INITIAL DECISION RELEASE NO. 851
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16195

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of JUDY K. WOLF	INITIAL DECISION August 5, 2015

APPEARANCES: Donald W. Searles and David S. Brown for the Division of Enforcement, Securities and Exchange Commission

Steven M. Salky and Steven N. Herman, Zuckerman Spaeder LLP, for Respondent Judy K. Wolf

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision finds that Respondent Judy K. Wolf (Wolf) willfully aided and abetted and caused Wells Fargo Advisors, LLC's (Wells Fargo), violations of Securities and Exchange Act of 1934 (Exchange Act) Section 17(a) and Rule 17a-4(j) and Investment Advisers Act of 1940 (Advisers Act) Section 204(a). I decline to impose any sanctions.

I. Introduction

A. Procedural Background

On October 15, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against Wolf, pursuant to Exchange Act Sections 15(b) and 21C and Advisers Act Sections 203(f) and (k). Wolf filed her Answer on November 5, 2014.

A hearing was held on February 23 and 24, 2015, in Washington, D.C. The admitted exhibits are listed in the Record Index issued by the Commission's Office of the Secretary on June 30, 2015. The Division of Enforcement (Division) and Wolf filed post-hearing opening briefs on March 23, 2015, and their reply briefs on April 6, 2015.[1]

[1] Citations to the transcript of the hearing are noted as "Tr. ___." Citations to the parties' Stipulated Facts are noted as "Stip. ___." The parties filed a Joint Exhibit List, and citations to

On March 23, 2015, the Division moved for leave to supplement the record with additional evidence (Motion). The Division sought admission of a one-page Wells Fargo business record consisting of an email chain dated December 28, 2012, with the subject line "SEC Request for Burger King." Motion at 1. The Division represented that it inadvertently failed to produce the document to Respondent, which it had extracted from Respondent's hard drive. *Id.* On March 26, 2015, Wolf filed an Opposition to the Motion and a Motion to Dismiss (Opp.), noting that she would be prejudiced by the admission of the document. Wolf argues that by attaching the email in question to its Motion, the Division "tainted the neutral fact-finder to a degree that Ms. Wolf may no longer be able to receive a fair hearing," such that the proceeding should be dismissed. Opp. at 2. On April 1, 2015, I issued an Order deferring decision on the Motion until the Initial Decision. *Judy K. Wolf*, Admin Proc. Rulings Release No. 2481, 2015 SEC LEXIS 1184. I find that the Division's failure to timely produce the document was not in bad faith and the interests of justice warrant admission of the document. Therefore, I GRANT the Division's Motion and admit the document into the record as Exhibit 535.

B. Summary of Allegations

This proceeding concerns Wolf's alleged alteration of the records of Wells Fargo. OIP at 1-3. In summary, the OIP alleges that: Wolf worked in Wells Fargo's compliance department; in September 2010, Wolf reviewed the trading of Waldyr Da Silva Prado Neto (Prado), a Wells Fargo registered representative, and generated a document memorializing her review; Prado was later sued by the Commission for insider trading; in December 2012, Wolf altered her document to make it appear that her September 2010 review was more thorough than it actually was; and the altered document was produced to Commission staff without mention of its alteration. OIP at 2, 4-6. The OIP further alleges that Wolf thereby willfully aided and abetted and caused violations of the securities laws by Wells Fargo's: (1) failure to produce accurate records of a broker-dealer to a Commission representative, in violation of Exchange Act Section 17(a) and Rule 17a-4(j); and (2) production of altered records of an investment adviser to the Commission, in violation of Advisers Act Section 204(a). *See id.* at 7. The Division seeks a cease-and-desist order, second-tier civil penalties, and an associational bar against Wolf. Div. Br. at 40-45.

Although in her Answer Wolf denied numerous allegations, she later stipulated to a large number of relevant facts. *See generally* Answer; Stips. Wolf does not dispute altering the document in question, but denies that she knew or should have known about the Commission's document requests when she altered the document. Resp. Br. at 22-26. Wolf also raised three affirmative defenses. *See* Answer at 7. Two of the affirmative defenses – essentially, that the OIP fails to state a claim – are necessarily rejected. *Id.* However, Wolf's claim of inability to pay is more substantial and is addressed below. *Id.*

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exhibits are noted as "Ex. ___." The Division's and Wolf's post-hearing briefs are noted as "Div. Br. ___" and "Resp. Br. ___", respectively. The Division's and Wolf's reply briefs are noted as "Div. Reply Br. ___" and "Resp. Reply Br. ___", respectively.

II. Findings of Fact

The findings and conclusions in this Initial Decision are based on the entire record. The parties' filings and all documents and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision have been considered and rejected. This ID cites to evidence placed under seal, including to testimony under seal, but does not disclose any confidential information included therein.

A. Respondent and Other Relevant Persons and Entities

Wolf is sixty-two years old and resides in St. Louis, Missouri. Stip. ¶ 1; Tr. 86. She holds a degree in finance from Washington University in St. Louis and began working in the securities industry in 1979. Tr. 378, 434, 440; Stip. ¶ 2. Wolf's first job after graduating from college was in the research department of Clayton Brokerage, where she worked for roughly nine years and held a Series 3 license. Tr. 434-35. Wolf then worked for Mark Twain Brokerage, facilitating trades for brokers, and held a Series 7 license. Tr. 436. Afterward, Wolf moved to California and worked for Great Western Savings as a broker. Tr. 436. She then worked for Financial Network Investment Corporation, where she held a Series 24 license and supervised the trading desk. Tr. 437-38. From 2004 to June 13, 2013, Wolf worked at Wells Fargo and its predecessor entities as a compliance consultant in the Retail Control Group of the compliance department, where she eventually earned approximately $61,000 per year. Stip. ¶ 3; Tr. 308, 438. During her time at Wells Fargo, Wolf worked in a cubicle and was supervised by Roseann St John (St John) and Modesto Moya (Moya), St John's supervisor. Stip. ¶ 11; Tr. 308. While associated with Wells Fargo, she held Series 7, 24, 63, and 65 licenses. Stip. ¶ 5. Wolf has been unemployed since June 2013. Tr. 377.

In 2010, Prado was a registered representative and associated person of Wells Fargo in a branch office in Miami, and held Series 7 and 65 licenses. Stip. ¶ 22; Ex. 533 at 8. The Commission filed a complaint against Prado on September 20, 2012, in the United States District Court for Southern District of New York, charging him with insider trading in Burger King securities. Stip. ¶ 31; *see* Ex. 530. The Commission's complaint charged him with misappropriating information about the acquisition of Burger King by 3G Capital Partners Ltd. (3G Capital), a private equity firm, from one of his brokerage customers who invested in 3G Capital. *See* Ex. 379 at 7-22; Ex. 533 at 8; Stip. ¶ 31. The Commission alleged that Prado traded Burger King securities through his personal Wells Fargo brokerage account, and that he tipped several of his other brokerage customers, including at least three tippees who traded Burger King securities through their own Wells Fargo accounts. Ex. 533 at 8. The Commission accused Prado and his tippees of reaping over $2 million in total insider trading profits. Ex. 533 at 8. The Commission obtained a final judgment by default against Prado on January 7, 2014. Stip. ¶ 32; Ex. 530. The final judgment permanently enjoined Prado from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3, and ordered him to disgorge $397,110.01 plus prejudgment interest of $41,622.90, and imposed civil penalties of $5,195,500. Stip. ¶ 32; Ex. 530.

Wells Fargo was a dually registered broker-dealer and investment adviser at all relevant times. Stip. ¶ 6. Its business focused on providing retail brokerage services. Stip. ¶ 7. On September 22, 2014, 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 (k) of the Advisers Act. Stip. ¶ 63; Ex. 533. In that proceeding, Wells Fargo consented to: a cease-and-desist order finding that it had willfully violated Sections 15(g), 17(a), and 17(b) of the Exchange Act and Rule 17a-4(j), and Sections 204A and 204(a) of the Advisers Act; a censure; a $5 million civil penalty; and an order directing it to comply with certain undertakings. Stip. ¶ 63; Ex. 533. Wells Fargo "acknowledge[d] that its conduct violated the federal securities laws," specifically, Exchange Act Sections 15(g), 17(a), and 17(b) and Rule 17a-4(j) and Advisers Act Sections 204A and 204(a). Stips. ¶¶ 63-67; Ex. 533 at 1. Wells Fargo also admitted the findings set forth in Section III.C of the order instituting the settled proceedings, including that it failed to adequately maintain or enforce its policies and procedures (Policies) and that it had produced an altered document to the Commission in January 2013. Ex. 533 at 1, 4-11.

B. Wells Fargo's Policies and Wolf's Responsibilities

By providing retail services to customers and advisory clients who were company insiders or otherwise had access to material nonpublic information, Wells Fargo registered representatives and advisory personnel could come into possession of material nonpublic information. Stip. ¶ 8. Wolf recognized that clients and personnel of Wells Fargo might come into possession of, and misuse, material nonpublic information. Stip. ¶ 9.

Wells Fargo accordingly had Policies for conducting insider trading reviews. Stips. ¶¶ 9, 10. Wolf, St John, and Moya participated in drafting the Policies, which were approved by Moya and certified by Wells Fargo's chief compliance officer for retail compliance. Stips. ¶¶ 10, 11; Ex. 533 at 5. The Policies called for "[d]aily review to identify situations when profit or avoidance of loss could most likely result from trading prior to the public release of confidential information. Review of trading activity would occur when those situations have been identified." Stip. ¶ 13. The Policies specified that "when identifying situations for review, a security with a price movement of 25% and/or $10 should always receive [consideration]." Ex. 252 at 5. The Policies called for the review to begin with the largest positions in the security at Wells Fargo. *Id.*

Then, a "CIBRS 22150 Front Running report" (front running report) would be generated, starting ten business days before a major announcement and ending with the day prior to the announcement, showing any trading by Wells Fargo's employees and corporate insiders. *See* Ex. 252 at 5; Ex. 255 at 2-6 (of 9 PDF pages); Tr. 114-15. A further review of the account owner and trading history was required if profits or avoided losses were greater than $5,000, trading in insider accounts occurred, or trades in any accounts in the same branches as insiders occurred. Ex. 252 at 5. Then, a determination would be made of whether the trading reflected in the front running report was out of character for the particular traders. Tr. 115-16.

The Policies specified that "red flags" to look for included: whether the account owner is associated with the company or industry; whether the trades are out of character (*e.g.*, size,

frequency, types of securities); 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. Tr. 116; Ex. 252 at 5-6. The Policies also called for the reviewer to ask: "[w]as there any public speculation or rumors concerning the company that might explain these actions? If yes, describe source." Ex. 252 at 6; Tr. 119. For documentation purposes, the Policies required that "[o]nce a situation has been identified for review, print the news stories for the file." Stip. ¶ 14; Ex. 252 at 5. The Policies further prescribed that certain materials should be stored on-site for one year and off-site for six years. Stip. ¶ 12.

Wolf was the Wells Fargo compliance department employee responsible for conducting its insider trading reviews. Stips. ¶¶ 15, 16; Tr. 111-12, 115, 155, 309; Ex. 252 at 5; Resp. Br. at 3. The ten business day "look back" period was selected based on Wolf's analysis of Commission insider trading complaints. Tr. 115. Although Wells Fargo's Policies required contacting the relevant branch involved and discussing the situation with the branch manager if any red flags were found, Wolf had the discretion to close a file without further escalation if she felt no further action was required. Ex. 252 at 6; Ex. 610 at 14.

To initiate reviews, Wolf relied primarily on news stories. *See* Ex. 252 at 4; Tr. 111, 385. Wolf would typically print the Yahoo! Finance webpage for the security at issue in each review she conducted, because the page showed both the stock movement and the news headlines. Tr. 385; Ex. 255 at 9; Resp. Br. at 4. In 2009, St John suggested that Wolf maintain a Microsoft Excel spreadsheet (the Log) to track her insider trading reviews. Tr. 428. The parties agree that the Log was not a document that the securities laws required Wells Fargo to create and maintain. Div. Br. at 10; Resp. Br. at 1. Wolf used the Log "to record the [insider trading] review[s] [she] did, what companies [she] looked at, what [she] looked at, [and] what findings [she] came to," so that if someone asked her about a review, she would be able to determine "when it was done and if it was done." Stip. ¶ 17; Tr. 158-59, 381-82. The Log contained various categories of information, including: the date of Wolf's review, the security in question, the type of news that caused Wolf to initiate the review (such as the stock price rising in response to a merger announcement), Wolf's findings, and a "Contacts and Notes" section. Tr. 156-58; Ex. 343. Wolf sometimes included in the Log the reasons for closing an insider trading review. Stip. ¶ 19. Between 2009 and April 2013, Wolf was responsible for conducting trading reviews in over one million client accounts, and closed most reviews with "no findings." Tr. 111, 155; Stip. ¶ 18; *see* Ex. 533 at 5.

Wolf understood at all relevant times that the Commission investigates insider trading and that her reviews could result in an "escalation" by Wells Fargo to the Commission. Tr. 107-09. Wolf also understood that the Commission investigates brokers, dealers, and investment advisors, such as Wells Fargo, to determine whether they established, maintained, implemented and enforced procedures to prevent the misuse of material, nonpublic information. Tr. 109. Consequently, Wolf was aware at all relevant times that the Commission has the power to examine documents from Wells Fargo either to determine if insider trading occurred or to determine if Wells Fargo had adequate policies and procedures in place to detect the misuse of material, nonpublic information. Tr. 109-10, 260. Wolf further understood at all relevant times that it is improper to alter or falsify Wells Fargo's records. Tr. 140-41, 143.

C. Wolf's Review of Prado's Insider Trading

On September 2, 2010, it was publicly announced that 3G Capital would acquire Burger King and take it private. Stip. ¶ 21. That same day, Wolf began her review of pre-acquisition announcement trading in Burger King securities at Wells Fargo by Prado and three of his customers. Stip. ¶ 23. In that review, Wolf determined: (a) Prado and his customers represented the top four positions in Burger King securities firm-wide; (b) Prado and his customers bought Burger King securities within ten days prior to the announcement, including on the same days; (c) the profits by Prado and his customers each exceeded the $5,000 threshold specified in the Policies; (d) both Prado and Burger King were located in Miami; and (e) Prado, one or more of his customers, and 3G Capital were Brazilian. *Id.* Wolf conducted an "enhanced review," which included determining if any of Prado's clients were board members or officers of Burger King. Tr. 162. Wolf determined there were no "red flags" requiring follow-up and that none of the trading was out of character. Ex. 521 at 115-16; Ex. 533 at 9; Tr. 162.

Contemporaneously with conducting her Burger King insider trading review in September 2010, Wolf noted in the "Contacts and Notes" field of her Log, "09/02/10 opened 24% higher @ $23.35 vs. previous close $18.86," as well as "bot prev" (i.e., bought previously) on the front running report. Stip. ¶ 24; Ex. 255 at 1, 3; Ex. 525 at 30; Tr. 166, 193, 226-27. Wolf's September 2010 Burger King insider trading review file contained a Yahoo! Finance webpage printed on September 2, 2010, showing Burger King's stock price movement and headlines regarding Burger King's acquisition by 3G Capital. Stip. ¶ 26; Tr. 193-94; Ex. 255 at 9. Wolf did not: follow up with Prado or his branch manager about Prado's trading; contact the branch; escalate the review to her manager; or take any further steps. Stips. ¶¶ 25, 27. Wolf closed the review with "no findings." Stip. ¶ 25; Ex. 525 at 30; Tr. 165-66. Wolf then stored her Burger King file in a file drawer in her cubicle, along with other insider trading reviews she had conducted. Tr. 311. On April 4, 2012, the box containing Wolf's Burger King review file was sent to Iron Mountain, an offsite records storage company, in accordance with standard practice. Tr. 182-83, 216-17; Ex. 516.

D. Wolf's Review of Buckingham and Janney Orders

Wolf's review of two unrelated Commission actions following her Prado insider trading review—but prior to the Commission initiating its investigation into Prado—speaks to Wolf's experience and knowledge regarding compliance requirements and the alteration of records. On November 17, 2010, the Commission instituted cease-and-desist proceedings, made remedial findings, and imposed sanctions against The Buckingham Research Group, Inc., Buckingham Capital Management, Inc., and Lloyd R. Karp (Buckingham Order). Ex. 500. That action involved, among other things, the alteration of compliance documents that were produced to the Commission. *Id.* Wolf reviewed and discussed the Buckingham Order with St John a few days after it was issued. Exs. 501, 503. Wolf and St John prepared an assessment of the Buckingham Order as applicable to Wells Fargo's Policies, and provided it to Moya on November 29, 2010, which concluded that Wells Fargo's "existing processes and procedures adequately address these issues/findings." Exs. 502, 503.

Similarly, on July 11, 2011, the Commission instituted administrative and cease-and-desist proceedings, made findings, and imposed remedial sanctions and a cease-and-desist order against Janney Montgomery Scott, LLC (Janney Order). Ex. 506. That action involved a dually-registered broker-dealer and investment adviser's failure to establish, maintain, and enforce policies and procedures to prevent the misuse of material, nonpublic information. *Id.* at 2. The same day the Janney Order was issued, St John asked Wolf to review the Janney press release and "determine what their deficiencies were and ensure we are covered with our existing processes and add to your weekly report." Ex. 507. Wolf reviewed the press release, emailed it to others, and prepared a table comparing Janney's procedures with Wells Fargo's. Exs. 508, 511. Among other things, Wolf noted in the table that Wells Fargo's "process is to document everything. This demonstrates how we follow the procedures." Ex. 511 at 4 (of 4 PDF pages).

E. The Commission's Investigation and Wells Fargo's Responses

In 2012, the Commission initiated an investigation into Prado's insider trading. *See* Stip. ¶ 28. On June 13, 2012, as part of that investigation, Commission staff requested, pursuant to Exchange Act Section 17(a) and (b), that Wells Fargo produce, among other things, "[a]ll 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 [Prado] and his response to any such inquiry." Stip. ¶ 28; Ex. 517. On July 20, 2012, Commission staff requested, again pursuant to Exchange Act Section 17(a) and (b), that Wells Fargo produce, among other things, all "compliance files including but not limited to reviews, inquiries, or complaints" relating to Prado. Stip. ¶ 29; Ex. 518. The request was not limited to any timeframe. Stip. ¶ 29; Ex. 518. 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." Stip. ¶ 29; Ex. 518.

In response to both requests, Wells Fargo produced documents, but neither production contained any documents relating to Wolf's September 2010 Burger King insider trading review. Stip. ¶ 30. Wells Fargo certified its production as complete in early September 2012, even though the production did not contain any of Wolf's files, or any of the files of Wells Fargo's Retail Control Group. *Id.*

In mid-September 2012, Wolf became aware of the Commission's investigation regarding Prado's potential insider trading and that Wells Fargo's corporate investigations group was cooperating with the investigation and providing trading information to the Commission. Tr. 195-200, 203-06, 257-58, 392; *see* Ex. 380 at 1. Also on September 14, 2012, at St John's request, Wolf emailed Moya to inform him that a "[r]outine review" had been performed of trading in Burger King securities on September 2, 2010, "with no findings for escalation." Ex. 380. As noted above, the Commission sued Prado for insider trading on September 20, 2012. Stip. ¶ 31. On September 26, 2012, Moya emailed St John, asking if they had "pick[ed] up the trading in the burger king prado matter when it happened." Ex. 368 at 4. That same day, St John replied that "Judy performed a routine review on 09/02/10 with no findings for escalation, she based this conclusion on the fact that the trades reviewed did not appear to be out of character for

the account. Effective 9/27/12 I will be reviewing her reports for these situations on a daily basis going forward." *Id.* at 3; Stip. ¶ 33. Wolf was "not at all" concerned that St John would start reviewing her work because St John "already reviewed a great deal of [Wolf's] work on a daily basis." Tr. 312.

In September 2012, as a result of Moya and St John asking questions about Wolf's Burger King review, Wolf created a separate 2012 Burger King file to store documents compiled in 2012, in an effort to avoid creating the appearance of backfilling documents. Tr. 387, 392-93. On September 27, 2012, at her supervisors' request, Wolf reviewed the Commission's complaint against Prado, and provided information to St John and Moya on the trading set forth in the complaint. Stip. ¶ 34; Ex. 380 at 11-13 (of 104 PDF pages). Wolf told St John to "[p]lease note that the SEC accessed phone records, emails (most written in Portuguese) and records at other brokerage firms as part of their investigation." Ex. 380 at 12. Wolf also emailed St John to report that she had matched all of Prado's trades in Burger King securities and found they all were done through Prado's Wells Fargo account. *Id.* at 11. Nine minutes later, Wolf emailed St John again, stating:

> [a]lso, a little more info – According to news articles (The Street, Market Watch, Wall Street Journal), rumors of a sell of [Burger King] 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**, the day prior to the announcement.

Id. (emphasis added for reasons explained below).

On September 28, 2012, with St John's permission, Wolf had her Burger King insider trading review file retrieved from Iron Mountain. Stip. ¶ 35; Ex. 516; Tr. 218-19, 312-13. Once retrieved, Wolf kept her Burger King review file in her cubicle. Tr. 230, 313. Wolf testified that she printed out several Burger King articles during the month of September. Tr. 207-08; Ex. 380 at 32-48. Wolf could not recall if she had previously printed out those articles in September 2010, but testified that she "[p]robably [did] not" because Wells Fargo was "trying to be green and not print things that [it] could look up again." Tr. 208. In Wolf's view, the requirement in Wells Fargo's Policies that "[o]nce a situation has been identified for review, print the news stories for the file," only required her to print the news article showing why she initiated the review, but did not require her to print all news articles she reviewed as part of her review. Tr. 309-10, 386; *see* Ex. 252 at 5. Thus, Wolf testified that she believed she had complied with this requirement for her Burger King review by printing out only the September 2, 2010, Yahoo! Finance webpage for Burger King. Tr. 310.

On November 30, 2012, the Commission publicly announced that it had settled a case with one of Prado's customers, Igor Cornelsen. Tr. 223, 314; Ex. 605 at 3-4. As a result, Wolf's supervisors asked her questions regarding whether Cornelsen had accounts at Wells Fargo. Tr. 314. Soon thereafter, the Commission initiated an investigation into the sufficiency of Wells Fargo's Policies. Stip. ¶ 68. On December 21, 2012, Commission staff requested, pursuant to Exchange Act Section 17, that Wells Fargo produce, among other things, "[a]ll internal reviews or investigations regarding trading in Burger King." Stip. ¶ 36; Ex. 519. St John then requested that Wolf provide her with her Burger King review file, which was the first time Wolf had been

asked for it. Tr. 230, 314. On December 28, 2012, at 8:41 a.m., Wolf added two sentences (the Two Sentences) to the "Contacts and Notes" section of her Log pertaining to Burger King, 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**, the day prior to the announcement." (emphasis added). Stips. ¶¶ 37, 39, 40, 61; Tr. 228-30; Ex. 527 at 30. Prior iterations of the Log, dated before December 28, 2012, do not show the Two Sentences, and the metadata associated with the Log shows that Wolf was the last person to update the Log. Stips. ¶¶ 60, 62; Ex. 525 at 30. Wolf then created a "cover page" for her Burger King review by copying and pasting the altered Burger King entry from the Log onto a Microsoft Word document. Stips. ¶¶ 38-39; Tr. 177-78, 230. Also on December 28, 2012, Wolf gave St John six pages from her Burger King file, consisting of the cover sheet and front running report, and made a copy for herself to keep in her 2012 Burger King file. Tr. 230-31, 315-16; Ex. 379 at 1-6. Later that day, at 4:44 p.m., Wolf was copied on an email with the subject line "SEC Request for Burger King," which explained the process for requesting documents stored with Iron Mountain. Ex. 535.

On January 11, 2013, Wells Fargo produced documents relating to Wolf's Burger King insider trading review, including the cover page containing the Two Sentences. Stip. ¶ 37; Exs. 255, 534; Tr. 184-85. Prior to Wells Fargo's production on January 11, 2013, Wolf did not tell anyone at Wells Fargo that she had added the Two Sentences to the Log, or that she had created the cover page from the altered Log. Stips. ¶¶ 41, 42; Tr. 231-32, 244.

On or about January 25, 2013, Wolf met with St John, Moya, and Philip Toben (Toben), a Wells Fargo in-house attorney, to discuss the Burger King insider trading review and a request by the Commission staff to interview Wolf. Stip. ¶ 43; Tr. 236. The meeting lasted approximately ten to fifteen minutes and Wolf recalled that Moya, St John, and Toben were "very supportive" and assured her that she had "made a judgment call [to close the review with no findings] and they were okay with that." Tr. 236, 316-17. Moya further assured Wolf by telling her that he had been interviewed by the Commission before and she should not worry. Tr. 237. Wolf left the meeting feeling unconcerned. Tr. 317.

At the request of St John and Moya, Wolf prepared a memorandum dated February 28, 2013, summarizing the review she conducted in 2010 and her further review in September 2012 and thereafter. Stip. ¶ 44; Ex. 376; Tr. 237. As part of her summary, Wolf stated that 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." Stip. ¶ 45; Ex. 376 at 3. Wolf also wrote that her September 2010 review produced no findings because, among other reasons: "There was sufficient news/rumors a client could reference to make a decision to trade BKC." Stip. ¶ 45; Ex. 376 at 4. Wolf did not include in the memorandum that on December 28, 2012, she had transmitted to St John the newly-created cover sheet and the front running report. Tr. 427; Ex. 379 at 1-6. That same day, St John sent Wolf an annotated version of the memo with her comments. Ex. 376. St John suggested that "[a]t the end of this summary, provide information with regard to the two files, e.g., 'included with this summary are photo copies of my review(s), 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 started so as not to have the appearance that I was back filling my original review file.'" Ex. 376 at 9 (formatting

altered). Wolf did not talk to St John about this comment nor inform her that she had added the Two Sentences to the Log and created a cover sheet with the Two Sentences in December 2012. Tr. 241-42.

F. Wolf's 2013 Testimony and Termination

After the Commission staff requested Wolf's testimony, Wells Fargo advised Wolf that she would be provided with counsel, namely, Toben, who represented Wells Fargo and other individuals in the investigation, and Stephen Young (Young), who had previously represented Prado in the investigation and continued to represent Wells Fargo. Stips. ¶¶ 46, 47. Wolf signed engagement letters with Young and Toben on March 8, 2013, and March 11, 2013, respectively. Stips. ¶¶ 46, 47; Tr. 236-37, 242. On March 11, 2013, Wolf met with Toben (with Young participating by telephone) to prepare for her testimony on March 13, 2013. Tr. 320. Wolf reviewed parts of her Burger King file and Wells Fargo's Policies to prepare for her testimony. Tr. 243-44; Ex. 521 at 12-13. During her meeting with Toben, Wolf "realized that [Toben] only had pieces of [her] file and that he needed the entire file." Tr. 319. Wolf provided Toben with her entire Burger King file, which she assumed that Toben or Young then produced to the Commission in anticipation of her March 13, 2013, interview, since she overheard Toben and Young "talking about producing documents." Tr. 319; *see* Ex. 521 at 13. Wolf did not tell Toben or Young that she had added the Two Sentences to the Log or cover page approximately ten weeks earlier. Tr. 244.

Wolf testified on March 13, 2013, via video conference, and was the first Wells Fargo individual to testify regarding her September 2010 Burger King insider trading review. Stip. ¶ 49; Tr. 407. Wolf testified that Wells Fargo's Policies are in place because "[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." Ex. 521 at 42. Wolf further testified that she created the cover page in September 2010 and that it was her practice in 2010 to create and include cover pages for all of her review files "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." Stip. ¶ 50; Ex. 521 at 129.

Wolf denied altering the Log used to create the cover page after September 2010. Stip. ¶ 51; Ex. 521 at 129-30. When questioned about the discrepancy in the years referenced in the Log entry – i.e., "09/02/10" compared to "9/1/12" – Wolf testified that "9/1/12" was a typographical error she made in September 2010. Stip. ¶ 52. The interview was "a little bit traumatic" for Wolf because the Division attorneys were "pretty agitated," in particular when talking about the cover sheet, which Wolf had not expected. Tr. 233.

The next day, on March 14, 2013, Commission staff requested production of the metadata for the Log, as well as any version of the Log that existed prior to January 14, 2013. Stip. ¶ 53; Ex. 523. On March 25, 2013, Wells Fargo advised the Commission staff that the Log had been altered on December 28, 2012, prior to its production to the Commission. Stip. ¶ 54; Ex. 524. Wolf was not aware at that time that Wells Fargo had produced documents to the Commission showing her prior testimony had been false. Tr. 251. On March 27, 2013, Commission staff sent a subpoena to Toben, requiring Wolf to produce, among other things, documents relating to her

Burger King insider trading review by April 19, 2013, and to personally appear again for testimony in the investigation on April 30, 2013. Stip. ¶ 55; Ex. 513. Toben and Young subsequently informed Wolf that they could no longer represent her because Wells Fargo's interests and Wolf's were "no longer aligned." Tr. 254. Wells Fargo placed Wolf on administrative leave in late March 2013. Stip. ¶ 57; Tr. 252. Wolf engaged her present counsel on April 10, 2013. Stip. ¶ 56. On June 13, 2013, Wells Fargo terminated Wolf, citing "significant concern [regarding] alteration of documents." Stip. ¶ 57; Tr. 280-81, 328; *see* Exs. 403, 529. On July 9, 2013, Wells Fargo filed a Form U5 with the Financial Industry Regulatory Authority, explaining that Wolf had been "[t]erminated after questions [were] raised during regulatory matter concerning the accuracy of information provided by [Wolf]." Ex. 529 at 2 (formatting altered).

G. Wolf's 2014 Testimony

Wolf testified before the Commission staff again on April 10, 2014, and explained that she had "made a mistake" in her March 13, 2013, testimony. Stip. ¶ 58; Ex. 532 at 370. She testified that she left the March 13, 2013, interview feeling very poorly and decided to check the September 2010 month-end report "snapshot" to verify "whether or not [she] really had put [the Two Sentences] in 2010 or if it was some other time." Tr. 233-34; Stip. ¶ 58; Ex. 532 at 370. Upon doing so, Wolf testified that she realized that the Two Sentences were not in the Log in September 2010. Stip. ¶ 58; Ex. 532 at 370. Wolf then checked the other 2010 insider trading review files stored in the box retrieved from Iron Mountain and noticed that they did not contain cover sheets, also contrary to her March 13, 2013, testimony. Tr. 395; Ex. 532 at 342. Wolf testified that her practice of creating cover sheets for her reviews did not actually begin until late 2012. Ex. 532 at 342. Wolf testified that upon determining her errors on March 14, 2013, she immediately brought it to Toben's attention. Stip. ¶ 58; Ex. 532 at 370; Tr. 249-50, 322-24. Wolf believed that Toben "would know what to do." Tr. 323.

Wolf testified that she "believe[d]" she had actually added the Two Sentences in December 28, 2012, when St John asked her for material about the Burger King insider trading review. Stip. ¶ 58; Ex. 532 at 372; Tr. 314. Wolf "believe[d]" she added the Two Sentences to give St John "more information about the review," because she guessed that "someone," likely Moya, might ask more questions about it. Stip. ¶ 58; Ex. 532 at 373-74. When asked why she felt it was necessary to add the Two Sentences to her Log and cover sheet despite having already emailed St John the same information earlier, Wolf explained that she "didn't think that [St John] would have this information with her when she was discussing it with whoever was asking questions about it." Ex. 532 at 385; *see* Ex. 380 at 11. Wolf testified that she did not remember adding the Two Sentences, and did not tell anyone, including St John, that she had added the Two Sentences in 2012. Stip. ¶ 58; Ex. 532 at 373-75. Wolf testified that she did not know at the time she added the Two Sentences to the Log and created the cover sheet that the Commission had asked Wells Fargo for documents evidencing a review of trading in Burger King securities, nor that the documents she had provided to St John would be produced. Stip. ¶ 58; Ex. 532 at 374; Tr. 315-16.

Wolf further testified that her incorrect 2013 testimony had arisen because she could not remember adding the Two Sentences and therefore "wrongly assumed that [she] must have made

them in 2010," because her normal practice was to make comments at the time of her review. Stip. ¶ 59; Ex. 532 at 395. Wolf explained that in preparing for her 2013 testimony, she paid no attention to the Log because she did not consider it part of her review, but merely "a tool [she] was using to keep things organized." Stip. ¶ 59; Ex. 532 at 397; Tr. 428-29. When asked what she understood she had to retain in 2009, Wolf testified that she "believed it would be necessary to retain anything where I had made notes on the information, anything that would – something that would evidence my review of a – for example, an account or a trade." Ex. 532 at 210.

Wolf subsequently authorized her current counsel to make a proffer to the Commission on her behalf, which her counsel did on April 24, 2013. Tr. 62. The proffer contained the following statement:

> Judy will correct her testimony that (1) she made all the entries on the review spreadsheet regarding the Burger King insider trading review in September 2010; and (2) she included the excerpt from the spreadsheet regarding the Burger King review in her file in 2010. During her testimony, she made an assumption that she must have entered comments into the spreadsheet when she performed her initial review based on her usual practice and she made an assumption based on her more current practice that she included the spreadsheet in her initial review file. Judy is now unsure that she made all of the entries on the spreadsheet and, if she did, when that occurred. She will testify that it is more likely than not that she made the notes/comments and findings entries in the spreadsheet in 2012 and included the spreadsheet in the review file in 2012 as part of her providing information and materials to her superiors. She will explain the various times in 2012 she was asked for information relating to her Burger King review, but it's too complex for me to cover in this proffer.

Tr. 62-63.

H. The Present Proceeding

Wolf's testimony at the hearing remained largely consistent with her 2014 testimony. Wolf did not dispute that she altered the Log on December 28, 2012, but testified that she had—and continues to have—no "specific recollection of doing it." Tr. 227-30, 398. Wolf reiterated that following her March 13, 2013, testimony, she was concerned that the Division attorneys had been agitated about the dates, so she retrieved the month-end report from September 2010 in an effort to determine whether or not the Two Sentences were there. Tr. 233-34, 322. Wolf explained that she felt "really bad" when she realized the Two Sentences were not there and immediately brought it to Toben's attention the following morning, without knowing that the Commission was about to request from Wells Fargo prior versions of her Log to determine the accuracy of her prior testimony. Tr. 233-34, 322-23, 325. Wolf emphasized that when she first testified in 2013, she had "forgotten that [adding a cover sheet] was a new practice" she had begun in December 2012 (although she occasionally created cover sheets before 2012), and therefore erroneously testified that the cover sheet had existed in 2010, since her "usual practice was to make the comments around the time of the review." Tr. 172, 182, 189-92, 321, 399; *see, e.g.*, Ex. 401. Wolf acknowledged that given that the same date error is present in her September

27, 2012, email to St John, and the updated Log and cover sheet created on December 28, 2012, it is likely she copied the Two Sentences from the September 27, 2012, email and pasted them onto the altered Log, which was then used to create the cover sheet. Tr. 271-72; *compare* Ex. 255 at 1, *with* Ex. 380 at 11.

Wolf testified that in September 2010 she reviewed articles regarding the Burger King acquisition rumors and that she was therefore aware of the content of the Two Sentences in 2010 when she conducted the review. Tr. 263-64, 432-33. Wolf testified that she remembered "little idiosyncrasies about various [news] stories" she read in 2010, and in particular remembers reviewing a Wall Street Journal article detailing rumors of Burger King being acquired, because it had misidentified the private equity firm that would acquire Burger King, which Wolf found unusual. Tr. 432-34. Wolf conceded that it was her practice to reference rumors in the Log and could not give a reason for failing to include the rumors in the Log at the time or print out the news articles. Tr. 273-77, 433; Ex. 343 at lines 64, 127, and 179.

Wolf testified that she did not feel it is improper to alter a document if there is no intent to mislead. Tr. 143-44. However, Wolf later conceded that it is "definitely not" appropriate to create a document two years after the fact, associate it with the file and then not tell the Commission about it. Tr. 146-47. Wolf repeatedly testified that at the time she gave the altered Burger King documents to St John, she did not know that there was a Commission request for documents regarding the Burger King review or that the documents she had given St John were "related in any way to the SEC investigation." Tr. 315-16. Wolf "very much regret[s] making those mistakes in [her] first testimony," but insisted that she is not culpable because she had "not altered documents for purposes of misleading anyone or for purposes of falsifying documentation." Tr. 282, 326-27. Wolf testified that in retrospect she "should not [have] provide[d] information without asking what's going to be done with it," but that it was never her intention to disrupt the Commission's investigation in any way. Tr. 283-84, 326.

Wolf testified for the first time at the hearing that it was common practice to update the Log retroactively. Wolf agreed that the Log is "a living document in that when [she is] doing a new review [she goes] back to this review log and put[s] it in the new review that [she is] doing." Tr. 167-68. Wolf therefore described the Log as "something that was a work in progress for us" and testified that:

> We frequently . . . we did go back and make additions and we expanded the spreadsheet, in fact, added new columns so we could add new information that we hadn't thought of adding before. Like, blue sheet requests and, if escalated, to who. Those types of things weren't even on it at the beginning. We added those later on.

Tr. 430, 442. Wolf explained that "[i]n a few instances" she retroactively filled in the newly-created columns for prior reviews, because she "wanted to have a special place to document [the new information] and to be able to search the Excel spreadsheet based on that information." Tr. 430-31. Wolf explained that St John knew that there were "[r]etroactive changes being made to the [Log]." Tr. 431.

Apart from being terminated by Wells Fargo, Wolf testified she had never been terminated or disciplined in any other job before. Tr. 327-28. Wolf explained that the Commission's charges against her have "profoundly [a]ffected [her] life" and she's lost "[her] career, [her] income, [her] medical insurance, and maybe most importantly of all to [her], [her] reputation." Tr. 354. Wolf has "been very embarrassed and humiliated by the allegations that the [Commission] has publicly announced against [her]" and felt it was important to have the hearing "to clear [her] name." Tr. 355.

I. Wolf's Testimony Regarding Inability to Pay

In lieu of providing financial documentation, Wolf testified regarding her inability to pay a monetary sanction. Tr. 291-96; *see* 17 C.F.R. § 201.630. Wolf testified that since being terminated by Wells Fargo in 2013, she has searched for employment—outside the securities industry—and has applied for various openings, such as financial analyst and risk management positions, but has remained continuously unemployed since 2013. Tr. 285-86, 329-30, 377. Wolf does not believe she could be hired in the securities industry and does not expect to ever work in the securities industry again. Tr. 285-86, 331, 440. Wolf ceased looking for employment a few months ago. Tr. 380.

Wolf testified regarding how much money was in her savings account, individual retirement account (IRA), and 401(k) account. Tr. 338-39. She also testified about her current sources of income, how she supports herself and her ex-husband, and her credit card debt. Tr. 343, 346, 350. Wolf's twenty-eight year old son, Eric, has helped her financially in multiple ways, including paying for her travel to testify in this proceeding, and she also described his financial condition. Tr. 333, 346-47, 351-53, 375-76. Wolf has never paid any fees due to her current counsel. Tr. 98-99, 255.

Wolf was married for fourteen years to James Wolf, age sixty-two. Tr. 333, 350-51. James Wolf has multiple debilitating conditions. Tr. 333-34, 350-51. James Wolf stopped working "[s]everal years ago" and receives social security disability benefits. Tr. 357. Although they are divorced, Wolf routinely helps James Wolf with "paperwork, . . . doctors visits, obtaining referrals for specialists [and] . . . also sometimes help[s] him financially." Tr. 335. Wolf and James Wolf are joint owners of various bank accounts, one of which occasionally has a substantial balance, as well as vehicles and property. Tr. 337-40. However, Wolf testified that the assets as to which she is listed as co-owner with James Wolf are in fact only James Wolf's, and that she is listed only because she "help[s] him a lot with paperwork and keeping things straight." Tr. 340. For example, Wolf testified that she is listed as the joint owner of a checking account with James Wolf only for "emergency purposes, in case he should be hospitalized . . . and bills might need to be paid," but Wolf does not receive statements on the account. Tr. 335-36. Wolf also has four vehicles co-titled in her name which are in James Wolf's possession and which Wolf testified "actually belong to my ex-husband." Tr. 339-40. Wolf testified regarding the value of the vehicles. Tr. 340-42. Wolf drives a Dodge Caravan with approximately 157,000 miles that her parents own. Tr. 339.

Wolf also testified about the equity in a house she jointly owns with James Wolf. Tr. 342. James Wolf supervised the construction of the house and Wolf has never lived in it. Tr.

342. However, Wolf makes half the mortgage payments on the house because James Wolf is unable to pay the full amount on his own. Tr. 342-43, 358-59. Wolf is also listed as the joint-owner of a "small piece of property" that James Wolf uses for storage. Tr. 344.

Wolf testified that any fine "over $100.00 would be burdensome for [her]" and any fine over $500 would make it difficult for her to continue to assist James Wolf. Tr. 345-46. Wolf testified that if the Commission were to try to collect against joint assets she holds with James Wolf, James Wolf would have to find another place to live, which would be very difficult for him because "[m]oving and getting rid of his possessions would be incredibly stressful for him and stress exacerbates his condition." Tr. 344-45.

II. Conclusions of Law

A. Books and Records Liability

The books and records provisions require that investment advisers and broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records. *See Eric J. Brown*, Securities Act of 1933 (Securities Act) Release No. 9299, 2012 SEC LEXIS 636, at *32 (Feb. 27, 2012); *Don Warner Reinhard*, Exchange Act Release No. 63720, 2011 SEC LEXIS 158, at *2 n.5 (Jan. 14, 2011). That requirement includes the requirement that the records be accurate, which applies "regardless of whether the information itself is mandated." *Eric J. Brown*, 2012 SEC LEXIS 636, at *32 (quotation omitted); *see David Henry Disraeli*, Securities Act Release No. 8880, 2007 SEC LEXIS 3015, at *58 (Dec. 21, 2007). In particular, Exchange Act Section 17(a) and Rule 17a-4(j) 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." 17 C.F.R. § 240.17a-4(j). Advisers Act Section 204(a) provides that the records of an investment adviser in connection with its investment advisory business are subject to examination by the Commission. 15 U.S.C. § 80b-4(a).

The Commission has described the record keeping requirements as fundamental to the regulation of the securities industry and "a keystone of the surveillance of brokers and dealers by [the Commission's] staff and by the security industry's self-regulatory bodies." *Edward J. Mawod & Co*., 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979); *see also Comm'n Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and Nat'l Commerce Act of 2000 with Respect to Rule 17a-4(f)*, Exchange Act Release No. 44238, 2001 SEC LEXIS 2761, at *7 (May 1, 2001) (noting that "preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards"). Scienter is not an element of the violations alleged. *See Orlando Joseph Jett*, 57 S.E.C. 350, 396 (2004).

B. Aiding and Abetting and Willfulness

To establish aiding and abetting liability, the Division must show: (1) that a primary violation of the securities laws was committed; (2) that the aider and abettor provided substantial assistance to the primary violator in the commission of the primary violation; and (3) that the

aider and abettor had the necessary scienter. *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000); *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *70 (May 2, 2015); *Eric J. Brown*, 2012 SEC LEXIS 636, at *33. The scienter requirement for aiding and abetting liability may be satisfied by evidence that the respondent knew of, or recklessly disregarded, the wrongdoing and her role in furthering it. *Eric J. Brown*, 2012 SEC LEXIS 636, at *33; *see John P. Flannery*, Securities Act Release No. 9689, 2014 WL 7145625, at *10 n.24 (Dec. 15, 2014) (defining "extreme recklessness" in the context of securities fraud as including highly unreasonable conduct where the danger of a violation was so obvious that the respondent must have known of it).

For "causing" liability, three elements must be established: (1) a primary violation was committed; (2) an act or omission by the respondent was a cause of the primary violation; and (3) the respondent knew, or should have known, that her conduct would contribute to the violation. *Robert M. Fuller*, 56 S.E.C. 976, 984 (2003), *pet. denied*, 95 F. App'x 361 (D.C. Cir. 2004). One who aids and abets a primary violation is necessarily a cause of that violation. *Montford & Co.*, 2014 SEC LEXIS 1529, at *71; *Eric J. Brown*, 2012 SEC LEXIS 636, at *33; *Sharon M. Graham*, 53 S.E.C. 1072, 1085 n.35 (1998), *aff'd*, 222 F.3d 994 (D.C. Cir. 2000).

It is well established that a willful violation of the securities laws means "intentionally committing the act which constitutes the violation" and does not require that the actor "also be aware that he is violating one of the Rules or Acts." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (internal citation omitted); *see John P. Flannery*, 2014 WL 7145625, at *37. A showing of scienter is sufficient to demonstrate willfulness. *See Donald L. Koch*, Exchange Act Release No. 72179, 2014 WL 1998524, at *13 n.139 (May 16, 2014).

C. Wolf Aided and Abetted and Caused Wells Fargo's Violations of Exchange Act Section 17(a) and Rule 17a-4(j) and Advisers Act Section 204(a)

The parties have stipulated that Wells Fargo admitted to violating Exchange Act Section 17(a) and Rule 17a-4(j) and Advisers Act Section 204(a). Stips. ¶¶ 63, 66, 67; *see* Ex. 533. Therefore, the Division has satisfied the first element demonstrating that a primary securities law violation occurred. The Division has also satisfied its burden of showing that Wolf acted with scienter and rendered substantial assistance in the commission of that primary violation.

The evidence showed that Wolf, a seasoned compliance consultant who had been in the securities industry for over thirty years and held four securities licenses, was well trained and aware of the importance of keeping scrupulously accurate records for Wells Fargo, a regulated entity. Although Wolf's $61,000 salary is not indicative of a high-level employee, in practice Wolf exercised a key compliance function, having sole responsibility for conducting insider trading reviews and discretion on whether to escalate such reviews or not. Thus, Wells Fargo relied on Wolf to serve as the gatekeeper for detecting insider trading, a crucial role within the compliance department. In addition to her extensive experience in compliance, the fact that, prior to altering the Log Wolf had reviewed and prepared assessments of the Buckingham and Janney Orders, in which the Commission imposed sanctions on broker-dealers and investment advisers based on the alteration of compliance documents and the failure to establish, maintain, and enforce policies and procedures to prevent the misuse of material, nonpublic information, further underscores Wolf's

knowledge about the need to be fastidious in ensuring the integrity of records. Indeed, at the time Wolf began to receive questions from her supervisors regarding her Burger King review, Wolf created a 2012 file, as she knew to do, to prevent the appearance of backfilling documents. Nevertheless, rather than simply emailing St John the webpage regarding the Burger King acquisition rumors that had been circulating in 2010 as an additional source of information she had located in 2012, Wolf decided to also add the Two Sentences to her Log's 2010 review entry, without noting the date of the additions. Given Wolf's nearly decade-long experience as a compliance professional and her knowledge of the importance of maintaining meticulous records, Wolf "must have been aware" that adding the Two Sentences to her Log, without indicating when the addition had been made, was misleading because it gave the impression that the Two Sentences had been present in the Log in 2010. *John P. Flannery*, 2014 WL 7145625, at *10 n.24.

Wolf's argument that it is not improper to alter a compliance record so long as there is no "intent to mislead" as to the underlying facts is unconvincing. As a preliminary matter, for aiding and abetting and causing books and records violations, Wolf's liability does not hinge on whether she knew about the Burger King acquisition rumors in 2010 when she closed her review, but on whether she knew, or recklessly disregarded the risk, that the altered Log would ultimately be produced to the Commission, purporting to be the Log that existed in 2010 when she conducted her review. Even assuming that she had in fact reviewed the news articles regarding the acquisition rumors, by failing to note when the Two Sentences were added to the Log, any viewer of the Log would have the erroneous impression that the Two Sentences had been present in the original 2010 Log.

Moreover, the preponderance of the evidence shows that Wolf did *not* know about the Burger King acquisition rumors when she conducted her review in 2010, but rather that she first became aware of the rumors in 2012. For one, Wells Fargo's Policies provided that "[o]nce a situation has been identified for review, print the news stories for the file." Ex. 252 at 5. I do not credit Wolf's explanation that she was only required to print the document that *initiated* her review, and that she failed to print highly relevant webpages which would explain her findings in an effort to be "green." *See* Tr. 208. Secondly, Wells Fargo's Policies also specifically listed "rumors concerning [the] company" as a potential explanation for trading, and provided that if rumors were found, the reviewer should "describe [the] source." Ex. 252 at 6. The evidence showed that it was indeed Wolf's practice to note rumors in her Log. *See, e.g.*, Exs. 343, 525 (line 64 – Verisign Inc. ("rumors about a pending merger"); line 127 – Lubrizol Corp. ("identified this month in a Bloomberg News article reviewing firms that may fit Buffett's takeover criteria"); line 179 – Monster Beverage ("rumor that Coca Cola (KO) was considering acquisition of Monster"). Thus, the fact that Wolf neither printed out the webpage regarding the acquisition rumors nor noted the rumors in the Log suggests that Wolf was unaware of the rumors in 2010.

The record similarly belies Wolf's assertion that when she first testified in 2012 she did not remember having altered the Log ten weeks prior, and therefore assumed she must have added the Two Sentences in 2010. Wolf testified at the hearing that it was common practice to retroactively supplement the Log in an effort to have a centralized, updated document to look to—a procedure Wolf asserted St John was aware of. If that was the case when Wolf testified in 2013, Wolf would have had no reason to assume that she must have added the Two Sentences in

2010, especially considering that, at that point, her Burger King review was being closely scrutinized. Rather, it would have been more reasonable for Wolf to assume that she had added the Two Sentences after 2010. Wolf's failure to divulge the fact that the Log was routinely supplemented, combined with her initial testimony that she added the Two Sentences in 2010, suggests she actually knew that it was an improper compliance practice to supplement the Log after the fact, regardless of whether her supervisor approved of it or not. While it is certainly understandable to want to have one centralized compliance document containing all relevant information gathered on a particular review over time, as a trained compliance employee serving as the gatekeeper for Wells Fargo's insider trading reviews, Wolf knew that it was critical to keep records not only of *what* she did, but *when* she did it. Stip. ¶ 17; Tr. 158-59, 381-82. Thus, Wolf's assertion that she did not realize her testimony had been incorrect until she retrieved the 2010 month-end report and saw that the Two Sentences were not present is simply not credible. The more plausible explanation is that upon seeing how aggressive the Division attorneys were during her testimony with regard to the date she added the Two Sentences, Wolf panicked and sought to verify if there was a way her alteration would be uncovered. Upon realizing that it would, she then claimed it had been a "mistake."

That Wolf acted with scienter is bolstered by evidence of motive. As Wolf conceded, she was aware in mid-September 2012 that Wells Fargo was cooperating with the Commission's Prado investigation. Moreover, Wolf was copied on an email titled "Burger King SEC Request" the same day that she altered the Log. Upon realizing that the Prado insider trading case was being increasingly scrutinized, Wolf would have known that adding the Two Sentences would have given the impression that she had handled the 2010 Burger King review more thoroughly than she had, and that the acquisition rumors had informed her decision to close the review with no findings. Wolf's claim that her Log was merely an internal organizational document not meant to memorialize her review does not pass muster. As Wolf herself testified, she relied on the Log "to record the [insider trading] reviews [she] did, what companies [she] looked at, what [she] looked at, [and] what findings [she] came to," so that if someone asked her about a review, she would be able to determine "when it was done and if it was done." Tr. 158-59, 381-82; Stip. ¶ 17. The fact that Wolf created the cover sheet she provided to St John—when asked for her Burger King file—by copying and pasting her Burger King entry from the Log further evidences that the Log was not merely the informal, organizational tool Wolf alleges it is, but rather precisely the type of compliance record that the Commission sought in its requests, and which Wells Fargo had an obligation to ensure the accuracy of.

Wolf's knowledge of the Commission's ongoing Prado investigation and that Wells Fargo's records were subject to Commission review demonstrates that Wolf knew it was very likely that her Log—and subsequently created cover sheet—would be produced to the Commission. Nevertheless, in contravention of her extensive compliance training, Wolf chose to alter the Log after being informed that her supervisor would likely review it. At a minimum, Wolf's unilateral alteration of the Log, and creation of the cover sheet from the altered Log, was highly unreasonable and created an obvious danger of violating the books and records laws. Accordingly, Wolf acted with scienter, and substantially assisted Wells Fargo's commission of its primary violation.

For these reasons, I find that Wolf willfully aided and abetted and caused Wells Fargo's violations of Exchange Act Section 17(a) and Rule 17a-4(j) and Advisers Act Section 204(a).

III. Sanctions

The Division requests a cease-and-desist order, a second-tier civil penalty, and a permanent industry-wide associational bar. Div. Br. at 40-45.

A. Public Interest Factors

The appropriateness of any remedial sanction is guided by the public interest factors set forth in *Steadman v. SEC*, namely: the egregiousness of the respondent's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; the respondent's recognition of the wrongful nature of her conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003).

In determining whether a civil penalty is in the public interest, six statutory factors may be considered: (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. 15 U.S.C. §§ 78u-2(c), 80b-3(i)(3).

B. Discussion

On the one hand, Wolf acted with scienter. Based on her professional experience, she must have known that it was improper to alter compliance records, and that her alteration would result in the Log and cover sheet being misleading. Wolf's failure to inform the Division during her initial testimony that the Log was a document routinely updated, her unequivocal testimony at that time that she had not altered the Log after 2010, and her admission to altering the Log only after she realized the Commission was focusing on it, demonstrate that Wolf must have understood the wrongfulness of her actions.

Moreover, although Wolf conceded at the hearing that falsification of records is wrong, that "there are things that [she] could have done better," and that she wished she had not closed her Burger King review with "no findings" in 2010, Wolf continues to maintain that she is not culpable because she "[did] not alter[] documents for purposes of misleading anyone or for purposes of falsifying documentation." Tr. 140, 282. While Wolf sincerely regrets the

consequences resulting from her alteration of the Log, and the profound effect it has had on her life, she does not recognize the wrongful nature of her misconduct.

On the other hand, Wolf's alteration of the Log was an isolated event. Although Wolf was not initially forthcoming about having altered the Log, and thereby prolonged the period that the truth was hidden, her violation was limited to the addition of the Two Sentences to the Log and cover sheet, and was thus neither a recurrent nor widespread offense. Nor does her hearing testimony transform her misconduct, which surely took no more than a few minutes to complete, into a recurrent infraction. Div. Br. at 38-39.

Wolf also provided assurances against future violations. Wolf credibly testified that she has no desire to ever work in the securities industry again, and that she does not believe she would even be able to because of the allegations in this proceeding. Since her termination by Wells Fargo, Wolf has been unable to find employment, and at age sixty-two, is functionally retired.

For these same reasons, Wolf is not, and is unlikely to ever be, in an occupation presenting opportunities for committing securities violations. The violation occurred in 2012, and was neither recent nor remote. She has no record of discipline, and although her salary between her violation in September 2012 and her termination in June 2013 could be considered unjust enrichment, the Division does not contend that it is. Div. Br. at 42-43.

Taken in isolation, these factors weigh in favor of at least some sanction. I find, though, that they are decisively outweighed by the remaining public interest factors: egregiousness, degree of harm, and deterrence.

I do not condone Wolf's misconduct, or her deceit in attempting to cover it up. As an experienced compliance professional, Wolf knew of the importance of ensuring the integrity of records, and nevertheless purposefully altered the Log after the fact to make it appear that her past review had been more thorough than it was. Wolf must have known there was a strong likelihood that her altered documents would end up in the hands of the Commission, which would be misled into thinking that the produced Log was the same as the Log that existed in 2010. She knew that it is wrong to mislead Commission staff while testifying under oath.

But overall, Wolf's violation was not egregious and it caused no proven harm to investors or the marketplace. Certainly it stands to reason that the Division expended unnecessary investigative resources as a result of Wolf's Log alteration and initial, misleading testimony. But the Division demonstrated no particular degree of unnecessary expenditures, beyond having to take Wolf's testimony twice, and it learned very quickly that the Log had been altered. Exs. 523, 524. Indeed, there is literally no evidence that Wolf's alteration of the Log materially impeded the Division's investigation of Prado. Wolf credibly testified that there were public reports in 2010, around the time of Prado's insider trading, that Burger King was a takeover target, even though she was unaware of them at the time. There is therefore no reason to believe that Wolf's conclusion of "no findings" would have been different had she not altered the Log, or that Wells Fargo would have otherwise detected Prado's misconduct.

Admittedly, books and records violations alone can be egregious, and "the sanction for a failure to produce documents or information" is "likely to be greater than, or at least comparable to, the potential sanction for any wrongdoing that might be uncovered" during the associated investigation. *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 WL 2674858, at *15 (July 2, 2010). But other recent books and records violations found to have been egregious generally caused more serious, or more demonstrated, harm. In *vFinance*, for example, "Respondents' Exchange Act violations ultimately facilitated the destruction of the only version of certain records critical to a Commission fraud investigation." *Id.* In *Phlo Corporation*, Exchange Act Release No. 55562, 2007 WL 966943, at *12 (Mar. 30, 2007), the respondent "did not make any records available for examination for more than two months after a response to the October 31 document request letter was due, and even then, not all of the requested documents were made available." In *Schield Mgmt. Co.*, 58 S.E.C. at 1219, the respondents "deliberately deleted e-mails, furnished the staff with several different, inconsistent versions of requested [documents] that were incomplete and inaccurate, and destroyed and withheld documents related to client and adviser PINs." In *The Barr Financial Group, Inc.*, 56 S.E.C. 1243, 1262 (2003), the respondents' "untrue assertions" in Commission filings "misled investors regarding [Respondents'] qualifications and the willingness of others to trust respondents with their assets."

Here, by contrast, no documents were destroyed, Wolf timely produced all documents requested of her, Wolf's Log alteration was minimal and the cover sheet simply duplicated what was already in the file, and, most importantly, there is no evidence that Wolf's misconduct made any material difference to the investigation of Prado. Nor did her violation have any effect on investors or the marketplace. Wolf may have violated the law, but she did not do so egregiously.

The weightiest public interest consideration, however, is deterrence. To be sure, remedial sanctions "provide specific deterrence even where respondents may no longer work in the industry." *Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *46 (May 29, 2015). But Wolf has persuasively shown that she believes she has no realistic chance of ever working in the securities industry again, even without the imposition of remedial sanctions. On the facts of this case, the incremental specific deterrent effect of a sanction is vanishingly small.

As for general deterrence, there is, of course, a "need to deter . . . other persons." *Ralph Calabro*, 2015 WL 3439152, at *46 (citation omitted, ellipsis in original). On the facts of this case, however, I am satisfied that any remedial sanction, no matter how small, will not be an effective general deterrent. This is principally because of Wolf's status at Wells Fargo. She was low-ranking, relatively low-paid, supervised no one, and worked in a cubicle. Of all the individuals at Wells Fargo who contributed to its compliance failures, the only one charged individually was notably low-ranking. By sanctioning only Wolf—who, to her credit, does not blame anyone else for her misconduct, but whose testimony suggests that at least St John and possibly Moya could have been charged with the same misconduct—the rest of the securities industry could view this proceeding as proof that Wolf's violation was isolated and non-systemic. That is, if Wolf is sanctioned, there is a likelihood that others in the industry will perceive Wolf as simply a bad apple, a low status worker who unilaterally caused Wells Fargo to violate the law, and will see no need to examine their own practices and corporate cultures.

In fact, this would be a misperception, as the settled proceeding against Wells Fargo amply demonstrates. Ex. 533. Wells Fargo clearly had much deeper and more systemic problems than one bad apple. *See id.* Wolf testified to two examples of this. First, she testified that St John knew that Wolf made retroactive Log entries in other instances, apparently with no objection. Tr. 430-31. Second, St John told Moya by email in September 2012 that she would review Wolf's insider trading reviews on a "daily basis going forward," as if that would be an improvement on existing practices. Ex. 368. According to Wolf, though, St John was already doing just that, and St John's email was, therefore, misleading at best. Tr. 312; Ex. 368. But overall, there is a likelihood that others in the securities industry will focus on the superficial aspects of this proceeding, rather than on the details of Wolf's misconduct in the context of Wells Fargo's overall practices. Thus, any sanction here will not only fail to have the desired general deterrent effect, but may actually be counterproductive.

There is one additional consideration: the fact that Wolf worked in compliance. Obviously, compliance professionals are subject to the securities laws like everyone else. But Wolf is correct to complain that in compliance, "the risk is much too high for the compensation." Tr. 439. In my experience, firms tend to compensate compliance personnel relatively poorly, especially compared to other associated persons possessing the supervisory securities licenses compliance personnel typically have, likely because their work does not generate profits directly. But because of their responsibilities, compliance personnel receive a great deal of attention in investigations, and every time a violation is detected there is, quite naturally, a tendency for investigators to inquire into the reasons that compliance did not detect the violation first, or prevent it from happening at all. The temptation to look to compliance for the "low hanging fruit," however, should be resisted. There is a real risk that excessive focus on violations by compliance personnel will discourage competent persons from going into compliance, and thereby undermine the purpose of compliance programs in general. That is, "we should strive to avoid the perverse incentives that will naturally flow from targeting compliance personnel who are willing to run into the fires that so often occur at regulated entities." Comm'r Daniel M. Gallagher, Statement on Recent SEC Settlements Charging Chief Compliance Officers With Violations of Investment Advisers Act Rule 206(4)-7 (June 18, 2015), *available at* http://www.sec.gov/news/statement/sec-cco-settlements-iaa-rule-206-4-7.html (last accessed July 7, 2015).

Again, I do not condone Wolf's misconduct. Neither the Division nor the Commission as a whole should tolerate falsified records or knowingly false testimony, and the Division was quite right to at least investigate Wolf. But now that the evidence has been fully aired, it is clear that sanctioning Wolf in any fashion would be overkill. Accordingly, no sanction will be imposed.

IV. Record Certification

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on June 30, 2015, and additionally includes Exhibit 535.

V. Order

It is ORDERED that this proceeding is DISMISSED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule of Practice 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Cameron Elliot
Administrative Law Judge