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Via Federal Express

February 1, 2016

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

Re: **Application for Review of AutoChina International Limited**
Administrative Proceeding File No. 3-16913

Mr. Fields:

We represent Fincera, Inc., formerly known as AutoChina International Limited, in the above-referenced matter.

Enclosed please find the original and three copies of the Reply Brief in Further Support of Application of AutoChina International Limited, a/k/a Fincera, Inc. for Review of Action Taken by FINRA, and the Appendices referenced therein.

We have also sent you one copy of the brief and Appendices via facsimile. One copy of the brief and Appendices have also been sent to FINRA, Office of General Counsel, via facsimile and overnight delivery.

Sincerely,

Amanda-Jane Thomas
Attorney At Law

Enclosures

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

HARD COPY

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of AUTOCHINA INTERNATIONAL LIMITED, A/K/A FINCERA, INC. For Review of Action Taken by FINRA	Admin. Proc. File No. 3-16913

REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION OF AUTOCHINA INTERNATIONAL LIMITED, A/K/A FINCERA, INC. FOR REVIEW OF ACTION TAKEN BY FINRA

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INTRODUCTION

Pursuant to 15 U.S.C. § 78s, Fincera, Inc., formerly known as AutoChina International Limited ("AutoChina" or the "Company"), hereby submits this Reply Brief to the United States Securities and Exchange Commission (the "SEC" or the "Commission") in further support of its request that the Commission reverse the decision of the Uniform Practice Code Committee ("UPCC Subcommittee") of the Financial Industry Regulatory Authority ("FINRA"), dated September 29, 2015, which upheld FINRA's initial denial of the Company's application to change its name from AutoChina International Limited to Fincera, Inc. (the "Name Change Request").

As more fully set forth below, the UPCC Subcommittee's decision to deny that request was based on a mistake of fact, which alone is grounds for reversal. While FINRA's brief in opposition to the Company's application for review ("Opposition Brief") goes on at length about FINRA's broad discretion to make determinations under FINRA Rule 6490, it completely ignores that, despite this discretion, the UPCC Subcommittee's decision must rely on grounds that are factually accurate. Here, as discussed below, the UPCC Subcommittee based its decision on a mistake of fact.

Further, FINRA's denial of the Company's Name Change Request puts the Company and both existing and potential shareholders in an unworkable position. Because the Company's name and CUSIP number do not match, trades in the Company's securities cannot settle. This is detrimental to the maintenance of fair and orderly markets, which is a separate and independent ground for the Commission to reverse the UPCC Subcommittee's decision. As further explained herein, FINRA, in its Opposition Brief, blithely has informed the Company to work out any difficulties it encounters with the settlement of trades with the Depository Trust Company

("DTC"), while DTC already informed the Company to deal directly with FINRA on this issue. Meanwhile, as DTC and FINRA point fingers at each other, the public investors whose trades cannot settle are harmed. The decision to deny the Company's application therefore should be reversed, and the Company's Name Change Request should be processed.

Because the inability of the public markets to settle trades is the Company's paramount concern, the Company hereby withdraws its application to effect a dividend in the nature of a 10-1 forward stock split (the "Stock Split Request"). Accordingly, FINRA's concerns about potential stock manipulation that it raises in its Opposition Brief are a moot point, and FINRA's remaining investor protection concerns are not applicable to the Name Change Request. The Company does not withdraw its Stock Split Request lightly, nor should its withdrawal be read as agreeing with the UPCC Subcommittee's decision or rationale, which the Company still disputes. Rather, the Company wishes to underscore that FINRA's denial of the routine corporate action request to change the Company's name has created an untenable situation that fails to maintain fair and orderly markets because it prevents the settlement of trades. By withdrawing the Stock Split Request and appealing only the Name Change Request, the Company respectfully requests that the Commission restore a fair and orderly market where trading in the Company's securities is able to settle.

ARGUMENT

I. THE UPCC SUBCOMMITTEE'S DECISION WAS BASED ON A MISTAKE OF FACT

In its September 29, 2015 decision, the UPCC Subcommittee asserted, "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." (FINRA 000133-136, Decision of the Uniform Practice Code Committee Filed with the SEC, dated September 29, 2015, at FINRA 000135) (emphasis added).[1] This assertion is a clear mistake of fact in two respects.

First, the Company specifically communicated to FINRA on June 3, 2015, and again on August 28, 2015, that other than Mr. Hui Kai Yan, who was no longer an officer or director of the Company, the other defendants in the SEC Action[2] were not employed by or affiliated with the Company at that time or at the time of the SEC Action. (*See* Br. 10-11).[3] Therefore, the UPCC Subcommittee was mistaken when it found that the Company failed to address its concern. Second, the UPCC Subcommittee was mistaken when it found that the "other AutoChina Defendants are apparently still employed by or affiliated with AutoChina," when in fact they were not. These mistakes of fact "weigh[ed] heavily against processing the company's proposed name change." (FINRA 000135).

Nowhere in its Opposition Brief does FINRA address these mistakes of fact—that the UPCC Subcommittee based its denial of the Company's company-related action requests *specifically* on its (incorrect) belief that the other individuals and entities named in the SEC complaint were either still employed by or still affiliated with AutoChina, and that the Company failed to address this. Instead, FINRA in its Opposition Brief asserts that the Company, by

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[1] Citations to "FINRA 0000" refer to the Bates number in FINRA's certified record on appeal.

[2] The "SEC Action" refers to the 2012 civil action that the Commission commenced against the Company and others.

[3] Citations to "Br." refer to AutoChina's Brief in Support of Application of AutoChina International Limited, a/k/a Fincera, Inc. for Review of Action Taken by FINRA, dated December 16, 2015.

explicitly addressing this factual inaccuracy in its appeal, (*see* Br. at 10-13), somehow demonstrates an effort "to distance itself from the undeniable truth and consequence of the SEC's civil action against it." (Opp. Br. at 13).[4] FINRA's contention that the Company's argument on this point is "flawed," (Opp. Br. at 21), is a weak attempt to ignore: (1) the uncontroverted fact that these other defendants were not employed by, did not exercise any control over, and were not affiliated with the Company at the time of the SEC Action, the Company's corporate action requests, or now; (2) the uncontroverted fact that the Company informed FINRA of this prior to the UPCC Subcommittee's decision; and (3) the fact that the UPCC Subcommittee based its denial "heavily" on precisely these ignored facts. (*See* FINRA 000135).

As the Company has already addressed, (*see* Br. at 12), the fact that any of the individual defendants are related to Mr. Li is insufficient to establish affiliation—which, together with employment, is the exact basis upon which the UPCC Subcommittee based its decision—under the relevant and operative rules. *See, e.g.*, Regulation D at Section 230.501(b) and Section 230.144. As is clear from the definition of "affiliate" in Section 230.144, simply being related does *not* make two people affiliates. FINRA, however, seeks to glide over this distinction. Instead of dealing with "affiliated"—which was one of the grounds the UPCC Subcommittee expressly relied on in support of its denial of the company-related action requests—FINRA imports the entirely different concept of "connected" into its Opposition Brief. (Opp. Br. at 2, 22-23). FINRA then goes on to argue unremarkably that certain of the individual defendants in the SEC action are "connected" to the Company because they are related to Mr. Li. (Opp. Br. at

[4] Citations to "Opp. Br." refer to FINRA's Brief in Opposition to the Application for Review, dated January 19, 2016.

2, 23). FINRA, however, ignores that the UPCC Subcommittee's decision did not state that the individual defendants were "connected" to the Company, but stated (incorrectly) that the Company "fail[ed] to address why the other AutoChina Defendants are apparently *still employed by or affiliated with* AutoChina."[5] Indeed, the most straight-forward reading of the UPCC Subcommittee's decision demonstrates that their concern was that the individual defendants were still employed by the Company (which they were not) or still somehow otherwise affiliated with the Company (which they were not)—and not that these individuals were *still* related to Mr. Li. Indeed, a plain reading of the first line of the UPCC Subcommittee's decision makes clear that they were not concerned that the individual defendants were still related to Mr. Li (which is how FINRA asserts that they are "connected" to the Company), but that they may still be employed by or otherwise have a role at the Company. The UPCC Subcommittee stated that, "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."[6] (FINRA 000133-136) (emphasis added). This sentence clearly indicates the context for the UPCC Subcommittee's concern—that the individual defendants may be *"with the* company." Indeed, if the UPCC Subcommittee were inquiring about the familial relationships between the individual defendants and Mr. Li, there would be no reason to seek any representation from the Company because such relationships do not change (*e.g.*, Shu Ling Li is still Mr. Li's sister, and there would be no

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[5] FINRA now claims that it denied the Company's requests because it 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 . . . ." (Opp. Br. at 2). FINRA's position now is a re-writing of the UPCC Subcommittee's decision, which notably did not mention the term "connected."

[6] As explained above, this assertion is factually incorrect because the Company informed FINRA on June 3, 2015, and again on August 28, 2015, that the other defendants in the SEC Action were not employed by or affiliated with the Company at that time or at the time of the SEC Action.

conceivable reason for FINRA to complain that the Company failed to address why they still apparently were related).[7]

The discretion that FINRA has to make determinations under FINRA Rule 6490 does *not* give FINRA the power to make decisions that rely on factually inaccurate grounds. Indeed, the Commission is required to uphold an appeal of a denial by FINRA if "the specific grounds on which FINRA based its denial" do not "exist in fact." 15 U.S.C. § 78s(f); *see In the Matter of the Application of mPhase Technologies, Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *20 (Feb. 2, 2015) (to the extent discretion entered into FINRA's decision to deny access to services, the SEC can substitute its judgment for FINRA's if FINRA's decision is unsupported by the record). Here, the UPCC Subcommittee relied on a clear mistake of fact in reaching its September 29, 2015 decision, which necessitates that the Commission reverse the UPCC Subcommittee's denial of the Company's application to change its name.

II. THE UPCC SUBCOMMITTEE'S DENIAL OF THE COMPANY'S NAME CHANGE REQUEST IS DETRIMENTAL TO THE MAINTENANCE OF FAIR AND ORDERLY MARKETS

A. FINRA Ignores the Harm to Public Investors Caused by the Denial of the Name Change Request

FINRA blatantly ignores that its own requirements for issuers submitting a company-related action request, and its subsequent denial of the Company's Name Change Request, put the Company in an unworkable position. The Company has explained that it was required to

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[7] The other "connections" alleged by FINRA—that the individual defendants owned AutoChina stock, or were connected to each other through shared brokerage accounts (*see* Opp. Br. at 24-25)—does not make these individuals "affiliates" nor does it have any bearing on the Name Change Request. It strains credulity to argue that the UPCC Subcommittee's concern that "the other AutoChina Defendants are apparently *still employed by or affiliated with* AutoChina *weighs heavily* against processing the company's proposed name change" has anything to do with stock ownership or shared brokerage accounts or any other reason that FINRA now posits in its Opposition Brief.

legally change its name from AutoChina to Fincera, Inc. merely to make the corporate action request 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 that, as a result of this change, the DTC now refuses to settle trades. (*See* Br. at 17-18). Not only is FINRA's denial of the Company's Name Change Request damaging to the public interest of facilitating efficient capital markets because the mismatching name and ticker symbol/CUSIP number prevents the settlement of trades and creates widespread confusion and disarray among investors and the marketplace, but it also leaves the Company with no viable alternative moving forward. In its Opposition Brief, FINRA offers a hollow suggestion, stating, "Any difficulty with settling trades is a matter that AutoChina can potentially work out with DTC." (Opp. Br. at 28, n.14). However, the Company already has spoken with DTC about this issue, as the Company already has explained, (*see* Br. at 17-18), and DTC has indicated that the Company should work the matter out with FINRA. Because the Company has been told by both FINRA and DTC that there is nothing either can do regarding this problem, the Company is stuck in an unworkable position and in the meantime the public investors are harmed. FINRA's failure to process the name change has resulted and will continue to result in trades that cannot settle because the available CUSIP numbers do not match the name recognized by FINRA, thus harming the Company's shareholders, potential new shareholders, and the Company itself. This state of affairs necessitates that the Commission set aside the UPCC Subcommittee's September 29, 2015 decision to deny the Company's Name Change Request.

B. FINRA's Concerns Regarding the Company's Name Change Request Are Unfounded and Trumped by the Company's Compelling Business Reasons for the Change

In its September 29, 2015 decision, the UPCC Subcommittee stated, "We find that the requested name change would make it more difficult for the investing public to connect Fincera, Inc. with AutoChina." (FINRA 000135; *see also* Opp. Br. at 29 ("The company's name change would make it more difficult for investors to connect AutoChina, and its prior securities laws violations, with Fincera.")). FINRA's concerns are unsupported for several reasons.

First, the Company's name is repeatedly referred to as "Fincera, fka. AutoChina International" on the Company's corporate website. Indeed, the Company is referred to as "Fincera, fka. AutoChina International" in the banner at the top of the corporate website, and the website's overview section and news release section each refer to the Company as "Fincera (fka. AutoChina International)." (*See* Screen Shots of http://www.fincera.net, January 29, 2016, attached hereto as Appendix D). In addition, the Company's prior name is easily located through online searches. (*See* Br. at 16). FINRA dismisses this fact, giving no explanation as to why it holds no weight when considering investors' ability to connect AutoChina with Fincera. (*See* FINRA 000133-136; Opp. Br. at 29). The Internet is one of the primary ways that the public receives and exchanges information; here, the Company's corporate website refers to "Fincera, fka. AutoChina International," and a Google search for "Fincera" returns references to "AutoChina International" in two of the first eight search results. (*See* Google Search Results for "Fincera," January 29, 2016, attached hereto as Appendix E). Accordingly, FINRA's conclusion that the name change would make it more difficult for investors to connect Fincera with AutoChina is wholly unsupported by the record.

Second, the Company's prior name will continue to appear on the Company's SEC Edgar page, and the SEC Action is disclosed in many of the Company's SEC filings and was mentioned again in the Company's mid-year report on Form 6-K, which utilized the Company's new name, Fincera, Inc. (*See* Br. at 16). In its Opposition Brief, FINRA fails to address this second point altogether. That the SEC includes prior names on Edgar, which makes information available to all investors, and the Company discloses the SEC Action in its SEC filings is significant and in accordance with the Exchange Act's goal of protecting investors by making sure important information is available to them. Accordingly, it would be exceedingly simple for the average investor to connect the Company's new name with its old name. Indeed, the average person, who is not yet an investor, would have to conduct some research to learn of the Company that would most likely involve reading the Company's public filings, which include its SEC filings and press releases. Because the SEC Action is disclosed in these filings, the average person would learn of the SEC Action irrespective of whether the Company's name were AutoChina or Fincera.

Third, FINRA's justification that the "company's name change would make it more difficult for the investing public to connect Fincera, Inc. with AutoChina" proves too much because *any* name change by *any* company would make it marginally more difficult for investors to connect the new name with the old name. Surely that cannot be the test, otherwise that could be said of any and every name change request. What FINRA is required to do, and failed to do here, is consider how much more difficult it would be for investors to connect Fincera with AutoChina. FINRA already conceded that the "name change would not 'obfuscate' the company's previous regulatory history." (FINRA 000135). Moreover, FINRA has not disputed that the Company's prior names will continue to appear on the Company's SEC Edgar page, that

the SEC Action is disclosed in many of the Company's SEC filings and was mentioned again in the Company's mid-year report on Form 6-K, or that the prior name and the SEC Action are both easily found on Google.

Because the UPCC Subcommittee's concerns on which it based its denial of the Company's Name Change Request are unsupported by the record, its conclusion that the Company's business reasons for the name change, (*see* Br. at 14), did not provide a compelling basis to outweigh those concerns must be overturned. Accordingly, because FINRA's decision is unsupported by the record, the Commission may substitute its judgment and grant the Company's appeal. *See mPhase Technologies*, 2015 SEC LEXIS 398, at *20.

III. BECAUSE AUTOCHINA WITHDRAWS ITS STOCK SPLIT REQUEST, FINRA'S POTENTIAL STOCK MANIPULATION CONCERNS ARE NOW MOOT

Although the Company disagrees with the grounds on which the UPCC Subcommittee denied the Stock Split Request, the Company hereby withdraws this request. FINRA states that the UPCC Subcommittee made its decision to deny the Company's requests "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." (Opp. Br. at 29). Specifically, FINRA elaborated:

> 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 reason AutoChina concedes. ... 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. ... It is the risk of future harm, not proof that it will occur, that supports FINRA's denial of AutoChina's request.

(Opp. Br. at 29-30). FINRA's belief that there is a risk of such future misconduct is rooted in its claim that: (i) "the AutoChina Defendants are connected to the company" and (ii) "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." (Opp. Br. at 23, 25). However, because FINRA's concerns about the risk of future harm—and in turn, the "ongoing involvement" of Mr. Li, Mr. Wang, or any of the other defendants, (*see* Opp. Br. at 25)—are centered around the Company's Stock Split Request, they are all made moot by the Company's withdrawal of that request. Accordingly, the Commission need not consider these arguments in connection with the Company's appeal of the denial of the Name Change Request.

IV. THE UPCC SUBCOMMITTEE'S REMAINING INVESTOR PROTECTION CONCERNS ARE UNSUPPORTED

In justifying its "grave concerns" about AutoChina's corporate action requests in general, FINRA repeatedly references the "emphasis" the UPCC Subcommittee placed on "AutoChina's fraud and securities laws violations." (Opp. Br. at 2). Indeed, FINRA claims that AutoChina's settlement and payment of a civil penalty in the SEC Action is evidence of AutoChina's "prior securities laws violations" and its "profound disregard for securities regulations." (Opp. Br. at 29; FINRA 000136). However, the allegations in the SEC's complaint are just that—allegations—which have not been adjudicated as factual findings. Rather, the Company entered into its final judgment and settlement with the SEC without admitting or denying the allegations of the Complaint, (*see* Br. at 19), and FINRA subsequently undertook no independent investigation into the allegations in the SEC's complaint.

Courts consistently have emphasized that consent judgments, regardless of whether or not liability was admitted, cannot be used to treat the underlying allegations as findings of fact. *See, e.g., Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 893-94 (2d Cir. 1976) (a consent judgment between the SEC and a corporation that is "the result of private bargaining" and "not the result of an actual adjudication of any of the issues" cannot be used in a subsequent

proceeding to prove underlying facts of liability); *United States v. Gilbert*, 668 F.2d 94, 97 (2d Cir. 1981) (SEC consent decree may not be used in subsequent proceeding to prove liability); *United States v. Warren*, 2005 U.S. Dist. LEXIS 9269, at 9 (W.D. Va. May 17, 2005) ("Therefore, the Washington consent order could not be admitted to prove the defendant actually engaged in securities fraud in the state of Washington."); *Dent v. United States Tennis Ass'n*, 2008 U.S. Dist. LEXIS 46971, at *5-8, *10 (E.D.N.Y. June 17, 2008) (finding that plaintiff not allowed to use settlement agreement as proof of the truth of the matters that led to the settlement agreement and that "unproved allegations of misconduct are not proof of anything"); *Brady v. Wal-Mart Stores, Inc.*, 455 F. Supp. 2d 157, 179 (E.D.N.Y. 2006) (consent decree "as part of the settlement of a separate case in which [defendant] did not admit liability" not admitted to prove previous discrimination); *Safford v. St. Tammany Parish Fire Prot. Dist. No.1*, 2003 U.S. Dist. LEXIS 6513, at *8 (E.D. La. Apr. 11, 2003) ("the consent decree in dispute does not stand as evidence" of "past discriminatory acts toward other employees" and "shall not constitute an admission of any violation of law"); *Brotman v. National Life Ins. Co.*, 1999 U.S. Dist. LEXIS 22379, at *5-6 (E.D.N.Y. Jan. 22, 1999) (evidence not offered "to prove the truth of the underlying factual matters recited in the consent orders," even where party admitted guilt pursuant to consent orders); *see also In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 218 F.R.D. 76, 78-79 (S.D.N.Y. 2003) (striking references to earlier SEC complaint on grounds that "references to preliminary steps in litigations and administrative proceedings that did not result in an adjudication on the merits or legal or permissible findings of fact" cannot be used to prove liability in a "separate action").

This guidance from the courts makes it abundantly clear that an action that was adjudicated on the merits is different from a settled action, and carries with it a different ability

to prove underlying facts of liability in subsequent proceedings. FINRA repeatedly claims that FINRA Rule 6490(d)(3)(3) gives it blanket authority to deny AutoChina's request because of the mere existence of the settlement in the SEC Action. (*See, e.g.*, Opp. Br. at 5, 12, 15-17). However, FINRA's reading of Rule 6490(d)(3)(3) blatantly ignores that the Rule itself also specifically distinguishes between "pending," "adjudicated," and "settled" actions, implying that each requires its own tailored level of consideration when deciding whether to deny an issuer's corporate action request. (*See* FINRA Rule 6490(d)(3)(3)). Such consideration is the very definition of "discretion"—the quality of having or showing discernment. Although FINRA purports to apply this discretion in its decision, (*see, e.g.*, Opp. Br. at 15-16 ("Rule 6490 grants FINRA discretion ... In short, if one of the five grounds exists, then FINRA *may* decide to deny the request.") (emphasis in original)), the fact that FINRA relies wholly on the SEC's complaint and takes each of the SEC's allegations in a settled action, which was not adjudicated on the merits, as findings of fact makes it clear that actual discretion was not applied. For example, in arguing that Mr. Li's and Mr. Wang's roles in AutoChina presented concerns for future misconduct, FINRA states:

> 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. (Opp. Br. at 14).

This conclusion demonstrates how FINRA treated the SEC allegations as established fact, where instead neither Mr. Li nor Mr. Wang were defendants in the SEC Action, so there could not have been (and indeed, there were not) any findings of fact against them.

FINRA's reliance on *mPhase Technologies* to support its reliance on the allegations in the SEC's complaint is misplaced. (*See* Opp. Br. at 20-21, 24). The consent judgments in

mPhase Technologies were very different from the final judgments entered in the SEC Action against AutoChina. In *mPhase Technologies*, the SEC entered into cease-and-desist proceedings against the CEO and COO of mPhase Technologies, Inc. ("mPhase") "in which they consented to findings that they violated several federal securities laws" while they were officers of mPhase. *mPhase Technologies*, 2015 SEC LEXIS 398, at *10. In the SEC Action, none of the defendants consented to any findings of fact in the final judgments. Indeed, the final judgments in the SEC Action have no findings of fact whatsoever.[8]

More significantly, the UPCC Subcommittee that considered mPhase's company-related action request did not base its decision on the allegations in the SEC's complaint that was dismissed as part of the settlement, but relied on the findings of fact in the consent judgments. In its appeal, mPhase argued that because the federal suit against its CEO and COO was dismissed, "FINRA should not be able to use the dismissed complaint as a basis for its denial." *mPhase Technologies*, 2015 SEC LEXIS 398, at *35. In upholding FINRA's denial of mPhase's company-related action request, the SEC distinguished between the allegations in the SEC's complaint and the findings of fact in the consent judgments. The SEC clarified that "the grounds on which FINRA based its denial to process mPhase's Company-Related Action request existed in fact," and that there was no evidence that the UPCC Subcommittee considered the allegations in the SEC's complaint in denying mPhase's request. *Id.* at *35-37. Here, the opposite is true: the UPCC Subcommittee considered only the allegations made by the SEC in its complaint against the defendants in the SEC Action, and there were no findings of fact on which the UPCC Subcommittee could have based its decision.

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[8] Moreover, unlike the CEO and COO in *mPhase Technologies*, Mr. Li and Mr. Wang were not even defendants in the SEC Action, much less defendants who "consented to findings that they violated several federal securities laws" while they were officers.

Ultimately, to the extent the UPCC Subcommittee's concerns regarding AutoChina's Name Change Request are based on mere allegations in the SEC Complaint and *not* on findings of fact, these concerns should be accorded little weight when measured against the Company's compelling business reasons for the name change, including the need to ensure fair and orderly markets where trades are able to settle. Indeed, if FINRA truly were concerned with protecting investors, it would be concerned that investors' trades are unable to settle because it refused to process a routine company-related action request to change the Company's name to match its CUSIP number.

CONCLUSION

For all of the foregoing reasons, we respectfully request that the Commission reverse the decision of FINRA's UPCC Subcommittee to deny the Name Change Request in favor of the Company, and that the Company's Name Change Request be processed in due course.

Dated: February 1, 2016

LOEB & LOEB LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused the original and three copies of the foregoing brief and the Appendices referenced therein to be sent by overnight delivery (as well as one facsimile copy) to:

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Securities and Exchange Commission
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Via Overnight Courier
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I hereby certify that on this day, I also caused one copy of the foregoing brief and the Appendices referenced therein to be sent by overnight delivery (as well as one facsimile copy) to:

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Dated: February 1, 2016

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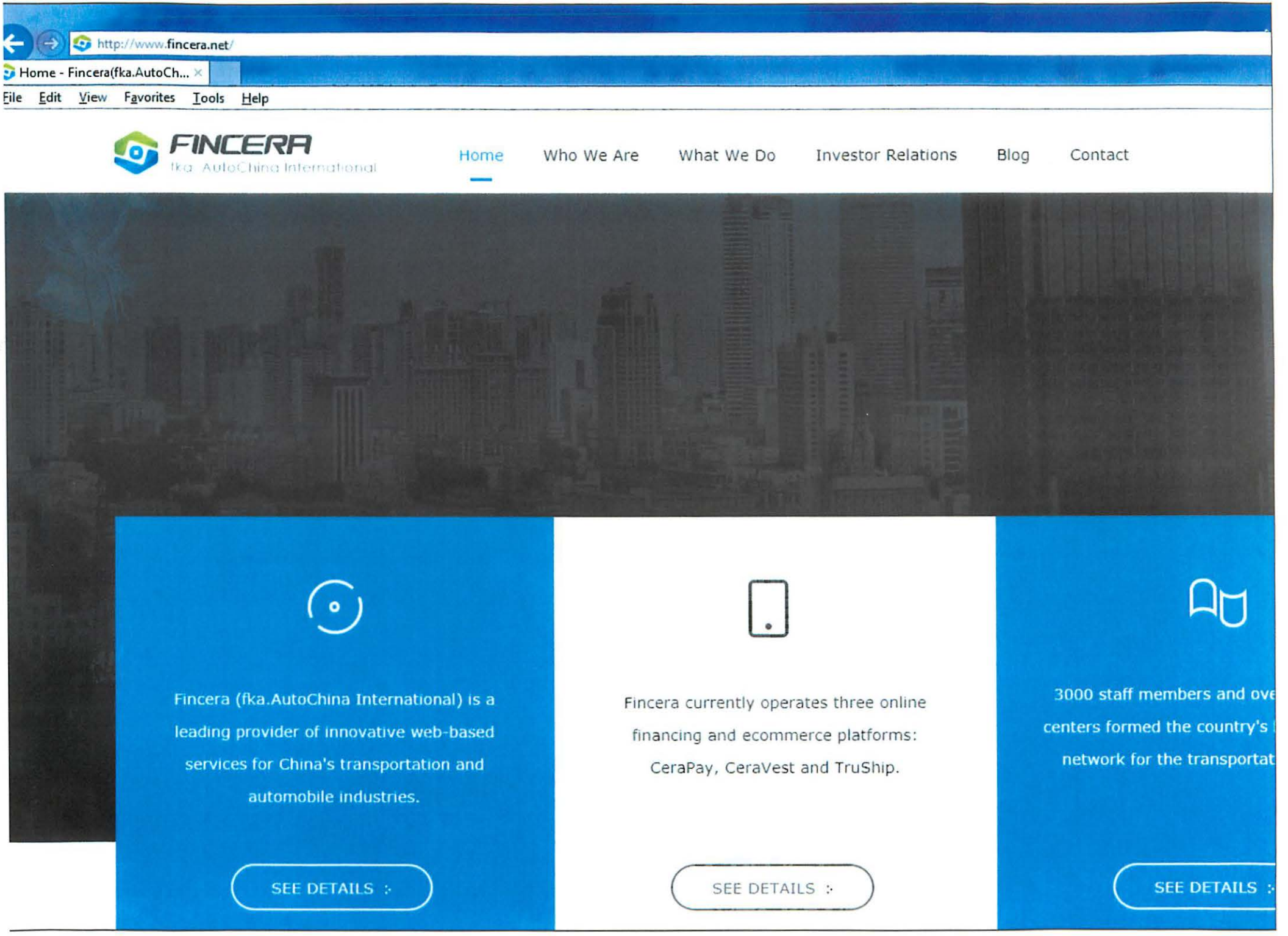
Appendix D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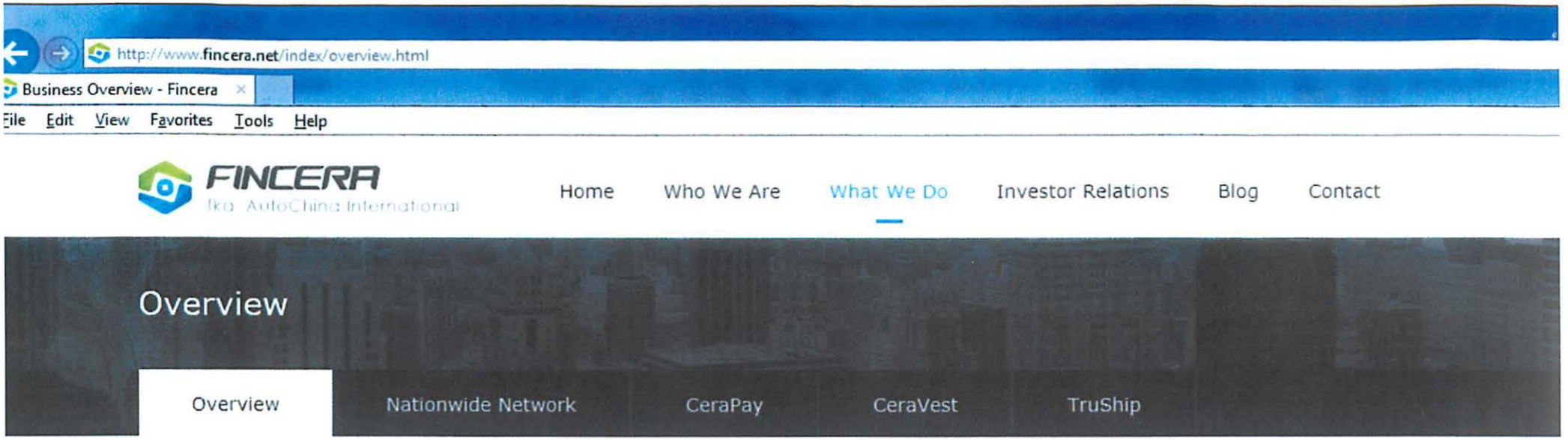


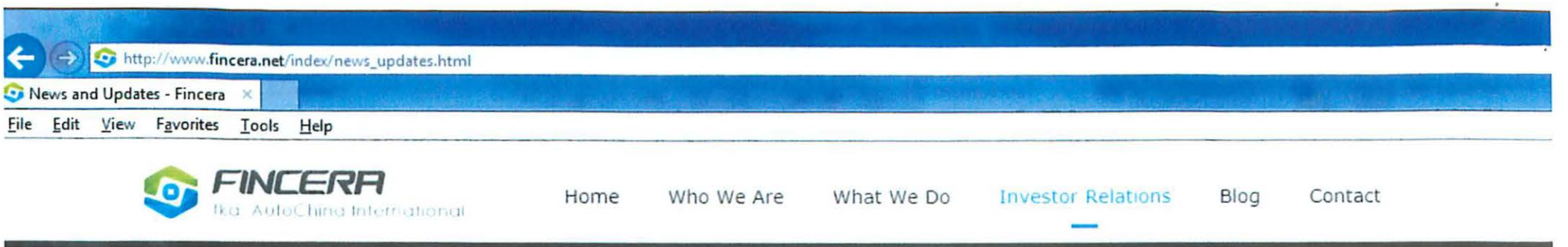
Overview

Fincera Inc. (fka.AutoChina International) is a leading provider of innovative web-based services for China's transportation an automobile industries. Our portfolio of services includes commercial vehicle financing, small business lending, B2B payment s ecommerce platforms. We currently operate three online platforms: CeraPay (垫付宝), a B2B payment platform, CeraVest (轻易 business lending platform, and TruShip (1号车网), an ecommerce platform and shipping marketplace.

In 1994, Fincera's management team was the first to introduce commercial vehicle financing to China's transportation industr next 20 years, Fincera refined and improved its business model to include web-based financial and ecommerce services.

Products

CERAPAY CERAVEST TRUSHIP



FINCERA
fka AutoChina International

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News and Updates

News and Updates | Presentations and Financial Statements | Notices | FAQs

2016/01/28 **Fincera (fka. AutoChina International) Provides 2015 Fourth Quarter Business Update, Announces Launch of TruShip Logistics Shipping Marketplace Feature**

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 provided an operational update on the 2015 fourth quarter ended December 31, 2015, and announced the launch of TruShip Logistics, the shipping marketplace feature on its TruShip ecommerce platform for the trucking industry in China.

2016/01/11 **Fincera (fka. AutoChina International) Media Mention in PaymentsCompliance: New Chinese KYC Rules Heap Pressure On Non-Banks**

Excerpt: "...Contrasting this, Spencer Li, vice president of product at Chinese web services firm Fincera, told PaymentsCompliance that the added KYC checks would not overly trouble payment providers despite the raised costs involved in interfacing with ID databases. "'It's important to note that the dominant personal platforms such as Alipay and Tenpay will be impacted the most as the common uses cases require the customer to open a payment account in order to transact,' he said."

Stock

Fincera Inc. (OTCQB

- Price
- Change
- Change(%)
- Volume
- Data as of **01/29/2**

Appendix E

Google Fincera

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Fincera: Home
www.fincera.net/
Fincera Inc. is a multifaceted financial services provider currently operating in China's road transportation industry with a focus on the heavy truck market.

Business Overview - Fincera
www.fincera.net/index/overview.html
Overview of **Fincera's** business model. **Fincera** Inc. is a multifaceted financial services provider currently operating in China's road transportation industry with a ...

Fincera Inc: OTCMKTS:AUTCF quotes & news - Google ...
www.google.com/finance?cid=15194216 Google
Get detailed financial information on **Fincera** Inc (OTCMKTS:AUTCF) including real-time stock quotes, historical charts & financial news, all for free.

In the news

Fincera Provides 2015 Fourth Quarter Business Update, Announces Launch of TruShip Logistics Shipping Marketplace ...
Yahoo Finance - 1 day ago
Screenshot of **Fincera's** new TruShip Logistics shipping marketplace feature for the trucking ...

More news for fincera

AUTCF - Yahoo Finance
finance.yahoo.com/q?s=AUTCF Yahoo! Finance
Fincera, Inc. breached its 50 day moving average in a Bullish Manner ... strong? at Capital Cube(Mon, Nov 23). **Fincera**, Inc. – Value Analysis (US OTC:AUTCF) ...

Fincera Inc. | LinkedIn
https://www.linkedin.com/company/**fincera**-inc- LinkedIn
Learn about working at **Fincera** Inc.. Join LinkedIn today for free. See who you know at **Fincera** Inc., leverage your professional network, and get hired.

AutoChina International Ltd - Bloomberg
www.bloomberg.com/quote/AUTCF:US Bloomberg L.P.
Fincera Announces 33.145-Share Purchase by Founding Shareholder. Oct 28 ...
Fincera Provides Update on Ticker Symbol/Company Name Change. Sep 30 ...

AutoChina International Announces Corporate Name ...
www.marketwired.com/.../autochina-international-announces-corporate-...
Jul 6, 2015 - AutoChina International Announces Corporate Name Change to **Fincera** Inc. to Reflect Its Evolution Into a Provider of Innovative ...

Fincera Inc stock quote, Fincera Inc company overview ...
in.reuters.com/finance/stocks/overview?symbol=AUTCF.PK Reuters
Fincera Inc. provides Web-based financing and ecommerce services for China's transportation and automobile industries. The Company also operates over 550 ...

Fincera Reports 2015 Third Quarter and Nine Month ...
www.streetinsider.com/Press.../**Fincera**+Reports.../11182480.html
Dec 30, 2015 - **Fincera's** Internet-based business segment generated revenues of $13.1 million in the third quarter ended September 30, 2015, and $24.7 ...

Searches related to fincera