BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Association of Xavier Capdepon as a General Securities Representative with Dinosaur Securities, LLC (n/k/a Dinosaur Financial Group, LLC)	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD-2044 Dated: July 20, 2016

I. Introduction

On or about September 18, 2014, Dinosaur Securities, LLC (n/k/a Dinosaur Financial Group, LLC) (the "Firm") filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure, seeking to permit Xavier Capdepon ("Capdepon"), a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. On February 17, 2016, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Capdepon appeared at the hearing, accompanied by his counsel, M. William Munno, Esq., his proposed primary supervisor, Elliot Grossman ("E. Grossman"), and his proposed alternate supervisor, Mauro W. Calderon ("Calderon"). Lorraine Lee Stepney, Ann-Marie Mason, Esq., Meredith MacVicar, Esq., and Bernard V. Canepa, Esq., appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

After a careful review of this matter, we deny the Firm's Application.[1] The Firm has not demonstrated that it is currently capable of stringently supervising a statutorily disqualified individual such as Capdepon. As more fully explained below, we base this determination primarily upon the Firm's recent and repeated deficiencies in supervising another statutorily disqualified individual at the Firm. The Firm's repeated failures to comply with all terms of a heightened supervisory plan for another statutorily disqualified employee directly impugns the

[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").

Firm's ability to stringently supervise Capdepon, which is critical to ensuring that a statutorily disqualified individual's association with a firm is in the public interest and will not present an unreasonable risk of harm to the market or investors.

II. The Statutorily Disqualifying Event

Capdepon is statutorily disqualified pursuant to an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order dated July 18, 2012 (the "SEC Order"). The SEC Order found that Capdepon and another individual provided inaccurate and misleading information to a credit rating agency regarding the assets securing a hybrid collateralized debt obligation ("CDO"). The CDO was a mezzanine CDO secured by, among other things, subprime residential mortgage backed securities ("RMBS"). Capdepon's broker-dealer marketed and obtained ratings for the CDO in mid-2007, and Capdepon was the lead modeler for the CDO. The marketing materials for the CDO represented that the notes issued by the CDO would obtain specific credit ratings from three rating agencies, which were conditions precedent to the sale of the notes. Investors were misled because notes were issued with ratings obtained and maintained through inaccurate and misleading information, which led investors to believe that the assets securing the CDO were of a higher credit quality, and the SEC Order found that Capdepon willfully violated Section 17(a) of the Securities Act of 1933 (the "Securities Act").[2]

The SEC, among other things, barred Capdepon from associating with any broker, dealer, investment adviser, municipal securities dealer, or municipal advisor, with the right to reapply for reentry after one year, and ordered that he pay a $125,000 civil penalty. Capdepon paid the civil penalty.

In the Application, Capdepon explained that he was responsible for the mathematical cash flow modeling of the CDO, although the composition of the collateral underlying the CDO

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[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 and 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 committed or omitted any act or is subject to an order or finding enumerated in subparagraph (D) . . . of paragraph (4) of section 15(b) of this title.

Exchange Act Section 15(b)(4)(D) refers to SEC orders making findings that an individual has willfully violated any provision of the Securities Act, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Exchange Act, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board.

was designed by other firm employees more senior to him. Capdepon stated that he took instructions about the portfolio from the deal and transaction managers, and the day before the CDO offering was scheduled to close, one of the ratings agencies revised its collateral valuation criteria and downgraded its valuation of a portion of the collateral securing the CDO. Capdepon's firm had already purchased securities for the collateral pool, and Capdepon was instructed to send the ratings agency a hypothetical alternative portfolio. Capdepon did so, understanding that the hypothetical portfolio would be used to obtain the rating agency's views and replace the collateral already purchased by the firm. The offering documents showed valuations for his hypothetical portfolio instead of the actual portfolio.

Capdepon further stated that when the rating agency later contacted Capdepon's senior colleague and asked her questions about the collateral and an accountant's letter describing the collateral, she misrepresented the effective date of the letter. Capdepon stated that he raised questions within his firm, but he was informed that the transaction manager on the deal had approved the matter. Capdepon took no further action. Capdepon stated that he regrets his misconduct and attributed it to "youthful inexperience, and a lack of the degree of self-confidence needed to question untrustworthy statements and instructions from a superior."

III. Background Information

A. Capdepon

Capdepon first qualified as a general securities representative in December 2009, and he re-qualified in that capacity in September 2014. He also qualified as an investment banking representative in February 2012, and he passed the uniform securities agent state law examination in April 2010 (and again in December 2014). Capdepon has been associated with the Firm since August 2014, although he is not currently working at the Firm pending resolution of the Application. Capdepon was previously associated with two other FINRA member firms. He also worked at a French firm in Paris, and at the same firm as a structured analyst in the firm's London and New York offices, from March 2004 until May 2008.

Other than the SEC Order, and a termination by his prior employer for the misconduct underlying the SEC Order, the record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Capdepon.

B. The Firm

1. Background and History

The Firm is based in New York City, and it has been a FINRA member since March 2001. The Application states that the Firm has three Offices of Supervisory Jurisdiction ("OSJ"), three branch offices, and employs 89 registered representatives and 10 registered principals. The Firm's primary business focuses on institutional fixed income securities.

2. Other Disqualified Individuals Employed by the Firm

The Firm currently employs two other individuals subject to statutory disqualification, Patrick Lubin ("Lubin") and Manuel Choy ("Choy").[3]

Lubin is employed in the Firm's Manalapan, New Jersey office. He was disqualified pursuant to a 2007 SEC administrative order, and he was previously approved to associate with two member firms notwithstanding his disqualification prior to associating with the Firm in December 2014. FINRA filed a notification with the SEC in April 2015 approving his association with the Firm.[4] He is currently subject to a heightened supervisory plan, and the Firm has not yet been examined in connection with Lubin's employment.

We approved Choy's association with the Firm in March 2012. *See In the Matter of the Association of X*, Redacted Decision No. SD12003 (NASD NAC 2012), *available at* http://www.finra.org/sites/default/files/NACDecision/p197447_0_0.pdf. Choy is currently employed in the Firm's Clifton Park, New York office pursuant to a heightened supervisory plan. We discuss Choy's association with the Firm in greater detail below.

3. Results of Statutory Disqualification Examinations

The Firm has been examined three times in connection with Choy's association with the Firm as a statutorily disqualified individual.

FINRA noted no exceptions in connection with its 2013 statutory disqualification examination of the Firm. FINRA staff, however, made several recommendations to the Firm to ensure compliance with Choy's heightened supervisory plan, including noting that Choy's alternate supervisor was no longer with the Firm, and it should "update the 19h-1 to reflect a new back-up supervisor."

In June 2014, and in connection with FINRA's 2014 statutory disqualification examination of the Firm, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following deficiencies: (1) arbitrarily changing without FINRA approval Choy's alternate supervisor; (2) arbitrarily changing without FINRA approval the requirement in Choy's heightened supervisory plan to review quarterly 100% of Choy's accounts to reviewing quarterly

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[3] Another individual who was subject to statutory disqualification, Douglas Donnelly, worked at the Firm until May 3, 2016. The Firm represents that he voluntarily retired.

[4] Member Regulation filed the notification approving Lubin's association with the Firm pursuant to Exchange Act Rule 19h-1(a)(3)(ii), which provides that a notice approving a statutorily disqualified individual's association with a firm need not be filed with the SEC if FINRA finds that, except for the identity of the employer, the terms and conditions of the proposed association are the same in all material respects as those imposed in connection with a prior admission or continuance of the person and there has been no intervening misconduct or circumstance that would cause the employment to be inconsistent with the public interest or investor protection.

only 15% of Choy's top commission generating accounts; (3) Choy's supervisor failing to properly document his review of Choy's accounts; and (4) Choy failing to sign quarterly meeting notes as required by the plan, from June 2013 to April 2014. The Firm responded, in writing and explained that it inadvertently changed the percentage of Choy's accounts that would be reviewed and that Choy's supervisor would continue his review of 100% of Choy's accounts, as he has always done.[5]

In April 2015, and in connection with FINRA's 2015 statutory disqualification examination of the Firm, FINRA issued the Firm a Cautionary Action. FINRA cited the Firm for the following deficiencies: (1) again failing to evidence Choy's participation in quarterly meetings as required by the plan, from April 2014 through January 2015; (2) failing to review, and approve Choy's orders after execution, on a "T + 1" basis in 150 out of 367 transactions; and (3) failing to refer three customer complaints to the Firm's chief compliance officer, as required by the plan. The Firm responded in writing and stated that Choy attended all of the meetings, but he inadvertently failed to evidence his attendance. It also explained that, in November 2014, the Firm changed clearing firms and experienced problems with its new clearing firm's trade blotter system (which resulted in delays in reviewing transactions). Finally, the Firm disagreed that the three communications to the Firm constituted complaints, but stated that it would ensure that Choy's supervisor would continue to review complaints, document their findings, and forward information to the Firm's chief compliance officer.[6]

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[5] In its submissions to the Hearing Panel, the Firm also included an affidavit from Choy's primary supervisor until sometime after the 2015 statutory disqualification examination, Andrew Guzzetti ("Guzzetti"). Guzzetti states that the provision in Choy's heightened supervisory plan regarding his review of Choy's accounts was inadvertently changed and he has always reviewed quarterly 100% of Choy's accounts. Guzzetti further explained that the plan was changed because the Firm mistakenly used a prior version of the plan that had not been approved by the NAC when it updated the plan to reflect that it was changing Choy's alternate supervisor. Guzzetti also states that he believed that the Firm had communicated with FINRA and requested approval for a change in back-up supervisors. This however, appears to have occurred months after the Firm made the change in supervisors.

[6] Guzzetti's affidavit states that he "literally was not able" to review Choy's trades on a T + 1 basis because of the Firm's change in clearing firms, and "[o]nce the [] trade blotter issue was resolved, I resumed the T + 1 review." The record also shows that the three customer complaints that were not forwarded to the Firm's chief compliance officer consisted of the following: an email from Choy's sister stating that she was disappointed with returns on her account; an email from a customer who was concerned about a trade conducted in his account without his knowledge; and an email from a customer expressing concerns about the performance of his account and requesting information about his accounts. Guzzetti states that he was aware of, and reviewed, each of the three customer communications. He determined that the customers "did not have any issues with Mr. Choy," did not perceive the communications as complaints, and he therefore did not report them to the chief compliance officer.

4. Recent Routine Examinations

In October 2015, FINRA issued the Firm a Cautionary Action in connection with its 2014 cycle examination of the Firm. FINRA cited the Firm for the following deficiencies: failing to conduct an adequate review of its employees' outside business activities, failing to implement an adequate supervisory system to review outside activities, and failing to follow its written supervisory procedures ("WSPs") with regard to investment advisory activities; failing to enforce its WSPs with regard to numerous areas (including failing to properly evidence a review of customer transactions); violating FINRA's advertising rules in connection with an offering; failing to implement an adequate supervisory system for the Firm's options activity (including Guzzetti and Choy's current primary supervisor signing off on options activity in six of Choy's accounts despite neither of them being registered as an options principal); failing to establish and maintain adequate written procedures with regard to private placement due diligence and variable annuities; failing to conduct specific training for the sale of variable annuities; failing to evidence principal approval for variable annuities; failing to establish and implement procedures designed to prevent the lending of money from registered representatives to customers; and failing to establish and maintain reasonable WSPs with regard to reviewing incoming and outgoing written correspondence and email.[7] The Firm responded in writing that it corrected certain of the deficiencies noted in the Cautionary Action, and it disputed the existence of other deficiencies.

In December 2012, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2012 cycle examination. FINRA cited the Firm for failing to update a registered representative's Uniform Application for Securities Industry Registration or Transfer ("Form U4") to reflect an outside business activity and failing to provide evidence that it obtained duplicate account statements for a representative's outside brokerage account and evidence that it reviewed the account statements. The Firm responded in writing that it corrected the deficiencies noted.

In June 2011, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2011 cycle examination. FINRA cited the Firm for the following deficiencies: failing to file accurate Forms U4 and keep the Firm's Uniform Application for Broker-Dealer Registration ("Form BD") accurate; failing to ensure that registered individuals attended an annual compliance meeting; failing to evidence approval of cancels and re-bills; failing to implement its WSPs regarding keeping Forms U4 current, Form BD current, attendance at annual compliance meetings, and evidencing approval of order tickets; failing to establish supervisory control policies and procedures that include means or methods of customer confirmation, notification, or follow-up that can be documented; failing to provide evidence that the Firm provided customer confirmation, notification, or follow-up regarding transmittals of customer funds and securities; failing to establish WSPs in numerous areas; failing to establish adequate AML Compliance Procedures and failing to maintain or collect identifying information for new accounts; failing to comply with FINRA's advertising standards; and failing to provide on the Firm's website

[7] Member Regulation also states that FINRA opened a separate examination to conduct further investigation into the Firm's Anti-Money Laundering ("AML") Compliance Program.

hyperlinks to FINRA's and SIPC's websites. The Firm responded in writing that it corrected the deficiencies noted.

5. Recent Regulatory Actions

In April 2013, the Firm entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA for violations of Exchange Act Rule 17a-3 and FINRA Rules 2010, 3110, 4511, and 6730. Without admitting or denying the allegations, the Firm consented to findings that it failed to state on order tickets whether it acted as an agent or principal in securities eligible to be reported to FINRA's Trade Reporting and Compliance Engine ("TRACE") and failed to properly or timely report transactions in TRACE-eligible securities. FINRA censured the Firm and fined it $10,000.

In April 2012, the Firm entered into an AWC with FINRA for violations of Exchange Act Section 17(a), Exchange Act Rules 15c3, 17a-3, and 17a-5, and FINRA Rules 2010 and 3110. Without admitting or denying the allegations, the Firm consented to findings that it failed to: maintain and accurately calculate its minimum net capital; maintain accurate books and records; and file accurate FOCUS reports. FINRA censured the Firm and fined it $8,000.

In July 2011, the Firm entered into an AWC with FINRA for violations of Exchange Act Rules 15c3-1 and 15c3-3 and NASD Rules 2110, 2711, and 3010. Without admitting or denying the allegations, the Firm consented to findings that it: failed to maintain adequate net capital and held customer funds in a "facilitation account" that did not meet the requirements of the Exchange Act; failed to make certain disclosures, and failed to make clear and comprehensive disclosures, in research reports; failed to maintain records of public appearances by the Firm's research analyst; failed to restrict the Firm's research analyst from participating in efforts to solicit investment banking business and from receiving compensation based upon investment banking services; and failed to adopt and implement reasonable supervisory procedures to ensure that the Firm and its employees complied with rules regarding research analysts and research reports. FINRA censured the Firm and fined it $50,000.

In June 2009, the Firm entered into an AWC with FINRA for violations of NASD Rules 1031 and 2110. Without admitting or denying the allegations, the Firm consented to findings that it paid commissions to seven individuals who were not registered with FINRA. FINRA censured the Firm and fined it $25,000.

IV. Capdepon's Proposed Business Activities

The Firm proposes to employ Capdepon at its home office in New York, New York as a general securities representative. In the Application, the Firm states that Capdepon "will perform brokerage activities for institutional customers, including [qualified institutional buyers], foreign investors and institutional investors, and mathematical modeling of structured products." The Firm later clarified that "Capdepon will function as a sales trader. He will not perform any mathematical modeling activities [at] the Firm," and he will be trading asset-backed securities in the secondary market. Capdepon will not service retail customers, and he will be compensated by commission.

The Firm proposes that Capdepon will be supervised primarily by E. Grossman.[8] He currently supervises 10 to 12 other registered representatives, and he will work at the same trading desk as Capdepon, a few feet away from him. E. Grossman has been with the Firm since March 2006, and he first registered as a general securities representative in May 2006. He qualified as a general securities principal in February 2011, and he passed the uniform securities agent state law examination in April 2008 and the equity trader qualification examination in October 2008. E. Grossman has not been associated with any other firms, and he is involved with several outside business activities. The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against E. Grossman.

The Firm further proposes that Calderon will serve as Capdepon's alternate supervisor. He first registered as a general securities representative in June 2006 and as a general securities principal in December 2015.[9] He also passed the uniform securities agent state law examination in May 2010. Calderon has been with the Firm since October 2009, and he was previously associated with one other member firm. The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Calderon.

The Firm submitted the following proposed Heightened Supervisory Plan:

1. The Firm will amend its written supervisory procedures to state that E. Grossman will be the primary supervisor responsible for Capdepon.

2. E. Grossman will supervise Capdepon at the Firm's home office located at 470 Park Avenue South, 9th Floor, New York, New York.

3. If E. Grossman is on vacation or out of the office, Calderon will serve as Capdepon's interim supervisor.

4. Capdepon will function as a sales trader. He will not perform any mathematical modeling activities at the Firm.[10]
5. Capdepon will not maintain retail customers or accounts.

6. Capdepon will not have discretionary accounts.

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[8] E. Grossman is the son of Glenn Grossman, the Firm's President, CEO and managing member. E. Grossman holds an ownership interest in the Firm.

[9] The Firm changed Capdepon's proposed alternate supervisor to Calderon prior to submitting its Heightened Supervisory Plan. The plan set forth herein reflects this update.

[10] Prior to the hearing, the Firm further clarified this provision to state that Capdepon "will not prepare models of structured products for issuers or marketers of those products or present models to rating agencies."

7. Capdepon will not have supervisory functions.

8. E. Grossman will review and pre-approve each of Capdepon's accounts, and will document such review by initialing the account paperwork and keeping it segregated for ease of review during any statutory disqualification or other examination.

9. E. Grossman will review and approve Capdepon's orders after execution, or as soon as practicable, but no later than on a T + 1 basis. E. Grossman wil1 then review the trade reports, on a T + l basis, evidence his review by initialing the trade reports, and keep copies of the reports segregated for ease of review during any statutory disqualification or other examination.

10. E. Grossman will review 100% of Capdepon's accounts on both a weekly and monthly basis to ensure compliance with applicable SEC and FINRA rules as well as the Firm's written supervisory procedures. E. Grossman will evidence his review by preparing a memorandum of each review, which will be preserved in a readily accessible place for ease of review during any statutory disqualification or other examination.

11. E. Grossman will review Capdepon's activity log and to-do lists on a weekly basis.

12. E. Grossman will meet with Capdepon weekly to discuss and review his entire work product from the preceding week. E. Grossman will prepare a memorandum of each such meeting and preserve it in a readily accessible place for review during any statutory disqualification or other examination.

13. E. Grossman will conduct a monthly meeting with Capdepon (which may coincide with the weekly meeting for that week) to discuss any meeting or discussions with clients over the course of the month, transactions with clients over the course of the month, any compliance issues that have arisen during the month, and the operation of the Heightened Supervisory Plan and how the Plan may be improved. E. Grossman will prepare a memorandum of each such meeting and preserve it in a readily accessible place for review during any statutory disqualification or other examination.

14. E. Grossman will review all of Capdepon's written correspondence (which includes email communications and instant messages), at a minimum, on a monthly basis, and E. Grossman will review and approve all of Capdepon's outgoing correspondence (which includes email communications and instant messages) before they are sent.

15. For the purposes of client communication, Capdepon will only be allowed to use an email account that is held at the Firm or at the domain of dinogroup.com, with all emails being filtered through the Firm's email system ("permitted email account"). If Capdepon receives a business-related email message in an email account other than the permitted email account, he will immediately deliver that message to the Firm's email account. Capdepon will also inform the Firm of all outside email accounts that he maintains. E. Grossman will maintain all business-related non-Firm electronic communications in a separate folder for ease of review during any statutory disqualification or other examination.

16. All complaints pertaining to Capdepon, whether oral or written, will be immediately referred to E. Grossman and the Chief Compliance Officer or his/her designee. E. Grossman, with the assistance of the Compliance Department, will prepare a memorandum to the file as to what measures were taken to investigate the merits of each such complaint and the resolution of the matter, and will keep documents pertaining to these complaints segregated for ease of review. E. Grossman and the Chief Compliance Officer will make Capdepon aware of any and all complaints filed against him and will obtain, and document, Capdepon's response.

17. Dinosaur will retain an independent consultant ("IC") to review and verify on a quarterly basis that the supervisor fully performs his obligations under this plan. The IC will document its reviews, including identifying areas of compliance as well as non-compliance. Non-compliance will be reported to the Firm's Chief Compliance Officer, who will document the steps taken to rectify the noncompliance. Such documentation will be preserved in a readily accessible place for review during any statutory disqualification or other examination.

18. For the duration of Capdepon's statutory disqualification, the Firm must obtain prior approval (or subsequent approval, if warranted) from Member Regulation if it wishes to change Capdepon's status or functions at the Firm or his responsible supervisor from E. Grossman to another person.

19. E. Grossman must certify quarterly (March 31st, June 30th, September 30th, and December 31st) of each year, in writing, to the Compliance Department, that he and Capdepon are in compliance will all of the above condition of the Heightened Supervisory Plan.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view, the Firm's last three examinations (i.e., its 2014 cycle examination and 2014 and 2015 statutory disqualification examinations) demonstrate that it cannot provide stringent supervision of

Capdepon, and Capdepon's proposed supervisors have significant time restraints "that will limit the time they can devote to providing adequate supervision of Capdepon."

VI. Discussion

We have carefully reviewed the entire record in this matter. Based on this record, we deny the Firm's Application to employ Capdepon as a general securities representative. Although Capdepon appears ready to rejoin the securities industry pursuant to Commission precedent governing this matter, the Firm has not demonstrated that it is currently able to stringently supervise Capdepon as a statutorily disqualified individual.

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*, 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.

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. *Id.* 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.* After applying the *Van Dusen* standard to this matter, we find that the Firm has failed to show that, "despite the disqualification, it is in the public interest to permit the requested employment." *See Gershon Tannenbaum*, 50 S.E.C. 1138, 1140 (1992). Consequently, we deny the Firm's Application.

As an initial matter, the record does not show that Capdepon has engaged in any misconduct since he became statutorily disqualified. Given that the term of Capdepon's one-year bar expired in July 2013, he has been permitted to seek re-entry to the securities industry since July 2013. Capdepon's lack of any misconduct since the SEC Order, however, is only one factor that we examine in weighing the merits of the Application. Indeed, we are required to examine the nature and history of the Firm and its ability to provide stringent supervision to Capdepon as a statutorily disqualified individual. *See Timothy P. Pedregon*, Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *27 (Mar. 26, 2010) (holding that an applicant must establish that it will be able to stringently supervise a statutorily disqualified individual); *Citadel Sec. Corp.*, 57 S.E.C. 502, 509-10 (2004) ("[I]n determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded

that person is of utmost importance. We have made it clear that such persons must be subject to stringent oversight[.]") (internal quotation omitted).

The results of FINRA's statutory disqualification examinations of the Firm in connection with Choy provide strong evidence of the Firm's inability to stringently supervise another statutorily disqualified individual such as Capdepon. We find that the various deficiencies discovered by FINRA in connection with those examinations raise serious questions as to the Firm's current ability to supervise another statutory disqualified individual. In two out of three examinations of the Firm in connection with Choy's employment, FINRA has found multiple deficiencies with Choy's supervision. In 2014, FINRA found four specific deficiencies related to Choy's supervision, including arbitrarily changing the terms of Choy's heightened supervisory plan, failing to properly document the review of Choy's accounts, and Choy failing to sign quarterly meeting notes as required by the plan. In 2015, FINRA found three specific deficiencies, including, once again, failing to evidence Choy's participation in quarterly meetings, failing to timely review and approve Choy's orders after execution in connection with more than 40% of Choy's transactions, and failing to refer three customer complaints to the Firm's chief compliance officer.

The deficiencies related to the Firm's 2014 and 2015 statutory disqualification examinations of Choy covered various areas of Choy's supervision, and while the Firm had explanations for some of the deficiencies and claims that other deficiencies were inadvertent, at best this demonstrates that the Firm has been sloppy for more than two years with regard to effectively implementing Choy's heightened supervisory plan and documenting its compliance with that plan. Such inattention to the details of a heightened supervisory plan is directly contrary to the requirement that a statutorily disqualified individual be stringently supervised. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *21 (July 17, 2009) (explaining that "inattention to the requirements of heightened supervision is not acceptable in statutory disqualification matters").[11] Moreover, the problems with Choy's supervision are particularly troubling given that several of Choy's supervisory terms that the Firm violated are proposed terms of Capdepon's heightened supervisory plan. We are also troubled that we approved Choy's continued association with the Firm, notwithstanding Member Regulation's opposition, based upon the Firm's representations that it had corrected prior deficiencies to ensure regulatory compliance going forward and had made significant

[11] With respect to the Firm's explanation that it did not deem the three customer complaints identified by FINRA staff as requiring escalation to the Firm's chief compliance officer pursuant to Choy's heightened supervisory plan, we agree with Member Regulation that, even if the Firm had legitimate questions whether these matters constituted customer complaints that would have to be reported in other contexts (e.g., to FINRA pursuant to FINRA Rule 4530), it should have erred on the side of caution and escalated these matters. Choy's heightened supervisory plan broadly provided that, "[a]ll complaints pertaining to Choy, whether verbal or written, will be immediately referred to the Chief Compliance Officer, or his designee."

improvements in the Firm's infrastructure and committed to continuing with improvements.[12] The Firm's sloppy supervision of Choy leads us to question the veracity of these representations, and we agree with Member Regulation that the Firm is currently not the appropriate firm for Capdepon's re-entry into the securities industry, particularly given that he would be the third statutorily disqualified individual employed at the Firm and all three individuals would be supervised pursuant to a heightened supervisory plan.

Finally, the Firm argues that Member Regulation is equating stringent supervision with perfect supervision. We disagree. Member firms and individuals supervising a statutorily disqualified individual must pay careful attention to detail and follow the heightened plan of supervision in place for the disqualified individual. The cumulative results from the statutory disqualification examinations of Choy during the past three years demonstrate that the Firm has, at best, been repeatedly careless in supervising Choy according to his supervisory plan and has repeatedly failed to comply with various terms of his supervisory plan. Simply put, the Firm has not met its obligation to stringently supervise Choy, and this provides strong evidence that at this time, the Firm is not capable of stringently supervising an additional statutorily disqualified individual such as Capdepon.[13]

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[12] We acknowledge that Capdepon would not work in the same office as Choy, and would be supervised by E. Grossman rather than any of Choy's past or present supervisors. Regardless, we find that the various deficiencies uncovered in connection with two out of three statutory disqualification examinations for Choy outweigh these factors and support our finding that the Firm cannot currently provide the stringent supervision of Capdepon that we require. Further, the results of the 2014 cycle examination, which include numerous supervisory deficiencies and additional deficiencies related to Choy and his supervisors, when viewed along with the statutory disqualification examinations, support our concerns regarding the Firm's proposed employment of Capdepon and ability to stringently supervise him pursuant to a heightened supervisory plan.

[13] Given our findings regarding the Firm's recent statutory disqualification and cycle examinations, we need not reach Member Regulation's other grounds for its recommended denial of the Application. We note, however, that while Calderon appeared to be a competent individual and had no disciplinary or regulatory history that we are aware of, he has only been licensed as a principal since December 2015. The Firm stated that Calderon's role as an alternate supervisor for Capdepon would provide him with an opportunity to obtain supervisory experience. We generally do not believe that it is appropriate for a newly minted supervisor to gain the supervisory experience that he lacks by supervising a disqualified individual. *See Morton Kantrowitz,* 55 S.E.C. 98, 102 (2001) ("In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls."); *see also Pedregon,* 2010 SEC LEXIS 1164, at *29 (finding troubling the assignment of an unqualified individual to serve as a supervisor for a statutorily disqualified individual).

VII. Conclusion

We find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Capdepon to associate with the Firm as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary