggieri of his bullish (or positive) views of Athena.

153. In fact, before Wells Fargo published an upgrade of Athena authored by Bolan, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Athena upgrade to Ruggieri.

154. 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.)

155. Less than two hours later, Bolan called Ruggieri but was unable to reach him. (DIV 125; DIV 194 at 8.)

156. Later that afternoon, Bolan spoke to Ruggieri. (*Id.*)

157. 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.) our formulation is more exact

158. 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.)

159. 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 to outperform. (*Id*).

160. When the market opened that day, Athena's stock price rose 5.66%. (DIV 128.)

161. 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.)

162. When the market closed on February 8, Athena's price had risen 4.05% from the previous day's closing price. (DIV 128.)

163. 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.**

164. Before Wells Fargo published the Bruker upgrade, Bolan communicated, in words or substance, material nonpublic information concerning the timing and content of the Bruker upgrade to Ruggieri.

165. On March 22, 2011, Bolan communicated with his supervisor regarding initiating coverage of Bruker Corp., traded under the ticker BRKR, with an outperform/buy rating. (DIV 127.)

166. The next day, shortly after the market opened, Bolan spoke with Ruggieri by phone. (DIV 194 at 9.)

167. That day, March 23, Ruggieri purchased Bruker shares for a net long position of 5,000 shares. (*Id.*)

168. From March 24 through March 29, Ruggieri continued to purchase Bruker stock and amassed a long position of 25,000 shares. (*Id.*)

169. 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.)

170. 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 On of the BEST Ways To Harvest Value In A Growing Industry." (DIV 90.) Bolan rated Bruker as outperform/buy. (Id.)

171. The next day, when the market opened, Bruker's stock price rose 2.56%. (DIV 128.)

172. 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.)

173. When the market closed on March 30, Bruker's stock had risen 3.36% from its closing price the previous day. (DIV 128.)

174. 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]

175. 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.)

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[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.

176. Bolan titled his report: "MDAS: Forward Earnings Risk May Be Growing Downgrade to MP: Downgrading to Market Perform and Lowering Valuation Range." (*Id.*)

177. In other words, Bolan downgraded MDAS to a market perform/hold rating from an outperform/buy rating. (*Id.*)

178. 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.*)

179. 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.)

180. After Wells Fargo issued the report, Ruggieri closed out his short position before the trading day ended. (DIV 177 at 18; DIV 147.)

## XI. BOLAN BENEFITTED FROM TIPPING RUGGIERI AND MOSKOWITZ.

181. Within months of Ruggieri joining Wells Fargo, and at least by October 2009, Bolan and Ruggieri had established a strong relationship and rapport.

182. Wells Fargo's senior management asked all traders to "comment on the analysts who you believe have been the most helpful" during the prior quarter, so that management could communicate the results to the equity research managers — Bolan's supervisors.

183. Ruggieri named four analysts and shared his view of Bolan: "Bolan's in a league of his own- great dialogue w/ clients and gets it." (Id.)

184. Bolan and Ruggieri became "pretty good friends," in Ruggieri's words. (Ex. 111 at 51–52.)

185. Bolan and Ruggieri spoke with each other "on a daily basis" and "[o]ften multiple times a day." (Ex. 111 at 51, 75.)

186. They talked not only about work but also about "stuff outside of work." (Id. at 51–52; Ex. 110 at 56.)

187. Bolan and Ruggieri socialized outside the office when Bolan traveled to New York. (Ex. 110 at 29–31.)

188. They "discuss[ed] work and...discuss[ed] family, and...just would be guys." (Ex. 110A at 30.)

189. Bolan and Ruggieri also entertained clients together, including on a fishing trip and a golf trip. (Ex. 111A at 59.)

190. In early March 2010, Ruggieri attended a health care client conference in Utah that Bolan and Wells Fargo had sponsored. (Ex. 172.)

191. Afterwards, Bolan emailed his own supervisors and Ruggieri's supervisor's supervisor, Chris Bartlett ("Bartlett"), to praise Ruggieri for attending the event. (Id.)

192. When Ruggieri learned of Bolan's praise, he emailed Bolan: "I love you. Thanks bro, appreciate." (Id.) Bolan replied: "Well deserved brotha!" (Id.)

193. Ruggieri and Bolan were "partners" trying to improve the standing of their health care "sector team" to benefit their own and each other's career. (Ex. 44.)

194. After Ruggieri had profitably traded on Bolan's first three ratings change tips, senior management asked him again in late July 2010 to provide feedback on research analysts who had been helpful in the preceding quarter. (Ex. 130.) Ruggieri praised Bolan effusively: "Bolan is far and away the best."

195. After Ruggieri had profitably traded on Bolan's fourth ratings change tip, senior management asked him in early December 2010 to provide feedback on research analysts who had been helpful in the preceding quarter. (*Id.*) Ruggieri again praised Bolan effusively: "Bolan – the best in our space. Proactive, great dialogue/traction with clients, communication with the desk is excellent and business in his names are the example."

196. In late 2010 or early 2011, Wickwire, Bolan's supervisor, considered Bolan for a promotion from vice president to director. (Ex. 132 at 69–70.)

197. Generally, a research department vice president had to have served in that role for three years before being considered for promotion. (Wickwire GFB.)

198. Bolan had been at the firm for approximately two years. (Ex. 135 at 8.)

199. Wickwire's Nomination Form reflected the trading desk's — and specifically Ruggieri's — glowing reviews of Bolan: "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." (Ex. 27 at 5; Ex. 132 at 69–70, 78–80.)

200. By "monetize," Wickwire meant that the trading desk was able to generate commission revenue from Bolan's research. (Ex. 132 at 79.)

201. In deciding whether to promote Bolan, the research management committee discussed the trading desk's feedback about Bolan and factored that in "on the positive side of the ledger" in deciding to promote Bolan. (Ex. 132A at 82.)

202. The committee ultimately decided to promote Bolan, who received the accompanying raise of $50,000 in approximately March 2011. (Ex. 132 at 79–80; Ex. 118.)

203. After their departures from Wells Fargo, Bolan's and Ruggieri's friendship continued.

204. Ruggieri gave Bolan the keys to his apartment so that Bolan could use it when interviewing for positions in New York. (Ex. 45; Ex. 110A at 71.)

205. Ruggieri let Bolan keep a copy of the keys until at least the next month. (Id.; Ex. 45.)

217. Moskowitz illegally profited by over $10,000 from his trades on Bolan's three tips. (Id.)

218. In February 2011, Bolan treated Moskowitz to dinner. (Ex. 170.) Moskowitz thanked him and told him it had been nice to see him. (Id.)

219. Bolan replied: "Likewise bro – see u in Nashville!" (Id.)

220. In March 2011, Bolan referred to Moskowitz as a "very good friend" and a "trusted friend" in an email to Bartlett, the head of equity sales and trading at Wells Fargo. (Ex. 119.)

221. Bolan asked Bartlett whether there were any job openings for Moskowitz and recommended him as having "all of the right credentials." (Id.)

222. Moskowitz recommended Bolan's current counsel, Sadis & Goldberg. (Id.)

223. Later, when Bolan received an investigative subpoena from the Division, Bolan told Moskowitz. (Id.) Moskowitz again recommended Sadis & Goldberg. (Id.)

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

224. On April 1, 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.)

225. 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.)

226. Bolan had then published a research note on the same topic later the same day. (Id.)

227. 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.)

228. 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.)

229. At times, Bolan had shared the same information with over 30 external clients. (Id.)

230. As the Division anticipates Friedman will testify, these and other compliance discoveries concerned Wells Fargo's compliance department.

231. 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.

232. For purposes of his inquiry, Friedman drafted a chronology of events and assembled problematic emails and instant messages. (DIV 15.)

233. 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.

234. On approximately April 4, 2011, Evans escalated his concerns directly to Wickwire. (DIV 15 at 4.)

235. Wickwire promptly informed Wells Fargo's compliance department. (Id.)

236. On April 6, 2011, Friedman and other compliance officers questioned Bolan by phone. (DIV 15 at 4.)

237. 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.7 (DIV 15 at 4–5.)

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[7] 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.)

238. 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.)

## XIII. WELLS FARGO DECIDED TO TERMINATE BOLAN AND RUGGIERI.

239. In April 2011, Wells Fargo decided to terminate Bolan, as the Division anticipates Wickwire will testify.

240. Wickwire travelled to Nashville to terminate Bolan in person, but Bolan resigned before Wickwire could do so.

241. On July 8, 2011, Wells Fargo filed a Form U5 disclosing that it had conducted an internal review of Bolan. (Div. 163).

242. 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.)

243. In April 2011, Bartlett terminated Ruggieri for cause. (DIV 164 at 1.)

244. 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."

## XIV. EXPERT REPORT OF DR. EDWARD S. O'NEAL

245. The Division has engaged Dr. Edward S. O'Neal to provide expert analysis and testimony regarding the trading activity undertaken by Joseph C. Ruggieri as it relates to certain security recommendations made by Gregory T. Bolan, Jr.

246. Dr. O'Neal is a qualified expert to render an expert opinion in this case.

247. Dr. O'Neal is a principal with Securities Litigation and Consulting Group in Fairfax, Virginia. Dr. O'Neal's firm provides consulting on a broad range of litigation issues related to securities, investments, and the capital markets.

248. Dr. O'Neal has been retained to provide expert witness services on over 200 matters in state and federal courts and various arbitration forums.

249. Dr. O'Neal has a Ph.D. in finance from the University of Florida. The Ph.D. program included graduate-level courses in Finance, Economics, and Statistics.

250. Dr. O'Neal's Ph.D. dissertation was an in-depth study of the behavior of the common stocks of electric utility companies and their statistical relationship to movements in the broad stock market and interest rate yields.

251. After graduating from the University of Florida, Dr. O'Neal taught undergraduate and graduate students for 14 years in the business schools of three universities, most recently Wake Forest University in Winston-Salem, NC. The courses that Dr. O'Neal taught included Investments and Portfolio Management, Applied Securities Analysis, Corporate Finance and the Management of Financial Institutions. All of Dr. O'Neal's courses included a strong emphasis on the operation and mechanics of the U.S. stock markets.

252. Dr. O'Neal has been retained to offer expert testimony on topics in financial economics multiple times in court and in various arbitration forums. The majority of these engagements have involved investment analysis and securities markets. Specifically, Dr. O'Neal been retained in the past to examine the reaction of common stocks to news releases and have performed event studies, a standard economic procedure, in those cases.

253. Dr. O'Neal and his firm are being compensated at the rate of $400 per hour for work on this case. The list of materials relied upon in Dr. O'Neal's analysis is included as Appendix 1 of the expert report.

**A. Dr. O'Neal's Assignment In This Case**

254. Dr. O'Neal was given the following information for his assignment: (1) Respondent Gregory T. Bolan was a research analyst at Wells Fargo from 2008 until 2011 who focused primarily

on the health care industry, and (2) Respondent Joseph C. Ruggieri was a health care industry stock trader at Wells Fargo from 2009 through 2011.[8]

255. Dr. O'Neal was further given the following information for his assignment: (1) The Division instituted an OIP against the Respondents alleging that, in their respective positions as research analyst and trader at Wells Fargo, they participated in an insider trading scheme, (2) the OIP alleges that Bolan on several occasions alerted Ruggieri to forthcoming but not-yet-public ratings changes, and (3) Ruggieri allegedly placed trade orders in advance of the public ratings change announcements in order to benefit from the price movements once the ratings changes were announced.

256. Dr. O'Neal's assignment included offering an opinion about whether trading ahead of analyst ratings changes would give a trader an unfair advantage over other market participants. Dr. O'Neal was also asked to examine the ratings change announcements of Bolan over the period 2009 to 2011 and determine whether the resulting stock price movements appeared to be material to the market. Finally, Dr. O'Neal was asked to examine whether Ruggieri's trading around the six ratings changes identified in the OIP was different from Ruggieri's typical trading patterns.

**B. Dr. O'Neal's Expert Findings**

257. Dr. O'Neal's expert analysis found that analyst ratings change announcements impact stock prices.

258. If a trader such as Ruggieri had the ability to trade ahead of such announcements, he could expect to profit at other investors' expense.

259. Upgrade announcements tend to lead to increases in prices while downgrades tend to decrease prices.

260. Numerous academic studies document this regularity.

[8] Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP"). p. 2.

261. Given that ratings changes impact stock prices, the ability to trade ahead of such changes would give a trader an unfair advantage over other market participants.

262. A strategy of trading ahead of ratings changes would garner profits at the expense of market participants who did not have access to information about the forthcoming ratings changes.

263. Bolan's ratings changes appear to have affected the market prices of the rated stocks just like those of other analysts.

264. The price of the stocks moved in the expected direction: up for an upgrade, down for a downgrade.

265. Over the period 2009 to 2011, Wells Fargo released 18 ratings changes authored by Bolan. O'Neal determined that ten of those announcements were not accompanied by other material announcements about the stock involved.

266. The stock price reactions to these ten ratings change announcements by Bolan were consistent with the academic literature.

267. The stock prices tended to move in the direction of the ratings changes indicating that trading in advance of the ratings changes would be profitable.

268. Ruggieri's trading around the six ratings changes identified in the OIP was not typical for Ruggieri.

269. Statistical analysis by Dr. O'Neal's expert analysis points to Ruggieri purposefully trading ahead of the ratings change announcements.

270. Over 98% of Ruggieri's trading involved opening and closing positions during the trading day.

271. Less than 2% of the time he held positions overnight.

272. For each of the trades at issue in this case, Ruggieri held the position overnight.

273. This would have been necessary to profit on the not-yet-public information in the ratings change because each of the six ratings change announcements came out after the stock market was closed.

274. Ruggieri occasionally held overnight positions in stocks on which Bolan released research reports.

275. However, the statistical probability that Ruggieri happened to trade overnight by chance in six of eight stocks with a Bolan ratings change is virtually zero.

### 1. Published Research Demonstrates that Stock Prices React Significantly to Analysts' Ratings Changes.

276. This case involves allegations that a trader obtained information about forthcoming but not-yet-public analyst ratings changes and then built positions in the stocks to profit once the ratings change was announced.

277. There are hundreds of published peer-reviewed articles that examine how releases of certain non-public information affect the prices of stocks.

278. One strand of this literature focuses specifically on whether analysts' ratings change announcements have a measurable effect on stock prices.

279. 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.

280. On average, when the announcement is released that an analyst has changed a rating to "buy" or "outperform," the stock's price increases.

281. Similarly, when an analyst downgrades a stock to "sell" or "underperform," the stock's price falls.

282. Hence, advance knowledge of a forthcoming ratings change could be used to trade profitably ahead of other traders in the market.

283. A number of published academic papers show that research analyst recommendation changes lead to significant price movements in the stocks that are the subject of the changes.

284. For example, Womack (1996) looked at the 3-day price reaction surrounding analyst recommendation changes to "buy" or to "sell."[9] He found that recommendation changes to "buy" led to average returns of +3% while changes to "sell" led to average returns of -4.7% in the three days surrounding the change and that these changes were highly statistically significant.

285. Womack also documented that the stock price reactions were greater in magnitude for smaller stocks than for larger stocks as defined by total market capitalization.

286. Finally, Womack showed that volume on the day of the announcement increases significantly, showing that stock market participants deem the information contained in a recommendation change important.

287. Green (2004) studied the stock price movements in response to ratings changes by looking at the stock price movements minute by minute and hour by hour.[10] For ratings changes made after trading hours, he found that the majority of the price movement occurs between the previous day closing and the next day opening. Although the stock price continues to move in the direction of the ratings change over the next few hours after the stock market begins trading, the largest bump occurs at the opening.

288. This evidence demonstrates that the most profitable way to trade in relation to an analyst ratings change would be to buy the stock the day before the change and sell it the day after the change. Of course, such a strategy would only be possible with advance information about the ratings change announcement.

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[9] See Kent Womack, "Do brokerage analysts' recommendations have investment value?," *Journal of Finance* 51, pages 137-167 (1996).
[10] See T.C. Green, "The value of client access to analyst recommendations," Journal of Financial and Quantitative Analysis 41 pages 1 – 24. (2006).

289. Brav and Lehavy (2003) examined stock price reactions to analysts' changes in target prices.[11] They find that positive changes in target prices (i.e., an analyst increasing the price that he or she expects a stock to attain over a specified period) on average led to positive and statistically significant stock price reaction over the 5 days surrounding the announcement.

290. They also find a negative and statistically significant stock price reaction to negative target price revisions.

291. In a recent contrary paper, Altinkilic and Hansen (2009) use intra-day stock returns to examine recommendations during trading hours and find that analyst recommendation changes themselves do not lead to abnormal returns but that the changes are "piggybacked" on other concurrent news about the company being recommended.[12]

292. However, Bradley, et al. (2014) show that systematic errors in the time-stamp data used by Altinkilic and Hansen (2009) to pinpoint the time of the analyst revisions drive their counter results.[13] Once the correct time-stamps are used for the analyst revision announcements, stock price returns of +2% in the 30 minutes after an upgrade and -2% in the 30 minutes after the downgrade are documented.

293. Further, Bradley et al. (2014) demonstrate that a sizeable number of analyst revisions are associated with "jumps" in the stock price. A jump is a discrete large movement in the stock price which is a departure from smooth and continuous changes in prices that are typically observed.

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[11] See Alon Brav and Reuven Lehavy, "An empirical analysis of analysts' target prices: short-term informativeness and long-term dynamics," *Journal of Finance* 53, pages 1933 – 1967 (2003).

[12] See Ova Altinkilic and Robert Hansen, "On the information role of stock recommendation revisions," *Journal of Accounting and Economics* 48, pages 17-36 (2009).

[13] See Daniel Bradley, Jonathan Clarke, Suzanne Lee and Chayawat Ornthanalai, "Are analyst recommendations informative? Intraday Evidence on the impact of time stamp delays," Journal of Finance 69, pages 645-673 (2014).

294. As with the increased volume found by Womack (1996), jumps indicate market participants are influenced by analyst recommendation changes.

295. The published research demonstrates that when an analyst changes the recommendation rating on a stock (for example from "hold" to "buy" or from "hold" to "sell"), the price of the stock tends to move in the direction of the change.

296. Given this regularity, the ability to trade ahead of the announcements of analyst recommendation changes would be profitable. A scheme to alert a trader to an imminent change in an analyst rating would give that trader an unfair advantage over other market participants.

297. Although trading on the information might not necessarily be profitable on every single trade, over the long run it would allow the trader to obtain superior returns at the expense of other market participants.

### 2. Stock Prices Reacted Significantly to Bolan's Ratings Changes.

298. The research cited in Dr. O'Neal's expert report in the publication section demonstrates that analyst ratings changes impact stock prices. If a trader knew about forthcoming ratings changes, he or she could use that information to profit at the expense of other traders.

299. Dr. O'Neal examined the ratings changes in the analyst reports authored by Bolan over the time period at issue in this case. The purpose of this analysis is to see whether, in this very limited sample of Bolan's ratings changes, the stock prices of the rated securities tend to exhibit characteristics that are similar to those found in the broader studies cited above.

300. The findings in this section are not critical to Dr. O'Neal's opinion that trading on forthcoming ratings changes would be expected to generate abnormal profits.

301. With small samples, such as the one Dr. O'Neal had for Bolan, it is possible that a statistical relationship might not be found.

302. However, Dr. O'Neal's analysis does show that Bolan's ratings changes impact stock prices just as is found in published studies for large samples of analyst ratings changes.

303. The analysis in Dr. O'Neal's section on stock price reaction on Bolan's rating changes is standard methodology for examining stock price reactions and has been developed over the past 30 or 40 years in the financial economics literature. Though it may seem complicated, the approach is very intuitive.

304. Dr. O'Neal's task is to try to determine if the movements in stock prices can be attributed to the ratings changes. As part of the analysis, Dr. O'Neal gathered the stock prices on days of ratings change announcements and determined whether they seem to move up with an upgrade and down with a downgrade.

305. Before Dr. O'Neal drew a conclusion, however, Dr. O'Neal did his best to make sure that his analysis was not attributing stock price movements to the ratings change that might be caused by something other than the ratings change. The two most important potential problems in conducting similar studies are 1) that other material information might have been released about the same time as the ratings change, and 2) broad stock market movements might have pushed the stock in the direction of the ratings change simply by chance.

306. In the following paragraphs, Dr. O'Neal outlines the steps that are typically taken to handle these two potential problems. Once Dr. O'Neal addressed these two issues that are present in all studies such as this, Dr. O'Neal's results show that Bolan's ratings changes did tend to move the stock prices when the ratings changes were announced.

307. Dr. O'Neal understood that Ruggieri undertook trading in advance of six of Bolan's subsequent ratings change announcements. Those ratings changes are:

1. Parexel International Corp. (PRXL), April 7, 2010, downgrade.
2. Covance, Inc. (CVD), June 15, 2010, upgrade.

3. Albany Molecular Research, Inc. (AMRI), July 6, 2010, upgrade.

4. Emdeon, Inc. (EM), August 16, 2010, upgrade.

5. Athenahealth, Inc. (ATHN), February 8, 2011, upgrade.

6. Bruker Corp. (BRKR), March 29, 2011, initiation of coverage with outperform rating.

308. Dr. O'Neal was provided a spreadsheet that contained all of Bolan's analyst recommendations between September 16, 2008 and April 25, 2011. The majority of those recommendations affirmed the rating that Bolan had previously held on the stock being rated. Some of those recommendations initiated coverage with a hold rating.

309. Eighteen of the recommendations were either changes from the previous recommendation or an initiation of coverage with a buy or a sell rating.[14]

310. Dr. O'Neal looked at all 18 of these recommendation changes to analyze the effect that the change announcements had on the stock prices of the affected securities. The six trades at issue in this case (listed in the paragraph above) are a subset of the 18.

311. Using standard event-study methodology, Dr. O'Neal analyzed these 18 recommendation change announcements to determine whether the announcements on average had an effect on the stocks.

312. As is standard in event-studies, Dr. O'Neal first looked at all news reports on the stocks in the days surrounding the announcement of Bolan's recommendation change. If there was a news report that released material information about the company in the two days before or two days after the announcement date, Dr. O'Neal removed that announcement from the analysis. The purpose of such a procedure is to prevent stock price movements due to information other than the recommendation change announcement from affecting the results.

[14] For the remainder of this section, all 18 of these instances are referred to as "recommendation changes."

313. If such instances are not removed, the subsequent analysis might wrongly attribute the stock price movement to the ratings change announcement when in fact it was due to the release of other material information.

314. Dr. O'Neal observed that eight of the announcements had confounding information. When Dr. O'Neal removed those eight from the data, ten "clean" or "non-confounded" announcements remain.

315. With the ten clean announcements, Dr. O'Neal performed an event study.

316. The event study methodology is used by economists to assess the impact of a broad range of information disclosures on security prices.[15] An event study is conducted by identifying releases of information to the public, measuring the stock price reaction to the information release over some short period of time (typically one or two days) and testing the statistical significance of the price reaction.

317. The event study technique was developed in the 1960s and 1970s to determine whether information that was being released to the public affected stock prices.

318. The methodology is well understood and is a fundamental topic of study in graduate-level finance programs.

319. Standard event study methodology consists of examining stock returns to determine whether the event (in our case, the announcement of a ratings change) tends to have an impact on the stock price.

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[15] See Stephen J. Brown and Jerold B. Warner, "Measuring Security Price Performance" Journal of Financial Economics 1980 pp. 205-258; Stephen J. Brown and Jerold B. Warner, "Using Daily Stock Returns: The Case of Event Studies" *Journal of Financial Economics* 1985 pp. 3-31; Mark P. Kritzman, "What Practitioners Need to Know About Event Studies" *Financial Analysts Journal* November-December 1994 pp. 17-20; Mark L. Mitchell and Jeffry M. Netter, "The Role of Financial Economists in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *The Business Lawyer*, February 1994 pp. 545-590.

320. The stock returns for companies that experience an event are adjusted for returns to the broad stock market, an industry-specific subset of the market or both.

321. The rationale behind the adjustment is that stock movements tend to be correlated; market or industry-specific factors will cause stock prices to move.

322. Dr. O'Neal understood while conducting the study for this case that it is important to control for these factors in order to isolate the effect of the event in question.

323. For each of the ten clean announcements, Dr. O'Neal estimated a market model as is standard in the academic literature using a multiple regression. Dr. O'Neal used the market model as shown in the equation below:

$ER_j = a_j + B_m{*}R_m + B_i{*}R_i$

Where,

$ER_j$ = the expected return to stock j

$a_j$ = an alpha term generated by the regression

$B_m$ = the beta of the stock relative to a market index proxied by the NASDAQ Composite index

$R_m$ = the return to the NASDAQ Composite index

$B_i$ = the beta of the stock relative to the healthcare services industry proxied by the NASDAQ Health Services index.

Ri = the return to the NASDAQ Health Services index.

324. The expected return in the equation above is based on the stock's historical relationship to the indexes. This expected return is used as a baseline.

325. The event study is an analysis of the deviation from this baseline that results from the event in question.

326. Most stocks tend to be positively correlated with the market. When the market moves in a particular direction (up or down) most stocks also move in the same direction.

327. However, some stocks may move by more than the market while others may move by less than the market. For example, if a particular stock tends to exhibit a return that is 1.5 times that of the broad market, and the market falls by 2%, we would expect the stock to fall by 3% (1.5 * 2%). This 3% decline would be the expected return on the stock on a day where the broad market declines by 2%.

328. For each of the ten stocks, Dr. O'Neal estimated the market model over the one year leading up to the date of the ratings change announcement.

329. Dr. O'Neal used the NASDAQ Composite index to proxy for the broad market (since all the stocks that are subjects of the ratings changes traded on the NASDAQ) and the NASDAQ Health Services Index to proxy for the industry in which the companies operate.

330. The next step Dr. O'Neal took for the study in this case is to determine the unexpected return on the date of the ratings change for each of the ten stocks. This calculation tells us whether the event actually had any additional impact on the price of a stock over and above the movement in the broad market and the health services industry.

331. It is calculated as the difference between the observed return (actual stock price movements) and the expected return (expected stock price movements). Continuing with the simple example, if the market declined by 2% leading to an expected decline of 3% for our stock, but the stock actually dropped by 7%, then the unexpected return would be 4% (7% - 3%).

332. For each of the ten announcements, Dr. O'Neal calculated the unexpected return. Table 1 shows the unexpected returns from the ratings change announcement for each of the ten stocks.

333. Eight of the unexpected returns are positive and two are negative. Dr. O'Neal understood that it is important to consider the signs in the context of the direction of the ratings

change while conducting the analysis. Note that the two ratings changes that produce negative stock returns are downgrades.

334. If the downgrade signals information to the market, the analysis would result a negative stock price return in reaction to a downgrade. Similarly, if an upgrade signals information to the market the analysis would result in an upgrade to be accompanied by a positive stock return.

335. The eight positive unexpected returns are all on stocks that Bolan upgraded. Therefore, Dr. O'Neal found that for all ten ratings change announcements, the stock price reaction is in the direction consistent with ratings changes conveying information to the market.

336. This finding is also consistent with the academic literature that shows that analyst ratings changes are material information to market participants.

337. Below is a table of the unexpected returns to the sample of clean Bolan ratings changes:

| Date | Ticker | Recommendation Change | Predicted Sign of the Unexpected Return | Observed Return | Unexpected Return | Unexpected Return t-Statistic |
|---|---|---|---|---|---|---|
| 9/17/2008 | KNDL | Resume at Outperform | + | -1.9% | 2.4% | 1.21 |
| 9/17/2008 | PPDI | Initiate at Outperform | + | -1.6% | 1.1% | 0.65 |
| 10/13/2008 | ICLR | Upgrade | + | 15.8% | 9.4% | **3.64** |
| 2/2/2009 | PRXL | Upgrade | + | 1.0% | 0.1% | 0.04 |
| 2/16/2010 | QSII | Upgrade | + | 2.4% | 1.1% | 0.56 |
| 4/7/2010 | PRXL | Downgrade | - | -4.3% | -3.8% | -1.19 |
| 7/6/2010 | AMRI | Upgrade | + | -0.2% | 0.6% | 0.26 |
| 11/29/2010 | PRXL | Downgrade | - | -5.6% | -5.1% | **-2.53** |
| 2/8/2011 | ATHN | Upgrade | + | 4.1% | 3.5% | 1.08 |
| 3/30/2011 | BRKR | Initiate at Outperform | + | 3.4% | 2.2% | 1.25 |

Notes: The dates reported in the table are the first trading dates after the analyst reports were published. All 10 analyst reports were published after trading closed on the previous trading day. The unexpected return is the difference between the observed return and the expected return. The expected return is estimated by regressing each ticker's daily stock return for the previous year against the daily return of the NASDAQ Composite index and the NASDAQ Health Services index. The regression uses the natural log of returns. Returns are de-logged for presentation in the table. T-statistics greater than 1.96 in absolute value are statistically significant at the 95% level and are in bold font in the table.

338. Dr. O'Neal looked at each of the ten unexpected stock returns individually and found that two of the ten are statistically different from zero.

339. This statistical test is geared at determining whether the return to one stock can be said to be reliably different from zero.

340. This determination is based on the magnitude of the return on the day of the ratings change compared to the typical magnitudes of daily returns to the same stock. If a stock is quite volatile from day to day, it will take a very large movement on the day in question to show that the return is statistically different from zero. For example, if a stock on average has returns that are plus or minus 2% each day, and the return on the day of an upgrade is 2.5%, this return may not look much different from any other daily return (it is 1.25 times as large as the returns on any typical day). Conversely, if the daily returns to a more stable stock are generally plus or minus 0.5% each day, the same 2.5% return might appear quite large and thus be statistically different from typical daily returns for that stock (it is 5 times larger than the return on any typical day).

341. Because the stocks that Bolan is rating are smaller stocks, they are generally quite volatile and require a very high return on the day in question to achieve statistical significance.

342. The returns on the announcement days are high enough to appear statistically different from a typical day in two out of the ten instances.

343. More frequently in studies of ratings change announcements, the statistical analysis is aimed at trying to determine whether the stock returns on the announcement days are significant as a group rather than individually.

344. In the procedure Dr. O'Neal took, the returns on the announcement days are collected, averaged, and then analyzed relative to the variability across the group.

345. If the average is high enough above zero given the variability of the returns across the group, Dr. O'Neal can feel confident that the returns are statistically positive. For example, assume we had 5 stocks and the returns were 3%, 1%, 2%, 4%, and 0%. The average return is 2% and the range is fairly tightly grouped around the average of 2%. Conversely, take a second sample

where the returns are +6%, -8%, +10%, -6%, and +8%. The average return in this second sample is also 2%, but given the much higher degree of variability, it would be more difficult to say for sure that the sample of five returns represent a population where the average is above zero.

346. It would not be much of a surprise if the next stock in the second group was found to have a return of -12%, at which point the average of the now group of six returns would then be zero.

347. The analysis would produce results that would have a stronger reliability confidence about the first sample being from a population where the true mean is greater than zero.

348. The following paragraphs indicate Dr. O'Neal's methodology for testing the statistical significance of the ten of Bolan's clean ratings change announcements as a group.

349. Dr. O'Neal calculated a directional unexpected return by multiplying the actual abnormal return by 1 for upgrades and by -1 for downgrades.

350. This simple transformation allows for more meaningful calculation of summary statistics because it causes the signs for negative returns in response to downgrades to have the same interpretation as positive returns in response to upgrades.

351. Dr. O'Neal observed that the magnitude of the directional unexpected returns ranges from 0.2% to 8.5%.

352. The average directional unexpected return is 2.9% which is very close to the 3% that Womack (1996) identified as the average market response to analyst upgrade announcements.

353. Dr. O'Neal noted that the sample of Bolan's ratings changes is small relative to the sample sizes in the academic studies of ratings changes (for example, Womack had 1,573 ratings changes in his sample).

354. In typical studies, it is more difficult to find statistical significance in smaller samples.

355. 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 Bolan's ratings changes affect stock prices in a manner consistent with the academic findings in large samples.

356. Dr. O'Neal performed a binomial test to determine the likelihood of observing ten out of ten correct directional abnormal returns if there is no information content in Bolan's ratings changes.

357. This test is similar to trying to figure out the likelihood of flipping ten straight heads if a coin is fair.

358. The calculation in this case for this instance is quite simple: $(.5)^{10} = .001$. The probability is only .1% that we would observe abnormal returns in the correct direction in all ten cases if Bolan's ratings changes did not contain material information.

359. There is a strong inference that Bolan's ratings changes did in fact contain information that was material to the market.[16]

360. Dr. O'Neal also calculated a standard statistical significance test on the average abnormal returns on the ten announcements.

361. The test statistic is calculated as the average abnormal return divided by the standard deviation scaled by $(N-1)^{1/2}$ where N is the number of observations.

362. This calculation gives a standardized abnormal return (SAR) and is distributed T with (N-1) degrees of freedom. The calculation is: SAR = 2.900/(2.54/SQRT(9)) = 3.44.

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[16] As previously explained, O'Neal eliminated 8 of the 18 announcement dates because of confounding information that was released very close to the time of Bolan's ratings change. The elimination of confounded announcements is standard event-study practice. However, all 18 announcements were considered, 15 of the 18 announcements were accompanied by abnormal stock returns in the direction expected given the direction of the ratings change. The probability of observing 15 out of 18 in the correct direction simply by chance is 0.4%.

363. Dr. O'Neal observed that the p-value of this calculation for 9 degrees of freedom is approximately .005 meaning that we are confident at the 99.5% level that the abnormal returns indicate informational content.

364. Dr. O'Neal's expert opinion is that the ability to trade ahead of analyst ratings changes would give a trader an unfair advantage over other market participants.

365. Dr. O'Neal's opinion is independent of the characteristics of the small sample of Bolan's ratings changes.

366. However, Dr. O'Neal observed that the findings in this section in the small sample limited to Bolan's ratings changes are consistent with the idea that trading ahead of analyst ratings changes is a strategy that gives a trader an unfair advantage.

### 3. Market Trading Volume Increased in the Stocks That Are the Subject of Bolan's Ratings Changes.

367. Dr. O'Neal examined how the prices of the stocks moved in response to a ratings change. Dr. O'Neal found that the prices tended to move in the expected direction: up for an upgrade, down for a downgrade.

368. A second way to determine whether 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.

369. More trading suggests that new information has been released and that traders are re-adjusting their holdings in response to the new information.

370. In order to identify increased trading on the ratings announcement days, Dr. O'Neal compared the trading volume on those days to the average trading on days surrounding the announcements.

371. Dr. O'Neal found that the trading volume increased by over 60% in the stocks for which Bolan published a ratings change.

372. Dr. O'Neal observed that higher than normal volume on the ratings change announcement days is indicative that the market attaches significance to the ratings change and therefore trades more intensely in days on which there is a ratings change.

373. In order to determine whether the volume was higher than normal, Dr. O'Neal first found the average trading volume for each of the ten stocks with clean announcements in the 30 days surrounding the announcement (15 days before to 15 days after).

374. Dr. O'Neal then divided the trading on each day for each stock by the average for that stock over the 31-day period.

375. The resulting series for each stock will have an average of 1.0.

376. Any day with a ratio above 1.0 indicates a higher than normal trading day.

377. For the ten clean announcements, the average trading ratio was 1.63 on the day of the announcements.

378. The interpretation is that on the day of the announcement the volume was approximately 63% higher than the average volume in the days immediately before and immediately after.

379. Dr. O'Neal performed a statistical difference of means test to determine if the ratio on the announcement days is higher than the ratio on non-announcement days.

380. The difference of means tests yields a test statistic that is 3.45 which is significant at the 1% level.

381. Based on the analysis in this case, Dr. O'Neal is 99% confident that trading increases on days where Bolan was releasing his ratings changes.

382. This finding indicates that the stock market reacts to Bolan's ratings changes with increased trading in the stock when the change is announced.

383. The market interprets the ratings change as material information.

### 4. Ruggieri Did Not Typically Hold Overnight Positions in the Stocks He Traded.

384. After having examined the market reaction to Bolan's ratings change announcements, Dr. O'Neal next set out to analyze Ruggieri's trading. In order for Ruggieri to have profited off of his advance knowledge of the ratings changes, he had to hold an overnight position in the rated stocks.

385. An overnight position was necessary because all six of the ratings change announcements came out after the stock market was closed.

386. In order to profit on the stock price reaction the following day, Ruggieri would have had to buy the stock before the stock market closed on the previous day and held it at least until the following morning.

387. The first question Dr. O'Neal answered is "what percentage of Ruggieri's trading involved holding overnight positions?" Dr. O'Neal concluded that the answer is less than 2%.

388. Ruggieri infrequently held his positions overnight, so the six specific trades identified by the SEC which were held overnight are different from his typical trades.

389. Dr. O'Neal analyzed the trading records of Ruggieri over the period March 30, 2010 through March 31, 2011. Ruggieri primarily placed trades that were closed out before the end of the trading day. Over this period, Ruggieri placed long or short positions that totaled 289,910,241 shares.

390. The positions represented by 285,827,076 of these shares were closed out the same day they were originally placed.

391. The positions represented by 4,083,165 shares were held overnight. Ruggieri therefore held only 1.41% of his trades overnight if we measure the trades by the number of shares.

392. Dr. O'Neal also analyzed the trading by dollar amount. Over the period March 30, 2010 through March 31, 2011, Ruggieri placed trades that totaled $6.11 billion.

393. Of these trades, $88.9 million in positions were held overnight. This represents 1.45% of all trades when measured by dollar amount.

394. On all six trades (100%) at issue in this case Ruggieri held the positions overnight.

395. Only a small fraction (1.4%) of Ruggieri's trades was generally held overnight. The vast majority were closed out the same day they were placed.

### 5. Ruggieri's Overnight Positions around the Six Ratings Changes Is Not Due to Chance.

396. Dr. O'Neal considered the possibility that Ruggieri may have held overnight positions in the six stocks with ratings changes simply by chance. Since Ruggieri traded primarily in the health care industry and Bolan was an analyst in the health care industry, it is theoretically possible that through the normal course of trading Ruggieri might take an overnight position in a stock that was coincidentally covered by a research report released by Bolan.

397. In order to test this possibility, Dr. O'Neal examined the days on which Bolan released a research report that did *not* contain a ratings change.

398. Ruggieri's trading around those releases is fundamentally and statistically different from his trading around Bolan's reports that *did* contain a ratings change. This finding is strong evidence that Ruggieri strategically traded in anticipation of Bolan's ratings changes and that these trades were not due to chance.

399. Dr. O'Neal examined all of the research reports issued by Bolan over the period March 30, 2010 through March 31, 2011.

400. Dr. O'Neal found a total of 190 separate research reports covering a total of 205 stocks (some of the reports cover multiple stocks).

401. Most of Bolan's research reports simply confirmed the rating on the covered stock rather than changing the rating.

402. Of these 205 reports, six are the ratings changes at issue in this case. In addition to the ratings changes at issue in this case, there were two other research reports that contain ratings changes. Therefore the total number of research reports with ratings changes is eight out of the 205 research reports issued by Bolan.

403. By examining all instances where Bolan released a research report on stocks in the industry, Dr. O'Neal can see how often Ruggieri just happened to be holding an overnight position in stocks on the days which Bolan released a report on those stocks.

404. There were 205 stocks on which a report was released by Bolan.

405. In 14 of those cases, Ruggieri built a position in the stock the day before the research report and liquidated it the day after the research report.

406. If the overnight positions that Ruggieri took were not influenced by Bolan's research reports and happened simply by chance, then the 14 out of 205 represent the percentage of time that Ruggieri was simply trading overnight in those stocks by chance.[17] That is, 6.8% (14 divided by 205) of the time, Ruggieri held an overnight position in a stock covered by a research report released by Bolan.

407. This turns out to be approximately 1 out of every 15 times that Bolan releases a research report, Ruggieri had an overnight position in the stock.

408. If Dr. O'Neal's analysis confined the reports to just those involving ratings changes, the analysis would result approximately the same likelihood if it is just a matter of chance. In other words 1 out of 15 times Bolan publishes a ratings change, Ruggieri is expected to hold an overnight position if it was simply a chance occurrence.

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[17] O'Neal assumed that none of the trades were influenced by the release of research reports by Bolan. If there was evidence that some of his trades were in response to the research reports, it would reduce the percentage that was simply by chance. This in turn would make the findings in this section even stronger.

409. In actuality, Ruggieri built an overnight position in 6 out of 8 of the ratings change announcements, which is 75% of the time. If it were simply a matter of chance, Ruggieri is expected build overnight positions approximately 1 out of 15. Instead, Dr. O'Neal's analysis results in 6 out of 8.

410. The likelihood of observing Ruggieri holding overnight positions in 75% of eight particular research reports simply by chance when the likelihood of that happening by chance on any particular report date is 6.8% is, for all practical purposes, zero.

411. A binomial test observing 6 out of 8 overnight trades when the probability of an overnight trade is 6.8% yields a p-value of .000002. This means that the probability is .0002% that Ruggieri would have 6 or more out of 8 trades being held overnight if it was simply by chance.

412. The overnight positions in the stocks Ruggieri held with ratings changes are NOT simply by chance. The explanation that the six trades represented just chance occurrences is rejected.

413. Seven of the ratings changes in the research reports came out after the market closed. The eighth ratings change was released during the trading day.

414. Because this ratings change (the ticker symbol is MDAS and the ratings change was released on January 5, 2011 at approximately 10:20 am) was released during the trading day, capitalizing on the ratings change would not have required an overnight position and so does not lend itself to the same analysis of overnight trading that I discussed earlier in this report.

415. However, it is interesting to know that Ruggieri actually built a position in MDAS within an hour of the release of Bolan's ratings change at 10:20 and then drew down that position before the end of that trading day.

416. Dr. O'Neal's analysis in the paragraph above actually understates the frequency with which Ruggieri had positions in place when Bolan's ratings change was released.

417. In fact, it was seven out of eight times rather than six out of eight. Six out of eight times Ruggieri held an overnight position and, in the seventh, the position was not held overnight but was put in place immediately before the ratings change and unwound the same day.

418. Counting the trading on MDAS as a holding which capitalized on a ratings change, 88% of the time that Bolan released a ratings change within this one-year period, Ruggieri's portfolio was constructed to capture the stock price reaction.

## XV. REBUTTAL REPORT OF DR. EDWARD S. O'NEAL

419. Dr. O'Neal submitted an initial expert report dated February 17, 2015 in this matter.

420. Dr. O'Neal's rebuttal report addresses certain points in the respondents' expert report of Stephen Prowse ("Prowse Report") dated February 17, 2015.

### A. Dr. Prowse's Identification of Confounding Events is Aggressive.

421. Dr. Prowse claims that four of the six ratings changes at issue in this case are confounded and therefore any stock price reaction of those four stocks cannot be attributed to Bolan's ratings changes.

422. The reasons, or lack thereof, for determining that these ratings changes are confounded are addressed in Section I of Dr. O'Neal's rebuttal report.

423. Two of these four announcements were also categorized as confounding in O'Neal's statistical analysis. The four ratings changes that Prowse claims are confounded are:

- the report downgrading Parexel, issued on April 7, 2010;
- the report upgrading Covance, issued on June 15, 2010;
- the report upgrading Emdeon, issued on August 16, 2010; and
- the report upgrading athenahealth, issued on February 18, 2011.

Dr. O'Neal treats each one of these in turn below.

The April 7, 2010 Parexel report

424. Dr. Prowse claims Parexel's stock price decline on April 7, 2010, "likely was due at least partially to concerns about the Euro's and British Pound's declines" (Prowse Report ¶ 18).

425. Dr. O'Neal looked at daily changes in the US dollar/Euro exchange rate for the year preceding Bolan's report (April 7, 2009 to April 6, 2010).

426. Over this period, the average magnitude of the exchange rate change is 0.51% per day.

427. In contrast, on April 7, 2010, the US dollar/Euro exchange rate moved 0.41%, from $1.3399 per Euro to $1.3344 per Euro. Thus, the US dollar/Euro exchange rate did not experience an abnormally large shift on April 7, 2010.

428. In fact, the magnitude of the change in the exchange rate was smaller than average.

429. In Dr. O'Neal's expert opinion this smaller-than-average change in the exchange rate would not cause a price reaction in Parexel and so would not cause the ratings change of Parexel to be confounded.

430. Dr. O'Neal has collected data for the US dollar/British Pound exchange rate and find that the 0.17% movement in the exchange rate on April 7, 2010 was substantially smaller than the 0.57% average daily movement experienced during the preceding year.

431. As a second test of whether the change in the exchange rate would have affected the stock price of Parexel, Dr. O'Neal re-estimated the market model used in generating the abnormal returns of Parexel by including the percentage change in the daily exchange rate between the Euro and the US dollar as an additional factor.

432. The change in the exchange rate was not statistically significant in the market model.

433. The change in the Euro/US dollar exchange rate has no additional effect on the price changes of Parexel over and above any effect it might have on the broader market or the health care industry.

434. Therefore, Dr. Prowse's claim that the change in exchange rates on April 7, 2010 confounds the stock price reaction on that day is unfounded.

435. As a practical matter, this claim of a confounding event is disingenuous since the exchange rate changes every day of the year.

436. Given that these changes would be in the direction of a ratings change approximately 50% of the time, Dr. Prowse would apparently claim that half of all trading days are confounded for Parexel.

The June 15, 2010 Covance report

437. Dr. Prowse claims Covance's stock return on June 15, 2010, was "due at least partially to Recognia's Alert Wire" (Prowse Report ¶ 20).

438. Recognia publishes alerts for traders using technical analysis (also called "charting"), which uses patterns in a stock's price (rather than information about the company's performance) to predict future stock prices.

439. Dr. O'Neal has never seen any academic paper or been involved in any securities fraud case where the researcher has categorized such an announcement from a charting company as confounding in an event study.

440. These charting companies' reports are not reliable and would not be considered confounding.

441. As an example of their unreliability, Dr. O'Neal collected all of Recognia's announcements during 2009 and 2010 regarding Covance. Recognia issued nine alerts about Covance.

442. Each alert predicted a range for the stock's future share price and the date by which the price should be in the range.

443. Dr. O'Neal compared the direction of each alert's prediction (i.e., whether the stock price was going to go up or down) to the actual change in share price by the predicted date and found that only three of Recognia's nine reports correctly guessed whether the stock price would go up or down.

444. Clearly these reports are inaccurate and an efficient market would not react to such reports.

445. Dr. O'Neal excluded this ratings change from his analysis as potentially confounded for a different reason.

446. On the same date as the ratings change, the CFO of Covance spoke at a Healthcare Growth Stock conference sponsored by William Blair. Although the complete content of his comments was not part of the news report, it is possible that the CFO spoke about the prospects for Covance.

447. In an abundance of caution, Dr. O'Neal categorized this ratings change as confounded for this reason.

448. Dr. O'Neal does not know that the CFO said anything about Covance that was not already known by the market.

<u>The August 16, 2010 Emdeon report</u>

449. Dr. Prowse claims Emdeon's stock return on August 16, 2010, was confounded because "Emdeon announced a strategic partnership with Noridian at 1:06 PM" (Prowse Report ¶ 23).

450. Dr. Prowse relies on a timestamp from a social networking app called "Twitter" to show the precise time Emdeon made the announcement.

451. However, as is well-known, Twitter timestamps are notoriously unreliable (for example, see this blog post http://www.networkworld.com/article/2836779/software/twitter-s-timestamp-bug-alec-baldwin-and-me.html).

452. Twitter admitted its timestamps were unreliable and addressed the problem in December 2013, well after the August 2010 Emdeon announcement. (See for example: https://twitter.com/support/status/410219471530237952.)

453. According to Bloomberg, the strategic partnership announcement between Emdeon and Noridian was published by PR Newswire at 4:01 PM, after markets had closed for the day.

454. In an abundance of caution, Dr. O'Neal also categorized this announcement as confounded in his collective analysis of Bolan's ratings changes even though the announcement followed the closing of the market.

455. Since the announcement came out after the market closed, it is not clear that it had any effect on the price of Emdeon.

The February 18, 2011 athenahealth report

456. Dr. Prowse claims athenahealth's stock return on February 18, 2011, was due at least partially to a Recognia alert.

457. Dr. O'Neal performed the same analysis for athenahealth as he did for Covance.

458. During 2009, 2010, and 2011, Recognia issued 20 alerts about athenahealth.

459. Only 45% (9 out of 20) of Recognia's reports correctly guessed whether the stock price would be higher or lower by the specified date.

460. The February 18, 2011 stock price movement of athenahealth was therefore not confounded due to a technical analysis report by Recognia.

**B. When Bolan's ratings changes are analyzed collectively, as is standard in the academic literature, they have a statistically significant impact on stock prices.**

461. Respondent Bolan's Motion in Limine (the "Motion") claim that Dr. O'Neal utilized "junk science" and as being "desperate" because Dr. O'Neal allegedly departed from event study methodology in his analysis of Bolan's ratings changes.

462. Nothing could be further from the truth. Every published study of which Dr. O'Neal is aware that analyzes the effect of analyst ratings changes on stock prices analyzes them collectively.

463. Dr. O'Neal cites several of them in his expert report.

464. These studies calculate the average stock price effects over a sample of ratings changes and, using standard, accepted statistical techniques, determine whether the observed average returns indicate that ratings changes affect stock prices.

465. Not only is this common technique applied in the literature to ratings changes, it is applied to all kinds of other information releases.

466. In Dr. O'Neal's expert report in this case, he applied these same standard statistical techniques to a sample of ratings changes authored by Bolan between September 16, 2008 and April 25, 2011.

467. Dr. O'Neal's analysis showed that, on average, stocks responded by moving approximately 2.9% in the direction of Bolan's rating change and that this average change was statistically significant.

468. All ten of the non-confounded ratings changes from Bolan caused the subject stocks to move in the direction of Bolan's ratings change.

469. These findings and techniques are consistent with the academic literature over the past 20 years that analyzes stock price reactions to analyst ratings changes collectively.

470. Bolan's Motion is absolutely wrong about the literature. His Motion points to an article by Green (2004) as evidence that Dr. O'Neal's analysis departs from the economic methodology of the academic papers he rely on. This is patently false.

471. Bolan does not mention that this paper calculates the statistical significance of stock price reactions collectively and does not examine statistical significance of individual stock price reactions at all.

472. In fact, all of the papers of which Dr. O'Neal is aware that look at the significance of analyst ratings changes look at them collectively, and none of them attempts to look at the significance of individual ratings changes.

473. Dr. O'Neal's analysis answers the question of whether a trader could expect to beat the market by receiving tips to allow informed trading ahead of analyst ratings changes.

474. Based on the published literature and on Dr. O'Neal's study of Bolan's ratings changes collectively, which show statistically significant movements of stock prices on average in response to ratings changes, a strategy of trading ahead of those changes could be expected to beat the market.

475. In addition to following standard and accepted statistical techniques to analyze the collective stock price reactions to Bolan's ratings changes, Dr. O'Neal also analyzed the volume of shares traded in reaction to the ratings changes.

476. Contrary to Bolan's assertion, volume changes are often studied to detect increased market interest in the information conveyed by ratings changes (see for example the article by Womack (1996) that Dr. O'Neal referenced in his expert report).

### C. Dr. O'Neal's analysis of Respondent Ruggieri's overnight positions leads to essentially the same result whether using the corrected or uncorrected raw trade data.

477. Dr. O'Neal has been asked by the Division to re-run his analysis of Ruggieri's overnight positions on days of Bolan's analyst reports without making any corrections in the underlying data with the error correction file Dr. O'Neal was provided to see if there is any difference.[18]

478. Dr. O'Neal examined all of the research reports issued by Bolan over the period March 30, 2010 through March 31, 2011.

479. Dr. O'Neal found research reports covering a total of 205 stocks.

480. In 18 of those cases, Ruggieri built a position in the stock the day before the research report and liquidated it the day after the research report (when Dr. O'Neal used the data correction file to correct Ruggieri's trading, he found 14 rather than 18).

481. If Dr. O'Neal assumes that the overnight positions that Ruggieri took were not influenced by Bolan's research reports and happened simply by chance, then the 18 out of 205 represent the percentage of time that Ruggieri was simply trading overnight in those stocks by chance.[19]

482. That is, 8.8% (18 divided by 205) of the time, Ruggieri held an overnight position in a stock covered by a research report released by Bolan.

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[18] The data correction file was labeled WF-002848306. O'Neal has also been provided recently with a file that is labeled WGBJR-000003 which, as far as O'Neal can tell, has the same information with the exception of two minor corrections.

[19] O'Neal assumed that none of the trades were influenced by the release of research reports by Bolan. If there was evidence that some of his trades were in response to the research reports, it would reduce the percentage that was simply by chance. This in turn would make the findings in this section even stronger.

483. If Dr. O'Neal confines the reports to just those involving ratings changes, he would expect approximately the same likelihood if it is just a matter of chance.

484. In actuality, Ruggieri built an overnight position in 6 out of 8 of the ratings change announcements, which is 75% of the time.

485. The likelihood of observing Ruggieri holding overnight positions in 75% of eight particular research reports simply by chance when the likelihood of that happening by chance on any particular report date is 8.8% is still, for all practical purposes, zero.

486. A binomial test observing 6 out of 8 overnight trades when the probability of an overnight trade is 8.8% yields a p-value of .000011.

487. This means that the probability is .0011% that 6 or more out of 8 trades being held overnight was simply by chance.[20]

488. The overnight positions in the stocks with ratings changes are not simply by chance.

**D. Respondent's brief presents flawed evidence that Ruggieri's trading was driven by chance.**

489. Bolan presented a list of five instances in which Ruggieri held an overnight position in the opposite direction of reports issued by Bolan, none of which included ratings changes.

490. Bolan concludes that this trading show that Ruggieri's trading ahead of the six ratings changes at issue was simply by chance.

491. Dr. O'Neal's analysis shows that this is not correct. Notably, the research reports that Bolan cited contained earnings or valuation changes that did not rise to the level of causing Bolan to change his rating on the company.

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[20] Of the 205 stocks covered, 196 represented unique stocks. For example, Bolan occasionally released 2 reports in one day that would cover the same stock twice. If I run the analysis assuming 196 unique stocks, the results are qualitatively similar. The p-value is .000014.

492. A ratings change conveys a greater level of change in an analyst's opinion than a revision in earnings or valuation absent a ratings change and is more likely to move the price of the stock.

493. Therefore, considering all of Bolan's reports over the one-year period between March 30, 2010 and March 31, 2011, the eight ratings changes, including the initiation of coverage with a buy rating, are the eight announcements that convey the most significant kind of information.

494. Of these eight, Ruggieri held an overnight position 75% of the time.[21]

495. Dr. O'Neal agrees that Ruggieri held overnight positions on several other occasions. But as stated in Dr. O'Neal's expert report, he maintained overnight positions ahead of research reports that did not contain ratings changes less than 10% of the time.

496. Of those reports most likely to have an effect on stock prices, *i.e.,* those containing ratings changes, Ruggieri held an overnight position 75% of the time.

497. Therefore, these overnight positions ahead of ratings changes were not a product of random chance regardless of the direction of Ruggieri's other overnight positions.

## XVI. DECLARATION OF DR. EDWARD S. O'NEAL

498. O'Neal has been engaged by the Securities and Exchange Commission's Division of Enforcement to provide an expert analysis and testimony in this proceeding and have previously prepared and submitted an Expert Report dated February 17, 2015. Since 2007, O'Neal has been a principal of Securities Litigation and Consulting Group, Inc. ("SLCG"), which generally provides expert consultation and testimony in investment management and valuation disputes including event

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[21] As discussed in O'Neal's expert report, one of these eight announcements occurred during the trading day and, though Ruggieri did not hold an overnight position he did have a short term position at the time of the announcement. Therefore, it appears that Ruggieri actually traded on seven out of the eight ratings change announcements, or 88%.

study analysis. The Affidavit of Daniel G. Viola In Support of Bolan's Motions *In Limine* (the "Viola Affidavit"), dated March 9, 2015, and Respondent Gregory T. Bolan, Jr.'s Motions *In Limine*, dated March 9, 2015, falsely accuse O'Neal of ethical violations.

499. The Division of Enforcement first contacted O'Neal regarding the possibility of O'Neal retention as an expert in this matter on March 3, 2014. Consistent with O'Neal's prior practice, after an initial conversation about the general scope of the potential engagement, the Division informed O'Neal that the matter concerned an investigation of individuals named Gregory T. Bolan, Jr. and Joseph C. Ruggieri and their trading at a securities firm, Wells Fargo. O'Neal ran a conflict search by thoroughly examining the present clients and past clients of SLCG and the names Bolan and Ruggieri did not appear. Nor did O'Neal recollect working for, or even knowing the names of, Gregory T. Bolan and Joseph C. Ruggieri. On March 27, 2014, the Division retained O'Neal to provide expert services in this matter.

500. It is O'Neal's understanding that the Division initially identified O'Neal to Respondents as its expert in this matter on February 9, 2015, in its witness list.

501. On or about March 2, 2015 — after the Division filed O'Neal's initial expert report — the Division staff advised O'Neal that counsel for Bolan, Sam Lieberman, Esq., advised the staff that he had found records indicating that in October 2013, O'Neal had had communications with Lieberman and his law firm, Sadis & Goldberg LLP, regarding the possibility of that firm engaging O'Neal's expert services. O'Neal initially had no recollection of any communications or meetings with Lieberman or Sadis & Goldberg in October 2013.

502. On or about March 2, 2015, O'Neal checked his records and confirmed to the Division staff that he had had an initial meeting with Sadis & Goldberg on or about October 9, 2013 regarding the possibility of being engaged on at least one matter to perform an "event study"

analysis. O'Neal had agreed to meet with them in person in New York for an initial interview, because O'Neal had planned on being in New York for an unrelated matter.

503. Neither at that meeting with Sadis & Goldberg nor before that meeting does O'Neal recall Sadis & Goldberg disclosing to O'Neal the name of their clients or the matter. Nor did O'Neal enter into any confidentiality agreement with Sadis & Goldberg or their clients, and no such agreement is reflected in any of O'Neal's records. Indeed, there is nothing in O'Neal's file to indicate that Sadis & Goldberg gave O'Neal any documents or confidential information. Moreover, O'Neal did not take any notes during the October 9, 2013 meeting, which would be O'Neal's usual practice when having a preliminary meeting with attorneys on any type of case. O'Neal has such preliminary in-person or telephonic meetings several times a month.

504. The copy of O'Neal's email dated October 4, 2013 to Lieberman, attached as Exhibit 1 to the Viola Affidavit, is consistent with O'Neal's records and recollection that O'Neal was not told the identity of Sadis & Goldberg's clients nor the matter name of the Division investigation they were considering hiring O'Neal for. For example, the subject matter is simply "Event Study case." In addition, while O'Neal refers to the possibility of meeting with their "two clients," the email does not contain the names of the clients. Indeed, O'Neal's recollection is that their clients were not in that meeting. O'Neal's recollection is that there were three people in that meeting, all of whom were identified to O'Neal as attorneys. Nor does the Viola Affidavit state that he or anyone else at Sadis & Goldberg told O'Neal their clients' names or that their clients attended the meeting with O'Neal on October 9, 2013. Nothing ever came of that meeting on October 9, 2013, and O'Neal never heard from Sadis & Goldberg again, to the best of O'Neal's recollection.

505. Viola suggests in his affidavit that he provided O'Neal with confidential information. O'Neal is unaware of any confidential information that Viola or anyone at Sadis & Goldberg gave me. In fact, O'Neal's records indicate and his recollection is that he discussed with them doing an

event study only in a general sense. Such event study analyses are standard in many securities fraud cases, including insider trading cases. Other than generally knowing that they were explore retaining O'Neal's services to conduct an event study in an insider trading matter, it does not appear that O'Neal was given any other information such as the name of the clients, and the particular events that were relevant to the insider trading charges.

506. O'Neal's records indicate that he never entered into any agreement with Sadis & Goldberg regarding anything that was discussed at that October 9, 2013 meeting. In O'Neal's practice, it would be unusual for a potential client to give O'Neal confidential information absent a written confidentiality agreement. Other than generally asserting that he provided O'Neal with confidential information, Viola provides no description or detail in his affidavit as to the so-called confidential information he claims to have provided O'Neal on October 9, 2013.

507. Viola suggests in his affidavit that O'Neal provided an opinion endorsing his client's defenses during that the October 2013 meeting. As an expert, O'Neal does not provide opinions, and he certainly does not provide opinions on event studies, until after he has been provided or has collected data and has then undertaken a thorough analysis. Consistent with his practice, O'Neal did not recall providing any such opinion to Sadis & Goldberg at the meeting in October 2013. SLCG and O'Neal have been hired on multiple securities fraud cases. In the vast majority of those cases, event studies were conducted by both plaintiff and respondent/defendant experts. Any discussion of event studies at that early stage would have been standard and certainly not a unique defense strategy. Further, any discussion of any opinion at that initial interview stage would have been based on hypothetical facts being established. The only event studies O'Neal has conducted in this matter are those identified in his expert report on behalf of the Division, dated February 17, 2015.

508. O'Neal was insulted by Bolan's accusations in his *in limine* brief, in which he accused O'Neal of acting in an "unethical" manner. As the CV attached to his expert report indicates,

O'Neal has testified as an expert witness since 2000 in over 70 litigations. This is the first time anyone has questioned his ethics. There was absolutely no basis for Bolan or Sadis & Goldberg to allege that O'Neal engaged in any improper conduct.

## XVII. ADDITIONAL PHONE NUMBER AND EMAIL FACTS

509. Moskowitz was the subscriber for the landline telephone number [redacted] from at least March 2010 through March 2011. (DIV 152).

510. Moskowitz was the subscriber for the cellular telephone number [redacted] from at least March 2010 through March 2011. (DIV 145).

511. As of the date it produced the landline telephone records contained in DIV 152, Time Warner Cable retained records of telephone calls going back to March 2011.

512. As of the date it produced the landline telephone records contained in DIV 144, Comcast retained records of telephone calls going back to August 2010.

513. Wells Fargo retained records of outgoing telephone calls for the telephone records contained in Exhibit 146-A.

514. Wells Fargo did not retain records of incoming telephone calls for the telephone records contained in Exhibit 146-A.

515. Emails produced by Wells Fargo and Bates-stamped with the prefix "WFC-" are emails in which the date and time information contained in the email header at the very top of each Bates-labeled document (*i.e.*, document image with the WFC-Bates label affixed on it) is in Eastern Time.

## DIVISION'S DISPUTED PROPOSED CONCLUSIONS OF LAW

## I. PREPONDERANCE-OF-THE-EVIDENCE STANDARD

15. See stipulated conclusions of law for preponderance-of-the-evidence standard.

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

16. See stipulated conclusions of law for statutory basis for insider trading violations.

17. 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)).

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

19. See stipulated conclusions of law for standard for tipper liability.

### A. Bolan Tipped Ruggieri and Moskowitz.

20. "[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.").

21. 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).

22. 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.

23. Ruggieri held overnight positions less than 2% of the time and admittedly held positions for more than a few days only "very rare[ly]."

24. Yet Ruggieri held overnight positions — two of which he held for one week — before six of Bolan's eight ratings changes.

25. 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.

26. 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.

27. 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.

28. 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).

29. 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. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) ("An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.... It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote."); *John P. Flannery*, Commission Opinion, Rel. No. 3981, 2014 WL 7145625, at *20 (Dec. 15, 2014) ("[A] misrepresentation can be material as long as a reasonable shareholder would deem it 'important' to his deliberations; the standard does not require proof 'that disclosure of the omitted fact would have caused the reasonable investor to change' his behavior.") (citations omitted); *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 162 (2d Cir. 2000) ("[I]t is not necessary to assert that the investor would have acted differently if an accurate disclosure was

made."); *Folger Adam Co. v. PMI Indus., Inc.*, 938 F.2d 1529, 1533 (2d Cir. 1991) ("No matter how stated, however, it is well-established that a material fact need not be outcome-determinative; that is, it need not be important enough that it 'would have caused the reasonable investor to change his vote.'… Rather, the information need only be important enough that it 'would have assumed actual significance in the deliberations of the reasonable shareholder.'") (quoting *TSC Indus. Inc.*, 426 U.S. at 449).

30. Therefore, the Division does not need to show that a company's stock price moved after disclosure of the relevant information in order to prove that the information was material. *See 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."); *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."); *DeMarco v. Lehman Bros., Inc.*, 222 F.R.D. 243, 245 (S.D.N.Y. 2004) ("In [*United States v. Carpenter*], however, the [Supreme] Court further noted that the district court had found that the [newspaper] column's impact on the market was 'difficult ... to quantify in any particular case.' [484 U.S. 19, 23 (1987)], *quoting United States v. Winans*, 612 F.Supp. 827, 830 (S.D.N.Y.1985). As it happens, this inability to quantify was irrelevant to the decision in *Carpenter*, both because *Carpenter* was a criminal case in which proof of reliance was unnecessary…and because, since the column was found to reflect the columnist's honest opinions, *id.* at 22–23,…the case was analyzed in terms of misappropriation of information from the columnist's employer rather than in terms of fraud on a purchaser or seller of securities, *id.* at 22–25.").

31. 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).

32. 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.").

33. 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.)

34. As Dr. O'Neal's analysis will establish, Bolan's ratings changes had an empirically material impact on stock prices when taken together.

35. 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.

36. See stipulated conclusions of law for legal standard for non-public information.

37. 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.

38. 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.

39. 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).

40. Bolan had material non-public information that Wells Fargo required him to treat as confidential: knowledge of his own forthcoming ratings changes.

41. 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.**

42. To the extent that the Second Circuit's decision in *United States v. Newman*, __ F.3d __, 2014 WL 6911278 (2d Cir. Dec. 10, 2014) stands for the proposition that a tipper's gift of confidential information for the pecuniary benefit of his tippee friend no longer suffices to establish the tipper's personal benefit, its holding contradicts the Supreme Court's decision in *Dirks*, a prior Commission opinion, and the decisions of each of the five other Circuit Courts that have considered the issue.

43. Indeed, for decades, virtually uniform precedent has held that a tipper's gift of inside information for the pecuniary benefit of his friend constitutes a sufficient personal benefit to the tipper to establish criminal and civil insider trading liability.

44. To the extent *Newman* holds otherwise, this Court should decline to follow it.

45. Bolan tipped his friends, Ruggieri and Moskowitz, by giving them gifts of confidential information that they could then trade on for profits suffices to allege Bolan's personal benefit.

46. The Supreme Court first required a showing of personal benefit in *Dirks*, when it hinged liability on proof that "the insider personally will benefit, directly or indirectly, from his disclosure." *Dirks*, 463 U.S. at 662.

47. While *Dirks* noted that a *quid pro quo* between the tipper and the trader satisfied that requirement, it required no such *quid pro quo*. *Id.* at 664.

48. Instead, *Dirks* explicitly held that a personal benefit "*also exist[s]* when a [tipper] makes a gift of confidential information to a trading relative or friend.

49. The tip and trade resemble trading by the [tipper] himself followed by a gift of the profits to the recipient." *Id.* at 664 (emphasis added); *see also id.* at 659 ("[I]nsiders...may not give such [undisclosed corporate] information to an outsider for the same improper purpose of exploiting the information for their personal gain.") (citing Exchange Act Section 20(b), 15 U.S.C. § 78t(b)).

50. *Dirks'* personal benefit requirement sought to distinguish between disclosures of confidential information for a proper, corporate purpose and disclosures for an improper, self-dealing purpose.

51. Following *Dirks*, the Commission has held that, in the absence of any "economic benefit" to a tipper resulting from his tip, a tipper's office friendship with his tippee satisfies any personal benefit requirement. *See Lohmann*, 2003 WL 21468604, at *4.

52. In *Lohmann*, a former registered representative of a broker-dealer and investment adviser appealed an administrative law judge's initial decision barring him from associating with a broker-dealer or investment adviser after finding him liable as a tipper for insider trading. *Id.* at *1, 4.

53. The tipper's "sole contention" on appeal was that he did not violate Exchange Act Section 10(b) and Rule 10b-5 because he received no benefit from his tip to a co-worker. *Id.* at *4. Rejecting his argument, the Commission concluded:

> Here, Lohmann received no economic benefit from the tip he provided to [the tippee].... Lohmann claims that [the tippee] was a mere acquaintance rather than a friend and that therefore their relationship was too attenuated for his tip to constitute a gift to a friend under the *Dirks* benefit test.... We reject Lohmann's contention.... It is sufficient, as the law judge found, that Lohmann and [the tippee] were 'friendly, if casual, office acquaintances.' [The tippee] sought Lohmann's advice and found Lohmann to be helpful. Lohmann offered the tip to help the young [tippee]. In return, Lohmann received the personal satisfaction of his generosity and the admiration of [the tippee]. We believe this is one type of benefit envisioned by *Dirks*.

*Id.*

54. Similarly, the Second Circuit has repeatedly held that a "personal benefit to the tipper" includes "not only 'pecuniary gain,' such as a cut of the take or a gratuity from the tippee, but also a 'reputational benefit' or the benefit one would obtain from simply 'mak[ing] a gift of confidential information to a trading relative or friend.'" *Obus*, 693 F.3d at 285 (quoting *Dirks*, 463 U.S. at 663–64); *see also id.* at 291 ("*Dirks* defined 'personal benefit' to include making a gift of information to a friend.... [T]he undisputed fact that [the tipper] and [tippee] were friends from college is sufficient to send to the jury the question of whether [the tipper] received a benefit from tipping."); *United States v. Jiau*, 734 F.3d 147, 153 (2d Cir. 2013) (concluding that a tipper obtains a personal benefit if he has "an intention to benefit the [recipient]," such as by "'mak[ing] a gift of confidential information to a trading relative or friend'") (quoting, directly and indirectly, *Dirks*, 463 U.S. at 664); *SEC v. Warde*, 151 F.3d 42, 48–49 (2d Cir. 1998) ("[T]he Supreme Court has made plain that to prove a § 10(b) violation, the SEC need not show that the tipper expected or received a specific or tangible benefit in exchange for the tip.... Rather, the 'benefit' element of § 10(b) is satisfied when the tipper 'intend[s] to benefit the...recipient' or 'makes a gift of confidential information to a trading relative or friend.'") (citing and quoting *Dirks*, 463 U.S. at 664). As the Second Circuit noted in *Jiau*, "The proof required to show personal benefit to the tipper is modest." 734 F.3d at 153.

55. Since then, every other Circuit court to have considered the issue has also held that a tipper's gift of confidential information to a trading friend confers a personal benefit on the tipper. *See SEC v. Rocklage*, 470 F.3d 1, 7 n.4 (1st Cir. 2006) ("Even if there is a requirement that the tipper receive a personal benefit [in a misappropriation case], the mere giving of a gift to a relative or friend is a sufficient personal benefit."); *SEC v. Cuban*, 620 F.3d 551, 558 n. 38 (5th Cir. 2010) ("[A] gift to a trading friend or relative" could "suffice to show the tipper personally benefitted.") (quoting *Yun*,

327 F.3d at 1277); *United States v. Evans*, 486 F.3d 315, 321 (7th Cir. 2007) ("[T]he concept of gain is a broad one, which can include a 'gift of confidential information to a trading relative or friend.'") (quoting *Dirks*, 463 U.S. at 664); *SEC v. Clark*, 915 F.2d 439, 454 (9th Cir. 1990) ("(1) [E]nriching a friend or relative; *or* (2) tipping others with the expectation of reciprocity" gives rise to Rule 10b-5 liability) (emphasis added); *Yun*, 327 F.3d at 1275 ("[T]he gain does not always have to be pecuniary.... [A] gift to a trading friend or relative [can] suffice to show that the tipper personally benefitted.") (summarizing *Dirks*).

56. Some federal courts have even held that a benefit should be *presumed* when a tipper intentionally discloses material, non-public information. As the Seventh Circuit put it, "[a]bsent some legitimate reason for [the tipper's] disclosure . . . the inference that [his] disclosure was an improper gift of confidential corporate information is unassailable. After all, he did not have to make any disclosure, so why tell [the tippee] anything?" *SEC v. Maio*, 51 F.3d 623, 632 (7th Cir. 1995); *see also SEC v. Blackwell*, 291 F. Supp. 2d 673, 692 (S.D. Ohio 2003) ("A mere allegation that the insider has disclosed material non-public information is sufficient to create a legal inference that the insider intended to provide a gift to the recipient of the information, thereby establishing the personal benefit.").

57. Against this backdrop, the Second Circuit issued the *Newman* decision last month. In *Newman*, the Second Circuit vacated and dismissed with prejudice the criminal convictions of two hedge fund managers who were downstream tippees several tipping levels removed from the corporate insider tippers. 2014 WL 6911278, at *1–2. In part, the court found the trial evidence insufficient to prove beyond a reasonable doubt that the two tippers, who had never been criminally charged, received a personal benefit from their tips. *See id.* at *2, 9–11.

58. The court held that the "[t]he circumstantial evidence...was simply too thin to warrant the inference that the corporate insiders received any personal benefit in exchange for their

tips." *Id.* at *10. In the court's view, the trial evidence established that the first tipper and his tippee were "not close friends," although they had attended business school and worked together, and that the second tipper and his tippee were "family friends" who "had met through church and occasionally socialized together." *Id.* at *2, 10. The court held that these relationships were not enough to infer, beyond a reasonable doubt, a personal benefit to the tippers. *See id.* at *9–13.

59. See stipulated conclusions of law for agreed language from *Newman.*

60. Although this language initially suggests that the "mere fact of a friendship" is not enough, as Respondents emphasize, several sentences later, in quoting *Jiau*, the court holds that evidence of "an intention to benefit the [tippee]," as *Dirks* permits, is sufficient.

61. At a minimum, *Newman*'s standard is unclear. It is ambiguous about whether fact-finders in the Second Circuit may rely on the tipper and tippee's friendship to infer the tipper's "intention to benefit" from his tip.

62. Furthermore, particularly in light of its ambiguity, *Newman* should not be read to overturn the Second Circuit's settled law, as set forth most recently by another Second Circuit panel in *Jiau*, holding that friendship alone can be sufficient evidence of the tipper's personal benefit. *Jiau*, 734 F.3d at 153; *Piesco v. Koch*, 12 F.3d 332, 345 (2d Cir. 1993) ("[A] panel of the [Second Circuit] lacks the authority to overrule the prevailing law of the circuit.").

63. Even if *Newman* could be read to hold that friendship alone between the tipper and tippee never permits the inference of a personal benefit to the tipper, this Court should not apply any such holding to this administrative proceeding.

64. Such a holding cannot be reconciled with the Supreme Court's holding in *Dirks*, the Commission's own precedent, the uniform view of the five other Circuits to have reached the question, or the prior Second Circuit decisions, as described above.

65. As those cases hold, a tipper derives a personal benefit by disclosing inside information to a trading friend, because the tip is equivalent to the tipper himself profitably trading on the information and then giving the trading profits to his friend — obviously illegal conduct. *See, e.g.*, *Dirks* at 664; *Warde*, 151 F.3d at 48–49; *Jiau*, 734 F.3d at 153.

66. A lone Second Circuit panel's decision to the contrary would bind neither this Court nor the Commission.

67. Bolan's friendship with Ruggieri and Moskowitz therefore adequately alleges Bolan's personal benefit.

68. Indeed, Respondents' own admissions, which the Division will offer into evidence at the hearing, demonstrate that Bolan and Ruggieri were "pretty good friends," who spoke "daily" and "[o]ften multiple times a day," including about both work and personal matters. (Ex. 111 at 51–52, 75 (Ruggieri).)

69. Similarly, Bolan's admissions demonstrate that he and Moskowitz were "old," "close" friends. (Ex. 110 at 112–13.)

70. Based on these admissions, the Court should ultimately conclude that Bolan received a personal benefit under *Dirks* by giving his friends the gift of material, nonpublic information — in violation of Wells Fargo's compliance policies — that his friends could use to make profits.

71. Even if the Court were to conclude that Bolan's friendship with Ruggieri and Moskowitz cannot alone suffice to establish Bolan's personal benefit as a matter of law, Bolan also received a personal benefit of a "pecuniary *or* similarly valuable nature." *Newman*, 2014 WL 6911278, at *10 (emphasis added).

72. Bolan tipped Ruggieri at least in part to curry favor with him so that he would help boost Bolan's career.

73. In fact, Ruggieri helped Bolan obtain a promotion and salary raise.

74. As *Newman* makes clear, there are at least two possible ways to satisfy its standard: (1) "a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least *a potential gain of a pecuniary or similarly valuable nature*," or (2) "a relationship between the insider and the recipient that suggests…an intention to benefit the [latter]." *Newman*, 2014 WL 6911278, at *10 (emphasis added) (brackets in original).

75. Nowhere does *Newman* suggest that a direct, pecuniary *quid pro quo* is required to show a personal benefit. *Id.*

76. The Division's evidence of Bolan and Ruggieri's relationship satisfy this standard.

77. Bolan both "inten[ded]" to benefit Ruggieri *and* received a "potential[ly]… pecuniary" gain from his own tips. *Newman*, 2014 WL 6911278, at *10.

78. Bolan tipped Ruggieri, who used the information to execute illegal profitable trades in his Wells Fargo account.

79. In return, Ruggieri praised Bolan to Ruggieri's supervisor, without disclosing the tips. Ruggieri's supervisor in turn conveyed Ruggieri's praise to Bolan's supervisor when Bolan was nominated for a promotion to a director position.

80. Ruggieri's praise, filtered through his and Bolan's supervisors, helped Bolan obtain the promotion and a corresponding raise.

81. This type of gain is more than sufficient even under *Newman*.

82. Respondents' contention that this benefit is "theoretical," "too far removed," or "unquantifiable" (Bolan Mem. 9; Ruggieri Mem. 8) finds no support in *Newman* or *Dirks*.[22]

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[22] Nor does it find any support in *SEC v. Rorech*, 720 F. Supp. 2d 367 (S.D.N.Y. 2010), which Bolan also cites. (Bolan Mem. 9.) In *Rorech*, after a bench trial, the court concluded that, among other things, the tipper did not have a "motive" to provide inside information to the tippee where the tipper and tippee "had a purely professional working relationship [and] were not friends." 720 F. Supp. 2d at 373, 415–16. *Rorech* is inapposite for two reasons. First, the *Rorech* court did not require a showing of personal benefit as an element of the misappropriation case before it. *Id.* at

83. Nor do Respondents' contentions find any support in *SEC v. Rorech*, 720 F. Supp. 2d 367 (S.D.N.Y. 2010), which Bolan also cites. (Bolan Mem. 9.) In *Rorech*, after a bench trial, the court concluded that, among other things, the tipper did not have a "motive" to provide inside information to the tippee where the tipper and tippee "had a purely professional working relationship [and] were not friends." 720 F. Supp. 2d at 373, 415–16. *Rorech* is inapposite for two reasons. First, the *Rorech* court did not require a showing of personal benefit as an element of the misappropriation case before it. *Id.* at 408–09 (reciting elements of misappropriation case with no mention of personal benefit). Second, the court used the phrase "quantifiable or direct financial benefit," which Bolan quotes, in a different context: to determine whether the defendant tipper had a plausible motive, absent any friendship between him and the tippee, for providing an illegal tip. *Id.* at 373, 415–16. In contrast, the hearing evidence of the friendship and work "partner[ship]" between Bolan and Ruggieri and the close friendship between Bolan and Moskowitz will demonstrate why Bolan tipped Ruggieri and Moskowitz.

84. *Dirks'* personal benefit inquiry addresses the tipper's "intention," a term *Newman* itself quotes, and requires no resulting, direct pecuniary exchange from the tippee to the tipper. *See Dirks*, 463 U.S. at 664; *Newman*, 2014 WL 6911278, at *10.

85. Nor would it be appropriate to require Bolan to receive some direct pecuniary benefit in exchange for a disclosure that had no pecuniary cost. Tipping is costless (other than the risk of detection).

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408–09 (reciting elements of misappropriation case with no mention of personal benefit). Second, the court used the phrase "quantifiable or direct financial benefit," which Bolan quotes, in a different context: to determine whether the defendant tipper had a plausible motive, absent any friendship between him and the tippee, for providing an illegal tip. *Id.* at 373, 415–16. In contrast, the hearing evidence of the friendship and work "partner[ship]" between Bolan and Ruggieri and the close friendship between Bolan and Moskowitz will demonstrate why Bolan tipped Ruggieri and Moskowitz.

86. Making a gift of inside information is unlike making a gift of cash or personal property, because unlike physical property that can ordinarily be enjoyed by only one person at a time, many people — including the tipper and multiple tippees — may be able to simultaneously have and profitably trade on the same information, as both Ruggieri and Moskowitz did here. *See, e.g.*, *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968) (involving trading by multiple insiders and tippees).

87. The tangible benefit here of a promotion and raise is very different from the career advice that *Newman* found wanting. In *Newman*, one tippee provided career advice that the Second Circuit described as "little more than the encouragement one would generally expect of a fellow alumnus or casual acquaintance." 2014 WL 6911278, at *11. The court noted some examples: "minor suggestions on a resume" and "advice prior to an informational interview." *Id.* (internal quotation marks and citations omitted).

88. The court also summarized its view of the testimony of this first-level tippee, the prosecution's cooperating witness: "[H]e would have given [the tipper] advice without receiving information because he routinely did so for industry colleagues." *Id.* at *10.

89. Unlike this sort of general career advice that any business acquaintance might give another business acquaintance, Ruggieri provided Bolan a more particularized career benefit: praising Bolan to supervisors to help him obtain a promotion and raise.

90. Furthermore, another court in the Southern District of New York has recently 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).

*United States v. Riley*, 2015 WL 891675, at *5 (S.D.N.Y. Mar. 3, 2015).

91. Judge Caproni also 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).

92. 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.

93. Judge Caproni's analysis further demonstrates that Bolan's personal benefit suffices under *Newman*. Among other things, 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.

94. 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.**

95. See stipulated conclusions of law for tipper scienter standard.

96. 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").

97. Bolan had the requisite scienter. 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.

98. Second, there can be no reasonable dispute that Bolan knew his forthcoming ratings changes were material, non-public information, as his prior admissions establish.

99. Third, Bolan knew that Wells Fargo employed him and knew that Wells Fargo prohibited him from discussing forthcoming ratings 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.

100. 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.

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

101. 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.

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

102. 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).

103. 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 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.

104. 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.

105. 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. 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.

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

106. See stipulated conclusions of law for statutory basis for cease-and-desist orders and factors Court should consider under *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), to determine appropriateness of a cease-and-desist order.

107. 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)).

108. 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.

109. See stipulated conclusions of law for statutory basis for industry bars or suspensions.

110. 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."[23] 15 U.S.C. §§ 78o(b)(6)(A) & 78o(b)(4)(D).

111. 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).

112. 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 six different stocks, and have failed to take responsibility for their conduct. 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

[23] 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.

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.

113. See stipulated conclusions of law for statutory basis for and purpose of disgorgement.

114. 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).

115. 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)).

116. 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.**

117. See stipulated conclusions of law for statutory basis for civil money penalties.

118. 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).

119. 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).

120. 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]").

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