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9

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

10

OF THE STATE OF CALIFORNIA

11

In the Matter of:

) CRD NO.: 4412731

12

THE COMMISSIONER OF BUSINESS
OVERSIGHT,

) STATEMENT OF ISSUES IN SUPPORT OF
) ORDER BARRING MATTHEW JOHN DAVIS
) FROM ANY POSITION OF EMPLOYMENT,
) MANAGEMENT OR CONTROL OF ANY
) INVESTMENT ADVISER, BROKER-DEALER
) OR COMMODITY ADVISER PURSUANT TO
) CORPORATIONS CODE SECTION 25232.1

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Complainant,

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v.

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MATTHEW JOHN DAVIS,

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Respondent.

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22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), alleges and
23 charges as follows:

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I.

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Jurisdiction and Venue

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1. The Commissioner brings this action pursuant to Corporations Code sections 25232
27 and 25232.1 of the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.) to bar
28 Matthew John Davis (Davis) from any position of employment, management or control of any

1 investment adviser, broker-dealer or commodity adviser.

2 2. The Commissioner, as head of the Department of Business Oversight (Department), is
3 authorized to administer and enforce the provisions of the Corporate Securities Law of 1968 (Corp.
4 Code, § 25000 et seq.) and the regulations promulgated under title 10 of the California Code of
5 Regulations (Cal. Code Regs., tit.10, § 260.000 et seq.).

6 **II.**

7 **Statement of Facts**

8 3. Davis is currently registered as an investment adviser representative with Coppel
9 Advisory Solution, LLC dba Fusion Capital Management (Fusion Capital), a Securities and Exchange
10 Commission registered investment adviser firm with CRD No. 156549. Davis has been employed at
11 Fusion Capital since August 7, 2013.

12 4. Davis was a member of the Financial Industry Regulatory Authority (FINRA)¹ starting
13 in or around 2005. Davis was associated with OneAmerica Securities, Inc. (OneAmerica) from on or
14 around April 1, 2010 through July 26, 2013 as a General Securities Representative and Investment
15 Company Products/Variable Contract Representative.

16 5. In 2014, FINRA conducted an investigation into Davis and OneAmerica based on
17 allegations that Davis had engaged in misconduct in several customer accounts in connection with his
18 association with OneAmerica. The alleged misconduct included: (a) conversion; (b)
19 misrepresentation of customer holdings and account values; (c) forgery of account related documents;
20 (d) discretionary and/or unauthorized trading; (e) efforts to settle a customer complaint away from his
21 firm; and (f) unsuitable recommendations.

22 6. FINRA’s investigation of Davis concluded with the execution of a Letter of
23 Acceptance, Waiver, and Consent from Davis (Davis AWC), signed and executed by Davis on April
24 10, 2014, and accepted by FINRA on July 18, 2014. The Davis AWC set forth the following:

- 25 a. Davis was associated with OneAmerica as a General Securities Representative and
26 Investment Company Product/Variable Contracts Representative from April 1, 2010 to

27 _____
28 ¹ FINRA is a self-regulatory organization that succeeded the National Association of Securities
Dealers, Inc. (NASD), overseeing brokerage firms and registered securities representatives.

1 July 26, 2013.

- 2 b. By letter dated March 14, 2014, FINRA staff requested that Davis appear and provide
3 on-the-record testimony on March 24, 2014, in connection with an investigation into
4 allegations of misconduct in several customer accounts. Davis did not appear.
- 5 c. By failing to appear to provide on-the-record testimony, Davis violated: (1) FINRA
6 Rule 8210, which requires that FINRA members must testify at a location specified by
7 FINRA staff, under oath or affirmation with respect to any matter involved in an
8 investigation, complaint, examination, or proceeding; and (2) FINRA Rule 2010,
9 which provides that “members shall observe high standards of commercial honor and
10 just and equitable principles of trade.”

11 7. Effective July 18, 2014, upon FINRA’s acceptance of the Davis AWC, FINRA
12 permanently barred Davis from associating with any FINRA member in any capacity.²

13 8. FINRA’s investigation of OneAmerica concluded with the execution of a Letter of
14 Acceptance, Waiver, and Consent from OneAmerica (OneAmerica AWC), which was accepted by
15 FINRA on February 13, 2015. The OneAmerica AWC resulted in OneAmerica’s censure, in which
16 OneAmerica agreed to adhere to a corrective action statement, and a \$75,000.00 fine. FINRA
17 provided an overview of their findings:³

18
19 OneAmerica failed to make reasonable inquiries or otherwise follow-
20 up on multiple red flags that indicated Matthew J. Davis (“Davis”), a
21 registered representative associated with the Firm, was making
22 unsuitable options recommendations and causing an improper and/or
23 unauthorized transfer of funds to a third party. The Firm also lacked
24 an adequate system and procedures to supervise options trades and
25 transmittals to third parties.

26 ² FINRA Case No. 2013036026901. The Davis AWC is set forth in full at:
https://www.finra.org/sites/default/files/fda_documents/2013036026901_FDA_Jk7X3946.pdf

27 ³ FINRA Case No. 2013036026902. The OneAmerica AWC is set forth in full, including
28 extensive factual findings and violations, at:
https://www.finra.org/sites/default/files/fda_documents/2013036026902_FDA_TP72293.pdf

1 Davis was barred from the securities industry as a sanction from a
2 FINRA disciplinary proceeding. Having failed to adequately
3 supervise Davis as alleged herein and having failed to establish
4 adequate supervisory systems and procedures, OneAmerica violated
NASD Rules 3010(a) and (b) and FINRA Rules 2360(b)(20)(A) and
2010.

5 9. On July 6, 2016, a Form U-4 (Uniform Application for Securities Industry
6 Registration or Transfer) was filed by on or on behalf of Davis. Davis provided the following
7 responses to the following questions (emphasis in the original):

- 8 a. Form U-4 at Question 14E(3) asked: “Has any self-regulatory organization ever *found*
9 you to have been *involved* in a violation of its rules (other than a violation designated
10 as a “*minor rule violation*” under a plan approved by the U.S. Securities and Exchange
11 Commission)?” Davis answered “No.”
- 12 b. Form U-4 at Question 14E(3) asked: “Has any *self-regulatory organization* ever *found*
13 you to have been the cause of an *investment-related* business having its authorization
14 to do business denied, suspended, revoked or restricted?” Davis answered “No.”
- 15 c. Form U-4 at Question 14E(3) asked: “Has any *self-regulatory organization* ever
16 disciplined you by expelling or suspending you from membership, barring or
17 suspending your association with its members, or restricting your activities?” Davis
18 answered “No.”
- 19 d. Form U-4 at Question 14G(1) asked “Have you been notified, in writing, that you are
20 now the subject of any regulatory complaint or proceeding that could result in a ‘yes’
21 answer to any part of [14E]? (If ‘yes’, complete the *Regulatory Action* Disclosure
22 Reporting Page.)” Davis answered “No,” and did not complete the Regulatory Action
23 Disclosure Reporting Page.
- 24 e. Form U-4 at Question 14G(2) asked “Have you been notified, in writing, that you are
25 now the subject of any investigation that could result in a ‘yes’ answer to any part of
26 [14E]? (If ‘yes’, complete the *Investigation* Disclosure Reporting Page.)” Davis
27 answered “No,” and did not complete the Investigation Disclosure Reporting Page.
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III.

Authority to Bar Davis from Any Position of Employment, Management or Control of Any Investment Adviser, Broker-Dealer or Commodity Adviser Pursuant to Corporations Code section 25232.1 for Acts Committed as Specified Under Corporations Code Section 25232

10. Corporations Code section 25232.1

The commissioner may, after appropriate notice and opportunity for hearing . . . bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 or has been convicted of any offense or held liable in any civil action specified in subdivision (b) of Section 25232 or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25232 or is subject to any order specified in subdivision (d) of Section 25232.

11. Corporations Code section 25232, in relevant part, provides:

The commissioner may, after appropriate notice and opportunity for hearing . . . revoke the certificate of, an investment adviser, if the commissioner finds that the . . . revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

...

(a) Has willfully made or caused to be made in any application for a certificate or any report filed with the commissioner under this division, or in any proceeding before the commissioner, 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 willfully omitted to state in the application or report any material fact which is required to be stated therein.

...

(d) Is or has been subject to . . . (2) any order of any national securities association or national securities exchange (registered under the Securities Exchange Act of 1934) suspending or expelling him or her from membership in that association or exchange or from association with any member thereof, or (3) any other order of the commission or any administrator, association, or exchange referred to in this

1 subdivision which is or has been necessary for the protection of any
2 investor.

3 12. Based on the foregoing, the Commissioner is of the opinion that under the meaning of
4 section 25232(a), in his amendment Form U-4 submitted on July 6, 2016, Davis willfully made or
5 caused to be made statements that were false and misleading as to material facts, and willfully
6 omitted to state material facts which were required to be stated to the Commissioner, and it is in the
7 public interest to bar Davis from any position of employment, management or control of any
8 investment adviser, broker-dealer or commodity adviser pursuant to section 25232.1.

9 13. Based on the foregoing, the Commissioner is of the opinion that Davis is subject to an
10 order specified in sections 25232(d)(2) and (d)(3), specifically FINRA June 18, 2014 order barring
11 him from association with any FINRA member firm in any capacity, and it is in the public interest to
12 bar Davis from any position of employment, management or control of any investment adviser,
13 broker-dealer or commodity adviser pursuant to section 25232.1.

14 **V.**

15 **Conclusion**

16 Based upon the foregoing, the Commissioner finds that grounds exist and that it is in the
17 public interest to bar Matthew John Davis from any position of employment, management or control
18 of any investment adviser, broker-dealer or commodity adviser pursuant to Corporations Code
19 sections 25232.1, 25232(a), and 25232(d). The Commissioner hereby notifies Matthew John Davis
20 of her intention to make such order final
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22 Dated: January 24, 2018
23 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

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25 By: _____
26 KELLY SUK
27 Counsel
28 Enforcement Division