

FINANCIAL INDUSTRY REGULATORY AUTHORITY
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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KALE E. EVANS
(CRD No. 2236466),

Respondent.

Disciplinary Proceeding
No. 2006005977901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This matter involves a former TD Waterhouse representative, Kale Evans, who gained access to an 18 year old individual's (AV) inheritance by inducing her to open joint accounts with him including a TD Waterhouse brokerage account which she funded with life insurance proceeds. These life insurance proceeds represented payments from a policy held by AV's father, who had recently died unexpectedly.

2. Evans day traded AV's brokerage account and, within about four months, its equity of \$400,000.00 diminished by more than 70%. During the same period, Evans transferred significant sums from AV's bank account to his personal brokerage accounts, bank accounts, and various creditors. This conduct occurred while AV resided with Evans and his family.

3. After AV moved out of Evans' home and learned of some of the losses that he had caused, he paid her \$35,000.00 without his firm's knowledge or consent.

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4. This Complaint alleges that Evans violated Conduct Rules 2510(a), 2310, 2110 and IM-2310-2(b)(2) by executing qualitatively unsuitable and excessive trades (first and second causes); and NASD Conduct Rule 2110 by attempting to settle with AV without his firm's knowledge or consent (third cause). The Complaint also alleges that from at least August 2004 through November 2005, i.e., from the time that he induced AV to open a brokerage account through the time that he paid her \$35,000.00, Evans engaged in a course of conduct that was inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of NASD Conduct Rule 2110 (fourth cause).

RESPONDENT AND JURISDICTION

5. From June 1, 1998 through December 8, 2005, Evans was associated with FINRA member TD Waterhouse Investor Services, Inc. (nka TD Ameritrade, Inc.) as a General Securities Representative and General Securities Sales Supervisor. From March 29, 2006 through the present, Evans has been associated with another FINRA member in the same capacities.

BACKGROUND

6. AV's father, JV, died unexpectedly in a March 2004 motorcycle accident. AV, who was a 17 year old high school student at the time of her father's death, was the sole beneficiary of his life insurance policy.

7. Evans and JV had been close friends since childhood. Shortly after JV's death, AV and her three younger siblings temporarily moved to Evans' home to live with him and his family.

8. On August 1, 2004, AV celebrated her 18th birthday. Within the succeeding three and one half months, her late father's employer sent her the proceeds of his life insurance policy: on September 29, 2004 she received \$308,000.00 and on November 9, 2004, she received \$206,000; for a total of \$514,000.00. AV deposited these proceeds into her account at Washington Mutual Bank. ("AV WaMu Account"). She had intended on using these funds to pay for her and her siblings' college educations.

9. On or about October 19, 2004, Evans persuaded AV to open a TD Waterhouse Account with AV and Evans as joint tenants on the account ("AV TD Waterhouse Account"). Evans told AV that a "savings account" at TD Waterhouse would pay more interest than she was receiving from her WaMu account. Although Evans knew that AV had no experience with brokerage accounts, and for all intents and purposes had no money other than her late father's insurance proceeds, he persuaded her to open a margin account. Moreover, although Evans had no legal or equitable claim to the account proceeds, he persuaded AV to open the account in joint tenancy with himself.

10. On October 22, 2004, Evans, who had arranged for signatory authority on the AV WaMu Account, caused \$250,000.00 to be transferred from the AV WaMu Account to the AV TD Waterhouse Account. About one month later, on November 30, 2004, Evans caused an additional \$150,000.00 to be transferred from the AV WaMu Account to the AV TD Waterhouse Account.

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ACTIVITY IN AV'S TD WATERHOUSE ACCOUNT

11. Evans controlled the AV TD Waterhouse Account. He initiated all the transactions; he determined what securities would be purchased and sold and when the transactions would occur. He did not discuss the trades with AV. Moreover, she did not receive account statements and was unaware of the activity in her account.

12. Between October 28, 2004 and March 10, 2005, Evans executed 80 trades in 18 different securities, ran up a margin debit balance that ballooned to nearly \$450,000.00 by December 31, 2004, and lost more than 70% of the AV TD Waterhouse Account equity. The annualized turnover rate for the AV TD Waterhouse Account was 121.7.

13. Evans' trading in the AV TD Waterhouse Account was speculative. It included a large uncovered short sale and was characterized by concentrated positions, large margin interest balances, repeated margin calls, and short holding periods. For example, at the end of December 2004, the account held only two long positions, Research In Motion LTD ("RIMM") and Taylor Devices ("TAYD") and the margin debit balance was \$448,166.00. At the end of January 2005, the account was concentrated in a single equity position (RIMM) and the margin debit balance was \$271,536.00. At the end of February 2005, the account held two long positions: RIMM and Comcast Corporation ("CMCSK"). The margin debit balance was \$297,159.18. The RIMM trades alone generated a loss of \$188,343.00.

14. Evans seldom held any security for more than several days and often purchased and sold the same security in the same day. One of the securities that Evans repeatedly bought and

sold in the AV TD Waterhouse account was Travelzoo ("TZOO"). The following table describes Evans' in and out trading in TZOO:

Trade Date	Activity	Security	Quantity of Shares
12/7/04	Buy	TZOO	15,000
12/7/04	Sell	TZOO	15,000
12/8/04	Buy	TZOO	7,000
12/10/04	Sell	TZOO	2,000
12/21/04	Sell	TZOO	4,100
12/30/04	Buy	TZOO	3,000
12/30/04	Sell	TZOO	3,900
12/31/04	Buy	TZOO	2,000
12/31/04	Sell	TZOO	2000

The TZOO trades generated a \$36,927 loss.

15. On March 14, 2005, Evans liquidated the securities in the account and wire transferred the remaining balance of \$109,653.27 from the AV TD Waterhouse Account back to the AV WaMu Account.

MISAPPROPRIATIONS AND TRANSFERS FROM AV'S WaMu ACCOUNT

16. At approximately the same time that Evans was engaging in reckless and speculative trading in the AV TD Waterhouse account, he was also misappropriating and transferring funds from the AV WaMu Account to his personal brokerage accounts, bank account, and creditors. Between August 30, 2004 and March 15, 2005, Evans caused the transfer

of approximately \$127,000 from accounts holding AV's funds to accounts he held jointly with Cheryll Evans or to his creditors. In August and October 2005, he orchestrated a series of transactions that resulted in a net reduction of \$4,500 in accounts holding AV's funds and a corresponding increase in accounts he held jointly with Cheryll Evans. These transfers are described below.

A. The \$10,000.00 Transfer to the Evans TD Waterhouse Joint Account

17. Evans and his wife held an account at TD Waterhouse entitled the Kale Evans and Cheryll R. Evans Jt. Tenancy account ("Evans TD Waterhouse Joint Account").

18. On September 4, 2004, Evans transferred \$10,000.00 from the AV WaMu Account to the Evans TD Waterhouse Joint Account without AV's knowledge or consent.

B. The \$50,000.00 Transfer to the Evans TD Waterhouse Trust Account

19. On October 5, 2004, about one week after AV received the first installment (\$308,000.00) of the life insurance proceeds, Evans and his wife created the Kale Evans and Cheryll Evans Trust. Ten days later, Evans opened the Kale Evans and Cheryll Evans Trust Account at TD Waterhouse, bearing Account No. [REDACTED] ("Evans TD Waterhouse Trust Account").

20. On November 30, 2004, Evans transferred \$50,000.00 from the AV WaMu Account to the Evans TD Waterhouse Trust Account without AV's knowledge or consent.

C. The \$32,450.00 Transfers to Evans' WaMu Account

21. In mid-April 2004, about two weeks after AV opened the AV WaMu Account, Evans and his wife, Cheryll, opened a checking account at Washington Mutual Bank. ("Evans WaMu Account").

22. Between September 9, 2004, and March 15, 2005, Evans transferred a total of \$32,150 from the AV WaMu Account to the Evans WaMu Account.

D. The \$35,197.38 Transfers for Evans Debit and Credit Card Bills

23. Between August 30, 2004 and December 7, 2004, Evans paid bills totaling \$35,197.38, to his various creditors, including Sears, Discover Card, GM Cardmember Services, and Citibank, from checks drawn on the AV WaMu Account

E. The \$4,500 of Miscellaneous Transfers

24. In August and October 2005, Evan made offsetting deposits and withdrawals from the AV WaMu Account creating a net loss of \$4,500.00 from the AV WaMu Account.

25. On August 24, 2005, Evans deposited \$28,000.00 into the AV WaMu Account. On the same day, he caused \$31,000.00 to be withdrawn from the account.

26. On October 4, 2005, Evans deposited \$5,000.00 into the AV WaMu Account. On the same day, he caused \$6,500.00 to be withdrawn from the AV WaMu Account.

AV DISCOVERS THE LOSS IN HER TD WATERHOUSE ACCOUNT

27. In early summer 2005, AV moved out of Evans' home, unaware of the activity in her accounts and the losses she had sustained. In late November 2005, after learning that only about \$109,000.00 had been wired from the AV TD Waterhouse Account to the AV WaMu Account, AV asked Evans about what had become of the \$400,000.00 that had been transferred to the TD Waterhouse Account in late 2004.

28. In response to AV's inquiry, Evans agreed to meet her in a park in Escondido, California on or about November 25, 2005, to discuss her account. At the park, Evans produced no documents or records but gave AV a check in the amount of \$35,000.00.

29. On or about December 1, 2005, AV walked into a TD Waterhouse branch office, inquired about the activity in her account, and requested copies of account statements.

30. In mid-December 2005, Evans was permitted to resign from TD Waterhouse.

FIRST CAUSE OF ACTION
(Unsuitable Recommendations—Qualitative Unsuitability)
(Violation of NASD Conduct Rules 2310 and 2110)

31. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 30, above.

32. Between October 2004 and March 2005, Evans engaged in a speculative and reckless course of trading in AV's TD Waterhouse Account that included a short sale, repeated excessive concentrations in individual stocks, and extensive use of margin interest. For example:

- On October 28, 2004, Evans sold short 1,000 shares of Google in AV's account. At the end of October 2004, AV had an uncovered short position valued at \$190,705.00. This single position constituted 78% of the value of her account.
- On December 17, 2004, Evans built a 17,000 share position in Research in Motion purchased for approximately \$1.65 million. By the end of December 2004, Evans had reduced that position to 7,000 shares, which was worth \$576,940.00. At the end of December 2004, Evans also built a 20,000 share position worth \$137,400.00 in Taylor Devices. These two positions totaled \$714,340.00, which constituted 268% of the value of AV's account (total portfolio value \$266,174.00).

- On January 31, 2005, AV's portfolio consisted of 6,000 shares of Research in Motion worth \$427,740.00. This position constituted 274% of the value of her account (total portfolio value \$156,203.32).
- On February 18, 2005, Evans built a 2,000 share position in Comcast Corp purchased for \$63,074.00. Moreover, Evans maintained a 5,500 share position in Research in Motion. At the end of February 2005, these two investments were the only investments in AV's account. The 5,500 shares of Research in Motion had a market value of \$363,605.00 and constituted 279% of AV's total portfolio value (\$130,165.00). The 2,000 shares of Comcast Corp. were worth \$63,720.00 and constituted 49% of the portfolio value.

33. Evans recommended and effected transactions in AV's account without reasonable grounds for believing those transactions were suitable for AV in light of the information known to him about AV's financial circumstances and needs and thereby violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF ACTION
(Unsuitable Trading—Quantitative Unsuitability)
(Violation of NASD Conduct Rules 2510(a), 2310, 2110 and IM 2310-2)

34. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 30, above.

35. From October 2004 through March 2005, Evans recommended and effected 80 transactions in AV's account that, taken together, constituted an excessive number of transactions. These transactions are set forth on Schedule A, attached hereto and incorporated by

this reference. The turnover rate in the AV account over the period trading was approximately 60; annualized, the turnover rate was approximately 121.

36. Evans did not have a reasonable basis for believing that volume of transactions he recommended and effected was suitable for AV in light of the information known to him about about AV's financial circumstances and needs and her investment objectives. Therefore Evans violated NASD Conduct Rules 2510(a), 2310, 2110 and IM-2310-2(b)(2).

THIRD CAUSE OF ACTION
(Settling Away)
(Violation of NASD Conduct Rule 2110)

37. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 30, above.

38. On or about November 25, 2005, Evans paid AV \$35,000.00 after she inquired and complained about the activity and losses in her TD Waterhouse Account.

39. Evans made this payment to AV to address her inquiries and settle her complaints without the knowledge or consent of his employer firm.

40. By reason of the foregoing, Evans violated NASD Conduct Rule 2110.

FOURTH CAUSE OF ACTION
(Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade)
(Violation of NASD Conduct Rule 2110)

41. The Department of Enforcement realleges and incorporates by reference paragraph numbers 1 through 40, above.

42. Beginning in mid-2004 and continuing through at least November 2005, Evans engaged in a course of conduct with respect to AV and her assets that was inconsistent with high

standards of commercial honor and just and equitable principles of trade. His actions enabled him to use, control and dissipate the proceeds of JV's insurance policy in a manner that harmed AV while inuring to his personal benefit. His pattern of deceitful and unethical conduct included the following:

- In October 2004, he induced AV to open a margin account at TD Waterhouse by telling her it was a savings account with no risk of loss when he knew or should have known that the account was a trading account and that he intended to trade its assets on margin;
- Even though Evans had no legal or equitable claim to the funds in the AV TD Waterhouse Account – an account that was funded exclusively with life insurance proceeds that AV received as beneficiary of her late father's life insurance policies – he caused the account to be opened as a joint tenancy account, causing TD Waterhouse to characterize the account as an employee account and insulating it from the oversight afforded customer accounts under the firm's procedures;
- Between August 2004 and December 2005, he misappropriated funds from AV's WaMu Account including transferring : (i) \$60,000 to his personal brokerage accounts; (ii) \$32,450.00 to personal bank accounts; and (iii) more than \$35,000.00 to his creditors;
- As more fully described in Cause One above, he engaged in speculative and unsuitable trading in AV's account knowing that she had essentially

no income and no certain source of support, and was relying on the funds in her account to pay for her and her siblings' college education;

- After AV learned of some of the losses, he offered her a settlement that was a fraction of the losses that he had caused.

43. This course of conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and constituted a violation of NASD Conduct Rule 2110 by Evans.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 10, 2009


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SCHEDULE A
AV TD Waterhouse Account Transactions

Symbol	Settlement Date	Activity	Qty	Price Per Share	Transaction Cost /(Value)
GOOG	10/28/04	Short	(1,000)	184.850	(184,828.00)
DWA	11/02/04	Buy	1,000	39.390	39,390.00
TASR	11/09/04	Buy	2,000	44.490	88,980.00
GOOG	11/09/04	Cover Short	1,000	185.255	185,253.00
RIMM	11/10/04	Buy	2,000	82.488	165,051.00
TASR	11/16/04	Buy	1,000	57.613	57,608.40
DWA	11/17/04	Sell	(1,000)	40.630	(40,630.00)
PIXR	11/17/04	Buy	2,000	84.600	169,200.00
PIXR	11/22/04	Sell	(2,000)	87.330	(174,660.00)
TASR	11/22/04	Buy	2,000	86.893	173,786.00
RIMM	11/23/04	Sell	(2,000)	84.547	(169,093.00)
ADSK	11/24/04	Buy	4,000	64.930	259,720.00
ADSK	11/24/04	Sell	(4,000)	65.163	(260,605.00)
PLAY	11/24/04	Buy	5,000	25.895	129,497.00
PLAY	11/24/04	Sell	(5,000)	26.030	(129,981.00)
PLAY	11/26/04	Buy	5,000	29.060	145,405.00
PLAY	11/29/04	Sell	(5,000)	30.120	(150,360.12)
BIIB	11/30/04	Buy	5,000	58.504	292,606.31
BIIB	11/30/04	Sell	(5,000)	58.725	(293,518.00)
GOOG	11/30/04	Buy	1,000	174.495	174,492.00
UTHR	12/01/04	Buy	3,000	45.161	135,511.05
UTHR	12/01/04	Sell	(3,000)	45.563	(34,300.00)
AAPL	12/02/04	Buy	5,000	68.533	342,619.40
GOOG	12/02/04	Sell	(1,000)	181.100	(181,100.00)
GOOG	12/07/04	Buy	1,000	180.490	180,490.00
GOOG	12/07/04	Sell	(1,000)	180.785	(180,789.30)
TASR	12/07/04	Buy	5,000	26.898	134,389.00
TASR	12/07/04	Sell	(10,000)	27.075	(270,596.08)
TZOO	12/07/04	Buy	15,000	94.399	1,414,330.42
TZOO	12/07/04	Sell	(15,000)	94.678	(1,428,576.18)
GOOG	12/08/04	Buy	5,000	178.369	891,597.00
GOOG	12/08/04	Sell	(5,000)	178.623	(893,144.56)
TASR	12/08/04	Buy	10,000	27.688	277,253.00
TASR	12/08/04	Sell	(15,000)	27.975	(419,004.45)
TZOO	12/08/04	Buy	7,000	97.752	684,048.10
GOOG	12/09/04	Buy	2,500	177.004	442,553.85
GOOG	12/09/04	Sell	(2,500)	177.570	(443,742.60)
OSTK	12/09/04	Buy	5,000	75.822	379,176.00
OSTK	12/09/04	Sell	(5,000)	76.020	(380,100.00)
TZOO	12/10/04	Sell	(2,000)	85.650	(171,300.00)
TASR	12/14/04	Buy	10,000	25.424	253,859.80
TASR	12/14/04	Sell	(10,000)	25.821	(258,091.25)
OSTK	12/15/04	Buy	5,000	70.354	351,746.00

Symbol	Settlement Date	Activity	Qty	Price Per Share	Transaction Cost /(Value)
QSTK	12/15/04	Sell	(5,000)	69.592	(347,775.00)
TASR	12/15/04	Buy	20,000	27.120	541,458.00
TASR	12/15/04	Sell	(20,000)	28.904	(540,015.70)
AAPL	12/16/04	Sell	(5,000)	64.935	(324,664.00)
TASR	12/16/04	Buy	20,000	28.049	561,774.43
TASR	12/16/04	Sell	(10,000)	27.155	(271,505.00)
RIMM	12/17/04	Buy	18,200	98.903	1,650,095.70
RIMM	12/17/04	Sell	(10,000)	98.790	(991,074.00)
TASR	12/17/04	Sell	(10,000)	27.255	(272,560.56)
VRTS	12/17/04	Buy	10,000	27.235	272,392.00
VRTS	12/17/04	Sell	(10,000)	27.517	(275,111.60)
TZOO	12/21/04	Sell	(4,100)	90.763	(372,120.20)
TZOO	12/30/04	Buy	3,000	100.293	300,845.00
TZOO	12/30/04	Sell	(3,900)	101.505	(396,321.00)
TZOO	12/31/04	Buy	2,000	103.758	207,585.00
TZOO	12/31/04	Sell	(2,000)	100.860	(201,720.00)
TAYD	12/31/04	Buy	20,000	8.118	162,374.63
HOFF	01/05/05	Buy	5,000	2.258	11,290.00
TAYD	01/11/05	Sell	(9,000)	5.995	(53,735.44)
RIMM	01/12/05	Sell	(500)	74.380	(37,187.00)
TAYD	01/12/05	Sell	(11,000)	5.875	(64,481.00)
RIMM	01/13/05	Sell	(500)	74.330	(37,165.00)
TASR	01/19/05	Buy	2,400	21.368	51,342.18
HOFF	01/25/05	Sell	(5,000)	1.090	(5,450.00)
TASR	01/25/05	Sell	(2,400)	17.750	(42,610.80)
RIMM	02/01/05	Sell	(500)	69.670	(34,836.41)
THQI	02/07/05	Buy	1,500	26.840	40,238.00
QCOM	02/14/05	Buy	1,500	35.595	53,387.00
THQI	02/14/05	Sell	(1,500)	28.137	(42,221.00)
CMCSK	02/18/05	Buy	2,000	31.537	63,074.00
QCOM	02/18/05	Sell	(1,500)	36.765	(55,150.00)
CMCSK	03/01/05	Sell	(2,000)	32.352	(64,705.20)
RIMM	03/01/05	Sell	(500)	69.210	(34,605.00)
RIMM	03/04/05	Buy	8,000	67.245	538,018.25
RIMM	03/04/05	Sell	(13,000)	65.263	(861,045.00)
TASR	03/08/05	Buy	15,000	15.293	228,925.83
TASR	03/10/05	Sell	(15,000)	14.256	(213,704.40)