

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

In the Matter of the Application of

Good Vibration Shoes, Inc.

For Review of Denial of Company-Related Action by

Financial Industry Regulatory Authority

File No. 3-19238

**FINRA'S MOTION TO DISMISS GOOD VIBRATION SHOES, INC.'S APPLICATION  
FOR REVIEW AND  
TO STAY BRIEFING SCHEDULE**

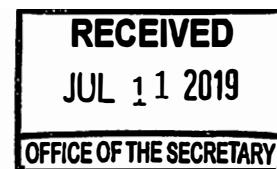
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July 11, 2019

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**I. INTRODUCTION**

This matter concerns FINRA's Department of Market Operations ("Department") determination not to process documentation related to company-related actions for Good Vibration Shoes, Inc. ("GVSI"), and the company's attempt to appeal to the Commission an initial decision by FINRA staff. The Department specifically determined that GVSI's requests were deficient because FINRA has actual knowledge that the issuer is not current in its reporting requirements. In response, on June 27, 2019, GVSI filed an appeal with FINRA's Uniform Practice Code Committee—and with no valid reason—a contemporaneous application for review with the Commission. RP 609-10, 777-78.<sup>1</sup> The Commission should dismiss GVSI's

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<sup>1</sup> "RP" refers to the page numbers in the certified record of this case filed with the Commission.

application for review because FINRA has not issued a final decision and, therefore, GVSI has failed to exhaust the administrative remedies available to it in FINRA's forum.<sup>2</sup>

## II. BACKGROUND

### A. FINRA Reviews Company-Related Actions

FINRA performs critical functions in the over-the-counter market. *See Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions)* ("Approval Order"), Exchange Act Release No. 62434, 2010 SEC LEXIS 2186, at \*2-3 (July 1, 2010). FINRA reviews and processes requests to announce or publish company actions taken by issuers of over-the-counter securities to foster cooperation and coordination of the clearing, settling, and processing of transactions involving these securities, and in general, to protect investors and the public interest. *See* FINRA Rule 6490(a)(1). Specifically, FINRA reviews and processes documents relating to announcements for two categories of issuer actions: actions related to announcements required under Securities Exchange Act of 1934 Rule 10b-17 and "Other Company-Related Actions" (collectively, "Company-Related Actions"). *Id.* These Company-Related Actions include: (1) dividend payments or other distributions in cash or kind; (2) stock splits; (3) reverse stock splits; (4) rights or other subscription offerings; (5) any issuance or change to an issuer's symbol or name; (6) mergers; (7) acquisitions; (8) dissolutions; (9) bankruptcy; (10) liquidations; or (11) any other company control transaction. *See* FINRA Rule 6490(a)(2).

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<sup>2</sup> Pursuant to Commission Rule of Practice 161, FINRA requests that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive argument that GVSI's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

In considering an issuer's request to process a Company-Related Action, the Department may request any necessary additional information to complete its review of the request. *See* FINRA Rule 6490(b)(4); *Approval Order*, 2010 SEC LEXIS 2186, at \*9. If the Department determines to process documentation related to a Company-Related Action,<sup>3</sup> the Department provides notice of the action to the over-the-counter market and adjusts the issuer's name, symbol, or stock price, as requested in the Company-Related Action. *See id.* at \*4. The Department also publishes Company-Related Actions pursuant to requests from issuers and their agents on its website in a document known as the "Daily List." *See id.* at \*4 n.7.

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

FINRA may determine that it is necessary for the protection of investors and in the public interest to deem a Company-Related Action deficient, in which case documentation related to the Company-Related Action will not be processed. FINRA Rule 6490(d)(3). Under FINRA Rule 6490, FINRA may deny an issuer's application for Company-Related Action based on five specific factors. *See id.* "The Rule's use of the permissive term 'may' vests FINRA with discretionary authority in deciding whether to process and announce a deficient Company-Related Action request on the OTCBB." *mPhase Technologies, Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at \*19-20 (Feb. 2, 2015). In this case, the Department denied

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

GVSI's requests pursuant to FINRA Rule 6490(d)(3)(2), because it determined that the issuer is not current in its reporting requirements to the SEC. RP 583-84.

Following the Department's determination that an issuer's request is deficient because it falls within one or more of the five factors enumerated in FINRA Rule 6490(d)(3), the Department provides written notice of the deficiency to the issuer, identifying the specific factors that caused the request to be deemed deficient. *See Approval Order*, 2010 SEC LEXIS 2186, at \*11; FINRA Rule 6490(d)(4). Once an issuer's request is deemed deficient, FINRA will not process the issuer's documentation for the proposed Company-Related Action or announce the Company-Related Action to the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*9.

FINRA's review of a Company-Related Action includes an issuer's right to appeal. FINRA Rule 6490 sets forth that an issuer has an exclusive right to appeal from a Department deficiency determination. *See* FINRA Rule 6490(e). A three-person subcommittee comprised of current or former industry members of FINRA's Uniform Practice Code Committee (the "UPC Subcommittee") reviews and decides all appeals.<sup>4</sup> *See* FINRA Rule 6490(e). The UPC Subcommittee meets each month, as needed, and issues a written decision within *three business days* of its consideration of the appeal. *See id.* FINRA rules do not permit a direct appeal to the Commission of the Department's determination. Rather, it is the UPC Subcommittee's written decision that is the final FINRA action for purposes of an SEC appeal. *Id.*; *see, e.g., mPhase*,

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<sup>4</sup> The Uniform Practice Code provides the framework of rules governing broker-dealers for the settlement of non-exchange listed securities quoted or traded in the over-the-counter market. *See Approval Order*, 2010 SEC LEXIS 2186, at \*5 n.8.

2015 SEC LEXIS 398, at \*7-15 (illustrating that an issuer appealed to the Commission from UPC Subcommittee’s decision affirming Department’s decision).

### **III. FACTS**

#### **A. GVSI Submits to FINRA the Notification of Company Related Actions**

GVSI is a Nevada company that “currently operates a consultancy leveraging its expertise in business logistics.” <https://www.otcmarkets.com/stock/GVSI/overview> (last visited July 10, 2019). GVSI was seeking to effect a merger and submitted the Issuer Company Related Action Notification on March 20, 2019.<sup>5</sup> RP 1-7. GVSI submitted its application requesting that FINRA process documentation related to a 1 for 20,000 share exchange in connection with a merger and a name and symbol change. RP 1-7. As part of the Department’s review, it asked GVSI to answer a series of questions and provide documentation related to its requests. RP 167-70, 173-76, 389-97, 399-402, 443-47, 473, 475-79, 553-55, 559-61, 565-69, 571-79. After reviewing the information that GVSI provided, the Department deemed its request deficient and denied the request. RP 583-85.

#### **B. The Department Determines GVSI’s Request Is Deficient Under FINRA Rule 6490(d)(3)(2)**

The Department denied GVSI’s request pursuant to FINRA Rule 6490(d)(3)(2). RP 583-84. The Department explained that it had actual knowledge that GVSI is not current in its reporting requirements to the SEC. RP 583-84. The Department further explained that the issuer had failed to file 21 periodic reports from 2008 through 2013. RP 583-84. The Department concluded that as a result of GVSI’s lapses in meeting mandatory reporting requirements, the

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<sup>5</sup> GVSI previously had submitted an application requesting that FINRA process documentation related to a 1 for 20,000 reverse stock split, merger, and a name and symbol change. The Department denied that request on October 18, 2018. RP 163-65, 389.

issuer triggered one of the grounds delineated in FINRA Rule 6490(d)(3) and deemed the application deficient. RP 583-84. Consequently, the Department declined to process GVSI's documentation concerning the share exchange, merger, and name and symbol change. RP 583. The Department provided GVSI with a written deficiency determination on June 21, 2019. RP 583-85.

**C. GVSI Files Dueling Appeals with the UPC Subcommittee and the Commission**

On June 27, 2019, GVSI requested that the UPC Subcommittee review the Department's decision under FINRA Rule 6490(e). RP 609-10. On the same day that GVSI appealed to the UPC Subcommittee, it also submitted an application for the Commission's review of the Department's deficiency decision. RP 777-78. GVSI appealed to the Commission despite the fact that it had just asked the UPC Subcommittee to review this matter. *See* FINRA Rule 6490(e). On July 2, 2019, FINRA's Office of General Counsel notified the attorney representing the issuer that the appeal to the Commission at this stage of the case is not consistent with FINRA rules and requested that GVSI withdraw its SEC appeal. RP 941-42. On July 3, 2019, GVSI's counsel responded to FINRA's July 2 letter, admitting that the issuer is pursuing "remedies outside of the purview of the FINRA appeal process" by appealing to the SEC at this stage. RP 945. To date, GVSI has not withdrawn its appeal to the Commission.

**IV. ARGUMENT**

The Commission should dismiss GVSI's application for review because the issuer has failed to exhaust its administrative remedies under FINRA Rule 6490. FINRA procedures direct that the UPC Subcommittee conduct a *de novo* review of the record and issue a written decision before a Company-Related Action is considered a final action that is ripe for Commission review. FINRA Rule 6490(e). At this stage of the proceeding, the Commission should decline

to consider GVSI's application for review because the issuer first must follow FINRA procedures to exhaust the available administrative remedies. *See WD Clearing, LLC*, Investment Co. Act Release No. 75868, 2015 SEC LEXIS 3699, at \*20 (Sept. 9, 2015) ("If we were to assume that FINRA would have rejected Wilson-Davis's application based on the incomplete record before us, we would divest FINRA of its 'self-regulatory function' because FINRA did not have the opportunity to decide the issue for itself or review its own decision through its internal appellate process prior to Commission review.").

To properly invoke the Commission's review of a Company-Related Action denial, GVSI should appeal from a final FINRA action that denies its request, not an initial determination from the Department. The UPC Subcommittee has not issued a final decision and—while GVSI's appeal to the Commission is pending—it will not. GVSI should withdraw this appeal, submit its arguments to the UPC Subcommittee, and receive a final decision on its request. GVSI can then evaluate if it is aggrieved by the UPC Subcommittee's decision. At the moment, however, GVSI has failed to take an appeal that it must pursue to exhaust the remedies available to it.

As the Commission has emphasized, "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review." *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at \*9 (Apr. 10, 2014) (citation omitted). The Commission has repeatedly held that requiring respondents to exhaust their administrative remedies before FINRA is necessary to FINRA's important regulatory functions, promotes development of the record, allows FINRA the opportunity to correct its own errors prior to Commission review, and promotes the efficient resolution of disputes. *See, e.g., WD Clearing*, 2015 SEC LEXIS 3699, at



\*20; *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at \*5-7 (Sept. 19, 2014) (same); *Mullins*, 2014 SEC LEXIS 1268, at \*10 (same).

GVSI asserts that the Department “failed to provide a basis for [its] determination relative to the June 21, 2019 deficiency notice,” and FINRA therefore did not provide the issuer with “sufficient information to properly pursue” an appeal to the UPC Subcommittee. RP 945. GVSI is flat wrong. The Department’s June 21 deficiency notice expressly states that FINRA has actual knowledge that the issuer is not current in its reporting requirements by failing to file 21 mandatory reports. RP 583-84. Consequently, and consistent with FINRA Rule 6490(d)(3), the Department determined that the issuer’s request is deficient. RP 583-84.

Appellate review by the Commission here would be especially at odds with an orderly appeals process that “allow[s] the lower body to articulate its rationale or correct mistakes.” *Florence Sarah Pollard*, Exchange Act Release No. 55978, 2007 SEC LEXIS 1430, at \*7-8 (June 28, 2007); *see also MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004) (requiring applicant to exhaust administrative remedies “promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review”), *affirming MFS Sec. Corp.*, 56 S.E.C. 380, 393 (2003) (emphasizing that it is “clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review” and refusing to consider applicant’s denial of access to services claim because applicant failed to exhaust NYSE procedures). After its review, the UPC Subcommittee will issue a detailed written decision explaining the bases for its determination on appeal. *See* FINRA Rule 6490(e). Requiring the issuer to follow FINRA procedures and exhaust all of its administrative remedies is consistent with Commission precedent and will promote the efficient

resolution of this dispute. *See WD Clearing*, 2015 SEC LEXIS 3699, at \*20. If the UPC Subcommittee's written decision is adverse to GVSI, then the issuer within 30 days of service may appeal to the Commission. The issuer concedes as much. RP 946.

Regarding the key points of allowing an opportunity to correct errors and efficient resolution of SRO disputes, the Second Circuit Court of Appeals has explained:

Were SRO members, or former SRO members, free to bring their SRO-related grievances before the SEC without first exhausting SRO remedies, the self-regulatory function of SROs could be compromised. . . . It also provides SROs with the opportunity to correct their own errors prior to review by the Commission. The SEC's exhaustion requirement thus promotes the efficient resolution of disciplinary disputes between SROs and their members and is in harmony with Congress's delegation of authority to SROs to settle, in the first instance, disputes relating to their operations.

*MFS Sec. Corp.*, 380 F.3d at 621-22. Thus, as an aggrieved party, GVSI is required to exhaust its administrative remedies before resorting to an SEC appeal. Those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Sec. Corp.*, 36 S.E.C. 275, 277 n.3 (1955).

In addition, the precedent with respect to administrative exhaustion is well-settled, and the Commission has consistently dismissed respondents' applications for review when respondents failed to exhaust their administrative remedies under FINRA rules. *See WD Clearing*, 2015 SEC LEXIS 3699, at \*20 (requiring exhaustion before a firm can appeal a potential denial of membership); *see also Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585, at \*6-14 (Sept. 21, 2016) (dismissing applicant's appeal for failure to exhaust administrative remedies when FINRA barred applicant under FINRA Rule 9552 for failing to respond to FINRA Rule 8210 requests); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at \*8 (Dec. 4, 2014) ("[The Commission] will not consider an application for review if the applicant failed to exhaust FINRA's procedures."); *Pollard*, 2007

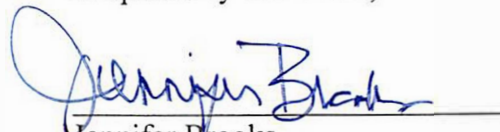
SEC LEXIS 1430, at \*7 (“We decline to construe NASD rules in a way that would disturb the long-settled and well-justified policy of requiring people to exhaust the full administrative process at NASD. Prior to any appeal here, [appellant] was required to appeal the Remand Decision to the NAC.”).

Instead of following the streamlined appellate process set forth in FINRA’s rules, GVSI filed this appeal with the Commission without a final FINRA decision. The issuer’s failure to follow FINRA’s procedure means that it does not qualify for appellate review by the Commission at this point in the process. *See WD Clearing*, 2015 SEC LEXIS 3699, at \*20. The Commission, accordingly, should dismiss the application for review.

**V. CONCLUSION**

The Commission should dismiss GVSI’s appeal for its failure to exhaust FINRA’s administrative remedies.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jennifer Brooks", is written over a horizontal line.

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July 11, 2019

**CERTIFICATE OF SERVICE**

I, Jennifer Brooks, certify that on this 11th day of July 2019, I caused a copy of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule, in the matter of Application for Review of Good Vibration Shoes, Inc., Administrative Proceeding No. 3-19238, to be served by messenger on:

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090

and via FedEx, certified mail, and email on:

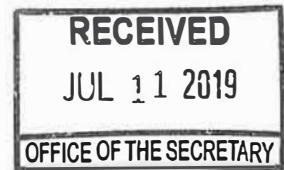
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Service was made on the Commission by messenger and on the Applicant's attorney by FedEx, certified mail, and email due to the distance between the office of FINRA and the Applicant's attorney.



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July 11, 2019

**VIA MESSENGER**

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
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Washington, DC 20549-1090

RE: In the Matter of the Application for Review of Good Vibration Shoes, Inc.  
(Allied Corp./Landmark Technology Group, Inc.)  
Administrative Proceeding No. 3-19238

Dear Ms. Countryman:

Enclosed please find the original and three (3) copies of FINRA's Motion to Dismiss Good Vibration Shoes, Inc.'s Application for Review and to Stay Briefing Schedule in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer Brooks

Enclosures

cc: M. Richard Cutler, Esq. (via FedEx, certified mail, and email)  
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