UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	§	
EYECITY.COM, INC.	§	**ADMINISTRATIVE PROCEEDING**
For Review of Action Taken by	§	
FINRA	§	
Administrative Proceeding No. 3-19406	§	

BRIEF IN SUPPORT OF APPLICATION OF

CAREX BLOCKCHAIN PLATFORM, INC.

FOR REVIEW OF ACTION TAKEN BY FINRA

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INTRODUCTION AND PRELIMINARY NOTE

This matter involves an appeal from a determination by the Financial Industry Regulatory Authority ("FINRA"). On December 28, 2018 (almost 17 months ago), Applicant, CareX Blockchain Platform, Inc. (previously Eyecity.com, Inc.) ("ICTY"), submitted an application to FINRA to complete a name change, obtain a new symbol, and conduct a reverse stock exchange pursuant to a merger, pursuant to FINRA Rule 6490. After months and months of delays as set forth below, FINRA determined the application was deficient on June 21, 2019. Applicant filed an appeal to the Uniform Practice Committee of FINRA (the "Committee") on June 27, 2019. On August 16, 2019, the Committee affirmed FINRA's determination. The Company filed an application for reversal of FINRA's deficiency determination on August 22, 2019 (nine months ago).

FINRA's established purpose is "to protect investors and ensure the market's integrity, . . [FINRA staff] work every day to ensure that everyone can participate in the market with confidence." The Company and counsel acknowledge and applaud FINRA's role in ferreting out fraud and assuring the integrity of public markets to protect investors. In this case and others, however, it has become very clear that FINRA's internal guideline manual relative to corporate actions must be entitled "How to Destroy a Company and Harm Investors and Take as Long as Possible to Do So." As set forth below, FINRA's actions in this matter are egregious, inconsistent, unlawful and clearly intended to destroy the Company.

At the outset, FINRA's actions have effectively already murdered the Company and destroyed investment by its shareholders and other investors. Not surprisingly given the exceptionally lengthy timeframe of FINRA's actions (and inactions), the corporate actions initially proposed by the Company have long ago been abandoned. Investors who intended to fund the Company have disappeared and invested elsewhere. The Company's shareholders have essentially all lost their investment in the

Company. Essentially, it is simply not possible for a corporate transaction in the real world (unlike FINRA's world) to exist for more than 17 months without resolution. No rational investor continues in that fashion.

Nevertheless, this appeal action is far from moot. Investors have truly been harmed, but through this action counsel and the Company seek resolution from the Commission to assure that the Company may undertake an alternative transaction which could have at least some benefit to the Company's shareholders. Company counsel at its own time and expense continues to pursue this matter long after the Company has been effectively destroyed.

First established in 2010, FINRA Rule 6490 establishes procedures for the submission, review, and approval of requests, by issuers to FINRA, to process certain corporate actions, including dividends, distributions, and stock splits. Rule 6490 is an extension of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and SEC Rule 10b-17, promulgated thereunder, and it grants FINRA the authority to deny an issuer's request if the request is incomplete.[1] Additionally, FINRA may deny an issuer's request if there are other "indicators of potential fraud," such as actual knowledge of the issuer previously found liable of securities fraud, or settled a securities fraud investigation, or failure to file *current* reports with the SEC or other regulatory body. Here, FINRA has acknowledged that ICTY has disclosed and provided all material information requested by the application. FINRA denied the application only because ICTY did not file periodic reports during a period preceding filing a Form 15 on June 10, 2008, more than eleven years ago. FINRA's denial is therefore punishment and harm to current shareholders for ancient, immaterial and far from "current" disclosure to ICTY's shareholders, and should

[1] Counsel would note that recent actions by OTC Markets and others seek to limit FINRA's role in the determination of corporate actions and Form 211 filings. Counsel vigorously supports those actions in view of FINRA's inability to process such actions and filings in a rational, business driven fashion.

be reversed. Further, as set forth in more detail below, this issuer completed a three party merger pursuant to which it now is structured with a holding company structure, such that even under applicable securities laws it would NOT be responsible for any past filing deficiencies.

STATEMENT OF FACTS

I. Procedural Posture

A. Respondent's Application and FINRA's Initial Denial

Respondent CareX Blockchain Platform, Inc. is a Delaware corporation that intended to complete a share exchange with a private company to undertake a health care payment system known as "carepay". ICTY is publicly traded on the OTC Markets "pink market" under ticker symbol ICTY.[2]

On December 28, 2018 ICTY first submitted a notice to FINRA's Department of Operations ("DOP") requesting that DOP process documentation which would allow ICTY to change its name to CareX Blockchain Platform, Inc., and conduct a reverse stock exchange pursuant to a merger. *Certified Record* Tab 1. All of the foregoing had and has already occurred with the Delaware Secretary of State prior to filing with FINRA. *See Certified Record* Tab 1. ICTY's notice was made pursuant to FINRA Rule 6490. *See Certified Record* Tab 1. Subsequently, ICTY through its counsel presented correspondence to FINRA detailing the holding company structure utilized by ICTY, which had been the basis for many previous such filings. *See Certified Record* Tab 5 Letter to FINRA regarding holding company structure February 9, 2019. In filing its notice and in during subsequent correspondence with FINRA, ICTY complied with all of Rule 6490's requirements and submitted all required documentation. *See Certified Record* Tabs 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 Correspondence to and from FINRA related to the Issuer Company-Related Action Notification Form. In point of fact, FINRA's

[2] ICTY currently has approximately 8.5 billion shares outstanding (dating from years ago), which because it was cumbersome to new potential investors was the rationale behind the initial reverse stock exchange.

analyst requested information on eleven separate occasions, each time seeking to elicit more documentation or other information. In each instance ICTY fully cooperated and provided such information exceptionally promptly.

The DOP made no finding that the documentation ICTY submitted was in any way deficient. *See Certified Record* Tab 18 FINRA Deficiency Notice dated June 21, 2019. Yet on June 21, 2019, DOP refused ICTY's application by providing ICTY with a deficiency notice. *(Id.)* In refusing to grant ICTY's application, DOP stated its denial was based on a finding that ICTY had not completed certain periodic filings prior to filing its Form 15 on June 10, 2008 (eleven years ago).

Respondent's Appeal

On June 27, 2019, ICTY filed an appeal of DOP's deficiency determination. (Notice of Appeal of Deficiency Notice). *See Certified Record* Tab 22. Pursuant to FINRA Rule 6490 that appeal must be heard and responded to within 30 days of filing. Nonetheless, on July 10, 2019 Alan Lawhead on behalf of FINRA unilaterally and arbitrarily suspended the appeal because the Company had alternatively also sought review by the SEC. *See Certified Record* Tab 30. The Company through counsel vigorously opposed that suspension in view of the continued harm to the Company through further delays.[3] In order to force expedition of the appeal, counsel for the Company was forced to withdraw its initial SEC appeal. *See Certified Record* Tab 38. Finally, on August 16, 2019 almost two months later in direct contradiction to FINRA's own rule, the Uniform Practice Committee of FINRA essentially rubber stamped and affirmed FINRA's deficiency determination.

[3] At that time the Company still intended to seek to complete the corporate actions and had investors who intended to invest in the Company and its business.

FINRA Rule 6490 states that its guiding principles are to prevent fraudulent activities in connection with the securities markets and to protect investors and the public interest. Yet nowhere in the Deficiency Notice or subsequent correspondence does DOP state or explain how filings from eleven years ago have any bearing whatsoever to either transparent current reporting requirements or with any fraudulent activities in connection with the securities markets. In fact, FINRA refused counsel's request for the basis of its determination relative to the holding company structure. *See Certified Record* Tab 20 correspondence to FINRA requesting clarification dated June 25, 2019 and *Certified Record* Tab 21 FINRA letter dated June 26, 2019. Nor does the Deficiency Letter or further correspondence set forth an explanation as to how its decision in any possible fashion protects investors and the public interest.

Let there be no doubt that there is a strong public policy in favor of capital formation for small businesses

There can be no doubt that current political fiscal policy favors long term economic growth through increased capital formation. Government agencies have been instructed to reduce barriers to investment of capital, particularly in emerging growth and smaller businesses. Without a doubt reduction of regulatory barriers has been a mandate of the current administration with a view to improving the US economy (which is even more necessarily in view of the current pandemic). Similarly recent and proposed reductions in tax rates and capital gains are intended to stimulate growth. Economic theory is clear that countries that have increased investment have higher long-run rates of economic growth. Unreasonable regulatory burdens harm the economy. FINRA's interpretation in this matter simply presents an obstacle to the formation of capital unrelated in any way to its objectives under Rule 6490.

Corporations such as ICTY require the ability to access public funds in order to grow their business. Investors had already contributed significant funds to the success of the health care payment system venture which was effectively destroyed by FINRA's actions. *See* www.carepay.care. The Company launched its operations in early June 2019 and requires further investment to achieve its objectives – which include providing an alternative, transparent health care payment system which helps solve significant healthcare cost issues for all. A vast improvement over current insurance and other healthcare related structures. Unfortunately the Carepay system was forced to go an alternative route without the investors it had worked so hard to obtain.

Investors investing real money into a company desire the exit strategy and liquidity afforded by public securities markets. Few investors desire to invest in private businesses because of the potential long-term requirement for the investment. As a consequence, companies such as this issuer seek the ability to privately offer securities to investors, all the while providing a potential exit for profitable operations which is not in the far too distant future. Quite frankly, that is the principle reason that companies go public in the first place.

Consequently, I would strongly state that significant FINRA delays in processing corporate actions strongly violates the public policy of providing worthy public companies of access to investment and growth capital.

SUMMARY OF ARGUMENT

FINRA Rule 6490 is intended to be merely a ministerial rule. Enacted in September 2010, it sets forth specific procedures for the submission, review, and determination of the sufficiency of requests made to FINRA by issuers to process certain corporate actions, including dividends, distributions, and stock splits. It is not intended to be a free for all ability of FINRA to deny applications. Rule 6490 is an extension of Section 10(b) of the Exchange Act and Rule 10b-17, promulgated thereunder, and gives FINRA authority to deny an issuer's request if that request is incomplete or if there are other "indicators of potential fraud." *See* Proposal Release, at 39604. The plain language of the Rule and the Rule's history demonstrate that these latter two occurrences that trigger FINRA's ability to deny requests are interrelated. Specifically, FINRA can deny a request if the issuer fails to include information that is "material," and *current* under the federal securities laws or finds that principles of the Company have adjudicated or settled securities act violations. In other words, all Rule 6490 gives to FINRA is the power to detect and ferret out fraud in the application.

Simply put, because ICTY disclosed all other necessary information and provides *current* information to shareholders, FINRA's denial exceeded the scope of its authority under Rule 6490 and was improper. Moreover, FINRA's denial - and the SEC's affirmation of that denial - would amount to punishment of past conduct in failing to make filings more than eleven years ago that neither FINRA nor the SEC have the power or ability to seek now. Affirming FINRA's denial would improperly expand FINRA's powers, and it would allow the Commission a backdoor to a remedy it chose not to seek more than eleven years ago. Accordingly, FINRA's denial of Respondent's application to change its name, obtain a new symbol, and conduct a reverse stock exchange pursuant to a merger should be reversed.

Furthermore, FINRA's denial flies in the face of current securities laws for a company that has completed a detailed holding company structure. In its appeal determination, FINRA repeatedly mistakes the Company as a "successor issuer" for purposes of reporting obligations. In point of fact, the entity allegedly with incomplete filings does not exist because it was merged out of existence. Because the former entity ICTY alleged to have missing filings was merged out of existence, under current rulings and securities laws it no longer even had a requirement to make such filings.

Finally, FINRA violated its own Rule in delaying response to the Company's appeal beyond required rules.

FINRA's denial must and should be reversed.

ARGUMENT

I. FINRA's Denial of Respondent's Application Should Be Reversed Because The Denial Exceeded the Authority Granted To FINRA Under Exchange Act Section 10(b), SEC Rule 10b-17, and FINRA Rule 6490.

As noted in the proposal to adopt Rule 6490, FINRA has no jurisdiction over issuers and does not impose listing standards. *See* Proposal Release, at 39604. Therefore, it may not make substantive judgments about matters of corporate governance for a corporation, such as whether filings from eleven years ago constitute "current" reporting obligations. Further FINRA may not make its own completely inconsistent interpretations of a holding company structure which has been used in many previous filings approved for corporate actions and already approved by FINRA in exactly the same circumstances for filings (*See, e.g.* NUGL, Inc. {symbol NUGL}, Joey New York, Inc. {symbol JOEY}, and Petlife Pharmaceuticals, Inc. {symbol PTLF}). Rather, the only power granted to FINRA under Rule 6490 by Section 10(b) of the Exchange Act and SEC Rule 10b-17 - the enabling statute and SEC Rule - is to require the filing of an appropriate notice, which it may refuse to approve if the notice is deficient in some way.

Here there was no deficiency in Respondent's notice because ICTY provided all information required or requested, and that was repeatedly acknowledged by FINRA.

Accordingly, FINRA's denial of ICTY's application based on the filings from eleven years ago exceeded the authority granted to FINRA under Rule 6490 and should be reversed.

Two provisions of the Exchange Act define FINRA's quasi-governmental authority to adjudicate actions against members who are accused of unethical or illegal securities practices and the Commission's oversight of that authority: *See* Sections 15A and 19 of the Exchange Act. *National Association of Securities. Dealers. Inc.* v. *SEC,* 431 F.3d 803, 804 (D.C. Cir. 2005), *rehearing en banc denied* (2006) *("NASD v. SEC).* Section 15A of the Exchange Act, 15 U.S.C. § 78o-3, lays out FINRA's specific duties, including disciplinary functions. Further, Section 19, 15 U.S.C. § 78s, sets out the SEC's supervisory duties over FINRA. A close look at Section 19 shows that FINRA's rule-making authority should be strictly limited by parameters set forth by the Commission and, by extension, Congress. *See* 15 U.S.C. § 78s (b)(1) ("Each self-regulatory organization shall file with the Commission, *in accordance with such rules as the Commission may prescribe,* copies of any proposed rule or any proposed change ... No proposed rule change shall take effect *unless approved by the Commission)* (emphasis added); *see also Fiero v. FINRA,* 600 F.3d 569, 574-79 (2d Cir. 2011) (analyzing whether FINRA's actions in that case conformed to the authority granted under the Exchange Act and any corresponding SEC and/or SRO rule). Here, FINRA has attempted to subvert the clear intention of Rule 6490, as approved by the SEC, by providing their own interpretation of a provision clearly contradictory to the intentions of the Rule and intended to punish companies for filings not made many many years ago.

Here, the statute guiding the Commission's supervision over FINRA is Section 10(b) of the Exchange Act, which was written by Congress to prohibit conduct involving fraud or manipulation in

connection with the purchase or sale of securities. *See Santa Fe v. Green,* 430 U.S. 462, 473, 97 S.Ct. 1292 (1977); *see also SEC v. Zandford,* 535 U.S. 813, 819, 122 S.Ct. 1899 (2002) (discussing how Section 10(b) and the Exchange Act, in general, were written to promote a philosophy of full disclosure surrounding the purchase or sale of securities on national exchanges). To further the goals of Section 10(b), the Commission promulgated, *inter alia.* Rule 10b-17, entitled "Untimely Announcements of Record Dates." 17 C.F.R. § 240.10b-17.

According to its plain text, Rule 10b-17 was enacted to prevent the failure to give notice by an issuer with respect to certain corporate actions, such as payment to shareholders of dividends, distributions, stock splits, or rights offerings. *Id.* Accordingly, the Commission requires that issuers give notice to FINRA not later than ten days prior to the record date of such corporate action[4]. *Id.* This is a ministerial function. Indeed, FINRA has limited jurisdictional reach over public companies. FINRA does not impose listing standards for securities and maintains no formal relationship with, or direct jurisdiction over, issuers. *See* Proposal Release, at 39604.

Thus, the overarching purpose of the Rule is to ensure that the investing public is not misled by the failure of issuers to disclose information that would be considered material under the federal securities laws. For example, subsection (d)(3) of Rule 6490 itself recognizes in that subsection's title - "Deficiency Determination" - that FINRA's *sole* function in the application process is ministerial. That subsection states that:

> [W]here an SEA Rule 10b-17 Action or Other Company-Related Action is deemed deficient, the Department may determine ... that documentation ... will not be processed ... [W]here the Department makes such a deficiency

[4] This brief does not address the clear conflict between FINRA's ministerial role in reviewing corporate actions and with state law for actions which by their nature must already be legally completed. FINRA requires that a company provide a file-stamped copy of any corporate actions filed with a state corporate secretary prior to undertaking a review. I leave it to the SEC to correct this serious deficiency in the review process.

> determination, the request to process documentation ... will be closed ... The Department shall make such deficiency determinations *solely* on the basis of one or more of the following factors: (1) FINRA staff reasonably believes the forms and all supporting documentation, in whole or in part, may not be complete, accurate or with proper authority; (2) the issuer is not *current* in its reporting requirements, if applicable, to the SEC or other regulatory authority; (3) FINRA has *actual knowledge* that the issuer ... officers, [or] directors ... are the subject of a pending, adjudicated or settled regulatory action or investigation by a federal, state or foreign regulatory agency, or a self-regulatory organization; or a civil or criminal action related to fraud or securities laws violations; [and] (4) a state, federal or foreign authority or self-regulatory organization has provided information to FINRA, or FINRA *otherwise has actual knowledge* indicating that the issuer ... officers, [or] directors... may be potentially involved in fraudulent activities related to the securities markets and/or pose a threat to public investors...

See FINRA Rule 6490(d)(3) (emphasis added); *see also* Proposal Release, at 39606 ("Accordingly, the Commission believes that the proposal is designed to encourage issuers and their agents to provide complete, accurate and timely information to FINRA concerning Company-Related Actions involving OTC Securities, *and thereby* to prevent fraudulent and manipulative acts and practices with respect to these securities") (emphasis added).

Thus, under the plain text of subsections (d)(1) and (d)(2) of Rule 6490, FINRA can deny a request if the issuer fails to include information that is *material* under the federal securities laws. Information relative to a failing company from eleven years ago is hardly material to an investment in a company today or even anything current shareholders would find relevant.

Here, subsections (d)(1), (d)(3), and (d)(4) are clearly inapposite. The only subsection that could apply is (d)(2). The record, however, shows that ICTY provides and will continue to provide transparent, current information to its shareholders with respect to its actions, business and operations. In fact, ICTY had prepared and intended to file a Registration Statement on Form S-1 when it cleared this obstacle in place arbitrarily from FINRA. Sadly because of FINRA's actions that was necessarily abandoned.

Therefore, there can be no "deficiency determination." This is the only logical reading of Rule 6490(d)(2). That is why the rule refers to “current” in its reporting requirements.

As a final note, subsection (d)(5) of Rule 6490 also allows FINRA to determine that an application is deficient if there is "significant uncertainty" in the settlement and clearance process for the issuer's securities. *See* FINRA Rule 6490(d)(5). This is a technical exception that makes sense when one considers the object of Rule 6490 is to perform actions that will impact trading in the issuer's securities. In addition, as the Proposal Release makes clear, this exception was the *main* reason Rule 6490 increased FINRA's role in the application process - namely, there was concern that fraudsters were taking advantage of FINRA's limited powers vis-a-vis corporate actions to assist in certain and specific schemes, such as usurping the corporate identity of publicly traded entities by either reinstating an entity with no authority or creating new entities with the same name as the public entity. *See* Proposal Release, at 39604 & n.9 *(citing* Commission Order and cases). In other words, the only additional power that Rule 6490 gives to FINRA is the power to detect and ferret out *this* type of fraud in the application.

Yet not only does the DOP’s Deficiency letter and FINRA’s appeal determination fail to state how eleven year old filings are material or could result in fraudulent activity, they make absolutely no attempt whatsoever to base its decision on the actual language of the rule, in context, or this important history. Thus, any argument by FINRA *now* that its decision is supported by Rule 6490 is a semantic argument that relies on certain broad language from subsection (d)(2), taken out of context. In sum, FINRA's denial exceeded the scope of its authority under Rule 6490 and was improper. Accordingly, FINRA's denial of Respondent's application to change its name, obtain a new symbol and conduct a reverse stock exchange pursuant to a merger should be reversed.

II. Even If FINRA's Interpretation Of The Rule Is Correct, FINRA's Denial of Respondent's Application Was Based On Improper Application of Existing Law for holding company structures.

Assuming *arguendo* that the Commission finds that FINRA did not exceed the authority granted to it under Exchange Act Section 10(b) and SEC Rule 10b-17, which ICTY does not concede, the Commission should nevertheless find that FINRA improperly applied applicable law.

ICTY was well aware that Eyecity.com had not filed every required SEC filing at the time it filed a Form 15 in 2008. However, the structure of the transaction between ICTY (then renamed CareX Blockchain Technology, Inc.), a Delaware corporation ("CareX"), and CareX Merger Subsidiary, Inc., a Delaware corporation and a wholly-owned subsidiary of CareX reflected a subsidiary merger pursuant to which CareX Merger Subsidiary survived and changed its name back to CareX Blockchain Technology Group, Inc.

This transaction was structured identically to other entities after significant discussions with Larry Spirgel, Assistant Director of the U.S. Securities and Exchange Commission regarding succession-related issues under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), arising from circumstances identical to the hereinafter described reorganization of CareX into a holding company structure (the "Reorganization"). *See, e.g.* NUGL, Inc. (symbol "NUGL"), Joey New York, Inc. (symbol "JOEY") and Petlife Pharmaceuticals, Inc. (symbol "PTLF"). Please see the following, to-wit:

To effect the Reorganization, CareX Merger Sub was formed by CareX as its direct and wholly owned subsidiary. The holding company organizational structure was implemented pursuant to Section 251(g)) of the General Corporation Law of the State of Delaware, by the merger of CareX with and into CareX Merger Sub. CareX Merger Sub survived the merger. The Commission has long recognized

the holding company structure through numerous no action letters relating to Section 251(g)) of the General Corporation Law of the State of Delaware, as well as a similar section Section 92A of the Nevada General Corporation Laws. At the time of the Reorganization, CareX Merger Sub is the resulting issuer and had less than 300 shareholders.

Upon consummation of the Reorganization, each issued and outstanding common stock share of the former CareX was transmuted into and exchanged for an identical equity structure of CareX Merger Sub (on a one share for 74,000 share exchange basis) having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions. Upon consummation, CareX Merger Sub was the issuer since the former equity structure was transmuted pursuant to Section 251(g) into current issued and outstanding equities of CareX Merger Sub. The Reorganization was exempt from the registration requirements of the Securities Act of 1933 ("Act") as there was no "offer" or "sale" as defined in Section 2(3) of the Act so as to invoke the requirements of Rule 145 also under the Act. Under the terms of the Agreement the shareholders and equity holders of the former CareX had no appraisal rights or rights to a shareholder vote and consequently no investment decision was made by the shareholders. Further, the transaction complied with the provisions of Rule 144(D)(3)(x) titled "Holding Company Formation."

The Commission has long recognized the form of Reorganization executed here under comparable circumstances, including similar holding company reorganizations. *See e.g.*, The Dress Barn, Inc., available August 13, 2010, GulfMark Offshore, Inc., available January 11, 2010, Tim Hortons Inc., available September 9, 2009, Weatherford International Ltd., available January 14, 2009, Willbros Group, Inc., available February 27, 2009, Pediatrix Medical Group, Inc., available December 22, 2008, Otter Tail Corporation, available December 2008, Mentor Corporation, available September 26, 2008, Dollar Tree

Stores, Inc., available February 20, 2008, InterDigital Communications Corporation, available June 25, 2007, Hecla Mining Company, available October 31, 2006, Mercer International, Inc., available December 12, 2005, Matria Healthcare, Inc., available February 10, 2005, Adolph Coors Company, available August 25, 2003, Bon-Ton Stores (July 14, 1995), INDESCO, Inc. (October 31, 1995), Toys R Us, Inc. (December 31, 1995), ABX Air, Inc. (June 13, 2007), Brandywine Raceway Association (June 27, 1977), BMC West Corp. (April 16, 1997), Roper Industries, Inc. (July 19, 2007), Lamalie Assoc., Inc. (December 16, 1998), IPC Information Systems, Inc. (May 20, 1999), Kerr-McGee Holdco, Inc., (July 31, 2001), Hecia Mining Co. (October 31, 2006), Equitable Resources, Inc. (April 25, 2007), and Halliburton Co. (December 11, 1996). In its appeal determination, FINRA misleadingly attempts to take certain concepts from this strong line of cases to indicate that as a "successor issuer", the Company is required to continue its filings. Those attempted diversions are inapposite in view of the fact that the Company is simply not the result of a succession.

It abundantly clear that CareX Merger Sub is not the surviving or resulting corporation but that of a newly created parent holding company under Section 251(a) of the Delaware Act. As stated, the parent holding company formation was done in compliance with the Delaware Act and the parent, CareX (ICTY), is not a successor or survivor. The Statute is very clear and exacting as to the procedure and results, whereby CareX Merger Sub was newly formed under Section 251(g) and only become the Parent and not a successor under Section 251(g). Despite FINRA's arguments in the appeal determination, there is simply no administrative ruling, case law, no action letter, or other opinion that is in contradiction to the propriety of the action taken in this Reorganization or the results of the parent/holding company formation.

As to whether or not the new parent/holding company, CareX Merger Sub (now named CareX Blockchain Technology, Inc.), has any reporting or filing responsibility with the SEC, the answer is

clear that no such obligation remains under Federal law. We direct your attention to 17 C.F.R. § 240.12g-3, specifically Rule 12g-3(a) which provides as follows, to wit:

> "Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to Section 12 of the Act (15 U.S.C. 78 l) are issued to the holders of any class of securities of another issuer that is registered pursuant to either Section 12 (b) or (g) of the Act (15 U.S.C. 78 l (b) or (g)), the class of securities so issued shall be deemed to be registered under the same paragraph of Section 12 of the Act unless upon consummation of the succession:
>
> (1) Such class is exempt from such registration other than by § 240.12g3- 2;
>
> (2) All securities of such class are held of record by fewer than 300 persons, or 1,200 persons in the case of a bank; a savings and loan holding company, as such term is defined in Section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);
>
> (3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under Section 12 of the Act (15 U.S.C. 78 l) but for this section."

It is important to note that CareX Merger Sub is a brand new company, is not the successor in interest, is the new parent with the same shareholder structure and is a company with less than 300 shareholders of record on the date of the Reorganization. The Reorganization did not allow for any reporting responsibility to transfer for purposes of applicability Rule 12g-3(a) under the Exchange Act. Thus Rule 12g-3(a) blocked the transfer to Merger Sub of any nexus or connection to past reporting responsibilities, the former file number, tax id number, or otherwise. CareX Merger Sub is a successor issuer, but not under Rules 12g-3(a) and 12b-c of the Exchange Act.

FINRA's appeal determination argues that the following passage of Rule 12g-3(b) requires continued filing of reports, but inaccurately determines the requirements of that rule:

> Where, in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered…are issued to the holders of any class of securities of another issuer *that is required to file a registration statement…but has not yet done so*, the duty to file such statement shall be deemed to have been assumed by the issuer of securities so issued." [emphasis supplied]

In this case, however, the ISSUER IS NOT REQUIRED TO FILE A REGISTRATION STATEMENT per the language referenced in the rule. Only if it did not meet the 300 person requirement would the entity be required to do so. FINRA's conclusion that "the successor stands in the place of the predecessor and 'assumes' the securities registration requirements of the predecessor" are simply not accurate and mistake the intention and language of the rule.

In addition, FINRA cites Exchange Act Rule 12g-3(g) for the proposition that periodic filing requirements apply for issuers such as ICTY. ICTY does NOT disagree that it would be required to file reports SUBSEQUENT to the reorganization transaction. However, even that rule is mistakenly read by FINRA as it provides "[a]n issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act shall file an annual report for each fiscal year ***beginning on or after the date as of which the success occurred.´*** [emphasis supplied]. That does not require filings from eleven years ago.

We believe that there can be no other conclusion. CareX Merger Sub (now renamed CareX Blockchain Platform, Inc.) has no obligation to file any delinquent filings with the Commission under Rules 12g-3 and 12b-2 in light of the fact of the parent/holding company formation, namely the Reorganization, and in light of the fact that there were less than 300 shareholders.

III. The SEC's Enforcement of FINRA's Denial Would Be Improper Because It Would Amount To A De Facto Interpretation of a Reporting Obligation that the SEC Is Estopped From Seeking Now.

As demonstrated above, FINRA's decision went beyond detecting incomplete information or fraud in the application and is essentially a punishment for past conduct from a long ago failing business

entity. If the Commission affirms FINRA's deficiency determination, the Commission will effectively terminate any ability of ICTY to operate a business and punish any and all investors and shareholders which in point of fact would be an outcome that the Commission is collaterally estopped from seeking.

Corporate actions, such as dividends, distributions, and stock splits are necessary in the life cycle of all corporate entities. By preventing ICTY from engaging in these actions now, simply because a Company no longer in existence did not file all periodic reports prior to filing a Form 15 eleven years ago, FINRA has effectively terminated the life cycle of this corporate entity. Therefore, the Commission's enforcement of the instant deficiency determination would amount to a death sentence for ICTY or any other public company similarly situated. The Commission, however, should be collaterally estopped from affecting such requirement against ICTY now.

The doctrine of collateral estoppel is appropriate in any proceeding where the same facts and issues that were previously adjudicated are being used against the same party to impose a new punishment or new liability. *See Montana* v. *United States,* 440 U.S. 147, 153-54, 99 S.Ct. 970 (1979); *see also* RESTATEMENT (SECOND) OF JUDGMENTS § 27, comment c. ("[I]f the party against whom preclusion is sought did in fact litigate an issue of ultimate fact and suffered an adverse determination, new evidentiary facts may not be brought forward to obtain a different determination of that ultimate fact.... similarly if the issue was one of law, new arguments may not be presented to obtain a different determination of that issue"). Here the Commission took no action against ICTY in 2008 when it did not file its periodic reports prior to filing a Form 15.

Thus, the Commission is now precluded from seeking to make such requirements pursuant to the doctrine of estoppel set forth above, and by extension FINRA must similarly be barred. In any event, as demonstrated above, the Commission's enforcement of FINRA's denial would amount to a de

facto death sentence to ICTY. The Commission, and by extension FINRA, however, should be collaterally estopped from imposing such a requirement on ICTY now.

As a final note, yet more to the point, if the Commission were to enforce FINRA's deficiency finding, not only would it violate the well-established principals of collateral estoppel, but it would do so in a way that is void of the procedural requirements dictated by the federal securities laws. For example, even if the Commission were able to pursue a follow-on action under any of the aforementioned provisions, a jury, a district court judge, or administrative law judge would be required to engage in an extensive balancing and weighing of facts in order to determine whether ICTY was required to complete reporting obligations from eleven years ago.

In sum, given the reasons set forth by the FINRA and the DOP in their determinations - which were sparse at best - the Commission's enforcement of FINRA's denial would effectively terminate the ability of ICTY to operate its business.

IV. The SEC's Enforcement of FINRA's Denial Would Be Improper Because It Violates The Five Year Statute Of Limitations.

FINRA's deficiency determination and appeal determination and the Commission's affirmation of FINRA's deficiency determination would amount to punishing ICTY for the past conduct of its management. Accordingly, the FINRA actions as well as this appeal should constitute "an action, suit or proceeding" for the enforcement of a "penalty," and the Commission should be time-barred from affirming FINRA's denial by the general statute of limitations contained in 28 U.S.C. § 2462.

As an initial matter, the five year limitations period has clearly passed. In the Supreme Court's recent decision in *Gabelli v. SEC, 133* U.S. 1216 (2013), the Supreme Court held that the five-year statute of limitations period in Section 2462 begins to run at the time the actions at issue are

"complete" rather than when they are discovered. The Court rejected the SEC's arguments that the discovery rule should apply to Section 2462. Here, the conduct at issue occurred at the latest March 2013. Under the rule in *Gabelli,* the statute began to run no later than 2013. Even under the "discovery rule", however, the clock began to tick when ICTY publicly filed its Form 15.

Second, preventing ICTY from conducting its name change and a reverse stock exchange for the past conduct of management, is a "penalty" within the meaning of section 2462. In *Johnson v. SEC,* the D.C. Circuit Court of Appeals ruled that a sanction rendered by the Commission is a "penalty" within the meaning of section 2462 if it (1) has "collateral consequences" beyond merely remedying the instant misconduct, and (2) is based mostly on a person's past misconduct. 87 F.3d 484, 488 (D.C. Cir. 1996). Here, the failures to file took place from in 2002 through 2008. However, FINRA's deficiency determination and the Commission's affirmation of FINRA's deficiency determination would have the collateral consequence of preventing ICTY from *ever* conducting future corporate actions. The determination and affirmation would have the additional collateral consequence of terminating the corporate viability of ICTY.

Lastly, the Commission should recognize that FINRA's deficiency determination and the Commission's affirmation of FINRA's deficiency determination constitute an "action, suit or proceeding." Section 2462's five year limitation applies to the entire federal government in all civil penalty cases, unless Congress specifically provides otherwise. *3M Co.* v. *Browner,* 17 F.3d 1453, 1461 (D.C. Cir. 1994). It is well-established that this statute applies to the SEC. *See Johnson,* 87 F.3d at 488; *SEC v. Jones,* 476 F. Supp. 2d 374, 381 (S.D.N.Y. 2007).

V. FINRA VIOLATED ITS OWN RULE 6490 IN DELAYING ITS APPEAL DETERMINATION.

Rule 6490 specifically requires the following: "The subcommittee shall convene once each calendar month to consider all appeals received under this Rule during the prior month. The subcommittee shall render a determination within three (3) business days following the day the appeal is considered by the subcommittee." The Company's appeal was filed on June 27, 2019. Pursuant to Rule 6490, the Committee was required to convene during the month of July 2019 and report back its findings within three days thereafter. No ruling was made until August 16, 2019.

Accordingly FINRA must be estopped from denying the Company's application because it violated its own rule in making its deficiency determination.

CONCLUSION

For all of the foregoing reasons, we respectfully request that the Commission reverse the decision of the DOP and FINRA in favor of Respondents.

Respectfully submitted,

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