BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of METATRON, INC. For Review of Action Taken by FINRA	Admin. Proc. File No. 3-18567

REPLY BRIEF IN FURTHER SUPPORT OF APPLICATION OF METATRON, INC. FOR A REVIEW OF DECISION OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY'S UNIFORM PRACTICE CODE COMMITTEE

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I. INTRODUCTION

Pursuant to Rule 450 of the Securities and Exchange Commission's (the "Commission") Rules of Practice, Metatron, Inc. (the "Company"), hereby submits this reply brief in further support of its application for review by the Commission of the June 5th, 2018 decision of a subcommittee of the Financial Industry Regulatory Authority's ("FINRA") Uniform Practice Code Committee (the "Subcommittee"). 17 C.F.R. § 201.450 (2018). The Subcommittee's decision affirmed the Department of Operations' (the "Department") denial of the Company's requested corporate action pursuant to FINRA Rule 6490(d)(3)(2) because of its failure to file 12 periodic Quarterly and Annual Reports between March 2006 and December 2008 (the "2006-2008 Reports").[1]

[1] The 12 periodic Quarterly and Annual Reports are: (1) Form 10-K for the fiscal year ending March 31, 2006; (2) Form 10-Q for the quarter ending June 30, 2006; (3) Form 10-Q for the quarter ending September 30, 2006; (4) Form 10-Q for the quarter ending December 31, 2006; (5) Form 10-K for the fiscal year ending March 31, 2007; (6) Form 10-Q for the quarter ending June 30, 2007; (7) Form 10-Q for the quarter ending September 30, 2007; (8) Form 10-Q for the quarter ending December 31, 2007; (9) Form 10-K for the fiscal year ending March 31, 2008; (10) Form 10-Q for the quarter ending June 30, 2008; (11) Form 10-Q for the quarter ending September 30, 2008; and (12) Form 10-Q for the quarter ending December 31, 2008.

The record does not support the Department's deficiency determination. The Department is misinterpreting FINRA Rule 6490(d)(3)(2), namely asserting that the Company must be current in its reporting requirements to the Commission. FINRA's arguments refuse to acknowledge that the Company cannot become "current" in the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), if it is no longer subject to the Exchange Act reporting requirements and has not been subject to such requirements for nine years. FINRA's position is unsupported by a plain reading of FINRA Rule 6490(d)(3)(2). FINRA's position is also unsupported by the numerous Commission decisions FINRA cites to in its Opposition Brief. The Department's denial could not have been in accordance with FINRA Rule 6490, and FINRA Rule 6490(d)(3)(2) is not, and was not applied in a manner, consistent with the purposes of the Exchange Act. Accordingly, for the reasons set forth herein, the Commission should reverse the Department's deficiency determination and order FINRA to process the Company's corporate action promptly.

II. CONDENSED BACKGROUND

A. The Company's Relevant Corporate History For Purposes of This Reply Brief

On March 4, 2002, the Company filed a Form 10-SB (General Form for the Registration of Securities Under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended) with the Commission. RP 000001, 004619.[2] From the period beginning on March 4, 2002 until April 24, 2009, the date on which the Company filed a Form 15 with the Commission to deregister its class of common stock under Section 12(g) of the Exchange Act, the Company was a fully reporting issuer. 15 U.S.C. § 78i (2018); RP 004619-004620. The Company filed a Form 15 with the Commission to terminate its Exchange Act registration of its class of common stock and status as a fully reporting issuer under the Exchange Act based on Rule 12g-4(a)(1) because it had fewer than 300 stockholders

[2] "RP" refers to the page number in the certified record FINRA filed with the Commission on July 12, 2018, as corrected on August 2, 2018.

at the date the Form 15 was filed. 17 C.F.R. § 240.12g-4 (2018); RP 004619-004620. Shortly thereafter, the Company adopted and, since that date, has been following the Alternative Reporting Standards of the OTC Markets Group Inc. (the "OTCM Group"). RP 004622. The Company's common stock is quoted on the OTCM Group's "OTC Pink" tier ("PINK").

B. Brief History of FINRA and FINRA Rule 6490

FINRA is an association of securities broker-dealers registered with the Commission pursuant to Section 15A(a) of the Exchange Act. 15 U.S.C. § 78o-3(a) (2018). "It is a self-regulatory organization empowered to adopt rules governing the conduct of its members and of persons associated with its members." Saad v. SEC, 718 F.3d 904, 907 (D.C. Cir. 2013). "FINRA performs several critical functions in the over-the-counter [. . .] market," . . . "including review[ing] and process[ing] requests to announce or publish certain corporate actions taken by issuers" whose securities are quoted over-the-counter. Self-Regulatory Organizations, Exchange Act Release No. 62434, 2010 WL 2641653 at *1 (July 1, 2010). Corporate actions under FINRA's purview include, among other things, stock splits. See id.; see also 17 C.F.R. § 240.10b-17 (2018) (requiring companies quoted over-the-counter to provide timely notice to FINRA of certain corporation actions, including stock splits). FINRA believes that the function of processing corporate actions is important for the trading of securities over-the-counter, as well as "promoting investor protection and market integrity." Id.

The Commission approved FINRA Rule 6490 in 2010, finding that the rule was "consistent with the [Exchange] Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the [Exchange] Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing transactions in securities, and, in

general, to protect investors and the public interest..." Self-Regulatory Organizations, 2010 WL 2641653, at *5 (citations omitted); 17 C.F.R. § 240.15A(b)(6) (2018).

C. The Company's 2018 Reverse Stock Split

On February 16, 2018, the Company submitted to the Department an application requesting that the Department approve its proposed 1:57 reverse stock split (the "2018 Split"). RP 000001, 000143-000148. Pursuant to the Department's requests, the Company provided the Department with supplemental information via email on February 27, 2018, March 12, 2018, and March 14, 2018. RP 000257-001008, 001027-004046. On March 15, 2018, the Company's transfer agent, Pacific Stock Transfer Company, submitted via email its Transfer Agent Verification Form, as well as additional stockholder lists. RP 004069-004594. On April 5, 2018, the Department advised the Company that its corporate action request was deficient pursuant to FINRA Rule 6490(d) because of its failure to file the 2006-2008 Reports. RP 004601-004606; FINRA Rule 6490(d).

The Company timely filed an appeal of the Department's deficiency determination on April 23, 2018, and requested that the Department allow the Company to proceed with the proposed 2018 Split. RP 004617-004626. On June 5, 2018, the Subcommittee affirmed the Department's deficiency determination and stated that, based on the record, the Department should not process the Company's proposed 2018 Split because it had failed to "provide information that would have allowed investors to make better-informed decisions about buying, selling, or holding the Company's stock." RP 004747, 004756.

On June 28, 2018, the Company filed an Application for Review of FINRA Action with the Commission to appeal the decision of the Subcommittee. RP 004759-004764. The Commission ordered scheduling of briefs on August 3, 2018. The Company filed its Opening Brief with the Commission on September 4, 2018. FINRA filed its Opposition Brief with the Commission on October 3, 2018.

III. ARGUMENT

Pursuant to Section 19(f) of the Exchange Act, the Commission must dismiss the Company's appeal of the Department's denial of its corporate action request if the Commission finds that (i) the specific grounds on which the Department based its denial exist in fact, (ii) the denial was in accordance with FINRA rules, *and* (iii) those rules are, and were, applied in a manner consistent with the purposes of the Exchange Act. See mPhase Techs., Inc., Exchange Act Release No. 74187, 2015 WL 412910 at *4 (Feb. 2, 2015); see also Fog Cutter Capital Grp., Inc. v. SEC, 474 F.3d 822, 825 (D.C. Cir. 2007) (emphasis added). As set forth below, the specific grounds on which the Department based its denial do not exist in fact. Hence, the denial could not have been in accordance with FINRA Rule 6490, and FINRA Rule 6490(d)(3)(2) is not, and was not, applied in a manner consistent with the purposes of the Exchange Act. Accordingly, the Commission should reverse the Department's deficiency determination.

A. The Company did not trigger any of the five factors listed in FINRA Rule 6490(d)(3), including the factor listed in FINRA Rule 6490(d)(3)(2). The Department misinterpreted, and continues to misinterpret, FINRA Rule 6490(d)(3)(2).

Pursuant to FINRA Rule 6490(d), the Department must conduct a two-step analysis in determining whether to process a corporate action request. FINRA Rule 6490(d); see also mPhase Techs., Inc., 2015 WL 412910, at *4. First, the Department must assess whether the corporate action is deficient solely based on one or more of the five factors listed in FINRA Rule 6490(d)(3), which factors include "the issuer [not being] current in its reporting requirements, if applicable, to the Commission or other regulatory authority." FINRA Rule 6490(d)(3)(2); see also mPhase Techs., Inc., 2015 WL 412910 at *4.

The crux of the Department's denial of the Company's corporate action request is the Company's alleged failure to be current in its reporting requirements to the Commission. FINRA Rule 6490(d)(3)(2) provides that the Department may decline to process a corporate action if "the issuer is

not current in its reporting requirements, *if applicable*, to the [Commission] *or* other regulatory authority." FINRA Rule 6490(d)(3)(2) (emphasis added). FINRA contends that it is entitled to deny a corporate action request if "the issuer is not current in its reporting requirements to the [Commission], another regulatory authority, or both." FINRA Brief ("Br.") at 11. While FINRA agrees that the plain language of a statute or regulation is the starting point when interpreting statutes, this is where the parties' agreement ends. Br. at 10; see King v. Burwell, 135 S. Ct. 2480, 2489 (2015).

1. A plain reading of FINRA Rule 6490(d)(3)(2) supports the Company's position that it needs to be current in its reporting obligations only to the directly relevant regulatory authority.

In its Opposition Brief, FINRA cites to Shaw v. National Union Fire Insurance Company as support that the word "or" can be used in an exclusive sense (*i.e.*, A or B, but not both) *and* in an inclusive sense (*i.e.*, A or B, or both). Shaw, 605 F.3d 1250, 1253-54 (11th Cir. 2010). However, FINRA's reliance on Shaw is misplaced. Primarily, FINRA fails to address the clause "if applicable" in FINRA Rule 6490(d)(3)(2) together with the word "or" to determine if the word "or" is used in an inclusive or exclusive sense. The use of "if applicable" eliminates any doubt that the word "or" is used in an exclusive sense. See U.S. v. Woods, 571 U.S. 31, 46 (2013) (stating that the ordinary use of the word "or" is almost always disjunctive and that the use of "or" followed by the clause "as the case may be" eliminates any lingering doubt that the items are alternatives); see also Reiter v. Sonotone Corp., 99 S. Ct. 2326, 2331 (1979) (stating that canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise).

Accordingly, a plain reading of FINRA Rule 6490(d)(3)(2) and the use of the clause "if applicable" together with "or" lends easy and accurate support to the Company's interpretation of the rule – FINRA Rule 6490(d)(3)(2) does not require the Company to be current in its reporting requirements to the Commission *and* another regulatory authority, but instead *only* to the directly relevant regulatory authority, if any.

2. The filing of a Form 15 with the Commission in 2009 terminated the registration of the Company's securities, and immediately suspended any continuing reporting obligation to the Commission; thus, the Commission is not the Company's applicable regulatory authority and the Company cannot be deemed "current" with respect to any reporting requirements of the Commission.

If an issuer with a class of securities registered under Section 12(g) of the Securities Act of 1933, as amended, has fewer than 300 stockholders of record, it can deregister its class of securities by filing a Form 15 with the Commission, which deregistration becomes effective 90 days after the filing date, and immediately suspend its Exchange Act reporting obligations. 17 C.F.R. § 240.12g-4 (2018). The Company filed a Form 15 with the Commission on April 24, 2009 pursuant to Exchange Act Section 12g-4(a)(1) because it had fewer than 300 stockholders of record. RP 004619-004620; 17 C.F.R. § 12g-4(a)(1) (2018). Following the filing of the Form 15, the Company had, and to this day has, no continuing reporting obligations to the Commission.

FINRA asserts that the filing of the Form 15 "does not cure [the Company's] pre-existing reporting deficiencies" and only suspends the duty to file periodic reports in the future. Br. at 19 (citing to Aqua Socy., Inc., Initial Decision Release No. 439, 2011 WL 5275847 (Nov. 3, 2011)). FINRA further asserts that the filing of a Form 15 "does [not] necessarily moot any sanction for pre-existing violations of the Exchange Act's reporting requirements." Id. FINRA relies on numerous Commission decisions as evidence that filing a Form 15 does not cure pre-existing reporting deficiencies. FINRA's reliance on these decisions is misplaced and its argument misses the point.

The decisions upon which FINRA relies are in connection with proceedings instituted by the Commission. The Commission is empowered, pursuant to Section 12(j) of the Exchange Act, "as it deems necessary or appropriate for the protection of investors," to suspend for a period not exceeding twelve months, or revoke, the registration of a security if it finds that the issuer of such security has failed to comply with any provision of the Exchange Act or its rules and regulations. 15 U.S.C. § 78*l*(j) (2018). In the decisions cited by FINRA, the Commission instituted Section 12(j) proceedings because

the issuers had failed to comply with their reporting obligations. In each of these cases, the Commission noted whether the issuer had filed a Form 15 and the timing of the effectiveness of the deregistration of the issuer's securities. See Aqua Socy., 2011 WL 5275847 at *7 (noting that the issuer had filed a Form 15 after the proceedings were instituted and that the effectiveness of the Form 15 would occur after the due date of the Commission's initial decision); see also Cirtran Corp., Initial Decision Release No. 1134, 2017 WL 1953457 (May 11, 2017); Earth Dragon Res. Inc., Initial Decision Release No. 786, 2015 WL 1968391 at *3 (May 4, 2015) (noting that, although the issuer had filed a Form 15, the effectiveness of the Form 15 would occur after the due date of the Commission's initial decision, and that issuer did not participate in or otherwise defend the proceeding); Inelco Corp., Initial Decision Release No. 934, 2015 WL 9583332 at *4 (December 31, 2015) (noting that, although the issuer had filed a Form 15, the effectiveness of the Form 15 would occur after the due date of the Commission's initial decision, and that issuer did not participate in or otherwise defend the proceeding).

These matters are easily distinguishable from the case at hand. First, the Commission did not ever institute Section 12(j) proceedings against the Company, including while it then had reporting obligations almost ten years ago. Second, the Company filed a Form 15, voluntarily deregistering its class of common stock, which effectively suspended its reporting obligations. In fact, in the instances that the Commission instituted Section 12(j) proceedings and the issuer filed a Form 15 that would deregister the securities prior to the Commission's initial decision due date, the Commission dismissed the proceedings because an issuer without any registered securities cannot be sanctioned under Exchange Act Section 12(j). See GCA I Acquisition Corp., Initial Decision Release No. 1135, 2017 WL 20000697 (May 12, 2017); Vikonics, Inc., Initial Decision Release No. 405, 2010 WL 4153289 (Oct. 22, 2010); World Assoc., Inc., Initial Decision Release No. 59034, 2008 WL 5055737 (Dec. 1, 2008). While filing a Form 15 may not cure previous reporting deficiencies, it is clear that the

Commission is unable to sanction issuers pursuant to Exchange Act Section 12(j) after such issuers filed Forms 15 that effectively deregistered their securities prior to the Commission's initial decision due date.

Moreover, the Commission has also acknowledged that an issuer that has filed a Form 15 with pre-existing delinquent periodic reports, or that is subject to revocation of its securities registration by the Commission as a result of Section 12(j) proceedings, may subsequently file a Form 10 with the Commission. See Nature's Sunshine Products, Inc., Initial Decision Release No. 59268, 2009 WL 137145 (May 21, 2009); Impax Labs., Inc., Initial Decision Release No. 57864, 2008 WL 2167956 (May 23, 2008); Samaritan Pharms., Inc., Initial Decision Release No. 437, 2011 WL 4889122 (Oct. 14, 2011). Importantly, the Commission went as far as to say that an issuer filing a Form 10, after prior deregistration of its securities pursuant to its filing of a Form 15 or revocation of its securities registration by the Commission, would be required to provide only the financial statements and related disclosures required by Form 10 and Regulation S-X, which would include only two or three years of financial information. See Nature's Sunshine Products, Inc., 2009 WL 137145 at *9. The Commission did not state that the issuer would need to file any delinquent reports first, or include the information that was required to be disclosed in the delinquent reports in an issuer's new Form 10 for re-registration of a class of its securities. In fact, in Aqua Society, Inc., the Commission stated that such "re-registration" requirements "do not necessarily include filing all delinquent pre-revocation reports" and cited to the re-registration of another issuer's securities without filing all of its delinquent pre-revocation reports as support for this proposition. The Commission clearly recognizes that an issuer cannot become "current" with respect to delinquent reports after the filing of a Form 15 or the revocation of securities registration by the Commission because, at that point, the issuer has no statutory obligation to file any periodic reports, much less delinquent periodic reports. Exchange Act Section 12(j) authorizes the Commission, "as it deems necessary or appropriate for the protection of

investors," to suspend for a period not exceeding 12 months, or revoke, the registration of a security if it finds that the issuer of such security has failed to comply with any provision of the Exchange Act or its rules and regulations. 15 U.S.C. § 78l(j) (2018). These sanctions are the Commission's sole remedy.

3. The Company's securities are quoted over-the-counter on the OTCM Group's PINK.

Following the date on which the Company filed its Form 15 with the Commission, the Company had no continuing reporting obligation to the Commission. RP 004619-004620. Instead, on June 12, 2009, the Company adopted and, since such date, has been following the Alternative Reporting Standards of the OTCM Group. RP 004622. At all times since its adoption of the OTCM Group's Alternative Reporting Standards, the Company's securities have been quoted on PINK. FINRA does not believe that the Company's compliance with the OTCM Group's Alternative Reporting Standards is relevant to whether the Company's corporate action request is deficient under FINRA Rule 6490(d)(3)(2). Br. at 13. Once again, this is evidence of FINRA refusing properly to interpret FINRA Rule 6490(d)(3)(2) for issuers, such as the Company, who are no longer subject to the Exchange Act's reporting requirements. Further, FINRA is refusing to acknowledge the boundaries of the oversight it does and does not have, and its role in regulating over-the-counter securities. FINRA is overreaching and attempting to usurp authority it does not have.

Over the years, PINK has had several iterations, with various names.[3] Despite the various iterations, it is widely accepted that PINK is a "quotation service that certain broker-dealers use to post offers to sell and to buy securities not listed on a national exchange" and that PINK "is not itself

[3] The term "pink sheets" "originated in 1904, when a Boston publisher disseminated price quotes to market makers in over-the-counter securities on pink-colored sheets of paper." STEVEN MARK LEVY, REGULATION OF SECURITIES: SEC ANSWER BOOK – LEVY, Q 1:67 (5th ed., 2018-2 Supp. 2016). This paper was "later replaced by computers." Id. After that, pink sheets was known as the National Quotation Bureau, until it changed its name in 2000 to Pink Sheets LLC, then to Pink OTC Markets Inc. in 2008, and OTC Markets Group Inc. in 2011. Id.

an exchange." See In re Poseidon Concepts Securities Litigation, 2016 WL 3017395 at *12 (S.D.N.Y. 2016). The OTCM Group segments PINK companies based on the information provided to investors. See Information for Pink Companies, https://www.otcmarkets.com/corporate-services/information-for-pink-companies (last visited Oct. 15, 2018). Companies that desire to qualify for the "Current Information" segment must adopt one of following four reporting standard options: (i) the "SEC Reporting Standard," which requires companies to be in compliance with their reporting requirements to the Commission; (ii) the "U.S. Bank Reporting Standard," which requires companies to be in compliance with their bank regulatory reporting; (iii) the "International Reporting Standard," which applies to companies traded on a qualified foreign exchange; or (iv) the "Alternative Reporting Standard," which applies to companies that do not meet the standards listed above in (i) through (iii) and that make information available directly to investors on the OTCM Group's website. Id. Companies that choose the Alternative Reporting Standard must publish their disclosure, including financial reports, and provide either an Attorney Letter or an Audit Opinion. The information submitted is reviewed by OTCM Group's Issuer Compliance department prior to being designated in the "Current Information" segment. Id. The OTCM Group has designated the Company in the "Current Information" segment based on its adoption of, and compliance with, the Alternative Reporting Standards.

Based on the Company's adoption of the Alternative Reporting Standards, the Company previously argued that, while the OTCM Group is not *per se* "another regulatory authority," for purposes of FINRA Rule 6490(d)(3)(2), the OTCM Group is the entity to which the Company submits current information and should be deemed to be its "regulatory authority." FINRA denounced this argument, stating that the "[OTCM] Group owns OTC Link LLC, which operates OTC Link ATS, a FINRA-member broker-dealer that operates [Commission]-registered alternative trading systems,"

and that the OTCM Group "also operates the OTCQX, OTCQB, and [PINK]." Br. at 12 (citations omitted).

As previously acknowledged by the Company, the Company agrees that the OTCM Group is not *per se* "another regulatory authority." However, if the OTCM Group is not the appropriate regulatory authority for purposes of FINRA Rule 6490(d)(3)(2), then the Company argues that FINRA is. Why? Because "FINRA has 'direct authority for the activities related to [over-the-counter] trading.'" In re Positron Corp., Exchange Act Release No. 34-74216, 2015 WL 470454 at *10 (Feb. 5, 2015). "Investors in [over-the-counter] securities are entitled to assume that 'the risk associated with investing in a market over which FINRA has such authority] is market risk rather than the risk that the promoter or other persons exercising substantial influence over the issuer is acting in an illegal manner.'" Id.

FINRA is a single self-regulatory organization for broker-dealers and their agents and its oversight of the over-the-counter market is through the regulation of these broker-dealers. 15 U.S.C. § 78o-3(a) (2018). FINRA adopted Rule 6432 to ensure that its members comply with Exchange Act Rule 15c2-11. FINRA Rule 6432.

Exchange Act Rule 15c2-11 "regulates the initiation and resumption of quotations in a quotation medium by a broker-dealer for certain [over-the-counter] securities." Publication or Submission of Quotations Without Specified Information, Exchange Act Release No. 34-39670, 1998 WL 63592 at *3 (Feb. 17, 1998) (proposed rule). "The Commission adopted [Exchange Act] Rule 15c2-11 in 1971 to prevent fraudulent and manipulative trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by 'shell' companies, or other issuers of infrequently-traded securities (about which there was little public information)." Id. (citations omitted). Further, the Commission adopted Exchange Act Rule 15c2-11 to deter broker-dealers "from becoming witting or unwitting participants in fraud activities involving over-the-counter securities." STEVEN MARK LEVY, supra, at Q 5:18 (citing to Publication or Submission of Quotations

Without Specified Information, Exchange Act Release No. 34-41110, 1999 WL 95487 (Mar. 8, 1999) (re-proposed rule)). Thus, even if a company is no longer subject to Exchange Act reporting, certain informational requirements may be triggered if a market maker submits quotations to a quotation system, such as PINK. In such cases, the current public information requirement is deemed satisfied only if "there is publicly available information concerning the issuer specified in paragraphs (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of Exchange Act Rule 15c2-11." STEVEN MARK LEVY, supra, at Q 16:33.

Because the Company is no longer subject to filing Exchange Act periodic reports with the Commission, then, for purposes of determining whether the Company is current in its reporting requirements, the Company urges the Commission to find that compliance with the OTCM Group's Alternative Reporting Standards, which provide broker-dealers with the information required by Exchange Act Rule 15c2-11, are sufficient to meet the "current" reporting requirements of FINRA Rule 6490.

4. Whether an issuer can be current in its reporting obligations to the Commission is dependent on whether such issuer is subject to Exchange Act reporting obligations.

FINRA offers many examples of Commission actions, wherein the Commission stated that "issuers that have failed to file all required periodic reports, or that have filed deficient reports, are not 'current' in their Exchange Act reporting." Br. at 13-14. Essentially, according to FINRA, to become current in reporting requirements, an issuer must file all delinquent reports. Br. at 14. However, FINRA is again misconstruing Commission decisions. In Citizens Capital Corporation, the Commission revoked the registration of the issuer's securities because of the failure to file periodic reports over a ten-year period. See Citizens Capital Corp., Exchange Act Release No. 67313, 2012 WL 2499350, at *9 (June 29, 2012). The Commission noted that, through the proceeding, the issuer repeatedly promised to become current with its reporting obligations by a certain date, which it did

not do. Id. at *7. In failing to keep these promises, the Commission was concerned about future violations. Id. The issuer had not filed a Form 15; thus, if the Commission did not revoke the registration of its securities, the issuer would continue to be subject to the Exchange Act filing requirements. Accordingly, the discussion with respect to the delinquent reports, and whether such reports would be filed in the future, was relevant to that particular Commission action. The discussion of the 2006-2008 Reports is not relevant here because the Company is no longer subject to the Exchange Act reporting requirements.

Similarly, in Impax Laboratories, another Commission enforcement action on which FINRA relied, the issuer had not filed a Form 15 and had promised to "remedy its past violations and ensure future compliance," which promises did not materialize. See Impax Labs., Inc., 2008 WL 2167956, at *8. Importantly, the Commission noted that the issuer could re-register its securities under the Exchange Act once it could comply with the registration requirements. Id. at *10.

FINRA further mischaracterizes the Commission's decisions in these actions in its application to the case at hand. Specifically, FINRA asserts that, according to the Commission, "the issuer would have to file several years of periodic reports to become 'current' in its reporting requirements to the [Commission]." Br. 15. While this may be true in those actions, this statement is blatantly wrong with respect to this matter. Each of the issuers in Citizens Capital Corporation and Impax Laboratories had years of delinquent reports, and the Commission brought a Section 12(j) enforcement proceeding against each such issuer. In those cases, where neither issuer filed a Form 15 and was still subject to the Exchange Act at the time of the Commission's initial decision, the only way to become current would have been to have filed all of the delinquent reports. In the case at hand, the Company is no longer subject to the Exchange Act's reporting obligations and has not been since 2009. Thus, it is impossible for it to become "current" with respect to those obligations. In fact, if and when the Company wants to become subject to the Exchange Act filing requirements and re-register its

securities, the Company would be required to provide only the financial statements and related disclosures required by Form 10 and Regulation S-X, which would include only two or three years of financial information; not file all the 2006-2008 Reports along with the Form 10. Accordingly, FINRA's reliance on Citizens Capital Corporation and Impax Laboratories is misplaced and not sound.

B. The Department's denial of the Company's corporate action request was not necessary for the protection of investors, the public interest, and to maintain fair and orderly markets.

Even if the Commission were to find the Company's arguments unpersuasive, and determine that the Company had triggered a deficiency based on FINRA Rule 6490(d)(3)(2), the Department must still demonstrate that the denial is "necessary for the protection of investors, the public interest and to maintain fair and orderly markets." FINRA Rule 6490(d)(3); see also mPhase Techs., Inc., 2015 WL 412910, at *4. The Department asserts that it determined, "in light of [the Company's] admitted non-compliance with its reporting obligations, processing and announcing the Company's reverse stock split would pose a threat to investors and market integrity in two ways." Br. at 20. "First, it would provide a disincentive for issuers to become and remain current in their reporting requirements to the [Commission] and other regulatory authorities." Br. at 20-21. "Second, [the Company's] failure to file required periodic reports deprived investors of information that would have enabled them 'to make better-informed decisions about buying, selling, or holding [the Company's] stock.'" Br. at 21.

Once again, FINRA relies upon previous decisions of the Commission that do not involve issuers that are no longer subject to the Exchange Act reporting requirements at the time of the Section 12(j) proceedings. The Department cites to American Stellar Energy as authority for the Commission finding that "issuers must file all required periodic reports, even when those reports were due many years earlier and the issuer has provided more recent information to investors." Br. at 21; Am. Stellar Energy, Exchange Release No. 64987, 2011 WL 2783483 (July 18, 2011). In American Stellar Energy,

the issuer had not filed a Form 15; thus, it remained subject to the Exchange Act reporting requirements at the time of the Section 12(j) proceeding. The issuer had numerous periodic reports that were delinquent at the time the Commission instituted proceedings. Id. at *4. The issuer filed the most current delinquent annual report after the proceeding commenced, but had not filed any of the previous delinquent reports, and had not done so at the time of the Commission's initial decision. Id. Still subject to Exchange Act reporting requirements, the Commission noted that "Exchange Act reports are designed to provide the public with information that is 'material, timely, and accurate.'" Id. at *6. Due to the numerous delinquent periodic reports, and the failed promises to file these reports, the Commission revoked the registration of the issuer's securities. Id. at *7. The key and material distinction between American Stellar Energy and the case at hand rests upon the fact that the Company is no longer subject to Exchange Act reporting requirements.

"The reporting requirements of the [Exchange Act] [are] the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977). However, not all companies are subject to the Exchange Act reporting requirements. In those cases, the Exchange Act reporting requirements "tool" is not in the Commission's, nor any other self-regulatory organization's, toolbox. Instead, to protect the public against issuers that are not subject to periodic reporting under the Exchange Act, the Commission adopted Rule 15c2-11. STEVEN MARK LEVY, supra, at Q 5:18. The purpose of Rule 15c2-11 is to prevent fraudulent, deceptive, or manipulative acts or practices among broker-dealers in publishing securities quotes for securities that are traded on exchanges other than U.S. national securities exchanges. See Initiation or Resumption of Quotations Without Specified Information, Exchange Act Release No. 34-29094, 1991 WL 292186 (Apr. 17, 1991).

The Commission cannot impose the Exchange Act reporting requirements on an issuer that is not subject to such requirements, whether by reason of the issuer never having been subject to such requirements, the issuer having suspended such obligations through its filing of a Form 15, or the Commission having revoked the issuer's registration. FINRA cannot impose the Exchange Act reporting requirements on an issuer that is not subject to such requirements whatsoever. Instead, in cases where an issuer is not subject to Exchange Act filing requirements, the Commission and FINRA must rely upon the requirements of Rule 15c2-11 to protect investors and maintain fair and orderly markets. Through its compliance with the Alternative Reporting Standards of the OTCM Group, the Company has made, and continues to make, information available to investors that more than meets broker-dealers' requirements pursuant to Rule 15c2-11.

Moreover, the Commission has also addressed FINRA's "disincentive" argument in a number of Section 12(j) proceedings. Br. at 20; see Am. Stellar Energy, 2011 WL 2783483, at *7. In American Stellar Energy, the Commission was determining the sanction to impose on an issuer that had numerous delinquent periodic reports and was *still* subject to the Exchange Act reporting requirements. Id. (emphasis added). In such case, the Commission determined that a revocation of the registration of its securities was the only appropriate sanction because other, lesser sanctions would "reward those issuers who fail to file required periodic reports when due over an extended period of time." Id. This same disincentive argument does not apply to the case at hand.

In fact, it can be argued that permitting an issuer to re-register a class of its securities by filing a Form 10, without first requiring that issuer to remedy any delinquent periodic reports, similarly would disincentivize an issuer to "become and remain current in [its] reporting requirements." Br. at 20. However, the Commission routinely permits issuers to do so.

The Company simply wants to effect a reverse stock split of its common stock. There are no fraud concerns here, nor can there be any. The failure to file the 2006-2008 Reports does not signal

possible fraudulent activity, especially with respect to the proposed corporate action request, which was submitted 10 years after the periods covered by the 2006-2008 Reports. Investors do not need to be (and, in fact, could not be) protected in the way that the Department is alleging. The Department's denial of the Company's corporate action request is baseless and a pure abuse of FINRA's power with respect to its oversight obligations of over-the-counter securities. The Department's denial of the Company's corporate action request was not in accordance with FINRA Rule 6490 and was not applied in a manner consistent with the purposes of the Exchange Act.

IV. Conclusion

In light of the foregoing, the Company respectfully requests that the Commission reverse the Department's deficiency determination because the specific grounds upon which the Department based its denial do not exist in fact. A plain reading of FINRA Rule 6490(d)(3)(2) does not support the interpretation that the Company must be current both in its reporting obligations to the Commission *and* in its information disclosure pursuant to the Alternative Reporting Standards of the OTCM Group. Rather, FINRA Rule 6490(d)(3)(2) requires an issuer to be current "in its reporting requirements, *if applicable*, to the [Commission] *or* other regulatory authority." FINRA Rule 6490(d)(3)(2) (emphasis added). Although the OTCM Group is not, *per se*, a "regulatory authority," it serves as such for purposes of the Company's disclosure of its current, relevant information pursuant to the Alternative Reporting Standards of the OTCM Group. Alternatively, even if the Commission were not to find that the OTCM Group is deemed to be a "regulatory authority," then the Commission should find that FINRA is the appropriate regulatory authority. In such case, the Company has provided information that exceeds the information requirements set forth by Rule 15c2-11 for broker-dealers to make a market in the Company's securities. The Commission should reverse the Department's deficiency determination in all respects and order FINRA to process the Company's 2018 Split promptly.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Alissa Lugo, certify that on this 16th day of October, 2018, I caused to be filed the original and three copies of the Reply Brief in Further Support of Application of Metatron, Inc. For a Review of Decision of the Financial Industry Regulatory Authority's Uniform Practice Code Committee, Administrative Proceeding No. 3-18567, to be served via overnight mail on:

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CERTIFICATE OF COMPLIANCE

I, Alissa Lugo, certify that this Reply Brief in Further Support of Application of Metatron, Inc. For a Review of Decision of the Financial Industry Regulatory Authority's Uniform Practice Code Committee, Administrative Proceeding No. 3-18567, complies with the length limitation set forth in the Securities and Exchange Commission's Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 6,167 words, excluding the cover page, table of contents, and table of authorities.

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