

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 61995 / April 27, 2010

In the Matter of the Application of	:	
	:	
Financial Industry Regulatory Authority, Inc.	:	
	:	
For an Order Granting the Approval of	:	ORDER APPROVING
	:	APPLICATION FOR
Patrick C. Lubin	:	RELIEF FROM A
	:	STATUTORY
As a	:	DISQUALIFICATION
	:	
General Securities Representative	:	
	:	
With	:	
	:	
O'Brien Shepard, Inc.	:	
	:	
Securities Exchange Act of 1934	:	
Section 15A(g)(2)	:	
	:	

The Financial Industry Regulatory Authority, Inc. (“FINRA”) has filed a Notice containing an application (“Application”) pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act”) on behalf of O’Brien Shepard, Inc. (“O’Brien” or “Firm”) seeking Commission consent for Patrick C. Lubin, a person subject to a statutory disqualification, to associate with O’Brien, subject to the terms and conditions set forth in the Application. Mr. Lubin is currently not employed in the securities industry.

I. Background

A. Basis for Statutory Disqualification

On September 27, 2007, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions (“Bar Order”) barring Mr. Lubin from association with a broker or dealer, or a municipal securities dealer, with the right to re-apply after one year, and permanently barring Mr. Lubin from association in a supervisory capacity with a broker or dealer, or a municipal securities dealer. See Securities Exchange Act Release No. 56542 (September 27, 2007). The Bar Order also imposed a cease-and-desist order on Mr. Lubin, and ordered him to pay a \$50,000 fine. The Bar Order subjects Mr. Lubin to a statutory disqualification under Section 3(a)(39)(B)(i)(II) of the Exchange Act.

The Bar Order found that Mr. Lubin willfully aided and abetted and caused the violations of his then-firm, Regional Brokers, Inc. (“Regional”), of Sections 15(c)(1)(A), 15B(c)(1) and 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and MSRB Rules G-8, G-9, G-13 and G-17. Generally, the Commission found that Mr. Lubin, while associated with Regional, failed to supervise Regional’s municipal securities traders who engaged in misrepresentations and other fraudulent conduct in bond auctions, and that Mr. Lubin had also condoned and participated in such misconduct.

B. Mr. Lubin’s Industry Background

Mr. Lubin first registered in the securities industry as a general securities representative in September 1983. He qualified as a municipal securities principal in August 1992, as a financial and operations principal in October 1994, and as a general securities principal in July 1996. He was previously associated with four firms including Regional between September 1983 and November 2006. Mr. Lubin voluntarily resigned from Regional on November 21, 2006.

II. Proposed Business Activities and Supervision

In the Application, FINRA and O’Brien represent that O’Brien proposes to employ Mr. Lubin as a general securities representative at the Firm’s home office located in Jersey City, New Jersey, and that Mr. Lubin’s “duties will include gathering offerings, putting bonds out for the bid, making phone calls to determine prospective client’s needs, presenting offerings, and trying to make a match by communicating back and forth between buyers and sellers.” O’Brien has been a FINRA member since May 1976, and employs five registered principals and 11 registered representatives. FINRA represents that the Firm operates as a municipal bond broker’s broker.

FINRA and O’Brien represent that O’Brien proposes that Jeffrey P. Flaster, the president and a 50 percent owner of the Firm, will be Mr. Lubin’s primary supervisor.

Mr. Flaster will supervise Mr. Lubin on-site at the Firm's home office, and they will be in very close proximity to each other because all of the Firm's representatives and principals work together at one large table in one room. Mr. Flaster first registered as a general securities representative in November 1967, and qualified as a municipal securities principal in December 1993. Mr. Flaster became associated with O'Brien in September 1990, and he currently supervises nine individuals at O'Brien. Prior to that time, he was associated with seven other firms commencing in 1971.

FINRA and O'Brien also represent that O'Brien proposes that when Mr. Flaster is not available, Michael Petrucelli, the Firm's vice president and the other 50 percent owner of the Firm, will supervise Mr. Lubin. Mr. Petrucelli qualified as a general securities representative in March 1983 and as a municipal securities principal in December 1983. He has been employed by O'Brien since September 1990. Mr. Petrucelli was associated with three other firms before joining O'Brien.

In the Application, FINRA and O'Brien also represent, among other things, that:

1. O'Brien will amend its written supervisory procedures to state that Mr. Flaster is the primary supervisor responsible for Mr. Lubin;
2. Mr. Lubin will not act in a supervisory capacity;
3. Mr. Lubin will not maintain any discretionary accounts;
4. Mr. Flaster will supervise Mr. Lubin on-site;
5. Mr. Flaster must first approve all accounts handled by Mr. Lubin. Mr. Lubin will only be permitted to cover accounts that Mr. Flaster has approved. Mr. Flaster will maintain a list of Mr. Lubin's accounts and segregate it for ease of review during any regulatory examination;
6. Mr. Flaster will monitor all "bids wanted auctions" in which Mr. Lubin is involved. Mr. Flaster will accomplish this by following the procedures found in the Firm's written supervisory procedures and by Mr. Flaster's close proximity on the trading desk to Mr. Lubin;
7. For the purposes of client email communication, Mr. Lubin will be allowed to use only an email account that is held at the Firm, with all emails being filtered through the Firm's email system. Mr. Lubin will forward any emails received or sent through his Firm email account to the Bloomberg system, enabling Mr. Flaster to conduct a simultaneous review of emails that Mr. Lubin receives or sends. If Mr. Lubin receives a business-related email message in another email account outside the Firm, he will immediately deliver that message to the Firm's email account and through the Bloomberg system. Mr. Lubin will also inform the Firm of all outside email accounts that he maintains. Mr. Flaster will preserve Mr. Lubin's email messages and segregate them for ease of review during any regulatory examination. It is currently the Firm's policy to

have all employees certify, on an annual basis, that they have not engaged in any securities-related electronic correspondence, either sent or received, outside of the Firm's internal electronic system. Mr. Flaster will preserve Mr. Lubin's annual certifications and segregate them for ease of review during any regulatory examination;

8. The Firm's primary method of communication is the Bloomberg system. The Firm will configure Mr. Lubin's system to enable Mr. Flaster to be copied simultaneously on all of Mr. Lubin's incoming and outgoing correspondence. The Firm's communication vendor, SMARSH, will also capture the Bloomberg correspondence. On a monthly basis, SMARSH will provide the Firm with a disk containing all of Mr. Lubin's communications from the prior month. Mr. Flaster will maintain these disks and segregate them for ease of review during any regulatory examination;

9. Mr. Flaster will promptly review and approve all of Mr. Lubin's order tickets within a 24-hour period, and he will evidence his review by placing his initials on the tickets;

10. Mr. Lubin will not be permitted to engage in any outside securities transactions or any outside business activities that are investment-related. If Mr. Lubin maintains any personal outside securities accounts, Mr. Flaster will review all brokerage account confirmations and statements. To evidence his review, Mr. Flaster will maintain copies of the statements and confirmations, initial them, and segregate them for ease of review during any regulatory examination;

11. If Mr. Flaster is on vacation or out of the office, Mr. Petrucelli will act as Mr. Lubin's interim supervisor;

12. All complaints pertaining to Mr. Lubin, whether oral or written, will be immediately referred to Mr. Flaster for review. Mr. Flaster will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint and the resolution of the matter. Mr. Flaster will segregate documents pertaining to these complaints for review during any regulatory examination;

13. For the duration of Mr. Lubin's statutory disqualification, the Firm must obtain prior approval from FINRA's Member Regulation if it wishes to change Mr. Lubin's responsible supervisor from Mr. Flaster to another person; and

14. Mr. Flaster must certify quarterly (March 31, June 30, September 30, and December 31) to the Firm's compliance department that Mr. Flaster and Mr. Lubin are in compliance with all of the above conditions of heightened supervision to be accorded Mr. Lubin.

III. Relief Sought

In the Application, FINRA seeks an order declaring that, notwithstanding the statutory disqualification, the Commission:

1. Will not institute proceedings pursuant to Section 15(b) of the Exchange Act solely on the basis of Mr. Lubin's association as a general securities representative with O'Brien pursuant to the representations contained in the Application; and
2. Will not direct FINRA to bar the proposed association, as provided in Section 15A(g)(2) of the Exchange Act.

IV. Conclusion

The Division of Trading and Markets, pursuant to delegated authority, has reviewed the instant Application and the record before FINRA. Relying on the representations made by FINRA and O'Brien concerning the proposed association of Mr. Lubin,¹ the Division of Trading and Markets has concluded that it is appropriate for the Commission to approve the Application for Mr. Lubin to associate as a general securities representative subject to the conditions of this order.

Accordingly, IT IS ORDERED that said Application of FINRA on behalf of O'Brien and Mr. Lubin be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²

Elizabeth M. Murphy
Secretary

¹ All representations, terms, and conditions of employment not specifically listed are incorporated herein by reference. This Order is further conditioned on FINRA's Rule 19h-1 notice filing which includes O'Brien's MC-400 Application to FINRA.

² 17 CFR 200.30-3(a)(4).