UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of
Gregory T. Bolan, Jr. and
Joseph C. Ruggieri,
Respondents.

RESPONDENT BOLAN'S DISPUTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Samuel J. Lieberman
Michelle N. Tanney
Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, New York 10176
(212) 573-8164

Attorneys for Gregory T. Bolan, Jr.

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<u>**DISPUTED FACTS**</u>

I. <u>Relevant Parties</u>

A. <u>Gregory T. Bolan, Jr.</u>

1. Both Bolan and Wells Fargo ranked very low in industry ratings for influence.

2. The premier rankings for analyst influence, published by *Institutional Investor* Magazine in October 2010, ranked Bolan "19" out of "28" Wall Street Analysts in the "Health Care Technology & Distribution" category. (Bolan Rebuttal Ex. ("BRX") 16 at WF670677-729.)

3. For the same category, Wells Fargo was ranked "19" out of "22" Wall Street Firms. (*Id.*)

4. Further, since Bolan did not even begin covering the Life Science Tools sector (which contained stock BRKR) until March 29, 2011, neither he nor Wells Fargo was even ranked in this category. (*Id.*)

5. Bolan had little market influence because he had less than three years' experience publishing analyst reports during the relevant period.

6. Although the Division notes that Bolan received a "best up and comer" recognition from *Institutional Investor* in October 2010 for the CRO/Pharmaceutical area, this was for "very junior people" whose reputations were "not enough to get voted and ranked." (Div. Ex. ("DX") 132 Wickwire Tr. at 65:12-20.)

7. Further, it is undisputed that Bolan's reputation in the Health Care IT sector was "Far less relevant" than in the CRO sector. (DX112 Evans Tr. at 23:19-23.) And his opinion was "virtually irrelevant" in the Life Science Tools sector. (*Id.* at 24:7-8.)

B. **Joseph C. Ruggieri**

8. Ruggieri's job involved actively trading all of the approximately sixteen stocks that Bolan covered. (BX82-99 (Trading Spreadsheets).)

9. On a daily basis, he made hundreds of trades either in an agency capacity (for customers), or in a principal capacity (putting Wells Fargo money at risk) (*Id.*)

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

11. Ruggieri was not Bolan's supervisor. And he did not have the power to decide whether Bolan would be promoted or paid more.

12. During Ruggieri's Wells Fargo tenure, Bolan published at least 285 analyst reports. (BX45, WF284305.) Yet Ruggieri's Wells Fargo tenure spanned just 415 trading days.[24]

13. In other words, Bolan published a report every 1.5 trading days Ruggieri worked. And each day, Ruggieri actively traded the same stocks that Bolan covered.

C. **Trader A**

14. Trader A was in no position to provide Bolan with *quid pro quo*, objective pecuniary or similarly valuable benefit to Bolan for alleged insider trading.

15. The Division has no evidence that Bolan received anything of value or consequence from Trader A.

[24] This number is derived from subtracting two out of every seven days for weekends, and also subtracting the 15 days of market holidays from September 1, 2009 through April 25, 2011. *See, e.g.*, Nasdaq OMX Market Holiday Schedules 2009-2011, *available at* http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2010-030 (2011); https://www.nasdaqtrader.com/TraderNews.aspx? id=dn2009-041 (2010); https://www.nasdaqtrader.com/TraderNews.aspx?id=nva2008-083 (2009).

16. Trader A's records reveal that he actively traded at least ten of the stocks that Bolan covered as an analyst. This includes the securities of ATHN, AMRI, CVD, EM, ICLR, KNDL, MDAS, PRXL, PPDI and QSII.

17. Trader A also actively followed Bolan's published research. Indeed, Trader A engaged in hundreds of transactions in PRXL, AMRI, and EM besides the three transactions at issue. Thus, his trades are neither unusual nor suspicious.

18. The Division has identified no witness to support its Trader A allegations, and thus its claims have no factual or legal support.

19. The assertion that Bolan and Trader A were particularly close is rebutted by (i) unrebutted testimony that they only occasionally socialized, and (ii) the fact that Bolan was neither directly notified of Trader A's death nor invited to his funeral.

II. <u>As Healthcare Analyst, Bolan's Job Required Him to Call Ruggieri, Wells Fargo's Healthcare Trader, "At Least Once a Day" for Legitimate Purposes</u>

A. <u>Wells Fargo Asked Bolan to Speak to Ruggieri Once or More a Day About Any News on His Stocks, Including While He worked on Ratings Changes</u>

20. There are legitimate reasons for every phone call cited by the Division in the OIP, because Bolan was instructed by his supervisors to contact Ruggieri "at least once a day to exchange information." (BX2 at WFC-1003791.)

21. In an email entitled "Have you called your trader today?," Bolan's supervisor instructed him "to be in constant dialogue with your trading counterpart[]," who was Ruggieri. (*Id.*)

22. Wells Fargo emphasized that "NOTHING ELSE you can do will impact revenues more directly than providing the person who trades your stocks with timely opinions and answers to questions." (*Id.*)

23. Wells Fargo told Bolan it was his "responsibility to call the desk every morning and check in" with Ruggieri. (*Id. at* WFC-1003791-92.)

24. Wells Fargo also told Bolan "[w]hen news breaks" on any of his stocks, he should "be certain to call" Ruggieri "right away," including: (1) "if there is a news article on one of your stocks"; (2) "if a competitor" of Wells Fargo "changes a rating"; (3) "if a merger is announced" and (4) "if the company files an 8-K [SEC form for press release], etc., etc., etc." (*Id.* at WFC-1003792; Ex. 1 ("Stay in touch with your trader.").)

25. Wells Fargo's requirement that Bolan speak to Ruggieri at least once a day was on top of its "Best Practices" for analysts at Wells Fargo (then-Wachovia). (BX1.) They instructed analysts to "stay in touch with your trader," speak with "the sales/trading floor to get the word out," and have "150-200 calls per month" with clients about his analysis. (BX at WF508355, pp. 8, 12-13.)

26. Wells Fargo urged Bolan to widely distribute his analysis to increase his influence.

27. Importantly, Wells Fargo required Bolan to speak to Ruggieri even while he was working on a report changing his "rating or estimates" of valuation or earnings. (BX2 at WFC-001003792.)

28. Wells Fargo demanded that when writing a rating change, "do not get so caught up in writing your note/squawk that you fail to communicate with the trading desk in a timely manner." (*Id.*) It wanted "constant dialogue" with Ruggieri. (*Id.* at WFC-001003791.)

29. It is evident from Bolan's record of research reports (BX45), emails and judicially noticeable releases and articles that there are valid reasons for every call at issue.

30. For example, the Division cites a 7:10 a.m. March 30, 2010 phone call where Bolan dialed the 6210 number as a suspicious phone call. Yet the document trail shows that just three minutes earlier, at 7:07 a.m., Ruggieri sent Bolan a copy of a ratings upgrade of PRXL by Raymond James, a Wells Fargo competitor. (BRX1 at WFC660162.)[25]

31. Thus, the document trail confirms Bolan validly calling Ruggieri when "a competitor" of Wells Fargo "changes a rating." (BX2 at WFC-1003792). This is much more plausible than the Division's suggestion, because Bolan did not even request to downgrade Parexel until 2:23 p.m. on March 30, 2010. (DX48.)

32. Similarly, the Division falsely cites as suspicious an 18-minute call from Ruggieri to Bolan at 7:39 p.m. on the evening of April 5, 2010. Yet documentary evidence shows that from 7:54-7:55 p.m. – while this call was ongoing – Bolan forwarded the "Vcf" file VCard contact information for four industry contacts for a California business trip. (BX7 at WFC463079; BX8 at WFC463080; BX9 at WFC465508; BX10 at WFC475158.) Ruggieri's expense records show he travelled for "SAN FRAN & SAN DIEGO MTGS" that week. (BX103B line 386 ("Cab to Airport" April 4, 2010), line 384 ("Cab to San Fran Hotel" April 9, 2010)).

33. The Division also falsely cites as suspicious a June 14, 2010 phone call at 10:43 a.m. from Bolan to Ruggieri lasting 3 minutes and 24 seconds. But the documentary evidence shows this call was roughly an hour after Bolan published a Squawk Analyst Report entitled "BMY Chooses ICLR and PRXL as Strategic Partners." (BX26 at WFC-2362398; BX45 at WF284305, line 250.) This is a prime example of Bolan acting to "call the desk" shortly after

publishing an analyst report – to explain the report to Ruggieri as he interacted with clients. (BX2 at WFC-1003792.)

34. And the documentary shows there is no record of any call between Bolan and Ruggieri before Bolan issued the July 6, 2010 AMRI upgrade report.

35. None of the phone records identified by the Division identifies any call between Bolan and Ruggieri from June 25 through the end of the day, July 6, 2010 – after the AMRI report was issued. (DX121-26, 144-46).

36. Instead, the Division cites a July 1, 2010 email exchange entitled "You heard anything on KNDL?" in which a client asked Bolan about a different stock Bolan covered, Kendle. (DX57 at WFC-472248.)

37. After the client email, Ruggieri wrote to Bolan "Call u right back." But this email says nothing about AMRI, and instead addresses six other companies, making it legitimate. (*Id.*) With no record this call ever occurred, the evidence shows the Division is alleging a tipless trade.

38. Further, the record shows Bolan did not get approval to change AMRI's rating until 3:55 p.m., on Friday, July 2, 2010 – *after Ruggieri bought all of his shares of AMRI.* (BRX7 at WFC-829669.)

39. In fact, Ruggieri bought his principal position of 35,050 between 9:42:48 a.m. and 3:42 p.m. on July 2, 2010. (BX95, lines 4683-9071 (filter chart by ticker).) Yet there was no phone call between Bolan and Ruggieri on July 2 after Bolan got approval.

40. Further, Ruggieri would not have had time to unwind his position if Bolan's report got delayed, or rejected, because approval was given 5 minutes before market close into July 4th weekend.

41. Ruggieri's trading pattern is also inconsistent with insider trading. He held at least 15,267 shares at the end of the day on July 6, 2010 after Bolan's report came out – rather than liquidating his entire position. (BX95, lines 9071-12185.) And Ruggieri did not principally trade any shares of AMRI on July 7. (*Id.*, lines 12185-200.)

42. Further, Ruggieri continued to hold 10,000 shares of AMRI at the end of the day on July 8, and 5,000 shares at the end of the day July 9.

43. It was not until the afternoon of July 12 – almost a week after Bolan's report – that Ruggieri finally liquidated his early-July 2010 AMRI position. (*Id.*, line 24582-25861.) Such trading is not consistent with trying to trade based on prior knowledge of a research report.

44. In addition, documentary evidence corroborates legitimate reasons for Bolan's calls with Ruggieri near the time of his EM, ATHN and BRKR reports.

45. For EM, a press release on August 13, 2010, announced that a Bolan-covered company, Allscripts (MDRX), approved a merger to acquire Eclypsis. (BX63 (press release).). This merger was the subject of a prior Bolan squawk on June 9, 2010. (BX45, line 249 ("Allscripts-Misys to Merger with Eclypsis").) And there was also prior-published research on August 11, and an ongoing August 12 discussion about increasing business for Wells Fargo, among legitimate topics discussed by Bolan and Ruggieri. (BX59 at WF677126-27, BX60 at WFC483158-61.)

46. As to discussions before the ATHN February 8, 2011 report, a major topic for Bolan and Ruggieri to discuss was AMRI's February 7, 2011 morning announcement of Fourth Quarter and Full Year 2010 results. (BX70.)

47. And documents show that before the BRKR report, Bolan and Ruggieri on March 23 discussed setting up a dinner for Wells Fargo healthcare traders, analysts, and salespeople (BRX17 at WFC2303-07).

48. And leading up to and including March 28, Bolan asked for Ruggieri's help in tracking down a March 24, 2011 public report on Debtwire.com that Kendle International (KNDL) had "placed itself on the auction circuit," (BRX18, WFC47771-6).

B. Bolan Received "Great Feedback" for Speaking Daily to Wells Fargo Traders for Legitimate Purposes Even Before Ruggieri Was Hired

49. Consistent with Wells Fargo's instructions, Bolan was well-known for his constant dialogue with Wells Fargo Healthcare Traders for legitimate purposes, for at least a year before the alleged insider trading – and even before Ruggieri was hired.

50. For example, on April 22, 2009, Bolan wrote his supervisors that "I call my trader as often as possible to make sure he is apprised of any research calls that I have made and just to get a general update on trading activity in my names" as well as to update on which clients Bolan spoke with and which are interested in trading "my stocks." (JR3, WFC-960036.)

51. Similarly, on July 1, 2009, Bolan's ultimate superior, Diane Schumaker, told Bolan "BTW, I've gotten great feedback on you from dave graichen," – the Healthcare trader that Ruggieri was hired to replace. (BRX2 at WF-891552.)

52. And in October 2009, six months before the alleged insider trading at issue, Ruggieri cited Bolan as the "most practice and helpful" analyst at Wells Fargo. (BX3 at WF1594764.) In particular, Ruggieri stated "Bolan's in a league of his own - great dialogue with clients and gets it." (*Id.*) There is no allegation of insider trading or benefit related to this comment.

C. <u>Almost All of the Phone Calls Cited by the Division Involve a Phone Number Wells Fargo Says Does Not Exist, for Which There is No Set of Phone Records, and Which Was Accessible to at Least 17 Wells Fargo Traders</u>

53. A major problem regarding the phone calls at issue is that all but three or four calls at issue involve the telephone number 212-214-6210 (DX121-26, 144-46), which is a telephone number that (i) Wells Fargo says does not exist, (ii) has no set of phone records obtained by the Division or otherwise, and (iii) appears to have been accessible by Wells Fargo's entire trading floor, *i.e.*, at least 17 different traders.

54. For example, Wells Fargo told the Division that "it searched its records and cannot locate any record" of "212-214-6210" "ever having been a WFS number." (BRX3, November 25, 2014 letter from M. Missal to S.E.C.'s S. Satwalekar; *accord* BRX4, November 17, 2014 letter from M. Missal to SEC's S. Satwalekar (same).) Indeed, the Division's own exhibit proves that Wells Fargo "looked up telephone number 212 214 6210 and said it didn't exist....at all...." (DX142.)

55. Strikingly, the Division issued at least two subpoenas to Verizon (the external, regional service provider identified for 212-214-6210), but never followed up on them.

56. Yet when Bolan himself issued a subpoena for the records of 212-214-6210, Verizon responded that there were "no subscribers, documents, records, or other materials" for that number. (BRX5 at 2.)

57. Instead of 212-214-6210, Wells Fargo identified "212-214-6201" as the "telephone number associated with Mr. Ruggieri," which is just a generic "number for the WFS Trading Desk, of which Mr. Ruggieri was a member." (BRX3.)

58. Indeed, Ruggieri was one of at least 17 Wells Fargo traders who arc listed for that telephone number on Wells Fargo contact lists. (BRX6, 551031-56, Wells Fargo Trading Phone List and Trading Map.)

59. Yet even for this telephone number, the Division has no original phone company records. (BRX3.)

60. Instead, there are only internal records retained by Wells Fargo, which themselves are incomplete because its 6201 "telephone records only list outgoing calls." (*Id.*)

61. Accordingly, it appears the 6210 extension was just a number dialed that forwarded directly to the Wells Fargo trading desk – and was not a separate phone number at all. When Bolan dialed the 6210 extension, a person other than Ruggieri picked up roughly half the time.

62. Bolan spoke to several others at the trading desk using that extension, including Bruce Mackle and Chip Short (a healthcare trader and specialist), or other traders on the Trading Desk who picked up the phone if Ruggieri was not available or out of the office.

III. The Division's Allegations of a Pattern of Suspicious Trading Are False Because They Fail to Address at Least Five Times that Ruggieri Traded in the Opposite Direction of a Report Changing his Valuation or Earnings Estimates

63. The Division distorts data by isolating trading near five Bolan Rating Changes and a Coverage Initiation without ever addressing the five times when Ruggieri held large overnight positions in the opposite direction of a Bolan valuation or earnings estimate change.

64. But Wells Fargo's own policies equate a change of "valuation range and/or estimates" with a report "changing your rating." (BX2 at WFC-1003791.)

65. Indeed. even the Division's own expert relied on a paper that analyzed "analysts' changes in target prices," *i.e.*, valuation range based on estimates of future earnings, as relevant

to his opinion. (Div. Ex. 177 at 6.) Thus, the Division is plainly trying to hide bad facts by leaving this information out.

66. In fact, when Bolan's valuation and earnings estimate changes are taken into account, Ruggieri had overnight positions in the opposite direction of a Bolan report *at least* five times during the March 2010 to March 2011 time period.

Report Date	Stock	Bolan Value/Earnings Change	Ruggieri Overnight Position
8/11/10[26]	PRXL	Downgrade Valuation $1.50/share	Long 1,379 Shares – Wrong
9/30/10	CVD	Upgrade Valuation $4-5/share	Short -17,500 Shares – Wrong
11/29/10	ICLR	Downgrade Earnings $0.13/share	Long 5,000 Shares – Wrong
2/2/11	PRXL	Downgrade Valuation $1.00/share	Long 1,876 Shares – Wrong
2/25/11	ICLR	Downgrade Valuation $1.00/share	Long 66,052 Shares – Wrong

67. Indeed when Bolan's valuation and earnings estimate changes during Ruggieri's Wells Fargo tenure are included with rating changes and coverage initiations, the Division's allegations amount to this: *Out of 90 reports, Ruggieri allegedly had a prior overnight position in the same direction six times, but held an overnight position in the wrong direction five times.* And 79 times – for 88% – he had no overnight position. That is a pattern entirely consistent with chance.

[26] These reports are identified at BX45 at 284305, lines 291, 306, 338, 372, and 390. They are also BRX8 at WF677128-34, BRX9 at WF544411-17; BRX10 at WF539728-36; BRX 11 at WF511149-56; BRX12 at WF 511028-36. Ruggieri's overnight positions are based on reviewing the trade spreadsheets for Ruggieri's Wells Fargo account at BX82, 87-89, 95-97, and BX100, which lists many "adjustments" or changes to the trading records made by Wells Fargo at the Division's request. Ruggieri likely had other overnight positions that went the other way of valuation and earnings estimate changes – which makes an ongoing discovery dispute between Bolan and Wells Fargo that much more important.

71. The Division omits this key fact from its description of the EM report. Yet this negative aspect of the EM report was clear from its title: "EM-Valuation, Sentiment at Depressed Levels…." (*Id.*) This shows Ruggieri was just as likely to have an overnight position in the wrong direction as he was in the right direction.

72. Moreover, the Division has distorted the facts by falsely referring to the March 29, 2011 Bruker Report as a "ratings change[]" (Div. Summ. D. Opp. Br. at 9; Div. Supp. Submission ¶ 19 (same).)

73. This was not a "ratings change" at all. Rather, the Bruker Report was an "Initiating of Coverage," which means it was the *first time* Wells Fargo issued a report on Bruker. (BX45 at WF 284305 (line 400).) It did not "change" anything about Wells Fargo's prior published opinion on Bruker – since there was none. Thus, it is not equivalent to a rating change.

74. Notably, the Wells Fargo email regarding analyst-trader phone calls did not identify a coverage initiation as similar to "changing your ratings; valuation range and/or estimates." (BX2 at WF-1003791.)

75. And Bolan's Bruker coverage initiation was necessarily less meaningful, because it is undisputed that Bolan's opinion was "virtually irrelevant" in Bruker's sector, Life Science Tools. (DX112 at 24:7-8.)

76. Excluding coverage initiations from the sample leaves Ruggieri trading overnight in the wrong direction six times, and allegations of trading in the right direction five times – out of 82 reports changing a rating, valuation or earnings estimate. (BX45 at WF284305.)

77. Separately, it leaves Ruggieri trading overnight in the right direction just once out of eight coverage initiations. Neither result is consistent with suspicious trading activity.

78. *Finally*, the overnight positions issue highlights yet another attempt by the Division to manipulate the data: The Division falsely suggests it was rare for Ruggieri to hold an overnight position when he actually held stock overnight *at least* 329 times in the 414 trading days he worked at Wells Fargo. (BX82-100.) Thus, Ruggieri's overnight positions were a not uncommon occurrence – especially given the millions of trades he made each year.

IV. <u>Bolan Never Received any "Exchange that is Objective, Consequential and" a "Gain of a Pecuniary or Similarly Valuable Nature," and Thus Did Not Receive an Actionable Personal Benefit Under *U.S. v. Newman*</u>

79. Although the personal benefit issue has already been extensively briefed with the Court on summary disposition (which arguments are incorporated here), there are some key highlights of the Division's failure to show a concrete, objectively valuable benefit.

80. Bolan's history of great positive feedback for speaking with traders dated back at least a year before the alleged insider trading – before Ruggieri was hired by Wells Fargo – and included Ruggieri feedback in October 2009, six months before the allegation here. (*E.g.*, BX3 at WF-1594764.) Under *Newman*, it "would not be possible" to prove a personal benefit where such career assistance was given long "before [a tipper] began providing any" alleged "insider information." *U.S. v. Newman*, 773 F.3d 438, 453 (2d Cir. 2014).

81. Indeed, at trial Bolan will prove the obvious fact that flows from this: The positive feedback Bolan received for trader dialogue was due to him actually performing legitimate work of speaking to Ruggieri about legitimate topics every day. The wealth of feedback preceding any alleged trading disproves it as a personal benefit for tipping.

82. Bolan's positive feedback was confirmed both by Ruggieri's and Bolan's managers, who are not alleged to be involved in any alleged insider trading scheme. This thus breaks any link between the feedback and any claimed benefit for tipping. Further, it proves that

Ruggieri did not have the power to give an objective *quid pro quo* to Bolan through feedback – as Ruggieri did not have the power to promote Bolan.

83. Bolan's supervisor testified that Ruggieri's feedback did not play any quantifiable role in his promotion. Instead, he testified it was "client votes, sales force review and external rankings," that "will ultimately determine where you end up" for a promotion as an analyst – not trader input. (DX132 at 19:1-6.). Nowhere in Wickwire's testimony did he ever quantify what impact Ruggieri's feedback had on Bolan's prospects for promotion.

84. That Bolan and Ruggieri were pretty good friends is insufficient as a matter of law under *Newman*, which rejected "mere friendship" and extensive phone conversations as insufficient to support an "inference" of personal benefit. 773 F.3d at 452.

85. The sparse evidence that Bolan and Ruggieri occasionally socialized outside the office is nothing more than testimony that they socialized four-to-seven times during the three-year period from "2009" through "2011." (DX110, 110A at 30-31). But "typically" this sparse socializing involved "Other colleagues from Wells Fargo." (*Id.* at 30.)

86. That Bolan stayed at Ruggieri's New York City apartment one time after leaving Wells Fargo in late April 2011 is insufficient to show a personal benefit, and was plainly not an inducement to tip information. *See, e.g., S.E.C. v. Anton*, 2009 WL 1109324, at *9 (E.D. Pa., Apr. 23, 2009) (rejecting personal benefit where tipper visited "home only once.").

87. It is undisputed that Bolan and Ruggieri did not maintain a significant relationship after Wells Fargo, as shown by undisputed testimony that their communication "kind of died off after [Bolan] went to Madison Williams" in June 2011, and "It's been extremely infrequent since then." (DX110 at 31.)

V. <u>The Trader A Allegations Suffer from Even Greater Defects than the Ruggieri Allegations</u>

88. The Division's sparse Trader A allegations suffer from greater defects than the Ruggieri allegations, particularly with the lack of personal benefit.

89. There is no evidence that Bolan received anything of objective pecuniary or similar value from Trader A for alleged tipping. Nothing of value is alleged to have been given from Trader A to Bolan.

90. Bolan and Trader A worked together for just nine months in 2005, and since then socialized just "Four times since 2005" and spoke "a couple of times a month." (DX110 at 112-13.) This disproves any suggestion that Bolan and Trader A had any especially "close" friendship – and the Division has utterly failed to give any content to its bald quotation of the words "close" and "trusted"

91. *Critically, Bolan was not even invited to Trader A's funeral.* Bolan only learned of his death at a later date from others who were not members of Trader A's family.

92. Bolan and Trader A lived in different states – Bolan worked in "Nashville," Tennessee, (OIP ¶ 4), and Trader A stayed New York City. (Brokercheck Rept.)

93. Moreover, the same factual defects in the Ruggieri AMRI claim apply to the Trader A AMRI claim – which comprises over 80% of the alleged ill-gotten Trader A profit. Bolan did not get approval for the AMRI upgrade until 3:55 p.m. on July 2, 2010. (BRX7 at WFC-829669.)

94. Yet Trader A began buying AMRI shares at 9:41 a.m. on July 1, 2010, almost two trading days before Bolan was approved to upgrade AMRI. (BX79, line 65446.)

95. Trader A bought the majority of his shares that day (13,726 shares.) (*Id.*, lines 65238-66309.) Trader A bought all but a few hundred shares of his 24,252-share AMRI position before Bolan was authorized to upgrade AMRI. (*Id.*, lines 65238-66309.)

104. This is corroborated by an email less than two hours later, in which Trader A wrote Bolan an email containing Bolan's home phone number and a "?," which indicates Trader A was asking if that was the number to use to call Bolan back, after getting the message.

105. The Division's phone records show that there was no subsequent phone call between Bolan and Trader A – and thus no tip could have been communicated at this time

106. Indeed, the circumstances surrounding the April 5 call are innocent, because Bolan was merely calling Trader A back after the latter sent an email to Bolan that generated an "Out of Office AutoReply" on April 1, 2010. (BRX14 at WFC810248.) Merely returning a call and failing to connect with someone is not consistent with tipping them.

107. Moreover, the Division ignores that Trader A's April 6, 2010 trading is inconsistent with merely trading on the PRXL upgrade (which addressed PRXL only), because Trader A's primary investment position that day was a $93,465 short position in Covance. (BX79, lines 58280-86.)

108. Trader A was short 1500 shares of Covance at a price of $62.20, whereas his PRXL short position that day was worth just $49,277.12. (*Id.*, lines 58342-43.) Trader A's CVD-PRXL short position was consistent with Bolan's previously-published March 22, 2010 Squawk "CRO's: Stronger USD Creates Headwind," which opined that falling Euro rates would cause PRXL to lose $22 million and CVD to lose $20 million in revenue. (BX4 at WF765700-01.)

109. Trading on published research is not insider trading.

110. The documentary evidence proves this motivation behind Trader A's April 6 trading. Publicly-available Euro-USD price data shows that the Euro was dropping significantly on from April 4-6, 2010. (BX17.) And Trader A sent Bolan an email on March 31, 2010

upgrading to "Outperform" and (6) Bruker ("BRKR") on March 29, 2011, initiating coverage with "Outperform." (*Id.* ¶5 at 4.)

129. Dr. Prowse was further informed of the S.E.C.'s allegations in their Order Instituting Proceedings ("OIP") in that they allege: (1) that Mr. Bolan provided advance notice of the issuance of the research reports with ratings changes or initiations at issue to both Mr. Ruggieri and another individual who was a friend of Mr. Bolan's ("Trader A"), and (2) that Mr. Ruggieri and Trader A were able to trade ahead of the issuance of the reports and realize profits. (*Id.* ¶5 at 4.)

130. Dr. Prowse propounded his Initial Expert Report (the "Initial Report") on February 18, 2015.

B. <u>Summary of Dr. Prowse's Findings</u>

131. Dr. Prowse's analysis found that "several of the reports were issued simultaneously with confounding information", which was likely responsible for the price movement on that day versus the alleged tipped information. (*Id.* ¶9 at 5.)

132. Dr. Prowse found that the confounding information made it "problematic to conclude that all of the stock price movement following a report was due to the report." (*Id.* ¶9 at 5-6.)

133. Dr. Prowse also performed a statistical analysis of the price movements following the issuance of each of Bolan's research reports. (*Id.* ¶9 at 6.) From these analyses, Dr. Prowse concluded that "none of the reports are followed by a daily price movement that is statistically significant at the generally accepted 95% confidence level." (*Id.*) In other words, Dr. Prowse found that the stock price movement on each day could not be distinguished from "random noise." (*Id.*)

134. Based on his full analysis, Dr. Prowse concluded that the alleged tipped information regarding Bolan's ratings changes or initiations was not material to investors. (*Id.*)

C. **Dr. Prowse's Methodology**

135. Dr. Prowse performed an event study on the share prices of each of the six companies to examine the movements in their share prices in response to Mr. Bolan's research reports. (*Id.* ¶12 at 7.)

136. An event study is "a generally accepted financial and econometric methodology that can provide a basis to opine on the materiality of an announcement or an event based on the effect of the announcement on a company's securities prices." (*Id.*)

137. In this context, an event study "estimates the change in a company's securities price that is attributable to a particular announcement." (*Id.* ¶13 at 7.)

138. Changes in a company's security price that are attributable to the event under study are referred to as the "abnormal return." (*Id.*)

139. In order to estimate the abnormal return attributable to a particular event or announcement, Dr. Prowse "constructed a market model to explain movements in the company's stock price." (*Id.* ¶14 at 8.)

140. The market model explains movements in a company's stock price by using three explanatory variables: a general stock market index, a broad industry specific index, and a comparable company index. (*Id.*)

141. Dr. Prowse estimated the market model over a period of one year prior to the issuance of each of Bolan's reports, and then estimated the abnormal return associated with each report. (*Id.* ¶14 at 8.)

142. Finally, Dr. Prowse tested the abnormal return for statistical significance on the date of each of Mr. Bolan's reports. (*Id.*)

143. A test for statistical significance allows one to analyze whether announced information "could be associated with a material movement in the security price, by examining whether the abnormal return was the product of random chance or not." (*Id.* ¶15 at 8.)

144. A finding that the abnormal return is statistically significant (i.e., reliably different from zero) is evidence that the information was material to investors, because it could be associated with price movement that is different from the normal volatility of the stock. (*Id.*) Conversely, a finding that an abnormal return is not statistically significant is evident that the information is not material to investors. (*Id.*)

145. As a measure of statistical significance, Dr. Prowse used the "95% confidence level", which is the generally accepted confidence level in event studies. (*Id.* at 8-9)

146. For each of the six companies, Dr. Prowse constructed a market model using a "multi-variate log differenced regression model", including explanatory variables: (1) the S&P 500 as the general market index, (2) the Dow Jones U.S. Select Health Care Providers Total Return Index as the industry index, and (3) a comparable company index, customized for each company "as an equally-weighted index of competitors." (*Id.* ¶16 at 8.)

147. Each of Dr. Prowse's market models was used to estimate the abnormal stock price movement on the day of issuance of each of the six reports in question. (*Id.*)

D. **<u>Dr. Prowse's Analysis</u>**

<u>1. Dr. Prowse's PRXL Event Study</u>

148. Dr. Prowse first found that there was a great deal of confounding information in the market on the morning of April 7, 2010 which "may have contributed to PAREXEL's price movement on that day." (*Id.* ¶17 at 9.)

149. Dr. Prowse found the confounding information to be "problematic" in his attempt to attribute PRXL's stock price movement to Bolan's analyst report. (*Id.*)

150. Specifically, there were concerns regarding Greece's debt crisis, which led the Euro-U.S. Dollar exchange rate to decline from 1.3399 Euros per dollar at the close on April 6, 2010 to 1.3344 Euros per dollar at the close on April 7, 2010. (*Id.* ¶17 at 8-9.). The minimum for the day was 1.3326 Euros per dollar on April 7, 2010 at 8:20 a.m. EST, which was before the market opened. (*Id.* at 9.)

151. This drop "was a widely reported event", and was covered by the *Wall Street Journal.* (*Id.*)

152. Importantly, the market was warned that a drop in the Euro-U.S. Dollar exchange rate "would have a negative impact on PAREXEL" including in (1) Wells Fargo's March 22, 2010 Squawk research report entitled "CRO's: Stronger USD Creates Headwind," (2) an April 1, 2010Jefferies & Company, Inc. research report on the healthcare industry entitled, "Previews of Upcoming (Conference) Attractions," (3) Wells Fargo's April 7, 2010 research report on PAREXEL, and (4) PAREXEL's 10- Q for the quarter ended December 31, 2009. (*Id.* ¶18 at 10.)

153. These research reports also discussed PRXL's sensitivity to the British Pound-U.S. Dollar exchange rate. (*Id.* at 11.)

154. In fact, Dr. Prowse noted that the British Pound-U.S. Dollar rate dropped from 1.5267 on the close on April 6, 2010 to 1.5241 on the close on April 7, 2010. (*Id.*)

155. On April 7, 2010, the British Pound-U.S. Dollar exchange reached a low of 1.514 at 7:10 a.m., before the market opened. (*Id.* at 11.)

156. As such, Dr. Prowse concluded that the stock price decline in PRXL on April 7, 2010 was likely due, at least in part, to concerns regarding the decline of the Euro and British Pound. (*Id.*)

157. Notwithstanding this information, Dr. Prowse analyzed PRXL's price movement following the issuance of Bolan's report on April 7, 2010, which downgraded PRXL to "Market Perform." (*Id.* ¶19 at 11.)

158. Dr. Prowse ran a market model from April 7, 2009 to April 6, 2010, and found that "the stock price movement from the closing price on April 6, 2010 to the closing price on April 7, 2010 was not statistically significant." (*Id.*)

159. Specifically, Dr. Prowse's analysis produced an "abnormal price decline of $1.05 with a t-statistic of -1.81." (*Id.*) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

160. Therefore, Dr. Prowse concluded that the stock price movement on April 7, 2010 "cannot be meaningfully distinguished from random noise." (*Id.* ¶19 at 11, Ex. 4.)

<u>2. *Dr. Prowse's CVD Event Study*</u>

161. Like with PRXL, Dr. Prowse also found confounding information in the market on June 15, 2010, which could have contributed to CVD's price movement. (*Id.* ¶20 at 12.)

162. And, also like with PRXL, Dr. Prowse found this "problematic" to his study. (*Id.*)

163. Specifically, Dr. Prowse found that Recognia, which is a quantitative and technical stock analysis firm, issued an alert indicating that the price of the stock may move

upward from the June 14, 2010 closing price of $54.29 to a target price in the range of $58.00 to $58.90. (*Id.*)

164. And, because Recognia's reports are "widely disseminated", Dr. Prowse found that the "market's price movement in Covance shares on June 15, 2010 likely was due at least partially to Recognia's Alert Wire." (*Id.*)

165. Notwithstanding, Dr. Prowse conducted an event study on CVD's price movement following Bolan's report on June 15, 2010, which upgraded CVD to "Outperform." (*Id.* ¶21 at 12.)

166. Dr. Prowse ran a market model from June 15, 2009 to June 14, 2010, and found that "the stock price movement from the closing price on June 14, 2010 to the closing price on June 15, 2010 was not statistically significant." (*Id.* at 12-13)

167. Specifically, Dr. Prowse's event study analysis "found an abnormal price *decline* of $0.62 with a t-statistic of -0.93." (*Id.* ¶22 at 13.) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

168. Therefore, Dr. Prowse concluded that the stock price movement on June 15, 2010 "cannot be meaningfully distinguished from random noise." (*Id.* ¶22 at 13, Ex. 5.)

3. ***Dr. Prowse's AMRI Event Study***

169. Dr. Prowse ran a market model over the period from July 6, 2009 to July 2, 2010 to analyze AMRI's price movement following the issuance of Bolan's report on July 6, 2010, which upgraded AMRI to "Outperform." (*Id.* ¶22 at 13.)

170. Specifically, Dr. Prowse's event study analysis "found an abnormal price *decline* of $0.02 with a t-statistic of -0.18." (*Id.* ¶21 at 14.) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

171. Therefore, Dr. Prowse concluded that the stock price movement on July 6, 2010 "cannot be meaningfully distinguished from random noise." (*Id.* ¶21 at 14, Ex. 6.)

4. *Dr. Prowse's EM Event Study*

172. As with PRXL and CVD, Dr. Prowse found evidence of confounding information about EM on August 16, 2010, which may have contributed to EM's price increase that day. (*Id.* ¶23 at 14.)

173. This too was "problematic" to Dr. Prowse's study (*Id.*)

174. Specifically, EM announced a strategic relationship with Noridian at 1:06 p.m. on August 16, 2010, which likely caused a market price increase in EM's shares. (*Id.*)

175. Notwithstanding this information, Dr. Prowse conducted an event study on EM's price movement following Bolan's report on August 16, 2010, which upgraded EM to "Outperform." (*Id.* ¶24 at 14.)

176. Dr. Prowse ran a market model over the period from August 14, 2009 to August 13, 2010 to determine if Bolan's research report upgrading EM to outperform before the market opened on August 16, 2010 had any impact on EM's price movement. (*Id.*)

177. Dr. Prowse "found an abnormal price increase of $0.16 with a t-statistic of 0.96." (*Id.* ¶24 at 15.) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

178. Therefore, Dr. Prowse concluded that the stock price movement on August 16, 2010 "cannot be meaningfully distinguished from random noise." (*Id.* ¶22 at 13, Ex. 7.)

5. *Dr. Prowse's ATHN Event Study*

179. As with PRXL, CVD, and EM, Dr. Prowse found evidence of confounding information about ATHN after the market closed on February 7, 2011, which may have contributed to ATHN's price increase that day. (*Id.* ¶25 at 15.)

180. Dr. Prowse found this "problematic" in his attempt to attribute ATHN's stock price movement to Bolan's report. (*Id.*)

181. Specifically, Dr. Prowse found that Recognia noted a "continuation diamond" pattern in ATHN's stock price, which indicated that "the price may rise from the February 7, 2011 closing price of $46.13 to a range of $55.00 to $57.00." (*Id.*)

182. Dr. Prowse concluded that ATHN's market price increase was likely due, at least in part, to Recognia's Daily Market Report. (*Id.*)

183. Notwithstanding this information, Dr. Prowse analyzed ATHN's price movement following the issuance of Bolan's research report upgrading ATHN to "Outperform" before the market opened on February 8, 2011. (*Id.* ¶26 at 16.)

184. Dr. Prowse ran a market model over the period from February 8, 2010 through February 7, 2011. (*Id.*)

185. Dr. Prowse found "an abnormal price increase of $1.33 with a t-statistic of 0.89." (*Id.*) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

186. Therefore, Dr. Prowse concluded that the stock price movement on February 8, 2011 "cannot be meaningfully distinguished from random noise." (*Id.* ¶26 at 16, Ex. 8.)

<u>6. ***Dr. Prowse's BRKR Event Study***</u>

187. Lastly, Dr. Prowse conducted an analysis of BRKR's price movement following the issuance of Bolan's research report initiating coverage to "Outperform" after the market closed on March 29, 2011. (*Id.* ¶27 at 16.)

188. Dr. Prowse ran a market model from March 30, 2010 to March 29, 2011. (*Id.*)

189. From the market model, Dr. Prowse found "an abnormal price increase of $0.45 with a t-statistic of 1.34." (*Id.* ¶27 at 17.) This indicates that the stock price movement on that day was not statistically significant at the 95% confidence level. (*Id.*)

190. Therefore, Dr. Prowse concluded that the stock price movement on March 30, 2011 "cannot be meaningfully distinguished from random noise." (*Id.* ¶27 at 17, Ex. 9.)

E. <u>Dr. Prowse's Conclusion</u>

191. From his event studies, Dr. Prowse concluded that the allegedly tipped information in each of the six Bolan analyst reports at issue was not material to investors, based on "the lack of any statistically significant impact on the stock price." (*Id.* ¶28 at 18.)

VII. <u>Rebuttal Expert Report of Dr. Stephen D. Prowse</u>

192. Dr. Prowse propounded a rebuttal expert report (the "Rebuttal Report") on March 16, 2015.

193. The Rebuttal Report was written in response to the Division's Expert, Dr. Edward O'Neal's expert report (the "O'Neal Report"), dated February 17, 2015.

194. Dr. Prowse was specifically asked to address the O'Neal Report's analyses of stock price reactions to Bolan's research reports, the O'Neal Report's analysis of market trading volume following Bolan's research reports, and the O'Neal Report's analysis of Ruggieri's overnight positions. (BRX19 ¶1 at 2.)

195. The materials Dr. Prowse relied upon in writing his Rebuttal Report are annexed to his Rebuttal Report as Exhibit 1.

A. <u>Summary of Dr. Prowse's Findings</u>

196. As an initial matter, Dr. Prowse found that the event study analyses contained in the O'Neal Report were "consistent" with his own findings— that being, that there were no statistically significant stock price reactions following the issuance of Bolan's reports. (BRX19 ¶5 at 2-3.)

197. However, Dr. Prowse found the O'Neal Report to be "deeply flawed" overall, in its attempt to address materiality by analyzing ten Bolan rating changes or coverage of initiations –only four of which are at issue in this case. (*Id.* ¶6 at 3.)

198. *First,* Dr. Prowse found that Dr. O'Neal neglected to address confounding information which contaminated event studies for at least for of the reports analyzed by Dr. O'Neal in his report (PRXL on April 7, 2010 and November 29, 2010, ATHN February 8, 2011, and BRKR March 29, 2011. (*Id.*)

199. *Second,* the O'Neal Report's event studies for three reports (KNDL and PPDI, September 17, 2008, and ICLR, October 13, 2008) use event windows during the heart of the 2008 financial crisis—one of the most volatile periods ever—paired with an estimation window primarily before the financial crisis. (*Id.*)

200. The mismatched combination of estimation window and event window renders the O'Neal Report's event study analysis unreliable. (*Id.*)

201. *Third,* Dr. Prowse found flaws in Dr. O'Neal's event studies for two reports that are not even at issue in this case that show statistical significant price reactions. (*Id.* at ¶7 at 3.)

202. Specifically, once the ICLR October 13, 2008 event study is corrected to address the 2008 financial crisis, it does not show statistical significance. (*Id.*) And the PRXL November 29, 2010 report's event study analysis is contaminated by confounding news on the relevant day, rendering problematic the attempt to attribute any stock price movement on the relevant day to the analyst report. (*Id.*)

203. With respect to Dr. O'Neal's reliance on academic studies, Dr. Prowse points out that while there is "significant dispute" in academic literature as to whether analyst recommendation changes can provide statistically significant information, no study has ever specifically addressed the six reports at issue in this case and thus "cannot demonstrate the significance of these reports." (*Id.* at ¶8 at 4.)

204. The O'Neal Report lacks support in academic literature that looking at volume is itself "[a] second way" (DX 177 at 14) to evaluate materiality.

205. Volume cannot address whether the market views information as positive or negative, and increased volume may show both positive and negative views in the market, or other factors. (BRX19 ¶9 at 4.)

206. The O'Neal Report volume study also fails to address confounding information for four reports. (*Id.*)

207. Lastly, Dr. Prowse found that O'Neal Report's analysis of Ruggieri's overnight trading relies upon an arbitrarily cherry-picked selection of Bolan's research reports, because, as corrected, Dr. O'Neal's methodology does not show any statistical significance. (*Id.* at ¶10 at 4.)

B. *<u>The O'Neal Report Finds No Statistically Significant Stock Price Reaction for Any of the Six Bolan Research Reports at Issue</u>*

208. The O'Neal Report analyzes the stock price movements for only four of the reports at issue: PRXL on April 7, 2010, AMRI on July 6, 2010, ATHN on February 8, 2011, and BRKR on March 30, 2011. (*Id.* at ¶11 at 5.)

209. For each of these four reports, Dr. O'Neal found that the price movements fell well below the statistical significance threshold. (*Id.*, DX177 at Table 1.)

210. In fact, the O'Neal Report even concedes that "T-statistics greater than 1.96 absolute value" are necessary for statistical significance, but thThe Oe greatest t-statistic the O'Neal Report finds for any of the four reports is 1.25. (*Id.*)

211. The O'Neal Report also finds that two of the reports at issue (CVD and EM) had confounding information released near the time of each report. (DX177 at 8-9, 11.)

212. Thus, the O'Neal Report is unable to conclude that these two reports were associated with any statistically significant price movement. (BRX19 ¶11 at 5.)

2. ***The O'Neal Report's Attempt to Indirectly Suggest Materiality Using Event Studies of Ten Reports—Six of Which Are Not Even at Issue—is Deeply Flawed for Several Reasons***

213. Dr. Prowse found numerous flaws with respect to Dr. O'Neal's methodology in conducting his event studies.

214. *First*, The event studies of KNDL on September 17, 2008, PPDI on September 17, 2008, and ICLR on October 13, 2008 all use estimation windows that include periods before and after a sharp increase in market volatility that occurred at the beginning of the 2008 financial crisis in the third quarter of 2008 and event windows that are within the period of increased volatility. (*Id.* ¶14 at 6.)

215. This is a major flaw, because the beginning of the 2008 financial crisis was one of the most volatile periods ever. (*Id.*) Indeed, October 13, 2008 is the date of the largest one-day

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increase in the history of the Dow Jones Industrial Average, and September 17, 2008 was just two days after Lehman Brothers collapsed (and the day after the AIG Bailout was announced).[30] (*Id.*) This renders Dr. O'Neal's event study unreliable. (*Id.*)

216. *Second*, Dr. Prowse found that O'Neal neglects to consider substantial confounding news in the event windows of Bolan's reports for PRXL on April 7, 2010 and November 29, 2010, and ATHN on February 8, 2011. (*Id.*)

217. Additionally, Dr. O'Neal's analysis of Bolan's report for BRKR on March 30, 2011 neglected to consider confounding information from a BRKR press release. (*Id.*)

218. *Third*, and most troublesome, Dr. Prowse applied Dr. O'Neal's own methodology—flawed as it is—to the four reports at issue which Dr. O'Neal actually performs an event study on, and found that they were all still lacking statistical significance. (*Id.* ¶16 at 7-8.)

3. ***The O'Neal Report's Analyses of the Two Bolan Reports Not at Issue in <u>This Case Which it Finds Material are Flawed</u>***

219. For some reason, Dr. O'Neal performed an event study of six Bolan reports that are not even at issue in this matter.

220. Of these six reports, Dr. O'Neal purportedly finds statistically significant stock price movements for two of them: an October 31, 2008 upgrade of ICLR and a November 29, 2010 downgrade of PRXL.

221. However, Dr. O'Neal's analyses of these reports are flawed.

222. With respect to the ICLR October 13, 2008 upgrade, Dr. O'Neal uses an estimation window that includes both a portion of time before the 2008 financial crisis, and a

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[30] *See Wall Street Journal Chart of Largest Market Price Movements in History*, http://online.wsj.com/mdc/public/page/2_3024-djia_alltime.html (noting that three of the five largest one day point gains and four of five largest one-day point losses occurred near the end of 2008); "This Day in Crisis History, Sept. 17, 2008," http://blogs.wsj.com/moneybeat/2013/09/17/this-day-in-crisis-historysept-17-2008/.

portion of time in which the stock market increased in volatility due to the financial crisis. (*Id.* ¶19 at 9.)

223. As such, Dr. Prowse found Dr. O'Neal's analysis to be flawed such an increase in volatility will "tend to identify more days as having statistically significant price movements." (*Id.* ¶19 at 9-10.) Dr. O'Neal's finding here is therefore flawed.

224. To correct Dr. O'Neal's error, Dr. Prowse re-ran the event study using an estimation window that immediately surrounds the report's issuance. (*Id.* ¶20 at 10.) Doing so ensures that volatility in the event window is similar to when the event occurs, and produces more accurate data. (*Id.*)

225. Dr. Prowse found that ICLR's abnormal return on October 13, 2008 was 3.9% with a t-statistic of 1.01, which indicates that the stock price movement was not statistically significant at the 95% confidence level. (*Id.*)

226. Thus, just like the Bolan reports at issue, stock price movement on October 13, 2008 day could not be meaningfully distinguished from random noise. (*Id.*)

227. With respect to the PRXL November 29, 2010 downgrade, Dr. O'Neal's event study ignored important confounding information that likely had an impact on stock price movement that day: on November 29, 2010, the Euro dropped to below $1.31, its lowest level since September 12, 2010. (*Id.* ¶21 at 10-11.)

228. As was addressed in Dr. Prowse's Initial Report, PRXL was particularly sensitive to movements in Euro-U.S. Dollar exchange rates.

229. Furthermore, Dr. O'Neal seemingly ignored other confounding events that fell under his own definition of confounding news.[31]

[31] *See* DX 177 at 8: "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, I removed that announcement from the analysis."

230. Specifically, Goldman Sachs removed PRXL from its Conviction Buy List on December 1, 2015,[32] and Raymond James dropped PRXL from its list of top picks on November 30, 2010.[33] (*Id.* ¶22 at 11.)

231. Dr. Prowse concluded that the existence of these events occurring simultaneous with the issuance of Bolan's report render it problematic to attribute PRXL's stock price movement to Bolan's report. (*Id.*)

232. Dr. O'Neal's analysis for this report is, again, flawed.

4. ***The Economic Literature on Analyst Reports is Not Directly Relevant Because it Does Not Address the Specific Reports at Issue Here, and There is No Academic Consensus on Whether Analyst Rating Changes are, on Average, Material***

233. Because Dr. O'Neal failed to find any of the reports at issue to be associated with statistically significant price movement, Dr. O'Neal hides behind academic literature.

234. However Dr. O'Neal relies on academic literature riddled with disputed conclusions. (*Id.* ¶23 at 11-12.)

235. Furthermore, these disputed academic articles are not even relevant because they do not address the six reports at issue in this matter. (*Id.*)

236. Accordingly, the cited literature necessarily fails to address factors that potentially affect the reports at issue.

237. *First,* these articles fail to address whether Bolan's reports had any influence because he had less than two years' experience as an equity research analyst when his first report was issued, and less than three years' experience at the time of all six reports. (*Id.* ¶24 at 12.)

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[32] *See* "Goldman Sachs Removes PAREXEL International (PRXL) From Conviction Buy List," December 1, 2010, *StreetInsider.com*.
[33] *See* WF-002144013.

238. *Second*, these articles fail to address whether Bolan's reports had any influence at all since he was not even ranked in the Life Sciences Tools sector for BRKR, and was only ranked "19" or "28" analysts by *Institutional Investor* Magazine in the Healthcare Technology and Distribution sector during the period at issue. (*Id.* ¶25 at 12.)

239. In fact, the BRKR report on March 29, 2011 was the first time Bolan ever issued a report on a stock in that sector, which would tend to make any influence of his report questionable. (*Id.*)

240. Additionally, Dr. O'Neal's conclusion that "almost all researchers that have studied this phenomenon is that analyst ratings changes do have a measureable and significant impact on stock prices" (DX 177 at 4) is inherently suspect because there is not only significant dispute on this issue, but Dr. O'Neal *concedes* that one of the five articles he cites disagrees with his conclusion. (*Id.* ¶26 at 13.)

241. In fact, a 2011 article by Professors Roger Loh and René Stultz found thatafter adjusting for confounding news, "relatively few analyst recommendation changes are influential in the sense that they impact investors' beliefs about a firm in a way that could be noticed in that firm's stock returns."[34] (*Id.* ¶27 at 13.) Dr. O'Neal conveniently does not address this article.

242. Professors Loh and Stultz even constructed a sample of recommendation changes where the impact of confounding firm-specific news was minimized and found that only 12% of analyst recommendation changes are associated with statistically significant price movements.[35] (*Id.*)

243. The Loh and Stultz article contradicts four of the five studies cited by Dr. O'Neal.

[34] Loh, Roger, and René Stulz, "When are analyst recommendation changes influential?," *Review of Financial Studies vol.* 24, no. 2 at 593-627 (Feb. 2011).
[35] *Id.*

244. The article is additionally important, because it was, at the time, the first major article to filter out confounding events and employ an actual event study to address whether analyst reports visibly impact stock prices of individual firms in a statistically significant way. (*Id.* ¶28 at 14.) Dr. Prowse therefore found this article more reliable than any cited in the O'Neal Report. (*Id.*)

245. Dr. Prowse also notes that Professors Altinikic, Balashov, and Hansen recently published a study of 10 years of analyst forecast changes finding that analysts' changes of forecasts "do not appear to have a significant impact" on stock prices.[36] (*Id.* ¶29 at 14.)

246. The Professors found that analyst forecast changes "are not a regular source of useful new information for public customers."[37] (*Id.* ¶29 at 14.)

247. This finding also contradicts the four studies relied upon by Dr. O'Neal.

248. In short, Dr. Prowse concluded that there is no economic consensus on the issue of whether analyst rating changes significantly affect stock prices, which makes it problematic that Dr. O'Neal extrapolated from this literature any conclusion about the significance of any Bolan report. (*Id.* ¶29 at 15.)

249. However, none of these articles dispute that event study methodology should be employed to form a conclusion about the materiality of a specific analyst report. (*Id.* ¶30 at 15.) And both Dr. Prowse *and* Dr. O'Neal found no statistically significant price movement associated with any of the six reports at issue.

5. ***<u>The O'Neal Report's Volume-Based Analysis is not Supported by Academic Literature</u>***

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[36] Atlinikic,Oya, Balashov, Vadim S., and Hansen, Robert S., "Are Analysts' Forecasts Informative to the General Public?," 59 Journal of Management Science, 2550, 2551 (Nov. 2013) (this is a larger, more comprehensive study than the article cited in the O'Neal Report, and it is written by an additional author).

[37] *Id.*

250. The O'Neal Report also contains an analysis of trading volume on the day of the reports at issue, and claims that analyzing the level of trading volume on that date is, itself, a second way to determine materiality. (*Id.* ¶32 at 16.)

251. Dr. O'Neal opines that more trading volume suggests that new information has been released and traders are re-adjusting their holdings, accordingly. (*Id.*)

252. However, Dr. O'Neal cites to no academic literature to support his assertion.

253. Dr. Prowse is also unaware of any academic literature that finds that increased trading volume indicates materiality. (*Id.*)

254. And, even if increased volume was tied to statistically significant price movements, Dr. Prowse notes that volume is unable to indicate the direction of the abnormal price movement—i.e., volume is unable to tell whether the market believed the news was positive, negative, or both. (*Id.* ¶33 at 16.)

255. Volume could also just indicate a greater desire for liquidity rather than indicate market views about a report. (*Id.*)

256. Importantly, however, much like his event study analysis, Dr. O'Neal fails to account for confounding news that contaminates the analyses for at least four reports: PRXL April 7 and November 29, 2010, ATHN February 8, 2011, and BRKR March 29, 2011. (*Id.* ¶34 at 16.)

257. An additional problem with the O'Neal Report volume analysis is that it uses a different estimation window than it uses for its event studies as to price impact – for volume the O'Neal Report looks at "15 days before to 15 days after" the report, whereas for price the O'Neal Report looks at "the one year leading up to the date" of the report. (*Id.* ¶34 at 16-17.) This is a true departure from the stand, generally accepted event methodology and is therefore unreliable.

6. *The O'Neal Report's Analysis of Mr. Ruggieri's Overnight Positions Uses an Arbitrarily Cherry-Picked Sample Which Leads to a* ***<u>Flawed Conclusion</u>***

258. Lastly, Dr. O'Neal analyzes Ruggieri's overnight positions on nights preceding the issuance of Bolan's reports, but does so by cherry-picking data convenient to come to conclusions demanded by the S.E.C.

259. The O'Neal Report examines dates with reports issued during March 30, 2010 through March 31, 2011, and compares the frequency of Ruggieri holding overnight positions preceding the issuance of these reports, with the frequency of Ruggieri's overnight position preceding eight specific reports during this period that include ratings changes or initiations of coverage. (*Id.* ¶36 at 17.)

260. Dr. O'Neal starts of his analysis with a misnomer by referring to these eight reports as the "six [] ratings changes at issue in this case," and "two other research reports that contain ratings changes." (*Id.* ¶37 at 17.) This is *false*. The six reports at issue are actually five ratings changes, and one report initiating coverage. (*Id.*)

261. The March 29, 2011 BRKR initiation of coverage report is the clearest indicator that Dr. O'Neal cherry-picked his data. Specifically, there are two other reports that contain initiations of coverage that were issued during this period but are excluded from the set of reports considered by the O'Neal Report. (*Id.* ¶38 at 18.) These are a July 15, 2010 initiation of coverage of athenahealth (ATHN) and a March 29, 2011 initiation of coverage of Waters Corporation (WAT). (*Id.*)

262. From the trading data produced in this action, Dr. Prowse noted that Ruggieri did not build an overnight position in those stocks the day before each report was issued. Since the

set of reports at issue in this matter include an initiation of coverage, these other initiations of coverage should have been included in the set examined in the O'Neal Report. (*Id.*)

263. Additionally, the O'Neal Report suspiciously excludes from its sample valuation and earnings estimate changes. (*Id.* ¶39 at 18.)

264. This is particularly suspect considering that Wells Fargo's own policies and an article the O'Neal Report itself cites point to valuation and earnings estimate changes as similarly meaningful to rating changes, stating that analysts should safeguard "changing your rating; valuation range and/or estimates."[38] (*Id.*)

265. In fact, Wells Fargo's own records show that there are an additional 49 reports that include earnings estimate revisions and an additional 12 reports that include changes in valuation ranges.[39] (*Id.* ¶39 at 18-19.)

266. Dr. Prowse concluded that there was "no reason" to exclude these reports from Dr. O'Neal's set, particularly noting that academic literature that examines market reactions to information in analyst reports includes analysts' earnings forecast changes and target price changes in addition to ratings changes. (*Id.* ¶39 at 19.)

267. The addition of these reports would expand Dr. O'Neal's set from eight to 71.

268. However, Dr. Prowse found that expanding the set of reports does not increase the number of overnight positions held by Ruggieri that were in a "favorable direction."[40] (*Id.* ¶41 at 19.)

[38] See, for example: BX 2 at WF1003791; Brav, Alon and Lehavy, Reuven, "An Empirical Analysis of Analysts' Target Prices: Short-term Informativeness and Long-term Dynamics," *The Journal of Finance*, Vol. LVII, No. 5, October 2003, pp. 1933-1967 (cited in the O'Neal Report) and Gleason, Cristi A. and Lee, Charles M.C., "Analyst Forecast Revisions and Market Price Discovery," *The Accounting Review*, Vol 78, No. 1, January 2003, pp. 193-225.

[39] BX45 at WF284305. There were a total of four reports issued with changes in valuation ranges, but two of those reports each covered five companies, while the remaining two reports each covered one company, for a total of 12 companies covered. The O'Neal Report counts the two reports covering five companies each as 10 separate reports, so my rebuttal does the same.

269. Dr. Prowse recalculated the p-value from the O'Neal Report to calculate the probability of observing six out of 71 overnight positions when the probability on each date is 6.86% (14 out of 205)[41] (*Id.*)

270. Dr. Prowse found a p-value of 0.147, or a 14.7% chance of it happening by chance, which is not statistically significant. (*Id.*)

271. Dr. Prowse repeated this analysis to include the January 5, 2011 MDAS report.[42] (*Id.* ¶41 at 19-20.)

272. Dr. Prowse found a p-value of 0.116, or an 11.6% chance of it happening by chance, which is not statistically significant. (*Id.* ¶41 at 20.)

273. Consequently, Dr. Prowse concluding that even when using Dr. O'Neal's cherry-picked time period of March 30, 2010 to March 31, 2011, the probability of Ruggieri building an overnight position in the same direction of a Bolan rating change, valuation or earnings estimate, or initiation of coverage cannot reliably be distinguished from chance. (*Id.* ¶42 at 20.)

274. Furthermore, Dr. Prowse found that in the set of 71, there are additional five instances in which positions were established the previous day and held overnight by Ruggieri in an *unfavorable* direction.[43] (*Id.* ¶43 at 20.)

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[40] Dr. Prowse uses the phrase "favorable direction" to mean a short position before a downgrade or downward revision of estimates and long position before an upgrade or upward revision of estimates.

[41] Although the O'Neal Report's analysis indicates that there were a total of 204 reports, it is to Dr. Prowse's understanding that Dr. O'Neal has amended that number to 205. *See* email dated March 4, 2015 from Preethi Krishnamurthy to Sam Lieberman on the topic.

[42] The O'Neal Report notes that Mr. Ruggieri built a position before the mid-day release of the January 5, 2011 MDAS report, which is not included in the 14 overnight positions (out of 205 total reports) or the six overnight positions (out of eight ratings change reports) analyzed in the O'Neal Report.

[43] Dr. Prowse noted that the August 16, 2010 report for EM included a rating upgrade to Outperform simultaneously with a significant decrease in the valuation range by $3.00 per share and the earnings estimates. As such,

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275. Dr. Prowse conducted a statistical test to the ration of Ruggieri's holdings in the favorable direction (six of 71) and the unfavorable direction (five of 71) to see if the two ratios can be distinguished from each other at a level that is statistically significant. (*Id.* ¶43 at 20.)

276. Dr. Prowse found a p-value of 0.76, indicating that the two ratios are not different from each other at a statistically significant level.[44] In other worse, the frequencies of Ruggieri's overnight positions in the favorable or unfavorable direction are indistinguishable. (*Id.*)

277. This fact is "problematic" to any attempt to draw conclusions regarding Ruggieri's overnight positions in one direction versus the other. (*Id.*)

278. These tables show the five reports with unfavorable positions and a summary of the p-values calculated by Dr. Prowse.

Bolan Valuation or Earning Change Reports with Accompanying Unfavorable Overnight Positions Held by Mr. Ruggieri			
Report Date	**Stock**	**Bolan Value/Earnings Change**	**Ruggieri Overnight Position**
8/11/10[36]	PRXL	Downgrade Valuation $1.50/share	Long 1,379 Shares
8/16/10	EM	Downgrade Valuation $3.00/share	Long 10,000 Shares
9/30/10	CVD	Upgrade Valuation $4-5/share	Short 17,500 Shares
2/2/11	PRXL	Downgrade Valuation $1.00/share	Long 1,876 Shares
2/25/11	ICLR	Downgrade Valuation $1.00/share	Long 66,052 Shares

Summary of p-values Comparing Mr. Ruggieri's Favorable and Unfavorable Overnight Positions		
Ratios Compared	**2-Tailed p-value**	**1-Tailed p-value**
6 of 71 favorable vs 5 of 71 unfavorable	0.7557	0.3778
5 of 71 favorable vs 4 of 71 unfavorable	0.7328	0.3664

Ruggieri's position could be considered either favorable or unfavorable. (BX42.) Because the O'Neal Report already includes this report as a favorable position, Dr. Prowse included the position in both the favorable and unfavorable counts in the analysis presented here.

[44] This result is for a 2-tailed test. If Dr. Prowse applied a 1-tailed test, thus specifically checking the see if the ratio of6/71 is *larger* than 5/71, rather than if 6/71 is different in either direction from 5/71, he would find a p-value of 0.38. Similarly, if he ran the test on 5/71 and 4/71, to exclude the EM report from both sets, he would find a 2-tailed p-value of 0.73 and a 1-tailed p-value of 0.37. In no case do he find statistical significance.

(*Id.* ¶44 at 21-22.)

279. Dr. Prowse notes the additional errors in Dr. O'Neal's methodology including: (1) the PRXL overnight position held before the April 7, 2010 report issuance was not"built" on day before, but rather built over several days from March 29 through April 6, 2010;[45] 2) the BRKR overnight position held before the March 30, 2011initiation of coverage was similarly built in increments from March 23 through March 29, 2011;[46] 3) the CVD overnight position held before the June 15, 2010 report issuance was not sold in one day, but over two days on June 15 and 16, 2010;[47] 4) the AMRI overnight position held before the July 6, 2010 report issuance was sold over several days, on July 6 through 12, 2010;[48] 5) the questionable decision to include the BRKR initiation considering that was the same day Mr. Bolan and Wells Fargo initiated coverage on that entire sector, arguably making their opinion less important to investors; and 6) the use of a mid-day January 5, 2011 MDAS position compared to overnight positions, when the proper comparison is to other mid-day rating, valuation or earnings estimate changes, of which this position appears to be just one time of 19 mid-day reports.[49] (*Id.* at ¶45 at 22-23.)

[45] WF-002847685; BX82-100 (trading printouts and purported corrections).

[46] BX97, WF2847677; BX82-100 (trading printouts and purported corrections).

[47] WF-002847685; BX82-100 (trading printouts and purported corrections).

[48] WF-002847685; BX82-100 (trading printouts and purported corrections).

[49] BX45 at WF284305 (time-stamps for reports on lines 229, 236, 244, 274, 282, 302, 335, 366, and 352-53 (five valuation changes each)).

C. Dr. Prowse's Conclusions

280. After reviewing the O'Neal Report, Dr. Prowse did not change his opinion that the allegedly tipped information in each of the six Wells Fargo analyst reports concerning rating changes or initiations issued on the dates examined was not material to investors. (*Id.* at ¶46 at 23.)

281. In fact, Dr. Prowse found that the O'Neal Report confirms his own conclusions based on its event study analyses. (*Id.*)

282. Additionally, there are a number of flaws in the O'Neal Report that render his conclusions invalid. (*Id.*)

VIII. Dr. O'Neal's "Expert" Opinion is Unreliable for Departing from Event-Study Methodology, Under *Daubert* and Related Principles of Expert Reliability, and Also Suffers From Credibility Issues

283. Dr. O'Neal's expert opinion should be disregarded because he runs from event studies that found no statistically significant price movements related to the six analyst reports at issue.

284. Dr. O'Neal is simply employing a litigation-driven tactic, by hiding from the failure of his event studies by asserting "the findings in this section are not critical to my opinion that trading on forthcoming rating changes would be expected to generate abnormal profits." (DX177 at 7; *see also id.* at 14 (noting his "opinion is independent of the characteristics of the small sample of Mr. Bolan's rating changes").

285. It is clear why he did so: Dr. O'Neal analyzed the stock price movements for four of the reports (PRXL on April 7, 2010, AMRI on July 6, 2010, ATHN on February 8, 2011, and BRKR on March 30, 2011), and found the price movements fell well short of the statistically significant threshold. (*Id.* at 11 & note.)

286. The greatest t-statistic he found for any of these four reports was 1.25 – yet he admits that the threshold for scientifically valid statistical significance requires "T-statistics greater than 1.96 absolute value."

287. Moreover, Dr. O'Neal concluded that two of the reports at issue (CVD and EM) "had confounding information" released near the time of each report. (*Id.* at 8-9.)

288. He concluded that an event study 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." (*Id.* at 9.) Thus, Dr. O'Neal was unable to conclude that they were associated with any statistically significant price movement. (*Id.* at 8-9, 11.)

289. Dr. O'Neal's event study analysis thus confirms the conclusion of Bolan's expert, Dr. Stephen Prowse, who also found no statistically significant price movement associated with any of the six reports at issue. (BX90 ¶¶ 5-6 at 9-11.)

290. This should be fatal to the Division's claims.

291. Yet, instead of relying on generally-accepted event study methodology, Dr. O'Neal relies on (i) "published research" about analyst reports generally, which he admits does not uniformly support his opinion (DX177 at 4-6); and (ii) changes in volume of Bolan-covered stocks, for which he fails to cite a single article or study, (*id.* at 14-15.)

292. Even so, Dr. O'Neal's reliance on disputed academic papers analyzing analyst reports also generally fails under *Daubert*, because the studies provide no actual analysis of Bolan's actual reports, nor of Bolan's actual influence as a relatively junior and low-ranked analyst – he was ranked 19 of 28 health care analysts in October 2010 and not even ranked in Life Science Tools in October 2010. (BRX16 at WF670677-729.)

293. Such papers about analyst reports generally do not provide meaningful evidence about Bolan's reports specifically – particularly in the face of event studies of Bolan's six specific reports showing a lack of materiality.

294. Dr. O'Neal's opinion also suffers from credibility issues because Dr. O'Neal himself discussed serving as an expert for Bolan. Dr. O'Neal had email and phone conversations with Bolan's counsel about serving as Bolan's expert – and made an unsolicited "offer" to meet in person. (BRX13.)

295. During phone conversations and a meeting with Dr. O'Neal on October 9, 2013, counsel discussed retaining Dr. O'Neal to conduct event studies to disprove materiality in this case – specifically because academic research did not definitively address this issue. Dr. O'Neal approved of an expert report based on this methodology, and in fact gave Bolan's counsel a specific budget for this engagement.

296. Ultimately, Bolan's counsel chose a different expert.

297. Undeterred, Dr. O'Neal turned around less than five months later (on March 3, 2014) and was contacted by the Division about taking the opposite position as he discussed with Bolan's counsel. This was less than five months after speaking with Bolan's counsel about an Event Study analysis. Shortly thereafter, Dr. O'Neal agreed to be retained by the Division.

298. Dr. O'Neal's actions in seeking employment on *both sides of this case* raise profound issues about his credibility.

299. Dr. O'Neal's credibility is suspect because he discussed employment as Bolan's expert to disprove materiality based on event studies, without regard to academic research. Yet here he offers the opposite opinion: that Bolan's analyst reports should be material based on

academic studies, regardless of event studies showing no statistically significant price movement.

300. Equally important, however, is that Dr. O'Neal's conduct in seriously discussing serving as an expert with both sides in this litigation shows his opinion is entirely litigation-driven.

301. After all, Dr. O'Neal specifically met with Bolan's counsel for an "Event Study Case" to provide an opinion that his event studies of the reports at issue should govern the analysis whether the analyst reports at issue were material. Yet now he offers an opinion that his own event study analysis of the six reports should not govern materiality, and that instead academic research that long-predated his meeting with Bolan's counsel should govern. (DX177 at 4-11.) This raises serious issues about the credibility of his opinion here.

IX. Disputed Facts from OIP[50]

302. Bolan did not give advance notice of forthcoming ratings changes to Ruggieri or Trader A. (OIP ¶1.)

303. Ruggieri did not "trade ahead" of any rating changes by Mr. Bolan because of any tip provided by Bolan. (OIP ¶¶2, 11.) Nor did Trader A, on these same grounds.

304. Ruggieri did not generate $117,000 in gross profits for Wells Fargo by "trading ahead" of any rating changes by Bolan based on any tip provided by Bolan to Ruggieri. (OIP ¶¶2, 11.) Bolan disputes that Trader A generated trading profits from trading ahead of research reports based on a tip from Bolan.

305. Paragraph 3 of the OIP states a legal conclusion that is disputed.

306. The descriptions of parties and related persons are proposed above.

[50] This section identifies the key disputes of the allegations of the complaint. Any facts sought to be agreed upon are set forth above in the proposed findings of fact set forth above.

307. Bolan never tipped Ruggieri about Bolan's ratings changes before they were made public. (OIP ¶8.)

308. Bolan's rating changes did not impact the stock price and volume of the companies being analyzed. (OIP ¶8.)

309. Bolan and Ruggieri deny that Ruggieri traded ahead of his rating changes or initiation of coverage based on a tip from Bolan. (OIP ¶ 9.)

310. Ruggieri and Bolan dispute that any profits for Wells Fargo were due to trading ahead of reports based on a tip of information from Bolan. (OIP ¶11.)

311. Ruggieri never "traded ahead" of Bolan's April 7, 2010 equity research report based on any tip from Mr. Bolan—or anyone else—about his anticipated report. (OIP ¶12.)

312. The publication of Bolan's April 7, 2010 equity research report did not cause PRXL's stock price to decrease or trading volume to increase. (OIP ¶¶13, 14.)

313. Bolan did not communicate a tip to Ruggieri on the evening of April 5. (OIP ¶14.)

314. Ruggieri never "traded ahead" of Bolan's June 15, 2014 equity research report based on any tip from Bolan—or anyone else—about his anticipated report. (OIP ¶15.)

315. The publication of Bolan's June 15, 2010 equity research report did not cause CVD's stock price or trading volume to increase. (OIP ¶16.)

316. Bolan did not communicate any material nonpublic information to Ruggieri. (OIP ¶17.)

317. Ruggieri never "traded ahead" of Mr. Bolan's July 6, 2010 equity research report based on any tip from Mr. Bolan—or anyone else—about his anticipated report. (OIP ¶18.)

318. The publication of Bolan's July 6, 2010 equity research report did not cause AMRI's stock price or trading volume to increase. (OIP ¶19.)

319. Bolan did not communicate any material nonpublic information to Ruggieri. (OIP ¶20.)

320. Ruggieri never "traded ahead" of Bolan's August 16, 2010 equity research report based on any tip from Bolan—or anyone else—about his anticipated report. (OIP ¶21.)

321. The publication of Bolan's August 16, 2010 equity research report did not cause EM's stock price or trading volume to increase. (OIP ¶22.)

322. Bolan did not communicate any material nonpublic information to Ruggieri. (OIP ¶23.)

323. Ruggieri never "traded ahead" of Bolan's February 8, 2011 equity research report based on any tip from Bolan—or anyone else—about his anticipated report. (OIP ¶24.)

324. The publication of Bolan's February 8, 2011 equity research report did not cause ATHN's stock price or trading volume to increase. (OIP ¶25.)

325. Bolan did not communicate any material nonpublic information to Ruggieri. (OIP ¶26.)

326. Ruggieri never "traded ahead" of Bolan's March 29, 2011 equity research report based on any tip from Bolan—or anyone else—about his anticipated report. (OIP ¶27.)

327. The publication of Bolan's March 29, 2011 equity research report did not cause BRKR's stock price or trading volume to increase. (OIP ¶28.)

328. Bolan did not communicate any material nonpublic information to Ruggieri. (OIP ¶29.)

329. Mr. Bolan did not tip Trader A on any of the instances cited in OIP ¶30.

330. Bolan refers to the trading records for Trader A, and notes that Trader A did trade Emdeon in February 2010, and traded PRXL in April 2010, and traded AMRI in 2011-12. (OIP ¶31.)

331. Bolan received a "Best Up and Comer" Award from *Institutional Investor* Magazine, but is otherwise unaware of market professionals generally having a view of his reports as significant. (OIP ¶32.)

332. The text of the document referred to in OIP ¶34 says, "I hope so" rather than stating certainty as suggested in the allegation. (OIP ¶34.)

333. Bolan did not receive a personal benefit from any alleged tip. (OIP ¶¶35-36.)

334. Bolan and Ruggieri deny acting with scienter. (OIP ¶40-41.)

335. Bolan and Ruggieri deny the conclusion of law stated in OIP ¶42.

DISPUTED CONCLUSIONS OF LAW

I. General Principles

1. Insider trading arising under Section 10(b) requires a showing of *scienter*, which requires that "the tipper must know that the information that is the subject of the tip is non-public and material for securities purposes or act with reckless disregard of the nature of the information." *S.E.C. v. Obus*, 693 F.3d 276, 289 (2d Cir. 2012).

2. *Scienter* requires "a mental state embracing intent to deceive, manipulate, or defraud." *Obus*, 693 F.3d at 287.

3. Bolan did not act with *scienter*, as he did not act to deceive, manipulate or defraud Wells Fargo. *See Obus*, 693 F.3d 276, 288-89.

4. Disclosure of insider information must be a breach of duty that "itself deceive[s], manipulate[s], or defraud[s]." *Dirks v. S.E.C.*, 463 U.S. 646, 663 (1983).

5. In addition to *scienter*, Insider trading claims against a tipper require that the Division prove that an alleged tipper (1) had a fiduciary duty to his employer, (ii) breached that fiduciary duty by disclosing (iii) material nonpublic information (iv) to a tippee who traded on that information, and (v) "in exchange for a personal benefit." *U.S. v. Newman*, 773 F.3d 438, 442 (2d Cir. 2014).

II. Mere Circumstantial Evidence is Insufficient to Meet the Division's Burden of Proving Tipping By a Preponderance of the Evidence

6. Evidence of records of times of telephone calls and text messages" and the "purchase and sale of [] stock during these periods," are insufficient to prove insider trading by a preponderance of the evidence. *S.E.C v. Schvacho*, 991 F. Supp. 2d 1284, 1299 (N.D. Ga. 2014).

7. While "pattern" evidence may be "facially interesting," it does not prove, "by a preponderance of the evidence, that [Bolan] misappropriated insider information to" tip his rating changes. *Id.* at 1299; *S.E.C. v. Jensen*, 2013 WL 6499699, at *24 (C.D. Cal. Dec. 10, 2013) (rejecting insider trading claim based on former CEO's stock sale three days before press release).

8. Allegations of suspicious trading phone or trading activity are insufficient where there is a "reasonable explanation" for such activity. *Freeman v. Decio*, 584 F.2d 186, 197 & n. 44 (7th Cir. 1978) (finding no inference of wrongdoing where, among other reasons, defendant had reasonable explanations for conduct); *S.E.C. v. Moran*, 922 F. Supp. 867, 893 (S.D.N.Y. 1996); *accord S.E.C. v. Rorech*, 722 F. Supp. 2d at 414-14 (S.D.N.Y. 2010) (citing defendant's "innocent explanation" for conduct in finding no insider trading).

9. It is insufficient to prove insider trading by a preponderance of the evidence by citing to several "successful trades" over a small time period. *S.E.C. v. Horn*, 2010 WL

5370988, at *5 (N.D. Ill. Dec. 16, 2010) (rejecting S.E.C. insider trading claim based on "five successful trades" over "eight-and-a-half months").

10. Where there is "unrebutted" evidence that the alleged tipper and tippee "spoke with each other with enormous frequency about matters that" are legitimate, purported evidence of suspiciously-timed phone calls "does not meet the SEC's burden of proof." *Schvacho*, 991 F. Supp. 2d at 1299 (N.D. Ga. 2014); *accord Jensen*, 2013 WL 6499699, at *24 (C.D. Ca. Dec. 10, 2013) (rejecting circumstantial insider trading claim where defendant offered testimony from broker giving innocent explanation for trade).

11. A defendant's history of actively trading similar or the same stocks weighs heavily against any suggestions of insider trading. *See SEC v. Heartland Advisors, Inc.*, No. 03 Civ. 1427, 2006 WL 2547090, at *1-4 (E.D. Wisc. Aug. 31, 2006) (rejecting insider trading claim based on portfolio manager's lunch with insider just before liquidating holdings where defendant had previously sold the same security in similar quantities); *Rorech*, 722 F. Supp. 2d at 414-15. (rejecting insider trading claim where defendant established legitimate explanation based on belief that company was undervalued due to its high leverage); *Moran*, 922 F. Supp. At 893 (S.D.N.Y. 1996) (defendant's history of purchasing large quantities of similar stocks weighed against finding of insider trading).

12. An analyst report is only material information if there is a showing that it moved prices "in any material way that is not simply speculative." *DeMarco v. Lehman Brothers, Inc.*, 222 F.R.D. 243, 247 (S.D.N.Y. 2004). This is because compared to information from the company itself, "a statement of opinion emanating from a research analyst is far more subjective and far less certain, and often appears in tandem with conflicting opinions from other analysts as well as new statements from the issuer." *Id.*

III. The Division Has Failed to Prove a Personal Benefit Rising to an Exchange of a Pecuniary of Similarly Valuable Nature as Required Under Newman

13. *Newman* is "the controlling rule of law." *U.S. v. Conradt*, 12-cr-887-ALC, dkt. No. 166 at 2 (S.D.N.Y.).

14. In order for there to be a personal benefit, there must be a quid pro quo that is material. *Newman*, 773 F.3d at 452.

15. Absent some personal gain, there is no breach of duty that triggers insider trading liability. *Dirks*, 463 U.S. at 662.

16. Courts are required "to focus on objective criteria, *i.e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or reputational benefit that will translate into future earnings." *Dirks*, 463 U.S. at 663.

17. Absent an objective standard of value for personal benefit, "the personal benefit requirement would become a nullity." *Newman*, 773 F.3d at 452.

18. It is essential to apply the personal benefit requirement as a "limiting principle" for those "whose daily activities are . . . instructed by the SEC's inside-trading rules." *Dirks*, 463 U.S. at 664.

19. Speculative benefits and an unreciprocated gift are insufficient to meet the standard of "objective criteria" for an actual "personal benefit" to the tipper. *Dirks*, 463 U.S. at 665-67, *see also S.E.C. v. Cuban*, 620 F.3d 551, 557 & n.38 (5thCir. 2010) (merely noting "concerns" of possibly tipper/tippee liability if there was no agreement), *S.E.C. v. Yun*, 327 F.3d 1263, 1280-81 (11th Cir. 2003) (vacating the lower court's judgment of tipper liability for failing to instruct the jury that "the disclosure has to be for the fiduciary's personal benefit to constitute a breach."), *U.S. v. Evans*, 486 F.3d 315, 323 (7th Cir. 2007) (tipper was acquitted where "the

jury might have found that [the tipper] did not receive any benefit from giving out the information.

20. It is impermissible to infer a personal benefit from "the mere fact of a friendship" absent "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." *Newman*, 773 F.3d at 452.

21. Alleging a breach of a duty of loyalty through self-dealing based on mere friendship requires evidence showing that the alleged friends "are as thick as blood relations." *In re MFW S'holders Litig.*, 67 A.3d 496, 509 n.37 (Del. Ch. 2013) (Strine, C.).

22. Career advice or assistance given well before any alleged tipping of inside information is negates an inference of a personal benefit. *Newman*, 773 F.3d at 452-53.

23. An allegation that a tipee gave positive feedback to an employer is insufficient to show a personal benefit. *Newman*, 773 F.3d at 452.

24. It is insufficient to prove a personal benefit when a tipper has only been to a tippee's "home only once." *S.E.C. v. Anton*, 2009 WL 1109324, at *9 (E.D. Pa., Apr. 23, 2009).

25. The elements giving rise to tipping liability are the same under a 'classical' theory or 'misappropriation' theory. *Newman*, 773 F.3d at 446.

26. Like with the classical theory of insider trading, there must be a showing of a "direct or indirect personal benefit." *Evans*, 486 F.3d at 322-23.

27. Under the misappropriation doctrine , "A fiduciary who '[pretends] loyalty to the principal while secretly converting the principal's information for personal gain 'dupes' or defrauds the principal.'" *U.S. v. O'Hagan*, 521 U.S. 642, 653 (1997) (citation omitted).

28. *Dirks* itself rejected tipper liability based on an alleged unreciprocated "gift," intent to benefit a recipient, and a vague, unquantified "enhanced reputation." *Dirks*, 463 U.S. at 676 n. 13 (Blackmun, J. (dissenting)).

29. In particular, *Dirks* itself held that a tipper did not violate the securities law when he received no objective personal benefit, but absolutely did act "with the intention that Dirks would cause his clients to trade on that information." *Id.* at 666 n.27. As the *Dirks* dissent pointed out, the tipper did obtain a subjective "benefit," both "the good feeling of exposing a fraud and his enhanced reputation." *Id.* at 676 n.13 (Blackmun, J. (dissenting)). Similarly, the tipper "surely gave Dirks a gift of the commissions Dirks made on the deal in order to induce him to disseminate the information." *Id.* Yet *Dirks* held such speculative benefits and an unreciprocated gift was insufficient to meet the standard of "objective criteria" for an actual "personal benefit" to the tipper. *Id.* at 665-67.

30. Indeed, *Dirks*'s holding was based on a specific standard: the "disclosure" of information must be a breach of duty that "itself deceive[s], manipulate[s], or defraud[s]." *Id.* at 663.

31. The *Dirks* standard "requires courts to focus on objective criteria, *i.e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or reputational benefit that will translate into future earnings." *Id.* In adopting this standard, *Dirks* explicitly quoted the following passage: "The theory ... is the insider, by giving the information out selectively, is in effect selling the information to its recipient for cash, reciprocal information, or other things of value for himself...." *Id.* at 664. That is the full extent of the standard *Dirks* adopted, and it is entirely consistent with *Newman*.

32. *Dirks* said about a "gift of confidential information," "intent[] to benefit the particular recipient" and a "friend" is that such facts can "often justify such an inference" of an objectively valuable personal benefit. *Id.* at 664. But the necessary corollary to the statement "often justify such an inference" is that such facts often do not justify such an inference. Critically, the Court did not say "always justify such an inference."

33. *Dirks's actual holding* rejecting as insufficient that the tipper "inten[ded] that Dirks would cause his clients to trade on that information," "gave Dirks a gift of [] commissions" on the trades, and obtained the "benefit" of an unquantified "enhanced reputation" conclusively proves this point. *Id.* at 666 n.27, 676 n.13

34. *Newman* thus reinforces *Dirks*'s actual holding, by focusing on "objective criteria," *id.* at 663, *i.e.*, "an exchange that is objective, consequential, and represents" a "gain of a pecuniary or similarly valuable nature," 773 F.3d at 452.

35. Absent an objective standard of value for personal benefit, "the personal benefit requirement would become a nullity," *id.*, and there would be no "guidance as to where the line is between permissible and impermissible disclosures," *Dirks*, 463 U.S. at 659 n.17. This would necessarily chill the actions of "corporate insiders" and "analysts," who would never "be sure when the line is crossed." *Id.*

IV. The Analyst Reports at Issue are Not Material Because Both Experts Conducted Event Studies on the Reports at Issue, and Both Experts Failed to Find that Any Report Had a Statistically Significant on the Stock Price

36. An "event study" is "reliable and the best measure of materiality." *S.E.C. v. Berlacher*, 2010 WL 3566790, at *8 (E.D. Pa., Sept. 13, 2010); *U.S. v. Schiff*, 603 F.3d 152, 171-72 (3d Cir. 2010) (rejecting government expert event study methodology under *Daubert*, and

stating that the government "must demonstrate that public disclosure of the []statements charged...had an 'appreciable....effect' on the stock price.").

37. "[T]he question of materiality ... is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor." *Amgen Inc. v. Conn. Retirement Plans and Trust Funds*, 133 S. Ct. 1184 (2012).

38. "Immaterial information, by definition, does not affect market price." *Id.*

39. Where there is no reliable evidence that a "disclosure" had an "effect on [the stock's] price, it follows that the information disclosed...was immaterial as a matter of law." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1425, 1435 (3rd Cir.1997); *Kleinman v. Elan Corp., PLC*, 706 F.3d 145, (2d Cir. 2013) ("A drop in stock price, if relevant, tends to establish materiality, *i.e.*, whether reasonable investors would consider the information 'to be significant or to have altered the total mix of information affecting their investment decisions."); *accordIn re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1, 13, 19 (1st Cir. 2005) (vacating district court's certification of the class and rejecting definition of market efficiency that "allows some information to be considered 'material' and yet not affect market price"); *S.E.C. v. Bausch & Lomb*, 565 F.2d 8, 14-15 (2d Cir. 1977) ("Only when the inside information 'so leaked' is essentially 'extraordinary in nature' and 'reasonably certain to have a substantial effect on the market price of a security'" is it material).

40. "In efficient markets" such as the ones in which the stocks Bolan covered trade, "materiality is defined as 'information that alters the price of the firm's stock.'" *In re Merck & Co., Inc. Secs. Litig.*, 432 F.3d 216, 273-74 (3d Cir. 2005); *accord Schiff*, 603 F.3d at 172.

41. Cases applying event study methodology to reject liability apply to the issue of materiality, which is an element of insider trading. *In re Credit Suisse First Boston (Latronix,*

Inc.) Analyst Secs. Litig., 250 F.R.D. 137, 143 & n.5 (S.D.N.Y. 2008) (citing cases noting that fraud on the market presumption depends on whether information is "materiality"); *Fogarazzo v. Lehman Bros., Inc.*, 232 F.R.D. 176, 184, 190 (S.D.N.Y. 2005) ("Thus, the fraud on the market inquiry is dependent not on who *made* a misstatement, but whether the statement was *material.*" (emphasis in original).)

42. This is because "to invoke the *Basic* presumption," of fraud on the market, "a plaintiff must prove that: "(1) the alleged misrepresentations were publicly known, [and] (2) they were material…." *Halliburton v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2413 (2014); *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds,* 133 S. Ct. 1184 (2012 ("immaterial information, by definition, does not affect market price").

43. Analyst reports may not be actionable under the securities law where there is strong evidence that they did not "actually affect[] the price of securities traded in the open market" *Hevesi v. Citigroup, Inc.*, 366 F.3d 70, 79-80 (2d Cir. 2004); *accord In re IPO Secs. Litig.*, 471 F.3d 24, 43 (2d Cir. 2006) (noting that it is "doubtful" a presumption of market impact can be extended to "analysts' reports"); *In re Credit Suisse First Boston (Latronix, Inc.) Analyst Secs. Litig.*, 250 F.R.D. 137, 143 (S.D.N.Y. 2008) (rejecting argument that analyst report-related price increases of "roughly 3.6% and 2%" were material because price movement likely was "just random fluctuations in the stock price").

44. A securities fraud claim based on an analyst report is actionable only if there is "a showing that the analyst's statements materially impacted the market price in a reasonably quantifiable respect." *DeMarco,* 222 F.R.D. at 247 (S.D.N.Y. 2004). Such a showing requires analyzing the price movements of stocks in response to analyst reports using a large enough

sample to have "statistical significance" and determining whether the analyst's reports were "different than similar recommendations of many other analysts at the time." *Id.* at 247-49.

45. Failure to address confounding information is grounds for rejecting an expert event study. *Bricklayers and Towel Trades Int'l Pension Fund v. Credit Suisse Secs. (USA) LLC*, 752 F.3d 82, 95-96 (1st Cir. 2014) (rejecting expert event study for failing to "address confounding information that entered the market on the event date").

V. Dr. O'Neal's Selective Departure from Event Study Methodology Warrants Giving His Opinion Little Weight at the Hearing

46. "'Junk science' has no more place in administrative proceedings than in judicial ones." *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004).

47. *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993) applies in administrative proceedings to assess the reliability of expert testimony. *In the Matter of WSF Corp.*, 2002 WL 917293, at *3-*4 (S.E.C., May 8, 2002) (applying *Daubert* to disregard expert testimony); *In re H.J. Meyers & Co.*, 2002 WL 1828078, at *46 (Aug. 9, 2002) (applying *Daubert*).

48. The S.E.C.'s Division of Enforcement itself has argued that *Daubert* applies in theirown administrative proceedings. *See, e.g., In re Matter of BDO China Dahua CPA Co., Ltd.*, File Nos. 3-14872, 15116, Div.' Mot. in Limine 7-14 (June 26, 2013), *available at* http://www.sec.gov/litigation/apdocuments/3-15116-event-86.pdf.

49. Expert findings that lack statistical significance fail the *Daubert* reliability test. *Newman v. Motorola, Inc.*, 78 F. App'x 292, 294 (4th Cir. 2003) (plaintiff's proffered expert testimony on specific causation failed the *Daubert* reliability test based on lack of statistically significant findings); *see also Wells v. SmithKline Beecham Corp.*, 601 F.3d 375, 379 (5th Cir. 2010).

50. Principles of reliability require "a valid scientific connection to the pertinent inquiry as a precondition to admissibility." *Daubert*, 509 U.S. at 591.

51. Expert testimony which merely suggests a correlation is insufficient to support a causal connection. *Anderson v. Bristol Myers Squibb Co., No.* CIV.A. H-95-0003, 1998 WL 35178199, at *4 (S.D. Tex. Apr. 20, 1998); *see also Allen v. Pennsylvania Eng'g Corp.*, 102 F.3d 194, 197 (5th Cir. 1996) ("Suggestiveness" is not by the experts' own admission statistical significance, nor did the appellants' experts show why and how mere "suggestiveness" scientifically supports a causal connection; this basis for their...opinion must be rejected.").

52. Statistically significant values have a probability of occurring by chance 5% of the time or less is the generally accepted threshold in scientific analysis. *See Cooper v. University of Texas at Dallas* 482 F.Supp. 187, 194 (N.D.Tex.1979), *aff'd*,648 F.2d 1039 (5th Cir.1981) ("It has become a convention in social science to accept as statistically significant values which have a probability of occurring by chance 5% of the time or less."); *see also In re Photochromic Lens Antitrust Litig.*, No. 8:10-MD-2173-T-27EAJ, 2013 WL 8183461, at *10 (M.D. Fla. Mar. 12, 2013) *report and recommendation approved in part*, No. 8:10-CV-00984-T-27EA, 2014 WL 1338605 (M.D. Fla. Apr. 3, 2014) ("a more rigorous 5 percent measure is generally accepted practice among economists."), *Billhofer v. Flamel Technologies, S.A.*, 281 F.R.D. 150, 162 (S.D.N.Y. 2012) (expert testified at his deposition that a 5% statistical significance level is "the standard test in the finance literature.").

53. For a showing of statistical significance, there must be a 95% "confidence level" that the connection between the variables did not occur by chance. *In re Xerox Corp. Sec. Litig.*, 746 F. Supp. 2d 402, 409, fn. 2 (D. Conn. 2010).

54. Expert opinions should be disregarded when the expert cherry-pick facts to render the opinion. *Holden Metal & Aluminum Works, Ltd. v. Wismarq Corp.*, No. 00 C 0191, 2003 WL 1797844, at *2 (N.D. Ill. Apr. 3, 2003) ("such selective use of facts failed to satisfy the scientific method and *Daubert*.").

55. Expert opinion should similarly be given no weight when an expert "has unjustifiably extrapolated from an accepted premise to an unfounded conclusion." *E.E.O.C. v. Ethan Allen, Inc.*, 259 F. Supp. 2d 625, 634 (N.D. Ohio 2003).

VI. <u>The Division's Purported Evidence of Other Compliance Violations Are Irrelevant, Immaterial and Should be Given No Weight in this Proceeding</u>

56. Allowing the Division to rely on documents and testimony alleging Bolan committed violations of Wells Fargo's compliance policies in relation to channel checks runs the risk of derailing this proceeding and creating a trial within a trial. *In re Airtouch Commc'ns, Inc.*, AP File No. 3-16033, at 3(S.E.C. January 9, 2015), *available* at <u>http://www.sec.gov/alj/aljorders/2015/ap-2197.pdf</u>

57. The Division's purported evidence of other compliance issues is irrelevant because it does not involve (i) any alleged trading by Mr. Ruggieri, (ii) any rating change or coverage initiation report; (iii) Trader A; and (iv) any of the events challenged in the Order Instituting Proceedings. *Beastie Boys v. Monster Energy Co.*, 983 F. Supp. 2d 369, 375 (S.D.N.Y. 2014) (a trial within a trial runs a great risk of confusing the fact finder, "and would give rise to substantial and needless delay.").

58. Evidence and testimony of Bolan's alleged compliance violations are not relevant to the S.E.C.'s allegations in their OIP and should therefore be rejected. *United States v. Al Kassar*, 582 F.Supp.2d 498, 500 (S.D.N.Y.2008).

March 23, 2015

SADIS & GOLBERG, LLP

Samuel J. Lieberman, Esq.
Michelle N. Tanney, Esq.
551 Fifth Avenue, 21st Floor
New York, New York 10176
slieberman@sglawyers.com
mtanney@sglawyers.com
(212) 573-8164, phone
(212) 573-8149, fax

Attorneys for Gregory T. Bolan, Jr.

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of
Gregory T. Bolan, Jr. and
Joseph C. Ruggieri,
Respondents.

RESPONDENT RUGGIERI'S DISPUTED FACTS AND CONCLUSIONS OF LAW

SERPE RYAN LLP
Paul W. Ryan
Silvia L. Serpe
1115 Broadway, 11th Fl.
New York, NY 10010
(212) 257-5011

Counsel for Respondent Ruggieri

{00276246.DOCX; 1}

DISPUTED FACTS

OIP

1. Mr. Bolan did not give advance notice of forthcoming ratings changes to Mr. Ruggieri. OIP ¶1.

2. Ruggieri did not "trade ahead" of any rating changes by Mr. Bolan because of any tip provided by Mr. Bolan. OIP ¶2, 11.

3. Mr. Ruggieri did not generate $117,000 in gross profits for Wells Fargo by "trading ahead" of any rating changes by Mr. Bolan based on any tip provided by Mr. Bolan to Mr. Ruggieri. OIP ¶¶2, 11.

4. Mr. Bolan never tipped Mr. Ruggieri about Mr. Bolan's ratings changes before they were made public. OIP ¶8.

5. Mr. Bolan's rating changes did not impact the stock price and volume of the companies being analyzed. OIP ¶8.

6. Mr. Ruggieri never "traded ahead" of Mr. Bolan's April 7, 2010 equity research report based on any tip from Mr. Bolan (or anyone else). OIP ¶12.

7. The publication of Mr. Bolan's April 7, 2010 equity research report did not cause PRXL's stock price to decrease or trading volume to increase. OIP ¶¶13, 14.

8. Mr. Bolan did not communicate a tip to Mr. Ruggieri on the evening of April 5. OIP ¶14.

9. Mr. Ruggieri never "traded ahead" of Mr. Bolan's June 15, 2014 equity research report based on any tip from Mr. Bolan (or anyone else). OIP ¶15.

10. The publication of Mr. Bolan's June 15, 2010 equity research report did not cause CVD's stock price or trading volume to increase. OIP ¶16.

11. Mr. Bolan did not communicate any material nonpublic information to Mr. Ruggieri. OIP ¶17.

12. Mr. Ruggieri never "traded ahead" of Mr. Bolan's July 6, 2010 equity research report based on any tip from Mr. Bolan (or anyone else) about his anticipated report. OIP ¶18.

13. The publication of Mr. Bolan's July 6, 2010 equity research report did not cause AMRI's stock price or trading volume to increase. OIP ¶19.

14. Mr. Bolan did not communicate any material nonpublic information to Mr. Ruggieri. OIP ¶20.

15. Mr. Ruggieri never "traded ahead" of Mr. Bolan's August 16, 2010 equity research report based on any tip from Mr. Bolan (or anyone else) about his anticipated report. OIP ¶21.

16. The publication of Mr. Bolan's August 16, 2010 equity research report did not cause EM's stock price or trading volume to increase.

17. Mr. Bolan did not communicate any material nonpublic information to Mr. Ruggieri. OIP ¶23.

18. Mr. Ruggieri never "traded ahead" of Mr. Bolan's February 8, 2011 equity research report based on any tip from Mr. Bolan (or anyone else) about his anticipated report. OIP ¶24.

19. The publication of Mr. Bolan's February 8, 2011 equity research report did not cause ATHN's stock price or trading volume to increase. OIP ¶25.

20. Mr. Bolan did not communicate any material nonpublic information to Mr. Ruggieri. OIP ¶26.

21. Mr. Ruggieri never "traded ahead" of Mr. Bolan's March 29, 2011 equity research report based on any tip from Mr. Bolan (or anyone else) about his anticipated report. OIP ¶27.

22. The publication of Mr. Bolan's March 29, 2011 equity research report did not cause BRKR's stock price or trading volume to increase. OIP ¶28.

23. Mr. Bolan did not communicate any material nonpublic information to Mr. Ruggieri. OIP ¶29.

24. Mr. Bolan did not receive a personal benefit from any alleged tip. ¶35-36.

Trading in a Principal Capacity

25. Mr. Ruggieri traded PRXL stock in a principal capacity on approximately 102 trading days.

26. During his tenure at Wells Fargo, Mr. Ruggieri traded CVD stock in a principal capacity on approximately 51 days.

27. During the tenure of his career at Wells Fargo, Mr. Ruggieri traded AMRI stock in a principal capacity on approximately 68 days.

28. During the tenure of his career at Wells Fargo, Mr. Ruggieri traded EM stock in a principal capacity on approximately 46 days.

29. During the tenure of his career at Wells Fargo, Mr. Ruggieri traded ATHN stock in a principal capacity on approximately 114 days.

30. During the tenure of his career at Wells Fargo, Mr. Ruggieri traded BRKR stock in a principal capacity on approximately 100 days.

31. During his tenure at Wells Fargo, Ruggieri held overnight positions in approximately 325 instances.

Additional Disputed Facts

32. Ruggieri placed every trade at issue in this matter because he had a clear thesis and a legitimate purpose.

33. The Parties dispute the extent to which Ruggieri's feedback contributed to Bolan's promotion.

34. During the time period that Ruggieri and Bolan overlapped at Wells Fargo, Wells Fargo published at least 94 equity research reports by Bolan containing at least 106 instances of Bolan initiating coverage or changing a rating, valuation range or estimated earnings.

35. During the time period from March 30, 2010 through March 31, 2011, Wells Fargo published approximately 63 equity research reports by Bolan containing at least 71 instances of Bolan initiating coverage or changing a rating, valuation or estimated earnings.

36. There was no phone call between Bolan and Ruggieri from June 26 until the afternoon of July 6, 2010.

37. Ruggieri purchased all of his shares of AMRI alleged to be insider trading before July 2, 2010 at 3:55 p.m.

38. Wells Fargo employed a "Turret" phone system that allowed multiple traders to pick up a line, either individually or simultaneously.

39. 212-214-6210 rang on the Trading Desk Line.

40. Approximately 17 individuals, including Ruggieri, used the Trading Desk Line.

Wells Fargo's Internal Investigation

41. Around March 31, 2011, Bolan conducted a channel check with WIL Research, a private CRO company.

42. On March 31, 2011, Bolan emailed the result of this channel check to the Wells Fargo healthcare-trading desk.

43. On March 31, 2011, Ruggieri conformed Bolan's email into an email from him which he then sent to multiple clients.

44. On March 31, 2011, Bolan sent the results of his WIL channel check to various clients.

45. On April 1, 2011, Bolan conducted a channel check with MPI Research, a private company.

46. On April 1, 2011, Ruggieri forwarded the results of Bolan's MPI channel check to approximately 10-15 clients.

47. On April 1, 2011, Bolan sent the results of his MPI channel check to a group of clients.

48. Bolan published the channel check as a research report and submitted the text of the channel check to Wells Fargo's Equity Squawks department for approval to publish. The report was substantially similar to the email that had been previously sent to select Wells Fargo clients.

49. Following the publication of the Wells Fargo equity research report, one of the recipients of the earlier-disseminated emails, SAC Capital, sent an email to Wells Fargo Equity Compliance inquiring whether SAC had received the research in advance of its publication.

50. On April 4, 2011, Wells Fargo began an investigation into whether, on March 31 and April 1, 2011, Respondents violated Wells Fargo policies.

51. Following its internal investigation, in late April 2011, Wells Fargo terminated Ruggieri. The "Termination Explanation" Wells Fargo provided on Ruggieri's Form U5 was "Loss of confidence due to failure to escalate issues regarding the inappropriate dissemination of information."

52. Ruggieri did not trade CVD or CRL stock in a principal capacity on March 31, 2011 or April 1, 2011.

53. Wells Fargo did not conclude that Mr. Ruggieri violated any internal policies and procedures.

54. During the course of Wells Fargo's investigation into channel checks, it also conducted its own internal compliance review of Bolan's communications with Ruggieri and found no evidence of Bolan tipping Ruggieri about a rating change or coverage initiation.

Expert Opinion Of O'neal

55. The time period for the trading records and equity research reports that Dr. O'Neal analyzed is arbitrary and incomplete.

56. The type of equity research reports included by Dr. O'Neal is arbitrary and inconsistent with the academic literature.

DISPUTED CONCLUSIONS OF LAW

57. A misappropriator violates Section 10(b) by "converting the principal's information for personal gain." *SEC v. Obus*, 693 F.3d 276, 284-85 (2d Cir. 2012) (citing *O'Hagan*, 521 U.S. at 653); see also *Dirks v. SEC*, 463 U.S. 646, 662 (1983) ("Absent some personal gain, there has been no breach of duty . . ."); *U.S. v. Newman*, 773 F.3d 438, 442 (2d Cir. 2014) (holding that "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information and that he did so in exchange for a personal benefit") (emphasis in original).

58. Tippee liability requires that: "(1) the corporate insider was entrusted with a fiduciary duty; (2) the corporate insider breached his fiduciary duty by (a) disclosing confidential information to a tippee (b) in exchange for a personal benefit; (3) the tippee knew of the tipper's breach, that is, he knew the information was confidential and divulged for personal benefit; and (4) the tippee still used that information to trade in a security or tip another individual for personal benefit." *U.S. v. Newman*, 773 F.3d 438, 450 (2d Cir. 2015).

59. In order for there to be a personal benefit, there must be a quid pro quo that is material. *U.S. v. Newman*, 773 F.3d at 452.

60. In order for there to be a personal benefit, there must be an exchange. *U.S. v. Newman*, 773 F.3d at 442 ("the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information and that he did so in exchange for a personal benefit") (emphasis in original); 447 ("the corporate insider has committed no breach of fiduciary duty unless he receives a personal benefit in exchange for the disclosure"); 447-48 ("Dirks counsels us that the exchange of confidential information for personal benefit is not separate from an insider's fiduciary breach"); 448 ("Thus, without establishing that the tippee knows of the personal benefit received by the insider in exchange for the disclosure, the Government cannot meet its burden of showing that the tippee knew of a breach."); 449 (same); 450 (same); 452 (same); 453 (same); 455 (same).

61. The tippee must know both that the tipper breached a fiduciary duty, and that the tipper benefitted by giving the tip. *U.S. v. Newman*, 773 F.3d at 447.

62. The tippee must know that the tipped information is material and non-public. Obus, 693 F.3d at 287. The Division must prove that the tippee intentionally or recklessly traded while in knowing possession of that information. *Id.* at 288.

63. Mr. Bolan did not breach a fiduciary duty to Wells Fargo.

64. Mr. Bolan did not intentionally or recklessly disclose confidential information to Mr. Ruggieri.

65. Mr. Bolan did not disclose material information to Mr. Ruggieri.

66. Mr. Bolan did not receive a personal benefit from Mr. Ruggieri in exchange for confidential information.

67. Mr. Bolan and Mr. Ruggieri did not have a meaningfully close personal relationship that generated an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature.

68. Mr. Ruggieri did not know the Mr. Bolan breached a fiduciary duty to Wells Fargo.

69. Mr. Ruggieri did not use confidential information to trade in a security.

70. Mr. Ruggieri did not trade in a security.

71. Mr. Ruggieri did not tip another individual for personal benefit.

72. Mr. Ruggieri did not act with scienter.