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	:

MOTION TO SUPPLEMENT THE RECORD

Respondents, NYPPEX, LLC, and Laurence Allen, by and through undersigned counsel, hereby respectfully move, under Rule 452 of the Commission's Rules of Practice [17 C.F.R. § 201.452], to permit the filing of the attached Declaration of Laurence G. Allen ("Declaration") as additional evidence. In support of this motion, Respondents state as follows:

1. The facts and circumstances relevant to the Commission's review of FINRA's disciplinary action against Respondents encompass a four-year period.

2. The record for this review, as supplied by FINRA, contains over 9,000 pages of materials.

3. The Commission's review would benefit from a succinct summary of the relevant portions of the record along with a few documents that were not contained in the FINRA record but serve to fill in certain details not found in the record.

4. The Declaration provides context and specific cites to the record and attaches 11 additional documents as exhibits that were not found in the FINRA record.

5. The Declaration's purpose is to provide a narrowed focus upon only those facts and circumstances Respondents believe to be relevant to the Commission's consideration and

OS Received 08/02/2024

decision in this matter.

WHEREFORE, based on the foregoing, Respondents respectfully request that the Commission grant this motion to supplement the record and consider the facts contained in the Declaration in coming to a decision regarding this review.

Dated: August 2, 2024

Respectfully submitted,

/s/ *Adriaen M. Morse Jr.*

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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 2nd 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 U.S. Mail and email to:
FINRA
Office of General Counsel
Attn: Michael M. Smith
1700 K Street, N.W.
Washington, D.C. 20006
michael.smith@finra.org
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/s/ *Adriaen M. Morse Jr.*
Adriaen M. Morse Jr.

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DECLARATION OF LAURENCE G. ALLEN

I, Laurence G. Allen, being over the age of 18, hereby declare and state as follows:

1. I am one of the two Applicants in this Review. I submit this Declaration with the attached exhibits to highlight certain aspects of the FINRA record.

BACKGROUND OF LAURENCE ALLEN

2. I have been in the securities industry for over 36 years after graduation from the Wharton School at the University of Pennsylvania with a B.S. in Economics with honors in 1979, and an M.B.A. in Finance in 1982. In my senior year, I served as President of the Wharton Student Government.

3. During my career, I have managed private placement teams of investment bankers, traders, and portfolio managers. My career background is:

(1) Merrill Lynch from 1982 to 1993 as Vice President and Head of the Commercial Mortgage Trading Desk, where I participated in the origination, private placement, and development of secondary private market liquidity for commercial mortgage loans with institutional investors; and

(2) Bear Stearns from 1993 to 1998 as Managing Director and Head of the Private

Placement Group, where I participated in the origination, private placement, and development of secondary private market liquidity for convertible and high yield corporate bonds with institutional investors.

(3) NYPPEX Holdings, LLC from 1998 to present as a co-founder and Managing Member, where I participated in the origination, private placement, and development of secondary private market liquidity for restricted securities in private companies and private capital funds (i.e. buyout, private equity, venture, real estate, distressed debt, infrastructure etc.) with institutional investors.

(4) In 2004, the U.S. Internal Revenue Service issued a private letter ruling that formally recognized NYPPEX as a Qualified Matching Service ("QMS") under IRS §1.7704-1 known as the "publicly traded partnership" rule. This enabled NYPPEX to provide a QMS Safe Harbor Exemption to qualify private capital funds to permit higher annual volumes of secondary interest transfers without an adverse tax consequence.

(5) I have been a guest speaker at private capital fund conferences and quoted in publications worldwide. Over the years, typically in 1-hour "state of the market" presentations, I advised members of the House Financial Services Committee and senior regulators regarding "emerging regulatory issues in alternative assets" along with one of our senior securities attorneys typically from Gibson Dunn or Sullivan Cromwell. Regulators included the Chairperson of the SEC, CEO of FINRA, and General Counsel of the FDIC.

(6) During a pilot program with the SEC and FDIC, NYPPEX provided access to its secondary private market price data on over 9,400 private capital funds in 110 countries. I understand that the (a) SEC considered using this data to evaluate price executions of

secondary interest transfers in the secondary private market and (b) FDIC considered using this data to evaluate risk-adjusted capital ratios of banks that held interests in private capital funds as assets.

(7) For over 36 years, I had an exemplary regulatory background as I had never been fined, disciplined, or censured in the United States or the 26 foreign jurisdictions in which NYPPEX operated. NYPPEX team members and I proactively visited our state and federal regulators and provided updates on our unique secondary private transfer business and the alternative asset industry. Often, we were told that NYPPEX was among the few organizations that proactively made annual visits to securities regulators.

(8) During my career, I have served on a variety of advisory boards including the Wharton School, Bowery Mission in New York City, and the Second Congregational Church in Greenwich, CT. I received a Lifetime Achievement Award from Ducks Unlimited, a leader in wetlands conservation. My wife, Michelle and I have raised our three children in the same home for 26 years in Greenwich, CT.

BACKGROUND OF ENTITIES

ORGANIZATIONAL STRUCTURE OF NYPPEX ("NYPPEX ENTITIES")

4. Our organizational structure consists of a parent company, NYPPEX Holdings, LLC ("HC"), NYPPEX, LLC, a subsidiary and former broker-dealer for institutional investors ("BD" or "NYPPEX"), and ACP Investment Group, LLC, ("ACP" or "Advisor") a subsidiary and former SEC-registered advisor that sponsored private equity funds for institutional investors (collectively, the "Entities").

5. Our organizations have never provided financial services to the public. Eligible customers had to be sophisticated and both an accredited investor as well as a qualified client as

per SEC Rule 205-3. All our organizations are Delaware limited liability companies. Our organizations were supervised by internal Oversight Committees including an Executive Committee, Finance and Audit Committee, and Legal and Compliance Committee.

6. For over 18 years, an independent auditor reviewed our organization's financial statements and issued unqualified opinion letters. Our broker-dealer and private fund's outside legal advisors included Latham & Watkins and Gibson Dunn. Our former General Counsel was previously an attorney with the SEC and the New Jersey Securities Bureau. Many of our employees had 10 years or more experience with major financial services firms including Morgan Stanley, JP Morgan, and Goldman Sachs.

7. NYPPEX and ACP pioneered the development of secondary private market liquidity for private capital funds and institutional investors worldwide. Our institutional clients included financial institutions such as Bank of America and UBS, foundations such as Wellcome Trust, the largest charitable foundation in the U.K., and university endowments such as University of California Regents.

8. NYPPEX was located in the former headquarters of General Foods in Rye Brook, NY. Its computer servers were secure, password protected, and maintained in various co-locations across the U.S. which provided a high level of comfort to institutional clients that valued server redundancy and protection of confidential documents. NYPPEX systems were never hacked.

9. In 2019, NYPPEX employed approximately 12 professionals in its transfer administration, data, and private funds management businesses located in Rye Brook, NY and teams of tech developers located in Texas, Massachusetts, and India. NYPPEX employed both W-2 employees and 1099 contractors.

ORGANIZATIONAL STRUCTURE OF ACP X, LP ("FUND")

10. In 2004, ACP Investment Group, LLC ("ACP" or "Advisor") sponsored and served as advisor to ACP X, LP (formerly Allen Capital Partners X, LP), a Delaware limited partnership ("Fund"). ACP Partners X, LLC (formerly Allen Partners X, LLC) served as General Partner to the Fund (the "GP").

11. Based on legal documents I have reviewed, it is my understanding that the Fund privately offered and sold limited partnership interests only to persons that were qualified investors in reliance on exemptions provided under: (1) Section 4(a)(2) of the Securities Act of 1933 ("Securities Act"), (2) Regulation D, Section 506(b), under the Securities Act [17 C.F.R. 230.506(b)]; and (3) Regulation S under the Securities Act for interests privately offered and sold outside the United States. Experienced outside counsel, Perkins Coie, prepared the Fund's documents to comply fully with all federal and state laws.

12. The Fund raised approximately $17.6 million in a private placement with approximately 76 limited partners that were sophisticated qualified clients as defined in SEC Rule 205-3. The Fund was not an investment company as defined under the U.S. Investment Company Act of 1940.

13. The Fund's primary objective was to seek an attractive risk-adjusted total return over the long term. The Fund's investment strategy was to make secondary and primary private investments in private capital funds and private companies.

14. The General Partner team invested in the Fund alongside limited partners and became one of the largest investors in ACP X, LP. The GP's investment in the Fund served to align the best interests of its limited partners with the GP team.

15. Typical of standard compensation structures for sponsors of multiple private capital funds and affiliated businesses, our employees and contractors were legally eligible to

receive compensation from our various private funds and businesses.

16. Expenses were allocated among Entities, including the Fund, based on both (i) written guidelines stated in the NYPPEX Affiliate Service Agreement - which FINRA typically reviewed during examinations, as well as (ii) the operating agreements of our sponsored funds. Annually, expense allocations among affiliates were reviewed by our Finance and Audit Committee, and thereafter, by an independent auditing firm. The NYAG misunderstood how expenses are allocated among affiliates in the private capital fund industry and erroneously alleged that our Fund was charged certain expenses.

17. Neither I nor any individuals or entities with whom I was or am associated or affiliated ever solicited, offered, or sold to the Fund's limited partnership interests to the general public.

18. Neither I nor any individuals or entities with whom I was or am associated or affiliated ever solicited, offered, or sold any securities to the general public. Again, NYPPEX and ACP did not provide their services to the public, nor were involved with publicly traded securities.

THE FUND'S CONTRACT

19. As a standard operating procedure in the private capital funds industry, the General Partner of ACP X, LP and its limited partners agreed on a contract, the Amended and Restated Agreement of Limited Partnership (the "LPA"). The LPA described the terms under which the Fund would be managed by the General Partner and was signed by each limited partner. The Fund's 2005 LPA (with its 1st amendment) is attached as Exhibit 1.

20. The Fund also provided prospective limited partners with a Private Placement Memorandum ("PPM") and a Subscription Agreement. The PPM is a confidential private

offering document that discusses important information about the Fund such as its strategy, legal structure, and makes numerous risk disclosures - which in this case included that the Fund's strategy included making investments in affiliates, and therefore, numerous potential conflicts of interest would exist. The limited partners accepted this risk as it also provided the Fund with various competitive advantages.

21. Because a private capital fund typically takes 2 years or more to raise its target capital commitments, an industry standard is for the PPM and LPA to be periodically revised and restated to reflect new information such as recent investments made by a fund.

22. The Fund called capital from its limited partners from 2004 to 2007, during which time the Fund invested the called capital in private capital funds and private companies as authorized by its LPA.

23. In 2005, the Fund revised its 2004 PPM to reflect its new investments and clarified certain information. The revised 2005 PPM was provided to prior limited partners (without any objections) as well as to new limited partners. A true and complete copy of the Fund's 2005 PPM is attached as Exhibit 2.

24. The PPM stated the Fund's investment objective (Ex. 2 at 15), which included making allocations to private equity firms and private companies (*Id.* at 17); the GP's broad investment ability; the GP's ability to transact with affiliates (*Id.* at 19); and the Fund's investments (*Id.* at 9).

25. The Fund's LPA (before amendment and restatement) in Section 2.09, captioned "Transactions with Affiliates," the LPA described the GP's authority to make investments in affiliates as detailed below:

(1) *... the General Partner, when acting in its capacity as general partner of the*

Partnership, is hereby authorized, on behalf of the Partnership, to purchase property or obtain services from, to sell property or provide services to, or otherwise to deal with the General Partner, any Affiliate of the General Partner, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person (whether before or after or in connection with the making of the applicable Investment), or any Affiliate of any of the foregoing Persons.

(2) *In connection with any services performed by any Affiliate of the General Partner for the Partnership, such Affiliate shall be entitled to be compensated by the Partnership for such services, and the amount of such compensation shall be determined by the General Partner in its discretion. Each Limited Partner acknowledges and agrees that the purchase or sale of property, the performance of such services, other dealings or the receipt of such compensation may give rise to conflicts of interest between the Partnership and the Limited Partners, on the one hand, and the General Partner or such Affiliate, on the other hand. ACP and its Affiliates may act as a lender, principal or investor in the Portfolio Investments and may acquire, hold, sell, issue or dispose of securities issued by or to the Portfolio Investments or the Partnership, including securitizations, in principal or agency transactions. Such loans or securities may be pari passu, senior or junior in ranking to the Partnership's investment.*

Exhibit 1 § 2.09

26. The LPA had a specific procedure for proposing amendments to the Fund's limited partners ("LPs"), which the GP Team properly followed. In my opinion, a private capital fund will typically have 10 or more amendments over its 10–15-year term for reasons that include revising strategy and adjusting to changing market conditions.

27. The Fund's Limited Partners Advisory Committee ("LPAC"), comprised of particularly sophisticated limited partners, provided advice to the GP team and typically reviewed and edited draft amendment proposals from the GP team.

28. The 3rd, 4th and 5th proposed amendments were approved by a majority of the Fund's LPs, and among other issues, reiterated that the GP was authorized to make follow-on investments in its portfolio of private companies and private funds, including affiliates. The GP believed that reinvesting the Fund's cash would help the Fund achieve its primary objective - to generate an attractive risk-adjusted total return over the long term.

29. The Fund's LPA noted that in the event the terms of LPA conflicted with the PPM or the amended LPA, the amended LPA controlled.

30. Over the years, the Fund invested in over 210 private equity funds and private companies.

THE FUND'S SOPHISTICATED AND QUALIFIED INVESTORS

31. To be eligible to make a capital commitment to the Fund, prospective subscribers were required to represent in the Fund's Subscription Agreement (§ 2.4) they were sophisticated with respect to illiquid investments in private capital funds and private companies, accredited investors, and qualified clients as per SEC Rule 205-3.

32. Specifically, Section 2.4.1 of the Subscription Agreement asked the subscriber to confirm that they possessed: *(a) the financial ability to bear the economic risk of this investment, [having] adequate means to provide for the subscriber's current needs and contingencies, and [having] no need for liquidity with respect to the subscribed Interest; (b) the financial sophistication and experience with private equity to make an intelligent, independent evaluation of the risks of the Interests offered in the Partnership (Fund); and (c) concluded that an Interest*

in the Partnership meets the investment objectives of and is a suitable investment for the subscriber. A true and complete copy of the Subscription Agreement is attached as Exhibit 3.

33. The Subscription Agreement required confirmation that the subscriber had the personal net worth and liquidity to withstand the risks inherent in a private equity partnership investment, which entailed an uncertain holding period and frequency of distributions, which could result in a complete loss of capital. (*Id.* §§ 2.4, 2.6, 2.7, 2.8.; *see also*, FINRA 005304).

34. The Fund's investors included the GP and the limited partners ("LPs"), the latter consisting of asset managers typically with billions in assets under management and wealthy private clients.

35. There was no public market for interests in the Fund ("Interests") and no public market was expected to occur.

THE FUND'S INVESTMENT STRATEGY & OBJECTIVE

36. The Fund's investment strategy was to make investments in private capital funds and private companies.

37. The Fund's primary investment objective was to seek an attractive total return on its capital over the long term, similar to many other private capital funds.

38. The Fund's term was expected to be 10 years with 2 one-year term extensions not requiring approval from limited partners, as is standard for U.S. private capital funds.

39. Eligible investment types in private companies included preferred stock, common stock, warrants, and convertible notes (loans).

THE 2008 GREAT RECESSION

40. The 2008 great recession caused substantial reductions in valuations of private capital funds and private companies. In addition, profitable exit events would take years longer.

41. To illustrate, it is estimated that in in 2008, the S&P 500 Index ("Index") declined approximately 38% year over year. On August 28, 2008, the Index peaked at 1,300.68, but on March 9, 2009, declined approximately 48% to 948.05.

42. The GP team noticed that valuations had declined by more than 70% in certain private company sectors, including fintech and biotech.

43. The GP team decided that it would be in the best interests of the Fund, and enhance its ability to achieve its investment objective, to rebalance its portfolio by (i) reducing its allocation to private capital funds and (ii) increasing its allocation to fintech and biotech private companies.

44. It is an industry standard practice and a natural risk management tool for private capital funds to periodically rebalance their portfolios as market conditions change.

45. On September 22, 2008, the GP team received a legal opinion letter from outside general counsel that reiterated the Fund was authorized to make investments in affiliates, including its own fintech company, NYPPEX Holdings, LLC. On May 11, 2009, the GP Team, relying on the legal opinion and the terms of the LPA and PPM, approved the Fund to make its first investment in an affiliate, specifically authorizing an investment in NYPPEX Holdings, LLC. A true and complete copy of these documents are attached as Exhibit 4.

46. With approvals from the ACP Legal and Compliance Committee, outside general counsel, and the Fund's Limited Partners Advisory Committee, the GP team implemented its rebalancing strategy by (i) selling some investments typically at moderate discounts to their cost and (ii) reinvesting sales proceeds into biotech and fintech private companies typically at substantial discounts to their prior valuations.

47. The Fund's portfolio rebalancing strategy worked very well as compared to results if the Fund had held its prior investments. Although numerous private capital funds ceased doing business

during this period, the Fund's total return increased substantially as measured by Investment Multiple (i.e. Cumulate Distributions + Net Asset Value / Capital Contributions).

48. Soon, the Fund ranked in the top 10% of all 2004 vintage private capital funds worldwide according to Preqin, ahead of well-known private fund sponsors such as Goldman Sachs and AXA.

49. The Fund's re-investments included convertible notes in NYPPEX Holdings, LLC at conversion prices that represented substantial 75% discounts such as $0.50 per share as compared to the most recent price paid of $2.00 per share by outside accredited investors.

50. The Fund adhered to a 15% maximum allocation guideline for investments in affiliates based on the current market value of the Fund at the time of an investment.

51. Prior to the Fund considering an investment in an affiliate, an ACP investment committee would review and decide if the proposed investment would help the Fund achieve its objective and in the best interests of its limited partners. The committee would memorialize their analysis and decision by signing a certification document.

52. In December 2018, a majority of the Fund's limited partners approved a proposed 7th Amendment to terminate the Fund and distribute its cash and investments. At this time, NYPPEX Holdings, LLC was preparing to list on a stock exchange, which was expected to generate an attractive return to the Fund. The approved 7th Amendment scheduled the Fund to make a final distribution of cash and in-kind securities to limited partners on or about January 15, 2019.

FEDERAL AND STATE SECURITIES REGULATORS

53. Over the course of my career, I have personally responded to various regulatory requests for information, both in terms of documents and testimony, concerning one of our

Entities. In each case, federal and state securities regulators were pleased with my response.

NEW YORK ATTORNEY GENERAL INVESTIGATION

LP WITH A LIQUIDITY PROBLEM CONTACTS THE NYAG

54. In 2016, I was contacted by an LP in the Fund, who explained he had a liquidity problem because of the 2008 recession's impact on his commercial real estate investments. He demanded that the Fund buyback his commitment ($100,000) and insisted on a price of 100% of its current value ($195,000).

55. The GP team approved this LP to transfer his interest, but explained that as a fiduciary, a buyback of his commitment would not be in the best interests of the Fund or its other 75 limited partners.

56. Thereafter , the LP telephoned our employees and threatened, on multiple occasions over years, that if his demand was not met, he would complain to the Office of the New York Attorney General ("NYAG"), presumably, I believe, to motivate the GP team to change its decision.

57. The NYAG apparently references this individual in ¶ 90 of its verified complaint of December 4, 2020.

58. To the best of my knowledge, this LP never filed a formal complaint, nor was he asked by the NYAG to submit an affidavit or testify at subsequent hearings, which I believe shows his lack of credibility

59. In August 2016, the NYAG subpoenaed the GP team for information about the Fund, which apparently marked the beginning of an investigation instituted under the New York Martin Act of 1921, which is codified in its General Business Law ("GBL") at N.Y. GEN. BUS. § 352 ("Martin Act").

60. Over the next twenty-eight months, our Entities and I complied fully with all the NYAG's demands for documents and testimony. During that period, the NYAG took my testimony twice, in spite of my disclosed impaired cognitive and memory condition caused by a terrible car accident earlier in 2018.

61. Despite the Fund's success for its limited partners, in 2020, the NYAG alleged that the Fund's investments in affiliates constituted "self-dealing" under the New York Martin Act and ignored the facts and the law in pursuing a case against our business. The NYAG and the New York court ignored federal preemption and the GP team's and its legal advisors' reliance for over 14 years on SEC regulations, including Rule 17a, that permit investment advisors to make investments in affiliates. They also circumvented the relevant PPMs, subscription agreements, and LPAs which governed our entities and affiliates. Given that numerous private capital funds and companies make investments in affiliates, including Warren Buffet when he buys stock back in Berkshire Hathaway, I believe this NYAG allegation and the court decision will create a chill among private capital funds and their legal advisors regarding investments in affiliates, unless the SEC clarifies its position on these issues.

THE EX PARTE ORDER (GBL 354) ORDER (DECEMBER 28, 2018)

62. On December 12, 2018, Letitia James became the NYAG. A true and complete copy of a press article announcing Letitia James as the NYAG is attached as Exhibit 5.

63. Approximately two weeks later, on or before December 28, 2018, during a teleconference call and upon my counsel's request that my intended third testimony be postponed because of my counsel's scheduling conflict due to a court hearing, a new assistant attorney general for the NYAG, Jaclyn Grodin, stated, "You'll see who's boss here." (I understand from her LinkedIn posting that Ms. Grodin joined the NYAG Investor Protection

Bureau in April 2018. During her 14-year career, she had worked for several different law firms. Her most senior role was that of a Senior Associate. She had no documented experience with private capital funds.) Ms. Grodin did not elaborate as to what her ominous comment meant.

64. On the same day, December 28, 2018, as I later learned, Grodin filed under GBL Section 354 to secure from the New York State Supreme Court ("NYSSCT") for New York County an *ex parte* order ("354 Order") that compelled testimony, froze the Fund's assets, and granted a preliminary injunction "as may appear to be proper and expedient." The 354 Order was signed by a judge on January 2, 2019. (FINRA 006041).

FILING OF FINRA FORM U4 (JANUARY 24, 2019)

65. In January 2019, I first learned of the 354 Order naming me and certain Entities as defendants.

66. Upon learning about the 354 Order, the BD and I filed, on January 24, 2019, an Amended Form U4 with FINRA ("U4"). (FINRA 005969). Under the U4's disclosure question 14G, I answered "yes" to the following question: "Have you been notified, in writing, that you are now the subject of any: (1) regulatory complaint or *proceeding* that could result in a 'yes' answer to any part of 14C, D or E? (If 'yes', complete the *Regulatory Action* Disclosure Reporting Page.)" Parts 14C, D, and E relate to findings of various kinds of violations by the SEC, CFTC, other federal or state regulatory agencies, or self-regulatory organizations. I also answered "yes" to U4 question 14H(1): "Has any domestic or foreign court ever: (a) enjoined you in connection with *an investment-related* activity?" (FINRA 005979). The U4 identified and described the 354 Order on the appropriate reporting pages and provided detailed information concerning the NYAG legal action, including the date the 354 Order had been entered—December 20, 2018. (FINRA 005982-85 (related to 14H(1)(a)) and FINRA 005985-88 (related

to 14G(1))).

67. I solicited the advice of several attorneys as to whether the 354 Order had rendered me "statutorily disqualified." Their response was universally consistent in concluding that the 354 Order, about which I had no knowledge contemporaneous with its issuance and which provided no due process, had not rendered me statutorily disqualified nor was the BD disqualified for being associated with a person statutorily disqualified.

THE NYAG'S VERIFIED COMPLAINT (DECEMBER 4, 2019)

68. On December 4, 2019, almost one year after 354 Order, the NYAG filed a verified complaint ("Complaint") for Case No. 452378/2019. (FINRA 006047; *see also* FINRA 009022).

69. The Complaint identified: (1) as primary defendants, the GP, Allen, the HC, the Adviser, and the Fund; and (2) as relief defendants, various entities, including the BD, against which the NYAG made no claims.

70. The Complaint asserted five claims against the Defendants, which were based on alleged violations of: (1) the Executive Law 63(12) (claims II and V); (2) the General Business Law (Martin Act provisions) (claim I); (3) the law concerning fiduciary duties (claim III); and (4) the common law of equitable fraud. The Complaint sought disgorgement, damages, and other relief.

71. The New York Martin Act, as I understand, under GBL § 352 authorizes the NYAG to investigate, among other things, any alleged "deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise" in the offering or sale of any security in violation of the provisions of said section [or Section 359]. I understand further that the Martin Act is considered by many to be the most severe state securities or "blue sky" law in the United States in terms of scope and ease of favorable results for the NYAG.

THE NYAG'S PRESS RELEASE (DECEMBER 5, 2019)

72. On December 5, 2019, the NYAG issued a press release which was sub-captioned, and stated as fact, that "AG James Files Lawsuit Against Private Equity Fund Manager Who Used Investor Funds as Private Piggy Bank: Fund Manager Illegally Converted More than $13 Million in Investor Funds to Prop Up Failing Broker-Dealer," and confirmed that "[i]n December 2018 ... the [NYAG] obtained an order pursuant to Section 354 of the Martin Act" — which remains in effect today — "[that] restrained Allen from further misappropriation of [Fund] assets or otherwise enriching himself at the expense of investors." A true and complete copy of the NYAG Press Release of December 5, 2019, is attached as Exhibit 6.

THE NYAG'S PRELIMINARY INJUNCTION (FEBRUARY 4, 2020)

73. On or about December 9, 2019, the NYAG sought a preliminary injunction (1) to enjoin me and the Entity defendants from accessing the assets of the Fund and (2) to seek appointment of a receiver to distribute the remaining assets of the Fund.

74. On February 4, 2020, the NYSSCT: (1) issued a decision and order that granted the NYAG's motion, which (2) prohibited any transactions by defendants with the Fund and Advisor, other than Court-approved distributions from the Fund, and (3) denied the NYAG's request for a receiver ("PI Order"). The PI Order stated that the NYSSCT would "provide a copy of [its] opinion to the appropriate enforcement agencies." (FINRA 006129).

THE NYAG AND THE NYSSCT IGNORES SEC AND FEDERAL PREEMPTION

75. The NYAG's core allegation was that the GP engaged in "self-dealing" as defined in the Martin Act. On numerous occasions, GP's counsel explained and I testified to the NYAG and in court that the Fund was authorized in its LPA to make investments in affiliates, that the GP received advice and a legal opinion from outside legal counsel, that the Fund was authorized

to make investments in affiliates, that all investments in affiliates were fully disclosed to LPs without objection, and that SEC federal regulations, including SEC Rule 17a, permitted investment advisors to make investments in affiliates, and that our attorneys had assisted us to adhere with all contractual and regulatory requirements over the years.

76. The GP's attorneys understood that federal securities regulations preempt state securities regulations on specific issues. However, a NY state court disagreed and issued an adverse decision against defendants, effectively unwinding the Fund's investments in affiliates and reversing the LP-approved amendments that authorized distributions to the GP team.

77. I was personally offended and shocked by the NYSSCT's refusal to honor the terms of private contracts that governed the conduct and business of the Entities and investors, all in compliance with the federal securities laws and SEC rules and regulations, and the interest of the NYAG in issuing press releases instead of protecting investors. There was not a single penny that was missing from the Fund.

THE NYAG'S TRIAL, DECISION, AND ORDER (FEBRUARY 4, 2021)

78. From January 11, 2021, to January 14, 2021, the NYAG tried its action in a court-ordered bench trial. On February 4, 2021, the NYSSCT issued a decision and order that, among other things: (1) granted the NYAG's motion, and (2) prohibited any transactions by defendants with the co-defendant Fund. A true and complete copy of the NYSSCT Decision After Trial is attached as Exhibit 7.

THE PRESENT STATE OF THE FUND

79. On December 28, 2018, when the NYSSCT issued the 354 Order: (1) the net asset value of the Fund was approximatley $37 million, an amount confirming significant return on the total contributed capital of approximately $17.6 million; and (2) the Fund's assets were in cash,

marketable securities and remaining private investments. Again, the GP had scheduled a full and final cash and in-kind distribution for January 15, 2019 as per the approved 7th Amendment.

80. On June 2, 2022, the NYSSCT ordered that a receiver seize the Fund and its assets. The receiver, as I understand, subsequently took exclusive control of the Fund and its assets. A true and complete copy of the NYSSCT Order of June 2, 2022, is attached as Exhibit 8.

81. On October 28, 2022, the NYSSCT directed the receiver to marshal the Fund's assets, monetize them, and distribute them to the LPs in accordance with the schedule to which the receiver and NYAG had agreed.

82. On December 20, 2023, almost five years after the 354 Order, the NYSSCT held a (virtual) hearing on the status of the Fund, which I attended. During the hearing, the NYSSCT stated, among other things, that:

(1) "the marketable securities and cash position of limited partnership appears [sic] to have decreased at more than 50 percent, and perhaps as much as 70 percent, for which there is no explanation whatsoever [from the receiver]" (Tr. at 4);

(2) "there has basically been radio silence from the receiver with respect to the conduct of the marshalization and monitorization [sic] of the estate" (*Id.*);

(3) "it's quite apparent that [two law firms] have added absolutely no value to the administration of this estate" (*Id.* at 5); and

(4) "[i]n fact, they've presided over radical diminution of the value of the estate. And the fees to which these parties are seeking to be reimbursed represent a [sic.] extremely significant percentage of the total assets of the estate." (*Id.*).

A true and complete copy of the NYSSCT hearing transcript of December 20, 2023 (emphasis (highlighting) added), is attached as Exhibit 9.

83. I understand, that as of August 2024, the LPs have still not received a meaningful distribution from the Fund to return their contributed capital. It is also my opinion that the receiver does not understand how to manage the Fund or sell private equity assets, consisting of private partnerships or private companies.

84. In the end, the NYAG's actions — ostensibly intended to protect sophisticated investors familiar with partnership and contract law and none of whom complained about the Fund's operations or results — severely reduced the value of the Fund and have, to this day, prevented any of the partners, the LPs and the GP alike, from receiving their contributed capital and what, if anything, remains of the returns the GP generated on that contributed capital.

THE FINRA MATTER

The FINRA Examination (2018-2019)

85. In 2018, FINRA conducted an examination of the BD, in the matter numbered 2018-0562809.

86. On February 28, 2019, FINRA informed the BD that the examination was completed, and on April 30, 2019, FINRA sent an examination disposition letter noting exceptions. (FINRA 006165).

87. FINRA reviewed many of the same issues alleged by the NYAG about the Fund, our BD, and me. FINRA did not issue a fine, discipline, or censure of the BD, the Fund, or me.

88. In 2021, the SEC's Boston Office also conducted an extensive investigation of our GP, Fund, and me regarding the same issues alleged by the NYAG. Subsequently, the SEC Assistant Regional Director issued a close-out letter dated May 18, 2021, which stated, "We have concluded the investigation as to ACP Investment Group, LLC. Based on the information we have as of this date, we do not intend to recommend an enforcement action by the Commission against ACP

Investment." A true and complete copy of the SEC's letter is attached as Exhibit 10.

THE FINRA RULE 8210 DOCUMENT AND TESTIMONY DEMANDS (EARLY 2020)

89. As noted above, the PI Order of February 4, 2020, stated that the NYSSCT would "provide a copy of [its] opinion to the appropriate enforcement agencies," Based on this statement, it is my understanding that the NYSSCT, the NYAG, or both provided FINRA with information and documentation concerning the PI Order.

90. As of February 4, 2020:

(1) The PI Order prevented the Fund's GP, the HC and its BD from engaging in transactions with the Fund;

(2) The BD had 12 employees, which included the Chief Compliance Officer, Michael Schunk, and me, and was operating on a full-time basis;

(3) Mr. Schunk had stomach cancer for which he was receiving chemotherapy—Mr. Schunk has since passed away; and

(4) I was on medication for a brain trauma suffered in an automobile accident in May 2018. Specifically, neurologists at Yale Medical concluded that as the result of my car accident, I had an impaired cognitive processing and memory condition during the NYAG depositions, NYSSCT hearings, and FINRA investigation.

91. Beginning on February 10, 2020, FINRA's departments began sending Rule 8210 document demands to the BD, me, and the BD's chief compliance officer, Michael Schunk, and Rule 8210 demands for testimony from several of our employees, including us. These overwhelming and overlapping demands over a tight time period and related documents and events are listed below (much of this information appears at FINRA 009027-009034):

(1) Document Demand 1 ("DD1")

Date: February 10, 2020 (FINRA 007707)
From: Department of Member Supervision (Steinberg)
Items: 8
Due: February 24, 2020 – 14 days (3 of 8 Items)

February 13, 2020	Notice of Statutory Disqualification (FINRA 006177)
February 14, 2020	BD submitted MC-400 (continuance of membership) (FINRA 006181)
February 24, 2020	Extension granted to March 2 (FINRA 007715)
March 2, 2020	BD has difficulty uploading documents, requests assistance (FINRA 007723)
March 13, 2020	FINRA complains of no response to Items 2 and 8, combines Feb 10 and Feb 20 deadlines with new response deadline of March 20 (FINRA 007729)
March 20, 2020	FINRA extends deadline to March 24, asks for documents on rolling basis (FINRA 007757)
March 21, 2020	BD Production re Item 8, continuing to produce documents (FINRA 007779)
March 30, 2020	BD documents uploaded (FINRA 00787)
March 30, 2020	FINRA Email (Steinberg) re Items 2, 6 and 7, threats of summary FINRA proceeding (FINRA 007789)
March 31, 2020	Schunk emailed "complete production" (FINRA 00791)
April 1, 2020	Schunk had surgery
April 15, 2020	FINRA Letter (Steinberg) claiming incomplete production constitutes violation of FINRA 8210 and threatening sanctions (FINRA 007793)
April 24, 2020	BD wrote to Steinberg disputing incompleteness (FINRA 007825)
May 11, 2020	Record of document submissions from Mar 2-May 11, 2020 responsive to February 10 document demand (FINRA 007721)

(2) Document Demand 2 ("DD2")

Date: February 20, 2020 (FINRA 007711)
From Department of Member Supervision (Steinberg)
Items: 2
Due: February 27, 2020 — 7 days

March 2, 2020	BD uploads some documents, notes difficulty uploading documents, requests assistance (FINRA 007723)
March 5, 2020	BD uploaded 8 documents (FINRA 007783)

March 13, 2020	FINRA complains of no response to Item 1, combines Feb 10 and Feb 20 deadlines with new response deadline of March 20 (FINRA 007729)
March 20, 2020	FINRA extends deadline to March 24, asks for documents on rolling basis (FINRA 007757)
March 21, 2020	BD Production re Items 1 and 2 (including 3 loan agreements for Item 1), continuing to produce (FINRA 007759)
March 30, 2020	BD documents uploaded in response to Items 1 and 2 (FINRA 007783)
March 30, 2020	FINRA Email (Steinberg), Item 2 no response, threats of summary FINRA proceeding (FINRA 007789)
March 31, 2020	Schunk emailed "complete production" (FINRA 00791)
April 1, 2020	Schunk had surgery
April 15, 2020	FINRA Letter (Steinberg) claiming incomplete production constitutes violation of FINRA 8210 and threatening sanctions (FINRA 007793)
April 24, 2020	BD wrote to Steinberg disputing incompleteness (FINRA 007825)

(3) Document Demand 3 ("DD3") — DD3 is discussed at length in the NAC Decision

Date: March 5, 2020 (FINRA 007667)
From: Department of Advertising Regulation (Gregory)
Items: 5
Due: March 19, 2020 – 14 days

March 30, 2020	Second request, answers due April 6 (FINRA 007681)
April 8, 2020	Third request, answers due April 15 (FINRA 007683)
April 20, 2020	Allen emailed Gregory to explain that BD has just seen first request and was "overwhelmed" by all the requests and suggested ways to address (FINRA 007685)
April 20, 2020	FINRA (Gregory) approves extension to April 24 (FINRA 007685)
April 23, 2020	Letter to Gregory providing documents, responses to questions, and explaining (among other things) that the firm's press release had been reviewed and approved by external counsel, the information contained in it was factually accurate, and nowhere did it state or imply that FINRA endorsed, indemnified, or agreed with the firm's business practices (FINRA 007691)

(4) Testimony 1 – Allen

Date: March 10, 2020

(5) Document Demand 4 ("DD4")

Date: March 10, 2020 (FINRA 007814)
From: Department of Enforcement (Koszulinski)
Items: 29
Due: March 20, 2020 — 10 days

March 31, 2020	BD email to FINRA (Koszulinski) noting that responses to Feb 10 and Feb 20 requests submitted and Schunk to enter hospital for surgery on April 1 (the next day) (FINRA 00791)
March 31, 2020	Extension granted to April 13 (FINRA 00791)
April 1, 2020	Schunk had surgery
April 15, 2020	FINRA Letter (Steinberg) claiming incomplete production constitutes violation of FINRA 8210 and threatening sanctions (FINRA 007793)
April 24, 2020	BD wrote to Steinberg disputing incompleteness (FINRA 007825)

(6) Testimony 2 – Schunk

Date: March 18, 2020

(7) Document Demand 5 ("DD5")

Date: April 10, 2020 (FINRA 007833)
From: Department of Member Supervision (Steinberg)
Items: 14
Due: April 24, 2020 – 14 days

April 15, 2020	FINRA Letter (Steinberg) claiming incomplete production constitutes violation of FINRA 8210 and threatening sanctions (FINRA 007793)
April 24, 2020	BD wrote to Steinberg disputing incompleteness (FINRA 007825)

(8) Testimony 3 – Schunck

Date: April 28, 2020

(9) Testimony 3 – Schunck

Date: April 29, 2020

92. In various emails dated April 27, 2020, and May 1, 2020, FINRA investigator David Steinberg noted our continued production on outstanding items and the need for passwords to certain documents uploaded into FINRA's Request Manager. (FINRA 007847-00748).

FINRA'S REJECTION OF ACCESS TO PROTECTED BANK DOCUMENTS.

93. DD1, Item 2, requested production of documentation from bank accounts over which I had signatory authority. I had signatory authority over one set of bank accounts, namely my personal accounts, for which I could and did produce the FINRA-requested documentation ("Regular Accounts").

94. However, I did not have signing authority for Allen family trust accounts for which I am not the sole beneficiary and for which I did not have legal authority to produce documentation without an assurance of confidentiality ("Trust Accounts").

95. After receiving DD1 and prior to May 7, 2020, my counsel John Hewitt and I ("we") informed FINRA's investigator, David Steinberg, that I was legally constrained from producing documents for the Trust Accounts.

96. We offered to have FINRA view information for the Trust Accounts online for purposes of the investigation. FINRA informed us that this offer was unacceptable.

97. We offered, on May 5, 2020, to produce to FINRA the information for the Trust Accounts in hard copy, subject to agreed-upon confidentiality. FINRA informed us that this offer was unacceptable, too.

98. By letter dated May 7, 2020, FINRA's investigator David Steinberg informed my counsel, John Hewitt, that "FINRA Rule 8210 requires that FINRA members produce all documents or information requested by FINRA, but does not authorize or permit firms or

individuals to place conditions on the production of those materials." A true and complete copy of this letter is attached as Exhibit 11.

99. We offered to provide FINRA a discrete review of information in person from the Trust Accounts. FINRA informed us that this offer was also unacceptable.

100. By letter dated May 12, 2020, BD's counsel, John Hewitt, wrote FINRA investigator Steinberg, noting that, as for certain bank accounts within the scope of DD1, Item 2, Hewitt stated that FINRA's "Staff has agreed to make a discrete review of these accounts to determine their relevance in this matter" and "[w]e are currently discussing with the Staff arrangements for this review." (FINRA 007859).

101. Mr. Steinberg testified that he was unaware of any such discussions about any of Allen's bank statements. (FINRA 009032).

102. Hewitt and I did not understand why FINRA would not agree to review the materials online given that FINRA Rule 8210(a)(2) authorizes FINRA to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control." The access to the requested information we had offered literally allowed FINRA staff to "inspect and copy" all of the information they were requesting—either by copying the information by hand or by taking screenshots of the information made available online; given the constraints on my ability to turn over the information, which was not in my possession, custody, or control, this was full compliance with the 8210 demand.

103. Further, FINRA Enforcement claimed to have misplaced passwords or have never received passwords on numerous occasions, which prevented its staff from access documents we produced on the FINRA system. This required that we email or send by expedited delivery these

documents to FINRA. In an April 24, 2020, letter that addressed the various delays and extensions of time worked out between FINRA staff and our external counsel, the BD noted that FINRA staff had also neglected to access password-protected documents in a timely fashion (14 days), allowing the passwords to expire. (FINRA 007825, 007828).

104. The NAC's decision of April 8, 2024, states that my answers to obviously rhetorical questions about the function and importance of FINRA Rule 8210 evidenced a "cavalier attitude about [my] failure to comply with Rule 8210." (FINRA 009077).

105. The NAC drew the wrong inference from my answers. They reflected not a "cavalier attitude" but genuine frustration with having done my best to respond timely and completely to FINRA's multitudinous and overlapping information demands imposed on our business. The seriousness with which I took the Rule 8210 information demands is best evidenced not by answers to several questions but the multitude of documents that our staff, our counsel, and I produced in response to five overlapping document demands and four testimonial demands all within a two-month period, all undertaken while continuing to operate a business, to prepare for a trial with the NYAG, and to address the physical infirmities that Mr. Schunk and I were under, not to mention the fact that the COVID-19 pandemic was then rampant throughout the United States and the entire economy, including our business, was attempting to operate (and survive) under pandemic lock-down conditions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of August 2024.

Laurence G. Allen