

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2008015004001**

RECEIVED
2009 SEP 15 A 7:33
REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Kevin Paul O'Brien, Respondent
Registered Representative
CRD No. 1782288

Pursuant to FINRA Rule 9216 of the FINRA Code of Procedure, Kevin Paul O'Brien ("Respondent" or "O'Brien") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Respondent O'Brien first became registered with FINRA (f/k/a NASD), as a General Securities Representative with Fifth Third/The Ohio Company on November 16, 1987. From September 25, 1998 until his termination on September 12, 2008, O'Brien was registered as a General Securities Representative with Robert W. Baird & Co., Inc. O'Brien has not been registered with a member firm since September 12, 2008. FINRA retains jurisdiction over O'Brien pursuant to Article V, § 4(a) of the By-Laws since the conduct which serves as the basis for this action commenced prior to his termination of registration from a member firm and this AWC is filed within two years after the effective date of his last termination of registration from a member firm.

O'Brien has prior disciplinary history. On October 24, 2005, FINRA suspended O'Brien for ten days and fined him \$2,500 for engaging in outside business activity

000006258 2009

without giving prompt written notice to the firm, in violation of NASD Rules 3030 and 2110.

OVERVIEW

From 1998 through 2008 (the "review period"), O'Brien was a registered representative with Robert W. Baird & Co., Inc. ("Baird" or the "firm"). During the review period, O'Brien engaged in outside business activities for one of his brokerage customers, RB, without providing prompt written notice to the firm. O'Brien additionally made improper use of RB's funds during the review period, for which the firm reimbursed the customer \$285,000. By engaging in outside business activities with [REDACTED] without providing prompt written notice to the firm and improperly using customer funds, O'Brien violated NASD Conduct Rules 3030, 2330, and 2110, and IM-2310-2.

FACTS AND VIOLATIVE CONDUCT

During the review period, O'Brien was the broker of record at Baird for customer RB. In addition to these services, O'Brien performed outside business activities for RB regarding management of RB's assets and estate. O'Brien never provided the firm with written notification of these outside business activities. In connection with providing the outside business services, O'Brien, with the assistance of RB and RB's legal counsel, obtained a durable power of attorney over RB's bank account at another financial institution in RB's name, transferred funds via checks from RB's Baird account to the second account and wrote checks on the second account.

During the review period, a total of \$378,000 was transferred from RB's Baird account to the second account. Of this amount, a portion was used to pay legitimate expenses on behalf of RB. O'Brien misappropriated the remaining amount by writing checks to himself and to a charitable organization for which he was treasurer, and by withdrawing cash using an ATM card for the second account.

RB discovered that funds were missing in September 2008 and reported the losses to Baird. The firm reimbursed RB \$285,000. Baird was unaware that O'Brien had engaged in any outside business activities for RB during O'Brien's employment with the firm.

By engaging in outside business activities for RB without providing prompt written notice to the firm and improperly using RB's funds, O'Brien violated NASD Conduct Rules 3030, 2330, and 2110 and IM-2310-2.

B. I also consent to the imposition of the following sanctions:

A bar from association with any FINRA member in any capacity.

I understand that if I am suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rule 8310 and IM-8310-1.)

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

- A.** Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAG, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B.** If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C.** If accepted:
 - 1.** this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2.** this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3.** FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-3; and
 - 4.** I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

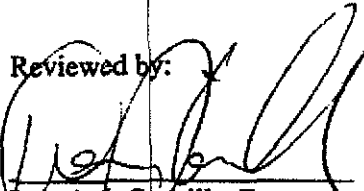
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

8-25-2009

Date


Kevin Paul O'Brien

Reviewed by:


Dennis J. Concilla, Esq.
Counsel for Respondent

Accepted by FINRA:

9/14/09
Date

Signed on behalf of the
Director of ODA, by delegated authority


Samuel L. Israel
Associate Vice President and Chief
Counsel
FINRA Department of Enforcement
1801 K Street N.W., Suite 800
Washington, D.C. 20006-1334
(t) (202) 974-2868
(f) (202) 721-8316