JMK:SCJ/PTH/MEB
F. # 2013R01203

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

Docket No. 14-CR-399 (S-1)(ENV)

ABRAXIS J. DISCALA,
also known as "AJ Discala,"
CRAIG JOSEPHBERG,
also known as "Jobo,"
KYLEEN CANE and
MICHAEL MORRIS,

Defendants.

– –X

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE GOVERNMENT'S MOTION TO ADMIT CERTAIN EVIDENCE AS DIRECT EVIDENCE OR, IN THE ALTERNATIVE, PURSUANT TO RULE 404(B)

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PRELIMINARY STATEMENT

The government respectfully submits this reply to respond to the opposition briefs filed by defendants Abraxas J. Discala ("Discala Br.," ECF No. 419), Kyleen Cane ("Cane Br.," ECF No. 413) and Michael Morris ("Morris Br.," ECF No. 421) to the government's previously filed motion to admit certain acts in evidence at trial as direct evidence of the charged fraud offenses, or, in the alternative, pursuant to Federal Rule of Evidence 404(b) ("Rule 404(b)") as evidence of motive, intent, knowledge, lack of mistake and common scheme and plan (the "Govt. Motion," ECF No. 399). For the reasons set forth below, the proffered evidence is admissible, relevant and not unduly prejudicial.

ARGUMENT[1]

I. THE RELEVANT EVIDENCE

The government respectfully submits that the uncharged acts and other conduct described in the Govt. Motion are admissible because they are relevant and inextricably intertwined with the charged offenses. The evidence is alternatively admissible, pursuant to Rule 404(b), as evidence of motive, intent, knowledge, lack of mistake and common scheme and plan.

A. The Prior Relationship Between Discala and Cane

The government seeks to introduce evidence that Discala and Cane have known each other since at least 2010 and worked together on prior securities transactions. Govt. Motion at 9-11.

[1] The factual background and applicable legal standards were previously described in pages 1 through 9 of the Govt. Motion.

Cane concedes that the prior dealings between Cane and Discala, at least with respect to Regenicin, Inc. ("Regenicin"), can be properly admitted as background to the charged conspiracy. Cane Br. at 1.

Discala does not object to the introduction of evidence showing Discala and Cane knew each other and worked together in the past, but objects to any additional detail about those prior dealings being introduced, which Discala describes as an "attorney client relationship." Discala Br. at 3, 7. The government believes this characterization is inaccurate and misleading. There is no indication that Cane represented Discala or any company affiliated with Discala. Cane represented Regenicin, not Discala. While the government does not intend to introduce evidence that Discala and Cane engaged in a prior stock manipulation scheme with respect to Regenicin, the government does not concede that the Discala-Cane history was made up of only legitimate transactions. Among other things, Discala's and Cane's prior course of dealings, which involved transactions associated with taking Regenicin public, resulted in Discala placing a high degree of trust and confidence in Cane. The fact that Discala often referred to Cane as his "Guardian Princess" or "GP," when, in fact, Cane was not Discala's attorney but purported to represent companies in which Discala obtained large amounts of stock, is relevant to understanding why Discala trusted Cane to hold and control the free-trading stock of Cubed for the benefit of Discala and the other co-conspirators.

Discala also argues that the government is attempting to use documents seized from the offices of OmniView pursuant to a search warrant that are outside the scope of the warrant. Discala Br. at 10-11. Discala is correct that the OmniView search warrant only authorized the seizure of documents from the time period after February 2012, and the government will not offer any documents into evidence at trial seized from OmniView's office that are outside the scope of the warrant. Notably, there are multiple sources of information about Discala's and Cane's dealings in connection with Regenicin. For example, the government seized a binder of documents on Regenicin from Discala's home during a consent search. There are texts with Discala seized from Cane's phone about Regenicin. There are texts about Regenicin seized from Discala's phone. An anticipated government witness, who conspired with Discala to manipulate the stock of CodeSmart, Cubed, StarStream and Staffing Group (collectively, the "Manipulated Public Companies), will testify that he purchased a small amount of Regenicin stock in 2013 at Discala's urging.

The government respectfully submits that evidence regarding the background relationship between Discala and Cane is direct evidence of the charged offense. Should the Court disagree that this is direct evidence of the charges, the government respectfully submits that the evidence is nonetheless appropriately admitted pursuant to Rule 404(b) because it will help the jury understand the basis for the co-conspirators' relationship of mutual trust. United States v. Pipola, 83 F.3d 556, 566 (2d Cir. 1996).

B. The Contemporaneous Deals Involving Discala, Cane and Josephberg

At trial, the government will prove that the co-conspirators, led by Discala, manipulated the stock of the Manipulated Public Companies as alleged in the Superseding Indictment. The government seeks to introduce evidence that Cane, Discala, Josephberg and others, prior to their arrest on July 17, 2014, had identified another company ("Company A") whose stock they intended to manipulate through similar tactics to those used to manipulate the stock of Cubed. In addition, Cane, Discala and Goodrich, who was a broker at California-based broker dealer, BD Firm 2 (see S-1 Ind. ¶ 6), discussed working together on a deal with another company ("Company B") for which Goodrich was raising money. Govt. Motion at 11-13. Both

Cane and Discala object to the introduction of this evidence, although Cane recently moved to admit certain evidence that would fall within this category in her January 3, 2018 Motion in Limine ("Cane MOL," ECF No. 426).

Cane argues that the government has failed to show that the discussions and steps that the co-conspirators took with respect to Company A and Company B are relevant because the transactions were "inchoate," and, as a result, any claims regarding the parties intent is "highly speculative." Cane Br. at 9. Cane also claims that the Cubed transaction "can be entirely explained without reference to general chatter about possible escrow accounts in the Company A and Company B transactions were never consummated." Id. These two assertions are incorrect. First, while the arrest of Cane and Discala in July 2014 ended their dealings with Company A before they could take Company A public in the fall of 2014, they had a plan and had taken a number of steps to further this transaction. Among other things, Discala solicited and received money from multiple investors for stock in Company A, pursuant to "participation agreements" in the future escrow arrangement for Company A. At least one government witness is expected to testify, in relevant part, that he invested in Cubed by sending money to bank accounts controlled by Discala and Cane, and also that he sent Discala another $25,000 for participation in an investment in Company A. Bank records and seized documents show that multiple investors sent funds to Cane and OmniView for Cubed stock as well as money to OmniView for Company A stock.

Also, between February 2014 and June 2014, in five different wire transfers, Discala, through OmniView's bank accounts, sent approximately $500,000 to Cane's attorney bank account at Wells Fargo. Some of this money was for Cubed stock, and 75,000 shares of restricted Cubed stock were issued to OmniView in April 2014. However, a portion of this money was for financing for Company A and Company B. Cane, in turn, wired $300,000 to Company A on May 2, 2014 on behalf of OmniView, and $625,000 to Company B on July 10, 2014, as well as additional wire transfers from Cane's attorney bank account to Company B totaling over $150,000 after Cane's arrest in July 2014. At or around the same time, Cane wired approximately $2.6 million dollars of investor money from Cane's same attorney bank account to Cubed in multiple wire transfers between April 1, 2014 and June 24, 2014. An additional $25,000 was wired to Cubed after Cane's arrest.

During the trial, the government will use bank records, transfer agent records and stock purchase agreements, among other documents, to illustrate the flow of money and stock between investors, co-conspirators and the Manipulated Companies. Certain investors invested in Cubed, Company A and Company B, all during the same time period, and sent money to both OmniView and Cane. OmniView also sent money to Cane. Cane sent money to Cubed, Company A and Company B. It is necessary for these transactions to be presented and discussed, otherwise the jury will not understand either the wiretap calls or the flow of money reflected in the relevant bank records.

Furthermore, the apparent success of Discala's prior effort to take other companies public, as illustrated to how their stock performed, was relevant to Discala's and Cane's ability to convince Company A to move forward with a transaction with them. To assist in those efforts, a Company A insider, who wanted Discala to raise money for Company A, was intercepted on the wiretap agreeing to purchase Cubed stock at Discala's direction. Trading data shows that this individual, in fact, purchased Cubed stock as asked.

Ultimately, discussions regarding the intended manipulation of the stock of Company A by the same co-conspirators at the same time that they were manipulating the stock of Cubed are relevant and admissible as direct evidence of the charged crime because these discussions arose out of the same transaction or series of transactions as the charged offense and is necessary to complete the story of the crime on trial. See United States v. Carboni, 204 F.3d 39, 44 (2d Cir. 2000). The conversations regarding the "escrow" with respect to both Company A and Company B are relevant and admissible as direct evidence because they help explain what the "escrow" was intended to do, i.e., to control stock.

In fact, while Cane opposes the admission of evidence of this type by the government, Cane Br. at 6-10, in her motion in limine, Cane takes the opposite position, and seeks to admit a conversation between Discala and the CEO of Company A about the "escrow" to show that it was proper.[2] Cane MOL at 7. Cane's defense appears to be that the stock "escrow" was not intended to manipulate the stock price, but instead was a legal way to "protect" the stock price from "aggressive shorting of Cubed shares." Id. In this context, the fact that Discala offered to pay secret compensation (the kickback) to Company A's CEO who was made aware that Cane and Discala wanted to lock up free-trading stock in an escrow arrangement, shows that the "escrow" was not a legal means to a legitimate end, and the parties involved understood that. Alternatively, the evidence regarding Company A and Company B is admissible pursuant to Rule 404(b) to help explain and provide context for the intercepted conversations, and clarify that certain conversations between the co-conspirators about raising investor funds and the stock "escrow" were not, in fact, always about only Cubed but also involved discussions about Company A and Company B. Certain events, intercepted recordings

[2] The government will address the Cane MOL separately, but notes that while the government is permitted to admit co-conspirator statements and admissions by the defendants under the Rules of Evidence, the defendants are not permitted to do so.

and the co-conspirators' bank records will not make sense to the jury unless they understand that Cane, Discala and others were raising money for multiple deals at the same time with the same people, not all of which were charged in the Superseding Indictment.

C. Trading by Cane Through Nominee Accounts

The government will prove at trial that Cane exerted control over the price of Cubed's stock by holding all unrestricted Cubed shares and selling a portion of those shares through an account held in the name of a nominee ("Nominee 1") at a broker-dealer in California ("BD Firm 3"). The government seeks to introduce evidence that all the trades and transactions executed in Nominee 1's account at BD Firm 3 were at Cane's direction, and evidence that stock held in Nominee 1's account includes the stock of companies that previously retained Cane as counsel, including Regenicin. Cane does not appear to object to the admission of this evidence. Cane Br. at 1.

D. Cane's Prior Manipulative Trading Activity

1. Evidence Regarding Cane's Cubed Trading

The government will prove at trial that Cane played an active role in controlling Cubed's stock price through coordinating the sales of Cubed stock from Nominee 1's account at BD Firm 3 using Broker 3 with purchases by Discala and others. See S-1 Ind. ¶ 41 (describing calls between Cane and Discala regarding moving the price of Cubed back down after they briefly lost control of the price). Cane worked on Cubed's press releases, dealt with stock promoters and found investors to put "interim money" into Cubed. See S-1 Ind. ¶ 53(j)(l). Cane appears to concede that she directed the trading of Cubed in Nominee 1's account at BD Firm 3 (Cane Br. at 12), but denies that there was anything illegal about how she conducted the trading or the purpose of the account.

Only 267,000 shares of unrestricted Cubed stock were held in Nominee 1's name and then deposited into Nominee 1's account, and those were the only unrestricted Cubed shares available to the market prior to July 2014 despite there being more than 7 million additional free-trading shares held in Cane's control. Prior to her arrest in July 2014, Cane had sold more than 100,000 of the Cubed shares from Nominee 1's account, generating approximately $584,000 in proceeds. The evidence will also show that, in June 2014, Cane also took the initial steps to deposit 267,000 shares of unrestricted Cubed stock into an account held in the name of Oxbridge Technology Partners, Inc., with an address in Belize City, Belize. The evidence also will show that, in or about June 2014, Cane contacted an individual (the "Legacy Broker") via text message to discuss depositing 270,000 shares of Cubed with him, with two more tranches to come.

All of the above indisputably is direct evidence of the charged crime, to which Cane has raised no objection.

2. <u>The Skype Texts from 2012 and 2013</u>

As part of its proof, the government seeks to introduce at trial additional text messages between Cane and the Legacy Broker and Broker 3, as well as others, dated between 2012 and 2013, which were seized from Cane's cell phone. These prior text messages show that Cane communicated with the Legacy Broker and Broker 3 to execute trades on behalf of others, including trades of the stock of Crown Alliance Capital Ltd. ("CACL"), which traded under ticker symbol CACL. Govt. Motion at 14-20. According to the seized text messages, Cane delivered trading instructions to the Legacy Broker and Broker 3 regarding stock held in a number of accounts, including an account with the Legacy Broker referred to as the "Oxbridge" account. The Skype texts show that, at times, individuals asked Cane to have Broker 3 "support" the stock, and Cane delivered trading instructions to Broker 3 and the Legacy Broker.

The nature of the text messages are described at length in the Govt. Motion. Id. Cane objects to the admission of these texts, which she claims are irrelevant propensity evidence and unduly prejudicial. Cane Br. at 11-17. The government's position, as described below, is that these texts are admissible as direct evidence to show that Cane's communications with Broker 3 and the Legacy Broker were for the purpose of executing coordinated trading in accounts not held in her name on behalf of others, and not some other purpose. In the alternative, pursuant to Rule 404(b), these text are admissible as proof of Cane's intent, knowledge and that there was a lack of mistake with respect to the government's proof that Cane assisted in the coordinated effort to manipulate the price of Cubed stock.

Cane concedes that "It is true Cane gave trading instructions to the broker at BD 3 in both [Cubed and CACL], gave instructions to a broker at Legacy in the case of CACL, and later considered whether to open an account at Legacy in connection with the Cubed transaction," (Cane Br. at 12-13), but nonetheless argues that argues that the "trading activity described by the government [with respect to CACL] bears relatively little relation to the trading activity in the present case." Id. The government disagrees. The government has charged Cane with participating in a stock manipulation scheme that involved, among other things, coordinated trading by the co-conspirators to raise both the price of the stock and the volume of stock traded to make it appear to the market that more demand existed for the stock than was true. This is what Cane did with respect to both Cubed and CACL. Cane's prior interactions with the Legacy Broker and Broker 3 in 2012 and 2013 show that when third parties gave Cane trading instructions, she both understood and executed them. Cane gave directions to the brokers over trading accounts she controlled, and she, in fact, executed manipulative trading at the direction of others. This is not propensity evidence, but shows that Cane acted purposely and understood exactly what Discala and others were trying to accomplish with Cubed.

Cane also argues that the text messages seized from her phone are not evidence of "manipulative" trading, noting that no one has been charged with a crime with respect to CACL. Cane Br. 11. Cane's texts speak for themselves. Cane can argue to the jury what that texts mean, but she is explicitly directed to "support" the price of stock, and does so by directing multiple brokers to bid on and sell the same stock on the same day at set prices. For example, on June 20, 2013, a CACL insider messaged Cane: "Hi, I… just want to make sure [BD Firm 3] [Broker 3] isn't going to continue to give us heart attacks and push the price down - can you pls speak with him if you haven't yet?" Cane responded: "I did." On June 24, 2013, TP 1 messaged Cane: "Sell 20k: cacl between .74 and .77. If possible move support up to .70 from .67." Approximately 30 minutes later, Cane forwarded that message to Broker 3, and then responded to TP 1: "Done. Let me know if not implemented." On July 10, 2013, Cane exchanged emails with a CACL insider about the issuance of a press release before 8 a.m. Shortly thereafter, Cane instructed Broker 3: "for CACL, please sell unheld 100k above .72, let it run if it goes up." Approximately five minutes later, Cane instructed the Legacy Broker: "on CACL please place buy order at .71 for up to 2500 shares use [account] s10810." Later that same day, Cane messaged the Legacy Broker to sell a different stock from a different account. Cane then instructed the Legacy Broker: "Let's put 25k of CACL up from [account] 10780 at .77 or above. For sale that is. Make it .78." Later that same day, a CACL insider and Cane exchanged messages about the "promo" in CACL still going out, "vol good price up," "already our second best day!"

The purpose of the texts that Cane exchanged with the Legacy Broker about Cubed in 2014 only make sense within the context of Cane's prior dealing with the Legacy Broker. Cane took steps to deposit additional stocks of Cubed into the name of Oxbridge Technology Partners. The earlier texts seized from Cane's cell phone show she exercised control over a number of off-shore trading accounts, including one in the name of "Oxbridge." On July 16, 2013, Cane received the following two messages from the Legacy Broker: "cacl buy yest goes into which acct? … Oxbridge?" Cane replied: "North Star." On July 18, 2013, Cane messaged the Legacy Broker: "morning, lets put in a buy order for 5000 shares of CACL at .71" The Legacy Broker replied: "Which account?" Cane responded: ". . . lets buy out of Oxbridge today." On August 6, 2013, Cane texted the Legacy Broker: "[M___] is selling CACL and SNPD only out of OX and Northstar. He can buy or sell anything out of Trilogy." On October 3, 2013, Cane messaged the Legacy Broker: "can you buy 1k shares of CACL at the ask from Oxbridge acct." On October 22, 2013, Cane received the following message from Legacy Broker: "CACL halted."

As noted above, the government will prove at trial that, in addition to selling Cubed stock through the Nominee 1 Account at BD Firm 3, Cane planned to sell additional unrestricted Cubed stock that she controlled, some held in the name of Oxbridge Technology Partners. The seized text messages show that Cane intended to use the Legacy Broker to facilitate the next set of Cubed trades. The text messages from 2012 and 2013 between Cane and the Legacy Broker and between Cane and Broker 3 at BD Firm 3 are relevant evidence to show that once stock was deposited with those brokers, Cane actively conspired with others to coordinate manipulative stock trading. Cane's text messages undercut any argument that Discala was lying or engaging in puffery when he told co-conspirators that Cane was central to the scheme, and she could and would control the Cubed stock price.

E. The Halcyon Broker

The government expects to call as a trial witness a former Halcyon broker ("Halcyon Broker 1") who was directly involved in the charged stock fraud scheme. As set forth in more detail in the Govt. Motion, Halcyon Broker 1 is expected to testify about how she met certain co-conspirators and the circumstances under which Morris hired her to work at Halcyon. Govt. Motion at 20-22. Halcyon Broker 1 participated in the charged securities fraud scheme and is expected to provide inculpatory testimony relating to the charged schemes.

Discala argues that evidence as to the way Halcyon Broker 1 met Morris and Josephberg and came to be hired to work at Halcyon should be excluded as irrelevant and highly prejudicial. Discala Br. at 12-13. To date, Morris has not responded to this argument.[3] The government submits that information regarding how Halycon Broker 1 became involved in the charged scheme is relevant background information and provides context for certain statements made to her by Morris and Josephberg. It also helps explain why Halycon Broker 1 took certain steps at Halcyon and followed Josephberg when he left Halcyon for another broker-dealer. Furthermore, this background information does not prejudice Discala as it has nothing to do with him other than that Halycon Broker 1 participated in executing the stock manipulation scheme.

F. Morris's and Josephberg's History as Registered Brokers

The government seeks to introduce into evidence at trial the Central Registration Depository ("CRD") reports maintained by FINRA for Josephberg and Morris which reflect their

[3] The government inquired with Morris's former counsel Maranda Fritz as to whether she filed a response to this argument separate from the Morris Br. She indicated that she had not.

licenses and disciplinary history. Govt. Motion at 22-26. There are a number of "Disclosure Events" listed on the CRD reports and available to the public through FINRA's BrokerCheck website. Josephberg has not responded to the motion. Morris objects to the admission of the CRDs, and claims that the information regarding Josephberg's and his own disciplinary history is irrelevant propensity evidence. Morris Br. at 2.

1. Josephberg's Pre-Halcyon History

Morris hired Josephberg to work at Halcyon, a broker dealer that Morris opened with another individual in or around 2010. Josephberg's disciplinary history was reviewed by Morris prior to hiring Jospephberg. 2/27/25 Morris SEC Tr. at 33. The evidence will also show that, because of this prior history, Josephberg was placed on "heightened supervision" at Halcyon, with Morris as his direct supervisor. Among other things, Morris was well aware that Josephberg was not a licensed broker in many states, and Morris became aware that Josephberg flouted those rules by working with other Halcyon brokers. Josephberg's CRD report also reflects a number of prior customer disputes for unauthorized trading in customer accounts. The CRD report also reflects the Internal Revenue Service ("IRS") filed two tax liens against Josephberg, one for $204,455 in July 2009 and another for $109,936 in August 2011.

The information contained on Josephberg's CRD, known to Morris when Josephberg was hired, shows that Morris was well aware that Josephberg was a broker who had problems with money and a prior history of engaging in unauthorized trading in customer accounts. Nevertheless, while being supervised by Morris, Josephberg stuffed client accounts with unauthorized CodeSmart trades, and sold Halcyon clients CodeSmart shares at inflated prices. While Josephberg was selling CodeSmart to Halcyon's clients, which Morris knew because he reviewed Halcyon's trade blotter regularly, both Morris and Josephberg sold the CodeSmart stock they had received at a discount in a deal arranged by Discala. Morris, as

Halcyon's owner, was also aware that Discala and a number of Discala's associates opened accounts at Halcyon to deposit and trade their CodeSmart stock. Nevertheless, Morris claims that he was unaware that Discala and Josephberg were engaged in a conspiracy to manipulate the CodeSmart stock, at the same time that he profited from that scheme. What Morris knew about Josephberg and his history prior to these events is highly relevant and probative evidence of Morris's awareness of Josephberg's actions at Halcyon and Morris's knowing participation in the CodeSmart stock fraud. There can be no propensity argument raised by Morris with respect to Josephberg's history.

2. Morris's Disciplinary History

Morris's disciplinary history, including his failure to supervise rogue Halcyon brokers despite his regulatory obligation to do so, as outlined in the government's motion, are highly relevant and inextricably intertwined to the charged scheme. Govt. Motion at 23-25. The evidence will show that Morris not only failed to prevent Josephberg from engaging in a scheme to stuff CodeSmart stock into Halcyon customer's accounts or other relevant acts, but also that Morris directly participated with Josephberg in both the Cell Therapeutics fraudulent transaction in May 2012 and the CodeSmart stock manipulation scheme in May 2013 through September of 2013.

The evidence will show that Morris actually knew what Josephberg and Halcyon Broker 1 were doing with CodeSmart stock trades, or that he consciously avoided knowing, while he profited from their wrongdoing. Morris's and Josephberg's prior disciplinary history, and Morris's own prior documented supervisory failures, are all relevant to Morris's knowledge and intent of the charged scheme and lack of mistake.

G. Discala's Gambling

The government has previously noted that a participant in the Cubed stock manipulation scheme is expected to testify that the participant had a falling out with Discala over a $6,500 gambling debt that Discala refused to pay. Discala and this witness participated in a number of intercepted telephone calls during May and June 2014, and it appeared, for a period of time, that they had a close relationship. However, this witness is expected to testify that he began to step back from Discala during the course of the conspiracy, for a number of reasons, including Discala's actions with respect to this debt. This relatively minor gambling debt is not unduly prejudicial in light of the seriousness of the charged conspiracy, yet is relevant because it explains, in part, a break down in the relationship between co-conspirators during the course of the conspiracy.

* * * *

The evidence of uncharged crimes and misconduct described above should be admitted as direct evidence appropriately admitted in the case-in-chief, or, in the alternative, the evidence should be admitted pursuant to Rule 404(b). Much of the evidence goes directly to proving that the defendants acted with the requisite criminal intent or provides necessary context and background information for the charged conspiracy. See United States v. Brand, 467 F.3d 179, 197 (2d Cir. 2006) ("We have long acknowledged that 'prior act evidence is generally admissible to prove that the defendant acted with the state of mind necessary to commit the offense charged.'"); see also United States v. Fasciana, 226 F. Supp. 445, 455 (S.D.N.Y. 2002) (admitting evidence of other acts of fraud in mail and wire fraud case noting that "defendant does not contest that [intent, knowledge, and absence of mistake] are disputed in this case."). Such evidence is particularly relevant where the defendant has offered a "good faith" defense to the charges. See United States v. Reddeck, 22 F.3d 1504, 1509 (10th Cir. 1994) (prior indictment for mail fraud that was similar to charged scheme was admissible pursuant to Rule 404(b) as relevant to "absence of mistake, and as rebuttal of defendant's good faith defense").

In addition to satisfying the requirements of Fed. R. Evid. 404(b), this evidence is admissible because its probative value is not "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence" under Federal Rule of Evidence 403. Fed. R. Evid. 403 (emphasis added). The evidence has substantial probative value, as noted above, and would not tend to unfairly prejudice the defendants in the eyes of the jury. Testimony that the trial defendants engaged in additional acts of securities fraud, gambling, and testimony about how Halcyon Broker 1 came to work at Halcyon are no more inflammatory than the substantial evidence that the defendants each took part in the securities fraud offenses charged in the Superseding Indictment.

CONCLUSION

For the reasons stated herein, the government respectfully submits that the other acts evidence described herein should be admitted as direct evidence of the charged crimes, or, in the alternative, under Rule 404(b).

Dated: Brooklyn, New York
January 5, 2018

Respectfully submitted,

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