

ADJ

3-16913



October 15, 2015

Office of The Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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OFFICE OF THE SECRETARY

Re: **Appeal to the SEC**
AutoChina International Limited (AUTCF)
FINRA Case Numbers: CAS-36222-K0N5Z8 and CAS-33803-N1G7K3

On September 29, 2015, Fincera Inc. (the "Company") received a letter from FINRA stating that the FINRA Uniform Practice Code Committee (the "UPCC") had affirmed FINRA's denial of the Company's request to process documentation relating to the Company's name change and 10-1 forward stock split requests. The Company hereby appeals this decision to the SEC.

In connection with denying the Company's appeal, the UPCC relied in part on certain inaccurate information. The Company also believes that the UPCC demonstrated significant bias against the Company, which brings the decision by the UPCC against the Company into question. Finally, while it is well understood that FINRA Rule 6490 allows for significant discretion to deny company-related actions when there has been pending, adjudicated, or settled federal civil action related to securities laws violations if it is deemed necessary for the protection of investors, the public interest and to maintain fair and orderly markets, the Company believes that the UPCC's denial of the Company's appeal is, in fact, detrimental to the protection of investors, the public interest and to maintain fair and orderly markets.

The Company believes that the biases of the UPCC are evident in the inaccuracies in the UPCC's denial letter. For example, the UPCC states that the final judgment determined that the Company engaged in fraudulent and manipulative conduct and violated federal securities laws. This is incorrect, since the judgment makes no such statements and instead clearly states that the Company consented to the final judgment without admitting or denying the allegations of the complaint.

The UPCC states that six of the individual defendants identified themselves as employees of the Company. This is factually incorrect. Contrary to the UPCC's allegations in its denial letter, the Company specifically communicated to FINRA in June 2015, in response to FINRA's request for such information, that only one of the individual defendants (Hui Kai Yan) was an employee of the Company during the time of the SEC complaint. Furthermore, FINRA at no point requested information about whether the other defendants were currently employees of the Company, which they are not. The Company believes that this misinformation, which FINRA and the UPCC could have cleared up by simply requesting the information from the Company, heavily influenced the UPCC's decision to deny the appeal, as they stated in their letter that the Company's "...failure to address why the other AutoChina Defendants are apparently still employed by or affiliated with AutoChina weighs heavily against processing the company's proposed name change and forward stock split." In fact, the Company did not address the remaining defendants simply because they were not employees of the Company during the time of the complaint - and the UPCC's incorrect assumption that they are current employees only demonstrates the bias resulting in the denial of the appeal by the UPCC.

The UPCC also indicates that the continued involvement of executives, managers, and directors who were employed with the Company during the time of alleged misconduct raise significant concerns. The UPCC casts these

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aspersions despite the fact that these individuals were not named as defendants in the complaint. The implication that the Company must replace all of its officers, directors and managers in order for FINRA to allow it to process normal-course corporate actions is clearly biased.


The UPCC concludes that the SEC complaint that resulted in the Company paying a \$4.35 million civil penalty demonstrates the Company's profound disregard for securities regulation. The Company disagrees with this assertion. There are a multitude of reasons why the Company chose to enter into the settlement and final judgment. The Company would like to emphasize that the final judgment was entered into by the Company without admitting or denying the allegations of the complaint, that the Company paid the penalty in its entirety and has continued to meet its reporting obligations, which would actually indicate a regard for securities regulation. Furthermore, the Company has taken steps to attempt to ensure that it would not be the subject of such an SEC action again in the future. For example, the Company has provided mandatory training for management regarding important topics such as insider trading and required directors and officers to complete an annual certification regarding insider trading. Finally, the only employee of the Company at the time of the complaint who was named in it, Hui Kai Yan, who was also an officer and director of the Company, is no longer an employee, officer or director.

In conclusion, rather than simply presenting the facts and drawing reasonable conclusions from them, the UPCC used incorrect information and mischaracterizations that portray the Company in a negative manner, which displays the bias with which the UPCC approached the matter. The Company hopes that the SEC can consider the matter objectively and would ask the SEC to review the Company's arguments it set forth in its original letter of appeal (the "FINRA appeal letter") that was submitted to the UPCC on September 16, 2015 (which we would be happy to provide upon request – the Company has not done so here because it spans more than the two page maximum for this application).

In the FINRA appeal letter, the Company argues that not processing the name change and stock split paperwork is detrimental to the protection of investors, the public interest and to maintain fair and orderly markets, that the Company believes that it is necessary to undergo the two corporate actions for legitimate business reasons due to its new business model, and that the denial of the name change has already created an untenable situation that hinders market transparency and only confuses investors. For example, the Company was already required to legally change its name to Fincera, Inc. because it could only obtain CUSIP numbers (which are necessary for the submission to FINRA for a name change) once its corporate name was already changed, and the failure of FINRA to process the information for the name change has led to confusion in the marketplace as to the Company's name (exacerbated by the fact that FINRA initially processed the name change and then inaccurately informed the marketplace that the Company was changing its name back to AutoChina International Limited). The Company also believes that the two corporate action requests should be considered separately instead of in an "all-or-nothing" manner.

The Company can be reached at its San Diego address and phone number found at the bottom of the first page of this letter. Please feel free to contact the Company or me directly at jcwang@fincera.net if you require any additional information. Thank you for your consideration.

Sincerely,

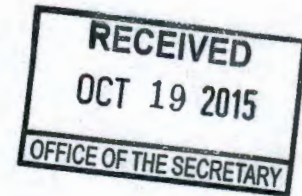


Jason Wang
Chief Financial Officer
Fincera Inc.

Cc: Jante C. Turner, FINRA – Office of General Counsel



Financial Industry Regulatory Authority



Jante C. Turner
Assistant General Counsel – Appellate Group

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September 29, 2015

VIA ELECTRONIC AND CERTIFIED MAIL

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New York, NY 10514
gcaruso@loeb.com

RE: CASE NOS. CAS-36222-K0N5Z8/CAS-33803-NIG7K3
AUTOCHINA INTERNATIONAL LIMITED (AUTCF)

Mr. Caruso:

On September 24, 2015, a subcommittee of FINRA's Uniform Practice Code Committee ("UPCC Subcommittee") convened to review the Department of Operations' ("Department") denial of AutoChina International Limited's ("AutoChina") request to process documentation related to a proposed name change and 10-1 forward stock split.¹ After careful consideration of AutoChina's request, the Department's denial of that request, and the additional supporting documentation that the Department and AutoChina submitted in this appeal, the UPCC Subcommittee affirms the Department's denial.

A. AutoChina's Application and the Department's Deficiency Determination

On February 17, 2015, AutoChina submitted an application requesting that the Department process documentation related to the forward stock split. The issuer submitted the application related to the proposed name change on June 19, 2015.

The Department reviewed AutoChina's submission, but it determined that AutoChina's request was deficient and did not process the documentation.² Citing FINRA Rule 6490(d)(3)(3), the Department stated that it had actual knowledge that AutoChina, and its officers, directors, associated persons, and other persons connected

¹ AutoChina proposes to change its name to Fincera, Inc.

² The Department erroneously announced AutoChina's proposed name change on August 5, 2015. The Department corrected the error, reversed the name change, and updated the announcement on the Daily List on September 3, 2015.

to the company, were the subject of a pending, adjudicated, or settled federal civil action related to fraud or securities laws violations. The Department specifically identified a federal civil action, which the Securities and Exchange Commission ("Commission") filed against AutoChina, nine individuals, and two corporate entities, in the United States District Court for the District of Massachusetts ("District Court") on April 11, 2012. The Department explained that the Commission's federal civil action against AutoChina and its officers, directors, and associated persons raised concerns about AutoChina's proposed name change and forward stock split. The Department provided AutoChina with the deficiency determination on August 21, 2015. On August 28, 2015, AutoChina filed this appeal.

B. The Commission's Federal Civil Action

The Commission's federal civil action alleged that AutoChina, its senior executive and director, Hui Kai Yan ("Yan"), eight other individuals, and two limited corporations (the "AutoChina Defendants") fraudulently traded AutoChina's shares to boost the company's trading volume, create the appearance of liquidity of AutoChina's stock, and enhance the company's current CEO and Chairman's, Yong Hui Li ("Li"), ability to obtain financing. The Commission stated that the AutoChina Defendants' stock manipulation occurred over a three-month period and involved more than \$60 million, 26 brokerage accounts, and innumerable matched orders and wash trades.

In June 2014, AutoChina and Yan consented to the District Court's entry of final judgments against them. The District Court's judgment permanently enjoined each of the AutoChina Defendants from future violations of the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 ("Exchange Act") and the anti-manipulation provisions of the Exchange Act. The District Court ordered AutoChina to pay a civil penalty of \$4.35 million. The District Court also permanently barred Yan from serving as an officer or director of any public company. The District Court entered default judgments against the remaining AutoChina Defendants in October 2014. The District Court ordered each of the remaining AutoChina Defendants to pay a civil penalty of \$150,000.

C. The UPCC Subcommittee's Findings and Conclusions

FINRA Rule 6490 authorizes the Department to process or decline to process documentation related to company-related actions such as corporate name and symbol changes. See *mPhase Technologies, Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *4 (Feb. 2, 2015). This grant of authority permits the Department to exercise discretion and to decline to process documentation related to company-related actions if an issuer's request is "deficient," based on one or more of the five-factors listed in FINRA Rule 6490(d)(3), and if denial of the issuer's request is "necessary for the protection of investors, the public interest and to maintain fair and orderly markets." See *id.* at *6. Our review of AutoChina's request to process documentation related to the proposed name change and forward stock split, and the

Giovanni Caruso, Esq.

September 29, 2015

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related submissions and arguments leads us to conclude that the Department's deficiency determination was correct.

As an initial matter, we note that AutoChina was named as a defendant in the Commission's federal civil action, and that AutoChina consented to a final judgment, which determined that the company engaged in fraudulent and manipulative conduct and violated the federal securities laws. As the Commission explained, AutoChina and the other AutoChina Defendants employed a fraudulent and manipulative scheme to artificially inflate AutoChina's trading volume to assist the company's current CEO and Chairman, Li, in securing a loan. We find the Commission's federal court action and the final judgment to be very serious, particularly as we consider the gravity of the violations at issue and the company's proposed corporate actions in this case.

We find that the conduct described in the Commission's complaint involves not only one former senior executive and director, Yan, but it also details misconduct by several other individuals and corporate entities affiliated with AutoChina and Li. AutoChina identified one of the corporate AutoChina Defendants, Rainbow Yield Limited, as an affiliate in documents filed with the Commission. Six of the individual AutoChina Defendants identified themselves as employees of AutoChina, and four of the individual AutoChina Defendants are related to Li. Although AutoChina has stated that Yan is no longer with the company, it has made no such representations with regard to the other AutoChina Defendants. AutoChina's failure to address why the other AutoChina Defendants are apparently still employed by or affiliated with AutoChina weighs heavily against processing the company's proposed name change and forward stock split.

We note that the Commission's investigation, which led to the filing of the federal civil action, initially focused on the conduct of Li and AutoChina's current Chief Financial Officer, Jason Wang. The continued involvement of executives, managers, and directors who were employed with AutoChina when the misconduct occurred raises significant concerns about the company-related actions that AutoChina has requested.

We also find that AutoChina's business reasons to support the proposed name change and forward stock split do not present a compelling basis to reverse the Department's denial of the corporate actions. Our role as gatekeepers of the over-the-counter securities markets places primary importance on the protection of investors, particularly when an issuer or its officers, directors, or associated persons have settled a fraud and manipulation complaint by consenting to a final judgment. We acknowledge AutoChina's argument that a name change would not "obfuscate" the company's previous regulatory history. We disagree, however, that our role is to approve name changes only when it would not obscure a company's history. We find that the requested name change would make it more difficult for the investing public to connect Fincera, Inc. with AutoChina.

Finally, as we reviewed AutoChina's appeal and considered that the Commission's federal civil action resulted in AutoChina's payment of \$4.35 million as a civil penalty a little over a year ago, we determined that the AutoChina Defendants have demonstrated a profound disregard for securities regulation. Under these circumstances, we have concluded that the processing of AutoChina's proposed company-related actions pose too great of a risk to the investing public and the securities markets. Consequently, we affirm the Department's denial of AutoChina's request for a name change and 10-1 forward stock split. This decision constitutes FINRA's final action with respect to this matter.

D. Appeals to the Commission

AutoChina may appeal this decision to the Commission. To do so, AutoChina must file an application for review with the Commission within 30 days of receipt of this decision. A copy of this application must also be sent to FINRA's Office of General Counsel.

The address of the Commission is:

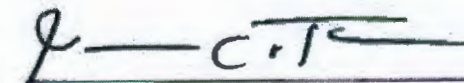
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

The address of FINRA is:

Jante C. Turner
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006

If AutoChina files an application for review with the Commission, the application must identify the FINRA case number and state the basis for appeal. The application also must include an address where AutoChina may be served and a telephone number where AutoChina may be reached during business hours. Attorneys must file a notice of appearance. Questions regarding the appeal process may be directed to the Office of the Secretary at the Commission. The telephone number of that office is 202-551-5400.

On Behalf of the Uniform Practice Code Committee,



Jante C. Turner

cc: Millicent Banks
Patricia Casimates
Kosha Dalal
Nancy Espinosa
Ciara Gray