

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.

RESPONDENT LAURENCE G. ALLEN'S
OPPOSITION TO DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION.

In this follow-on administrative proceeding, the Division of Enforcement (“Division”) seeks an industry bar against Respondent Laurence G. Allen (“Mr. Allen”) and has moved for summary disposition pursuant to Rule 250. As discussed in Mr. Allen’s own Motion for Summary Disposition and further below, there is no proper legal basis for a sanction in this action, and no public interest in imposing a bar. Mr. Allen has not been found by any court of law to have violated any federal securities laws, nor is he enjoined from violating the federal securities laws or from acting as an investment adviser or broker or from engaging in the purchase or sale of securities. Rather, the Division seeks a bar solely because Mr. Allen is subject to a limited injunction entered by one state court which preserves the status quo primarily with regard to a small private equity fund (ACP X, LP) and does little more than require Mr. Allen to obey New York law. In other words, the Division would have the Commission impose the securities industry equivalent of capital punishment¹ – effectively ending Mr. Allen’s three-plus decade career in the securities industry, notwithstanding that he had no disciplinary history whatsoever prior to the New York Action – because one judge in one state court entered a limited injunction which has no material effect on Mr. Allen’s regular securities business (and in an action which remains subject to an ongoing appeal). This is a punitive punishment which is arbitrary and capricious for its failure to apply consistent treatment, and therefore it is in violation of the Securities Exchange Act of 1934, the Administrative Procedure Act and the U.S. Constitution. Further, it would do nothing to protect the public or the marketplace.

¹ *Paz Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

II. ARGUMENT.

1. The New York Injunction Does not Provide the Commission with Jurisdiction or Legal Basis for Imposing a Remedial Sanction.

The determination as to whether to impose a remedial sanction in an administrative proceeding requires a three-part test. Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from the securities industry if it finds, “on the record after notice and opportunity for hearing, that (i) the person has been enjoined from engaging in or continuing any conduct or practice in connection with activity as a broker or dealer, or in connection with the purchase or sale of any security; (ii) the person was associated with a broker or dealer at the time of the alleged misconduct; and (iii) such a sanction is in the public interest.” 15 U.S.C. § 78o(b)(6)(A)(iii) (cross-referencing Exchange Act Section 15(b)(4)(C)); *Jonathan Morrone*, Exchange Act Rel. No. 93847, *6 (Dec. 21, 2021).² Mr. Allen does not dispute that he was associated with a broker dealer and an investment adviser at the time of the alleged conduct, and therefore the only questions pertinent here are whether (1) he has been enjoined within the meaning of the statutes, and (2) if so, whether a sanction is in the public interest.

As an initial matter, the Commission must focus on the trial court’s injunction and not its findings. An administrative sanction is proper only based on injunctive relief entered in an underlying civil action (*e.g.*, “if [the Commission] finds ... that (i) the person has been enjoined...”), not factual findings or conclusions of law. For jurisdictional purposes, the trial court’s findings in the New York Action are irrelevant. All that matters at the outset is whether the injunction entered by the trial court meets the standard set forth in the Exchange Act and the Advisers Act.

² With regard to the Advisers Act, *see* 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b3(e)(4)); *Joseph A. Meyer, Jr.*, Advisers Act Rel. No. 6009, *5 (Apr. 29, 2022).

In that regard, Mr. Allen cautions the Commission not to put the cart before the horse. In the typical follow-on proceeding, the jurisdictional threshold is easily met, often in the form of a federal court injunction obtained by the Division itself in an underlying civil action brought pursuant to the federal securities laws. Here, however, the Commission cannot simply assume that because an injunction exists, jurisdiction is proper, such that the only question is one of public interest. As Mr. Allen discussed in his Motion for Summary Disposition, the New York court's injunction is not remotely similar to the type of injunctions which routinely provide the Commission with jurisdiction and a legal basis to impose sanctions in a follow-on administrative proceeding. Thus, the Division's repeated assertion in its motion that the New York injunction is "closely analogous" to broad federal court injunctions, and its conclusory statement that the injunction is a "sufficient predicate for this proceeding," deserve meaningful scrutiny from the Commission. The injunction in this case does not enjoin Mr. Allen from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, municipal adviser, government securities broker, or any of the other activities in enumerated in the statutes. Nor does it enjoin 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." Nor does it enjoin Mr. Allen from violating the federal securities laws, a condition which the Division itself has asserted on numerous occasions that it must demonstrate in order for the Commission to impose a sanction.³

Rather, as the New York court noted in its order, it issued a permanent injunction "identical to the preliminary injunction" which it entered one year earlier and which was intended to protect the status quo of ACP X, LP, a small private equity fund. Aside from enjoining disturbance of

³ See Allen Mot., pp. 10-12 (quoting Division motions for summary disposition in other cases).

that fund, the injunction does nothing more than require Mr. Allen to obey New York law and not engage in improper conduct – duties which exist even absent the injunction.

For the reasons set forth in his own motion, Mr. Allen submits that the New York court’s injunction does not provide the proper legal or jurisdictional basis for the imposition of a sanction under Section 15(b) of the Exchange Act or Section 203(f) of the Advisers Act.

2. Enforcement’s Reference to “Fraud” is Misleading and Prejudicial in the Context of a Federal Administrative Proceeding.

The Division emphasizes throughout its motion that the New York state court judge found Mr. Allen liable for “fraud,” and that Mr. Allen acted “fraudulently.” While those findings exist in the court’s orders, the Division’s use of the term “fraud” in this federal administrative proceeding is misleading and prejudicial. Proper context is necessary.

The required elements for a claim of fraud under the Martin Act in New York are materially different than under federal securities law, and thus the meaning of “fraud” differs materially between the Martin Act and federal securities law. *See e.g. State v. Sonifer Realty Corp.*, 212 A.D.2d 366, 367 (1st Dept. 1995) (“the fraudulent practices targeted by the [Martin Act] statute need not constitute fraud in the classic common law sense”); *People v. Barysh*, 408 N.Y.S.2d 190, 193 (Sup. Ct. N.Y. County 1978) (holding that the Martin Act does not require reliance or scienter); *People v. Royal Sec. Corp.*, 165 N.Y.S.2d 907, 909 (Sup. Ct. N.Y. County 1955) (scienter, reliance, and damages are not needed for Martin Act violation). *Cf. Pitts v. Am. Express Bank Int’l.*, 911 F. Supp. 710, 719 (S.D.N.Y. 1996) (federal securities fraud action under SEC Rule 10b-5 requires, among other things, proof of scienter, reasonable reliance on a material misrepresentation representation and damages caused by such reliance). To the extent that the New York court found that Mr. Allen acted “fraudulently,” that term does not have the same meaning or context as in a typical securities fraud enforcement case before the Commission, or the

typical administrative proceeding based on an underlying enforcement action in federal court. *See e.g. People v. Federated Radio Corporation*, 244 N.Y. 33, 38-39 (1926) (under the Martin Act, “[t]he words ‘fraud’ and ‘fraudulent practice’ ... should ... be given a wide meaning so as to include all acts, although not originating in any actual evil design or contrivance to perpetrate fraud or injury upon others, which do by their tendency to deceive or mislead the purchasing public come within the purpose of the law”). A comparison of Martin Act fraud to federal securities fraud is effectively an apples-to-oranges comparison with little practical utility.

No federal court has found Mr. Allen liable for fraud under the federal securities laws. The Division’s repeated use of the terms “fraud,” “fraudulent” and “acted fraudulently” to insinuate the type of conduct that exists in a federal securities fraud enforcement action is misleading, as it suggests or implies findings which do not exist. The Commission should exercise caution in considering the Division’s arguments, as the words used by the Division (and by the New York court) have meanings materially different than virtually every fraud case which comes before the Commission.

3. This Case is Neither “Closely Analogous” to the Typical Case, Nor “Routine”.

Relatedly, the Division asserts multiple times in its motion that “the Martin Act is closely analogous to the typical injunction against future violations of securities law provisions that the Commission obtains in its enforcement actions and upon which it routinely institutes follow-on proceedings such as this one.” Div. Mot., pp. 2; *see also* pp. 17, 20 (the “Martin Act injunction against Allen is closely analogous to the very type of federal court injunctions upon which the Commission routinely institutes follow-on proceedings”); p. 19 (Martin Act is “entirely consistent” with the types of actions “that the Commission routinely enforces”). As discussed above, that is simply not true. If the Division brings an enforcement action in federal court (or

before the Commission) for violation of the federal securities anti-fraud laws, it must prove elements that were not required in the New York Action, including scienter.

At page 18 of its motion, the Division attempts to distinguish this case by asserting that “the Commission has instituted a number of follow-on proceedings, analogous to this one, based solely on district court injunctions against non-scienter violations.” Div. Mot., p. 18. However, the cases cited by the Division in support of that position are not fraud cases, but registration cases (*e.g.*, sale of unregistered securities, acting as an unregistered broker or adviser). Though they are based on “district court injunctions against non-scienter violations,” registration cases are not analogous, as no showing of scienter is ever required in such a case. In comparison, a federal district court injunction in a fraud case would require proof of scienter.

In short, the Division is attempting to sow confusion as to what types of actions are “analogous” or “routine.” An underlying fraud case with no scienter requirement – such as the “Martin Act injunction against Mr. Allen” – is neither analogous nor routine. Based on a review of available authority, it is unprecedented. *See* Allen Mot., p. 12-13 and Wells Decl., Ex. C.

Along the same lines, the Division asserts that Mr. Allen has challenged this proceeding on the grounds that “it arises from state securities law violations that ... are ‘fundamentally inconsistent with federal law on the same subject matter’ (because the Martin Act does not contain a scienter requirement).” Div. Mot., p. 17 (quoting, in part, Allen Answer to OIP). Enforcement misconstrues Mr. Allen’s arguments. Mr. Allen has not asserted that the Commission cannot impose an administrative sanction based on an injunction arising from a violation of a securities law that does not require proof of scienter. As is clear from the authority cited by the Division in its motion, the Commission can impose sanctions in matters that do not require an underlying showing of scienter, such as the sale of unregistered securities. But this is not a securities

registration case. It is purportedly a fraud case (although in reality it should be little more than a breach of contract case, as the subject matter of the underlying action concerned matters governed by contract). Mr. Allen's point regarding scienter in his Answer to the OIP was merely that this proceeding is fundamentally different from virtually all similar *fraud* actions which form the basis of follow-on administrative proceedings because the underlying case did not require proof of scienter, as would be the case in a federal securities fraud action. Put another way, the Division seeks to impose a federal administrative sanction based on an underlying state fraud case that had a significantly lower burden of proof than would have been required of the Division if it had brought a similar case against Mr. Allen in a civil action in federal court or in an administrative proceeding before the Commission.⁴

This point is salient because the Division argues in its motion that "the Commission has repeatedly held that 'severe' remedial sanctions, including industry and penny-stock bars, are in the public interest where, as here, a respondent has been enjoined from future violations of applicable securities law anti-fraud provisions." Div. Mot., p. 21. But the (purportedly) "applicable securities law anti-fraud provisions" here are materially different than those in the cases in which the Commission has "repeatedly held" that "severe remedial sanctions" are appropriate. The Division's logic does not hold. Mr. Allen has not been enjoined from violating the securities law anti-fraud provisions "applicable" in virtually every case. He was enjoined from violating a state law which has fewer essential elements and a significantly lower burden of proof.

⁴ The fact that the Division never brought such an action is notable. The allegations in the New York Action concerned events that took place between 2013 and 2018 and relate to a Fund which was formed in 2004. During that fourteen-year period, the SEC conducted regular examinations of the investment adviser with which Mr. Allen was affiliated. Yet at no time did the Division initiate an enforcement action against Mr. Allen or the investment adviser for any alleged violation of any federal securities laws. Further, SEC staff conducted an examination and an investigation of ACP in early 2021 (SEC File No. 801-113381 and matter B-03465) which resulted in close-out letters stating that "we do not intend to recommend an enforcement action by the Commission."

This proceeding is arbitrary and capricious and represents an inconsistent use of the Division's enforcement powers in violation of federal law and Mr. Allen's Constitutional rights.

4. The Division's Inference of Scienter is Improper.

In his Motion for Summary Disposition, Mr. Allen warned against inferring scienter from an underlying action in which no proof of scienter was required. *See* Allen Mot., p. 27. Not unexpectedly, the Division has made the inference anyway. At page 22 of its motion, the Division summarizes the trial court's order and asserts that "Allen's conduct was both egregious and involved, at the least, *a significant degree of scienter.*" Div. Mot., p. 22 (emphasis added). This is improper and should be disregarded by the Commission.

Scienter is not an essential element of a Martin Act claim, and therefore NYAG was not required to prove, and the trial court was not required to find, that Mr. Allen acted with an intent to deceive. *Barysh*, supra at 193. The trial court's orders must be read in Martin Act terms, not in the context of the federal securities laws to which the Division and the Commission are otherwise predisposed. The Division's assertion that Mr. Allen's conduct involved "a significant degree of scienter" is without legal or factual basis and is improper. The Commission can make no inference regarding scienter, because scienter was not a consideration in the New York Action, and it should disregard the Division's comments.

5. Mr. Allen is Entitled to Present Mitigating Evidence for Purposes of the Public Interest Analysis.

At page 24 of its motion, the Division asserts that arguments advanced by Mr. Allen "constitute impermissible collateral attacks on the findings and conclusions" of the trial court. Div. Mot., p., 24. The Division asserts further that Mr. Allen's arguments "constitute improper collateral attacks in this proceeding" and that his "attempts to re-litigate the New York case here are nothing more than improper collateral attacks." *Id.*, pp. 24-25.

While it is true that a respondent in a follow-on administrative proceeding may not collaterally attack an underlying order issued by a court of law, the Division is certainly aware that a respondent *is* entitled, as part of the public interest analysis, to present mitigating facts and evidence (such as the circumstances underlying a trial court decision), and that the Commission is bound to consider mitigating factors in determining whether a sanction is in the public interest. *Gary L. McDuff*, Exchange Act Release No. 78066, at *13 (June 14, 2016) (“respondent in a follow-on proceeding may introduce evidence regarding the circumstances surrounding the conduct that forms the basis of the underlying proceeding as a means of addressing whether sanctions should be imposed in the public interest”); *Saad v. SEC*, 718 F.3d 904 (June 11, 2013) (reiterating that “the SEC must be particularly careful to address potentially mitigating factors before affirming a permanent bar” and remanding “because the decision of the Commission ... ignores several potentially mitigating factors asserted by [appellant] and supported by evidence in the record”).

To be sure, the question of whether the points that Mr. Allen raises are “collateral attacks” or “mitigating factors” is largely a matter of semantics. Regardless, case law is clear that Mr. Allen is entitled to demonstrate to the Commission, for purposes of public interest analysis, any mitigating factors that he deems material, including the facts and circumstances which gave rise to the trial court’s order and, crucially, any omission of those facts and circumstances from the order. *McDuff*, *supra*. Given that authority, the Division’s protestation that these are improper “collateral attacks” is unavailing.

6. The Division’s Reference to a Pending FINRA Action Against Mr. Allen is Irrelevant and Prejudicial.

At page 13 of its motion, the Division raises a matter completely irrelevant to this

proceeding – an enforcement action initiated by FINRA against Mr. Allen (and others) on May 27, 2021. Div. Mot., p. 13. The point of this reference becomes clear later in the Division’s motion, during a discussion regarding the public interest, when the Division posits that Mr. Allen’s “continued association with ACP and NYPPEX will only present further opportunities for misconduct” because “FINRA instituted a disciplinary proceeding against Allen for additional alleged fraudulent conduct under the federal securities laws, involving his subsequent attempts to raise \$10 million for NYPPEX – claims separate from the NYAG’s claims in *NYAG v. Allen*.” *Id.* at 22-23. According to the Division, “Allen has demonstrated that he has continued opportunities to violate the federal securities laws.” *Id.* at 23.

As an initial matter, the FINRA action against Mr. Allen remains pending. The case was tried before a hearing officer in March 2022; no decision has been entered and there has been no finding or conclusion that Mr. Allen violated any federal securities laws or FINRA rules. As a result, the FINRA action demonstrates nothing other than that it contains allegations that have not been proven. The Division’s reference to a proceeding in which no findings have been made is irrelevant to this matter and highly prejudicial to Mr. Allen.

While a detailed discussion of the FINRA action is far beyond the scope of this brief, it is necessary to address some of the allegations in brief, as they have been raised by the Division. As the Division noted, one of the allegations was that Mr. Allen “devised and orchestrated an aggressive sales campaign to raise \$10 million through the sale of securities in NYPPEX Holdings” and that “while soliciting these investments, NYPPEX and Allen intentionally or recklessly made a series of material misrepresentations and omissions of material fact to prospective investors ...” Jung. Decl., Ex. 6. According to FINRA, Mr. Allen was desperate to raise money and actively misled investors by omitting purportedly material information (such as

the existence of the New York court's 2018 *ex parte* restraining order) from the offering materials, in violation of Sections 17(a)(1) and (a)(3) of the Securities Act of 1933.

The problem with the allegation – as was borne out at the FINRA hearing – is that Section 17(a) is addressed to “the offer or sale of any securities” and in this case there was never any offer of securities as contemplated by the statute, nor any offering documents (such as a prospectus or private placement memorandum). Rather, the communications about which FINRA complained were pre-marketing invitations from NYPPEX Holdings, LLC – which is not a FINRA member – prepared with the advice and assistance of counsel and intended to gauge preliminary interest and negotiate terms in a possible private capital round by NYPPEX Holdings. Wells Decl., Ex. I. These communications took the form of emails and were little more than “feelers” to test the waters before committing to an official offering. *Id.* Ultimately, the preliminary invitations produced insufficient interest to pursue an offering, and no prospectus or private placement memorandum was prepared, nor was any security actually offered for sale. Moreover, the emails about which FINRA complained contained numerous disclosures and disclaimers, such as the following:

- THIS INVITATION DOES NOT CONSTITUTE A SOLICITATION, AN OFFERING, OR AN OFFERING DOCUMENT. AN OFFERING MAY ONLY BE MADE THROUGH THE OFFERING DOCUMENTS PROVIDED BY THE ISSUER AND IN JURISDICTIONS WHERE PERMISSABLE.
- **Source. Incompleteness.** The information contained herein is in the legal form of a summary invitation (the “Invitation Letter”). The Information has been prepared from original sources and data we believe to be reliable but we make no representations as to its accuracy or completeness. This summary has been prepared solely as a preliminary document to determine investor interest regarding the companies described herein. An offer or solicitation with respect to a fund will be made only through final Offering’s confidential materials, and will be subject to the terms and conditions contained in such documents. The information set forth herein does not purport to be complete.
- Nothing contained in this message is a solicitation of (i) any buy or sell transaction in the securities mentioned herein, or (ii) service(s) in any jurisdiction where the offer or sale is not qualified or exempt from regulation. Sales and offers to sell may

be made only by the offering's confidential materials or issuer's private placement memorandum ("PPM") or prospectus and only in jurisdictions where permissible.

Wells Decl., Ex. I.

This was not "securities fraud," as FINRA alleged. Pre-marketing emails do not constitute an offer of securities within the meaning of Sections 17(a)(1) and (a)(3) of the Securities Act, nor do they require the full and robust disclosures of an actual securities offering. Had there been sufficient interest in an offering, counsel would have prepared formal offering materials, which would have included all of the disclosures and material information required of such documents.

Second, as the Division noted, another of the allegations in the FINRA action is that Mr. Allen "made false or misleading assertions on the firm's website about FINRA's 2018 examination of NYPPEX," among other things. Jung. Decl., Ex. 6. The problem with this allegation is that none of the purported statements about which FINRA complained had anything to do with the offer or sale of any security, or any service provided by NYPPEX (and thus subject to FINRA rules or the securities laws). Rather, what FINRA complained about was a press statement published by a non-FINRA member, NYPPEX Holdings, LLC, which was created – again with the assistance of counsel – as a point-by-point rebuttal to a public statement issued by NYAG in connection with the New York Action. In other words, FINRA is complaining about a non-regulated entity's attempt to defend itself and set the record straight regarding some of the hyperbolic allegations raised by NYAG, not a communication by a broker dealer in connection with the offer of a security. Worse, FINRA's actual complaints about the press statement amount to subjective nitpicking about language and word choices, such as a representation that Mr. Allen and others had "exemplary" regulatory compliance (Mr. Allen had no disciplinary history at the time), and a representation that NYAG's allegations of significant securities fraud were "in conflict" with a recent FINRA examination (which had noted only minor exceptions). Put simply,

FINRA took issue with a non-member entity's press statement and attempted to elevate its own subjective opinions about the non-member's statement into violations of FINRA rules and federal securities laws.

The outcome of the FINRA action remains unknown. What is clear is that the FINRA hearing demonstrated that there was no real basis for an enforcement action against Mr. Allen other than to seek to punish him for purported violations which had no basis in law or fact.

7. The New York Action is Currently on Appeal.

At page 13 of its motion, the Division notes that Mr. Allen's appeal of the New York Action to the New York Court of Appeals was dismissed on April 26, 2022 because "the order appealed from does not finally determine the action within the meaning of the Constitution." This was a procedural dismissal based on a concern regarding the finality of the trial court order and not a denial of the appeal on the merits. The parties to that action subsequently cured the procedural defect by obtaining a final order from the trial court, and Mr. Allen and the other appellants refiled their appeal with the New York Court of Appeals on July 1, 2022. That appeal is pending.

8. There Are Significant Mitigating Factors Which Militate Against Imposing a Remedial Sanction Against Mr. Allen.

In his Motion for Summary Disposition, Mr. Allen discussed several mitigating factors – namely, that there is no evidence of scienter, no evidence of investor harm, no recent misconduct and no present risk of potential harm to the public (as evidenced by, among other things, the Division's lack of urgency in bringing this action). Mr. Allen will address additional mitigating factors here, as well as respond to comments made by the Division in its motion.

A. Mr. Allen Remains on Heightened Supervision With Enhanced Oversight.

The purpose of a sanction is to protect the public and address the "future risk the respondent

poses to investors.” *John W. Lawton*, Advisers Act Rel. No. 3513 (Dec. 13, 2012); *Johnson v. Securities and Exchange Commission*, 87 F.3d 484 (D.C. Cir. 1996). Mr. Allen noted in his Motion that he poses no risk to the public because he does not interact with the retail investing public, there is no evidence of any recent misconduct and he has no disciplinary history aside from the New York Action.

In addition, the ACP entities have imposed further measures to ensure that Mr. Allen poses no risk to the public. First, he is subject to a heightened supervision plan which is overseen not only by the firm’s chief compliance officer, but also by a third-party regulatory consultant, Luxor Financial Group, Inc., whose managing principal is a two-term member of the Board of Governors of FINRA. Wells Decl., Ex. J. Second, in 2019 the ACP entities hired a new general counsel with more than eighteen years of experience in financial regulation at JP Morgan Chase and in private practice at Hogan Lovells. Though Mr. Allen conducts no retail securities business with the investing public, his limited activities in connection with private investors are subject at all times to oversight by experienced legal and compliance professionals both inside and outside of the firm.

B. The Limited Partners Continue to Oppose Actions Against Mr. Allen.

As discussed above, the purpose of a sanction is to protect investors. In that regard, it should be noted that many of the Fund’s Limited Partner investors continue to oppose legal and regulatory actions against Mr. Allen and believe that these actions are doing more harm than good. Mr. Allen is aware that the Limited Partners Advisory Committee (“LPAC”), which represents the interests of the Limited Partners, has filed an amicus brief in this proceeding. As the LPAC has noted, it does not have the same interests as Mr. Allen, and if its members believed that Mr. Allen had engaged in wrongdoing, they would be the first to say so, since they have a direct economic interest at stake. They are the investors whom Mr. Allen allegedly defrauded. But, consistent with

Mr. Allen's position in this matter, they do not believe that the New York Action reflected the true facts concerning the Fund or Mr. Allen's actions, nor do they believe that Mr. Allen acted in any way contrary to the contractual authority which they bestowed upon him as the manager of the General Partner. Mr. Allen can think of no more important mitigating factor than the fact that many of the investors whom the Commission would ostensibly seek to protect do not believe that he engaged in any wrongdoing at all and have not hesitated to make that known to NYAG, the New York court and the Commission. *See also* Wells Decl., Ex. G (sample of Limited Partners affidavits submitted at trial).

C. The Division's Citation to Certain Limited Partner Affidavits Demonstrates Mr. Allen's Point Regarding the New York Action.

Further to that point, the Division asserts at page 23 of its motion that in the New York Action "the trial court received testimony from two groups of ACP X limited partners ... certain investors who supported Allen and opposed the NYAG action and, conversely, certain investors who were critical and/or distrustful of Allen and supported the NYAG lawsuit." Div. Mot., p. 23. While this is an oversimplification and suggests a false equivalence⁵, there is a telling bit of truth in the Division's statement. That is, the Limited Partners who provided testimony for NYAG were "critical and/or distrustful of Mr. Allen" and nothing more. Notably, the Division does not allege that these Limited Partners said that Mr. Allen committed fraud or even that he violated the Fund's PPM or LPA, because they did not do so. Rather, as Mr. Allen has insisted from the outset, NYAG's case, and, ultimately the court's findings, were based on little more than appearances,

⁵ Nearly two dozen Limited Partners supported Mr. Allen's defense by testifying, providing sworn affidavits and/or sending letters to the Court and NYAG (several of whom stated that they believed their views reflected the majority of Limited Partners). That number dwarfed the five Limited Partners who provided testimony for NYAG (and for which there is no record of any complaints before they were contacted by NYAG).

perceptions and expectations, not facts. NYAG created the appearance of fraud without ever actually demonstrating that an actual fraud occurred.

The Division attached to its motion affidavits from two Limited Partners who provided testimony on behalf of NYAG: Alex Khan and David Burrows. Far from supporting NYAG's case, these affidavits illustrate perfectly that NYAG's case was based on what investors "expected" and "believed" as opposed to what the PPM and LPA actually said. To that point, neither of the affidavits put forth by the Division *includes a single reference to any provision of those contracts.*

Alex Kahn was not even a Limited Partner in the Fund. He was eighteen years old when the Fund was formed in 2004, and he acknowledges having "no involvement or detailed understanding" of the Fund until 2012, when he began to monitor the investment for his father, who was a Limited Partner. Mr. Kahn's eight-page affidavit does not refer to any provision of the PPM or LPA, nor does it detail anything that Mr. Allen allegedly did in contravention of those agreements. Rather, Mr. Kahn's affidavit expresses what were allegedly his and his father's "expectations": "my father ... expected a liquidity event..." (Par. 6); "I would expect..." (Par. 7); "I would expect..." (Par. 8); "my expectation is that..." (Par. 9); "there is generally an expectation..." (Par. 9). But these vague and generalized "expectations" mean nothing unless they relate to some specific breach of the PPM or LPA, a connection which the affidavit fails to make.

Likewise, Mr. Burrows' affidavit contains no allegation that Mr. Allen (or, more properly, the General Partner) took any action that was in contravention of the PPM or LPA. Rather, his affidavit states that he "learned of Mr. Allen's alleged misconduct" after reviewing the NYAG complaint online, and it avers that he would not have invested in ACP X had he known of the basis of the factual allegations. But nowhere in his affidavit does Mr. Burrows provide any factual support for NYAG's allegations, such as citing to provisions of the LPA that Mr. Allen allegedly

violated. By way of example, Mr. Burrow states at Paragraph 22 that “I expected that operating expenses would be paid by the General Partner and that ACP would not pay or be responsible for any operating expenses,” yet he does not provide any contractual basis for this “expectation” (notwithstanding that the LPA contains detailed provisions regarding operating expenses), nor any evidence as to what the General Partner is alleged to have done in contravention of those provisions with regard to operating expenses. He is merely mimicking NYAG’s allegations, irrespective of whether those allegations had any basis in fact.

ACP X is governed by the PPM and LPA, extensive contracts which set forth (in great detail) the terms upon which the Fund will be operated. “Fraud” in this context requires some violation of contractual authority, not vague “expectations” untethered to any contractual provision. However, neither Mr. Kahn nor Mr. Burrows seemed to have read or studied the Fund’s operative agreements at all. For example, with regard to investments in affiliate entities, Mr. Kahn states at Paragraph 7 of his affidavit that “it would be highly unusual for the general partner to invest in an entity affiliated with the general partner because such an investment would be an interested-party transaction, and creates opportunity for self-dealing.” Far from being “highly unusual,” investments in affiliates were expressly authorized by the PPM and LPA, notwithstanding that they were related-party transactions with potential conflicts that might otherwise give rise to an appearance of “self-dealing” (conflicts which were also fully disclosed in the PPM and LPA). Again, this is an allegation based on an *appearance* of self-dealing, not any actual misconduct.⁶

⁶ And, contrary to Mr. Kahn’s belief, affiliate transactions are not at all “unusual.” ACP X permitted affiliate transactions because SEC rules allowed such transactions, and the fund was modeled after similar funds sponsored by Goldman Sachs, Credit Suisse and Fortress Group, whose fund formation documents were typically prepared by highly respected law firms including Simpson Thatcher & Bartlett, LLC. Wells Decl., Ex. K.

For his part, Mr. Burrows states at Paragraph 30 of his affidavit that “ACP investments in NYPPEX were contrary to the stated objective of the fund” and “had I been advised or had the offering documents disclosed that such investments would occur, such information would have dramatically impacted my decision to invest and I would not have invested in ACP.” As discussed further below, however, the PPM and LPA specifically stated that the objective of the Fund was to invest in private funds and private and public companies. *See* Section II(8)(D), *infra*. And the PPM and LPA clearly disclosed that the General Partner was authorized to make investments in affiliate entities such as NYPPEX Holdings, LLC. *See* Wells Decl., Exs. D and E.

Like NYAG and the court, it seems that both Mr. Kahn and Mr. Burrows simply ignored the operative provisions of the PPM and LPA as if they did not exist. For a contrary view (and the correct one, based on the contracts which the investors entered into), see the testimony of Limited Partner Robert Schubert, who stated that “when I first invested in ACP X, I read the offering documents ... which specifically contemplated that the fund would invest in companies in which the General Partner ... had an affiliation,” and “accordingly, I had full knowledge that ACP X would be investing in affiliates or better stated, companies that the GP had an interest in [a]s this was clearly stated in the offering documents.” Wells Decl., Ex. G.

The fact that neither Mr. Kahn nor Mr. Burrows read or appreciated the terms of the PPM or LPA does not mean that Mr. Allen violated those agreements or engaged in self-dealing or fraud. Indeed, Mr. Burrows even admits that he received not only periodic capital account statements, but also “a much longer report that provided more detail on the status of the fund and the fund’s investments as well as performance updates from the General Partner,” but that “I did not closely review the longer report as I trusted Allen and the representations made by Allen.” Mr. Burrows had no reason to distrust Mr. Allen since he readily admits that the General Partner

disclosed all material information to him. Had Mr. Burrows read the reports provided by the General Partner over the course of more than a decade, he would have been well aware that the General Partner had made investments not only in NYPPEX Holdings, LLC (dating back to 2008), but in other affiliate entities as well.

In summary, the two affidavits put forth by the Division only prove the point which Mr. Allen has been making: neither the court, NYAG, nor the Limited Partners who testified for NYAG paid any attention whatsoever to the PPM or LPA (or amendments to the LPA, which were passed by substantial majorities of the Limited Partners). The Kahn and Burrows affidavits (like the court's orders) make no reference to any provision of the PPM or LPA, nor do they provide any factual basis for a determination that Mr. Allen did anything that was contrary to those agreements. Rather, the NYAG case – as reflected by the Kahn and Burrows affidavits – was based on the appearance or perception of self-dealing, notwithstanding that the PPM and LPA specifically disclosed and authorized the actions and transactions which NYAG alleged to constitute self-dealing and fraud. Disclosure is the antithesis of fraud, and in this case related-party transactions, affiliate investments and potential conflicts *were all fully disclosed* in the PPM and LPA.

It remains extraordinarily frustrating to Mr. Allen that in an action in which it was alleged that he engaged in self-dealing and fraud by acting *contrary to his contractual obligations to the Limited Partners*, no one adverse to him seems willing to read the contracts to see what they say. If one would take the time to read and understand the PPM and LPA (and amendments to the LPA), one will understand that Mr. Allen's actions on behalf of the General Partner were entirely consistent with those agreements. Which is why no Limited Partner has ever sued Mr. Allen, the General Partner or the Fund for breach of contract, much less fraud.

D. The Court Ignored or Disregarded the Fund’s Operative Agreements and Failed to Appreciate or Understand the Fund’s Investment Thesis and How Private Equity Funds Operate.

In his own Motion for Summary Disposition, Mr. Allen discussed how the Court failed to cite to, much less analyze or discuss, any of the relevant provisions of the PPM or LPA. *See* Allen Mot., pp. 23-27. The failure to consider or understand those contracts colored the entire proceeding and allowed the Court to reach findings that are at complete odds with those contracts.

As a threshold matter, however, the Court failed to appreciate or understand the Fund’s investment thesis and how private equity funds operate. In its decision, the court found that the Fund’s investment in NYPPEX Holdings, LLC was “in no way consistent with the investment thesis contained in the ACPX Private Placement Memorandum and in the ACPX Limited Partnership Agreement.” Wells Decl., Ex. B, p. 5. This is merely an adoption of NYAG’s allegation at Paragraph 61 of its complaint that investment in NYPPEX Holdings “conflicted with the fund’s disclosed investment strategy and objectives.” Wells Decl., Ex. A. This finding is wrong on multiple levels.

First, the Court held that the NYPPEX Holdings investment was “inconsistent with the investment thesis” in the PPM, but its decision does not cite, refer to or discuss any investment thesis set forth in that contract. The Court’s statement is conclusory, lacks evidentiary support and merely adopts an unsupported argument advanced by NYAG.

As set forth in the Complaint, NYAG’s argument was that the Fund’s value would be derived from secondary purchases of private equity partnership interests, and that any other investment – such as in a private company like NYPPEX Holdings – would be inconsistent with that thesis. For example, at Paragraph 47 of the Complaint, NYAG alleged that “Allen launched ACP in 2004 ostensibly to allow investors an opportunity to invest in other private equity funds

available for a discount on the secondary market.” Wells Decl., Ex. A. NYAG alleges further that Mr. Allen “represented to investors that ACP would operate as a “fund-of-funds,” investing in other established private equity funds[,]” and that “[a]lthough the PPM permitted ACP to invest in certain private companies, purchasing interests in other funds on the secondary market was supposed to drive the fund’s investment strategy.” *Id.* ¶ 50. In other words, NYAG’s argument – which the Court accepted – was that investment *in private funds* was the basis of the Fund’s investment thesis and would “drive” its investment strategy, and therefore any strategy to the contrary was “improper.”

The most basic problem with that argument is that it does not accurately reflect the Fund’s investment thesis as set forth in the PPM. The actual language states that the Fund intends “...to acquire *private equity interests*[,]” which are expressly defined to include “...both investments in funds *as well as direct investments in private and publicly held companies.*” Wells Decl., Ex. D, pp. iv, 33, 57) (emphasis added). In other words, the PPM does not say that investment *in private funds* would “drive” the investment strategy, as NYAG alleged. Rather, it clearly contemplated that the Fund would invest in private funds but also in private companies (like NYPPEX Holdings) and in public companies. NYAG’s argument that investments in NYPPEX Holdings “conflicted with the fund’s disclosed investment strategy and objectives” ignores the plain language of the PPM. For its part, the Court did not cite the PPM at all, nor did it discuss or analyze the language setting forth the Fund’s investment thesis. The Court’s conclusory statement that investments in NYPPEX Holdings were “in no way consistent with the investment thesis contained in the [PPM] and [LPA]” simply ignores what those contracts actually say.

Second, as discussed at length in Mr. Allen’s Motion, the Fund’s investments in NYPPEX Holdings were not only consistent with the stated investment thesis, but specifically authorized by

the PPM and LPA, which stated expressly that the General Partner was authorized to “purchase property in or from” any affiliate entity. Again, NYAG’s argument that investments in affiliates constituted improper self-dealing ignores the plain language of the PPM and LPA. And, again, the court made no effort to analyze any provision of those contracts to determine the veracity of NYAG’s arguments.

Third, and perhaps most importantly, both NYAG and the court erroneously treated the Fund’s investment thesis as static, such that any adjustment to portfolio allocations by the General Partner over time (such as an increased allocation to private company investments) was “contrary to the investment thesis.” This belies a fundamental misunderstanding of how private equity investing works. If market conditions change, an investment manager does not simply sit back and do nothing and hope for the best; rather, it makes adjustments it deems appropriate to maximize value for investors. In order to accept the fraud theory advanced by NYAG, the court had to ignore real world circumstances and pretend that the Fund existed in a vacuum. This, of course, makes no sense.

ACP X was formed in 2004. Just four years later, however, the 2008-2009 global financial crisis ensued. As the Commission is well aware, the financial crisis had a major disruptive impact on markets and the global economy, including private funds. Not surprisingly, it had a material impact on the Fund. Incredibly, however, the court ignored the effect of the financial crisis and treated it as if it never happened.

At trial, the court heard testimony that the financial crisis led to a rebalancing of the Fund’s portfolio, which, in summary, was to increase the percentage allocation to direct investments in private companies (due to a dramatic decline in company valuations as a result of the economic crisis) and to reduce the percentage allocation in private funds (which was in the General Partner’s

discretion, per the PPM and LPA). Mr. Allen testified that although thousands of private equity funds were forced to close as a result of the financial crisis – resulting in a complete loss of capital for their investors – ACP X did not. Instead, it survived, evolved and its performance actually improved relative to other private equity funds of similar vintage. Mr. Allen testified that:

When the 2008, 2009 financial crisis occurred, our portfolio was only what is called a third quartile performing fund. And the primary objective of this fund is to optimize total return over the long-term. ... We decided in 2008, 2009 that certain segments of the private equity market, notably BioTech and FinTech, among others, the valuations significantly declined. We revised our strategy that if we can reinvest a portion of the realizations into those sectors, we would have a better chance of achieving our primary objectives. That is what we did. And the result was the fund went from being a third quartile performer on a total return basis to a top 10 percent performer. In fact, in our estimated valuation it is still the number one performing fund among 2004 vintage secondary private equity funds.

[W]e decided to emphasize the investments in private companies because their valuations had declined so much that our cost [basis] was so low. We felt that by doing that, that would help achieve the primary objective of the fund, which was to optimize total return. And as I mentioned before, that was a successful strategy. (Wells Decl., Ex. L.)

The court ignored this testimony and treated the Fund’s original 2004 investment thesis as static – meaning that investment in private funds would always and forever “drive” the investment strategy – notwithstanding the worldwide financial crisis which ensued shortly after the Fund’s formation. The court’s refusal to accept or believe that the General Partner of a private equity fund could rebalance its portfolio in response to a global crisis is an important factor in the narrative that Mr. Allen was acting in his own self-interest, as it allowed the court to dismiss investments in NYPPEX Holdings as being “inconsistent with the Fund’s investment thesis” (which the court got wrong anyway) and thus a “fraud” on the investors. In reality, Mr. Allen (on behalf of the General Partner) was doing what was best for the investors by reacting to changing market conditions, and

in fact he improved the Fund's performance relative to its peers in doing so. Again, none of this mitigating evidence and testimony is reflected in the court's orders, but it exists in the trial record.

E. The Court Misrepresented Evidence Concerning Mr. Allen's Compensation.

The underlying theme of NYAG's fraud narrative was greed. NYAG alleged, and the court held, that Mr. Allen was motivated by self-interest, with the goal of enriching himself at the expense of the Fund and its Limited Partners. *See e.g.* Wells Decl., Ex. A, ¶ 9 ("Since 2008, Allen has invested approximately \$5.7 million from ACP into NYPPEX; during that same period, Allen paid himself \$5.7 million in salary from NYPPEX, concretely demonstrating that the primary beneficiary of Allen's decision to compel ACP to invest in NYPPEX was Allen himself"); Ex. B, p. 5 ("a significant portion of the capital contributed to the ACP X limited partnership was substantially diverted by a hopelessly conflicted Allen toward funding NYPPEX ... [which], in turn, utilized these funds to pay Allen exorbitant NYPPEX annual salaries totaling approximately \$6 million"). The court's insinuation was that virtually all of the money that the Fund invested in NYPPEX went directly into Mr. Allen's pocket as salary on an almost dollar-for-dollar basis. That is false.

Mr. Allen was never paid \$5.7 million in salary (per NYAG) nor \$6 million (per the court), on either an annual or total basis between 2008 and 2018 (the period during which those salaries were alleged to have been paid). In reality, the vast majority of Mr. Allen's annual compensation was not "salary," but rather commissions and fees earned from private placements that Mr. Allen originated, placed or managed, and which were paid out at the same grid rates as set for all employees at NYPPEX. This is a material distinction, as commissions and fees were earned by Mr. Allen based on his own personal production and have no relationship whatsoever to the funds which ACP X invested in NYPPEX Holdings.

Mark DiMichael, a CPA and Partner in the forensic accounting practice at Citrin Cooperman, served as an expert witness for Defendants at trial and provided testimony that:

...excluding commissions, Allen's salary, misc. pay, health reimbursement and draw average approximately \$266,000 annually. This is below the median base pay ... for most of the various industries in which NYPPEX operates[.]

Wells Decl., Ex. M.

Far from "exorbitant," Mr. Allen was actually paid a salary lower than his peers in the financial industry. But stating accurately that Mr. Allen received a below-market salary averaging \$266,000 per year would not comport with the narrative that he was funneling vast sums of money from the Fund to NYPPEX Holdings to himself. So, instead, NYAG and the court conflated "total compensation" with "salary" in order to make it appear that Fund investments in NYPPEX Holdings were then paid to Mr. Allen as salary on a nearly dollar-for-dollar basis, which was clearly not the case.

In summary, NYAG and the court used compensation figures to demonstrate Mr. Allen's purported greed and self-interest, but those figures are not correct and were presented in a manner that is highly misleading. And, again, none of the contrary or mitigating evidence or testimony appears anywhere in the court's order.

F. The Court Displayed a Particular Animus Towards Mr. Allen and His Defense.

Prior to the New York Action, Mr. Allen was a respected figure in the securities industry, with no disciplinary history whatsoever. Blind surveys of investors conducted by an independent third party yielded positive comments such as "very knowledgeable, very serious demeanor and approach to business," "does what [he] said will do," "focused, serious professional," "would

invest again” and “no red flags.”⁷ Limited Partners who testified at trial stated, among other things, that “I fully support the investment and business decisions made by” Mr. Allen,” “In this case I do not see that [Mr. Allen] did anything outside of his rights” and “I am pleased with my investment as a LP into ACP X.” Wells Decl., Ex G.

Notwithstanding NYAG’s allegations, there is a countervailing narrative, and one which is much more consistent with Mr. Allen’s sterling record in the industry, and more plausible in the context of a private fund governed by extensive contractual agreements and consisting of highly sophisticated investors (and in which nearly every action was subject to the review and approval of experienced legal counsel). One would expect that, when presented with this countervailing narrative and significant mitigating evidence, the court would act as a neutral arbiter, seeking only to discern the truth. Unfortunately, the trial record demonstrates that was not the case in the New York Action. For reasons that remain a mystery⁸, the trial court judge displayed a particular animus towards Mr. Allen and was openly disdainful of Mr. Allen and the defense witnesses.

For example, at one point during testimony, the court, entirely unprompted and for no apparent reason, interjected and insinuated on the record that an independent expert valuation report presented by the defense was “shit in, shit out.” Wells Decl., Ex. N. At another point, the court scoffed at a cross-examination question from Mr. Allen’s counsel: “[i]f pigs had wings they could fly.” *Id.*, Ex. O. These interjections by an experienced trial court judge were inappropriate,

⁷ See <https://laurenceallen.com/testimonials/>

⁸ Mr. Allen reasonably believes that NYAG’s action was precipitated by a disgruntled and vindictive Limited Partner who sought a preferential early withdrawal which was rejected by Mr. Allen as not being in the best interests of the other investors. Although Mr. Allen acted properly as a fiduciary, NYAG likely used this Limited Partner’s spurious allegations to secure an *ex parte* order in December 2018, an order which – absent any opportunity for Mr. Allen to object or defend himself – states that “alleged fraudulent practices of [Mr. Allen] threaten continued and immediate injury to the public.” Whether this early *ex parte* order colored the court’s view of Mr. Allen will never been known, although it is material that the case did not arrive on the court’s desk with a clean slate. Rather, Mr. Allen was subject an order stating that it was likely he had engaged in fraud before he ever appeared before the court.

unprofessional and demonstrate not only a disregard for Mr. Allen’s case, but a clear unwillingness to hear the evidence objectively and without bias.

In addition, the court refused to allow some defense witnesses to provide testimony, such as Paul Speyer, an expert who was called on direct examination to testify concerning ACP X LP’s fund documents and the operations of private equity partnerships (which was critical to establishing that Mr. Allen acted within his contractual authority): “All right, Mr. Speyer, I appreciate the tutorial. It is not relevant to anything in this case. ... So, thank you, very much for your testimony. Mr. D’Angelo, call your next witness.” Wells. Decl., Ex. P. The court readily acknowledged in its orders that it credited the testimony of NYAG’s witnesses and failed to credit the testimony of Mr. Allen or any of his witnesses – including multiple Limited Partners and numerous expert witnesses, including a Yale Law School professor who testified that the General Partner was in fact contractually authorized to make investments in affiliates. The court dismissed these witnesses derisively as “irrelevant” or “incompetent.” Wells. Decl., Ex. B, p. 14. The court similarly dismissed Mr. Allen’s defense as “fanciful explanations” and “unworthy of belief” (*see id.*) – notwithstanding that the defense was grounded in the actual language of the PPM and LPA, expert testimony and the testimony of a half-dozen Limited Partners – all of which the court conveniently ignored.

Lastly, the court seemingly had no interest in a full and fair trial on the merits. Prior to trial, the court stated, on the record, that “there is really not a great deal that I expect to learn beyond that which was presented at the preliminary injunction” hearing – essentially acknowledging that he had prejudged the case before trial. Wells. Decl., Ex. Q. The Court even advised NYAG as to how it should present its case at trial, based on the presentation at the earlier hearing: “I would suggest to the Office of the Attorney General that you don’t need nine or ten

investor witnesses to appear at trial without prejudging anything. It became cumulative, the testimony.” Wells Decl., Ex. R. And, when Mr. Allen’s counsel, Mr. D’Angelo, attempted at trial to demonstrate how NYPPEX’s secondary market platform works – crucial to explaining why NYPPEX was not a “failing broker dealer” as the court apparently believed – the court refused to hear it, stating, incredibly, that it had a “very good understanding” how the platform worked despite never actually having seen it:

MR. D’ANGELO: And we’re going to bring up on the screen the website. You need personalized login credentials to do that. We’re going to bring up the site and try to show the Court how it works.

MS. GRODIN: Your Honor, I’m going to object to this.

THE COURT: Okay. I have a very good understanding of how it works.

MR. D’ANGELO: Okay. Your Honor, have you been on the site?

THE COURT: No, I have not, but I have a very good understanding of how it works.

Wells Decl., Ex. S.

It is abundantly clear that the trial court made up its mind at the preliminary injunction stage – before Mr. Allen had even filed an answer to the complaint and before any discovery was conducted – and had no interest in hearing the evidence or testimony presented by Mr. Allen at trial (which, it should be noted, was conducted by videoconference during the pandemic, and after the court denied Mr. Allen’s demand for a jury trial). This disinterest is reflected in the court’s order, which does not mention any of Mr. Allen’s witnesses by name (or acknowledge their testimony), does not cite to any provision of the PPM or LPA and does not reference the defense at all other than to disparage it as “unworthy of belief.” What is unworthy of belief is that the

court, in a case in which the central question was whether Mr. Allen had exceeded his contractual authority, refused to address any provisions of the contracts which governed Mr. Allen's authority and yet somehow decided that he had engaged in "fraud."⁹

In summary, all of this calls into question the fairness of the proceedings and the credibility of the court's final order as a reflection of the facts presented at trial. This is a mitigating factor which the Commission must consider in determining whether a sanction is in the public interest.

CONCLUSION

This is not a typical follow-on administrative proceeding arising from a civil injunction entered by a court of law. Nor is this proceeding "routine" or closely analogous to the types of follow-on actions which the Commission routinely adjudicates.

Prior to the New York Action, Mr. Allen had worked in the securities industry for more than three decades, with no disciplinary history, no customer complaints and no formal complaints by any of the Limited Partner investors in ACP X, LP. Neither the SEC nor FINRA had ever raised any concerns with the operations of his various entities. He was a pioneer in the field of secondary private equity markets, and a trusted advisor to regulators – including an SEC Commissioner.

Then, in December 2018, the New York Attorney General went to court on an *ex parte* basis, accused Mr. Allen of fraud and obtained a temporary restraining order in secret, with no opportunity for Mr. Allen to respond or defend himself. NYAG then waited another year before actually filing a complaint against Mr. Allen – leaving him subject to an unsubstantiated *ex parte*

⁹ Lastly, the court committed numerous legal errors, including erroneously applying New York law to a dispute which the parties to the PPM and LPA had agreed would be governed by Delaware law ("the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Delaware"), and erroneously holding that New York law was not preempted by federal securities law governing private funds. These legal errors are currently on appeal to the New York Court of Appeals.

fraud order for a full year – and when it did so, it made allegations that were completely at odds with the Fund’s PPM and LPA. When the matter came before the court, the court denigrated Mr. Allen, his witnesses and his defense with unprofessional interjections evidencing bias, and it wrote two opinions which are most notable for the sin of omission – the failure to address any of the substantial mitigating evidence or testimony, such as the actual language of the PPM and LPA or the testimony of Limited Partners who were parties to those contracts.

Now the Division seeks to bar Mr. Allen from the securities industry based solely on the New York Action, in a proceeding that is virtually unprecedented in recent history, as it is based not on a federal court injunction – which the Division has stated previously and repeatedly that it must prove in order to obtain a sanction – or on an injunction which actually affects Mr. Allen’s regular securities business. This action is arbitrary and capricious, inconsistent with precedent, contrary to the law and serves no public interest whatsoever. Mr. Allen respectfully requests that the Commission DENY the Division of Enforcement’s Motion for Summary Disposition and dismiss the action against him.

Dated: July 8, 2022

Respectfully submitted,

GREENBERG TRAURIG, LLP

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Boston, MA 02110
(617) 310-6000 (phone)
wellsj@gtlaw.com

Attorneys for Respondent

ACTIVE 65353156v1

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.

**SUPPLEMENTAL DECLARATION OF JOHN K. WELLS, ESQ. IN SUPPORT OF
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION**

I, John K. Wells, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am counsel for Respondent Laurence G. Allen in the above-captioned matter. I make this declaration based upon my personal knowledge and in support of Respondent's Motion for Summary Disposition and opposition to the Division of Enforcement's Motion for Summary Disposition.

2. Attached hereto as Exhibit I are true and correct copies of a pre-marketing email which formed the subject matter of an action initiated by the Financial Industry Regulatory Authority ("FINRA") against Mr. Allen in May 2021.

3. Attached hereto as Exhibit J is a true and correct copy of a Second Revised Plan of Heightened Supervision of Laurence G. Allen.

4. Attached hereto as Exhibit K is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

5. Attached hereto as Exhibit L is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

6. Attached hereto as Exhibit M is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

7. Attached hereto as Exhibit N is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

8. Attached hereto as Exhibit O is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

9. Attached hereto as Exhibit P is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

10. Attached hereto as Exhibit Q is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

11. Attached hereto as Exhibit R is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

12. Attached hereto as Exhibit S is a true and correct excerpt of the transcript in *People v. Allen, et al.*, Index No. 452378/2019.

Executed under the pains and penalties of perjury this 8th day of July, 2022 at Boston, Massachusetts.

/s/ John K. Wells
John K. Wells, Esq.

EXHIBIT I

From: [Allen, Laurence G. \(NYPPEX\)](#)
To: [lan Sigalow \(sigalow@greycroftpartners.com\)](mailto:lan.sigalow@greycroftpartners.com)
Subject: \$10MM NYPPEX HOLDINGS SERIES E PFD - NEXT GENERATION ONLINE BROKERAGE - Greycroft - Confidential
Date: Tuesday, March 5, 2019 3:52:04 PM
Attachments: [Pensions & Investments -NYPPEX 2018 Secondary PE Volume Record 1-20-19.pdf](#)

<image001.jpg>

CONFIDENTIAL INFORMATION. FOR THE EXCLUSIVE USE OF INTENDED RECIPIENT ONLY.
PLEASE DO NOT DISTRIBUTE TO OUTSIDE PARTIES.

DRAFT

Ian,

Hope all well.

Sasha Ross at **Cooley** suggested we present our fintech investment opportunity to your firm.

If you are following trends in the **secondary private equity markets**, you may know that 2018 was a record year for volume.

- o For secondary interests in **private equity funds**, NYPPEX estimates that transaction volume increased 31% to \$54 billion.
- o For secondary shares in **private companies**, NYPPEX estimates that transaction volume increased 23% to \$29 billion.
- o Further, the market size for alternative assets is expected to **increase 59% in the next 4 years** to \$14 trillion according to Preqin.

As a result, NYPPEX, the leading secondary transfer administrator worldwide, just launched a \$10 million capital round.

- o This is the first opportunity for outside investors to purchase shares in NYPPEX since 2008.
- o The capital round will help finance its 3 year business plan, after which NYPPEX intends to IPO or be acquired.

Strategically, for your **venture investments**, we can help **manage risk** and **optimize**

OS Received 07/08/2022

returns - by enabling you to adjust allocations through the secondary markets.
I also believe a collaboration with **Robinhood** could be mutually beneficial.
If interested in viewing our confidential **PowerPoint**, please let me know.

Regards,

Larry

PS Attached is a recent article from ***Pensions & Investments*** that quotes NYPPEX about 2018 secondary private equity market trends.

In our space, some magazines use the NYPPEX name in their article titles – which I feel is a nice validation as to our reputation.

<image003.png>

Laurence G. Allen, Managing Member | [NYPPEX, LLC](#)
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P 914.305.2801 | F 914.307.2601 | M 203.912.9265
lallen@nypdex.com | www.nypdex.com

I. HIGHLIGHTS:

- PARTICIPATE IN THE GROWTH OF THE SECONDARY MARKET FOR ALTERNATIVE ASSETS.
 - The alternative asset class is projected to **increase approximately 59% in 4 years** to \$14 trillion by 2023 from \$8.8 trillion today (includes estimated growth of hedge funds to approximately \$4.7 trillion in 2023 from \$3.6 trillion today). *Source: Preqin.*
 - In 2018, secondary private equity transaction **volume achieved new record highs.**
 - i.e. Secondary LP interest volume in **private equity funds** increased approximately 31% to \$54.6 billion from \$41.4 billion in 2017.
 - i.e. Secondary securities volume in **private companies** increased approximately 23% to \$29.3 billion from \$23.8 billion in 2017. *Source: NYPPEX*
 - Annual turnover for alternative assets is expected to increase 300% in near future to over 3.00% by 2023 from approximately [0.95%] in 2018. *Source: NYPPEX*
 - For perspective, annual turnover on NASDAQ is approximately 120% in recent years.

- Together, the Company believes that **growth of the alternative asset class** plus **higher annual turnover rates**, will drive substantially higher secondary private market transaction volumes and revenue in the future.
- A MARKET LEADER, COMPELLING USER GROWTH AND POWERFUL BUSINESS MODEL
 - NYPPEX is the pioneer and global market leader in secondary private equity transfer administration.
 - Worldwide user growth on the NYPPEX QMS Platform™ has **increased 117% in last 4 years** to approx. 3,263 as of 12-31-18 compared to 1,503 as of 12-31-14.
 - 2017 **revenue growth approx. +45%** (YOY), **earnings margin 39%**, return on equity 37%. *Source: NYPPEX (pre-tax)*
 - The NYPPEX QMS Platform™ provides access to the **most private equity products** for risk management, including **19** private equity fund strategies, **12** private company industries, in **26** countries and **22** currencies.
 - NYPPEX has been selected by financial institutions to provide their private wealth advisors and clients access to the secondary private equity markets, which include **Morgan Stanley, BOA Merrill Lynch, UBS and Wells Fargo**.
- EXPERIENCED TEAM

Key management includes:

- **Laurence G. Allen**, CEO, with over 28 years' experience in the private markets. Previously served with **Merrill Lynch** and **Bear Stearns** where he helped develop the secondary private markets for mortgage securities and private placements. MBA Finance & BS Economics with honors at the Wharton School, University of Pennsylvania.
- **Jeffrey E. Grendi**, Head, Transaction Services, with over 20 years' experience in financial admin services. Previously served with **SS&C** and **JP Morgan** where he held various positions in alternative fund administration. MBA Pace University, BS CW Post.
- **Allan P. Shenoy**, Head, Software/AI Development, with over 25 years' experience in software development. Previously served as Chief Architect, Information Technology, **Morgan Stanley** and Head of Trading Technology, **UBS**. MS Mechanical Engineering, Villanova University.
- **James F. Lilley**, Head, Data & Cyber Security Systems. Over 21 years' experience in network design and management. BS New York City College of Technology.

- **Louis A. Almerini**, Director of Finance, with over 28 years' experience in finance. Previously served as Controller, **Merrill Lynch Global Wealth** and Deputy CFO, **PineBridge** Investments. BS Accounting with honors at Georgetown University.

Key advisory board members include:

- **David Shpilberg**, with over 30 years' experience in financial technology. Previously served as Head of the Worldwide Information Technology Practice at **Bain & Co.** PhD, MS, BS at MIT.
 - **Bhavin Shah**, with over 25 years' experience in private equity. Previously served with **McKinsey**, **Soros Fund Management** and the **Carlyle Group**. Harvard MBA.
 - **Donald Herrema**, with over 30 years' experience. Previously served as CEO of **Bessemer Trust** and Head of US Private Wealth with **Morgan Stanley**.
 - **Vinh Tran**, with 25 years' experience in alternative investments. Previously served as Director, Alternative Investments with **Bank of America Merrill Lynch** and Vice Chairman, Quantitative Equity with **Sapient Systems**. PhD & MBA, George Washington University.
- ATTRACTIVE VALUATION AND NEAR TERM TARGET EXIT.

At an offering price of \$1.00 per Unit, the Company believes this round offers a **compelling discount to fair value** by two measures (described below) for quick closings:

(A) based on the 5 year Warrant's estimated value of **\$0.33 per share** (Black Scholes model), the \$1.00 price is effectively \$0.67 per share as each Unit contains 1 share of Series E Preferred and 1 Warrant which may be exercised into 1 share of Common stock at \$1.00 per share; and,

(B) the Company's 2007-2008 rounds raised capital at **\$3.00 and \$2.50 per share**, before the Company acquired (i) a quant-based alternative investment management business and (ii) a web-based private equity portfolio risk management system business.

The Company's equity was valued at **approx. \$106 million** as of 12-31-18 by an independent valuation firm.

This round will be the first opportunity for outside parties to invest in NYPPEX since 2008. The primary use of capital will be to finance its 3 year business plan and to seek an IPO or acquisition in 3-4 years.

RISK DISCLOSURE HIGHLIGHTS. Private placements may contain a high degree of risk. The securities referenced herein are unregistered and no established market exists at this time where investors may obtain liquidity. Therefore, prospective investors must be prepared for an indefinite holding period. Ultimately, the Company

may not achieve a successful exit event, and this risk should be taken into consideration when evaluating the merits of an investment in the Company.

II. SUMMARY OF TERMS:

COMPANY:	NYPPEX Holdings, LLC, a Delaware limited liability company (" NYPPEX " or the " Company ")
BUSINESS DESCRIPTION:	<p>The Company operates the NYPPEX QMS Platform™ which provides secure, web-based private equity market brokerage, data and risk management tools for private wealth advisors, institutional investors, alternative investment firms and private companies.</p> <p>NYPPEX provides private equity investors the opportunity to manage risk, optimize returns, access liquidity and deals. Its secondary markets cover 19 private equity fund strategies and 12 private company industries in 26 countries and 22 currencies.</p>
HEADQUARTERS:	Rye Brook, NY
WEBSITE:	http://www.nyppe.com
OFFERING AMOUNT:	Maximum: \$10,000,000 Overallotment: \$5,000,000 Minimum: \$250,000
SECURITY:	Units. Each Unit will contain 1 share of Series E Preferred stock (the " Shares ") and a Warrant (the " Warrant ") exercisable into 1 share of Common stock at an exercise price of \$1.00 per share (together as the " Units " or " Securities "). The Warrants will have a 5 year maturity and be callable at a \$1.50 per share valuation (or listed stock price) for the Company.
LIQUIDATION PREFERENCE:	Each share of Series E Preferred shall have a 1x liquidation preference.
REGISTRATION:	NYPPEX shall file a registration statement on Form S-1 or similar form with the SEC within 36 months from the final closing of this round covering the resale of its shares (including the shares underlying the Warrants).
VOTING RIGHTS:	Each share shall have one (1) vote.
PRICE:	\$1.00 per Unit
MINIMUM INVESTMENT:	\$250,000 or as accepted at the discretion of the Company.
OFFER PERIOD:	The Securities will be privately offered through May 26, 2019 which period may be modified by the Company.
TARGET FIRST CLOSING:	2pm ET Tuesday, March 19, 2019
USE OF PROCEEDS:	Primarily for the development of technology, hiring key talent, marketing and general corporate purposes. This round includes a 20% allocation to selling shareholders that seek liquidity.
ESCROW:	All subscription amounts received will be held in a non-interest bearing account maintained at a financial institution. If the Minimum Offering amount is not closed by the termination date, none of the shares will be sold and all prospective investors' monies will be returned in full and without offset or interest

thereon.

RISK FACTORS: A purchase of the Securities involves a high degree of risk.

COUNSEL: Goodwin Procter LLP, Latham & Watkins LLP, Cooley, LLP

AUDITOR: Berkower LLC

WHO CAN ACQUIRE: Accredited Investors as defined in Rule 501(a) of Regulation D.

OFFERING DOCUMENTS: Available upon request.

LAST REVISED DATE: 3pm EST, February 28, 2019

For further information, you may contact either of the persons below:

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Vice President
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NYPPEX, LLC
800 Westchester Avenue | Rye Brook, NY 10573
P (914) 305 2800 | F (914) 307 2606
www.nyppex.com

IMPORTANT NOTES:

THIS INVITATION CONTAINS ILLIQUID SHARES IN A DEVELOPMENT STAGE PRIVATE COMPANY AND MAY CONTAIN A HIGH DEGREE OF RISK.

NO ESTABLISHED MARKET EXISTS FOR THE COMPANY'S SHARES. PROSPECTIVE INVESTORS NEED TO HAVE THE ABILITY TO HOLD SHARES FOR AN UNCERTAIN PERIOD OF TIME.

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REQUESTS FOR ADDITIONAL INFORMATION SHOULD BE MADE ONLY THROUGH NYPPEX, THE PLACEMENT AGENT. AT THE REQUEST OF THE ISSUER, PLEASE DO NOT DIRECTLY CONTACT THE ISSUER.

AFFILIATES OF NYPPEX ARE SHAREHOLDERS IN THE COMPANY, AND THEREFORE, THERE MAY BE POTENTIAL CONFLICTS OF INTEREST.

NYPPEX, LLC (THE "PLACEMENT AGENT") IS A SUBSIDIARY OF THE ISSUER. THE PLACEMENT AGENT HAS PERFORMED A REASONABLE LEVEL OF DUE DILIGENCE ON THE ISSUER, BUT HAS NOT INDEPENDENTLY VERIFIED SUCH INFORMATION.

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TO NOT RECEIVE FURTHER EMAILS FROM US, PLEASE "REPLY", AND REQUEST TO NOT RECEIVE FURTHER EMAILS. PLEASE STATE YOUR NAME, TITLE, ORGANIZATION AND PHONE OR DEALS@NYPPEX.COM.

PLEASE SEE COMPANY'S OFFERING MEMORANDUM FOR FURTHER IMPORTANT DETAILS.

THIS INVITATION IS BEING MADE AVAILABLE ONLY TO PROSPECTIVE CLIENTS THAT NYPPEX BELIEVES MEET ALL OF THE FOLLOWING CRITERIA (THE "**CRITERIA**"): (A) ARE ACCREDITED INVESTORS AS DEFINED IN RULE 501(A) OF REGULATION D, (B) IN THE CASE OF SIGNATORIES, ARE 21 YEARS OF AGE OR OLDER AND (C) THAT BELIEVE THE SECURITIES REFERENCED HEREIN ARE SUITABLE FOR THEIR INVESTMENT OBJECTIVES AND RISK TOLERANCE.

BY PURSUING THE INVESTMENT OPPORTUNITY DESCRIBED HEREIN, YOU ACKNOWLEDGE THAT YOU MEET ALL OF THE FOREGOING CRITERIA. THE INFORMATION CONTAINED IN THIS INVITATION IS NOT INTENDED TO BE COMMUNICATED OR FORWARDED, DIRECTLY OR INDIRECTLY, TO ANY OTHER PERSONS AND MUST BE KEPT CONFIDENTIAL.

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THIS PRIVATE TRANSACTION IS BEING MADE ON THE **NYPPEX QMS PLATFORM™** AND IN ACCORDANCE WITH SECTION 4(2) OF REGULATION D OF THE SEC ACT OF 1933 AND FINRA RULE 5122.

PLEASE SEE IMPORTANT DETAILS IN THE OFFERING DOCUMENTS.

RISK DISCLOSURES:

Information provided by NYPPEX (the "**Information**") is qualified in its entirety by Offering's confidential materials provided which is or will be available upon request, and will contain among other things, a description of the risks of an investment in the companies herein.

In making an investment decision, investors must rely solely on their own independent examination of the Offering's confidential materials including the merits and risks involved, and not on any information or representations made or alleged to have been made herein or otherwise.

An investment in the Offering involves a high degree of risk. There can be no guarantee, expressed or implied, that any

of the underlying companies objectives will be achieved.

Accordingly, the following should be considered before submitting a bid for the Offering.

No Assurance of Investment Return. Information relating to the performance of the companies is not necessarily indicative of future performance.

Lack of Liquidity of Investment. The securities mentioned herein in connection with the Offering are illiquid at this time.

Leverage. The use of leverage by the companies herein may increase the exposure to adverse economic factors, such as significantly rising interest rates, downturns in the economy or deterioration of the company.

Best Efforts. This Offering is being made on a best efforts only basis.

Buyers to Verify Information. All information must be verified by prospective buyers. NYPPEX has performed reasonable, but limited due diligence on the Offering and its underlying companies.

Jurisdiction. The distribution of the Offering's confidential materials, and the offering and sale of the securities described herein or therein, may be restricted by law in certain jurisdictions. NYPPEX requires persons into whose possession the Offering's confidential materials come to inform themselves about and to observe any such restrictions. NYPPEX does not accept any legal responsibility for any violation by any person, whether or not a prospective purchaser of these securities, of any such restrictions. The Offering's confidential materials will not constitute an offer of, or an invitation to purchase any securities, in any jurisdiction in which such offer or invitation would be unlawful.

No Independent Verification. NYPPEX has made no effort to independently verify any of the information contained herein. Opinions expressed herein are intended solely as general market commentary and do not constitute investment advice or a guarantee of returns.

Suitability and Due Diligence. NYPPEX performs a reasonable level of due diligence on its offered securities; however, our ability to evaluate investment suitability is limited to the information provided by each client. The security(s) mentioned herein may not be suitable for all investors. We provide such Information without regard to your investment objectives or financial circumstances and we do not represent that this Information is appropriate to your situation. You must review this Information with due regard for your personal circumstances and evaluate the Information independently, or with advice from your professional advisors. Our furnishing to you of this Information is not an expression of our endorsement, recommendation, advice or judgment as to the quality, soundness and/or and appropriateness of either the Information, or the parties that have prepared it. You must determine if this Information is appropriate for you. You agree that when you submit a sell or buy order to us, that order shall be incontrovertible evidence that you have made the decision that the order is suitable for you. Online, voicemail, faxed or other orders are not considered received by NYPPEX until we acknowledge receipt in writing to you. Orders are not executed by NYPPEX until we confirm the transaction in writing to you.

We are not obligated to make a market in any of the securities mentioned herein. Prices are indications only and may not be relied upon as bids or offers for the securities mentioned herein. Although we may furnish Information either verbally or in writing, such Information is subject to the disclosures in the Offering's confidential materials, and you agree to make your investment decision based solely on the Offering's confidential materials. You recognize that you have had the opportunity to independently evaluate the offering and price, and counter any price. Your acceptance of a price is incontrovertible evidence that you believe such price was the best execution at the time given all the circumstances and only you could make such determination through your actions.

Disclaimers. You should disregard any Information that you receive from NYPPEX or through our website, fax, email, or verbally that conflicts with the Offering's confidential materials. NYPPEX, LLC, its subsidiaries and its affiliates, and their respective employees and officers (together as the "**NYPPEX**", "**We**" or "**Our**") hereby expressly disclaim any and all warranties, guaranties, conditions, covenants, and representations relating to this Information, whether express or implied (in law or in fact), oral or written, or from a course of dealing or usage of trade. This Information is being provided with all faults and the entire risk as to satisfactory quality, performance, and accuracy regarding the Information is with you. Any reliance on the Information could potentially expose you to a significant risk of losing all of the property invested by you or the incurring by you of additional liability. NYPPEX shall not have any responsibility and/or liability for any loss, cost, claim or damage (including but not limited to direct, indirect, or consequential damages or lost profits) arising out of or otherwise relating to your access to any of this Information, any use thereof or any omission or failure of any of this Information and its content.

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Source. Incompleteness. The information contained herein is in the legal form of a summary invitation (the "Invitation Letter"). The Information has been prepared from original sources and data we believe to be reliable but we make no representations as to its accuracy or completeness. This summary has been prepared solely as a preliminary document to determine investor interest regarding the companies described herein. An offer or solicitation with respect to a fund will be made only through final Offering's confidential materials, and will be subject to the terms and conditions contained in such documents. The information set forth herein does not purport to be complete.

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Pensions & Investments

ALTERNATIVES

NYPPEX: LP transactions on secondary market rise 31.8% in 2018

JANUARY 18, 2019 4:14 PM



Alternative investment limited partnership interest transactions on the secondary market increased 31.8% to \$54.6 billion in 2018, compared to 2017, according to soon-to-be released estimates by secondary market broker NYPPEX.

"In 2018, NYPPEX observed LPs seeking to both buy and sell certain private equity funds, typically to manage risk and optimize returns," said Laurence Allen, managing member of NYPPEX, in an email.

Some 32% or \$17.4 billion of the total secondary market transactions in 2018 were general partnership-led deals.

"More GPs are utilizing the secondary market to generate exits, wind up older funds or restructure older funds to raise capital for new vehicles," Mr. Allen said.

At the same time, NYPPEX estimates the 2018 worldwide volume of secondary transactions involving private companies increased 23.1% to \$29.3 billion in 2018.

EXHIBIT J

2ND REVISED PLAN OF HEIGHTENED SUPERVISION

OF LAURENCE G. ALLEN

Confidential Information

Effective July 1, 2022

1. Recitals

Although we believe that Laurence Allen is no danger to the public, to provide additional comfort to our securities regulators, we have created this 2nd revised plan of heightened supervision of Mr. Allen (the “Plan”).

The Plan follows a FINRA memorandum which provides guidelines for heightened supervision policies. The FINRA memorandum encourages the use of outside parties authorized to directly contact a securities regulator. Therefore, the Plan provides the following additional levels of protection to the public:

(a) Multiple parties each knowledgeable of securities regulations will review the actions or the reviews of Mr. Allen (“Multiple Parties”).

(b) The internal consultants, Mr. Schunk or Mr. Kim or their designee (the “Internal Consultants”) will perform the actual reviews of actions of Mr. Allen (the “Reviews”) and memorialize such reviews by certifying a checklist report each calendar quarter (the “Checklist Reports”). The Checklist Reports will be presented to the Outside Consultants for their evaluation.

c) The outside consultants, initially Mr. Norensberg, Ms. Lennon or their designees (the “Outside Consultants”), will review the Checklist Reports, have the opportunity to ask questions and view documents directly, and memorialize their evaluations, which may include comments on the Checklist Reports such as:

- (i) acknowledging the work was completed
- (ii) making suggestions and providing time for corrective action
- (iii) expressing concerns and providing time for corrective action
- (iv) in egregious cases, directly contacting a securities regulator about any concerns

d) Reviews will occur at such times by the Internal Consultants depending on the type of reviews as detailed herein.

2ND REVISED PLAN OF HEIGHTENED SUPERVISION

OF LAURENCE G. ALLEN

Confidential Information

2. The Multiple Parties

Initially, the Multiple Parties shall consist of:

- i) Michael Schunk, Chief Compliance Officer and Jeremy Kim, General Counsel, or their designees will serve as Internal Consultants. Mr. Schunk has over 30 years' experience in compliance supervision for securities regulations. Mr. Kim has over 18 years' experience in financial regulation as an attorney.
- ii) Ken Norensberg, President, Luxor Financial, or his designee will serve as an Outside Consultant. Mr. Norensberg has over 20 years' experience in financial services including private placements and is a 2 term member of the Board of Governors of FINRA.
- iii) Anita Lennon, President, Pivot Business Consulting LLC or her designee will serve as an Outside Consultant. Ms. Lennon is an attorney with over 20 years' experience as a securities regulatory compliance consultant.

3. The Checklist Report

The Checklist Report contains the areas to be reviewed of Mr. Allen. It will be completed by the Internal Consultants on a calendar quarter basis.

4. Daily: Supervision

When Mr. Allen is in the office, he will be supervised by Mr. Schunk or Mr. Kim or their designee.

Daily, Mr. Schunk or Mr. Kim or their designee will:

- i) meet with Mr. Allen in the morning, remote via Zoom or in person, to review his activities
- ii) review Mr. Allen's emails via the firm's Global Relay system

During the current Pandemic, personnel including Mr. Allen operate remotely.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

2ND REVISED PLAN OF HEIGHTENED SUPERVISION

OF LAURENCE G. ALLEN

Confidential Information

5. Daily: Securities Accounts and Transactions

Daily, Mr. Schunk or Mr. Kim or their designee will review statements and transactions for each securities account of Mr. Allen.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

6. Daily: Written Correspondence

Daily, Mr. Schunk or Mr. Kim or their designee will review Mr. Allen's incoming and outgoing written correspondence, including emails and commentaries.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

7. Daily: Order Tickets

Daily, Mr. Schunk or Mr. Kim or their designee will review Mr. Allen's sell/buy order tickets entered via the firm, before they are executed. Mr. Schunk will evidence his review by initialing the order tickets.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

8. Daily: Customer Complaints

Daily, Mr. Schunk or Mr. Kim or their designees will review customer complaints about Mr. Allen and create a memo to the firm's customer complaint file if any customer complaints.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

**2ND REVISED PLAN OF HEIGHTENED SUPERVISION
OF LAURENCE G. ALLEN**

Confidential Information

9. Daily: Contingency Plan

Daily, Mr. Schunk or Mr. Kim or their designees will appoint a backup person in the event any of the initial Multiple Parties cannot perform their role.

10. Quarterly: Outside Business Activities

Quarterly, Mr. Schunk or Mr. Kim or their designee will perform Internet searches for outside business activities of Mr. Allen as well as request updates from Mr. Allen as to new or discontinued outside business activities.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

11. Quarterly: Certifications of Checklist Report

Quarterly, Mr. Schunk or Mr. Kim or their designee and the Multiple Parties will complete and certify the Checklist Report.

The Outside Consultants will review this topic as stated on the Checklist Reports and provide their evaluations as described above.

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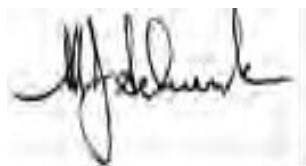
2ND REVISED PLAN OF HEIGHTENED SUPERVISION

OF LAURENCE G. ALLEN

Confidential Information

This 2nd revised Plan of Heightened Supervision has been approved by the NYPPEX Legal and Compliance Committee.

By:

A handwritten signature in black ink, appearing to read "Michael J. Schunk", written over a light gray rectangular background.

Michael J. Schunk

Chief Compliance Officer & Co-Head, NYPPEX Legal & Compliance Committee

By:

A handwritten signature in black ink, appearing to read "Jeremy Kim", written over a light gray rectangular background.

Jeremy Kim

General Counsel & Co-Head, NYPPEX Legal & Compliance Committee

EXHIBIT K

-Redirect/L. Allen/by Mr. D'Angelo-

668

1 2008, 2009 financial crisis. How did that play into the
2 operation of the fund?

3 A Well, with respect to ACP X?

4 Q Yes.

5 A Well, we decided to emphasize the investments in
6 private companies because their valuations had declined so much
7 that our cost bases was so low. We felt that by doing that,
8 that would help achieve the primary objective of the fund, which
9 was to optimize total return. And as I mentioned before, that
10 was a successful strategy.

11 Q Okay. One of Ms. Grodin's questions revolved around
12 Mr. Mincberg, one of the LPs, who stated that he has never seen
13 investments in affiliates by private equity funds.

14 Do you agree with that statement?

15 MS. GRODIN: Objection that misstatements Mr.
16 Mincberg's testimony.

17 THE COURT: Okay. Let him answer.

18 A No, I do not agree with Mr. Mincberg's statement.

19 Q Why?

20 A Because we have numerous examples of private equity
21 funds where they have authorizations in their offering documents
22 to make affiliate investments. Those funds, by firms like
23 Goldman Sachs, Credit Suisse and Fortress Group are firms that
24 we followed when we developed certain ACP funds.

25 So, for example, there's a Credit Suisse Fund that I

dar

-Redirect/L. Allen/by Mr. D'Angelo-

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1 was going to talk about that it allocated 19 percent of its
2 portfolio to affiliate investments.

3 In the case of ACP funds, we have an internal
4 guideline, which is 15 percent, one five, and we've adhered to
5 that.

6 I think it is important when you have affiliate
7 investment strategy, the offering documents need to have
8 adequate disclosures as to potential conflicts of interest. We
9 take that a few steps further. We have a code of conduct that
10 addresses how we go about affiliate investments.

11 Q What about outside legal counsel with respect to the
12 disclosures that were made in the PPM and LPA.

13 Did you use outside legal counsel to draft the PPM and
14 the LPA?

15 A Of course, experienced counsel that has drafted other
16 private equity fund documents.

17 Q Are they well-known firms?

18 A Yes, firms like --if you would like me to mention them.
19 Perkins Coie, Squire Sanders. The law firm that has been, in my
20 opinion, the most prominent, that have drafted the documents of
21 the firms I just mentioned is Simpson Thatcher. And much of our
22 language that is in ACP X is verbatim with offering documents of
23 the firms that I mentioned.

24 Q And What are the maximum allocation percentages for
25 affiliate investments for other funds versus ACP funds?

dar

EXHIBIT L

-Redirect/L. Allen/by Mr. D'Angelo-

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1 returns, LP Johnson stated that your fund was a long-term
2 investment and, therefore, that he didn't expect to receive a
3 full return of his initial capital investment. Do you recall
4 that testimony?

5 A In general, yes.

6 Q Can you explain to me the long-term investment
7 strategies employed?

8 A Well, a fund of this nature is typically a ten-year
9 term with two one-year extensions at the option of the general
10 partner.

11 In the case of this fund, because we had difficulty
12 exiting some of the private company investments, we requested
13 the limited partners to extend the fund's term for four years,
14 in other words, making it a 14-year fund. And at the end of
15 that 14 year was December 31st, 2018, that is when we proposed
16 the Seventh Amendment to liquidate the fund.

17 Q And what type of investments did you make in the fund?

18 A We fulfilled our obligation to allocate at least
19 two-thirds of the portfolio to secondary investments of
20 interests in private equity partnerships. And that was achieved
21 in 2009.

22 Q Is LP --go ahead.

23 A When the 2008, 2009 financial crisis occurred, our
24 portfolio was only what is called a third quartile performing
25 fund. And the primary objective of this fund is to optimize

dar

-Redirect/L. Allen/by Mr. D'Angelo-

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1 total return over the long-term. And I would also state not
2 distributions; although ideally, we would like to make
3 distributions along with total return.

4 We decided in 2008, 2009 that certain segments of the
5 private equity market, notable Bio Tech and Pin Tech, among
6 others, the valuations significantly declined. We revised our
7 strategy that if we can reinvest a portion of the realizations
8 into those sectors, we would have a better chance of achieving
9 our primary objectives. That is what we did.

10 And the result was the fund went from being a third
11 quartile performer on a total return basis to a top 10 percent
12 performer. In fact, in our estimated valuations it is still the
13 number one performing funds among 2004 vintage secondary private
14 equity funds.

15 Q Thank you.

16 Is it true that many private equity funds had to close
17 their doors during the 2008/2009 financial crisis?

18 A Yes. As I understand, during that period over 1,400
19 private funds were forced to close.

20 Q Did ACP X close?

21 A No. We in, our humble opinion, we navigated that
22 situation and we actually came out better for it. However, the
23 distributions slowed. And the some limited partners were
24 hopeful of getting liquidity. And that is the one area that I
25 wish we could have done better. We are also not the worst

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-Redirect/L. Allen/by Mr. D'Angelo-

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1 represented their long-term oriented and have sufficient
2 liquidity to withstand an uncertain holding period, uncertain
3 frequency of distributions, and whether they will receive a
4 return of their capital?

5 A Our last three funds are ACP Partners, which on a total
6 return basis was ranked in the top ten percent of its peer
7 group. In fact, it is the number one performing fund. That has
8 been liquidated in the 10th year.

9 ACP Credit Partners, I mentioned, that was liquidated
10 seven years ahead of schedule, in three years.

11 ACP X is also performed top ten percent of its peer
12 group; however, as I have mentioned before, the distributions
13 have lagged. But that fund is 2004 vintage. And now we're in
14 2021 so we're behind schedule with liquidating that fund.

15 Q Okay. And aside from the New York Attorney General
16 investigation, why has ACP X not liquidated in ten years?

17 A Because an industry problem has been smaller private
18 companies have had difficulty exiting through the IPO Market or
19 M&A Market. As a result, approximately 23 percent of all
20 private equity funds worldwide are now 15 years and older in
21 age.

22 Q And you gave some testimony --go ahead.

23 A So ACP X is falling into that category.

24 Q Okay. And you talked to Ms. Grodin a bit about the
25 trends in the industry and, specifically, you mentioned the

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-Redirect/L. Allen/by Mr. D'Angelo-

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1 2008, 2009 financial crisis. How did that play into the
2 operation of the fund?

3 A Well, with respect to ACP X?

4 Q Yes.

5 A Well, we decided to emphasize the investments in
6 private companies because their valuations had declined so much
7 that our cost bases was so low. We felt that by doing that,
8 that would help achieve the primary objective of the fund, which
9 was to optimize total return. And as I mentioned before, that
10 was a successful strategy.

11 Q Okay. One of Ms. Grodin's questions revolved around
12 Mr. Mincberg, one of the LPs, who stated that he has never seen
13 investments in affiliates by private equity funds.

14 Do you agree with that statement?

15 MS. GRODIN: Objection that misstatements Mr.
16 Mincberg's testimony.

17 THE COURT: Okay. Let him answer.

18 A No, I do not agree with Mr. Mincberg's statement.

19 Q Why?

20 A Because we have numerous examples of private equity
21 funds where they have authorizations in their offering documents
22 to make affiliate investments. Those funds, by firms like
23 Goldman Sachs, Credit Suisse and Fortress Group are firms that
24 we followed when we developed certain ACP funds.

25 So, for example, there's a Credit Suisse Fund that I

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EXHIBIT M

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

Index No.: 452378/2019

-v-

LAURENCE G. ALLEN, ACP INVESTMENT
GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP
PARTNERS X, LLC, and ACP X, LP,

Defendants,

-and-

NYPPEX, LLC, LGA CONSULTANTS, LLC,
INSTITUTIONAL INTERNET VENTURES, LLC,
EQUITY OPPORTUNITY PARTNERS, LP and
INSTITUTIONAL TECHNOLOGY VENTURES,
LLC,

Relief Defendants.

-----X

EXPERT REPORT

OF

MARK DIMICHAEL, CPA/CFF/ABV, CFE, CCFI

CITRIN COOPERMAN & COMPANY, LLP

December 31, 2020

**EXPERT REPORT OF MARK DIMICHAEL, CPA/ABV/CFE, CFE, CCFI
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III. COMPENSATION FROM NYPPEX	4
IV. CARRIED INTEREST CALCULATION.....	8
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Exhibit

EXHIBIT A.....	CURRICULUM VITAE OF MARK DIMICHAEL
EXHIBIT B.....	DOCUMENTS RELIED UPON
EXHIBIT C-1.....	LAURENCE ALLEN COMPENATION BY YEAR
EXHIBIT C-2.....	NYPPEX REVENUE BY YEAR
EXHIBIT D.....	NYPPEX PAYOUT GRID
EXHIBIT E	CALCULATION OF UNPAID CARRIED INTEREST
EXHIBIT F	ACP, X LP 2016 QUICKBOOKS BALANCE SHEET
EXHIBIT G.....	CALCULATION OF PREFERRED RETURN BALANCE
EXHIBIT H.....	ACP, X LP CARRIED INTEREST PAID

I. PURPOSE AND OBJECTIVE OF THE ASSIGNMENT

A. DESCRIPTION OF THE ASSIGNMENT

1. Citrin Cooperman & Company, LLP (“Citrin Cooperman”) was engaged by Akerman LLP (“Counsel”) to analyze the carried interest calculation of APC X LP and compensation of Laurence Allen (“Allen”).

B. PROFESSIONAL QUALIFICATIONS

2. I am a Certified Public Accountant, licensed to practice in the State of New York by the New York State Board of Public Accountancy. I am accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants, accredited as a Certified Fraud Examiner (CFE) by the Association of Certified Fraud Examiners (ACFE), and a Certified Cryptocurrency Forensic Investigator (CCFI) by the McAfee Institute. A copy of my curriculum vitae is included in **Exhibit A**.
3. I am a partner in Citrin Cooperman’s Forensic, Litigation, and Valuation Services department with offices located at 709 Westchester Avenue, White Plains, NY 10604 and 529 Fifth Avenue, New York, NY 10017.
4. Citrin Cooperman is being compensated at \$475 per hour for my work. I have been assisted by other Citrin Cooperman professionals, billing at their standard hourly rates. In accordance with recognized professional ethics, the fee for my services is not contingent upon the results of my analysis. Neither Citrin Cooperman nor I have a present or contemplated future interest in the entities discussed in this report. I have no past, present, or future interest in the outcome of this matter, nor have I had, at any time, any relationship with Allen.

C. INFORMATION AND DOCUMENTS RELIED UPON

5. During the course of my analysis, I had access to and reviewed information related to this matter. The documents I have relied upon are listed in **Exhibit B**.
6. I reserve the right to revise this report if I am provided with additional information subsequent to the date of this report.

II. BACKGROUND

7. The New York State Attorney General filed a complaint against Defendants on December 4, 2019 (the “Complaint”). The Complaint made many allegations, but this report addresses the following two allegations:¹
 - a) Allen paid himself \$5.7 million in salary from NYPPEX Holdings, LLC (“NYPPEX”).
 - b) Beginning in 2013, Allen fraudulently began to distribute what he characterized as carried interest—i.e. profits over and above certain investor distribution hurdles—in ACP X, LP (“ACP”) to himself, depriving investors of distributions to which they were entitled.

III. COMPENSATION FROM NYPPEX

8. The Complaint alleges Allen received approximately \$5.7 Million in salary from NYPPEX. I reviewed Allen’s W-2s and earnings statements and found that Allen received approximately \$5.55 million in total compensation from 2010 through 2019. This total compensation includes not just salary, but also commissions, health reimbursement, miscellaneous pay, and a draw. See **Exhibit C-1**. Allen received this pay over a period of 10 years, so it is important to examine his compensation on average, by year. On average, Allen was paid approximately \$555,000 per year.²
9. Allen acts as the CEO of NYPPEX. NYPPEX provides private equity market services. NYPPEX was the first intermediary to transfer interests in private companies and private equity funds. Today, they operate the NYPPEX QMS Platform, which enables financial institutions, alternative investment firms, private companies, qualified investors, employees and advisors to access the secondary private equity markets worldwide in a fair and ethical manner.³
10. Allen’s role as CEO is highly varied because of NYPPEX’s different subsidiaries and business lines. Allen is acting as a:
 - a) CEO of a diversified financial services company (NYPPEX)

¹ Verified Complaint dated December 4, 2019.

² The maximum compensation amount paid to Allen was \$909,858 in 2016 and the minimum compensation amount paid to Allen was \$268,845 in 2015.

³ <https://nyppex.com/our-story/>

- b) Head investment banker / broker dealer (NYPPEX LLC, a subsidiary of NYPPEX)
 - c) Chief Investment Officer of a private equity asset management business (ACP Investment Group, LLC, a subsidiary of NYPPEX)
 - d) CEO of the market data business of NYPPEX.
11. NYPPEX revenue ranged from \$978,000 to \$3,268,000, and averaged \$2,046,264 over the 10 year period. See **Exhibit C-2**.⁴
12. I researched various data sources to obtain compensation data for similar businesses. My firm subscribes to the Economic Research Institute (“ERI”) Salary Assessor database (the “ERI Database”). ERI compiles salary, cost of living, and executive compensation survey data, with updated market data for more than 1,100 industry sectors.
13. The ERI Database is organized by industry codes known as NAICS codes. For companies in the financial services sector, ERI uses assets under management as the metric for researching data. As of December 31, 2018, NYPPEX’s subsidiary, ACP Investment Group LLC, and its affiliates managed \$18 million of assets.⁵ Since NYPPEX is so diversified, no single industry sufficiently captures its breadth of operations. The following NAICS codes are applicable:
- a) 522320 - Financial Transactions and Clearinghouse Activities
 - b) 523110 - Investment Banking and Securities Dealing
 - c) 523120 - Securities Brokerage
 - d) 523210 – Securities and Exchange Brokerages
 - e) 523920 - Private Equity Fund Management

⁴ The revenue amounts included in my calculation are per the annual reports of NYPPEX Holdings, LLC for the years ended December 31, 2010 through 2011 and 2014 through 2019. The annual reports include audited financial statements for the years ended December 31, 2010 and 2014 through 2016. However, the annual reports include *unaudited* financial statements for the years ended December 31, 2011 and 2017 through 2019. Additionally, I was not provided annual reports or financial statements for the years ended December 31, 2012 and 2013.

⁵ ACP Investment Group LLC Form ADV Part 2A dated March 30, 2019. The same form listed Assets Under Management of \$24,190,992 and \$20,818,662 as of December 31, 2017 and December 31, 2016, respectively.

14. Using the ERI Database, I searched for compensation of CEOs of companies in those industries with \$18M in assets under management located in Greenwich, CT as of December 31, 2019. ERI provided total CEO compensation in those industries as follows:

Total Compensation					
NAICS Code	10th Percentile	25th Percentile	Median	75th Percentile	90th Percentile
522320	\$ 126,045	\$ 185,521	\$ 249,620	\$ 332,349	\$ 404,389
523110	\$ 252,526	\$ 368,008	\$ 496,500	\$ 661,877	\$ 807,024
523120	\$ 252,656	\$ 368,198	\$ 496,756	\$ 662,220	\$ 807,445
523920 / 523930	\$ 251,853	\$ 367,025	\$ 495,173	\$ 660,097	\$ 804,844
523210	\$ 239,830	\$ 349,466	\$ 471,461	\$ 628,334	\$ 765,895

15. In addition, I reviewed several other websites with compensation data. They provided the following data:

- a) 2019 North American Private Equity Investment Professional Compensation Survey published by Heidrick & Struggles is a survey of private equity investment professionals. It lists average managing partner compensation for 2017, 2018, and 2019 for companies with assets under management less than \$500 Million of \$382,000, \$396,000, and \$432,000 per year, respectively.
- b) 2016 North American Operating Executive Compensation Survey published by Heidrick & Struggles is a survey of operating executives working in private equity regarding compensation data. This survey shows that managing partners of funds with less than \$500M receive an average salary of approximately \$391,670 plus an average bonus of \$66,330, for a total average compensation amount of \$458,000.
- c) WallStreetOasis.com Investment Banking Compensation Industry Reports provide information on average compensation in the investment banking field. For the top roles of investment banking firms, Director and Managing Director, this website found compensation, including salary and bonuses, to average \$598,000 per year as of 2019⁶.
- d) InstitutionalInvestor.com reported that portfolio managers at investment advisory firms anticipated earnings compensation of \$805,583 in 2018. InstitutionalInvestor.com also

⁶ <https://www.wallstreeoasis.com/investment-banking-industry-reports/2019>

reported that mutual fund portfolio managers expected to earn approximately \$1.12 million.⁷

16. One could argue that lower compensation for Allen is reasonable because of the company's lack of profitability. While that is true, the diversified and complex nature of the multiple lines of business of NYPPEX would justify a higher than average compensation.
17. Additionally, more than 50% of Allen's compensation is commissions (based on his NYPPEX earnings statements). Allen informed me that his commissions are based upon a commission payout grid, which is the same grid use for other employees of NYPPEX. I have attached a copy of the sample NYPPEX payout grid as **Exhibit D**. Excluding commissions, Allen's salary, misc. pay, health reimbursement, and draw average approximately \$266,000 annually. This is below the median base pay provided by ERI for most of the various industries in which NYPPEX operates, as demonstrated in the table below.

NAICS Code	Median Base Pay
522320	\$ 193,804
523110	324,561
523120	324,723
523920 / 523930	323,692
523210	324,810

18. Based on the above information, compensation of \$500,000 or more is common for top executives at companies similar to NYPPEX.

⁷ <https://www.institutionalinvestor.com/research/8841/All-America-Buy-Side-Compensation>

IV. CARRIED INTEREST CALCULATION

19. In 2013, 2015, and 2017, ACP entered into the following amendments to its partnership agreement (collectively, the “Carried Interest Amendments”):
 - a) Third Amendment to the Amended and Restated Agreement of Limited Partnership of ACP effective December 1, 2013, along with a “Clarification Letter” dated January 2014.
 - b) Fourth Amendment to the Amended and Restated Agreement of Limited Partnership of ACP effective June 15, 2015.
 - c) Fifth Amendment to the Amended and Restated Agreement of Limited Partnership of ACP effective March 31, 2017.
20. Each of the above listed amendments have a section discussing the Carried Interest Distributions.
21. A carried interest is a share of any profits that the general partners of private equity and hedge funds receive as compensation regardless of whether they contribute any initial funds. Carried interests are often only paid if the fund’s returns meet a certain threshold. Per www.investopedia.com and www.jobsearchdigest.com, the typical carried interest amount is around 20% for private equity and hedge funds.⁸ ACP’s operating agreement has a 20% carried interest provision, which is in line with industry standards.⁹
22. Plaintiffs allege that Allen “manipulated investors” into entering into the Carried Interest Amendments. Plaintiffs allege that Allen did this “through omissions and misleading disclosures”. I did not investigate, and this report does not address these allegations. Instead, Counsel has informed me to assume (1) that the amendments are valid, (2) that the language in the Carried Interest Amendments allows ACP to distribute the carried interest to the General Partner even though the Preferred Return to the Limited Partners had not yet been fully distributed; and (3) the Fifth Amendment to the Amended and Restated Agreement of Limited Partnership of ACP effective March 31, 2017 requires the calculation of the cumulative Carried Interest allocable to the General Partner as of December 31, 2016. Counsel has requested I perform this carried interest calculation as of December 31, 2016.

⁸ <https://www.investopedia.com/terms/c/carriedinterest.asp>
<https://www.jobsearchdigest.com/private-equity-jobs/career-advice/carried-interest-guide/>

⁹ www.jobsearchdigest.com states that carried interests range from 10% to 50%.


23. Per the Amended and Restated Agreement of Limited Partnership of ACP dated April 26, 2004 (Section 6.02), funds available will be distributed in the following order (the “Waterfall Calculation Methodology”):
- a) First, 100% to all limited partners in proportion to their funded capital commitment until they have received cumulative distributions equal to the sum of the following:
 - i. The limited partner’s total capital contributions; and
 - ii. A preferred return equal to an 8% cumulative, non-compounded annual rate of return on each limited partner’s unreturned capital contributions.
 - b) Second, 100% to the General Partner until the General Partner has received an amount equal to 20% of the cumulative distributions made to the limited partners in (a)(ii) above and this paragraph (b); and
 - c) Last, 80% to all limited partners and 20% to the General Partner.
24. I have used the Waterfall Calculation Methodology to determine the cumulative carried interest as of December 31, 2016. In order to perform this calculation, I relied upon the audited financial statements of ACP for the year ended December 31, 2016, as well as the ACP X LP QuickBooks records provided by Allen.¹⁰
25. I performed the calculation in **Exhibit E**. I conclude that the total Accrued Carried Interest to the General Partner as of December 31, 2016 was \$3,924,561. After ACP made a carried interest payment in April 2017, ACP had paid a total of \$3,404,467. This results in an unpaid carried interest balance of \$520,094.

¹⁰ I have not verified the accuracy of the QuickBooks files, but I did verify that the total equity amount per QuickBooks as of December 31, 2016 (\$25,981,133) agrees to the total equity per the audited financial statements for that same year.

V. CONCLUSION

26. Allen received an average total annual compensation of approximately \$555,000 from 2010 through 2019. Based on industry averages, compensation amounts of \$500,000 or more are not uncommon for top executives at similar companies to NYPPEX.
27. I conclude that the total Accrued Carried Interest to the General Partner as of December 31, 2016 was \$3,924,561. After ACP made a carried interest payment in April 2017, ACP had paid a total of \$3,404,467. This results in an unpaid carried interest balance of \$520,094.
28. I reserve the right to revise this report if I am provide with additional information subsequent to the date of this report.

Sincerely,



Mark DiMichael, CPA/ABV/CFF, CFE, CCFI



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

Educational Background and Credentials

Profession Certified Public Accountant in New York State

Credentials ABV – Accredited in Business Valuation
CFF – Certified in Financial Forensics;
CFE – Certified Fraud Examiner;
CCFI – Certified Cryptocurrency Forensic Investigator

Education Fordham University, Bachelor of Science (Accounting), 2005

Professional Experience

- Mr. DiMichael is a forensic accounting and business valuation professional with expertise in matrimonial dissolutions, economic damages, digital assets, white collar criminal defense, shareholder disputes, and business valuations.
- Worked in public accounting since 2005.
- Partner, Citrin Cooperman & Company, LLP, concentrating in forensic accounting, litigation support, and economic damages analysis.
- Senior Consultant, Holtz Rubenstein Reminick LLP, concentrating in matrimonial litigation consulting, investigative accounting, and business appraisals
- Senior Auditor, Paul Scherer & Company LLP, providing auditing and accounting services to various businesses, specializing in performing these services for news and media outlets.



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

Professional Activities

Member of:

- American Institute of Certified Public Accountants
- New York State Society of Certified Public Accountants (NYSSCPA)
- Association of Certified Fraud Examiners (ACFE)
- National Association of Divorce Professionals
- Citrin Cooperman Digital Assets Committee

Chairperson of the NYSSCPA Digital Assets Committee for fiscal year 2018/19 and 2019/20

Planning Committee Member for the NYSSCPA 2019 Digital Asset Conference

Member of Citrin Cooperman Digital Asset Committee (2019 to Present)

NYSSCPA Society Awards Committee Member for fiscal years 2016/17 and 2017/18

Chairperson of the NYSSCPA Consulting Services Oversight Committee for fiscal year 2016/17 and 2017/18

Planning Committee Chairperson for the NYSSCPA 2015 and 2016 Forensic & Litigation Services Conference

Chairperson of the NYSSCPA Litigation Services Committee for fiscal years 2014/15 and 2015/16.

Planning Committee Member for the NYSSCPA 2014 Anti-Fraud Conference

**Curriculum Vitae of****MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI****Trial and Deposition Testimony**

<u>Case Name</u>	<u>Jurisdiction</u>	<u>Date</u>	<u>Nature of Case</u>
Kimberly Schmidtner v. Alois Schmidtner	Northampton County Family Court, Pennsylvania	Master's Hearing: October 2020	Business valuation of an industrial equipment wholesale entity related to a divorce litigation.
J.P. Morgan Trust Company of Delaware, Trustee of the Fisher 2006 Trust F/B/O Hadley Fisher U/A dtd 2/15/2006 v. Hadley Fisher et al.	Court of Chancery for the State of Delaware	Deposition: July 2020	Dispute regarding the administration of a trust, specifically related to the tax treatment of certain payments.
Todd Diamond et al. v. 142 Mercer Street, LLC et al.	Arbitration, New York	Arbitration: October 2019	Forensic accounting and economic damages calculation related to waterfall calculation in a SoHo restaurant shareholder dispute.
Beatrice Investments LLC et al. v. 940 Realty LLC et al.	Supreme Court of New York, Commercial Division	Deposition: October 2019 and June 2020	Economic damages related to a shareholder dispute regarding a real estate holding company.
In Re: Pierson Lakes Homeowners Association, Inc.	United States Bankruptcy Court – Southern District of New York	Trial Testimony: July 2019	Analysis of debtor's ability to pay and "cramdown" interest rate for bankruptcy matter.
Zap Cellular, Inc. DBA AMP Cellular v. Ari Weintraub et al.	United States District Court - Eastern District of New York	Deposition: April & June 2019	Forensic tracing of credit card receipts and business valuation to calculate economic damages in a shareholder dispute.
Richard Catena v. Raytheon Company et al.	Superior Court of New Jersey	Deposition: November 2018	Rebuttal of plaintiff expert's report regarding damages from an environmental remediation claim.
Hemna Schlueter v. Marc Schlueter	Supreme Court of New York, Westchester County District	Trial Testimony: April 2016	Testified as to the theoretical and technical accuracy of a neutral expert's reports regarding business valuation, enhanced earnings capacity, and income stream.
United States of America v. Mark Hotton	United States District Court - Eastern District of New York	Trial Testimony: June 2015	Determined the fraud loss amount and repayments to victims in accordance with the United States Federal Sentencing Guidelines.
Robert L. Riddle and Christel Greene v. Westchester Beach Spa LLC et al.	Arbitration, New York	Arbitration Testimony: 2014	Damages related to a Shareholder Dispute over several tanning salons in New York and Connecticut.



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

Articles Written

- **Reasons Divorce Attorneys Are (and Are Not) Losing Sleep Over Cryptocurrency**
Published on www.citrincooperman.com (December 2019)
- **Hard Forks Lead to Hard Tax: The IRS Issues Guidance on the Tax Liabilities from Unplanned Cryptocurrency Forks and Airdrops**
Co-written with Daniel J. Healy, Esq. and published on www.accountingtoday.com (November 2019)
- **A Forensic Guide to Finding Cryptocurrency in Divorce Litigation**
Co-written with Katerina Gaebel, CPA and published in the NYSSCPA Tax Stringer. (September 2018)
- **Taxation of Cryptocurrencies**
Published on www.citrincooperman.com (December 2017) and Hedge Connection Daily Intelligence Briefing (May 2018)
- **Considerations for Token Qualifications as Securities**
Published on www.citrincooperman.com (December 2017)
- **Loss of Earnings: When Do The Damages Stop?**
Published on www.newyorklawjournal.com (Fall 2015)

Speaking Engagements

- **Top Considerations for Businesses Transacting in Bitcoin and Cryptocurrencies** co-presented with David Rosenbaum, MBA, CISA for www.prolawcle.com (November 2020) and the NYSSCPA Digital Assets Committee (December 2020).
- **Divorce Forensic Accounting and Business Valuation** presented for www.prolawcle.com (November 2020).
- **Introduction to Digital Assets for Accountants** presented for www.my-cpe.com (February 2020), www.cpaacademy.org (May 2020), and a NYSSCPA Digital Assets Committee Technical Session (November 2020).
- **Crypto Asset Location, Investigation, & Seizure** presented for www.cpaacademy.org (June 2020). Co-presented with Katerina Gaebel for the NYSSCPA Business Valuation & Litigation Services Committee (August 2020), and the NYSSCPA Digital Asset Committee (September 2020).



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

- **Emerging Tech Trends** panel discussion for NYSSCPA NextGen Conference with Eric Cohen and Zachary Gordon (July 2020)
- **Obtaining Information from Personal Tax Returns** presented for the family law practitioners of the Pace Womens' Justice Center (June 2020)
- **Cryptocurrency and How to Find It/Track It in Divorce Litigation** co-presented with Nicholas Himonidis for the National Association of Divorce Professionals (March 2019 and March 2020), the American Bar Association (April 2020), and www.cpaacademy.org (May 2020).
- **Shareholder Dispute Case Study – Ambulance Company Fraud** presented for the Forensic, Litigation, and Valuation Services Department of Citrin Cooperman (May 2020)
- **Forensic Accountng 101** presented for www.cpaacademy.org (May 2020)
- **Divorce – Litigation Support Services** presented for Citrin Cooperman Employees (June 2019) and www.cpaacademy.org (March 2020)
- **Cryptocurrency Fraud & Forensics** presented for www.my-cpe.com (January 2020), www.cpaacademy.org (February and March 2020), NYSSCPA Digital Assets Committee (February 2020), and the ACFE (March 2020).
- **The Life of a Digital Asset** co-presented with Eric E. Cohen for the NYSSCPA Digital Asset Conference (October 2019)
- **Understanding Digital Assets and Blockchain** for the NYSSCPA Cyber Security Committee (July 2019), the NYSSCPA Closely Held and S Corporations Committee (August 2019), and the NYSSCPA Digital Assets Conference (October 2019).
- **Digital Asset Consulting, Taxes, & Audit** co-presented with David Rosenbaum, MBA, Alex Reyes, CPA, and Felix Ramirez, MBA, CISA, CRISC, CGEIT for Citrin Cooperman employees (August 2019)
- Member of panel discussion at the NYSSCPA Incoming Committee Chair Orientation (May 2016 and May 2019)
- **Forensic Accounting 101 for Lawyers** for www.prolawcle.com (April 2019)
- **Tax Cuts & Jobs Act: What Family Mediators Need to Know** co-presented with Robert Friedman, CDFA before the Family and Divorce Mediation Counsel of Greater New York at the New York City Bar Association (February 2019)



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

- **Introduction to Cryptocurrency for Tax Accountants** co-presented with James Anthony Wolff, Esq. for the NYSSCPA Individual Taxation Committee (April 2018) and the NYSSCPA Taxation of Individuals Conference (November 2018)
- **Understanding Cryptocurrency and Blockchain** presented for Citrin Cooperman Managers/Directors/Partners as well as the NYSSCPA Litigation Services Committee (October 2017) and CFO Committee (September 2018)
- **Cryptocurrency, the Law, and How to Find It/Track It in a Matrimonial Dispute** co-presented with James Anthony Wolff, Esq. and Nicholas Himonidis for the Brooklyn Bar Association (March 2018), Westchester County Bar Association (May 2018), and Nassau County Bar Association (September 2018)
- Member of panel on “Blockchain-N-Banking” at City Blockchain Summit’s Annual Blockchain & Crypto Conference at the New York Institute of Technology (September 2018)
- **Beyond Bitcoin: Blockchain as a Real Estate Game-Changer** – panel discussion at a real estate conference hosted by the Massachusetts Society of CPAs (June 2018)
- **Introduction to Cryptocurrency for Lawyers** for Esquire-CLE.com (June 2018)
- **Cryptocurrency Update** co-presented with James Anthony Wolff, Esq. for the NYSSCPA Forensic and Litigation Services Conference (May 2018)
- **Understanding Cryptocurrency & Its Legal Implications** co-presented with James Anthony Wolff, Esq. for www.lawline.com (February 2018) and the New York County Lawyers Association (May 2018)
- **Assisting The Matrimonial Practitioner in Recognizing The Red Flags, Economic Impact And Sometimes The Chicanery Found in Corporate and Partnership Income Tax Returns** presented for the New York Legal Assistance Group Matrimonial and Family Law Unit (November 2017)
- **Obtaining Useful Information from Personal Income Tax Returns** presented for the New York Legal Assistance Group Matrimonial and Family Law Unit (October 2017)
- **Microsoft Excel Expert Skills** presented for the Citrin Cooperman Valuation & Forensic Services Department (October 2016) as well as the NYSSCPA Litigation Services Committee (January 2017)
- **Addressing Work-life Expectancy in Lost Wages and Enhanced Earnings Capacity Calculations** presented for the Citrin Cooperman Valuation & Forensic Services Department (February 2015), as well as the NYSSCPA Litigation Services Committee and Business Valuation Committee (August 2015)



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

- **Accounting for Marital & Separate Property in Divorce** co-presented with Christina Misa, CPA for the NYSSCPA Litigation Services Committee (July 2015)
- **Handling Options, Restricted Stock, and Other Deferred Compensation in Divorce** presented to the Westchester County Bar Association's Domestic Relations and Family Law Section (March 2015)
- Member of panel discussion at the Lehman College Student Chapter of the Association of Certified Fraud Examiners regarding accountant's role in litigation. (April 2014)

Featured or Quoted in Media

- Recipient of an AICPA Forensic and Valuation Services Standing Ovation award
- Selected to the National Association of Certified Valuation Analysts (NACVA) "40 Under Forty" recognition program (July 2020)
- Recipient of an NYSSCPA Forty Under 40 Award (July 2020)
- Quoted in a blog article by the AICPA entitled "Cyber criminals are finding ways to steal your digital dollars" (May 2020)
- Quoted in an article by Jeff Stimpson of Financial Advisor Magazine entitled "IRS Clarifies How Clients Should Report Income From Crypto Currency" (November 2019)
- Quoted in article by Phil Hall of Daily Voice Plus by Fairfield Business Journal entitled "Will Facebook's Libra tip the cryptocurrency scales?" (July 2019)
- Featured in an article by Chris Gaetano in NextGen magazine entitled "CPA Forging New Ground in Cryptocurrency" (March 2019).
- Quoted in an article by Kelly Anne Smith on www.bankrate.com entitled "How cryptocurrency assets are becoming a new battleground in divorce disputes" (March 2019).
- Quoted in an article by Leo Jakobson on www.modernconsensus.com entitled "Crypto a growing problem in divorce cases" (March 2019).
- Quoted in an article by Ford & Friedman entitled "Could Cryptocurrency Affect My High Asset Divorce?" (March 2019)
- Quoted in an article regarding taxes on cryptocurrency by Chris Gaetano in the Trusted Professional newspaper of the NYSSCPA (February 2019).



Curriculum Vitae of

MARK V. DIMICHAEL, CPA · ABV · CFF, CFE, CCFI

- Quoted in Rhode Island Society of Certified Public Accountants newsletter in an article entitled “Small State, Big Impact: Citrin Cooperman Explores BitCoin Consultancies” (September 2018).
- Interviewed for the “Hidden Forces” Podcast by Demetri Kofinas for a podcast entitled “How Do Governments Tax Bitcoin?” (January 2018)
- Interviewed for a career development article in NextGen Magazine, published by the NYSSCPA (December 2016)

Allen, Laurence
Documents Relied Upon

- Verified Complaint dated December 4, 2019;
- Earnings reports issued by NYPPEX Holdings LLC to Laurence G. Allen for the period of January 1, 2013 through December 31, 2019;
- Form W-2's issued by NYPPEX Holdings LLC to Laurence G. Allen for the period of January 1, 2010 through December 31, 2018;
- NYPPEX Annual Reports for the years ended December 31, 2010 through 2011, 2014 through 2017 and 2019;
- NYPPEX Holdings LLC payout grid as of August 6, 2018;
- Economic Research Institute's Salary Assessor compensation reports as of October 1, 2020 for:
 - CEO in the Investment Banking and Securities Dealing industry;
 - CEO in the Securities Brokerage industry;
 - CEO in the Private Equity Fund Management industry;
 - CEO in the Financial Transactions and Clearinghouse Activities industry; and
 - CEO in the Securities and Exchange Brokerages industry.

- ACP Investment Group LLC Form ADV Part 2A dated March 30, 2017;
- ACP Investment Group LLC Form ADV Part 2A dated March 30, 2018;
- ACP Investment Group LLC Form ADV Part 2A dated March 30, 2019;
- 2019 North American Private Equity Investment Professional Compensation Survey published by Heidrick & Struggles;
- 2016 North American Operating Executive Compensation Survey published by Heidrick & Struggles;
- <https://nyppe.com/our-story/>
- <https://www.wallstreeoasis.com/investment-banking-industry-reports/2019>
- <https://www.institutionalinvestor.com/research/8841/All-America-Buy-Side-Compensation>
- <https://www.investopedia.com/terms/c/carriedinterest.asp>
- <https://www.jobsearchdigest.com/private-equity-jobs/career-advice/carried-interest-guide/>
- Annual report of NYPPEX Holdings, LLC for the years ended December 31, 2010 through 2011 and 2015 through 2019;
- Audited financial statements of ACP X, LP for the years ended December 31, 2012 through 2016;
- QuickBooks of ACP X, LP;

- Amended and Restated Agreement of Limited Partnership of Allen Capital Partners X, LP dated April 26, 2004;
- Third Amendment to the Amended and Restated Agreement of Limited Partnership of ACP X, LP effective December 1, 2013;
- Clarification letter from ACP Partners X LLC to Valued Partner dated January 2014;
- Fourth Amendment to the Amended and Restated Agreement of Limited Partnership of ACP X, LP effective June 15, 2015; and
- Fifth Amendment to the Amended and Restated Agreement of Limited Partnership of ACP X, LP effective March 31, 2017.

Allen, Laurence
Analysis of Compensation to Laurence Allen from NYPPEX Holdings LLC
For the Period of January 1, 2010 through December 31, 2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total	Average	Percentage of Total
NYPPEX Holdings LLC Earnings Reports [A]													
Regular	N/A	N/A	N/A	\$ -	\$ -	\$ 15,000	\$ 406,173	\$ 165,000	\$ 110,000	\$ 270,000	\$ 966,173	\$ 138,025	25.3%
Misc pay	N/A	N/A	N/A	62,430	-	-	-	-	-	20,442	82,872	11,839	2.2%
Commission	N/A	N/A	N/A	613,002	163,729	123,725	503,685	245,429	153,938	146,207	1,949,715	278,531	51.1%
Health Reimbursement	N/A	N/A	N/A	-	-	-	-	-	-	14,021	14,021	2,003	0.4%
Draw Taxable	N/A	N/A	N/A	160,770	216,871	130,120	-	86,648	205,961	-	800,370	114,339	21.0%
Total Earnings Report Wages	N/A	N/A	N/A	836,202	380,600	268,845	909,858	497,076	469,899	450,671	3,813,151	544,736	100.0%
NYPPEX Holdings LLC W-2 Wages [B]													
Form W-2	579,890	492,465	667,676	836,202	380,600	268,845	909,858	497,076	469,899	N/A	5,102,512	566,946	
Immaterial Difference	N/A	N/A	N/A	(0)	-	-	0	-	-	N/A	-	-	
Total Compensation Paid to Laurence G. Allen [C]	\$ 579,890	\$ 492,465	\$ 667,676	\$ 836,202	\$ 380,600	\$ 268,845	\$ 909,858	\$ 497,076	\$ 469,899	\$ 450,671	\$ 5,553,182	\$ 555,318	
NYPPEX Holdings, LLC Revenue [D]	2,441,554	2,697,000	N/A	N/A	1,442,556	1,556,000	2,253,000	3,268,000	978,000	1,734,000	16,370,110	2,046,264	

Notes:

[A] Earnings reports issued by NYPPEX Holdings LLC to Laurence G. Allen. I was not provided earnings reports for the years ended December 31, 2010 through 2012.

[B] Per the Form W-2's issued by NYPPEX Holdings LLC to Laurence G. Allen for the years ended December 31, 2010 through 2018. I was not provided with Form W-2s for the year ended December 31, 2019.

[C] Earnings reports were not provided for the years ended December 31, 2010 through 2012. Therefore, I have used W-2 wages in my calculation of total wages paid for 2010 through 2012. I have used wages per the earnings reports for the years ended December 31, 2013 through 2019.

[D] See Exhibit C-2.

Allen, Laurence
NYPPEX Holdings, LLC - Revenue by Year
For the Period of January 1, 2010 through December 31, 2019

Year	Revenue
2010	\$ 2,441,554 [A]
2011	2,697,000 [B]
2012	N/A [C]
2013	N/A [C]
2014	1,442,556 [D]
2015	1,556,000 [E]
2016	2,253,000 [F]
2017	3,268,000 [G]
2018	978,000 [H]
2019	1,734,000 [H]
Total	\$ 16,370,110
Average	\$ 2,046,264

Notes:

-
- [A] Per the audited financial statements included in the 2010 annual report of NYPPEX Holdings, LLC.
- [B] Per the unaudited financial statements included in the 2011 annual report of NYPPEX Holdings, LLC.
- [C] I was not provided financial statements for the years ended December 31, 2012 and 2013.
- [D] Per the audited financial statements included in the 2015 annual report of NYPPEX Holdings, LLC.
- [E] Per the audited financial statements included in the 2016 annual report of NYPPEX Holdings, LLC.
- [F] Per the audited financial statements included in the 2017 annual report of NYPPEX Holdings, LLC.
- [G] Per the unaudited financial statements included in the 2017 annual report of NYPPEX Holdings, LLC.
- [H] Per the unaudited financial statements included in the 2019 annual report of NYPPEX Holdings, LLC.

OS Received 07/08/2022

Inputs

Transfer Admin Payout Calculator

Scenario 1 - Desk Trade

Trade Commissions	\$	17,500.00	
Payroll	July	2018	
Buy Side Allocation		50%	

	Seller	%	Payout	Net Payout	Buyer	%	Payout
Net Payout		35%				35%	
Broker 1	Grendi	50%	\$ 1,531.25	Broker 1	Grendi	50%	\$ 1,531.25
Broker 2	Allen	50%	\$ 1,531.25	Broker 2	Allen	50%	\$ 1,531.25
Seller Origination	Allen	10%	\$ 1,750.00	Seller Origination			
						Payout %	42.50%

Scenario 2 - Desk/Blitz trade

Trade Commissions	\$	17,500.00	
Payroll	July	2018	
Buy Side Allocation		50%	

	Seller	%	Payout	Net Payout	Buyer	%	Payout
Net Payout		35%				35%	
Broker 1	Grendi	50%	\$ 1,531.25	Broker 1	Blitz	100%	\$ 3,062.50
Broker 2	Allen	50%	\$ 1,531.25	Broker 2	Allen	0%	\$ -
Seller Origination	Allen	10%	\$ 1,750.00	Seller Origination			
						Payout %	51.25%

Management Overrides

Grendi	\$	2,625.00	15%	Note: Jeff receives override amount, not Scenaro amounts above
Allen T	\$	175.00	1%	as only added to reflect correct payout to Larry

Block Trades Payout Calculator

Scenario 1 - Desk Trade

Trade Commissions	\$	17,500.00	
Payroll	July	2018	
Buy Side Allocation		50%	

	Seller	%	Payout	Net Payout	Buyer	%	Payout
Net Payout		35%				35%	
Broker 1	Grendi	50%	\$ 1,531.25	Broker 1	Grendi	50%	\$ 1,531.25
Broker 2	Allen	50%	\$ 1,531.25	Broker 2	Allen	50%	\$ 1,531.25
Seller Origination	Allen	10%	\$ 1,750.00	Seller Origination			
						Payout %	42.50%

Management Overrides

Grendi	\$	2,625.00	15%	Note: Jeff receives override amount, not Scenaro amounts above
Allen T	\$	175.00	1%	as only added to reflect correct payout to Larry

New Issue Fee Payout Calculator

New Issue Fees	\$	30,000.00
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Payouts

	Origination	%	Payout
Allen	Origination	10.00%	\$ 3,000.00
Grendi	Co-Manager	5.00%	\$ 1,500.00
Schunk	Co-Manager	5.00%	\$ 1,500.00
Blitz	Placement	10.13%	\$ 3,038.00
Allen	Placement	21.13%	\$ 6,338.00
Nunziato	Co-Manager Operatic	2.50%	\$ 750.00
Tyler Allen	Analyst	2.50%	\$ 750.00
		56.25%	\$ 16,876.00
		Payout %	56.25%

Market Data Payout Calculator

Market Data Fees	\$	10,000.00
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Payouts

	Desk	%	Payout
Allen	Desk	5.00%	\$ 500.00
Grendi	Desk	5.00%	\$ 500.00
Allen T	Analyst	5.00%	\$ 500.00
Allen	Product Manager	5.00%	\$ 500.00
Grendi	Product Manager	5.00%	\$ 500.00
Schunk	Compliance	5.00%	\$ 500.00
		30.00%	\$ 3,000.00
		Payout %	30.00%

Issuer Name	Offering	Fee (Able to edit fee percentages)	Basis	Example	Trade Commisions (Fee)
NYPPEX	Secondary Fund		2.75% Commitment	Sell a \$1mm Commitment in Carlyle Partners V fee is \$27,500 (\$1mm X 2.75%)	\$27,500.00
Merrill Lynch	Secondary Fund		2.75% Commitment	Sell a \$1mm Commitment in Carlyle Partners V fee is \$27,500 (\$1mm X 2.75%)	\$27,500.00
Morgan Stanley	Secondary Fund	For Odd lots (Funds with \$5MM in NAV or less) use 2.50% ; For Block Trades (Funds with Greater than \$5MM in NAV) use 2.1%	Commitment	Sell a \$500,000 Commitment in a Morgan Stanley Fund with a NAV of 1.5MM, Fee is \$12,500 (2.50% X 500,000)= \$12,500	\$27,500.00
Morgan Stanley	Secondary Fund	For Odd lots (Funds with \$5MM in NAV or less) use 2.50% ; For Block Trades (Funds with Greater than \$5MM in NAV) use 2.1%	Commitment	Sell a \$20,000,000 commitment in a WF Fund with a NAV of 9,500,000 fee is \$420,000 (20,000,000 X 2.1%)	\$420,000.00
NYPPEX	Secondary Company	The greater of 3.5% or \$10,000	Gross Cash Proceeds	Sell a \$5,000,000 stake in XYZ company, Fee is \$175,000 (\$5mm X 3.50%)	\$175,000.00
NYPPEX	New Issue Fund		5% Cash Value of Money Raised	Raise \$10,000,000 for a new Fund fee is \$500,000(\$10MM X 5%)	\$500,000.00
NYPPEX	New Issue Company		5% Cash Value of Money Raised	Raise \$10,000,000 for a new company fee is \$500,000(\$10MM X 5%)	\$500,000.00
UBS US	Secondary Fund		2.75% Commitment	Sell a \$250,000 commitment in Alpha Keys KKR Fund fee is \$6,875. (250,000 X 2.75%) = 6,875	6,875
Wells Fargo	Secondary Fund	For Odd lots (Funds with \$5MM in NAV or less) use 2.50% ; For Block Trades (Funds with Greater than \$5MM in NAV) use 1.50%	Commitment	Sell a \$500,000 Commitment in WF Fund with a NAV of 1.5MM, Fee is \$12,500 (2.50% X 500,000)= \$12,500	12,500
Wells Fargo	Secondary Fund	For Odd lots (Funds with \$5MM in NAV or less) use 2.50% ; For Block Trades (Funds with Greater than \$5MM in NAV) use 1.50%	Commitment	Sell a \$20,000,000 commitment in a WF Fund with a NAV of 9,500,000 fee is \$300,000 (20,000,000 X 1.5%) =300,000	\$300,000
UBS AG	Secondary Fund	Usually 2.25%	commitment	Sell a 250,000 commitment in Alpha Keys KKR Fund I, Fee will be \$5,625 (250,000 X 2.25%)	\$5,625.00

OS Received 07/08/2022

**Allen, Laurence
Calculation of Unpaid Carried Interest
As of December 31, 2016**

Total capital	\$ 25,981,133	[A]
Unreturned LP capital contributions	(5,795,326)	[B]
8% preferred return to LPs	(10,064,476)	[C]
GP's capital contribution	<u>(160,424)</u>	[D]
Remaining balance	9,960,908	
1st accrued carried interest allocated to GP	<u>2,415,474</u>	[E]
Remaining balance less 1st accrued carried interest allocated to GP	7,545,433	
2nd carried interest % allocated to GP	<u>20%</u>	
2nd accrued carried interest to GP	<u>1,509,087</u>	
Total Accrued Carried Interest to GP	3,924,561	
Actual amount paid	3,404,467	[F]
Unpaid carried interest	<u><u>\$ 520,094</u></u>	

Notes:

-
- [A] Total equity amount per ACP X, LP Balance Sheet as of December 31, 2016. See **Exhibit F**.
- [B] Total LP's Capital amount per ACP X, LP Balance Sheet as of December 31, 2016. See **Exhibit F**.
- [C] See **Exhibit G**.
- [D] Total Allen Partners X (GP) Capital amount per ACP X, LP Balance Sheet as of December 31, 2016. See **Exhibit F**.
- [E] Calculated per the Amended and Restated Agreement of Limited Partnership of Allen Capital Partners X, LP dated April 26, 2004 (Section 6.02, paragraph b) as follows:
- | | | |
|---|-----------|--------------------------------|
| 20% of the total 8% preferred return to LPs | \$ | 2,012,895 |
| Additional 20% of the amount calculated above | | <u>402,579</u> |
| 1st accrued carried interest allocated to GP | \$ | <u><u>2,415,474</u></u> |
- [F] Total Carried Interest Payments after payment for 5th amendment. See **Exhibit H**.

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

ASSETS

Current Assets

Checking/Savings

People's Bank

People's - Operating Account \$ 47,132

Total People's Bank 47,132

Cash and cash equivalents

Chase 804891141 -

Credit Suisse -

Merrill Lynch

Merrill Lynch 2SD-02007 164,841

Merrill Lynch 2SD-02024 14,167

Merrill Lynch 2SD-02040 -

Merrill lynch 7J1-02040 44,195

Total Merrill Lynch 223,203

Morgan Stanley Smith Barney

MSSB 409-061156-403 INS. CAP 36,669

Morgan Stanley 359-37322-11-403 -

MSSB 409-072552-269 fka 403 14,060

Total Morgan Stanley Smith Barney 50,729

UBS

UBS Y2-05314-SG 2,914

Total UBS 2,914

Wachovia Bus. High Perf. MMKT -

Wachovia Capital Receivable Acc -

Wachovia Operating Account -

Total Cash and cash equivalents 276,846

Interactive Brokers

IB Account U1468911 362

Interactive Brokers Account -

Total Interactive Brokers 362

Total Checking/Savings 324,340

Other Current Assets

ACP Secured Loan Corbus

Accrued Interest -

Loan at 6.00% -

Total ACP Secured Loan Corbus -

ACP Partners Secured Loan GI

Accrued Interest -

Loan at 6.00% -

Total ACP Partners Secured Loan GI -

Receivable of Investments -

Receivable Funds IQ Investment -

BUPA Escrow due Health Dialog -

DLJ PE Part Fnd LP (DLJPEP,LP) -

Due From Affiliates

Due from NYPPE Holdings, LLC

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Securities Purchased	-
Total Due from NYPPE Holdings, LLC	-
ACP Credit Partners, LP	
Dissolution - Transfer to ACP X	-
Total ACP Credit Partners, LP	-
Allen Partners X (GP) Comm Rec	
General Partner 1st Close	13,750
General Partner 2nd Close	2,750
General Partner 3rd Close	2,700
General Partner 4th Close	1,500
General Partner 5th Close	800
General Partner 6th Close	15,100
General Partner 7th Close	5,100
General Partner 8th Close	3,000
General Partner 9th Close	3,120
General Partner Other	(43,160)
General Partner z 18th Close	46
General Partner z 20th Close	10,400
General Partner z10th Close	15,000
General Partner z11th Close	1,500
General Partner z12th Close	1,500
General Partner z13th Close	1,500
General Partner z14th Close	1,500
General Partner z15th Close	1,500
General Partner z16th Close	2,500
General Partner z17th Close	2,000
General Partner z19th Close	5,000
General Partner z21st Close	1,000
General Partner z22nd Close	1,000
General Partner z23rd Close	2,000
Allen Partners X (GP) Comm Rec - Other	(51,095)
Total Allen Partners X (GP) Comm Rec	12
Due from ACP Partners Fund, LP	-
Due From ACP, LLC	
Cash Mgt Trading Profits @ 15%	11,176
Due from ACP	67,047
Due From GP Capital	23
Loan Interest @ 12%	
Loan Interest Hyperactive	3,945
Loan Interest Immune Response	10,290
Loan Interest InnoCentive	3,896
Total Loan Interest @ 12%	18,132
Loan Interest Receivable @ 4%	12,727
Loan Receivable from ACP	
Loan 02.21.06 Immune Response	-
Loan 05.05.06 Hyperactive Tech	-
Loan 05.05.06 InnoCentive	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Total Loan Receivable from ACP	-
Due From ACP, LLC - Other	(46,950)
	62,155
Total Due From ACP, LLC	62,155
Due From Allen Partners X, LLC	
GP Capital	93,983
	93,983
Total Due From Allen Partners X, LLC	93,983
Due From NYPPEX, LLC	
Due from NYPPE (Capital Call)	-
Due From NYPPE Return Admin Fee	-
Due From NYPPEX Transfer Fees	5,187
Due From NYPPEX, LLC - Other	-
	5,187
Total Due From NYPPEX, LLC	5,187
Total Due From Affiliates	161,337
Due from CSFB	-
Due From Lehman Bros.	-
Interest Receivable	
HyperActive Trust Cvt Note	-
	-
Total Interest Receivable	-
Investments	
Direct Invest In Companies	
Motus GI-Warrants 01/17	-
HAT Aksor Holdings, LLC	
HAT Aksor Holdings, LLC Units	3,084,241
HAT Aksor Holdings, LLC - Other	(0)
	3,084,241
Total HAT Aksor Holdings, LLC	3,084,241
Armada Participation Interest	15,000
Dance Biopharm Inc.	
Dance Cvt Note 10% 4/27/18	-
Dance Biopharm (20,000 units)	-
Dance Placement Agent Wts	35,977
Dance Wts \$5.00 9/30/2020	68,202
Dance Biopharm Common	250,000
Dance Warrants 12/19/19	62,000
Dance Biopharm Accrued Interest	50,764
Dance Cvt Note 10% 6/19/16	250,000
	716,943
Total Dance Biopharm Inc.	716,943
Corbus Pharmaceuticals	
Corbus Common Stock	9,018,829
Corbus Pharmaceuticals - ACP X	
Corbus Wts \$1.00 5/30/19	-
Corbus Restricted Common Stock	-
Corbus Wts \$1.00 4/11/19	-
	-
Total Corbus Pharmaceuticals - ACP X	-
Corbus Allocation to EOP	
Corbus Restricted Common Stock	-
Corbus Wts \$1.00 4/11/19	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Total Corbus Allocation to EOP	-
Total Corbus Pharmaceuticals	9,018,829
GlobeImmune	
GlobeImmune Restricted Common	-
GlobeImmune Wts 1/29/19 at \$10	-
Total GlobeImmune	-
Deem Inc.	
Conv. Pfd. Stock Series AA-1	
Deem Reserve	(978,580)
Conv. Pfd. Stock Series AA-1 - Other	1,878,580
Total Conv. Pfd. Stock Series AA-1	900,000
Total Deem Inc.	900,000
Matinas BioPharma Holdings, Inc	
Restricted Stock	-
Matinas Series A Preferred	150,000
Wts @ \$2.00 7/30/18 Non PA	51,825
Matinas Wts 3/30/20 @ \$.75	507,875
Wts at \$1.00 Exercise 7/30/18	18,770
Wts @2.00 Exercise 7/30/18	4,382
Common Stock	2,437,274
Total Matinas BioPharma Holdings, Inc	3,170,126
Armada Water Assets Inc.	
Armada Wts \$4.50 5/9/18	-
Armada Wts \$1.00 strike	-
Armada Common Stock	-
Total Armada Water Assets Inc.	-
Akkadian Ventures, LP	24,025
Arrive Technologies Inc.	60,000
Boldface Group Inc.	
Boldface Restricted Stock	-
Boldface Cvt Note Accrued Int.	-
Boldface Common Stock	-
Boldface Cvt Note 12% 8/21/13	-
Boldface Wts 12/20/17 .50	-
Boldface Wts 12/20/17 1.00	-
Total Boldface Group Inc.	-
Capital Growth Systems, Inc.	
Capital Growth .45 Warrants	-
Capital Growth .65 Warrants	-
Capital Growth Common Shares	-
Capital Growth Systems, Inc. - Other	-
Total Capital Growth Systems, Inc.	-
CyberInvestors, LLC	373,540
Felix Multi-Opportunity Fund II	-
Health Dialog Series A Conv Pfd	-
Hyperactive Securities	
HAT Sr. Sub. Cvt Note 8% 12/14	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Hyperactive PFD B-1	-
Hyperactive Series B	-
Hyperactive Series B Cert 125	-
Hyperactive Series C PFD	-
HyperActive Sr. Conv. Pr. Note	-
Hyperactive Tech B-1 & B-2	-
HyperActive Tech Ser C Wts	-
HyperActive Tech Ser D Pfd	-
HyperActive Tech Ser D Wts	-
Total Hyperactive Securities	-
Innocentive	3,750
Investment NYPPEX Holdings, LLC	
NYPPEX WTS \$.63 8-29-21	0
NYPPEX Holdings, LLC Cvt Pfd	
Cvt Pref Stock 2018 Facility	-
Cvt Pfd Dividend accrued 2018	-
Cvt Pfd Unrealized Gain/Loss	361,392
K-1 Income/(Loss)	(361,392)
Accrued Interest - LOC	-
NYPPEX Cvt Pfd Stock	1,000,000
NYPPEX Cvt Pfd Dividend Accrued	20,333
Total NYPPEX Holdings, LLC Cvt Pfd	1,020,333
NYPPEX Holdings Wts 6-30-15	54,970
NYPPEX WTS - LOC	102,267
NYPPEX Holdings Cvt. Note	-
NYPPEX Holdings Shares	
NYPPEX C-2 Shs	415,000
NYPPEX Holdings C Shs	2,075,000
NYPPEX Holdings Ser. D-2 Shares	3,374,115
Total NYPPEX Holdings Shares	5,864,115
NYPPEX Wts	108,147
Total Investment NYPPEX Holdings, LLC	7,149,832
Invivo Therapeutice Holdings	-
Labstyle	
Labstyle Wts \$1.50 10/27/16	-
Labstyle Wts \$5.00 7/1/2016	-
Labstyle Common	-
Labstyle Innovation 3/30/19 1.0	-
Labstyle Wts	-
Total Labstyle	-
Organovo	
Organovo Common	-
Total Organovo	-
PIPES	
Vyteris Holdings Inc Sec Conv N	-
Total PIPES	-
Portfolio 2006-16A	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Communications and Information	-
Investment Opportunities NTV	-
Investment Opportunities NTV II	-
New Technologies Fund	-
New Technologies Fund II	-
Technologies Venture Fund	-
Portfolio 2006-16A - Other	-
Total Portfolio 2006-16A	-
Redpoint Bio	
Redpoint Bio Corporation	-
Total Redpoint Bio	-
Total Direct Invest In Companies	24,516,286
Invest Underlying Partnerships	
ACP-Hyperactive Trust	158,068
New Economy Growth Prtnrs Offsh	-
ACP Credit Partners LP	-
ACP IX, LLC \$301M	52,146
Arthur Street Fund, LP	-
Blackstone RE Partners VI	-
BlueStream Vent L.P. \$1.0MM	-
CPI Cap Partners Asia Pacific F	49,904
Madrna Vnt Fnd (MDRVF.LP1)\$500M	-
ML-AIG Healthcare Trust	-
ML-Lee Internet Trust	-
ML-Silver Lake Trust III	-
ML-TH Lee Equity Fd. VI Trust	-
ML-Warburg Pincus IV Trust	42,223
ML-Welsh Carson (Offshore) LP	-
ML-WP X Trust	-
ML BCP V Trust	-
ML Fortress Partners Fund	208,050
ML Warburg Pincus Fnd III \$500M	229,207
ML Warburg Pincus Trust II	-
ML WP Trust (MLWPA.LP)	-
Port 2005-1 (WSW 1996) \$1.5MM	-
Port 2005-2 (DLJ PEP II) \$2.0MM	-
Port 2005-3 (ML PE) \$1.0MM	-
Port 2005-4 (DLJ Multi Mg)\$250M	-
Port 2005-5 (DLJPEP.LP O) \$1MM	-
Port 2005-6 (MLPEFO.LP 3)\$1.5MM	-
Port 2005-7 (DLJPEP.LP) \$500M	-
Port 2005-8 (MLPEF.LP1) \$500M	-
Port 2006-1 (WSW Int'l PE)	-
Port 2006-2 (DLJ Vent Part B)	-
Port 2008-1 (Cap Opport)	-
Port 2009-1 (MS Prem Partn II)	-
Slv Lke Trst II(SLVLP.LP2)\$500M	66,003

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Sprout CEO Fund \$100M	-
Warburg Pincus Equity Ptnrs LP	-
Total Invest Underlying Partnerships	805,601
Schwab/DAIN Investment Accts	
Exchange Traded Funds	
NASDAQ 100 Shares (QQQQ)	-
Total Exchange Traded Funds	-
Total Schwab/DAIN Investment Accts	-
Total RBC Cash Accounts	
RBC Cash Account 836-00021	266,395
RBC Margin Account 836-00629	21,195
RBC Temporary Investments	
Alternative Assets	
Apollo Investment (AINV)	-
Fortress Invt Grp (FIG)	-
Goldman Sachs Group (GS)	-
KKR Fin. Corp REIT (KFN)	-
MVC Capital Corp.(MVC)	-
Total Alternative Assets	-
Equities	
Mankind Corp Common	64
Ishares MSCI Emerging Mkt (EEM)	-
Powershares Agricultral (DBA)	-
SPRD Wilshire Large Cap (ELV)	-
Streetracks Gold Trust (GLD)	-
Total Equities	64
Exchange Traded Bond Funds	
PIMCO High income Fund (PHK)	-
SPDR Barclays Cap HY Bd ETF JNK	-
Total Exchange Traded Bond Funds	-
Fixed Income	
NDAQ Eqty Linked Note 06738CHQ5	-
Valero Energy 74977HBQ8	-
Total Fixed Income	-
Total RBC Temporary Investments	64
Total Total RBC Cash Accounts	287,654
Total Schwab Cash Accounts	
Money Market Account 3093-9685	66,172
Schwab Cash Account	-
Total Schwab Cash Accounts - Other	-
Total Total Schwab Cash Accounts	66,172
Total Investments	25,675,712
LP's Commitments Receivable	
Commitment Rec 22nd Close	
The New Group	-
Total Commitment Rec 22nd Close	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Commitment Receivable 12th Cls	
Parker Carlson & Johnson , Inc.	-
	-
Total Commitment Receivable 12th Cls	-
Commitment Receivable 13th Cls	
Erdman, Christian	-
	-
Total Commitment Receivable 13th Cls	-
Commitment Receivable 14th Cls	
Welsh, Richard E.	-
	-
Total Commitment Receivable 14th Cls	-
Commitment Receivable 15th Cls	
Pannier, Laura B. IRA	-
	-
Total Commitment Receivable 15th Cls	-
Commitment Receivable 16th Cls	
Donnan Ltd.	-
Ireland, Ellen S. IRA	-
	-
Total Commitment Receivable 16th Cls	-
Commitment Receivable 17th Cls	
Hay Family LP	-
William Hay Decedents Trust	-
	-
Total Commitment Receivable 17th Cls	-
Commitment Receivable 18th Cls	
Blake, Dexter B.	500
Blitz, Craig	200
JJD Consultants, LLC	100
Portera, Michael	150
Regnery, George	100
Shenoy, Allan	100
	1,150
Total Commitment Receivable 18th Cls	1,150
Commitment Receivable 19th Cls	
D Burrows fka B Stollman Trust	25,000
Four O Group, LLC	-
Kamar J. Fabri Co., Inc.	-
The Wolphin Co.	-
	25,000
Total Commitment Receivable 19th Cls	25,000
Commitment Receivable 1st Close	
Bodnar Capital Managment LLC	-
Chappell, Mike	-
Conway, Daniel J.	-
Davilla, Fernando J.	-
Fink, Jerome A.	(187,500)
Hallowell, Joseph	-
Hillcrest Investors Ltd.	-
Kalina III, Charles J.	-
Kidner/Funk JTWROS	-
Martin III, Wells	-
Refurbco Inc.	(75,000)

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Spangler, Arnold E.	-
Total Commitment Receivable 1st Close	(262,500)
Commitment Receivable 20th Cls	
Borovoy, Joyce	-
Brentwood Trust	-
Burrows, David	(25,000)
Fara J. Messana Trust	-
Greg & Julia Schechter Rev Trust	-
Harriet Brent Trust	-
Janower Partnership III	-
Jason Zimmerman Living Trust	-
Kahn Family, LLC	(35,000)
Mark Kahn Trust	35,000
Michael B. Serling Rev Trust	-
Robert V. Shecter Living Trust	-
Schechter, Marc R.	-
Zimmerman, Rciahrd B.	-
Total Commitment Receivable 20th Cls	(25,000)
Commitment Receivable 21st Cls	
Garon, Larry R. & Lori B. Garon	-
Total Commitment Receivable 21st Cls	-
Commitment Receivable 2nd Close	
Dain Roth C/F Thomas C. Judge	-
Gaines, Ira J.	21,875
Judge, Thomas C.	-
Kremen, Gary	(75,000)
Macauley, Cornelius P.	-
Pride, William M. DB Pen Pl Trs	-
Rubis, David J.	(40,000)
Total Commitment Receivable 2nd Close	(93,125)
Commitment Receivable 3rd Close	
Chapman, John	-
Kendall, James	-
Shihadeh, Bassam	-
Total Commitment Receivable 3rd Close	-
Commitment Receivable 4th Close	
Follett, Mark C.	-
Total Commitment Receivable 4th Close	-
Commitment Receivable 5th Close	
Rubis, Daniel J.	40,000
Total Commitment Receivable 5th Close	40,000
Commitment Receivable 6th Close	
Fink, Jerome A.	187,500
Gaines, Ira J.	(21,875)
Kremen, Gary	75,000
Macgillivray, Elizabeth, IRA	-
Neal, John R.	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Refurbco, Inc.	75,000
Schubert Jr., Robert W.	-
Sumnicht, Vernon C. & Debra A.	-
Total Commitment Receivable 6th Close	315,625
Commitment Receivable 7th Close	
Cholewa, Walter	-
GEM Industries Inc.	-
Pinkus, Scott	-
Total Commitment Receivable 7th Close	-
Commitment Receivable 8th Close	
Cooperative Holdings	-
John Wood Gay IRA	-
Wasson, Thomas J.	-
Total Commitment Receivable 8th Close	-
Commitment Receivable 9th Close	
Allen, Laurence G.	-
Allen, Michelle	-
Gomach Trust Dated 03/27/04	-
Wendy Betts Trust	-
Total Commitment Receivable 9th Close	-
Commitment Receivable z11th Cls	
Crane, Cheryl Anne	-
Total Commitment Receivable z11th Cls	-
Commitments Receivable 10th Cls	
Allen, Kent Jason	-
Crouth, Jeffrey	-
Keys, Richard W.	-
Sullivan, Patrick	-
Total Commitments Receivable 10th Cls	-
Commitment Rec 23rd Close	
One Braeburn Investments LP	-
Total Commitment Rec 23rd Close	-
Total LP's Commitments Receivable	1,150
Other Receivables	
Due From ACP X Investors, L.P.	-
Due From Limited Partners Escrw	-
Total Other Receivables	-
Total Other Current Assets	25,838,199
Total Current Assets	26,162,539
Other Assets	
Due From NYPPEX Holdings LLC	
10% Prom Note D/F NYPPEX Hold	-
Note Interest Receivable	-
Total Due From NYPPEX Holdings LLC	-
NYPPEX Holdings 10% Cvt Int	-
Prepaid Expenses	

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Start- Up Costs	
Delaware Incorporation	(207)
Legal Start Up Costs	(2,240)
Licenses and Permits	(81)
Start Up Printing Costs	9,608
State Filing Fees	(34)
Total Start- Up Costs	<u>7,047</u>
Start Up Administration Costs	
2% Admin Costs 1st Close	40,254
2% Admin Costs 2nd Close	17,631
2% Admin Costs 3rd Close	7,174
2% Admin Costs 4th Close	4,074
2% Admin Costs 5th close	1,630
2% Admin Costs 6th Close	35,000
2% Admin Costs 7th Close	14,167
2% Admin Costs 8th Close	8,333
2% Admin Costs 9th Close	8,868
a 2% Admin Costs 10th Close	21,825
b 2% Admin Costs 11th Close	4,365
c 2% Admin Costs 12th Close	4,365
d 2% Admin Costs 13th Close	4,472
e 2% Admin Costs 14th Close	4,472
f 2% Admin Costs 15th Close	4,472
g 2% Admin Costs 16th Close	9,167
h 2% Admin Costs 17th Close	9,167
i 2% Admin Costs 18th Close	224
j 2% Admin Costs 19th Close	25,000
k 2% Admin Costs 20th Close	52,000
l 2% Admin Costs 21st Close	5,000
m 2% Admin Costs 22nd Close	5,000
Prepaid Admin Fees	(139,840)
Start Up Administration Costs - Other	(146,818)
Total Start Up Administration Costs	<u>-</u>
Total Prepaid Expenses	<u>7,047</u>
Unfunded Commitments	
Arthur Street Fund, LP	-
Blackstone Real Estate VI	-
Bluestream	-
Capitol Private OpportunitiesLP	-
CPI Cap Partners Asia Pacific F	11,250
DLJ Multi Manager	-
DLJPEP.LP	-
Madrona Ventures	-
ML-Fortress Partners Fund,LP	-
ML-Silver Lake Trust III	-
ML-TH Lee Equity Fund VI Trust	-
ML-WCA&S Offshore LP	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

ML-WP X Trust	-
ML AIG Healthcare	-
ML BCP V Trust	-
ML Lee Internet Trust	-
ML WP Trust II	-
ML WP Trust IV	-
Portfolio 2005-2	-
Portfolio 2005-3	-
Portfolio 2005-4	-
Portfolio 2005-5	-
Portfolio 2005-6	-
Portfolio 2005-7	-
Portfolio 2005-8	-
Silver Lake Trust II	37,500
Warburg Pincuss III	-
Total Unfunded Commitments	<u>48,750</u>
Total Other Assets	<u>55,797</u>
TOTAL ASSETS	<u>26,218,336</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	39,593
Total Accounts Payable	<u>39,593</u>
Other Current Liabilities	
Securities Sold Short	
Vanguard Small Cap ETF	106,392
Total Securities Sold Short	<u>106,392</u>
8th Close Pending Partnership	
Cooperative Holdings	-
General Partner	-
John Wood Gay IRA	-
Thomas F. Wasson	-
8th Close Pending Partnership - Other	-
Total 8th Close Pending Partnership	<u>-</u>
Accrued Liabilities	
Due to Limited Partner's	-
Total Accrued Liabilities	<u>-</u>
Aged Distribution Payable	-
Commitments Payable	
Arthur Street Fund, LP	-
Blackstone Real Estate VI	-
Capitol Private OpportunitiesLP	-
CPI Cap Partners Asia Pacific F	11,250
DLJ Multi Manager	-
DLJPEP.LP	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Due to Bluestream	-
Due to Madrona Venture Group	-
Due to ML-WP X Trust	-
Due to ML BCP V Trust	-
Due to Silver Lake II	37,500
Due to Warburg Pincus	-
ML-Fortress Partners Fund ,LP	-
ML-Lee Internet Trust	-
ML-Silver Lake Trust III	-
ML-WCA&S (Offshore) LP	-
ML AIG Healthcare	-
ML WP Trust II	-
ML WP Trust IV	-
Portfolio 2005-2	-
Portfolio 2005-3	-
Portfolio 2005-4	-
Portfolio 2005-5	-
Portfolio 2005-6	-
Portfolio 2005-7	-
Portfolio 2005-8	-
TH Lee Equity Fund VI, LP	-
Total Commitments Payable	<u>48,750</u>
Distribution Payable	2
Due to Affiliates	
Due to ACP IX, LLC	
Health Dialog Escrow	-
Total Due to ACP IX, LLC	<u>-</u>
Due To ACP, LLC	
2% Admin Fees Payable	50,841
Due To ACP Allocated Costs	706,559
Due to ACP Mgt Fees	(174,501)
Investment Advisor Fee Payable	1,171,088
Trading Profits	100,605
Due To ACP, LLC - Other	(1,813,288)
Total Due To ACP, LLC	<u>41,305</u>
Due to NYPPEX Holdings, LLC	
Due to Holdings - Legal Fees	-
Due to Holdings-Other	-
Due to NYPPE Holdings Alloc.	-
Total Due to NYPPEX Holdings, LLC	<u>-</u>
Due to NYPPEX, LLC	
Due to NYPPE Admin Fees	-
Due to NYPPEX-Other	-
Total Due to NYPPEX, LLC	<u>-</u>
Total Due to Affiliates	<u>41,305</u>
Due To LP's (Employees)	1,150
Due to Withdrawn Partner	-

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Redpoint Short Securities	-
Total Other Current Liabilities	197,598
Total Current Liabilities	237,191
Long Term Liabilities	
Allen Partners X (GP) Cap Comm	
GP Capital Commitment Other	(46,310)
GP Commitment 1st Close	16,275
GP Commitment 22nd Close	1,000
GP Commitment 23rd Close	2,000
GP Commitment 2nd Close	3,775
GP Commitment 3rd Close	3,150
GP Commitment 4th Close	1,750
GP Commitment 5th Close	900
GP Commitment 6th Close	15,100
GP Commitment 7th Close	5,100
GP Commitment 8th Close	3,000
GP Commitment 9th Close	3,120
GP Commitment z10th Close	15,000
GP Commitment z11th Close	1,500
GP Commitment z12th Close	1,500
GP Commitment z13th Close	1,500
GP Commitment z14th Close	1,500
GP Commitment z15th Close	1,500
GP Commitment z16th Close	2,500
GP Commitment z17th Close	2,000
GP Commitment z18th Close	46
GP Commitment z19th Close	5,000
GP Commitment z20th Close	10,400
GP Commitment z21st Close	1,000
Allen Partners X (GP) Cap Comm - Other	(52,295)
Total Allen Partners X (GP) Cap Comm	12
LP Commitments	-
Total Long Term Liabilities	12
Total Liabilities	237,202
Equity	
Allen Partners X (GP) Capital	
CI Allocation	(1,782,474)
z Allen Partners X Gen Partner	
General Partner 19th Close	7,500
General Partner 1st Close	9,123
General Partner 2nd Close	1,816
General Partner 3rd Close	1,792
General Partner 4th Close	996
General Partner 5th Close	532
General Partner 6th Close	10,029
General Partner 7th Close	3,385
General Partner 8th Close	1,991

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

General Partner 9th Close	2,070
General Partner Other	32,443
General Partner z10th Close	9,982
General Partner z11th Close	17,134
General Partner z12th Close	996
General Partner z13th Close	998
General Partner z14th Close	998
General Partner z15th Close	998
General Partner z16th Close	2,498
General Partner z17th Close	2,998
General Partner z18th Close	23
GP Partner 21st Close	1,500
GP Partner 22nd Close	1,500
GP Partner 23rd Close	3,000
GP Partner z20th Close	15,600
z Allen Partners X Gen Partner - Other	30,523
Total z Allen Partners X Gen Partner	160,424
Total Allen Partners X (GP) Capital	(1,622,050)
Audit Adjustment	(368,784)
LP's Capital	
2017 Liquidity	-
2015 Liquidity	(744,691)
Investor Liquidation	(712,494)
2013 Liquidity	(2,530,436)
1st Close 04.26.04	
Bodnar Capital Management LLC	939,888
Chappell, Michael	93,988
Conway, Daniel J.	70,491
Davilla, Fernando	93,988
Fink, Jerome A.	495,741
Hallowell, Joseph	94,123
Hillcrest Investors	93,988
Kalina III, Charles J.	93,988
Kidner/Funk JTWROS	140,983
Martin III, Wells	187,977
Refurbco	128,942
Spangler, Arnold E.	234,971
Total 1st Close 04.26.04	2,669,068
22nd Close 09.11.2006	
The New Group	225,063
Total 22nd Close 09.11.2006	225,063
23rd Close 09.29.06	
One Braeburn Investments LP	225,063
Total 23rd Close 09.29.06	225,063
2nd Close 05.21.04	
Dain Roth C/F Thomas C. Judge	76,070
Gaines, Ira J.	68,863

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Judge, Thomas C.	46,528
Kremen, Gary	378,786
Macauley, Cornelius P.	95,265
Pride, William M. DB Pen Pl Trs	-
Rubis, David J.	94,092
Wells Fargo CVRoth C/F Thomas C	5,287
Total 2nd Close 05.21.04	764,892
3rd Close 06.24.2004	
Chapman, John	94,328
Kendall, James	235,821
Shihadeh, Bassam	94,328
Total 3rd Close 06.24.2004	424,477
4th Close 08/09/04	
Follett, Mark C.	237,968
RBC Dain CVRoth C/F T. Judge	(8,804)
Total 4th Close 08/09/04	229,164
5th Close 09-01-2004	
Rubis, Daniel J.	95,662
Total 5th Close 09-01-2004	95,662
6th Close 11.10.2004	
Fink, Jerome A.	220,621
Gaines, Ira	74,540
Kremen, Gary	340,769
MacGillivray, Elizabeth, IRA	96,278
Neal, John R.	240,695
Refrubco, Inc.	157,603
Schubert, Robert W.	240,731
Sumnicht, Vernon C. & Debra A.	240,695
Total 6th Close 11.10.2004	1,611,933
7th Close 12.01.04	
Cholewa, Walter	96,278
GEM Industries Inc.	481,392
Pinkus, Scott	240,695
Total 7th Close 12.01.04	818,366
8th Close 01.10.05	
Cooperative Holdings	95,180
John Wood Gay IRA	95,180
Wasson, Thomas J.	5,488
Total 8th Close 01.10.05	195,849
9th Close 03.31.05	
Allen, Laurence G.	9,463
Allen, Michelle	9,461
Gomach Trust Dated 03.27.04	236,552
Wedy Betts Trust	236,596
Total 9th Close 03.31.05	492,074
a 10th Close 04.29.2005	
Allen, Kent Jason	235,666

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

Crouth, Jeffrey	942,833
Keys, Richard W.	471,355
Sullivan, Patrick K.	<u>707,103</u>
Total a 10th Close 04.29.2005	2,356,957
b 11th close 04.28.05	
Crane, Cheryl Anne	<u>235,656</u>
Total b 11th close 04.28.05	235,656
c 12th Close 06.10.05	
Parker Carlson & Johnson, Inc.	<u>233,434</u>
Total c 12th Close 06.10.05	233,434
d 13th Close 08.09.05	
Erdman, Christian	<u>233,321</u>
Total d 13th Close 08.09.05	233,321
e 14th Close 09.30.05	
Welsh, Richard E.	<u>231,140</u>
Total e 14th Close 09.30.05	231,140
f 15th Close 09.30.05	
Pannier, Laura B. IRA	<u>231,140</u>
Total f 15th Close 09.30.05	231,140
g 16th Close 11.07.05	
Donnan Ltd.	227,690
Ireland, Ellen S. IRA	<u>227,701</u>
Total g 16th Close 11.07.05	455,391
h 17th Close 12.07.05	
Hay Family LP	224,342
William Hay Decendents Trust	<u>224,342</u>
Total h 17th Close 12.07.05	448,683
i 18th Close 03.08.06	
Blake, Dexter B.	4,006
Blitz, Craig	1,590
JJD Consultants, LLC	801
Portera, Michael	1,199
Regnery, George	801
Shenoy, Allan	<u>801</u>
Total i 18th Close 03.08.06	9,198

Allen, Laurence
ACP, X LP Balance Sheet ^[A]
As of December 31, 2016

j 19th Close 04.10.06	
D Burrows fka B Stollman Trust	198,556
Four O Group, LLC	224,207
Kamar J. Fabri Co., Inc.	224,207
The Wolphin Group	448,413
Total j 19th Close 04.10.06	1,095,383
k 20th Close 05.04.06	
Borovoy, Joyce	224,714
Brentwood Trust	89,886
Burrows, David	249,763
Fara J. Messana Trust	224,714
Greg & Julia Schecter Rev Trust	89,886
Harriet Brent Trust	224,849
Janower Partnership III	224,714
Jason Zimmerman Living Trust	44,943
Kahn Family, LLC	119,819
Mark Kahn Trust	329,579
Michael B. Serling Rev. Trust	224,714
Robert V. Schecter Living Trust	179,771
Schecter, Marc R.	89,886
Zimmerman, Richard B.	44,953
Total k 20th Close 05.04.06	2,362,191
l 21st Close 07.05.06	
Garon, Larry	225,063
Total l 21st Close 07.05.06	225,063
Partner's Distributions	(6,145,679)
Gary L. Ran	661
LP's Capital - Other	58,796
Total LP's Capital	5,795,326
Retained Earnings	13,853,479
Net Income	8,323,162
Total Equity	25,981,133
TOTAL LIABILITIES & EQUITY	\$ 26,218,336

Notes:

[A] Per ACP X, LP QuickBooks.

Allen, Laurence
Calculation of Preferred Return Balance

Month End	LP Unreturned Capital Balance [A]	8% Annual Rate	Preferred Return for Month	Preferred Return Balance
4/30/2004	\$ (252,500)	0.00667	\$ (1,683)	\$ (1,683)
5/31/2004	(355,000)	0.00667	(2,367)	(4,050)
6/30/2004	(386,670)	0.00667	(2,578)	(6,628)
7/31/2004	(386,670)	0.00667	(2,578)	(9,206)
8/31/2004	(411,670)	0.00667	(2,744)	(11,950)
9/30/2004	(381,395)	0.00667	(2,543)	(14,493)
10/31/2004	(381,395)	0.00667	(2,543)	(17,035)
11/30/2004	(876,395)	0.00667	(5,843)	(22,878)
12/31/2004	(1,404,621)	0.00667	(9,364)	(32,242)
1/31/2005	(1,504,394)	0.00667	(10,029)	(42,271)
2/28/2005	(1,504,394)	0.00667	(10,029)	(52,301)
3/31/2005	(1,601,081)	0.00667	(10,674)	(62,975)
4/30/2005	(2,151,081)	0.00667	(14,341)	(77,315)
5/31/2005	(2,151,081)	0.00667	(14,341)	(91,656)
6/30/2005	(4,193,940)	0.00667	(27,960)	(119,615)
7/31/2005	(4,193,940)	0.00667	(27,960)	(147,575)
8/31/2005	(4,293,940)	0.00667	(28,626)	(176,201)
9/30/2005	(4,379,405)	0.00667	(29,196)	(205,397)
10/31/2005	(6,723,405)	0.00667	(44,823)	(250,220)
11/30/2005	(7,023,405)	0.00667	(46,823)	(297,043)
12/31/2005	(8,364,904)	0.00667	(55,766)	(352,809)
1/31/2006	(8,174,411)	0.00667	(54,496)	(407,305)
2/28/2006	(8,174,411)	0.00667	(54,496)	(461,801)
3/31/2006	(8,085,288)	0.00667	(53,902)	(515,703)
4/30/2006	(8,835,288)	0.00667	(58,902)	(574,605)
5/31/2006	(10,395,288)	0.00667	(69,302)	(643,906)
6/30/2006	(10,311,325)	0.00667	(68,742)	(712,649)
7/31/2006	(10,448,894)	0.00667	(69,659)	(782,308)
8/31/2006	(10,448,894)	0.00667	(69,659)	(851,967)
9/30/2006	(10,673,436)	0.00667	(71,156)	(923,123)
10/31/2006	(10,673,436)	0.00667	(71,156)	(994,280)
11/30/2006	(10,673,436)	0.00667	(71,156)	(1,065,436)
12/31/2006	(10,663,735)	0.00667	(71,092)	(1,136,527)
1/31/2007	(10,663,735)	0.00667	(71,092)	(1,207,619)
2/28/2007	(10,663,735)	0.00667	(71,092)	(1,278,711)
3/31/2007	(10,263,684)	0.00667	(68,425)	(1,347,135)
4/30/2007	(10,263,684)	0.00667	(68,425)	(1,415,560)
5/31/2007	(12,780,909)	0.00667	(85,206)	(1,500,766)
6/30/2007	(12,576,631)	0.00667	(83,844)	(1,584,610)
7/31/2007	(12,576,631)	0.00667	(83,844)	(1,668,454)
8/31/2007	(12,576,631)	0.00667	(83,844)	(1,752,298)
9/30/2007	(12,576,631)	0.00667	(83,844)	(1,836,143)
10/31/2007	(12,576,631)	0.00667	(83,844)	(1,919,987)

Allen, Laurence
Calculation of Preferred Return Balance

Month End	LP Unreturned Capital Balance [A]	8% Annual Rate	Preferred Return for Month	Preferred Return Balance
11/30/2007	(14,831,531)	0.00667	(98,877)	(2,018,864)
12/31/2007	(14,785,283)	0.00667	(98,569)	(2,117,432)
1/31/2008	(14,785,283)	0.00667	(98,569)	(2,216,001)
2/29/2008	(14,785,283)	0.00667	(98,569)	(2,314,569)
3/31/2008	(14,008,781)	0.00667	(93,392)	(2,407,961)
4/30/2008	(14,008,781)	0.00667	(93,392)	(2,501,353)
5/31/2008	(14,008,781)	0.00667	(93,392)	(2,594,745)
6/30/2008	(14,008,781)	0.00667	(93,392)	(2,688,137)
7/31/2008	(14,008,781)	0.00667	(93,392)	(2,781,529)
8/31/2008	(14,008,781)	0.00667	(93,392)	(2,874,921)
9/30/2008	(15,708,781)	0.00667	(104,725)	(2,979,646)
10/31/2008	(15,710,781)	0.00667	(104,739)	(3,084,384)
11/30/2008	(15,710,781)	0.00667	(104,739)	(3,189,123)
12/31/2008	(13,799,658)	0.00667	(91,998)	(3,281,121)
1/31/2009	(13,799,658)	0.00667	(91,998)	(3,373,118)
2/28/2009	(13,799,658)	0.00667	(91,998)	(3,465,116)
3/31/2009	(13,799,658)	0.00667	(91,998)	(3,557,114)
4/30/2009	(13,799,658)	0.00667	(91,998)	(3,649,111)
5/31/2009	(13,799,658)	0.00667	(91,998)	(3,741,109)
6/30/2009	(13,799,658)	0.00667	(91,998)	(3,833,107)
7/31/2009	(13,799,658)	0.00667	(91,998)	(3,925,105)
8/31/2009	(13,799,658)	0.00667	(91,998)	(4,017,102)
9/30/2009	(13,799,658)	0.00667	(91,998)	(4,109,100)
10/31/2009	(13,799,658)	0.00667	(91,998)	(4,201,098)
11/30/2009	(13,799,658)	0.00667	(91,998)	(4,293,096)
12/31/2009	(13,799,658)	0.00667	(91,998)	(4,385,093)
1/31/2010	(13,799,658)	0.00667	(91,998)	(4,477,091)
2/28/2010	(13,799,658)	0.00667	(91,998)	(4,569,089)
3/31/2010	(13,799,658)	0.00667	(91,998)	(4,661,086)
4/30/2010	(13,799,658)	0.00667	(91,998)	(4,753,084)
5/31/2010	(13,799,658)	0.00667	(91,998)	(4,845,082)
6/30/2010	(13,799,658)	0.00667	(91,998)	(4,937,080)
7/31/2010	(13,799,658)	0.00667	(91,998)	(5,029,077)
8/31/2010	(13,799,658)	0.00667	(91,998)	(5,121,075)
9/30/2010	(13,455,288)	0.00667	(89,702)	(5,210,777)
10/31/2010	(13,455,288)	0.00667	(89,702)	(5,300,479)
11/30/2010	(13,455,288)	0.00667	(89,702)	(5,390,181)
12/31/2010	(13,455,288)	0.00667	(89,702)	(5,479,883)
1/31/2011	(13,455,288)	0.00667	(89,702)	(5,569,585)
2/28/2011	(13,455,288)	0.00667	(89,702)	(5,659,287)
3/31/2011	(13,455,288)	0.00667	(89,702)	(5,748,988)
4/30/2011	(13,455,288)	0.00667	(89,702)	(5,838,690)
5/31/2011	(13,455,288)	0.00667	(89,702)	(5,928,392)

Allen, Laurence
Calculation of Preferred Return Balance

Month End	LP Unreturned Capital Balance [A]	8% Annual Rate	Preferred Return for Month	Preferred Return Balance
6/30/2011	(13,455,288)	0.00667	(89,702)	(6,018,094)
7/31/2011	(13,455,288)	0.00667	(89,702)	(6,107,796)
8/31/2011	(13,455,288)	0.00667	(89,702)	(6,197,498)
9/30/2011	(13,110,919)	0.00667	(87,406)	(6,284,904)
10/31/2011	(13,110,919)	0.00667	(87,406)	(6,372,310)
11/30/2011	(13,110,919)	0.00667	(87,406)	(6,459,716)
12/31/2011	(13,110,919)	0.00667	(87,406)	(6,547,123)
1/31/2012	(13,110,949)	0.00667	(87,406)	(6,634,529)
2/29/2012	(13,110,949)	0.00667	(87,406)	(6,721,935)
3/31/2012	(13,110,949)	0.00667	(87,406)	(6,809,342)
4/30/2012	(13,110,949)	0.00667	(87,406)	(6,896,748)
5/31/2012	(13,110,949)	0.00667	(87,406)	(6,984,154)
6/30/2012	(12,594,396)	0.00667	(83,963)	(7,068,117)
7/31/2012	(12,594,396)	0.00667	(83,963)	(7,152,079)
8/31/2012	(12,594,396)	0.00667	(83,963)	(7,236,042)
9/30/2012	(12,594,396)	0.00667	(83,963)	(7,320,005)
10/31/2012	(12,594,396)	0.00667	(83,963)	(7,403,967)
11/30/2012	(12,594,396)	0.00667	(83,963)	(7,487,930)
12/31/2012	(10,887,807)	0.00667	(72,585)	(7,560,515)
1/31/2013	(10,875,550)	0.00667	(72,504)	(7,633,019)
2/28/2013	(10,875,550)	0.00667	(72,504)	(7,705,523)
3/31/2013	(10,875,550)	0.00667	(72,504)	(7,778,026)
4/30/2013	(10,875,550)	0.00667	(72,504)	(7,850,530)
5/31/2013	(10,875,550)	0.00667	(72,504)	(7,923,034)
6/30/2013	(10,887,807)	0.00667	(72,585)	(7,995,619)
7/31/2013	(10,887,807)	0.00667	(72,585)	(8,068,205)
8/31/2013	(10,887,807)	0.00667	(72,585)	(8,140,790)
9/30/2013	(10,887,807)	0.00667	(72,585)	(8,213,375)
10/31/2013	(10,887,807)	0.00667	(72,585)	(8,285,961)
11/30/2013	(10,887,807)	0.00667	(72,585)	(8,358,546)
12/31/2013	(8,357,371)	0.00667	(55,716)	(8,414,262)
1/31/2014	(8,357,371)	0.00667	(55,716)	(8,469,978)
2/28/2014	(8,357,371)	0.00667	(55,716)	(8,525,693)
3/31/2014	(8,357,371)	0.00667	(55,716)	(8,581,409)
4/30/2014	(8,357,371)	0.00667	(55,716)	(8,637,125)
5/31/2014	(8,357,371)	0.00667	(55,716)	(8,692,841)
6/30/2014	(8,357,371)	0.00667	(55,716)	(8,748,557)
7/31/2014	(8,001,124)	0.00667	(53,341)	(8,801,898)
8/31/2014	(8,001,124)	0.00667	(53,341)	(8,855,238)
9/30/2014	(7,290,901)	0.00667	(48,606)	(8,903,844)
10/31/2014	(7,290,901)	0.00667	(48,606)	(8,952,450)
11/30/2014	(7,290,901)	0.00667	(48,606)	(9,001,056)
12/31/2014	(7,290,901)	0.00667	(48,606)	(9,049,662)

Allen, Laurence
Calculation of Preferred Return Balance

Month End	LP Unreturned Capital Balance [A]	8% Annual Rate	Preferred Return for Month	Preferred Return Balance
1/31/2015	(7,290,901)	0.00667	(48,606)	(9,098,268)
2/28/2015	(7,290,901)	0.00667	(48,606)	(9,146,874)
3/31/2015	(6,795,334)	0.00667	(45,302)	(9,192,177)
4/30/2015	(6,795,334)	0.00667	(45,302)	(9,237,479)
5/31/2015	(6,795,334)	0.00667	(45,302)	(9,282,781)
6/30/2015	(6,795,334)	0.00667	(45,302)	(9,328,083)
7/31/2015	(6,795,334)	0.00667	(45,302)	(9,373,386)
8/31/2015	(6,795,334)	0.00667	(45,302)	(9,418,688)
9/30/2015	(6,795,334)	0.00667	(45,302)	(9,463,990)
10/31/2015	(6,101,572)	0.00667	(40,677)	(9,504,667)
11/30/2015	(6,088,505)	0.00667	(40,590)	(9,545,257)
12/31/2015	(6,050,669)	0.00667	(40,338)	(9,585,595)
1/31/2016	(6,050,669)	0.00667	(40,338)	(9,625,933)
2/29/2016	(6,050,669)	0.00667	(40,338)	(9,666,271)
3/31/2016	(6,050,669)	0.00667	(40,338)	(9,706,608)
4/30/2016	(6,050,669)	0.00667	(40,338)	(9,746,946)
5/31/2016	(6,050,669)	0.00667	(40,338)	(9,787,284)
6/30/2016	(6,050,669)	0.00667	(40,338)	(9,827,622)
7/31/2016	(6,050,669)	0.00667	(40,338)	(9,867,960)
8/31/2016	(6,050,669)	0.00667	(40,338)	(9,908,297)
9/30/2016	(6,050,669)	0.00667	(40,338)	(9,948,635)
10/31/2016	(5,785,503)	0.00667	(38,570)	(9,987,205)
11/30/2016	(5,795,326)	0.00667	(38,636)	(10,025,841)
12/31/2016	(5,795,326)	0.00667	(38,636)	(10,064,476)

Notes:

[A] Monthly unreturned capital balance for all LPs per QuickBooks.

Allen, Laurence
 ACP, X LP Carried Interest Paid ^[A]
 For the Period of January 31, 2014 through April 25, 2017

	Type	Date	Num	Adj Name	Memo	Clr	Split	Debit	Credit	Balance	
Allen Partners X (GP) Capital											
CI Allocation											
	General Journal	01/31/2014	CI		3rd Amendment		Merrill Lynch 2SD-02007	\$ 700,000 00		\$ (700,000 00)	
	General Journal	01/31/2014	CI		3rd Amendment		RBC Cash Account 836-00021	100,000 00		(800,000 00)	
	General Journal	02/28/2014	CI		3rd Amendment		People's - Operating Account	387,947 43		(1,187,947 43)	
	General Journal	11/17/2015	CI		4th Amendment		People's - Operating Account	549,526 12		(1,737,473 55)	
	General Journal	11/17/2015	CI		4th Amendment		People's - Operating Account	45,000 00		(1,782,473 55)	
	General Journal	04/25/2017	carried int		5th amendment		RBC Cash Account 836-00021	1,621,993 00		(3,404,466 55)	
	Total CI Allocation							<u>3,404,466 55</u>	-		<u>(3,404,466 55)</u>
	Total Allen Partners X (GP) Capital							<u>3,404,466 55</u>	-		<u>(3,404,466 55)</u>
TOTAL								\$ 3,404,466.55	\$ -		\$ (3,404,466.55)

Notes:

[A] Per ACP X, LP QuickBooks

OS Received 07/08/2022

EXHIBIT N

-Proceedings-

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1 whether or not that value is close to that number?

2 A Not as part of my assignment, no.

3 MR. D'ANGELO: Okay. Your Honor, I'm going to move
4 to strike this expert's testimony, as well as his report.
5 It is entirely irrelevant. There's no valuation, quite
6 frankly and it is speculative, at best.

7 The witness has just indicated, your Honor, that he
8 doesn't know if NYPPEX could be valued at 30 million or
9 more.

10 So we're going to move to strike at this time, your
11 Honor.

12 THE COURT: Okay. That is denied.

13 I have a couple of questions Mr. Dolgoff.

14 THE COURT: Is it correct that what Mr. Volkmann
15 did was to accept NYPPEX's representations about base case
16 for years 2019 and 2020.

17 THE WITNESS: Yes, that's correct, your Honor.

18 THE COURT: The base case may or may not have borne
19 any relationship to realty, correct?

20 THE WITNESS: That's correct. I think Mr. Volkmann
21 agreed that it was, in his word, optimistic.

22 THE COURT: Well, it was optimistic because the
23 base case was a multiple by a factor of 15, or 20, or 25 of
24 what historical performance had been, correct?

25 MR. D'ANGELO: We are going to object, your Honor.

dar

-Proceedings-

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1 The witness testified he did not review any of the
2 documents, so he doesn't know.

3 THE WITNESS: Correct.

4 THE COURT: I'm asking him some questions. You
5 can't object to my questions.

6 MR. D'ANGELO: I'm not objecting to your questions,
7 your Honor. Let me be clear.

8 My objection is that the witness has testified he
9 has no direct independent knowledge of any of the backup
10 that was contained in the four corners of the Volkmann
11 report and what he relied on in making his valuation.

12 I'm not objecting to your question. I'm objecting
13 to the way he's answering because he has no personal
14 knowledge of it.

15 THE COURT: Okay. Are you familiar with the
16 accounting principle SISO?

17 THE WITNESS: SISO? No, that one I am not familiar
18 with.

19 THE COURT: Shit in, shit out?

20 THE WITNESS: Now I am, yes.

21 THE COURT: Okay.

22 I don't have any other questions.

23 Do you have any questions Mr. Zweig?

24 MR. ZWEIG: No, your Honor. I think you covered
25 it.

dar

-Proceedings-

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1 THE COURT: Okay. You're excused Mr. Dolgoff.
2 Thank you for your testimony.

3 MR. D'ANGELO: I want to note my objection for the
4 record as to shit in shit out term. That is not -- we don't
5 want to impune the record or color the testimony. I'm not
6 familiar with that term.

7 THE COURT: Okay. That is his testimony. He's not
8 familiar with that term.

9 So, we'll resume at 9:30 tomorrow.

10 MR. ZWEIG: Sorry to interpret, your Honor.

11 THE COURT: Do you have questions?

12 MR. ZWEIG: I had a procedural question for your
13 Honor. I want to make sure I ask you a process question
14 before we went off the record.

15 THE COURT: Mr. Dolgoff, you can sign off. Thank
16 you.

17 THE WITNESS: Thank you.

18 MR. ZWEIG: Thank you Mr. Dolgoff.

19 Your Honor, my question for you was, we wanted to
20 make sure to have the opportunity to answer in full and with
21 full consideration to the questions that your Honor raised
22 at the beginning of trial a couple of days ago; related to
23 the Martin Acts applicability and the statute of
24 limitations.

25 Our intent, if your Honor permits us, is to file a
dar

EXHIBIT O

-Cross-D. Minberg/by Mr. D'Angelo-

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1 Q Did you provide any documents to the Attorney General's
2 Office regarding the percentage of your return on capital?

3 A Prior to my appearing in this court approximately one
4 year ago, I believe I had provided to the Attorney General a
5 schedule of the distributions that I had received from ACP.

6 Q Did you ever speak to a Mr. Joseph Pope directly?

7 A I think you asked me that yesterday and my answer is
8 still no.

9 Q Okay. Thank you.

10 And you testified yesterday that you first made
11 communication with the Attorney General's Office in 2019, is
12 that accurate?

13 A I think that is accurate. That is my best recollection
14 at this time, yes.

15 Q And that was after Mr. Allen disclosed the Attorney
16 General's investigation to you?

17 THE COURT: That is the fourth time that you've
18 asked this question Mr. D'Angelo.

19 MR. D'ANGELO: I'm sorry, your Honor?

20 Hello.

21 THE COURT: Yes.

22 MR. D'ANGELO: Sorry, I thought I cut out there.

23 (Pausing.)

24 Q Are you aware that your return on capital would be
25 close to 200 percent if NYPPEX sells for \$0.87 per share?

dar

-Redirect/D. Minberg/by Ms. Grodin-

191

1 THE COURT: If pigs had wings they could fly.

2 Let's ask a question of the fact witness about facts.

3 Q Okay.

4 You also had testified, Mr. Minberg, that you had
5 tried to communicate with Mr. Allen about certain questions you
6 had about the fund, correct?

7 A That's correct.

8 Q Are any of those communications in writing?

9 THE COURT: This is the third time you've asked him
10 that question. Can we get onto something substantive?

11 MR. D'ANGELO: Your Honor, I'm trying to build the
12 timeline here as to when Mr. Minberg first went to the
13 Attorney General, which is clear that it is after a
14 conversation or discussion that he had with Mr. Allen; and
15 at this time we're going to move to strike Mr. Minberg's
16 affidavit from the record because it relates entirely to
17 facts that occurred after the Preliminary Injunction hearing
18 and are completely irrelevant to this proceeding.

19 So I have no further questions for Mr. Minberg.

20 THE COURT: All right.

21 MS. GRODIN: Your Honor, may I briefly ask one
22 single re-direct question please?

23 THE COURT: Go ahead.

24 REDIRECT EXAMINATION

25 BY MS. GRODIN:

dar

EXHIBIT P

Redirect/P. Speyer/by Mr. D'Angelo-

537

1 can think of off the top of my head.

2 Q And how large were those funds?

3 A Some of the funds would be somewhat small, maybe in the
4 250 to 300 million range; some of them were roughly 750 million
5 of committed capital.

6 Q Okay. And what can you tell me about the specialized
7 formation of private equity funds?

8 A Well, in the private equity world, we often see the
9 fund itself; but the fund doesn't really operate the business,
10 if you will. There's usually the general partner to the fund,
11 which is required, of course, because we have a limited
12 partnership and, you know, even in accounting we know that we
13 have to have a general partner and their return;

14 So we have a general partner and then often there is a
15 management company which houses employees which will use the
16 time during the day to provide services to the fund, the general
17 partner; and within that management entity may or may not be the
18 investment advisory group, they may be housed in a different
19 entity.

20 So typically you're looking at least three entities, if
21 not four or five that operate the fund itself, if you will.

22 And do you need more clarification on that?

23 Q Sure. If you could please elucidate us on how these
24 funds work and how they are structured and set up?

25 A All right.

dar

Redirect/P. Speyer/by Mr. D'Angelo-

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1 Well, there is the private equity fund itself. And
2 that is the entity that would go out and raise money from the
3 limited partners, or the investors, the people with the money.
4 They would come into that. There would also be a general
5 partner to that.

6 Members of the general partner were often times, and
7 most usual times also members of the management entity, a
8 separate entity, which was the entity that would provide
9 services to the fund, such as bookkeeping so that financial
10 statements could be issued, tax return and K-1s could be issued,
11 internal reports to the investor, you know, tracking the
12 investments and such like that.

13 Then there also usually is an advisory group often in
14 another entity.

15 THE COURT: All right, Mr. Speyer, I appreciate the
16 tutorial. It is not relevant to anything in this case.

17 MR. D'ANGELO: Your Honor, it is relevant to the
18 structure of this secondary market private equity fund that
19 is at issue here. That is the purpose of his expert
20 testimony. These are sui generis and unique formulations
21 which Mr. Speyer is opining on and providing expert
22 testimony on as an expert in the private equity.

23 THE COURT: I just looked at Mr. Speyer's affidavit
24 and this is way, way, way outside the scope of his
25 affidavit; and way, way, way outside the scope of your

dar

Redirect/P. Speyer/by Mr. D'Angelo-

539

1 re-direct.

2 So, thank you, very much for your testimony.

3 Mr. D'Angelo, call your next witness.

4 MR. D'ANGELO: Your Honor, we're getting into what
5 we -- what he saw.

6 He reviewed the underlying PPM and LPA documents.
7 That is what we are getting in. That is what he testified
8 on cross-examination.

9 THE COURT: That is an issue of law for me, Mr.
10 D'Angelo; and, respectfully, what Mr. Speyer was able to
11 review in a 24-hour period, or 36-hour period, excluding the
12 time he spent sleeping, is really not probative of anything
13 in this case.

14 So, Mr. Speyer you're excused and let's call your
15 next witness.

16 You have your objection, Mr. D'Angelo.

17 MR. D'ANGELO: No. No. It is beyond an objection,
18 your Honor.

19 Mr. Speyer was retained to elucidate these issues
20 for us and we're talking about formation documents; the PPM
21 is not a very long document. The LPA is not a very long
22 document. To the extent--

23 THE COURT: I understand those documents and what
24 the legal consequences of those documents are and I don't
25 need any further assistance from Mr. Speyer.

dar

EXHIBIT Q

Proceedings

21

1 THE COURT: Respectfully, these constant requests
2 for delay have reached a point where they can no longer be
3 agreed to by the Court. This was a case that was supposed
4 to be ready to go to trial in June of 2020 after an
5 extensive preliminary injunction hearing took place in
6 February of 2020. We moved the trial back a couple of
7 times, and now we are moving it to January 11.

8 It is just going to be incumbent upon you,
9 Mr. Kim, and your client Mr. Allen and your clients the
10 partnerships to meet whatever deadlines need to be met in
11 advance of the January 11 trial. And there is really not a
12 great deal that I expect to learn beyond that which was
13 presented at the preliminary injunction trial, but you'll
14 have had by January 11 almost a full year to organize the
15 trial presentation.

16 So, we are going forward on the basis outlined in
17 the transcript of proceedings today. If you will work with
18 the Office of the Attorney General I am sure you can work
19 out reasonable deadlines for everything that needs to be
20 done.

21 I don't anticipate that you are going to have a
22 huge volume of witnesses whose testimony has to be
23 memorialized in affidavits. And you have had a full year
24 within which to secure an expert, if you don't already have
25 one, and exchange expert reports with the Office of the

Rachel C. Simone, CSR, RMR, CRR

EXHIBIT R

Proceedings

1 testimony I think from nine or ten witnesses. At least
2 certain of those witnesses, investor witnesses, were from
3 out of state. Others were -- I think one was from New
4 York State.

5 Is it fair to say that we will be able to rely
6 on the testimony from the investor witnesses taken at the
7 preliminary injunction hearing for the trial or would it
8 be your intention to present those witnesses live again?

9 THE COURT: We're going to have a preliminary
10 trial and the prior testimony of the witnesses at the
11 preliminary injunction hearing isn't necessarily admissible
12 at the trial but I would suggests to the Office of the
13 Attorney General that you don't need nine or ten investor
14 witnesses to appear at trial without prejudging anything.
15 It became cumulative, the testimony.

16 MS. GRODIN: Understood, your Honor.

17 MR. BORSTEIN: I of course disagree with that,
18 your Honor. There are 75 limited partners. They put on
19 five. Four of the five I think I destroyed but again the
20 Court did not see it my way but I did, and cumulative, that
21 means the 70 that didn't testify would be the majority by
22 far and I don't agree at all with what was being said here.

23 THE COURT: Okay. Well, Mr. Allen is free to
24 produce either -- they had no issue whatsoever in the
25 manner in which the general partner managed the limited

KATHY Y. JONES, OFFICIAL COURT REPORTER

EXHIBIT S

-Redirect/L. Allen/by Mr. D'Angelo-

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1 Q Is that accurate?

2 A Yes.

3 Q Is there activity on the NYPPEX site?

4 A Mr. Guiva's software is what we call Version 4.0. We
5 are in the process of deploying that. We're still using our 3.0
6 Version.

7 Q Could you demonstrate to us how the NYPPEX platform
8 works?

9 A Sure.

10 Q And we're going to bring up on the screen the website.
11 You need personalized login credentials to do that. We're going
12 to bring up the site and try to show the Court how it works.

13 MS. GRODIN: Your Honor, I'm going to object to
14 this.

15 THE COURT: Okay. I have a very good understanding
16 of how it works.

17 MR. D'ANGELO: Okay. Your Honor, have you been on
18 the site.

19 THE COURT: No, I have not, but I have a very good
20 understanding of how it works.

21 It is a platform that facilitates trading in
22 secondary trading in private equity firms and it runs on
23 \$44,000 of software that Mr. Guiva provided to NYPPEX.

24 Q Is that accurate, Mr. Allen, what the Judge just said,
25 or do you need to clarify how the platform works?

dar

-Redirect/L. Allen/by Mr. D'Angelo-

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1 A Well, your Honor, I agree with the first portion of
2 what you said; but, again, we've not transitioned to Mr. Guiva's
3 platform yet.

4 Q Okay. The Judge made a specific statement about the
5 amount of money used. Could you tell us specifically how the
6 NYPPEX site is revolutionary?

7 A Well, I was prepared to give an example of the European
8 financial institution client; where the first step is designing
9 the transfer instructions for that financial institution. And
10 if you can imagine, if the buyer is located in one of the number
11 of European countries there needs to be specific regulatory
12 knowledge of each country, specific tax knowledge of each
13 country. And then the process gets implemented and buyers get
14 invited, unlike a public Stock Exchange where everybody seeks
15 the offerings and prices.

16 With our system you need to be invited to see a
17 particular private equity offering. Upon signing a
18 nondisclosure agreement, which includes knowledge of where the
19 site is, then a prospective buyer gets introduced to the deal,
20 he sees the deal documents under password protected site.

21 And it is a bit like, if you were to attempt to sell
22 your home online, I would say that is an analogy with our
23 process.

24 Q So it's a little more than what the Judge just
25 represented about some capital being used for technology, is it

dar

-Redirect/L. Allen/by Mr. D'Angelo-

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1 is not?

2 A In my opinion, yes.

3 Q And does this platform speed up private equity
4 transactions, essentially creating a new market in the field?

5 A Yes. Before NYPPEX a private client, with an
6 investment of under \$5 million, would have a very difficult time
7 obtaining liquidity in the secondary transfer process.

8 One of things we pioneered was the ability to provide
9 liquidity to investors that had had less than \$5 million
10 investment in a private equity fund.

11 Q Thank you.

12 And you gave some testimony about Louis Almerini. Do
13 you know who that is?

14 A Yes.

15 Q And you told Ms. Grodin about some of the committees
16 that you work under. Could you tell us about how many
17 committees you're in and how they operate?

18 A Well, we refer to them as oversight committees. And
19 the basis to which we've set up those committees, years ago, was
20 we intended for NYPPEX Holdings to become a publicly traded
21 company some day. And one of the requirements of a publicly
22 traded company is representations by the CEO and CFO that
23 financial statements and other representations are accurate, not
24 misleading, et cetera.

25 So, we have emphasized developing culture were

dar