



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

In the matter of:

Docket No. 22-028011

NYPPEX, LLC
CRD # 47654

Agency No. ENF-22-020055

Respondent.

FINAL ORDER

1. This matter came before the Department of Licensing and Regulatory Affairs under the Michigan Uniform Securities Act (2002), MCL 451.2101 *et seq.* (the "Act") and associated administrative rules.
2. The director of the Corporations, Securities & Commercial Licensing Bureau, who is the Administrator of the Act (the "Administrator"), received the Proposal for Decision to Grant Petitioner's Motion for Summary Disposition (the "PFD"), and the entire hearing record, in accordance with MCL 451.2412 and the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*
3. The Administrator considered the Findings of Fact and Conclusions of Law in the PFD of James Long, Administrative Law Judge, dated November 4, 2022, and the entire hearing record.
4. The PFD is incorporated by reference.
5. Respondent was found in violation of the Act and/or its associated administrative rules.

THEREFORE, IT IS ORDERED THAT:

- A. Respondent's broker-dealer registration is immediately REVOKED, as authorized by section 412(2), (4)(d), and (4)(e)(i) of the Act, MCL 451.2412(2), (4)(d), and (4)(e)(i).
- B. No application for a permit, registration, licensure, relicensure, reinstatement or renewal submitted by Respondent under the Act will be considered or granted by the Department, until all final orders of the Department are fully complied with.
- C. Respondent may not engage in any activities requiring a broker-dealer registration under the Act after the effective date of this Final Order, until Respondent obtains the appropriate registration under the Act.
- D. Respondent must submit in writing to the Department proof of compliance with each requirement of this Final Order in a form acceptable to the Department.

E. Failure to comply with this Final Order may subject Respondent to additional administrative, civil, or criminal sanctions, fines, and penalties. Under section 604 of the Act, MCL 451.2604, the Administrator may commence an administrative proceeding directing a person that violated an order issued under the Act to stop and signifying an intent to impose a civil fine of up to \$10,000.00 for a single violation or up to \$500,000.00 for multiple violations with the possibility of doubling those amounts if the victims of the violation(s) were 60 years of age or older or unable to protect their financial interests due to disability of illiteracy or an inability to understand the language of an agreement presented to them. Under section 603 of the Act, MCL 451.2603, if a person violates an order issued under the Act, the Administrator may maintain a civil action to stop the violation and enforce compliance with the order and may include, among other relief, the imposition of a civil fine of up to \$10,000.00 for a single violation or up to \$500,000.00 for multiple violations. Under section 508 of the Act, MCL 451.2508, a person that willfully violates the Act or an order issued under the Act is guilty of a felony punishable by imprisonment for not more than 10 years, a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under the Act may be fined but may not be imprisoned if the individual did not have knowledge of the rule or order. The attorney general or the proper prosecuting attorney may institute criminal proceedings under the Act with or without reference from the Administrator.

This Final Order is effective immediately upon its mailing.

Given under my hand this 20th day of December 2022.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By: /s/ Linda Clegg
Linda Clegg, Administrator and
Corporations, Securities & Commercial Licensing Bureau Director

Date mailed: December 22, 2022

Compliance Questions May be Directed to:

Telephone: (517) 241-9180

Email: LARA-CSCL-Order-Monitoring@michigan.gov

This is the last and final page of the Final Order in the matter of Nypex, LLC, ENF-22-020055.

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 22-028011

**Corporations, Securities & Commercial
Licensing Bureau,
Petitioner**

Case No.: ENF-22-020055

**Agency: Corp. Securities
Commercial
Licensing Bureau**

v

**NYPPEX, LLC,
Respondent**

**Case Type: Broker-Dealer
Registration**

Filing Type: Intent to Revoke

**Issued and entered
this 4th day of November 2022
by: James Long
Administrative Law Judge**

**PROPOSAL FOR DECISION TO GRANT
PETITIONER'S MOTION FOR SUMMARY DISPOSITION**

Procedural History

This matter commenced on April 14, 2022, when Petitioner Corporations, Securities & Commercial Licensing Bureau, within the Department of Licensing and Regulatory Affairs (Petitioner or Bureau), issued a Notice of Intent to Revoke Broker-Dealer Registration (NOI) to Respondent NYPPEX, LLC (CRD# 47654) (Respondent or NYPPEX). The NOI alleged that the Bureau Director (Administrator) was authorized to revoke Respondent's broker-dealer registration under the Michigan Uniform Securities Act, MCL 451.2101, *et seq.*

On August 10, 2022, the Bureau forwarded the matter to the Michigan Office of Administrative Hearings and Rules (MOAHR) to schedule a hearing.

On August 10, 2022, MOAHR issued a Notice of Telephone Hearing to the interested parties scheduling an administrative hearing on September 19, 2022, at 1:30 p.m. Eastern Time.

On August 11, 2022, Assistant Attorney General (AAG) Aaron W. Levin filed an appearance on behalf of the Bureau.

On August 24, 2022, AAG Levin requested an adjournment of the September 19, 2022, hearing due to scheduling conflicts.

On August 26, 2022, Attorney Jonathan E. Neuman of New York, on behalf of Respondent, submitted an email to MOAHR indicating that NYPPEX did not object to Petitioner's request to adjourn the September 19, 2022, hearing. Under Mich Admin Code, R 792.10107(1), a document signed and filed by an attorney on behalf of a client is deemed an appearance of the attorney. Filing by e-mail has been specifically authorized for matters before MOAHR under Mich Admin Code, R 792.10109(4). An attorney who has entered an appearance may withdraw from the case, or be substituted for another attorney, only by order of the administrative law judge. Mich Admin Code, R 792.10107(2).¹

On August 26, 2022, this tribunal issued an Order Granting Adjournment of Evidentiary Hearing and Notice of Scheduling Telephone Prehearing Conference, which adjourned the September 19, 2022, hearing and scheduled a telephone prehearing conference for September 22, 2022, at 1:30 p.m. The August 26, 2022, Order provided the parties with a phone number to call to participate in the prehearing telephone conference.

The prehearing conference was held by telephone on September 22, 2022, at 1:30 p.m. as scheduled. AAG Levin appeared on behalf of the Bureau. Neither Respondent nor a representative or attorney on Respondent's behalf appeared for the prehearing conference. The prehearing conference was held in Respondent's absence, as permitted by Mich Admin Code, R 792.10114(7).

After the September 22, 2022, prehearing conference, this tribunal issued an Order Following Prehearing Conference which, among other things, scheduled a contested case hearing, to be held by telephone, for November 30, 2022, at 9:00 a.m. EST. The September 22, 2022, Order Following Prehearing Conference further ordered that "[a]ll prehearing motions, including motions for summary disposition, must be filed with MOAHR and served on the opposing party at least 14 days before the hearing in this matter. Responses to any motions must be filed with MOAHR and served on the other party at least 7 days before the hearing in this matter."

On September 30, 2022, the Bureau filed a motion for summary disposition and brief in support (with attachments "Exhibit A", "Exhibit B", "Exhibit C" and "Exhibit D"). As part of its motion, the Bureau requested a briefing schedule that would require Respondent to file a response to the motion for summary disposition within 21 days of the Bureau's motion for summary disposition. Respondent did not file a response to the Bureau's request for a briefing schedule.

¹ No motion has been filed to date in this matter that Attorney Neuman, who is apparently licensed to practice law in New York but not in Michigan, be admitted *pro hac vice*.

On October 6, 2022, this tribunal issued an Order Setting Briefing Schedule on Petitioner's Motion for Summary Disposition, ordering, in part, that:

1. Respondent may file a response to Petitioner's motion for summary disposition but is not required to do so.
2. If Respondent chooses to file a response to Petitioner's motion for summary disposition, it must do so on or before October 21, 2022.

Respondent did not file a response to the Bureau's motion for summary disposition on or before October 21, 2022. And as of the date of this Proposal for Decision to Grant Petitioner's Motion for Summary Disposition, Respondent has filed no response to the Bureau's motion for summary disposition.²

On October 24, 2022, the undersigned issued a Notice of Change in Teleconference Information regarding the November 30, 2022, hearing date. On November 2, 2022, Petitioner filed its Witness and Exhibit List.

Issue and Applicable Law

The issue in this matter is whether the Bureau's Administrator is authorized under the Michigan Uniform Securities Act, MCL 451.2101, *et seq.*, to revoke Respondent's Michigan broker-dealer registration.

MCL 451.2412 provides, in relevant part:

Sec. 412.

- (2) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or

² After close of business on October 20, 2022, Attorney Neuman filed with MOAHR an e-mail notice that he was not representing NYPPEX, stating, "There was some talk early on about me coming into the case, but I was not retained by NYPPEX." The same date, Laurence G. Allen for NYPPEX sent an e-mail notice to MOAHR, stating that "John Wells is handling," apparently referring to representation for NYPPEX. To date, however, Mr. Wells has not filed with MOAHR an appearance or pleading on behalf of NYPPEX.

investment adviser. However, the administrator may not do any of the following:

(a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than 1 year after the date of the order on which it is based.

(b) Under subsection (4)(e)(i) or (ii), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

* * *

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

* * *

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

* * *

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

- (a) Appropriate notice has been given to the applicant or registrant.
- (b) Opportunity for hearing has been given to the applicant or registrant.
- (c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Findings of Fact

Based on the entire record, including the NOI, and the Bureau's motion and brief in support of motion for summary disposition, and the exhibits attached thereto, I find the following material facts:

1. Respondent is a "Delaware-organized limited liability company registered as a broker-dealer under the Securities Act in Michigan." (NOI, p 1, ¶ 1).
2. On or about February 4, 2021, in *State of New York v Allen, et al.*, Index No. 452378/2019, the Honorable Barry R. Ostrager of the Supreme Court of the State of New York (New York County) issued a Decision after Trial that permanently enjoined defendants, including Respondent as a Relief Defendant, from, among other things, directly or indirectly:
 - a. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of or with certain individuals and entities, and;
 - b. Violating Article 23-A of New York's General Business Law, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. B, pp 14-15).³
3. The disposition of *State of New York v Allen, et al.*, Index No. 452378/2019, was disclosed on the Financial Industry Regulatory Authority's (FINRA's) Central Registration Depository (CRD) database. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. A).

³ The page references to the exhibits attached to the Bureau's Brief in Support of Motion for Summary Disposition in this Proposal for Decision refer to the page of the particular document, and do not include the cover page that the Bureau included to specify the exhibit and MOAHR case number.

4. Respondent was registered as a broker-dealer in the state of Maryland as of May 19, 2020. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. D, p 1).
5. On or about June 4, 2021, following the Supreme Court of the State of New York's February 4, 2021, Decision After Trial in *State of New York v Allen, et al.*, Index No. 452378/2019, the Maryland Securities Commissioner issued an Order to Show Cause and Order of Summary Suspension summarily suspending Respondent's registration as a broker-dealer in Maryland and requiring Respondent to show cause why an Order of Revocation of Respondent's Maryland broker-dealer registration should not be issued against Respondent. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. D, p 2).
6. On or about December 6, 2021, the Maryland Securities Commissioner and Respondent entered into a Consent Order, the terms of which provided:
 - a. Respondent shall pay \$5,000 to the [Maryland] Office of the Attorney General, in support of vacating the Order of Revocation of Broker-Dealer Registration.
 - b. The [Maryland] Order of Revocation of Broker-Dealer Registration issued against Respondent on July 13, 2021, is vacated.
 - c. Respondent's registration as a broker-dealer in [Maryland] is withdrawn as of the date of the Consent Order [December 6, 2021].
 - d. Respondent or any successor of the Respondent agrees not to apply or reapply for registration as a broker-dealer or investment adviser with the state of Maryland or conduct securities or investment advisory business in Maryland until the later of five years from the date of this Order or all pending regulatory matters, including without limitation matters with the New York Attorney General, Financial Industry Regulatory Authority, Inc., and the Securities and Exchange Commission, have been resolved. Once all pending regulatory matters have been resolved and at least five years have passed, Respondent may petition the Commission to seek permission to apply as a broker-dealer or investment adviser and conduct securities and investment advisory business in Maryland. Any such petition shall be evaluated in light of Respondent's current and past disciplinary history as well as any other then relevant information.

(Bureau's Brief in Support of Motion for Summary Disposition, Ex. D, pp 3-4).⁴

7. The terms of the December 6, 2021, Consent Order between the Maryland Securities Commissioner and Respondent, as set forth above, were disclosed on the FINRA's CRD database. The disclosure further stated that:

The Maryland Securities Commissioner (the "Commissioner") had grounds to seek revocation of NYPPEX, LLC's broker-dealer registration under section 11-412(A)(4) of the Maryland Securities Act which authorizes the Commissioner to deny, suspend, or revoke any registration if she finds that the applicant or registrant is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or investment advisory or any other financial services business. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. C, p 2).

Conclusions of Law

The Bureau bears the burden of proof to establish, by a preponderance of the evidence, the allegations in the NOI and that the Bureau's Administrator is authorized to revoke Respondent's broker-dealer registration. See, e.g., *Bunce v Secretary of State*, 239 Mich App 204, 216; 607 NW2d 372 (1999) (holding that the proponent of an order bears the burden of proof in an administrative proceeding).

The Bureau seeks summary disposition under Mich Admin Code, R 792.10129(1)(a), which provides:

Rule 129. (1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that that [*sic*] any of the following exists:

⁴ While Exhibit D of the Bureau's Brief in Support of Motion for Summary Disposition does not contain the signatures of the parties to the December 6, 2021, Consent Order, Exhibit D states that the Maryland Securities Commissioner's signature is on file with the original document. Further, the same terms stated in the December 6, 2021, Consent Order are set forth in the subsequently reported disclosure for Respondent on the FINRA's CRD database, which is Exhibit C of the Bureau's Brief in Support of Motion for Summary Disposition.

(a) There is no genuine issue of material fact.

A motion brought under Mich Admin Code, R 792.10129(1)(a) is akin to a motion brought under Michigan Court Rule (MCR) 2.116(C)(10). A motion filed under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Summary disposition under MCR 2.116(C)(10) is available when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10); see also *Coblentz v City of Novi*, 475 Mich 558; 719 NW2d 73 (2006); *Haliw v City of Sterling Heights*, 464 Mich 297; 627 NW2d 581 (2001); and *Veenstra v Washtenaw Country Club*, 466 Mich 155; 645 NW2d 643 (2002).

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Attorney Gen v PowerPick Players' Club of Michigan, LLC*, 287 Mich App 13, 26–27; 783 NW2d 515 (2010), quoting *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

A material fact has been defined as "an ultimate fact issue upon which a jury's verdict must be based." *Estate of Neal v Friendship Manor Nursing Home*, 113 Mich App 759, 763; 318 NW2d 594 (1982). In other words, "[t]he disputed factual issue must be material to the dispositive legal claim[s]." *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328, 333; 671 NW2d 132 (2003).

In reviewing a motion brought under MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993); *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). Affidavits or other documentation submitted in support of or in opposition to a motion for summary disposition under MCR 2.116(C)(10) must contain admissible evidence. MCR 2.116(G)(6); *Maiden*, 461 Mich at 121.

Granting the nonmoving party the benefit of any reasonable doubt regarding material facts, the court must then determine whether a factual dispute exists to warrant a trial. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617–618; 537 NW2d 185 (1995); *Radtke*, 442 Mich at 374. If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996) (plaintiff failed to present evidence on which reasonable person could

find that hostile work environment existed; summary disposition proper); *Hesel v Morcom*, 219 Mich App 14, 17; 555 NW2d 852 (1996).

Subject to the limitations set forth in MCL 451.2412(2)(a) and (b) and MCL 451.2412(7), the Bureau's administrator is authorized under MCL 451.2412(4) to revoke, suspend, condition, or limit the registration of a broker-dealer where the administrator finds that the order to revoke, suspend, condition or limit is in the public interest and any of the following apply:

(d) The person is *enjoined* or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the *subject of an order, issued after notice and opportunity for hearing by any of the following:*

(i) The securities or other *financial services regulator of a state*, or the securities and exchange commission or other federal agency denying, revoking, *barring*, or suspending *registration as a broker-dealer*, agent, investment adviser, federal covered investment adviser, or investment adviser representative. MCL 451.2412(4), (emphasis added).

Respondent, as one of the Relief Defendants in *State of New York v Allen, et al.*, Index No. 452378/2019, is permanently enjoined from directly or indirectly:

- a. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of or with certain individuals and entities, and;
- b. Violating Article 23-A of New York's General Business Law, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. B, pp 14-15).

Further, per the December 6, 2021, Consent Order between Respondent and the Maryland Securities Commissioner, Respondent may not "apply or reapply for

registration as a broker-dealer or investment adviser with the State of Maryland or conduct securities or investment advisory business in Maryland until the later of five years from the date of this Order or all pending regulatory matters ... have been resolved.” (Bureaus’ Brief in Support of Motion for Summary Disposition, Ex. D, pp 3-4).

There is no genuine issue of material fact that Respondent falls within the parameters of MCL 451.2412(4)(d) and, as such, is subject to revocation of its broker-dealer registration absent a limitation on the Administrator’s authority to do so.

MCL 451.2412(2) and (7) set forth limitations on the Bureau administrator’s authority to revoke, suspend, condition, or limit a broker-dealer’s registration. Specifically, MCL 451.2412(2) states, in relevant part:

However, the administrator may not do any of the following:

- (a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than 1 year after the date of the order on which it is based.
- (b) Under subsection (4)(e)(i) or (ii), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

MCL 451.2412(7) states:

Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

- (a) Appropriate notice has been given to the applicant or registrant.
- (b) Opportunity for hearing has been given to the applicant or registrant.
- (c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

As to MCL 451.2412(2)(a), it is not clear on this record when the Decision After Trial in *State of New York v Allen, et al.*, Index No. 452378/2019 was reported to the Bureau’s

administrator or designee and, therefore, there remains a genuine issue of material fact about whether the Bureau instituted a revocation proceeding more than 1 year after the Supreme Court of New York's February 4, 2021, Decision After Trial was reported to the Bureau.⁵ The record is clear, however, that the Bureau instituted revocation proceedings less than 1 year after the December 6, 2021, Consent Order between the Maryland Securities Commissioner and Respondent.⁶ Accordingly, there is no genuine issue of material fact that the Bureau's administrator is not precluded from revoking Respondent's broker-dealer registration under MCL 451.2412(2)(a) because the Bureau instituted revocation proceeding against Respondent within the applicable time period.

As to MCL 451.2412(2)(b), because MCL 451.2412(4)(d) would authorize the Bureau's administrator to issue an order of discipline based on the February 4, 2021, Decision After Trial in *State of New York v Allen, et al.*, Index No. 452378/2019 and/or the December 6, 2021, Maryland Consent Order, there is no genuine issue of material fact that the Bureau's administrator is not precluded from revoking Respondent's broker-dealer registration under MCL 451.2412(2)(b).

Further, the Bureau has complied with the requirements of MCL 451.2412(7). Per the Bureau's April 14, 2022, NOI, and the notice provisions set forth therein, including notice to Respondent of its right to request a hearing and the inclusion of a "Request for Hearing Form" as an attachment to the NOI, and in conjunction with the proceedings before this tribunal, there is no genuine issue of material fact that the Bureau's administrator is not precluded from revoking Respondent's broker-dealer registration under MCL 451.2412(7).

Finally, in addition to establishing compliance with MCL 451.2412(2)(a) & (b) and MCL 451.2412(7), revocation of Respondent's broker-dealer registration requires that the Bureau's administrator find that the order of revocation is in the public interest.

Here, the NOI asserts that the Bureau's administrator finds that revocation of Respondent's broker-dealer registration is in the public interest based on the relevant facts and applicable law set forth in the NOI. (NOI, p 3). The factual allegations set forth in the NOI have been supported by the Bureau's Brief in Support of Motion for Summary Disposition and the exhibits attached thereto.

⁵ The earliest possible date the Bureau's administrator or designee could have received a report of the Supreme Court of New York's Decision After Trial is February 4, 2021, when the Decision was issued. On the record before this tribunal, it appears that revocation proceedings were instituted on April 14, 2022, when the Bureau issued its NOI to Respondent.

⁶ The earliest possible date the Bureau's administrator or designee could have received a report of the Maryland Consent Order was December 6, 2021. The Bureau's NOI, issued to Respondent on April 14, 2022, was within the 1-year time period required under MCL 451.2412(2)(a).

As the Bureau correctly notes in its Brief in Support of Motion for Summary Disposition, the term “public interest” is not defined in Michigan’s Uniform Securities Act. The Bureau asserts, however, that it is appropriate to look to interpretations of other states that have enacted the Uniform Securities Act and to interpretations of federal securities laws to determine the meaning of “public interest” under Michigan’s Uniform Securities Act. To that end, the Bureau cites *Sec & Exch Comm’n v Blatt*, 583 F2d 1325 (CA 5, 1978) in support of its assertion that the federal courts have considered the following six factors for evaluating public interest: (1) the egregiousness of the defendant’s actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the defendant’s assurances against future violations; (5) the defendant’s recognition of the wrongful nature of his conduct; and (6) the likelihood that the defendant’s occupation will present future opportunities for violations. (Bureau’s Brief in Support of Motion for Summary Disposition, pp 10-11).

In *Blatt*, the court described the factors the Bureau contends should be used to evaluate public interest as factors that a trial court should consider “in deciding whether to issue an injunction in light of past violations.” *Blatt*, 583 F2d at 1334. Harm to the public interest is one factor courts use to assess whether an injunction should issue. *Michigan State AFL-CIO v Secretary of State*, 230 Mich App 1, 14; 583 NW2d 701 (1998), citing *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). And while the six factors identified in *Blatt* may be relevant to determining whether it is in the public interest to revoke a broker-dealer’s registration, to the extent the Bureau contends that the Bureau’s administrator is limited to those six factors, this tribunal rejects that assertion.

With that said, this tribunal concludes that the Bureau administrator’s finding that revoking Respondent’s broker-dealer registration is in the public interest is supported by the record.

The public interest is advanced by protecting investors from unscrupulous or unethical broker-dealers. In *State of New York v Allen, et al.*, Index No. 452378/2019, the court found that Laurence G. Allen, the managing member and majority shareholder of Respondent, engaged in fraudulent and misleading activities. (Bureau’s Brief in Support of Motion for Summary Disposition, Ex. B, pp 2 and 11). With respect to Respondent specifically, the Supreme Court of the State of New York stated, in relevant part:

[T]hrough a maze of entities owned and /or controlled by defendant Allen, a significant portion of the capital contributed to the ACPX limited partnership was substantially diverted by a hopelessly conflicted Allen toward funding NYPPEX – the broker-dealer entity controlled by Allen. NYPPEX, in turn, utilized these funds to pay Allen exorbitant NYPPEX

annual salaries totaling approximately \$6 million, as well as to pay the salaries of his staff. ACPX capital was also used to pay NYPPEX operating expenses. NYPPEX itself is not, as Allen claims, a technology startup with either a present or potential centi-million dollar valuation. Rather, based upon the Court's assessment of the credibility of witnesses and a review of relevant documents, NYPPEX is, and always has been, a failing broker-dealer that has a \$44,000 software package purchased from a third-party vendor that supposedly allows NYPPEX to execute secondary market trades of private equity interests. (Bureau's Brief in Support of Motion for Summary Disposition, Ex. B, p 5).

Given that 1) the Supreme Court of the State of New York determined, following a trial, that Respondent "is, and always has been, a failing broker-dealer" that paid its managing member and majority shareholder "exorbitant" annual salaries, 2) that Respondent is permanently enjoined in New York from engaging in certain investment activities, and 3) that Respondent may not apply or reapply for registration as a broker-dealer or investment advisor with the State of Maryland or conduct securities or investment advisory business in Maryland for at least five years after December 6, 2021, the record supports the Bureau administrator's finding that it is in the public interest to revoke Respondent's Michigan broker-dealer registration.

Accordingly, for the reasons set forth above, this tribunal concludes that the Bureau's Motion for Summary Disposition should be granted.

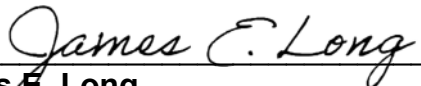
PROPOSED DECISION

This tribunal proposes that the Administrator issue an order as follows:

1. That Petitioner's Motion for Summary Disposition under Mich Admin Code, R 792.10129 is GRANTED.
2. That Respondent's broker-dealer registration is revoked.

Notice of Cancellation of November 30, 2022 hearing

In light of the Proposed Decision to grant Petitioner's Motion for Summary Disposition, which disposes of all of the matters pending before this tribunal, the hearing by telephone conference scheduled for November 30, 2022, at 9:00 a.m. EST is hereby CANCELLED.



James E. Long
Administrative Law Judge

EXCEPTIONS

Pursuant to MCL 24.281 and Mich Admin Code, R 792.10132, the parties may file Exceptions to this Proposal for Decision within twenty-one (21) days after it is issued and entered. An opposing party may file a response within fourteen (14) days after initial Exceptions are filed. All Exceptions and Responses to Exceptions must state the case docket number and be filed with the Michigan Office of Administrative Hearings and Rules, P.O. Box 30695, 611 West Ottawa Street (Ottawa Building-2nd Floor), Lansing, Michigan 48909 (E-mail preferred: MOAHR-GA@michigan.gov) and served on all parties to the proceeding as listed on the attached Proof of Service. Note: Overnight Carrier Address (UPS, FedEx, DHL Deliveries): MOAHR-GA, c/o Department of Licensing and Regulatory Affairs, Mail Services, 2407 N. Grand River Avenue, Lansing, Michigan 48906.

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 4th day of November, 2022.



D. Hagar
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail

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**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU**

In the matter of:

Agency No. ENF-22-020055

NYPPEX, LLC
CRD# 47654

Respondent.
_____ /

Issued and entered

This 14th day of April, 2022

NOTICE OF INTENT TO REVOKE BROKER-DEALER REGISTRATION

I. RELEVANT FACTS AND APPLICABLE LAW.

Relevant information and statutory provisions, under the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et. seq.* ("Securities Act"):

1. NYPPEX, LLC (CRD#47654, "Respondent") is a Delaware-organized limited liability company registered as a broker-dealer under the Securities Act in Michigan.
2. The Corporations, Securities, and Commercial Licensing Bureau ("the Bureau") within the Michigan Department of Licensing and Regulatory Affairs opened an investigation into Respondent after a routine review of disclosures on the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depository database ("CRD") revealed that Respondent may be the subject of various civil and administrative actions.
3. Evidence collected by Bureau staff shows that Respondent is enjoined by a court in the State of New York in an action instituted by the New York Attorney General from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities or investments.
4. Evidence collected by Bureau staff shows that Respondent is presently subject to an order issued by the securities regulator in the State of Maryland prohibiting or barring Respondent from applying for registration as a broker-dealer or an investment adviser in Maryland or from conducting any securities or investment advisory business in Maryland for at least five years from the later of the date of issuance of the Maryland order (December 6, 2021) or five years after Respondent has settled all pending regulatory matters including but not limited to matters involving the New York Attorney General, FINRA, and the United States Securities and Exchange Commission. Under the Maryland order, after five years from the later of one of those dates, Respondent

may petition for permission to apply to conduct business under the securities laws of the State of Maryland.

5. The Bureau Director (“Administrator”) has reviewed materials regarding Respondent’s conduct in the securities industry and the status of the New York and Maryland enforcement matters as they relate to Respondent’s registration under the Securities Act. The Administrator has determined that it is authorized, appropriate, and in the public interest to revoke Respondent’s broker-dealer registration.
6. Section 412(2) of the Securities Act, MCL 451.2412(2), states in relevant part:

If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser...

7. Section 412(4) of the Securities Act, MCL 451.2412(4) states in relevant part:

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative...

8. Section 412(7) of the Securities Act, MCL 451.2412(7) states:

Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

- (a) Appropriate notice has been given to the applicant or registrant.
- (b) Opportunity for hearing has been given to the applicant or registrant.

(c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

9. The Administrator may revoke Respondent NYPPEX, LLC's broker-dealer registration under section 412(2) of the Securities Act, MCL 451.2412(2), because it is in the public interest, because Respondent is the subject of an injunction issued by a court of competent jurisdiction in the State of New York enjoining it from engaging in an act, practice, or course of business involving securities or investments, and because Respondent is the subject of an order barring it from applying for registration as a broker-dealer or investment adviser in the State of Maryland, causing the applicability of MCL 451.2412(4)(d) and MCL 451.2412(4)(e)(i).

II. ORDER.

The Administrator finds that this order is authorized, appropriate, and in the public interest based on the above-cited facts and law.

IT IS ORDERED as follows:

1. The Administrator intends to revoke Respondent NYPPEX, LLC's broker-dealer registration under MCL 451.2412(2) because Respondent is enjoined by a court of competent jurisdiction from engaging in aspects of business involving securities and investments, and because Respondent subject of an order prohibiting or barring it from registering as a broker-dealer or investment adviser in the State of Maryland, causing the applicability of MCL 451.2412(4)(d) and MCL 451.2412(e)(i) and authorizing the revocation of Respondent's broker-dealer registration.

2. In accordance with MCL 451.2412(2) and MCL 451.2412(7): This is notice that the Administrator intends to commence administrative proceedings to revoke Respondent's broker-dealer registration, and that Respondent has thirty (30) days after the date that this Order is served on Respondent to respond in writing to the enclosed Notice of Opportunity to Show Compliance. If the Administrator timely receives a written request, depending upon the election, the Administrator shall either promptly schedule a compliance conference, or schedule a hearing within fifteen (15) days after receipt of the written request. If Respondent fails to respond to this Notice and Order within the time frame specified, the Administrator shall schedule a hearing. If a hearing is requested or ordered, the Administrator, after notice of and an opportunity for hearing to Respondent, may modify or vacate this Order or extend the Order until final determination.

If Respondent requests a hearing, the request must be in writing and filed with the Department of Licensing and Regulatory Affairs, Corporations, Securities & Commercial Licensing Bureau, Regulatory Compliance Division, P.O. Box 30018, Lansing, MI 48909, or by email to CSCL-FOIA@michigan.gov.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU

/s/ Linda Clegg

Linda Clegg, Administrator and Director
Corporations, Securities & Commercial Licensing Bureau

4/14/2022

Date