

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NYPPEX, LLC (CRD No. 47654),  
LAURENCE ALLEN (CRD No. 1063970),  
and  
MICHAEL SCHUNK (CRD No. 732595),

Respondents.

Disciplinary Proceeding  
No. 2019064813801

Hearing Officer—DRS

**ORDER GRANTING, IN PART, ENFORCEMENT'S MOTION FOR INTERIM  
CONDITIONS AND RESTRICTIONS ON RESPONDENTS**

**I. Introduction**

On August 26, 2022, the Extended Hearing Panel issued its decision in this disciplinary proceeding (“Decision”).<sup>1</sup> The Panel found that the Department of Enforcement proved all charges alleged in the Complaint and imposed sanctions. It determined that NYPPEX, LLC (“NYPPEX” or “Firm”): (1) improperly permitted Laurence Allen to continue to associate with the Firm while statutorily disqualified, in violation of Article III, Section 3(b) of FINRA’s By-Laws and FINRA Rules 8311 and 2010;<sup>2</sup> (2) made misrepresentations and omissions of material facts to investors in connection with a securities offering, in violation of FINRA Rule 2010, independently and by violating on Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933;<sup>3</sup> (3) violated FINRA’s advertising standards in communications to prospective investors and in material posted on the Firm’s website, in violation of FINRA Rules 2210(d) and 2010;<sup>4</sup> (4) made false or misleading statements on the Firm’s website, in violation of FINRA Rules 2210(d), 2210(e), and 2010;<sup>5</sup> (5) failed to reasonably supervise Allen, in violation of FINRA Rules

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<sup>1</sup> *Dep’t of Enforcement v. NYPPEX, LLC*, No. 2019064813801, 2022 FINRA Discip. LEXIS 14 (OHO Aug. 26, 2022).

<sup>2</sup> *Id.* at \*72.

<sup>3</sup> *Id.* at \*85.

<sup>4</sup> *Id.* at \*89.

<sup>5</sup> *Id.* at \*91.

3110(a) and 2010;<sup>6</sup> (6) made false or misleading statements in response to FINRA requests for information, in violation of FINRA Rules 8210 and 2010;<sup>7</sup> and (7) failed to timely and completely respond to FINRA requests for information, in violation of FINRA Rules 8210 and 2010.<sup>8</sup>

The Panel also found that Allen: (1) improperly associated with the Firm for more than a year while statutorily disqualified, in violation of Article III, Section 3(b) of FINRA's By-Laws and FINRA Rule 2010;<sup>9</sup> (2) made misrepresentations and omissions of material facts to investors in connection with a securities offering, in violation of FINRA Rule 2010 independently and by violating on Sections 17(a)(1) and 17(a)(3) of the Securities Act of 1933;<sup>10</sup> (3) violated FINRA's advertising standards in communications to prospective investors and in material posted on the Firm's website, in violation of FINRA Rules 2210(d) and 2010;<sup>11</sup> (4) made false or misleading statements on the Firm's website, in violation of FINRA Rules 2210(d), 2210(e), and 2010;<sup>12</sup> (5) made false or misleading statements to a court and to FINRA, in violation of FINRA Rule 2010;<sup>13</sup> (6) made false or misleading statements in response to FINRA requests for information, in violation of FINRA Rules 8210 and 2010;<sup>14</sup> and (7) failed to timely and completely respond to FINRA requests for information, in violation of FINRA Rules 8210 and 2010.<sup>15</sup>

Finally, the Panel concluded that Michael Schunk (1) improperly permitted Allen to continue to associate with the Firm while statutorily disqualified, in violation of Article III, Section 3(b) of FINRA's By-Laws and FINRA Rules 8311 and 2010;<sup>16</sup> (2) failed to reasonably supervise Allen in violation of FINRA Rules 3110(a) and 2010;<sup>17</sup> and (3) made false or misleading statements in response to FINRA requests for information, in violation of FINRA Rules 8210 and 2010.<sup>18</sup>

The Panel expelled the Firm and barred Allen for their untimely and incomplete FINRA Rule 8210 responses. In in light of the expulsion and bar, the Panel imposed no additional

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<sup>6</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*99.

<sup>7</sup> *Id.* at \*101.

<sup>8</sup> *Id.* at \*104.

<sup>9</sup> *Id.* at \*71–72.

<sup>10</sup> *Id.* at \*85.

<sup>11</sup> *Id.* at \*88–89.

<sup>12</sup> *Id.* at \*91.

<sup>13</sup> *Id.* at \*92.

<sup>14</sup> *Id.* at \*100–01.

<sup>15</sup> *Id.* at \*104.

<sup>16</sup> *Id.* at \*72.

<sup>17</sup> *Id.* at \*97–99.

<sup>18</sup> *Id.* at \*100–01.

sanctions for their other violations.<sup>19</sup> The Panel also suspended Schunk in all capacities for two years, barred him from acting in a principal or supervisory capacity, and fined him \$120,000.<sup>20</sup>

Respondents appealed the Decision to the National Adjudicatory Counsel (“NAC”) on September 19, 2022.<sup>21</sup> The appeal automatically stayed the sanctions.<sup>22</sup> Four days later, on September 23, in a separate FINRA proceeding, the NAC denied the Firm’s Membership Continuance Application (“Application” or “MC-400”).<sup>23</sup> The Application requested that FINRA permit Allen, a statutorily disqualified person, to continue associating with the Firm as a general securities representative and a general securities principal.<sup>24</sup> The NAC’s decision in that proceeding became effective on September 23.<sup>25</sup>

On October 3, 2022, Enforcement moved for an order imposing interim conditions and restrictions on Respondents’ activities until FINRA’s final decision takes effect and all appeals are exhausted (“Motion”).<sup>26</sup> According to the Motion, NYPPEX is currently registered as a FINRA member firm; Schunk remains associated with the Firm as, among other things, a General Securities Principal; and Allen remains associated with the Firm, although his FINRA registrations were revoked on September 23, 2022.<sup>27</sup>

Enforcement requests that I impose 11 conditions and restrictions (detailed below) on Respondents—five relating to NYPPEX, and six applying to Allen and Schunk. Enforcement contends that these conditions and restrictions are reasonably necessary to prevent customer harm based on the risk posed by Respondents.

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<sup>19</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*136–37.

<sup>20</sup> *Id.* at \*138.

<sup>21</sup> Notice of Appeal of NYPPEX, LLC, Laurence Allen, and Michael Schunk (Sept. 19, 2022).

<sup>22</sup> Under FINRA Rule 9311(b), an appeal to the NAC from a decision issued under FINRA Rule 9268 operates as a stay of that decision until the NAC issues its decision. The Decision was issued under FINRA Rule 9268.

<sup>23</sup> *In the Matter of the Continued Association of Laurence Allen as a General Securities Representative and General Securities Principal with NYPPEX, LLC*, SD-2265 (Sept. 23, 2022), <https://www.finra.org/sites/default/files/2022-10/sd-2265-allen-092322.pdf>.

<sup>24</sup> *Id.* at 1.

<sup>25</sup> See FINRA Rule 9524(b)(3) (“A decision to deny . . . continued association shall be effective immediately.”).

<sup>26</sup> Department of Enforcement’s Motion for an Order Placing Interim Conditions and Restrictions on Respondents Pursuant to Rule 9285 (Oct. 3, 2022).

<sup>27</sup> Motion 4.

Respondents filed their opposition on October 17 (“Opposition”).<sup>28</sup> They claim that the requested conditions and restrictions are unnecessary and urge me to reject the “motion in its entirety, together with such other, further, and different relief as may seem just and proper.”<sup>29</sup>

On October 25, 2022, Enforcement notified the Office of Hearing Officers by email (and copied Respondents’ counsel) that on October 24, Allen, through counsel, appealed the NAC’s decision denying NYPPEX’s MC-400 application for Allen’s continued association, along with a motion to stay the termination of his association.

For the reasons below, I grant the Motion, in part. With one exception, I impose each of the requested conditions and restrictions on Respondents.

## **II. Legal Standards**

Enforcement seeks an order imposing interim conditions and restrictions on Respondents under FINRA Rule 9285(a)(1). That rule provides that if a respondent appeals a disciplinary decision finding that the respondent “violated a statute or rule provision,” Enforcement may move for an order imposing “conditions or restrictions on the activities” of the respondent “that are reasonably necessary for the purpose of preventing customer harm.” FINRA Rule 9285(a)(3) permits respondents to file an opposition or other response to the motion. Any such filing “shall explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm.” A Hearing Officer is authorized by the rule “to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm.”<sup>30</sup>

Since FINRA Rule 9285 became effective on April 15, 2021,<sup>31</sup> neither the NAC nor the Securities and Exchange Commission (“SEC”) has published any decisions applying it. So for guidance in deciding the Motion, I looked to their pronouncements in connection with the rule’s adoption. FINRA explained in Regulatory Notice 21-09 that the rule seeks to enhance investor protection by potentially preventing “associated persons and firms found to have violated a

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<sup>28</sup> Respondents’ Opposition to Enforcement’s Motion for an Order Placing Interim Conditions and Restrictions (Oct. 17, 2022).

<sup>29</sup> Opposition 7.

<sup>30</sup> FINRA Rule 9285(a)(5). Additionally, FINRA Rule 9285(e)(1) provides, among other things, that if an Extended Hearing Panel issues a decision under FINRA Rule 9268 finding that a respondent violated a statute or rule provision, then within 10 days of any party filing an appeal to the NAC, any member firm with which the respondent is associated must adopt a written plan of heightened supervision of the respondent, file it with FINRA’s Office of General Counsel, and serve a copy on Enforcement and the respondent.

<sup>31</sup> FINRA Regulatory Notice 21-09 (Mar. 2021), <https://www.finra.org/rules-guidance/notices/21-09>.

statute or rule from engaging in additional misconduct during the appeal process.” FINRA described the rule as adding “an interim layer of investor protection” during that period.<sup>32</sup>

For its part, the SEC stated in its order adopting the rule that the Hearing Officer should “target the misconduct demonstrated in the disciplinary proceeding” and tailor the conditions and restrictions “to the specific risks posed by the Respondents during the appeal period.”<sup>33</sup> As a result, according to the SEC, “the conditions and restrictions are not intended to be as restrictive as the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal.”<sup>34</sup>

### **III. Discussion**

Enforcement argues that its proposed conditions and restrictions meet the above standards. It claims that the conditions and restrictions (1) are not as restrictive as the sanctions imposed by the Panel; (2) are designed to avoid recurrence of the misconduct; (3) are reasonably necessary to prevent customer harm during the appeal process;<sup>35</sup> (4) target the misconduct demonstrated in the disciplinary proceeding;<sup>36</sup> and (5) “will allow Respondents to remain in the securities industry while the appeal is pending, but under conditions and restrictions designed to prevent customer harm.”<sup>37</sup>

Below, I list each proposed restriction or condition, along with Enforcement’s basis for the request. I then turn to Respondents’ opposition.

#### **A. Enforcement’s Proposed Conditions and Restrictions on NYPPEX**

##### **1. NYPPEX must be prohibited from offering, or participating in, private placements during the pendency of its appeal.**

Enforcement seeks this restriction to address (1) the misrepresentations and omissions of material fact made to prospective investors in connection with the securities offering for NYPPEX’s parent company; and (2) the violations of FINRA’s advertising standards in communications to prospective investors. According to Enforcement, preventing NYPPEX from offering or selling securities in private offerings addresses the exact misconduct that FINRA

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<sup>32</sup> *Id.* at 3.

<sup>33</sup> SR-FINRA-2020-011, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers With a Significant History of Misconduct, Exchange Act Release No. 34-90635, 85 Fed. Reg. 81540, 81542 (Dec. 16, 2020); *accord* FINRA Regulatory Notice 21-09.

<sup>34</sup> *Id.*

<sup>35</sup> Motion 1.

<sup>36</sup> Motion 5.

<sup>37</sup> Motion 6.

Rule 9285 aimed to prevent during the pendency of an appeal, and the proposed restriction is one of the four examples provided in FINRA's notice of filing for the proposed Rule.<sup>38</sup>

- 2. NYPPEX must adopt a plan of heightened supervision for Allen and Schunk that requires an independent and experienced Series 24 General Securities Principal ("Principal"), not unacceptable to FINRA, to directly supervise them. Neither Allen nor Schunk may supervise each other. The plan of heightened supervision must require, at a minimum, the Principal to: (1) conduct a weekly review of all email communications of Allen and Schunk, document his/her review in writing, and retain documentation of such review; (2) monitor and participate in every meeting or call that Allen and Schunk have with existing or potential customers or investors; and (3) review all correspondence with customers and retail investors (prospective and existing) prior to distribution.**

This condition purportedly addresses the same misconduct referenced above relating to Request No. 1 by having an independent and qualified Principal review Allen's and Schunk's communications with existing and potential customers and investors for potentially false or misleading statements.<sup>39</sup>

- 3. NYPPEX must designate an independent and experienced Principal, other than Allen or Schunk, to prepare the firm's responses to any inquiries or requests for information and documents made to the firm by FINRA, irrespective of whether such request is made pursuant to FINRA Rule 8210.**

Enforcement seeks this condition to address the violations relating to the false or misleading statements to FINRA in response to FINRA Rule 8210 requests and the failure to respond completely and timely to such requests. Enforcement argues that timely and complete cooperation with FINRA's requests are essential to FINRA's ability to discover and remediate misconduct and thereby protect investors. Enforcement argues that Allen and Schunk's misconduct relating to FINRA's document and information requests shows they cannot be trusted to comply with FINRA's requests truthfully and completely. As a result, Enforcement claims that to protect investors, the Firm must appoint an experienced and qualified Principal to respond to FINRA's regulatory inquiries and requests.

- 4. NYPPEX must designate an independent and experienced Principal, other than Allen or Schunk, to prepare and review any applications, including**

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<sup>38</sup> See SR-FINRA-2020-011, *Notice of Filing of a Proposed Rule Change*, Exchange Act Release No. 34-88600, 85 Fed. Reg. 20745, 20747-48 (Apr. 14, 2020).

<sup>39</sup> The record in this proceeding does not reflect whether NYPPEX, or any other member firm, has already adopted a written plan of heightened supervision of Allen and Schunk and complied with the other FINRA Rule 9285(e)(1) requirements. See n.30, above.

**MC-400 applications, prior to submission to FINRA. The Principal must document, and maintain evidence of, such review.**

Enforcement seeks this condition to address the risks posed by the statutory disqualification violations; Allen's false or misleading statements to a court; the false or misleading statements in response to FINRA Rule 8210 requests; and the failure to respond to FINRA Rule 8210 requests in a complete and timely manner. Enforcement submits that, like Request No. 3, this condition can directly prevent potential customer harm by ensuring that the Firm files timely, accurate, and complete information with FINRA, thus limiting the Firm's ability to mislead potential customers about the Firm, its associated persons, and its business.

- 5. NYPPEX must file with FINRA's Advertising Regulation Department at least 10 business days prior to use, all retail and institutional communications posted on the web or social media, as defined in FINRA Rule 2210(a) (the "filed communications").<sup>40</sup> After 10 business days, NYPPEX may use the filed communications in the absence of comments from FINRA. However, at any time, upon receipt of comments from FINRA on the filed communications, NYPPEX shall take all reasonable steps to withhold the material from further use until the changes specified by FINRA have been made, and such material will be revised and re-filed 10 business days prior to any use, unless otherwise agreed to by FINRA staff at its sole discretion.**

Enforcement requests this condition to address the failure to comply with FINRA's advertising standards in material posted on the Firm's website and the false or misleading statements on the Firm's website. Enforcement asserts that imposing this condition will prevent customer harm by ensuring that existing and potential customers, as well as the general public, are not misled about the Firm, its business, or the status of FINRA's regulatory reviews of the firm.

**B. Enforcement's Proposed Conditions and Restrictions on Allen and Schunk**

- 1. Allen and Schunk must be prohibited from offering, or participating in, private placements during the pendency of the appeal.**

Enforcement requests this restriction for the same reasons it requested that I impose this restriction on the Firm.

- 2. While associating with NYPPEX or any other FINRA member firm, Allen and Schunk must be subject to a plan of heightened supervision that requires, at minimum, an independent and experienced Principal to: (1) conduct a weekly review of their email communications (with the Principal**

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<sup>40</sup> Motion 7. The 10-business day period shall commence on the date of transmission with respect to filed communications that NYPPEX successfully uploads to FINRA's Advertising Regulation Electronic Filing (AREF) system. *Id.*

**documenting and maintaining evidence of the review); (2) monitor and participate in every meeting or call that Allen or Schunk has with existing or potential customers or investors; and (3) review all correspondence of Allen and Schunk with customers and retail investors (prospective or existing) prior to distribution.**

According to Enforcement, this condition is tailored to the misrepresentations and omissions made to prospective investors in connection with the securities offering for NYPPEX's parent company; Allen's violations of FINRA's advertising standards in communications to prospective investors; and Schunk's failure to supervise Allen. Enforcement also maintains that the condition will prevent Allen and Schunk from harming customers by making false or misleading statements to existing or potential customers, and, in Schunk's case, by failing to supervise such misconduct.

- 3. Allen and Schunk must be prohibited from responding to FINRA's inquiries and requests for information and documents (irrespective of whether such request is made pursuant to FINRA Rule 8210) made to NYPPEX or any other FINRA member firm, unless a designated Principal or compliance person reviews the response and documents the completion of such review prior to submission to FINRA.<sup>41</sup>**

Enforcement contends that this condition is tailored to address the violations relating to Allen's false or misleading statements to a court and to FINRA; Schunk's failure to reasonably supervise Allen; their false or misleading statements in response to FINRA Rule 8210 requests; and Allen's failure to respond to FINRA Rule 8210 requests in a complete and timely manner. Like the proposed conditions for NYPPEX, according to Enforcement, this condition serves to prevent potential harm to customers by limiting Allen and Schunk's ability of to impede FINRA's inquiries and investigations into potential fraud through false, misleading, incomplete, or untimely responses to FINRA.

- 4. Allen and Schunk must be prohibited from submitting to FINRA any applications on behalf of NYPPEX or a FINRA member firm, unless a designated Principal or compliance person reviews the response and documents the completion of such review.**

Enforcement maintains that this condition, like the similar one for NYPPEX, is tailored to address the misconduct found in connection with the statutory disqualification violations; Allen's false or misleading statements to a court; Schunk's failure to reasonably supervise Allen; their false or misleading statements in response to FINRA Rule 8210 requests; and Allen's failure to respond to FINRA Rule 8210 requests in a complete and timely manner. Enforcement

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<sup>41</sup> Nothing in the proposed interim conditions or restrictions would prohibit Allen or Schunk from responding to FINRA inquiries and requests for information and documents *addressed to them personally*.



also claims that imposing this condition will prevent potential customer harm by restricting Allen and Schunk from filing false and misleading information with FINRA.

**5. Allen and Schunk must be prohibited from supervising any associated person requiring heightened supervision or that is subject to a statutorily disqualifying event.**

According to Enforcement, this restriction relates to all causes of action because Allen and Schunk's failure to respond properly to a statutorily disqualifying event for an associated person, including by failing to supervise that person, led directly to all the misconduct found by the Panel. Continuing, Enforcement asserts that such supervisory failures may potentially harm the investing public by allowing additional misconduct (including misrepresentations and omissions to potential investors, the public, and to FINRA) to occur, as it did in this case.

**6. Allen and Schunk must be required to re-take and pass the General Securities Representative Qualification Exam and General Securities Principal Qualification Exam (also known as the Series 7 and 24 exams, respectively), within 90 days of the filing of their appeal on September 19, 2022.**

Enforcement requests that I impose this condition on Allen because the Panel found that he displayed a "contemptuous and cavalier attitude for the disciplinary process"<sup>42</sup> and "general contempt for the regulatory process."<sup>43</sup> Enforcement explains that Schunk must also requalify because the Panel found that he demonstrated "a complete failure to appreciate the responsibilities of his supervisory role"<sup>44</sup> and "poses a risk to investors were he to act as a principal or supervisor again."<sup>45</sup> According to Enforcement, requiring Allen and Schunk to pass the Series 7 and 24 exams will ensure that they possess the necessary competence and understanding of their responsibilities in the securities industry.

**C. Respondents' Opposition**

**1. General Objections**

Respondents oppose the Motion and make both general and request-specific objections.<sup>46</sup> With one exception, I reject their objections. Respondents begin by arguing that FINRA Rule 9285 is inapplicable here because it is intended to apply only to respondents with significant disciplinary histories, which they purportedly lack. Respondents base this argument on

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<sup>42</sup> Motion 9; *NYPPEX*, 2022 FINRA Discip.. LEXIS 14, at \*105–06.

<sup>43</sup> Motion 9; *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*132.

<sup>44</sup> Motion 9; *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*123.

<sup>45</sup> Motion 9; *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*124.

<sup>46</sup> Respondents did not "specify alternate conditions or restrictions" as permitted under FINRA Rule 9285(a)(3). Nor did Respondents dispute that NYPPEX is currently registered as a FINRA member firm or that Schunk and Allen remain associated with it.

statements in Regulatory Notice 21-09 and the SEC's order adopting the rule.<sup>47</sup> The Regulatory Notice announced that FINRA "adopted new rules to address brokers with a significant history of misconduct and the broker-dealers that employ them."<sup>48</sup> Respondents point out that this statement echoes the title of the SEC's order adopting the rule change: "Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers With a Significant History of Misconduct."<sup>49</sup>

These statements, however, are of no avail to Respondents. They do not directly or impliedly limit FINRA Rule 9285's application to persons with a significant history of misconduct preceding the misconduct subject to an appeal. Indeed, reading this limitation into the rule would deprive customers of protection from persons found to have engaged in misconduct unless they had also engaged in previous misconduct. Respondents' interpretation would undermine the rule's purpose: to protect the public from the risks posed *during the appeal period* by persons found to have engaged in misconduct. Moreover, the language of the rule does not support Respondents' position. The rule delineates the respondents to which it applies. Those criteria include respondents who appeal to the NAC a disciplinary decision finding that they violated a rule or statute. NYPPEX, Allen, and Schunk meet those criteria.

Next, Respondents argue that the proposed conditions and restrictions are burdensome, onerous, and unnecessary because Enforcement failed to show that its proposals are reasonably necessary to prevent customer harm. Respondents reason that because Enforcement failed to prove that any customers were injured by the misconduct—when no conditions or restrictions were in effect—it means that "there could not possibly be necessity of conditions and restrictions to prevent customer harm" during the appeal.<sup>50</sup> This argument misses the point. The relevant issue is whether Respondents' misconduct creates a risk of harm during the appeal period. The lack of customer harm in the past does not mean there is no risk of customer harm in the future. The Decision found that Respondents engaged in serious misconduct.<sup>51</sup> That misconduct placed the public at risk, even if none were injured. Without adequate conditions and restrictions imposed on Respondents during the appeal, the public would again be at risk.<sup>52</sup>

Respondents also claim that conditions and restrictions are unnecessary because Respondents do not pose a risk to customers during the appeal period and the proposed

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<sup>47</sup> Opposition 1–2.

<sup>48</sup> Opposition 1; Regulatory Notice 21-09.

<sup>49</sup> Opposition 1–2. The SEC order also stated that FINRA filed "a proposed rule change to amend FINRA's rules to help further address the issue of associated persons with a significant history of misconduct and the broker-dealers that employ them." 85 Fed. Reg. 81540.

<sup>50</sup> Opposition 2.

<sup>51</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*109–28.

<sup>52</sup> The NAC decision denying the Application does not eliminate the risk of harm to the public posed by Allen pending appeal. For example, another member firm could seek—and perhaps obtain—permission from FINRA to associate with Allen. Additionally, according to Enforcement, as noted above, Allen appealed the NAC's denial of the Application and sought a stay of the decision.

conditions and restrictions are not tailored to specific alleged risks. They make four arguments to support this claim. First, Respondents describe the Decision as mainly stemming from their “interactions with FINRA and rules related thereto,” not their interactions with customers. This argument mischaracterizes the Decision. The Panel found that Respondents engaged in misconduct that was not limited to their interactions with FINRA, but included, among other things, misconduct involving their communications with the public. Even more to the point, Respondents’ argument hinges on a false premise: that there is no risk of harm to the public when violations rest on interactions with FINRA. I reject this argument, as discussed below.<sup>53</sup>

Second, according to Respondents, Enforcement never showed the “alleged misconduct that was alleged to have taken place was anything more than a one-time occurrence” rather than “a repeating event [impacting] anything more than the one capital raise from three years ago at issue in the hearing.”<sup>54</sup> Respondents understate the scope of their misconduct. The statutory disqualification misconduct was a continuing violation that, as the Panel found, enabled Allen to engage in other misconduct over several months.<sup>55</sup> The Panel also found that NYPPEX and Allen engaged in numerous instances of fraudulent misconduct aimed at misleading and deceiving potential investors.<sup>56</sup> Further, the Panel found that the advertising violations were not isolated, but occurred in emails, in a Corporate Overview, at a webinar, and on the Firm’s website, which remained widely and publicly available for months.<sup>57</sup> Finally, the supervision violations occurred over several months as well.<sup>58</sup>

Third, Respondents assert that they deal only with accredited and institutional investors—not the general public or unsophisticated investors. They also claim that “[n]ews of Respondent’s expulsion from the industry is common knowledge at this point, and it is the first thing that pops up in a Google search.”<sup>59</sup> These arguments are unpersuasive. As the NAC held, “[t]he protection of the antifraud provisions of the securities laws extends to sophisticated investors as well as those less sophisticated.”<sup>60</sup> Likewise, all customers are entitled to protection from the risk of harm Respondents pose during the appeal period—whether or not they are sophisticated or unsophisticated or are aware of the Decision or could learn of it by performing a Google search.

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<sup>53</sup> See p. 13.

<sup>54</sup> Opposition 3.

<sup>55</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*109–10.

<sup>56</sup> *Id.* at \*113.

<sup>57</sup> *Id.* at \*115.

<sup>58</sup> *Id.* at \*122–23.

<sup>59</sup> Opposition 4.

<sup>60</sup> *Dep’t of Enforcement v. Clements*, No. 2015044960501, 2018 FINRA Discip. LEXIS 11, at \*66 (NAC May 17, 2018) (quoting *Dolphin and Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 SEC LEXIS 1592, at \*25 (Jul. 13, 2006)); see *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*84 n.391.

Finally, Respondents contend that the requested conditions and restrictions are cumulative and unnecessary because the New York State Court issued a permanent injunction freezing almost all of Respondents' assets and restricting their ability to harm anyone.<sup>61</sup> This argument also fails. While the injunction may have reduced the risk of harm Respondents pose to the public, it was issued based on misconduct separate from that charged—and found—here. So it was not tailored to address the misconduct demonstrated in this disciplinary proceeding.<sup>62</sup>

## **2. Respondents' Objections to Specific Proposed Conditions and Restrictions on NYPPEX**

### **a. Request No. 1**

Respondents argue that prohibiting NYPPEX from offering, or participating in, private placements during the pendency of its appeal will force the Firm out of the industry. They claim that private “placements are a primary way that NYPPEX raises funds for its business opportunities” and this restriction would “take away any ability of NYPPEX to raise money.”<sup>63</sup>

I recognize that imposing this restriction may require NYPPEX to modify the way it did business previously. But that does not resolve whether I should impose it. The restriction is not as stringent as the sanctions imposed by the Panel. Additionally, the Panel found widespread, serious misconduct—including fraudulent misrepresentations and omissions—in connection with a private securities offering that occurred over several months. And, as Enforcement correctly points out, the proposed restriction is one example FINRA provided in its notice of filing for proposed FINRA Rule 9285 of a condition or restriction that could be imposed in cases of misrepresentations and omissions made to customers.<sup>64</sup> I find that this proposed restriction is reasonably necessary to prevent customer harm given the misconduct found by the Panel and is appropriately tailored to the risks posed by that misconduct. I therefore impose it.

### **b. Request No. 2**

Respondents argue that the proposed heightened supervision condition is too broad and not tailored to any of the evidence in the hearing. Respondents assert that there was no evidence at “the hearing regarding any false or misleading statements in email communications or phone

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<sup>61</sup> Opposition 4.

<sup>62</sup> Respondents also accuse Enforcement of acting in bad faith by seeking conditions and restrictions against Allen. The evidence of purported bad faith consists of Enforcement's rationale for filing the motion: even though the NAC denied the Application, the SEC might stay that denial. “Such an anticipatory action,” Respondents assert, “would be the biggest display of hubris and a clear demonstration of the fundamental unfairness of the FINRA OHO process, which not only never gives brokers a fair shot, but won't even give them a chance to have their case reviewed by an independent body before destroying their life's career.” Opposition 4–5. Respondents' accusation is baseless; Enforcement's explanation is reasonable and does not evidence bad faith.

<sup>63</sup> Opposition 5.

<sup>64</sup> 85 Fed. Reg. at 20747–48 (“Conditions or restrictions could include, for example, prohibiting a member firm or broker from offering private placements in cases of misrepresentations and omissions made to customers”).

calls that was shown during the hearing.” Rather, according to Respondents, “the only evidence regarding any meetings was one annual meeting of a non-FINRA member that merely tracked the alleged omissions from the preliminary private placement documentation.”<sup>65</sup>

This argument minimizes the findings of wrongdoing, as explained above, and the need for a heightened supervision plan to protect customers given those findings. In light of the Panel’s findings of serious, widespread misconduct, I find that the proposed heightened supervision condition is not overly broad. Instead, I find that it is tailored to the misconduct and reasonably necessary to protect customers from harm. Thus, I impose it.

**c. Request Nos. 3–5**

Respondents oppose the requests requiring that an independent and experienced Principal, other than Allen or Schunk, prepare the Firm’s responses to inquiries or requests for information and documents made to the Firm by FINRA (Request No. 3) and prepare and review applications, including MC-400 applications, before submission to FINRA (Request No. 4). They also object to the Firm having to file with FINRA’s Advertising Regulation Department at least 10 business days before use, all retail and institutional communications posted on the web or social media (Request No. 5).

The grounds for Respondents’ objections are that these requests are too broad because they are unrelated to customer harm and are only related to interactions between the Firm and FINRA. Respondents’ arguments about Request Nos. 3 and 4 ignore the important nexus between misstatements to FINRA and the risk of customer harm. The Panel highlighted this connection: “[s]upplying false information to FINRA is serious, as it ‘misleads [FINRA] and can conceal wrongdoing and thereby subverts [FINRA’s] ability to perform its regulatory function and protect the public interest.’”<sup>66</sup> It is necessary to protect the public from the risk of harm based on further misstatements to FINRA during the appeal period. The proposed conditions appropriately address those risks and are tailored to the misconduct. So I impose those conditions.

Respondents’ objection to Request No. 5 also fails, as it also ignores the connection between the proposed filing requirement and preventing customer harm. While the conditions target interactions with FINRA, those interactions pertain to the Firm’s “retail and institutional communications posted on the web or social media” and seek to ensure that the Firm complies with the advertising standards during the appeal. This request is designed to protect the public from the risks of new advertising violations during the appeal. I find that this condition is

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<sup>65</sup> Opposition 6. Respondents claim that “this overbroad, generic request by Enforcement just demonstrates the bad faith nature of this entire motion.” That claim is baseless and not supported by the specifics of Enforcement’s heightened supervision request, which I find reasonable.

<sup>66</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*125 (quoting *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at \*32 (Aug. 22, 2008)); see also *Dep’t of Enforcement v. Laverty*, No. 2016050205901, 2020 FINRA Discip. LEXIS 47, at \*36 (NAC Dec. 22, 2020) (finding that a violation of FINRA 8210 is serious and subverts FINRA’s ability to carry out its responsibilities as a regulator, threatening both investors and the markets).

necessary to protect the public and is tailored to the misconduct found by the Panel. As a result, I impose the conditions contained in Request No. 5.

### **3. Objections to Proposed Conditions and Restrictions on Allen and Schunk**

#### **a. Request Nos. 1–4**

Respondents oppose these requests for the reasons they opposed the comparable requests pertaining to the Firm. I impose the conditions contained in these requests for the same reasons I granted those requests.

#### **b. Request No. 5**

Respondents oppose this request prohibiting Allen and Schunk from supervising any associated person requiring heightened supervision or that is subject to a statutorily disqualifying event. Respondents argue that this request has nothing to do with customer harm and is Enforcement's "backdoor attempt to regulate all of Respondents' conduct, something not contemplated nor allowed by the rule."<sup>67</sup>

I reject these arguments. The Panel found that Allen and Schunk engaged in serious violations of the FINRA by-law and rule provisions governing a firm's continued association with a person subject to a statutory violation.<sup>68</sup> It found that Allen "went beyond failing to show remorse—he displayed a contemptuous and cavalier attitude for the disciplinary process";<sup>69</sup> was "unfit to remain in the securities industry"; and his "continued presence would pose a substantial risk to the investing public."<sup>70</sup>

As for Schunk, the Panel also found that he failed to implement the Firm's Written Supervisory Procedures, and, in so doing, failed to maintain a supervisory system reasonably designed to prevent NYPPEX's and Allen's misconduct.<sup>71</sup> It also concluded that he

repeatedly failed to exercise reasonable supervision over Allen, including in the face of numerous red flags of wrongdoing. He adopted a lax approach to supervision that allowed Allen to act with impunity, leading to serious infractions of the federal securities laws; at a minimum, it facilitated those violations. Schunk's hands-off approach and lack of remorse demonstrate a complete failure to appreciate the responsibilities of his supervisory role, particularly his responsibility

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<sup>67</sup> Opposition 7.

<sup>68</sup> *NYPPEX*, 2022 FINRA Discip. LEXIS 14, at \*72, 109–10.

<sup>69</sup> *Id.* at \*105–06.

<sup>70</sup> *Id.* at \*135.

<sup>71</sup> *Id.* at \*99.

to identify and respond to red flags. Schunk's misconduct was at least reckless and exhibited a willful disinterest in regulatory responsibilities.<sup>72</sup>

Finally, the Panel found that Schunk "demonstrated that he is unfit to act as a securities principal engaged in supervision, especially given that he has a disciplinary history for failure to supervise."<sup>73</sup>

Considering these findings, the public would be at risk of harm if, during the appeal period, Allen and Schunk supervised any associated person requiring heightened supervision or subject to a statutorily disqualifying event. Prohibiting them from doing so is necessary to protect the public and is tailored to the risks posed by the misconduct found by the Panel. I therefore impose this restriction.

### **c. Request No. 6**

Respondents oppose this request, which requires them to re-take and pass the Series 7 and 24 exams within 90 days of the date they appealed the Decision. Respondents complain that "there is categorically no support whatsoever to require Allen and Schunk to only be able to work in the industry upon retaking certain exams."<sup>74</sup> They also maintain that the request has nothing to do with customer harm, the specific allegations against Respondents, or the rulings made by the Panel.<sup>75</sup>

This restriction goes too far under the circumstances presented here. The Panel barred Allen from associating with any FINRA member firm in all capacities. And, while it barred Schunk from acting in any principal, or supervisory, capacity, it did not bar him from associating with a firm in all capacities. Allen and Schunk's sanctions are stayed pending appeal. Thus, during the appeal, the sanctions do not preclude them from remaining in the securities industry and functioning in Series 7 and 24 capacities, subject to any conditions and restrictions I impose under FINRA Rule 9285. Requiring them to requalify or else not be able to function in those capacities is arguably inconsistent with the stay.

Moreover, I find that this condition is not reasonably necessary to protect the public during the appeal and is not tailored to the misconduct found by the Panel. The other conditions and restrictions I am imposing in this Order, coupled with continuing education, are more appropriate methods of protecting the public than requiring Allen and Schunk's requalification. So I reject that proposed condition. Instead, I require Allen to attend and satisfactorily complete 40 hours of continuing education by a provider not unacceptable to FINRA concerning ethical

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<sup>72</sup> *Id.* at \*122–23.

<sup>73</sup> *Id.* at \*124.

<sup>74</sup> Opposition 7.

<sup>75</sup> Respondents maintain that Enforcement made this request in bad faith because it "does nothing more than demonstrate Enforcement's complete and utter abuse of this new, limited procedure." Opposition 7. While I deny the request, I do not find evidence of bad faith.

and regulatory responsibilities, and communications with the public. I also require Schunk to attend and satisfactorily complete 40 hours of continuing education by a provider not unacceptable to FINRA concerning supervisory responsibilities, ethical and regulatory responsibilities, and communications with the public. Within 30 days following completion of their continuing education programs, Allen and Schunk must submit written proof to Enforcement that they satisfactorily completed the programs.

#### IV. Order

For the reasons stated above, I **GRANT** the Motion, **IN PART**, as follows:

1. I **GRANT** the request to impose on NYPPEX the conditions and restrictions proposed in Section III. A., above, and the request to impose on Allen and Schunk the conditions and restrictions proposed in Section III. B, Request Nos. 1–5, above.
2. I **DENY** the request to impose on Allen and Schunk the condition proposed in Section III. B, Request No. 6, above.
3. Allen shall attend and satisfactorily complete 40 hours of continuing education by a provider not unacceptable to FINRA concerning ethical and regulatory responsibilities, and communications with the public within 90 days after the date of this Order.
4. Schunk shall attend and satisfactorily complete 40 hours of continuing education by a provider not unacceptable to FINRA concerning supervisory responsibilities, ethical and regulatory responsibilities, and communications with the public within 90 days after the date of this Order.
5. Within 30 days following completion of their continuing education programs, Allen and Schunk must submit written proof to Enforcement that they satisfactorily completed the programs.
6. The conditions and restrictions in Section III. A. Request No. 2, above, and Section III. B. Request No. 2, above, shall become effective 10 days after the date of this Order. All other conditions and restrictions imposed by this Order are effective immediately.
7. The conditions or restrictions imposed by this Order that are not subject to any stay, or imposed by the NAC Review Subcommittee, shall remain effective until FINRA's final decision in the underlying disciplinary proceeding takes effect.<sup>76</sup>

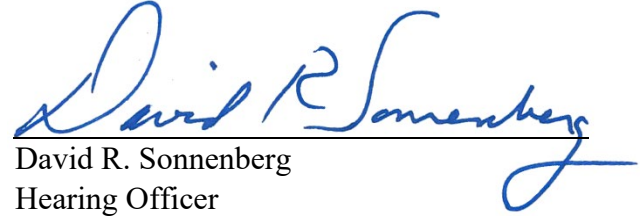
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<sup>76</sup> See FINRA Rule 9285(d) (“Conditions or restrictions imposed by a Hearing Officer that are not subject to any stay, or imposed by the Review Subcommittee, shall remain effective until FINRA’s final decision in the underlying disciplinary proceeding takes effect.”).



If the parties have any questions about this Order or the conduct of this proceeding, they should contact Case Administrator Kate Shaffer, at 202-728-8113 or [kate.shaffer@finra.org](mailto:kate.shaffer@finra.org).

**SO ORDERED.**

  
David R. Sonnenberg  
Hearing Officer

Dated: October 31, 2022

Copies to:

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