

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88592 / April 8, 2020

Admin. Proc. File No. 3-19406

In the Matter of the Application of

EYECITY.COM, INC.
(N/K/A CAREX BLOCKCHAIN PLATFORM, INC.),

For Review of Action Taken by

FINRA

ORDER GRANTING MOTION TO STRIKE AND SETTING BRIEFING SCHEDULE

On August 29, 2019, EyeCity.Com, Inc. (n/k/a CareX Blockchain Platform, Inc.) filed an application for review of FINRA action pursuant to Section 19(d)(2) of the Securities Exchange Act of 1934.¹ FINRA denied EyeCity's request to process documentation related to a corporate name change, symbol change, and "a reverse stock exchange pursuant to a merger . . ." On September 12, 2019, FINRA filed a certified copy of the record in the case, along with three copies of the index to the record. On September 25, 2019, EyeCity submitted its own version of the record and index. FINRA now moves to strike the record and index that EyeCity filed. For the reasons discussed below, we grant FINRA's motion and set a briefing schedule in this case.

Commission Rule of Practice 420(e) directs FINRA, within 14 days of the filing of the application for review of FINRA action, to "certify and file with the Commission one copy of the record upon which the action complained of was taken" along with three copies of the index.² EyeCity does not dispute that FINRA complied with these requirements. Instead, EyeCity opposes FINRA's motion to strike by arguing that it "is entitled to present its own" version of the underlying record because "nowhere in [Rule 420] does it preclude the opposing party from presenting an additional record." But EyeCity identifies no language in that rule or any other rule providing for an applicant's filing of an alternative version of the record or index, or any other authority in support of its position. Our Rules of Practice do not contemplate the submission of competing records for the Commission's consideration. Indeed, Rule 420(e) expressly tasks FINRA with the sole responsibility of certifying the underlying record and filing

¹ 15 U.S.C. § 78s(d)(2).

² 17 C.F.R. § 201.420(e).

a copy with the Commission, along with copies of the index, and Rule of Practice 460(a)(2) defines the record before the Commission to “consist of” the record that FINRA certifies.³

Nor has EyeCity established that it will be prejudiced because it has not been provided with a copy of the entire record. EyeCity contends that, because the rule requires FINRA to serve an applicant with merely the index to the record,⁴ EyeCity will be unable “to cite to specific provisions in the record” in its briefs and “cannot be sure that FINRA has provided a complete record for the Commission to review.” Although EyeCity asserts that it had earlier determined that “the ‘official record’ was missing key documents required for the basis of certain of the Company’s arguments in the case,” it is undisputed that FINRA previously invited EyeCity to identify any “missing” documents but that EyeCity declined to do so. And although EyeCity does not identify any documents listed in the index to the record that it contends it does not have in its possession, it may request that FINRA provide it with any such documents.⁵ To the extent EyeCity wishes to supplement the record at this stage, it can do so pursuant to Rule of Practice 452, which permits a party to submit additional evidence based on a “show[ing] with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.”⁶

Accordingly, IT IS ORDERED that FINRA’s motion to strike EyeCity’s filing of a record and index is granted, and it is further ORDERED, pursuant to Rule 450(a) of the Rules of Practice,⁷ that a brief in support of the application for review shall be filed by May 8, 2020. A brief in opposition shall be filed by July 6, 2020, and any reply brief shall be filed by

³ 17 C.F.R. § 201.460(a)(2) (defining the contents of the record before the Commission to include “[t]he record certified ... by the self-regulatory organization,” along with any application for review and “submissions, motions, and briefs” filed with the Commission).

⁴ See 17 C.F.R. § 201.420(e) (providing that the relevant self-regulatory organization “shall serve upon each party one copy of the index” to the record but not the record itself).

⁵ See *Michael Patrick Nanto*, Exchange Act Release No. 84808, 2018 WL 6523112, at *1 (Dec. 12, 2018) (directing FINRA to provide applicant with documents in the certified record in response to applicant’s motion asserting that he did not have the documents).

⁶ 17 C.F.R. § 201.452; see also *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 WL 3216542, at *27 (July 17, 2019) (“grant[ing] FINRA’s motion to strike” applicant’s submission of additional evidence where the applicant had not complied with Commission rules); 17 C.F.R. § 201.460(c) (providing that “[a]ny document offered in evidence but excluded by ... the Commission ... shall not be considered a part of the record before the Commission on appeal”). EyeCity’s failure to satisfy or address the requirements of Rule 452 provides an alternative basis for excluding its submission, even if FINRA had not moved to strike.

⁷ 17 C.F.R. § 201.450(a).

September 18, 2020. No briefs in addition to those specified in this schedule may be filed without leave of the Commission. Pursuant to Rule 180(c) of the Rules of Practice,⁸ failure to file a brief in support of the application may result in dismissal of this review proceeding.

Attention is called to Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b) & (c), with respect to content and length limitations, and Rules of Practice 150–153, 17 C.F.R. § 201.150–153, with respect to form and service, as well as our March 18, 2020 order providing further instructions regarding the filing and service of papers in appeals of action taken by FINRA.⁹

By the Commission.

Vanessa A. Countryman
Secretary

⁸ 17 C.F.R. § 201.180(c).

⁹ *See In re: Pending Administrative Proceedings*, Exchange Act Release No. 88415, <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.