

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Matthew David Rubin
Wayne, NJ,

Respondent.

DECISION

Complaint No. 2012033832501

Dated: October 3, 2018

Registered representative unethically financed his securities trading and violated the federal securities laws and FINRA rules concerning the extension of credit and margin requirements. Held, findings and sanction affirmed.

Appearances

For the Complainant: Andre T. Beirne, Esq., Megan P. Davis, Esq., Leo F. Orenstein, Esq., Michael J. Watling, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Matthew David Rubin (“Rubin”) appeals a December 14, 2016 Extended Hearing Panel (“Hearing Panel”) decision. The Hearing Panel found that Rubin unethically initiated unfunded electronic transfers of money from his bank account to his brokerage account to create the false appearance that his securities trading was financed by sums greater than he possessed, in violation of FINRA Rule 2010. The Hearing Panel further found that, through the aforementioned misconduct, Rubin willfully violated Section 7(f) of the Securities Exchange Act of 1934 (“Exchange Act”) and Regulation X, by willfully causing his firm to extend him credit in contravention of the margin requirements established under Regulation T, and violated as well FINRA Rules 4210(f)(7) and 2010. The Hearing Panel barred Rubin from associating in any capacity with any FINRA member for this misconduct.

After reviewing the entire record, we affirm the Hearing Panel’s findings and the sanction it imposed.

I. Background

Rubin entered the securities industry in 2004. He registered as a general securities representative of Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) on April 14, 2008. He resigned his position with that firm on August 21, 2012, while Merrill Lynch conducted an internal review of his activities for “conduct inconsistent with firm policy regarding personal brokerage accounts.” Rubin left the securities industry in January 2015.

II. Procedural History

This appeal concerns allegations of misconduct that FINRA’s Department of Enforcement (“Enforcement”) raised in an amended, two-cause complaint filed on August 30, 2016. The first cause of action alleged that Rubin violated FINRA Rule 2010 by making 12 requests, during a four-month period in 2012, to transfer electronically from his bank account to his brokerage account funds totaling approximately \$18 million, without having sufficient money in his bank account to cover the transfer requests, and thereby creating the impression that he funded his securities trading with money he did not have.¹ The second cause of action alleged that Rubin’s use of the unfunded transfer requests willfully violated Exchange Act Section 7(f) and Regulation X by willfully causing Merrill Lynch to extend him credit in violation of Regulation T, and violated FINRA Rules 4210(f)(7) and 2010 because he impermissibly liquidated securities in his brokerage account to meet the account’s margin requirements.

On August 30, 2016, Rubin filed an answer to the amended complaint in which he admitted liability for the misconduct Enforcement alleged in the complaint’s two causes of action. The Hearing Panel thereafter conducted a two-day hearing that focused on the issue of sanctions.

On December 14, 2016, the Hearing Panel issued its decision, which Rubin timely appealed. In his appeal, Rubin does not contest the Hearing Panel’s determination of liability. He instead requests that we reassess the Hearing Panel’s decision to bar him from the securities industry. For the reasons discussed below, we affirm the Hearing Panel’s findings and the sanction it imposed for Rubin’s misconduct.

III. Discussion

A. Facts

From March 2, 2012, to June 13, 2012, the relevant period, Rubin traded securities in his Merrill Lynch brokerage account actively. During this period, he engaged in nearly 2,000 securities transactions, largely through day trading, and he purchased and sold securities valued at nearly \$88 million, realizing approximately \$33,000 in trading profits.

¹ The conduct rules that we apply in this case are those that existed at the time of the conduct at issue.

Rubin sustained his securities trading largely by manipulating his use of requests for the electronic transfer of funds between accounts that he controlled. During the relevant period, Rubin initiated 12 such requests to transfer funds from his personal bank account, which was at a third-party financial institution, to his Merrill Lynch brokerage account, when Rubin did not have sufficient money in his bank account to cover those requests. Rubin knew that each of the requests, which totaled approximately \$18 million, would ultimately fail for lack of funding, but he exploited the fact that Merrill Lynch credited his brokerage account at the time he made each of the requests for the full amount of the funds he ostensibly transferred.

Using this delay—often more than a week—between the date on which Merrill Lynch credited funds to his brokerage account and the date the request was rejected for insufficient funds, Rubin falsely created the impression that his securities trading at Merrill Lynch was financed by sums of money significantly greater than he had. In doing so, he enhanced his ability to purchase securities, artificially increasing his margin equity and avoiding the need to deposit cash or securities to meet margin requirements in his Merrill Lynch brokerage account as he traded.² He also, in effect, made a practice of meeting margin requirements resulting from his securities trading by liquidating the same securities or other commitments in his brokerage account.

Rubin furthered his securities trading also by misleading Merrill Lynch about his sales of securities short.³ When using Merrill Lynch’s order management system to record these sales, Rubin falsely identified the sales as “sales not long,” indicating to Merrill Lynch that Rubin owned in accounts outside of Merrill Lynch the securities he sold short in his Merrill Lynch brokerage account.⁴

Rubin’s false identification of trades was not without consequence. A “short sale” is a margin transaction because the seller must purchase securities to cover the sale of securities he

² “Margin” is the equity customers must maintain to conduct securities trading in a margin account. *See FINRA Investor Alerts: Updated: Investing with Borrow Funds: No “Margin” for Error* (Jan. 18, 2018), <http://www.finra.org/investors/alerts/investing-borrowed-funds-no-margin-error>. Among other requirements, customers must deposit “initial margin”—generally 50 percent of the purchase price—before engaging in a transaction to purchase stock in a margin transaction. *See id.* If customers do not maintain sufficient equity in their account to cover their share of the purchase price of a security, they will receive a “margin call” to deposit additional cash or securities to meet the margin requirements for their securities trading. *See id.*

³ “Selling short” or a “short sale” involves the sale of a security not owned by the seller; the seller borrows stock for delivery at the time of the sale and then purchases the security in the market later to cover his sale. *See Selling Short*, Barron’s Dictionary of Finance and Investment Terms (9th ed. 2014).

⁴ A “sale not long” transaction was available to Rubin uniquely as a Merrill Lynch employee.

does not have.⁵ In contrast, Merrill Lynch treated a “sale not long” as a cash transaction that resulted in Rubin’s Merrill Lynch account being credited with the proceeds from the sale of securities he purported to own.

Rubin did not own securities to cover all of the sales that he identified as “sales not long.” By selling for cash securities he did not have, and purchasing those same securities later on margin, Rubin evaded the need to deposit additional cash or securities to meet margin requirements that would have applied if he had marked the sales correctly as short sales.⁶ Rubin bypassed Merrill Lynch’s systems and, using his unfunded transfer requests as a disguise, persuaded the firm’s margin department to pair short positions on the cash side of his account with long positions in the same securities in his margin account, thus closing out Rubin’s short positions with free credit balances that Rubin then used to support additional trading.

B. Rubin Violated FINRA Rule 2010

FINRA Rule 2010 is a broad and generalized ethical provision.⁷ It states that a broker-dealer, “in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”⁸ “[C]onduct that reflects negatively on an applicant’s ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade.”⁹ *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008).

⁵ As with buying stock on margin, short sellers must sell the securities in a margin account and are subject to margin requirements. *See Day-Trading Margin Requirements: Know the Rules*, <http://www.finra.org/investors/day-trading-margin-requirements-know-rules>.

⁶ If Rubin correctly marked his sales of securities as short sales, rather than sales not long, his sale and purchase of the same securities on the same day would have subjected him to additional day-trading margin requirements. *See id.*

⁷ Disciplinary proceedings under FINRA Rule 2010 are “ethical proceedings” and may arise even “where no legally cognizable wrong occurred.” *Timothy L. Burkes*, 51 S.E.C. 356, 359 (1993), *aff’d*, 29 F.3d 630 (9th Cir. 1994).

⁸ FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that “[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules.”

⁹ FINRA’s authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct, even if it does not involve a security. *See, e.g., Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (holding that a registered representative violated just and equitable principles of trade by misappropriating funds belonging to a political club for which he served as treasurer).

The Hearing Panel found, and Rubin admits, that his business-related conduct violated FINRA Rule 2010. On 12 occasions, over the course of four months, Rubin initiated requests to transfer money electronically from his bank account to his Merrill Lynch brokerage account to inflate artificially the equity in his brokerage account and leave Merrill Lynch with the false belief that he supported his securities trading with cash when in fact he had insufficient funds. These simple, undisputed facts establish plainly that Rubin acted unethically and failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010. *See, e.g., Kirk A. Knapp*, 51 S.E.C. 115, 127-28 (1992) (finding respondent acted inconsistently with high standards of commercial honor by writing several personal checks to pay for his securities trading when his bank account did not have sufficient funds to cover them); *David D. Esco, Jr.*, 46 S.E.C. 1205, 1206 (1978) (affirming NASD finding that broker who paid for his securities trading with checks that were not backed with sufficient funds “evidenced a pattern of fraud and deceit on his employers” that violated NASD rules of fair practice).

We affirm the Hearing Panel’s findings with respect to the complaint’s first cause of action.

C. Rubin Caused Merrill Lynch to Extend Him Credit in Willful Violation of the Federal Securities Laws, and in Violation Also of FINRA Rules

The federal securities laws prescribe rules and regulations with respect to the amount of credit that may be extended on any security. *See* 15 U.S.C. § 78g(a). It is unlawful, under Section 7(f) of the Exchange Act, for a person to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit to purchase a security unless the extension of credit otherwise complies with Section 7, and the rules and regulations promulgated thereunder. *See* 15 U.S.C. § 78g(f)(1). Those regulations include Regulation X, which prohibits a person from obtaining credit by willfully causing the extension of credit in contravention of the margin requirements of Regulation T. *See* 12 C.F.R. § 224.1.

The Hearing Panel found, and Rubin admits, that he willfully violated Exchange Act Section 7(f) and Regulation X.¹⁰ Regulation T generally mandates an initial margin requirement

¹⁰ Rubin does not dispute Enforcement’s allegation, or the Hearing Panel’s conclusion, that his conduct in this case was willful. The term “willful” means intentionally committing the act that constitutes the violation. *Mathis v. SEC*, 671 F.3d 210, 216-18 (2d Cir. 2012). There is no requirement that the actor be aware that he or she is violating a particular rule or regulation. *Id.*; *see also Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (holding that the term “willful” means that the person with the duty knows what he is doing, but does not require that one know that he is breaking the law). Pursuant to Sections 3(a)(39) and 15(b)(4)(D) of the Exchange Act, broker-dealers and individuals are, as is the case here, subject to disqualification from the securities industry for willful violations of the federal securities laws. 15 U.S.C. § 78c(a)(39); 15 U.S.C. § 78o(b)(4)(D).

equal to 50 percent of the current market value of a security.¹¹ *See id.* § 220.12(a). Regulation T also requires any call to eliminate or reduce any margin deficiency be satisfied by a deposit of cash or securities. *See id.* § 220.4. Rubin financed his securities trading with 12 requests to transfer funds electronically from his bank account to his brokerage account when he did not have sufficient funds in his bank account to cover each of the fund transfer requests. By appearing to pay for his securities purchases with money he did not have, and preventing or meeting margin calls without depositing any additional cash or securities in his brokerage account, Rubin willfully caused Merrill Lynch to extend him credit in contravention of Regulation T. *See John D. Audifferen*, Exchange Act Release No. 58230, 2008 SEC LEXIS 1740, at *28-29 (July 25, 2008) (“By purporting to pay for stock purchases in his account with insufficient funds, Audifferen caused [his broker-dealer] to extend credit in violation of . . . Regulation T . . .”).

The Hearing Panel found also, and Rubin likewise concedes, that his conduct caused him to violate FINRA 4210(f)(7) and FINRA Rule 2010.¹² FINRA Rule 4210(f)(7) provides, in relevant part, that when a “margin call,” as defined by 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.” Rubin did not meet margin calls by depositing cash or securities in his Merrill Lynch brokerage account. Rather, he engaged in the impermissible practice of meeting or preventing margin calls by liquidating either the same commitments that resulted in those margin calls or other commitments in his Merrill Lynch account.

We thus also affirm the Hearing Panel’s findings under the complaint’s second cause of action.

IV. Sanctions

The Hearing Panel imposed a unitary sanction, a bar from associating with any FINRA member in any capacity, for Rubin’s misconduct. We agree with its decision to impose a unitary sanction and affirm the bar it imposed.¹³

¹¹ The margin required for the short sale of a security is set generally at 150 percent of the current market value of the security. *See* 12 C.F.R. § 220.12(c).

¹² A violation of one FINRA rule is also a violation of FINRA Rule 2010. *See Dep’t of Enforcement v. Luo*, Complaint No. 2011026346206, 2017 FINRA Discip. LEXIS 4, at *20-21 (FINRA NAC Jan. 13, 2017).

¹³ The FINRA Sanction Guidelines (“Guidelines”) permit the aggregation or batching of similar violations for purposes of determining sanctions in disciplinary proceedings. *See FINRA Sanction Guidelines* 4 (2017) (General Principles Applicable to All Sanction Determinations, No. 4), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We conclude that Rubin’s misconduct, which results from the same underlying activity, warrants imposing a unitary sanction in this case. *See Dep’t of Mkt. Regulation v. Lane*,

We, like the Hearing Panel, consider two Guidelines that are relevant for the purpose of assessing sanctions for Rubin's misconduct. The first concerns the falsification of records and provides that a bar is standard when a respondent falsifies a document in furtherance of another violation, and his conduct is accompanied by significant aggravating factors.¹⁴ The second concerns violations of Regulation T and margin requirements and instructs us to consider, in egregious cases, a lengthy suspension of up to two years or a bar.¹⁵

We conclude that Rubin's misconduct was egregious and the two foregoing Guidelines, as well as the principal considerations specifically referenced in each of them and those that apply in all sanction determinations, warrant a bar in this case. Rubin effectively tricked Merrill Lynch into extending him millions of dollars of credit, in violation of the federal securities laws, so that he could engage in a large volume of securities trading in his Merrill Lynch brokerage account when he did not have the funds to support his trading activities. "[Section 7 of the Exchange Act and Regulation T] are integral parts of an over-all scheme designed to prevent dislocation of the economy by the excessive use of credit to finance securities transactions." *Billings Assoc., Inc.*, 43 S.E.C. 641, 650 (1967). We determine that Rubin has evidenced a disturbing lack of appreciation for the importance of these provisions and related FINRA rules. *See Audifferen*, 2008 SEC LEXIS 1740, at *48 ("Audifferen exhibits a fundamental lack of respect and understanding for an important element of the securities industry's regulatory apparatus . . ."); *see also Esco*, 46 S.E.C. at 1208 ("The misconduct that we and the NASD have found is of the utmost seriousness . . . [I]t clearly demonstrates that Esco should be excluded from further participation in the securities business.").

Several troubling, aggravating factors further support the decision to bar Rubin. First, Rubin engaged in a pattern of misconduct over a period of several months, and the number, size, and character of those transactions were significant.¹⁶ He made 12 requests to transfer approximately \$18 million from his bank account to his brokerage account over a four-month period, knowing well that he did not have the money to cover them. In this respect, the extent

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Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *82 (FINRA NAC Dec. 26, 2013) ("Because these violations result from the same course of misconduct, a unitary sanction is appropriate."), *aff'd*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558 (Feb. 13, 2015).

¹⁴ *See Guidelines*, at 37 (Forgery, Unauthorized Use of Signatures or Falsification of Records). The Hearing Panel analogized Rubin's use of essentially false requests to transfer money from his bank account to his brokerage account to a falsification of records. We see no error in the Hearing Panel's decision to do so. *See id.* at 1 ("Adjudicators are encouraged to look to the guidelines for analogous violations."). His mismarking of short sales is surely an example of falsification of records.

¹⁵ *See id.* at 30 (Regulation T and Margin Requirements).

¹⁶ *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 9, 17).

and nature of his evasion or failure to comply with Regulation T and margin requirements was extraordinary.¹⁷ He used his unfunded transfer requests to appear to meet greater than \$3.8 million in margin calls.

Second, Rubin pursued this misconduct for his own potential gain.¹⁸ Rubin used his deceptions to support large volumes of securities trading for profit, ostensibly chancing little of his own funds to the market, but rather exposing Merrill Lynch to the financial risks that accompanied his self-serving behavior. *See Audifferen*, 2008 SEC LEXIS 1740, at *46 (“Audifferen’s misconduct . . . placed his member firm . . . at financial risk.”).

Finally, Rubin intentionally exhibited flagrant dishonesty and his conduct was accompanied by a high level of deception of Merrill Lynch and FINRA.¹⁹ Rubin admittedly submitted unfunded transfer requests and misidentified short sales repeatedly in a conscious effort to frustrate federal credit regulations and cause Merrill Lynch to permit his securities trading when he did not have the money to finance that trading himself. As the Hearing Panel found, and the record establishes, Rubin habitually lied to Merrill Lynch when firm personnel questioned him about the unusual, large transfers of cash to his brokerage account, among other things claiming that the requests to transfer funds were supported by money from a prior job and family, or were caused by typographical or data-entry errors. Rubin repeatedly downplayed his activities and intentionally avoided being fully forthcoming in an effort to keep his job and career as a securities industry professional. Moreover, when FINRA investigated Rubin after Merrill Lynch terminated his association with the firm, Rubin answered some questions, but his explanations were incomplete and misleading in numerous ways. He minimized the extent to which he had used the unfunded transfer requests to support his securities trading, falsely denied using the delay between the dates when he made the transfers requests and the requests were ultimately denied to exploit Merrill Lynch, and downplayed his use of the unfunded requests to meet margin requirements by claiming those requirements were issued in error and were “superfluous.” These facts weigh heavily in our decision to bar Rubin. *See Knapp*, 51 S.E.C. at 134 (“[I]n light of the pervasiveness of the misconduct and the repeated attempts to circumvent detection, we consider the [fine and bar] imposed on Knapp . . . fully warranted in the public interest.”).

In this appeal, Rubin admits that his conduct was willful and intentional and designed to deceive Merrill Lynch into permitting him to engage in securities trading which was otherwise beyond his means. He also admits he lied to Merrill Lynch personnel when they questioned him about his conduct. He nevertheless claims that a sanction less than a bar is warranted in this case given the presence of several mitigating factors, which he suggests the Hearing Panel failed to

¹⁷ *See id.* at 30 (Principal Considerations in Determining Sanctions, No. 1).

¹⁸ *See id.* at 7-8 (Principal Considerations in Determining Sanctions, No. 16).

¹⁹ *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 10, 13).

consider. We have reviewed each of Rubin's arguments in favor of mitigation, and we reject them all.

First, Rubin claims that, throughout the investigations conducted by Merrill Lynch and FINRA, he accepted responsibility for his behavior and expressed remorse. Rubin, however, did not accept responsibility for his misconduct prior to detection, and although he had numerous opportunities to answer for his misconduct, he failed to do so until he resigned from Merrill Lynch.²⁰ *See also Mark. F. Mizenko*, 58 S.E.C. 846, 856 (2005) ("Mizenko's confession to having copied the signature carries little weight because it came only after he was confronted by his employer for his wrongdoing."). Because Rubin engaged in acts of deceit for his own profit, his conduct as a securities industry professional indicates that he remains a threat to the markets and investors. His expression of remorse and assurances that he will not repeat his misconduct offer little mitigative weight in favor of a sanction less than a bar. *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *22 (Sept. 3, 2015) ("[G]iven the circumstances of Olson's deceit for her own profit, we find that Olson's admissions, expressions of remorse, and assurances do not outweigh our concern that she presents a continuing threat to investors.").

Second, Rubin contends that his misconduct was an aberration precipitated by the personal stress he was experiencing because of his stepfather's death. As we have held, however, showing that stress or other personal circumstances interfered with an ability to abide by the federal securities laws or FINRA rules is a difficult burden to meet. *See Dep't of Enforcement v. Saad*, Complaint No. 2006006705601r, 2015 FINRA Discip. LEXIS 49 (FINRA NAC Mar. 16, 2015), *aff'd*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015), *aff'd in relevant part*, 873 F.3d 297 (D.C. Cir. 2017). In this case, the evidence does not support a finding that Rubin's emotional state is a mitigating factor. "His course of conduct was not the type that one might associate with stress, such as an unthinking reaction during a stressful moment that is later redressed; instead, his deceptive conduct demonstrated a high degree of intentionality over a long period of time." *See John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015), *aff'd in relevant part*, 873 F.3d 297 (D.C. Cir. 2017). Rubin's misconduct was knowing and clever, occurred repeatedly over a lengthy period, and advanced with deliberate and measured falsehoods and misrepresentations. The details necessary for Rubin to effect his scheme belie the assertion that his conduct represents a mere aberration.²¹ *See Saad*, 2015 FINRA Discip. LEXIS 49, at *22 ("The extent of Saad's planning, and his detailed execution of that plan, belies Saad's assertion

²⁰ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2).

²¹ Rubin's lack of a prior disciplinary history also does not merit a sanction less than a bar. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 1). While the presence of prior disciplinary action may serve as an aggravating factor when assessing sanctions, the absence of such disciplinary history is not a mitigating factor. *See, e.g., Mitchel H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *60 (May 27, 2015) ("We also reject his claim that his prior compliance with FINRA rules is mitigating.").

that his conduct was simply ‘a series of blunders.’”); *see also Dep’t of Enforcement v. Conway*, Complaint No. E102003025201, 2010 FINRA Discip. LEXIS 27, at *46 (FINRA NAC Oct. 26, 2010) (“[W]e have judged that the number of late trades and evasive market-timing transactions executed by the respondents and the period of time over which the respondents perpetrated these trades indicate that their conduct was not an aberration.”), *aff’d*, Exchange Act Release No. 70833, 2013 SEC LEXIS 3527 (Nov. 7, 2013).

Third, Rubin argues that he was fully cooperative with FINRA. We, however, agree with the Hearing Panel that Rubin was not forthcoming about the true extent of his misconduct when responding to FINRA’s inquiries. Rubin withheld information or provided inaccurate or misleading testimony throughout FINRA’s investigation.²² He selectively admitted only those facts that were impossible for him to deny and did not explain to FINRA the purpose of his unfunded transfer requests, and that he was using them to fund his securities trading, until he admitted liability in his amended answer and at the hearing. Instead, he consistently and falsely maintained throughout FINRA’s investigation that he did not finance his securities trading with unfunded transfer requests and denied that he knowingly mismarked shorts sales as sales not long.²³ While the Guidelines provide that “substantial assistance” to FINRA may be a mitigating factor, we are unable to conclude, based on this record, that Rubin provided anything other than the assistance he was required to provide FINRA in fulfillment of his regulatory obligations.²⁴ *See, e.g., Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *40-41 (Jan. 9, 2015) (“Associated persons do not provide substantial assistance by simply fulfilling their obligations to provide FINRA information pursuant to an investigation.”), *aff’d*, 641 F. App’x 27 (2d Cir. 2016).

Finally, Rubin contends that no customers suffered harm because of his misconduct and Merrill Lynch experienced no direct loss from his trading activities. These arguments highlight Rubin’s basic misapprehension of his wrongdoing and his role within the securities industry. The primary purpose of the federal securities laws is to protect investors. The specific purpose of the provisions at issue here, however, is the regulation of the securities market and the protection of broker-dealers from insolvency. *See Naftalin & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 469 F.2d 1166, 1180 (8th Cir. 1972) (“The legislative history of section 7 of the Act reveals that its primary purpose was to prevent speculation on credit from draining a disproportionate share of the nation’s credit resources into the stock market.”); *Carras v. Burns*,

²² *See Guidelines*, at 8 (Principal Consideration in Determining Sanctions, No. 12).

²³ Rubin testified at the hearing that he did not know how a “sale not long” affected his trading and therefore did not draw a distinction between a short sale and a sale not long. The Hearing Panel did not find this testimony credible. Absent substantial evidence to the contrary, the Hearing Panel’s credibility determination is entitled to our deference. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) (“Credibility determinations by a fact-finder deserve special weight.”).

²⁴ *See Guidelines*, at 8 (Principal Consideration in Determining Sanctions, No. 12).

516 F.2d 251, 260 (4th Cir. 1975) (“Margin maintenance requirements are established primarily to protect the solvency of brokers by assuring adequate collateral for their loans that finance customer speculation.”). His misconduct is not mitigated because his actions did not result in injury to investors. *Cf. Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *17 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009) (finding the lack of direct harm to customers or benefit to violators does not mitigate a violation of FINRA Rule 8210 because such conduct nevertheless is a significant harm to the self-regulatory system). A bar will protect the public from Rubin’s willingness to place his trading interests before those of other securities market participants, including his firm. *See Audifferen*, 2008 SEC LEXIS 1740, at *49 (“A bar prevents Audifferen from improperly extending credit to his customers or himself in the future and from benefitting financially from such credit extensions at the expense of his customers or his firm.”).

To summarize, Rubin has exhibited a disquieting propensity to engage in unethical and unlawful misconduct to further self-serving interests. His deceptive behavior indicates a troubling disregard of fundamental obligations imposed on him as a securities industry professional and reflects negatively on his ability to comply with basic regulatory requirements in the future. His conduct suggests that his continued participation in the securities industry poses an unwarranted risk to the markets and the investing public. The facts and circumstances of this case thus lead us to conclude that barring Rubin serves a remedial purpose and protects the public interest. *See McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) (“[T]he purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers.”). It will also serve to deter other persons who may be similarly inclined to put their interests dangerously before other participants in the securities markets. *See id.* at 189 (“Although general deterrence is not, by itself, sufficient justification for expulsion or suspension, we recognize that it may be considered as part of the overall remedial inquiry.”). We therefore affirm the bar prescribed by the Hearing Panel for Rubin’s misconduct.

V. Conclusion

We find that Rubin unethically initiated unfunded electronic transfers of money in violation of FINRA Rule 2010. We also find that he willfully violated Section 7(f) of the Exchange Act and Regulation X, and violated FINRA Rules 4210(f)(7) and 2010, by using his unfunded transfer requests to finance his securities trading without depositing additional cash or securities to meet margin requirements. Accordingly, we bar Rubin from associating with any FINRA member in any capacity. That bar is effective immediately upon issuance of this decision. We also affirm the Hearing Panel’s order that Rubin pay hearing costs of \$5,724.02, and we impose appeal costs of \$1,713.87.²⁵

²⁵ Pursuant to FINRA Rule 8320, FINRA will revoke for non-payment the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanctions after seven days’ notice in writing.

On behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary