UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Admin. Proc. File No. 3-21933

In the Matter of the Application of NYPPEX, LLC and LAURENCE G. ALLEN For Review of Disciplinary Action Taken by FINRA	:

COMBINED REPLY BRIEF IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD AND MOTION FOR ORAL ARGUMENT

Respondents, NYPPEX, LLC, and Laurence Allen, by and through undersigned counsel, under Rule 154(b) of the Commission's Rules of Practice [17 C.F.R. § 201.154(b)], file this combined reply brief in further support of their motion to supplement the record and motion for oral argument.

This *de novo* review is from a Decision of FINRA's National Adjudicatory Council ("NAC Decision"), which modified the Decision of FINRA's Extended Hearing Panel dated August 6, 2022 ("HP Decision"). The HP Decision is 85 pages, and the NAC Decision is 69 pages, excluding Attachments. These two documents provide the only narratives of this matter. The narrative in the NAC Decision includes selected portions of FINRA's enormous 9,000-page record ("Record"), sculpted to support FINRA's sanctions against Applicants.

Applicants offer a Declaration in lieu of a statement of facts to keep their Opening Brief, which cites to the Record, within the Commission's page limitations. The Declaration is, in effect, a formalized narrative and statement of facts that provides a context for Applicants' citations to the Record. Applicants moved to include the Declaration under Rule 452 (17 C.F.R.

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§ 201.452) because it was the most appropriate mechanism for introducing it into the Record.

Although the Declaration, as a sworn statement, is "evidence" in the strictest sense, it is not "new" or "additional evidence" of which FINRA was unaware at any time. The information to which it refers was not necessarily "material" to the NAC Decision but is or may be material to this review. FINRA acknowledges that the Declaration is not evidence beyond the Record, claiming that, if accepted, it "would add little to the record," (Mem. in Opp. at 4). FINRA also notes that the Declaration's exhibits were not included in the Record because Applicants "failed to offer them during the hearing or on appeal to the NAC." (*Id.*).

The Declaration could not have been part of the FINRA record because it is, in part, a narrative about the origins of the FINRA investigation, the material portions of the Record excluded from the NAC Decision, and the Record itself. Applicants submit that the Declaration and Exhibits provide a fuller and fairer "picture" of the entire matter. While it is perhaps understandable that FINRA would not want the entire framework of its actions subjected to review, the review would benefit from the Commission's more complete understanding of the facts that gave rise to the FINRA's actions in this matter.

Applicants submit that the Declaration, in the context of the Commission's *de novo* review and its limitation of brief length, does not prejudice FINRA or the NAC and provides an alternative story based on the same evidence. *See, e.g.*, *Portillo v. Webb*, 2018 WL 6177920, at *2 (S.D.N.Y. Nov. 27, 2018) (U.S. district court judge has discretion on *de novo* review to supplement the record and consider facts not before the magistrate judge); *Keiser v. CDC Inv. Management Corp.*, 160 F. Supp.2d 512, 519 (S.D.N.Y. 2001).

Finally, while FINRA claims in its opposition to Applicants' motion for oral argument that "Applicants have not shown that the issues raised in their appeal cannot be determined on the basis of the briefs filed by the parties," this is not the standard. The standard is whether the

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"presentation of facts and legal arguments . . . and the decisional process would be significantly aided by oral argument." Rule 451(a) [17 C.F.R. § 201.451(a)]. Any appeal "can" be determined based on the briefs filed by the parties. The better inquiry is whether an appeal based on arguments that the SEC has exceeded its authority in delegating to FINRA powers it does not itself have and would, if successful, negate FINRA's ability to impose penalties while bypassing a respondent's Seventh Amendment right to a trial by jury "should" be decided without oral argument. It is somewhat surprising that FINRA would not want to have the opportunity to discuss these issues directly with the Commission in an oral argument format. These are important issues that the Commission, if not FINRA, should want to discuss directly with Applicants and FINRA.

WHEREFORE, based on the foregoing, Applicants respectfully request that the Commission grant their motion to supplement the Record and for oral argument.

Dated: August 12, 2024

Respectfully submitted,

/s/ *Adriaen M. Morse Jr.*

Adriaen M. Morse Jr.
Cory C. Kirchert
SECIL Law PLLC
1701 Pennsylvania Ave., NW, Suite 200
Washington, DC 20006
Morse-Tel (571) 314-5469
Kirchert-Tel (703) 405-7974
amorse@secillaw.com
ckirchert@secillaw.com

Attorneys for Respondents

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CERTIFICATE OF SERVICE

In accordance with Rule 151 of the SEC Rules of Practice [17 CFR § 201.151], I hereby certify that a true copy of the forgoing Motion for Extension of Briefing Schedule was served on the following on this 12th day of August, 2024, in the manner indicated below:

Via the Commission's Electronic Filings in Administrative Proceedings:
The Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, D.C. 20549-1090

Via email to:
FINRA
Office of General Counsel
Attn: Michael M. Smith
1700 K Street, N.W.
Washington, D.C. 20006
michael.smith@finra.org
nac.casefilings@finra.org

/s/ *Adriaen M. Morse Jr.*
Adriaen M. Morse Jr.

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