

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Alan J. Davidofsky
[CRD No. 1389312],

Respondent.

DISCIPLINARY PROCEEDING
No. 2008015934801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From December 2007 through September 2008, Respondent Alan J. Davidofsky executed ninety transactions for a firm customer without the customer's knowledge or consent, in violation of NASD Conduct Rule 2110 and IM-2310-2. These transactions, in addition to being unauthorized, also constituted excessive trading and were quantitatively unsuitable, in violation of NASD Conduct Rules 2310, 2110, and IM-2310-2. Respondent's actions also constituted churning, in willful violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Securities and Exchange Commission (SEC) Rule 10b-5, and NASD Conduct Rules 2120 and 2110.

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RESPONDENT AND JURISDICTION

2. Respondent Davidofsky entered the securities industry in 1988 as a General Securities Representative of a FINRA member firm. Respondent Davidofsky, during all periods mentioned herein, was associated with member firm Oppenheimer & Co., Inc. and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. After Oppenheimer terminated Respondent on November 7, 2008 for the conduct alleged herein, he became registered with another member firm. On July 1, 2010, however, that member firm also terminated Respondent Davidofsky. On November 1, 2010, Respondent associated with another member firm, where he is currently employed. Accordingly, Respondent Davidofsky remains subject to FINRA's jurisdiction for purposes of this proceeding.

FACTUAL BACKGROUND

3. Firm customer JL transferred her IRA to Oppenheimer in February 2004, following her original broker who had recently moved to Oppenheimer. Her financial profile indicated that she had an annual income of \$50,000, a total net worth of \$300,000, and a liquid net worth of \$10,000. Her investment objectives were documented as being "Current Income (Conservative)" and "Capital Appreciation (Conservative)."
4. Due to a registration issue in JL's home state, her original broker could no longer service the IRA account. Consequently, Respondent Davidofsky began servicing JL's IRA account in March 2007.

5. Statements for JL's IRA reflect that during the six months prior to December 2007, the account maintained an average monthly balance of \$127,239.43.
6. During those six months, the account held positions in four closed-end funds and three open-end mutual funds. Additionally, JL maintained two fixed income positions (corporate bonds) in the account. The account contained only one individual stock position during this period: 114 shares of Delta Airlines common stock.
7. From June 2007 through November 2007, total purchases in the account amounted to \$66,016.68. These purchases occurred during the months of August (one purchase amounting to \$24,006.04) and October 2007 (one purchase amounting to \$42,010.64). During the other four months in the period, no trading activity took place.
8. For year end 2007, JL's total liquid net worth was approximately \$342,127, her adjusted gross income was \$62,099, and her taxable income was \$40,813.
9. At the end of November 2007, JL's IRA balance was \$127,325.43. At the time, the IRA represented approximately 37% of JL's liquid net worth.¹ By the end of September 2008, however, the value, as well as the investment composition, of JL's IRA account, had changed drastically due to Davidofsky's conduct.
10. During the period from December 7, 2007, through October 1, 2008, Respondent Davidofsky executed ninety unauthorized transactions in JL's IRA account. The principal amount of the unauthorized transactions totaled approximately \$1,362,665.45, which included approximately \$759,915.59 in purchases. A list of those ninety

¹ By year end 2008, JL's liquid net worth had fallen to approximately \$187,946.

unauthorized transactions, the vast majority of which were in equities, is attached as "Exhibit A" and incorporated into this Complaint by reference.

11. During the relevant time frame, JL withdrew no funds from the account.² From December 2007 through September 2008, Davidofsky's transactions in the account generated total commissions of \$31,311.42. By the end of September 2008, JL's account balance had fallen to \$19,092.06 due to Davidofsky's unauthorized trading and churning of the account.
12. The resulting annualized turnover ratio incurred by JL's IRA for the period from December 1, 2007 to October 1, 2008 was 10.89. For the same period, the account incurred an annualized cost/commission-to-equity ratio of 44.86%. JL incurred losses in the account of \$108,206 during the ten-month period.

FIRST CAUSE OF ACTION

NASD Rule 2110 and IM-2310-2

(Unauthorized Transactions, Against Respondent Davidofsky)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.
14. During the period from December 7, 2007, through October 1, 2008, Respondent Davidofsky executed ninety unauthorized transactions in the IRA account of firm customer JL. *See* Exh. A.
15. The transactions delineated in Exhibit A were unauthorized because Respondent Davidofsky executed them without JL's prior knowledge, authorization or consent.
16. JL's IRA account incurred losses of \$108,206 during the period of the unauthorized trading.

² It should be noted, however, that approximately 225 shares (\$3352.34) of a mutual fund were journaled out of the account in April 2008. In addition, in March 2008, the account incurred a \$40 IRA annual fee.

17. Davidofsky's execution of transactions without his customer's prior authorization and consent, as described above, constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade. Each such transaction constitutes separate and distinct violations of NASD Conduct Rule 2110 and IM-2310-2 by Respondent Davidofsky.

SECOND CAUSE OF ACTION

NASD Conduct Rules 2120, 2310 and 2110 and IM-2310-2
(Quantitative Unsuitability, Against Respondent Davidofsky)

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.
19. During the period from December 7, 2007, through October 1, 2008, Respondent Davidofsky exercised control over JL's account by engaging in unauthorized trading and the execution of ninety transactions in the IRA account of firm customer JL. *See* Exh. A.
20. Davidofsky's trading was unsuitable and excessive in size and frequency in view of JL's financial situation and needs. JL was a conservative investor whose total liquid net worth in 2007 was \$342,127. At the end of November 2007, JL's IRA represented approximately 37% of her net worth.
21. As a result of Davidofsky's unauthorized and excessive trading, the resulting annualized turnover ratio incurred by JL's IRA for the period from December 1, 2007 to October 1, 2008 was 10.89. For the same period, the account incurred an annualized cost/commission-to-equity ratio of 44.86%. In other words, JL's account would have had to achieve a return of 44.86% to break even. JL incurred losses in the account of \$108,206 during the ten-month period. Therefore, these unauthorized transactions constituted excessive trading and were quantitatively unsuitable.

22. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110, and IM-2310-2 by Respondent Davidofsky.

THIRD CAUSE OF ACTION

10(b) of the Exchange Act, SEC Rule 10b-5, and NASD Conduct Rules 2120 and 2110
(Churning, Against Respondent Davidofsky)

23. The Department realleges and incorporates by reference paragraphs 1 through 22 above.
24. Respondent directed and controlled the transactions in JL's IRA account.
25. The number of transactions in JL's IRA account was excessive in light of JL's investment objectives and resulted in turnover and cost/commission-equity ratios exceeding those that create a presumption of churning.
26. Respondent controlled the JL transactions and executed or caused their execution by means of the instrumentalities of interstate commerce.
27. Respondent executed or caused the execution of the JL transactions with an intent to defraud, in that he knew, or was reckless in failing to recognize, that the trading in JL's IRA account resulted in substantial commission income for him, but could not reasonably be expected to benefit JL.
28. By executing the transactions in JL's account, Respondent placed his own interests above the interests of JL.
29. The conduct herein constituted the use of manipulative or deceptive devices or contrivances in connection with the purchase and sale of securities by Respondent. As a result of the foregoing conduct, Respondent Alan J. Davidofsky willfully violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

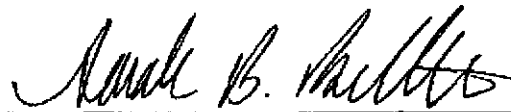
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed against Respondent, including monetary sanctions, full disgorgement of any and all ill-gotten gains, and/or full and complete restitution, together with interest;
- 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; and
- C. make specific findings that Respondent willfully violated Section 10(b) of the Exchange Act, SEC Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 23, 2011



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RESPONDENT ALAN DAVIDOFSKY'S UNAUTHORIZED TRADES

IN CUSTOMER JL'S IRA ACCOUNT

[DECEMBER 1, 2007 THROUGH SEPTEMBER 30, 2008]

Trade Date	Buy / Sell	Security Symbol / CUSIP	Quantity	Price	Principal	Commission
12/03/07	S	SOLARFJN POWER HOLDINGS CO LTD (SOLF)	1100	19.0500	\$20,955.00	\$400.93
12/05/07	B	CANADIAN SOLAR INC (CSIQ)	1100	19.8082	\$21,789.02	\$825.00
12/07/07	B	BEA SYS INC (BEAS)	1300	15.8782	\$20,641.66	\$387.18
12/07/07	S	CANADIAN SOLAR INC (CSIQ)	1100	21.3000	\$23,430.00	\$422.84
12/10/07	B	KB HOME (KBH)	900	24.4800	\$22,032.00	\$395.71
12/10/07	S	BEA SYS INC (BEAS)	1300	16.1200	\$20,956.00	\$325.00
12/14/07	B	TAKE-TWO INTERACTIVE SOFTWARE (TTWO)	1000	18.6700	\$18,670.00	\$348.41
12/14/07	S	ING ASIA PAC HGH DIVID EQ INCM (IAE)	850	22.3200	\$18,972.00	\$334.83
12/18/07	S	BLACKROCK GBL EQTY INCOME TR (BFD)	850	15.6400	\$13,294.00	\$249.38
12/19/07	B	E M C CORP MASS (EMC)	660	18.6500	\$12,309.00	\$268.03
12/26/07	S	KB HOME (KBH)	900	23.3000	\$20,970.00	\$343.38
12/26/07	B	INTEL CORP (INTC)	730	27.9383	\$20,394.96	\$365.00
12/31/07	S	E M C CORP MASS (EMC)	660	18.4500	\$12,177.00	\$254.26
12/31/07	B	PACIFIC ETHANOL INC (PEIX)	2000	7.9500	\$15,900.00	\$400.00
12/31/07	S	TAKE-TWO INTERACTIVE SOFTWARE (TTWO)	1000	18.1200	\$18,120.00	\$320.00
01/02/08	B	EVERGREEN SOLAR INC (ESLR)	850	17.2400	\$14,654.00	\$317.81
01/03/08	B	EVERGREEN SOLAR INC (ESLR)	950	18.4000	\$17,480.00	\$399.00
01/03/08	S	PACIFIC ETHANOL INC (PEIX)	2000	8.6700	\$17,340.00	\$460.00
01/24/08	B	KB HOME (KBH)	1000	23.5490	\$23,549.00	\$394.76
01/24/08	S	INTEL CORP (INTC)	730	20.0100	\$14,607.30	\$328.50
01/28/08	S	KB HOME (KBH)	1000	24.0000	\$24,000.00	\$375.09
01/28/08	B	PACIFIC ETHANOL INC (PEIX)	3500	5.8500	\$20,475.00	\$525.00

01/30/08	B	GENERAL MTRS CORP (GM)	900	27.8500	\$25,065.00	\$375.60
01/30/08	S	PACIFIC ETHANOL INC (PEIX)	3500	6.1900	\$21,665.00	\$560.00
02/27/08	S	GENERAL MOTORS CORP (GM)	900	24.8400	\$22,356.00	\$376.43
02/27/08	B	FT PRECIOUS METALS #6 (30271N306000)	1475	13.9360	\$20,555.60	\$873.61
03/12/08	B	FT ALTERNATIVE ENERGY #3 (30272T161000)	1477	9.3661	\$13,833.73	\$449.60
03/20/08	S	TENET HEALTHCARE CORP (88033GAT7000)	7000	86.5000	\$6,192.55	\$105.00
03/20/08	B	LEHMAN BROS HLDGS INC (LEH)	1000	22.1990	\$22,199.00	\$500.00
03/26/08	B	MOTOROLA INC (MOT)	1000	9.8300	\$9,830.00	\$292.17
03/28/08	B	EVERGREEN SOLAR INC (ESLR)	1200	9.3600	\$11,232.00	\$291.35
04/02/08	S	MOTOROLA INC (MOT)	1000	9.5900	\$9,590.00	\$216.35
04/02/08	S	EVERGREEN SOLAR INC (ESLR)	1500	9.6100	\$14,415.00	\$315.00
04/03/08	S	LEHMAN BROS HLDGS 7.95% (LEHPRJ)	1000	23.2430	\$23,243.00	\$420.00
04/09/08	B	BARCLAYS BK PLC 8.125% PFD (BCSPRD)	750	25.0000	\$18,750.00	\$375.00
04/14/08	B	EL PASO CORP (EP)	1000	17.6700	\$17,670.00	\$347.73
04/18/08	S	EVERGREEN SOLAR INC (ESLR)	1200	10.240	\$12,288.00	\$312.00
04/18/08	B	AGFEED INDUSTRIES INC (FEED)	700	17.5700	\$12,299.00	\$259.00
04/23/08	B	AGFEED INDUSTRIES INC (FEED)	700	19.9700	\$13,979.00	\$280.00
04/25/08	S	AGFEED INDUSTRIES INC (FEED)	700	19.2500	\$13,475.00	\$288.56
04/28/08	B	DWS DREMAN HIGH EQUITY-A (KDHA)	314	45.6200	\$14,324.68	\$744.88
04/30/08	B	FT STOWE GLOBAL COAL #1 (30274W287000)	508	11.8138	\$6,001.41	\$165.04
05/08/08	S	EL PASO CORP (EP)	1000	18.8500	\$18,850.00	\$363.05
05/08/08	B	AGFEED INDUSTRIES INC (FEED)	800	19.3900	\$15,512.00	\$320.00
05/15/08	B	YAHOO INC (YHOO)	1000	27.9300	\$27,930.00	\$450.00
05/28/08	S	BARCLAYS BK PLC 8.125% PFD (BCSPRD)	750	25.1500	\$18,862.50	\$306.21
05/29/08	S	YAHOO INC (YHOO)	1000	27.2060	\$27,206.00	\$375.31
05/30/08	B	CALPINE CORP (CPN)	1000	22.9970	\$22,997.00	\$390.15

05/30/08	B	MARVELL TECHNOLOGY GROUP LTD (MRVL)	1000	17.7282	\$17,728.20	\$370.00
05/30/08	B	FT GLOBAL NATURAL RESOURCES #6 (30273J360000)	1000	10.8857	\$10,885.70	\$435.43
06/11/08	S	CALPINE CORP (CPN)	1000	22.3410	\$22,341.00	\$380.00
06/11/08	B	SKYWORKS SOLUTIONS INC (SWKS)	1000	11.2500	\$11,250.00	\$270.00
06/20/08	B	HARTFORD CAPITAL APPREC FD A (ITHAX)	274.041	40.1400	\$11,000.01	\$522.50
06/23/08	B	EVERGREEN SOLAR INC (ESLR)	1350	12.5100	\$16,888.50	\$364.50
06/23/08	S	MARVELL TECHNOLOGY GROUP LTD (MRVL)	1000	17.4900	\$17,490.00	\$320.00
06/30/08	S	EVERGREEN SOLAR INC (ESLR)	700	9.5400	\$6,678.00	\$210.00
06/30/08	S	SKYWORKS SOLUTIONS INC (SWKS)	1000	9.6915	\$9,691.50	\$250.00
06/30/08	B	BROCADE COMMUNICATIONS SYS INC (BRCD)	2000	8.4700	\$16,940.00	\$420.00
06/30/08	B	30274W386000	565	9.5935	\$5,420.33	\$149.06
06/30/08	B	30274W386000	693	9.4976	\$6,581.84	\$115.18
07/02/08	S	BROCADE COMMUNICATIONS SYS INC (BRCD)	1000	8.6000	\$8,600.00	\$230.00
07/07/08	S	BROCADE COMMUNICATIONS SYS INC (BRCD)	1000	8.2716	\$8,271.60	\$250.00
07/16/08	B	LEHMAN BROS HLDGS INC (LEH)	1000	15.3200	\$15,320.00	\$350.00
07/16/08	S	LEHMAN BROS HLDGS INC (LEH)	1000	16.2900	\$16,290.00	\$350.00
07/22/08	B	BROCADE COMMUNICATIONS SYS INC (BRCD)	1750	6.8284	\$11,949.70	\$350.00
07/23/08	B	SIRIUS SATELLITE RADIO INC (82966U103000)	2000	2.5795	\$5,159.00	\$240.00
07/24/08	B	WACHOVIA CORP NEW (WB)	700	16.4800	\$11,536.00	\$261.37
07/24/08	S	BROCADE COMMUNICATIONS SYS INC (BRCD)	1750	6.3201	\$11,060.18	\$262.50
07/28/08	B	WACHOVIA CORP NEW (WB)	700	14.5600	\$10,192.00	\$255.30
07/28/08	S	EVERGREEN SOLAR INC (ESLR)	950	8.5800	\$8,151.00	\$237.50
07/28/08	S	AGFEED INDUSTRIES INC (FEED)	300	12.9700	\$3,891.00	\$130.38
07/30/08	S	WACHOVIA CORP NEW (WB)	1400	17.0200	\$23,828.00	\$444.07
07/30/08	B	JA SOLAR HOLDINGS CO LTD (JASO)	1500	16.4856	\$24,728.40	\$450.00
07/31/08	B	WASHINGTON MUT INC (WM)	2500	5.3700	\$13,425.00	\$409.34

08/07/08	S	WASHINGTON MUT INC (WM)	2500	5.3500	\$13,375.00	\$395.73
08/08/08	B	LEHMAN BROS HLDGS INC (LEH)	1250	18.5500	\$23,187.50	\$450.93
08/08/08	S	JA SOLAR HOLDINGS CO LTD (JASO)	1500	15.1644	\$22,746.60	\$450.00
08/13/08	B	LEHMAN BROS HLDGS INC (LEH)	750	15.3600	\$11,520.00	\$287.67
08/15/08	S	LEHMAN BROS HLDGS INC (LEH)	750	17.2500	\$12,937.50	\$314.95
08/19/08	B	AMBAC FINL GROUP INC. (ABK)	2000	6.1700	\$12,340.00	\$360.00
08/25/08	S	AMBAC FINL GROUP INC. (ABK)	2000	5.2604	\$10,520.80	\$312.62
08/25/08	B	AGFEED INDUSTRIES INC (FEED)	850	12.7825	\$10,865.13	\$280.50
08/28/08	B	FEDERAL NATL MTG ASSN (FNM)	2000	6.9900	\$13,980.00	\$365.65
08/29/08	S	AGFEED INDUSTRIES INC (FEED)	850	11.4830	\$9,760.55	\$255.00
09/04/08	S	AGFEED INDUSTRIES INC (FEED)	500	10.5615	\$5,280.75	\$170.59
09/08/08	B	AMBAC FINL GROUP INC. (ABK)	1000	8.8992	\$8,899.20	\$250.02
09/15/08	S	AMBAC FINL GROUP INC. (ABK)	1000	6.4120	\$6,412.00	\$220.29
09/15/08	S	SIRIUS SATELLITE RADIO INC (82966U103000)	2000	0.8155	\$1631.00	\$85.20
09/30/08	B	WACHOVIA CORP NEW (WB)	3500	2.4429	\$8,550.15	\$412.75
09/30/08	S	WACHOVIA CORP NEW (WB)	3500	3.5214	\$12,324.90	\$480.24
TOTALS					\$1,362,665.45	\$31,311.42