SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99558 / February 20, 2024

Admin. Proc. File No. 3-18567

In the Matter of the Application of

METATRON, INC.

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED NATIONAL SECURITIES ASSOCIATION—REVIEW OF ASSOCIATION ACTION DENYING REQUEST TO PROCESS CORPORATE ACTION

FINRA denied request to process and announce an issuer's reverse stock split, but did not explain why denial of request was necessary for the protection of investors, the public interest, or to maintain fair and orderly markets. *Held*, review proceeding is *remanded*.

APPEARANCES:

Randolf W. Katz and *Alissa K. Lugo*, Baker & Hostetler LLP, for Metatron, Inc.

Alan Lawhead, *Jante C. Turner*, and *Michael M. Smith* for FINRA

Application for review filed: June 28, 2018
Last brief received: June 2, 2020

Metatron, Inc. appeals from FINRA's denial of its request to process and announce a reverse stock split. FINRA found that Metatron's request was deficient under FINRA Rule 6490(d)(3) because Metatron was not current in its reporting requirements under Exchange Act Section 13 and the importance of requiring issuers to abide by such periodic reporting requirements "far outweigh[ed] [Metatron's] interest in conducting its proposed corporate actions." We remand this proceeding so that FINRA can assess whether and why, in light of the particular facts and circumstances presented here, denial of the reverse-stock-split announcement is necessary for the protection of investors, the public interest, or to maintain fair and orderly markets.

I. Background

A. FINRA's Processing of Company-Related Actions under FINRA Rule 6490

FINRA Rule 6490 governs FINRA's consideration of requests to announce and publish corporate actions from issuers like Metatron that have securities traded on the over-the-counter ("OTC") markets.[1] These corporate actions include those listed in Exchange Act Rule 10b-17, including dividends, stock splits, and reverse stock splits, as well as "Other Company-Related Actions," such as name or symbol changes and company-control transactions (collectively, "Company-Related Actions").[2] After FINRA approves a request, the action is published on FINRA's website in the "Daily List" document, which effectively announces it to the OTC market.

Historically, FINRA described its role in processing Company-Related Actions "as primarily ministerial" because "FINRA [did] not impose listing standards for securities and maintains no formal relationship with, or direct jurisdiction over, issuers."[3] In 2010, however, FINRA adopted Rule 6490 to address a "growing concern that FINRA's Company-Related Action processing services" were potentially being used "to further fraudulent activities," such as "corporate hijackings" in which wrongdoers usurped the identity of a defunct or inactive

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[1] Additional background may be found in *Positron Corp.*, Exchange Act Release No. 74216, 2015 WL 470454, at *1-2 (Feb. 5, 2015); and *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 WL 412910, at *1-2 (Feb. 2, 2015).

[2] FINRA Rule 6490(a)(1)-(2). Exchange Act Rule 10b-17(a) requires non-exchange listed companies to give FINRA timely notice of certain corporate actions; issuers of exchange-listed securities must comply with a similar notice requirement in accordance with the procedures of the applicable national securities exchange. 17 C.F.R. § 240.10b-17(a).

[3] *Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions)*, 75 Fed. Reg. 39,603, 39,604, Exchange Act Release No. 62434, 2010 WL 2641653, at *2 (July 1, 2010) ("2010 Approval Order"). The underlying corporate action is typically governed by the law of the state of incorporation. *See, e.g.*, *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) (discussing the internal affairs doctrine).

corporation.[4] The rule thus details the circumstances in which FINRA may deny a request to process a Company-Related Action by mandating a two-step inquiry that FINRA must undertake.[5]

First, FINRA must assess whether the issuer's request is "deficient." FINRA must make this deficiency determination "solely on the basis of one or more" of five factors being present,[6] including, as relied upon by FINRA here, that "the issuer is not current in its reporting requirements, if applicable, to the SEC or other regulatory authority."[7] FINRA must "state the specific factor(s) that caused the request to be deemed deficient."[8]

Second, if an issuer's request is deficient, FINRA then "may determine" not to process the request if it finds that denial "is necessary for the protection of investors, the public interest and to maintain fair and orderly markets."[9] Unless FINRA makes the necessary finding under both prongs, Rule 6490 requires FINRA to process and announce the Company-Related Action.

B. The registration of Metatron's securities

On March 4, 2002, Metatron (then called XRG, Inc.) filed a Form 10-SB[10] to register its class of common stock pursuant to Exchange Act Section 12(g).[11] Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file periodic, quarterly, and annual reports, as well as current

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4 2010 Approval Order, 75 Fed. Reg. at 39,604, 2010 WL 2641653, at *2.

5 *Positron Corp.*, 2015 WL 470454, at *6; *accord AutoChina Int'l Ltd.*, Exchange Act Release No. 77502, 2016 WL 1272875, at *3 (Apr. 1, 2016); *mPhase*, 2015 WL 412910, at *4.

6 FINRA Rule 6490(d)(3).

7 *Id.*; 2010 Approval Order, 75 Fed. Reg. at 39,606, 2010 WL 2641653, at *6-7.

8 75 Fed. Reg. at 39,605; 2010 WL 2641653, at *3.

9 *AutoChina Int'l Ltd.*, 2016 WL 1272875, at *3 (quoting FINRA Rule 6490(d)(3)); *accord Positron Corp.*, 2015 WL 470454, at *6; *mPhase*, 2015 WL 412910, at *4.

10 Smaller reporting companies now can register using Form 10. *See Smaller Reporting Company Regulatory Relief and Simplification*, 2008 WL 45348, 73 Fed. Reg. 934, 941-42 (Jan. 4, 2008).

11 An issuer must register a class of equity securities under Exchange Act Section 12(g) if the issuer's total assets exceed a specified threshold and that class of securities is held by more than a specified number of holders of record, as was the case when XRG filed the Form 10-SB. 15 U.S.C. § 78*l*(g)(1); Exchange Act Rule 12g-1, 17 C.F.R. § 240.12g-1.

reports.[12] Between March 2006 and December 2008, Metatron failed to file 3 required annual and 9 quarterly reports (the "2006–2008 Reports").[13] Metatron has never filed those reports.

On April 24, 2009, Metatron filed a Form 15 to terminate its registration under Exchange Act Rule 12g-4(a)(1), which, as applicable here, provides for termination upon the issuer's certification that it has fewer than 300 shareholders of record.[14] Because Metatron's Form 15 certified that it had only 202 shareholders of record as of the date of that filing, Metatron's obligation to file periodic reports was immediately suspended. The termination of Metatron's Exchange Act Section 12(g) registration become effective on July 23, 2009.[15] Metatron has never subsequently sought to re-register its securities under Section 12(g).[16]

Metatron is currently an issuer of securities that are quoted solely on the OTC Pink tier of OTC Markets Group, Inc.'s OTC Link system.[17] OTC Link has a number of "tiered marketplaces," and the information provided to investors by companies varies considerably from tier to tier; OTC Pink is the most permissive of them.[18] Metatron has elected to upload financial and other information to the OTC Markets website following OTC Market Group's Pink Current "Alternative Reporting Standard" guidelines, which are intended to make available only the basic information an issuer would provide a broker-dealer that sought to initiate or maintain a public quotation in the issuer's securities.[19] Metatron began supplying such information in June

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12 15 U.S.C. § 78m(a); Exchange Act Rules 13a-1, 13a-13, 17 C.F.R. §§ 240.13a-1, 13-a13.

13 It is undisputed that Metatron did not file Form 10-Ks for the fiscal years ending March 31, 2006; March 31, 2007; and March 31, 2008, and Form 10-Qs for the quarters ending June 30, 2006; September 30, 2006; December 31, 2006; June 30, 2007; September 30, 2007; December 31, 2007; June 30, 2008; September 30, 2008; and December 31, 2008.

14 17 C.F.R. § 240.12g-4(a)(1).

15 *See Enamelon, Inc.*, Exchange Act Release No. 52956, 2005 WL 3439458, at *1 (Dec. 15, 2005) (explaining that "Form 15[] became effective automatically . . . upon the expiration of 90 days).

16 We express no view as to whether Metatron may have exceeded the then-applicable Section 12(g)'s asset and holders of record thresholds during some periods subsequent to July 2009, and thus may have been required to re-register under Section 12(g). *See generally* Jumpstart Our Business Startups Act, Pub. L. No. 112-106 § 501, 126 Stat. 306, 325 (2012) (revising Section 12(g) thresholds).

17 OTC Link is an alternative trading system that allows broker-dealers to post and disseminate their quotations to the marketplace and to negotiate trades at agreed-upon prices. *Positron Corp.*, 2015 WL 470454, at *1 n.1. *Id.*

18 *Id.*

19 *Smartag Int'l, Inc.*, Exchange Act Release No. 96755, 2023 WL 1066737, at *4 n.30 (Jan. 26, 2023). The guidelines state that "they have not been reviewed by the U.S. Securities

(footnote continued . . .)

2009 and, at present, has uploaded all quarterly and annual reports specified by the Alternative Reporting Standard.

C. FINRA denies Metatron's request to announce a Company-Related Action.

Metatron submitted the Company-Related Action request at issue here in 2018, asking FINRA to process and announce a 1:57 reverse stock split.[20] FINRA's Department of Operations (the "Department") determined that the request was deficient under FINRA Rule 6490(d)(3)(2), reasoning that Metatron "is not current in its reporting requirements . . . to the Securities and Exchange Commission," having failed to file 12 periodic reports between 2006 and 2008. Metatron appealed that decision to a subcommittee of FINRA's Uniform Practice Code Committee ("UPC Committee"), which upheld the Department's denial of Metatron's request. In so doing, the UPC Committee rejected Metatron's contention that its request was not deficient because it "has no current reporting obligations" to the Commission on account of its Form 15 filing. According to the UPC Committee, Metatron's termination of its ongoing periodic filing requirements with the Commission did not "obviate the issuer's filing obligations related to the 12 delinquent periodic reports it has neglected to file." The UPC Committee also rejected Metatron's argument that the missing 2006–2008 Reports dated back more than a decade, when the company was in a "completely different" business, and any information that would have been contained in them is "meaningless to its stockholders" today. In addressing this argument, the UPC Committee focused on the importance of the periodic reporting requirements as a general matter, without identifying an investor-protection, public-interest, or market-integrity interest advanced by denial of processing the particular pending reverse-stock-split request. According to the UPC Committee, it sufficed that the "public interest strongly favors issuers becoming current in their Exchange Act reporting obligations." The UPC Committee stated that Metatron's "failure to file the periodic reports" in question deprived investors of "information that could have allowed [them] to make better-informed decisions."

Metatron appealed FINRA's decision.

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and Exchange Commission." OTC Markets Group, *Alternative Reporting Standards: Pink Basic Disclosure Guidelines* at 1 n.1, https://www.otcmarkets.com/files/OTCPinkGuidelines.docx (last visited February 14, 2024) (noting that "Guidelines have been designed to encompass the 'Catch All' information required in Rule 15c2-11"). As we have explained, a company's "submissions under OTC Markets' 'Pink Basic' Disclosure Guidelines do not substitute for, or themselves constitute, compliance with the Commission's wholly distinct disclosure framework under the Exchange Act." *Smartag Int'l, Inc.*, 2023 WL 1066737, at *4.

[20] In January 2017, Metatron requested that FINRA process and announce a 1:78 reverse stock split, which FINRA approved. In May 2015, Metatron requested that FINRA process and announce a 1:10,000 reverse stock split, which FINRA also approved. Metatron "acknowledges that [FINRA's] approval of a corporate action does not guarantee [its] approval of equivalent future corporate actions." And the record does not contain any indication that FINRA considered reporting delinquencies as a basis for making a deficiency determination on either occasion.

II. Analysis

Exchange Act Section 19(f) governs our review of FINRA's action in denying Metatron's Rule 6490 request.[21] Under Section 19(f), we may sustain FINRA's action only if we find that (1) the specific grounds on which FINRA based its denial exist in fact; (2) the denial was in accordance with FINRA's rules; and (3) those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. Moreover, "it is important that a self-regulatory organization clearly explain the bases for its conclusions. If it fails to do so, we cannot discharge properly our review function."[22] For the reasons explained below, FINRA's explanation here is insufficient for us to make the findings necessary under Section 19(f) to sustain the action—specifically, we cannot determine that the grounds for the denial exist in fact or that the denial was in accordance with FINRA Rule 6490. We therefore exercise our remedial discretion to remand this case to FINRA for additional explanation of the basis for its conclusion that denial of Metatron's reverse-stock-split announcement request was necessary for investor protection, the public interest, or to maintain market integrity.

As described above, FINRA Rule 6490(d)(3) requires a two-step inquiry before FINRA may deny a Company-Related Action request: (1) FINRA must deem a Company-Related Action "deficient" under one of five enumerated factors, after which (2) FINRA "may determine" to deny the request if doing so is "necessary for the protection of investors, the public interest and to maintain fair and orderly markets." We need not, and do not now, determine here whether FINRA correctly found under the first step that Metatron's request was deficient on the ground that the company was "not current" in its reporting obligations between 2006 and 2008.[23]

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[21] 15 U.S.C. § 78s(f) (providing for Commission review of self-regulatory organization ("SRO") action that prohibits or limits "any person with respect to access to services offered by the [SRO]); *see, e.g.*, *AutoChina Int'l Ltd.*, Exchange Act Release No. 79010, 2016 WL 5571626, at *3 & n.9 (Sept. 30, 2016) (applying Section 19(f) to review of denial of FINRA Rule 6490 request); *mPhase*, 2015 WL 412910, at *4 & n.29; *see also* 15 U.S.C. § 78c(a)(26) (defining "self-regulatory organization" to include any registered national securities association, like FINRA).

[22] *Trevor Michael Saliba*, Exchange Act Release No. 91527, 2021 WL 1336324, at *13 (Apr. 9, 2021) (cleaned up); *see also Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 WL 1206062, at *7 (Mar. 31, 2017) (similar); *Eagle Supply Grp., Inc.*, Exchange Act Release No. 39800, 1998 WL 133847, at *4 (Mar. 25, 1998) (remanding under Section 19(f) of the Exchange Act so that the SRO could "provide a sufficient basis for its decision to enable us to make the requisite determination" under the statute).

[23] We previously requested additional briefing on whether Metatron may have had Commission reporting obligations beyond those asserted by FINRA. *See Metatron, Inc.*, Exchange Act Release No. 88429, 2020 WL 1322011 (Mar. 19, 2020); *Metatron, Inc.*, Exchange Act Release No. 86069, 2019 WL 2419477 (June 7, 2019). It appears that, at the time that

(footnote continued . . .)

Nor do we find it necessary to remand on the issue of the first-step deficiency determination.[24] Instead, we remand for further proceedings under the second step because FINRA did not explain how, in light of the missing 2006–2008 Reports and any other relevant circumstances, granting Metatron's request in 2018 to announce the reverse stock split at issue would give rise to investor-protection, public-interest, or market-integrity concerns.

In denying Metatron's request, FINRA focused almost entirely on the general importance of the Exchange Act's periodic reporting requirements. For example, FINRA explained that the "purpose of periodic reporting requirements . . . is to provide public disclosure of financial information about an issuer; so investors may make informed decisions." It stated that "the public interest strongly favors issuers becoming current in their Exchange Act reporting obligations" and "that the requirement to file periodic reports serves to 'protect[] . . . investors and . . . [e]nsure fair dealing.'"[25] And then it conclusorily stated that Metatron's reverse stock split announcement should not be processed because Metatron's failure to file the 2006–2008 Reports prevented potential investors from "knowing what losses or gains resulted from [Metatron's] operations" or "whether [Metatron] had taken on additional liabilities," and so prevented them from making "better-informed decisions about buying, selling, holding [Metatron's] stock."

Metatron terminated its Exchange Act Section 12(g) registration, it may have had still-ongoing reporting requirements under Exchange Act Section 15(d) as a result of the filing and effectiveness of a Form S-8 registration statement in 2004 to register 3,000,000 shares of its common stock. Put another way, Metatron may have been required to file annual and quarterly reports beyond 2008, notwithstanding its filing of a Form 15 with respect to its Section 12(g) registration statement. However, we do not consider this further at this juncture because FINRA did not rely on post-2008 delinquencies in the Department-level deficiency notice or the denial of access under review. *See* 2010 Approval Order, 75 Fed. Reg. at 39,605, 2010 WL 2641653, at *3 ("Such written notice would be required to state the *specific factor(s)* that caused the request to be deemed deficient.") (emphasis added); *see generally* 15 U.S.C. § 78o(d); Exchange Act Rules 15d-1, 15d-11, 15d-13, 17 C.F.R. §§ 240.15d-1, 15d-11, 15d-13; *see also Kimberly Springsteen-Abbott*, 2017 WL 1206062, at *7 (explaining that the Commission's review function in the Section 19 context centers on "the [*SRO's*] bases for *its* conclusions") (emphasis added); *First Denver Sec. Corp.*, Exchange Act Release No. 9710, 1972 WL 121292, at *2 (Aug. 7, 1972) (explaining that, "[i]n this review proceeding . . . we must decide whether the record supports the [SRO's] findings, not arrive at new findings which the [SRO] has not made"). As noted below, however, Metatron's failure to file additional reports beyond 2008 may be relevant to FINRA's public-interest determination on remand. *See* note 44 *infra*.

[24] *Cf. AutoChina Int'l Ltd.*, 2016 WL 1272875, at *3 (remanding solely for redetermination of FINRA's second-step public-interest analysis).

[25] Quoting *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013).

We have long emphasized how the securities' laws reporting requirements are "the primary tools which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities."[26] Congress, we have recognized, "enacted the reporting requirements to ensure 'the proper protection of investors and to insure fair dealing' in registered securities."[27] Failing to file periodic reports both violates "a central provision of the Exchange Act" and "deprive[s] both existing and prospective holders of its registered stock of the ability to make informed investment decisions based on current and reliable information."[28] A registrant subject to periodic filing obligations is not entitled to decide for itself that partial, or belated, compliance with the Exchange Act's reporting requirements is enough to "provide[] investors with adequate information to make an investment decision."[29]

At issue here, however, is not whether FINRA properly articulated the importance of a registrant's compliance with the Exchange Act's reporting requirements. Rather, the question

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[26] *Am.'s Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 WL 858747, at *4 n.17 (Mar. 22, 2007) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)). Thus, in the context of proceedings brought under Exchange Act Section 12(j) to revoke a security's registration, we have consistently held that compliance with Commission reporting requirements means filing the periodic reports required throughout the entire period that the company's securities were registered. *See, e.g.*, *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at *6-7 (Jun. 29, 2012) ("becom[ing] current with" and in "compliance" with reporting obligations means "filing all . . . missing . . . reports"); *Am. Stellar Energy, Inc.*, 2011 WL 2783483, at *5 (July 18, 2011) (issuer, which had "still not made a number of the filings specified in the OIP," failed to "come into full compliance by filing all of its delinquent reports"). Indeed, while "subsequent attempts to file delinquent reports and remain in compliance with its reporting obligations are important factors" in the analysis, they do not preclude imposition of a sanction under Section 12(j). *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at *6 (Apr. 4, 2014). "[E]ven if an issuer has filed all delinquent periodic reports, revocation [in a Section 12(j) proceeding] can be appropriate, particularly when . . . the delinquencies continued for an extended period without adequate explanation." *China-Biotics, Inc.*, 2013 WL 5883342, at *13.

[27] *China-Biotics, Inc.*, 2013 WL 5883342, at *11 (quoting 15 U.S.C. § 78m(a)).

[28] *Accredited Bus. Consolidators Corp.*, Exchange Act Release No. 75840, 2015 WL 5172970, at *2 (Sept. 4, 2015); *see also United States v. Arthur Young & Co.*, 465 U.S. 805, 810 (1984) (observing that "[c]orporate financial statements are one of the primary sources of information available to guide the decisions of the investing public").

[29] *Am. Stellar Energy, Inc.*, 2011 WL 2783483, at *6 (rejecting argument based on the issuer's contention that its "current financial statements are meaningless" and that the Form 10-Ks already filed "have the most current information available regarding" the company).

before us is narrower: Whether FINRA "discharge[d] its duty to fairly and adequately explain the basis" of its action, consistent with the requirements of Rule 6490?[30] We find that it did not.

As we explained in approving the rule in 2010, FINRA has the discretionary authority to deny processing a Rule 6490 request when doing so is "necessary for the protection of investors and the public interest and to maintain fair and orderly markets."[31] Although the discretion belongs to FINRA in the first instance, and we will not generally "substitute our judgment for FINRA's," such discretion must be exercised in a reasoned fashion.[32] Accordingly, where, as here, FINRA bases its first-step deficiency finding on an issuer's delinquency in its reporting obligations,[33] FINRA must in the second step of its analysis explain why denial of the specific request—as distinguished from compliance with the Exchange Act's reporting requirements, in some general sense—is necessary for the protection of investors, the public interest, and to

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30 *Scottsdale Capital Advisors Corp*., Exchange Act Release No. 93052, 2021 WL 4242630, at *13 (Sept. 17, 2021) (emphasizing that decision to set aside finding of violation on the record presented should not be understood as receding from prior statements regarding importance of the underlying legal requirements); *see also Domestic Securities, Inc.*, Exchange Act Release No. 37559, 1996 WL 457250, at *5 (Aug. 13, 1996) (setting aside denial of service in light of "abbreviated nature of the [SRO's] analysis," which left the Commission "unable to discern the path by which the [SRO] arrived at its conclusion").

31 *See supra* notes 3-9 and accompanying text.

32 *Positron Corp.*, 2015 WL 470454, at *6 (cleaned up); *see also Navistar Int'l*, Exchange Act Release No. 55304, 2007 WL 505770, at *6 (Feb. 13, 2007) (explaining that an SRO must provide a "well reasoned analysis and explanation" however "it chooses to exercise its discretion").

33 In some situations, the same facts that give rise to FINRA's first-step deficiency determination could also provide a basis for its second-step determination of an investor-protection, public-interest, or market-integrity concern. For example, where the company or its officers have committed fraud or other securities violations, investors may be protected by denial of a Rule 6490 request, even when the underlying misconduct is unrelated to the Company-Related Action. *See Positron Corp.*, 2015 WL 470454, at *9-11 (affirming FINRA's finding that "recent nature of the [antifraud] regulatory actions against" the company's CEO and Chairman and his "substantial authority and control" over the company "made denial of the company's request necessary to protect investors"); *see also AutoChina Int'l Ltd.*, 2016 WL 5571626, at *3 (setting forth FINRA's reasoning that processing a name change would "pose a threat to investors and market integrity" by "mak[ing] it more difficult for investors to learn" about prior actions against the issuer); *mPhase*, 2015 WL 412910, at *11 (recognizing that "refusal to announce . . . Company-Related Action" may be justified as a "prophylactic measure designed to prevent potential fraud or abuse"). In other words, context, as well as the fulsomeness of the arguments pressed by the company before FINRA, matters as to how much explanation FINRA must provide.

maintain fair and orderly markets.[34] To accept FINRA's broad statements here about the reporting requirements as a sufficient explanation for denying Metatron's request not only fails to provide such an analysis, but it would also effectively allow FINRA to deny *every* Company-Related Action request submitted by a delinquent issuer—an outcome that may be at odds with Rule 6490 itself.

We do not believe Rule 6490 was intended as a substitute means for FINRA to enforce the Exchange Act's reporting requirements or of imposing a sanction for such violations. As explained above, the rule was instead adopted to address concerns that FINRA's *Company-Related Action announcement facilities* were potentially being "misused in furtherance of fraudulent or manipulative acts and practices."[35] Indeed, during our consideration of Rule 6490, a public comment questioned "whether delinquent issuers would *automatically* have their requests to process a Company-Related Action determined to be deficient."[36] FINRA responded that it would "conduct an in-depth review of the Company-Related Action and seek additional information or documentation."[37] FINRA further observed that "the failure of an issuer to remain current in its reporting obligations is one of [the] factors that FINRA '*may*' consider."[38]

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[34] In approving the rule in 2010, we characterized the Rule 6490 process as designed, among other things, to elicit request-specific information from companies so as to bring out indicia of potential fraud. *See, e.g.*, 2010 Approval Order, 75 Fed. Reg. at 39,604, 2010 WL 2641653, at *2 (explaining that Rule 6490 is aimed at "provid[ing] FINRA staff the discretion not to process incomplete requests and requests for which there are certain indicators of potential fraud"); 75 Fed. Reg. at 39,606, 2010 WL 2641653, at *5 (explaining that Rule 6490 encourages issuers to "provide complete, accurate and timely information to FINRA *concerning Company-Related Actions* . . . and thereby to prevent fraudulent and manipulative acts and practices") (emphasis added); *see also Positron Corp.*, 2015 WL 470454, at *9 (explaining that the "Rule addresses the risk of future harm by providing FINRA with discretion to consider whether the *proposed Company-Related Action raises* indicators of potential fraud such that it poses a threat to investors and the integrity of the markets") (emphasis added).

[35] 2010 Approval Order, 75 Fed. Reg. at 39,606, 2010 WL 2641653, at *7; *see also* 75 Fed. Reg. at 39,604, 2010 WL 2641653, at *2 ("[T]here has been growing concern that FINRA's Company-Related Action processing services may potentially be used by certain parties to further fraudulent activities."). The Commission cited examples of persons "usurp[ing] the identity of a defunct or inactive publicly traded corporation, initially by incorporating a new entity using the same name, and then by obtaining a new CUSIP number and ticker symbol based on the apparently false representation that they were duly authorized officers, directors and/or agents of the original publicly traded corporation," as well as other "Fraudulent Corporate Hijackings." *Id.* at *2 n.9.

[36] 2010 Approval Order, 75 Fed. Reg. at 39,606, 2010 WL 2641653, at *6 (emphasis added).

[37] *Id.*

[38] *Id.* (emphasis added).

FINRA did not indicate that any delinquency would automatically be sufficient to deny a request under the proposed rule. And a number of factors—*e.g.*, the duration of the delinquency, how long ago the delinquency occurred, whether the company is continuing to accrue additional delinquencies as periodic reports come newly due, or any other relevant circumstances—will often be relevant to FINRA's public-interest determination.

Here, the basis for FINRA's deficiency determination was the missing 2006–2008 Reports. FINRA concluded that Metatron's failure to file those reports deprived investors of an understanding of the company's operations and financial condition, at least as to the 2006–2008 period. FINRA explained that the missing 2006–2008 Reports meant investors were prevented from "knowing what losses or gains resulted from [Metatron's] operations" or "whether [Metatron] had taken on additional liabilities" during those periods.[39] But that will be true for *every delinquent issuer* with any outstanding periodic report. And it will likewise be true for every request submitted by such an issuer, regardless of the nature of the company-related action for which processing is sought.[40] Without more explanation, it is not clear how investors are protected, or what potentially fraudulent or manipulative acts or potential threats to market integrity are thwarted, by preventing Metatron from announcing a reverse stock split in 2018—a necessary determination under Rule 6490 that FIRNA did not make.

Where a self-regulatory association like FINRA does not clearly explain the bases for its conclusions, the Commission "'cannot discharge properly [its] review function'" and often "remand is appropriate."[41] A remand is particularly appropriate here because the Commission's prior precedent regarding FINRA Rule 6490 did not involve a first-step deficiency determination premised on missing periodic filings.[42] We thus remand this case to FINRA for further explanation as to why denial of Metatron's reverse-stock-split announcement is necessary for the protection of investors and public interest; of course, FINRA also may determine to process

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[39] FINRA did not make any findings or raise any concerns regarding the accuracy or completeness of the financial and other information that Metatron uploaded to the OTC Markets website regarding its post-2009 activities.

[40] Because context matters, the Rule 6490 analysis may take account of other Company-Related Actions requests submitted by the company. *See Positron Corp.*, 2015 WL 470454, at *11 (considering dual requests to announce reverse stock split and change in corporate domicile); *see also* note 20 *supra*.

[41] *See, e.g.*, *Keith Patrick Sequeira*, Exchange Act Release No. 81786, 2017 WL 4335070, at *5 (Sept. 29, 2017) (quoting *Richard T. Sullivan*, Exchange Act Release No. 40671, 1998 WL 786943, at *6 (Nov. 12, 1998)); *see also* note 22 *supra.*

[42] *Cf.* note 33 *supra*.

Metatron's request.[43] FINRA also should ensure that the record contains all of the evidence upon which its action is taken.[44]

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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[43] We do not intend to suggest any outcome with respect to proceedings on remand and we otherwise make no determination as to the merits of the parties' arguments on appeal.

[44] *See AutoChina Int'l Ltd.*, 2016 WL 1272875, at *4. Given our guidance herein on the wide-ranging nature of the public-interest analysis, FINRA necessarily may consider facts and circumstances beyond those it identified previously, and the parties should be given the opportunity to submit further evidence and argument. *See* 2010 Approval Order, 75 Fed. Reg. at 39,606, 2010 WL 2641653, at *6 (contemplating "in-depth review" and submission of "additional information or documentation"); *cf. Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 WL 3397780, at *14 (May 27, 2015) (stating that "FINRA may consider" misconduct that "was outside the allegations of FINRA's complaint . . . when assessing the appropriate sanction").

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99558 / February 20, 2024

Admin. Proc. File No. 3-18567

In the Matter of the Application of

METATRON, INC.

For Review of Action Taken by

FINRA

ORDER REMANDING DENIAL OF REQUEST TO PROCESS CORPORATE ACTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the review proceeding arising out of FINRA's denial of the request of Metatron, Inc. to process and announce the company's 1 to 57 reverse stock split pursuant to FINRA Rule 6490, is remanded to FINRA for further proceedings consistent with the opinion.

By the Commission.

Vanessa A. Countryman
Secretary