UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94441/March 14, 2022

INVESTMENT ADVISORS ACT OF 1940
Release No. 5977/March 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20795

In the Matter of

LAURENCE G. ALLEN,

Respondent.

ANSWER TO SEC ORDER INSTITUTING PROCEEDINGS

Respondent Laurence G. Allen ("Mr. Allen" or "Respondent"), by his attorneys, Greenberg Traurig, LLP, as and for his Answer ("Answer") to the Order Instituting Proceedings ("OIP") filed by the Securities and Exchange Commission ("SEC" or the "Commission"), responds as follows:

PRELIMINARY STATEMENT

The OIP is based solely on a New York state court judgment and order imposing injunctive relief (the "Order") which falsely portrays Mr. Allen as a self-interested investment adviser who, in his capacity as managing member of the general partner of a small private equity fund, allegedly diverted and misappropriated assets of the fund for his own benefit. Nothing could be further from the truth.

Mr. Allen has worked in the securities industry for over thirty-five (35) years, including senior positions with Merrill Lynch and Bear Stearns where he helped pioneer the development of secondary private markets in new asset classes, mortgages and private placements. He is the founder of NYPPEX Holdings, LLC ("NYPPEX"), one of the world's leading providers of

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secondary market liquidity to investors in alternative funds and private companies. To date, NYPPEX has executed and settled over 1,625 private equity transactions in the secondary market. Over the years, Mr. Allen has personally advised senior regulators in connection with emerging regulatory issues in the secondary private equity markets, including a Commissioner of the SEC, the Chief Executive Officer of FINRA and Senior Counsel with the FDIC. He has been a member of numerous professional organizations, including the Securities Industry and Financial Markets Association (SIFMA), National Association of Corporate Directors, the Private Equity CFO Association and the Association of Fraud Examiners. Mr. Allen graduated with a Bachelor of Science in Economics (1979) with honors and a Master of Business Administration in Finance (1982) from the Wharton School at the University of Pennsylvania. He is an active and positive force in his local community, having served on advisory boards of several community organizations, including, but not limited to, as a trustee to the Joseph Wharton Leadership Awards, the U.S. Congress Business Advisory Board, Bowery Mission Foundation and the Second Congregational Church. He has received a Lifetime Achievement Award from Ducks Unlimited, the largest non-profit organization in the United States dedicated to the conservation of wetlands for waterfowl and other wildlife.

In a career spanning nearly four decades in the securities industry, Mr. Allen has never been subject to any prior regulatory action by the SEC or FINRA, nor has he ever been disciplined in any manner by the SEC or FINRA. Prior to the New York state court action discussed herein, no regulator had ever accused him of wrongdoing, much less found him liable for any violation of federal securities laws, rules or regulations. Nor has any customer or investor ever made any formal complaint or initiated an action against him. He is recognized as a trusted thought leader in the secondary private market space, with decades of experience in the private equity markets.

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While the Order exists as a matter of fact, there are mitigating factors about which the Commission should be aware. This is not a collateral attack on the Order itself, nor an attempt to re-litigate the New York state court case (which remains subject to an ongoing appeal as of the date of this Answer). Rather, because this action is a follow-on proceeding and is based solely on the entry of injunctive relief in the Order, Mr. Allen is compelled to explain briefly why he disagrees so vehemently with the court's factual findings, which are at complete odds with his exemplary record in the securities industry prior to that action.[1]

The New York state court action concerns the operation of a private equity fund, ACP X, LP ("ACP X" or the "Fund"), which consists of seventy-six limited partner investors, all of whom are qualified purchasers as defined under federal law. As an independent contractor through his consulting firm, LGA Consulting, LLC, Mr. Allen has served as the managing member of the general partner of ACP X. The Fund's investors agreed to be bound by a series of contracts, which included a ninety-seven (97) page private placement memorandum ("PPM") and a sixty-one (61) page limited partnership agreement ("LPA"), as well as amendments to the LPA that were approved by a majority of the limited partners. The rights and obligations of the parties are defined by these contracts, which were prepared by legal counsel and were bargained-for, arms-length transactions between sophisticated parties. By and through those contracts, the limited partners in ACP X knowingly afforded the general partner, of which Mr. Allen is a member, significant investment discretion and decision-making authority – and permitted conflicts of interest, investments in affiliated entities and other actions that might be anathema to the average retail

[1] While the Commission does not permit a respondent to re-litigate issues that were addressed in a previous civil action proceeding against him (*see e.g. James E. Franklin*, Exchange Act Release No. 56649 (Oct. 12, 2007)), in proceedings based on an injunction the Commission traditionally will examine and consider the facts and circumstances underlying the injunction in making a public interest determination. *See Mark Feathers*, Initial Decision Release No. 605, 2014 WL 2418472 (May 30, 2014); *Marshall E. Melton*, Exchange Act Release No. 48228 (July 25, 2003). As a result, a brief discussion of the facts and circumstances underlying the Order is appropriate.

investor – in order to generate superior returns over the long term. As with most private funds, the LPA and PPM of ACP X govern the operation of the Fund and dictate what the general partner can and cannot do. If there is uncertainty or a dispute as to whether certain proposed actions of the general partner are appropriate or not, reference to the Fund's governing documents will generally provide the answer.[2]

Thus, when the New York Attorney General ("NYAG") brought an action alleging that Mr. Allen had acted improperly and contrary to ACP X's offering documents by causing the Fund to make investments in an affiliated entity, NYPPEX Holdings, one might expect that the court would turn first to the LPA and PPM and analyze the relevant provisions of those contracts, particularly – as in the case below – if there is substantial disagreement as to the propriety of the general partner's actions. In this case, however, the Order includes no reference whatsoever to any provision of the LPA or PPM, notwithstanding that those agreements not only address but govern the very conduct which the NYAG alleged was improper. In fact, contrary to the NYAG's allegation that "the offering documents do not disclose or contemplate an investment by ACP into any of its affiliates," the LPA and PPM not only contemplate but permit the general partner to make such investments.[3] Moreover, multiple limited partners in the Fund submitted affidavits and

[2] Notably, no limited partner in ACP X has ever brought a claim against the general partner for breach of contract or any other action related to ACP X's operations. Moreover, most proposed actions of the general partner were undertaken based on the advice of legal counsel and were typically submitted for review and approval to the Limited Partner Advisory Committee ("LPAC"), which, per the LPA, exists to provide advice to the general partner "in connection with investment strategy, potential conflicts of interest, portfolio valuation and other Partnership matters."

[3] Page 61 of the PPM contains a heading entitled "Related Party Transactions; Conflicts of Interest" which provides that "General Partner is hereby authorized … to purchase property or obtain services from any Affiliate of the General Partner …" That same disclosure is repeated elsewhere in the PPM, and also at Section 2.09 of the LPA in a section entitled "Transactions With Affiliates." Page 61 of the PPM continues by disclosing that "[e]ach Limited Partner acknowledges and agrees that the purchase or sale of property … 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[.]" The PPM and LPA contain additional disclosures concerning affiliate transactions. Further, a majority of limited partners voted to amend the LPA in 2015 and again in 2017 to reflect that "[i]t is hereby reiterated that the General Partner is permitted to make follow-on investments in portfolio companies and funds *including affiliates* without requiring the consent of Limited Partners as deemed appropriate by the General Partner." (Emphasis added.)

testified at trial that the LPA and PPM permit investments in affiliates and that Mr. Allen acted in accordance with the broad authority that they had granted to him.[4] Mr. Allen himself testified that ACP X's operating documents were modeled after private equity funds sponsored by firms such as Goldman Sachs, Credit Suisse and Fortress Group, among others, all of which allow investments in affiliates (sometimes without an allocation limit), and he even submitted an expert opinion report from a widely-cited Yale Law School professor concluding that the LPA and PPM authorized investments in affiliates. Mr. Allen also testified that he relied on the advice of legal counsel and on federal securities regulations (specifically SEC Rules 17a-6 and 17d-1, which were revised in 2003 to reiterate that investments in affiliates were permitted).

Incredibly, however, none of this appears in the Order. The Order reflects no effort by the court to review, discuss or analyze the relevant provisions of the LPA or PPM. In fact, the Order is devoid of any reference whatsoever to any provision of either of those contracts. Nor does the Order acknowledge the testimony of witnesses who were parties to those contracts, much less attempt to discuss or weigh such testimony (or that of the expert witness). Thus, the court concluded that Mr. Allen "fraudulently caused ACP X to purchase equity in NYPPEX in each of 2014, 2015, 2016, and 2017-18" notwithstanding that evidence and testimony clearly demonstrated that such investments were entirely permissible under the LPA and PPM.

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[4] For example, limited partner Vernon Sumnicht stated that "I understood the PPM and LPA authorized the GP to invest in affiliates" and "I understood that the GP would invest in companies that the GP was affiliated with, controlled or owned." Robert Shubert, Jr. stated that "I read the offering documents… which specifically contemplated that the fund would invest in companies in which the General Partner, Laurence Allen, had an affiliation" and "[a]ccordingly, I had full knowledge that ACP X would be investing in affiliates or better stated, in companies that the GP had an interest in as this was clearly stated in the offering documents." James Johnston stated that "I understood the PPM and LPA authorized the GP to invest in affiliates." David Rubis stated that "I understand both the PPM and LPA allow for ACP X to invest in affiliates" and "this includes NYPPEX, which the General Partner, Laurence Allen, had an affiliation." Bassam Shihadeh stated that "at all relevant times, I understood that the GP was authorized to invest in affiliates." Christian Erdman stated that "it was within the GP's rights to make" investments in affiliates, including NYPPEX.

Similarly, the court found that Mr. Allen improperly caused ACP X to pay NYPPEX operating expenses, which the court described as a self-dealing effort by Mr. Allen to divert assets of the Fund to himself. But the Order contains no citation to, discussion of or analysis of Article 4 of the LPA governing "Partnership Expenses," which covers nearly three full pages of written text and provides that the Fund (as opposed to the general partner) is responsible for payment of certain expenses, including expenses alleged as improper by the NYAG. At trial, the Fund's then-head of finance (a former controller at Morgan Stanley) testified that the alleged transfers of cash between the Fund and certain affiliates were merely quarterly allocations of expenses which complied with the NYPPEX affiliate service agreement and the Fund's LPA. This is yet another instance in which the Order purports to find that Mr. Allen acted wrongfully without any reference whatsoever to the contracts that govern the conduct at issue or the testimony of percipient witnesses who (opposed to the NYAG) actually had an intimate understanding of those contracts and firsthand knowledge of the pertinent events.

Mr. Allen understands that he cannot re-litigate these issues in this forum. However, it remains unfathomable to him that in a matter concerning relationships governed by contract, a court could simply ignore the operative contracts as if they did not exist and find "fraud" in actions expressly permitted by those contracts. The Order's material omissions render it highly misleading and grossly unfair, as no impartial observer reading the Order on its face would have any indication that there is a narrative contrary to the one advanced by the NYAG, or that the LPA and PPM contain relevant language which appears nowhere in the Order, or that limited partners in the Fund testified that Mr. Allen's actions on behalf of the general partner were entirely consistent with the LPA and PPM. By failing to cite any provision of the LPA or PPM in the Order, or to acknowledge the limited partners and other witnesses who testified regarding those provisions, the court

effectively whitewashed Mr. Allen's defense from the official record.[5] Put simply, the court appears to have refused to accept any testimony or evidence that did not comport with the "fraud" narrative advanced by the NYAG.[6]

Further, it is material that the Order is based solely on New York law, not federal securities law, as New York's Martin Act (General Business Law Article 23-A, §§ 352–353) has a significantly lower threshold for fraud than federal law.[7] Thus, the court was able to find that Mr.

[5] Worse, the court dismissed the witnesses called by Mr. Allen's counsel – which included expert witnesses and the limited partners themselves – as "irrelevant" or "incompetent to offer the testimony they offered." The limited partners are the investors whom the NYAG was purportedly trying to protect, and yet the court dismissed them out of hand as if their perspective on a private fund in which they are invested – and on contracts to which they are parties – was entirely irrelevant. The disparagement of those investors as "incompetent" calls into question the fairness of the proceedings and the credibility of the Order as a reflection of the facts, evidence and testimony presented at trial.

[6] Additionally, one significant issue before the court concerned the valuation of NYPPEX for purposes of ACP X's investment in that affiliate entity. Notwithstanding that the NYAG failed to offer an expert opinion on the valuation of NYPPEX at trial, the court mocked and dismissed the independent valuation reports that Mr. Allen obtained from two separate firms which reflected a minimum valuation of $107 million as of September 30, 2019. The court ignored that the LPA does not require an independent valuation of Fund investments and provides instead that fair value of investments in private companies shall be estimated based on the implied valuation of a company's most recent capital round, with adjustments made by the general partner in its sole discretion. In this case, the most recent NYPPEX capital round was issued $2.00 per share, a price which was discounted to $0.73 per share by the general partner for internal valuation purposes, and ultimately valued at $0.86 per share in the lowest independent valuation introduced at trial. While NYPPEX has been sidelined due to the New York state court litigation, a new competitor which also provides secondary private equity liquidity, Forge Global (FRGE), publicly listed its shares on the NYSE on March 22, 2022. The public market valuation of Forge Global increased sharply upon trading and was approximately *$5.6 billion* based on its closing share price on March 31, 2022. Forge Global's spectacular success demonstrates that the independent valuation of NYPPEX at $0.86 per share just a few years earlier was not unrealistic. NYPPEX was and is a market leader with demonstrated success (more than 1,000 secondary private equity transactions at the time), respected partners (service arrangements with Morgan Stanley, BOA Merrill Lynch and UBS, among other leading financial institutions) and tremendous growth potential in a new, $13 trillion alternative asset market. Mr. Allen fully intended for NYPPEX to be what Forge Global has become, as he was a pioneer in the sector well before Forge Global and saw the opportunities that existed. NYPPEX's projections for growth – which the court derided (in unprofessional language evidencing bias and prejudice) as "shit in, shit out," "if pigs had wings they could fly" and based on "incredible assumptions supplied by Allen that bear no relationship to reality" – were, in hindsight, quite conservative when compared to Forge Global's actual revenues of $24 million in 2019, $72 million in 2020 and $123 million in 2021. *Source*: Forge Global S-1 filing with the SEC.

[7] *See e.g.*, Robert McTamaney & Michael Shapiro, *New York's Martin Act: Preemption is Past Due*, New York Law Journal (March 25, 2021); Robert McTamaney, *NY State Attorney General's Aggressive Use of Martin Act Revives Federal Preemption Objection*, Wash. Legal Foundation Legal Opinion Letter (February 12, 2016); Jonathan R. Macey, *Positive Political Theory and Federal Usurpation of the Regulation of Corporate Governance: The Coming Preemption of the Martin Act*, 80 Notre Dame L. Rev. 951 (2005). One of Mr. Allen's arguments on appeal of the Order is that the Martin Act is preempted by federal securities law, as the United States Congress has acted repeatedly for many years to establish uniformity with regard to securities laws and regulations, and the Martin Act's watered-down definition of "fraud" has created a continuing and irreconcilable conflict between state and federal courts assessing alleged fraud in securities transactions.

Allen engaged in "fraud" without having to assess or determine intent to deceive on the part of Mr. Allen, reliance by any limited partner, or damages.[8] Had the Division of Enforcement brought the same causes of action against Mr. Allen in federal court, based on the same facts and circumstances, it would have faced a significantly higher burden than did the NYAG.

Lastly, although this follow-on proceeding is based on the entry of an injunction in a court of competent jurisdiction, it is fundamentally different from virtually all similar actions and constitutes an improper application of Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. First, the vast majority of follow-on proceedings have been based on injunctions entered by *federal courts* based on violations of *federal securities laws* (and often in cases brought by the SEC itself in federal district court). In contrast, this case follows a state court action brought under state law – and one that is fundamentally inconsistent with federal law on the same subject matter. Second, in the rare instances in which the Division of Enforcement has brought an action based on the entry of a state court injunction, the injunctive relief is clearly directed to an individual's ability to conduct a securities business. *See e.g. Robert H. Van Zandt*, Exchange Act Release No. 94477 (March 18, 2022) (in which the New York state court enjoined respondent from "engaging or attempting to

[8] No investor in the Fund has lost money. In fact – although the Order certainly does not acknowledge it – ACP X has generated an estimated net investment multiple to its limited partners of approximately 1.99x as of December 31, 2020, which ranked as the number one performing secondary private equity fund worldwide based on its 2004 vintage. According to NYAG's own forensic accounting expert, some of the limited partners have received a full return of their capital investment in the Fund, and the "vast majority" have received "the majority of their initial capital investment back," all before liquidation of the Fund, which was approved by the limited partners in December 2018 but halted by the court the same month. As Mr. Allen testified (unrebutted) at trial, all limited partners stand to receive not only a full return of their capital but an estimated total return of somewhere between 119% and 184% of their initial capital investment upon liquidation of the Fund's investments, which has been restricted for more than three years due to the NYAG litigation. These estimated returns are net of management expenses and incentive fees. The Fund's early withdrawal amendments (3rd, 4th and 5th amendments, which amended and restated the terms of the LPA) provided all limited partners with the opportunity to access liquidity at an approximate 15-20% discount to their current net asset values (approximately 1.5-2.0x their original investment), in exchange for allowing the general partner to receive a partial distribution of its accrued incentive fees (carried interest).

engage in any manner in the securities business within or from the State of New York as a broker, dealer, issuer, investment adviser or investment manager, or as an officer, director, principal, controlling person, agent, affiliate person, consultant or salesperson of a broker, dealer, issuer, investment adviser or investment manager"). Here, however, the permanent injunction entered by the New York trial court in the Order merely makes permanent the same preliminary injunctive relief which the court imposed earlier to maintain the status quo of the Fund. The purpose of the injunction was to preserve the status quo pending the appointment of a provisional receiver and the allocation of fund assets, not to enjoin Mr. Allen from conducting his securities business. Nothing in the Order prohibits Mr. Allen from acting as an investment adviser or broker, from affiliating with a registered advisor firm or broker dealer, from engaging in or continuing any conduct or practice in connection with such activity, or in connection with the purchase or sale of a security. Indeed, the court pointedly refused the NYAG's request to bar Mr. Allen from the securities industry, leaving it to the regulatory authorities to "address the future status of [the entities that Allen controls] and Allen's future role in those entities." And, in fact, Mr. Allen has continued to conduct his regular securities business since the preliminary injunction was first entered in 2020 and since the Order was entered in 2021. The only thing that the Order enjoins is the disruption of the status quo with regard to the Fund itself. This is not the type of state court injunctive relief which, to Mr. Allen's knowledge, leads to a follow-on proceeding under the federal securities laws, and it does not meet the standard for a sanction under Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act.

RESPONSES TO ALLEGATIONS IN THE OIP

A. Respondent

1. Allen, 63 years old, resides in Greenwich, Connecticut. From at least 1990 through the present, Allen has been chief executive officer and managing member of NYYPEX, LLC ("NYPPEX"), a broker dealer registered with the Commission. From at least 2004 to the present, Allen has been the managing principal of ACP Investment Group, the investment advisor to private equity fund ACP X, LP ("ACP X"). For a portion of the time in which he engaged in the conduct underlying the complaint described below, Allen was a registered representative and investment adviser representative associated with a broker dealer and an investment adviser both registered with the Commission.

RESPONDENT'S ANSWER:

Respondent generally admits the allegations in Paragraph 1, except that he denies that "he engaged in the conduct underlying the complaint described below." Responding further, Mr. Allen is 64 years old, has stepped down as a management member of NYPPEX, LLC and today serves only as a consultant in order to conduct his securities business and earn a living. Mr. Allen continues to serve as the managing member of NYPPEX Holdings, LLC.

B. Entry of the Injunction.

2. According to a complaint in a civil action entitled *NYAG v. Laurence G. Allen, et al*, 452378/201913 (N.Y. Sup. Ct.) filed on December 4, 2019 by the New York Office of the Attorney General ("NYAG"), Allen defrauded investors in his private equity fund, ACP X, by investing ACP X investor funds in his registered broker dealer NYPPEX, contrary to the terms of ACP's private placement memorandum. Allen used ACP X investor funds to pay NYPPEX's operating expenses and his own salary relating to his work for NYPPEX. The complaint also alleged that Allen misappropriated funds from ACP X by making impermissible distributions to himself from ACP X, characterized as carried interest that should first have been distributed to the limited partners towards the return of capital and next, their preferred return.

RESPONDENT'S ANSWER:

Respondent admits that on December 4, 2019 the NYAG filed a complaint in a civil action entitled *NYAG v. Laurence G. Allen, et al*, 452378/201913, and admits further that according to the complaint in said action the NYAG made allegations largely as described in Paragraph 2. Respondent denies the substance of those allegations.

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More specifically, Respondent responds to the statements in Paragraph 2 as follows:

"Allen defrauded investors in his private equity fund, ACP X, by investing ACP X investor funds in his registered broker dealer NYPPEX, contrary to the terms of ACP's private placement memorandum."

Respondent's Answer: Respondent denies that he defrauded investors in ACP X and denies that making investments in affiliates was contrary to the terms of ACP X's private placement memorandum (or its limited partnership agreement). To the contrary, ACP X's private placement memorandum and limited partnership agreement authorized the general partner of ACP X (of which Respondent was the managing member) to make investments in affiliates, which would include NYPPEX Holdings, LLC. For example, Page 19 of the ACP X private placement memorandum provides that the "General Partner … is hereby authorized, on behalf of the Partnership, to purchase property or obtain services from … any Affiliate of the General Partner, any Limited Partner, any Private Fund, any Portfolio Company or any Related Person [], or any Affiliate of any of the foregoing Persons." Page 61 of the private placement memorandum states further that "each Limited Partner acknowledges and agrees that the purchase or sale of property 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." Page 74 of the private placement memorandum states that "[t]he Partnership may sell or make investments in entities created by or investments held by ACP or its Affiliates at prices established by the General Partner in its sole discretion." (The limited partnership agreement contains the same and other similar disclosures.) In addition to the disclosures in the private placement memorandum and limited partnership agreement, a majority of the Fund's limited partners voted on multiple occasions to approve amendments to the limited partnership agreement to reflect that "[i]t is hereby reiterated that the General Partner is permitted to make follow-on investments in portfolio companies and

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funds *including affiliates* without requiring the consent of Limited Partners as deemed appropriate by the General Partner." (Emphasis added.)

Further, all such investments were fully disclosed to the qualified investors in ACP X through quarterly and annual reports, and a majority of the qualified investors confirmed their approval of the Fund's investments (and their respective estimated fair values) when submitting ballots approving the proposed 3rd, 4th, 5th, 6th and 7th amendments to the LPA.

The allegation that Respondent "defrauded" investors in ACP X by making investments in affiliates is false, and the allegation that the Fund's investments in NYPPEX Holdings, LLC were contrary to the terms of the private placement memorandum is also false.

> *"Allen used ACP X investor funds to pay NYPPEX's operating expenses and his own salary relating to his work for NYPPEX."*

Respondent's Answer: While Respondent admits that by definition a percentage of the Fund's investments in affiliates will typically be used as working capital to pay certain operating expenses (in this case, of NYPPEX Holdings, LLC), Respondent denies the implication that that such investments and their uses were improper, untoward or wrongful. Respondent denies further any implication that the Fund's investments in NYPPEX Holdings, LLC were intended to be used or were used solely for his benefit, as Mr. Allen typically generates the vast majority of his total annual compensation from his trading commission and deal fees, not salary as alleged (wrongly) by the NYAG.

> *"Allen misappropriated funds from ACP X by making impermissible distributions to himself from ACP X, characterized as carried interest that should first have been distributed to the limited partners towards the return of capital and next, their preferred return."*

Respondent's Answer: Respondent denies that he misappropriated any assets from ACP X, denies that he made "impermissible distributions" to "himself," denies the implications that any

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distributions were improperly "characterized" as carried interest, and denies that distributions "should first have been distributed to the limited partners…" On three separate occasions, a majority of the Fund's limited partners voted to approve amendments to the limited partnership agreement (the 3rd, 4th and 5th amendments) which amended and restated the original terms of the limited partnership agreement regarding the priority of distributions to limited partners and the general partner. These amendments allowed all limited partners to elect whether to receive an early withdrawal of a percentage of their capital (typically at a 15-20% discount to the net asset value) as well as a reduction in annual management fees charged by the general partner in exchange for the general partner to receive a partial distribution of its accrued carried interest. These amendments were prepared and reviewed by counsel and the independent auditor to the Fund, were submitted to and approved by the Limited Partner Advisory Committee prior to a vote by the limited partners themselves, and caused no issue whatsoever until approximately six years later, when the NYAG filed its complaint alleging that the amendments constituted fraud and misrepresentation.[9] The distributions of carried interest were neither impermissible nor made in contravention of the limited partners' rights, as they were specifically approved by the limited

[9] The NYAG initially alleged that payment of carried interest to the general partner was improper because it was contrary to the LPA, which provided that limited partners had first priority on distributions towards return of capital prior to payment of carried interest. When it was pointed out to the NYAG that the limited partners themselves voted to amend the LPA three separate times to allow for payment of carried interest ahead of their distributions, and that those amendments *amended and restated the terms of the LPA* such that the original waterfall was no longer operative, the NYAG changed its allegation and instead argued that the amendments themselves were procured by fraudulent misrepresentations by Mr. Allen. That allegation is fundamentally absurd, as it ignores that the amendments were prepared by counsel and were submitted to, reviewed and approved by the Limited Partner Advisory Committee prior to submission to the limited partnership for a vote. "Mr. Allen" himself did not make representations in the proposed amendments; those amendments were the product of many hands and were subject to multiple layers of review and approval. Further, no limited partner ever raised any concern or issue to the general partner with regard to the amendment language or claimed that he or she was misled. And, because New York law does not require a showing of justifiable reliance, the NYAG did not have to prove – nor did the court have to find – that any of the highly sophisticated limited partners actually relied on the purported "misrepresentations" to his or her detriment. Lastly, the court itself misrepresented the language of the amendments in the Order, writing falsely on four separate occasions that "Mr. Allen" had represented that he "was always entitled to carried interest" (or, alternately, that the "general partner was entitled to 100% of his carried interest") when in fact none of the amendments contained the word "entitled."

partners. Respondent denies further any allegation that he made carried interest distributions to "himself," as distributions were typically made to members of the general partner entity (seventeen members at peak) at similar times as made to the Respondent.

3. After a bench trial, the Court issued a decision on February 4, 2021 and an amended decision on February 26, 2021, finding that the NYAG had proven by a preponderance of the evidence that Allen and the charged entities had:

> (1) Made frequent, material misrepresentations and misleading omissions in communications to the limited partners of ACP X; (2) fraudulently caused ACP X to make oversized investments in NYPPEX; (3) gave false and misleading investment advice to ACP X to purchase NYPPEX stock; (4) made false and misleading reports on the value of ACP X's interest in NYPPEX to the limited partners and caused ACP X to purchase NYPPEX stock at wildly inflated prices; (5) made false and misleading statements concerning the wind-down of ACP X; (6) concealed the merger of NYPPEX and ACP X's Investment Advisor to the ACP X limited partners; (7) fraudulently took carried interest to which they were not entitled, pursuant to amendments to the limited partnership agreement that were procured by means of material misrepresentations; and (8) fraudulently caused ACP X to cover significant NYPPEX operating expenses, without fairly disclosing any of these wrongdoings to ACP X investors.

RESPONDENT'S ANSWER:

Respondent admits that after a bench trial the Court entered a decision on February 4, 2021 and an amended decision on February 27, 2021, and that the decisions contained findings consistent with the statements in Paragraph 3. Respondent denies the allegations underlying those findings and denies the substance of the findings themselves. Respondent states further that to the extent that the court made findings that Respondent acted "fraudulently," Respondent denies those findings even in light of the low standard provided under New York's Martin Act, which does not require a showing of scienter, reliance or damages. The Court was not asked to consider and therefore did not consider whether Respondent engaged in "fraud" under the standards applicable in an action before the Commission or brought under the federal securities laws.

4. On March 17, 2021, the Court signed a final judgment which was entered by the New

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York County Clerk's Office on May 4, 2021. The Court's judgment permanently enjoins Allen (and the charged entities) from:

> (1) Taking any action pursuant to the Seventh Amendment to the Amended and Restated Agreement of the Limited Partnership Agreement of ACP X, LP; (2) Making distributions from ACP X, LP, except to limited partners of ACP X, LP on a pro-rata basis to their limited partnership interest in ACP X, LP, which distributions must first be approved by the Court; (3) Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of ACP X, LP to or with Laurence G. Allen, NYPPEX Holdings, LLC, ACP Partners X, LLC, or any other entity in which Allen directly or indirectly exercises control or has an ownership interest; (4) Facilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in ACP X, LP; (5) Making any payments or distributions from ACP X, LP, ACP Investment Group, LLC or ACP Partners X, LLC, to Defendants, Relief Defendants, Tyler Allen, Michelle Allen, and/or LGA Investments Family Limited Partnership; (6) Withdrawing, converting, transferring, selling or otherwise disposing of funds and assets held by ACP Investment Group, LLC, ACP X, LP, and ACP Partners X, LLC, wherever they may be situated, for purposes other than that provided for in Paragraph 2, supra; (7) Violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promise.

RESPONDENT'S ANSWER:

Respondent admits that on March 17, 2021, the Court signed a final judgment which was entered by the New York County Clerk's Office on May 4, 2021, and that the permanent injunction language is as described in Paragraph 4. Respondent denies that the May 4, 2021 permanent injunction enjoins him from acting as an investment adviser, broker, dealer or affiliated person of any registered entity, nor that it enjoins him from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or that it enjoins him from violation of any federal securities law or laws. Respondent avers that the permanent injunction was expressly intended to be (and thus was) identical to a preliminary injunction entered earlier by the Court to protect the status quo as regards the Fund, that the sole purpose of the permanent injunction was to preserve the status quo, and that permanent injunction

was not intended to (and thus did not) affect, alter or enjoin Respondent's business as an investment adviser or registered representative, or his ability to conduct any such business.

AFFIRMATIVE DEFENSES

Furthering answering the OIP, Respondent asserts the following affirmative defenses:

1. The OIP fails to state a claim for which relief may be granted.

2. The OIP and the relief sought are not in the public interest.

3. Respondent has not been permanently enjoined from violating any federal securities law or laws.

4. Respondent has not been permanently enjoined from "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security" within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act.

5. Respondent is not subject to any court order establishing scienter and thus a finding of scienter does not exist in this action.

6. Respondent is not subject to any court order establishing reliance by any investor on any misstatement by Respondent and thus a finding of reliance does not exist in this action.

7. Respondent is not subject to any court order establishing damage or harm to any investor and thus a finding of damage to an investor does not exist in this action.

8. This action does not concern any harm to investors or the marketplace resulting from the alleged violation.

9. The OIP's use of the term "fraud" is prejudicial and deprives Respondent of his right to a fair hearing as Respondent is not subject to any finding of fraud under standards articulated in the federal securities laws.

10. Respondent does not interact with the investing public and he does not conduct any retail investment business.

11. This action violates Respondents' due process rights and guarantees under the United States Constitution as the OIP seeks relief under the federal laws based on a state court order concerning violations of state laws which are inconsistent with federal laws.

12. As applied to this action, Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 are unconstitutionally vague as

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they fail to provide notice to Respondent that he might be held liable under federal laws for violation of state laws that are inconsistent with federal laws.

WHEREAS, Respondent Laurence G. Allen requests a hearing on the allegations of the OIP and that judgment be entered dismissing all claims against him with prejudice and granting other and further relief as is appropriate.

Dated: April 4, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ John K. Wells
John K. Wells
One International Place
Suite 2000
Boston, MA 02110
(617) 310-6000 (phone)
(617) 310-6001 (fax)
wellsj@gtlaw.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2022, I caused a copy of the foregoing document to be served on counsel of record by electronic mail to Jack Kaufman at KaufmanJa@sec.gov and Rhonda L. Jung at jungr.@sec.gov.

/s/ John K. Wells
John K. Wells