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July 19, 2019

**VIA MESSENGER**

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Room 10915  
Washington, DC 20549-1090

**RE: In the Matter of the Application of Metatron, Inc.**  
**Administrative Proceeding No. 3-18567**

Dear Ms. Countryman:

Enclosed please find the original and three copies of FINRA's Reply to Metatron's Response to the Commission's Order Requesting Additional Briefing in the above-captioned matter.

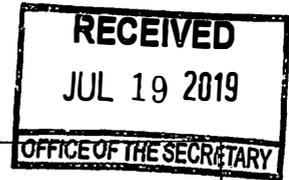
Please contact me at (202) 728-8177 if you have any questions.

Very truly yours,

Michael M. Smith

cc: Randolph Katz, Esq.  
Alissa Lugo, Esq.  
Nancy Espinosa

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



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In the Matter of the Application of

Metatron, Inc.

For Review of Denial of Company-Related Action by

FINRA

Administrative Proceeding File No. 3-18567

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**FINRA'S REPLY TO METATRON'S RESPONSE TO THE  
COMMISSION'S ORDER REQUESTING ADDITIONAL BRIEFING**

In its Brief in Response to the Commission's Order Requesting Additional Briefing ("Metatron's Brief"), Metatron erroneously argues that its filing of a Form S-8 registration statement under the Securities Act of 1933 (the "Securities Act") did not subject the company to the reporting requirements under Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). According to Metatron, the company "did not technically 'trigger' Section 15(d) reporting obligations because, even though the S-8 was effective upon filing, no shares were ever sold and, therefore, no investors purchased securities in that registered offering." Metatron's Brief at 13.

Metatron's argument fails because Exchange Act Section 15(d)'s reporting requirements are triggered upon the registration of securities under the Securities Act, not their sale in an offering. Section 15(d) provides that each issuer that files "a registration statement which has become effective pursuant to the Securities Act of 1933 . . . shall file with the Commission . . . such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security

registered pursuant to section 78l of this title.” 15 U.S.C. § 78o(d)(1). Through its filing of a Form S-8 in 2004, Metatron registered shares of its common stock under the Securities Act and became subject to Section 15(d)’s reporting requirements.

Although Metatron became subject to Exchange Act Section 15(d)’s reporting requirements in 2004, its obligation to file periodic reports was suspended through 2009 because the company had a class of securities registered under Section 12(g), and therefore met the requirements for an automatic suspension. *See* 15 U.S.C. § 78o(d). As of 2010, however, the company no longer qualified for an automatic suspension under Section 15(d), nor did it meet the requirements for a suspension under Exchange Act Rule 12h-3. *See* Metatron’s Brief at 7-9. Therefore, since at least 2010, Metatron has been required to file periodic reports with the SEC. Metatron has not filed any of those reports. As a result, Metatron was not current in its reporting requirements to the SEC from 2010 through at least 2018, when FINRA denied its request to process and announce a reverse stock split.

The no-action letters Metatron cites in its brief, *Synetics Solutions, Inc.*, SEC No-Action Letter, 2004 SEC No-Act. LEXIS 774 (Oct. 15, 2004), and *Engenio Information Technologies., Inc.*, SEC No-Action Letter, 2004 SEC No-Act. LEXIS 742 (Sept. 13, 2004), do not support Metatron’s position. Contrary to Metatron’s assertion, these letters do not stand for the proposition that an issuer who does not make any sales under a Securities Act registration statement is not subject to Section 15(d)’s reporting requirements. Rather, these letters reflect the SEC staff’s longstanding position that Exchange Act reporting should not be required when it does not serve the purpose underlying Section 15(d) because there are virtually no public investors in the securities

at issue. As explained below, Metatron's case is inapposite from both *Synetics* and *Engenio* because, unlike those issuers, Metatron has a substantial number of public investors, and therefore the purpose of Section 15(d) would be served by Metatron's filing of its required periodic reports.<sup>1</sup>

In both *Synetics* and *Engenio*, an issuer with only a handful of public investors filed a registration statement under the Securities Act to register shares of its common stock.<sup>2</sup> The issuer later withdrew the registration statement before making any sales under it. Even though the issuer cancelled the offering, it remained subject to Section 15(d)'s reporting requirements due its filing of the registration statement. *See* 15 U.S.C. § 78o(d)(1). Because the issuer had fewer than 300 holders of record, those reporting requirements would be suspended automatically on the first day of its next fiscal year. *See id.* Nevertheless, under Section 15(d), the issuer still was required to file periodic reports for the remainder of its current fiscal year. *See id.* The issuer wished to avail itself of the immediate suspension of reporting available under Rule 12h-3, but was not eligible because it had filed its registration statement during the same fiscal year. *See* 17 C.F.R. § 240.12h-3(c) ("This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933"). The issuer sought and received no-action relief enabling it

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<sup>1</sup> SEC no-action letters are "based on the specific facts and circumstances set forth in the request." No Action Letters, <https://www.sec.gov/fastanswers/answersnoactionhtm.html> (last visited July 17, 2019). To the extent that Metatron's facts and circumstances are materially different than those described in the underlying requests, the no-action letters should not be given any persuasive weight. *See id.*

<sup>2</sup> The issuer in *Synetics* represented that its stock was held by three record holders. *Synetics*, 2004 SEC No-Act. LEXIS 774, at \*5. The issuer in *Engenio* represented that its stock was held by seven record holders. *Engenio*, 2004 SEC No-Act. LEXIS 742, at \*5.

to immediately suspend its reporting requirements rather than waiting until the beginning of its next fiscal year.

The granting of no-action relief under the circumstances presented in *Synetics* and *Engenio* is entirely consistent with Section 15(d) and Rule 12h-3. The Commission has stated that “[t]he purpose of [periodic reporting under] Section 15(d) is to assure a stream of current information about an issuer for the benefit of purchasers in the registered offering, and for the public, in situations where Section 13 of the Exchange Act would not otherwise apply.” *Proposed Suspension of Periodic Reporting Obligation*, Exchange Act Release No. 34-20263, 1983 SEC LEXIS 2765, at \*4 (Oct. 5, 1983). The Commission has further stated that the Rule 12h-3(c) limitation with respect to the fiscal year in which a registration statement under the Securities Act becomes effective “is in keeping with the philosophy reflected in Section 15(d) of the Exchange Act that generally the investing public should have available complete information about the issuer’s activities at least through the end of the year in which it makes a registered offering.” *Id.* at \*8. In *Synetics* and *Engenio*, there were no purchasers in the registered offering and the issuer had virtually no public investors. Therefore, there was little or no benefit to the investing public in requiring these issuers to file periodic reports for the remainder of their current fiscal year.

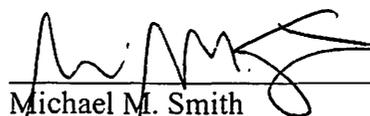
Metatron, conversely, has numerous public investors, and granting Metatron relief from its reporting obligations would not be consistent with the purpose of Section 15(d). The Commission may exempt an issuer from its Section 15(d) reporting obligations if it finds “by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the

issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors.” 15 U.S.C. § 78l(h). The Commission has stated that the “[n]umber of shareholders has always been recognized, and obviously is, the most direct and simple criterion of public-investor interest.” Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, Pt. 3, 88th Cong., 1st Sess. 17-18 (1963). Although Metatron cancelled its offering before making any sales under its Form S-8 registration statement, it still has a substantial number of public investors—more than 1,000. These investors would benefit from Metatron’s filing of its required public reports. Exempting Metatron from its reporting obligations under Section 15(d) would not be consistent with the public interest or the protection of investors.

### CONCLUSION

Metatron was not current in its reporting obligations under Section 15(d) from 2010 through at least 2018, when FINRA denied its request to process and announce the reverse stock split. These missing reports provide FINRA with a basis under FINRA Rule 6490(d)(3)(2) to deny Metatron’s request to process and announce the reverse stock split. The Commission therefore should dismiss Metatron’s application for review.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Michael M. Smith, certify that, on July 19, 2019, I caused the original and three copies of FINRA's Reply to Metatron's Brief in Response to the Commission's Order Requesting Additional Briefing, Administrative Proceeding File No. 3-18567, to be served via messenger on:

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Room 10915  
Washington, DC 20549

and via Federal Express Overnight Delivery and Electronic Mail on:

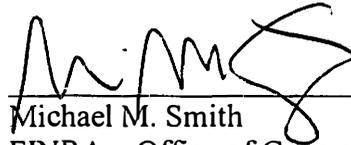
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Service was made on the Commission via messenger and on applicant's counsel via Federal Express and Electronic Mail due to the distance between FINRA's office and applicant's counsel's addresses.

Respectfully submitted,



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