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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

OPENING BRIEF IN 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 opening brief in 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. First, 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. This position is unsupported by a plain reading of FINRA Rule 6490(d)(3)(2). FINRA should look to the plain meaning of the rule, as well as find persuasive the Commission's rules and guidance (whether formal or informal), particularly when FINRA rules are silent on the matter, or when the rules FINRA seeks to enforce rely heavily upon the Commission's rules and regulations. Moreover, as discussed herein, the Commission has not previously raised (whether formally or informally) any concerns regarding the 2006-2008 Reports, further evidence that additional "protection of investors" is unwarranted in this case. Finally, requiring the Company to file the 2006-2008 Reports (1) would present an undue hardship, (2) may not be feasible, and (3) cannot aid in its stockholders' investment and voting decisions because the information is now more than one decade stale and fully irrelevant.

The Department's deficiency determination is evidence of FINRA, a quasi-governmental agency, exceeding the regulatory authority granted to it by the Commission with respect to processing issuer corporate actions by glossing over the plain language of FINRA Rule 6490 under the guise of "protecting investors." 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. BACKGROUND

A. The Company's Corporate History

The Company was incorporated in the State of Delaware on November 20, 2000 as USA Polymers Inc. ("USA Polymers"). RP 000085-000088, 000107, 000129, 000149, 000212, 000270, 000712,

004619.[2] Pursuant to a Certificate of Amendment to its Certificate of Incorporation filed with the Secretary of State of the State of Delaware on July 26, 2001, the Company, then known as USA Polymers, changed its name to XRG Inc. ("XRG"). RP 000083-000084, 000107, 000129, 000149, 000211, 000282, 004619.

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) with the Commission. RP 000001, 004619. 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 Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company was a fully reporting issuer. 15 U.S.C. § 78i (2018); RP 004619-004620.

The Company, then known as XRG, through its wholly-owned subsidiaries, operated as an asset-based carrier and, eventually, after a restructuring, as a non-asset-based provider of transportation services. RP 000712, 004619. On March 24, 2009, the Company and Rcomm Inc. ("Rcomm") entered into a Joint Venture Agreement, the purpose of which was to form a joint venture between the two entities in order to promote the business of Rcomm to potential customers and strategic partners on the internet. RP 000031-000038, 000272, 004619. The Agreement contemplated the joint venture being owned 51% by Rcomm and 49% by XRG and indicated the parties' intent to merge or otherwise to enter into a business combination during the term of the Agreement. Id.

On April 24, 2009, the Company, then known as XRG, filed a Certificate of Amendment to its Certificate of Incorporation with the Secretary of State of the State of Delaware to change its name to Metatron, Inc. RP 000052-000053, 000107, 000149, 004620. Also on April 24, 2009, as noted above, the Company filed a Form 15 with the Commission to terminate its Exchange Act securities

[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.

registration 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 at the date the Form 15 was filed. See 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 is quoted on the OTCM Group's "OTC Pink" tier.

On June 3, 2009, the Company, Rcomm, and Ralph Joseph Riehl entered into that certain Share Exchange Agreement and Plan of Reorganization (the "Share Exchange Agreement").[3] RP 000039-000050, 000107, 000119, 000114, 000273, 000282, 004620. Pursuant to the terms of the Share Exchange Agreement, Mr. Riehl, as the sole shareholder of Rcomm, exchanged all of his shares of Rcomm for 20,000,000 shares of common stock of the Company, and Rcomm became a wholly-owned subsidiary of the Company. RP 000107, 000119, 000114, 000129, 000133, 000138, 000141, 000150, 000273, 000282, 004620. Following the share exchange and reorganization, the Company ceased providing transportation services and began operating solely as an internet professional services firm, providing consulting services in the areas of web development, mobile software, online marketing, "pay-per-click" management, SEO services, and corporate strategy to internet-based businesses. RP 000273, 000275-000277, 004620.

B. 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

[3] From June 3, 2009, the date on which the transactions contemplated by the Share Exchange Agreement were consummated, until current, Mr. Riehl has served as the Company's Chief Executive Officer and one of its directors.

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.

In 2009, FINRA proposed FINRA Rule 6490 "in furtherance of its authority to adopt rules to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest" in order to "clarify the scope of its regulatory authority and to codify procedures that it will apply when reviewing requests to process [corporate actions]." Id. at *2; see also mPhase Techs., Inc., Exchange Act Release No. 74187, 2015 WL 412910, at *2 (Feb. 2, 2015) (Stating that the basis for the adoption of FINRA Rule 6490 was the "growing concern" that corporate actions may be "potentially used by certain parties to further fraudulent activities.") (citations omitted).

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).

C. The Company's 2017 Reverse Stock Split

On January 10, 2017, the Company submitted to the Department an application requesting that the Department approve its proposed 1:78 reverse stock split (the "2017 Split"). RP 000001. After submission of all documentation requested by the Department, the Department approved the 2017 Split on January 30, 2017, and announced the 2017 Split in its Daily List on January 31, 2017 (with an effective date of February 1, 2017). RP 000150-000151. The Company acknowledges that the Department's approval of a corporate action does not guarantee the Department's approval of equivalent future corporate actions. However, it is worth noting that the Department did not make a deficiency determination with respect to the Company's corporate action requesting approval of the 2017 Split despite the fact that the 2006-2008 Reports obviously had not been filed at the time the 2017 Split was approved by the Department.[4]

D. The Company's 2018 Reverse Stock Split

Early in 2018, the Company determined that it was in its best interests and the best interests of its stockholders to effect another reverse stock split. Accordingly, 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

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[4] FINRA acknowledged in its "6490 Deficiency – Appeal Summary" that, with respect to the 2017 Split (CAS-55628), FINRA did not ask about the alleged "[Commission] delinquency as the review of the more recent Edgar profile for [the Company] only noted the Form 1-A filings." RP 000001. FINRA staff further noted that seemingly the Company has two CIK numbers. Id. at 000002. CIK number 0001168375 displays the history from the filing of the Company's Form 10-SB to the filing of its Form 15. This CIK number is also the CIK number displayed under the Company's "company profile" on the OTCM Group's website. See Company Profile, http://www.otcmarkets.com/stock/MRNJ/ (last visited Aug. 31, 2018). Further, the Company's profile on the OTCM Group's website also displays information related to its Form 1-A filings. See Disclosure, http://www.otcmarkets.com/stock/MRNJ/disclosure/ (last visited Aug. 31, 2018). The Company's current management and counsel are unsure why or how the Company has two CIK numbers; however, this same information was readily available to FINRA when it processed the 2017 Split. FINRA also acknowledged that, prior to the 2017 Split, the Company filed a corporate action request in May 2015 (CAS-35646) to process a 1:100,000 reverse stock split. RP 000001. The 2015 split was announced in June 2015. Id. FINRA acknowledged again that the Company was not asked about the alleged delinquency and current staff is unsure if FINRA was pursuing Commission delinquencies as a basis for deficiency determinations in 2015. Id.

February 27, 2018, March 12, 2018, and March 14, 2018, which supplemental information included documentation that the Department had not requested in connection with the 2017 Split. 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 because of its failure to file the 2006-2008 Reports pursuant to FINRA Rule 6490(d). RP 004601-004606.

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.

III. ARGUMENT

A. The specific grounds on which the Department based its denial of the Company's requested corporate action do not exist in fact, the denial was not in accordance with FINRA Rule 6490, and FINRA Rule 6490 was, and was not applied in a manner consistent with the purposes of the Exchange Act.

Pursuant to FINRA Rule 6490(d), the Department must conduct a two-step analysis in determining whether to process a corporate action request. See 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 includes "the issuer

[not being] current in its reporting requirements, if applicable to the Commission or other regulatory authority." See FINRA Rule 6490(d)(3)(2); see also mPhase Techs., Inc., 2015 WL 412910 at *4. Second, if the Department deems the corporate action to be deficient, then the Department may determine not to process the corporate action if it finds that denial is "necessary for the protection of investors, the public interest and to maintain fair and orderly markets." See FINRA Rule 6490(d)(3), see also mPhase Techs., Inc., 2015 WL 412910, at *4.

If the Department refuses to process an issuer's corporate action, the issuer is first entitled to appeal the determination to the Subcommittee pursuant to FINRA Rule 6490(e). If the Subcommittee affirms the Department's decision, the issuer may appeal to the Commission. 17 C.F.R. § 201.420 (2018). The Commission's review of a self-regulatory organization's denial of access to services is governed by Section 19(f) of the Exchange Act. Id.; 15. U.S.C. § 78s(f) (2018); see also mPhase Techs., Inc., 2015 WL 412910, at *4. In the case at hand, the Department denied the Company's request to process and announce its 2018 Split, which decision was affirmed by the Subcommittee. RP 004603-004606, 004743-004750, 004752-004758. Subsequently, the Company appealed the Subcommittee's decision to the Commission.

Pursuant to Section 19(f) of the Exchange Act, the Commission must dismiss the Company's appeal of the Department's denial 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, were applied, in a manner consistent with the purposes of the Exchange Act. See mPhase Techs., Inc., 2015 WL 412910 at *4; 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) was 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.

1. The plain language interpretation of FINRA Rule 6490 does not support the Department's deficiency determination.

The plain language of a statute or regulation is the starting point when interpreting statutes. See King v. Burwell, 135 S. Ct 2480, 2489 (2015); see also SEC v. Levin, 849 F.3d 995, 1003 (11th Cir. 2017) ("[T]he first step is to determine whether the statutory language has a plain and unambiguous meaning by referring to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.") (citing Bautista v. Star Cruises, 396 F.3d 1289, 1295 (11th Cir. 2005)); Lindeen v. SEC, 825 F.3d 646 (D.C. Cir. 2016) ("[T]he starting point for our interpretation of a statute is always its language.") (quoting Cmty. For Creative Non-Violence v. Reid, 490 U.S. 730, 739 (1989)). Statutes should be construed so that "no clause, sentence, or word shall be superfluous, void, or insignificant." U.S. v. Ballinger, 395 F.3d 1218, 1236 (11th Cir. 2005) (quotations and citations omitted).

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). In its plain meaning, "applicable" means, with respect to a rule, regulation, or law, "having direct relevance." BLACK'S LAW DICTIONARY (10th ed. 2014), available at Westlaw BLACKs. The word "if" means "in the event that." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 598 (1987). Finally, the word "or" is used as a function word to indicate an alternative. Id. at 829.

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. After April 24, 2009, 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. The Alternative Reporting Standards of the OTCM Group [which, *per se*, is not "another reporting authority"] are designed to provide investors with the basic information a broker-dealer must maintain pursuant to Exchange Act Rule 15c2-11 to solicit trades. 17 C.F.R. § 240.15c2-11 (2018). Without the information mandated by Rule 15c2-11 of the Exchange Act, broker-dealers are unable to publish quotations for the particular issuer's securities. Thus, the information disclosed by the Company pursuant to the OTCM Group's Alternative Reporting Standards should be deemed sufficient to meet the requirements of FINRA Rule 6490, particularly in light of FINRA's regulation of broker-dealers that trade securities quoted over-the-counter.

Furthermore, FINRA Rule 6490 does not define "current" nor has FINRA issued guidance as to what is considered "current" for purposes of FINRA Rule 6490(d)(3)(2).[5] However, the Commission has defined what constitutes "current" in various other contexts. Since FINRA operates with oversight from the Commission, it is appropriate then that FINRA often finds Commission rules and guidance (whether formal or informal) to be persuasive, particularly when FINRA rules are silent on the matter, or when the rules FINRA seeks to enforce rely heavily upon the Commission's rules and regulations. For example, for purposes of Rule 144, the current public information requirement is

[5] The Commission noted in its adopting release of FINRA Rule 6490 that two comment letters were submitted in response to the proposal, one of which requested that FINRA provide additional guidance on two of the factors FINRA would consider when determining whether a request to process documentation related to a corporate action was deficient, namely, whether an issuer is current in its reporting obligations. See Self-Regulatory Organizations, 2015 WL 412910 at *6. In response, FINRA provided that when the Department reasonably believes that an issuer submitting a corporate action request has triggered one of five factors set forth in FINRA Rule 6490, the Department would generally conduct an in-depth review of the corporate action and seek additional information or documentation from the issuer. See id. FINRA's response does not clarify what it considers when determining whether an issuer is current in its reporting obligations.

met if the reporting issuer "is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of [S]ection 13 or 15(d) of the [Exchange Act] and has: (i) filed all required reports under [S]ection 13 or 15(d) of the [Exchange Act], as applicable during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports . . ."[6] 17 C.F.R. § 230.144(c)(1) (2018); see also Adoption of Rule 144, Release No. 33-5223, 1972 WL 121583 at *4 (Jan. 11, 1972) (Stating that "the purpose and underlying policy of the [Securities Act of 1933, as amended] [is] to protect investors," which "requires, in the Commission's opinion, that there be adequate current information concerning the issuer" and, thus, "the availability of Rule 144 is conditioned on the existence of adequate current public information."). In addition, reporting issuers are permitted to use registration statements if all reports and other materials required to be filed during the preceding 12 months have been filed, in the case of Form S-8, or have been timely filed in the case of Form S-3. In both of these examples, the Commission has indicated that a 12-month period is sufficient to satisfy the current information requirement of the applicable rules and regulations with respect to fully reporting issuers, as well as protect investors.

Similarly, the term "current" means "presently elapsing," "occurring in or existing at the present time," and "most recent." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 598 (1987). Thus, even the plain meaning of the word "current" is in line with the Commission's view that information spanning the prior 12-month period satisfies any applicable requirement imposed by the Commission's rules and regulations to be "current" with respect to the information shared with an issuer's investors.

[6] Non-reporting issuers must make publicly available certain current information about the issuer specified in Exchange Act Rule 15c2-11. The required information does not cover a specific time period.

If the primary purpose of FINRA Rule 6490 is to protect investors, namely through the prevention of fraud and market manipulation and promotion of transparency in the market, then the Department's interpretation of FINRA Rule 6490 is tenuous, at best. The Department's interpretation of FINRA Rule 6490 essentially excludes any issuer that, whether currently a fully reporting issuer or only formerly a fully reporting issuer, did not file a historically required Exchange Act report from FINRA ever effecting a corporate action. This interpretation would be broad enough to include any issuer that properly terminated its reporting obligations with the Commission with one or more unfiled Exchange Act reports and adopted the reporting standards of, for example, the OTCM Group. In addition, the Department's interpretation is at odds with the Commission's interpretation of "current." It is irreconcilable that the Company's stockholders can rely on Rule 144, assuming all of the applicable conditions are met, including the current information requirement, to effect resales of the Company's stock, but that the Company, itself, cannot effect certain corporate actions because it failed to file the 2006-2008 Reports, which reports, if filed, would contain stale and outdated information, just as, for example its 2005 Exchange Act reports or its 2010 Alternative Reporting Standard reports now, in 2018, contain stale and outdated information.

It is more likely that, in adopting FINRA Rule 6490, the Commission intended to ensure only that *current public information* be available to an issuer's stockholders at or about the time the corporate action is to be processed. This interpretation is also in line with previous statements by the Commission that the purpose of the periodic reporting requirements is to protect investors and ensure that *current information* about an issuer is publicly available to investors to aid in their investment and voting decisions. See U.S. v. Berger, 473 F.3d 1080, 1098-1099 (9th Cir. 2007) (citations omitted).

In its decision, the Subcommittee asserted that "[the Company]'s termination of its ongoing periodic filing requirements with the [Commission] does not obviate the issuer's filing obligations related to the 12 delinquent periodic reports that it has neglected to file." RP 004745, 004754. The

Subcommittee further cited to the Commission's Compliance and Disclosure Interpretations, Question 130.02, as authority that:

> "When a registrant becomes delinquent in its reporting obligation . . . [the] delinquent filer must file all delinquent reports in order to become current in its [Exchange Act] reporting. While filing required documents late will not 'cure' . . . violations, and will not make the registrant timely for purposes of eligibility to use certain Securities Act [of 1933] forms, it will permit the registrant to become current in its [Exchange Act] report."

Id.

The Subcommittee's assertions are unpersuasive and without merit. First, the Subcommittee is seeking to alter the plain language of FINRA Rule 6490(d)(3)(2) to require the Company to be current in its reporting obligations to the Commission and its continual disclosures under the OTCM Group's Alternative Reporting Standards. Second, neither FINRA Rule 6490 nor the Commission's adopting release specified that an issuer must have filed all reports required to be filed for as long as the issuer was required to do so. Third, the Department failed to consider, and find persuasive, the Commission's guidance on what constitutes "current information" for purposes of protecting investors. Finally, the Company acknowledges and agrees that, if it were still subject to reporting obligations to the Commission, the 2006-2008 Reports could potentially raise issues not only with respect to FINRA Rule 6490, but also with other rules and regulations of the Commission. However, the Company is currently following the Alternative Reporting Standards of the OTCM Group, with which it is current and has been current for almost a decade and, collaterally, the information disclosed in accordance with the Alternative Reporting Standards is more than what is required by Exchange Act Rule 15c2-11 for broker-dealers to make a market for the Company's securities. This is sufficient for purposes of FINRA Rule 6490.

Accordingly, based on a plain reading of FINRA Rule 6490, the Company did not trigger FINRA Rule 6490(d)(3)(2), which triggering is required for the Department's deficiency determination. The Commission should, therefore, reverse the Department's deficiency determination.

2. The Company was not precluded from conducting a Regulation A offering by the Commission.

In May 2014, the Company filed a Regulation A Offering Statement on Form 1-A with the Commission in connection with a proposed Regulation A offering, which was subsequently amended by the Company numerous times. RP 000509-000628.[7] The filed Form 1-A, as amended, was reviewed by the Commission and subject to numerous comment letters.

Regulation A is unavailable to issuers that are subject to Sections 13 or 15(d) of the Exchange Act immediately prior to the offering. See 17 C.F.R. §230.251 (2018). The Company believed that the filing of the Form 15 had terminated its reporting obligations under the Exchange Act; thus, it was eligible to conduct a Regulation A offering. Presumably, the Commission's staff agreed because, in its comment letters, staff did not raise any concerns regarding the lack of availability of Regulation A to the Company (generally) or its filing of the Form 15 (specifically), and similarly did not raise any concerns regarding the 2006-2008 Reports or that the Company otherwise needed to generate and file the 2006-2008 Reports that predated, by a decade, the Company's corporate action. Instead, Commission staff raised concerns about whether the Company was eligible to conduct its offering in reliance on Regulation A because the staff believed the proposed offering was a continuous or delayed primary offering and, thus, did not meet the requirements set forth in Rule 251(d)(3) of the Securities Act of 1933, as amended (the "Act"). 17 C.F.R. §230.251(d)(3). Therefore, the Company believes this is conclusive evidence that Commission staff did not view the 2006-2008 Reports as problematic for the Company's stockholders or that the filing of the 2006-2008 Reports was necessary to protect investors.

Furthermore, the Company also informed the Subcommittee that it spoke with Andrew Mew, Supervising Assistant Accountant in the Commission's Office of Transportation & Leisure, who

[7] The Company only submitted to FINRA the last and final amendment of its Form 1-A, filed on July 11, 2014. The initial filing, and subsequent amendments, can be found on the Commission's website.

informally advised the Company of his group's conclusion that the Company no longer had any duty to file the 2006-2008 Reports, which conclusion, he advised, was informally echoed by staff in the Commission's Office of Services-Computer Processing & Data Preparation. RP 004620-004621, 004760. The Commission's Regulation A-related actions and indirect statements support the conclusion that the grounds on which the Department based its denial do not exist.

The Subcommittee countered that "[the Company]... provided no documentation to corroborate it[s] conversations with the [Commission] or its representations concerning its obligation to file the delinquent periodic reports." RP 004745, 004754. As the Company stated in its notice of appeal letter to FINRA, the Company's counsel spoke to Mr. Mew on the telephone. The Company did not request that Mr. Mew, or other Commission staff, provide written documentation to formalize Mr. Mew's informal conclusions, particularly because the time period in which the Company had to appeal the Department's decision did not allow for a more formal request.[8] See RP 004611-004612. Rather, the purpose of the Company's inquiry was to aid in its decision of whether to appeal the Department's deficiency determination and the bases for that appeal. RP 004620-04621. The Company then provided the Subcommittee with the informal conclusions reached by Commission staff in order to aid the Subcommittee in its review of the Department's deficiency determination. The Company urges the Commission to adopt formally these informal conclusions by Mr. Mew's group and find that the termination of the Company's periodic filing requirements with the Commission obviated its filing obligations related to the 2006-2008 Reports for purposes of FINRA Rule 6490; thus, the Company did not trigger FINRA Rule 6490.

B. The business operations of XRG during the period of the 2006-2008 Reports is completely different from and unrelated to the Company's current business operations from and after 2009; thus, any disclosure regarding the Company's

[8] In order to obtain informally relevant guidance from the Commission, the Company had to seek an extension to the deadline to appeal the Department's decision.

operations during the period of the 2006-2008 Reports is meaningless to its current stockholders.

Even if the Commission were to find the Company's arguments unpersuasive, and determines that the Company triggered a deficiency based on FINRA 6490(d)(3)(2), the Department still did not meet the second part of the analysis, which would require that the Department find 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). The Company has provided, and continues to provide, through its continual disclosures under the OTCM Group's Alternative Reporting Standards, all current information, including financial information and other business information, that is necessary for current or prospective stockholders to make informed decisions regarding the Company.

Moreover, requiring the current filing of the Company's 2006-2008 Reports does not benefit its stockholders and cannot aid in their investment and voting decisions and might be confusing. See Basic Inc. v. Levinson, 485 U.S. 224, 231-232 (1988) (Stating that, with respect to material information, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.") (citations omitted). The providing of 10-year-old disclosure would prove to be meaningless to the Company's stockholders because of the staleness of the information from the passage of time. Additionally, the required disclosure would involve a line of business in which the Company does not currently engage, and in which it has not engaged since 2009. RP 004622. As noted above, the Company, then known as XRG, provided transportation services; whereas, the Company, now known as Metatron, Inc., currently provides consulting services in the areas of web development, mobile software, online marketing, "pay-per-click" management, SEO services, and corporate strategy to internet-based business, thereby rendering any information that the Company could disclose in the 2006-2008 Reports as completely irrelevant. Id. Additionally, and perhaps most importantly, the Company believes that the market for its common stock has long-since absorbed any

lack of information that would have been contained in the 2006-2008 Reports, particularly because stockholders that made investment decisions during that period, or immediately following that period, would, as of that point in time, already have taken into account the lack of information.

The Subcommittee rejected "[the Company]'s characterization of the 2006-2008 Reports" and its "failed attempt to define what is in the public interest for the investing public." RP 004746, 004755. Instead, the Subcommittee asserted that the "public interest strongly favors issuers becoming current in their Exchange Act reporting obligations." RP 004746 (citing to China-Biotics, Inc., Exchange Act Release No. 70800, 2013 SEC LEXIS 3451, at *4 (Nov. 4, 2013) (Quoting 15 U.S. § 78m(a) and stating that the requirement to file periodic reports serves to "'protect[]...investors and...[e]nsure fair dealing' in the company's securities")). The Subcommittee also stated that "the purpose of periodic reporting requirements under the [Act] and [Exchange Act] is to provide public disclosure of financial information about an issuer, so investors may make informed decisions." RP 004746-004747 (citing to SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (Stating that "the reporting requirements of the [Exchange Act] is 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. Congress has extended the reporting requirements even to companies which are 'relatively unknown and insubstantial.'")). Consequently, the Subcommittee concluded that "the Department should not process [the Company]'s proposed [2018 Split] because [the Company] has 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.

The Company agrees that providing investors with current information about an issuer is crucial to investors' ability to make informed decisions when dealing in an issuer's securities. However, the Subcommittee's specific assertions with respect to Exchange Act reporting obligations disregard the Company's continual disclosures under the OTCM Group's Alternative Reporting Standards, as well

as, collaterally, providing information that exceeds the information requirements set forth in Rule 15c2-11 of the Exchange Act for broker-dealers to make a market in the Company's stock. 17 C.F.R. § 240.15c2-11. In 2009, the Company adopted and, since that date, has been following the Alternative Reporting Standards of the OTCM Group. The Company has provided its stockholders and prospective investors with current information regarding its business operations and financial condition for more than nine years. Surely, this is sufficient for purposes of ensuring that investors are protected and have the necessary information to make informed decisions. The Commission, therefore, should find that the Department did not meet the second part of the analysis under FINRA Rule 6490 because the Company's continual disclosures under the OTCM Group's Alternative Reporting Standards for the previous nine-year period ensure that investors and the public are protected.

C. The filing of the 2006-2008 Reports via the Commission's EDGAR filing system may not be feasible.

Based on the Company's informal conversation with Mr. Mew, the staff does not believe the EDGAR filing system will accept the 2006-2008 Reports. RP 004622. If the Commission, or the EDGAR filing system, will not accept these filings, the Company would be unable to remedy the Department's perceived deficiency solely by filing these periodic reports. Id. To be transparent, Mr. Mew stated that staff's belief, both in his group (in which XRG and its type of businesses are included) and in the counterpart Office of Services-Computer Processing & Data Preparation (in which the Company and its type of businesses are included), do not constitute an official position of the Commission. Id.

In the Subcommittee's Decision, the Subcommittee "acknowledge[d] . . . the financial and other considerations that may underlie [the Company]'s decision not to file the delinquent periodic reports with the [Commission]." RP 004746, 004755. The Subcommittee, however, failed to acknowledge that, without the ability to submit the 2006-2008 Reports via the Commission's EDGAR filing system,

the Company cannot remedy FINRA's alleged deficiency. This result is not only unfair and unjust to the Company, but also to its stockholders and prospective investors. In the event the Commission finds the Company's arguments unpersuasive, the Company respectfully requests that the Commission provide guidance to both FINRA and the Company on how the Company could remedy the alleged deficiency, including, without limitation, whether the EDGAR filing system will accept filings that are for periods more than ten years ago and, if not, how these filings can be made.

D. The preparation of the 2006-2008 Reports would present an undue hardship to the Company.

Even if the Commission's staff were incorrect, and the Company could file the delinquent periodic reports on EDGAR, the preparation of the reports would impose a significant financial burden on the Company and would involve significant managerial efforts. RP 004622. First, as part of the preparation of the missing periodic reports, the Company would need to retain a registered independent public accounting firm to audit the Company's financial statements for periods that are more than a decade in the past. Id. This would result in the Company incurring significant fees, which, based on its current financial condition, it is incapable of absorbing. Incurring significant fees for a 10-year-old audit and related periodic filings also presents an undue non-economic hardship based on the size and scope of the Company's business. Id. Management would have to expend a considerable amount of time and energy on compiling the necessary information for its auditors and lawyers to prepare these periodic reports. Any time and energy spent by management on the preparation of these reports would detract from management's time, energy, and focus on the Company's business. Id. The Company believes that, in order to protect its stockholders more adequately, it is prudent to allow the Company's management to focus on ways to increase the

Company's business, financial condition, and results of operations, which in turn could increase stockholder value. Id.

The Subcommittee, in its decision, dismissed the financial burdens that would result if the Company were required to file the 2006-2008 Reports in order to proceed with the 2018 Split, stating that "FINRA's responsibility [is] to protect investors, not the financial expenses that an issuer may incur." RP 004746, 004755. The Subcommittee further stated that "[i]n this instance, [the Company] had an obligation to file periodic reports with the [Commission]" and, "[i]nstead of satisfying that requirement, [the Company] neglected its reporting obligations." Id.

The Subcommittee's assertions are unfounded. First, and most importantly, the Company is current with the disclosure that it has made available under the Alternative Reporting Standards of the OTCM Group, and has followed the OTCM Group's Alternative Reporting Standards in all material respects since 2009. These disclosures during this nine-year period, all of which are published on the website of the OTCM Group, are sufficient adequately to protect investors. Second, FINRA should not be allowed to deny issuers the ability to effect a corporate action under the guise of acting as "the gatekeepers of the over-the-counter markets" with the "responsibility . . . of protect[ing] investors." Id. FINRA is overreaching and is denying to process corporate actions for reasons not in accordance with FINRA Rule 6490(d)(3)(2).

IV. Conclusion

In light of the foregoing, the Company respectfully requests that the Commission reverse the Department's deficiency determination because the specific grounds on which the Department based its denial do not exist in fact. First, a plain reading of FINRA Rule 6490(d)(3)(2) does not support the interpretation that the Company must be current in its reporting obligations to the Commission and must be current 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." The Commission should also look to the plain definition of the word "current," as well as to the Commission's interpretation of "current" in other rules and regulations of the Commission. 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. The Company has provided all current disclosure and information with the OTCM Group for the previous nine-year period in connection with the Alternative Reporting Standards; thus, the Company should be deemed "current" with its disclosures to the OTCM Group. Furthermore, the Company has provided information that exceeds the information requirements set forth in Rule 15c2-11 of the Exchange Act for broker-dealers to make a market in the Company's stock (and, of course, broker-dealers are regulated by FINRA).

Second, and perhaps, most tellingly, the Commission did not deny qualification of the Company's Regulation A offering due to its retaining the status of a reporting issuer (whether current or delinquent). Hence, because FINRA appropriately and self-admittedly follows the Commission's guidelines in these issues, the regulatory concerns raised by FINRA in respect of the 2006-2008 Reports can now be deemed to be non-issues. Third, the Commission's staff has indicated, on an informal basis, their belief that the Company has no obligation to file the 2006-2008 Reports. Finally, requiring the Company to file the 2006-2008 Reports (1) would present an undue hardship, (2) may not be feasible, and (3) cannot aid in its stockholders' investment and voting decisions because the information is stale and irrelevant. The burdens associated with requiring the Company to file the 2006-2008 Reports are disproportionate to any perceived benefits to the Company's stockholders.

The Commission should reverse the Department's deficiency determination in all respects and order FINRA to process the Company's 2018 Split.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Alissa Lugo, certify that on this 4th day of September, 2018, I caused to be the original and three copies of the Opening Brief in 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:

Brent J. Fields, Secretary
Securities Exchange Commission
100 F. St., NE
Room 10915
Washington, DC 20549-1090

with an additional copy served on Mr. Fields via facsimile at (202) 772-9324, and a true and complete copy of such package via overnight mail upon the following party entitled to notice:

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Alissa Lugo, certify that this Opening Brief in 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 7,162 words, excluding the cover page, table of contents, and table of authorities.

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