

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51473 / April 4, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11880

In the Matter of

DENIS TIMOTHY O'BRIEN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDING
PURSUANT TO SECTION 15(b)(6) OF
THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) against Denis Timothy O’Brien (“Respondent”).

II.

In anticipation of the institution of this proceeding, Respondent has submitted an Offer of Settlement (the “Offer”) that the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceeding brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him, the subject matter of this proceeding, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceeding Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. O'Brien, age 49, resides in Temecula, California and was a sales agent of D.W. Heath & Associates, Inc., a California corporation, which acted as an unregistered broker-dealer offering and selling securities in the form of corporate notes of Private Capital Management, Inc. ("PCM") and the PCM Fixed Income Fund I, LLC ("PCM Fund") (collectively, "PCM Notes"). Respondent has never been registered with the Commission in any capacity.

2. On March 8, 2005, a judgment of permanent injunction was entered against Respondent, pursuant to his consent, enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a)(1) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. D. W. Heath & Associates, Inc., et al., Civil Action Number CV 04-02949 JFW (Ex), in the United States District Court for the Central District of California.

3. The Commission's first amended complaint alleges that Respondent, acting with and through Heath & Associates, PCM and the PCM Fund engaged in the unregistered offer and sale of at least \$69.9 million in PCM Notes. The Commission's first amended complaint also alleges that Respondent made material misrepresentations to prospective investors concerning the use of investor proceeds and the due diligence he had conducted prior to recommending the investment to prospective investors. The Commission's first amended complaint further alleges that Respondent knowingly failed to disclose to investors commissions received by him and other sales agents.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondent's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent be, and hereby is, barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order;
and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct
that served as the basis for the Commission order.

By the Commission.

Jonathan G. Katz
Secretary