

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86069 / June 7, 2019

Admin. Proc. File No. 3-18567

In the Matter of the Application of

METATRON, INC.

For Review of Action Taken by

FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

Metatron, Inc. appeals from FINRA’s denial of its request that FINRA process and announce a reverse stock split on FINRA’s website.¹ FINRA found that Metatron’s request was “deficient” under FINRA Rule 6490(d)(3)(2) because, in FINRA’s view, Metatron was “not current in its reporting requirements, if applicable, to the [Commission].” To this point, the parties’ briefs have focused on whether Metatron had, at the time of FINRA’s action, reporting requirements as a result of filing a Form 10-SB in 2002 to register a class of its common stock notwithstanding its subsequent filing of a Form 15 to terminate that registration. However, it appears that Metatron may have had reporting requirements as a result of filing a Form S-8 registration statement in 2004 to register 3,000,000 shares of its common stock. We therefore request that the parties provide additional briefing to address this latter issue.

Background

On March 4, 2002, Metatron (then called XRG, Inc.) filed a Form 10-SB to register its class of common stock pursuant to Exchange Act Section 12(g).² 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 reports.³ Between March 2006 and December 2008, Metatron did not file three required periodic annual and nine required periodic quarterly reports; the 2006-2008 reports have never been filed.

¹ *Metatron, Inc.*, Exchange Act Release No. 83776, 2018 WL 3702585 (Aug. 3, 2018).

² 15 U.S.C. § 78l(g)(1).

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

On April 24, 2009, Metatron filed a Form 15 with the Commission to terminate the registration of its class of common stock under Section 12(g). Metatron invoked Exchange Act Rule 12g-4(a)(1), which provides that the termination of the registration of a class of securities registered under Section 12(g) “shall take effect in 90 days” after the issuer files a Form 15 certifying that it has fewer than 300 shareholders.⁴ Because Metatron’s Form 15 certified that it had only 202 shareholders as of the date of filing, and the Commission did not institute proceedings under Section 12(g)(4) to deny termination,⁵ Metatron no longer had any class of securities registered with the Commission as of July 23, 2009.

In denying Metatron’s request that FINRA process and announce a reverse stock split, and finding that Metatron was not current in its reporting obligations, FINRA rejected Metatron’s contention that it “has no current reporting obligations” to the Commission on account of its Form 15 filing. According to FINRA, Metatron’s “termination of its *ongoing* periodic filing requirements with the SEC does not obviate the issuer’s filing obligations related to the 12 delinquent periodic reports it has neglected to file.” In the briefing to date, the parties have focused on whether Metatron still has a reporting obligation with respect to the 2006-2008 reports as a result of having registered a class of securities pursuant to Exchange Act Section 12(g), even though that registration had been terminated by its subsequent filing of a Form 15.

Request for Briefing

The Commission’s records indicate that on January 9, 2004, Metatron (again, XRG, Inc. at the time) filed a Form S-8 registration statement to register a total of 3,000,000 shares of common stock.⁶ This registration statement became effective automatically upon filing.⁷ Under Exchange Act Section 15(d), an issuer that files a registration statement that has become effective pursuant to the Securities Act “shall file with the Commission” such reports as the Commission may specify.⁸ Generally, the Commission’s rules require that an issuer with a reporting obligation under Section 15(d) file the same current, quarterly, and annual reports that issuers with a class of securities registered under Section 12 must file.⁹ Accordingly, Metatron’s Form S-8 filing could serve as the basis for an obligation to file periodic reports.

⁴ 17 C.F.R. § 240.12g-4(a)(1).

⁵ 15 U.S.C. § 78l(g)(4).

⁶ See Form S-8, CIK #0001168375, available at <https://www.sec.gov/Archives/edgar/data/1168375/000089706904000106/0000897069-04-000106-index.htm>; see generally *Helpeo, Inc.*, Exchange Act Release No. 82551, 2018 WL 487320, at *4 n.37 (Jan. 19, 2018) (taking official notice under Rule 323 of EDGAR filings).

⁷ 17 C.F.R. §§ 230.456.

⁸ 15 U.S.C. § 78o(d)(1).

⁹ See, e.g., Exchange Act Rules 15d-1, 15d-11, 15d-13, 17 C.F.R. §§ 240.15d-1, 15d-11, 15d-13; see also Exchange Act Section 15(d)(1), 15 U.S.C. § 78o(d)(1) (“reports as may be

(footnote continued . . .)

But the reporting requirements under Exchange Section 15(d) are suspended under certain circumstances. For example, the “duty to file” is automatically suspended “if and so long as” the issuer has securities registered under Section 12.¹⁰ The Section 15(d) reporting obligation is also “suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class . . . to which the registration statement relates are held of record by less than 300 persons.”¹¹ Alternatively, an issuer may seek to suspend its duty to file reports under Section 15(d) pursuant to Exchange Act Rule 12h-3.¹² That rule permits an issuer to suspend its obligations to file reports under Section 15(d) if the issuer (i) “has filed all reports required by Section 13(a) . . . for the shorter of its most recent three fiscal years . . . or the period since the issuer became subject to such reporting obligation,” (ii) the class of securities to which the registration statement relates has fewer than 300 holders of record *or* fewer than 500 holders of record and the issuer’s assets do not exceed \$10 million, and (iii) certain other conditions are met.¹³ To suspend a Section 15(d) reporting obligation in reliance on Rule 12h-3, the issuer must make the appropriate certification on Form 15.¹⁴

Moreover, even if an issuer satisfies the conditions listed in Section 15(d) or Rule 12h-3 to suspend its reporting obligation under Section 15(d) as to a particular fiscal year, the issuer must assess whether it has exceeded the threshold number of holders of record on the first day of every subsequent fiscal year. If that is the case, the reporting obligation under Section 15(d) is no longer suspended as to that fiscal year, and the issuer must comply with the reporting obligation—by filing the current, quarterly, and annual reports that issuers with a class of securities registered under Section 12 must file¹⁵—unless and until the issuer once again meets the requirements listed in Section 15(d) or Rule 12h-3 (or another applicable provision) to suspend the reporting obligation as to a future fiscal year.

(...continued)

required pursuant to Section 13 in respect of a security registered pursuant to Section 12”). Exchange Act Rule 15d-5 provides that these reporting requirements will be “deemed to have been assumed” by successors under various circumstances. 17 C.F.R. §§ 240.15d-5.

¹⁰ 15 U.S.C. § 78o(d).

¹¹ *Id.*

¹² 17 C.F.R. § 240.12h-3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See supra* note 9.

The Form 15 filed by Metatron in 2009 did not invoke either Exchange Act Rule 12h-3 or 15d-6.¹⁶ It also appears that there were more than 300 record holders of Metatron's common stock as of the fiscal years ending March 25, 2011 (1,643); December 31, 2011 (1,644); December 31, 2012 (1,655); December 31, 2013 (1,658); December 31, 2014 (1,657); December 31, 2015 (1,659); December 31, 2016 (1,728); December 31, 2017 (1,671); and December 31, 2018 (1,689).¹⁷ Additional briefing regarding whether Metatron had a reporting obligation under Section 15(d) as to fiscal years subsequent to Metatron's filing of the Form 15 in 2009 would assist the Commission in its determination of this review proceeding.

Accordingly, it is ORDERED that the parties shall file simultaneous briefs (not to exceed 5,000 words in length) by June 28, 2019, addressing any matters that the parties may believe pertinent as to whether Metatron had reporting requirements pursuant to Exchange Act Section 15(d) at the time that FINRA denied its request to process and approve the reverse stock split. For example, the parties should address the extent to which Metatron's 2004 Form S-8 filing gave rise to periodic filing requirements that are independent of those resulting from its 2002 Form 10-SB filing, whether and for what periods such reporting requirements may have been suspended, and the extent to which the company is current with respect to those reporting requirements that were operative as of FINRA's denial.

It is further ORDERED that the parties may file simultaneous reply briefs (not to exceed 2,500 words in length) by July 19, 2019. To the extent the parties deem it necessary, any additional evidentiary materials shall be attached to the briefs, which must contain specific citations to the evidence relied upon.¹⁸ This order is not to be construed as expressing any view as to the Commission's resolution of these issues or the review proceeding generally.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Acting Secretary

¹⁶ Exchange Act Rule 15d-6 provides that an issuer whose Section 15(d) reporting obligation is suspended by statute should file a notice of the suspension on Form 15. 17 C.F.R. § 240.15d-6.

¹⁷ See Metatron, Inc., OTC Disclosure & News, <https://www.otcm Markets.com/stock/MRNJ/disclosure> (last visited June 6, 2019).

¹⁸ See Rule of Practice 452, 17 C.F.R. § 201.452.