

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of
Scott Mathis
as a
General Securities Representative and
Principal
with
DPEC Capital, Inc.

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-1960

April 30, 2015

I. Introduction

On September 4, 2012, DPEC Capital, Inc. (“the Firm” or “DPEC”) filed a Membership Continuance Application (“MC-400” or “the Application”) with FINRA’s Department of Registration and Disclosure, seeking to permit Scott Mathis (“Mathis”), a person subject to a statutory disqualification, to associate with the Firm as, among other things, a general securities representative and principal. On October 16, 2014, a subcommittee (“Hearing Panel”) of FINRA’s Statutory Disqualification Committee held a hearing on the matter. Mathis appeared at the hearing, accompanied by his counsel, Eric Hutner, Esq., and his proposed primary supervisor, Keith Fasano (“Fasano”). Lorraine Lee Stepney, Ann-Marie Mason, Esq., and Melissa Nunziato, Esq., appeared on behalf of FINRA’s Department of Member Regulation (“Member Regulation”).

For the reasons explained below, and pursuant to controlling Commission precedent governing our review of this matter that limits the factors we may consider in assessing the Application, we approve the Firm’s Application.¹

¹ Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. In turn, the Statutory Disqualification Committee considered the Hearing Panel’s recommendation and presented a written recommendation to the National Adjudicatory Council (“NAC”).

II. The Statutorily Disqualifying Event

Mathis is statutorily disqualified pursuant to a NAC decision dated December 12, 2008, which found that, among other things, he willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose five federal tax liens that arose from 1996 through 2002.² The NAC suspended Mathis for three months and fined him \$10,000 in connection with this misconduct. The NAC also found that Mathis failed to timely amend his Form U4 to disclose a customer complaint and civil action, and suspended him for 10 business days and fined him \$2,500 for this non-willful misconduct.³ The NAC’s decision was affirmed on appeal. *See* Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff’d*, 671 F.3d 210 (2d Cir. 2012). Mathis subsequently paid all fines owed pursuant to the NAC decision and served his suspension.

Before the Hearing Panel, Mathis and his counsel stated that Mathis never disputed that he failed to disclose the tax liens on his Form U4, but argued that he did not willfully fail to disclose such liens based upon Mathis’s admittedly mistaken belief as to what constituted a tax lien. Mathis testified that the tax liens resulted from a lower withholding of taxes and that he always filed tax returns. In 2003, Mathis paid in full the taxes underlying these liens.

² FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). *See* FINRA By-Laws, Article III. Exchange Act Section 3(a)(39) provides that:

A person is subject to a “statutory disqualification” with respect to . . . association with a member of, a self-regulatory organization, if such person . . . (F) . . . has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any material fact which is required to be stated therein.

³ Mathis and the Firm also settled other charges brought in connection with the complaint underlying Mathis’s statutory disqualifying decision pursuant to an Order Accepting Offer of Settlement dated May 23, 2007. Pursuant to this settlement, Mathis paid, jointly and severally, a \$107,500 fine, and agreed to a 30-day suspension in all principal capacities. *See infra* Part III.C.3.

III. Background Information

A. Mathis

Mathis qualified as a general securities representative in May 1985, as a general securities principal in November 1995, and he passed the uniform securities agent state law exam in May 1985. Mathis also was grandfathered in as an investment banking representative. *See FINRA Regulatory Notice 09-41*, 2009 FINRA LEXIS 114 (July 2009). Mathis has been associated with the Firm (f/k/a InvestPrivate, Inc.) since April 1999. Mathis was previously associated with eight firms. Mathis continued to work at the Firm during the pendency of his appeal of the NAC's December 2008 decision.⁴ After exhausting his appeals, Mathis served his three-month suspension from June 2012 until September 2012. The Firm subsequently filed the Application, and Mathis has worked at the Firm during the pendency of the Application.⁵

B. Customer Complaints and Regulatory Matters

Mathis has been the subject of a number of customer complaints, and several regulatory matters. The vast majority of these matters, however, occurred prior to Mathis's disqualifying event. Pursuant to the Commission's directive, in considering an Application such as this one, we may generally consider only intervening misconduct and new information that has arisen since the disqualifying event and are thus precluded from considering these numerous customer complaints and regulatory matters. *See infra* Part VI. Nonetheless, we briefly summarize Mathis's customer complaints and regulatory matters.

1. Customer Complaints

From January 1992 through September 2006, 23 customer complaints were filed against Mathis (19 of which were filed before December 2002). These customer complaints alleged that Mathis, among other things, engaged in unauthorized trading, made unsuitable recommendations, breached his fiduciary duties, made fraudulent misrepresentations and omissions, and engaged in excessive trading. Fifteen of the 23 customer complaints were dismissed by a FINRA arbitration panel or denied by Mathis's firm with no further action taken by the customers. The eight remaining complaints, which sought damages totaling approximately \$1.165 million, were settled for a total of approximately \$148,000 (with Mathis personally contributing approximately

⁴ Mathis's appeal of the NAC's decision stayed the imposition of his suspension. *See* FINRA Rule 9370(a) (stating that filing an application for review shall stay the effectiveness of any sanction, other than a bar or expulsion).

⁵ Mathis's continued association with the Firm is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

\$29,500).⁶ Before the Hearing Panel, Mathis attributed the majority of his customer complaints to the fact that, over the years, he has supervised many registered representatives and that his business initially focused on higher risk areas (such as the biotechnology sector).

In April 2009, a customer alleged that Mathis misled him in connection with a private placement. The customer sought \$135,000 in damages. The Firm denied this claim and the customer did not take any further action.

2. Regulatory Matters

Several states have brought regulatory actions against Mathis. All but one pre-dates the disqualifying event, and as described below, the action post-dating Mathis's disqualifying event was based upon Mathis's prior history.

In May 1999, Mathis entered into an agreement with the Kansas Securities Commissioner to settle claims that he failed to supervise a registered representative. Mathis agreed to withdraw his registration in Kansas for 18 months and paid a \$250 fine.

In December 1999, Mathis entered into a consent order with the State of Missouri to settle claims that he inadequately supervised registered representatives. Mathis agreed to not reapply for registration for two years and to not accept a position of supervisory responsibility for any Missouri registered agent for two years. Mathis also paid \$2,500 to the Missouri Investor Education Fund.

In October 2004, the State of New Jersey denied Mathis's registration in that state. New Jersey later vacated this order, and Mathis agreed not to reapply to be licensed as a securities agent in New Jersey before May 2007.

In July 2007, Mathis surrendered his license to the State of Ohio Division of Securities in response to a pending disciplinary proceeding based upon Mathis's prior history.

Finally, in November 2011, Mathis agreed to a two-year conditional registration in the State of Georgia. This agreement was based solely on Mathis's history prior to the disqualifying event.

⁶ Mathis and the Firm settled one customer complaint in December 2002. Pursuant to that settlement, a FINRA arbitration panel dismissed certain of the customers' claims, found that the customers' allegations that Mathis and the Firm had recommended an unsuitable concentration of private placements had merit, and ordered that Mathis and the Firm rescind certain private placement transactions totaling \$432,000. At the hearing, Mathis's counsel explained that although the arbitration panel ordered Mathis and the Firm to refund this purchase, the stock at issue had significant value and the Firm later recouped the entire amount it had been ordered to refund to the customer. Further, in one of the customer complaints where Mathis was dismissed, Mathis's firm agreed to repurchase certain securities from the complaining customer.

3. Tax Liens

Mathis currently has two outstanding federal tax liens levied against him. Before the Hearing Panel, Mathis testified that he has been paying down the balances due pursuant to payment plans approved by the IRS. He owes approximately \$520,000 and makes monthly payments of \$10,000. Member Regulation represents that Mathis timely reported these liens on his Form U4.

C. The Firm

1. Background and History

The Firm is based in New York City, and it has been a FINRA member since June 2000. The Firm has one Office of Supervisory Jurisdiction (“OSJ”) and no branch offices. The Firm employs seven registered representatives and four registered principals. It does not employ any other individuals subject to statutory disqualification.

Mathis founded the Firm in 1999, and serves as its president, chief executive officer, and chairman of the Firm’s board of directors. Mathis directly and indirectly owns approximately 10% of the Firm’s parent, Algodon Wines & Luxury Development Group, Inc. (“AWLD”).⁷ Mathis also serves as AWLD’s president, chief executive officer, and chairman of its board of directors, and he spends a substantial amount of time on AWLD’s various businesses. AWLD is a holding company that conducts most of its business operations and holds its assets through various subsidiaries.⁸ AWLD’s primary focus is to create, develop, market and manage real estate in Argentina.

The Firm specializes in private placements, and Mathis testified that the Firm’s purpose is to raise funds for AWLD’s operations by finding accredited investors.⁹ Mathis testified that the vast majority of the Firm’s customers are referrals from existing Firm customers, and that the Firm does not engage in cold calling to locate accredited investors. Mathis further testified that the Firm effects approximately 10 securities transactions each year as an accommodation to its existing customers, and that the Firm effectuates one to two private placements per year in connection with AWLD’s businesses.

⁷ AWLD has approximately 680 shareholders. Fasano, Mathis’s primary proposed supervisor and the Firm’s chief compliance officer, owns approximately .23% of AWLD.

⁸ At the time of the hearing, AWLD was a public reporting company and was in the process of becoming a publicly-listed company.

⁹ The Firm also raises funds for another private company for which Mathis serves as president, chief executive officer, and chairman of its board of directors. That company develops Hollywood-themed fast food restaurants overseas.

2. Routine Examinations

The Firm's most recent examination concluded in August 2013. FINRA did not note any exceptions in connection with this examination.

In October 2010, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for failing to: (1) obtain from a registered representative's former member firm a copy of his Uniform Termination Notice for Securities Industry Registration; (2) notify FINRA of the Firm's reliance on the Limited Size and Resources Exemption; (3) have an adequate supervisory system in place to ensure compliance with net capital requirements; and (4) accurately calculate its net capital. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

In January 2009, and as a result of a cause examination, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for failing to: (1) promptly transmit customer checks and maintain an accurate blotter; (2) send confirmations to customers regarding changes of address; (3) adequately address the supervisory review of email in the Firm's written supervisory procedures ("WSPs"); and (4) address in the Firm's WSPs heightened supervisory procedures for Mathis and another individual (in that the WSPs did not assess the type of special supervision needed for each individual based upon their sales practices or other concerns, specify the frequency and scope of reviews, or specify how reviews would be documented or the principal responsible for providing special supervision). The Firm responded in writing that it corrected the deficiencies noted.

3. Regulatory Actions

In February 2009, the Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of NASD Rule 2110 and Exchange Act Rule 17f-2. Without admitting or denying the allegations, the Firm consented to findings that it failed to submit fingerprints for two associated persons. FINRA censured the Firm and fined it \$5,000.

In November 2007, the Firm entered into an AWC with FINRA for violations of NASD Rules 3010, 1017, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it engaged in options activity without first seeking FINRA approval to do so. FINRA censured the Firm and fined it \$15,000.

In May 2007, the Firm and Mathis entered into an Order Accepting Offer of Settlement with FINRA. Without admitting or denying the allegations set forth in FINRA's complaint, the Firm and Mathis agreed to settle allegations that the Firm, Mathis and two other employees violated federal securities laws in connection with the sale of securities and securities offerings, failed to disclose certain matters in private placement offerings, failed to maintain adequate net capital, failed to comply with FINRA registration requirements, failed to comply with escrow

requirements, failed to preserve records, and failed to maintain an adequate supervisory system.¹⁰ FINRA fined the Firm \$205,000 (of which \$107,500 was imposed against the Firm and Mathis, jointly and severally), suspended the Firm for 60 days from seeking or accepting new engagements to conduct or participate in the offer or sale of unregistered securities, and required the Firm to hire an independent consultant to review the Firm's procedures. Mathis also agreed to a 30-day suspension in all principal capacities.

IV. Mathis's Proposed Business Activities

The Firm proposes to continue to employ Mathis at the Firm's home office in New York City as a general securities representative and principal, an investment banking representative, and as the Firm's president, chief executive officer, chairman of the Firm's board of directors, and an indirect owner of the Firm's corporate parent. The Firm and Mathis state that Mathis will operate as a principal in a limited capacity—he will not have direct supervisory responsibilities over the Firm's registered representatives, but will continue as a Firm officer and director (and an officer and director of AWLD). In that capacity, Mathis manages the Firm and its business activities, determines what offerings the Firm will participate in, and has the "responsibility to sign-off on any offering materials used in connection with those offerings."

Mathis will be compensated by commission for his work as a registered representative, and a salary for his management responsibilities at the Firm. Although Mathis holds an ownership stake in the Firm via his approximately 10% ownership interest in AWLD, Mathis testified that he has not received any dividends from AWLD.

The Firm further proposes that Mathis will be supervised on-site primarily by Fasano, the Firm's chief compliance officer. Fasano already serves in the dual roles of supervisor and compliance officer; he currently supervises seven other registered representatives. He has been with the Firm since April 2001, and became the Firm's chief compliance officer in 2010. Fasano first registered as a general securities representative in December 1989. He qualified as a general securities principal in September 2003, passed the uniform securities agent state law exam in January 1990, and was grandfathered in as an investment banking representative. Fasano has been associated with three other firms.

Since 1998, five customer complaints have been filed against Fasano. Three of those complaints were dismissed by FINRA arbitration panels or denied by Fasano's firm with no further action. With respect to the other two complaints, in May 1998, customers alleged that Fasano made misrepresentations. The customers sought \$65,000 in damages. Fasano's firm settled this matter for \$20,000, with Fasano not contributing to this settlement. Further, in March 1999, a customer alleged that Fasano misrepresented facts to him regarding an investment. The

¹⁰ The record shows that FINRA's Department of Enforcement withdrew, with prejudice, allegations that the Firm and Mathis violated Exchange Act Sections 10(b) and 17(a), as well as Exchange Act Rule 10b-5 and NASD Rule 2120.

customer sought \$32,560 in damages. This matter was settled for \$1,000, with Fasano not contributing to this settlement.

We are not aware of any other disciplinary or regulatory proceedings, complaints, or arbitrations against Fasano.

The Firm further proposes that Brian Stern (“Stern”) will serve as Mathis’s alternate, on-site supervisor under the plan. Stern first registered as a general securities representative in November 2002, as an investment banking representative in 2010, and as a general securities principal in September 2014. Stern also passed the uniform securities agent state law exam in November 2002. Stern has been with the Firm since September 2002, and has never been associated with another member firm. He has no disciplinary or regulatory history.

V. Member Regulation’s Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over Mathis set forth below.

VI. Discussion

We have carefully reviewed the entire record in this matter. Based on this record, and pursuant to the Commission’s controlling decisions in this area, we approve the Firm’s Application to employ Mathis as, among other things, a general securities representative and principal, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

As the Commission has made clear, the legal framework that governs our review of the Application is set forth in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), *Arthur H. Ross*, 50 S.E.C. 1082 (1992), and *May Capital Group, LLC* (hereinafter “*Rokeach*”), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006). These Commission decisions provide that, in situations where the Commission or FINRA have already addressed an individual’s misconduct through their administrative or disciplinary processes and have chosen to impose sanctions for that misconduct, FINRA generally should not evaluate a statutory disqualification application based on the individual’s underlying misconduct. The Commission has stated that when the period of time specified in its or FINRA’s order has passed, in the absence of “new information reflecting adversely on [the applicant’s] ability to function in his proposed employment in a manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671; *see also Rokeach*, 2006 SEC LEXIS 1068, at *26 (rejecting FINRA’s challenge to the *Van Dusen* standard and stating that FINRA “should generally confine its analysis to new information” when evaluating a membership continuance application where FINRA has already addressed an individual’s misconduct); *Ass’n of X*, Redacted Decision No. SD06014, slip op. at 6-7 (NASD NAC 2006), *available at* <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p117869.pdf> (approving application under *Van Dusen* standard based in part upon findings that disqualified individual, despite having

several customer complaints and regulatory matters that occurred prior to disqualifying event, did not have any complaints, regulatory actions, or criminal charges after the disqualifying event and thus did not engage in any intervening misconduct).

The Commission also noted in *Van Dusen*, however, that an applicant's re-entry is not "to be granted automatically" after the expiration of a given time period. *Van Dusen*, 47 S.E.C. at 671. Instead, the Commission instructed FINRA to consider other factors, such as: (1) other intervening misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer and supervisor; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standard

After applying the *Van Dusen* standard to this matter and focusing only upon the three factors enunciated in *Van Dusen*, we approve the Firm's Application.¹¹

1. Intervening Misconduct

We recognize that Mathis has an extensive history of customer complaints and several regulatory matters. We find, however, that pursuant to the Commission's precedent governing our review of the Application, the vast majority of these matters arose prior to Mathis's disqualifying event and we are thus precluded from considering these matters in assessing the Application. With respect to the matters that arose subsequent to Mathis's disqualifying event, one customer complaint was denied by the Firm with no further action taken, and Mathis's consent order with the State of Georgia was based solely on Mathis's history prior to the disqualifying event. Thus, the record does not show that Mathis has engaged in any misconduct since he became statutorily disqualified.

Given the expiration of time for Mathis's three-month suspension, Mathis has been permitted to seek re-entry to the securities industry since he served his suspension in 2012. Accordingly, pursuant to the Commission's directives in *Van Dusen* and its progeny that in circumstances such as these we should generally only consider new information that has arisen since the disqualifying event, here we cannot look at Mathis's underlying misconduct that led to his statutory disqualification, or his prior disciplinary and regulatory history, in evaluating the Application. We thus find that the Application meets the first prong of the *Van Dusen* framework because we are not aware that Mathis has engaged in any intervening misconduct.

¹¹ The NAC has previously approved applications for a statutorily disqualified individual to continue to associate with his firm notwithstanding his statutory disqualification where the individual served as the firm's president and chief executive officer. *See, e.g., Ass'n of X*, Redacted Decision No. SD04004 (NASD NAC 2004), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036500.pdf>.

2. The Proposed Supervisors

The record shows that the proposed primary supervisor, Fasano, is qualified to supervise Mathis. He first registered in the securities industry in 1989 and has been a principal since 2003. Importantly, Fasano has been supervising Mathis since 2010 without incident. Further, we note that since Fasano became the Firm's chief compliance officer, the Firm has had no disciplinary or regulatory history.¹² Although Fasano does have duties and obligations as the Firm's chief compliance officer, we find credible Fasano's testimony that he will have sufficient time to supervise Mathis pursuant to heightened supervisory conditions. Fasano's testimony is bolstered by the limited number of securities transactions that the Firm effectuates each year, as well as the limited number of private placements the Firm effects. Moreover, we note that Fasano is assisted by an outside compliance consultant in performing his duties as the Firm's chief compliance officer, and that such consultant serves as a resource for Fasano.¹³ Fasano further testified that he fully understands the responsibility that he is undertaking and the importance of supervising a statutorily disqualified individual such as Mathis.

Moreover, we find that the Firm has adequately addressed Fasano's supervision of Mathis, the Firm's chief executive officer, president, chairman of the board of directors, and indirect owner of the Firm (via his 10% ownership interest in AWLD). As described below, the heightened supervisory plan provides that an independent consultant¹⁴ will verify that Fasano has independence, notwithstanding Mathis's position at the Firm, to ensure Mathis's compliance with the provisions of the heightened supervisory plan. Further, Mathis credibly testified that

¹² Member Regulation did not assert that the two customer complaints filed against Fasano that were not dismissed or denied (the most recent of which occurred more than 15 years ago and for which Fasano did not personally contribute any funds) renders Fasano unfit to supervise Mathis. Similarly, although Fasano has a small ownership interest in AWLD, he testified that he does not receive any overrides on Mathis. Under the circumstances, we find that these matters have no bearing on our assessment of Fasano's ability to supervise Mathis.

¹³ The Firm stated that the consultant's primary duties consist of reviewing and testing the Firm's Anti-Money Laundering Program and procedures; reviewing annually the Firm's business operations and procedures (and reporting to senior management any deficiencies); administering the Firm's Web CRD® filings; conducting the Firm's annual meeting; reviewing and testing the Firm's business continuity plan; reviewing and updating annually the Firm's WSPs; and assisting with regulatory exams. Fasano further testified that if he ever has issues or questions concerning compliance matters, he seeks guidance from the consultant.

¹⁴ The independent consultant must be approved by Member Regulation pursuant to the terms of the heightened supervisory plan. At the hearing, Mathis's counsel stated that although no final determination has been made, this independent consultant may be the Firm's existing compliance consultant.

Fasano has “complete autonomy” in carrying out his duties as the Firm’s chief compliance officer and that Fasano “calls the shots” with respect to compliance matters.¹⁵

With respect to Mathis’s backup supervisor Stern, while we have reservations concerning Stern’s lack of supervisory experience, given the provisions in the heightened supervisory plan requiring Fasano to promptly review all actions taken by Stern in Fasano’s absence upon Fasano’s return to the office, and the independent consultant’s semi-annual certification that Mathis’s activities are being adequately supervised under the plan, we find that Stern’s lack of supervisory experience does not warrant denial of the Application.¹⁶ We further note that Stern has been employed with the Firm for more than 12 years without incident.

3. The Firm’s History and the Proposed Heightened Supervisory Plan

Third, we look to the nature and disciplinary history of the Firm and to the supervisory plan. The record shows that, although the Firm has some disciplinary history, it has taken corrective actions to address noted deficiencies. Further, the last regulatory matter involving the Firm occurred more than five years ago, and since Fasano began serving as the Firm’s chief

¹⁵ Member Regulation also represents that the Firm is in compliance with FINRA Rule 3110(b)(6)(C), which provides that a firm’s supervisory procedures shall include provisions prohibiting associated persons who perform supervisory functions from: (i) supervising their own activities; and (ii) reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising. The rule further provides that if a firm determines that compliance with this provision is not possible because of the firm’s size or a supervisory personnel’s position within the firm, the member must document the factors used to reach such determination and how the supervisory arrangement with respect to such supervisory personnel otherwise complies with FINRA Rule 3110(a). *See also* Supplementary Material .10 to FINRA Rule 3110 (stating that a firm’s determination that it is not possible to comply with Rule 3110(b)(6)(C) will generally arise where, among other things, a registered person is the member’s most senior executive officer); *FINRA Regulatory Notice 14-10*, 2014 FINRA LEXIS 17, at *21-22 (Mar. 2014) (stating that “FINRA Rule 3110(b)(6) provides an exception for a firm that determines, with respect to any of its supervisory personnel, that compliance with [Rule 3110(b)(6)’s prohibitions] is not possible because of the firm’s size or a supervisory personnel’s position within the firm.”).

¹⁶ Regarding the Firm’s choice of Stern as Mathis’s backup supervisor, Mathis’s counsel stated that given the Firm’s small size, there were “not a lot of people to choose from.” The only other potential candidate, who is not registered as a general securities principal, serves as the Firm’s chief financial officer, chief operating officer, and financial and operations principal. Counsel further stated that, “[i]n discussions with [Member Regulation], it became apparent that they really wanted someone more closely aligned [than the chief financial officer] with the business activities of the firm.” Member Regulation represented that it had no objection to Stern serving as the backup supervisor.

compliance officer, the Firm has an unblemished record. We find that the Firm's prior disciplinary and regulatory actions will not interfere with its ability to provide an effective supervisory environment for Mathis.

Moreover, the Firm has proposed a comprehensive supervisory plan, developed with significant input and assistance by Member Regulation, to ensure that it will be able to maintain future compliance with the plan of heightened supervision for Mathis. As stated by Member Regulation, a key component of the heightened supervisory plan is a semi-annual review and certification that the Firm, Mathis, and Fasano are complying with the plan's terms. The Firm's plan is specifically tailored to prevent misconduct by Mathis. We have determined that under the Commission's commands in *Van Dusen*, the Firm's Application satisfies the conditions necessary for Mathis to remain in the securities industry.

We are satisfied that the following supervisory procedures for Mathis, if they are diligently followed, will enable the Firm to reasonably monitor his activities on a regular basis:¹⁷

- *1. In light of Mathis's equity position in DPEC's corporate parent, and to ensure the independence of Mathis's supervisor, DPEC shall engage an independent compliance consultant, not objectionable to FINRA's Department of Member Regulation, to verify that Mathis's supervisor's performance of his obligations under this supervisory plan have been fully performed in an environment where such performance is free from intimidation, coercion, or fear of retribution in the event Mathis's actions are found not to be in compliance in any respect with the provisions of this supervisory plan. The independent consultant will be required to certify on a semi-annual basis that Mathis's activities were monitored appropriately and in accordance with this supervisory plan. Copies of these certifications will be maintained and kept segregated for ease of review during any statutory disqualification examination.
- *2. DPEC will amend its written supervisory procedures to state that Fasano (hereinafter, "Supervisor") will serve as the primary supervisor for Mathis. If at any time Supervisor is not available to perform these functions, his responsibilities shall be performed by Stern, who has been designated as Mathis's alternate supervisor.
- *3. In the event that Stern performs any duties required under this plan while Supervisor is unavailable, Supervisor will review such actions taken by Stern and certify, within three (3) business days, that these actions comply with the

¹⁷ Items marked with an asterisk are heightened supervisory conditions that are not standard supervisory procedures at the Firm.

obligations of this plan of supervision.¹⁸ Records of the certifications will be kept segregated and maintained for ease of review during any statutory disqualification examination. In the event that Supervisor remains unavailable to perform the duties of this plan of supervision, Stern shall be responsible for all duties and obligations herein.

4. Mathis will not maintain discretionary accounts.
- *5. Mathis will not be the supervisor for any registered representative. Mathis will be registered at the Firm as a General Securities Principal (Series 24), but he will only act in a principal capacity as it relates to his duties as an officer and director of DPEC.
6. DPEC's home office at 135 Fifth Avenue, 10th Floor, New York, New York 10010 will serve as Mathis's primary office location and Mathis will be supervised at this location by Supervisor.
- *7. Prior to the opening of a securities account by Mathis, Supervisor will review and pre-approve each account. Account paperwork will be documented as approved with a date and signature and will be maintained at the Firm's home office located in New York City. Supervisor will keep copies of the paperwork segregated for ease of review during any statutory disqualification examination.
- *8. Supervisor will supervise Mathis's outside business activities and Mathis will disclose in writing to Supervisor, on a monthly basis, details related to Mathis's outside business activities. Such monthly disclosures will include a summary of Mathis's business activity, including nature of business conducted, business-related travel including destination and purpose of trip, and a summary of pending and completed transactions (including but not limited to all private equity transactions). Supervisor will review Mathis's monthly disclosures and keep copies of such disclosures, and evidence of Supervisor's review, segregated for ease of review during any statutory disqualification examination.¹⁹
- *9. Supervisor will review all written incoming DPEC-related correspondence (including email) addressed to or relating to Mathis upon arrival, and will review all DPEC-related outgoing correspondence prior to the time it is sent.

¹⁸ We have clarified that Fasano shall review Stern's actions when Fasano is out of the office within three business days of Fasano's return to the office. This heightened supervisory plan supersedes all previous plans submitted by the parties.

¹⁹ We have clarified that Mathis shall disclose in writing his outside business activities.

10. For purposes of client communication, Mathis will only be allowed to use an email account held at DPEC, with all emails being filtered through DPEC's email system. If Mathis receives a DPEC-related email message in another email account outside DPEC, he will immediately forward that message to his DPEC email account. Mathis will also inform DPEC of all outside email accounts that he maintains and will provide access to the accounts upon request. Supervisor will maintain the emails and keep them segregated for ease of review during any statutory disqualification examination. For purposes of this paragraph, a "client communication" shall be understood to refer to communications with: (a) customers of DPEC Capital, Inc., (b) investors or potential investors in Algodon Wines & Luxury Development Group, Inc. or Hollywood Burger Holdings, Inc., and any of their respective affiliates or subsidiaries, and (c) investors or potential investors in any new company formed, organized or controlled by Mathis that conducts any kind of public or private offering of any equity or debt securities.
11. All complaints pertaining to Mathis, whether verbal or written, will be immediately referred to Supervisor for review. Supervisor will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination.
- *12. With respect to Mathis's service as the Chairman of the Board of Directors of DPEC, Supervisor shall be supplied with any written agenda of any Board meeting before the meeting begins, and following the meeting (if Supervisor does not attend) shall be provided with the minutes of the meeting and thereafter review such minutes with Mathis to ensure that Mathis at all times acted in compliance with the provisions of this supervisory plan.
- *13. With respect to any meeting attended or to be attended by Mathis where one of the principal purposes of the meeting is to establish or develop relationships that could mature into a customer or investor relationship with DPEC, Supervisor shall do the following: (a) review and pre-approve in writing any written materials to be distributed or viewed by the group at such meetings; (b) if Supervisor is in attendance at the meeting, certify that the meeting was held in compliance with this supervisory plan and all applicable laws, rules and regulations; and (c) if Supervisor is not in attendance, Mathis will disclose to Supervisor the details of the meeting after it occurs. Supervisor will certify in writing to his receipt of this disclosure and will maintain copies of all written materials and keep them segregated for ease of review during any statutory disqualification examination.
- *14. The Firm must obtain prior approval from Member Regulation if it wishes to change Mathis's responsible supervisor from Supervisor to another person.


- *15. On a quarterly basis, Mathis will certify in writing to Supervisor that he has read the Firm's current Code of Conduct and other applicable Firm policies pertaining to his obligations to disclose legal, regulatory and financial matters to the Firm, and that he fully understands his obligations thereunder. Supervisor will maintain copies of Mathis's certifications and will keep them segregated for ease of review during any statutory disqualification examination.
- *16. On a quarterly basis, Mathis will certify in writing to Supervisor that he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA rules. The certification form will have questions that correlate to all required disclosures on Form U4, and shall be completed by the 15th day of the month following the end of each quarter. Supervisor will maintain copies of Mathis's quarterly certifications, will keep them segregated for ease of review during any statutory disqualification examination, and within fifteen days after receipt of each quarterly certification, shall complete his review thereof and in writing: (a) confirm that to the best of his knowledge the certification is accurate and that he is not aware of any facts which suggest otherwise, or (b) describe what steps were taken to ensure compliance with all applicable disclosure requirements.
- *17. Supervisor will certify quarterly at the end of every calendar quarter to the Compliance Department that Supervisor and Mathis are in compliance with all of the above conditions of heightened supervision. To that end, Supervisor and Mathis shall also meet and confer at least once every quarter to review the operation of the plan of supervision, to discuss any issues that have arisen or that are anticipated which would affect the ability of either to satisfy all requirements set forth in the plan of supervision. Supervisor's certifications, as well as written records summarizing the date of such meetings and the issues discussed and actions to be taken as a result (if any), will be maintained and kept segregated for ease of review during any statutory disqualification examination.

FINRA certifies that: (1) Mathis meets all applicable requirements for the proposed employment; (2) the Firm is not a member of any other self-regulatory organization; (3) the Firm represents that it does not employ any other statutorily disqualified individuals; and (4) the Firm represents that Mathis, Fasano, and Stern are not related by blood or marriage.

VII. Conclusion

Accordingly, we reluctantly follow the Commission's instructions in *Van Dusen* and approve the Firm's Application to employ Mathis as, among other things, a general securities representative and principal, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the continued association of Mathis with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary