

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

_____		)	
SECURITIES AND EXCHANGE		)	
COMMISSION,		)	
		)	
	Plaintiff,	)	Civil Action No.
		)	
v.		)	
		)	
DAVID MILLER,		)	
		)	
	Defendant.	)	
_____		)	

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendant David Miller (“Miller”):

**PRELIMINARY STATEMENT**

1. Miller was employed as a registered representative at Connecticut-based registered broker-dealer Rochdale Securities LLC (“Rochdale”) when he alone or in concert with others concocted a scheme during 2012 to place a series of unauthorized orders on one day to buy a total of more than 1.6 million shares of Apple, Inc. (“Apple”) stock.

2. On October 25, 2012, the day Apple’s earnings release for the quarter that ended September 30, 2012 was expected to be published following the close of the markets, a Rochdale customer (the “Customer”) appeared to instruct Miller to purchase 1,625 shares of Apple stock. Instead, pursuant to the scheme, Miller intentionally and fraudulently entered a series of orders to purchase a total of 1,625,000 shares of Apple (at a cost of almost \$1 billion), misrepresenting to

Rochdale and its principals and employees that the Customer authorized the orders and assumed the risk of loss on any trades executed pursuant to the orders.

3. On the same day, Miller also intentionally defrauded another registered broker-dealer and its employees (“Broker 1”) by placing a sell order for 500,000 shares of Apple stock under false pretenses: specifically, that Miller was employed by, and authorized to place the order on behalf of, a separate registered broker-dealer (“Broker 2”). Contrary to his representations to Broker 1, Miller had no relationship with Broker 2, nor was he authorized to trade on Broker 2’s behalf.

4. Miller, alone or in concert with others, planned to share in the Customer’s profit from selling the 1,625,000 shares if Apple’s stock price increased following the expected earnings announcement later that day. Alternatively, if Apple’s stock price decreased, Miller planned to claim that he inadvertently misinterpreted the size of the Customer’s order, and planned for his employer, Rochdale, to take responsibility for the unauthorized purchase and suffer the losses. In the latter scenario, Miller expected to then profit on his sale of 500,000 shares of Apple stock through Broker 1, thereby hedging his bet.

5. Apple’s stock price decreased after Apple’s earnings release was issued on October 25, 2012. The Customer denied buying 1,625,000 Apple shares, and, as Miller planned, Rochdale took responsibility for the unauthorized purchase. Rochdale then sold the Apple stock, resulting in an approximately \$5.3 million loss and causing Rochdale’s “net capital” (essentially, its available liquid assets) to fall below limits required by Commission rules applicable to broker-dealers.

6. Miller’s conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to

other persons: for example, as a result of Miller's conduct, Rochdale effectively ceased operations and virtually all of Rochdale's staff left for other jobs (or were let go) in or about November 2012.

7. By knowingly or recklessly engaging in the conduct and practices alleged in this Complaint, Miller violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder [15 U.S.C. §78j(b) and 17 C.F.R. §§ 240.10b-5], and Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)].

8. Based on these violations, the Commission seeks a permanent injunction against Miller enjoining him from engaging in the acts, practices and courses of business alleged in this complaint, civil monetary penalties, and such other and further relief as the Court may deem just and appropriate.

### **JURISDICTION AND VENUE**

9. The Commission brings this action pursuant to the enforcement authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §§78u(d)]. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Sections 21(d), (e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), and 78aa].

10. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15 U.S.C. §§ 78aa], because a substantial part of the acts, practices, and courses of business constituting the alleged violations occurred in the District of Connecticut.

11. In connection with the conduct alleged in this Complaint, Miller directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce or the facilities of a national securities exchange.

**DEFENDANT**

12. **Miller**, age 40, is a resident of Rockville Centre, New York. At all relevant times, Miller served as a registered representative at Rochdale. On December 3, 2012, Miller was charged by criminal complaint in *United States v. David Miller*, 3:12-mj-00288-HBF (D. Conn) regarding certain matters alleged in this Complaint.

**RELEVANT ENTITY**

13. **Rochdale Securities LLC** is a Connecticut-based broker-dealer that has been registered with the Commission since 1986. On or about February 25, 2013, Rochdale filed a notice with the Commission requesting that its registration be withdrawn.

**FACTUAL ALLEGATIONS**

14. Miller was employed as an institutional sales trader for Rochdale since approximately February 2009, working out of Rochdale's offices in Stamford, Connecticut. As a sales trader, Miller was responsible for covering accounts of certain of Rochdale's institutional customers who placed trades in securities through Rochdale.

15. In early 2012, Miller, alone or in concert with others, devised a plan to profit by placing a large, unauthorized trade in Apple stock on the day of an earnings announcement, based on the belief that Apple's stock price typically increases when earnings are released on days preceded by downward movements in Apple's stock price. The plan contemplated that when the Customer placed an order to buy Apple shares, Miller would then enter an order several times larger than the size of the actual order. If Apple's stock price increased following

the earnings announcement, Miller expected the Customer to take ownership of the entire order placed by Miller. Miller then planned to share in the profits with the Customer. Conversely, if Apple's stock price decreased following the announcement, Miller expected the Customer to deny placing the unauthorized order. Miller would then assert that the size of the order was ambiguous and was inadvertently misinterpreted, thereby causing Rochdale to assume the risk of loss for the order.

16. Miller executed the plan on October 25, 2012, the day that Apple's earnings announcement was due for its fiscal 2012 fourth quarter ended September 30, 2012. At approximately 9:30 a.m., a representative of the Customer sent an instant message to Miller instructing him to buy 125 shares of Apple stock every half hour (for 13 half hours) over the course of the day (totaling 1,625 shares). Specifically, the instant message read: "AAPL . . . b 125 ok (per 1/2 hr)." According to the plan, however, Miller proceeded to place multiple, separate orders in Rochdale's order management system approximately every half hour in aggregate increments of 125,000 (rather than 125) shares, buying a total of 1,625,000 Apple shares over the day, and entering the last order just before the market closed at 4:00 p.m. Miller executed the separate 125,000 share orders through various trading platforms to which Rochdale had access.

17. Miller intentionally and fraudulently made the following false and/or misleading representations directly or by implication to his colleagues at Rochdale in order to conceal his illicit activity:

- a. the Customer was buying the Apple shares to "cover" shares it had previously borrowed and sold (a practice known as "selling short");
- b. the Customer had sufficient funds to purchase more than 1.6 million shares of Apple stock; and

c. the Customer assumed the risk of loss on any trades executed pursuant to the orders.

18. Miller's statements and representations set forth in the preceding paragraph were false and/or misleading because the Customer: (a) did not authorize the purchase of more than 1,625 Apple shares and (b) did not assume the risk of loss for the purchase of more than 1,625 shares. Miller knew, or was reckless in not knowing, that his statements and representations were false and/or misleading because Miller, alone or in concert with others, concocted the scheme such that Rochdale, not the Customer, would bear the risk of loss if Apple's stock price dropped as a result of the upcoming earnings announcement.

19. Miller also deliberately and fraudulently confirmed the size of the Apple trades to at least one of Rochdale's executing brokerage firms, causing that firm to raise Rochdale's aggregate trading limits (the maximum dollar amount Rochdale was authorized to trade through that broker on a given day).

20. After the market close on October 25, 2012, trading in Apple stock was suspended pending Apple's earnings announcement. Once trading resumed in the after-hours market (stock trading that occurs after the traditional trading hours of the major stock exchanges), Apple's stock price began to decrease. Apple's stock closed at \$609.54 per share on October 25, 2012 and then dropped to a low of \$591 per share on October 26, 2012, ultimately closing that day at \$604 per share.

21. The Customer, as expected, refused to take ownership of the unauthorized purchase, agreeing only to purchase 1,625 shares. As a result, Rochdale took responsibility for the excess Apple shares purchased (approximately 1,623,375 shares) and, given the decrease in stock price, suffered a realized loss of approximately \$5.3 million after selling the shares on or

about October 26, 2012. Because of Miller's conduct, Rochdale effectively ceased operations after assuming the risk of loss for the Apple trades; virtually all of Rochdale's staff left for other jobs (or were let go) in or about November 2012. In February 2013, Rochdale filed to withdraw its registration with the Commission.

22. On the same day that Miller schemed to purchase over 1.6 million Apple shares through Rochdale, Miller also executed a separate scheme to sell 500,000 shares of Apple stock under false pretenses through Broker 1.

23. In perpetrating this part of the scheme, Miller knowingly and fraudulently made the following false and/or misleading representations to Broker 1 and its employees:

- a. Miller stated that he had accepted employment as a trader at Broker 2;
- b. Miller stated that he was authorized to open an account on Broker 2's behalf and was trading for Broker 2's account; and
- c. Miller provided names of fabricated contacts at Broker 2 who would purportedly provide instructions to "settle" (finalize) the trade.

24. Miller's statements set forth in the preceding paragraph were false and/or misleading because Miller had no relationship with Broker 2 and he was not authorized to trade on Broker 2's behalf. Miller knew, or was reckless in not knowing, that the statements were false and/or misleading because Miller knew he was not employed by Broker 2 and that he was not authorized to trade on Broker 2's behalf. Miller concocted this story solely to hedge his bet in the event that Apple's stock price decreased after the public announcement.

25. After Apple's stock price decreased, Broker 1 held a short position in Apple stock of approximately 500,000 shares (holding a short position means selling borrowed stock with the expectation that the stock will decrease in value). Miller's actions placed Broker 1 at risk of

losing a substantial amount of money had Apple's stock price increased before Broker 1 covered its position.

**First Claim for Relief**  
**(Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)**

26. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 25 above as if set forth fully herein.

27. By engaging in the conduct described above, Miller directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

28. By reason of the foregoing, Miller violated, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

**Second Claim for Relief**  
**(Violation of Sections 17(a)(1) and (3) of the Securities Act)**

29. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 25 above as if set forth fully herein.

30. By engaging in the conduct described above, Miller directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or

artifice to defraud, in violation of Section 17(a)(1) of the Securities Act and engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of securities, in violation of Section 17(a)(3) of the Securities Act.

31. By reason of the foregoing, Miller violated, and unless restrained and enjoined, will continue to violate, Sections 17(a)(1) and (3) of the Securities Act [15 U.S.C. §77q(a)(1) and 77(q)(a)(3)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Miller, and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];

B. Order Miller to pay a civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

C. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

D. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,

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COMMISSION**

Dated: April 15, 2013