

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Matthew David Rubin (CRD No. 4869755),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033832501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between March 2, 2012 and June 13, 2012 (the "Relevant Period"), while registered as a General Securities Representative ("GSR") through his association with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill" or the "Firm"), Respondent Matthew David Rubin ("Rubin") engaged in a pattern of deceit by initiating 12 Automated Clearinghouse ("ACH") requests for electronic funds transfers from his personal banking account to his Merrill brokerage account, totaling approximately \$17.895 million, even though he knew or reasonably should have known that he had insufficient funds to cover those requests. Rubin's unethical conduct violated FINRA Rule 2010.
2. In addition, through the use of these unfunded requests for electronic funds transfers, Rubin improperly appeared to meet margin calls totaling at least \$3.8 million and also

the costs of his securities transactions. Rubin's unfunded requests artificially inflated values in his brokerage account during the Relevant Period, contributing to his ability to effect securities transactions with a total principal value of nearly \$88 million and to realize approximately \$33,000 in trading gains. Through these unfunded ACH Requests, Rubin therefore willfully caused the Firm to extend credit to him in contravention of Regulation T of the Board of Governors of the Federal Reserve System (the "Board"). Because Rubin had insufficient funds to cover those requests for electronic funds transfer, Rubin made a practice of meeting margin calls resulting from his securities transactions by liquidating the same securities or other commitments in his brokerage account. The failure of those funding requests also caused Rubin to engage in "free-riding," as he made a practice of effecting transactions where the cost of securities purchased was met by the sale of the same securities. As a result, Rubin willfully violated Section 7(f) of the Securities Exchange Act of 1934 (the "Exchange Act") and Regulation X promulgated by the Board pursuant to Section 7 of the Exchange Act, and Rubin violated FINRA Rules 4210(f)(7) and (f)(9), and 2010.

RESPONDENT AND JURISDICTION

3. Rubin first became registered with FINRA in October 2004. On April 3, 2008, Rubin became registered as a GSR through his association with Merrill. On August 28, 2012, Merrill filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Rubin, terminating his association with the Firm. Between October 2012 and December 2012, Rubin was registered through another member firm. On December 19, 2013, Rubin became registered as a GSR through

his association with another FINRA member. On January 2, 2015, that member filed a Form U5 for Rubin, terminating his association with it.

4. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with a FINRA member, namely, January 2, 2015; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

(Unethical Conduct in Violation of FINRA Rule 2010)

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. From at least March through June 2012, Rubin maintained a brokerage account at Merrill (the "Merrill Account"), for which he was the broker of record. During the Relevant Period, Rubin actively traded securities in his Merrill Account, effecting nearly \$43.9 million in total purchases and over \$43.9 million in total sales. Rubin realized approximately \$33,000 in trading gains from his securities transactions during the Relevant Period.
7. From at least March through June 2012, Rubin maintained a personal bank account at another financial institution (the "Bank Account").

8. During the Relevant Period, Rubin initiated 12 ACH requests for electronic funds transfers from his Bank Account to his Merrill Account (the “ACH Requests”).

Those 12 ACH Requests totaled approximately \$17.895 million.

9. Those 12 ACH Requests were as follows:

Date Rubin Initiated the ACH Request	ACH Request Amount	Date When the ACH Was Credited	Date When the ACH Failed
3/8/2012	\$20,000	3/9/2012	3/20/2012
3/20/2012	\$750,000	3/21/2012	3/29/2012
4/12/2012	\$500,000	4/13/2012	4/23/2012
4/20/2012	\$150,000	4/23/2012	5/2/2012
5/3/2012	\$650,000	5/7/2012	5/16/2012
5/4/2012	\$450,000	5/7/2012	5/16/2012
5/7/2012	\$750,000	5/8/2012	5/16/2012
5/8/2012	\$6,000,000	5/10/2012	5/18/2012
5/9/2012	\$5,000,000	5/10/2012	5/18/2012
5/16/2012	\$2,500,000	5/17/2012	5/25/2012
5/16/2012	\$1,000,000	5/18/2012	5/30/2012
6/1/2012	\$125,000	6/4/2012	6/13/2012

10. When Rubin initiated the \$20,000 ACH Request he should have known that his Bank Account did not have sufficient funds to cover the amount of that ACH Request and when he initiated the next 11 ACH Requests, which totaled \$17.875 million, he knew that his Bank Account did not have sufficient funds to cover the amounts of those 11 ACH Requests.

- a. In March 2012, Rubin’s Bank Account reflected balances between a high of approximately \$17,306 and a low of approximately -\$11.
- b. In April 2012, Rubin’s Bank Account reflected balances between a high of approximately \$24,801 and a low of approximately \$33.

- c. In May 2012, Rubin's Bank Account reflected balances between a high of approximately \$9,687 and a low of approximately \$26.
 - d. In June 2012, Rubin's Bank Account reflected balances between a high of approximately \$7,590 and a low of approximately \$1.
11. Although Rubin's Bank Account had insufficient funds to cover any of the 12 ACH Requests, the amounts of those requests were credited to Rubin's Merrill Account for periods – often more than a week – before his lack of sufficient funds caused those amounts to appear to be debited from his Merrill Account.
12. As a result, the 12 ACH Requests initiated by Rubin created the false impression that his Merrill Account and his securities trading activities therein were funded by significantly greater amounts than they actually were.
13. By reason of the foregoing, Rubin failed to observe high standards of commercial honor and just and equitable principles of trade, and therefore violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

**(Failure To Meet Margin Calls and Free-Riding in
Willful Violation of Section 7(f) of the Exchange Act and Regulation X,
and in Violation of FINRA Rules 4210(f)(7) and (f)(9), and 2010)**

14. The Department realleges and incorporates by reference paragraphs 1 through 13 above.
15. Section 7(c) of the Securities Exchange Act of 1934 (the "Exchange Act") makes it unlawful for a firm to extend or maintain credit for a customer, except in compliance with certain regulations.

16. Section 7(f) of the Exchange Act makes it unlawful for any United States person to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender for the purpose of purchasing or carrying United States securities, except in compliance with certain regulations.
17. Regulation T, as promulgated by the Board pursuant to Section 7 of the Exchange Act, imposes restrictions on the ability of a broker-dealer to extend credit for the purpose of purchasing, carrying, or trading in securities. Section 220.2 of Regulation T defines “margin call” as “a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.” Regulation T defines “margin deficiency” as “the amount by which the required margin exceeds the equity in the margin account.”
18. Regulation X, as promulgated by the Board pursuant to Section 7 of the Exchange Act, provides, in relevant part, that any borrower who willfully causes credit to be extended in contravention of Regulation T must conform the credit to the margin regulation that applies to the lender.
19. FINRA Rule 4210(f)(7) provides, in relevant part, that “[w]hen a ‘margin call,’ as defined in Section 220.2 of Regulation T, is required in a customer’s account, no member shall permit a customer to make a practice of . . . meeting the margin required by the liquidation of the same or other commitments in the account.”
20. FINRA Rule 4210(f)(9) provides, in relevant part, that “[n]o member shall permit a customer . . . to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities.”

**Rubin's Practice of Meeting Margin Calls by Liquidating
the Same or Other Commitments in His Merrill Account**

21. In or about the periods March 19-20, 2012 and May 8-9, 2012, Rubin made a practice of meeting margin calls to which he was subject by liquidating the same or other commitments in his Merrill Account.
22. During the Relevant Period, Rubin effected nearly 2,000 securities transactions with a total principal value of nearly \$88 million in his Merrill Account.
23. During the Relevant Period Rubin engaged in offsetting, short-term transactions in his Merrill Account, by buying and selling the same securities on the same or surrounding trading days. For instance, on a single day, May 8, 2012, Rubin bought shares of Alpha Natural Resources stock ("ANR") totaling over \$10.68 million in principal value and sold shares of ANR totaling approximately \$10.52 million.
24. Rubin's securities transactions occasionally caused his Merrill Account to become subject to Regulation T Calls when the total available funds and marginable securities in it fell below the requirements set forth in Regulation T, thereby requiring Rubin to deposit additional cash or securities in his Merrill Account.
25. During the Relevant Period, Rubin initiated ACH Requests in response to the following Regulation T Calls issued to him.
 - a. On or about March 19, 2012, the Firm issued a Regulation T Call to Rubin for \$734,761 relating to securities transactions in his Merrill Account. Despite having a Bank Account balance of only approximately \$686 on March 20, 2012, Rubin initiated an ACH Request on that date for \$750,000. This

unfunded ACH Request, which failed by March 29, 2012, created the appearance that Rubin had met the Regulation T Call.

- b. At the end of the day on or about May 8, 2012, Rubin was subject to a Regulation T Call for approximately \$3,121,123, relating to securities transactions in his Merrill Account. Despite having a Bank Account balance that ranged between a high of only approximately \$2,721 on May 8, 2012 and a low of approximately \$2,421 on May 9, 2012, Rubin initiated an ACH Request for \$6,000,000 on May 8, 2012 and an ACH Request for \$5,000,000 on May 9, 2012. Rubin initiated the \$6,000,000 ACH Request to prevent the Firm from issuing a margin call to him. These unfunded ACH Requests, which failed by May 18, 2012, created the appearance that no margin call was necessary and the Firm did not issue the \$3,121,123 Regulation T Call to Rubin.

26. During the Relevant Period, Rubin also initiated one other ACH Request to prevent the Firm's issuance of a margin call to him. On or about May 16, 2012, despite having a Bank Account balance of only approximately \$1,221, Rubin initiated an ACH Request for \$2,500,000. Rubin initiated this unfunded ACH Request, which failed by May 25, 2012, in an effort to prevent the Firm from issuing a margin call to him in connection with securities transactions in his Merrill Account.

27. During the Relevant Period, the unfunded ACH Requests initiated by Rubin also artificially enhanced Rubin's margin buying power in his Merrill Account, in the form of his Margin Equity, which enabled Rubin to effect securities transactions without triggering margin calls. For instance, Rubin's Margin Equity increased from

approximately \$307,592 on March 20, 2012 to approximately \$932,278 by the end of the day on March 21, 2012 – the date when his unfunded \$750,000 ACH Request was credited. Likewise, Rubin’s Margin Equity increased from approximately \$276,595 on April 12, 2012 to approximately \$760,148 the next day – the date when Rubin’s unfunded \$500,000 ACH Request was credited to his Merrill Account. And, Rubin’s Margin Equity peaked at approximately \$27,678,139 on May 10, 2012, the date when Rubin’s five unfunded ACH Requests totaling \$12,850,000 had been credited to his Merrill Account.

28. By using unfunded ACH Requests to appear to meet margin calls or to cause the Firm not to issue additional margin calls, Rubin was able to close the positions in his Merrill Account that resulted in such margin calls through offsetting transactions.
29. Rubin obtained credit from the Firm to purchase or carry securities when the Firm credited the amounts of his ACH Requests to his Merrill Account.
30. But the ACH Requests initiated by Rubin during the Relevant Period failed for lack of funding and Rubin knew, or should have known, that each ACH Request would fail for lack of funding.
31. As a result, Rubin willfully caused credit to be extended to him by the Firm, to purchase or carry securities in his Merrill Account, in contravention of Regulation T, and Rubin did not conform that credit to the margin regulation that applies to the Firm.
32. Because the ACH Requests were not funded, Rubin did not meet or prevent margin calls with the deposit of additional cash or securities in his Merrill Account. Instead,

Rubin engaged in a practice of meeting or preventing margin calls in his Merrill Account by impermissibly liquidating either the same commitments that resulted in those margin calls or other commitments in his Merrill Account.

33. By reason of the foregoing, Rubin willfully violated Section 7(f) of the Exchange Act and Regulation X, promulgated pursuant to Section 7 of the Exchange Act, and Rubin violated FINRA Rules 4210(f)(7) and 2010.

Rubin's Practice of Engaging in Free-Riding

34. In or about the periods March 20-29, 2012 and May 7-18, 2012, Rubin made a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased was met by the sale of the same securities in his Merrill Account.
35. During the Relevant Period, Rubin effected securities transactions on both the cash and margin sides of his Merrill Account.
36. During the Relevant Period, Rubin sold securities in a type of short sale – i.e., transactions in which he did not own the underlying security – on the cash side of his Merrill Account. Because Rubin did not mark the sales as short sales, Merrill's systems classified those sales as "Sales Not Long." Sales Not Long are short sales where the customer owns the securities sold short outside of the Firm. As such, Rubin's Sales Not Long were short positions on the underlying security, which generated proceeds credited to the cash side of his Merrill Account. But, during the Relevant Period, Rubin did not own all of the securities that were subject to his Sales Not Long. Thus, around the same time that he effected these Sales Not Long, Rubin

also effected corresponding margin purchases of those same securities. Those corresponding margin purchases were long positions, which resulted in debit balances on the margin side of Rubin's Merrill Account.

37. Because the Sales Not Long caused Rubin's short positions to be on the cash side of his Merrill Account and his long positions on those same securities to be on the margin side, the Firm's systems did not match the trades as would have occurred if Rubin had marked his sales as short sales. If Rubin had correctly marked his sales as short sales, instead of as Sales Not Long, his otherwise corresponding transactions would have subjected him to potential day-trading calls.

38. For instance, on two consecutive trading days, March 2, 2012 and March 5, 2012, Rubin effected, among other things, a series of corresponding short-term transactions involving a total of 34,084 shares of Sears Holdings Corp. stock ("SHLD"). At one point on March 5, 2012, Rubin was short a total of 22,000 shares of SHLD, with a total principal value of approximately \$1.66 million. Although Rubin did not own SHLD, he did not mark his SHLD sales as Short Sales, so the Firm's systems classified his sales as Sales Not Long. Before the end of the trading day on March 5, 2012, Rubin purchased SHLD shares on margin to cover his sales of securities that he otherwise did not own. If Rubin had marked his SHLD sales as Short Sales, he would have been subject to a day-trading call on March 5, 2012 of approximately \$314,496. By doing cash sales of securities he did not own and margin purchases of those same securities, Rubin avoided a day-trading call and the need to fund his Merrill Account with additional cash or securities.

39. In connection with short-term purchases and sales of the same securities, Rubin initiated ACH Requests during the Relevant Period. Although all of Rubin's 12 ACH Requests were unfunded, the ACH Requests created the appearance that Rubin was depositing funds in his Merrill Account. Rubin thereby obtained credit from the Firm to purchase or carry securities when the Firm credited the amounts of his ACH Requests to his Merrill Account. The appearance of funding his securities transactions and the resulting extensions of credit caused the Firm to pair Rubin's short positions on the cash side of his Merrill Account – the cash proceeds from his sales of securities – with his corresponding long positions on the margin side – the margin purchases of those same securities – thus closing out Rubin's short positions and creating free credit balances, i.e., funds available for Rubin's use until the ACH Requests failed.
40. But Rubin knew, or should have known, that each ACH Request would fail for lack of funding. The failure of the ACH Requests meant that Rubin did not fund all of his securities transactions. Rubin therefore willfully caused credit to be extended to him in contravention of Regulation T, and Rubin did not conform that credit to the margin regulation that applies to the Firm. That credit should not have been extended to Rubin to purchase or carry securities in his Merrill Account. As a result, Rubin effected transactions on the cash side of his Merrill Account where the cost of securities purchased was met by the sale of the same securities. Thus, Rubin engaged in free-riding.
41. For instance, by the end of the day on March 20, 2012, Rubin had effected both Sales Not Long on the cash side of his Merrill Account as well as certain corresponding

margin purchases. As a result of those margin purchases, Rubin's Margin Equity fell below the minimum equity maintenance requirements for the securities he held on margin. Rubin's Merrill Account was thus subject to a "House Call," requiring him to deposit additional cash or securities to meet the House Call. On March 20, 2012, Rubin initiated an unfunded ACH Request for \$750,000, which was credited to his Merrill Account by March 21, 2012. Despite its failure for lack of funding by March 29, 2012, the \$750,000 ACH Request reduced Rubin's House Call and caused the Firm to extend credit to him and to pair Rubin's short positions on the cash side (his Sales Not Long) with his corresponding long positions on the margin side, thus closing those paired short positions.

42. Because the \$750,000 ACH Request failed for lack of funding, Rubin did not satisfy this House Call by depositing additional cash or securities in his Merrill Account. Thus, when this unfunded ACH Request caused the Firm to extend credit to him and to pair Rubin's short positions on the cash side of his Merrill Account with his corresponding long positions on the same securities on margin, that credit was extended in contravention of Regulation T, and Rubin did not conform that credit to the margin regulation that applies to the Firm. As a result, the cost of securities purchased by Rubin was met, in whole or in part, not by the unfunded ACH Request or the Firm's extension of credit in contravention of Regulation T, but by proceeds from the sale of those same securities on the cash side of his Merrill Account. Rubin therefore engaged in free-riding in or about the period March 20-29, 2012.

43. Then, between May 7, 2012 and May 9, 2012, Rubin engaged in similar activities, though on a larger scale. Rubin's sale transactions ("Total Sales") resulted in credit

cash settled and unsettled balances (“Cash Balances”) on the cash side of his Merrill Account and his purchase transactions (“Total Purchases”) resulted in debit margin settled and unsettled balances (“Margin Balances”). Those securities transactions caused Rubin to be subject to House Calls and, on May 8, 2012, to a Regulation T Call for \$3,121,123:

Date	Total Sales	Cash Balances	Total Purchases	Margin Balances	House Call
5/7/12	\$1,890,141	\$1,153,498	-\$1,966,070	-\$878,822	-\$150,559
5/8/12	\$10,520,031	\$11,673,507	-\$10,682,103	-\$10,810,902	-\$10,110,315
5/9/12	\$3,114,383	\$3,080,412	-\$2,124,436	-\$1,226,532	-\$512,619

44. Between May 3, 2012 and May 10, 2012, Rubin initiated five unfunded ACH

Requests, totaling \$12,850,000, and his Merrill Account was credited with amounts from those five ACH Requests. Despite that all five of these ACH Requests failed for lack of funding by May 18, 2012, the ACH Requests eliminated Rubin’s House Call and caused the Firm to extend credit to him and to pair Rubin’s short positions on the cash side (his Sales Not Long) with his corresponding long positions on the margin side, thus closing those paired short positions. As a result of the unfunded ACH Requests, by May 11, 2012, Rubin’s Merrill Account artificially reflected a net credit balance of cash and cash equivalents of approximately \$12,029,854, which amount was available for Rubin’s use until the ACH Requests failed, and a total funds value of approximately \$12,586,898.

45. Because all five of these ACH Requests, totaling \$12,850,000, failed for lack of funding, Rubin did not satisfy those House Calls in May 2012 by depositing additional cash or securities in his Merrill Account. Thus, when those unfunded ACH

Requests caused the Firm to extend credit to him and to pair Rubin's short positions on the cash side of his Merrill Account with his corresponding long positions on the same securities on margin, that credit was extended in contravention of Regulation T, and Rubin did not conform that credit to the margin regulation that applies to the Firm. As a result, the cost of securities purchased by Rubin was met, in whole or in part, not by the unfunded ACH Requests or the Firm's extension of credit in contravention of Regulation T, but by proceeds from the sale of those same securities on the cash side of his Merrill Account. Rubin therefore engaged in free-riding in or about the period May 7-18, 2012.

46. By reason of the foregoing, Rubin willfully violated Section 7(f) of the Exchange Act and Regulation X, promulgated pursuant to Section 7 of the Exchange Act, and Rubin violated FINRA Rules 4210(f)(9) and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent Matthew David Rubin willfully violated Section 7(f) of the Exchange Act and Regulation X, promulgated pursuant to Section 7 of the Exchange Act.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 14, 2015



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