SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99717 / March 12, 2024

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

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF FINRA ACTION

FINRA found that it was in the public interest to decline to process company-related actions because requesting company was delinquent in filing required periodic reports. *Held*, review proceeding is *dismissed*.

APPEARANCES:

M. Richard Cutler, for Eyecity.com, Inc.

Alan Lawhead, *Jennifer Brooks*, and *Jante Turner*, for FINRA.

Eyecity.com, Inc., n/k/a CareX Blockchain Platform, Inc. ("Eyecity"), seeks review of FINRA actions denying its request to process documentation related to certain "company-related" actions. But because Eyecity now represents that it has abandoned the proposed actions that are the basis of its appeal, we find that there is no longer any relief that we could provide. We therefore dismiss Eyecity's application for review as moot.

I. Background

FINRA considers requests to announce and publish certain company-related actions from issuers of securities traded on the over-the-counter markets, like Eyecity, under FINRA Rule 6490.[1] These actions include, as relevant here, reverse stock splits and name and trading symbol changes.[2] In considering such requests, FINRA conducts a two-step review. First, FINRA determines whether the request is deficient, based on one or more of five enumerated factors, including that the requesting company is "not current" in its reporting requirements to "regulatory authorities."[3] Second, if FINRA finds that a company's request is deficient, it then "may determine" not to process the request if denial "is necessary for the protection of investors, the public interest and to maintain fair and orderly markets."[4]

On December 28, 2018, Eyecity requested that FINRA process documentation related to a name and symbol change and "reverse stock exchange pursuant to a merger." FINRA's Department of Operations (the "Department") declined to process the request by finding that Eyecity's request was deficient based on the company's failure to file 25 periodic reports (six annual reports and 19 quarterly reports) between 2003 and 2008. This, according to FINRA, resulted in Eyecity being not "current in its reporting requirements."[5] Eyecity appealed the denial to a subcommittee of FINRA's Uniform Practice Code Committee ("UPCC Subcommittee"), which affirmed the Department's decision. The UPCC Subcommittee found that it was "not in the public interest" to process Eyecity's request because the company's "history of ignoring its reporting obligations evidences a high degree of disregard for the importance of public disclosure."

Eyecity appealed the UPCC Subcommittee's decision to the Commission. In doing so, it challenges FINRA's action in declining to process and announce its company-related actions as "exceed[ing] the scope of [FINRA's] authority." But Eyecity also states that the company-

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1 *See, e.g.*, *Positron Corp.*, Exchange Act Release No. 74216, 2015 WL 470454, at *1 (Feb. 5, 2015).

2 FINRA Rule 6490(a)(2).

3 FINRA Rule 6490(d)(3).

4 *AutoChina Int'l Ltd.*, Exchange Act Release No. 77502, 2016 WL 1272875, at *3 (Apr. 1, 2016) (quoting FINRA Rule 6490(d)(3)); *accord Positron Corp.*, 2015 WL 470454, at *6; *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 WL 412910, at *4 (Feb. 2, 2015).

5 Eyecity subsequently filed a Form 15 to terminate its registration under the Securities Exchange Act of 1934 and the related requirement that it file periodic reports.

related actions at issue have "long ago been abandoned."[6] Because Eyecity no longer wants FINRA to process its request, FINRA argues that Eyecity's appeal is therefore moot and should be dismissed.

II. Analysis

We dismiss Eyecity's application for review because Eyecity no longer seeks to have FINRA process the company-related actions that are the basis for the company's appeal.[7] As noted above, Eyecity represents that its company-related actions have "long ago been abandoned." As a result, even if we were to find that FINRA erred in denying Eyecity's request, there is no relief we could grant it.[8]

In its opposition to FINRA's motion, Eyecity does not dispute that it abandoned the company-related action. Rather, it argues that, if the company receives a favorable ruling on the substance of its appeal, the company "may" undertake "an alternative transaction" in the future (which it vaguely claims "could have at least some benefit to [its] shareholders"). But this is too speculative and attenuated for us to consider its application for review.[9] As we have held under

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[6] Factual representations made in briefs are deemed binding on the representing party. *See, e.g.*, *Trotter v. 7R Holdings LLC*, 873 F.3d 435, 443 (3d Cir. 2017) ("[A] reviewing court may properly consider the representations made in the appellate brief to be binding as a form of judicial estoppel.") (quoting *EF Operating Corp. v. Am. Bldgs.*, 993 F.2d 1046, 1050 (3d Cir. 1993)); *United States v. One Heckler-Koch Rifle*, 629 F.2d 1250, 1253 (7th Cir. 1980) (similar); *American Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226-27 (9th Cir. 1988) (similar). Although Eyecity no longer requests FINRA to process its requested actions, we note that Eyecity refers to itself by its proposed new name—Eyecity—in its filings.

[7] *Cf. Blair Edwards Olson*, Exchange Act Release No. 93216, 2021 WL 4500130, at *4 (Sept. 30, 2021) (dismissing application for review of FINRA's imposition of a bar as moot because FINRA had vacated the bar during the pendency of the appeal); *Michael A. Sparks*, Exchange Act Release No. 81787, 2017 WL 4335071, at *1 (Sept. 29, 2017) (dismissing application for review of bar imposed under Rule 9552 as moot because FINRA vacated the bar during the pendency of the appeal).

[8] *See, e.g.*, *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 283 (2001) (holding challenge to municipal adult-business licensing scheme moot where plaintiff "has ceased to operate as an adult business and no longer seeks to renew its license"); *Zoom Cos., Inc.*, Exchange Act Release No. 87383, 2019 WL 5395561, at *1 n.10 (Oct. 22, 2019) (declining to resolve proceeding "on the merits because no party has a concrete interest in its outcome or any remedy we could provide").

[9] *Cf. Munsell v. Dep't of Agriculture*, 509 F.3d 572, 582 (D.C. Cir. 2007) ("[A] live controversy is not maintained by speculation that [a] claimant *might* reenter a business that it has left."); *Hall v. Beals*, 396 U.S. 45, 49 (1969) (stating that "speculative contingencies" are not enough to revive an otherwise moot controversy); *St. Louis Fire Fighters Ass'n Int'l Ass'n of Fire Fighters Local 73 v. City of St. Louis*, 96 F.3d 323, 329 (8th Cir. 1996) (declining to accept "attenuated possibility" of future injury as a basis for concluding case is not moot). We note that we exercised our discretion to consider an otherwise moot appeal in *Interactive Brokers, LLC*,

similar circumstances, Eyecity's "desire for helpful precedent, without anything more substantial at stake in the controversy, does not persuade us that this case is not moot."[10]

Nor, as Eyecity essentially requests, could we provide a relevant advisory opinion about possible future action without knowing what corporate action Eyecity may someday wish to take and the context surrounding it.[11] As we recently explained, when FINRA refuses to process a company-related action under Rule 6490 based on a first-step determination that an issuer's periodic reports were delinquent, FINRA must then under the second step "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 maintain fair and orderly markets."[12] One cannot make such a request-specific determination without knowing the request. And, as we have held, such a request-specific determination "belongs to FINRA in the first instance."[13]

Eyecity additionally argues that we should not dismiss this proceeding as moot because FINRA's refusal to process the company-related actions is what led the company to abandon those actions. According to Eyecity, "given the exceptionally lengthy timeframe of FINRA's actions (or inactions)," the investors "who intended to fund the Company have disappeared and invested elsewhere," because "it is simply not possible for a corporate transaction in the real world (as opposed to FINRA's world) to exist for more than a year without resolution." But beyond these vague generalities about the need for companies to move quickly, Eyecity does not explain why it had to abandon its request to take the actions at issue, rather than pursue relief through its appeal.

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where the applicant identified specific action it planned to take if it prevailed and where "important policy questions [were] implicated." Exchange Act Release No. 39765, 1998 WL 117627, at *3 n.14 (Mar. 17, 1998). But Eyecity has not made such a showing here.

[10] *Marshall Fin., Inc.*, Exchange Act Release No. 50343, 2004 WL 2026518, at *4 (Sept. 10, 2004); *cf. W.C.W. W. Canada Water Enters., Inc.*, Exchange Act Release No. 27254, 1989 WL 992833, at *1 (Sept. 18, 1989) (rejecting request that the Commission issue "a declaratory judgment as to the proper interpretation of the NASD's NASDAQ listing criteria" where applicant argued that "it may once again be confronted with the task of trying to convince the NASD of the correctness of its position" because there was "no longer any adverse NASD determination upon which WCW can base an appeal under Section 19(d)(2) of the Securities Exchange Act").

[11] *Cf. Blinder, Robinson & Co.*, Exchange Act Release No, 29496, 1991 WL 285002, at *2 (July 29, 1991) (explaining that the Commission has "substantial discretion to determine whether the resolution of an issue . . . is precluded by mootness"); *Ass'n of Bus. Advocating Tariff Equity v. Hanzlik,* 779 F.2d 697, 700 (D.C. Cir. 1985) (finding that the "exercise of discretion" to "refrain from resolving issues in an administrative proceeding…was neither arbitrary nor capricious" where "no practical purpose would be served by continuing" with review).

[12] *Metatron, Inc.*, Exchange Act Release No. 99558, 2024 WL 707436, at *5 (Feb. 20, 2024).

[13] *Id.* (quoting *Positron Corp.*, 2015 WL 470454, at *6).

Eyecity further disputes that this matter is moot because, it claims, investors have "been harmed and require redress." But the company does not explain (or otherwise provide support for) which or to what extent shareholders were harmed, how they were harmed, or how this appeal could redress that supposed harm. And because Eyecity is no longer asking FINRA to take any action, as explained herein, "even a favorable decision" would entitle the company to "no relief."[14] We therefore decline to consider Eyecity's appeal.[15]

Under the circumstances, we dismiss Eyecity's appeal.

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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[14] *Marshall Fin.*, 2003 WL 22945730, at *1 (dismissing appeal as moot and quoting *Blinder, Robinson*, 1991 WL 285002, at *2) (internal quotation marks omitted); *cf. Munsell*, 509 F.3d at 582 ("[A] controversy may become moot if a regulated business challenges a . . . policy or action and then terminates its operation during the pendency of the litigation. Normally, once a regulated business has voluntarily removed itself from the ambit of . . . oversight, it no longer has a legally cognizable interest in the outcome of litigation that seeks to challenge a . . . regulatory policy or action."); *Monahan v. Nebraska*, 687 F.2d 1164, 1168 (8th Cir. 1982) (finding challenge to school placement decision moot where student moved out of district and her plans to move back to district at some point were speculative).

[15] *See, e.g.*, *Marshall Fin.*, 2003 WL 22945730, at *1 (declining to exercise the Commission's discretion to consider a moot appeal where "'even a favorable decision by the Commission would entitle [the applicant] to 'no relief'") (quoting *Blinder, Robinson*, 1991 WL 285002, at *2).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

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ORDER DISMISSING APPLICATIONS FOR REVIEW OF ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the application for review filed by Eyecity.com, Inc. (n/k/a CareX Blockchain Platform, Inc.), is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary