

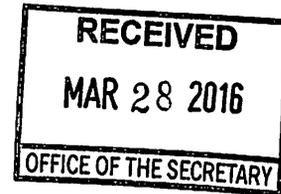
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

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

Respondents.



RESPONDENT JOSEPH C. RUGGIERI'S
REPLY BRIEF IN FURTHER SUPPORT OF HIS CROSS-PETITION ON APPEAL

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Respondent Joseph Ruggieri, by his attorneys Serpe Ryan LLP, respectfully submits this reply brief in further support of his request that the Commission reverse that portion of the Decision holding that he was tipped about four forthcoming rating changes, and that he traded based on those tips.

PRELIMINARY STATEMENT

The hallmark of the Division's case is inconsistency. In its attempt to prove a pattern of insider trading, the Division articulates conflicting theories depending on the unique facts of each trade. Why, for example, do *both* trading the night before and several days before the public release of a ratings change demonstrate insider trading? Similarly, how can selling out of a position after the rating change is publicly announced and holding onto part of it for sometimes days later *both* demonstrate insider trading?

When it suits its position, the Division argues that Bolan waited for supervisor approval before tipping Ruggieri, but when the timing undermined this rationale for another trade, the Division asserts that supervisor approval was nothing but a rubber stamp. Simply put, the Division woefully failed to prove any suspicious patterns for the trades at issue. The Commission should reverse the ALJ and find that Ruggieri did not receive or trade on any tips. That finding is not only consistent with the weight of the evidence, but it also dovetails with the ALJ's finding that Ruggieri did not engage in insider trading for two of the trades, as well as with his ultimate finding that the Division failed to prove any benefit.

ARGUMENT

I. Bolan Did Not Tip Ruggieri

The Division asserts that Ruggieri “mainly recycl[es] arguments the Initial Decision rightly rejects as unpersuasive”. (Div. Opp. at 11.)¹ Yet it is the Division that ignores key holdings (like the now undisputed finding that Ruggieri did not trade based on inside information for either PRXL or CVD), and crucial facts (such as incontrovertible evidence that Bolan spoke to many others at Wells Fargo *on Ruggieri’s purported personal line*). The Division has not only failed to disprove Ruggieri’s legitimate trading rationales, but it has failed to meet its affirmative burden to prove that Ruggieri made these trades based on inside information.

A. Parexel, Covance and MedAssets Break the Alleged Pattern

The Division relies on its expert’s opinion that it was statistically impossible for Ruggieri’s trades not to have been based on tips in the absence of any direct evidence. Indeed, the existence of a pattern was so crucial to the Division’s case that it elected to omit from the OIP Ruggieri’s trade prior to Bolan’s downgrade of MedAssets, and did not include it in any of its damage or disgorgement calculations at the hearing. (Div. Post-Hr’g Memo of Law at 40; Div. 195, attached as Ex. C.)² The Division excluded this trade because its purported pattern related only to overnight trades, and Ruggieri did not hold an overnight position in MedAssets. (Adm. FOF ¶ 404.)

The ALJ’s finding that Ruggieri did *not* trade based on inside information with

¹ “Div. Opp.” refers to the Division’s Opposition and Reply Brief on Review of the Initial Decision. This brief adopts the same citation formats used in Ruggieri’s Brief in Support of His Cross-Petition and in Opposition to the Division’s Brief in Support of Its Petition for Review (“Ruggieri Br.”).

² Select exhibits referenced in this brief are attached hereto as Exhibits A through H.

respect to two of the trades at issue (PRXL and CVD) undermines the pattern alleged by the Division, and seconded by its expert.³ Even though the Division did not appeal that finding, it insists that the now undisputed finding does not “eliminate any insider trading pattern”. (Div. Opp. at 11.) Pulling the ALJ’s words out of context, the Division misleadingly contends that the ALJ concluded that it was “just as plausible” or “possible” that Bolan tipped Ruggieri before these two trades. (Div. Opp. at 4 n.5.) In fact, with respect to Parexel, the ALJ stated “it is *just as plausible* that Bolan timed his downgrade on the same basis as Ruggieri did in taking his positions: to be more impactful, issuing the report when PRXL was trading at its highest level in months.” (Decision at 16 (emphasis added).) Concerning Covance, the ALJ stated that “[t]he Division’s contention that Ruggieri traded on a tip *is possible*, but it has not proved that it is the most likely explanation.” (Decision at 19 (emphasis added).) Anything is *possible*, but the ALJ flatly rejected the Division’s theory.

B. The Division Fails to Refute Ruggieri’s Legitimate Trading Theses

1. AMRI

(a) Ruggieri Demonstrated a Clear Trading Thesis

The contemporaneous evidence demonstrates that Ruggieri knew the buyback had commenced before he purchased AMRI. The Division misreads JR-91, attached as Ex. D, as somehow demonstrating the time that Ruggieri first learned that AMRI began executing its buyback. (Div. Opp. at 13.) But there is nothing in this document that supports *any* inference as to when Ruggieri first learned that the share buyback had begun. Instead, JR-93 definitively demonstrates that Ruggieri knew before he bought AMRI shares on July 2 that the buyback had begun. (Ruggieri Br. Ex. 5.) The Division baselessly alleges that Ruggieri’s

³ The Division asserts that Ruggieri traded in front of seven ratings changes. There are only three ratings changes and one initiation of coverage at issue in this appeal. *See* Letter from Paul W. Ryan to B. Fields, dated March 9, 2016.

statement in that July 6 instant message that “we’ve been an otd buyer past couple days” does “not refer to buyback orders at all.” (Div. Opp. at 12-13.) However, “OTD” or “over the day” is buyback jargon. Ruggieri would not have used this language otherwise. (R. Adm. FOF ¶ 266 (“On July 6, 2010, Ruggieri marketed a buyer of AMRI over the day. Over the day is how a buyback is usually executed.”).) The Division also claims that “‘couple days’ *presumably* refers to July 6 and July 2, not July 1.” (Div. Opp. at 13 (emphasis added).) This inference is insupportable, as highlighted by the Division’s use of “presumably”. JR-93 strongly suggests that Ruggieri was aware of the buyback at least as of the previous trading day, July 2, which was the day he purchased AMRI, and likely before that. Ruggieri even referenced the “couple of days” language in his testimony and was not questioned by the Division about what he meant. (Tr. 2810-2813.)⁴ The Division attempts to dismiss this exhibit as “irrelevant” but it is actually direct, contemporaneous evidence of Ruggieri’s trading thesis and Ruggieri cited it in his proposed finding of fact in a paragraph not disputed by the Division. (R. Adm. FOF ¶¶ 265.)

(b) Ruggieri Did Not Engage in Front Running

The Division also contends that the AMRI trade constitutes “a different type of illegal insider trading: front-running a client’s order.” (Div. Opp. at 11.) This is a red herring. In order to prevail in this case, the Division must prove that Ruggieri received a tip from Bolan – *not* the Wells Fargo buy-back desk. Moreover, there is no evidence to support its front-running allegation. None of the Division’s twelve witnesses, including the four from Wells Fargo’s compliance department, ever suggested that Ruggieri engaged in front-running.

At the hearing, the Division tried to get Short to agree that Ruggieri’s AMRI trade was front-running. He did not. (Tr. 3363 (whether a trade is front running “depend[s] on the

⁴ All citations to the hearing transcript are attached to this brief as Ex. A.

semantics of the trade and when you took the position and when you were flat the position and how you traded the position.”.) Also, Ruggieri’s supervisor, who was shown documents supporting Ruggieri’s buyback thesis, testified that it was a reasonable trade, not illegal. (Tr. 1030-1031.) Ruggieri explained why it was not front-running:

What I consider front-running is that you know that they're buying at a certain level, . . . and you control the order and you're buying in front of them. That's not what happened here. I did not have control of the order. I knew that they were going to be in the market at some time and I marketed it that way, and I was free to trade in my account. I don't view that as front-running the order, no.

(Tr. 2798.)

In other words, Ruggieri was trading based on *publicly announced* information regarding the buyback program *and not* on any non-public information from the buyback desk regarding the details of any buyback trades. There is not a shred of evidence to suggest otherwise.

(c) Bolan and Ruggieri’s Communication Prior to the AMRI Trade Belies a Tip

The Division alleges that Bolan tipped Ruggieri on non-work lines prior to Ruggieri’s AMRI trade, but it failed to produce phone records supporting that allegation. The only documented call in the week prior to the July 2 AMRI trade is a 39-second phone call – on Thursday, July 1 – from Bolan to Ruggieri at 6:14 pm. The uncharacteristic lack of communication is explained by the fact that [REDACTED] [REDACTED] [REDACTED] and was out of the office for several days, until June 30 or July 1. (JR-90, attached as Ex. E.) With respect to the 39-second call, it is clear that Ruggieri and Bolan did not speak but instead Bolan left a message from his home on Ruggieri’s work blackberry (not his personal cell phone) – the first telephone communication with Ruggieri since his hospitalization. When Bolan left that message, Ruggieri was on his personal cell phone speaking with his

mother. (R. Adm. FOF ¶¶ 255-259.) Although the Division asserts “Ruggieri called Bolan back” (Div. Opp. at 6), its confidence is misplaced.

Even though Ruggieri emailed “Call u right back” while on the phone with his mother, neither Ruggieri’s cell or home phone, nor Bolan’s cell or home phone records, evidence that he did. (Div. 57; R. Adm. FOF ¶ 260.) At the hearing, the Division relied on a witness from Bolan’s phone provider who testified that, although he could not give a percentage of times where it occurred, he had “encountered circumstances” where Comcast’s call detail records were sometimes incomplete. (Tr. 1596-97.) The Division argued from this that Ruggieri *could have called* Bolan even though no records exist of such an incoming call from him. The ALJ wrongly credited this argument. (Decision at 21.) In crediting the Division, the ALJ engaged in double speculation: first, he speculated that Bolan’s call records were incomplete; second, he speculated that the incomplete call records would have included a call from Ruggieri.

If Ruggieri called Bolan back, he did so on his work Blackberry but there is no evidence of such a call. The Division never subpoenaed the blackberry phone records. So, while it is *possible* that Ruggieri and Bolan spoke on a call for which no record exists, such a conclusion would be based on speculation. It is equally possible that the Division did not want to close the loop on this issue because the documentary evidence might have hurt its case. Significantly, it is the Division’s burden; not Ruggieri’s – and it failed to meet it with respect to proving the communication of a tip.

Even if Ruggieri and Bolan did speak that night, it is clear what they would have spoken about – and it was not about AMRI, but instead about the substance of the very email to which Ruggieri responded when he emailed “Call u right back”. He was replying to an email with a subject line: “Re: You heard anything on KNNDL?” (Div. 57, attached as Ex.

F). A Wells Fargo client initiated the email string by asking Bolan about the recent stock performance of Kendle International (a CRO company) and also for his ranking of “hedgie” shorts and longs in that sector (AMRI is not even in that sector). (*Id.*) At 6:14 p.m., Bolan replied to the client, and as was customary given best practices between analysts and traders, Bolan blind copied Ruggieri on that reply. (*Id.*) Within one minute of sending this email, Bolan followed up by calling Ruggieri’s work Blackberry (the 39-second call discussed above). (R. Adm. FOI ¶¶ 256-57.) The circumstantial record could not be clearer: after having been out for several days, Bolan was anxious to speak to Ruggieri about a work matter, not to communicate an illegal tip. (Div. 57.) Any other inference defies common sense.

(d) No One Testified that Ruggieri Traded in a Manner to Avoid “Unwanted Attention”

The Division asserts that Ruggieri sold “most” of his AMRI position on July 6. (Div. Opp. at 13.) In fact, he sold just over half and sold the rest off over four days. (JFOF ¶¶ 108-114.) The Division argues – without evidence – that Ruggieri held onto the shares to avoid attracting “unwanted attention” to his trades. (Div. Opp. at 14.) However, Ruggieri’s boss thought that Ruggieri’s trading demonstrated that he “likely felt the stock was going to go higher” because of the share buyback program. (Tr. 1030-1031.)⁵

⁵ The Division’s attempt to discredit Ruggieri’s theory that Bolan learned about the repurchase program from Ruggieri because “Bolan’s report upgrading Albany does not mention the buyback program” is equally unavailing. (Div. Opp. at 14.) An analyst would not mention a short-term event such as an immediate buyback program in a long-term predictive report.

2. ATHN

(a) Mackle's Identical Trade Shows There Was No Tip

The Division fails to refute the fact that Mackle, Ruggieri's desk analyst, had the same long position in ATHN as Ruggieri at the same time. (JR-139, attached as Ex. G.) As a desk analyst, part of Mackle's job was to "come up with ideas for the trading desk and share[] with the trading desk and with clients". (Tr. 968.) Mackle "traded" ATHN as part of a web-based trading system in which desk analysts across "all the Wall Street firms" contributed long and short term trading ideas. (Tr. 3249-3250.) They helped to generate trading ideas for clients (and earn commissions for Wells Fargo), and the system kept track of their performance, ranking them depending on the success of their ideas. (Tr. 3249-3250.)⁶

The Division never contended that Bolan was also tipping Mackle, so the fact that they both held the same position shows they shared a legitimate reason for the trade, thereby eviscerating the theory that Ruggieri traded on a tip. In fact, contemporaneous records demonstrate that both Ruggieri and Mackle were focusing on the "key metric" of physician practices. (R. Adm. FOF ¶ 291A (unnumbered beneath ¶ 291); Ruggieri Br. Ex. 7 (Div. 120).) Brown agreed that Mackle "had some insight into the position. Joe was the primary risk taker, but . . . they both liked the position." (Tr. 967.)

(b) The Timing Of the Trade Supports Ruggieri

The Division attempts to discredit Ruggieri's trading thesis in ATHN by arguing that, were his thesis credible, he would have traded earlier than he did. (Div. Opp. at 16.) By alleging that "Bolan's tip can be the only plausible reason" for Ruggieri's trade, the Division

⁶ In its fact section, the Division tries to downplay Mackle's trade by labeling it a "fantasy trade". (Div. Opp. at 9.) Mackle was trading as part of his job, and not for fun.

ignores extensive evidence supporting Ruggieri's rationale, including Bolan's warning to Ruggieri that ATHN was the most "crowded short". (Ruggieri Br. at 8.) In light of that warning, it makes perfect sense that Ruggieri waited an additional day after the ATHN positive announcement on February 4 regarding its acquisition of physician practices before purchasing ATHN: he wanted to make sure that the price of the shares was not temporarily inflated due to numerous shareholders looking to cover their short positions. (*Id.* at 26.)

(c) The Division's Arguments Are Inconsistent

The Division takes inconsistent positions with respect to the significance of the timing of Ruggieri's trades. The ATHN announcement and Bolan's purported tip occurred on the same day, but Ruggieri did not trade then. The Division proclaims that it is "obvious" that Ruggieri waited until the following business day (Monday) to trade because he wanted to "minimize market risk" and "wanted to hold an overnight position only on the night before the upgrade." (Div. Opp. at 17.) But Ruggieri held Bruker and Parexel for five days before, and he held AMRI for five days after, Bolan's research on such stock was published. As Ruggieri has argued consistently, these facts demonstrate that insider trading did not occur.

The Division takes another inconsistent position when discussing the timing of Bolan's purported tip on ATHN. The Division speculates that the multi-hour gap between the time Bolan received approval "to upgrade shares of ATHN" and his phone call to Ruggieri – a time lapse that suggests the later phone call was not a tip at all – was because "he wanted to confirm exactly when Wells Fargo would issue his upgrade report." (Div. Opp. at 17; Ruggieri Br. Ex. 8 (Div. 32).) However, the Division has consistently argued that approval was "nothing but a rubber stamp." (Div. Post Hr'g Reply at 13.) Not only is this the first time the Division made this argument (with respect to any stock), but there is also

no evidence that Bolan either sought or received confirmation of the exact timing of publication of his upgrade report.⁷

(d) Ruggieri Was Not Expected to Inform His Supervisor About His Profits

The Division faults Ruggieri for failing to tell his supervisor “how much profit he had made on the [ATHN] position.” (Div. Opp. at 9.) Ruggieri did not do so because his supervisor discouraged bragging about profits, and instead only wanted to hear about significant losses. (Tr. 931-32; 2996.) There is also no evidence to suggest that a trader was tasked to give an a play-by-play of his trades to his supervisor, since traders knew that their trades were heavily monitored. Indeed, Brown emailed Ruggieri to ask him about the ATHN trade, which clearly was on Brown’s radar without Ruggieri having boasted about it. (Ruggieri Br. at 9.) Finally, as discussed *infra* Section C.1, the totality of Ruggieri’s proprietary trades were immaterial to Ruggieri’s job.

3. EM

(a) The Division Ignores Key Facts

With respect to Emdeon, there are several key facts that the Division fails to properly address. First, the Division downplays the fact that the Emdeon upgrade was something no reasonable trader would have placed a bet on, referring to the research as having “some negative information.” (Div. Opp. at 14.) In fact, “some negative information” included a material decrease in his valuation of 17%. (Ruggieri Br. at 29.) This upgrade was “meaningless”, as Brown observed, so much so that Ruggieri even teased Bolan about it in real time. (*Id.* at 10.)

Second, the Division concedes that Ruggieri’s argument that his prior trade in

⁷ The Division’s position has implications for the AMRI trade, which took place *before* Bolan received supervisor approval. Under the Division’s theory with respect to ATHN, if Bolan needed supervisor approval before tipping Ruggieri, then Ruggieri’s trade took place *before* Bolan knew he had approval (i.e., before any possible tip).

Emdeon reinforces his innocent trading rationale for this trade “might have some minimal force”. (Div. Opp. at 15.) Third, the Division ignores how insignificant this trade was: Ruggieri had over 100 larger overnight positions during his short tenure at Wells Fargo (Ruggieri Br. at 10), and the profit was \$266. (Div. 195.)

(b) Moskowitz’s Trades Are Meaningless

The Division also fails to address the lack of a connection between the Ruggieri and Moskowitz’s trades, bolstered by the ALJ’s finding that with respect to PRXL “the evidence may suggest that Moskowitz traded based on Bolan’s tip” but that Ruggieri did not. (Decision at 14, 16.) This finding alone renders Moskowitz’s trades meaningless when assessing Ruggieri’s trades.⁸

In support of its argument that Moskowitz’s trades are relevant to an analysis of whether Ruggieri committed insider trading, the Division relies on two cases – neither of which is persuasive. (Div. Opp. at 21-22.) *United States v. Contorinis* upheld the admissibility of “evidence of contemporaneous trades by individuals who received inside information from the same source as” defendant. 692 F.3d 136, 139 (2d Cir. 2012). However, in *Contorinis* the tipper actually admitted to tipping the defendant and other individuals, but the defendant denied that he was tipped. *Id.* at 140-41. Therefore, the court upheld the admission of the other individuals’ trading history because it supported the tipper’s credibility that he tipped. *Id.* at 145. In contrast, the Division is attempting to use the trading of Moskowitz as evidence that Ruggieri engaged in insider trading, and not to bolster the credibility of the tipper’s admission. Significantly, unlike the defendant in *Contorinis*, Bolan denied providing tips to Ruggieri or to Moskowitz – and the Division, in fact, declined to call Bolan as a

⁸ The Division mistakenly asserts that “Ruggieri apparently found his own explanation [for trading in Emdeon] underwhelming: he did not discuss it in his post-hearing brief.” (Div. Opp. at 14.) This statement is not true. (Ruggieri Post Hr’g Br. at 10.)

witness – so Moskowitz’s trades have no evidentiary value. (Ruggieri Br. at 14-15.)

Similarly, *United States v. Gutierrez*, 181 F. Supp. 2d 350, 355 (S.D.N.Y. 2002), is distinguishable. The *Gutierrez* court allowed evidence of trading by the defendant’s family members, because they all traded large amounts of the same stock at the same time. *Id.* at 354. Therefore, the court admitted evidence of their trading in support of an inference that the defendant also traded. *Id.* In contrast, Moskowitz and Ruggieri did not trade in tandem. (Ruggieri Br. at 14-15.) In addition, they were not family; in fact, they never met. And it was Ruggieri’s job to trade in these particular stocks, whereas Moskowitz did not even work in the securities industry. (*Id.*)

4. BRKR

(a) The Bruker Report Was Not Impactful

The Division counters Ruggieri’s contention that the report announcing Bolan’s initiation of coverage of Bruker (from a sector he had never covered) would have been meaningless to a trader by stating, “Ruggieri conceded the materiality of the relevant ratings changes, including Bruker.” (Div. Opp. at 18.) The fact that Ruggieri did not contest the element of materiality in this case does not speak to Ruggieri’s intent or state of mind when making a trading decision. Whether a research report is impactful is fact specific. Ruggieri testified that given Bolan’s experience in the life-sciences sector, “[y]ou don’t know how the market is going to react” to any research report he releases. (Tr. 2601.) His testimony was consistent with the testimony of Evans, Brown and Bolan. (Ruggieri Br. at 28.)

(b) The Timing of the Trade Supports Ruggieri

As discussed above, the Division is also inconsistent in how it deals with the timing of the Bruker trade. With respect to ATHN, the Division argued that Ruggieri’s rationale for taking his position the night before Bolan’s upgrade was an “obvious” attempt to “minimize

market risk, Ruggieri wanted to hold an overnight position only on the night before the upgrade.” (Div. Opp. at 17.) Yet, with respect to Bruker, for which Ruggieri held overnight risk for five trading days (Div. Resp. ¶ 63), the Division wants the Commission to credit the ALJ’s speculation that “Ruggieri may have structured the building of his position so it did not clearly resemble insider trading.” (*Id.* at 18.)

The only document the Division relies on is JR-139 (attached as Ex. G), but that document does not evidence deceptive conduct. Brown was clear that he merely “was seeing that Joe had a P&I gain and [was] happy about it.” (Tr. 1118.) Brown was never suspicious of Ruggieri’s work. (Tr. 1116 (“There was no hiding of positions”).) Furthermore, if Ruggieri were concerned about avoiding detection, then he would not have sold his entire position the day of the upgrade.

Finally, the timing of the phone call relied upon by the Division as the purported communication of a tip makes no sense. That call from Bolan to the 6210 line at 9:46 a.m. on March 23 was made more than 20 hours after Bolan received permission from his supervisor to initiate coverage on Bruker. (Div. 127, attached as Ex. H; Div. Opp. at 9.) Unlike with rating changes, the Division admits that prior supervisor approval was required before initiating coverage on a stock. (Div. Response to R. FOF ¶ 74.) Why would Bolan wait more than 20 hours to communicate this alleged tip? Put in context, it is clear that the only rational conclusion is that the call on March 23 was a routine work call.

C. Circumstantial Evidence of Tipping is Lacking

1. There is No Evidence of Ruggieri’s Motive to Tip

The Division asserts that Ruggieri’s motive for allegedly engaging in insider trading was to gain a trading “edge”. (Div. Opp. at 19.) Lacking factual support, the Division instead cites to its prior briefs, which also do not cite to evidence backing up this statement. (*Id.*)

Not a single witness at the hearing testified to any “edge” that the miniscule profits at issue would have provided. Significantly, Brown testified that *all* of Ruggieri’s proprietary trading was “inconsequential”. (Ruggieri Br. at 5.).

The Division also wrongly accuses Ruggieri of failing to deny “having taken his positions in anticipation of Bolan’s ratings changes” when questioned at his Investigative Testimony. (Div. Opp. at 10-11.) To the contrary, Ruggieri was emphatic:

- “Greg is a compliant analyst . . . to infer that he . . . told me he was downgrading or upgrading . . . is absolutely not true.” (Div. 111 at 74:15-19.)
- “Q: It’s your testimony that Mr. Bolan never gave you advanced notice of any impending upgrade or downgrade in any security he covered,” Ruggieri responded, “Correct, correct.” (*Id.* at 75:5-8.)
- “[B]y no means did Greg ever infer he was downgrading or upgrading, give me any material . . . nonpublic information that he was doing anything . . . If there was any decision I made, it was on my own intuition from those conversations, not from anybody inferring anything material nonpublic to me.” (*Id.* at 75:19-76:3.)
- “Never did I ever [trade] in any material nonpublic information from Greg or any other analyst” (*Id.* at 78:15-17.)
- “I don’t want anybody ever to tell me anything material or nonpublic. That’s not how I made my investment thesis and decisions. Any decisions I made was on my own intuition.” (*Id.* at 174:12-15.)

(*See also id.* at 80; 82; 84; 104; 109; 125; 126; 128; 143-144; 152-153; 168.)⁹

Finally, the Division asserts that Ruggieri’s compensation guarantee was “short-lived” thus giving him an additional motive. (Div. Opp. at 19.) Ruggieri was promoted to managing director in March 2011. (Ruggieri Br. at 3-4.) Is the Division suggesting his promotion came with a pay cut?

⁹ At times during his Investigative Testimony, Ruggieri testified that he did not remember the exact rationale for each trade. And, how could he? As the Division stated, “equity traders made thousands of trades daily.” (Div. Opp. at 20.) Moreover, Ruggieri did not have the benefit of the contemporaneous documentation to help refresh his recollection at the time of that testimony.

2. There is No Evidence of Bolan's Motive to Tip

Instead of refuting that Bolan also had no motive to tip, the Division refers the Commission to its briefing on “personal benefit,” which is devoted largely to parsing case law. (Div. Opp. at 19.) The only fact in the “benefit” section remotely suggesting a motive for Bolan – that he wanted Ruggieri to praise him orally to Wickwire – lacks force. Apparently, the Division no longer denies that Ruggieri’s written feedback had no impact on Bolan’s promotion, but it now attempts to distinguish between Ruggieri’s oral and written feedback to Wickwire – a distinction never made at trial by anyone. (Div. Opp. at 25 (asserting that Ruggieri provided “direct, oral praise of Bolan to Wickwire” and that “Wickwire never suggested that this latter, direct feedback did not factor into Bolan’s promotion.”).) The evidence was crystal clear. Wickwire stated that even if Bolan’s rating in the “trading impact” category of the analyst scorecard – the only category that Ruggieri could have had any impact – remained the same, it would have had “very little” impact on his overall score and Bolan would “still have gotten promoted.” (Tr. 1549.) Despite the Division’s claim to the contrary, this testimony confirmed what Ruggieri contended from day one, including in its pre-hearing motion for summary disposition: Bolan would have been promoted regardless of any feedback – whether oral or written – from Ruggieri. (Div. Opp. at 25-26; Ruggieri’s Mot. Summary Affirm. at 12.) Thus, the Division failed to prove any motive by Bolan to tip.

3. The Division Admits that Ruggieri's Trades Were Heavily Monitored

The Division argues that Ruggieri’s boss “could not and did not review every trade” given the high volume of trades. (Div. Opp. at 20.) The fact that Brown inquired in real time about the profitability of the ATHN trade reinforces the argument that nothing was hidden. Bartlett also had the P&L for traders on his screen all day “and to the extent something

interested me or alarmed me, I could drill in by trader, by security, by trade. So, yes, we had a lot of layers of granularity.” (Tr. 1133-1134.) Indeed, Wells Fargo had systems of surveillance “tailored to try to pick up potential violations”. (Tr. 759-761.) Notably, the Division even represented to the ALJ that Ruggieri’s “superiors looked at profit and loss, P&L, on their monitors every day.” (Tr. 42.)

4. There is No Conclusive Evidence that Bolan Spoke to Ruggieri in Advance of the Publication of His Research

Putting aside the improbability that Bolan and Ruggieri would be so reckless as to engage in insider trading on a Wells Fargo work line, the evidence regarding phone calls is fatal to the Division’s case. For three of the four trades at issue (EM, ATHN and BRKR), the Division alleges that Bolan tipped Ruggieri on his 6210 work line, but the Division cannot show that the two spoke prior to the trades. The testimony at the hearing made clear that Ruggieri was not chained to his desk. Ruggieri traveled to stay in front of clients (Tr. 3208), and even when he was not traveling, he was not able to field all calls to the 6210 line – whether it was because he was speaking with a client or in the bathroom. This meant that others were required to man the 6210 phone line. (Tr. 3395.) Thus, there is no way for a fact finder to infer that Ruggieri as opposed to someone else (including Short and/or Mackle) fielded the 3-minute call on August 13 (EM), or the 41-second call (ATHN) or the 5 minute call (BRKR).

Misleadingly, the Division asserts, “Ruggieri’s Wells Fargo Extension Reached Only Ruggieri”. (Div. Opp. at 2.) This section title is contradicted by the Division’s own admission in the body of the section that “Ruggieri’s 6210 Line did ring on Short’s phone turret.” (Adm. FOF ¶ 230.) The idea that a business phone on the trading floor at Wells Fargo would be accessible only to Ruggieri defies common sense. It is also proven false by the documentary record. JR Rebuttal Exhibit 67 (Ruggieri Br. Ex. 14), which the Division

never rebutted at the hearing and ignores in its opposition brief, proves beyond a doubt that Bolan spoke to someone other than Ruggieri on *at least* 41 occasions when Ruggieri was definitely out of the office – i.e. traveling. (Ruggieri Br. at 12.) This exhibit shows that not only did Bolan speak with someone in Ruggieri’s absence, but that the phone calls were substantive – averaging 3 minutes in length, with a handful of calls lasting *longer* than the call prior to the Bruker upgrade (the longest of the three calls at issue).

Moreover, even if the Division could establish that Bolan spoke with Ruggieri during these three phone calls, it cannot establish that *only* Ruggieri was on the line. Brown testified that more than one trader (i.e. Ruggieri and Short, the two health care traders) “often” joined calls with an analyst. (Tr. 977.) Short agreed. (Tr. 3393 (Short: “if Bruce [Mackle] *picked up Joe’s line* and listened in on what he was saying, that was something that was common.”) (emphasis added).)¹⁰ Mackle and Short joined these calls because it was important that everyone on the trading desk be educated about Ruggieri’s stocks in case Ruggieri was away from his desk or the office. (Tr. 2065-66.)¹¹ There was no evidence that any individual who joined a call with Ruggieri witnessed the communication of a tip. And if Bolan wanted to

¹⁰ The Division twice asserts that Mackle did not have access to Ruggieri’s line. (Div. Opp. at 2-3 n.3.) In fact, Mackle testified, “I [didn’t] recall it ringing on my phone” but he did not know for sure, and Short testified “I would imagine [Ruggieri’s phone] rang on Bruce’s as well.” (Div. Findings ¶ 229.) Given that Short testified that Mackle commonly listened in on Ruggieri’s conversations (Tr. 3393), Ruggieri disputed Div. Findings ¶ 229, cited by the Division on pages 2 and 3, fn.3, of its opposition brief. This evidence also supports the ALJ’s finding that “a handful of other individuals could have answered Ruggieri’s phone at Wells Fargo if he was absent”. (Decision at 10.)

¹¹ Remarkably, the Division contends that Short did not trade any stocks that Bolan covered. (Div. Opp. 3 n.3.) That is not true. Short covered – i.e. traded for – Ruggieri when Ruggieri was away from his desk, which included trading in stocks covered by Bolan. The Division did not dispute this. (R. Adm. FOF ¶ 40 (“In Ruggieri’s absence, Short traded in stocks covered by Bolan.”).)

communicate a tip privately to Ruggieri, wouldn't it have made more sense for him to just call Ruggieri's private cell phone?

Finally, the Division's reliance on *United States v. McDermott*, 245 F.3d 133 (2d Cir. 2001), is misplaced. (Div. Opp. at 20.) There, in the absence of direct evidence of the contents of the telephone conversation, the evidence demonstrated that the tippee, who was an "amateur trader", opened a trading account with money given to her by the tipper, with whom she was having an affair. 245 F.3d at 138. Thus, the Court credited the jury's inference of a tip. Here, there is no basis to infer that a tip was communicated between work colleagues who spoke regularly as part of their jobs, often with other co-workers in attendance, especially when the Division cannot even establish that Bolan and Ruggieri spoke at all.

5. Ratings Changes Are Not Unique

The Division cites no evidence that supports its assertion that analyst research that does not include a rating change "has less impact on stock prices". (Div. Opp. at 21.) Rather, the evidence it cites concerns the trading restrictions Wells Fargo placed on certain types of publications (Adm. FOF ¶ 131) and the percentage of Bolan's research that contained ratings changes (Adm. FOF ¶ 135). The Division also cites two of its findings of fact that Ruggieri contested. (Div. Opp. at 21.) For example, the Division asserted that "[r]atings changes are more likely to move stock prices than other research reports" (Div. Findings ¶ 130), which was not a fact but the opinion of its expert, and was contradicted by scholarly research on the impact of other research, such as earnings forecast revisions and changes in estimates. (JR-REB 103 at Abstract.)¹²

¹² On six occasions, the Division asserts that Ruggieri "cit[ed] no counter-evidence" in his denials to its proposed findings of fact. (*See, e.g.*, Div. Opp. at 2, 3 n.3, 6, 21.) However,

The Division's assertion also flies in the face of the testimony of Wells Fargo's research head, Wickwire, who testified that earnings forecast revisions and changes in estimates are among "the most material on the spectrum of materiality". (Tr. 1477.) Wickwire was not the only witness to reject the Division's attempt to elevate ratings changes to a special category. So did Friedman, Mackle, Short, Ruggieri, and Yi. (Tr. 420 ("[t]here could be situations in which a ratings change is not material, such as after a company has issued news"); Tr. 3203-04 ("it's too broad of a brush to stroke" to describe ratings changes as more or less material than other research because "it depends on the content. There is a lot of useless research out there as well. So I think it just depends on the content of the note"); Tr. 3351 (whether a ratings change's materiality is "equal to all the other research" . . . "depends on the ratings change, several different factors"); Tr. 2467 (Ruggieri stated that he did not "view upgrades and downgrades as the only kinds of important information"); Tr. 836-37 (depending on the situation, a valuation report can be "more material" than a ratings change).)

6. The Division Cannot Defend Its Faulty Statistics

The Division, citing to its post-hearing reply brief, contends that it "showed that Ruggieri misconstrued the expert's analysis." (Div. Opp. at 21.) In fact, Ruggieri did no such thing. The expert "confine[d] the reports to just those involving ratings changes". (Div. 177 at 17.) However, the scholarly research discussed above demonstrates that ratings changes are not the only impactful research. (JR-REB 103 at Abstract ("the market reacts significantly and positively to changes in recommendation levels, earning forecasts, and price

examination of the proposed finding of fact belies the Division's indictment of Ruggieri's response. No counter-evidence was needed because the evidence it cited in support of its proposed fact did not actually support it. Attached as Ex. B are all of the instances where Ruggieri denied a factual finding and the Division claims he did not provide counter-evidence.

targets”).) The expert’s failure to include Bolan’s price targets, and earning forecasts (changes in estimates) skewed his statistics.

Moreover, the expert’s opinion that his statistical analysis was “strong evidence that Mr. Ruggieri strategically traded in anticipation of Mr. Bolan’s ratings changes” (*id.* at 16) was debunked by the ALJ’s ruling that Parexel and Covance were not insider trades and the Division did not appeal that finding. Indeed, the ALJ generally disagreed with the expert’s underlying analysis, describing his statistical model as “not fully addressing the issue”, and criticizing the report for “not address[ing] the so-called ‘symbiotic relationship’ between Bolan and Ruggieri, nor Ruggieri’s ‘contemporaneous thesis’ for each trade . . .” (Decision at 10.) He concluded that “the Division seems to miss the point” that the same events that spur a trader to trade in a stock may separately influence an analyst to release research “in order to garner attention and influence with clients” and stated that he did not rely on the expert report “as an indictment of Ruggieri’s explanation for the trades”. (*Id.*)

7. Bolan Did Not Have a Propensity to Commit Insider Trading

The Division contends that Bolan’s purported violation of Wells Fargo’s channel check policy somehow shows his motive and intent to commit insider trading. (Div. Opp. at 22.) Not only is there no basis to conclude that Bolan had a propensity to commit insider trading, but the facts did not even demonstrate that Bolan violated any then-existing channel check policy. The Division asserts that “even after warnings from both a supervisory and junior analyst, Bolan violated Wells Fargo’s prohibitions by giving high-paying clients unpublished channel check information. . . .” (Div. Opp. at 22.) This assertion ignores key points raised in Ruggieri’s Brief, such as the fact that Wells Fargo did not even have a channel check policy in place at the time, that even Wells Fargo’s current policies do not prohibit selective dissemination of non-material research, and that Wells Fargo’s Global

Head of Research had praised Bolan for sending his channel check research to platinum accounts. (Ruggieri Br. at 16, 38-39.) The Division's characterization of Bolan as a rogue operator is also contradicted by the evidence, which documented his numerous efforts to be in compliance with Wells Fargo policies. (R. Adm. FOF ¶¶ 118-122.)

CONCLUSION

For the above reasons, Ruggieri respectfully requests that the Commission find that he did not engage in insider trading, and dismiss this action against him.

Dated: New York, New York
March 25, 2016

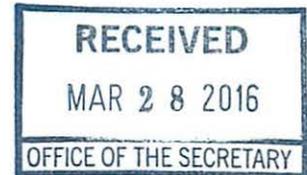
Respectfully submitted,

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March 25, 2016

VIA FED EX

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

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

Dear Mr. Fields:

Counsel for Joseph C. Ruggieri respectfully submits the enclosed documents for filing with the Commission: 1) Respondent Joseph C. Ruggieri's Reply Brief in Further Support of His Cross-Petition on Appeal; 2) Exhibits A through H; and 3) Respondent's certificate of compliance. Enclosed are the original and three copies of the aforementioned documents.

Thank you for your attention to this matter.

Respectfully submitted,

Silvia L. Serpe

cc: Administrative Law Judge Jason S. Patil (by e-mail w/ encl.)
Sandeep Satwalekar (satwalekarS@sec.gov) (by e-mail w/ encl.)
Alexander M. Vasilescu (VasilescuA@sec.gov) (by e-mail w/ encl.)
Preethi Krishnamurthy (KrishnamurthyP@sec.gov) (by e-mail w/ encl.)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

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

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I served Joseph C. Ruggieri's Reply Brief in Further Support of His Cross-Petition on Appeal, Exhibits A through H, and Mr. Ruggieri's certificate of compliance, upon the following parties on March 25, 2016 either by electronic mail in accordance with the parties' agreement, or as otherwise specified:

By Fed Ex:
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Dated: New York, New York
March 25, 2016

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16178

In the Matter of

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

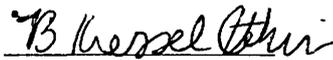
Respondents.

CERTIFICATE OF COMPLIANCE

I hereby certify that, as per the Commission Rule of Practice 450(d), Respondent's Reply Brief in Further Support of His Cross-Petition On Appeal, complies with the 7,000-word limit set forth in the Commission's Order Denying Motion for Summary Affirmance, Granting Petitions for Review, and Scheduling Briefs, dated December 10, 2015. Exclusive of the table of contents, table of authorities, and exhibits, Respondent's brief contains 6,662 words, based on Microsoft Word's word count.

Dated: New York, New York
March 25, 2016

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