



Alpine is a small, registered self-clearing broker-dealer, engaged primarily in clearing liquidation (sale-side) microcap or over the counter (“OTC”) stock transactions for other firms, including, frequently, stocks with a price less than \$.01/share. Alpine is a member in good standing of NSCC that is entitled to access NSCC’s Continuous Net Settlement (“CNS”) clearing and settlement services. To access its CNS system, NSCC requires Alpine to contribute to a Clearing Fund on an ongoing basis by paying a daily “Required Deposit” – which is comprised of a number of components that NSCC assesses on a per-member basis – as “margin.”<sup>2</sup> These “margin” charges, taken individually or collectively, are astronomical, far exceeding the market value of the underlying positions, and are particularly egregious when a sub-penny stock is involved.

In December of 2018, Alpine filed an Application for Review, pursuant to Sections 19(d) and (f) of the Exchange Act, challenging several components of the Required Deposit as being so arbitrary, unreasonable and onerous that they impermissibly limit Alpine’s access to NSCC’s services in violation of the Exchange Act.<sup>3</sup> That First Application for Review remains pending.

On November 24, 2020, the SEC’s Division of Trading and Markets approved a rule change submitted by NSCC (SR-NSCC-2020-003) (“Rule Change”) to amend, *inter alia*, the “Haircut-Based Volatility Charge” component of the Required Deposit for “Illiquid Securities,”<sup>4</sup> which NSCC defined as all OTC and microcap stocks (“New OTC Volatility Charge”). NSCC began applying the Rule Change to calculate Alpine’s Required Deposit on February 1, 2021.

NSCC’s calculation and application of the Rule Change to Alpine has significantly *increased* its Daily Required Deposit beyond the already astronomical amounts, and constitutes a further impermissible limitation on Alpine’s access to NSCC’s essential clearing and settlement services in violation of the Exchange Act and the rules thereunder. In summary:

- The New OTC Volatility Charge – taken individually or, even more so, in the aggregate with other components of the Required Deposit – results in charges that are arbitrary, onerous, and facially unreasonable in relation to the value of the underlying positions. This is particularly evident when a sub-penny stock is involved because NSCC imposes a fictional, increased share-price of \$.01 to calculate the margin, which invariably results in

---

<sup>2</sup> NSCC Rules and Procedures, at Rule 2, §§ 1 and 2(i), Rule 4, §§ 1, 8, and Procedure XV.

<sup>3</sup> See Administrative Proceeding File No. 3-18979.

<sup>4</sup> See SEC Release No. 34-90502.

charges that far exceed the value of the position, often by several orders of magnitude. NSCC made no attempt to justify this practice in the Rule Change, and it is contrary to NSCC's own schedules.<sup>5</sup> It is believed that NSCC also uses this fictional share price to calculate other components of the Required Deposit, including Mark-to-Market charges, Margin Differential Component ("MRD") and Coverage Component ("CC") charge.

- NSCC has not established that the risks, for which the margin charges are purportedly necessary, "exist in fact." For example, and in addition to the lack of actual risk that justifies use of an increased fictional share price to calculate margin, NSCC claims that, for a CNS short (sell) position, the margin is necessary to cover the risk that, in the event of a member default, it may have to go into the market to buy-in the stock to cover the position between the date of NSCC's trade guaranty (T+0) and settlement (T+2). In the Rule Change, NSCC ignored that this purported risk is non-existent where a member, such as Alpine, already has the stock to cover the position in its account at DTC.
- The Rule Change imposes an unnecessary discriminatory and anticompetitive burden by targeting smaller NSCC members trading in the OTC and microcap markets, and favoring the registered exchanges over OTC/microcap securities.
- NSCC used the Rule Change as a trojan horse to change, without notice, comment or approval, other components of the Required Deposit, including the MRD and CC charges, which now purport to incorporate the New OTC Volatility Charge based upon artificially created volatility increases.<sup>6</sup>
- NSCC states that it is still using the "Illiquid Charge," which was eliminated by the Rule Change, to calculate the CC charge. *See* Ex. A, at p. 20.
- It is believed NSCC is impermissibly applying the New OTC Volatility Charge retroactively by using it in its 100-day look-back to calculate the CC charge, and/or in performing other back-testing or forecasting to calculate margin charges.

The Commission should grant this Application because NSCC's actions violate the Exchange Act,<sup>7</sup> and result in an actual limitation of access to NSCC's CNS clearing services. Among other things, Alpine has had to limit trading and business as a direct result of NSCC's implementation of the Rule Change. Alpine is adversely impacted by NSCC's application of Rule Change on an ongoing basis, and is seeking review and relief within 30 days of NSCC's first

<sup>5</sup> For example, NSCC's "haircut schedule" for the New OTC Volatility Charge states that a "rate" of 100% will be applied to a CNS short (sell) position in sub-penny stock. *See* NSCC Risk Margin Component Guide, February 1, 2021, at p. 24, attached as Ex. A. But, because NSCC uses a fictional price per share of \$.01, instead of the actual share price, the actual OTC Volatility Charge far exceeds 100% of the value of the position – i.e., if the actual share price is \$.001, use of a fictional share price of \$.01 to calculate the margin results in margin charges that are 10x (1,000%) the value of the position. This mischaracterizes the risk in the position.

<sup>6</sup> Alpine's MRD and CC charges jumped from approximate per-day amount of \$200,000 to \$950,000 after the Rule Change was implemented on February 1, 2021.

<sup>7</sup> NSCC's actions violate, *inter alia*, 15 U.S.C. § 78q-1(b)(3)(D), (F) and (I), and (b)(6); 15 U.S.C. § 78s(f); 17 C.F.R. § 17Ad-22(e)(4), (6) and (7) (requiring NSCC's margin systems and procedures be "reasonably designed," and produce margin levels "commensurate with" the risk), and principles against retroactive application of rules.

implementation thereof.

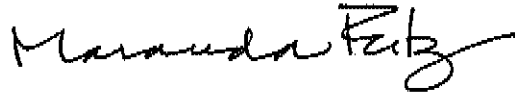
DATED this 2nd day of March 2021.

**PARSONS BEHLE AND LATIMER**



Aaron D. Lebenta  
Jonathan D. Bletzacker

**MARANDA E. FRITZ, P.C.**



Maranda E. Fritz

*Counsel for Petitioner*