

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES
COLUMBUS, OHIO 43215-6131

Order No. 11-030

**IN THE MATTER OF: KEVIN PAUL O'BRIEN, CRD # 1782288;
O'BRIEN PRIVATE WEALTH MANAGEMENT;
O'BRIEN PWM, LLC, CRD #148314**

NOTICE OF OPPORTUNITY FOR HEARING

DIVISION ORDER

WHEREAS, the Ohio Division of Securities (hereinafter "the Division"), is charged with the responsibility of protecting investors and finds that this order is necessary or appropriate in the public interest or for the protection of investors, and is consistent with the purposes of the Ohio Securities Act, Chapter 1707 of the Ohio Revised Code (hereinafter "R.C."); and

WHEREAS, the Division has conducted an investigation into the activities of Kevin Paul O'Brien, CRD # 1782288, and O'Brien Private Wealth Management, CRD #148314, (collectively "Respondents"). Respondents' business address is 8190 Beechmont Avenue, Cincinnati, Ohio 45255. As a result of said investigation, the Division alleges as follows:

- (1) Respondent O'Brien Private Wealth Management, whose address is 8190 Beechmont Avenue #163, Cincinnati, Ohio 45255 is a trade name registered in the State of Ohio;
- (2) Respondent O'Brien PWM, LLC, whose address is 8190 Beechmont Avenue #163, Cincinnati, Ohio 45255, is registered as a Limited Liability Company in the State of Ohio;
- (3) Respondent O'Brien PWM, LLC is operating under the trade name of O'Brien Private Wealth Management;
- (4) Respondent Kevin Paul O'Brien ("O'Brien") is a natural person and the Owner and President of O'Brien PWM, LLC and O'Brien Private Wealth Management;
- (5) Prior to O'Brien Private Wealth Management and O'Brien PWM, LLC, Respondent O'Brien worked with Robert W. Baird & Co. from July, 1999 to September, 2008;

- (6) The Central Registration Depository ("CRD") indicates that during his employment with Robert W. Baird & Co., Respondent O'Brien, CRD #1782288, was licensed as a Salesperson in Ohio from July 5, 1999 to September 17, 2008;
- (7) The CRD indicates that Respondent O'Brien was licensed as an Investment Adviser Representative in Ohio from July 5, 1999 to September 17, 2008;
- (8) The CRD also notes that Respondent O'Brien was terminated by Robert W. Baird & Co. in September, 2008 due to his failure to disclose compensation received from a client through an outside business activity and also due to the allegation that he used the same client's funds for his own benefit;
- (9) As a result of his termination of employment with Robert W. Baird & Co., Respondent O'Brien's Salesperson and Investment Adviser Representative Licenses in Ohio under CRD No. 1782288 were terminated on September 17, 2008;
- (10) Respondent O'Brien's employment with O'Brien PWM, LLC, began on September 17, 2008;
- (11) Articles of Organization / Domestic Profit Limited Liability Company for O'Brien PWM, LLC, were filed and recorded on September 19, 2008 with the Ohio Secretary of State;
- (12) The Articles of Organization for a Domestic Limited Liability Company listed the business purpose of O'Brien PWM, LLC, as "Investment and wealth advisory";
- (13) The Ohio Secretary of State's Business filings note the Trade Name / Original Filing documents for O'Brien Private Wealth Management were filed and recorded on September 19, 2008;
- (14) The Trade Name Registration stated the nature of the business conducted by O'Brien Private Wealth Management is "investment and wealth advisory";
- (15) Respondent O'Brien PWM, LLC registered with the CRD in September, 2008;
- (16) Respondent O'Brien PWM, LLC filed an application for an Investment Adviser Firm License with the State of Ohio on September 17, 2008;

- (17) The application for Respondent O'Brien PWM, LLC stated the advisory services of the company were to include, but were not limited to, financial planning services, portfolio management for individuals and businesses, and pension consulting services;
- (18) Respondent O'Brien filed an application for an Investment Adviser Representative License for O'Brien PWM, LLC, CRD #148314, with the State of Ohio on September 17, 2008;
- (19) The advisory services of Respondent O'Brien as an Investment Adviser Representative were to include, but were not limited to financial planning services, portfolio management for individuals and businesses, and pension consulting services;
- (20) The Ohio applications for O'Brien PWM, LLC, CRD #148314, and Kevin Paul O'Brien, CRD No. 1782288, were withdrawn on December 18, 2008;
- (21) O'Brien PWM, LLC and Respondent O'Brien have not re-applied with the State of Ohio since December 18, 2008 and therefore are not licensed to act as investment adviser representatives or salespersons for compensation in the State of Ohio;
- (22) In 2008, upon his termination from Robert W. Baird & Co., O'Brien contacted former Baird clients to sign contracts for investment advisory services with O'Brien PWM, LLC;
- (23) During the time period from September 2008 up to and including February, 2010, a series of seventeen (17) client agreement contracts were entered into between clients and Respondents;
- (24) During the time period from September 2008 up to and including December 31, 2009, a series of thirty-one (31) power of attorney forms from Charles Schwab Bank were entered into between Respondents and their contractual clients;
- (25) Each of the Schwab Power of Attorney forms gave Respondents authority to access client's bank accounts and trade information;
- (26) Each of the Power of Attorney forms listed Respondent O'Brien as agent to the applicable client accounts;
- (27) Each of the Charles Schwab Power of Attorney forms named Kevin P. O'Brien as agent and holder of the Power of Attorney;

- (28) Each of the Charles Schwab Power of Attorney forms indicated that Kevin P. O'Brien was employed by O'Brien PWM, LLC, and listed his position with the company as "Principal";
- (29) Each of the Charles Schwab Power of Attorney forms required an answer to the question of whether the agent was "being compensated for providing investment advice on this account or any other account?" On each of the Power of Attorney forms the answer "Yes" was marked;
- (30) Each of the Charles Schwab Power of Attorney forms required an answer to the question "are you, or are you employed by, a federal or state registered Investment Advisor?" On each of the Power of Attorney forms the answer "No" was marked;
- (31) Each of the Charles Schwab Power of Attorney forms was signed by Kevin P. O'Brien as agent and holder of the Power of Attorney;
- (32) As described in Paragraphs (1) through (21) the Respondents are not licensed to give investment advice for compensation under R.C 1707.141;
- (33) The Power of Attorney forms described in Paragraphs (24) through (31) contained affirmations that the Respondents were receiving compensation for financial advice;
- (34) William C. Lewis and Dorothy Lewis are husband and wife and are natural persons and Ohio residents;
- (35) William C. Lewis and Dorothy Lewis were clients of Kevin O'Brien during his employment with Robert W. Baird & Co., Inc.;
- (36) William C. Lewis and Dorothy Lewis transferred their accounts from Robert W. Baird & Co, Inc. after Kevin O'Brien's employment was terminated on September 12, 2008;
- (37) On November 24, 2008, William C. Lewis and Dorothy Lewis signed a series of four (4) Power of Attorneys documents with Charles Schwab and Charles Schwab Bank;
- (38) Each of the allegations in paragraphs 27 through 31 applies to the Power of Attorney documents signed by William C. Lewis and Dorothy Lewis;
- (39) On December 29, 2009, William C. Lewis and Dorothy Lewis paid Respondent the sum of six hundred dollars (\$600.00) for investment advice given by Respondent during the months of October, November, and December, 2009;

- (40) On January 19, 2010, William C. Lewis and Dorothy Lewis paid Respondent the sum of two hundred dollars (\$200.00) for investment advice given by Respondent during the month of January, 2010;
- (41) Respondents did not disclose to William C. Lewis and Dorothy Lewis the nature of Kevin O'Brien's termination of employment with Robert W. Baird & Co., Inc.;
- (42) Respondents did not disclose to William C. Lewis and Dorothy Lewis the nature of the Civil lawsuit associated with his termination of employment with Robert W. Baird & Co., Inc.;
- (43) Kevin P. O'Brien did not disclose to William C. Lewis and Dorothy Lewis that he was not licensed to give financial advice for compensation in the State of Ohio;
- (44) The information relating to Respondents' termination from Baird was material in the decision of William C. Lewis and Dorothy Lewis relative to their decision to hire Respondents and in whether to sign the Schwab Power of Attorney forms;
- (45) The information relating to Respondents' status concerning being licensed in Ohio was material in the decision of William C. Lewis and Dorothy Lewis relative to their decision to hire Respondents and in signing the Schwab Power of Attorney forms;
- (46) The omissions as stated in paragraphs (47), (48), and (49) were omissions of material facts;
- (47) 1707.44(A)(2) prohibits providing investment advice for compensation without a license under R.C. 1707.141;
- (48) R.C. 1707.44(G) provides that no person in purchasing or selling securities shall knowingly engage in any act or practice that is in this chapter, is declared illegal, defined as fraudulent, or prohibited; and
- (49) R.C. 1707.01(J) defines fraudulent practices as any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise and any act, practice, transaction, or course of business relating to the purchase or sale of securities that is fraudulent or that has operated or would operate as a fraud upon the seller or purchaser.

WHEREAS, based on Paragraphs (1) through (49), the Division alleges that Respondents have violated the provisions of Ohio Revised Code Sections 1707.44(A)(2) and 1707.44(G);

THEREFORE, IT IS ORDERED THAT, pursuant to Chapter 119 of the Ohio Revised Code, Respondents Kevin Paul O'Brien and O'Brien Private Wealth Management are hereby notified that thirty (30) days from the date of mailing of this Notice, the Division, pursuant to R.C. 1707.23(G), intends to issue an Order to **CEASE AND DESIST** from the acts and practices as described above which constitute a violation of Chapter 1707 of the Ohio Revised Code;

FURTHER, IT IS ORDERED THAT, pursuant to Ohio Revised Code sections 119.01 to 119.12, inclusive; Respondents are hereby notified that they are entitled to an adjudicatory hearing if a written request is received by the Division within thirty (30) days from the date of mailing of this Notice. At the hearing, Respondents may appear in person, by their attorney(s), or together with their attorney(s), or Respondents may present their positions, arguments, or contentions in writing, and that at the hearing they may present evidence and examine witnesses appearing for or against them; and

FURTHER, IT IS ORDERED THAT, if no hearing is timely requested, an Order to **CEASE and DESIST** may be issued.

PRM/cn

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 16th day of June, 2011.


Andrea Seidt, Commissioner of Securities