

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 79010 / September 30, 2016

Admin. Proc. File No. 3-16913r

In the Matter of the Application of

AUTOCHINA INTERNATIONAL LIMITED
c/o Jason Wang, Chief Financial Officer

For Review of Action Taken by FINRA

OPINION OF THE COMMISSION

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

Registered securities association declined to process issuer's proposed name change on remand from the Commission because the proposed name change would pose too great a risk to the investing public and the securities markets. *Held*, review proceeding is *dismissed*.

APPEARANCES:

Jason Wang, for AutoChina International Limited.

Alan Lawhead and *Jennifer C. Brooks*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: May 26, 2016

Last brief received: August 30, 2016

AutoChina International Limited ("AutoChina" or the "Company"), an issuer of securities quoted on the OTCQB Venture Marketplace ("OTCQB"),¹ appeals from FINRA's denial,

¹ OTCQB is one of the tiers of OTC Link®ATS ("OTC Link"), 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. See <http://www.otcmarkets.com/about/otc-markets-history>.

following a remand from the Commission, of AutoChina's request that FINRA process and announce its name change to Fincera, Inc.

FINRA Rule 6490 governs such requests.² A name change request may be deemed deficient if FINRA "has actual knowledge that the issuer [or certain other persons] . . . are the subject of . . . a civil or criminal action related to fraud or securities law violations."³ And "where an [action] is deemed deficient," FINRA "may determine that it is necessary for the protection of investors, the public interest and to maintain fair and orderly markets" to deny the request.⁴

Our prior opinion found that AutoChina's request was deficient because FINRA had "actual knowledge" that AutoChina was one of the subjects of a "civil . . . action related to fraud or securities law violations."⁵ We nonetheless remanded because we found that one of the factual findings supporting FINRA's denial of the request—*i.e.* its finding that certain other defendants in that civil action were still employed by AutoChina—was unsupported by the record.⁶ We remanded to FINRA to determine whether those defendants were still employed by or affiliated with AutoChina, and if they were not, whether denying AutoChina's request was in the public interest. On remand, FINRA held that even without that finding, allowing the name change to proceed would pose too great a risk to the investing public and the securities markets. FINRA, therefore, again denied AutoChina's request. Based on our own independent review of the record, we agree with FINRA's finding and dismiss the appeal.

I. Facts

FINRA denied AutoChina's requested name change based on the involvement of AutoChina and its former Secretary Hui Kai Yan in a Commission civil action (the "Civil Action"). The complaint in the Civil Action (the "Complaint") alleged that over a period of approximately four months, AutoChina, Yan, and ten other defendants (collectively, "the Defendants") fraudulently manipulated AutoChina's shares to increase trading volume and create the appearance of liquidity, thereby enhancing the ability of AutoChina's chairman and chief executive officer, Yong Hui Li, to obtain financing for the Company. The Complaint further alleged that the stock manipulation involved 26 brokerage accounts into which more than \$60 million were deposited and through which millions of shares of AutoChina stock were sold. AutoChina and Yan, without admitting or denying the allegations of the Complaint, consented to

² See FINRA Rule 6490(a)(1), (2) (setting forth procedures governing FINRA's review and processing of documents related to "any issuance or change to a symbol or name" "to facilitate the orderly trading and settlement" of securities traded on the over-the-counter markets).

³ FINRA Rule 6490(d)(3)(3).

⁴ FINRA Rule 6490(d)(3).

⁵ See *AutoChina Int'l Ltd.*, Exchange Act Release No. 77502, 2016 WL 1272875, at *3 (Apr. 1, 2016).

⁶ *Id.* at *4.

the entry of final judgments (the "Final Judgments"). The Final Judgments permanently enjoined AutoChina and Yan from future violations of the antifraud provisions of the Securities Act of 1933 and the antifraud and anti-manipulation provisions of the Securities Exchange Act of 1934, ordered AutoChina to pay a civil penalty of \$4.35 million and Yan to pay a civil penalty of \$150,000, and permanently barred Yan from serving as an officer or director of any public company.⁷

In its first decision denying the requested name change, FINRA found AutoChina's request deficient based on the settlement of the Civil Action and further found that the processing of AutoChina's request would pose too much risk to the investing public and the securities markets. FINRA relied, in part, on its finding that certain Defendants were purportedly still employed by or affiliated with AutoChina. We remanded because we found that the record did not support FINRA's finding regarding those Defendants' employment or affiliation.⁸

On remand, FINRA recognized that its finding regarding the current employment or affiliation of the Defendants in question was an error, but nonetheless again denied AutoChina's request. FINRA noted that the Civil Action was based on allegations of fraudulent and manipulative conduct, and it characterized AutoChina's settlement of the Civil Action as "recent" and "serious." Additionally, FINRA found that the public interest "favors easy identification of an issuer with its past federal court actions and the final judgments entered in those actions," and that the name change "would impose an obstacle for investors" to learn about the Complaint and the Final Judgment against AutoChina. Thus, FINRA found that processing and announcing the name change would be detrimental to the protection of investors and the public interest. FINRA recognized that AutoChina asserted that the name Fincera would better reflect the Company's focus on financial technology products and services. It found, however, that that was not a compelling reason to allow the name change to proceed.

⁷ *SEC v. AutoChina Int'l Ltd.*, Litigation Release No. 23033, 2014 WL 2915933 (June 27, 2014). The court entered default judgments as to the remaining Defendants on October 24, 2014. *SEC v. AutoChina Int'l Ltd.*, Litigation Release No. 23121, 2014 WL 5454169 (Oct. 28, 2014).

⁸ *AutoChina Int'l Ltd.*, 2016 WL 1272875, at *4.

II. Analysis

Exchange Act Section 19(f) governs our review.⁹ Section 19(f) requires us to dismiss AutoChina's application for review if (i) the specific grounds on which FINRA based its denial of AutoChina's requested name change exist in fact; (ii) the denial was in accordance with FINRA's rules; and (iii) those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.¹⁰ Our review is of FINRA's decision on remand.

A. The grounds for the denial exist in fact.

FINRA Rule 6490(d)(3) requires FINRA to conduct a two-step analysis in determining whether to process a name change request.¹¹ First, FINRA determines whether the issuer's request is deficient under five enumerated factors. Then, if the request is deficient, FINRA "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."¹² We have found that the "use of the permissive term 'may' vests FINRA with discretionary authority in deciding whether to process and announce" such a request.¹³ Moreover, "we will not substitute our judgment for FINRA's unless its decision is unsupported by the record."¹⁴

We find that the specific grounds on which FINRA determined that AutoChina's name change request was deficient exist in fact. Our prior opinion determined that AutoChina's request was deficient based on FINRA's actual knowledge that AutoChina (among others) was a defendant in the Civil Action. This determination was not subject to challenge on remand.¹⁵

⁹ 15 U.S.C. § 78s(f) (authorizing Commission review of SRO action that prohibits or limits "any person with respect to access to services offered" by the SRO); *see, e.g., Positron Corp.*, Exchange Act Release No. 74216, 2015 WL 470454, at *5-11 (Feb. 5, 2015) (applying Section 19(f) to review of FINRA's denial of a request to process corporate actions).

¹⁰ *Fog Cutter Capital Grp., Inc. v. SEC*, 474 F.3d 822, 825 (D.C. Cir. 2007).

¹¹ *AutoChina Int'l Ltd.*, 2016 WL 1272875, at *3.

¹² *mPhase*, Exchange Act Release No. 74187, 2015 WL 412910, at *4 (Feb. 2, 2015) (citations omitted); *see also Positron Corp.*, 2015 WL 470454, at *6 (setting forth and applying two-step analysis that FINRA must conduct under FINRA Rule 6490(d)(3)).

¹³ *mPhase*, 2015 WL 412910, at *5.

¹⁴ *Id.* (citations omitted).

¹⁵ AutoChina argues that FINRA did not properly consider that the Civil Action was settled rather than adjudicated because Rule 6490(d)(3)(3) "specifically distinguishes between 'pending,' 'adjudicated,' and 'settled' actions." We see no basis for requiring FINRA to treat settled matters differently from adjudicated ones under Rule 6490(d)(3)(3). Rule 6490(d)(3)(3), which contains the "pending," "settled," or "adjudicated" language, identifies several possible bases for finding a request deficient and permits FINRA to find the request deficient if any of these bases is

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We also find that the specific grounds on which FINRA determined that AutoChina's proposed name change would pose a threat to investors and market integrity exist in fact. FINRA based its determination on the facts—which we find to be amply supported in the record—that the Complaint in the Civil Action alleged a massive manipulation of the Company's stock, that AutoChina's settlement of the Civil Action was "serious" and recent, and that the name change would make it more difficult for investors to learn about the Civil Action. The misconduct alleged in the Complaint undoubtedly poses a serious threat to investors and the public interest and is detrimental to the maintenance of fair and orderly markets. Market manipulation is "one of the most egregious securities laws violations" because it "'attacks the very foundation and integrity of the free market system' and 'runs counter to the basic objectives of the securities laws.'"¹⁶ Investors have a legitimate interest in knowing that an issuer has been charged with such misconduct, and we find that there was a basis in fact for FINRA's determination that the name change would make it more difficult for investors to learn about the Final Judgments and related allegations because the connection between "Fincera" and "AutoChina" would not necessarily be immediately evident.

AutoChina argues that FINRA's concern that allowing the name change would make it harder for investors to connect the renamed company with the Complaint and the Final Judgment is unsupported. It asserts that it refers to itself as "Fincera, fka AutoChina International" on its website, in its press releases, and in its periodic reports filed with the Commission.¹⁷ It also claims that because the name change was so recent, it "features prominently" in recent materials that investors may see, such as its 2015 annual report on Form 20-F, and that "the Company's prior name is easily located through online searches."

Notwithstanding the measures AutoChina alludes to, FINRA's concern remains valid. For example, AutoChina may decide to change the way it refers to itself on its website at any time. It also would be free to stop mentioning the name change in materials it disseminates. And while investors could perhaps discover the link between the two corporate names through an

(. . . continued)

established. We discuss below AutoChina's arguments about the relevance of the settled nature of the Civil Action to FINRA's determination to deny the request in light of the public interest.

¹⁶ *Donald L. Koch*, Exchange Act Release No. 72179, 2014 WL 1998524, at *21 (May 16, 2014) (quoting *Terrance Yoshikawa*, Exchange Act Release No. 53731, 2006 SEC LEXIS 948, at *32 (Apr. 26, 2006)), *petition granted in part and denied in relevant part*, 793 F.3d 147 (D.C. Cir. 2015); *see also, e.g., Kirlin Sec.*, Exchange Act Release No. 61135, 2009 WL 4731652, at *9 (Dec. 10, 2009) (market manipulation is "at the core of conduct that the securities laws were designed to prevent"); *Robert J. Prager*, Exchange Act Release No. 51974, 2005 SEC LEXIS 1558, at *55 (July 6, 2006) (noting that manipulation is a "very grave violation" and that its elimination is "one of the central goals of the federal securities laws").

¹⁷ AutoChina attached screenshots to its opening brief showing the use of "Fincera (fka AutoChina International)" on the internet in late June and early to mid-July 2016. Our rules required AutoChina to file a motion to adduce this new evidence. Rule of Practice 452, 17 C.F.R. § 201.452. Nonetheless, we exercise our discretion to consider this evidence.

internet search, doing so requires additional effort that will be unnecessary if the Company continues to use the name associated with the Final Judgments.¹⁸

AutoChina also contends that FINRA erred in characterizing the settlement of the Civil Action as "serious" because doing so assumes the allegations in the Complaint are true. But FINRA's characterization of the settlement as "serious" is not the same as finding that the allegations of the Complaint are true. The misconduct alleged was unquestionably serious and of interest to investors.¹⁹ Investors would want to know that AutoChina was charged with this misconduct, that it neither admitted nor denied the allegations in settling the action, and that it agreed to be enjoined and to pay a \$4.35 million civil penalty. Because allowing the name change would, as FINRA found, make it more difficult for investors to access that information, we find no error in FINRA's consideration of the allegations of the Complaint.²⁰

AutoChina also claims that FINRA was required to consider whether any of the parties alleged to have participated in the misconduct alleged in the Complaint are still employed by or affiliated with the Company. According to AutoChina, "the key players involved in the [Civil] Action are not presently employed by the Company and do not assert any control over the Company, thus eliminating any potential for ongoing regulatory concerns about the Company's operations." Consistent with our direction on remand, FINRA considered whether any of the Defendants in the Civil Action were still employed by or affiliated with the Company. It concluded that they were not but that the request should nonetheless be denied in order to protect the public. The fact that the Defendants in the Civil Action are no longer associated with AutoChina did not require FINRA to approve the request because FINRA considered that fact

¹⁸ AutoChina challenges FINRA's holding that the name change would make it harder for investors to "connect Fincera, Inc. with AutoChina" on the ground that "any name change by any company would make it marginally more difficult for investors to connect the new name with the old name." The situation here, however, is distinguishable from the typical name change in that, in light of the Final Judgments and the Civil Action, it was necessary that investors be able to connect the two companies easily.

¹⁹ See *Positron Corp.*, 2015 WL 470454, at *8 (holding that FINRA may consider the allegations in a complaint in a civil action when it assesses the public interest).

²⁰ AutoChina argues that FINRA's brief demonstrates that it "determined" certain facts. But we review FINRA's decision on remand, not its brief, and the decision did not "determine" that the allegations in the Complaint were true. Similarly, AutoChina asserts in its reply brief that FINRA's opposition brief incorrectly linked the company's receipt of \$60 million in loan proceeds with the manipulation alleged in the Complaint. But FINRA's decision on remand does not say anything about AutoChina's receipt of \$60 million in loan proceeds. The circumstances surrounding the Company's receipt of any loan proceeds play no role in our disposition of this matter.

and appropriately concluded, on the basis of the other facts presented, that denial is in the public interest.²¹

Finally, AutoChina argues that FINRA's public interest analysis reached the wrong conclusion because FINRA's refusal to process the name change, among other things, prevents trade settlement. AutoChina says that it is a Cayman Islands company, and it effected a name change in the Cayman Islands in June 2015. It now argues that because FINRA refused to process the name change request, AutoChina is using a name that does not match its ticker symbol, and as a result The Depository Trust Company ("DTC") will not settle trades.²² Furthermore, AutoChina claims that it cannot change its name back to AutoChina International Limited because that name is no longer available with the General Registry of the Cayman Islands Government.

This alleged difficulty in settling trades is not supported by the record.²³ AutoChina does not point to any evidence showing that trades are not settling, or what steps it has taken to try to resolve its alleged differences with DTC. Moreover, the record shows that the instructions to the name change request form that AutoChina submitted to FINRA stated that the "current CUSIP should not be suspended until shortly before the requested corporate action is announced." And in an e-mail sent while the request was under consideration, FINRA advised the Company that "[a]lthough Cayman Islands filings show the new name of the company has been effected, AutoChina will continue to trade under the current name and CUSIP until the name change is publically announced to the marketplace by FINRA, thus there is no confusion in the OTC marketplace." It would be inconsistent with the objectives of the Exchange Act and the discretion vested in FINRA under Rule 6490 to allow action that AutoChina took unilaterally to force FINRA to approve the name change request.

²¹ AutoChina cites findings in FINRA's prior decision that it contends are unsupported by the record as evidence that FINRA "exhibited bias against the company." But our review is based on FINRA's decision on remand, and that decision does not contain those findings.

AutoChina further asserts that FINRA's continued denial of its request, despite acknowledging that its original denial was based in part on an erroneous finding, "is also an example of bias." But an adverse decision does not itself establish bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994); see also *Marcus v. Dir., Office of Workers' Comp. Programs*, 548 F.2d 1044, 1051 (D.C. Cir. 1976) ("The mere fact that a decision was reached contrary to a particular party's interest cannot justify a claim of bias . . ."). In any event, our de novo review protects AutoChina from any alleged bias by FINRA. *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *39 (June 14, 2013) (finding that the Commission's de novo review of FINRA disciplinary action "cures whatever bias or errors of fact, if any, that may have existed").

²² DTC is a registered clearing agency that, among other things, provides clearance and settlement services for a substantial portion of all equities available for trading in the United States.

²³ Unsworn representations in briefs are not evidence. See *CleanTech Innovations, Inc.*, Exchange Act Release No. 69968, 2013 SEC LEXIS 1998, at *6 n.7 (July 11, 2013).

B. FINRA's denial of AutoChina's request was in accordance with its rules.

The plain language of FINRA Rule 6490(3) makes clear that FINRA may deny a name change request under the circumstances presented here. FINRA's "actual knowledge" of the settled Civil Action against AutoChina alleging antifraud and anti-manipulation violations allowed FINRA to find the request deficient, and its decision to deny the request based on its public interest analysis was a permissible exercise of discretion under FINRA Rule 6490(d)(3).

C. FINRA applied its rules in a manner consistent with the Exchange Act.

We approved FINRA's adoption of Rule 6490 as "consistent with the [Exchange] Act and the rules and regulations thereunder applicable to a national securities association."²⁴ In so doing, we found that the rule "furthers FINRA's goal to assure that . . . its facilities are not misused in furtherance of fraudulent or manipulative acts and practices."²⁵ Here, FINRA properly considered the allegations of manipulation in the Complaint, the amount paid in settling the Civil Action, and the short time that had elapsed between the settlement and the name change request. FINRA also considered the business reasons AutoChina gave to support the request and explained why it found them "not compelling." FINRA found that Rule 6490 "places primary importance on FINRA's responsibility to protect investors, not issuers," and concluded that processing the name change would pose too great a risk to the investing public and the securities markets. This application of Rule 6490 was consistent with the statutory objectives identified above.

Based on the foregoing, we find that FINRA's determination to deny AutoChina's name change request is in the public interest and consistent with the purposes of the Exchange Act. Accordingly, we dismiss AutoChina's application for review.

An appropriate order will issue.²⁶

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

²⁴ *Order Approving Proposed FINRA Rule 6490 (Processing of Company-Related Actions) to Clarify Scope of FINRA's Authority When Processing Documents Related to Announcements for Company-Related Actions for Non-Exchange Listed Securities and to Implement Fees for Such Services*, Exchange Act Release No. 62434, 2010 WL 2641653, at *5 (July 1, 2010).

²⁵ *Id.* at *7.

²⁶ We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 79010 / September 30, 2016

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In the Matter of the Application of
AUTOCHINA INTERNATIONAL LIMITED
For review of Action Taken by FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION OF REGISTERED
SECURITIES ASSOCIATION

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

ORDERED that the application for review of action taken by FINRA against AutoChina International Ltd. is hereby dismissed.

By the Commission.

Brent J. Fields
Secretary