ORIGINAL

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16195

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **JUDY K. WOLF,** **Respondent.**	**Judge Cameron Elliot**

DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

March 20, 2015

Division of Enforcement
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I. INTRODUCTION

The Division of Enforcement ("Division") has brought this action against Judy K. Wolf, ("Respondent"), a former employee of Wells Fargo Advisors, LLC ("Wells Fargo") who was responsible for conducting reviews of potential insider trading by Wells Fargo employees, associated persons, brokerage customers and advisory clients, for willfully aiding and abetting, and causing Wells Fargo's violation of the recordkeeping requirements of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-4(j) thereunder, and Section 204(a) of the Investment Advisers Act of 1940 ("Advisers Act"). The evidence presented at the hearing proving Respondent's liability is overwhelming and largely unrefuted.

On September 2, 2010, Respondent initiated a review for potential insider trading in Burger King securities in response to a news announcement that day that Burger King was going to be acquired by a private equity firm. She closed her review with no findings, concluding that the trading by a Wells Fargo registered representative, Waldyr Prado ("Prado") and three of his customers, were not out of character for their accounts. In a log that she maintained to record each of her insider trading reviews, Respondent simply noted the date she conducted her review, the news that prompted her review, the amount of the stock price movement in response to that news, and that she had closed her review with no findings.

More than two years later, shortly after the Commission charged Prado and one of his customers with insider trading in Burger King securities, and during a time when Respondent knew or should have known that Wells Fargo was continuing to cooperate with the Commission's investigation, Respondent altered her insider trading review log from which she created a new cover page to her Burger King review file, stating that news articles discussing rumors of Burger King's acquisition had been circulating in the market for several weeks prior to the acquisition announcement. In particular, on December 28, 2012, over 27 months after she had closed her review. Respondent added the following two sentences to her log: "Rumors of acquisition by a

private equity group had been circulating for several weeks prior to the announcement. The stock price was up 15% on 9/1/**12**, the day prior to the announcement." (emphasis added). Respondent created a new cover page to her file using her altered log to make it appear that she had performed a more thorough review than she actually had. Respondent never disclosed her alteration to her supervisors. Wells Fargo then produced the altered document to the Commission staff without disclosing the alteration.

Ten weeks after she altered her log, Respondent testified before the Commission and was confronted with the date discrepancy on her log, which read 9/1/**12**, rather than 9/1/**10**, when she ostensibly read news articles concerning rumors of Burger King's acquisition. During her investigative testimony she repeatedly and unequivocally stated that the date discrepancy was simply a typographical error, that she had made that entry in her log in 2010 (claiming that it was her then-common practice to create a cover sheet for each of her reviews and associate it with the file), and that she had in fact read news articles in 2010 discussing rumors of Burger King's acquisition prior to closing her review.

Wells Fargo subsequently produced to the Commission staff the metadata associated with her insider trading review log, which irrefutably demonstrated Respondent had altered her log on December 28, 2012. One year later, Respondent testified before the Commission staff a second time and recanted much of her key testimony regarding her review files. On that occasion, she admitted that the she had altered her log in 2012, and was "mistaken" in her prior testimony, both as to when she had inserted the two sentences regarding rumors of Burger King's acquisition, and as to her practice of when she began routinely creating cover sheets for each of her reviews.

By producing the altered document, Wells Fargo did not produce a true, complete and current copy that existed at the time of the staff's request, thereby violating the books and records requirements of the Exchange Act and the Advisers Act. Indeed, in a settled action with the

Commission, Wells Fargo admitted to those violations. And as a result of her conduct, Respondent willfully aided and abetted and caused Wells Fargo's violation of Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder and Section 204(a) of the Advisers Act.

Nor are Respondent's after-the-fact explanations for her conduct credible. Her contention that she did not appreciate the wrongfulness of her conduct because she was wholly unaware of the staff's investigation or its request for her file at the time she altered her log is contradicted by a multitude of facts, including her knowledge that Wells Fargo's Corporate Investigations Group had been cooperating with the staff's investigation of Prado's trading, and that the Commission, in charging one of Prado's customers in late November 2012 – just one month prior to her alteration – announced that its investigation was continuing. Similarly, her assertion that she altered her log just to be helpful – so her supervisor would have a little more information "when she was discussing it with whoever was asking questions about it" is no defense and, in fact, only underscores that she knew questions were being asked about her Burger King review, and that she knew or should have known that it was the Commission staff who was asking those questions given her knowledge of the staff's continuing investigation. Finally, her claim that she did not falsify her log, because she had, in fact, read news articles in 2010 regarding rumors of Burger King's acquisition, has no documentary support, and her failure to make copies of those news articles at the time she purportedly read them, or even to make contemporaneous notes of such rumors, was inconsistent with Wells Fargo's procedures, as well as her own practices in conducting other reviews.

Given Respondent's egregious conduct, both in altering documents and then lying to the Commission staff about what she had done, strong remedial relief is required, including a cease-and-desist order, civil penalties, and a permanent industry-wide associational bar. Even at this late date, Respondent claims she did nothing wrong in altering her log two-years after the fact and telling no one that she had done so. Given Respondent's refusal to accept responsibility for her wrongful conduct, or

even to acknowledge it was wrong, meaningful sanctions must be imposed, both to prevent Respondent from violating the law in the future, as well as to deter other compliance professionals who may choose to put their own reputation above the interests of their employers and the public.

II. FACTS

A. Background

Respondent Judy Wolf, age 62 at the time of the OIP and a resident of St. Louis, Missouri, held the title of "compliance consultant" in the Retail Control Group of Wells Fargo, or its predecessor entities, from 2004 to June 13, 2013, when she was terminated by Wells Fargo. SF ¶ 1, 3; RT (02/23/15) 105:22-106:3; 111:2-6.[1] While associated with Wells Fargo, Respondent held Series 7, 24, 63 and 65 securities licenses. SF ¶ 5. Respondent holds a degree in Finance from the University of Washington in St. Louis, and started working in the securities industry in 1979 when she first became licensed. SF ¶ 2.

At all relevant times to this action, Wells Fargo was a dually registered broker-dealer and investment advisor. SF ¶ 6. As such, Wells Fargo was required under Section 15(g) of the Exchange Act and Section 204A of the Advisers Act to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material nonpublic information. Wells Fargo's business focused on retail brokerage services. SF ¶ 7.

In her capacity as a compliance consultant at Wells Fargo, Respondent was solely responsible for initiating reviews designed to detect potential insider trading. SF ¶ 15; RT (02/23/15) 111:13-17; 112:14-17; 155:18-21. In addition, she participated, along with her immediate supervisor, Roseann St. John, and their group manager, Modesto Moya, in the drafting of Wells Fargo's policies and procedures for conducting such reviews. SF ¶ 10, 11; RT (02/23/15)

[1] "SF" refers to the parties joint stipulated facts filed in this action; "RT" refers to the reporter's transcript; "Ex." refers to the exhibits introduced at the hearing.

105:13-14; 111:7-12; Ex. 252. In doing so, Respondent recognized that clients and advisory personnel of Wells Fargo might come into possession of, and misuse, material nonpublic information, and Wells Fargo's policies and procedures for conducting insider trading reviews considered that possibility. SF ¶¶ 8, 9.

Respondent understood that the Commission investigates insider trading, and that her insider trading reviews could result in the escalation of a matter to the Commission's attention. RT (02/23/15) 107:5-6; 109:1-9. Respondent also understood that the Commission conducts investigations to determine if broker-dealers and investment advisors, such as Wells Fargo, have established, maintained, and enforce procedures to prevent the misuse of material nonpublic information. RT (02/23/15) 109:10-19. As a corollary to those investigative powers, Respondent also understood that the Commission has the authority to examine Wells Fargo's books and records, either to determine if insider trading may have occurred, or to assess the adequacy and implementation of its procedures designed to prevent the misuse of material nonpublic information. RT (02/23/15) 109:20-110:9. Respondent also specifically monitored Commission enforcement actions involving broker-dealer violations of Section 15(g) of the Exchange Act and Section 204A of the Advisers Act.

Respondent knew, based on her nine-and- one-half years in the securities industry working as a compliance consultant, and her review of other Commission enforcement actions, as well as Wells Fargo's Code of Ethics and Business Conduct, that it was improper to misstate, alter, add information to, or omit or delete information from Wells Fargo's books and records. RT (02/23/15) 140:10-12; 141:13-16; 143:1-6; Exs. 500-512. For example, she reviewed the Commission's Order sanctioning Buckingham Research Group, Inc. at the time it was instituted. RT (02/23/15) 125:17-126:6; Ex. 500; *In the Matter of Buckingham Research Group, Inc. et al.*, Exchange Act Release No. 63323, 2010 SEC LEXIS 3830 (Nov. 17, 2010) ("*Buckingham* Order"). That action involved,

among other things, the alteration of compliance-related records concerning insider trading reviews, and the subsequent production of those records to the Commission staff without disclosing the alteration. Ex. 500.

Based on that action, if not before, Respondent understood that Section 204(a) of the Advisers Act subjected all of Wells Fargo's records to examination by the Commission. RT (02/23/15) 129:20-130:1; Ex. 500, ¶ 26. Based on the *Buckingham* Order, Respondent also understood that regulated firms, such as Wells Fargo, are not allowed to undermine the Commission's examination authority by producing altered records, or by supplementing existing records with replacements for missing documents, even if not they are not documents the firm is required to create, without disclosure of the additions and alterations to the Commission staff. RT (02/23/15) 130:2-17; Ex. 500, ¶ 26. In fact, Respondent, along with her supervisor, drafted an internal assessment of the *Buckingham* Order, comparing Buckingham's procedures and processes against those of Wells Fargo, in which they specifically noted that Buckingham improperly replaced incomplete compliance logs, and supplemented and altered records before producing them to the Commission staff, without disclosing what had been done. RT (02/23/15) 132:17-24; 135:2-16; Ex. 503. Based on the *Buckingham* Order, Respondent knew by at least 2010 that creating or altering compliance-related documents and producing them to the Commission staff without disclosing what had been done was not only wrong, but that it violated the law. RT (02/23/15) 136:11-137:1; Ex. 500.

Respondent also reviewed the Commission's Order sanctioning dually registered broker-dealer and investment adviser Janney Montgomery Scott LLC at the time it was instituted. RT (02/23/15) 147:6-14, Exs. 506-512. *In the Matter of Janney Montgomery Scott LLC*, Exchange Act Release No. 64855, 2011 SEC LEXIS 3166 (Jul. 11, 2011). That action involved Janney Montgomery Scott's failure to adequately establish, maintain and enforce policies and procedures designed to prevent the misuse of material, nonpublic information, in violation of Section 15(g) of

the Exchange Act. Respondent created a chart comparing Janney Montgomery Scott's procedures against those of Wells Fargo's to determine if there were potential areas for improvement. Among other things, Respondent commented that Janney Montgomery Scott "failed to enforce policies and procedures and maintain proper documentation." Ex. 511 (chart p. 3). In comparison, Respondent found no need for internal improvement at Wells Fargo, noting "[o]ur process is to document everything. This demonstrates how we follow procedures." RT (02/23/15) 152:8-17.[2] Respondent's close review of these two Commission actions informed her that: (1) the Commission investigates potential failures in broker-dealers' insider trading controls; and (2) she must not alter the firm's records without disclosing those alterations to the Commission.

Respondent was also familiar with Wells Fargo's own prohibitions against altering records. Respondent knew that the firm's Code of Ethics and Business Conduct provided, in a section entitled "Accurate Records," that falsification of company records was prohibited. As defined therein, "[f]alsification refers to knowingly misstating, altering, adding information to, or omitting information from a Wells Fargo record or system which results in something that is untrue, fraudulent or misleading." Ex. 504 (p. 3).[3] Respondent acknowledged, in writing, that she had reviewed and agreed to adhere to the firm's Code of Ethics and Business Conduct. Ex. 505.

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[2] Respondent's statement that it was her process to "document everything" was also in accord with her prior investigative testimony, where she testified "I believed it would be necessary to retain anything where I had made notes on information, anything that would – something that would evidence my review of a – for example, account or trade. RT (02/23/15) 153:13-25; Ex. 532 (RT (04/10/14) 210:4-7; *see also* Ex. 521 (RT (03/13/13) 92:8-16 (stating that she would put in the "Comments and Notes" field of her log "[a]nything particularly interesting about the review that I want memorialized . . . anything I want to document about the review.").

[3] At the hearing, Respondent explained that she understood this provision to prohibit the after-the-fact alteration of records only if she intended to mislead someone, but conceded, upon further questioning, that it is never appropriate to create a new document two years after the fact, associate it with the file, and then not tell the Commission staff what had been done. RT (02/23/15) 146:18-147:1.

B. Wells Fargo's Procedures For Conducting Reviews For Potential Insider-Trading

Wells Fargo's procedures for conducting reviews for potential insider trading that were in place in September 2010, when Respondent conducted her review of trading in Burger King securities, set forth a multi-step review process. RT (02/23/15) 105:15-21; Ex. 252. The first step was to identify – on a daily basis – situations for review, such as an announcement of a merger or acquisition, or other significant corporate news. RT (02/23/15) 110:22-111:1; Ex. 252, p. 4 of 7; SF ¶ 13. Respondent had the discretionary authority to decide whether to initiate and close a review. RT (02/23/15) 110:22-111:1; 112:14-17. The procedures specified that when identifying a situation for review, a security with a price movement of 25% and/or $10 should always receive consideration. Ex. 252, p. 5 of 7. In practice, however, Respondent frequently initiated insider trading reviews where the price movement was in the range of 10% to 15%. RT (02/23/15) 111:23-112:13; *see, e.g.,* Exs. 343, 525 (item numbers 57, 75, 117, 142, 146, 165, 175, 202, 208).

The procedures specified that "[o]nce a situation has been identified for review, print the news stories for the file." Ex. 252, p. 5 of 7; SF ¶ 14. Respondent testified that it was her belief this requirement only applied to news articles pertaining as to why she had initiated a review, as opposed to other news articles she may have considered in conducting and/or closing her review, but the procedures included no such limitation. Moreover, Respondent acknowledged that whatever the news was, even if it was just rumors in the marketplace, she would print the news articles and associate copies with her file. RT (02/23/15) 113:4-11; 114:2-24. Respondent also conceded that the requirement of printing new articles for the file could apply to any articles that she had read that might explain why the trading occurred. RT (02/23/15) 385:2-386:9.

The next step in the process was to run a so-called CIBRS 22150 "front running report" reflecting any trading by Wells Fargo's employees and corporate insiders, beginning 10 business days prior to the announcement and ending with the day prior to the announcement, with a focus on

trading in insider accounts, trading in accounts in the same branches as the insiders, or where trading profits (or avoided losses) were greater than $5,000. Ex. 252. Respondent stated that the 10-business day "look back" period was selected based on her review of Commission insider trading complaints. RT (02/23/15) 115:15-20.

If any of those threshold criteria were found, the procedures then called for a further review of the account owner and trading history, to determine if the trading was out of character for the account. RT (02/23/15) 115:21-116:1; Ex. 252. The procedures specified that "red flags" to look for included: whether the account owner is associated with the company; whether the trades are out of character (*e.g.*, size, frequency, types); whether there is a previous trading history in the security; the physical location of the issuer to the branch or customer; and the business relationship between Wells Fargo and the issuer, if any. RT (02/23/15) 116:2-11; Ex. 252.

If "red flags" are found the procedures specified that Respondent should contact the branch manager and the financial adviser to discuss the situation, to attempt to determine the circumstances surrounding the trading. One of the suggested questions the reviewer should ask is "[w]as there any public speculation or rumors concerning the company that might explain these actions? If so, describe source." RT (02/23/15) 119:10-19; Ex. 252.

If the explanations were insufficient to resolve Respondent's concerns, she was required to escalate the review to the Manager of the Retail Control Group and, depending on the circumstances, the matter could result in a variety of corrective actions, including breaking the trade, internal disciplinary action, and/or reporting the violation to regulatory authorities. Ex. 252.

Finally, the procedures required that the front running report with supporting documentation be maintained in department files for one-year on-site, and for an additional six-years off-site at Iron Mountain. RT (02/23/15) 122:8-14; Ex. 252; SF ¶ 12. At the hearing Respondent acknowledged that the primary purpose of these document retention requirements was to maintain

records of the review in the event someone needed to determine whether a review had been conducted, what findings, if any, had been made, and the basis for any such findings. RT (02/23/15) 123:2-12.[4]

During the period at issue, the principal document that Respondent created and maintained to memorialize her insider trading reviews was a log she created in Microsoft Excel entitled "Potential Insider Trading Reviews January 2009 to Present." RT 155:7-17; 155:22-156:3; 159:20-22; Ex. 343, 525; SF ¶ 17. Although the log was not a document that the securities laws required Wells Fargo to create and maintain, Respondent and her supervisor treated it as a compliance record, and Respondent shared excerpts from the log when her supervisor or others had questions about a particular look back review. *See, e.g.*, Exs. 399, 401. The log reflected that from January 2009 to December 2012, Respondent had conducted approximately 230 insider trading reviews, and had closed over 95% of her reviews with no findings. *Id*; SF ¶ 18. The log contained numerous horizontal rows and vertical columns. Each horizontal row reflected, in reverse chronological order (*i.e.*, most recent first), a company-specific insider trading review. The vertical rows reflected, among other things: the date of her review; the security in question; the type of news that caused her to initiate the review; her findings, if any; a "Contacts and Notes" column specifying the amount of the stock price movement as well as additional information regarding her review; whether there had been any blue sheet requests by regulators; who may have referred the matter for review; and whether the matter had been escalated for further review. Ex. 343. Respondent testified that she started the log in 2009 at the suggestion of her supervisor and used it as a means to record what reviews she had conducted, and that it supported her insider trading reviews in that it reflected what she had done, what companies she had looked at, what findings she had made, if any, and the basis

[4] As Respondent testified on March 13, 2013, "[w]e want to have our procedure documented so in the future if someone comes back and looks at a review or the procedures, they will know what we did and how we did it." RT (02/23/15) 124:15-24; Ex. 521 (RT 03/13/13) 42:8-10.

for her findings. RT (02/23/15) 159:5-7; 159:11-19; 381:23-382:3; SF ¶ 19.

The spreadsheet reflected all of the insider trading reviews Respondent had conducted for the period January 2009 to December 2012, and she periodically updated it to include her then most-recent review. RT (02/23/15) 167:23-168:2; Ex. 343. Respondent conceded, however, that, other than her Burger King review, she could not recall any specific instance when she backfilled her log to include new information about a closed review. RT (02/23/15) 168:14-169:1.

C. Respondent's Burger King Review In 2010

On September 2, 2010, Respondent conducted a review for potential insider trading in Burger King securities, in response to a news announcement on that day that 3G Capital Partners Ltd., a private equity firm, would acquire Burger King and take it private. SF ¶ 21; Ex. 255. Respondent determined that Prado, who was a registered representative and associated person of Wells Fargo in a branch office in Miami, and three of his customers represented the top four positions in Burger King securities firm wide. SF ¶ 23; Ex. 255 (front running report). In addition, Respondent determined that: Prado and his customers bought Burger King securities within 10 days before the announcement, including on the same days; the profits by Prado and his customers exceeded the $5,000 threshold specified in Well Fargo's review procedures; both Prado and Burger King were located in Miami; and Prado, and one or more of his customers, were Brazilian, as was 3G Capital. SF ¶ 23. Based on what she found, Respondent performed an "enhanced review" on some of the accounts, which she explained involved a determination of whether Prado's customers were board members or corporate officers of Burger King. RT (02/23/15) 162:3-12. As best as she could recall, Respondent's review took a couple of hours to complete. *Id.* 164:9-16. Ultimately, Respondent found no "red flags," did not contact Prado or the Miami branch manager, did not take any further steps, did not escalate the review to her manager, and closed her review with no findings, concluding that Prado's and his customers' trading did not appear to be out of character for their accounts. RT (02/23/15) 161:7-17; 162:22-25; 165:6-21; SF ¶ 25; Ex. 255.

In support of her conclusion, Respondent made a contemporaneous notation on the front running report, next to Prado's trades, "bot prev" (*i.e.*, bought previously) Ex. 255; Ex. 532 (RT (04/14/14) 368:3-17; 369:7-9). In the "Contacts and Notes" field of the log, Respondent also noted: "09/02/10 opened 24% higher @ $23.35 vs. previous close $18.86." SF ¶ 25; Ex. 525. Her file also contained a page printed on September 2, 2010 from the Yahoo! Finance website regarding the announcement of the Burger King acquisition. SF ¶ 26. That was the only news article in the file. RT (02/23/15) 194:9-14; Ex. 255-257. Consistent with her discretionary authority to initiate and close insider trading reviews, Respondent never made her supervisors aware, in 2010, that she had conducted an insider trading review concerning the announcement of Burger King's acquisition by 3G. SF ¶ 27. Thereafter, on April 4, 2012, the box containing her Burger King review file was sent to Iron Mountain for long-term storage. RT (02/23/15) 216:20-217:13; Ex. 516.

D. The Staff's Investigation Concerning Insider Trading In Burger King Securities And The Adequacy Of Wells Fargo's Procedures To Prevent The Misuse Of Material Nonpublic Information

On June 13, 2012, during an investigation by the Commission, in correspondence directed to Wells Fargo's Legal Division, the staff requested, pursuant to Sections 17(a) and (b) of the Exchange Act, that Wells Fargo produce, among other things, "All documents concerning any inquiry made by any representative of Wells Fargo, including but not limited to the compliance department, relating to trades in Burger King securities made by Waldyr Silva Prado (CRD 3170209) and his response to any such inquiry." SF ¶¶ 28, 68; Ex. 517.

On July 20, 2012, during an investigation by the Commission, in correspondence directed to Wells Fargo's Legal Department, the staff requested, pursuant to Sections 17(a) and (b) of the Exchange Act, that Wells Fargo produce, among other things, all "compliance files including but not limited to reviews, inquiries, or complaints" relating to Prado. The request was not limited to any timeframe. The request also asked for Wells Fargo's "written policies and procedures in force and

effect in 2010 designed to prevent a financial advisor and/or registered representative's misuse of material, nonpublic information, or other policies and procedures in force and effect in 2010 designed to prevent insider trading by a financial advisor and/or registered representative." SF ¶ 29; Ex. 518.

Wells Fargo produced documents in response to both the June and July 2012 requests, but neither production contained any documents relating to the Burger King insider trading review conducted by Respondent in September 2010, even though the review directly related to a compliance department inquiry and review of trading in Burger King securities by Prado. SF ¶ 30. Wells Fargo certified its production as complete in early September 2012, but the production did not contain any of Respondent's or the Retail Control Group's files. *Id.*

Although there is no evidence demonstrating that Respondent was specifically aware of the staff's June or July document requests, Respondent admitted that in mid-September 2012, prior to the Commission's filing of a complaint Prado, she was aware that the Commission staff was conducting an insider trading investigation concerning Prado's trading in Burger King securities. RT (02/23/15) 195:7-23; 198:11-15; 205:5-10; Ex. 380 (email dated 09/14/2012). Respondent also knew in mid-September that Wells Fargo's Corporate Investigations Group was cooperating with and had been providing information to the Commission staff. RT (02/23/15) 199:13-200:2; 205:24-206:4.

On September 14, 2012, in response to a request from her supervisor Respondent sent an email to their group manager stating that a "routine review" of trading in Burger King securities had been performed by the Retail Control Group on September 2, 2010, with no findings for escalation. Ex. 380 (SEC-PRADO-025241); SF ¶ 33. She also forwarded to their group manager a FINRA report on Prado (Ex. 380 (SEC-PRADO 025244-250)) and listed the blue sheet requests by regulators from 2010 to the present. *Id.* (SEC-PRADO-025241). She noted that there had been a blue sheet request by FINRA on September 16, 2010, and three blue sheet requests by the Commission, two on September 30, 2010, and one as recently as February 22, 2012. *Id.* (SEC-

PRADO-025241).

On September 14, 2012, Respondent also printed from the Internet several news articles dated September 1, 2010, discussing rumors of a potential acquisition of Burger King. RT (02/23/15) 206:15-207:27; Ex. 380, 380A (SEC-PRADO-025277-88).

On September 20, 2012, the Commission charged Prado with insider trading in Burger King securities. SF ¶ 31; Ex. 380 (SEC-PRADO-025289-304).[5] Respondent reviewed that complaint when it came out. RT (02/23/15) 196:18-23; 209:25-210:10. On September 26, 2012, Respondent had a conversation with her supervisor in which she told her supervisor that she had performed a routine review on September 2, 2010, with no findings for escalation, based on her conclusion that the trades did not appear to be out of character for the account. RT (02/23/15) 215:1-216:14; 265:19-267:10; Ex. 368 (SEC-PRADO-025383).[6] On that same date, St. John advised their group manager, Moya, that effective September 27, 2012 (*i.e.*, the next day), she would be reviewing all of Respondent's "reports for these situations on a daily basis going forward." Ex. 368 (SEC-PRADO-025383). Respondent acknowledged that St. John's daily review of her insider trading reviews was a new level of supervision. RT (02/23/15) 211:21-212:23.

In response to questions from their group manager as to whether Prado's trading had taken place at Wells Fargo, Respondent studied the Prado complaint but could not determine, at least on that date, where Prado had placed his trades. Respondent advised her supervisor however, that one of Prado's customers ("Tippee A") had placed his trades (generating trading profits of over $1.68

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[5] On January 7, 2014, the Commission obtained a final judgment against Prado, which permanently enjoined him from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, and which ordered Prado to disgorge ill-gotten gains of $397,110.01 plus prejudgment interest of $41,622.90 and imposed civil penalties of $5,195,500. SF ¶ 32; Ex. 530.

[6] At the hearing, Respondent could not specifically recall this conversation, but did not challenge the fact that it likely occurred. RT (02/23/15) 216:10-11 ("it's possible, but I don't remember doing it").

million) at two other brokerage firms. Ex. 368 (SEC-PRADO-025381. Respondent also told her supervisor, "[p]lease note that the SEC accessed phone records, emails (mostly written in Portuguese) and records at other brokerage firms as part of their investigation." *Id.* Respondent pointed those facts out to her supervisor in an attempt to explain why the Commission had been able to detect Prado's insider trading, whereas she had not been able to. RT (02/23/15) 213:5-214:10.

On the morning of September 27, 2012, Respondent sent an email to her supervisor reporting that she had been able to match all of Prado's trades in Burger King securities referenced in the Commission's complaint, finding that they had all taken place in Prado's Wells Fargo account. Ex. 380 (SEC-PRADO-025251); SF ¶ 34. Later that morning, Respondent sent a second email to her supervisor, stating: "Also, a little more info – According to news articles (The Street, Market Watch, Wall Street Journal), rumors of a sell of BKC to a private equity group had been circulating for several weeks prior to the announcement. The stock price was up 15% on 9/1/**12** [sic], the day prior to the announcement." *Id.* (emphasis added). This was the first time that Respondent told her supervisor that rumors of Burger King's acquisition had been circulating in the market before the acquisition announcement. RT (02/23/15) 267:20-268:7.

In response to all of the questions being asked by her supervisors about her Burger King insider trading review, on September 28, 2012, Respondent recalled her review file from long term storage at Iron Mountain. RT (02/23/15) 214:11-215:15; 216:15-217:13218:1-219:2; Ex. 516; SF ¶ 35. During this mid- to late-September time period, Respondent also created a second Burger King file, to keep track of the additional work she was doing on the matter in the fall of 2012. RT (02/23/15) 387:6-12; 391:6-10.

After the Commission sued Prado, and at the direction of her supervisor, Respondent became involved in what she called a "very time consuming" "special project," where she was called upon to retrieve all of her insider trading review files, and all of Wells Fargo's policies and procedures

designed to prevent the misuse of material nonpublic information. RT (02/23/15) 220:3-221:19.[7]

Respondent also learned in late November 2012, that the Commission had filed a complaint against one of Prado's customers, Igor Cornelson and the Bainbridge Group, for insider trading in Burger King securities. RT (02/23/15) 223:7-12; 425:17-426:4; Ex. 380 (SEC-PRADO-025325); Ex. 376 (PRADO-SEC-025468-70). [8]

E. Respondent's Alteration Of Documents That Had Been Requested By The Staff

On December 21, 2012, the Commission staff requested, in correspondence directed to Wells Fargo's Legal Department, pursuant to Sections 17(a) and (b) of the Exchange Act, that Wells Fargo produce, among other things, "All internal reviews or investigations regarding trading in Burger King." SF ¶ 36; Ex. 519.

On or about December 28, 2012, St. John asked Respondent for her Burger King insider trading review file. RT (02/23/15) 225:14-19.[9] At 8:41 a.m., on December 28, 2012, Respondent

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[7] At the hearing, Respondent could not recall when she was engaged in this "special project," whether it was in the fall of 2012, or sometime in early 2013, prior to her being placed on administrative leave at the end of March 2013. RT (02/23/15) 220:16-221:19. During her investigative testimony on April 14, 2014, Respondent stated that because of the time consuming nature of this special project, a backlog of pending insider trading reviews began to pile up "during the first three months of 2013." Ex. 532 (RT (04/14/14) 287:21-289:17).

[8] On November 30, 2012, the Commission issued a press release announcing its filing of a settled action for insider trading against Cornelsen and the Bainbridge Group, who agreed to pay more than $5.1 million. *See* SEC Press Release 2012-248. That press release also stated that the Commission's investigation was continuing. Ex. 376 (PRADO-SEC-025468-70). Respondent read that press release the day it was issued and conducted an investigation to determine where Cornelson and Bainbridge had placed their trades. Although Bainbridge had a Wells Fargo account, Respondent determined that they had placed their trades in other brokerage accounts outside of Wells Fargo. *Id.* (PRADO-SEC-025469-70).

[9] At the hearing, Respondent testified that her supervisor requested her Burger King file sometime in December 2012, but did not specify an exact date. In her investigative testimony on April 10, 2014, she testified that her supervisor's request was likely made on the same date that she altered her insider trading review log, *i.e.*, on December 28, 2012. Ex. 532 (RT 04/14/14) 372:13-18 ("I believe this information was added to the spreadsheet in December of 2012, when Roseann [St. John] asked me for some materials about the Burger King review. I believe I probably added those sentences at that time and gave it to her along with a copy of the front running report."); *see also, id.*, 382:21-383:10 (provided St. John with the file the day she asked for it).

accessed her insider trading review log, and in the "Contacts and Notes" section of the row pertaining to her Burger King review (item number 91), typed in two new sentences, which read: "Rumors of acquisition by a private equity group had been circulating for several weeks prior to the announcement. The stock price was up 15% on 9/1/**12** [sic], the day prior to the announcement." Exs. 255, 526-528 (emphasis added).[10] Respondent no longer disputes that she added those two sentences on that date and at that time. RT (02/23/15) 226:22-229:11.[11] Respondent then did a screen capture of the row of her log pertaining to her Burger King review, pasted it into a newly created Microsoft Word document, printed it out so as to create a cover sheet for her Burger King review file, and gave the collection of documents to her supervisor. RT (02/23/15) 230:8-21; Exs. 255, 256, 257. Respondent did not tell her supervisor (or anyone else for that matter) that she had altered her insider trading review log by adding the two new sentences. RT (02/23/15) 231:4-17, 18-22; 232:16-21; SF ¶¶ 38 - 40.

In response to the Commission's December 21, 2012 document request, on January 11, 2013, Wells Fargo produced documents to the Commission staff relating to Respondent's Burger King insider trading review, including the newly created cover page without disclosing the recent alteration to Respondent's insider trading review log. SF ¶ 37; Ex. 534. Prior to Wells Fargo's production, Respondent did not tell anyone within Wells Fargo that on December 28, 2012 she

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[10] Exhibit 525, and its associated metadata reflected in Ex. 526, demonstrates that the two newly added sentences did not exist in Respondent's insider trading review log as it existed on December 27, 2012. The altered log reflecting the two newly added sentences (Ex. 527, and its associated metadata (Ex. 528), demonstrates that Respondent added those two sentences at 8:41 a.m. on December 28, 2012. *See also*, SF ¶¶ 60, 61, 62.

[11] At the hearing, Respondent conceded that it was likely, in inserting those two new sentences into her log, that she had simply copied the language from her September 27, 2012 email to St. John, as the last sentence in both the altered log and that email – "The stock price was up 15% on 9/1/12, the day prior to the announcement" – were identical. RT (02/23/15) 271:17-272:21; Exs. 255, 380.

added the last two sentences in the Contacts and Notes section to her Burger King review log to add information regarding rumors in the market and created a new cover page to her Burger King file reflecting that alteration. SF ¶¶ 41,42.[12]

On January 25, 2013, Respondent met with St. John, Moya and Wells Fargo's in-house counsel to discuss the Burger King insider trading review and the Commission staff's request to interview Respondent about that review. SF ¶ 43. At that meeting Respondent again failed to disclose her recent alteration of her Burger King file. RT (02/23/15) 231:18-22.

At the request of St. John and Moya, Respondent prepared a memo to her supervisors dated February 28, 2013 summarizing her Burger King insider trading review conducted in 2010 and her further review in September 2012 and thereafter. SF ¶ 44. Respondent's February 28, 2013 memo provided a summary of her September 2010 Burger King insider trading review. As part of her summary, she stated that contemporaneous with her review in September 2010 "news articles were also searched and many referred to acquisition rumors that had been circulating for several weeks prior to the announcement." Ex. 376 (PRADO-SEC-025464). Respondent, in stating several reasons for closing the review with no findings, wrote: "There was sufficient news/rumors a client could reference to make a decision to trade BKC." RT (02/23/15) 237:6-239:7; SF ¶ 45; Ex. 376 (PRADO-SEC-025465). St. John, in commenting on a draft of Respondent's "detailed summary," cautioned Respondent to "make a copy of EVERYTHING/every piece of paper you have in those two files, even hand written notes" and to provide information at the end of the memo that she had

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[12] Based, in part, on Respondent's alteration of her insider trading review log, and its subsequent production by Wells Fargo to the Commission staff without disclosing the alteration, the Commission instituted a settled public administrative and cease-and-desist proceeding against Wells Fargo, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, in which Wells Fargo: (1) admitted to findings that it willfully violated Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j) thereunder and Sections 204A and 204(a) of the Advisers Act; (2) was censured; and (3) ordered to cease-and-desist, comply with certain undertakings, and pay a $5 million civil money penalty. Exchange Act Release No. 73175 (Sept. 22, 2014). SF ¶¶ 63-67; Ex. 533.

created two files, and suggested the following language: "*e.g.*, 'included in this summary are photo copies of my reviews, the first file is the content of my initial review of this activity, the second file is the file I started when all the questions were coming back. Second file was created so as not to have the appearance that I was back filling my original review file." RT (02/23/15) 241:9-20; Ex. 376. Even in the face of those specific admonitions, Respondent again failed to tell her supervisor about her then-recent alteration of her insider trading review log and creation of a new cover page to her Burger King file, nor did she include any mention of her alteration in her summary memo to her supervisors. RT (02/23/15) 241:21-242:2; Ex. 376.

F. Respondent's False Testimony Before The Commission Staff

Respondent testified before the Commission staff on March 13, 2013. That testimony was conducted by video conference, with Respondent and her counsel located in St. Louis, Missouri, and Commission staff located in Los Angeles, California. RT (02/23/15) 236:10-237:5. Before testifying, Respondent met with both Wells Fargo's in-house counsel and outside counsel with whom she had signed an engagement letter on March 8, to prepare for her testimony. SF ¶¶ 46, 47. In those prep sessions, Respondent reviewed her Burger King review file, along with Wells Fargo's policies and procedures for conducting reviews of potential insider trading and Wells Fargo's Code of Ethics and Business Conduct. RT (02/23/15) 242:25-244:11; Ex. 521 (03/13/13) 12:13-16; 13:10-15. In preparation for her testimony, Respondent again failed to disclose to either of her counsel that she had added information to her insider trading review log and created a new cover sheet for her Burger King file just ten weeks earlier. *Id.* 232:16-21; 244:12-21.

During her testimony, Respondent was repeatedly asked about the final two sentences in the Contacts and Notes section of her Burger King review cover sheet as the following colloquy from her March 13, 2013 testimony makes clear:

> Q. [By Mr. Brown] Also under the contacts and notes section you wrote that "The stock price was up 15 percent on 9/1/12, the day prior to the announcement."

Do you see that?

A. [Respondent] Yes, I do, but that obviously should be ten, 9/1/10.

Q. How can you account for that mistake?

A. You mean the date mistake?

Q. Yes.

A. Typos.

Q. Did you make that typo in September of 2010?

A. Yes.

Q. So everything we are looking at on the cover page, Exhibit 255, you created contemporaneously with your review on September 2, 2010; is that right?

A. Correct, correct.

Q. Did you add, change, delete, anything of this cover page since September 2, 2010?

A. No, I didn't – well, wait. No, not since September 2nd because I may have worked on this for two or three days, so it could have been September 3rd, September 4th, but it was definitely September of 2010.

RT (02/23/15) 245:2-246: 14; Ex. 521 (RT 03/13/12) 97:5-25.

Approximately an hour later, Respondent was asked additional questions by another staff counsel on the same subject:

Q. [Ms. Bergstrom] Looking at Exhibit 255, the information that's in the Contacts and Notes section.

A. Yes.

Q. After you concluded our review in 2010, did you make any changes to this section?

A. No, I did not.

Q. Do you know if anyone else did?

A. I cannot even imagine that anyone else could have.

Q. Why not?

A. Well, for one thing, there are only, what, four of us who have access to this – or five of us, I guess, who have access to this log. And I printed this and put in on here in 2010. I can't imagine that anyone would have any reason to go in and change it.

Q. How do we know, I mean, how do you know you printed it in 2010? There is no date stamp showing when it was printed.

A. The only reason I know that is because I always print it and attach it before I put the paperwork in the file.

Q. Looking at the Contacts and Notes section on the first page of Exhibit 255, the date?

A. Yes.

Q. The date September 2, 2010 is written 09/02/10. Is that how you normally record dates?

A. I recorded the dates on this log so that I can kind of sort this that way. I like to keep the years together. It's just because the way it stores it.

Q. Well, I think you're talking about the date column, but I'm talking about the Contact and Notes section column.

A. Oh, okay. Do I normally record dates by 09/02/10?

Q. Yes.

A. Usually maybe, but not always.

Q. Because I'm wondering, I'm wondering because the last sentence in the Contacts and Notes section says, "The stock price was up 15% on 9/1/12" so there's a discrepancy between the way the date is recorded at the beginning of the Contacts and Notes section and the way it is recorded at the end. Can you account for that discrepancy?

A. No. I typed the dates different ways at different times. Sometimes I even type out 2010 instead of just ten.

Q. And if we looked at your master spreadsheet, we would be able to see that?

A. Sure.

RT (02/23/15) 246:15-247:21; Ex. 521 (RT (03/13/13) 129:18-131:13; *see also* SF ¶¶ 48-52.

Consistent with her testimony that she created the cover page and associated it with her Burger King file in September 2010, Respondent testified that it was her practice, at the time she conducted her Burger King review, to create and place a cover page in all of her review files. Ex. 521 (03/13/13) 126:8-127:8; 128:24-129:17. As she explained, she did so "just in case if I pull it out at some point in the future, I don't want to have to look through all of this paper to try to figure out why I did this review and what it was all about, and what the results were." *Id.*, 129:12-17.

G. The Staff's Subsequent Efforts To Determine The Accuracy Of Respondent's Testimony And What She May Have Actually Done In Connection With Her Burger King Review

On March 14, 2013, the day after her testimony, the Commission staff requested Wells Fargo to produce the metadata for Respondent's log as well as any versions of the log that existed prior to January 14, 2013. SF ¶ 53; Ex. 523. On March 25, 2013, Wells Fargo advised the Commission's staff that the log used to create the cover page excerpt regarding the Burger King insider trading review had been altered on December 28, 2012, prior to its production to the

Commission, and produced the associated metadata reflecting those alterations. SF ¶ 54; Ex. 524; *see also* Exs. 525-528. Two days later, on March 27, 2013, the Commission staff sent a subpoena to Wells Fargo's Legal Department, requiring Respondent to produce, among other things, documents relating to her Burger King trading review by April 19, 2013 and to personally appear again for testimony in the investigation on April 30, 2013. SF ¶ 55; Ex. 513.

At the end of March, 2013, Respondent was placed on administrative leave. RT (02/23/15) 252:6-10; SF ¶ 57. The following month, Wells Fargo arranged for her to have new counsel, explaining to Respondent that their interests "were no longer aligned." *Id.*, 254:1-12; SF ¶ 56. On June 13, 2013, Wells Fargo terminated Respondent's employment, citing its "significant concerns [over her] alteration of documents." RT (02/23/15) 280:6-281:6; SF ¶ 57; Ex. 403. Thereafter, on July 9, 2013, Wells Fargo filed a Form U5 with FINRA, regarding Respondent's termination, in which it explained that she had been "terminated after questions raised during regulatory matter concerning the accuracy of information provided by team member." Ex. 529. Section 7F of the Form U5 further stated that Respondent had been terminated after allegations were made that accused Respondent of "violating investment-related statutes, regulations, rules of industry standards of conduct." *Id.*

H. Respondent's Testimony On April 14, 2014

On April 14, 2014, in response to the Commission's subpoena dated March 27, 2013, Respondent testified for a second time before the Commission staff. Ex. 532. At that time, she acknowledged that she had previously provided false testimony with respect to two different matters. First, she acknowledged that, contrary to her testimony on March 13, 2013, when she testified that she had created the cover sheet to her Burger King review file in September 2010, in fact, she had created that cover sheet, with the additional two sentences regarding rumors in the market, in December 2012. RT (02/13/15) 256:15-257:5; SF ¶ 58; Ex. 532 (RT (04/14/14) 372:371:17-372:18. Second, she testified, contrary to her testimony on March 13, 2013, that it was

her routine practice at the time of her Burger King review to create a cover sheet for all of her reviews, that she only began that as a routine practice "at the end of 2012 or sometime like that." Ex. 532 (RT (04/14/14) 342:6-20).

When she was asked why she had altered her insider trading review log in December 2012, to add the two sentences regarding rumors in the market, even though she had previously told St. John the same information in September 2012 (*see, e.g.*, Ex.380 (SEC-PRADO-025251), Respondent explained: "I didn't think that she would have this information with her when she was discussing it with whoever was asking questions about it." RT (02/213/15) 256:15-257:5, 262:22-263:3; Ex. 532 (RT (04/14/14) 385:14-20). She further explained that St. John did not tell her why she wanted her Burger King file (nor did she ask), "but I guessed that someone might be asking her questions about it." RT (02/23/15) 259:25-260:3; Ex. 532 (RT (04/14/14) 373:24-374:3).

III. LEGAL DISCUSSION

The evidence presented at the hearing proves, by at least a preponderance of the evidence, that Respondent willfully aided and abetted, and caused, Wells Fargo's violation of Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder, which require broker-dealers to "furnish promptly to a representative of the Commission legible, true, complete and current copies of [records required by Rule 17a-4] or ...any other records of the member, broker, or dealer ... that are requested by the representative of the Commission." The evidence also proves that Respondent willfully aided and abetted, and caused, Wells Fargo's violation of Section 204(a) of the Advisers Act, which provides that the records of an investment adviser in connection with its investment advisory business are subject to examination by the Commission.

A. Respondent Wilfully Aided And Abetted Wells Fargo's Books And Records Violations

Aiding and abetting liability requires proof of: (1) a primary violation of the securities laws; (2) knowledge of the primary violation by the aider and abettor; and (3) substantial assistance by the

aider and abettor in the commission of the primary violation. *In the Matter of Timbervest, LLC*, Initial Decisions Release No. 658, 2014 SEC LEXIS 2990, at *170 (Aug. 20, 2014) (*citing SEC v. DiBella*, 587 F.3d 553, 566 (2d Cir. 2009)); *see also SEC v. Johnson*, 530 F. Supp. 2d 325, 333 (D.D.C. 2008) (holding that "willful" aiding and abetting standard applied in administrative proceedings is less burdensome than the "knowingly" aiding and abetting standard applied in district court cases under Exchange Act Section 20(e)); *In the Matter of v.Finance Investments, Inc.*, Exchange Act Release No. 62448, 2012 SEC LEXIS 2216, at *46-47 (July 12, 2010) (same).

It is well established that a willful violation of the securities laws means the intentional commission of an act that constitutes the violation, there is no requirement that the actor must be aware that she is violating any statutes or regulations. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976); *In the Matter of Jay W. Kaufmann & Co.*, Admin. Proc. File No. 3-6084, 1982 SEC LEXIS 2642 (Aug 2, 1982) ("willfulness" only requires a showing that the respondent "acted intentionally in the sense he was aware of what he was doing."). Furthermore, where, as here, no scienter is required, willful aiding and abetting liability only requires proof that the aider and abettor had a general awareness that her role was part of an overall activity that was improper, and that the aider and abettor knowingly and substantially assisted the principal violation. *In the Matter of Peak Wealth Opportunities, LLC*, Exchange Act Release No. 69036, 2013 SEC LEXIS 664, at *16 (Mar. 5, 2013) (*citing Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir. 1980)); *see also United States v. Faulkenberry*, 614 F.3d 573, 583 (6th Cir. 2010) (aiding and abetting liability for securities fraud requires the defendant to have had a general awareness that her role was part of an overall activity that was improper); *SEC v. Espuelas*, 905 F. Supp. 2d 507, 518 (S.D.N.Y. 2012) (same). Alternatively, willful aiding and abetting liability may be satisfied by a showing that the respondent recklessly disregarded the wrongdoing and her role in furthering it when the aider and abettor is a

fiduciary or active participant. *In the Matter of Harding Advisory LLC*, Initial Decision Release No. 734, 2015 SEC LEXIS 118, at *250 (Jan. 12, 2015); *In the Matter of Timbervest, LLC*, 2014 SEC LEXIS 2990, at *170; *see also In the Matter of Vancook*, Exchange Act Release No. 61039A, 2009 SEC LEXIS 3872, at *55 (Nov. 20, 2009); *Monetta Fin. Servs. Inc. v. SEC*, 390 F.3d 952, 956 (7th Cir. 2004); *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004); *Graham v. SEC*, 222 F.3d. 994, 1000 (D.C. Cir. 2000). Recklessness is "highly unreasonable" conduct, "which represents an 'extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" *In the Matter of Peak Wealth Opportunities, LLC,* 2013 SEC LEXIS 664, at *16 (*quoting Rolf v. Blyth, Eastman, Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978) (*quoting Sanders v. John Nuveen & Co.*, 554 F.2d 790, 793 (7th Cir. 1977)).

B. Wells Fargo's Primary Violation

Respondent does not dispute the existence of Wells Fargo's primary violation. Indeed, Wells Fargo, in a settled proceeding with Commission, admitted to such a violation based, in part, on Respondent's conduct. A primary violation exists because Wells Fargo failed to produce a true, complete, and current copy of the file relating to the Burger King insider trading review file in response to three separate requests from the Commission staff for all compliance reviews relating to Prado.

Pursuant to its authority under Section 17(a)(1) of the Exchange Act, the Commission promulgated Rule 17a-4 to address broker-dealers' obligations to preserve records. That rule requires broker-dealers to "furnish promptly to a representative of the Commission legible, true, complete and current copies of [records required by Rule 17a-3] or . . . any other [*i.e.*, non-required] records of the member, broker, or dealer . . . that are requested by the representative of the Commission." The Commission has emphasized that the record–keeping rules, such as Rule 17a-4, "are a keystone of the surveillance of brokers and dealers by our staff and the securities industry's

self-regulatory bodies." *In the Matter of David R. Williams*, Exchange Act Release No. 21788, 1985 SEC LEXIS 2093, at *7 (Feb. 26, 1985). While there is no analogous rule under the Advisers Act regarding an adviser's obligations as to non-required records, the importance of the Commission's ability to examine investment advisers' books and records cannot be disputed. Indeed, Section 204(a) of the Advisers Act was expressly amended in 1960 to allow the Commission staff the authority to examine an investment adviser's books and records.[13] In support of that amendment, the Commission explained that, unlike its existing authority with respect to broker-dealers, it lacked the authority to examine investment advisers' books and records to determine whether they were engaging in unlawful practices. *See Securities Acts Amendments, 1959: Hearings on Securities and Exchange Commission Matters Before the Subcommittee of the Committee on Interstate and Foreign Commerce*, 86th Cong., 1st Sess. (1959) (Statement of the Securities and Exchange Commission on Amendments to Investment Advisers Act of 1940). Moreover, the Commission has charged investment advisers for Section 204(a) violations by producing to the staff altered records or supplementing existing records without disclosing the additions or alterations. *In the Matter of Wells Fargo Advisors, LLC*, Exchange Act Release 73175, 2014 SEC LEXIS 3574, at *28-29 (Sept. 22, 2014); *Buckingham,* 2011 SEC LEXIS 3166.

The failure by a registrant to produce true, complete and current copies of required or non-required records for examination constitute violations of the law. In *Sinclair v. SEC*, 444 F.2d 399 (2d Cir. 1971), the court held that an order clerk who falsified names of executing brokers on the firm's order tickets violated Section 17(a) of the Exchange Act and the rules thereunder. The court expressly noted, "[a]lthough the Commission's rules did not specifically require that the executing brokers' names be put on the order tickets, that information was obviously material and important, and, even assuming no legal obligation to furnish the names, there was an obligation, upon

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[13] Act of Sept. 13, 1960, Pub. L. No. 86-750, § 6, 74 Stat. 886 (1960).

voluntarily supplying that information, to be truthful." *Id.* at 401. *See also SEC v. Badian*, 06 Civ. 2621 (LTS)(DFE), 2008 U.S. Dist. LEXIS 64661, at *23 (S.D.N.Y. Aug. 22, 2008) (broker-dealers are required to maintain accurate books and records, even if the information itself is not mandated); *In the Matter of Merrill Lynch, Pierce, Fenner & Smith Inc.*, Exchange Act Release No. 33367, 51 S.E.C. 892, 900, 1993 SEC LEXIS 3516 (Dec. 22, 1993) (same); *In the Matter of James F. Novak*, 47 S.E.C. 892, Exchange Act Release No. 19660, 1983 SEC LEXIS 2023 (Apr. 8, 1983) (Commission opinion holding that information – whether required or not – recorded on required records must be accurate and requirement that records be kept embodies requirement that records be true and correct).

Wells Fargo produced documents related to the Burger King review that contained a log entry that Respondent altered in December 2012 after Wells Fargo received the staff's document requests, and made no mention of the alteration. By producing such records without disclosing the alteration, Wells Fargo impeded the staff's examination authority because the records could not reliably shed light on the lawfulness of Wells Fargo's conduct. In doing so, Wells Fargo violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder and Section 204(a) of the Advisers Act, and its settlement with the Commission, in which it affirmatively admitted its violations, included these charges. Thus, the existence of a primary violation cannot be disputed.

1. Respondent Knew Or Was Reckless In Not Knowing That Her Alteration Of Documents Was Improper

Second, Respondent had at least a general awareness that her alteration of her insider trading review log and creation of a new cover sheet for her Burger King file – 27-months months after she had closed her review – was improper. She had read and agreed to adhere to Wells Fargo's Code of Ethics and Business Conduct, which forbade knowingly altering or adding information to a Wells Fargo record that results in something that is untrue, fraudulent or misleading. Prior to the alteration of her log, she had also read and commented upon the Commission's actions in

Buckingham and *Janney Montgomery Scott*. From those Orders she understood that regulated firms, such as Wells Fargo, are not allowed to undermine the Commission's examination authority by producing altered records, or by supplementing existing records with replacements for missing documents, even if not required documents, without disclosure of the additions and alterations to the Commission staff.

Respondent also conceded that she never told her supervisor about her alteration of the log, either at the time she altered it, or at any subsequent time. In fact, in connection with Respondent's preparation of a special memorandum in early 2013 concerning her Burger King review, Respondent's supervisor specifically admonished Respondent to avoid the appearance of backfilling her Burger King file by mentioning the existence of two files, one that Respondent prepared in 2010, and the other she prepared in 2012, when "all the questions were coming back" about her review. Respondent's repeated failure to disclose her alteration, despite repeated opportunities to do so, demonstrates that Respondent understood her alteration was improper.

The evidence also demonstrates that Respondent altered the her log after the Commission charged Prado with insider trading for the purpose of covering-up the inadequate review she had conducted in 2010. Although she found numerous indications to suggest that Prado and his customers had access to inside information, she failed to follow up on them, and closed her review after a few hours, with no findings, concluding the trading did not appear to be out of character.

In late September 2012, about a week after the Commission charged Prado with insider trading in Burger King securities, Respondent was asked if she reviewed the trading in September 2010. Respondent began performing additional work on Burger King and over the next few months progressively provided additional justifications to her supervisors why she had closed the review. For example, based on her review of the Prado complaint, she pointed out to her supervisors the additional evidence that the Commission had access to that she did not, in an attempt to explain why she had

failed to detect Prado's illegal trading. She was also placed on increased supervision as a result of the questions being raised about her review. Clearly, Respondent believed that her performance in connection with the Prado matter was being questioned, and she was looking for additional reasons that would have justified her decision to close the review with no findings. Indeed, that is the likely reason Respondent began reading additional news articles about Burger King's acquisition, to see if there might be additional explanations for Prado's and his clients' trading activity.

a. Respondent's Various Excuses For Her Conduct Do Not Withstand Scrutiny

Respondent's innocuous explanations for her alteration lack credibility and only serve to add to her appreciation of the wrongfulness of her conduct. She testified that she had no knowledge, at the time she altered her log, that the SEC had requested its production; that she altered her compliance log simply to give her supervisor additional information; and that she had, in fact, read news articles regarding rumors of Burger King's acquisition in 2010, and therefore was not attempting to falsify her log two years later. None of Respondent's explanations are credible.

Respondent contends that she did not appreciate the wrongfulness of her conduct because she did not have specific knowledge of the Commission staff's document requests at the time she altered her insider trading review log and created a new cover sheet for her Burger King file. RT (02/23/15) 259:12-18; 315:15-24. Such a showing is not necessary to establish liability. *See Wonsover v. SEC*, 205 F.3d at 414; *In the Matter of Peak Wealth Opportunities, LLC*, 2013 SEC LEXIS 664, at *16; *In the Matter of Harding Advisory LLC*, 2015 SEC LEXIS 118, at *250. 2015). Nonetheless, the circumstantial evidence strongly supports the reasonable inference that Respondent knew or should have known that her Burger King file would be examined by the staff. Indeed, Respondent virtually admitted as much, when she stated she added the two sentences about rumors in the market to provide more information about her review because she "guessed that someone might be asking [her supervisor] questions about it."

In addition to that admission, prior to her alteration of her log, Respondent was a compliance consultant and aware that her employer, Wells Fargo, was a regulated entity, whose records were subject to examination by the Commission staff. At the time she altered her insider trading review log, Respondent also knew that: (1) the Commission investigates both suspected insider trading and broker-dealers' and investment advisers' policies and procedures designed to prevent the misuse of material nonpublic information; (2) the Commission was conducting an insider trading investigation involving Burger King securities; (3) Wells Fargo's Corporate Investigations Group was providing information to the Commission staff in connection with that investigation; (4) Wells Fargo charged Prado with insider trading in September 2012; (5) the Commission charged one of Prado's customers with insider trading in late November 2012 (at which time the Commission announced that its investigation was continuing); and (6) she was involved in a "very time consuming" "special project," most likely in late 2012, that required her to collect all of her insider trading review files as well as Wells Fargo's policies and procedures for conducting insider trading reviews.

In short, as Respondent acknowledged at the hearing, "the Prado matter kept reappearing." RT (02/23/15) 226:2-21. Thus, when Respondent's supervisor asked her for her Burger King review file in late December 2012, it should have been obvious to Respondent that it was part and parcel of the Commission staff's continuing investigation. In the face of what she knew, Respondent conceded at the hearing that she should have asked her supervisor what she intended to do with her Burger King file. RT (02/23/15) 283:13-284:2. The fact that she did not demonstrates that she already knew or consciously avoided learning the obvious; at a minimum, her failure to ask any questions about the status of the staff's continuing investigation at the time she altered her log and handed it to her supervisor so that "she would have this information with her when she was discussing it with whoever was asking questions about it" demonstrates her recklessness, as well as

her appreciation of the improper nature of her conduct.[14]

At the hearing, Respondent also testified that she altered her insider trading review log, and created a new cover sheet for the Burger King file, to add information about rumors of Burger King's acquisition, simply because she wanted to give her supervisor "a little bit more information about the review." SF ¶ 58; Ex. 532 (RT (04/14/14) 372:20-373:1). But if that were her motivation, there was no need to alter her compliance log or create a new cover sheet for her Burger King file. Respondent had previously told her supervisor, in an email dated September 27, 2012, that she had discovered various news articles stating that rumors of Burger King's acquisition had been circulating in the market for several weeks prior to the announcement. In fact, she copied text from that very email to draft the two sentences that she later inserted into her insider trading review log. In addition, in September 2012, Respondent had printed several of those news stories for her

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[14] Respondent's subsequent conduct in failing to disclose the alteration of her review log and creation of a new cover page to her Burger King file, either to her supervisors or to Commission staff, at time when she unequivocally knew that the Commission staff intended to, and did in fact, question her about her review, is also reflective of her state of mind at the time she altered her log. Had Respondent truly believed that she had done nothing wrong in creating a new cover page to her file, she presumably would have disclosed that fact to her supervisors in January 2013, when she was advised of the staff's intention to interview her; or at least during her initial testimony before the Commission, when she was asked pointed questions about the obvious date discrepancy in the "Comments and Notes" field of her cover sheet. At the hearing, Respondent readily conceded that she does not currently date anything "2017" (RT 02/23/15) 408:10-14) and it should have been equally obvious to her that her notation "9/1/12" was not placed in her log in 2010, but rather in 2012. Thus, her failure to timely disclose her obvious after-the-fact alteration again demonstrates her understanding that her alteration of her log at the time she altered it was wrongful.

In that regard, at the hearing Respondent testified that as soon as she realized the mistake in her initial testimony, she immediately contacted Wells Fargo's in-house counsel. But even that testimony is suspect, as it does not explain why Wells Fargo placed her on administrative leave at the end of March 2013, and then terminated her employment in June 2013, citing its serious concerns over her alteration of documents. In addition, Respondent testified that she spoke to Wells Fargo's in-house counsel only after she looked at a month-end report for September 2010, which contained a snapshot of her Burger King review, which did not reflect the two sentences she had added in December 2012. Only upon realizing that documentary evidence existed proving her then-recent alteration, did she confess the alteration to Wells Fargo's counsel. Nor do the scant collection of exhibits Respondent submitted into evidence at the hearing support her claim that she had initiated the conversation about her mistaken testimony with Wells Fargo's in-house counsel. *See*, Exs. 616-618. It is equally, if not more plausible, given the obviousness of her typographical error, that Wells Fargo's in-house counsel was the first to express concerns about the accuracy of Respondent's testimony.

file and had given copies of them to her supervisors. She also worked in near physical proximity to her supervisor and could have simply reminded her supervisor about the news articles, and/or her prior email, when she handed her Burger King file to her on December 28, 2012. *See* RT (02/23/15) 261:2-262:21 (Respondent conceded she had many different ways, short of altering her log, to tell St. John about the rumors in the market). In short, there was no legitimate justification for Respondent's alteration of her log on December 28, 2012.

Finally, one of the most troubling – and unverifiable – aspects of Respondent's testimony at the hearing is her claim that she did, in fact, read news articles concerning rumors of Burger King's acquisition in September 2010, prior to the acquisition announcement. RT (02/23/15) 263:17-23.[15] Even had she done so, her subsequent alteration of her log over two years later, to add additional justifications for her having closed her review with no findings, without disclosure of those alterations to either her employer, or to the Commission staff, was improper. But the evidence supports the conclusion that Respondent did not, in fact, review any such articles at the time she closed her review in 2010, and thus deliberately falsified her log two years later to make it appear that she had.

Respondent concedes, as she must, that there is no documentary evidence to substantiate her assertion that she had read such articles at the time. *See* RT (02/23/15) 208:1-5; 263:24-264:2. And although she claimed to have not printed those news articles in 2010, at the time she purportedly read them, because she "trying to be green and not print things we could look up again" and to "conserve on our file space" (*id.*, 207:19-208:14), Wells Fargo's procedures specifically called for printing news

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[15] The Division submits that whether or not Respondent actually reviewed news articles concerning rumors of Burger King's acquisition at the time of her initial review is not relevant to her liability. Her violations were complete at the time she altered her insider trading review log, regardless of what she may or may not have done in conducting that review two years earlier. *See, e.g., James F. Novak*, Exchange Act Release No. 19660, 1983 SEC LEXIS 2023 (Apr. 8, 1983) (the effect the false records may have on investigators or customers is irrelevant to the question of whether there was a violation of record keeping requirements); *In the Matter of Lowell Niebuhr & Co., Inc.*, 18 S.E.C. 471, 476 (1945) (same).

stories for the file, as well as for the long term off-site storage of her review files. Those procedures also specifically noted rumors in the market as a potential explanation for trading, and if rumors were found, the reviewer should "note the source." At the hearing, Respondent conceded that "it would have been a good idea" to have at least noted the existence of rumors on the market at the time she conducted her review, so that she could remember that fact if she had to review her file in the future. *Id.* 209:4-24; 273:2-7. Indeed, it was her practice to "document everything," and the fact that she did not print those news stories for the file, or even mention that rumors had been circulating in the market prior the announcement of Burger King's acquisition, strongly supports the conclusion that she had not read any such articles at the time she conducted her review.[16]

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[16] This conclusion is further supported by Respondent's conduct in connection with her other insider trading reviews, where she routinely noted rumors in the market about significant corporate events, which might explain the trading activity. RT (02/23/15) 273:8-277:15; *see. e.g.,* Ex. 343, 525 (item 64 – Versign; item 77 – Argon ST; item 127 – Lubrizol; item 179 – Monster Beverage). During her investigative testimony on April 14, 2014, when she finally acknowledged her recent alterations, Respondent also attempted to explain her prior "mistaken" testimony one year earlier, by explaining that it was her practice in 2010 to note things like rumors in the market in her log, and that was the reason she initially thought she had placed the two sentences in her log regarding rumors at the time she conducted her review. Ex. 532 (RT (04/14/14) 395: 7-17 ("it was normally my practice to make comments at the time of the review")). Thus, according to her past practices, and her corrective testimony, she would have noted rumors at the time had she been aware of them. The fact that she did not strongly suggests that Respondent had not reviewed news articles regarding rumors in the market at the time of her initial review.

In addition, she routinely conducted reviews where the stock price movement was in the range of 10-15%. RT (02/23/15) 277:20-279:3*); see, e.g.*, Exs. 343, 525 (items 57, 75, 117, 142, 146, 165, 175, 202, 208). But as Respondent's noted, in altering her log to add information about rumors of Burger King's acquisition, "the stock price was up 15% on 9/1/12 [sic], the day prior to the announcement." Had Respondent followed her past practices, she would have opened an insider trading review at least one day earlier that she did, based on those rumors and the associated movement in Burger King's stock price. The fact she did not again supports the inference that she had not read any such articles at the time.

Finally, Respondent's testimony at the hearing, to the effect that she clearly recalls reading news articles in September 2010 concerning rumors of Burger King's acquisition, strains credulity in light of her poor memory on other, more recent, key facts. For example, Respondent claimed to have no recollection of altering her insider trading review log and creating a new cover sheet in December 2012, and claims to have completely forgotten that fact when she testified falsely in March 2013, just ten weeks later. RT (02/23/15) 229:13-19. In any event, upon further questioning by staff counsel, Respondent ultimately conceded that she was not 100% certain that she had read those news articles in 2010, or in 2012. RT (02/23/15) 279:4-23.

2. Respondent Substantially Assisted In Wells Fargo's Primary Violation

Third, Respondent's alteration of the log substantially assisted Wells Fargo in violating the firm's books and records obligations. Respondent was the person who altered the document, thereby making it not true, complete, or current at the time of the staff's request. She never told her supervisors about her alteration, and by at least January 2013, Respondent admitted participating in a meeting with her supervisors and learning that Wells Fargo had produced her Burger King file – with the altered log entry – to the Commission staff. During her March 2013 testimony, she authenticated the log as having been created in September 2010 without qualification. Her unequivocal assurances in testimony implied that the contents of the Burger King file that Wells Fargo produced to the Commission staff were true, complete, and current. It was only after Respondent was confronted with the documentary evidence, including the metadata associated with her insider trading review log, which conclusively proved the recent alteration of her log, did she finally admit in her subsequent testimony that she had been "mistaken" about the log's creation. In light of Respondent's active role in altering the document, and concealing what she had done, there is no question that her conduct was a substantial factor in causing Wells Fargo's violation. *See, e.g., In the Matter of Gregory O. Trautman*, Securities Act Release No. 9088, 2009 SEC LEXIS 4173, at *74 (Dec. 15, 2009) (adopting the Second Circuit's proximate cause requirement for "the substantial assistance" element of aiding and abetting liability) (*citing SEC v. Pentagon Capital Management*, 612 F. Supp. 241, 266 (S.D.N.Y. 2009); *SEC v. Treadway*, 430 F. Supp. 2d 293, 339 (S.D.N.Y. 2006)).

C. Respondent Caused Wells Fargo's Books And Records Violations

Respondent also caused Wells Fargo's violations. Section 21C of the Exchange Act and Section 203(k) of the Advisers Act authorize the Commission to bring cease and desist proceedings against any person "that is ... a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation." "Causing liability" requires that: (1) a

primary violation occurred; (2) an act or omission by the respondent contributed to the violation; and (3) the respondent knew or should have known that his or her conduct would contribute to the violation. *See In the Matter of Gateway Int'l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288, at *35 (May 31, 2006); *In the Matter of Robert M. Fuller,* 56 S.E.C. 976, 984 (2003), *pet. denied*, 95 Fed. Appx. 361 (D.C. Cir. Apr. 23, 2004); *Erik W. Chan*, 55 S.E.C. 715, 724-26 (2002).

Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See Howard*, 376 F.3d at 1141; *In the Matter of KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *recon. denied*, 55 S.E.C. 1, 4 & n.8 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002), *reh'g en banc denied*, 2002 U.S. App. LEXIS 14543 (Jul. 16, 2002). Neither Section 17(a) of the Exchange Act nor Section 204(a) of the Advisors Act requires that Respondent (or Wells Fargo) to have acted with scienter. *See. e.g., In the Matter of BKD, LLP*, Exchange Act Release No. 73768, 2014 SEC LEXIS 4704, at *10 (Dec. 8, 2014) (Exchange Act Section 17(a)); *In the Matter of Aetna Capital Management, Inc.*, Investment Advisors Act Release No. 1379, 51 S.E.C. 631, 1993 SEC LEXIS 2090, at *18, n. 19 (Aug. 19, 1993) (Advisors Act Section 204)

In *In the Matter of Dominick & Dominick, Inc.*, 50 S.E.C. 571, 578 n.11 (1991), a settled proceeding, the Commission concluded that one who aids and abets a primary violation is necessarily a cause of the violation. The Commission has subsequently followed that approach in contested cases raising the same issue. *See In the Matter of Sharon M. Graham*, 53 S.E.C. 1072, 1085 n.35 (1988), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000); *In the Matter of Adrian C. Havill*, 53 S.E.C. 1060, 1070 n.26 (1998).

As noted above, a primary violation of Wells Fargo's books and records obligation exists. Respondent's alteration of the log directly led to that violation. Respondent knew or should have known that her conduct would contribute to the violation because she was a compliance consultant

responsible for ensuring that Wells Fargo maintained the insider trading review log, she created the log entry, and she ultimately admitted to altering the log. These facts show that at a minimum Respondent acted negligently when she altered the log and thereby contributed to Wells Fargo's inability to produce a true, complete and current copy of that record.

IV. RELIEF REQUESTED

The guiding principle in imposing sanctions against a respondent is the public interest. *See, e.g., In the Matter of Vladimir Boris Bugarski, et. al.*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *10-11 (Apr. 20, 2012) (Comm. op.); *In the Matter of Joseph P. Doxey*, Initial Decision Release No. 598, 2014 SEC LEXIS 1668, at *58 (May 15, 2014). In determining whether an administrative sanction is in the public interest, the Commission generally focuses on the factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979): (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman*, 603 F.2d at 1140; *see also In the Matter of Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009) (applying *Steadman*); *Doxey*, 2014 SEC LEXIS 1668, at *58-59 (same); *In the Matter of John Thomas Capital Management Group LLC*, Initial Decision Release No. 693, 2014 SEC LEXIS 4162, at *87 (Oct. 17, 2014) (same).

In addition, the Commission considers whether sanctions will have a deterrent effect. *See In the Matter of Schield Mgmt. Co.*, Exchange Act Release No. 53201, 58 S.E.C. 1197, 2006 SEC LEXIS 195, at *35 (Jan. 31, 2006) (Comm. op.); *In the Matter of David F. Bandimere*, Initial Decision Release No. 507, 2013 SEC LEXIS 3142, at *228-29 (Oct. 8, 2013).

"The appropriate sanction depends on the facts and circumstances of each case." *Schield Mgmt.*, 2006 SEC LEXIS, at *35. Thus, the "inquiry into the appropriate sanction to protect the public interest is a flexible one and no one factor is dispositive." *Kornman*, 2009 SEC LEXIS 367,

existed in 2010. Only when confronted with irrefutable documentary evidence did Respondent finally acknowledge that she altered her log. In addition, her testimony at the hearing, in which she offered a variety of innocuous explanations for her conduct, is simply not credible, thereby exacerbating the wrongfulness of underlying conduct.

3. Respondent Acted With The Highest Degree Of Scienter

Respondent was a compliance professional for a dually-registered broker-dealer and investment adviser. She had read Wells Fargo's Code of Ethics and Business Conduct, and had studied the Commission's prior enforcement actions in *Buckingham* and *Janney Montgomery Scott.* As a result, she knew her conduct was not only wrong, but that it was illegal. This demonstrates that she acted with the highest degree of scienter, even though such a showing is not necessary to establish her liability.

4. Respondent's Has Provided No Assurances Against Repeated Violations

Although Respondent, both in her subsequent investigative testimony in April 2014, and again at the hearing, admitted that she had altered her insider trading review log in 2012, and admitted that she had been "mistaken" in her initial investigation testimony, her corrective testimony was hardly an act of contrition. She conceded, as she had to, that her initial investigative testimony was false, but she continued to claim that she had done nothing wrong in altering her log. Respondent's inability to admit, even at the hearing, that her conduct was wrongful provides no assurance that she will not commit future violations. *See, e.g., KPMG Peat Marwick, LLP*, 2001 SEC LEXIS 98, at *102 ("a finding of violations raises a sufficient risk of future violation").

5. Likelihood Of Future Violations

Respondent is [redacted] years-old, and has the physical and mental capacity to work in the securities industry. Although Respondent has been unemployed since her termination by Wells Fargo in June 2013, she had continued to look for work and has provided no verifiable assurance that she will never return to work in the securities industry. If she were to return to such work, given her numerous lapses in this matter, the opportunity for future violations is apparent,

notwithstanding her current work status. *See In the Matter of John Allan Russell*, 2015 SEC LEXIS 775, at *19 (Mar. 2, 2015).

B. Respondent's Violations Warrant A Cease-And-Desist Order

Both Section 21C (a) of the Exchange Act and Section 203(k) of the Advisers Act authorize the hearing officer to impose a cease-and-desist order for violations of those Acts against any person who caused such violations, whether willful or not. 15 U.S.C. § 78u-3(a); 15 U.S.C. § 80b-3(k)(1); *see also In the Matter of Centreinvest Inc.*, Exchange Act Release No. 60413, 2009 SEC LEXIS 2611, *19 (July 31, 2009) (cease-and-desist order may be imposed against any person that is a cause of the violation due to an act or omission the person knew or should have known would contribute to the violation)

In assessing whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors, as well as "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *KPMG Peat Marwick*, 54 S.E.C. 1135, 1192. Moreover, while a likelihood of future violations is one of the *Steadman* factors, the showing for that factor in an administrative or cease-and-desist proceeding is "significantly less than that required for an injunction." *Id.* at 1991. Indeed, absent of the evidence to the contrary, "a finding of a [past] violation raises a sufficient risk of future violation" because "evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist.: *Id.* at 1185; *see also In the Matter of Ambassador Capital Management, LLC*, Initial Decision Release No. 672, 2014 SEC LEXIS 3478, at *211 (Sept. 19, 2014).

As described above, the evidence demonstrates Respondent consciously and repeatedly disregarded her responsibilities as a compliance officer under the federal securities laws. She altered compliance-related documents, failed to disclose to her supervisors what she had done, and affirmatively lied during testimony before the Commission staff. Respondent has also displayed an utter lack of recognition of the wrongful nature of her conduct, making a cease-and-desist order all

the more appropriate. *See e.g., Harding Advisory LLC*, 2015 SEC LEXIS 118, at *267 (placing particular weight on respondent's lack of recognition of the wrongful nature of his conduct in imposing a cease-and-desist order); *Ambassador Capital Management, LLC*, 2014 SEC LEXIS 3478, at *211 (same); *Timbervest, LLC*, 2014 SEC LEXIS 2990, at *184 (same).

C. Respondent's Misconduct Warrants Monetary Sanctions

Penalties should be imposed when they serve the public interest, and are meant to deter future violators. *See, e.g., In the Matter of Raymond James Fin. Servs., Inc., et al.*, Initial Decision Release No. 296, 2005 SEC LEXIS 2368, at *197 (Sept. 15, 2005). Section 21B of the Exchange Act and Section 203(i) of the Advisers Act authorize the imposition of civil penalties in administrative and cease-and-desist proceedings upon a finding that a respondent violated, or was a cause of a violation, of any provision, rule or regulation issued under those Acts. 15 U.S.C. § 78u-2; 15 U.S.C. § 80b-3(1).

Section 21B of the Exchange Act and Section 203(i) of the Advisers Act provides several factors to consider: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. *See* 15 U.S.C. § 78u-2(c); 15 U.S.C. §§ 80a-9(d)(3), 80b-3(i)(3). "'Not all factors may be relevant in a given case, and the factors need not all carry equal weight.'" *Bandimere*, 2013 SEC LEXIS 3142, at *249-50 (citations and quotations omitted).

As for the amount of the penalty, "a three-tiered statutory framework provides the maximum civil money penalty that may be imposed for each violation if found in the public interest." *Doxey*, 2014 SEC LEXIS 1668, at *7-8. The Division recommends the imposition of a second-tier penalty, as Respondent's conduct involved a "deliberate or reckless disregard of a regulatory requirement." 15 U.S.C. § 77h-1(g)(2)(B), 15 U.S.C. § 78u-2(b)(2). The maximum second tier penalty that may be imposed is $60,000 for a natural person. *See* 17 C.F.R. § 201.1004 (2012), Subpart E, Table IV.

While the statutory tier system sets forth the maximum penalty, it is up to the hearing officer to determine the amount of the penalty to be imposed within the tier. *See In the Matter of Julieann*

Palmer Martin, Initial Decisions Release No. 751, 2015 SEC LEXIS 880, at *40 (Mar. 9, 2015) (*citing In the Matter of Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *42 (Nov. 21, 2008); *see also SEC v. Murray*, No. 05-CV-4643 (MKB), 2013 U.S. Dist. LEXIS 32460, at *10 (E.D.N.Y. Mar. 6, 2013)). In making that assessment, courts have considered the following factors established in *SEC v. Lybrand*:

> (1) the egregiousness of the violations at issue, (2) defendants' scienter, (3) the repeated nature of the violations, (4) defendants' failure to admit to their wrongdoing; (5) whether defendants' conduct created substantial losses or the risk of substantial losses to other persons; (6) defendants' lack of cooperation and honesty with authorities, if any; and (7) whether the penalty that would otherwise be appropriate should be reduced due to defendants' demonstrated current and future financial condition.

281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003), *aff'd on other grounds*, 425 F.3d 143 (2d Cir. 2005); *see also Bandimere*, 2013 SEC LEXIS 3142, at *251-52. Although these factors provide guidance, "the civil penalty framework is of a 'discretionary nature' and each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed.'" *Murray*, 2013 U.S. Dist. LEXIS 32460, at *11 (*quoting SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007)).

Moreover, the size of a civil penalty is "not limited to the amount of profits derived from the violation." *In the Matter of Ronald S. Bloomfield*, Exchange Act Release No. 71632, 2014 SEC LEXIS 698, at *91 (Feb. 27, 2014) (Comm. op.). Thus, the civil penalty imposed against Respondent can be "without regard to defendants' pecuniary gain." *Id.*

Here, the evidence shows that a second tier civil penalty is more than justified, both to punish Respondent for her wrongdoing, and to deter others. Moreover, Respondent has failed to demonstrate an inability to pay a significant penalty. *See e.g.*, Section 21B(d) Evidence Concerning Ability to Pay; and Rule 630 of the Commission's Rules of Practice Although currently unemployed, Respondent retains the skills and capacity to work in the financial industry, or in any other industry she may choose. She also owns [redacted].

In any event, any claim by Respondent that she cannot afford a monetary penalty does not

preclude the imposition of a large monetary sanction. "[N]othing in the securities laws expressly prohibits a court from imposing penalties or disgorgement liability in excess of a violator's ability to pay." *SEC v. Warren*, 534 F.3d 1368, 1370 (11th Cir. 2008). A respondent's ability to pay a penalty is "[a]t most" just one factor to be considered. *Id.*; *accord In the Matter of Philip A. Lehman*, Exchange Act Release No. 54660, 2006 SEC LEXIS 2489, at *11 (Oct. 27, 2006) (on *de novo* review, Commission rejecting respondent's claimed inability to pay and imposing full penalty given the egregiousness of the violations and the for deterrence effect).

D. Respondent's Conduct Warrants A Complete Associational Bar

Both Section 15(b)(6) of the Exchange Act and Section 203(e)(6) of the Advisers Act authorize the hearing officer to impose an associational bar against a respondent found to have willfully violated, or aided and abetted, any provision of the Exchange Act or the Advisers Act. 15 U.S.C. §§ 78o-3(b)(4)(D), (6)(A); 15 U.S.C. § 80b-3(f). In *In the Matter of Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities," and that the law judge's decision "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *8 (Mar. 7, 2014) (internal quotations marks omitted); *see also*, *John Allan Russell*, 2015 SEC LEXIS 775, at *12-13.

The Division seeks a full associational bar against Respondent. Her conduct, although isolated to the alteration and creation of only a few documents, was recurrent, in that she repeatedly failed to disclose what she had done to her supervisors on multiple occasions when it would have been appropriate to do so. Compounding the egregious nature of her conduct was her false testimony before the Commission staff, which she belatedly corrected only in the face of documentary evidence that proved her initial testimony was false.

Respondent has also failed to make assurances against future violations or to recognize her wrongdoing. Although she obviously regrets having been a caught in a lie during her initial testimony before the Commission staff, she still refuses to recognize that she did anything wrong when she altered her insider trading review log on December 28, 2012. Her intransigence demonstrates the threat of future violations. *John Allan Russell*, 2015 SEC LEXIS 775, at *19; *see also In the Matter of Christopher A. Lowry*, 55 S.E.C. 1133, 1144 (2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003).

Finally, the opportunity for future violations is apparent, notwithstanding her current work status. *John Allan Russell*, 2015 SEC LEXIS 775, at *19.

A full associational bar, as opposed to a more limited bar is appropriate for a compliance officer as it "will prevent [Respondent] from putting investors [or her employers] at further risk and serve a deterrent to others from engaging in similar misconduct." *Id.* (*quoting In the Matter of Montford & Co., Inc.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *20 (May 2, 2014); *see also Schield Mgmt.*, 2006 SEC LEXIS 195, at *44.

As the Commission observed in *Buckingham*:

> The Commission's examination authority is fundamental to its ability to protect investors by monitoring investment advisers' compliance with the federal securities laws. Regulated firms cannot undermine this crucial component of Commission oversight by producing altered records or by supplementing existing records with replacements for missing documents, even if not required records, without disclosure of the additions and alterations to the Commission examination staff.

Buckingham, 2010 SEC LEXIS 3830, at *16; Ex. 500, ¶ 26. But that is precisely what Respondent did: by altering documents she undermined the Commission's examination authority, and placed her own self-interests above those of her employer and the public. In short, "the proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure." *John Allan Russell*, 2015 SEC LEXIS 775, at *22 (*quoting In the Matter of John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750 (Dec. 13,

2012)). Respondent grievously violated those standards, demonstrating her unfitness to serve in any capacity in the securities industry.

On balance, each of these public interest factors weigh in favor of a full and permanent associational bar against Respondent.

V. CONCLUSION

For the reasons stated, the Division requests that the Court find that Respondent has violated the specified provisions of the Exchange Act and the Advisers Act and impose the requested sanctions.

Dated: March 20, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT

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