

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

In the Matter of the Application of  
NYPPEX, LLC, and LAURENCE G. ALLEN  
For Review of Action Taken by  
FINRA  
File No. 3-21933

**FINRA’S OPPOSITION TO  
MOTION TO SUPPLEMENT THE RECORD**

Applicants Laurence Allen and NYPPEX, LLC, filed a Motion to Supplement the Record (the “Motion”). Applicants seek to introduce additional evidence in the form of a 105-paragraph declaration by Allen (the “Allen Declaration”) and 11 documents attached to the Allen Declaration. The Commission should deny the Motion because Applicants have not met their burden of showing that the additional evidence is material nor have they shown reasonable grounds for their failure to adduce it previously.

**I. Procedural Background**

On April 8, 2024, FINRA’s National Adjudicatory Council (the “NAC”) issued a decision in which it found (1) that Allen and NYPPEX violated FINRA’s By-Laws and rules because Allen associated with NYPPEX for more than one year while he was subject to a statutory disqualification based on an ex parte injunction entered by a New York state court in December 2018 (RP 9041-47), (2) that Allen and NYPPEX violated FINRA’s advertising rule by posting to the internet a press release that implied FINRA’s endorsement of NYPPEX’s business practices

(RP 9054-55), and (3) that Allen and NYPPEX violated FINRA Rule 8210 by failing to respond completely to the FINRA staff's requests for documents and information. RP 9066-69.<sup>1</sup>

For Allen's violations of FINRA Rule 8210, the NAC barred him from associating with any FINRA member in any capacity. RP 9075-78. In light of the bar, the NAC did not impose on Allen any sanctions for his other violations. With respect to NYPPEX, for violating FINRA Rule 8210, the NAC suspended the firm for one year. RP 9078-80. For allowing Allen to associate with the firm while subject to a statutory disqualification, the NAC fined NYPPEX \$40,000. RP 9073. For violating FINRA's advertising rule, the NAC fined NYPPEX \$10,000. RP 9073. Applicants filed an application for review with the Commission.

On August 2, 2024, Applicants filed the Motion at the same time they filed the Opening Brief of NYPPEX, LLC and Laurence Allen (the "Opening Brief") and a Motion for Oral Argument.

## **II. Argument**

Under SEC Rule of Practice 452, a motion to submit additional evidence must "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." 17 CFR § 201.452. The Commission has observed that "fairness to the original tribunal requires that it be given the opportunity to consider all available evidence in making its decision," and therefore "the Commission will not open the record to receive further evidence except in a case where it is shown that such evidence is relevant to the issues raised but could not be presented in the original proceedings." *Herrick,*

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<sup>1</sup> The NAC also made findings of violation and imposed sanctions against NYPPEX's chief compliance officer, Michael Schunk. Schunk, however, did not appeal the NAC's decision. According to Allen's Declaration, Schunk is deceased.

*Wadell & Co., Inc.*, 23 S.E.C. 301, 302 (1946). Applicants have not met their burden under Rule 452.

First, Applicants make no effort to show reasonable grounds for their failure to adduce the additional evidence during FINRA’s disciplinary proceeding. The record shows that Applicants were represented by counsel during the 11-day hearing in this matter, and that they had an adequate opportunity at the hearing to offer testimony and documentary evidence. *See* RP 843-8045. The Record further shows that Applicants were represented by counsel on their appeal to the NAC, and that they could have sought to adduce the additional evidence at that time. *See* FINRA Rule 9346; RP 8645.<sup>2</sup> Applicants do not explain their failure to introduce the additional evidence during the hearing or on appeal to the NAC. That alone is sufficient grounds for the Commission to deny the Motion. *See, e.g., FCS Secs.*, Exch. Act Release No. 64852, 2011 SEC LEXIS 2366, at \*31 n.34 (July 11, 2011) (“[O]ur finding that Applicants did not show reasonable grounds for failing to adduce the evidence previously is itself a sufficient basis for our denial of the Additional Evidence Motion.”), *aff’d sub nom Kleinser v. SEC*, 593 F. App’x 7 (2d Cir. 2013).

Second, Applicants have not shown in any way—much less “with particularity”—that the additional evidence is material. Indeed, Applicants do not address this issue at all. Much of the additional evidence offered by Applicants is immaterial on its face because it is unrelated to the NAC’s findings of violation and the sanctions the NAC imposed. A large portion of the additional evidence concerns Allen’s management of a private investment fund named ACP X, LP (“ACP X”), and the merits of the New York Attorney General’s (the “NYAG”) civil lawsuit

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<sup>2</sup> On appeal to the NAC, Applicants moved to admit other additional evidence. *See* RP 8675. The NAC denied that motion. *See* RP 8956. Applicants do not challenge the NAC’s denial of that motion on appeal.

relating to Allen’s management of ACP X. *See, e.g.*, Allen Declaration at ¶¶ 10-52, 54-61, 68-71, 75-84, Exhibits 1-4 to Allen Declaration. The NAC, however, did not make any findings of violation or impose any sanctions based on Allen’s management of ACP X. *See* RP 8962-9001. Accordingly, the additional evidence related to Allen’s management of ACP X is immaterial to this appeal. A substantial portion of the remaining additional evidence is cumulative and would add little to the record. *See Vanasco v. SEC*, 395 F.2d 349 (2d Cir. 1968) (court did not consider additional evidence because it was cumulative and would add little to existing record); *Sidney C. Eng*, 53 S.E.C. 709, 720 (1998) (Commission denied a motion to introduce additional evidence because it was cumulative).<sup>3</sup>

Applicants argue that the Commission should grant the Motion because the Commission would benefit from a “succinct summary” of the record and the 11 attachments to Allen’s Declaration “were not found in the FINRA record.” Neither is a valid reason to grant the Motion. The Commission does not need a “succinct summary” of the record because the parties are required to cite “relevant portions of the record” in their briefs. SEC Rule of Practice 450(b). And the attachments “were not found in the FINRA record” because Applicants failed to offer them during the hearing or on appeal to the NAC. The Commission should not reopen the record merely because the Applicants would prefer to submit a declaration and documents that could have been submitted as evidence during the hearing in this matter.

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<sup>3</sup> For example, the record already contains extensive evidence about Allen’s background (Allen Declaration ¶¶ 2-8), NYPPEX’s background (Allen Declaration ¶¶ 4-9), the injunction entered against Allen in December 2018 (Allen Declaration ¶¶ 62-64), Allen’s filing of an amended Form U4 in January 2019 (Allen Declaration ¶¶ 65-67), the AG’s civil lawsuit against Allen (Allen Declaration ¶¶ 68-74), FINRA’s examination of NYPPEX (Allen Declaration ¶¶ 85-87), and Allen’s and NYPPEX’s failure to completely respond to the FINRA staff’s requests for documents and information made pursuant to FINRA Rule 8210 (Allen Declaration ¶¶ 89-105).

### **III. Conclusion**

The Commission should deny the Motion because Applicants have not shown that the additional evidence is material or that there were reasonable grounds for their failure to adduce the additional evidence previously.

Respectfully submitted,

/s/ Michael M. Smith

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## CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 9th day of August, 2024, I caused a copy of the foregoing FINRA's Opposition to Motion to Supplement the Record, in the matter of the Application for Review of NYPPEX, LLC and Laurence G. Allen, Administrative Proceeding File No. 3-21933, to be filed through the SEC's eFAP system and served by electronic mail on:

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Respectfully submitted,

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