



Robert L.D. Colby
Executive Vice President
and Chief Legal Officer

May 19, 2023

VIA EMAIL

Clifton DuBose, Jr.
Chief Executive Officer
Next Bridge Hydrocarbons, Inc.

Dear Mr. DuBose:

I am writing in response to your letter transmitted to FINRA on April 19, 2023, in which you state that Next Bridge Hydrocarbons, Inc. (NBH) has received numerous complaints and expressions of concern from a large number of its shareholders. FINRA has also received many communications from NBH investors who have voiced concerns regarding a number of issues, including the lack of availability of a public market for the NBH common stock that was distributed to holders of the Meta Materials, Inc. (Meta Materials) Series A Preferred Shares (formerly identified by the symbol “MMTLP”) last December. Because the MMTLP shares were cancelled by the issuer on December 14, 2022, they can no longer be traded, and the symbol can no longer be reinstated. FINRA shares your concerns regarding the complaints that your shareholders have expressed about MMTLP and NBH, including complaints relating to the current predicament of shareholders who previously held an interest in a publicly traded security but who now are unable to trade their NBH common stock.

As you are aware, investors have raised questions following the corporate action undertaken by Meta Materials and a related trading halt that was initiated by FINRA. As FINRA has publicly stated, the trading halt was initiated in light of clearance and settlement concerns that arose due to the structure and timing of the Next Bridge / MMTLP corporate action.¹ Specifically, shareholders’ interests in MMTLP, which had been publicly traded over the counter (OTC), were replaced with an interest in NBH common stock. Because NBH did not obtain a CUSIP identifier (CUSIP) for its common stock and the stock was not DTC-eligible, the structure of the corporate action did not provide for continuity in the clearance and settlement process for the distribution of the shares. This meant that MMTLP shareholders, who previously had an interest in a security that had a public trading market, were exchanged into a security that did not, and does not currently, trade. FINRA was also concerned that investors buying MMTLP after December 8 may not have realized that those shares were about to be cancelled by Meta

¹ See FAQ: MMTLP Corporate Action and Trading Halt (March 16, 2023), available at <https://www.finra.org/investors/insights/FAQ-MMTLP-corporate-action-and-trading-halt>.

Materials, and that they would not be recorded on December 12 as MMTLP holders eligible to receive NBH common stock in the distribution.² Due to these circumstances, FINRA halted trading in MMTLP on December 9 pursuant to its rules and its mandate to protect investors and the public interest.

You have expressed an inclination for NBH to facilitate trading in its common stock in response to requests from your shareholders. FINRA notes, however, that initiating, facilitating, and ceasing trading under the conditions contemplated in your letter would involve numerous third parties in addition to FINRA, as discussed below. Moreover, the limitations you would like placed on trading in NBH common stock are inconsistent with FINRA's understanding of its rules and procedures, market practice, and investor protection.

As you consider potential steps you may take to address the concerns shareholders have expressed regarding your company's shares, we would like to provide you with information regarding FINRA's role in the OTC market, including certain limits to its jurisdiction and authority. In this regard, we note that we do not agree with much of the depiction of the MMTLP market events, FINRA actions, and application of specific rules described in your letter, nor do we concur with its characterization of the process for quoting and trading securities in the OTC market. Moreover, we have no independent information and thus will not comment on the various transactions and agreements between NBH and other parties referenced in your letter, such as the company's intentions regarding the issuance of additional equity securities, agreements regarding the company's merger transaction, and the ownership of equity positions by NBH executives and board members.

FINRA's Role in Regulating the OTC Markets

FINRA is a statutorily authorized not-for-profit organization that oversees U.S. broker-dealers that are FINRA members. As a national securities association and self-regulatory organization, FINRA is registered with and subject to the oversight of the Securities and Exchange Commission (SEC). In this role, FINRA examines its member firm broker-dealers for compliance with the federal securities laws, the rules thereunder, and FINRA rules, including just and equitable principles of trade, and is authorized to enforce those laws and rules through its disciplinary process. In addition, brokerage services provided by firms for customers are largely governed by contract.

² As FINRA has noted publicly, this means that for trades in MMTLP executed after December 8, the seller of MMTLP shares would still have been recorded as the holder eligible to receive NBH common stock as part of the corporate action distribution, and the buyer would not be recorded as eligible to receive NBH common stock in the distribution. Moreover, the buyer would have purchased shares that would be cancelled on December 14, and there was uncertainty as to whether these trades would be settled in an orderly manner before the cancellation date. *See id.*

Thus, under the regulatory framework put in place by Congress and overseen by the SEC, FINRA does not have jurisdiction to regulate the conduct of non-members, including issuers of securities such as NBH and individual investors. Unlike securities exchanges that list securities, FINRA does not operate a market and does not establish listing standards for issuers or otherwise regulate the companies that issue equity securities that trade over the counter.

However, FINRA does regulate broker-dealers that facilitate investor access to the securities markets, including the OTC market. The federal securities laws require that FINRA's rules for those activities, like all FINRA rules, remove impediments to and perfect the mechanism of a free and open market, among other things. The SEC's oversight of FINRA includes reviewing its rules, which must be filed with the SEC. FINRA has adopted, through the SEC's rule filing process, numerous rules that relate to the market activity of its members, including reviewing corporate actions and monitoring trading in the OTC market. These rules include:

- FINRA Rule 6440. This rule requires broker-dealer firms to halt quoting and trading activities when FINRA determines, in accordance with the rule, that doing so is necessary to protect investors and the public interest. As described publicly, pursuant to Rule 6440, FINRA halted trading in MMTLP due to concerns regarding the clearance and settlement process for transactions occurring after December 8th in light of the timing and structure of the Next Bridge / MMTLP corporate action.
- FINRA Rule 6490. SEC Rule 10b-17 generally requires issuers of publicly traded securities to give notice of corporate actions to a self-regulatory organization, which is the securities exchange for actions involving a listed security. For unlisted securities, SEC Rule 10b-17 requires issuers to provide FINRA with notice of corporate actions. In relevant part, the rule generally provides that it shall constitute a "manipulative or deceptive device or contrivance" as used in Section 10(b) of the Exchange Act for any issuer of a class of publicly traded securities to fail to give notice relating to such securities of a dividend or other distribution in cash or in kind, including a dividend or distribution of any security of the same or another issuer. Thus, though FINRA does not have jurisdiction over the issuer of a class of unlisted securities, the issuer is obligated by the SEC to provide notice to FINRA, in accordance with Rule 10b-17, of specified planned corporate actions, including the distribution of a security.

FINRA Rule 6490 sets forth FINRA's process for reviewing corporate action submissions, including those required under SEC Rule 10b-17. FINRA does not initiate, approve, or conduct the underlying corporate action that the issuer is taking. Rather, the company itself is responsible for making sure the corporate action complies with all applicable laws and regulations. FINRA's role in the process is thus limited to reviewing and processing the submission and announcing the corporate action to market participants (unless the corporate action documentation is found to be deficient under the rule, in which case FINRA may determine not to process the corporate action).

- FINRA Rule 6432. Like Rule 6490, Rule 6432 addresses compliance with an SEC obligation. Rule 6432 is designed to address FINRA member broker-dealer compliance with SEC Rule 15c2-11, which sets forth requirements for broker-dealers that publish

quotations in a quotation medium for securities in the OTC market. In general, Rule 15c2-11 prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a security unless it has obtained and reviewed specified current information about the issuer whose security is the subject of the quotation and has a reasonable basis under the circumstances for believing the information is accurate in all material respects and obtained from a reliable source, unless otherwise permitted under the rule. Rule 15c2-11 includes several exceptions, one of which permits a broker-dealer to publish quotations on behalf of a customer (other than a person acting as or for a dealer) that represents the customer's unsolicited indication of interest; provided, however, that the exception is not available where the quotation is directly or indirectly on behalf of a company insider or affiliate unless specified issuer information is current and publicly available.

NBH Proposals

NBH has indicated in its letter that it is interested in facilitating the trading of its common stock, but only subject to a number of limitations, including trading for a pre-determined, limited period of time. Because an offering of NBH common stock was registered with the Commission, these shares are freely tradeable as a legal matter; however, trading is difficult because NBH has not requested a CUSIP from CUSIP Global Services. If NBH obtains a CUSIP for NBH common stock, NBH can apply to DTC for DTC eligibility for the NBH common stock, which facilitates the central clearance and settlement of securities transactions. In addition, if NBH obtains a CUSIP for the NBH common stock, a member firm can apply to FINRA for a trading symbol for that stock. However, FINRA does not operate a market and does not determine when a security may begin to trade or stop trading in the ordinary course.³

³ One of FINRA's roles in the market for OTC equity securities is to assign security symbols in connection with quoting and trade reporting by FINRA member firms. Through published guidance and FAQs, FINRA's members are familiar with the circumstances under which a symbol may be assigned as well as the process for obtaining a symbol. In accordance with regulatory obligations for OTC equity securities, symbols are assigned by FINRA at the request of a FINRA member to allow members to:

- Report an executed transaction in an OTC equity security, or
- Initiate quotations (consistent with the review requirements of Rule 15c2-11).

Under the current process, FINRA will assign a symbol only if certain minimum requirements are met, including, for example, that the security has a valid CUSIP. As you know, settlement is a key part of any securities transaction and therefore the SEC has mandated, for example, a standard settlement cycle for most securities transactions. SEC Rule 15c6-1, for example, generally prevents brokers and dealers (including FINRA members) from effecting or entering into contracts for the purchase or sale of securities transactions that provide for payment of funds and delivery of securities later than the established settlement cycle (currently T+2) unless otherwise expressly agreed. Thus,

In your letter, NBH states that, if its common stock is traded, NBH would like to restrict market activity in the stock to a limited period of time. NBH asks that FINRA take action to effectuate these time restrictions; however, it is unclear on what grounds and under what authority FINRA would mandate that trading must cease within a relatively short, predetermined time after the security has been assigned a CUSIP, FINRA has assigned a symbol, and trading has commenced. FINRA assigns a symbol to a security to enable its member firms to comply with regulatory requirements or in connection with quoting of the security once certain regulatory requirements are met; this limited function does not authorize FINRA to subsequently restrict trading in that security by immediately deleting the symbol pursuant to an issuer's request. For this reason, FINRA deletes symbols only in limited circumstances, for example when the CUSIP has been suspended as determined by CUSIP Global Services (including where the subject security has been cancelled), or where there has been a period of extended inactivity in the security. Thus, if NBH obtains a CUSIP for its common stock and a member obtains a symbol for those shares, that symbol would continue to be available for ongoing quoting and trade reporting purposes unless conditions were to significantly change (with or without the agreement of the issuer).

In addition, an issuer's desire to limit trading in its stock "for a very short, finite period of time" does not justify the initiation of a trading halt under FINRA rules. FINRA's authority to initiate a trading halt is narrowly limited to circumstances in which it is necessary to protect investors and the public interest. In pertinent part, Rule 6440 provides that FINRA can initiate a trading halt for an OTC equity security if FINRA determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the security or has caused or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearance process. An issuer's request for a trading halt, by itself, is not a sufficient basis for FINRA to exercise its halt authority and does not justify a halt. More broadly, in our view, any such directive from an issuer could conflict with FINRA's statutory duty to promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market; and to not permit unfair discrimination between customers.

NBH also has requested that FINRA, during a limited trading period, "cause FINRA member firms to close out and settle any remaining uncovered short positions originating in MMTLP Stock that are now in the NBH Common Stock." NBH's request may be based on its view, or the view of others, that some market participants are improperly maintaining short positions in NBH common stock. As FINRA has publicly stated, short interest reports on NBH common stock are not available on FINRA's website because firms report short interest by security symbol and NBH common stock does not have a symbol. If NBH were to obtain a CUSIP for its common stock, a FINRA member would then be able to request that FINRA assign a symbol in connection with quoting or trading activity, consistent with FINRA rules and procedures. In turn, FINRA members would be able to report short interest in NBH common stock to FINRA and FINRA would make this information available on its public website.

FINRA members have obligations under the federal securities laws and FINRA rules under which they must have a plan for the clearance and settlement of any transactions that occur.

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The legal requirements for short sale activity, including specified close out obligations, are addressed by existing rules, in particular the SEC's Regulation SHO. Rule 204 of Regulation SHO requires firms to close out fail to deliver positions by borrowing or purchasing securities of like kind and quantity. Specifically, Rule 204 requires brokers and dealers that are participants of a registered clearing agency to take action to close out failure to deliver positions by no later than the period of time specified in the rule (T+3 or T+5, depending on the circumstances). If the broker-dealer does not close out its position, the broker-dealer and any broker-dealer for which it clears transactions, are not permitted to effect further short sales in that security without borrowing or entering into a bona fide agreement to borrow the security until the broker-dealer purchases shares to close out the position and the purchase clears and settles. Given the purview of the federal securities laws in this area, it is unclear how the approach described in your letter differs from the application of existing requirements and, if it does, on what authority the desired action would be based.⁴

Conclusion

We share your concerns regarding the complaints that your shareholders have expressed, including shareholders that cannot trade their NBH common stock in the absence of an active trading market. As discussed above, there are steps that NBH may take that would facilitate secondary market trading in, and clearance and settlement for, NBH common stock. That said, FINRA's actions are limited by its jurisdiction and rules and governed by its processes and procedures that must apply to all potential quotation and trading activity in OTC equity securities. The scenario that you describe in your letter—whereby steps would be taken by FINRA and other third parties to facilitate your desire to end any trading market that may develop in NBH common stock after a relatively short, predetermined time—does not comport with FINRA's understanding of its authority and applicable regulations, processes, or market practice. FINRA cannot and will not take actions that are inconsistent with its authority or that do not enhance investor protection and market integrity. If helpful, we can discuss these issues on a call with you.

Very truly yours,



Robert Colby

cc: James M. Harrigan
Jason Schumacher
Jack Jacobsen

⁴ Your letter erroneously references FINRA Rule 6490 as a source of authority for your request that firms be caused to close out short positions. As discussed above, Rule 6490 sets forth FINRA's process for reviewing corporate action submissions, including those required under Rule 10b-17.