



Financial Industry Regulatory Authority

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January 19, 2016

**VIA MESSENGER**

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

RE: In the Matter of the Application for Review of AutoChina Int'l Ltd.  
Administrative Proceeding No. 3-16913

Dear Mr. Fields:

Enclosed are the original and three copies of FINRA's Brief in Opposition to the Application for Review for the above-referenced matter. Please contact me at 202-728-8083 if you have any questions.

Very truly yours,

Jennifer C. Brooks

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Enclosures

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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of  
AutoChina International Limited  
For Review of Denial of Company-Related Action by  
FINRA  
Administrative Proceeding File No. 3-16913

**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

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January 19, 2016

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**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

**I. INTRODUCTION**

AutoChina International Limited (“AutoChina”), an issuer quoted on the Over-the-Counter Bulletin Board<sup>®</sup> (“OTCBB”), appeals a FINRA decision that denied the company’s request to process documentation related to a forward stock split and name change. FINRA denied AutoChina’s request because the SEC filed a federal civil action alleging a manipulative trading scheme against AutoChina and nine individuals and two corporate entities connected to AutoChina. The SEC’s action specifically 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 misleading appearance of liquidity of AutoChina’s stock, and enhance the company’s current Chief Executive Officer, Chairman, and beneficial owner, Yong Hui Li’s (“Li”), ability to obtain much-needed financing.

In June 2014, AutoChina and Yan consented to permanent injunctions in the SEC’s civil action and the entry of final judgments against them. The district court entered default judgments against the remaining AutoChina Defendants in October 2014. The judgments were

based upon findings that AutoChina, Yan, and the other AutoChina Defendants manipulated AutoChina's stock through 26 brokerage accounts and innumerable matched orders and wash trades, involving more than \$60 million, and violated the federal securities laws. The district court ordered, among other penalties, that AutoChina pay \$4.35 million for its misconduct.

In denying AutoChina's request to process the forward stock split and name change, FINRA determined that the SEC's civil action against AutoChina and Yan, as well as the other AutoChina Defendants, raised grave concerns about AutoChina's proposed name change and forward stock split. FINRA's emphasis on AutoChina's fraud and securities laws violations was well-founded and correct. FINRA appropriately considered the recent and serious nature of the SEC's civil action against AutoChina, Yan, and the other AutoChina Defendants and the fraud and securities laws permanent injunctions to which AutoChina and Yan consented. FINRA found concerning that the SEC's investigation, which led to the filing of the civil action, focused on the conduct of AutoChina's current CEO, Li, and AutoChina's current Chief Financial Officer, Jason Wang ("Wang"). In addition, six of the individual AutoChina Defendants are related to Li and one of the corporate AutoChina Defendants is an AutoChina affiliate and controlled by Li. FINRA determined that the involvement of AutoChina's executives and others who were employed by or connected to AutoChina when the misconduct occurred raised significant concerns about harm to the investing public and denied AutoChina's request in accordance with FINRA Rule 6490.

In so doing, FINRA fulfilled its role as the gatekeeper of information for the orderly operation of the securities markets and satisfied the standard of review for the denial of an issuer's request for a forward stock split and name change. FINRA followed its rules, relied on grounds that are factually accurate, and applied its rules in a manner consistent with the



Securities Exchange Act of 1934 (“Exchange Act”). The SEC therefore should dismiss AutoChina’s application for review.

## II. BACKGROUND

### A. FINRA Reviews Company-Related Actions

FINRA performs critical functions in the over-the-counter market. *See Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions)* (“Approval Order”), Exchange Act Release No. 62434, 2010 SEC LEXIS 2186, at \*2-3 (July 1, 2010). FINRA operates the OTCBB, which provides a mechanism for FINRA members to quote certain eligible over-the-counter securities.<sup>1</sup> *Id.* at \*3.

FINRA also reviews and processes requests to announce or publish company actions taken by issuers of over-the-counter securities to foster cooperation and coordination of the clearing, settling, and processing of transactions involving these securities, and in general, to protect investors and the public interest. *See* FINRA Rule 6490(a)(1). Specifically, FINRA reviews and processes documents relating to announcements for two categories of issuer actions – actions related to announcements required under Exchange Act Rule 10b-17 and “Other Company-Related Actions” (collectively, “Company-Related Actions”). *Id.* These Company-Related Actions include: (1) dividend payments or other distributions in cash or kind, (2) stock splits, (3) reverse stock splits, (4) rights or other subscription offerings, (5) any issuance or

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<sup>1</sup> The OTCBB is an electronic quotation facility that displays current quotes, last-sales prices, and volume information for eligible equity securities that are not listed on a national securities exchange. *See NASD Notice to Members 99-15*, 1999 NASD LEXIS 90, at \*1-2 (Feb. 1999); *see also* FINRA Rule 6520. OTCBB eligible securities are defined in FINRA Rule 6530. Unlike national securities markets, where securities issuers apply for listing and must meet listing standards, FINRA members initiate quotations for specific securities on the OTCBB. *See NASD Notice to Members 99-15*, 1999 NASD LEXIS 90, at \*2.

change to an issuer's symbol or name, (6) mergers, (7) acquisitions, (8) dissolutions, (9) bankruptcy, (10) liquidations, or (11) any other company control transaction. FINRA Rule 6490(a)(2).

In considering an issuer's request to process a Company-Related Action, FINRA may request additional information in order to complete its review of the request. *See* FINRA Rule 6490(b)(4); *Approval Order*, 2010 SEC LEXIS 2186, at \*8. If FINRA determines to process documentation related to a Company-Related Action,<sup>2</sup> FINRA provides notice of the action to the over-the-counter market and adjusts the issuer's name, symbol, or stock price, as requested in the Company-Related Action. *See id.* at \*4. FINRA also publishes Company-Related Actions pursuant to requests from issuers and their agents on its website in a document known as the "Daily List." *See Approval Order*, 2010 SEC LEXIS 2186, at \*5 n.7. Publication of Company-Related Actions in the Daily List announces the Company-Related Action to the over-the-counter market. *See id.*

**B. Deficiency Determinations Under FINRA Rule 6490**

FINRA may determine that it is necessary for the protection of investors and in the public interest to deem a Company-Related Action deficient, in which case documentation related to the Company-Related Action will not be processed. FINRA Rule 6490(d)(3). Under FINRA Rule 6490, FINRA may deny an issuer's application for Company-Related Action based on five

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<sup>2</sup> In addition to state corporate law requirements, an issuer with a class of publicly traded securities must comply with Exchange Act Rule 10b-17. *See Approval Order*, 2010 SEC LEXIS 2186, at \*3, 4 n.6. Exchange Act Rule 10b-17 requires that an issuer provide FINRA with notice of proposed Company-Related Actions when their securities are not listed on a national securities exchange or the SEC has not issued an exemption. *See* Exchange Act Rule 10b-17(a), (b)(2), (3), 17 C.F.R. 240.10b-17(a), (b)(2), (3). Once FINRA receives this notice, FINRA Rule 6490 authorizes FINRA to use its judgment and process or decline to process the Company-Related Action. *See Approval Order*, 2010 SEC LEXIS 2186, at \*7.

specific factors. *See id.* It is subsection three, FINRA Rule 6490(d)(3)(3), which is the focus of AutoChina's application for review.

FINRA Rule 6490(d)(3)(3) permits FINRA's Department of Operations (the "Department") to exercise its judgment as to the significance of certain events. *See* FINRA Rule 6490(d)(3)(3); *Approval Order*, 2010 SEC LEXIS 2186, at \*9 ("[I]f a request to process a Company-Related Action is deficient, and [FINRA] determines that it is necessary for the protection of investors and the public interest and to maintain fair and orderly markets, [FINRA] may determine that documentation related to a Company-Related Action *shall not* be processed." (Emphasis added)). Specifically, FINRA Rule 6490(d)(3)(3) allows the Department to deny an issuer's request if "FINRA has actual knowledge that the issuer, associated persons, officers, directors, transfer agent, legal adviser, promoters or other persons connected to the issuer" or the Company-Related Action "are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations." FINRA Rule 6490(d)(3)(3).

Following the Department's determination that an issuer's request is deficient because it falls within one or more of the five factors enumerated in FINRA Rule 6490(d)(3), the Department provides written notice of the deficiency to the issuer, identifying the specific factors that caused the request to be deemed deficient. *See Approval Order*, 2010 SEC LEXIS 2186, at \*11; FINRA Rule 6490(d)(4). Once an issuer's request is deemed deficient, FINRA will not process the issuer's documentation for the proposed Company-Related Action or announce the Company-Related Action to the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*11.

FINRA Rule 6490 also provides an issuer with a right to appeal from a Department deficiency determination. *See* FINRA Rule 6490(e). A three-person subcommittee comprised of current or former industry members of FINRA’s Uniform Practice Code Committee (the “UPC Subcommittee”) thoroughly reviews and decides all appeals.<sup>3</sup> *See id.* The UPC Subcommittee meets each month, as needed, and issues a written decision within three business days of its consideration of the appeal. *See id.*

### **III. FACTS**

#### **A. AutoChina and Its CEO Li**

AutoChina is a Cayman Islands corporation with its principal place of business in the People’s Republic of China. RP 1, 21, 50, 94.<sup>4</sup> AutoChina owns and operates a commercial vehicle leasing business in China. RP 1, 21, 104, 113. The company represents that it is changing its business from vehicle leasing to “providing financial technology related products and services.” RP 104; *see* Br. at 15. AutoChina is a foreign private issuer and trades on the OTCBB under the symbol AUTCF. RP 1, 21.

Li is AutoChina’s CEO and Chairman of the company’s Board of Directors. RP 51, 95. He has held these positions since April 2009, which includes the relevant time period encompassing the scheme to manipulate AutoChina’s stock as alleged in the SEC’s civil action.

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<sup>3</sup> The Uniform Practice Code provides the framework of rules governing broker-dealers for the settlement of non-exchange listed securities quoted or traded in the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*6 n.8.

<sup>4</sup> “RP” refers to the record page in the certified record. “Br.” refers to the referenced page in AutoChina’s brief.

RP 51, 95. Li also is the majority shareholder of AutoChina's stock and the company's beneficial owner.<sup>5</sup> RP 69, 78-79.

**B. The SEC's Civil Action Against AutoChina Alleging a Scheme to Manipulate the Company's Stock**

On April 11, 2012, the SEC filed a federal civil action in the United States District Court for the District of Massachusetts against AutoChina, Yan (AutoChina's then-current secretary and member of the company's Board of Directors), and the ten other AutoChina Defendants<sup>6</sup> who were related to Li or otherwise connected to AutoChina. RP 17-46. The SEC alleged that AutoChina, Yan, and the other AutoChina Defendants engaged in fraud by artificially increasing the trading volume of the company's stock. RP 17-18. AutoChina's manipulative scheme was designed to benefit its current CEO, Li. The SEC alleged that prior to the period beginning on November 1, 2010, AutoChina unsuccessfully negotiated with potential lenders for a loan to Li to be secured by AutoChina stock owned by Li through another entity that he controls. RP 18.

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<sup>5</sup> Li is the owner and sole shareholder of Honest Best Int'l Ltd., which, as of February 2015, owned 80.42 percent of AutoChina's ordinary shares. RP 69-70 nn. 3-4. As of March 11, 2015, Li owned approximately 64 percent of AutoChina's ordinary shares through Honest Best Int'l. RP 78-79. In August 2015, AutoChina, using the name Fincera, announced that Li, through Honest Best Int'l, acquired an additional 30,000 of AutoChina's shares. Exhibit A. Approximately three weeks later, on September 10, 2015, AutoChina announced that Li, through Honest Best Int'l, purchased an additional 14,448 of the company's shares. Exhibit B.

<sup>6</sup> AutoChina "objects" to the use of the shorthand definition of eight individuals and two entities connected to AutoChina, and named in the SEC's civil action, as the "AutoChina Defendants." Br. at 10 n.7. This collective reference is similar to the one used by the SEC in its civil action, which referred to all of the parties named in the complaint collectively as "Defendants." RP 17. AutoChina's meritless objection is one of many instances where AutoChina attempts to distance itself from the reality of the SEC's civil action connecting these persons and entities to the company—a company that also was a named defendant in the civil action and that consented to factual findings related to manipulation of its stock and securities fraud and agreed to pay millions in civil penalties. See, e.g., *mPhase Technologies, Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at \*29 (Feb. 2, 2015) (finding that FINRA correctly considered the factual findings underlying a prior settlement when denying a Company-Related Action).

AutoChina was unable to secure financing because lenders were hesitant to extend credit for a share-backed loan when AutoChina's stock did not trade regularly or broadly. RP 18, 23. But, as the SEC detailed, by creating the appearance of liquidity of the company's stock, AutoChina, through Li, would be more likely to obtain much-needed financing. RP 17-18.

The SEC asserted that, to enable their manipulative scheme, AutoChina, Yan, the AutoChina Defendants, and others connected to AutoChina opened 26 brokerage accounts at E\*Trade Financial Corporation and deposited more than \$60 million into these accounts over four months. RP 18, 24. Many of the E\*Trade accounts were opened on the same day. RP 18, 24. Many of the account-opening documentation for these E\*Trade accounts listed AutoChina as the applicants' employer and AutoChina's business address as the applicants' mailing address. RP 18, 24-29. In addition, the more than \$60 million deposited into the E\*Trade accounts was inconsistent with the listed annual incomes, ranging from \$15,000 to \$99,999, on the account documents and the volume of trading done in these accounts. RP 18, 30.

From October 2010 through February 2012, AutoChina, Yan, and the AutoChina Defendants used these accounts to trade millions of shares of AutoChina stock and dramatically increase the stock's trading volume. RP 18, 19, 30. For example, from November 1, 2010, through January 31, 2011, AutoChina's average daily trading volume increased to over 139,000 shares per day. RP 19. The SEC asserted that the AutoChina Defendants aggressively bought and sold AutoChina's stock to create the false appearance of a liquid market and stable price for the stock. RP 19. The SEC detailed that AutoChina, Yan, and the AutoChina Defendants placed matched orders, wash trades, and other non-economic trades to create an appearance of an active market for AutoChina's shares and to increase the stock's sales volume and price. RP 19, 31-39. The SEC also noted that, in many cases, these trades were made using the same computers and computer networks. RP 19, 30-31.

The SEC stressed that this misconduct benefitted AutoChina and its CEO, Li. As a result of this trading, which created artificial trading volume in AutoChina's stock, Li was able to obtain approximately \$120 million in much needed financing. RP 39. Li transferred at least \$60 million of these loan proceeds to AutoChina. RP 39.

The SEC alleged that AutoChina's, Yan's, and the AutoChina Defendants' actions violated the antifraud provisions of the Securities Act of 1933 ("Securities Act") and the Exchange Act. RP 20, 40-42. The SEC also alleged that the AutoChina Defendants aided and abetted AutoChina's violations of the antifraud provisions of the Securities Act and the Exchange Act. RP 20, 42-45.

**C. AutoChina and Its Senior Executive Consent to Permanent Injunctions and Are Ordered to Pay Sizable Civil Penalties in the SEC's Civil Action**

On June 25, 2014, AutoChina and its senior executive and Board member, Yan, consented to the Massachusetts district court's entry of permanent injunctions against them based upon the alleged misconduct. RP 46.1-.12. AutoChina was ordered to pay a civil penalty of \$4.35 million. RP 46.4. Yan was ordered to pay \$150,000 in civil penalties and was barred from serving as an officer or director of a public company. RP 46.10.

**D. The Ten Remaining AutoChina Defendants Default**

The Massachusetts district court entered default judgments against the remaining AutoChina Defendants in October 2014. RP 46.13-72. The district court ordered each of the remaining AutoChina Defendants to pay a civil penalty of \$150,000. RP 46.16, 46.22, 46.28, 46.34, 46.40, 46.46, 46.52, 46.58, 46.64, 46.70.

**E. The 10-1 Forward Stock Split and Name Change**

On February 17, 2015, AutoChina submitted an application requesting that FINRA process documentation related to a 10-1 forward stock split. RP 50-54. AutoChina subsequently submitted an additional application requesting to change its name to Fincera, Inc. on June 19,

2015. RP 94-98. FINRA asked AutoChina to answer questions and provide documentation to facilitate its review. RP 55-91. After reviewing the information that AutoChina provided, the Department deemed AutoChina's request deficient and denied the request.<sup>7</sup> RP 99-102.

The Department denied AutoChina's request pursuant to FINRA Rule 6490(d)(3)(3). RP 99. The Department explained that it had actual knowledge that AutoChina, Yan, and other persons connected to AutoChina were the subject of the SEC's civil action. RP 99-100. The Department also noted its knowledge of AutoChina's and Yan's consent to the final judgments against them and the resulting millions of dollars in civil penalties and bar of Yan as an officer or director. RP 100. The Department concluded that AutoChina's settlement of the SEC's civil action related to manipulation and securities laws violations triggered one of the grounds delineated in FINRA Rule 6490(d)(3) and deemed the application deficient. RP 99-100. Consequently, the Department declined to process AutoChina's documentation concerning the forward stock split and name change.<sup>8</sup> RP 99-100. The Department provided AutoChina with a written deficiency determination on August 21, 2015. RP 99.

#### **F. The Appellate Proceedings Before the UPC Subcommittee**

On August 28, 2015, AutoChina requested that the UPC Subcommittee review the Department's decision under FINRA Rule 6490(e). RP 103-05. Consistent with the rule, the UPC Subcommittee provided AutoChina with the opportunity to respond to the Department's

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<sup>7</sup> AutoChina asserts that FINRA should have considered the two Company-Related Action requests separately. Br. at 1 n.1. FINRA, however, acted consistent with its rules in the manner in which it considered the requests. *See infra* Part V.A. The stock split request was pending when the company submitted the later request to change its name. FINRA appropriately considered the information AutoChina had submitted and issued a single decision denying both requests. RP 99-102.

<sup>8</sup> The Department erroneously announced AutoChina's proposed name change on August 5, 2015. RP 124. The Department corrected the error, reversed the name change, and updated the announcement on the Daily List on September 3, 2015. RP 124.



deficiency determination and supplement the record with additional supporting documentation.

RP 107-08. AutoChina supplemented the record on September 16, 2015. RP 111-26.

After a de novo review of the record, the UPC Subcommittee affirmed the Department's denial of AutoChina's requested forward stock split and name change. RP 127-30. The UPC Subcommittee's decision provided several reasons to support the denial. RP 127-30. The UPC Subcommittee found "very serious" that AutoChina was named as a defendant in the SEC's civil action in which AutoChina consented to a final judgment that determined that the company engaged in fraudulent and manipulative conduct and violated the federal securities laws. RP 129. The gravity of these violations weighed heavily against processing the company's proposed corporate actions in this case. RP 129. The UPC Subcommittee also considered AutoChina's recent payment of \$4.35 million in civil penalties resulting from the SEC's civil action. RP 46.1-.6, 130.

The UPC Subcommittee also stressed that the conduct described in the SEC's complaint involved not only one former senior executive and director, Yan, but it also detailed misconduct by several other individuals and corporate entities connected to AutoChina and Li. RP 129. The UPC Subcommittee found relevant to its determination that the SEC's investigation, which led to the filing of the civil action, initially focused on the conduct of Li and AutoChina's current Chief Financial Officer, Wang. RP 3, 129. The UPC Subcommittee explained that the continued involvement of executives, managers, and directors who were employed with AutoChina when the misconduct occurred raised significant concerns about the Company-Related Actions that AutoChina requested. RP 129.

In rendering its decision, the UPC Subcommittee analyzed the arguments that AutoChina offered in support of the appeal – that AutoChina had business reasons for the proposed forward stock split and name change. RP 129. The UPC Subcommittee concluded, however, that these

reasons did not compel approval of the Company-Related Actions, particularly in light of AutoChina's settlement and final judgment that determined the company engaged in securities fraud. RP 129-30. The UPC Subcommittee acknowledged AutoChina's argument that a name change to Fincera would not mask the company's regulatory history, but the Subcommittee nonetheless determined that the investing public would be less likely to connect Fincera to AutoChina. RP 129. The UPC Subcommittee concluded that because AutoChina demonstrated "a profound disregard for securities regulation" as evidenced by the company's agreement to pay a \$4.35 million civil penalty in June 2014, the processing of the proposed Company-Related Actions "pose too great of a risk to the investing public and the securities markets." RP 130.

The UPC Subcommittee rendered its decision on September 29, 2015. RP 127.

AutoChina timely appealed to the SEC on October 15, 2015. RP 137-38.

#### **IV. SUMMARY OF ARGUMENT**

FINRA's denial of AutoChina's request for the forward stock split and name change was based on protecting investors and the public interest and should be affirmed by the SEC. FINRA Rule 6490(d)(3)(3) permitted FINRA to examine any pending, adjudicated, or settled civil or regulatory action related to fraud or securities laws violations, in which the issuer, or its associated persons, officers, directors, or other persons connected to the issuer are a party. FINRA's denial properly applied FINRA Rule 6490.

In this instance, AutoChina and one of the company's senior executives and member of its Board of Directors, Yan, consented to a judgment in a federal civil action brought by the SEC, which alleged a scheme to manipulate AutoChina's stock and related securities laws violations. In addition, a federal district court entered default judgments for related fraudulent misconduct against the other AutoChina Defendants who were connected to AutoChina. Sizeable monetary

penalties were imposed upon AutoChina, Yan, and the remaining AutoChina Defendants. The SEC's civil action triggers FINRA Rule 6490(d)(3)(3), and the UPC Subcommittee properly exercised its judgment to deny AutoChina's request for the Company-Related Action.

On appeal before the SEC, AutoChina demonstrates a fundamental misunderstanding of FINRA Rule 6490 and tries to distance itself from the undeniable truth and consequence of the SEC's civil action against it. First, AutoChina argues FINRA Rule 6490 limits FINRA's authority to decline to process Company-Related Actions to circumstances in which FINRA has actual knowledge of the fraudulent activities of an issuer's employee or control person. To that end, AutoChina asserts that the 10 AutoChina Defendants were not company employees, control persons, or affiliates. Reading FINRA Rule 6490 in this manner, however, ignores the rule's text, which allows FINRA the discretion to decline to process a Company-Related Action when FINRA has actual knowledge that "persons connected to the issuer," among others, are the subject of a civil action pertaining to fraud or other securities law violations. Contrary to AutoChina's assertions, the record in this case unequivocally shows that the AutoChina Defendants were connected to AutoChina in myriad ways. FINRA Rule 6490 serves as a monitoring mechanism for FINRA to root out proposed Company-Related Actions for which there are indicators of potential fraud. One such indicator, which is present in this case, is when an issuer, its officer and director, and others connected to the issuer are the subject of a settled federal civil action alleging fraud.

Second, AutoChina argues that FINRA impermissibly weighed the SEC's civil action against AutoChina when the company and Yan consented to the judgment without admitting or denying liability and paid the related civil penalties in full. Consistent with SEC precedent, FINRA gave the appropriate weight to the SEC's civil action and sanctions and imposed no penalty on AutoChina. FINRA's refusal to process the forward stock split and name change is a

collateral consequence of AutoChina's settlement and well-within FINRA's discretionary authority under FINRA Rule 6490.

Third, AutoChina states that the company's CEO, Li, and its Chief Financial Officer, Wang, were neither accused of fraud nor named as defendants in the SEC's civil action, and argues that FINRA is improperly punishing the company for Li's and Wang's continued involvement in the management of the company. Both Li and Wang, however, are deeply connected to AutoChina. Li is the company's CEO, Chairman, and its majority shareholder. In addition, six of the AutoChina Defendants are related to Li. Li was also a beneficiary of AutoChina's manipulative trading scheme when he obtained much needed financing through a loan backed by his AutoChina stock after the stock's volume increased dramatically. Wang was involved in the company's attempts to secure financing during the relevant period encompassing the SEC's civil action. The continued involvement of Li and Wang, who AutoChina employed when the misconduct occurred, serves as additional support under FINRA Rule 6490(d)(3)(3) to deny AutoChina's forward stock split and name change.

Finally, AutoChina states that it has compelling business reasons for the forward stock split and name change, and that FINRA's denial of the requested Company-Related Action disadvantages AutoChina's employees and shareholders and unduly burdens competition. AutoChina's shortsighted argument ignores the primary importance of FINRA's responsibility to protect investors when an issuer, its officers or directors, or others connected to the issuer are the subject of civil actions that allege fraud or securities laws violations, which occurred in this case.

FINRA properly denied AutoChina's proposed Company-Related Actions, and in so doing, complied fully with the three-pronged standard of review for this action. FINRA followed its rules, relied on grounds that are factually accurate, and applied its rules in a manner consistent with the Exchange Act. The SEC therefore should dismiss this appeal.

## V. ARGUMENT

Section 19(f) of the Exchange Act governs the SEC's review of this case.<sup>9</sup> *See* 15 U.S.C. § 78s(f). The SEC should affirm FINRA's denial of AutoChina's proposed forward stock split and name change because: (1) FINRA's action was taken in accordance with its rules; (2) the specific grounds upon which FINRA based its action "exist in fact"; (3) FINRA applied its rules in a manner that is consistent with the purposes of the Exchange Act; and (4) FINRA's action imposes no undue burden upon competition. *See id.*; *see also Tassaway, Inc.*, 45 S.E.C. 706, 709-10 (1975) ("Our function when asked to review the [FINRA's] action . . . is very narrow. It is solely that of seeing whether 'the specific grounds on which such action [are] based exist in fact and are in accord with the applicable rules of the association.' Should [FINRA's] action meet that test, we must dismiss the review proceeding.").

### A. FINRA's Action Is in Accordance with FINRA Rule 6490

This case presents a classic example of what FINRA Rule 6490 is designed to protect. FINRA Rule 6490 protects "'the OTC marketplace and investors in OTC Securities' by permitting FINRA to deny a Company-Related Action request when there are 'certain indicators of potential fraud.'" *Positron*, 2015 SEC LEXIS 442, at \*32 (quoting *Approval Order*, 2010 SEC LEXIS 2186, at \*2). Thus, Rule 6490 grants FINRA discretion to deny Company-Related Actions based on instances when an issuer, the issuer's officer or director, or others connected to the issuer is the subject of a pending or settled federal civil or regulatory action. *See Approval*

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<sup>9</sup> Section 19(d) of the Exchange Act, 15 U.S.C. § 78s(d), grants the SEC jurisdiction to review any denial of access to services by a self-regulatory organization. *See Positron Corp.*, Exchange Act Release No. 74216, 2015 SEC LEXIS 442, at \*21 (Feb. 5, 2015). FINRA's denial of the forward stock split and name change prevents AutoChina's access to FINRA's services, is FINRA's final action in this case, and is subject to SEC review. *See id.*; *Approval Order*, 2010 SEC LEXIS 2186, at \*21.

*Order*, 2010 SEC LEXIS 2186, at \*7; *see also Positron*, 2015 SEC LEXIS 422, at \*22-23; *mPhase*, 2015 SEC LEXIS 398, at \*18-19. These circumstances are present here, and FINRA properly exercised its discretion to deny AutoChina’s proposed Company-Related Action in accordance with FINRA Rule 6490.

**1. FINRA Rule 6490 Authorized FINRA’s Denial of AutoChina’s Company-Related Action**

FINRA Rule 6490(d)(3) enumerates five grounds upon which FINRA may decide to classify a Company-Related Action as deficient. The rule states, “[FINRA] shall make such deficiency determinations solely on the basis of one or more of the following factors . . . .” FINRA Rule 6490(d)(3).

Once FINRA finds that one of the five grounds applies, it exercises judgment to decide whether to approve or deny the request. Specifically, FINRA Rule 6490(d)(3) explains that, “In circumstances where . . . [FINRA] may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets, that documentation related to [the] . . . Company-Related Action *will not be processed.*” FINRA Rule 6490(d)(3) (emphasis added). In short, if one of the five grounds exists, then FINRA *may* decide to deny the request. *See id.* As the SEC recently explained in two other appeals of Company-Related Action requests, “[t]he Rule’s use of the permissive ‘may’ vests FINRA with discretionary authority in deciding whether to process and announce a Company-Related Action request on the Daily List.” *Positron*, 2015 SEC LEXIS 442, at \*24; *see mPhase*, 2015 SEC LEXIS 398, at \*19-20.

FINRA identified subsection (3) of FINRA Rule 6490(d)(3) as the basis for its denial of AutoChina’s forward stock split and name change. That subsection permits FINRA to deny a Company-Related Action based on a pending or settled federal civil or regulatory action related to fraud or securities laws violations:

- (3) FINRA has actual knowledge that the issuer, associated persons, officers, directors, . . . or other persons connected to the issuer . . . are the subject of a pending, adjudicated or settled regulatory action . . . by a federal . . . regulatory agency . . . related to fraud or securities laws violations.

FINRA Rule 6490(d)(3)(3). Accordingly, FINRA's denial of AutoChina's proposed Company-Related Action is fully authorized by the rule.

## **2. FINRA Followed the Procedures Set Forth in FINRA Rule 6490**

FINRA's decision also complied with the requirements of FINRA Rule 6490 because FINRA followed each of the rule's procedural steps in the proceedings before the Department and the UPC Subcommittee. The Department provided AutoChina with written notice of the deficiency determination. RP 99-102; *see* FINRA Rule 6490(d)(4). The Department explained that its deficiency determination was based on FINRA Rule 6490(d)(3)(3). RP 99. The Department had actual knowledge of the SEC's civil action alleging securities fraud against AutoChina, Yan, and the 10 other AutoChina Defendants as well as the final judgments imposing civil penalties upon AutoChina and Yan for the alleged misconduct. RP 99-100; *see* FINRA Rule 6490(d)(4).

Thereafter, AutoChina availed itself of the opportunity to appeal the Department's denial and submitted a brief to the UPC Subcommittee. RP 103-06; *see* FINRA Rule 6490(e). The UPC Subcommittee considered the written record developed during the proceedings before the Department, permitted AutoChina to supplement the record with additional supporting documentation, and conducted a *de novo* review of the Department's denial. RP 107-08; 111-26, 127-30; *see* FINRA Rule 6490(e). After an independent review of the record, the UPC Subcommittee determined that, in addition to the final judgments and penalties imposed upon

AutoChina and Yan, the Massachusetts district court had entered default judgments and imposed civil penalties upon the 10 other AutoChina Defendants.<sup>10</sup> RP 128. The UPC Subcommittee concluded that the Department’s decision to deny the company’s request was correct and provided AutoChina with written notice of its decision. RP 127-30; *see* FINRA Rule 6490(e). The UPC Subcommittee’s decision to deny AutoChina’s proposed forward stock split and name change was in accordance with FINRA Rule 6490.

**B. FINRA Relied on Grounds that Are Factually Accurate**

AutoChina’s request for the forward stock split and name change squarely triggered one of the five grounds detailed in FINRA Rule 6490(d)(3). FINRA had actual knowledge that AutoChina, and Yan, one of its senior executives and a director, consented to a judgment in the SEC’s civil action, which alleged securities fraud and a scheme to manipulate the company’s stock. *See* FINRA Rule 6490(d)(3)(3). AutoChina admits that FINRA had this knowledge. Br. at 10. The plain language of FINRA Rule 6490(d)(3) reveals that FINRA’s actual knowledge of AutoChina’s settlement of the SEC’s civil action related to fraud was alone sufficient grounds to find AutoChina’s request deficient. *See* Rule 6490(d)(3) (“FINRA has actual knowledge that the issuer . . . [is] the subject of a . . . civil or criminal action related to fraud or securities laws violations.”); *mPhase*, 2015 SEC LEXIS 398, at \*45.

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<sup>10</sup> AutoChina contends that FINRA’s denial was not based in fact because of the Department’s concerns that the SEC’s civil action was pending against the remaining AutoChina Defendants and that the Department did not acknowledge that AutoChina paid the \$4.35 million civil penalty. Br. at 3-4, 6. This contention is erroneous. “[I]t is the decision of the UPCC Subcommittee—not the Department’s examiner—that constitutes the final action of FINRA subject to [the SEC’s] review.” *mPhase*, 2015 SEC LEXIS 398, at \*35. In fact, the UPC Subcommittee’s decision found that the district court entered default judgments against the remaining AutoChina Defendants and that AutoChina paid the penalty. RP 128, 130. Indeed, AutoChina acknowledges that the UPC Subcommittee’s decision considered that AutoChina paid the civil penalty. Br. at 18-20. FINRA’s decision is unquestionably based in fact.



FINRA carefully examined the facts underlying the SEC's civil action and stressed that the case was related to fraud and the manipulation of AutoChina's stock, in violation of the federal securities laws, which raised grave concerns for the risk of future harm. RP 129; *see Positron*, 2015 SEC LEXIS 442, at \*35-36 (addressing future harm). In addition to the company's settlement, FINRA had actual knowledge of Yan's settlement and the default judgments entered against the 10 AutoChina Defendants for fraudulent misconduct involving manipulation of AutoChina's stock, which further supports FINRA's action. *See* FINRA Rule 6490(d)(3)(3).

FINRA also carefully examined AutoChina's business reasons for the Company-Related Action, but determined that AutoChina's reasons did not outweigh FINRA's investor protection concerns emerging from the SEC's civil action against AutoChina relating to fraud and securities laws violations. RP 129. In short, AutoChina's business reasons did not present a compelling basis for FINRA to allow the action to proceed. RP 129; *see Positron*, 2015 SEC LEXIS 442, at \*45.

FINRA had actual knowledge of these facts, determined that the SEC's civil action raised serious concerns about the requested Company-Related Action, and properly denied the request in accordance with FINRA Rule 6490(d)(3)(3).

**1. FINRA Properly Considered that AutoChina Consented to the Judgment in the SEC's Civil Action and Paid a Sizable Civil Penalty**

AutoChina asserts that FINRA's denial of the Company-Related Action impermissibly relied on the consent judgment in the SEC's civil action and AutoChina's payment of a \$4.35 million civil penalty. Br. at 18-20. AutoChina moreover contends that the UPC Subcommittee mischaracterized the judgment and civil penalty as evidence establishing liability against AutoChina. Br. at 18-20. To support this point, AutoChina stresses that AutoChina neither

admitted nor denied the SEC's allegations, paid the civil penalty in full, and since the settlement, has demonstrated a "high regard" for securities regulation. Br. at 6, 18-20. AutoChina effectively asserts that the consent judgment and civil penalty should have minimal effect on AutoChina's request for Company-Related Action. These arguments demonstrate a misunderstanding of FINRA's denial of AutoChina's Company-Related Action.

FINRA properly considered the judgment and civil penalty that AutoChina consented to, which is fully consistent with FINRA's authority under FINRA Rule 6490(d)(3)(3). FINRA has discretion to deny a Company-Related Action based on a settled federal civil action related to fraud or a securities laws violation. FINRA Rule 6490(d)(3)(3). The SEC recently endorsed FINRA's consideration of the underlying factual findings in affirming FINRA's denial of another Company-Related Action. *See mPhase*, 2015 SEC LEXIS 398, at \*28. "By including a settled securities-related action as one of the specific grounds for deeming a Company-Related Action deficient in Rule 6490, FINRA made a basic public interest determination about the seriousness of such an action." *Id.* (internal quotation marks omitted). The SEC further explained that FINRA's consideration of the "factual predicate for the settlement, rather than the existence of the settlement alone, is a necessary element of this analysis—both with respect to the issuer, which may seek to explain the circumstances of the past action, . . . and the public, which may be adversely affected by a decision to deny or approve an announcement on the OTCBB." *Id.* at \*29. This ruling applied directly to AutoChina. Once AutoChina and Yan consented to the district court's entry of judgments against them for fraud and securities laws violations, the consent judgments became a proper basis for FINRA's review of AutoChina's request for Company-Related Action. *See id.* When assessing AutoChina's request, FINRA did not rely upon the findings of the SEC's action to establish any liability against AutoChina, and FINRA imposed no sanction or penalty against the company. *See Positron*, 2015 SEC LEXIS

442, at \*30. Rather, FINRA’s denial of AutoChina’s request “is but one of the collateral consequences created by” AutoChina’s settlement and consent to the civil penalty. *See id.*; *mPhase*, 2015 SEC LEXIS 398, at \*32.

AutoChina’s efforts to downplay the settlement because the company did not admit or deny the allegations in the SEC’s complaint is directly at odds with the language of FINRA Rule 6490 and the SEC’s recent precedent. *See mPhase*, 2015 SEC LEXIS 398, at \*28-29. FINRA may consider settlements (including consent judgments) concerning fraud violations or other violations of the securities laws when evaluating an issuer’s request for a forward stock split and name change. FINRA Rule 6490(d)(3)(3). When approving Rule 6490, the SEC “highlighted the value of FINRA’s authority under the Rule to conduct in-depth reviews of requests to process Company-Related Actions and to provide FINRA staff the discretion not to process . . . requests for which there are certain indicators of potential fraud.” *Positron*, 2015 SEC LEXIS 442, at \*30 (internal quotation marks omitted). In this case, FINRA fulfilled its role as gatekeeper of information for the orderly operation of the securities markets and properly used its judgment to deny AutoChina’s request to process documentation for its proposed forward stock split and name change where the issuer, a company director, *and* others connected to the issuer consented (or defaulted) to findings of fraud and a scheme to manipulate the company’s stock.

**2. FINRA Properly Considered that the Other AutoChina Defendants and Their Misconduct Were Connected to AutoChina**

AutoChina argues that FINRA relied upon factually inaccurate grounds when it considered the other AutoChina Defendants’ misconduct because those defendants were “not employed by and did not exercise any control over,” or were otherwise affiliated with, the company. Br. at 10-12. AutoChina’s argument is flawed and has no support in the text of the

rule or the SEC's Approval Order for FINRA Rule 6490. Moreover, the evidence shows that the AutoChina Defendants were connected to AutoChina.

FINRA's consideration of the SEC's civil action related to the AutoChina Defendants' misconduct and default judgments as a basis for the denial of AutoChina's request for a forward stock split and name change is authorized by the express terms of FINRA Rule 6490(d)(3). *See Positron*, 2015 SEC LEXIS 442, at \*30-31; *see also Approval Order*, 2010 SEC LEXIS 2186, at \*7 (“[FINRA] Rule 6490 would codify the authority of [FINRA] to conduct in-depth reviews of requests to process Company-Related Actions and to provide FINRA staff the discretion not to process . . . requests for which there are certain indicators of potential fraud.”). These considerations were central to FINRA's exercise of its judgment as well. *Cf. DHB Capital Group Inc.*, 52 S.E.C. 740, 744-45 (1996) (“The NASD's decision to deny inclusion—based in part on the fact that, upon finding that Brooks committed serious securities law violations, we barred him (with his consent) from the industry – is a collateral consequence of Brooks' misconduct . . . . It also is a proper exercise of the NASD's authority under its Qualification Requirements By-Law.”). The text of FINRA Rule 6490, as well as the Approval Order, establishes that FINRA may use its judgment and deny a request for Company-Related Action when certain events raise reasonable concerns about the effect of a proposed Company-Related Action on the investing public and the securities markets. As the SEC recently explained, “FINRA's discretionary authority under Rule 6490 is significant.” *Positron*, 2015 SEC LEXIS 442, at \*43.

FINRA Rule 6490(d)(3)(3) covers, in addition to the issuer, numerous actors that are linked to the issuer. Rule 6490(d)(3)(3) permits FINRA to examine civil actions related to fraud or securities laws violations, in which the issuer's “associated persons, officers, directors, . . . or

*other persons connected to the issuer*” are a party.<sup>11</sup> FINRA Rule 6490(d)(3)(3) (emphasis added). Nothing in FINRA Rule 6490 requires that the other persons connected to the issuer be employees or exercise control over the issuer. AutoChina’s interpretations of FINRA Rule 6490 to require that FINRA can only consider the misconduct of employees or control persons conflicts with the rule’s purpose and plain language. The rule permits FINRA to look to the conduct of others “related to the issuer.” *Positron*, 2015 SEC LEXIS 442, at \*31. AutoChina fails to explain why the SEC should invalidate the express language of FINRA Rule 6490.

As the allegations in the SEC’s civil complaint illustrate, the AutoChina Defendants are connected to the company. For example, six of the AutoChina Defendants are relatives of the company’s CEO, Li—Shu Ling Li (sister), Yong Li Li (brother), Yong Qi Li (brother), Ai Xi Ji (sister-in-law); Rui Ge Dong (sister-in-law), and Zhong Wen Zhang (brother-in-law). RP 23, 26, 27; Br. Appendix A, at 1, 2. Shu Ling Li, Yong Li Li, Ai Xi Ji, Yong Qi Li, Rui Ge Dong, and Zhong Wen Zhang each opened an E\*Trade account in order to trade AutoChina shares as part of a manipulative scheme. RP 25, 26, 27. Shu Ling Li listed AutoChina’s mailing address and the company as her employer on her account opening documentation with E\*Trade. RP 27. Rui Ge Dong, Ai Xi Ji, and Zhong Wen Zhang also listed AutoChina as their employer on their E\*Trade account opening documents. RP 25, 26, 27. Shu Ling Li was the sole director of Rainbow Yield, another AutoChina Defendant. RP 23, 26, 27. She, along with Yan, were listed as the signatories on Rainbow Yield’s E\*Trade account, which was used to trade AutoChina’s stock as part of the manipulative scheme. RP 23. In addition, AutoChina listed Rainbow Yield as an affiliate on its Form 20-F in November 2011. *See*

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<sup>11</sup> The dictionary definition of “connected” means to associate, relate, or link together. *Webster’s II New College Dictionary* 239 (2001).

[http://www.sec.gov/Archives/edgar/data/1417370/000114420411067702/v239372\\_20f.htm](http://www.sec.gov/Archives/edgar/data/1417370/000114420411067702/v239372_20f.htm); Br. at 12. Li acquired Rainbow Yield in December 2014 through Honest Best Int'l Ltd. Br. Appendix A at 2.

In addition to these connections, several AutoChina defendants were directly connected to AutoChina stock. In AutoChina's 2009 Form 20-F/F-1 filed with the SEC, the company disclosed a series of private stock transactions in which Shu Ling Li, Yan, Rainbow Yield, Ai Xi Ji, Yong Li Li, and Yong Qi Li, among other AutoChina Defendants, received stock options and warrants in the company. RP 29;

[http://www.sec.gov/Archives/edgar/data/1417370/000114420409057593/v165028\\_f1a.htm](http://www.sec.gov/Archives/edgar/data/1417370/000114420409057593/v165028_f1a.htm);

[http://www.sec.gov/Archives/edgar/data/1417370/000114420409057136/v165073\\_20fa.htm](http://www.sec.gov/Archives/edgar/data/1417370/000114420409057136/v165073_20fa.htm).

Thus, AutoChina had a prior relationship with these AutoChina Defendants. As the SEC aptly noted in its complaint, “[t]he Defendants’ connections to each other and to AutoChina are revealed by their E\*Trade account-opening forms, by their other brokerage accounts, and by their holding of stock options and warrants issued by AutoChina through a series of private stock transactions. . . . In addition, the Defendants traded solely in AutoChina stock through the E\*Trade [a]ccounts.” RP 25. The SEC’s complaint also highlighted that the trades done by the AutoChina Defendants in the E\*Trade accounts were made from the same computer network or even the same computer with an IP address connected to AutoChina’s business. RP 19, 30, 31.

AutoChina attempts to disclaim the factual underpinnings set forth in the SEC’s complaint, including that the AutoChina Defendants were linked to the company. Br. at 10-12. FINRA, however, is permitted to consider the “factual predicate for the settlement” and properly did so here. *See mPhase*, 2015 SEC LEXIS 398, at \*29. Finally, although not required by the rule, the AutoChina Defendants’ activities did directly involve AutoChina. FINRA’s consideration of the SEC’s civil action related to the AutoChina Defendants serves to emphasize

the investor protection necessity of denying these requests related to this issuer. FINRA had actual knowledge that the AutoChina Defendants had connections to AutoChina and were the subjects of the SEC's civil action. These connections served as an element of FINRA's denial of AutoChina's Company-Related Action. AutoChina's argument that FINRA's action was in error because the AutoChina Defendants were not AutoChina employees or control persons is wholly without merit.<sup>12</sup>

### **3. FINRA Properly Considered Li's and Wang's Role in AutoChina**

When FINRA reviewed AutoChina's application and made its deficiency determination, FINRA considered that the SEC's investigation, which resulted in the SEC's civil action, initially focused on Li and Wang. RP 129. Li and Wang were employed with the company when the misconduct detailed in the SEC's civil action occurred and continue to be deeply involved with the company now. RP 3-4, 17-46, 51, 95. FINRA properly determined that Li's and Wang's ongoing involvement with AutoChina raised serious concerns about the stock split and name change that AutoChina requested. RP 129.

Li maintains a significant role within AutoChina and holds a substantial amount of the company's stock. Li is firmly established as AutoChina's CEO and the Chairman of the company's Board of Directors, having held these positions since 2009. RP 51, 95. Li, through

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<sup>12</sup> AutoChina argues that the UPC Subcommittee erroneously failed to consider its statement that none of the AutoChina Defendants were "employee[s] of AutoChina or had any other affiliation with AutoChina during the time of the SEC complaint" and that FINRA "at no point requested information about whether the other defendants were currently employees of the Company." Br. at 11. As the record shows, and is discussed above, however, the AutoChina Defendants were connected to the company for purposes of FINRA's review under Rule 6490. Moreover, AutoChina continued to employ Yan until September 30, 2015, which was after the UPC Subcommittee issued its decision in this case and approximately 15 months after the final judgment in the SEC's civil action was entered against him. RP 46.7-.12, 127; Br. at 4 n.4.

Honest Best Int'l, also is the majority shareholder in AutoChina, and he recently acquired 45,000 additional shares. RP 69-70, 78-79; Exhibits A & B. Li's beneficial ownership of AutoChina, and the corporate positions that he maintains, provides Li with substantial authority and control over the company. In addition, Wang has served as AutoChina's Chief Financial Officer since 2009 and, through that position, was involved with the company's pursuit of financing during the time of the alleged misconduct. RP 24, 39, 51, 95. Li's and Wang's continued involvement with AutoChina, coupled with Li's authority and control over the company, creates an environment ripe for abuse, particularly in light of the specific Corporate-Related Actions that AutoChina now seeks.

AutoChina contends that FINRA's actions were not based in fact because the SEC did not formally charge Li and Wang with wrongdoing.<sup>13</sup> Br. at 13-14. That contention misses the mark. Undeniably, Li and Wang were AutoChina executives when the misconduct alleged in the SEC's civil action took place and their connection to the company and efforts to secure financing were spelled out in the SEC's complaint. RP 18, 19, 23, 24, 39. For example, the SEC's complaint recounts how Wang, the company's CFO, regularly updated Li, Yan, and others about the status of AutoChina's financing efforts. RP 24. In one of these reports, Wang "indicated that one potential lender had determined not to extend the loan because of low trading volume in AutoChina's stock." RP 24. Subsequently, in order to bolster the stock's liquidity and secure a

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<sup>13</sup> AutoChina further contends that FINRA, in effect, is requiring the company to replace all of its officers, directors, and managers. Br. at 14. FINRA requires no such action and the company may continue to operate under its existing corporate structure. FINRA merely exercised its discretion under Rule 6490 in determining that it was not in the public interest to process AutoChina's stock split and name change given the continued involvement of Li and others who were employed by the company when the misconduct occurred. *See Positron*, 2015 SEC LEXIS 442, at \*41, \*42 n.62 ("[N]or does the denial prevent Positron from effectuating these Company-Related Actions outside of FINRA's services.").



loan, the company through Yan and the other AutoChina Defendants, several of whom were related to Li, engaged in matched orders and other non-economic trading designed to create the false appearance of an active and stable market in AutoChina stock. In February 2011, after the manipulative trading in AutoChina's stock ceased, Wang, as CFO, circulated an email urging Yan and others to "stop shopping for a stock loan immediately because our constant shopping may be contributing to our share price decline." RP 39. Thereafter, Li, through another entity that he controlled, obtained \$120 million in financing and transferred \$60 million of these loan proceeds to AutoChina. *Id.*

Li's authority over AutoChina, both as the beneficial owner and CEO, and Wang's ongoing financial control as CFO reinforce that FINRA's denial of AutoChina's Company-Related Action was correct. Although FINRA's action denies AutoChina's request to process its stock split and change in name from AutoChina to Fincera at this time, it does not prohibit Li and Wang from serving as officers or executives of any company, including AutoChina. *See Positron*, 2015 SEC LEXIS 442, at \*41, \*42 n.62; *cf. Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837, at \*45 (Mar. 19, 2013) (stating that FINRA's decision imposes no penalty because "Weiss remains free to restart the association process with a different firm at any time.").

#### **4. AutoChina's Self-Justified Business Reasons Do Not Compel Approval of the Company-Related Action**

AutoChina argues that its business reasons require that FINRA process the company's application to change its name and offer a 10-1 forward stock split. Br. at 14-16. AutoChina explains that the name change to Fincera would better reflect the company's change in business to focus on financial technology products and services. Br. at 15. The company adds that it sought to declare a dividend in the form of the forward stock split in order to improve the company's competitiveness in hiring and retaining employees. Br. at 15. AutoChina also notes

that the stock split would reduce the price of its ordinary shares in order to issue more shares as compensation to employees. Br. at 15. FINRA considered AutoChina's business reasons for the Company-Related Action, but determined that the business reasons did not present a compelling basis to allow the Company-Related Actions to proceed. RP 129.

As an initial matter, a majority of issuers that request Company-Related Action pursuant to FINRA Rule 6490 have business reasons for their proposed action. AutoChina is not exceptional in this regard. FINRA Rule 6490 places primary importance on FINRA's responsibility to protect investors, not issuers. *See Approval Order*, 2010 SEC LEXIS 2186, at \*5 (explaining that FINRA Rule 6490 responds to a "growing concern that FINRA's Company-Related Action processing services may potentially be used by certain parties to further fraudulent activities"). When an issuer, an issuer's officer and director, or persons connected to the issuer are defendants in settled civil actions that allege fraud or securities laws violations, it poses a substantial risk and creates an environment ripe for further misconduct.<sup>14</sup> *See Positron*, 2015 SEC LEXIS 442, at \*35-36. FINRA Rule 6490 curtails the risk for future misconduct by

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<sup>14</sup> AutoChina claims that FINRA's denial of the Company-Related Action was detrimental to the investing public and market transparency and hinders the settlement of trades. Br. at 17-18. AutoChina's argument is flawed. FINRA's denial serves simply to maintain the status quo ante for the purposes of protecting the investing public and promoting market integrity. *See Approval Order*, 2010 SEC LEXIS 2186, at \*4 (noting that FINRA's issuer-related OTCBB services "are aimed not only at facilitating trading and settlement, but also promoting investor protection and market integrity"); *see Positron*, 2015 SEC LEXIS 442, at \*44-45. FINRA's action does not prevent AutoChina from changing its name or splitting its stock. Indeed, AutoChina indicates that it already changed its name and obtained a CUSIP number for Fincera. Br. at 17. FINRA's "refusal to announce [AutoChina's] Company-Related Action was a prophylactic measure designed to prevent potential fraud or abuse from occurring through use of the Daily List, and it had no further reach than announcement on that particular FINRA facility." *Positron*, 2015 SEC LEXIS 442, at \*41. AutoChina argues that the Depository Trust Company ("DTC") refuses to settle trades in AutoChina stock after the company obtained a CUSIP number for Fincera. Br. at 17-18. Any difficulty with settling trades is a matter that AutoChina can potentially work out with DTC. FINRA is not required to approve a name change merely because the issuer has filed a new corporate name in its place of incorporation.

giving FINRA discretionary authority to declare a Company-Related Action deficient. *See* FINRA Rule 6490(d)(3)(3). In this instance, AutoChina, Yan, and the other AutoChina Defendants independently triggered FINRA’s discretionary authority under FINRA Rule 6490(d)(3)(3). The facts presented in this case illustrate the importance of FINRA’s review of Company-Related Actions in order to protect investors in the over-the-counter securities market and to prevent FINRA’s facilities from being used as a conduit for fraud. *See Approval Order*, 2010 SEC LEXIS 2186, at \*5.

FINRA, when analyzing the proposed Company-Related Actions, took into account AutoChina’s business reasons for the name change and forward stock split. RP 99-100, 129-30. FINRA concluded, however, that AutoChina’s Company-Related Action raised serious concerns about investor protection, particularly given the gravity of the SEC’s civil action that alleged securities fraud and a scheme to manipulate the company’s stock. RP 99-100, 129-30. The company’s name change would make it more difficult for investors to connect AutoChina, and its prior securities laws violations, with Fincera irrespective of the fact that AutoChina’s regulatory history would remain available through online searches.<sup>15</sup> *See* Br. at 16.

With respect to the stock split, the company’s purported business purpose is to enhance its competitiveness in employee hiring. Another reason for splitting stock, and arguably a more logical one in this case, is to increase a stock’s liquidity by issuing a greater number of shares—a

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<sup>15</sup> AutoChina further contends that because the “individual defendants” named in the SEC’s civil action “are not employed by” AutoChina and “do not assert any control over” the company, that FINRA’s regulatory concerns should evaporate. Br. at 15-16. As discussed in Part V.B.2, the AutoChina Defendants were connected to AutoChina in myriad ways. AutoChina’s argument further ignores that the company *itself* was a named defendant in the civil action; thus, its proposed Company-Related Action poses a threat to the investing public. FINRA, as the owner and operator of the OTCBB has a duty “to oversee the OTCBB and protect the integrity of the market it is charged with maintaining.” *mPhase*, 2015 SEC LEXIS 398, at \*49 (internal quotation marks omitted).

reason AutoChina concedes. *See* Br. at 15 (“it can issue a greater number of shares (at a lower value per share)”). Stock splits, with the resulting increased liquidity, can be tools of a fraudulent scheme to manipulate an issuer’s stock or of an unlawful distribution, which is particularly concerning in this case given AutoChina’s regulatory history. *See, e.g., SEC v. Farmer*, Civ. Action No. 4:14-CV-2345, 2015 U.S. Dist. LEXIS 136702, at \*10, \*13, \*17-53 (S.D. Tex. Oct. 7, 2015) (using forward stock split as part of larger fraudulent scheme); *Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at \*14-15, \*33-36 (Jan. 20, 2012) (using a forward stock split to triple number of shares and name change to facilitate a pump and dump scheme in Section 5 case); *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 SEC LEXIS 56, at \*12, \*16-17, \*24 (Jan. 6, 2012) (forward stock split and name change of OTCBB issuer were suspicious and led to Section 5 violations), *aff’d*, 739 F.3d 1243 (9th Cir. 2014). It is the risk of future harm, not proof that it will occur, that supports FINRA’s denial of AutoChina’s request. *See Positron*, 2015 SEC LEXIS 442, at \*35-36.

AutoChina’s business reasons for changing its name and splitting its stock did not provide a compelling basis to overcome FINRA’s concerns about the company’s proposed Company-Related Actions particularly in light of the company’s serious regulatory history and the type of actions that AutoChina requested which, if granted, could serve to place the investing public at risk. RP 99-100, 129-30.

**C. FINRA Applied FINRA Rule 6490 in a Manner Consistent with the Exchange Act**

FINRA’s decision in this case was in accordance with FINRA Rule 6490, firmly rooted in the facts, and was entirely consistent with the Exchange Act. *See Approval Order*, 2010 SEC LEXIS 2186, at \*15-16 (“[T]he proposal is consistent with the [Exchange] Act and . . . Section 15A(b)(6) of the [Exchange] Act,” and “is necessary for the protection of investors and the public interest and to maintain fair and orderly markets.”). In this case, FINRA properly found

that the SEC's civil action against AutoChina raised reasonable concerns about investor protection and market integrity, and it denied AutoChina's request for the forward stock split and name change. RP 128-30. In denying the request, FINRA appropriately considered that the SEC alleged that AutoChina, its senior executive and director, Yan, and the other AutoChina Defendants connected to the company, fraudulently traded AutoChina's shares to boost the company's trading volume, create the appearance of liquidity, and enhance Li's ability to obtain financing for AutoChina. AutoChina and Yan consented to a judgment that permanently enjoined them from future violations of the securities laws and imposed sizable civil penalties. RP 128-30. The other AutoChina Defendants defaulted and were ordered to pay \$150,000 each in civil penalties. RP 128. FINRA also considered that the SEC's civil action and AutoChina's payment of the \$4.35 million penalty was relatively recent. RP 129-30; *see Positron*, 2015 SEC LEXIS 442, at \*28.

FINRA also based its denial on the fact that the SEC's civil action details misconduct of several others connected to AutoChina and Li. Li, as the company's CEO, owner, and majority shareholder, has substantial authority and control over AutoChina. FINRA, in addition, considered that AutoChina's business reasons for the stock split and name change were not outweighed by the risk to investors in the over-the-counter securities markets of future fraud. RP 129-30. FINRA properly exercised its judgment and denied AutoChina's request for the forward stock split and name change in accordance with FINRA Rule 6490 and the Exchange Act.

**D. FINRA's Denial Imposes No Undue Burden Upon Competition**

AutoChina asserts that FINRA's denial of the Company-Related Action imposes an inappropriate burden on competition without pointing to the necessary proof of such a burden. Br. at 20-21. AutoChina "believes" that the company's hiring and employee retention will be impacted negatively if the forward stock split is denied. Br. at 21; RP 61. The record is bereft of

sufficient evidence to support AutoChina's self-serving belief. Even if there was, FINRA's action in denying the requested stock split and name change could not be viewed as unnecessarily burdening competition when the important regulatory purpose of the denial is considered. *See generally Revcon, Inc.*, 53 S.E.C. 315, 328 (1997) (holding that denial of access to services was "aimed reasonably" at an important regulatory purpose and did not burden competition unnecessarily).

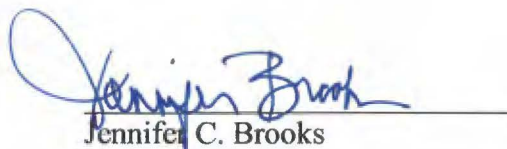
Inherent in FINRA Rule 6490 is the concept that a denial of a request to process a Company-Related Action may have some impact on an issuer. Any burden on an issuer, such as AutoChina in this case, is outweighed by the public interest in ensuring that the Daily List is not being used to facilitate fraud through Company-Related Actions. *See Approval Order*, 2010 SEC LEXIS 2186, at \*5-6, 7; *Positron*, 2015 SEC LEXIS 442, at \*32; *see, e.g., Exch. Servs., Inc. v. SEC*, 797 F.2d 188, 191 (4th Cir. 1996) ("[A]ny burden on competition created by the overly comprehensive exam is outweighed by the necessity for public interest protection."); *James Lee Goldberg*, Exchange Act Release No. 66549, 2012 SEC LEXIS 762, at \* (Mar. 9, 2012) (finding qualification examinations do not impose undue burden on competition because of the public interest in ensuring registered representatives are competent to serve in that capacity); *Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at \*28 (Dec. 11, 2006) (finding regulatory information requests, which are necessary to ensure compliance, constitute no undue burden on competition).

The denial of the Company-Related Action in this case was patently necessary for the protection of investors and did not unnecessarily burden competition. *See Positron*, 2015 SEC LEXIS 442, at \*45.

## VI. CONCLUSION

FINRA properly denied AutoChina's proposed Company-Related Action. FINRA considered the seriousness of AutoChina's, Yan's, and the other AutoChina Defendants' misconduct, which was recent and involved securities fraud and a scheme to manipulate the company's stock. This grave misconduct raised significant concerns about the company's proposed name change and 10-1 forward stock split. FINRA also considered AutoChina's current management, including Li's ongoing leadership as the company's CEO and his connections to the misconduct alleged in the SEC's civil action. FINRA's denial comports fully with Section 19(f) of the Exchange Act and imposes no undue burden upon competition. The SEC therefore should dismiss AutoChina's application for review.

Respectfully Submitted,



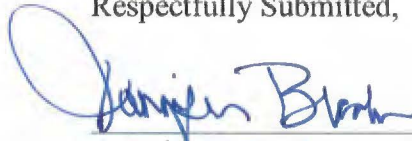
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January 19, 2016

**CERTIFICATE OF COMPLIANCE**

I, Jennifer Brooks, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 10,355 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Jennifer Brooks". The signature is written in a cursive style and is positioned above a horizontal line.

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**CERTIFICATE OF SERVICE**

I, Jennifer Brooks, certify that on January 19, 2016, I caused a copy of FINRA's Brief in Opposition to the Application for Review, Administrative Proceeding File No. 3-16913, to be served via messenger on:

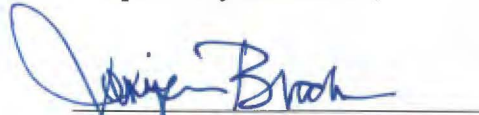
Brent J. Fields, Secretary  
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and via Federal Express Overnight Delivery and Electronic Mail on:

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Different methods of service were used because courier service could not be provided to the applicant's counsel.

Respectfully Submitted,



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SOURCE: Fincera Inc.



August 14, 2015 16:05 ET

## Fincera Announces 30,000-Share Purchase by Founding Shareholder

SHIJIAZHUANG, CHINA--(Marketwired - Aug 14, 2015) - Fincera Inc. ("Fincera" or the "Company") (OTCQB: AUTCF), a leading provider of web-based financing and ecommerce services for China's transportation and automobile industries, today announced that Honest Best International Ltd. ("Honest Best"), an entity owned by Mr. Yong Hui Li, Fincera's founder, Chairman and Chief Executive Officer, recently acquired 30,000 of Fincera's ordinary shares in a privately negotiated transaction for approximately \$645,000.

Because it is a foreign private issuer, Fincera's officers and directors are not required to file insider trading reports with the Securities and Exchange Commission. However, in accordance with its commitment to maintaining a policy of transparency with its shareholders, Fincera's own policy is that any trading of the Company's securities totaling \$250,000 or more conducted by officers or directors during any consecutive five trading days must be disclosed by the Company within 48 hours via a press release.

### About Fincera Inc.:

Founded in 2005, Fincera Inc. (OTCQB: AUTCF) provides innovative web-based financing and ecommerce services for China's transportation and automobile industries. The Company also operates over 550 finance and service centers in 26 provinces, municipalities, and autonomous regions across China. Fincera's current service offerings include a B2B payment network and a web-based small business lending platform. In addition, Fincera also provides sales-type leasing programs and support services for heavy trucks. The Company's website is <http://www.fincera.net>. Fincera trades on the OTCQB venture stage marketplace for early stage and developing U.S. and international companies. OTCQB companies are current in their reporting and undergo an annual verification and management certification process.

### Safe Harbor Statement:

This press release may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 about the Company. Forward-looking statements are statements that are not historical facts. Such forward-looking statements, based upon the current beliefs and expectations of the Company's management, are subject to risks and uncertainties, which could cause actual results to differ from the forward-looking statements. The following factors, among others, could cause actual results to meaningfully differ from those set forth in the forward-looking statements:

- Continued compliance with government regulations;
- Changing legislation or regulatory environments;

- Requirements or changes affecting the businesses in which the Company is engaged;
- Industry trends, including factors affecting supply and demand;
  - Labor and personnel relations;
  - Credit risks affecting the Company's revenue and profitability;
  - Changes in the commercial vehicle industry;
  - The Company's ability to effectively manage its growth, including implementing effective controls and procedures and attracting and retaining key management and personnel;
  - Changing interpretations of generally accepted accounting principles;
  - General economic conditions; and
  - Other relevant risks detailed in the Company's filings with the Securities and Exchange Commission.

The information set forth herein should be read in light of such risks. The Company does not assume any obligation to update the information contained in this press release.

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SOURCE: Fincera Inc.



September 10, 2015 08:30 ET

## Fincera Announces 14,448-Share Purchase by Founding Shareholder

SHIJIAZHUANG, CHINA--(Marketwired - Sep 10, 2015) - Fincera Inc. ("Fincera" or the "Company") (OTCQB: AUTCF), a leading provider of web-based financing and ecommerce services for China's transportation and automobile industries, today announced that Honest Best International Ltd. ("Honest Best"), an entity owned by Mr. Yong Hui Li, Fincera's founder, Chairman and Chief Executive Officer, recently acquired 14,448 of Fincera's ordinary shares on the open market for approximately \$350,000.

Because it is a foreign private issuer, Fincera's officers and directors are not required to file insider trading reports with the Securities and Exchange Commission. However, in accordance with its commitment to maintaining a policy of transparency with its shareholders, Fincera's own policy is that any trading of the Company's securities totaling \$250,000 or more conducted by officers or directors during any consecutive five trading days must be disclosed by the Company within 48 hours via a press release.

### About Fincera Inc.:

Founded in 2005, Fincera Inc. (OTCQB: AUTCF) provides innovative web-based financing and ecommerce services for China's transportation and automobile industries. The Company also operates over 550 finance and service centers in 26 provinces, municipalities, and autonomous regions across China. Fincera's current service offerings include a B2B payment network and a web-based small business lending platform. In addition, Fincera also provides sales-type leasing programs and support services for heavy trucks. The Company's website is <http://www.fincera.net>. Fincera trades on the OTCQB venture stage marketplace for early stage and developing U.S. and international companies. OTCQB companies are current in their reporting and undergo an annual verification and management certification process.

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This press release may contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 about the Company. Forward-looking statements are statements that are not historical facts. Such forward-looking statements, based upon the current beliefs and expectations of the Company's management, are subject to risks and uncertainties, which could cause actual results to differ from the forward-looking statements. The following factors, among others, could cause actual results to meaningfully differ from those set forth in the forward-looking statements:

- Changing principles of generally accepted accounting principles;
- Continued compliance with government regulations;

Legislation or regulatory environments, requirements or changes adversely affecting the transportation or financial services industry in China;

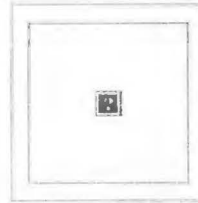
- Fluctuations in consumer demand in the transportation industry;
- Management of rapid growth;
- General economic conditions;
- Changes in government policy;
- China's overall economic conditions and local market economic conditions;
- The Company's ability to expand through strategic acquisitions;
- The Company's business strategy and plans, including whether its new financial services products are accepted by consumers;
- The results of future financing efforts; and
- Geopolitical events.

The information set forth herein should be read in light of such risks. The Company does not assume any obligation to update the information contained in this press release.

## Contact Information

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