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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of  ALPINE SECURITIES CORPORATION, a Utah limited liability company  For Review of Adverse Action Taken By  NATIONAL SECURITIES CLEARING CORPORATION	Admin. Proc. File. No. 3-20238
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**ALPINE'S MOTION FOR AN EMERGENCY INTERIM STAY AND OTHER  
APPROPRIATE COMMISSION RELIEF**

**\*\*\* EXPEDITED CONSIDERATION REQUESTED UNDER RULE 401(d)(3) \*\*\***

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Pursuant to SEC Rule of Practice 401(d)(3), Alpine Securities Corporation (“Alpine”), through counsel of record, submits this Motion for An Emergency Interim Stay and Other Appropriate Relief by the Commission (“Emergency Motion”) in connection with Alpine’s pending Application for Review of adverse actions taken by the National Securities Clearing Corporation (“NSCC”). Because Alpine is facing imminent harm, set to occur on **November 1, 2022** unless a stay is granted, Alpine requests *expedited consideration* of this Motion. This Motion is supported by the Declaration of Aaron D. Lebenta, undersigned counsel for Alpine, (attached hereto as **Ex. 1**), and the Declaration of Raymond Maratea, Alpine’s Chief Executive Officer (“CEO”), (attached hereto as **Ex. 2**).

### **INTRODUCTION AND DESCRIPTION OF SPECIFIC RELIEF SOUGHT**

Alpine is a small, self-clearing broker-dealer member of NSCC, engaged primarily in clearing liquidation (or sale-side) microcap or over the counter (“OTC”) stock transactions for other firms, including, frequently, stocks with a price less than \$.01/share. Alpine filed its Application for Review (“Application”) in this matter on March 2, 2021 to obtain Commission review of certain actions taken by NSCC, purportedly under SR-NSCC-2020-003 (the “Rule Change”), in calculating and assessing Alpine’s Required Fund Deposit (“Required Deposit”) margin charges.<sup>1</sup> On March 5, 2021, Alpine also filed a Motion for Interim Stay of the Required

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<sup>1</sup> The margin charges and actions by NSCC that were the subject of Alpine’s Application for Review include: (a) implementing an enhanced Haircut-Based Volatility Charge for Illiquid Securities (“New OTC Volatility Charge”); (b) using an artificial price per-share of \$.01 to calculate and assess Alpine’s Required Deposit for positions in sub-penny securities; (c) implementing substantive changes to the Margin Requirement Differential (“MRD”) charge, Coverage Component (“CC”) charge and Backtesting Charge that were not approved by the Commission; (d) retroactively applying the Rule Change in performing forecasting and/or backtesting when calculating and assessing Alpine’s Required Deposit. (See Alpine’s Application for Review in Admin. Proceeding File No. 3-20238, March 2, 2021, attached as **Ex. A** to the Lebenta Decl., **Ex. 1**; see also Alpine’s Motion for an Interim Stay of Required Deposit Charges



Deposit margin charges (“Initial Motion to Stay”) that were the subject of Alpine’s Application, until such time as Alpine’s Application was considered and decided.<sup>2</sup> Despite the passage of over 18 months since Alpine filed its Application and Initial Motion to Stay, and the fact that Alpine’s Initial Motion to Stay was fully briefed by March 18, 2021, there has been *no ruling or action of any kind* by the Commission on either Alpine’s Application or Initial Motion to Stay.

This Emergency Motion is triggered by the NSCC’s recent actions in unexpectedly imposing on Alpine another “Backtesting Charge” – one of NSCC’s Required Deposit charges that is the subject of Alpine’s pending Application and Initial Motion to Stay – in the amount of \$2.1 million. Specifically, on October 24, 2022, NSCC informed Alpine that it was imposing a total Backtesting Charge on Alpine of \$2,154,101.23 (comprised of an \$545,166.69 “end of day” Backtesting Charge and a \$1,608,934.54 “intraday” Backtesting Charge), effective **November 1, 2022**, which would have to be maintained for a 12-month rolling period. This charge does not cover any actual or existing deficiency in Alpine’s Required Deposit based on its actual trading activity on a given day, but rather is based on a historical lookback of “simulated” losses in Alpine’s portfolio to purportedly identify backtesting “deficiencies.” That deficiency, according to DTCC, arises from Alpine’s “concentrated short position” in a particular stock during a four-day period in September – when in fact Alpine was not “short” because it was processing a sell order for stock *that was already held at DTC*. And Alpine was charged and posted sufficient margin to cover this so-called “deficiency” in September.

NSCC has further informed Alpine that if Alpine is unable to pay this \$2.1 million Backtesting Charge by November 1, 2022, NSCC will impose that backtesting charge against

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(“Initial Motion to Stay”) in Admin. Proceeding File No 3-20238, March 5, 2021, attached as **Ex. B** to the Lebenta Decl., **Ex. 1**).

<sup>2</sup> See Alpine’s Initial Motion to Stay, March 5, 2022, **Ex. B** to Lebenta Decl., **Ex. 1**.

Alpine's current Clearing Fund deposit of \$3 million. Alpine currently lacks the capital resources to pay as a "charge" an amount almost equal to its existing \$3 million deposit. Alpine will therefore be left without the ability to satisfy NSCC's ongoing margin charges imposed on every trade that Alpine seeks to execute for its customers.

As detailed in Alpine's Application and Initial Motion to Stay, NSCC's exorbitant Required Deposit margin charges are unreasonably excessive and unjustified, particularly when applied to a clearing member like Alpine *that always has sufficient shares in its account at DTC to cover its positions* before submitting a trade through NSCC, eliminating the purported counterparty risk to NSCC of having to buy-in the shares to close out a position in the event of a default by Alpine. The Backtesting Charge, which NSCC has added on top of all of the other margin charges after-the-fact, and which artificially *inflates* the margin charges already imposed on the trading positions based on the fiction that Alpine is "short," is less justifiable still.

Notably, NSCC apparently agrees that this destructive charge is unnecessary. Months ago, NSCC proposed a rule change to eliminate the "Intraday Backtesting Charge" – the lion share of the \$2.1 million Backtesting Charge – because it is *not necessary* for NSCC to "adequately address both its intraday market risk exposures and its backtesting coverage metrics."<sup>3</sup> That Alpine could be put out of business because it lacks the capital to pay a margin charge that even NSCC agrees is unnecessary is certainly not consistent with the Exchange Act or any recognized principle of justice or equity.

Since being notified of the Backtesting charge, and in light of the filing of the Motion, Alpine has conferred with DTCC to confirm whether it would delay imposition of the charge until

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<sup>3</sup> See Securities Exchange Act Release No. 95286 (July 14, 2022), at p. 22, 87 FR 43355 (July 20, 2022) (File No. SR-NSCC-2022-009).

this Motion is considered and decided. Notwithstanding the fact that NSCC has already proposed to eliminate the charge because it is unnecessary, and that Backtesting charges are entirely discretionary, DTCC declined to agree to delay imposition of the charge.<sup>4</sup>

As a result of these actions and circumstances, Alpine respectfully requests that the Commission consider this Emergency Motion on an expedited basis under Rule 401(d)(3) of the SEC's Rules of Practice and stay imposition of NSCC's \$2.1 million Backtesting Charge on Alpine until Alpine's Application is considered and decided by the Commission and/or until the Commission decides whether to approve NSCC's proposed rule change to eliminate the Intraday Backtesting Charge.<sup>5</sup>

In addition, Alpine respectfully requests that the Commission (a) issue a decision on Alpine's Initial Motion to Stay; and (b) require NSCC to file a certified copy of the administrative record pursuant to Rule of Practice 420(e) and issue a briefing schedule on Alpine's Application.

### **REQUEST FOR EXPEDITED CONSIDERATION**

Alpine respectfully requests that the Commission give this Motion expedited consideration under Rule 401(d)(3) of the Rules of Practice because, as detailed further below, NSCC just notified Alpine on October 24, 2022 of the \$2.1 million Backtesting Charge that is at issue in this Motion, and stated that it will be imposed *effective November 1, 2022*.<sup>6</sup>

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<sup>4</sup> Maratea Dec., **Ex. 2**, at ¶ 34.

<sup>5</sup> Although the elimination of the intraday charge was proposed in June, the Commission only on October 14, 2022 instituted the proceedings to determine whether to approve or disapprove SR-NSCC-2022-009. *See* Securities Exchange Act Release No. 34-96088 (October 14, 2022).

<sup>6</sup> *See* SEC Rule of Practice 401(d)(3) (stating that “[w]here the action complained of has already taken effect and the motion to stay is filed within 10 days of the effectiveness of the action, or where the action complained of, will, by its terms, take effect within five days of the filing of the motion for stay, the consideration of and decision on the motion for a stay shall be expedited in every way, consistent with the Commission’s other responsibilities.”).

## **INCORPORATION OF ALPINE'S INITIAL MOTION TO STAY/APPLICATION**

In the interests of efficiency and brevity, Alpine limits this Emergency Motion to the Backtesting Charge immediately at issue and, except as necessary for context, will not repeat here the comprehensive supporting background, facts and argument set forth in Alpine's fully-briefed Initial Motion to Stay regarding the other components of the Required Deposit at issue in Alpine's Application. Alpine incorporates herein by reference its Application, Initial Motion to Stay and attached declarations, and its Reply Memorandum in Support, true and correct copies of which are attached to the Lebenta Declaration (**Ex. 1** hereto).

### **BACKGROUND**

#### **A. Summary of Alpine's Application and Initial Motion to Stay.**

Alpine filed the Application and Initial Motion to Stay on March 2, 2021 and March 5, 2021, respectively, within 30 days of NSCC's implementation (on February 1, 2021) of SR-NSCC-2020-003, which imposed, *inter alia*, the New OTC Volatility Charge as an "enhanced" haircut-based volatility charge to "Illiquid Securities," which NSCC defined to include OTC securities, and certain "micro-capitalization securities."<sup>7</sup> As detailed in the Initial Motion to Stay, Alpine commenced this proceeding and sought a stay because its daily Required Deposit skyrocketed once NSCC began implementing the rule change, immediately increasing from an average daily amount of approximately \$2.5 million to \$3.2 million.

In addition, after NSCC began implementing the New OTC Volatility Charge, Alpine also experienced sudden and dramatic increases (approximately 450%) to its MRD and CC components of its Required Deposit, as well as the imposition of a \$1.1 million Backtesting Charge on March

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<sup>7</sup> See Alpine's Application, **Ex. A** to Lebenta Decl., **Ex. 1**; see also Alpine's Motion to Stay, at pp. 6-10 (discussing New OTC Volatility Charge), **Ex. B** to Lebenta Decl., **Ex. 1**.

1, 2021, which had not been previously imposed on Alpine.<sup>8</sup> Notably, NSCC did not propose, let alone get Commission approval for, any changes to the MRD, CC or Backtesting Charges in SR-NSCC-2020-003.<sup>9</sup> Nevertheless, it is apparent that NSCC changed these components as evidenced by the sudden increase in the charges thereunder and, as explained in more detail in Alpine's Initial Motion to Stay, Alpine believes that NSCC did so by using the New OTC Volatility Charge to calculate them in violation of Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder (requiring notice and approval of changes to SRO rules) and legal prohibitions against retroactive application of rule changes.<sup>10</sup>

This sudden increase in these components of Alpine's Required Deposit – which was already onerous and unjustified in relation to the amounts of the underlying trades and the fact that Alpine *was and is always long* the shares to cover the short (sell) positions at DTC – caused immediate hardship to Alpine and its customers. Most directly, Alpine was left struggling to locate sufficient capital to cover the margin charges necessary to access NSCC's essential CNS system to clear trades for Alpine's customers and was severely limited in the number customer trades that could be processed each day.<sup>11</sup> Alpine therefore filed the Application to seek Commission review of NSCC's limitation of access under Sections 19(d) and (f), and sought a stay of NSCC's implementation of these charges pending Commission review.

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<sup>8</sup> See Alpine's Initial Motion to Stay, **Ex. B** to Lebenta Decl., **Ex. 1**, at 10-13.

<sup>9</sup> See *id.*, at 9-10, 20-22.

<sup>10</sup> See *id.*, at 20-22 (citing authorities). With respect to retroactive application, Alpine understands that NSCC uses forecasting and simulations based on a historical lookback at a member's portfolio over a given period of time to calculate the MRD, CC and Backtesting Charges. See *id.* at 20-22 (citing authorities). By using the New OTC Volatility Charge retroactively to calculate the MRD, CC and Backtesting Charges, NSCC created deficiencies that did not exist at the time they were calculated under the old volatility charge.

<sup>11</sup> See *id.*, at pp. 10-13.

To date, there has been no decision, or action of any kind, on Alpine’s Application or Initial Motion to Stay by the Commission, and no extensions of time to render a decision. *They have seemingly been completely ignored.*

**B. Description of the Backtesting Charge.**

The Backtesting Charge is described in Section I(B)(3) of Procedure XV of NSCC’s Rules and Procedures, and purports to be necessary to cover the potential loss that NSCC may be subject to in the event of member default. According to NSCC, the “[t]he objective of the Backtesting Charge is to increase the Required Deposits for Members that are likely to experience backtesting deficiencies ... by an amount sufficient to maintain such Member’s backtesting coverage above the 99 percent confidence threshold. Because the settlement activity and size of the backtesting deficiencies varies among impacted Members, NSCC must assess a Backtesting Charge that is *specific to each impacted Member.*”<sup>12</sup>

NSCC’s splits its assessment of the Backtesting Charge into two parts: one that NSCC assesses at the start of the day, which it refers to as the “Regular Backtesting Charge,” and one it assesses on an intraday basis, which it refers to as the “Intraday Backtesting Charge.”<sup>13</sup> “If assessed, a Member’s Backtesting Charge is generally equal to the Member’s third largest deficiency, when calculating the Regular Backtesting Charge, and fifth largest deficiency, when calculating the Intraday Backtesting Charge, that occurred during the previous 12 months.”<sup>14</sup> Although NSCC’s formula for determining whether to assess the Backtesting Charge is undisclosed and vaguely described, NSCC has stated in its Risk Margin Component Guide that,

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<sup>12</sup> See Securities Exchange Act Release No. 34-7808, at pp. 4-5, SR-NSCC-2016-004 (September 9, 2016) (emphasis added).

<sup>13</sup> See Securities Exchange Act Release No. 95286, *supra n. 3*, at pp. 7.

<sup>14</sup> *Id.*, at p. 8.

“in order to calculate this charge,” it takes “portfolio snapshots then compares the Member’s Required Fund Deposit to the profit and loss over a *simulated* three-day liquidation horizon,” with a “deficiency” occurring when a Member’s Required Deposit “does not sufficiently cover the *simulated* loss on a portfolio.”<sup>15</sup> NSCC conducts its backtesting coverage analysis over a rolling 12-month period.

**C. Last July, NSCC Proposed to Eliminate the Intraday Backtesting Charge.**

On July 14, 2022, NSCC published a proposed rule change (SR-NSCC-2022-009) to, *inter alia*, “eliminate the Intraday Backtesting Charge.”<sup>16</sup> In proposing the elimination of this charge, NSCC stated that it “believes it will continue to be able to adequately address both its intraday market risk exposures and its backtesting coverage metrics if it eliminates the Intraday Backtesting Charge.”<sup>17</sup> In the same publication, NSCC further confirmed that it has now (*after* imposition of the rule) conducted studies that confirm that the Intraday Backtesting Charge has no appreciable value or use in mitigating its purported central counterparty risk: “Studies reviewing the impact of removing the Intraday Backtesting Charge on NSCC’s backtesting coverage metrics ... indicate that this proposal would not have a significant impact on NSCC’s ability to maintain its backtesting coverage target.”<sup>18</sup> Indeed, NSCC confirmed that its impact studies showed that removal of the

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<sup>15</sup> NSCC Risk Margin Component Guide, February 1, 2021, at p. 23 (emphasis added) (Ex. 2 to Alpine’s Initial Motion to Stay, found at Ex. B to Lebenta Decl., Ex. 1); *see also* Securities Exchange Act Release No. 95286, *supra n. 3*, at p. 4 (stating that to identify “backtesting deficiencies,” NSCC “compares the Required Fund Deposit for each member with the simulated liquidation gains/losses using the actual positions in the Member’s portfolio, and the actual historical security returns.”).

<sup>16</sup> Securities Exchange Act Release No. 95286, at p. 1.

<sup>17</sup> *See id.*, at p. 22.

<sup>18</sup> *Id.*, at p. 23.

Intraday Backtesting Charge would have an “immaterial impact” on its backtesting results or its ability to maintain at least a 99% coverage target.<sup>19</sup>

On October 14, 2022, the Commission instituted proceedings to determine whether to approve or disapprove NSCC’s proposed rule changes in SR-NSCC-2022-009.<sup>20</sup>

**D. NSCC Creates an Emergency and Immediate Irreparable Harm to Alpine by Imposing an Unnecessary and Punitive \$2.1 Million Backtesting Charge.**

On October 24, 2022, NSCC (through an employee of DTCC, NSCC’s parent company) notified Alpine that due to “Backtesting Deficiencies” observed for Alpine, effective November 1, 2022, NSCC was imposing a “total Backtesting Charge of \$2,154,101.23 (comprised of \$545,166.69 End of Day Backtesting Charge and \$1,608,934.54 Intraday Backtesting Charge)” in addition to Alpine’s Clearing Fund Requirement.<sup>21</sup> NSCC further represented that the purported deficiencies giving rise to the Backtesting Charge occurred on September 29, 2022 and were attributable to a “concentrated net short position of ticker GTII.”<sup>22</sup> NSCC stated that this Backtesting Charge would remain in place for a “12 month rolling period,” subject to reassessment on a “monthly basis for any changes.”<sup>23</sup>

Thus, despite the fact that NSCC had confirmed in its July 2022 proposed rule change that the Intraday Backtesting Charge was unnecessary for risk mitigation, the Intraday Backtesting

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<sup>19</sup> *Id.*, at p. 24-25.

<sup>20</sup> *See* Securities Exchange Act Release No. 34-96088 (October 14, 2022). Alpine notes that because NSCC proposed multiple rule changes in SR-NSCC-2022-009, it is unclear whether the proposal to eliminate the Intraday Backtesting Charge is the cause for further proceedings by the Commission.

<sup>21</sup> *See* Maratea Decl., **Ex. 2**, at ¶ 15.

<sup>22</sup> *Id.*, at ¶ 16.

<sup>23</sup> *Id.*, at ¶ 17.



Charge made up the lion share (approximately 2/3) of the total Backtesting Charge being imposed on Alpine.

**E. The Backtesting Charge is Based on DTCC’s Statement that Alpine Had a Concentrated Short Position – Even though Alpine was Long Because the Stock Was on Deposit with DTC.**

As with all of the sale-side trades that Alpine processes for its customers, prior to submitting the trades in GTII through NSCC’s CNS system that created the purported net “short” (sell) position in this stock, Alpine had sufficient shares of GTII in its account at DTC to fully cover its net sell position,<sup>24</sup> eliminating any possible central counterparty risk to NSCC from a member default. Further, Alpine received a margin call from NSCC with respect to this purported deficiency and short position *as it occurred*, and immediately posted sufficient funds to fully cover the required margin call on September 30, 2022.<sup>25</sup> In other words, in addition to having the shares in its inventory at DTC to fully cover the position in GTII before it placed the trades, Alpine also paid additional money as margin to fully cover the purported deficiency as it occurred.<sup>26</sup> NSCC’s demand that Alpine now post an additional \$2.1 million for the deficiency after-the-fact as a “Backtesting Charge,” *and to continue to impose that \$2.1 million as a “charge” for up to one year*, is simply punitive, and unnecessary to guard against any existing risk to NSCC.

NSCC/DTCC has also informed Alpine that if it is unable to pay the Backtesting Charge, it will deduct that amount from Alpine’s current deposit of \$3 million, leaving Alpine effectively unable to pay the already exorbitant margin charges imposed by NSCC every day to process its customers trades. NSCC’s imposition of that Backtesting Charge will therefore prevent Alpine

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<sup>24</sup> Maratea Decl., **Ex. 2**, at ¶ 21.

<sup>25</sup> *Id.*, at ¶ 24.

<sup>26</sup> *Id.*, at ¶ 26.

from being able to access NSCC's services, including its CNS settlement system,<sup>27</sup> which will result in it losing customers and counterparties and prevent Alpine from earning sufficient revenue to be able to cover its operating expenses.<sup>28</sup> Alpine currently has insufficient capital to pay the \$2.1 million Backtesting Charge by November 1, 2022, keep it on deposit with DTCC for a year, and still cover the additional margin necessary for its customers' trading activity.<sup>29</sup> Even if Alpine were able to eventually acquire enough capital to cover the Backtesting Charge, it will likely face substantial costs of acquisition of that capital and a business interruption in the meantime, which impacts not just Alpine, but also its customers who will be unable to trade their shares.<sup>30</sup>

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<sup>27</sup> Maratea Decl., **Ex. 2**, at ¶ 29.

<sup>28</sup> *Id.*, at ¶ 30.

<sup>29</sup> *Id.*, at ¶ 28.

<sup>30</sup> *Id.*, at ¶ 32.

## ARGUMENT

The Commission weighs four factors in deciding whether to grant a stay: (1) “whether there is a strong likelihood that the moving party will succeed on the merits of the appeal; (2) “whether the moving party will suffer irreparable harm without a stay”; (3) “whether any person will suffer substantial harm as a result of a stay”; and (4) “whether a stay is likely to serve the public interest.”<sup>31</sup> However, “a stay may be granted where there is a high probability of irreparable harm, but a lower probability of success on the merits, or vice versa.” *Id.* All four factors strongly support a stay here.

### **A. Alpine has a Strong Likelihood of Success on the Merits.**

To prevail on a petition for review under Section 19(d) and (f), Alpine must first show that there is an “actual limitation of access” to the “applicant’s ability to utilize one of the fundamentally important services offered by the SRO.”<sup>32</sup> Second, Alpine must assert a basis that, if established, would lead the Commission to conclude that the [actions] violate Exchange Act Section 19(f).<sup>33</sup>

#### **1. *The Backtesting Charge and Other Required Deposit Charges Actually Limit Alpine’s Access to NSCC’s Essential Clearing and Settlement Services.***

In this matter, NSCC’s calculation and imposition of the \$2.1 million Backtesting Charge, along with the other components of the Required Deposit challenged in the Application and discussed in Alpine’s Initial Motion to Stay, creates an actual limitation of access to fundamentally

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<sup>31</sup> *Application of Michael Earl McCune*, SEC Release No. 77921, 2016 WL 2997935, at \* 1 (May 25, 2016).

<sup>32</sup> *In re Application of Securities Industry and Financial Markets Association*, (“SIFMA”), SEC Release No. 72182, 2014 WL 1998525, at \*8 (May 16, 2014).

<sup>33</sup> *Id.*, at \*9.

important services offered by NSCC – its essential clearing and settlement services. That access to NSCC’s clearing and settlement services is fundamentally important is irrefutable. NSCC has been granted near monopolistic control over the settlement of equity trades in the United States, and NSCC imposes the Required Deposit, including full payment of the Backtesting Charge, as a condition to access. Its clearance and settlement services are the *most* fundamentally important service NSCC offers, and it is essential to Alpine’s business.

As detailed in Sections D and E of the Background, above, NSCC has informed Alpine that unless it pays the \$2.1 million Backtesting Charge by November 1, 2022, it will deduct it from Alpine’s current deposit of \$3 million leaving Alpine unable to use those funds to pay the enormous deposits that are required each day to access and utilize NSCC’s CNS system to process trades for its customers. This is in addition to the other trading specific margin charges that NSCC imposes cumulatively, such as the New OTC Volatility Charge discussed in Alpine’s Initial Motion to Stay, that NSCC requires Alpine to post in order to process trades through the CNS system. If Alpine is unable to process trades for its customers through NSCC, it will lose its customers and go out of business. NSCC’s imposition of the Backtesting Charge and other Required Deposit charges are therefore actual limitations on access under Commission precedent.<sup>34</sup> Indeed, it is a more direct limitation on access than those that the Commission has recognized as actionable under Section 19(d) and (f) in the past.<sup>35</sup>

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<sup>34</sup> See *In re Bloomberg, L.P.*, Release No. 49076, 2004 WL 67566 at \*2 (Jan. 14, 2004) (holding that NYSE’s “imposition and enforcement of” certain restrictions relating to the dissemination of depth-of-book data “effected a denial of access to Bloomberg” of services because NYSE “would not provide Bloomberg access to [that] data unless it disseminated and continue[d] to disseminate” it in accordance with the restrictions).

<sup>35</sup> *In re International Power Group, Ltd.*, SEC Release No. 66611, 2012 WL 892229 at \*4 (March 15, 2012) (stating, “loss of or increased costs of doing business” or “difficulties in fulfilling market-making obligations” were “negative impacts” on a “Broker-Dealer Participant” that “could be remedied by challenging DTC’s denial of the Participant’s access to services”); *Application of*

2. *NSCC's Imposition of the Backtesting Charge on Alpine Violates Section 19(f).*

“Section 19(f) requires” that an SRO's action denying or limiting access to services “be set aside *unless* (i) the specific grounds on which the challenged action is based exist in fact; (ii) such action was taken in accordance with the rules of the SRO as approved by the Commission (or subject to an exception to such approval); and (iii) such rules are and were applied in a manner that is consistent with the purposes of the Exchange Act.”<sup>36</sup> “Section 19(f) further requires that [the Commission] set aside SRO action if it ‘imposes any burden on competition not necessary or appropriate in furtherance of the purposes’ of the Exchange Act.”<sup>37</sup> NSCC bears the burden to demonstrate that its rules and actions are consistent with the Exchange Act.<sup>38</sup>

There is a substantial likelihood that the Commission will find that NSCC’s imposition of the \$2.1 million Backtesting Charge does not measure up to these requirements. First and foremost, NSCC cannot establish that the risks that purportedly necessitated the imposition of this Backtesting Charge on Alpine “exist in fact.”<sup>39</sup> The purported basis for all of the Required Deposit margin charges, including the Backtesting Charge, is to mitigate NSCC’s central counterparty risk from a member default.<sup>40</sup> However, as Alpine maintained in the Application and Initial Motion to

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*William Higgins*, 51 Fed.Reg. 6186-04, 1986 WL 89969 (Feb. 20, 1986) (exercising jurisdiction to institute “denial of access” proceedings under Sections 19(d) and (f) to review the NYSE's denial of a member's request to install an unrestricted phone line on the floor of the Exchange to contact customer).

<sup>36</sup> *In re Bloomberg, L.P.*, SEC Release No. 49076, 2004 WL 67566, \*3 (January 14, 2004) (emphasis added); *see also* 15 U.S.C. § 78s(f).

<sup>37</sup> *Id.* (quoting 15 U.S.C. § 19(f)).

<sup>38</sup> *See* Section 19(f), 15 U.S.C. § 78s(f) and Rule of Practice 700, 17 C.F.R. § 201.700; *see also SIFMA*, 2014 WL 1998525, at \*9 n. 88.

<sup>39</sup> 15 U.S.C. § 78s(f).

<sup>40</sup> *See, e.g.*, Securities Exchange Act Release No. 95286, at pp. 3-4.

Stay that it filed in March 2021, the Backtesting Charge is unnecessary for this purpose. NSCC has now conceded this fact with respect to the Intraday Backtesting Charge, which comprises approximately \$1.6 million of the \$2.1 million total Backtesting Charge to Alpine, by stating that it should be eliminated.<sup>41</sup> In so proposing, NSCC made clear that it “will continue to be able to adequately address both its intraday market risk exposures and its backtesting coverage metrics if it eliminates the Intraday Backtesting Charge,”<sup>42</sup> and apparently commissioned impact studies proving the “immaterial impact” of this charge on its risk mitigation and coverage. Given this, NSCC cannot show that the purported grounds for which it imposed the \$2.1 million Backtesting Charge on Alpine – risk mitigation – exist in fact.

Moreover, as demonstrated in Alpine’s Initial Motion to Stay, NSCC’s risk-based justification for imposing cumulative margin charges on the same positions held by Alpine is itself specious and facially unreasonable, in violation of Section 17A(b)(3)(D) of the Exchange Act.<sup>43</sup> For example, on Alpine’s net sell position in GTII, NSCC imposed trading specific margin charges that far exceeded the value of the position, such as volatility and mark to market of approximately \$2 million, that Alpine had to post at the time, including to cover a deficiency.<sup>44</sup> Now, nearly a month later, NSCC is imposing another \$2.1 million Backtesting Charge – most of which NSCC concedes has an “immaterial impact” on its risk mitigation and coverage – on that same historical and long-since closed position. It is not a “reasonable ... charge[.]” within the meaning of Section 17A(b)(3)(D), and there is no valid risk-based justification, for NSCC to be so over-covered on

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<sup>41</sup> Securities Exchange Act Release No. 95286, at pp. 1, 22-23.

<sup>42</sup> *See id.*, at p. 22.

<sup>43</sup> *See* 15 U.S.C. § 78q-1(b)(3)(D) (requiring that “rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.”)

<sup>44</sup> Maratea Decl., **Ex. 2**, at ¶¶ 24-25.

this position, particularly to impose an after-the-fact Backtesting Charge that cannot possibly mitigate a purported risk that was already adequately covered the time of the trading, and can only be viewed as a penalty because a deficiency was momentarily created.

Indeed, the notion that NSCC faces any central counterparty risk from Alpine's sell-side trading activity is itself illusory because Alpine always has sufficient shares of the stock in its account at DTC to cover its sell-side positions before it submits the trades to NSCC.<sup>45</sup> Thus, even if Alpine were to default, there is no risk that NSCC would have to go into the market to locate or buy-in the stock to cover the position at potentially increased prices; it can simply acquire it from Alpine's account at DTC – NSCC's sister corporation. NSCC has confirmed time and again that DTC's obligations to deliver securities it holds in a member's account to NSCC is not interrupted because of a member default or even a bankruptcy.<sup>46</sup>

Alpine has thus demonstrated a substantial likelihood of success on its claim that the \$2.1 million Backtesting Charge violates Section 19(f) and must be set aside.

**B. Alpine Will Suffer Irreparable Injury if a Stay is Not Granted.**

Alpine and its customers will suffer irreparable harm as a result of the \$2.1 million Backtesting Charge if a stay is not granted. This is in addition to the ongoing harm that Alpine and its customers are suffering from NSCC's other margin charges, such as the New OTC Volatility Charge, which are imposed cumulatively, as discussed in Alpine's Initial Motion to Stay.

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<sup>45</sup> Maratea Decl., **Ex. 2**, at ¶¶ 21-22.

<sup>46</sup> NSCC's rules state, even where NSCC has "ceased to act" for a member, it can "continue to instruct [DTC] ... to deliver CNS Securities from such Member's account at [DTC] to [NSCC's] account in respect to such Member's Short Position." NSCC's Rules & Procedures, Rule 18, § 5. NSCC has further confirmed its unrestricted ability to close contracts and open positions, regardless of insolvency or default of a member, in its Disclosure Framework. *See* National Securities Clearing Corporation, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, at 18-21 (December 2020).

As detailed in Sections D and E of the Background, NSCC gave Alpine one week to come up with over \$2.1 million to cover the unexpected Backtesting Charge. NSCC further informed Alpine that, unless Alpine pays that “charge,” it will impose it against Alpine’s current deposit and effectively deprive Alpine of the ability to pay amounts necessary to use NSCC’s CNS system to clear trades for its customers.<sup>47</sup>

Alpine currently has insufficient capital to pay this charge by November 1, 2022, keep it on deposit with DTCC for a year, and still cover the additional margin necessary for its customers’ trading activity.<sup>48</sup> If Alpine is unable to process trades for its customers, it will go out of business.<sup>49</sup> For a firm that specializes in microcap and OTC stocks to not be able to execute sell orders due to margin is also significant injury to its reputation, goodwill and relationships with its customers and in the industry. Even if Alpine were able to eventually acquire enough capital to cover the Backtesting Charge, it will likely face substantial additional costs associated with acquisition of those funds and a business interruption in the meantime, which impacts not just Alpine, but also its customers who will be unable to trade their shares.<sup>50</sup> Further, Alpine believes it will not have enough capital remaining after paying the Backtesting Charge to pay the other margin charges from NSCC to process its customers trades, which will result in it losing customers and counterparties and prevent Alpine from earning sufficient revenue to be able to cover its operating expenses.<sup>51</sup>

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<sup>47</sup> Maratea Decl., **Ex. 2**, at ¶ 29.

<sup>48</sup> *Id.*, at ¶ 28.

<sup>49</sup> *Id.*, at ¶ 30.

<sup>50</sup> *Id.*, at ¶ 32.

<sup>51</sup> *Id.*, at ¶¶ 29-32.



The destruction of Alpine’s business is plainly irreparable harm. Frankly, the Commission has recognized sufficient irreparable harm for stay under far less dire circumstances, including loss of customers, good will and revenue.<sup>52</sup> That Alpine faces the destruction of its business, loss of customers, goodwill and revenue because of a charge that even NSCC recognizes is *unnecessary* and unjustified from a risk-mitigation perspective further magnifies the injustice and inequity of the harm to Alpine. The Commission should therefore find that a substantial likelihood of irreparable harm exists here to enter the stay either until Alpine’s Application is decided, and/or until the Commission has an opportunity to consider and decide whether to approve NSCC’s proposal to eliminate the Intraday Backtesting Charge.

**C. The Stay Will Not Result in Harm to Any Other Party.**

As demonstrated above, and for reasons further detailed in Alpine’s Application and Initial Motion to Stay, the \$2.1 million Backtesting Charge is arbitrary, unreasonable and not rationally related to, or necessary to guard against, any actual risk. Indeed, NSCC has conceded as much with respect to at least \$1.6 million of the Backtesting Charge by seeking to eliminate the Intraday Backtesting Charge as unnecessary, which of course begs the question of why NSCC has imposed

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<sup>52</sup> See *In re SIFMA and Bloomberg, L.P.*, SEC Release No. 83755, at 16-18 and n. 71 (July 31, 2018) (citing *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 599 (6th Cir. 2001) (holding that company’s need to raise fees to recoup projected losses because of challenged statute constituted irreparable harm because “even if higher rates and fees do not drive customers away, loss of established goodwill may irreparably harm a company”); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 20 (1st Cir. 1996) (“[S]everal courts have recognized that the loss of product line may create a threat of irreparable injury if it is likely that customers (or prospective customers) will turn to competitors who do not labor under the same handicap.” (citations removed)); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) (“[W]hen the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied.” (citation removed)); *Institutional Networks Corp.*, Exchange Act Release No. 20088, 1983 WL 404184, at \*7 (Aug. 16, 1983) (finding irreparable harm where, in the absence of a stay, movant “may lose (1) potential customers (2) revenues and (3) competitive advantages”).

it in the first place. Further, the Backtesting Charge is based on a purported historical margin deficiency that did not exist, because Alpine was long the stock and because it already fully covered other margin payments imposed at the time the position was created. Alpine is also willing to continue its practice of having shares to fully cover its open positions in its account at DTC before submitting the trade to NSCC, during the duration of the stay, or to release the shares from its DTC account to NSCC's account before settlement. In these circumstances, there is no actual prejudice to NSCC or any other member from a stay.

**D. The Public Interest Favors a Stay.**

The public interest favors fair competition, choice and open access to a variety of different trading markets. Alpine is one of the last clearing firms willing and able to clear trades in OTC and microcap stock. It is not in the public interest to deprive Alpine or its customers access to NSCC's CNS system to process these trades because Alpine lacks the current capital to pay an admittedly unnecessary Backtesting Charge for a long-closed position. Rather, the public interest favors staying that Backtesting Charge until Alpine's Application is decided and/or until the Commission has had an opportunity to evaluate NSCC's proposal to eliminate the very charge that may force Alpine to close its doors.

**CONCLUSION**

For the forgoing reasons, Alpine's Emergency Motion for an Interim Stay and Other Appropriate Commission Relief should be considered on an expedited basis and granted.

DATED this 28th day of October, 2022.

**PARSONS BEHLE AND LATIMER**

*/s/ Aaron D. Lebenta*

\_\_\_\_\_  
Aaron D. Lebenta

**MARANDA FRITZ, P.C.**

*/s/ Maranda E. Fritz*

\_\_\_\_\_  
Maranda E. Fritz

*Counsel for Alpine*

**ATTORNEY CERTIFICATION**

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that the foregoing document contains 5,944 words, exclusive of the tables of contents and authorities, caption, and certificates.

**PARSONS BEHLE AND LATIMER**

*/s/ Aaron D. Lebenta*

\_\_\_\_\_  
Aaron D. Lebenta

*Counsel for Alpine*

**CERTIFICATE OF COMPLIANCE**

I, Aaron D. Lebenta, certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

**PARSONS BEHLE AND LATIMER**

*/s/ Aaron D. Lebenta*

\_\_\_\_\_  
Aaron D. Lebenta

*Counsel for Alpine*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served on the following on this 28th day of October, 2022, in the manner indicated below:

Securities and Exchange Commission  
Vanessa Countryman, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(Via eFap filing system, and courtesy email to [apfilings@sec.gov](mailto:apfilings@sec.gov))

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Counsel for NSCC

*/s/ Aaron D. Lebenta*  
\_\_\_\_\_  
Aaron D. Lebenta

# **EXHIBIT 1**

## **Declaration of Counsel in Support of Alpine's Motion for an Emergency Stay**

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*Attorneys for Petitioner*

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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of  
  
ALPINE SECURITIES CORPORATION, a  
Utah limited liability company  
  
For Review of Adverse Action Taken By  
  
NATIONAL SECURITIES CLEARING  
CORPORATION

**DECLARATION OF COUNSEL IN  
SUPPORT OF ALPINE'S MOTION  
FOR AN EMERGENCY INTERIM  
STAY AND OTHER APPROPRIATE  
COMMISSION RELIEF**

I, Aaron D. Lebenta, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. My name is Aaron D. Lebenta, and I am a resident of Salt Lake County, Utah, am over 18 years of age, and make the statements herein based on my personal knowledge.
2. I am one of the attorneys representing Alpine Securities Corporation ("Alpine") in the above-entitled matter, and am familiar with all the pleadings and filings in this matter.
3. Attached hereto as Exhibit A is a true and correct copy of Alpine's Application

for Review, filed in this Administrative Proceeding File No. 3-20238, on March 2, 2021.

4. Attached hereto as Exhibit B is a true and correct copy of Alpine's Motion for an Interim Stay, including all exhibits, filed in this Administrative Proceeding File No. 3-20238, on March 5, 2021.

5. Attached hereto as Exhibit C is a true and correct copy of Alpine's Certificate of Service of its Motion for Interim Stay, along with a true and correct copy of the email serving and filing the foregoing pleading with the Commission and counsel for NSCC via email at [apfilings@sec.gov](mailto:apfilings@sec.gov).

6. Attached hereto as Exhibit D is a true and correct copy of the Objection of NSCC to Alpine's Application for Review and Motion for an Interim Stay, filed by NSCC in this Administrative Proceeding File No. 3-20238, on March 12, 2021.

7. Attached hereto as Exhibit E is a true and correct copy of Alpine's Reply Memorandum in Support of its Motion for an Interim Stay, filed in this Administrative Proceeding File No. 3-2023, on March 18, 2021.

8. Alpine's Application has been submitted and its Motion for an Interim Stay has been fully briefed and ready for a decision since March 18, 2021. Nevertheless, to my knowledge there has been no decision or other Commission action on Alpine's Application for Review or Alpine's March 5, 2021 Motion for an Interim Stay.

WHEREFORE, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of October, 2022.

/s/ Aaron D. Lebenta

Aaron D. Lebenta

*[electronically signed with permission]*

# **EXHIBIT A**

## **Alpine's Application for Review**



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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of  
  
ALPINE SECURITIES CORPORATION, a  
Utah limited liability company  
  
For Review of Adverse Action Taken By  
  
NATIONAL SECURITIES CLEARING  
CORPORATION

**APPLICATION FOR REVIEW**

**Oral Argument Requested**

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To: The Office of the Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**PLEASE TAKE NOTICE** that Alpine Securities Corporation (“**Alpine**”) hereby applies for review, pursuant to Section 19(d) and (f) of Securities Exchange Act of 1934 (the “Exchange Act”), of certain “Required Deposit” charges imposed by the National Securities Clearing Corporation (“NSCC”), a registered clearing agency, under a newly approved rule change (SR-NSCC-2020-003) which are onerous, discriminatory and otherwise inconsistent with the requirements of the Exchange Act, and which result in a denial or limitation of Alpine’s access to services at NSCC, as set forth below.<sup>1</sup>

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<sup>1</sup> In light of the two-page limitation on this Petition for Review in Rule of Practice 420(c), Alpine requests an opportunity to provide further briefing and evidence, as well as oral argument, to aid the Commission in its consideration of these issues.

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

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<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

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<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*

# EXHIBIT A



## NSCC RISK MARGIN COMPONENT GUIDE

**PUBLICATION DATE: FEBRUARY 1, 2021**

### ***Important Notice***

This document and the information described herein is provided as a convenience to NSCC Members and is for informational purposes only. This document should not be regarded as a definitive or exhaustive description of NSCC's clearing fund methodology or risk-management framework; nor should it be regarded as a substitute for the NSCC Rules and Procedures ("Rules"), which governs in all respects the relationship between NSCC and its Members. Members should refer to the NSCC Rules for a complete statement of NSCC procedures, rights, obligations, and requirements.

Notwithstanding anything stated herein, NSCC retains all discretion and rights set forth in the NSCC Rules. Nothing in this document shall be deemed to impose any obligations on NSCC that are not set forth in the NSCC Rules, and in the case of any discrepancy between this document and the NSCC Rules, the NSCC Rules shall govern.

This document may be amended at any time without prior notice and the risk-management practices described herein may be changed at any time without update to this document.

ADVANCING FINANCIAL MARKETS. TOGETHER.™

DTCC Public (White)

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## Introduction

On a daily basis NSCC calculates a Clearing Fund requirement for each Member based upon their unsettled and pending transactions, using the prior day's securities closing market price. The formula uses a risk-based methodology and includes a number of components.

Some of these components are described in this document, including the volatility charges, mark-to-market charges, fail charges (for CNS transactions), a charge for Family-Issued Securities to mitigate specific wrong way risk, a charge for Illiquid Positions, a charge to mitigate day over day margin differentials, a coverage component, and a Backtesting Charge. In addition, NSCC may impose a premium charge when a Member's Required Fund Deposit exceeds its excess net capital.

Not all required components to the Clearing Fund or other Clearing Fund deposit requirements are described in this document; NSCC may require additional deposits to a Member's Clearing Fund, as described in the NSCC Rules.

## 1 Volatility Component

### 1.1 Overview of Methodology

The volatility component of each Member's Required Deposit is designed to measure market price volatility and is calculated for Members' Net Unsettled Positions. The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of confidence.

The volatility component applicable to most Net Unsettled Positions is calculated utilizing a parametric Value-at-Risk ("VaR") model and is referred to as the VaR Charge. Net Unsettled Positions in certain securities are excluded from this calculation and are instead charged a haircut-based charge as the volatility component.

The volatility component usually comprises the largest portion of a Member's Required Deposit. The volatility component is described in Procedure XV, I(A)(1)(a) and I(A)(2)(a) of the NSCC Rules.

### 1.2 In-Scope Products and Process

Securities that are eligible to be cleared at NSCC can generally be classified into two broad categories: equity and fixed income instruments. Equity securities can be considered either liquid or illiquid, which include, for example, OTC stocks, IPOs, and some micro-cap stocks. Fixed income securities can include, for example, corporate bonds, municipal bonds and other types of securities that are non-corporate/non-municipal securities. Examples are unit investment trusts, preferred stock, or other fixed income securities that are amenable to generally accepted statistical analysis only in a complex manner.

Generally, liquid equity securities are subject to the VaR Charge, which uses a parametric VaR approach with a number of flooring mechanisms which each targets a specific risk driver; and both illiquid equity securities as well as fixed income securities are subject to a haircut-based volatility charge.

### 1.2.1 Equity Margining

All equities, other than those that are "Illiquid Securities", as defined in the NSCC Rules are classified as liquid securities (subject to further segmentation, see below). In general, these securities include securities that are traded on the national securities exchanges with its first available price more than 30 business days ago in the FAME historical price file over the past 153 business days. These securities are subject to the VaR Charge, which utilizes a parametric method with additional components of a Volatility Floor, Gap Risk, and Margin Floor.

A haircut-based charge is applied as the volatility component for equities that are considered Illiquid Securities. The following securities are considered Illiquid Securities:

- In general, equity securities traded on a national securities exchange that do not meet the available pricing criteria are classified as an Initial Public Offering ("IPO") and considered Illiquid Securities.
- Securities for which there is no price data from the FAME historical price file for the day are generally considered Illiquid Securities.
- Securities that are not listed on a national securities exchange and are traded in over-the-counter marketplaces will also be considered Illiquid Securities.
- In addition, certain securities traded on a national securities exchange will be subject to an illiquidity ratio test such that if the securities' illiquidity ratio is over a pre-defined threshold the securities will be considered Illiquid Securities.

### 1.2.2 Equity Segmentation Logic

As mentioned above certain equity securities traded on a national securities exchange are subject to an illiquidity ratio test and may be considered Illiquid Securities. This is done in the following two steps.

#### 1.2.2.1 Market Capitalization Tier

A security's market capitalization is calculated as the product of its shares outstanding and its closing market price. All liquid securities as defined above are grouped into 4 tiers as follows:

- 1) Large Cap & Mid Cap Stocks: Average Market Cap  $\geq$  \$2 billion
- 2) Small Cap Stocks: \$300 million  $\leq$  Average Market Cap  $<$  \$2 billion
- 3) Microcap Stocks: Average Market Cap  $<$  \$300 million or unavailable
- 4) ETPs

where the 'Average Market Cap' is the month average as of close of business on the last business day of the previous month.

#### 1.2.2.2 Illiquidity Ratio test

Microcap Stocks and ADRs are subject to illiquidity ratio test specified below and considered Illiquid Securities if the illiquidity ratio is over a pre-defined threshold.

The illiquidity ratio<sup>1</sup> is a liquidity indicator by measuring the security's price impact from trading, defined as the following:

$$\text{DailyIlliquidityRatio} = \text{abs}(\text{DailyLogReturn}) / \text{AverageDailyTradingAmount}$$

The '*AverageDailyTradingAmount*' is calculated as the average of the previous 20 days' trading volume. In actual usage, the illiquidity ratio is scaled up by a factor of 10<sup>6</sup>. In case there is missing information for the daily illiquidity ratio calculation, its *DailyIlliquidityRatio* for that day will be defaulted to a conservative level of 100.

Any security with 6 months' median illiquidity ratio over a pre-defined threshold is re-classified as an Illiquid Security. The classification is then carried through the following month.

For CUSIP changes that occur intra-month, i.e. if the market cap and illiquidity ratio were unavailable for the new CUSIP at the previous month end, however the current daily market cap is available, then the liquid/ illiquid classification for the outgoing old CUSIP, where available, is carried over for the new CUSIP for the remaining of the month.

### 1.2.3 Fixed Income Margining

There are generally three categories of fixed income securities that are eligible to be cleared at NSCC: (1) corporate bonds, (2) municipal bonds, and (3) other fixed income securities (non-corporate/non-municipal securities). A haircut-based volatility charge applied to all fixed income securities. Specific haircut rates depend on the category of the security.

The haircut rates for corporate bonds are derived from the maturity/credit rating category into which that bond is classified. For municipal bonds, the haircut rates depend on bond maturity, credit rating and the bond's sector. All other non-corporate/non-municipal bond fixed income securities are subject to a single haircut rate.

## 1.3 Equity Volatility Component Calculations

### 1.3.1 VaR Charge

NSCC uses a parametric VaR methodology to calculate the VaR Charge for liquid equity<sup>2</sup> positions. Parametric VaR is assessed by simultaneously calculating four separate VaR types – (i) an exponentially-weighted moving average ("EWMA") volatility estimation, (ii) an evenly-weighted volatility estimation (aka, volatility floor), (iii) a gap risk measure, and (iv) a portfolio margin floor. The highest resultant value among all of the parametric VaR calculations becomes the surviving parametric VaR that is applied to the start-of-day liquid equity position.

#### Parametric VaR Calculation

The parametric VaR for a given Member's liquid security portfolio,  $VaR_P$ , is calculated as follows:

$$VaR_P = f_{fat-tail} \times 2.327 \times \sqrt{3} \times \sqrt{\text{Variance}(P)}$$

<sup>1</sup> Amihud, Yakov 'Illiquidity and Stock Returns: Cross-Section and Time-Series Effects.' J. Financial Markets 5 (January 2002)

<sup>2</sup> In this document, the concept of liquid/illiquid is for equity securities only. Therefore, the terms "liquid (illiquid) equity" and "liquid (illiquid) security" are interchangeable.

where 2.327 represents the 99<sup>th</sup> percentile of the Normal distribution,  $\sqrt{3}$  is a time scaling factor for the 3-day risk horizon, and  $f_{fat-tail}$  is an adjustment factor from Normal distribution to corresponding Student's t distribution. The adjustment factor is subject to quarterly review and update. The current value is 1.1428.

Note that the variance is calculated with a decay factor and a lookback period, as follows:

$$Variance = \frac{1}{\theta} \sum_{k=0}^{\omega-1} \lambda^k \left( \sum_{i=1}^N (v_i \times r_i(k)) \right)^2$$

where

$\lambda$ : decay factor

$\omega$ : look-back window size for EWMA decay factor

$r_i(k)$ : the 1-day return of the  $i$ th equity in the portfolio on the  $k$ th day counting backward, based on FAME corporate action adjusted historical prices

$v_i$ : the position value of the  $i$ th equity in the portfolio

and

$$\theta = \sum_{k=0}^{\omega-1} \lambda^k$$

The core parametric VaR is the larger of the base VaR and the Volatility Floor, where

1. the base VaR is calculated with  $\lambda = 0.97$  and  $\omega = 152$
2. the Volatility Floor is calculated with  $\lambda = 1$  and  $\omega = 252$

### 1.3.2 Bid-Ask Spread

A bid-ask spread is explicitly assessed for both EWMA VaR and Volatility Floor. This is achieved by adding a bid-ask cost amount equal to the gross un-settled position, multiplied by a bid-ask haircut equivalent to half of a bid-ask spread estimation.

More specifically, the bid-ask charge is calculated based on the gross market value of a portfolio's position in each of the four asset tiers as defined in 1.2.2.1.

The bid-ask spread charge is calculated as:

$$Bid - Ask Spread Charge = \sum_{i=1}^4 Gross\ Market\ Value_i \times BidAsk\ haircut_i$$

An example of the bid-ask haircut levels is shown in the following table.

Tier	Transaction cost haircut (bps)
Tier 1: Large & Mid	5.06
Tier 2: Small Cap	13.67



Tier 3: Micro Cap	23.30
Tier 4: ETP	1.85

### 1.3.3 Gap Risk

The gap risk measure is designed to ensure that NSCC collects enough margin to cover the idiosyncratic price movement of the most concentrated position in the guaranteed portfolio.

NSCC defines the gap risk as follows:<sup>3</sup>

$$\text{gap risk}(c, g) = \begin{cases} g \times \max_i |MV_i|, & \text{when } \frac{\max_i |MV_i|}{\sum_i |MV_i|} > c \\ 0, & \text{otherwise} \end{cases}$$

where

$c$  = concentration level, which is the % threshold of the top non-ETF concentrated position in the portfolio, beyond which Gap Risk would be assessed for the portfolio. Currently, it is set to 10%.

$g$  = gap size, which is the haircut applied to the top concentrated position in the portfolio. Currently, it is set to 16%<sup>4</sup>.

$MV_i$  = market value of position  $i$ .

### 1.3.4 Margin Floor

To address the remaining idiosyncratic and other risk factors in the portfolio not accounted for in the other VaR calculations, NSCC utilizes a portfolio-level margin floor, parameterized as a combined margin haircut on the value of net directional market exposure and the value of balanced market exposures, respectively. These margin haircuts are equivalent to the reciprocal of the directional or balanced Leverage Ratios.

First, the net directional market value of the portfolio is calculated by taking the absolute difference between the market value of the long net unsettled positions and the market value of the short net unsettled positions in the portfolio and then multiplying that amount by a percentage.<sup>5</sup>

<sup>3</sup> While positions in ETPs are generally excluded from the calculation of the Gap Risk measure, NSCC does maintain a list of ETPs that will be subject to Gap Risk measure. Both the concentration level and gap size are subject to reassessments and updates.

<sup>4</sup> Both the gap threshold and the gap size (haircut) are subject to annual review.

<sup>5</sup> NSCC determines the applicable percentage by examining the annual historical volatility levels of benchmark indices over a historical look-back period.

Second, NSCC calculates the balanced market value of the portfolio by taking the lowest absolute market value of long net unsettled positions and short net unsettled positions in the portfolio and then multiplying that value by a percentage.<sup>6</sup>

More specifically,

$$\text{margin floor}(HC_d, HC_b) = GMV_d \times HC_d + GMV_b \times HC_b = \frac{GMV_d}{LV_d} + \frac{GMV_b}{LV_b}$$

where

$HC_d$ <sup>7</sup>: haircut rate on directional market value<sup>8</sup>

$HC_b$ : haircut rate on balanced market value

$GMV_d$ : directional gross market value,  $||GMV_{long}| - |GMV_{short}||$

$GMV_b$ : balanced gross market value,  $\min(|GMV_{long}|, |GMV_{short}|)$

### 1.3.5 Final Parametric VaR

NSCC takes the highest result of the calculation of the core parametric VaR, the Gap Risk measure and the margin floor as the final parametric VaR Charge.

NSCC calculates the parametric VaR at the individual Account level and sums up to the Member level.

### 1.3.6 Missing Security Return Filing

In calculating the VaR Charge, if the price return cannot be computed for a security due to inaccurate or incomplete data, the following procedure is followed:

- Calculate the front weighted correlations of this CUSIP with the list of indexing CUSIPs in the table below as follows:

Step 1: Exclude any index ETF CUSIPs with less than n days of price history from FAME, where n is the length of the estimation window.

Step 2: Calculate 1-day log returns for each CUSIP as well as the index ETF for each historical business day

$$r_t = \ln\left(\frac{p_{t+1}}{p_t}\right) \quad (\text{Eqn. 1.3.1})$$

where  $P_t$  represents the historical price on business date t.

<sup>6</sup> NSCC determines the applicable percentage to be an amount that covers the transaction costs and other relevant risks associated with the positions in the portfolio.

<sup>7</sup> Haircuts are equivalent to the reciprocal of Leverage Ratios (LV).

<sup>8</sup> Margin floor haircut rates are subject to annual review.

Step 3: For each CUSIP and index ETF pair ( $i, l$ ), calculate the correlation:

1. Calculate the front-weighted mean of each CUSIP and index ETF pair

$$\bar{r}_i(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times r_{i,T_0-k} \quad (\text{Eqn. 1.3.2})$$

$$\bar{r}_l(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times r_{l,T_0-k} \quad (\text{Eqn. 1.3.3})$$

where  $i$  represents CUSIP and  $l$  represents index ETF,  $T_0$  stands for date of the calculation, and  $N$  is the number of days between the earliest date when a return was calculation in step 2 and  $T_0 - 1$  for CUSIP. And  $I_{T_0-k}$  is the indicator function and

$$I_{T_0-k} = \begin{cases} 0, & \text{when } r_{i,T_0-k} \text{ is missing} \\ 1, & \text{otherwise} \end{cases} \quad (\text{Eqn. 1.3.4})$$

As any missing return will have no contribution to the mean calculation, any missing return in the mean calculation can be simply filled with zero.  $\theta$  is default to the same decay factor as the VaR Charge. Please note that the same indicator function is used in both (Eqn. 1.3.2) and (Eqn. 1.3.3).

2. Calculate the front-weighted standard deviation and covariance

$$\sigma_i(T_0) = \sqrt{\frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{i,T_0-k} - \bar{r}_i(T_0))^2} \quad (\text{Eqn. 1.3.5})$$

$$\sigma_l(T_0) = \sqrt{\frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{l,T_0-k} - \bar{r}_l(T_0))^2} \quad (\text{Eqn. 1.3.6})$$

$$\sigma_{i,l}(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{i,T_0-k} - \bar{r}_i(T_0)) \times (r_{l,T_0-k} - \bar{r}_l(T_0)) \quad (\text{Eqn. 1.3.7})$$

where  $\bar{r}_i(T_0)$  and  $\bar{r}_l(T_0)$  are calculated in (Eqn. 1.3.2) and (Eqn. 1.3.3) separately, and  $I_{T_0-k}$  is specified in (Eqn. 1.3.4). As mentioned, that there is no impact on the variance or covariance, the missing return can be simply filled with zero.  $\sigma_i(T_0)$  is calculated differently for different  $r_i$  series when having less than  $n$  returns. The  $r_{i,T_0-k}$  terms in  $\sigma_l(T_0)$  calculation must match  $r_{l,T_0-k}$ . In other word,  $I_{T_0-k}$  is determined by if  $r_i$  is missing and shared across Eqn. 1.3.5, Eqn. 1.3.6 and Eqn. 1.3.7 above.

3. Calculate the correlation

$$\text{Corr}_{i,j}(T_0) = \frac{\sigma_{i,j}(T_0)}{\sigma_i(T_0) \times \sigma_j(T_0)} \quad (\text{Eqn. 1.3.8})$$

where  $i$  represents the  $i$ -th CUSIP,  $j$  represents the  $j$ -th index ETF.

Table 1: Index ETF for Return Filling

CUSIP	Type of CUSIP	SYMBOL	DESCRIPTION
46090E103	Liquid	QQQ	PowerShares QQQ Trust, Series 1 (ETF)
78467X109	Liquid	DIA	SPDR Dow Jones Industrial Average ETF
78462F103	Liquid	SPY	SPDR S&P 500 ETF
81369Y605	Liquid	XLF	Financial Select Sector SPDR (ETF)
81369Y506	Liquid	XLE	Energy Select Sector SPDR (ETF)
464287655	Liquid	IWM	iShares Russell 2000 Index (ETF)

- Select the index ETF CUSIP with the maximum correlation. i.e.  $\max(\text{abs}(\text{correlations}))$
- If this indexing CUSIP has a correlation value greater or equal to the value of the CutoffCorrelation parameter, then replace the missing return with the return of the index times the SIGN of the correlation between the index and the individual CUSIP. The initial value of the CutoffCorrelation is set to 0.3. If this indexing CUSIP has a correlation value of less than the value of CutoffCorrelation parameter, then replace the missing return with a zero. This can be expressed as:

if  $\max(\text{abs}(\text{correlation})) \geq \text{CutOffCorrelation}$   
then if  $\text{correlation} \geq 0$ , then replace it with  $\text{indexing-CUSIP-return}$   
else replace it with  $(-1 * \text{indexing-CUSIP-return})$   
else replace it with 0

### 1.3.7 Illiquid Securities

Illiquid Securities are margined with haircut approach. While the price of a sub-penny stock cannot drop more than 100%, the price for a sub-penny stock frequently moves up over 100%. Thus, NSCC further segments the direction of the transaction (long vs. short) for sub-penny stocks.

For each participant, the Illiquid Security margin charge is calculated as:

$$\text{Illiquid Security Charge} = \sum_{\text{illiquid equity } i} \text{Haircut}(i) \times \text{ABS}(\text{Market Amount}(i))$$

For an example of the Illiquid Security haircut schedule, please see [Appendix A](#).



## 1.4 Fixed Income Volatility Component Calculations

NSCC calculates the haircut-based volatility charge on fixed income securities at the individual Account level and sums up to the Member level.

### 1.4.1 Calculation Methodology for Corporate Bonds

Corporate bonds are categorized according to their time to maturity as of the latest trading date<sup>9</sup> and credit rating. Please see [Appendix B](#) for a detailed breakdown of the indices and haircut rates that are currently utilized, as of the publication date of this document<sup>10</sup>.

The total volatility charge for positions in corporate bonds is equal to the sum of charges for each category, as described below:

$$chrg(\text{corporate bonds}) = \sum_{i=1}^{36} (hr_{long}(i) \times |v_{long}(i)| + hr_{short}(i) \times |v_{short}(i)|),$$

where  $v_{long}(i)$  and  $v_{short}(i)$  are respectively the total market values of long and short positions in bucket  $i$ .

### 1.4.2 Calculation Methodology for Municipal Bonds

Municipal bonds are grouped according to credit rating, remaining time to maturity as of the latest trading date and separately categorized by municipal sector.

The charge for a Member is obtained by aggregating the CUSIP-level charge contributions:

$$Muni\ Bond\ Chrg = \sum_{\text{muni bonds } b \text{ in part.portfolio}} hrc(b) \times ABS(\text{Market Amount}(b))$$

Please refer to [Appendix C](#) for details.

If the maturity date is unavailable, the haircut rate is set to that of longest tenor category.

### 1.4.3 Calculation Methodology for Other Fixed Income Securities

All fixed-income securities that are not classified as corporate bonds or municipal bonds are subject to a haircut as follows:

$$\begin{aligned} Non\ Corp/Non\ Muni\ Chrg \\ = haircut \times \sum_{\text{non-corp non-muni bond } i} ABS(\text{USD Position Amount}(i)) \end{aligned}$$

Currently, the haircut rate is 3.5%, but the value is updated annually.

<sup>9</sup> The time to maturity is calculated as of the latest trading date. For example, at the end of day on 9/1/2020, the latest trading date is 9/1/2020; at the start of day on 9/2/2020, the latest trading date is also 9/1/2020.

<sup>10</sup> Corporate bond and muni bond haircut rates are reviewed and updated on a quarterly basis.

## 1.5 Family-Issued Securities Volatility Component Calculation

NSCC assesses a haircut-based volatility charge of no less than 80.0% on positions held in a Member's Family-Issued Securities (or "FIS", as defined in the NSCC Rules). The Family-issued Securities Charge is calculated to mitigate specific wrong-way risk to securities issued by Members or their affiliates.

NSCC removes all long Net Unsettled Positions in FIS from the VaR Charge calculation and assesses a haircut-based volatility charge on these positions based on the asset class of the security.

	<b>Fixed Income Family-Issued Securities</b>	<b>Equity Family-Issued Securities</b>
Long Positions	80.0% haircut	100.0% haircut
Short Positions	Not subject to this separate volatility charge.	Not subject to this separate volatility charge.

## 1.6 Margin Liquidity Adjustment

NSCC uses a base-line Margin Liquidity Adjustment (MLA) model to account for the potential additional market impact costs associated with liquidating a portfolio that is relatively large in size with respect to available market-wide liquidity.

### 1.6.1 Portfolio segmentation

To calculate MLA, a member's portfolio is first segmented into the following tiers (note there are additional tiers here in comparison to segmentations used in earlier sections such as 1.2.2.1 and 1.3.2):

- Tier 1 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$10 billion
- Tier 2 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$2 billion and  $<$  \$10 billion
- Tier 3 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$300 million and  $<$  \$2 billion
- Tier 4 – Liquid Equity and Equity based ETP with market capitalization  $<$  \$300 million
- Tier 5 – Treasury based ETP
- Tier 6 – All ETP not in tier 1-5, and 71 & 81
- Tier 71– MUNI bond based ETP
- Tier 81– Corp. bond based ETP
- Tier 7– Corp. bonds
- Tier 8 – MUNI bonds
- Tier 9 – Non-Corp/Non-Muni
- Tier 10 – Illiquid Equity
- Tier 11 – ETF creation/redemption transactions (Basket ETF only)

### 1.6.2 VaR Allocation

Next, for liquid equity tiers (1-6, 71, 81, 11) we need to allocate the member VaR, this is performed by:

1. Aggregate a member's sub-account VaR for business day t:

$$member_{VaR} = sum(subaccount_{VaR})$$

2. Calculate an independent tier level VaR using the current liquid equity VaR model for each member and each tier. As an example, member XYZ has 5 tiers on day t, then we need to calculate VaR for each of the 5 tiers as of this day, the VaR calculation would include the EWMA, Evenly Weighted (Vol. Floor), Margin Floor and Gap Risk components.
3. Based on the independent tier level VaR, proportionally allocate the member's total VaR to the tier level. More specifically, this is done as:

$$VaR_{perc\_g} = VaR_{standalone\_g} / \sum_{g=1-6,71,81,11} VaR_{standalone\_g}$$

$$allocated\ VaR_g = Member\ VaR \times VaR_{perc\_g}$$

4. Calculate 1-day VaR from the 3-day VaR in step 3, this is calculated as  $VaR/sqrt(3)$ .

### 1.6.3 MLA Calculation

The MLA charge can be expressed as the following formula across all asset tiers in 1.6.1:

$$MLA_{Adj_{p,g}} = B_g \times \max \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i \omega_i^{\alpha+1} \right]^\delta \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^\alpha - 1, 0 \right)$$

where

$MLA_{Adj_{p,g}}$ : also expressed as  $f_g$ , this is the adjustment factor to be multiplied by the member tier 1-day VaR.

$B_g$ : asset tier coefficient to be provided by NSCC.

$\sigma_{1g}$ : 1-day volatility for each asset class

$h_{1p}$ : 1-day effective haircut, this value is calculated as  $\frac{Va_{1g}}{GM_g}$ ,  $Va_{1g}$  is the allocated 1-day member tier VaR as calculated per VaR Allocation in the previous section.

$\omega_i$ : the position weight of each CUSIP, calculated as  $\frac{GMV_i}{\sum GMV_i}$ , where  $i$  represents each individual CUSIP within the member tier portfolio.

$\delta$  is an indicator equals to 1 for Large, Medium, Small, and Micro Cap (or, tier 1-4) and 0 for the rest asset class group, this is equivalent to say, the value  $\omega_i$  is only calculated for tier 1-4; for the rest of tiers, the term  $[\sum_i \omega_i^{\alpha+1}]^\delta = 1$ .

$\alpha = 0.5$ , this is a fixed parameter.

$GMV_p$  represents the gross market value for the member tier.

$\theta_g$ : represents the % of assumed ADV to be liquidated.

$ADV_g$  represent the aggregated average trading volume for the asset class group.

And finally, the combined MLA charge for a member is calculated as:

$$MLA_{NSCC} = \sum_g v_g \cdot f_g + f_{Corp} * HC_{Corp} + f_{Muni} * HC_{Muni} + f_{Illiquid} * HC_{Illiquid} + f_{UIT} * HC_{UIT}$$

where  $v_g$  is the 1-day VaR for each asset member tier,  $f_g$  is the same as  $MLA\_Adj$  calculated per the previous section, and  $HC$  represents the haircut, or VaR for haircut assets.

#### Special handling for bond ETFs:

Corp bond ETF & Muni bond ETF are assigned to the Corp and Muni tier, therefore when the GMV is calculated for corp & muni bond, it is calculated as:

$$GMV_{corp} = GMV_{corp} + GMV_{corp\ ETF}$$

$$GMV_{muni} = GMV_{muni} + GMV_{muni\ ETF}$$

Moreover, the VaR for the respective bond and bond ETF portions are combined:

$VaR_{corp} = VaR_{corp} + VaR_{corp\ ETF}$ , where  $VaR_{corp\ ETF}$  is the allocated 1-day VaR for corp bond ETFs.

$VaR_{muni} = VaR_{muni} + VaR_{muni\ ETF}$ , where  $VaR_{muni\ ETF}$  is the allocated 1-day VaR for muni bond ETFs.

The effective haircut is then:

$$HC_{corp} = \frac{VaR_{corp}}{GMV_{corp}}, \quad HC_{muni} = \frac{VaR_{muni}}{GMV_{muni}}$$

#### Special handling for IPO:

When calculating the MLA charge for the Illiquid Equity tier, note that GMV ( $GMV_{illiquid}$ ) is calculated excluding IPO securities. Similarly,  $VaR_{10}$  is calculated as a haircut on pure illiquid positions, excluding IPO.

#### Special handling of ETF Creation and Redemption

It is expected that the removal of creation & redemption activities would reduce a member's overall GMV (Gross Market Value). However, if the removal of such activities increases the member's GMV, we leave such positions with the member portfolio.

In other words, if  $GMV$  (member liquid equity portfolio without C&R) >  $GMV$  (member liquid equity portfolio with C&R), then do not remove C&R from this member on this business day.

As an example, suppose we have the following two portfolios:

Portfolio A, the GMV of the portfolio was \$550, after taking out the C&R position, the remaining portfolio becomes \$50, in such case C&R position is taken out and separated into Tier 11.

cusip	CRRD pstn	non CRRD	CNS
c1	100	0	100
c2	100	-50	50
c3	100	0	100
c4	-300	0	-300
GROSS		50	550

In portfolio B, the GMV of the portfolio was \$50, after taking out the C&R position, the remaining portfolio is \$550, in this case we would not be separating the C&R position but instead allocating the entire portfolio into tier 1-10.

cusip	CRRD pstn	non CRRD	CNS
c1	100	-100	0
c2	100	-100	0
c3	100	-50	50
c4	-300	300	0
GROSS		550	50

#### 1.6.4 Kappa Adjustment

The MLA charge is further refined by introducing a Kappa adjustment factor. The Kappa adjustment is conditional on the  $(I/V)^*$  on the member tier level.

1. The value  $(I/V)^*$  ratio for kappa adjustment application is calculated by first calculating  $I_g^*$ , which then is divided by the tier 1-day VaR.
2. The estimated value  $I_g^*$  of market impact is calculated differently for liquid equity tiers and other tiers:

For tiers greater than 4 we calculate

$$I_g^* = 0.4 \sigma_{1g} GMV_p \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2}$$

For liquid equity tiers (tiers 1,2,3,4) we calculate

$$I_g^* = \begin{cases} \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^{3/2} \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right) & \text{if } B_g \times \frac{\left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^{3/2} \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right)}{0.7} + 0.4 > 0, \\ \text{then } VaR_g \times (B_g \times \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^{3/2} \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right)) / 0.7 + 0.4) & \\ \text{Else, } 0 & \end{cases}$$



Note that  $(I/V)^* = (I^*/V)$

3. The sums are taken across all tiers as in 1.6.1.
4. Use the ratio  $k^* = \frac{\sum_g I_g^*}{\sum_g VaR_g}$  to choose a value for kappa adjustment from the table:
5. in the following table: e.g. if  $(I/V)^* = 0.6$ , then Kappa = 93%

Lower Bound and Upper Bound (Left inclusive) of $I/V$		$\kappa$
0.0	0.5	100%
0.5	0.7	93%
0.7	1.2	86%
1.2	1.8	79%
1.8	2.8	71%
2.8	4.2	64%
4.2	6.5	57%
6.5	10.3	50%
10.3	17	43%
17	30	36%
30+		29%

6. The member's final MLA charge then becomes:

$$MLA\ Charge = MLA\ charge\ without\ kappa\ adjustment \times k$$

## 2 Mark to Market Component

### 2.1.1 Start of Day Mark to Market Charge

The mark-to-market ("MTM") component measures the unrealized profit or loss using the contract price versus the current market price (that is, the price for a security determined daily for purposes of the CNS system; generally that is the prior day's closing price). The MTM component is described in Procedure XV, I(A)(1)(b) and (c) and I(A)(2)(b) of the NSCC Rules.

The MTM charge is assessed on each Member's rolling two-day portfolio net of unsettled positions, including positions that fail in NSCC's Continuous Net Settlement system. The charge is calculated by taking the difference between the contract value of each position in the portfolio and the market value based on the prior day's closing market price.

CUSIP MTM credits and debits are first aggregated at the linked family account level. The main account MTM is equal to the sum of the MTM debits across link accounts, separated into three transaction types: regular way, when-issued, and Institutional Delivery Net ("ID Net"). The MTM debits calculated for regular way, when-issued, and ID Net transactions are summed to a total MTM charge.

MTM credits do not offset the total MTM charge; in the event the Member has an MTM credit when aggregated at the main account level, the MTM charge will be zero.

### 2.1.2 Intraday Mark to Market Charge

NSCC may require an additional Intraday MTM charge should NSCC deem it necessary or appropriate, for example, during times of extreme market volatility. The intraday MTM charge is described in Procedure XV, Section I(B)(5) of the NSCC Rules.

Intraday market moves and positions are tracked in fifteen-minute intervals and an additional MTM charge may be collected if the difference between most recent mark-to-market price of a Member's Net Unsettled Positions and the most recent observed market price exceeds a predetermined threshold.

The current threshold is 80% of the Member's volatility charge and may be reduced if NSCC determines that a reduction of the threshold is appropriate to mitigate risk during volatile market conditions.

### 3 Special Charge

NSCC may require an additional payment, or Special Charge, from Members in view of price fluctuations in or volatility or lack of liquidity of any security. NSCC shall make such determination based on the Member, the security type and concentration, CRRM or third-party credit ratings, or other factors. The Special Charge is described in Procedure XV, Section I(A)(1)(d) and I(A)(2)(c) of the NSCC Rules.

### 4 CNS Fails Charge Component

NSCC may be exposed to market risk when a Member fails to pay net settlement proceeds as a result of the non-delivery of securities by settlement date as well as when a Member fails in the delivery of securities on settlement date. To mitigate NSCC's exposure to CNS fails positions, which could be correlated to a Member's credit-worthiness, NSCC assesses the CNS Fails Charge. The CNS Fails Charge is described in Procedure XV, Section I(A)(1)(e) of the NSCC Rules.

The CNS Fails Charge is calculated by multiplying the current market value of a Member's aggregate CNS Fails Positions by a percent based on the Member's rating on the Credit Risk Rating Matrix ("CRRM"), as described below:

Member's CRRM Rating	CNS Fails Charge Haircut Rate
1-4	5.0% of the Member's aggregate CNS fails positions
5-6	10.0% of the Member's aggregate CNS fails positions
7	20.0% of the Member's aggregate CNS fails positions

The Credit Risk Rating Matrix is described in Rule 2B, Section 4 of the NSCC Rules.

## 5 Margin Requirement Differential (“MRD”) Component

NSCC may be exposed to market risk based on potential portfolio fluctuation as a Member executes trades throughout the day. Pursuant to Addendum K of the NSCC Rules, NSCC's general counterparty trade guaranty generally attaches immediately upon trade validation and before NSCC has collected the Member's required deposit. As a result, NSCC may be exposed to large un-margined intraday portfolio fluctuations before NSCC has collected the Member's clearing fund requirement the following morning.

The Margin Requirement Differential charge (“MRD”) is designed to help mitigate the risks posed to NSCC by day-over-day fluctuations in a Member's portfolio by forecasting future changes in a Member's portfolio based on a historical look-back at each Member's portfolio over a given time period. The MRD charge is described in Procedure XV, Section I(A)(1)(f) and 1(A)(2)(d) of the NSCC Rules.

The MRD charge is calculated based on the day-over-day positive changes in the Member's start of day<sup>11</sup> (“SOD”) volatility charge and MTM charge components, which are calculated based on the overnight or end of day (“EOD”) positions. For example, the position referred to by NSCC's system's SOD label on 7/1/2020 refers to the EOD position on 6/30/2020.

For any given calculation date,  $t$ , the MRD charge is calculated as follows:

1. Calculate the  $MRD_{VaR}$  and  $MRD_{MTM}$  sub-components,

$$MRD_{VaR}(t) = \frac{\sum_{i=0}^{99} \theta^i \times \max\{VaR(t-i, SOD) - VaR(t-(i+1), SOD), 0\}}{\sum_{i=0}^{99} \theta^i} \quad \text{(Eqn. 5.1)}$$

$$MRD_{MTM}(t) = \frac{\sum_{i=0}^{99} \theta^i \times \max\{CHRG_{MTM}(t-i, SOD) - CHRG_{MTM}(t-(i+1), SOD), 0\}}{\sum_{i=0}^{99} \theta^i}$$

where

- $i$  represents the number of business days look back relative to the calculation date, currently 100 days; For example, when  $i = 0$ ,  $VaR(t-i, SOD)$  represents the SOD Volatility charge as of the calculation date; when  $i = 1$ ,  $VaR(t-i, SOD)$  represents the SOD volatility charge one business day before the calculation date; etc;
  - $\theta$  is equal to 0.97 as default;
  - $VaR(d, SOD)$  is the SOD volatility charge as of business date  $d$ ; and
  - $CHRG_{MTM}(d, SOD)$  is the SOD MTM charge as of business date  $d$ .
2. Calculate the MRD charge by multiplying the sum of  $MRD_{VaR}$  and  $MRD_{MTM}$  sub-components with an MRD coefficient, which is 1.5 currently.

<sup>11</sup> Using the NSCC risk system convention.



$$MRD(t) = Coefficient \times [MRD_{VaR}(t) + MRD_{MTM}(t)]$$

The MRD charge is calculated at the Member level. There are four special treatments in this calculation.

1. On the first day of membership, the differences  $VaR(t - i, SOD) - VaR(t - (i + 1), SOD)$  and  $CHRG_{MTM}(t - i, SOD) - CHRG_{MTM}(t - (i + 1), SOD)$  in Eqns. 5.1 are replaced with zeros.
2. Apart from treatment above, if a member has less than 101 business days of MTM and Volatility charges, the missing values  $VaR(t)$  and  $MTM(t)$  in Eqns. 5.1 are replaced with zeros.

## 6 Coverage Component (“CC”) Charge

NSCC is exposed to a Member’s un-margined portfolio as a result of the timing when NSCC’s trade guaranty attaches to positions, which is immediately upon trade validation and prior to the collection of margin. Therefore, the Coverage Component (“CC”) charge is designed to mitigate the risks associated with a Member’s Required Fund Deposit being insufficient to cover projected liquidation losses to the coverage target, currently a 99 percent confidence level, by adjusting a Member’s Required Fund Deposit towards the target. The CC charge is described in Procedure XV, Section I(A)(1)(g) and I(A)(2)(e) of the NSCC Rules.

The CC charge supplements the MRD charge by preemptively increasing a Member’s Required Fund Deposit in an amount calculated to forecast potential deficiencies in the margin coverage of a Member’s guaranteed portfolio.

The CC charge is calculated by comparing the simulated liquidation profit and loss of a Member’s portfolio, using the actual positions and the actual historical returns on the positions, against the sum of each of the following Clearing Fund components: (i) volatility charge; (ii) MRD charge; and (iii) illiquid charge. For a given business day, NSCC determines a daily peak deficiency amount for each Member equal to the maximum observed deficiency over any of the prior 10 business days. The CC charge is equal to the front-weighted average of the peak deficiencies over the prior 100 business days.

The CC charge is calculated as follows:

1. For any given business day  $t$ , calculate the Peak Deficiency:

$$\begin{aligned} PeakDeficiency(t) &= MAX_{0 \leq i \leq 9} \{ -\min [VaR(t - 4 - i, SOD) \\ &\quad + Illiquid(t - 4 - i) + MRD(t - 4 - i) \\ &\quad + P\&L(t - 3 - i), 0] \} \end{aligned} \quad \text{Eqn. 6.1}$$

where

- $i$  represents the number of business days look back; For example, when  $i=0$ ,  $VaR(t - 4 - i, SOD)$  represents the SOD Volatility charge as of the business day of  $t - 4$ ; when  $i=1$ ,  $VaR(t - 4 - i, SOD)$  represents the SOD Volatility charge as of the business day  $t - 5$ ; and etc;
- $VaR(d, SOD)$  is the SOD Volatility charge as of the business day  $d$ ;
- $Illiquid(d)$  is the illiquid charge as of the business day  $d$ ;
- $MRD(d)$  is the MRD charge as of the business day  $d$ ; and

- $P\&L(d)$  is the 3-day liquidation profit or loss of the SOD position as of the business day  $d$ ;

## 2. Calculate the CC charge

$$CC(t) = \frac{\sum_{i=0}^{99} \theta^i \times \text{PeakDeficiency}(t - i)}{\sum_{i=0}^{99} \theta^i}$$

where

- $i$  represents the number of business days look back as of the calculation day  $t$ , For example, when  $i=0$ ,  $\text{PeakDeficiency}(t - i)$  represents Peak Deficiency as of the calculation day  $t$ ; when  $i=1$ ,  $\text{PeakDeficiency}(t - i)$  represents the Peak Deficiency as of the business day before the calculation day; and etc;
- $\theta$  is equal to 0.97 as default.

The CC charge is calculated at the NSCC Member level only. The P&L and relevant charges in the above calculation are the sum of the Member's subaccounts. The following special treatment is applied:

1. When there is less than 10 days of history for the Peak Deficiency calculation in Eqn. 6.1, actual number of history observations is used.
2. In case the history of peak deficiencies is shorter than 100 days for any Member, all the missing peak deficiencies are default to zeros.

## 7 Other Transactions Charge

An additional charge for transactions other than CNS transactions is based on the 20-day rolling average of the summed value of non-guaranteed settlement activities. This "Other Transactions" charge is described in Procedure XV, Section I(A)(3) of the NSCC Rules.

Daily Other Transactions charges range between 2.5% and 10.0% of the net debits and credits. Each of the current Non-CNS codes is described in [Appendix D](#).

Currently, for Members with a CRRM rating of 1 through 6, the charge takes the greater of the following, based on a 20-day rolling average of activity:

- 2.5% of the absolute value of debits + the absolute value of credits
- 5.0% of the absolute value of debits

Currently, for Members with a CRRM rating of 7, the charge is calculated by taking the 20-day rolling average of activity based on 10.0% of the absolute value of debits and the absolute value of credits.

## 8 Mutual Fund Transactions Charge

An additional charge is calculated for mutual fund transactions, referred to as the Fund/SERV charge. This charge is described in Procedure XV, Section I(A)(4) of the NSCC Rules.

The Fund/SERV charge is derived from a Member's daily settlement debits related to mutual fund activities and is tiered as follows:

- A. \$5,000 if daily mutual fund services settlement debits of no more than \$100,000 with respect to any one fund Member.
- B. \$10,000 if daily mutual fund services settlement debits of no more than \$500,000 with respect to any one fund Member.
- C. \$20,000 if daily mutual fund services debits of more than \$500,000 with respect to any one fund Member.

A daily monitoring 'snapshot' is performed at 12:00PM EST. When mutual fund settlement debits are greater than or equal to \$500 million, NSCC generally will confirm the amount with the Member.

**9 Excess Capital Premium (“CF Premium”) Charge**

NSCC may assess a CF Premium charge to mitigate risk presented by highly leveraged Members. The charge may be imposed when a Member’s applicable Required Fund Deposit (the aggregate unadjusted Required Fund Deposit minus any MRD charge, CC charge, and special charges) exceeds their excess net capital (“ENC”) for broker-dealers, or equity capital for bank Members. The CF Premium charge is described in Procedure XV, Section I(B)(2).

The CF Premium charge may be assessed based on the amount by which a Member’s applicable Required Fund Deposit exceeds its most recently reported regulatory capital balance (ENC or equity capital).

If the ratio of the Required Fund Deposit over the excess capital balance (the “excess capital ratio”) exceeds 1.0, a CF Premium charge may be calculated by multiplying the excess capital ratio by the amount by which the Required Fund Deposit exceeds the excess capital balance.

When the excess capital ratio exceeds 1.0, NSCC may calculate and assess the CF Premium charge as part of the Member’s start-of-day requirement.

Excess Capital Ratio	NSCC Action	Additional Clearing Fund Calculation
Excess Capital Ratio > 1.0	An excess capital premium may be imposed.	Multiply the amount of the CFR that is in excess of the reported capital balance by the Member’s excess capital ratio

**10 Backtesting Charge**

NSCC may require a Member to make an additional deposit in the form of a Backtesting Charge to mitigate exposures that may not be adequately captured by the volatility model as needed to achieve a 99 percent back testing coverage target. The charge may be assessed at the start of the day or on an intraday basis, as needed. The Backtesting Charge is described in Procedure XV, Section I(B)(3) of the NSCC Rules.

NSCC incorporates daily backtesting to ensure that the calculated Clearing Fund Required Deposit is sufficient to cover the potential loss the clearing corporation may be subject to in the event of a Member default. In order to calculate this charge, NSCC takes end-of-day, 11:00AM EST, and 2:00PM EST portfolio snapshots, then compares the Member's Required Fund Deposit to the profit and loss over a simulated three-day liquidation horizon; a deficiency occurs when a Member's Required Fund Deposit does not sufficiently cover the simulated loss on a portfolio.

NSCC routinely calculates the rolling 12-month coverage ratio of the Member for both the end-of-day and intraday backtests. Coverage is calculated as the percentage of non-deficiency backtest observations out of the number of backtest observations the Member has during the period. NSCC seeks to maintain 99.0% coverage at the Member-level.

Should the coverage ratio decline below 99.0% for either or both backtest types, NSCC may assess a backtest charge component such that, if applied retroactively, the Member would not have incurred enough deficiencies for the coverage ratio to decline below the 99.0% coverage target. Typically, the amount of the backtest charge component will be equal to the Member's third-largest end-of-day backtest deficiency and fifth-largest intraday backtest deficiency during the rolling twelve-month period.

NSCC may adjust the calculation and/or application of the charge in order to achieve its backtesting coverage target.

## 11 Bank Holiday Charge

NSCC does not collect margin or settle securities on a bank holiday, such as Columbus Day and Veterans Day, when the equities markets are open for trading, but the Board of Governors of the Federal Reserve observes a holiday and banks are closed. To address exposure from Members' trading activity on a bank holiday, NSCC may require its Members to make an additional Clearing Fund deposit (the "Bank Holiday Charge"). The Bank Holiday Charge is based on NSCC's assessment of market conditions at the time the charge is calculated and is assessed on the business day immediately prior to the bank holiday. NSCC communicates in advance to Members, via an Important Notice, the day on which the charge will apply, including the methodology<sup>12</sup> it will use to calculate the Bank Holiday Charge. The Bank Holiday Charge is described in Procedure XV, Section I(B)(4) of the NSCC Rules.

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<sup>12</sup> A methodology might include time scaling of the volatility charge or a using a stress scenario that reflects potential market price volatility on that holiday.

## 12 Appendices

The information provided in these Appendices is current as of the publication date of this document. This information may change from time to time following publication, without notice and without updates to this document. Notwithstanding anything stated in this document, NSCC retains any discretion provided to it in the NSCC Rules in calculating the charges described therein.

### Appendix A

Illiquid Security haircut schedule:

Price Range	Haircut Rate
Price <= \$0.01, Long	57%
Price <= \$0.01, Short	100%
\$0.01 < Price < \$1.00	60%
\$1.00 <= Price < \$5.00	34%
Price => \$5.00	15%

### Appendix B

Corporate Bond Mapping and Haircut Table

Illiquid Security Group Code	Merrill Lynch Index	Description of the Security Group	Positive haircut_rt	Negative haircut_rt
1	C1A1	0-1 year/AAA/Aaa	2.0%	2.0%
2	C1A2	0-1 year/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
3	C1A3	0-1 year/A+/A/A-/A1/A2/A3	2.0%	2.0%
4	C1A4	0-1 year/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
5	H0A0	0-1 year/BB & Lower	6.3%	6.9%
6	C1A1	1-3 years/AAA/Aaa	2.0%	2.0%
7	C1A2	1-3 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
8	C1A3	1-3 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
9	C1A4	1-3 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
10	H0A0	1-3 years/BB & Lower	6.3%	6.9%
11	C2A1	3-5 years/AAA/Aaa	2.0%	2.0%
12	C2A2	3-5 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
13	C2A3	3-5 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
14	C2A4	3-5 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%



15	H0A0	3-5 years/BB & Lower	6.3%	6.9%
16	C3A1	5-7 years/AAA/Aaa	2.0%	2.0%
17	C3A2	5-7 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
18	C3A3	5-7 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
19	C3A4	5-7 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
20	H0A0	5-7 years/BB & Lower	6.3%	6.9%
21	C4A1	7-10 years/AAA/Aaa	2.0%	2.0%
22	C4A2	7-10 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.1%
23	C4A3	7-10 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
24	C4A4	7-10 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.1%
25	H0A0	7-10 years/BB & Lower	6.3%	6.9%
26	C7A1	10-15 years/AAA/Aaa	3.4%	2.5%
27	C7A2	10-15 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.3%	2.2%
28	C7A3	10-15 years/A+/A/A-/A1/A2/A3	2.1%	2.2%
29	C7A4	10-15 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.1%	2.6%
30	H0A0	10-15 years/BB & Lower	6.3%	6.9%
31	C8A1	15+ years/AAA/Aaa	4.3%	3.6%
32	C8A2	15+ years/AA+/AA/AA-/Aa1/Aa2/Aa3	3.6%	3.4%
33	C8A3	15+ years/A+/A/A-/A1/A2/A3	3.8%	3.5%
34	C8A4	15+ years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	3.2%	3.5%
35	H0A0	15+ years/BB & Lower	6.3%	6.9%
36	H0A0	All others/Not Rated	6.3%	6.9%

## Appendix C

### Municipal Bond Haircut Table

Rating	Maturity	Sector	HC
Above BBB+	1-3 Yrs		2.00%
Above BBB+	3-7 Yrs		2.00%
Above BBB+	7-12 Yrs		2.25%
Above BBB+	12-22 Yrs		3.20%
Above BBB+	22+ Yrs		4.36%

BBB+ and below	1-3 Yrs	General Obligation	6.11%
BBB+ and below	1-3 Yrs	Health Care	6.11%
BBB+ and below	1-3 Yrs	High Yield	6.11%
BBB+ and below	1-3 Yrs	Higher Education	6.11%
BBB+ and below	1-3 Yrs	Housing	6.52%
BBB+ and below	1-3 Yrs	Land Backed	6.11%
BBB+ and below	1-3 Yrs	OTHER	6.11%
BBB+ and below	1-3 Yrs	Tobacco	6.63%
BBB+ and below	1-3 Yrs	Transportation	6.11%
BBB+ and below	1-3 Yrs	Utility	6.11%
BBB+ and below	3-7 Yrs	General Obligation	6.11%
BBB+ and below	3-7 Yrs	Health Care	6.11%
BBB+ and below	3-7 Yrs	High Yield	6.11%
BBB+ and below	3-7 Yrs	Higher Education	6.11%
BBB+ and below	3-7 Yrs	Housing	6.52%
BBB+ and below	3-7 Yrs	Land Backed	6.11%
BBB+ and below	3-7 Yrs	OTHER	6.11%
BBB+ and below	3-7 Yrs	Tobacco	6.63%
BBB+ and below	3-7 Yrs	Transportation	6.11%
BBB+ and below	3-7 Yrs	Utility	6.11%
BBB+ and below	7-12 Yrs	General Obligation	6.11%
BBB+ and below	7-12 Yrs	Health Care	6.11%
BBB+ and below	7-12 Yrs	High Yield	6.11%
BBB+ and below	7-12 Yrs	Higher Education	6.11%
BBB+ and below	7-12 Yrs	Housing	6.52%
BBB+ and below	7-12 Yrs	Land Backed	6.11%
BBB+ and below	7-12 Yrs	OTHER	6.11%
BBB+ and below	7-12 Yrs	Tobacco	6.63%
BBB+ and below	7-12 Yrs	Transportation	6.11%
BBB+ and below	7-12 Yrs	Utility	6.11%
BBB+ and below	12-22 Yrs	General Obligation	7.30%
BBB+ and below	12-22 Yrs	Health Care	7.30%
BBB+ and below	12-22 Yrs	High Yield	7.30%
BBB+ and below	12-22 Yrs	Higher Education	7.30%

BBB+ and below	12-22 Yrs	Housing	7.30%
BBB+ and below	12-22 Yrs	Land Backed	7.30%
BBB+ and below	12-22 Yrs	OTHER	7.30%
BBB+ and below	12-22 Yrs	Tobacco	7.30%
BBB+ and below	12-22 Yrs	Transportation	7.30%
BBB+ and below	12-22 Yrs	Utility	7.30%
BBB+ and below	22+ Yrs	General Obligation	9.26%
BBB+ and below	22+ Yrs	Health Care	9.26%
BBB+ and below	22+ Yrs	High Yield	9.26%
BBB+ and below	22+ Yrs	Higher Education	9.26%
BBB+ and below	22+ Yrs	Housing	9.26%
BBB+ and below	22+ Yrs	Land Backed	9.26%
BBB+ and below	22+ Yrs	OTHER	9.26%
BBB+ and below	22+ Yrs	Tobacco	9.26%
BBB+ and below	22+ Yrs	Transportation	9.26%
BBB+ and below	22+ Yrs	Utility	9.26%

## Appendix D

### Non-CNS Codes

Code	Data Group	Description
1	DTC Settlement	DTC BROAD MONEY SETTLEMENT
2	Clearance Cash Adjustment	CLEARANCE CASH ADJUSTMENT
5	ACATS	ACATS INTERFACE REJECTS
8	ACATS	ACATS NEXT DAY SETTLEMENT
11	Envelope	DIVIDEND SETTLEMENT SERV.
12	Envelope	FUNDS ONLY SETTLEMENT
13	Envelope	DSS RECLAMATIONS
16	CNS Reorganizations	CNS REORG MARK - DEBIT



Code	Data Group	Description
17	CNS Reorganizations	CNS REORG MARK - CREDIT
20	OW	RECAPS CASH ADJUSTMENTS
30	CDS Dividends	DTC CANADIAN DIVIDENDS
31	CDS Dividends	CNS CANADIAN DIVIDENDS
32	CDS Dividends	DSS CANADIAN DIVIDENDS
35	OTHER	OCC COLLATERAL PLEDGE
45	Fees	NASDAQ BX TRAN FEES
46	Fees	NASD REG-FEES
47	Fees	PSA REGULATORY FEES
48	Fees	NSE TRANSACTION FEES
49	Fees	CSE REGULATORY FEES
50	Fees	NYSE REGULATORY FEES
51	Fees	AMEX REGULATORY FEES
52	Fees	NASD REGULATORY FEES
53	Fees	PSE REGULATORY FEES
68	Tax	NYS TRANSFER TAX
70	Tax	NYS QUARTERLY TAX
71	Tax	NYS QUARTERLY TAX REFUND
74	OTHER	CLEARING FUND COUPON INT
80	Fees	NSCC MONTHLY BILLING
81	Floor Broker	NYSE COMMISSION BILLS
83	Fully Paid	FULLY PAID DEBITS
84	Fully Paid	FULLY PAID CREDITS
85	Floor Broker	AMEX COMMISSION BILLS

Code	Data Group	Description
91	OTHER	GCN CHARGES
96	OTHER	OPTIONAL SETTL SERVICE
97	OTHER	SUSPENSE
98	OTHER	PAYMENTS (FUNDS TRANSFER)
101	OTHER	RIO-DTC INTERFACE
111	Insurance	INSURANCE COMMISSIONS
112	Insurance	INSURANCE PREMIUMS
113	Insurance	LICENSING & APPT DETAIL
181	Floor Broker	NYSE COMM BILL CHARGES
185	Floor Broker	AMEX COMM BILL CHARGES
198	OTHER	DTC/CNS CREDITS

# **EXHIBIT B**

## **Alpine's Motion for an Interim Stay**

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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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<p>In the Matter of the Application of</p> <p>ALPINE SECURITIES CORPORATION, a Utah limited liability company</p> <p>For Review of Adverse Action Taken By</p> <p>NATIONAL SECURITIES CLEARING CORPORATION</p>	<p>Admin. Proc. File. No. 3-20238</p>
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**ALPINE'S MOTION FOR AN INTERIM STAY AND INCORPORATED  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

**Oral Argument Requested**

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Pursuant to SEC Rule of Practice 401, Alpine Securities Corporation (“Alpine”), requests an interim stay, until Alpine’s Application for Review is considered and decided, of the following actions taken by the National Securities Clearing Corporation’s (“NSCC”), purportedly pursuant to recent amendments to NSCC’s Rules and Procedures under SR-NSCC-2020-003 (the “Rule Change”), in calculating and assessing Alpine’s Required Fund Deposit (“Required Deposit”) margin charges: (a) implementing enhanced Haircut-Based Volatility Charge for Illiquid Securities (“New OTC Volatility Charge”); (b) using an artificial price per-share of \$.01 to calculate and assess Alpine’s Required Deposit for positions in sub-penny securities; (c) implementing substantive changes to the Margin Requirement Differential (“MRD”) charge, Coverage Component (“CC”) charge and Backtesting charge that were not approved by the Commission; (d) continuing to use the “Illiquid Charge” component to calculate the CC charge; and (e) retroactively applying the Rule Change in performing forecasting and/or backtesting when calculating and assessing Alpine’s Required Deposit.

As condition to the stay, Alpine would stipulate to continue its practice of maintaining sufficient shares to cover any open positions in its account at DTC before Alpine submits a trade for clearance and settlement through NSCC’s CNS system, and/or to release such shares from Alpine’s account at DTC to NSCC before the applicable settlement date. This will ensure that there is no risk of a failure to deliver or to NSCC’s ability to acquire the shares to close out any of Alpine’s short positions – the ostensible basis for the margin components described above.

NSCC began taking each of these challenged actions when it began implementing the Rule Change on February 1, 2021. As established herein, NSCC’s conduct contravenes the Exchange Act, and has resulted in a significant and impermissible limitation on Alpine’s access to NSCC’s essential clearing and settlement services.



## INTRODUCTION

Alpine is a small, self-clearing broker-dealer, engaged primarily in clearing liquidation (or sale-side) microcap or over the counter (“OTC”) stock transactions for other firms, including, frequently, stocks with a price less than \$.01/share. On March 2, 2021, Alpine filed an Application for Review with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(d) and (f) of Securities Exchange Act of 1934 (the “Exchange Act”), of the above-described actions taken by NSCC in calculating and assessing Alpine’s Required Deposit pursuant to the Rule Change.

The Required Deposit charges, which are imposed by NSCC as a condition to accessing its clearing and settlement services, are massive and disproportionately onerous, particularly in relation to the underlying transactions or positions to be cleared. In recent years, NSCC has made a determined effort to increase these charges against a specific, disfavored, segment of the market: the microcap and OTC market. NSCC requires those members who serve these markets, which are generally small broker-dealers like Alpine, to devote significant portions of their capital to serve as margin in the form of a Required Deposit. The regulatory costs of serving these markets have become so astronomical, in fact, that Alpine is one of a few remaining broker-dealers to service this vital market segment.

The Rule Change represents NSCC’s latest attempt to choke OTC and microcap stocks by further increasing the already excessive margin demands on transactions involving purported “Illiquid Securities,” which NSCC has defined to include microcap and OTC stocks. Alpine’s Required Deposit soared overnight once NSCC began implementing the Rule Change on February 1, 2021, so much so that Alpine has to further restrict trading by its customers due to the capital constraints of these margin charges. Thus, it is the customers who are unable to sell their stock because of NSCC’s fiction of a potential risk in Alpine’s trades.

Alpine meets all of the elements for a stay of the above-described actions by NSCC under the Rule Change. First, Alpine has a substantial likelihood of success on its Application because the margin charges, as designed and assessed by NSCC under the Rule Change, impermissibly limit Alpine's access to NSCC's clearing and settlement services, and contravene the purposes and requirements of the Exchange Act. 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 charges that are exponentially greater than the value of the position. NSCC made no attempt to justify this practice in the Rule Change.
- NSCC has not established that the purported risks, for which it imposed new margin charges under the Rule Change, “exist in fact.” NSCC identified no risk that justifies use of an increased fictional share price to calculate margin. In addition, NSCC claims that, for a “CNS” short (sell) position,<sup>1</sup> the margin is necessary to cover the risk that, in the event of a member default, it may have to buy-in the stock to cover the position between the date of NSCC's trade guaranty (T+0) and settlement (T+2).<sup>2</sup> 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 their customers, 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, CC, and Backtesting charges, which now purport to incorporate the New OTC Volatility Charge based upon artificially created volatility increases.

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<sup>1</sup> The term “CNS” refers to NSCC's Continuous Net Settlement system, through which virtually all trades of equity securities in America are settled.

<sup>2</sup> See SR-NSCC-2020-003, SEC Release No. 34-88474, 85 F.R. 17910, 17911 (March 31, 2020) (“Proposed Rule Change”); Order Approving Rule Change, at 3, 12, SEC Release No. 34-90502 (November 24, 2020).

- It is believed NSCC is impermissibly applying the New OTC Volatility Charge retroactively by using it in its “historical look-back” of Alpine’s portfolio in calculating and assessing increased CC, MRD and Backtesting Charges on Alpine.
- NSCC states that it is still using the “Illiquid Charge,” which was eliminated by the Rule Change, to calculate the CC charge.

Irreparable harm, by virtue of NSCC’s implementation of the new charges purportedly under Rule Change, is also evident. Since February 1, 2021, Alpine has had to frequently turn down customer orders to sell their OTC or microcap stocks because Alpine cannot afford the margin for the trade. Similar to what recently occurred at Robinhood due to restrictions from NSCC’s margin requirements, customers are left without the ability to sell.<sup>3</sup> As a result, Alpine has already lost revenue, customers, goodwill and reputation, and customers are unable to exercise their fundamental right to sell their stock. These harms are real, immediate and irreparable, and will get worse unless stayed.

Finally, a balancing of the equities favors a stay. An interim stay of the margin charges under the Rule Change would cause no harm to NSCC or the public. Not only were these new charges just implemented, but also there is *no risk* to NSCC or the public from a failure to cover on Alpine’s transactions where Alpine is long the stock to cover the position at DTC. Further, as indicated, Alpine is willing to stipulate to continue its practice of depositing stock in its account at DTC to fully cover the trade *before* submitting the trade to NSCC, and/or to release that stock to NSCC before settlement date. The public interest is also furthered by ensuring compliance with the law, fair competition, choice, and the continued ability to access and fully utilize *all* trading markets. These interests, shared by all participants in microcap markets, are being trampled by

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<sup>3</sup> See *Why Robinhood Had to Risk Infuriating its Customers*, available at <https://www.nytimes.com/2021/01/29/business/dealbook/robinhood-fundraise-customers.html>. (discussing Robinhood’s need to raise \$1 billion from investors to cover margin charges imposed by NSCC’s parent, the Depository Trust and Clearing Corporation (“DTCC”), due to trading surges in the Gamestop and AMC stocks).

NSCC's unlawful quest to destroy the small broker-dealers and trading in OTC and microcap stocks through excessive, and unnecessary, margin demands.

## **BACKGROUND**

### **A. Background of Alpine and the OTC Market**

To function as a clearing firm for its correspondent firms, Alpine must be a member of NSCC and access its services. Alpine is a clearing-broker member in good standing of the NSCC and a DTC participant.

Alpine's mission is to provide liquidity to microcap and OTC stocks.<sup>4</sup> There are more than 10,000 issued stocks trading in the OTC markets, over twice the number of exchange-listed companies. The aggregate value of OTCQX, OTCQB and Pink Securities was approximately \$ 375.2 billion in 2018.<sup>5</sup> Alpine facilitates tens of millions of dollars of capital financing for small business each month through the deposit, clearance and liquidation of microcap securities on behalf of its customers who provide direct financing to thousands of innovative, startup and early stage development business that operate in the U.S.<sup>6</sup> This is undeniably a critically important segment of the market, that represents the core of the U.S. economy and jobs.

However, as a direct result of NSCC's Required Deposit charges and other regulatory burdens, the number of small clearing-broker members of NSCC providing clearing services for firms and investors holding microcap or OTC stocks is down significantly. Major clearing firms, such as Merrill Lynch, Fidelity, Morgan Stanley and UBS, no longer service the OTC market. Online discount firms (e.g., E-Trade, Charles Schwab, etc.) do not process this business either.<sup>7</sup>

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<sup>4</sup> See Declaration of Christopher Doubek, at ¶ 7, attached hereto as Ex. A.

<sup>5</sup> See <https://www.prnewswire.com/news-releases/otc-markets-group-reports-2018-trading-statistics-and-highlights-300779908.html>

<sup>6</sup> Doubek Decl., at ¶ 8.

<sup>7</sup> *Id.*, ¶ 38.

Alpine is one of a few remaining broker-dealers to fully service this vital market segment – a breed of that is dying under this regulatory onslaught.

## **B. Alpine’s First Application for Review**

On December 19, 2018, Alpine filed an Application for Review pursuant to Sections 19(d) and (f) of the Exchange Act (“First Application”) challenging NSCC’s calculation and application of the certain components of the Required Deposit to microcap and OTC stocks as impermissibly limiting Alpine’s access to NSCC’s clearing services.<sup>8</sup> In short, Alpine claimed that NSCC assesses margin charges that are so excessive that they exceed the value of underlying transaction or position to be cleared by several orders of magnitude, and that this contravenes the Exchange Act by imposing an unreasonable and disproportionate burden on small clearing-broker members, such as Alpine, and reflecting a discriminatory and anticompetitive policy towards the microcap or OTC markets and their participants. Alpine’s First Application remains pending.

## **C. The Rule Change**

### **1. Promulgation of the Rule Change**

In March of 2020, NSCC filed the Proposed Rule Change, as SR-NSCC-2020-003, to “Enhance [NSCC’s] Haircut-Based Volatility Charge Applicable to Illiquid Securities.”<sup>9</sup> Alpine, and several broker-dealers and industry groups, submitted comment letters asking the SEC to disapprove the proposed rule change, including because of the lack of adequate justification for the change, and its unreasonable, discriminatory and anticompetitive impacts on the OTC/microcap markets, their participants, and the smaller broker-dealers who service this

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<sup>8</sup> See Administrative Proceeding File No. 3-18979. These components included: (1) The “Illiquid Charges,” and NSCC’s refusal to allow the DTC inventory offset for members that NSCC claimed to have weak credit ratings; (2) NSCC’s implementation of a secret “Credit Risk Matrix Rating” which NSCC used to determine whether to impose an Illiquid Charge; (3) NSCC’s imposition of “Excess Net Capital Premium” (“ENCP”); (4) NSCC’s calculation of the volatility and mark-to-market charge for OTC and microcap stocks, particularly as applied to sub-penny stocks. See Alpine’s First Application, Admin Proc. No. 3-18979, at p. 1.

<sup>9</sup> Proposed Rule Change, 85 F.R. 17910 (March 31, 2020).

market.<sup>10</sup> *Notably, there were no member or industry comment letters supporting approval of the rule change.*

On June 24, 2020, the SEC Division of Trading and Markets, under delegated authority, instituted proceedings to determine whether to approve or disapprove the Rule Change. The Division thereafter approved the Rule Change, with no changes, on November 24, 2020.<sup>11</sup> NSCC began implementing the Rule Change on February 1, 2021.<sup>12</sup>

## **2. Components of the Rule Change**

Through the Rule Change, NSCC received approval to amend its Required Deposit rules in two primary ways relevant here.

### **a. New Volatility Charge for “Illiquid Securities”**

First, NSCC imposed the New OTC Volatility Charge as an “enhanced” haircut-based volatility charge to “Illiquid Securities,” which NSCC defined to include OTC securities, and certain “micro-capitalization securities” (which NSCC defined as market capitalization of less than \$300 million) listed on a national exchange.<sup>13</sup>

For securities that are *not* Illiquid Securities, NSCC uses a “Value at Risk” (“VaR”) model to calculate the volatility component of the Required Deposit.<sup>14</sup> However, NSCC calculates volatility differently for OTC securities, both before and after the Rule Change, using a “haircut”

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<sup>10</sup> Comment letters were submitted by Alpine, the Securities Industry Professional Association, Lek Securities Corporation, OTC Markets Group, Inc., the Securities Traders Association of New York, Inc., and Wilson-Davis & Co., Inc. The comment letters are available at: [SEC.gov | Comments on File No. SR-NSCC-2020-003](https://www.sec.gov/Comments/Comments%20on%20File%20No.%20SR-NSCC-2020-003).

<sup>11</sup> Order Approving Rule Change, SEC Release No. 34-90502 (November 24, 2020).

<sup>12</sup> Doubek Decl., ¶ 11.

<sup>13</sup> Order Approving Rule Change, at 9-14. Prior to the Rule Change, NSCC’s definition of “Illiquid Securities” already included OTC securities. *Id.* at 5. The Rule Change expanded the definition of Illiquid Securities to also include “micro-capitalization securities” that exceed a threshold of price movement to trade value under NSCC’s “illiquid ratio test” and securities a limited trading history (such as IPOs). *Id.* at 10-11.

<sup>14</sup> *Id.* at 12.

based methodology.<sup>15</sup> Before the Rule Change, NSCC had discretion to calculate the volatility charge for OTC securities by multiplying the absolute value of a given position by a percentage (or haircut) that is “not less than 10%.”<sup>16</sup> In practice, NSCC claims it would apply a “haircut of 20%” of the absolute value of the position.<sup>17</sup>

Under the Rule Change, NSCC changed its methodology and dramatically increased the haircut rate for Illiquid Securities, particularly for positions in sub-penny securities. Specifically, to determine the volatility charge for Illiquid Securities under the Rule Change, NSCC:

group[s] such securities by price level, and Illiquid Securities that are sub-penny securities shall be separately grouped by long or short positions, and (B) calculate[s] an amount for each such grouping by multiplying the absolute value of the positions in each group by a percentage designated by the Corporation at least annually, which percentage shall be based on the security’s Current Market Price, and shall be the highest of (1) 10%, (2) a percent benchmarked to be sufficient to cover 99.5th percentile of the historical 3-day return of each group in each Member’s portfolio using a look-back period of no less than 5 years, and (3) a percent benchmarked to be sufficient to cover 99th percentile of the historical 3-day return of each group in each Member’s portfolio using a lookback period of no less than 5 years after incorporating a fixed transaction cost equal to one-half of the estimated bid-ask spread.<sup>18</sup>

NSCC has since released the following Illiquid Security volatility haircut schedule,<sup>19</sup> which were not identified in the Proposed Rule Change or Order Approving Rule Change:<sup>20</sup>

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<sup>15</sup> *Id.* at 4-6, 12-14.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 6, n. 19. However, although not supported by NSCC’s rules, for sub-penny securities the actual haircut based volatility charge was significantly higher because NSCC would impose a fictional price per share of \$.01 to calculate the margin.

<sup>18</sup> NSCC Rules and Procedures, Procedure XV, § 1(A)(1)(a)(ii)(B)(1); Order Approving Rule Change at 12-14.

<sup>19</sup> NSCC Risk Margin Component Guide, February 1, 2021, at p. 24, attached as Ex. 2 to the Doubek Decl.

<sup>20</sup> Proposed Rule Change; Order Approving Rule Change, at 13-14.



<b>Price Range</b>	<b>Haircut Rate</b>
Price <= \$0.01, Long	57%
Price <= \$0.01, Short	100%
\$.01 < Price < \$1.00	60%
\$1.00 <= Price < \$5.00	34%
Price => \$5.00	15%

Although this schedule states that the haircut rate for a CNS short (sell) position in sub-penny securities will be 100% of the current market price, as detailed below, the actual haircut rate is significantly greater than this because NSCC applies a fictional price per share of \$.01, instead of the actual Current Market Price, to calculate the margin – a practice *not* approved by the SEC.

**b. Elimination of the Illiquid Charge and the DTC Offset**

The second major change approved by the Order was to eliminate the Illiquid Charge that was applied to positions in Illiquid Securities that exceeded certain volume thresholds.<sup>21</sup> In actuality, through the Rule Change, NSCC made the volatility charge applicable to OTC securities so high that it not only effectively incorporates the Illiquid Charge, but results in higher margin charges on OTC and qualifying microcap securities than before the Rule Change.

In eliminating the Illiquid Charge, NSCC also eliminated, *without discussion*, the “DTC offset,” wherein NSCC generally allowed members to offset net short positions in Illiquid Securities against shares of those securities in the member’s inventory at DTC, to avoid the Illiquid Charge.<sup>22</sup> NSCC’s recognition of the offset acknowledged the truth: NSCC has no risk on such covered positions. That acknowledgment by NSCC has now quietly and inexplicably vanished.

**3. Changes to MRD, CC and Backtesting Charges After the Rule Change.**

The Required Deposit includes a number of additional components through which NSCC imposes additional margin charges on its members, including the MRD, CC and Backtesting

<sup>21</sup> Order Approving Rule Change, at 6-7, 16, 18, 21.

<sup>22</sup> NSCC’s Rules and Procedures, Rule 1, at p. 10 (**prior** to the Rule Change).

charges. In summary: NSCC represents that the MRD is designed to help mitigate the risks posed by day-over-day fluctuations in a member's portfolio by forecasting future changes in the portfolio based on a historical look-back over 100 days.<sup>23</sup> NSCC represents that the CC charge is designed to mitigate the risks associated with a Required Deposit being insufficient to cover projected liquidation losses to a 99 percent confidence level, and that the CC supplements the MRD by preemptively increasing the member's required deposit in an amount calculated to forecast potential deficiencies in margin coverage of a portfolio.<sup>24</sup> NSCC represents that it may impose a Backtesting charge to mitigate exposure that may not be captured by volatility, to achieve a 99% backtesting coverage target, using simulated losses identified by backtesting observations to identify deficiencies.<sup>25</sup>

The Division of Trading and Markets did not approve changes to these components in the Order Approving Rule Change.<sup>26</sup> Nevertheless, as detailed below, NSCC has significantly increased Alpine's margin on each of these components since implementing the Rule Change.

**D. The Destructive Impacts of the Rule Change on Alpine and its Customers.**

Once NSCC began implementing the Rule Change on February 1, 2021, Alpine's daily Required Deposit skyrocketed. During December 2020 and January 2021, Alpine's average daily Required Deposit was approximately \$2.5 million – an already enormous sum relative to the value of the positions to be cleared.<sup>27</sup> Although there was no appreciable increase in the value of the trading activity at Alpine, from February 1, 2021 through March 1, 2021, Alpine's average daily Required Deposit jumped to \$3.2 million, and has included several large unexpected margin call

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<sup>23</sup> NSCC Risk Margin Component Guide, at 19-20. The actual formula is in Procedure XV, at §§ 1(A)(1)(f)

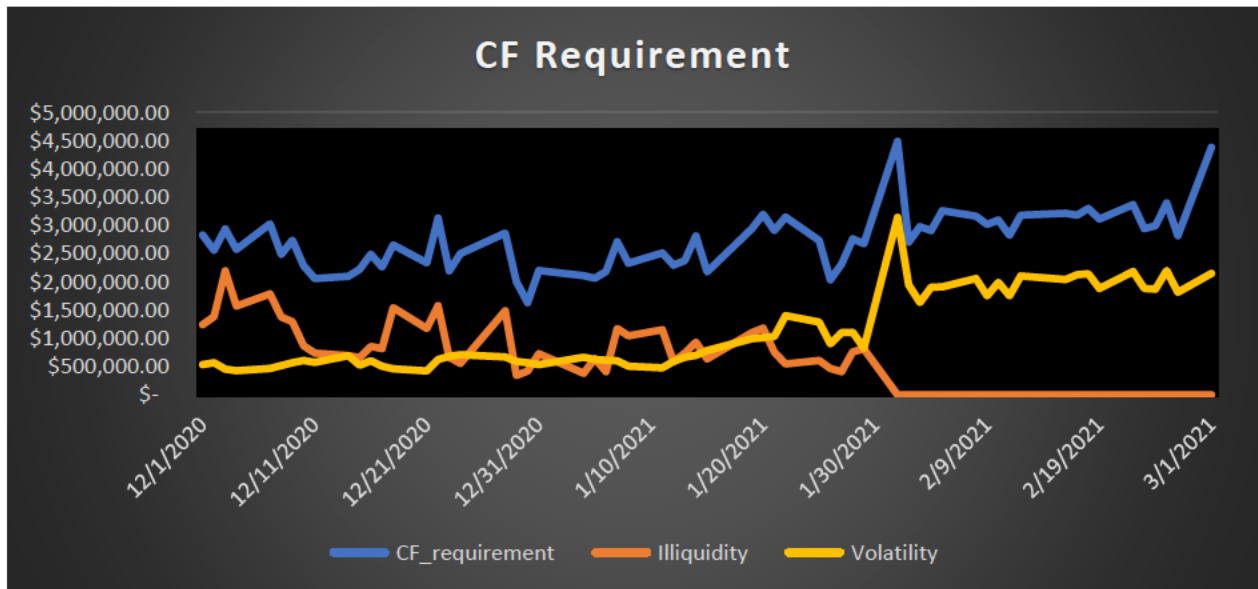
<sup>24</sup> *See id.*, at 20-21. The actual formula is in Procedure XV, at § 1(A)(1)(g).

<sup>25</sup> *See id.*, at 22-23. The actual formula is in Procedure XV, §1(B)(3).

<sup>26</sup> *See* Order Approving Rule Change, *generally*.

<sup>27</sup> Doubek Decl., at ¶ 19.

spikes that left Alpine struggling to locate capital to cover the calls.<sup>28</sup> A chart detailing Alpine's Required Deposit charges from December 2020-March 1, 2021 is below.

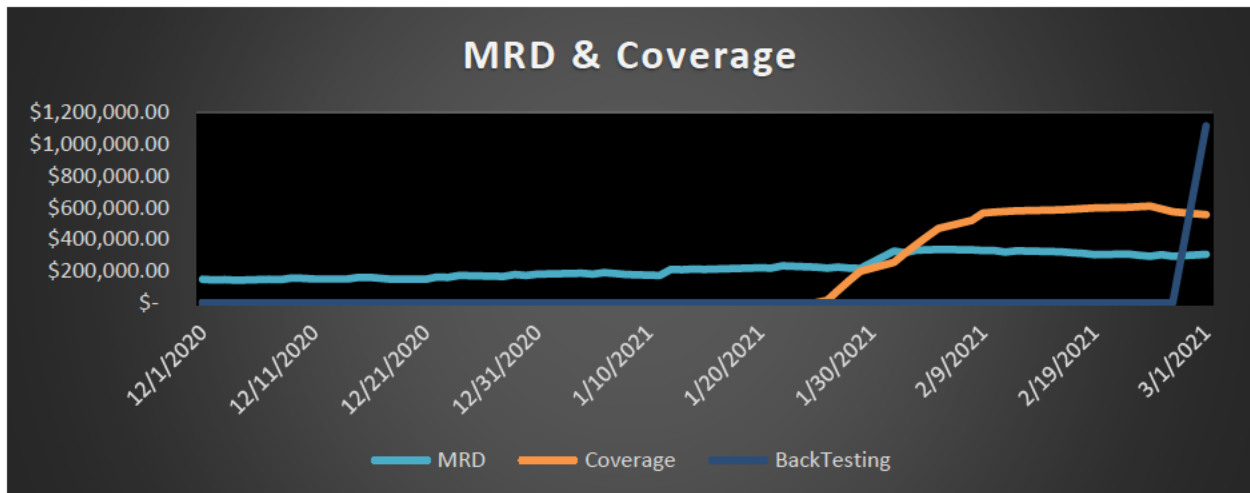


As this chart illustrates, although NSCC supposedly eliminated the Illiquid Charge, it increased Alpine's volatility charge to more than make up for the difference. In addition, as represented in the chart below, starting on February 1, 2021, NSCC suddenly increased Alpine's MRD and CC charges 450%, from a steady approximate amount of \$200,000 to approximately \$900,000, which further amplified the daily Required Deposit amount.<sup>29</sup> On March 1, 2021, NSCC also imposed a significant (\$1.1 million) Backtesting Charge, which it has not done before.<sup>30</sup>

<sup>28</sup> *Id.*, ¶¶ 20-23.

<sup>29</sup> *Id.*, ¶ 24.

<sup>30</sup> *Id.*, ¶ 25.



The impact on Alpine and its customers, and likely to the OTC and microcap markets in general, from the punitive margin charges on trading OTC and microcap stocks is enormous. As a small broker-dealer, Alpine lacks the capital to cover the new Required Deposit for all of its customer trades, particularly unexpected margin calls.<sup>31</sup> Indeed, NSCC requires Alpine to post \$2 million in margin before any trading occurs each day.<sup>32</sup> Since February 1<sup>st</sup>, Alpine has had to decline customer orders to sell their stock *every day*, and often multiple times per day, because it does not have the capital to post the margin to access NSCC’s CNS system for the trade, potentially costing customers millions of dollars, and depriving Alpine of significant revenue.<sup>33</sup>

And, Alpine is not alone. NSCC now demands so much money for trades in OTC and microcap stocks that these markets are being choked to death. Independent broker-dealers like Alpine simply cannot compete and are going extinct, and the large bank-affiliated broker-dealers no longer serve these markets due to the regulatory burden.<sup>34</sup> The trickle-down effect continues from there. By making it too expensive to trade, NSCC is effectively limiting access to all

<sup>31</sup> *Id.*, ¶ 29.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, ¶¶ 30-33.

<sup>34</sup> *Id.*, ¶ 38.

participants in these markets; if small-business investors lack the ability to sell their shares, not only are they directly harmed, but the small businesses who rely on these markets for liquidity also suffer because no rationale investor would buy shares she cannot sell.

To make matters worse, NSCC is imposing these onerous charges on Alpine even though the purported risk that NSCC will have to buy-in the shares to close the position is non-existent because Alpine always ensures it has the shares to cover the position in its account at DTC *before* submitting a sale-side trade to NSCC.<sup>35</sup> The Commission should stay these destructive practices.

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<sup>35</sup> *Id.*, ¶¶ 34-37. Notably, NSCC has even refused Alpine's offers to immediately transfer the shares from its DTC account to NSCC's account (on T+0), which would of course further reduce any possible risk to NSCC. *Id.*, ¶ 36.

## ARGUMENT

The SEC weighs four factors in deciding whether to grant a stay: (1) “whether there is a strong likelihood that the moving party will succeed on the merits of the appeal”; (2) “whether the moving party will suffer irreparable harm without a stay”; (3) “whether any person will suffer substantial harm as a result of a stay”; and (4) “whether a stay is likely to serve the public interest.”<sup>36</sup> However, “a stay may be granted where there is a high probability of irreparable harm, but a lower probability of success on the merits, or vice versa.” *Id.* These factors are met here.

### **I. ALPINE HAS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS IN IT APPLICATION FOR REVIEW.**

To prevail on its Application for Review,<sup>37</sup> Alpine must first show that there is an “actual limitation of access” to the “applicant’s ability to utilize one of the fundamentally important services offered by the SRO.”<sup>38</sup> Second, Alpine must assert a basis that, if established, would lead the Commission to conclude that the [actions] violate Exchange Act Section 19(f).<sup>39</sup>

#### **A. The Required Deposit Charges Under the Rule Change Actually Limit Alpine’s Access to NSCC’s Essential Clearing and Settlement Services.**

In this matter, NSCC’s calculation and application of the Required Deposit charges to Alpine creates an actual limitation of access to fundamentally important services offered by NSCC

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<sup>36</sup> *Application of Michael Earl McCune*, SEC Release No. 77921, 2016 WL 2997935, at \* 1 (May 25, 2016).

<sup>37</sup> The Commission has jurisdiction over Alpine’s Application under Section 19(d),(f). Alpine’s Application was timely filed because it was filed within 30 days of the date NSCC first applied the rule. *See* 15 U.S.C § 78s(d)(2); SEC Rule of Practice, Rule 420(b). In addition, while NSCC may argue that the D.C. Circuit’s decision in *NASDAQ Stock Market, LLC v. SEC*, 961 F.3d 421 (2020) precludes Alpine’s Application, that decision is distinguishable. The Circuit held only that “Section 19(d) is not available to challenge the reasonableness of *generally-applicable fee rules*,” but remains available where a “fee rule” is “targeted at specific individuals or entities.” *Id.* at 424, 427 (emphasis added). The margin charge components at issue here are not “generally-applicable fee rules,” but rather are imposed against a narrow range of market participants and are calculated and applied on a per-member basis. Specifically, NSCC calculates and imposes a unique Required Fund Deposit charge on Alpine on a daily basis based on Alpine’s characteristics, and number and types of transactions it clears.

<sup>38</sup> *In re Application of Securities Industry and Financial Markets Association*, (“SIFMA”), SEC Release No. 72182, 2014 WL 1998525, at \*8 (May 16, 2014).

<sup>39</sup> *Id.* at \*9.

– its essential clearing and settlement services. That access to NSCC’s clearing and settlement services is fundamentally important is irrefutable. NSCC has been granted near monopolistic control over the settlement of equity trades in the United States, and NSCC imposes the Required Deposit as a condition to access. Its clearance and settlement services are the *most* fundamentally important service NSCC offers, and it is essential to Alpine’s business.<sup>40</sup>

Since the Rule Change, NSCC significantly raised Alpine’s Required Deposit (from an average of \$2.5 million to an average of \$3.2 million), even though the volume and value of the trades/positions has not materially increased.<sup>41</sup> Alpine has had to deny customer trades, and lost customers and revenue, due to the capital necessary to fund the Required Deposit.<sup>42</sup> This is an actual limitation on access that is similar in nature to what the Commission held to be actionable in *International Power Group*.<sup>43</sup>

Furthermore, these excessive margin charges also restrict the ability of other participants in the microcap market – including issuers and traders – from accessing services at NSCC that are necessary to trade. Without firms willing and able to process these transactions, like Alpine, these investors and small companies will be cut-off from the capital markets. By imposing enhanced margin charges to trade OTC and microcap stocks, NSCC is also impermissibly limiting access to services by Alpine’s customers, in violation of Sections 17A(b)(6) and 19(f).<sup>44</sup>

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<sup>40</sup> Doubek Decl., ¶¶ 8, 12-13.

<sup>41</sup> *Id.*, ¶¶ 18-20.

<sup>42</sup> *Id.*, ¶¶ 30-33.

<sup>43</sup> *In re International Power Group, Ltd.*, SEC Release No. 66611, 2012 WL 892229 at \*4 (March 15, 2012) (stating, “loss of or increased costs of doing business” or “difficulties in fulfilling market-making obligations” were “negative impacts” on a “Broker-Dealer Participant” that “could be remedied by challenging DTC’s denial of the Participant’s access to services”).

<sup>44</sup> See 15 U.S.C. § 78q-1(b)(6) (“No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.”); *Int’l Power*, 2012 WL 892229 at \*\*4, 6 (recognizing that the Exchange Act also protects nonmembers indirect rights to access a registered clearing agency’s essential services, and the availability of a Section 19(d) petition to obtain Commission review of denials or limitations of access by a nonmember).



**B. NSCC’s Application of the Rule Change to Alpine Violates Section 19(f).**

“Section 19(f) requires” that an SRO’s action denying or limiting access to services “be set aside *unless* (i) the specific grounds on which the challenged action is based exist in fact; (ii) such action was taken in accordance with the rules of the SRO as approved by the Commission (or subject to an exception to such approval); and (iii) such rules are and were applied in a manner that is consistent with the purposes of the Exchange Act.”<sup>45</sup> “Section 19(f) further requires that [the Commission] set aside SRO action if it ‘imposes any burden on competition not necessary or appropriate in furtherance of the purposes’ of the Exchange Act.”<sup>46</sup> NSCC bears the burden to demonstrate that its rules and actions are consistent with the Exchange Act.<sup>47</sup>

**1. NSCC’s New OTC Volatility Charge and Use of Fictional Share Prices for Sub-Penny Stocks**

There is a substantial likelihood NSCC’s application of its New OTC Volatility Charge to Alpine will be set aside because it fails to meet the Section 19(f) requirements, particularly as applied to sub-penny securities.

First, NSCC’s calculation and imposition of this charge is not consistent with Exchange Action Section 17A(b)(3)(D), which requires that the “rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.”<sup>48</sup> The New OTC Volatility Charge imposed on Alpine (approximately \$2 million per day) is so excessive in relation to value of the underlying trade that it is facially “unreasonable.” The unreasonableness of this charge must also be evaluated in light of the fact that it is imposed in conjunction with other

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<sup>45</sup> *In re Bloomberg, L.P.*, SEC Release No. 49076, 2004 WL 67566, \*3 (January 14, 2004) (emphasis added); *see also* 15 U.S.C. § 78s(f).

<sup>46</sup> *Id.* (quoting 15 U.S.C. § 19(f)).

<sup>47</sup> *See* Section 19(f), 15 U.S.C. § 78s(f) and Rule of Practice 700, 17 C.F.R. § 201.700; *see also SIFMA*, 2014 WL 1998525, at \*9 n. 88.

<sup>48</sup> 15 U.S.C. § 78q-1(b)(3)(D)

margin charges on the same position, which together bring Alpine’s total average daily clearing fund requirement to an average of \$3.5 million per day – an amount that is far beyond any purported monetary risk NSCC could face from Alpine’s CNS short (sell) positions in the event of a default in relation to stock Alpine holds at DTC.

The sheer unreasonableness of this charge is even more arbitrary and punitive when a sub-penny stock is involved. As indicated, for sub-penny securities, *unlike for every other security of any value*, NSCC does not use the actual “Current Market Price” to calculate the margin charge, but instead uses a fictional share price of \$.01 to exponentially increase the margin charge. NSCC offered no risk-based justification for this practice in proposing the Rule Change, and it is not addressed in the Order Approving the Rule Change, let alone found to be consistent with the Exchange Act.<sup>49</sup> It is inconceivable NSCC could offer a valid risk-based justification for the practice, as it is nonsensical, and no different than if NSCC treated a \$10 stock as if it carried the same exposure as a \$100 or more stock in calculating margin. It is also notably inconsistent with NSCC’s own haircut schedule for CNS short positions in sub-penny stocks, which states that haircut rate would be 100% of the position.<sup>50</sup> Where NSCC uses an artificial share price of \$.01, the haircut rate will always be more than 100% of the position, and often significantly so depending on how far the security’s value is below a penny (i.e., if the actual share price is \$.001, use of the fictional price of \$.01 results in a volatility charge that is 1000% the value of the trade(s)).

NSCC provided no real-world examples of the amount of the New OTC Volatility Charges that would be imposed under the Rule Change, instead presenting only the general references to its opaque formula: the highest of 10% or an unidentified “percent benchmarked” to be sufficient

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<sup>49</sup> Proposed Rule Change, at 17,915; *see also* Order Approving Rule Change (not discussing practice).

<sup>50</sup> NSCC Risk Margin Component Guide, at 24.

cover at least 99 percentile of historical 3-day returns.<sup>51</sup> The Division of Trading and Markets could not therefore have been able to sufficiently fulfill its obligation to evaluate the actual reasonableness of the New OTC Volatility Charge in a real-world setting.

Second, NSCC failed to establish that the risks, for which this new margin charge was purportedly necessary, “exist in fact.”<sup>52</sup> NSCC claims that the onerous new volatility charge on OTC and microcap stock-sale transactions is necessary to guard against the risk that a member may default between the date NSCC’s trade guaranty sets in (T+0) and settlement date (T+2), and that NSCC may need to buy-in the stock at potentially increased prices to close out the defaulting member’s open short (sell) position.<sup>53</sup> NSCC’s rationale is specious.

The price of *any* stock may increase, making this a poor basis for discriminatorily imposing more onerous margin charges – millions of dollars per day – on OTC/microcap or sub-penny stock transactions. But, even accepting NSCC’s assertion that these stocks could have greater increases in value, the risk to NSCC is nonexistent where the member, like Alpine, is long the stock at DTC to cover the trade. The fact is that DTC’s obligations to deliver securities it holds in a member’s account to NSCC is not interrupted because of a member default or even a bankruptcy. NSCC has confirmed this time and again.<sup>54</sup>

Notably, up until the Rule Change, NSCC recognized that if a member had stock to cover the position at DTC, this eliminated the purported buy-in risk to NSCC in Illiquid Securities. This

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<sup>51</sup> Proposed Rule Change, at 17,915; *see also* Order Approving Rule Change, at 13-14.

<sup>52</sup> 15 U.S.C. § 78s(f).

<sup>53</sup> Order Approving Rule Change, at 12.

<sup>54</sup> NSCC’s rules state, even where NSCC has “ceased to act” for a member, it can “continue to instruct [DTC] ... to deliver CNS Securities from such Member’s account at [DTC] to [NSCC’s] account in respect to such Member’s Short Position.” NSCC’s Rules & Procedures, Rule 18, § 5. NSCC further confirmed its unrestricted ability to close contracts and open positions, regardless of insolvency or default of a member, in its Disclosure Framework. *See* National Securities Clearing Corporation, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, at 18-21 (December 2020), available at: [NSCC Disclosure Framework.pdf](#)

was the function of the DTC offset. But, as indicated, NSCC eliminated this offset in the Rule Change, without discussion, even though it serves the same de-risking function in relation to the New OTC Volatility Charge. NSCC has thus failed to establish that the purported risks for which it charges millions of dollars per day in margin exist in fact as it applies to Alpine’s circumstances.

Finally, the New OTC Volatility Charge violates the Exchange Act because, as applied and designed, it is discriminatory and anti-competitive. Section 17A(b)(3)(F) requires that clearing agency rules “are not designed to permit unfair discrimination . . . among participants in the use of the clearing agency . . . .”<sup>55</sup> Similarly, promoting competition and capital formation are each central to the purpose of the Exchange Act. As Congress noted in amending the Exchange Act in 1975, which added Sections 17A and 19 to the Exchange Act, “it is in the public interest to assure . . . fair competition among brokers and dealers, among markets and between exchange markets and over-the-counter markets.”<sup>56</sup>

Through the Rule Change, NSCC has continued its quest to make it so expensive to clear relatively small-value trades in OTC/microcap stocks that broker-dealers will stop serving these markets. It is undeniable that NSCC is providing an unfair advantage to the larger bank-affiliated broker-dealers over the smaller ones, and to “blue chip” stocks listed on national exchanges over microcap and OTC stocks. There is no justifiable reason – and as demonstrated above, NSCC’s “credit exposure” rationale is specious, at best – to single out certain members, investors and market segments for additional margin charges, at devastating impact, just because they participate in the OTC and microcap markets and/or have less capital.

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<sup>55</sup> 15 U.S.C. § 78q-1(A)(b)(3)

<sup>56</sup> S. Rep. 94-75 (1975), at 8; *see also* 15 U.S.C. §§ 78c(f), 78s(f).

**2. NSCC violated the Exchange Act by changing the MRD, CC and Backtesting Charges without notice and SEC approval.**

As indicated, since NSCC began implementing the Rule Change on February 1, 2021, NSCC has dramatically increased Alpine’s MRD and CC margin charges (by 450%, from approximately \$200,000 to \$900,000 per day), and imposed a “Backtesting Charge” of \$1.1 million on March 1, 2021. With one exception,<sup>57</sup> NSCC did not reference any of these components in the Rule Change, identify how a change to the volatility charge for Illiquid Securities may impact these components, or provide any risk-based justification to increase the margin under these components. Therefore, the Division of Trading and Markets did not evaluate any proposed changes to these components for reasonableness, consistency with the Exchange Act, or impact on competition or capital formation, or approve any such changes.<sup>58</sup>

NSCC has nevertheless effectively changed these components by apparently using the New OTC Volatility Charge to calculate them. This is impermissible. To change the obligations under these components, including how it administers, calculates and applies them, NSCC needed to comply with Section 19(b)(1) and Rule 19b-4 thereunder, including filing notice of the proposed changes with the SEC for public comment, “accompanied by a concise general statement of the basis and purpose of such proposed changes,” and receive SEC approval.<sup>59</sup> “Under this system, established by Congress in 1975, all new substantive rules and modification of existing rules for

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<sup>57</sup> NSCC only indicated the Rule Change would impact the calculation of the CC charge by removing the Illiquid Charge from the equation. Proposed Rule Change, 85 F.R. at 17,917. However, NSCC’s Risk Margin Component Guide, p. 20, indicates that NSCC is *still* using the now-eliminated Illiquid Charge.

<sup>58</sup> See NSCC proposed Rule Change; see also Order Approving Rule Change, at 8-18 (not listing these components in the substantive changes to the Required Deposit, or among the other “conforming changes.”)

<sup>59</sup> See 15 U.S.C. § 78s(b)(1).

SRO's must go through a notice and comment period and obtain SEC approval before becoming effective."<sup>60</sup>

Given the impact of the increased margin on its members, NSCC's attempts to substantively alter these components without following this mandatory process is invalid. That NSCC used the Section 19(b)(1) process to change other components of the Required Deposit is a clear admission that this process must also be followed to alter the MRD, CC and Backtesting charges. Here, as in *Bloomberg*, new restrictions have been impermissibly imposed and must be set aside because they were not "filed and approved pursuant to Exchange Act Section 19(b)."<sup>61</sup>

### **3. NSCC is impermissibly applying the Rule Change retroactively.**

To calculate a number of the Required Deposit charges – including, to Alpine's understanding, the MRD, CC and Backtesting components – NSCC uses forecasting based on a "historical look-back" of a member's portfolio over a given time period, including to determine whether it resulted in any simulated coverage deficiencies under NSCC's secret modeling for which NSCC imposes margin charges.<sup>62</sup> It appears that NSCC is also using the New OTC Volatility Charge retroactively in its backtesting/forecasting of Alpine's portfolio to create deficiencies that did not exist at the time when they were calculated under the old volatility charge. In essence, NSCC is taking the position that, had the New OTC Volatility Charge been in effect during the look-back period, there would have been a coverage deficiency, and therefore this warrants charging Alpine significant additional margin now.

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<sup>60</sup> *Fiero v. FINRA*, 660 F.3d 569, 578 (2d Cir. 2011).

<sup>61</sup> *See in re Bloomberg*, 2004 WL 67566, at \*\*4-5 (setting aside unapproved rule changes as an impermissible limitation on access).

<sup>62</sup> *See* NSCC's Risk Margin Component Guide, at 19-20 (describing NSCC's calculation of the MRD and CC components) and 22-23 (describing NSCC's calculation of the Backtesting Charge).

Retroactive application of rules is generally unlawful.<sup>63</sup> The Seventh Circuit applied these principles to SRO rules, holding that changes to NASD’s arbitration code could not apply retroactively to conduct that occurred before the amendments became effective because “it is unfair to hold private parties accountable for rules which were not in effect at the time their relevant conduct took place.”<sup>64</sup> In the Rule Change, NSCC gave no indication that it would even apply the New OTC Volatility Charge to other components, let alone that it would use it retroactively in forecasting and backtesting. It received no approval from the Division of Trading and Markets to use the new volatility charge in this fashion, and Congress did not authorize retroactive application of SRO rules.

#### **4. Continued Use of the Illiquid Charge to Calculate the CC Component.**

As indicated, the Rule Change eliminated the Illiquid Charge. However, according to NSCC’s representations, it is still using the Illiquid Charge to calculate the CC component.<sup>65</sup> To the extent NSCC is continuing to apply the Illiquid Charge, it is inconsistent with its own rules, and in violation of Section 19(g) of the Exchange Act.<sup>66</sup>

## **II. ALPINE FACES A LIKELIHOOD OF IRREPARABLE INJURY IF A STAY IS NOT GRANTED.**

Alpine and its customers will suffer irreparable harm as a result of the onerous charges under the Rule Change if a stay is not granted. As detailed in Section D of the Background, since its margin was suddenly and substantially increased on February 1, 2021, Alpine has had to

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<sup>63</sup> *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 215 (1988) (authority to promulgate rules does not “encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms,” and “administrative rules will not be construed to have retroactive effect unless their language requires this result.”)

<sup>64</sup> *Kresock v. Bankers Tr. Co.*, 21 F.3d 176, 179 (7<sup>th</sup> Cir. 1994)

<sup>65</sup> See NSCC Risk Margin Component Guide, at 20.

<sup>66</sup> NSCC’s CC component formula is extremely convoluted and relies on information that is not disclosed to Alpine, so it is difficult to determine all of the factors that NSCC actually uses to calculate this charge. Alpine is relying on NSCC’s representations in its Risk Margin Component Guide.



frequently (at least daily) turn down customer transactions, including customer orders to sell their stock, because it lacked the capital to post the margin for the trades. This denies customers a critical ability to sell and pushes Alpine further into a self-propelling downward cycle. Because Alpine must devote additional capital to post the increased Daily Required Deposit charges, Alpine must limit the volume of trades it can process per day, both due to capital constraints and to avoid other charges, such as the Excess Net Capital Premium (ENCP) charge. This, in turn, limits Alpine's ability to raise additional capital through its clearing business, and pull out of the cycle.<sup>67</sup>

For a firm that specializes in microcap and OTC stocks to not be able to execute sell orders due to margin is also significant injury to its reputation, goodwill and relationships with its customers and in the industry.<sup>68</sup> Alpine has already lost customers and business to competitors because of these new restrictions, and expects it is likely it will lose more, even as the loss of goodwill prevents it from attracting new business/customers.<sup>69</sup> This is unsustainable.

The Commission has held that customer loss constitutes a likelihood of irreparable harm for a stay, and also cited to decisions holding that economic harm in the form of the loss of customers, goodwill and revenue constitutes irreparable harm sufficient to grant a stay.<sup>70</sup> The Commission should follow those decisions here.

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<sup>67</sup> Doubek Decl., at ¶¶ 30-33, 40.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See *In re SIFMA and Bloomberg, L.P.*, SEC Release No. 83755, at 16-18 and n. 71 (July 31, 2018) (citing *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 599 (6th Cir. 2001) (holding that company's need to raise fees to recoup projected losses because of challenged statute constituted irreparable harm because "even if higher rates and fees do not drive customers away, loss of established goodwill may irreparably harm a company"); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 20 (1st Cir. 1996) ("[S]everal courts have recognized that the loss of product line may create a threat of irreparable injury if it is likely that customers (or prospective customers) will turn to competitors who do not labor under the same handicap." (citations removed)); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994) ("[W]hen the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied." (citation removed)); *Institutional Networks Corp.*, Exchange Act Release No.

### **III. THE STAY WILL NOT RESULT IN HARM TO ANY OTHER PARTY.**

As detailed above, the recently implemented Required Deposit charges at issue are arbitrary, unreasonable, and are not rationally related to, or necessary to guard against, any actual risk. Thus, a stay of these charges will not result in any damages to any other party, particularly where Alpine is willing to continue its practice of having shares to fully cover its open positions in its account at DTC before submitting the trade to NSCC, during the duration of the stay, or to release the shares from its DTC account to NSCC's account before settlement date. There would thus be no harm to NSCC or the other members from a stay.

### **IV. THE PUBLIC INTEREST FAVORS A STAY.**

The public interest favors fair competition, choice and open access to a variety of different trading markets. The Required Deposit charges at issue are destructive of these interests. As indicated, through the Rule Change, NSCC has continued to target OTC and microcap stocks for disparate treatment and escalating and unjustified clearance costs. NSCC knows that the broker-dealers who service these stocks lack the capital to pay these onerous margin charges, and that the investors who hold these stocks are generally not willing to pay the higher fees imposed by broker-dealers (to offset the margin costs) necessary to trade these low value stocks. This is contrary to the public interest and destructive of competition on a number of levels: between small broker-dealers who cannot afford the margin and the large bank-affiliated broker-dealers who can; between the OTC markets and registered exchanges; and between broker customers who invest in OTC/microcap stocks versus "blue chip" stocks.

The public also has an interest in ensuring that SROs comply with the rulemaking and other requirements of the Exchange Act, that public investors' interests are protected, and that NSCC

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20088, 1983 WL 404184, at \*7 (Aug. 16, 1983) (finding irreparable harm where, in the absence of a stay, movant "may lose (1) potential customers (2) revenues and (3) competitive advantages").

not use excessive margin to limit public access to a broker-dealer, such as Alpine, that is willing and able to clear trades in OTC and microcap stock.

**CONCLUSION**

For the foregoing reasons, Alpine Motion for an Interim Stay should be Granted.

DATED this 5th day of March, 2021.

**PARSONS BEHLE AND LATIMER**



Aaron D. Lebenta  
Jonathan D. Bletzacker

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



Maranda E. Fritz  
*Counsel for Alpine Securities Corporation*

**ATTORNEY CERTIFICATION**

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that the foregoing document contains 7,699 words, exclusive of the tables of contents and authorities.

**PARSONS BEHLE AND LATIMER**



Aaron D. Lebenta  
Jonathan D. Bletzacker

# **EXHIBIT A**

## **[Declaration in Support]**

## DECLARATION OF CHRISTOPHER DOUBEK

I, Christopher Doubek, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. My name is Christopher Doubek and I am a resident of Salt Lake County, Utah, am over 18 years of age, and make the statements herein based on my personal knowledge.
2. I am currently the Chief Executive Officer (“CEO”) and Chief Compliance Officer of Alpine Securities Corporation (“Alpine”), having been recognized by FINRA to hold that position.
3. I, along with the other officers of Alpine, manage and oversee the operations of Alpine.
4. Since assuming the position of CEO, I have familiarized myself with the history of Alpine’s business and its present financial circumstances.
5. Alpine is a small, self-clearing broker-dealer, registered with the Securities and Exchange Commission (“SEC”). Alpine’s business primarily involves clearing liquidation (or sale-side) microcap or over the counter (“OTC”) stock transactions for other firms, including, frequently, stocks with a price less than \$.01/share.
6. A clearing broker, such as Alpine, provides clearing and settlement services for itself and for its correspondent clients (“correspondents” or “clients”), who are generally broker-dealers, and its clients’ non-broker-dealer customers (“customers”), who are the beneficial buyers and sellers of a security.
7. Alpine’s mission is to provide liquidity to microcap and OTC stocks. There are more than 10,000 issued stocks trading in the OTC markets, while the number of listed companies is about 4,397 as of 2018. The total aggregate volume of OTCQX, OTCQB and Pink

Securities was approximately \$ 375.2 billion in 2018.<sup>1</sup>

8. Alpine facilitates tens of millions of dollars of capital financing for small business each month through the deposit, clearance and liquidation of microcap securities on behalf of its correspondent customers who provide direct financing to thousands of innovative, startup and early stage development business that operate in the U.S. This is undeniably a critically important segment of the market, that represents the core of the U.S. economy and jobs

9. I am familiar with Alpine's Application for Review, filed March 2, 2021, pursuant to Sections 19(d) and (f) of the Securities & Exchange Act of 1934, with respect to certain actions, practices and rules of the National Securities Clearing Corporation ("NSCC"), pursuant to recent amendments to NSCC's Rules and Procedures under SR-NSCC-2020-003 (the "Rule Change"), in calculating and assessing Alpine's Required Fund Deposit ("Required Deposit"). It is my understanding that the SEC approved the Rule Change on November 24, 2020, SEC Release No. 34-90502 (November 24, 2020). I am submitting this Declaration in Support of Alpine's Application for Review and Alpine's Motion for Interim Stay, until the Application for Review is considered and decided by the Commission.

10. Specifically, Alpine's Application for Review and Motion for Interim Stay addresses the following actions taken by NSCC following the Rule Change, which, as demonstrated below, are limiting Alpine's access to and use of NSCC's clearing and settlement services: (a) implementing an enhanced Haircut-Based Volatility Charge for Illiquid Securities ("New OTC Volatility Charge"); (b) using an artificial price per-share of \$.01 to calculate and assess Alpine's Required Deposit for positions in sub-penny securities; (c) implementing

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<sup>1</sup> See OTC Markets Group Reports 2018, Trading Statistics and Highlights, *available at*: <https://www.prnewswire.com/news-releases/otc-markets-group-reports-2018-trading-statistics-and-highlights-300779908.html>

substantive changes to the Margin Requirement Differential (“MRD”) charge, Coverage Component (“CC”) charge and Backtesting charge that were not approved by the Commission; (d) continuing to use the “Illiquid Charge” component to calculate the CC charge; and (e) retroactively applying the Rule Change in performing forecasting and/or backtesting when calculating and assessing Alpine’s Required Deposit

11. NSCC began implementing the Rule Change against Alpine on **February 1, 2021**.

12. In order for Alpine to provide clearing and settlement services and function as a clearing firm for its correspondent firms, Alpine must be a member of NSCC. Alpine is a clearing broker member in good standing of the NSCC and a Depository Trust Company (“DTC”) participant.

13. As an ongoing condition to membership, and thus use of NSCC’s clearance, settlement and other essential services for Alpine and its customers, NSCC requires members, including Alpine, to contribute daily to a “Clearing Fund,” by making “Required Deposits,” that NSCC indicates serves as “margin” against risk of default.

14. According to NSCC’s Rules and Procedures, the minimum Required Deposit to the Clearing Fund is \$10,000. In my experience, however, members are required to deposit far more than the minimum amount. Certainly, this is my experience at Alpine.

15. The formula that NSCC uses to calculate the Required Deposit charges is very complex, and is calculated and assessed on per-member on a discriminatory basis as against small broker-dealer members, based on many discretionary and fact-specific variables set forth in Procedure XV of the NSCC’s Rules and Procedures.

16. I understand that NSCC needs to guard against risk of member default, and



support the responsible collection of reasonable margin, where it is necessary as a safeguard. However, since I took over as Alpine's CEO, NSCC's calculation and assessment of Alpine's Required Deposit has been significant and onerous (averaging over \$2 million per day), exceeding the amount of the underlying transactions to be cleared and settled through NSCC, often by several orders of magnitude, and far more than would seem necessary or appropriate to cover any potential risk to NSCC from Alpine's positions held long at DTC.

17. Because Alpine is a small-broker dealer, it necessarily has limited capital resources available to it. The Required Deposit charges place an enormous strain on these limited resources, as detailed further below.

18. Once NSCC began implementing the Rule Change on February 1, 2021, Alpine's Required Deposit charges have increased substantially. Attached hereto as Exhibit 1 is a chart and summary of the Required Deposit charges assessed against Alpine from December 2020 through March 1, 2021. I am personally familiar with these numbers and Exhibit 1 correctly and accurately reflects these charges.

19. As is evident from Exhibit 1, in December 2020 and January 2021, Alpine's average daily Required Deposit was approximately \$2.5 million, which was already an enormous sum in relative to the value of the sale-side positions to be cleared, that are held long at DTC.

20. However, although there was no appreciable increase in the value or volume of the trading activity at Alpine, from February 1, 2021 through March 1, 2021, Alpine's average daily Required Deposit jumped to approximately \$3.2 million, and has included several large unexpected margin call spikes (on February 1, 2021 and March 1, 2021) that left Alpine struggling to locate capital to cover the calls. *See* Ex. 1 hereto.

21. NSCC's application of the New OTC Volatility Charge alone has resulted in an

average margin call on Alpine of \$2 million per day. See Ex. 1 hereto.

22. NSCC's calculation and assessment of the OTC Volatility Charge to sub-penny securities is even more troubling. In NSCC's Risk Margin Component Guide, which I downloaded from NSCC's member portal on February 8, 2021, NSCC included a volatility "haircut" schedule for how it would calculate volatility rates for "Illiquid Securities," as defined in the Rule Change, reproduced below:

Price Range	Haircut Rate
Price <= \$0.01, Long	57%
Price <= \$0.01, Short	100%
\$.01 < Price < \$1.00	60%
\$1.00 <= Price < \$5.00	34%
Price => \$5.00	15%

A true and correct copy of the Risk Margin Component Guide is attached hereto as Exhibit 2. I and others at Alpine rely on this Margin Risk Component Guide to try to get an understanding, and try to anticipate, how NSCC will calculate the various Required Deposit components, as it provides greater and more up-to-date detail than NSCC's Rules and Procedures.

23. Although this schedule indicates the haircut rate for net "short" (or sell) positions in sub-penny securities would be calculated at 100% of the current market price, this is not how NSCC actually calculates it. In my experience, the actual haircut rate is significantly more than 100% because NSCC uses a fictional price per share of \$.01, instead of the actual Current Market Price, to calculate the margin. In operation, this results in a "haircut" based volatility charge that is far in excess of 100% of the value of the position (i.e., if the actual share price is

\$.001, use of the fictional share price of \$.01 results in a volatility charge that is 1000% the value of the position). From my review of the Rule Change adopting releases, and from discussions with employees of NSCC, I am not aware of any risk-based or other justification for this practice.

24. In addition to the above, starting on February 1, 2021, NSCC suddenly increased Alpine's daily MRD and CC charges from a steady approximate amount of \$200,000 (before February 1, 2021) to an approximate daily amount of \$900,000, a 450% increase. *See Ex. 1 hereto.*

25. On March 1, 2021, NSCC also imposed a significant Backtesting Charge of \$1.1 million. I do not recall NSCC imposing this charge on Alpine before, and it did not do so in December 2020 or January 2021.

26. To my knowledge, NSCC did not propose changes to the MRD, CC or Backtesting charges in the Rule Change.

27. It is my belief and understanding that the sudden increase in NSCC's calculation and assessment of these margin charges on Alpine is because NSCC is using the New OTC Volatility Charge to calculate them. NSCC appears to be doing so both directly, as a variable or factor in the formula, and as part of its forecasting and backtesting, based on a historical "look-back" of supposed margin deficiencies in Alpine's portfolio. On this latter point, NSCC appears to be using the New Volatility Charge to retroactively create artificial coverage deficiencies or volatility issues in Alpine's historical portfolio that did not exist at the time (and under the old volatility component) in order to try to justify charging Alpine significant additional margin now. Thus, from this practice, it looks like NSCC is **double or triple dipping on the increased volatility charge on OTC and microcap stocks on which Alpine focuses, by using it to increase the margin**

under multiple components at once.

28. The impact on Alpine and its customers, and likely to the OTC and microcap markets in general, from the punitive margin charges on trading OTC and microcap stocks is immediate and devastating.

29. As a small broker-dealer, Alpine lacks the capital to cover the new Required Deposit for all of its customer trades, particularly unexpected margin calls. In fact, NSCC requires Alpine to post over \$2 million in margin before any trading occurs each day.

30. Although Alpine operates its business in such a way that it should have the capital necessary to process all of its customers' sale orders, as a result of these enormous margin charges, since February 1, 2021, we have had to decline customer orders to sell their stock every day, and often multiple times per day, because Alpine lacks the capital to post the margin to access NSCC's settlement services for the trade. The market value of the lost trades is in the millions. Thus, the inability of customers to be able to sell stock, long at DTC, when they want has cost Alpine's *customers* millions of dollars. The inability to clear these trades through NSCC, in turn, has also costs Alpine hundreds of thousands of dollars in lost revenue from commissions and other trade related fees. Every day these new margin charges continue the losses to both Alpine's customers and Alpine's revenue continue to grow.

31. For a firm that specializes in microcap and OTC stocks to not be able to execute sell orders due to margin is also significant and potentially permanent injury to its reputation, goodwill and relationships with its customers and in the industry. Alpine has already lost customers and business to competitors because of these new restrictions, and I expect it is likely

we will lose more, even as the loss of goodwill prevents us from attracting new customers.<sup>2</sup>

32. The increasingly onerous margin charges imposed by NSCC are also further pushing Alpine into a self-propelling downward cycle. Because Alpine must devote additional capital to post the increased Daily Required Deposit charges, Alpine must limit the volume of trades it can process per day, both due to capital constraints and to avoid other charges, such as the Excess Net Capital Premium (ENCP) charge. This, in turn, limits Alpine's ability to raise additional capital through its clearing business, and pull out of the cycle. The new loss of customers, relationships and goodwill will exacerbate this downward cycle further.

33. Further, Alpine, is not able to offset the increased margin costs with increased fees to customer. Given the relatively low value of these stocks, particularly in relation to the margin requirements, many of Alpine's customers would be unwilling to pay trading fees that would be necessary to offset the margin costs. Given the economics of the trade, I suspect the same issue exists at other small-broker dealers that clear microcap and OTC stocks. If stock owners cannot find a clearing firm willing and able to clear a sale of the stock, the shares are effectively untradeable, and worthless.

34. Perhaps the most concerning thing about this situation is that the onerous margin charges are unnecessary because there is no real risk to NSCC from Alpine's sell positions. I appreciate that NSCC must protect itself and other members against the possibility that NSCC would have to buy-in the shares to close out an open sell position after its trade guaranty sets in (on T+0) in the event of a member default. However, this is not a concern with Alpine's sell positions because, *prior to submitting a sell order, Alpine always ensures it has the shares to*

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<sup>2</sup> Because this is a declaration is being publicly filed, I am not identifying specific transactions or customers herein out of privacy concerns. However, I am willing to provide more specific detail confidentially, upon request.

*cover the order in its account at DTC.* In other words, Alpine's sell positions in every trade are always covered because Alpine is long the stock at DTC.

35. Based on this Alpine's responsible business practice in this regard, even if Alpine were to suddenly fail and default between T+0 and T+2, there is no risk to NSCC or other members because NSCC can simply access the shares from Alpine's DTC account to close the position and satisfy NSCC's central-counterparty obligation to the buyer.

36. I have further participated in discussions with NSCC where we have offered to immediately release the shares from Alpine's DTC account to NSCC's account at the time the trade is submitted to NSCC, or take other steps to ensure there was no impediment or delay in NSCC's ability to close out Alpine's sell positions, which would further mitigate any possible risk to NSCC from Alpine's trades. NSCC has declined these offers, and has been unwilling at this time to entertain alternatives to imposing the gigantic and destructive margin obligations.

37. Alpine is also an advocate for accelerated settlement, and is a participant in a pilot program with DTCC to explore accelerated settlement. Accelerated settlement is a far superior mechanism to mitigate risk than NSCC's current practice of monetizing it through margin, and would be far less detrimental to the industry. Further, OTC stocks are a perfect candidate for accelerated settlement because they cannot be margined and thus firms that clear trades in OTC and microcap stocks are generally, if not always, long the shares at DTC. As indicated, Alpine is always long the stock to cover the sell order at DTC. However, based on my interactions with DTCC and its bureaucracy, it appears that any serious consideration of implementing accelerated settlement is a long ways away.

38. The impact is not felt by Alpine and its customers alone. I believe it affects all participants in the OTC and microcap market – from the brokers to issuers to investors. To my

knowledge, very few small clearing firms exist today that serve the OTC and microcap securities market. Although larger NSCC members – banks, major clearing firms (Merrill Lynch, Fidelity, Morgan Stanley and UBS, and online discount firms) – likely have sufficient net capital to post the margin necessary to process these trades, to my knowledge, these firms are no longer willing to clear OTC stocks and microcap stock, let alone accept certificates or newly issued securities for microcap issuers, leaving but a handful of small firms that operate in this space. To my knowledge, in addition to Alpine, the list of firms that clear in this space includes Wilson Davis Securities, Lek Securities, Vision Securities, and Wedbush Securities. I am not aware of any other firms providing clearing services for OTC microcap stocks.

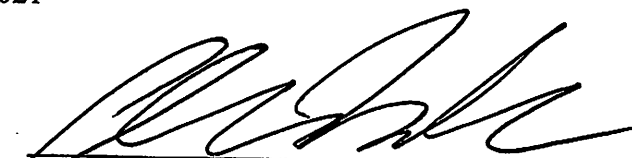
39. It is also my belief, that the Required Deposit charges at issue also have a profound adverse effect on small companies whose stock trades in the OTC and microcap markets. Microcap companies depend on issuance of shares to obtain services and finance their growth. Alpine, and other small broker-dealers in this segment of the market, play a critical role in providing liquidity for securities of small companies. A substantial part of Alpine's customer base consists of institutional lenders to small companies and the key service providers/ professionals to small companies – i.e., lawyers, accountants, transfer agents, advisors, etc. Without firms willing and able to process these transactions, like Alpine, and without correspondent brokers or investors willing or able to pay increased transaction fees, professionals and investors will be unwilling to accept stock and these small companies will be cut-off from the capital markets to raise money to grow their businesses.

40. Alpine's business, its customers, and all other participants in the OTC and microcap markets are thus being irreparably harmed due to the financial stress from the margin charges imposed by NSCC, particularly as they have been specifically increased against OTC

and microcap stocks by the Rule Change. The Commission needs to take a serious review of what is occurring at and through NSCC, and provide interim relief while it does so to prevent immediate and destructive impacts to Alpine, its customers and the OTC and microcap markets on which so many American's rely.

WHEREFORE, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 5 day of March, 2021

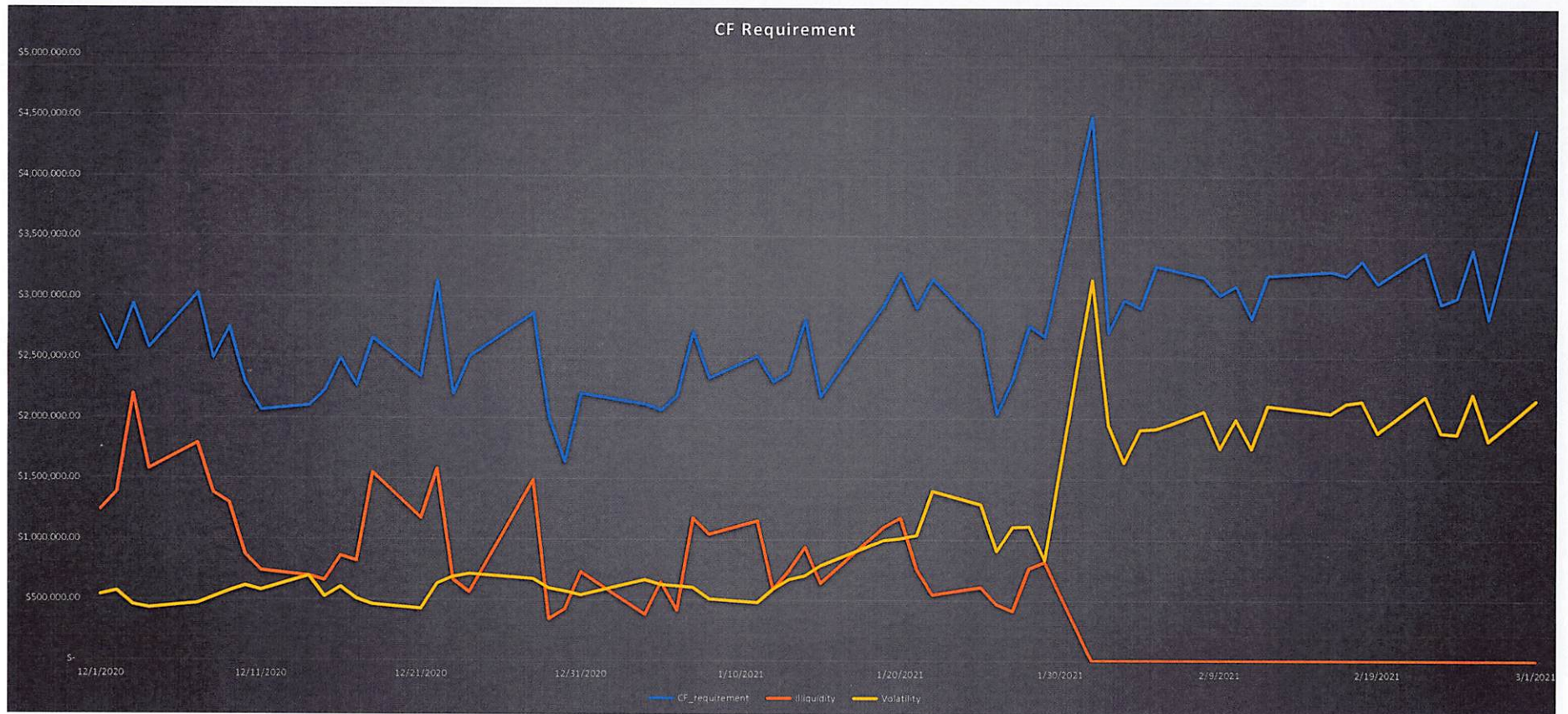


Christopher Doubek



# **EXHIBIT 1**

## **[Chart and Summary]**



OS Received 10/28/2022





Date	CF_requirement	Illiquidity	Mark to Market	Volatility	MRD	Coverage	BackTesting
12/1/2020	\$ 2,830,863.48	\$ 1,241,432.82	\$ 798,045.65	\$ 537,410.46	\$ 147,968.55	\$ -	\$ -
12/2/2020	\$ 2,559,826.45	\$ 1,383,428.29	\$ 359,530.38	\$ 566,934.06	\$ 143,927.72	\$ -	\$ -
12/3/2020	\$ 2,939,674.37	\$ 2,195,836.93	\$ 491,913.87	\$ 455,761.38	\$ 145,864.57	\$ -	\$ -
12/4/2020	\$ 2,574,846.48	\$ 1,575,426.72	\$ 323,653.02	\$ 428,216.11	\$ 141,488.63	\$ -	\$ -
12/7/2020	\$ 3,027,302.43	\$ 1,786,906.45	\$ 519,802.79	\$ 466,757.99	\$ 147,731.20	\$ -	\$ -
12/8/2020	\$ 2,488,268.54	\$ 1,380,667.86	\$ 339,650.68	\$ 516,485.99	\$ 145,360.01	\$ -	\$ -
12/9/2020	\$ 2,742,613.48	\$ 1,297,797.35	\$ 613,924.03	\$ 568,328.02	\$ 156,407.08	\$ -	\$ -
12/10/2020	\$ 2,285,996.24	\$ 870,105.37	\$ 545,814.37	\$ 610,329.91	\$ 153,558.59	\$ -	\$ -
12/11/2020	\$ 2,062,564.40	\$ 738,161.00	\$ 492,801.56	\$ 576,674.11	\$ 148,716.73	\$ -	\$ -
12/14/2020	\$ 2,101,240.51	\$ 693,823.46	\$ 457,551.11	\$ 694,047.49	\$ 149,603.45	\$ -	\$ -
12/15/2020	\$ 2,222,750.32	\$ 658,999.35	\$ 775,171.90	\$ 522,390.46	\$ 160,060.61	\$ -	\$ -
12/16/2020	\$ 2,490,163.83	\$ 858,462.22	\$ 762,352.73	\$ 604,098.65	\$ 159,119.23	\$ -	\$ -
12/17/2020	\$ 2,266,763.19	\$ 818,345.01	\$ 683,031.33	\$ 505,625.33	\$ 153,672.52	\$ -	\$ -
12/18/2020	\$ 2,657,184.21	\$ 1,546,469.38	\$ 396,241.11	\$ 460,003.94	\$ 148,401.78	\$ -	\$ -
12/21/2020	\$ 2,340,663.07	\$ 1,173,551.59	\$ 489,420.11	\$ 423,297.24	\$ 148,352.13	\$ -	\$ -
12/22/2020	\$ 3,130,527.64	\$ 1,577,450.90	\$ 657,790.03	\$ 628,455.46	\$ 161,187.25	\$ -	\$ -
12/23/2020	\$ 2,195,791.06	\$ 664,529.35	\$ 581,500.52	\$ 685,459.09	\$ 158,636.10	\$ -	\$ -
12/24/2020	\$ 2,504,693.77	\$ 560,377.10	\$ 954,496.76	\$ 712,323.52	\$ 171,837.39	\$ -	\$ -
12/28/2020	\$ 2,864,780.86	\$ 1,486,536.71	\$ 434,593.06	\$ 671,539.38	\$ 166,516.71	\$ -	\$ -
12/29/2020	\$ 2,001,339.11	\$ 340,632.72	\$ 784,835.43	\$ 592,446.40	\$ 177,849.56	\$ -	\$ -
12/30/2020	\$ 1,634,176.96	\$ 420,905.98	\$ 365,268.76	\$ 569,927.15	\$ 172,514.07	\$ -	\$ -
12/31/2020	\$ 2,200,479.74	\$ 728,764.44	\$ 647,855.98	\$ 538,272.28	\$ 180,004.04	\$ -	\$ -
1/4/2021	\$ 2,112,830.50	\$ 379,876.87	\$ 778,708.67	\$ 663,453.32	\$ 185,240.64	\$ -	\$ -
1/5/2021	\$ 2,065,908.74	\$ 645,469.65	\$ 509,798.41	\$ 625,409.26	\$ 179,683.42	\$ -	\$ -
1/6/2021	\$ 2,183,783.41	\$ 413,307.63	\$ 860,946.55	\$ 613,849.74	\$ 190,152.49	\$ -	\$ -
1/7/2021	\$ 2,709,740.15	\$ 1,175,212.56	\$ 642,777.34	\$ 603,199.57	\$ 183,002.68	\$ -	\$ -
1/8/2021	\$ 2,331,136.02	\$ 1,044,070.34	\$ 495,363.90	\$ 508,698.18	\$ 177,512.60	\$ -	\$ -
1/11/2021	\$ 2,511,756.48	\$ 1,153,612.67	\$ 602,526.89	\$ 478,296.10	\$ 171,879.82	\$ -	\$ -
1/12/2021	\$ 2,298,414.42	\$ 586,765.70	\$ 806,132.18	\$ 590,091.50	\$ 210,006.04	\$ -	\$ -
1/13/2021	\$ 2,380,544.28	\$ 740,198.75	\$ 658,716.62	\$ 668,808.92	\$ 207,424.99	\$ -	\$ -
1/14/2021	\$ 2,813,287.71	\$ 932,502.24	\$ 862,694.69	\$ 700,391.09	\$ 212,331.69	\$ -	\$ -
1/15/2021	\$ 2,176,961.08	\$ 637,887.25	\$ 440,839.37	\$ 783,014.06	\$ 209,865.40	\$ -	\$ -
1/19/2021	\$ 2,941,845.30	\$ 1,104,661.17	\$ 517,531.47	\$ 996,953.18	\$ 217,267.48	\$ -	\$ -
1/20/2021	\$ 3,198,938.33	\$ 1,179,449.43	\$ 682,789.65	\$ 1,012,195.14	\$ 219,086.11	\$ -	\$ -
1/21/2021	\$ 2,909,315.25	\$ 755,629.96	\$ 792,454.45	\$ 1,036,972.37	\$ 218,865.47	\$ -	\$ -
1/22/2021	\$ 3,151,044.97	\$ 546,000.11	\$ 852,775.90	\$ 1,402,009.27	\$ 232,352.46	\$ -	\$ -
1/25/2021	\$ 2,736,999.77	\$ 607,470.43	\$ 508,822.04	\$ 1,290,315.87	\$ 225,036.43	\$ -	\$ -
1/26/2021	\$ 2,037,876.94	\$ 466,971.92	\$ 329,386.63	\$ 904,168.35	\$ 217,783.48	\$ 14,229.56	\$ -
1/27/2021	\$ 2,317,626.24	\$ 411,951.75	\$ 394,410.97	\$ 1,104,906.73	\$ 223,806.38	\$ 77,235.41	\$ -
1/28/2021	\$ 2,762,424.96	\$ 760,584.35	\$ 429,936.45	\$ 1,109,487.75	\$ 218,772.33	\$ 138,351.08	\$ -
1/29/2021	\$ 2,675,391.43	\$ 814,737.49	\$ 512,031.35	\$ 829,948.69	\$ 215,759.61	\$ 197,633.29	\$ -
2/1/2021	\$ 4,490,804.36	\$ -	\$ 660,765.61	\$ 3,144,361.86	\$ 325,281.87	\$ 255,137.02	\$ -
2/2/2021	\$ 2,707,868.83	\$ -	\$ 28,589.46	\$ 1,947,601.31	\$ 315,523.41	\$ 310,915.65	\$ -
2/3/2021	\$ 2,979,903.15	\$ -	\$ 542,282.78	\$ 1,637,034.42	\$ 330,328.03	\$ 365,020.92	\$ -
2/4/2021	\$ 2,912,492.69	\$ -	\$ 151,083.41	\$ 1,906,362.32	\$ 332,327.93	\$ 417,503.03	\$ -
2/5/2021	\$ 3,260,178.42	\$ -	\$ 435,959.17	\$ 1,914,646.56	\$ 335,968.02	\$ 468,410.67	\$ -
2/8/2021	\$ 3,167,452.00	\$ -	\$ 150,068.99	\$ 2,061,567.42	\$ 332,830.50	\$ 517,791.09	\$ -
2/9/2021	\$ 3,020,403.99	\$ -	\$ 267,670.36	\$ 1,753,706.35	\$ 328,144.19	\$ 565,690.09	\$ -
2/10/2021	\$ 3,096,351.13	\$ -	\$ 97,440.48	\$ 1,993,705.01	\$ 329,397.05	\$ 570,615.59	\$ -
2/11/2021	\$ 2,823,016.96	\$ -	\$ 70,794.64	\$ 1,752,180.48	\$ 319,478.52	\$ 575,393.32	\$ -
2/12/2021	\$ 3,180,904.95	\$ -	\$ 61,341.86	\$ 2,106,933.77	\$ 326,627.80	\$ 580,027.72	\$ -
2/16/2021	\$ 3,213,949.44	\$ -	\$ 148,245.60	\$ 2,045,785.53	\$ 320,906.23	\$ 584,523.08	\$ -
2/17/2021	\$ 3,182,116.46	\$ -	\$ 35,066.87	\$ 2,128,069.86	\$ 315,165.14	\$ 588,883.59	\$ -
2/18/2021	\$ 3,301,138.65	\$ -	\$ 144,365.70	\$ 2,146,134.96	\$ 311,727.71	\$ 593,113.28	\$ -
2/19/2021	\$ 3,116,608.47	\$ -	\$ 145,029.48	\$ 1,883,692.11	\$ 302,407.24	\$ 597,216.08	\$ -
2/22/2021	\$ 3,368,335.73	\$ -	\$ 169,685.29	\$ 2,184,185.89	\$ 307,470.76	\$ 601,195.79	\$ -
2/23/2021	\$ 2,947,011.75	\$ -	\$ 55,395.16	\$ 1,882,821.22	\$ 297,902.25	\$ 605,056.12	\$ -
2/24/2021	\$ 2,997,331.21	\$ -	\$ 118,094.67	\$ 1,872,670.39	\$ 291,927.52	\$ 608,800.63	\$ -
2/25/2021	\$ 3,396,239.38	\$ -	\$ 197,112.55	\$ 2,200,394.23	\$ 302,357.99	\$ 590,536.61	\$ -
2/26/2021	\$ 2,820,021.35	\$ -	\$ 31,359.67	\$ 1,817,497.32	\$ 292,497.84	\$ 572,820.52	\$ -
3/1/2021	\$ 4,383,900.53	\$ -	\$ 149,478.30	\$ 2,153,432.36	\$ 305,139.96	\$ 555,635.90	\$ 1,114,376.01

# **EXHIBIT 2**

## **[NSCC Risk Margin Component Guide]**



## NSCC RISK MARGIN COMPONENT GUIDE

PUBLICATION DATE: FEBRUARY 1, 2021

### *Important Notice*

This document and the information described herein is provided as a convenience to NSCC Members and is for informational purposes only. This document should not be regarded as a definitive or exhaustive description of NSCC's clearing fund methodology or risk-management framework; nor should it be regarded as a substitute for the NSCC Rules and Procedures ("Rules"), which governs in all respects the relationship between NSCC and its Members. Members should refer to the NSCC Rules for a complete statement of NSCC procedures, rights, obligations, and requirements.

Notwithstanding anything stated herein, NSCC retains all discretion and rights set forth in the NSCC Rules. Nothing in this document shall be deemed to impose any obligations on NSCC that are not set forth in the NSCC Rules, and in the case of any discrepancy between this document and the NSCC Rules, the NSCC Rules shall govern.

This document may be amended at any time without prior notice and the risk-management practices described herein may be changed at any time without update to this document.

ADVANCING FINANCIAL MARKETS. TOGETHER.™

DTCC Public (White)

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## Introduction

On a daily basis NSCC calculates a Clearing Fund requirement for each Member based upon their unsettled and pending transactions, using the prior day's securities closing market price. The formula uses a risk-based methodology and includes a number of components.

Some of these components are described in this document, including the volatility charges, mark-to-market charges, fail charges (for CNS transactions), a charge for Family-Issued Securities to mitigate specific wrong way risk, a charge for Illiquid Positions, a charge to mitigate day over day margin differentials, a coverage component, and a Backtesting Charge. In addition, NSCC may impose a premium charge when a Member's Required Fund Deposit exceeds its excess net capital.

Not all required components to the Clearing Fund or other Clearing Fund deposit requirements are described in this document; NSCC may require additional deposits to a Member's Clearing Fund, as described in the NSCC Rules.

## 1 Volatility Component

### 1.1 Overview of Methodology

The volatility component of each Member's Required Deposit is designed to measure market price volatility and is calculated for Members' Net Unsettled Positions. The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of confidence.

The volatility component applicable to most Net Unsettled Positions is calculated utilizing a parametric Value-at-Risk ("VaR") model and is referred to as the VaR Charge. Net Unsettled Positions in certain securities are excluded from this calculation and are instead charged a haircut-based charge as the volatility component.

The volatility component usually comprises the largest portion of a Member's Required Deposit. The volatility component is described in Procedure XV, I(A)(1)(a) and I(A)(2)(a) of the NSCC Rules.

### 1.2 In-Scope Products and Process

Securities that are eligible to be cleared at NSCC can generally be classified into two broad categories: equity and fixed income instruments. Equity securities can be considered either liquid or illiquid, which include, for example, OTC stocks, IPOs, and some micro-cap stocks. Fixed income securities can include, for example, corporate bonds, municipal bonds and other types of securities that are non-corporate/non-municipal securities. Examples are unit investment trusts, preferred stock, or other fixed income securities that are amenable to generally accepted statistical analysis only in a complex manner.

Generally, liquid equity securities are subject to the VaR Charge, which uses a parametric VaR approach with a number of flooring mechanisms which each targets a specific risk driver; and both illiquid equity securities as well as fixed income securities are subject to a haircut-based volatility charge.

### 1.2.1 Equity Margining

All equities, other than those that are "Illiquid Securities", as defined in the NSCC Rules are classified as liquid securities (subject to further segmentation, see below). In general, these securities include securities that are traded on the national securities exchanges with its first available price more than 30 business days ago in the FAME historical price file over the past 153 business days. These securities are subject to the VaR Charge, which utilizes a parametric method with additional components of a Volatility Floor, Gap Risk, and Margin Floor.

A haircut-based charge is applied as the volatility component for equities that are considered Illiquid Securities. The following securities are considered Illiquid Securities:

- In general, equity securities traded on a national securities exchange that do not meet the available pricing criteria are classified as an Initial Public Offering ("IPO") and considered Illiquid Securities.
- Securities for which there is no price data from the FAME historical price file for the day are generally considered Illiquid Securities.
- Securities that are not listed on a national securities exchange and are traded in over-the-counter marketplaces will also be considered Illiquid Securities.
- In addition, certain securities traded on a national securities exchange will be subject to an illiquidity ratio test such that if the securities' illiquidity ratio is over a pre-defined threshold the securities will be considered Illiquid Securities.

### 1.2.2 Equity Segmentation Logic

As mentioned above certain equity securities traded on a national securities exchange are subject to an illiquidity ratio test and may be considered Illiquid Securities. This is done in the following two steps.

#### 1.2.2.1 Market Capitalization Tier

A security's market capitalization is calculated as the product of its shares outstanding and its closing market price. All liquid securities as defined above are grouped into 4 tiers as follows:

- 1) Large Cap & Mid Cap Stocks: Average Market Cap  $\geq$  \$2 billion
- 2) Small Cap Stocks: \$300 million  $\leq$  Average Market Cap  $<$  \$2 billion
- 3) Microcap Stocks: Average Market Cap  $<$  \$300 million or unavailable
- 4) ETPs

where the 'Average Market Cap' is the month average as of close of business on the last business day of the previous month.

#### 1.2.2.2 Illiquidity Ratio test

Microcap Stocks and ADRs are subject to illiquidity ratio test specified below and considered Illiquid Securities if the illiquidity ratio is over a pre-defined threshold.



The illiquidity ratio<sup>1</sup> is a liquidity indicator by measuring the security's price impact from trading, defined as the following:

$$\text{DailyIlliquidityRatio} = \text{abs}(\text{DailyLogReturn}) / \text{AverageDailyTradingAmount}$$

The '*AverageDailyTradingAmount*' is calculated as the average of the previous 20 days' trading volume. In actual usage, the illiquidity ratio is scaled up by a factor of 10<sup>6</sup>. In case there is missing information for the daily illiquidity ratio calculation, its *DailyIlliquidityRatio* for that day will be defaulted to a conservative level of 100.

Any security with 6 months' median illiquidity ratio over a pre-defined threshold is re-classified as an Illiquid Security. The classification is then carried through the following month.

For CUSIP changes that occur intra-month, i.e. if the market cap and illiquidity ratio were unavailable for the new CUSIP at the previous month end, however the current daily market cap is available, then the liquid/ illiquid classification for the outgoing old CUSIP, where available, is carried over for the new CUSIP for the remaining of the month.

### 1.2.3 Fixed Income Margining

There are generally three categories of fixed income securities that are eligible to be cleared at NSCC: (1) corporate bonds, (2) municipal bonds, and (3) other fixed income securities (non-corporate/non-municipal securities). A haircut-based volatility charge applied to all fixed income securities. Specific haircut rates depend on the category of the security.

The haircut rates for corporate bonds are derived from the maturity/credit rating category into which that bond is classified. For municipal bonds, the haircut rates depend on bond maturity, credit rating and the bond's sector. All other non-corporate/non-municipal bond fixed income securities are subject to a single haircut rate.

## 1.3 Equity Volatility Component Calculations

### 1.3.1 VaR Charge

NSCC uses a parametric VaR methodology to calculate the VaR Charge for liquid equity<sup>2</sup> positions. Parametric VaR is assessed by simultaneously calculating four separate VaR types – (i) an exponentially-weighted moving average ("EWMA") volatility estimation, (ii) an evenly-weighted volatility estimation (aka, volatility floor), (iii) a gap risk measure, and (iv) a portfolio margin floor. The highest resultant value among all of the parametric VaR calculations becomes the surviving parametric VaR that is applied to the start-of-day liquid equity position.

#### Parametric VaR Calculation

The parametric VaR for a given Member's liquid security portfolio,  $VaR_p$ , is calculated as follows:

$$VaR_p = f_{fat-tail} \times 2.327 \times \sqrt{3} \times \sqrt{\text{Variance}(P)}$$

<sup>1</sup> Amihud, Yakov 'Illiquidity and Stock Returns: Cross-Section and Time-Series Effects.' J. Financial Markets 5 (January 2002)

<sup>2</sup> In this document, the concept of liquid/illiquid is for equity securities only. Therefore, the terms "liquid (illiquid) equity" and "liquid (illiquid) security" are interchangeable.

where 2.327 represents the 99<sup>th</sup> percentile of the Normal distribution,  $\sqrt{3}$  is a time scaling factor for the 3-day risk horizon, and  $f_{fat-tail}$  is an adjustment factor from Normal distribution to corresponding Student's t distribution. The adjustment factor is subject to quarterly review and update. The current value is 1.1428.

Note that the variance is calculated with a decay factor and a lookback period, as follows:

$$Variance = \frac{1}{\theta} \sum_{k=0}^{\omega-1} \lambda^k \left( \sum_{i=1}^N (v_i \times r_i(k)) \right)^2$$

where

$\lambda$ : decay factor

$\omega$ : look-back window size for EWMA decay factor

$r_i(k)$ : the 1-day return of the  $i$ th equity in the portfolio on the  $k$ th day counting backward, based on FAME corporate action adjusted historical prices

$v_i$ : the position value of the  $i$ th equity in the portfolio

and

$$\theta = \sum_{k=0}^{\omega-1} \lambda^k$$

The core parametric VaR is the larger of the base VaR and the Volatility Floor, where

1. the base VaR is calculated with  $\lambda = 0.97$  and  $\omega = 152$
2. the Volatility Floor is calculated with  $\lambda = 1$  and  $\omega = 252$

### 1.3.2 Bid-Ask Spread

A bid-ask spread is explicitly assessed for both EWMA VaR and Volatility Floor. This is achieved by adding a bid-ask cost amount equal to the gross un-settled position, multiplied by a bid-ask haircut equivalent to half of a bid-ask spread estimation.

More specifically, the bid-ask charge is calculated based on the gross market value of a portfolio's position in each of the four asset tiers as defined in 1.2.2.1.

The bid-ask spread charge is calculated as:

$$Bid - Ask Spread Charge = \sum_{i=1}^4 Gross\ Market\ Value_i \times BidAsk\ haircut_i$$

An example of the bid-ask haircut levels is shown in the following table.

Tier	Transaction cost haircut (bps)
Tier 1: Large & Mid	5.06
Tier 2: Small Cap	13.67

Tier 3: Micro Cap	23.30
Tier 4: ETP	1.85

### 1.3.3 Gap Risk

The gap risk measure is designed to ensure that NSCC collects enough margin to cover the idiosyncratic price movement of the most concentrated position in the guaranteed portfolio.

NSCC defines the gap risk as follows:<sup>3</sup>

$$\text{gap risk}(c, g) = \begin{cases} g \times \max_i |MV_i|, & \text{when } \frac{\max_i |MV_i|}{\sum_i |MV_i|} > c \\ 0, & \text{otherwise} \end{cases}$$

where

$c$  = concentration level, which is the % threshold of the top non-ETF concentrated position in the portfolio, beyond which Gap Risk would be assessed for the portfolio. Currently, it is set to 10%.

$g$  = gap size, which is the haircut applied to the top concentrated position in the portfolio. Currently, it is set to 16%<sup>4</sup>.

$MV_i$  = market value of position  $i$ .

### 1.3.4 Margin Floor

To address the remaining idiosyncratic and other risk factors in the portfolio not accounted for in the other VaR calculations, NSCC utilizes a portfolio-level margin floor, parameterized as a combined margin haircut on the value of net directional market exposure and the value of balanced market exposures, respectively. These margin haircuts are equivalent to the reciprocal of the directional or balanced Leverage Ratios.

First, the net directional market value of the portfolio is calculated by taking the absolute difference between the market value of the long net unsettled positions and the market value of the short net unsettled positions in the portfolio and then multiplying that amount by a percentage.<sup>5</sup>

- 
- 3 While positions in ETPs are generally excluded from the calculation of the Gap Risk measure, NSCC does maintain a list of ETPs that will be subject to Gap Risk measure. Both the concentration level and gap size are subject to reassessments and updates.
  - 4 Both the gap threshold and the gap size (haircut) are subject to annual review.
  - 5 NSCC determines the applicable percentage by examining the annual historical volatility levels of benchmark indices over a historical look-back period.



Second, NSCC calculates the balanced market value of the portfolio by taking the lowest absolute market value of long net unsettled positions and short net unsettled positions in the portfolio and then multiplying that value by a percentage.<sup>6</sup>

More specifically,

$$\text{margin floor}(HC_d, HC_b) = GMV_d \times HC_d + GMV_b \times HC_b = \frac{GMV_d}{LV_d} + \frac{GMV_b}{LV_b}$$

where

$HC_d$ <sup>7</sup>: haircut rate on directional market value<sup>8</sup>

$HC_b$ : haircut rate on balanced market value

$GMV_d$ : directional gross market value,  $||GMV_{long}| - |GMV_{short}||$

$GMV_b$ : balanced gross market value,  $\min(|GMV_{long}|, |GMV_{short}|)$

### 1.3.5 Final Parametric VaR

NSCC takes the highest result of the calculation of the core parametric VaR, the Gap Risk measure and the margin floor as the final parametric VaR Charge.

NSCC calculates the parametric VaR at the individual Account level and sums up to the Member level.

### 1.3.6 Missing Security Return Filing

In calculating the VaR Charge, if the price return cannot be computed for a security due to inaccurate or incomplete data, the following procedure is followed:

- Calculate the front weighted correlations of this CUSIP with the list of indexing CUSIPs in the table below as follows:

Step 1: Exclude any index ETF CUSIPs with less than n days of price history from FAME, where n is the length of the estimation window.

Step 2: Calculate 1-day log returns for each CUSIP as well as the index ETF for each historical business day

$$r_t = \ln\left(\frac{P_{t+1}}{P_t}\right) \quad (\text{Eqn. 1.3.1})$$

where  $P_t$  represents the historical price on business date t.

6 NSCC determines the applicable percentage to be an amount that covers the transaction costs and other relevant risks associated with the positions in the portfolio.

7 Haircuts are equivalent to the reciprocal of Leverage Ratios (LV).

8 Margin floor haircut rates are subject to annual review.

Step 3: For each CUSIP and index ETF pair ( $i, l$ ), calculate the correlation:

1. Calculate the front-weighted mean of each CUSIP and index ETF pair

$$\bar{r}_i(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times r_{i,T_0-k} \quad (\text{Eqn. 1.3.2})$$

$$\bar{r}_l(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times r_{l,T_0-k} \quad (\text{Eqn. 1.3.3})$$

where  $i$  represents CUSIP and  $l$  represents index ETF,  $T_0$  stands for date of the calculation, and  $N$  is the number of days between the earliest date when a return was calculation in step 2 and  $T_0 - 1$  for CUSIP. And  $I_{T_0-k}$  is the indicator function and

$$I_{T_0-k} = \begin{cases} 0, & \text{when } r_{i,T_0-k} \text{ is missing} \\ 1, & \text{otherwise} \end{cases} \quad (\text{Eqn. 1.3.4})$$

As any missing return will have no contribution to the mean calculation, any missing return in the mean calculation can be simply filled with zero.  $\theta$  is default to the same decay factor as the VaR Charge. Please note that the same indicator function is used in both (Eqn. 1.3.2) and (Eqn. 1.3.3).

2. Calculate the front-weighted standard deviation and covariance

$$\sigma_i(T_0) = \sqrt{\frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{i,T_0-k} - \bar{r}_i(T_0))^2} \quad (\text{Eqn. 1.3.5})$$

$$\sigma_l(T_0) = \sqrt{\frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{l,T_0-k} - \bar{r}_l(T_0))^2} \quad (\text{Eqn. 1.3.6})$$

$$\sigma_{i,l}(T_0) = \frac{1}{\sum_{k=1}^N I_{T_0-k} \times \theta^{k-1}} \sum_{k=1}^N I_{T_0-k} \times \theta^{k-1} \times (r_{i,T_0-k} - \bar{r}_i(T_0)) \times (r_{l,T_0-k} - \bar{r}_l(T_0)) \quad (\text{Eqn. 1.3.7})$$

where  $\bar{r}_i(T_0)$  and  $\bar{r}_l(T_0)$  are calculated in (Eqn. 1.3.2) and (Eqn. 1.3.3) separately, and  $I_{T_0-k}$  is specified in (Eqn. 1.3.4). As mentioned, that there is no impact on the variance or covariance, the missing return can be simply filled with zero.  $\sigma_i(T_0)$  is calculated differently for different  $r_i$  series when having less than  $n$  returns. The  $r_{i,T_0-k}$  terms in  $\sigma_i(T_0)$  calculation must match  $r_{i,T_0-k_i}$ . In other word,  $I_{T_0-k}$  is determined by if  $r_i$  is missing and shared across Eqn. 1.3.5, Eqn. 1.3.6 and Eqn. 1.3.7 above.

3. Calculate the correlation

$$\text{Corr}_{i,j}(T_0) = \frac{\sigma_{i,j}(T_0)}{\sigma_i(T_0) \times \sigma_j(T_0)} \quad (\text{Eqn. 1.3.8})$$

where  $i$  represents the  $i$ -th CUSIP,  $j$  represents the  $j$ -th index ETF.

Table 1: Index ETF for Return Filling

CUSIP	Type of CUSIP	SYMBOL	DESCRIPTION
46090E103	Liquid	QQQ	PowerShares QQQ Trust, Series 1 (ETF)
78467X109	Liquid	DIA	SPDR Dow Jones Industrial Average ETF
78462F103	Liquid	SPY	SPDR S&P 500 ETF
81369Y605	Liquid	XLF	Financial Select Sector SPDR (ETF)
81369Y506	Liquid	XLE	Energy Select Sector SPDR (ETF)
464287655	Liquid	IWM	iShares Russell 2000 Index (ETF)

- Select the index ETF CUSIP with the maximum correlation. i.e.  $\max(\text{abs}(\text{correlations}))$
- If this indexing CUSIP has a correlation value greater or equal to the value of the CutoffCorrelation parameter, then replace the missing return with the return of the index times the SIGN of the correlation between the index and the individual CUSIP. The initial value of the CutoffCorrelation is set to 0.3. If this indexing CUSIP has a correlation value of less than the value of CutoffCorrelation parameter, then replace the missing return with a zero. This can be expressed as:

if  $\max(\text{abs}(\text{correlation})) \geq \text{CutOffCorrelation}$   
then if  $\text{correlation} \geq 0$ , then replace it with indexing-CUSIP-return  
else replace it with  $(-1 * \text{indexing-CUSIP-return})$   
else replace it with 0

### 1.3.7 Illiquid Securities

Illiquid Securities are margined with haircut approach. While the price of a sub-penny stock cannot drop more than 100%, the price for a sub-penny stock frequently moves up over 100%. Thus, NSCC further segments the direction of the transaction (long vs. short) for sub-penny stocks.

For each participant, the Illiquid Security margin charge is calculated as:

$$\text{Illiquid Security Charge} = \sum_{\text{illiquid equity } i} \text{Haircut}(i) \times \text{ABS}(\text{Market Amount}(i))$$

For an example of the Illiquid Security haircut schedule, please see [Appendix A](#).



## 1.4 Fixed Income Volatility Component Calculations

NSCC calculates the haircut-based volatility charge on fixed income securities at the individual Account level and sums up to the Member level.

### 1.4.1 Calculation Methodology for Corporate Bonds

Corporate bonds are categorized according to their time to maturity as of the latest trading date<sup>9</sup> and credit rating. Please see [Appendix B](#) for a detailed breakdown of the indices and haircut rates that are currently utilized, as of the publication date of this document<sup>10</sup>.

The total volatility charge for positions in corporate bonds is equal to the sum of charges for each category, as described below:

$$chrg(\text{corporate bonds}) = \sum_{i=1}^{36} (hr_{long}(i) \times |v_{long}(i)| + hr_{short}(i) \times |v_{short}(i)|),$$

where  $v_{long}(i)$  and  $v_{short}(i)$  are respectively the total market values of long and short positions in bucket  $i$ .

### 1.4.2 Calculation Methodology for Municipal Bonds

Municipal bonds are grouped according to credit rating, remaining time to maturity as of the latest trading date and separately categorized by municipal sector.

The charge for a Member is obtained by aggregating the CUSIP-level charge contributions:

$$Muni\ Bond\ Chrg = \sum_{\text{muni bonds } b \text{ in part.portfolio}} hrc(b) \times ABS(\text{Market Amount}(b))$$

Please refer to [Appendix C](#) for details.

If the maturity date is unavailable, the haircut rate is set to that of longest tenor category.

### 1.4.3 Calculation Methodology for Other Fixed Income Securities

All fixed-income securities that are not classified as corporate bonds or municipal bonds are subject to a haircut as follows:

$$\begin{aligned} Non\ Corp/Non\ Muni\ Chrg \\ = haircut \times \sum_{\text{non-corp non-muni bond } i} ABS(\text{USD Position Amount}(i)) \end{aligned}$$

Currently, the haircut rate is 3.5%, but the value is updated annually.

<sup>9</sup> The time to maturity is calculated as of the latest trading date. For example, at the end of day on 9/1/2020, the latest trading date is 9/1/2020; at the start of day on 9/2/2020, the latest trading date is also 9/1/2020.

<sup>10</sup> Corporate bond and muni bond haircut rates are reviewed and updated on a quarterly basis.

## 1.5 Family-Issued Securities Volatility Component Calculation

NSCC assesses a haircut-based volatility charge of no less than 80.0% on positions held in a Member's Family-Issued Securities (or "FIS", as defined in the NSCC Rules). The Family-issued Securities Charge is calculated to mitigate specific wrong-way risk to securities issued by Members or their affiliates.

NSCC removes all long Net Unsettled Positions in FIS from the VaR Charge calculation and assesses a haircut-based volatility charge on these positions based on the asset class of the security.

	Fixed Income Family-Issued Securities	Equity Family-Issued Securities
Long Positions	80.0% haircut	100.0% haircut
Short Positions	Not subject to this separate volatility charge.	Not subject to this separate volatility charge.

## 1.6 Margin Liquidity Adjustment

NSCC uses a base-line Margin Liquidity Adjustment (MLA) model to account for the potential additional market impact costs associated with liquidating a portfolio that is relatively large in size with respect to available market-wide liquidity.

### 1.6.1 Portfolio segmentation

To calculate MLA, a member's portfolio is first segmented into the following tiers (note there are additional tiers here in comparison to segmentations used in earlier sections such as 1.2.2.1 and 1.3.2):

- Tier 1 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$10 billion
- Tier 2 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$2 billion and  $<$  \$10 billion
- Tier 3 – Liquid Equity and Equity based ETP with market capitalization  $\geq$  \$300 million and  $<$  \$2 billion
- Tier 4 – Liquid Equity and Equity based ETP with market capitalization  $<$  \$300 million
- Tier 5 – Treasury based ETP
- Tier 6 – All ETP not in tier 1-5, and 71 & 81
- Tier 71– MUNI bond based ETP
- Tier 81– Corp. bond based ETP
- Tier 7– Corp. bonds
- Tier 8 – MUNI bonds
- Tier 9 – Non-Corp/Non-Muni
- Tier 10 – Illiquid Equity
- Tier 11 – ETF creation/redemption transactions (Basket ETF only)

### 1.6.2 VaR Allocation

Next, for liquid equity tiers (1-6, 71, 81, 11) we need to allocate the member VaR, this is performed by:

1. Aggregate a member's sub-account VaR for business day t:

$$member_{VaR} = sum(subaccount_{VaR})$$

2. Calculate an independent tier level VaR using the current liquid equity VaR model for each member and each tier. As an example, member XYZ has 5 tiers on day t, then we need to calculate VaR for each of the 5 tiers as of this day, the VaR calculation would include the EWMA, Evenly Weighted (Vol. Floor), Margin Floor and Gap Risk components.
3. Based on the independent tier level VaR, proportionally allocate the member's total VaR to the tier level. More specifically, this is done as:

$$VaR_{perc_g} = VaR_{standalone_g} / \sum_{g=1-6,71,81,11} VaR_{standalone_g}$$

$$allocated\ VaR_g = Member\ VaR \times VaR_{perc_g}$$

4. Calculate 1-day VaR from the 3-day VaR in step 3, this is calculated as  $VaR/sqrt(3)$ .

### 1.6.3 MLA Calculation

The MLA charge can be expressed as the following formula across all asset tiers in 1.6.1:

$$MLA_{Adj_{p,g}} = B_g \times \max \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_t \omega_t^{\alpha+1} \right]^\delta \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^\alpha - 1, 0 \right)$$

where

$MLA_{Adj_{p,g}}$ : also expressed as  $f_g$ , this is the adjustment factor to be multiplied by the member tier 1-day VaR.

$B_g$ : asset tier coefficient to be provided by NSCC.

$\sigma_{1g}$ : 1-day volatility for each asset class

$h_{1p}$ : 1-day effective haircut, this value is calculated as  $\frac{Va_{1g}}{GM_g}$ ,  $VaR_{1g}$  is the allocated 1-day member tier VaR as calculated per VaR Allocation in the previous section.

$\omega_t$ : the position weight of each CUSIP, calculated as  $\frac{GMV_t}{\sum GMV_t}$ , where  $t$  represents each individual CUSIP within the member tier portfolio.

$\delta$  is an indicator equals to 1 for Large, Medium, Small, and Micro Cap (or, tier 1-4) and 0 for the rest asset class group, this is equivalent to say, the value  $\omega_t$  is only calculated for tier 1-4; for the rest of tiers, the term  $[\sum_t \omega_t^{\alpha+1}]^\delta = 1$ .

$\alpha = 0.5$ , this is a fixed parameter.

$GMV_p$  represents the gross market value for the member tier.

$\theta_g$ : represents the % of assumed ADV to be liquidated.

$ADV_g$  represent the aggregated average trading volume for the asset class group.

And finally, the combined MLA charge for a member is calculated as:

$$MLA_{NSCC} = \sum_g v_g \cdot f_g + f_{corp} * HC_{corp} + f_{muni} * HC_{muni} + f_{illiquid} * HC_{illiquid} + f_{UIT} * HC_{UIT}$$

where  $v_g$  is the 1-day VaR for each asset member tier,  $f_g$  is the same as  $MLA\_Adj$  calculated per the previous section, and  $HC$  represents the haircut, or VaR for haircut assets.

#### Special handling for bond ETFs:

Corp bond ETF & Muni bond ETF are assigned to the Corp and Muni tier, therefore when the GMV is calculated for corp & muni bond, it is calculated as:

$$GMV_{corp} = GMV_{corp} + GMV_{corp\ ETF}$$

$$GMV_{muni} = GMV_{muni} + GMV_{muni\ ETF}$$

Moreover, the VaR for the respective bond and bond ETF portions are combined:

$VaR_{corp} = VaR_{corp} + VaR_{corp\ ETF}$ , where  $VaR_{corp\ ETF}$  is the allocated 1-day VaR for corp bond ETFs.

$VaR_{muni} = VaR_{muni} + VaR_{muni\ ETF}$ , where  $VaR_{muni\ ETF}$  is the allocated 1-day VaR for muni bond ETFs.

The effective haircut is then:

$$HC_{corp} = \frac{VaR_{corp}}{GMV_{corp}}, \quad HC_{muni} = \frac{VaR_{muni}}{GMV_{muni}}$$

#### Special handling for IPO:

When calculating the MLA charge for the Illiquid Equity tier, note that GMV ( $GMV_{illiquid}$ ) is calculated excluding IPO securities. Similarly,  $VaR_{10}$  is calculated as a haircut on pure illiquid positions, excluding IPO.

#### Special handling of ETF Creation and Redemption

It is expected that the removal of creation & redemption activities would reduce a member's overall GMV (Gross Market Value). However, if the removal of such activities increases the member's GMV, we leave such positions with the member portfolio.

In other words, if  $GMV$  (member liquid equity portfolio without C&R) >  $GMV$  (member liquid equity portfolio with C&R), then do not remove C&R from this member on this business day.

As an example, suppose we have the following two portfolios:

Portfolio A, the GMV of the portfolio was \$550, after taking out the C&R position, the remaining portfolio becomes \$50, in such case C&R position is taken out and separated into Tier 11.

cusip	CRRD pstn	non CRRD	CNS
c1	100	0	100
c2	100	-50	50
c3	100	0	100
c4	-300	0	-300
GROSS		50	550

In portfolio B, the GMV of the portfolio was \$50, after taking out the C&R position, the remaining portfolio is \$550, in this case we would not be separating the C&R position but instead allocating the entire portfolio into tier 1-10.

cusip	CRRD pstn	non CRRD	CNS
c1	100	-100	0
c2	100	-100	0
c3	100	-50	50
c4	-300	300	0
GROSS		550	50

#### 1.6.4 Kappa Adjustment

The MLA charge is further refined by introducing a Kappa adjustment factor. The Kappa adjustment is conditional on the  $(I/V)^*$  on the member tier level.

1. The value  $(I/V)^*$  ratio for kappa adjustment application is calculated by first calculating  $I_g^*$ , which then is divided by the tier 1-day VaR.
2. The estimated value  $I_g^*$  of market impact is calculated differently for liquid equity tiers and other tiers:

For tiers greater than 4 we calculate

$$I_g^* = 0.4 \sigma_{1g} GMV_p \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2}$$

For liquid equity tiers (tiers 1,2,3,4) we calculate

$$I_g^* = \begin{cases} \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^2 \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right) & \text{if } B_g \times \frac{\left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^2 \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right)}{0.7} + 0.4 > 0, \\ \text{then } VaR_g \times (B_g \times \left( \frac{\sigma_{1g}}{h_{1p}} \left[ \sum_i (\omega_i)^{3/2} \right] \left( \frac{GMV_p}{\Theta_g * ADV_g} \right)^{1/2} - 1.0 \right)) / 0.7 + 0.4) & \\ \text{Else, } 0 & \end{cases}$$



Note that  $(I/V)^* = (I^*/V)$

3. The sums are taken across all tiers as in 1.6.1.
4. Use the ratio  $k^* = \frac{\sum_g I_g^*}{\sum_g VaR_g}$  to choose a value for kappa adjustment from the table:
5. in the following table: e.g. if  $(I/V)^* = 0.6$ , then Kappa = 93%

Lower Bound and Upper Bound (Left inclusive) of I/V		$\kappa$
0.0	0.5	100%
0.5	0.7	93%
0.7	1.2	86%
1.2	1.8	79%
1.8	2.8	71%
2.8	4.2	64%
4.2	6.5	57%
6.5	10.3	50%
10.3	17	43%
17	30	36%
30+		29%

6. The member's final MLA charge then becomes:

$$MLA\ Charge = MLA\ charge\ without\ kappa\ adjustment \times k$$

## 2 Mark to Market Component

### 2.1.1 Start of Day Mark to Market Charge

The mark-to-market ("MTM") component measures the unrealized profit or loss using the contract price versus the current market price (that is, the price for a security determined daily for purposes of the CNS system; generally that is the prior day's closing price). The MTM component is described in Procedure XV, I(A)(1)(b) and (c) and I(A)(2)(b) of the NSCC Rules.

The MTM charge is assessed on each Member's rolling two-day portfolio net of unsettled positions, including positions that fail in NSCC's Continuous Net Settlement system. The charge is calculated by taking the difference between the contract value of each position in the portfolio and the market value based on the prior day's closing market price.

CUSIP MTM credits and debits are first aggregated at the linked family account level. The main account MTM is equal to the sum of the MTM debits across link accounts, separated into three transaction types: regular way, when-issued, and Institutional Delivery Net ("ID Net"). The MTM debits calculated for regular way, when-issued, and ID Net transactions are summed to a total MTM charge.

MTM credits do not offset the total MTM charge; in the event the Member has an MTM credit when aggregated at the main account level, the MTM charge will be zero.

### 2.1.2 Intraday Mark to Market Charge

NSCC may require an additional Intraday MTM charge should NSCC deem it necessary or appropriate, for example, during times of extreme market volatility. The intraday MTM charge is described in Procedure XV, Section I(B)(5) of the NSCC Rules.

Intraday market moves and positions are tracked in fifteen-minute intervals and an additional MTM charge may be collected if the difference between most recent mark-to-market price of a Member's Net Unsettled Positions and the most recent observed market price exceeds a predetermined threshold.

The current threshold is 80% of the Member's volatility charge and may be reduced if NSCC determines that a reduction of the threshold is appropriate to mitigate risk during volatile market conditions.

### 3 Special Charge

NSCC may require an additional payment, or Special Charge, from Members in view of price fluctuations in or volatility or lack of liquidity of any security. NSCC shall make such determination based on the Member, the security type and concentration, CRRM or third-party credit ratings, or other factors. The Special Charge is described in Procedure XV, Section I(A)(1)(d) and I(A)(2)(c) of the NSCC Rules.

### 4 CNS Fails Charge Component

NSCC may be exposed to market risk when a Member fails to pay net settlement proceeds as a result of the non-delivery of securities by settlement date as well as when a Member fails in the delivery of securities on settlement date. To mitigate NSCC's exposure to CNS fails positions, which could be correlated to a Member's credit-worthiness, NSCC assesses the CNS Fails Charge. The CNS Fails Charge is described in Procedure XV, Section I(A)(1)(e) of the NSCC Rules.

The CNS Fails Charge is calculated by multiplying the current market value of a Member's aggregate CNS Fails Positions by a percent based on the Member's rating on the Credit Risk Rating Matrix ("CRRM"), as described below:

Member's CRRM Rating	CNS Fails Charge Haircut Rate
1-4	5.0% of the Member's aggregate CNS fails positions
5-6	10.0% of the Member's aggregate CNS fails positions
7	20.0% of the Member's aggregate CNS fails positions

The Credit Risk Rating Matrix is described in Rule 2B, Section 4 of the NSCC Rules.

## 5 Margin Requirement Differential (“MRD”) Component

NSCC may be exposed to market risk based on potential portfolio fluctuation as a Member executes trades throughout the day. Pursuant to Addendum K of the NSCC Rules, NSCC’s general counterparty trade guaranty generally attaches immediately upon trade validation and before NSCC has collected the Member’s required deposit. As a result, NSCC may be exposed to large un-margined intraday portfolio fluctuations before NSCC has collected the Member’s clearing fund requirement the following morning.

The Margin Requirement Differential charge (“MRD”) is designed to help mitigate the risks posed to NSCC by day-over-day fluctuations in a Member’s portfolio by forecasting future changes in a Member’s portfolio based on a historical look-back at each Member’s portfolio over a given time period. The MRD charge is described in Procedure XV, Section I(A)(1)(f) and 1(A)(2)(d) of the NSCC Rules.

The MRD charge is calculated based on the day-over-day positive changes in the Member’s start of day<sup>11</sup> (“SOD”) volatility charge and MTM charge components, which are calculated based on the overnight or end of day (“EOD”) positions. For example, the position referred to by NSCC’s system’s SOD label on 7/1/2020 refers to the EOD position on 6/30/2020.

For any given calculation date,  $t$ , the MRD charge is calculated as follows:

1. Calculate the  $MRD_{VaR}$  and  $MRD_{MTM}$  sub-components,

$$MRD_{VaR}(t) = \frac{\sum_{i=0}^{99} \theta^i \times \max\{VaR(t-i, SOD) - VaR(t-(i+1), SOD), 0\}}{\sum_{i=0}^{99} \theta^i} \quad (\text{Eqn. 5.1})$$

$$MRD_{MTM}(t) = \frac{\sum_{i=0}^{99} \theta^i \times \max\{CHRG_{MTM}(t-i, SOD) - CHRG_{MTM}(t-(i+1), SOD), 0\}}{\sum_{i=0}^{99} \theta^i}$$

where

- $i$  represents the number of business days look back relative to the calculation date, currently 100 days; For example, when  $i = 0$ ,  $VaR(t-i, SOD)$  represents the SOD Volatility charge as of the calculation date; when  $i = 1$ ,  $VaR(t-i, SOD)$  represents the SOD volatility charge one business day before the calculation date; etc;
  - $\theta$  is equal to 0.97 as default;
  - $VaR(d, SOD)$  is the SOD volatility charge as of business date  $d$ ; and
  - $CHRG_{MTM}(d, SOD)$  is the SOD MTM charge as of business date  $d$ .
2. Calculate the MRD charge by multiplying the sum of  $MRD_{VaR}$  and  $MRD_{MTM}$  sub-components with an MRD coefficient, which is 1.5 currently.

<sup>11</sup> Using the NSCC risk system convention.



$$MRD(t) = Coefficient \times [ MRD_{VaR}(t) + MRD_{MTM}(t) ]$$

The MRD charge is calculated at the Member level. There are four special treatments in this calculation.

1. On the first day of membership, the differences  $VaR(t - i, SOD) - VaR(t - (i + 1), SOD)$  and  $CHRG_{MTM}(t - i, SOD) - CHRG_{MTM}(t - (i + 1), SOD)$  in Eqns. 5.1 are replaced with zeros.
2. Apart from treatment above, if a member has less than 101 business days of MTM and Volatility charges, the missing values  $VaR(t)$  and  $MTM(t)$  in Eqns. 5.1 are replaced with zeros.

## 6 Coverage Component ("CC") Charge

NSCC is exposed to a Member's un-margined portfolio as a result of the timing when NSCC's trade guaranty attaches to positions, which is immediately upon trade validation and prior to the collection of margin. Therefore, the Coverage Component ("CC") charge is designed to mitigate the risks associated with a Member's Required Fund Deposit being insufficient to cover projected liquidation losses to the coverage target, currently a 99 percent confidence level, by adjusting a Member's Required Fund Deposit towards the target. The CC charge is described in Procedure XV, Section I(A)(1)(g) and I(A)(2)(e) of the NSCC Rules.

The CC charge supplements the MRD charge by preemptively increasing a Member's Required Fund Deposit in an amount calculated to forecast potential deficiencies in the margin coverage of a Member's guaranteed portfolio.

The CC charge is calculated by comparing the simulated liquidation profit and loss of a Member's portfolio, using the actual positions and the actual historical returns on the positions, against the sum of each of the following Clearing Fund components: (i) volatility charge; (ii) MRD charge; and (iii) illiquid charge. For a given business day, NSCC determines a daily peak deficiency amount for each Member equal to the maximum observed deficiency over any of the prior 10 business days. The CC charge is equal to the front-weighted average of the peak deficiencies over the prior 100 business days.

The CC charge is calculated as follows:

1. For any given business day  $t$ , calculate the Peak Deficiency:

$$\begin{aligned} PeakDeficiency(t) &= MAX_{0 \leq i \leq 9} \{ -\min [ VaR(t - 4 - i, SOD) \\ &\quad + Illiquid(t - 4 - i) + MRD(t - 4 - i) \\ &\quad + P\&L(t - 3 - i), 0 ] \} \end{aligned} \quad \text{Eqn. 6.1}$$

where

- $i$  represents the number of business days look back; For example, when  $i=0$ ,  $VaR(t - 4 - i, SOD)$  represents the SOD Volatility charge as of the business day of  $t - 4$ ; when  $i=1$ ,  $VaR(t - 4 - i, SOD)$  represents the SOD Volatility charge as of the business day  $t - 5$ ; and etc;
- $VaR(d, SOD)$  is the SOD Volatility charge as of the business day  $d$ ;
- $Illiquid(d)$  is the illiquid charge as of the business day  $d$ ;
- $MRD(d)$  is the MRD charge as of the business day  $d$ ; and

- $P\&L(d)$  is the 3-day liquidation profit or loss of the SOD position as of the business day  $d$ ;

## 2. Calculate the CC charge

$$CC(t) = \frac{\sum_{i=0}^{99} \theta^i \times PeakDeficiency(t - i)}{\sum_{i=0}^{99} \theta^i}$$

where

- $i$  represents the number of business days look back as of the calculation day  $t$ , For example, when  $i=0$ ,  $PeakDeficiency(t - i)$  represents Peak Deficiency as of the calculation day  $t$ ; when  $i=1$ ,  $PeakDeficiency(t - i)$  represents the Peak Deficiency as of the business day before the calculation day; and etc;
- $\theta$  is equal to 0.97 as default.

The CC charge is calculated at the NSCC Member level only. The P&L and relevant charges in the above calculation are the sum of the Member's subaccounts. The following special treatment is applied:

1. When there is less than 10 days of history for the Peak Deficiency calculation in Eqn. 6.1, actual number of history observations is used.
2. In case the history of peak deficiencies is shorter than 100 days for any Member, all the missing peak deficiencies are default to zeros.

## 7 Other Transactions Charge

An additional charge for transactions other than CNS transactions is based on the 20-day rolling average of the summed value of non-guaranteed settlement activities. This "Other Transactions" charge is described in Procedure XV, Section I(A)(3) of the NSCC Rules.

Daily Other Transactions charges range between 2.5% and 10.0% of the net debits and credits. Each of the current Non-CNS codes is described in [Appendix D](#).

Currently, for Members with a CRRM rating of 1 through 6, the charge takes the greater of the following, based on a 20-day rolling average of activity:

- 2.5% of the absolute value of debits + the absolute value of credits
- 5.0% of the absolute value of debits

Currently, for Members with a CRRM rating of 7, the charge is calculated by taking the 20-day rolling average of activity based on 10.0% of the absolute value of debits and the absolute value of credits.

## 8 Mutual Fund Transactions Charge

An additional charge is calculated for mutual fund transactions, referred to as the Fund/SERV charge. This charge is described in Procedure XV, Section I(A)(4) of the NSCC Rules.

The Fund/SERV charge is derived from a Member's daily settlement debits related to mutual fund activities and is tiered as follows:

A. \$5,000 if daily mutual fund services settlement debits of no more than \$100,000 with respect to any one fund Member.

B. \$10,000 if daily mutual fund services settlement debits of no more than \$500,000 with respect to any one fund Member.

C. \$20,000 if daily mutual fund services debits of more than \$500,000 with respect to any one fund Member.

A daily monitoring 'snapshot' is performed at 12:00PM EST. When mutual fund settlement debits are greater than or equal to \$500 million, NSCC generally will confirm the amount with the Member.

## 9 Excess Capital Premium ("CF Premium") Charge

NSCC may assess a CF Premium charge to mitigate risk presented by highly leveraged Members. The charge may be imposed when a Member's applicable Required Fund Deposit (the aggregate unadjusted Required Fund Deposit minus any MRD charge, CC charge, and special charges) exceeds their excess net capital ("ENC") for broker-dealers, or equity capital for bank Members. The CF Premium charge is described in Procedure XV, Section I(B)(2).

The CF Premium charge may be assessed based on the amount by which a Member's applicable Required Fund Deposit exceeds its most recently reported regulatory capital balance (ENC or equity capital).

If the ratio of the Required Fund Deposit over the excess capital balance (the "excess capital ratio") exceeds 1.0, a CF Premium charge may be calculated by multiplying the excess capital ratio by the amount by which the Required Fund Deposit exceeds the excess capital balance.

When the excess capital ratio exceeds 1.0, NSCC may calculate and assess the CF Premium charge as part of the Member's start-of-day requirement.

Excess Capital Ratio	NSCC Action	Additional Clearing Fund Calculation
Excess Capital Ratio > 1.0	An excess capital premium may be imposed.	Multiply the amount of the CFR that is in excess of the reported capital balance by the Member's excess capital ratio

## 10 Backtesting Charge

NSCC may require a Member to make an additional deposit in the form of a Backtesting Charge to mitigate exposures that may not be adequately captured by the volatility model as needed to achieve a 99 percent back testing coverage target. The charge may be assessed at the start of the day or on an intraday basis, as needed. The Backtesting Charge is described in Procedure XV, Section I(B)(3) of the NSCC Rules.

NSCC incorporates daily backtesting to ensure that the calculated Clearing Fund Required Deposit is sufficient to cover the potential loss the clearing corporation may be subject to in the event of a Member default. In order to calculate this charge, NSCC takes end-of-day, 11:00AM EST, and 2:00PM EST portfolio snapshots, then compares the Member's Required Fund Deposit to the profit and loss over a simulated three-day liquidation horizon; a deficiency occurs when a Member's Required Fund Deposit does not sufficiently cover the simulated loss on a portfolio.

NSCC routinely calculates the rolling 12-month coverage ratio of the Member for both the end-of-day and intraday backtests. Coverage is calculated as the percentage of non-deficiency backtest observations out of the number of backtest observations the Member has during the period. NSCC seeks to maintain 99.0% coverage at the Member-level.

Should the coverage ratio decline below 99.0% for either or both backtest types, NSCC may assess a backtest charge component such that, if applied retroactively, the Member would not have incurred enough deficiencies for the coverage ratio to decline below the 99.0% coverage target. Typically, the amount of the backtest charge component will be equal to the Member's third-largest end-of-day backtest deficiency and fifth-largest intraday backtest deficiency during the rolling twelve-month period.

NSCC may adjust the calculation and/or application of the charge in order to achieve its backtesting coverage target.

## 11 Bank Holiday Charge

NSCC does not collect margin or settle securities on a bank holiday, such as Columbus Day and Veterans Day, when the equities markets are open for trading, but the Board of Governors of the Federal Reserve observes a holiday and banks are closed. To address exposure from Members' trading activity on a bank holiday, NSCC may require its Members to make an additional Clearing Fund deposit (the "Bank Holiday Charge"). The Bank Holiday Charge is based on NSCC's assessment of market conditions at the time the charge is calculated and is assessed on the business day immediately prior to the bank holiday. NSCC communicates in advance to Members, via an Important Notice, the day on which the charge will apply, including the methodology<sup>12</sup> it will use to calculate the Bank Holiday Charge. The Bank Holiday Charge is described in Procedure XV, Section I(B)(4) of the NSCC Rules.

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<sup>12</sup> A methodology might include time scaling of the volatility charge or a using a stress scenario that reflects potential market price volatility on that holiday.

## 12 Appendices

The information provided in these Appendices is current as of the publication date of this document. This information may change from time to time following publication, without notice and without updates to this document. Notwithstanding anything stated in this document, NSCC retains any discretion provided to it in the NSCC Rules in calculating the charges described therein.

### Appendix A

Illiquid Security haircut schedule:

Price Range	Haircut Rate
Price <= \$0.01, Long	57%
Price <= \$0.01, Short	100%
\$0.01 < Price < \$1.00	60%
\$1.00 <= Price < \$5.00	34%
Price => \$5.00	15%

### Appendix B

Corporate Bond Mapping and Haircut Table

Illiquid Security Group Code	Merrill Lynch Index	Description of the Security Group	Positive haircut_rt	Negative haircut_rt
1	C1A1	0-1 year/AAA/Aaa	2.0%	2.0%
2	C1A2	0-1 year/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
3	C1A3	0-1 year/A+/A/A-/A1/A2/A3	2.0%	2.0%
4	C1A4	0-1 year/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
5	H0A0	0-1 year/BB & Lower	6.3%	6.9%
6	C1A1	1-3 years/AAA/Aaa	2.0%	2.0%
7	C1A2	1-3 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
8	C1A3	1-3 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
9	C1A4	1-3 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
10	H0A0	1-3 years/BB & Lower	6.3%	6.9%
11	C2A1	3-5 years/AAA/Aaa	2.0%	2.0%
12	C2A2	3-5 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
13	C2A3	3-5 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
14	C2A4	3-5 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%



15	H0A0	3-5 years/BB & Lower	6.3%	6.9%
16	C3A1	5-7 years/AAA/Aaa	2.0%	2.0%
17	C3A2	5-7 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.0%
18	C3A3	5-7 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
19	C3A4	5-7 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.0%
20	H0A0	5-7 years/BB & Lower	6.3%	6.9%
21	C4A1	7-10 years/AAA/Aaa	2.0%	2.0%
22	C4A2	7-10 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.0%	2.1%
23	C4A3	7-10 years/A+/A/A-/A1/A2/A3	2.0%	2.0%
24	C4A4	7-10 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.0%	2.1%
25	H0A0	7-10 years/BB & Lower	6.3%	6.9%
26	C7A1	10-15 years/AAA/Aaa	3.4%	2.5%
27	C7A2	10-15 years/AA+/AA/AA-/Aa1/Aa2/Aa3	2.3%	2.2%
28	C7A3	10-15 years/A+/A/A-/A1/A2/A3	2.1%	2.2%
29	C7A4	10-15 years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	2.1%	2.6%
30	H0A0	10-15 years/BB & Lower	6.3%	6.9%
31	C8A1	15+ years/AAA/Aaa	4.3%	3.6%
32	C8A2	15+ years/AA+/AA/AA-/Aa1/Aa2/Aa3	3.6%	3.4%
33	C8A3	15+ years/A+/A/A-/A1/A2/A3	3.8%	3.5%
34	C8A4	15+ years/BBB+/BBB/BBB-/Baa1/Baa2/Baa3	3.2%	3.5%
35	H0A0	15+ years/BB & Lower	6.3%	6.9%
36	H0A0	All others/Not Rated	6.3%	6.9%

## Appendix C

### Municipal Bond Haircut Table

Rating	Maturity	Sector	HC
Above BBB+	1-3 Yrs		2.00%
Above BBB+	3-7 Yrs		2.00%
Above BBB+	7-12 Yrs		2.25%
Above BBB+	12-22 Yrs		3.20%
Above BBB+	22+ Yrs		4.36%

BBB+ and below	1-3 Yrs	General Obligation	6.11%
BBB+ and below	1-3 Yrs	Health Care	6.11%
BBB+ and below	1-3 Yrs	High Yield	6.11%
BBB+ and below	1-3 Yrs	Higher Education	6.11%
BBB+ and below	1-3 Yrs	Housing	6.52%
BBB+ and below	1-3 Yrs	Land Backed	6.11%
BBB+ and below	1-3 Yrs	OTHER	6.11%
BBB+ and below	1-3 Yrs	Tobacco	6.63%
BBB+ and below	1-3 Yrs	Transportation	6.11%
BBB+ and below	1-3 Yrs	Utility	6.11%
BBB+ and below	3-7 Yrs	General Obligation	6.11%
BBB+ and below	3-7 Yrs	Health Care	6.11%
BBB+ and below	3-7 Yrs	High Yield	6.11%
BBB+ and below	3-7 Yrs	Higher Education	6.11%
BBB+ and below	3-7 Yrs	Housing	6.52%
BBB+ and below	3-7 Yrs	Land Backed	6.11%
BBB+ and below	3-7 Yrs	OTHER	6.11%
BBB+ and below	3-7 Yrs	Tobacco	6.63%
BBB+ and below	3-7 Yrs	Transportation	6.11%
BBB+ and below	3-7 Yrs	Utility	6.11%
BBB+ and below	7-12 Yrs	General Obligation	6.11%
BBB+ and below	7-12 Yrs	Health Care	6.11%
BBB+ and below	7-12 Yrs	High Yield	6.11%
BBB+ and below	7-12 Yrs	Higher Education	6.11%
BBB+ and below	7-12 Yrs	Housing	6.52%
BBB+ and below	7-12 Yrs	Land Backed	6.11%
BBB+ and below	7-12 Yrs	OTHER	6.11%
BBB+ and below	7-12 Yrs	Tobacco	6.63%
BBB+ and below	7-12 Yrs	Transportation	6.11%
BBB+ and below	7-12 Yrs	Utility	6.11%
BBB+ and below	12-22 Yrs	General Obligation	7.30%
BBB+ and below	12-22 Yrs	Health Care	7.30%
BBB+ and below	12-22 Yrs	High Yield	7.30%
BBB+ and below	12-22 Yrs	Higher Education	7.30%



BBB+ and below	12-22 Yrs	Housing	7.30%
BBB+ and below	12-22 Yrs	Land Backed	7.30%
BBB+ and below	12-22 Yrs	OTHER	7.30%
BBB+ and below	12-22 Yrs	Tobacco	7.30%
BBB+ and below	12-22 Yrs	Transportation	7.30%
BBB+ and below	12-22 Yrs	Utility	7.30%
BBB+ and below	22+ Yrs	General Obligation	9.26%
BBB+ and below	22+ Yrs	Health Care	9.26%
BBB+ and below	22+ Yrs	High Yield	9.26%
BBB+ and below	22+ Yrs	Higher Education	9.26%
BBB+ and below	22+ Yrs	Housing	9.26%
BBB+ and below	22+ Yrs	Land Backed	9.26%
BBB+ and below	22+ Yrs	OTHER	9.26%
BBB+ and below	22+ Yrs	Tobacco	9.26%
BBB+ and below	22+ Yrs	Transportation	9.26%
BBB+ and below	22+ Yrs	Utility	9.26%

## Appendix D

### Non-CNS Codes

Code	Data Group	Description
1	DTC Settlement	DTC BROAD MONEY SETTLEMENT
2	Clearance Cash Adjustment	CLEARANCE CASH ADJUSTMENT
5	ACATS	ACATS INTERFACE REJECTS
8	ACATS	ACATS NEXT DAY SETTLEMENT
11	Envelope	DIVIDEND SETTLMNT SERV.
12	Envelope	FUNDS ONLY SETTLEMENT
13	Envelope	DSS RECLAMATIONS
16	CNS Reorganizations	CNS REORG MARK - DEBIT

Code	Data Group	Description
17	CNS Reorganizations	CNS REORG MARK - CREDIT
20	OW	RECAPS CASH ADJUSTMENTS
30	CDS Dividends	DTC CANADIAN DIVIDENDS
31	CDS Dividends	CNS CANADIAN DIVIDENDS
32	CDS Dividends	DSS CANADIAN DIVIDENDS
35	OTHER	OCC COLLATERAL PLEDGE
45	Fees	NASDAQ BX TRAN FEES
46	Fees	NASD REG-FEES
47	Fees	PSA REGULATORY FEES
48	Fees	NSE TRANSACTION FEES
49	Fees	CSE REGULATORY FEES
50	Fees	NYSE REGULATORY FEES
51	Fees	AMEX REGULATORY FEES
52	Fees	NASD REGULATORY FEES
53	Fees	PSE REGULATORY FEES
68	Tax	NYS TRANSFER TAX
70	Tax	NYS QUARTERLY TAX
71	Tax	NYS QUARTERLY TAX REFUND
74	OTHER	CLEARING FUND COUPON INT
80	Fees	NSCC MONTHLY BILLING
81	Floor Broker	NYSE COMMISSION BILLS
83	Fully Paid	FULLY PAID DEBITS
84	Fully Paid	FULLY PAID CREDITS
85	Floor Broker	AMEX COMMISSION BILLS

Code	Data Group	Description
91	OTHER	GCN CHARGES
96	OTHER	OPTIONAL SETTL SERVICE
97	OTHER	SUSPENSE
98	OTHER	PAYMENTS (FUNDS TRANSFER)
101	OTHER	RIO-DTC INTERFACE
111	Insurance	INSURANCE COMMISSIONS
112	Insurance	INSURANCE PREMIUMS
113	Insurance	LICENSING & APPT DETAIL
181	Floor Broker	NYSE COMM BILL CHARGES
185	Floor Broker	AMEX COMM BILL CHARGES
198	OTHER	DTC/CNS CREDITS

# **EXHIBIT C**

## **Alpine's Service of its Motion for an Interim Stay**

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*Attorneys for Petitioner*

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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of  
  
ALPINE SECURITIES CORPORATION, a  
Utah limited liability company  
  
For Review of Adverse Action Taken By  
  
NATIONAL SECURITIES CLEARING  
CORPORATION

**CERTIFICATE OF SERVICE**

Aaron D. Lebenta, counsel for Alpine Securities Corporation (“Alpine”), hereby certifies pursuant to Rule 151(d) of the Commission’s Rules of Practice that, on March 5, 2021, he served on National Securities Clearing Corporation (“NSCC”), along with this Certificate of Service, Alpine’s Motion for an Interim Stay and Memorandum in Support, along with exhibits, and Alpine’s Motion for leave to file an overlength Memorandum in Support, by the following means:

1. NSCC's headquarters: By the U.S. Postal Service, by means of certified mail, return receipt requested, directed to, National Securities Clearing Corporation, Attn: Secretary and/or General Counsel, 55 Water Street, New York, NY 10041.

2. NSCC's legal counsel: By email to [gmashberg@proskauer.com](mailto:gmashberg@proskauer.com); [mdale@proskauer.com](mailto:mdale@proskauer.com); and [bcatalano@proskauer.com](mailto:bcatalano@proskauer.com), pursuant to an agreement with NSCC's legal counsel for service by email.

3. SEC: By email to [apflings@sec.gov](mailto:apflings@sec.gov), pursuant to the Order entered by the SEC on March 18, 2020, directing filings to the foregoing email address.

DATED this 5th day of March 2021.

**PARSONS BEHLE AND LATIMER**

A handwritten signature in blue ink, appearing to be 'A', is centered below the firm name.

Aaron D. Lebenta  
Jonathan D. Bletzacker

## Jonathan Bletzacker

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**From:** Jonathan Bletzacker  
**Sent:** Friday, March 5, 2021 3:39 PM  
**To:** apfilings@sec.gov; Mashberg, Gregg M.; Dale, Margaret A.; Catalano, Benjamin J.  
**Cc:** Aaron Lebenta; Maranda Fritz; Susan Helier  
**Subject:** AP 3-20238, Alpine adv. NSCC, Motion for Interim Stay  
**Attachments:** Alpine's Motion for Interim Stay.zip

In AP 3-20238, Alpine Securities Corporation adv. NSCC, attached are the following:

- Alpine Securities Corporation's Motion for an Interim Stay and Memorandum in Support
- Declaration in Support of Motion for an Interim Stay
- Request for Leave to File Overlength Memorandum
- Certificate of Service

Please let us know if you have any questions or trouble accessing the attached documents.

Best, Jon Bletzacker



A Professional  
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# **EXHIBIT D**

## **Objection of NSCC to Alpine's Application for Review and Motion for an Interim Stay**

UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
March 12, 2021

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<b>In the Matter of</b>	:	
<b>ALPINE SECURITIES CORPORATION, a Utah limited liability company</b>	:	<b>OBJECTION OF NATIONAL SECURITIES CLEARING CORPORATION</b>
<b>For Review of Adverse Action Taken By</b>	:	<b>TO</b>
<b>NATIONAL SECURITIES CLEARING CORPORATION</b>	:	<b>APPLICATION FOR REVIEW AND MOTION FOR INTERIM STAY</b>

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The National Securities Clearing Corporation (“NSCC”) is a clearing agency registered with the Securities and Exchange Commission (“SEC” or the “Commission”) under Section 17A of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>1</sup> subject to specific requirements under Section 17A(b)(3) of the Exchange Act,<sup>2</sup> and a self-regulatory organization (“SRO”) under Section 19 of the Exchange Act.<sup>3</sup> NSCC objects to Alpine Securities Corporation’s (“Alpine”) Application for Review purportedly brought pursuant to Section 19(d) and (f) of the Exchange Act filed on March 2, 2021 (the “Application”),<sup>4</sup> and motion for an interim stay in connection with the

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<sup>1</sup> 15 U.S.C. § 78q-1.

<sup>2</sup> *Id.* at § 78q-1(b)(3).

<sup>3</sup> 15 U.S.C. § 78s.

<sup>4</sup> Application for Review, *In the Matter of Alpine Securities Corporation, a Utah limited liability company, for Review of Adverse Action Taken by National Securities Clearing Corporation (“Alpine II”)*, Admin. Proc. File No. 3-20238 (Mar. 2, 2021) (“Alpine II App. for Rev.”).

Application filed on March 5, 2021 (the “Stay Motion”). Among other things, Alpine’s Application is not justiciable under Section 19(d).<sup>5</sup> The Application should be dismissed and the Stay Motion should be denied.

(1)

The Application is substantially the same as the Application for Review Alpine filed on December 19, 2018 (the “December 2018 Application;” together with the Application, the “Applications”).<sup>6</sup> The December 2018 Application is a facial attack on NSCC’s SEC-approved rules and procedures governing Required Fund Deposits by members under NSCC’s Clearing Fund Rules (the “Clearing Fund Rules” or “Rules”). The Required Fund Deposits mitigate potential losses to NSCC and its members resulting from liquidating open positions in the event of a member default. The December 2018 Application primarily challenges the “Illiquid Charge,” an approved component of the Clearing Fund Rules that applied to transactions in microcap securities, which are the focus of Alpine’s business. In conjunction with the December 2018 Application, Alpine also filed a rulemaking proposal for new Clearing Fund Rules. The December 2018 Application and proposed rulemaking are pending before the Commission.

In connection with the December 2018 Application, Alpine sought to stay enforcement of the Illiquid Charge or, alternatively, NSCC’s determination the “DTC offset” was not available to Alpine.<sup>7</sup> The Commission denied the stay motion on November 22, 2019, finding Alpine had

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<sup>5</sup> 15 U.S.C. § 78q-1(d). Section 19(f) contains standards for review proceedings under Section 19(d), which are inapplicable where jurisdiction is lacking under Section 19(d). *See id.* at § 78q-1(f).

<sup>6</sup> Application for Review, *In the Matter of Alpine Securities Corporation, a Utah limited liability Company, for Review of Adverse Action Taken By National Securities Clearing Corporation (“Alpine I”)*, Admin. Proc. File No. 3-18979 (Dec. 19, 2018) (“Alpine I App. for Rev.”).

<sup>7</sup> In both Applications, Alpine complains about the unavailability of a reduction in its Required Fund Deposits for short positions in securities on deposit with respect to it at NSCC’s affiliate, The Depository Trust Company (“DTC”): In the December 2018 Application, because Alpine was not eligible for a “DTC offset” under the Clearing Fund Rules due to the fact it was assigned the lowest credit rating under the Rules, *see* Alpine I App. for Rev.; in this Application, because the DTC offset was eliminated (for all members) by amendments made to the Rules

failed to meet *any* of the four factors relevant to relief, including likelihood of success on the merits.<sup>8</sup>

The present Application and Stay Motion constitute an updated but equally infirm version of the December 2018 Application and stay request. First, Alpine mounts an invalid substantive challenge to NSCC's Clearing Fund Rules, this time focusing on the "Volatility Component" for illiquid securities (which replaced the Illiquid Charge). The Volatility Component, among other amendments, was approved by the Commission on November 24, 2020, pursuant to Section 19(b)(2) of the Exchange Act.<sup>9</sup> Second, Alpine brings another meritless request for a stay, including reinstatement for itself of the DTC offset eliminated by the amendments.

The Volatility Component and related changes were subject to a public comment period,<sup>10</sup> during which Alpine or others raised most, if not all, of the issues identified in Alpine's Application,<sup>11</sup> including Alpine's principal objections to the Volatility Component and the unavailability of a reduction in Required Fund Deposits for positions in securities on deposit at

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approved by the Commission on November 24, 2020, *see* Alpine II App. for Rev.; *see also* Order Approving a Proposed Rule Change to Enhance [NSCC]'s Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-90502 (Nov. 24, 2020), 85 Fed. Reg. 77,281 (Dec. 1, 2020) ("Order Adopting Amendments").

<sup>8</sup> Order Denying Stay and Denying Motion for Protective Order at 1–2, 21, Release No. 87599, *Alpine I*, Admin. Proc. File No. 3-18979 (Nov. 22, 2019) ("Alpine I Order Denying Stay").

<sup>9</sup> *See* Order Adopting Amendments.

<sup>10</sup> *See* Notice of Filing of Proposed Rule Change to Enhance [NSCC]'s Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-88474 (Mar. 25, 2020), 85 Fed. Reg. 17910 (Mar. 31, 2020) ("Notice of Proposed Changes").

<sup>11</sup> *See generally* Order Adopting Amendments; Alpine Securities Corporation Comment Letter to SEC Release No. 34-88474 (Apr. 21, 2020) ("Alpine Comment Letter").

DTC.<sup>12</sup> The SEC considered these issues in approving the amendments as consistent with NSCC's statutory and regulatory obligations.<sup>13</sup>

(2)

For the same reasons explained in NSCC's briefs in connection with the December 2018 Application and the prior stay request, the current Application and Stay Motion are jurisdictionally invalid under Section 19(d). Section 19(d) does not provide a statutory vehicle for Alpine to avoid or change the Volatility Component or any other aspect of NSCC's Clearing Fund Rules promulgated under Section 19(b)(2), which is the whole purpose of this proceeding.<sup>14</sup>

The Required Fund Deposits challenged here (and in the December 2018 Application) are an integral part of NSCC's services, key to its clearance and settlement risk-management function

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<sup>12</sup> See Alpine Comment Letter at 2–4 (raising objections to proposed rule based on increased charges and minimum clearing risk for securities on deposit); Order Adopting Amendments at 77,290, 77,292–77,293 (addressing same).

<sup>13</sup> See Order Adopting Amendments at 77,285–77,295 (finding consistency with applicable Exchange Act provisions and rules promulgated thereunder).

<sup>14</sup> See NSCC's Opposition to Alpine's Motion for an Interim Stay and Incorporated Memorandum of Points and Authorities in Support at 11–14, *Alpine I*, Admin. Proc. File No. 3-18979 (Jan. 23, 2019); NSCC's Brief Addressing Whether Alpine's Application for Review is Timely and If So Whether the SEC Has Jurisdiction and Incorporated Memorandum of Points and Authorities in Support at 11–15, *Alpine I*, Admin. Proc. File No. 3-18979 (Jan. 17, 2020) (together, "NSCC's *Alpine I* Briefs").

Alpine suggests the Commission did not consider all aspects of the changes made pursuant to the amendments it approved by order on November 24, 2020. Alpine II App. for Rev. at i, 2; Alpine's Motion for an Interim Stay and Incorporated Memorandum of Points and Authorities in Support at 3, 7–8, *Alpine II*, Admin. Proc. File No. 3-20238 (Mar. 5, 2021). NSCC disagrees with Alpine's assertion. Nevertheless, to the extent Alpine takes issue with the process in approving the amendments, its recourse is to appeal the Commission's order under Section 25(a) of the Exchange Act, 15 U.S.C. § 78y(a) (providing for review of Commission orders in the United States Courts of Appeals), not to invoke Section 19(d) to challenge the rules subject to the order. See Alpine I Order Denying Stay at 6 & n.40 (noting "[n]either Alpine nor anyone else appealed the Illiquid Charge Approval Order to the Commission").

under the Exchange Act.<sup>15</sup> They are not fees or charges for delivering those services.<sup>16</sup> They are applied uniformly to *all* members engaging in transactions subject to the Rules and the funds are returned when the transactions settle. Ultimately, Alpine is objecting to components of NSCC's services, not a limitation on access to them. Section 19(d) is not implicated simply because certain aspects of those services allegedly affect Alpine's cost of doing business (albeit no more or less than any other member doing the same business). Section 19(d) provides for recourse to review an SRO's actions prohibiting or limiting a particular member's access to the services *offered by an* SRO, not an avenue to modify those services.

To be sure, Alpine remains a NSCC member in good standing receiving all services for which it is eligible under NSCC's rules. NSCC has not taken any disciplinary action against Alpine for violation of or non-compliance with its Rules. To date, Alpine has met all of its obligations related to Required Fund Deposits.

In summary, Section 19(d) has no application to Alpine's complaints regarding NSCC Required Fund Deposits and the Application should be rejected. The Stay Motion also should be denied for the same reasons relied upon by the Commission in denying the prior stay request, chief among them that there is no likelihood Alpine will succeed on the merits.

Should the Commission determine to consider the merits of the Application or the Stay Motion, NSCC reserves the right to address all substantive issues posed by each, including whether

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<sup>15</sup> Required Fund Deposits are deposits of funds and other eligible assets required of each member, generally assessed according to the risk the member's trades pose to the clearance and settlement system, which may be used to secure the clearance and settlement risk of trades in the system to the benefit of all members, and are returned to the member upon withdrawal from membership. *See generally* NSCC Rules & Procedures, *available at* [https://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](https://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf) ("NSCC Rules"), Rule 4 "Clearing Fund" (containing provisions pertaining to Required Fund Deposits, including return upon withdrawal).

<sup>16</sup> *See* NSCC Rules, Rule 24 "Charges for Services Rendered" (pertaining to "fees" and "charges" members "shall pay . . . to the Corporation" for the services rendered to them by NSCC).

the Application was timely under Section 19(d),<sup>17</sup> and would request that the Commission set a schedule for briefing any issues of concern.

Finally, as was the case in *Alpine I*, because NSCC has not prohibited or limited Alpine's access to NSCC's services, there is no proceeding or record of such action for purposes of Rule 420(e) of the Rules of Practice.

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<sup>17</sup> Under Section 19(d)(2) of the Exchange Act, 15 U.S.C. § 78s(d)(2), a member or other person challenging the prohibition or limitation of services by an SRO must file its challenge within 30 days after the date the SRO filed with the Commission and the person received the "required" notice under Section 19(d)(1) of the Exchange Act, 15 U.S.C. § 78s(d)(1), and Rule 19d-1 thereunder, 17 C.F.R. 240.19d-1. NSCC has not filed (and does not intend to file) any Section 19(d)(1) notice in this case because NSCC has not prohibited or limited any services it offers to Alpine—it has simply administered its Rules. As NSCC argued in its briefs in connection with *Alpine I*, if such a notice were required in this case, similar notices would have to be filed in connection with the Required Fund Deposits assessed on every member doing business in illiquid securities through NSCC, as the effects are substantially the same for all of them. Such an absurd result demonstrates Alpine's grievance is not contemplated by Section 19(d).

Faced with the impossibility of applying the statutory trigger for calculating the commencement of the 30-day period, Alpine has constructed its own notice requirement, contending its action is timely because it was filed within 30 days after the Volatility Component and other amendments to the Required Fund Deposits were "implemented," on February 1, 2021. *Alpine II App. for Rev.* at 2–3. Apart from the fact the construction has no support in the statute, Alpine was on "notice" of the effects the amendments would have *well in advance* of the implementation date. NSCC described the increased deposits for illiquid securities in the release proposing the amendments on March 16, 2020. *See Notice of Proposed Changes at 17,911–17,920.* Alpine acknowledged the impact they would have on its business in its comment letter on the proposed amendments dated April 21, 2020. *See Alpine Comment Letter; Order Adopting Amendments at 77289 & n.76* (addressing comment Alpine submitted that "the proposal would discriminate against small [NSCC m]embers because the proposal would *demand higher margin*") (emphasis added). Moreover, as NSCC explained to the Commission, and the Commission acknowledged in its order approving the amendments on November 24, 2020, NSCC provided members, including Alpine, with specific assessments of the impact of the proposed changes, and furnished them with tools to enable them to estimate amounts that would be required on their positions under the proposed changes, well before then. *See Notice of No Objection to Advance Notice To Enhance [NSCC]'s Haircut-Based Volatility Charge Application to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-90367 (Nov. 6, 2020), 85 Fed. Reg. 73,099, 73,108–73,109 (Nov. 16, 2020)* (detailing various tools NSCC provides and outreach that NSCC conducted to inform members of the individualized impact of the proposed changes); *Order Adopting Amendments at 77,294–77,295* (same, and finding that "NSCC provided sufficient information to [m]embers to identify and evaluate the risks and other material costs they would incur due to securities with illiquid characteristics under the proposal"); *Alpine Comment Letter at 2* (admitting Alpine received "a White Paper outlining the proposed changes [to] the volatility component and an additional breakdown of the amounts Alpine would have been charged during the last year under the proposed changes"). Alpine's filing on March 2, 2021, was, in fact, long beyond 30 days after the time Alpine had notice (constructive and actual) on what it mischaracterizes as "limitation on service" in seeking to apply Section 19(d). Even if Section 19(d) were applicable, which it is not, the Application and Stay Motion are untimely.




**Conclusion**

For the reasons set forth above and in its papers submitted in opposition to the December 2018 Application and stay request, NSCC respectfully requests the SEC reject the Application and Stay Motion. Alpine should not be permitted to burden NSCC and the Commission with endless litigation of the same jurisdictionally defective and otherwise meritless claims.

New York, NY  
March 12, 2021

Respectfully submitted,

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# **EXHIBIT E**

## **Alpine's Reply Memorandum in Support of Motion for an Interim Stay**

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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of the Application of  
  
ALPINE SECURITIES CORPORATION, a  
Utah limited liability company  
  
For Review of Adverse Action Taken By  
  
NATIONAL SECURITIES CLEARING  
CORPORATION

Admin. Proc. File. No. 3-20238

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**ALPINE'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR INTERIM STAY  
AND RESPONSE TO OBJECTION OF RESPONDENT NATIONAL SECURITIES  
CLEARING CORPORATION**

**Oral Argument Requested**

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Alpine Securities Corporation (“Alpine”) submits this Reply Memorandum in Support of its Motion for Interim Stay (“Motion to Stay”) and Response to National Securities Clearing Corporation’s (“NSCC”)’s Objection.

### **INTRODUCTION**

On February 1, 2021, NSCC increased Alpine’s Required Deposit margin charges so significantly that Alpine can no longer afford to process all of its customer orders to sell their stock. Because NSCC’s imposition of these new margin charges, purportedly pursuant to a rule change NSCC began implementing on February 1, 2021 (“Rule Change”), constitutes an impermissible limitation of Alpine’s access to NSCC’s essential clearance and settlement services in a manner that contravenes the purposes and requirements of the Exchange Act, Alpine filed this Application for Review and Motion for an Interim Stay.<sup>1</sup>

As detailed in Alpine’s Motion, NSCC has made these charges so excessive in relation to the value of the position to be cleared that they are unreasonable and cannot be justified to guard against any purported risk to NSCC from a failure to deliver or default by a member. The fact of the matter is that that NSCC’s “risk” justification for imposing disproportionately astronomical margin charges on net sell positions in OTC and microcap stocks is itself illusory in relation to Alpine, and many (if not all) clearing brokers who service these markets, because Alpine and its customers are always long the shares at the Depository Trust Corporation (“DTC”) to cover the

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<sup>1</sup> The specific practices at issue are (a) implementing an onerous New Volatility Charge for sell (short) positions in over-the-counter (“OTC”) and microcap stocks (“New OTC Volatility Charge”); (b) using an artificial price per-share of \$.01 to calculate and assess Alpine’s Required Deposit for positions in sub-penny securities; (c) implementing substantive changes to the Margin Requirement Differential (“MRD”) charge, Coverage Component (“CC”) charge and Backtesting charge that were not approved by the Commission; (d) continuing to use the “Illiquid Charge” component to calculate the CC charge; and (e) retroactively applying the Rule Change in its “historical lookbacks” forecasting and/or backtesting when calculating and assessing Alpine’s Required Deposit. *See* Alpine’s Motion for a Stay, at 1.



trade *before* the customers' orders to sell their stock are submitted to NSCC. NSCC thus faces no central counterparty exposure to the buyer from having to locate the shares, or to buy-in the shares in the market at potentially increased prices, to close the net sell position in these circumstances. Even if the remote possibility of member default in the two-day window between trade date and settlement date came to pass, NSCC can simply acquire the shares from its sister corporation, DTC. NSCC continues to ignore reality, and refuses to consider any alternatives, even as it continues to limit access to its services to trade by demanding the outlay of more and more capital.<sup>2</sup>

In its response, NSCC chose not to address the merits of any of Alpine's arguments. *It does not deny any of the violative conduct alleged in Alpine's Application and Motion.* Instead, NSCC filed an "Objection," arguing that the Commission should dismiss Alpine's Application and deny its Motion for a Stay on the basis that the Commission does not have jurisdiction over Alpine's Application. NSCC's arguments should be rejected for the following reasons:

*First*, NSCC's Objection, and its attempt to reserve for itself a second bite at the apple to respond to Alpine's Motion for a Stay, is procedurally improper. NSCC had an opportunity to respond to all of Alpine's arguments, and it chose only to raise ill-conceived jurisdictional arguments. To avoid both inefficiency and prejudice to Alpine, the Commission should treat NSCC's Objection for what it is: a brief in opposition to Alpine's Motion for a Stay, and rule on Alpine's Motion based on the existing record.

*Second*, NSCC's assertion that Alpine's current Application for Review and Motion to Stay is identical to its Application for Review and stay motion Alpine filed in December of 2018 ("First

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<sup>2</sup> As set forth in the Declaration of Christopher Doubek, filed in conjunction with Alpine's Motion for a Stay on March 5, 2021, NSCC has refused to entertain alternatives to margin that would serve to better guard any conceivable risk to NSCC, including immediately releasing the shares from Alpine's account at DTC to NSCC's account on trade date. *Id.* at ¶¶ 36-37.

Application”) is baseless and irrelevant. Although both proceedings challenge NSCC’s imposition of facially unreasonable and excessive Required Deposit margin charges, in circumstances where there is no risk because the shares to cover the position are already at DTC, Alpine’s current Application and Motion clearly arise from NSCC’s new actions in purporting to implement the Rule Change on February 1, 2021. Further, Alpine’s First Application remains pending, and none of Alpine’s arguments therein have been addressed on their merits.

*Third*, NSCC’s convoluted claim that the Commission lacks jurisdiction over Alpine’s Application under Section 19(d) because NSCC’s clearing and settlement services are not “charges,” but are an integral part of NSCC’s services, is meritless. NSCC cites no authority for its argument, and it is inconsistent even with its own rules, which plainly refer to each of the Required Deposit components at issue as “charges.”

Moreover, NSCC’s contention that the Required Deposit can never be a limitation on access makes no sense. NSCC does not dispute that Alpine must pay all of the discretely-calculated Required Deposit charges that NSCC assesses upon it in order to access NSCC’s clearance and settlement services to clear trades for its customers. Nor has NSCC disputed Alpine’s evidence that NSCC has continued to increase those margin charges so dramatically, particularly since February 1, 2021, that Alpine has been forced to frequently decline customer orders to sell their stock because Alpine lacks the capital to post the margin for the trades, costing the customer essential choice of when to sell and potentially millions of dollars depending on the trade, and causing Alpine to lose substantial revenue, customers and goodwill. NSCC is effectively wielding its margin charges like a poll tax to discriminatorily restrict market access by individuals holding OTC and microcap stocks; specifically, to restrict the ability of individuals

from selling these stocks. This is an actionable limitation of access within the plain language of Section 19(d), and as interpreted by SEC precedent.

*Fourth*, NSCC's conclusory assertion that Alpine was required to seek judicial review of the Order Approving Rule Change under Section 25(a) of the Exchange Act to challenge NSCC's unapproved modifications to the MRD, CC and Backtesting Charges lacks any support. NSCC does not contest that it did not receive SEC approval to alter these components, *or* that it has in fact modified its application of these components to substantially increase Alpine's margin charges (by at least 450%) thereunder, frequently beyond what Alpine can afford to pay. Given the impact to Alpine's and its customers' ability to access NSCC's clearing and settlement services, such unauthorized rule changes are appropriately addressed under Section 19(d), particularly as compared to an appeal from the Order under Section 25(a).

*Finally*, Alpine's Application was timely filed because it was filed within 30 days of the date NSCC first implemented the Rule Change and first applied the Required Deposit charges at issue to Alpine. NSCC's assertions that Alpine had notice of the impact of these rules changes, and thus could have sought review at an earlier point, based on actions NSCC took *before the rule change was approved* are immaterial, nonsensical, and wholly unsupported.<sup>3</sup>

Accordingly, NSCC's jurisdictional arguments fail. The Commission should grant Alpine's Motion for a Stay until Alpine's Application can be fully considered on its merits, because NSCC has not refuted any of Alpine's numerous arguments demonstrating that NSCC's actions contravene the Exchange Act, or Alpine's arguments that NSCC's actions are causing irreparable harm to Alpine and its customers, and that a balancing of the equities favors a stay.

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<sup>3</sup> For this proposition, NSCC cites its notice of proposed rule change in March of 2020, and a white paper sent to Alpine several years ago detailing potential impacts from the potential rule change. (NSCC Objection, at 5 n. 17).

## ARGUMENT

### **I. NSCC’S “OBJECTION” IS PROCEDURALLY IMPROPER AND SHOULD BE TREATED AS NSCC’S OPPOSITION TO ALPINE’S MOTION TO STAY.**

Alpine filed its Motion for a Stay pursuant to Rules 154 and 401 of the Commission’s Rules of Practice.<sup>4</sup> Under Rule 154(b), NSCC had an opportunity to file a “brief in opposition” to Alpine’s Motion within five days.<sup>5</sup> However, neither Rule 154, Rule 401, nor any other Rule of Practice of which Alpine is aware, authorizes what NSCC has purported to do: filing an “Objection” to Alpine’s Motion and Application for Review, while reserving the right to file another brief “addressing all substantive issues” posed by Alpine’s Motion if the Commission rejects its jurisdictional arguments. (NSCC Objection, at 5). Indeed, NSCC even purports to reserve a further opportunity to brief arguments, such as timeliness, that it raised in its Objection and already spent hundreds of words addressing. (*Id.* at 6).

NSCC offers no reason why it should be permitted to stall these proceedings and rewrite the applicable rules to get two bites at the apple. NSCC has had a chance to address all of Alpine’s arguments; that it has instead only argued that Alpine’s Motion for a Stay “should be denied” for jurisdictional reasons was its strategic choice. (*Id.* at 2, 5 – asserting that Alpine’s Motion “should be denied” because “there is no likelihood Alpine will succeed on the merits”). NSCC’s tiered approach, in addition to being unauthorized, is both inefficient and prejudicial. Not only is it unduly costly, but NSCC has *not* disputed that Alpine and its customers are facing harm *now*. They are currently being limited in their ability to sell stock through NSCC because of excessive margin charges that NSCC is imposing on a discriminatory and anticompetitive basis – because

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<sup>4</sup> See SEC Rules 154(a), 401(a), 17 C.F.R. §§ 201.154, 201.401

<sup>5</sup> *Id.*, at Rule 154(b).

they are OTC/microcap stocks – without any valid risk-based justification, and in contravention of the Exchange Act.

The Commission should apply its Rules of Practice, consider NSCC’s Objection for what it is – an opposition to Alpine’s Motion to Stay – and rule upon Alpine’s Motion on the briefing provided. After all, NSCC has identified no harm or risk of harm that would result to itself, other members or the public from addressing Alpine’s Application while a stay is in place, particularly because *it is undisputed that Alpine and its customers are long the stock at DTC to cover every sale of stock Alpine clears, before its submits the trade to NSCC.*

**II. NSCC’S CLAIM THAT ALPINE’S APPLICATION FOR REVIEW AND MOTION TO STAY ARE IDENTICAL TO ITS PRIOR APPLICATION AND MOTION IS MERITLESS.**

NSCC’s assertion that Alpine’s current Application for Review and Motion to Stay are identical to its previous Application for Review and Motion to Stay filed in December of 2018 (“First Application”) flatly inaccurate.

One need only compare the First Application to the current Application to recognize they involve distinct challenges. Alpine’s First Application and Motion involved NSCC’s calculation and assessment of the “Illiquid Charge,” then-existing volatility charge, Excess Net Capital Premium (“ENCP”) and its use of the secret Credit Risk Rating Matrix (“CRRM”).<sup>6</sup> Alpine’s new Application and Motion concerns NSCC’s new assessment of margin charges on Alpine based on different components – the New OTC Volatility Charge, MRD, CC and Backtesting Charge – after it began implementing the Rule Change on February 1, 2021. Surely NSCC does not take the

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<sup>6</sup> See Alpine’s First Application, Admin Proc. No. 3-18979, at p. 1

position that Alpine's First Application implicitly incorporates its challenges to the NSCC's new actions following the Rule Change, such that Alpine did not need to file a new Application.<sup>7</sup>

It is true that both proceedings concern NSCC's impermissible efforts to restrict Alpine's and its customers' access to NSCC's clearing services by imposing unreasonably excessive and unjustified margin charges on Alpine because it clears OTC and microcap stocks. That similarity in focus is not the result of duplication by Alpine, however; it is because NSCC's actions following the Rule Change represent NSCC's continued and ongoing efforts to choke the OTC and microcap markets by making it too expensive for the small limited-capital clearing brokers who still serve these markets to afford to clear trades in this space, notwithstanding the undisputed lack of risk to NSCC where Alpine is long the stock to cover the position at DTC.<sup>8</sup>

It must be emphasized that it is not just Alpine that is being harmed through the irreparable loss of significant revenue, goodwill and customers due to NSCC's application of the new margin charges since February 1, 2021. As detailed in Alpine's Motion and supporting declaration, these margin charges are so excessive that they are preventing Alpine's customers from selling stock that they own and that is in Alpine's account at DTC because Alpine lacks the capital to post the margin for the trades. These onerous margin charges impact far more than Alpine; by making the costs to trade too expensive, they also limit a stock owner's fundamental right to sell her stock when she wants to realize a return on investment, devaluing the desire to invest in small businesses,

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<sup>7</sup> Indeed, if this were NSCC's position, its argument that Alpine's New Application is untimely, already meritless for the reasons detailed below, becomes even more so.

<sup>8</sup> Certainly, there is some overlap in issues in the two proceedings. For example, in both proceedings, Alpine asserts that NSCC has failed to establish that the purported risk of member default that NSCC has used to try to justify the excessive margin charges on OTC and microcap positions does not "not exist in fact," 15 U.S.C. §78s(f), where Alpine is long the stock at DTC. In the Rule Change, NSCC also failed to justify its continued practice of using a fictional price per-share of \$.01 to calculate margin on sub-penny securities. However, as detailed immediately below, the Commission has never addressed either of these issues on their merits.

and thus the ability of the small businesses to attract investors and raise needed liquidity. NSCC completely disregards that the Exchange Act also prohibits NSCC from limiting the right of “any person,” such as customers or issuers, from accessing NSCC’s clearing services through Alpine.<sup>9</sup>

Finally, and more to the point, it is unclear what NSCC hopes to accomplish by claiming the two applications are the same. Alpine’s First Application remains pending. Moreover, Alpine’s motion for a stay in connection with that First Application was not considered on its merits, but was denied on procedural grounds: because the Commission preliminarily determined that NSCC had been applying the rules at issue there for more than 30 days before Alpine filed its Application.<sup>10</sup> That is not the case here. If the Commission wishes to consolidate the two proceedings to consider the totality of NSCC’s actions over time, however, Alpine has no objection.

**III. THE COMMISSION HAS JURISDICTION OVER ALPINE’S APPLICATION AND MOTION BECAUSE ALPINE HAS ALLEGED, AND PROVIDED EVIDENCE TO ESTABLISH, AN ACTUAL LIMITATION OF ACCESS TO NSCC’S ESSENTIAL CLEARING AND SETTLEMENT SERVICES.**

NSCC claims that Alpine’s Application and Motion for a Stay are “jurisdictionally invalid under Section 19(d)” because the Required Deposit charges at issues are “an integral part of NSCC’s services . . . not fees or charges for delivering those services.” (NSCC’ Objection, at 4-5). “Ultimately,” NSCC contends, “Alpine is objecting to components of NSCC’s services, not a limitation on access to them.” (*Id.* at 5). Notably, NSCC offers no authority supporting its

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<sup>9</sup> See 15 U.S.C. § 78q-1(b)(6) (“No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.”); *In re International Power Group, Ltd.*, SEC Release No. 66611, 2012 WL 892229 at \*\*4, 6 (March 15, 2012).

<sup>10</sup> Order Denying Stay and Motion for Protective Order (November 22, 2019), SEC Release No. 87599, Admin. Proc. No. 3-18979, at 10 (resolving the likelihood of success element based on a preliminary determination that Alpine’s Application was untimely); at 17 (finding no irreparable harm from delay in bringing the challenge); at 18 (finding remaining stay factors not satisfied because, *inter alia*, the length of time the rules at issue there had been in effect and applied).



convoluted and restrictive reading of the scope of Section 19(d), which is not surprising, as it is completely meritless.

In the first instance, NSCC’s semantic assertion that the Required Deposit *margin charges* are “not fees or charges” is intellectually disingenuous. NSCC itself refers to the components at issue as “charges” in its Rules and rulemaking: describing the New OTC Volatility Charge as the “haircut-based volatility *charge*”;<sup>11</sup> the “margin requirement differential component *charge*”;<sup>12</sup> a “coverage component *charge*”;<sup>13</sup> the “Backtesting *Charge*.”<sup>14</sup> That Rule 24 of NSCC’s Rules also references other “charges” that NSCC may impose does not make the Required Deposit any less of a “charge.” (*See* NSCC’s Objection, at fn. 16).

Nomenclature aside, NSCC’s contention that the Required Deposit can never be a limitation on access makes no sense. NSCC’s does not, and cannot, dispute that the Required Deposit serves precisely to limit and proscribe access to essential "services," i.e, NSCC's CNS clearance and settlement services. NSCC has formulated and imposes unique charges on Alpine that it must post if it wants to access NSCC's clearance and settlement services for its own business and for its customers. Where NSCC continues to increase those margin charges to the point that they become so onerous that Alpine or other similarly situated members cannot pay them, they operate like a poll tax to restrict market access by Alpine and its customers, and thereby effect a limitation of access cognizable under Section 19(d).

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<sup>11</sup> *See, e.g.*, SR-NSCC-2020-003, SEC Release No. 34-88474, 85 F.R. 17910, 17915-17 (March 31, 2020) (“NSCC’s Rule Change Notice”). NSCC uses the term “charge” 98 separate times in its Rule Change Notice. *See id.*

<sup>12</sup> NSCC’s Rules & Procedures, Procedure XV, at § 1(A)(1)(f).

<sup>13</sup> *Id.*, Procedure XV, § 1(A)(1)(g).

<sup>14</sup> *Id.*, Procedure XV, § 1(B)(3).

As Alpine detailed in its Application, and supported by declaration, since the Rule Change, NSCC has significantly raised Alpine's Required Deposit (from an average of \$2.5 million to an average of \$3.2 million), even though the volume and value of the trades/positions has not materially increased.<sup>15</sup> These charges are wildly excessive in comparison to the underlying trades to be cleared and settled through NSCC, have not been shown to correspond to any actual risk, and artificially restrict the number of trades that Alpine can process every day. Alpine has had to deny customer trades, and lost customers and revenue, due to the capital necessary to fund the Required Deposit and, as indicated, the harms are felt even more acutely by Alpine's customers who are being restricted in their ability to sell stock they own and which is already at DTC at the time their orders to sell must be declined because Alpine lacks the capital to post the margin for the trades.<sup>16</sup> *NSCC has not addressed, let alone refuted, any of this.* It simply cannot be Congress' intent in Section 19(d) and (f) that NSCC's margin charges can never be limitations on access in these circumstances because they purport to be "components" of the service.

NSCC's unsupported assertion that an increase in "Alpine's cost of doing business" is not justiciable under Section 19(d),<sup>17</sup> not only mischaracterizes the impact on Alpine and its customers, it also flatly ignores that Section 19(d) applies to "limitations" on access as well as outright prohibitions. In fact, the Commission has explicitly recognized that a "loss or increased cost of doing business" could be remedied as a denial of access under Section 19(d).<sup>18</sup>

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<sup>15</sup> Doubek Decl., at ¶¶ 18-25.

<sup>16</sup> *Id.*, ¶¶ 17, 28-33 38-40.

<sup>17</sup> NSCC's Objection, at 5.

<sup>18</sup> *In re International Power Group, Ltd.*, SEC Release No. 66611, 2012 WL 892229 at \*4 (March 15, 2012) (stating, "loss of or increased costs of doing business" or "difficulties in fulfilling market-making obligations" were "negative impacts" on a "Broker-Dealer Participant" that "could be remedied by challenging DTC's denial of the Participant's access to services").

Given the broad language of the statute, it is unsurprising that the Commission has consistently refused to read the “limitation of access” language in the statute in the restrictive manner advanced by NSCC. For example, in *Bloomberg, L.P.*, the Commission held that NYSE’s “imposition and enforcement of” certain restrictions relating to the dissemination of depth-of-book data “effected a denial of access to Bloomberg” of services because NYSE “would not provide Bloomberg access to [that] data unless it disseminated and continue[ d] to disseminate” it in accordance with the restrictions.<sup>19</sup> Similarly, the Commission exercised jurisdiction to institute “denial of access” proceedings under Sections 19( d) and (t) to review the NYSE’s denial of a member’s request to install an unrestricted phone line on the floor of the Exchange to contact customers.<sup>20</sup> Certainly the excessive margin charges imposed by NSCC as a condition of clearing a trade likewise constitute a denial or limitation of access.

Finally, NSCC’s puzzling assertion that Section 19(d) does not provide “an avenue to modify” charges imposed on services offered by an SRO is equally baseless. (NSCC Objection, at 5). Section 19(f) expressly requires the Commission to “*set aside the action*” of the SRO that effects a limitation on access “unless” the Commission finds that: “(i) the specific grounds on which the challenged action is based exist in fact; (ii) “such action was taken in accordance with the rules of the SRO as approved by the Commission (or subject to an exception to such approval); and (iii) such rules are and were applied in a manner that is consistent with the purposes of the Exchange Act,” and imposes no “burden on competition [that] is not necessary or appropriate in furtherance of the purposes of the [Exchange] Act.”<sup>21</sup> In its Motion, Alpine detailed the numerous ways in which NSCC has failed to comply with those requirements in calculating and assessing

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<sup>19</sup> See *In re Bloomberg, L.P.*, Release No. 49076, 2004 WL 67566 at \*2 (Jan. 14, 2004).

<sup>20</sup> *Application of William Higgins*, 51 Fed.Reg. 6186-04, 1986 WL 89969 (Feb. 20, 1986).

<sup>21</sup> *In re Bloomberg, L.P.*, 2004 WL 67566, at \*3 (emphasis added); see also 15 U.S.C. § 78s(f).

Alpine's Required Deposit following the Rule Change.<sup>22</sup> The Commission has jurisdiction, and a statutory obligation, to consider these issues under Section 19, even though NSCC ignored them.

**IV. NSCC'S UNAUTHORIZED CHANGES TO THE CC, MRD AND BACKTESTING COMPONENTS ARE REVIEWABLE UNDER SECTION 19(D).**

As set forth in Alpine's Motion to Stay, since it began implementing the Rule Change on February 1, 2021, NSCC has significantly increased its assessment of the MRD, CC and Backtesting Charges on Alpine, even though the nature and value of Alpine's trading activity did not materially change on February 1, 2021.<sup>23</sup> Alpine has asserted that these increases result from unauthorized changes that NSCC has made to these components, without approval by the SEC, and by impermissibly retroactively applying the New OTC Volatility Charge in its "historical look-backs" and forecasting to calculate these components.<sup>24</sup>

NSCC does not dispute that it has changed its implementation of these components, or respond to any Alpine's arguments or law demonstrating the unlawfulness of NSCC's conduct in that regard. Instead, in a footnote, NSCC summarily declares that it "disagrees with Alpine's assertion" that the "Commission did not consider all aspects of the changes made pursuant to the amendments." (NSCC Objection, at 4 n. 13). NSCC then blithely asserts that Alpine's only recourse for these unauthorized changes is to appeal the Order Approving the Rule Change under Section 25(a) of the Exchange Act, 15 U.S.C. § 78y.

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<sup>22</sup> See Alpine's Motion to Stay, at 16-22.

<sup>23</sup> See *Id.*, at 11-12, 15, 20-21.

<sup>24</sup> *Id.* at 9-10, 20-21.

NSCC is incorrect. Because NSCC *did not disclose* that it intended to modify these components, or receive approval from the SEC to do so,<sup>25</sup> an appeal from the Order, or of the process the Division of Trading and Market used in approving the Rule Change, does not provide an appropriate vehicle of review. Simply put, this is not an asserted procedural error by the SEC appearing in the Order, it involves conduct by NSCC outside of the Rule Change that did not become apparent until NSCC purported to apply the Rule Change on February 1, 2021.<sup>26</sup>

Given the significance of the increase, and its undisputed limitation on Alpine's ability to utilize NSCC's clearing and settlement services, NSCC's application of its unlawfully modified rules is reviewable under Section 19(d), which, as indicated, requires the Commission to consider, *inter alia*, whether NSCC's "rules are and were applied in a manner that is consistent with the purposes of the Exchange Act."<sup>27</sup> Changing the MRD, CC and Backtesting charges without approval violates Section 19(b)(1) of the Exchange Act, and Rule 19b-4 thereunder.<sup>28</sup> Notably, the Commission confronted this exact situation in *Bloomberg*, where it held that the SRO's unapproved rule changes were unenforceable, and set aside the SRO's actions as an impermissible

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<sup>25</sup> Alpine invites the Commission to review NSCC's Rule Change Notice, and the Order Approving Rule Change, SEC Release No. 34-90502 (November 24, 2020), to confirm that changes to the MRD, CC and Backtesting components, and retroactive application of the New OTC Volatility Charge, were neither discussed nor approved.

<sup>26</sup> Even if this issue could be raised in a direct appeal from the Order under Section 25(a), NSCC has provided no authority suggesting that it cannot also be raised in an application for review under Section 19(d).

<sup>27</sup> 15 U.S.C. § 78s(f).

<sup>28</sup> As set forth in Alpine's Motion (at 21-22), established law separately precludes the retroactive application of rule changes to conduct that occurred before the amendments became effective. *See, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 215 (1988); *Kresock v. Bankers Tr. Co.*, 21 F.3d 176, 179 (7<sup>th</sup> Cir. 1994) (addressing the impermissibility of the retroactive application of SRO rules).

limitation on access under Sections 19(d) and (f).<sup>29</sup> The Commission should follow that approach here by entering an order staying NSCC’s implementation of the unlawfully modified MRD, CC and Backtesting Charges pending review of Alpine’s Application.

**V. ALPINE’S APPLICATION IS TIMELY.**

In a lengthy footnote at the end of its application, NSCC claims that Alpine’s Application is untimely, purportedly because NSCC “described the effects the amendments *well in advance* of the implementation date” – allegedly, when NSCC proposed the rule change in March of 2020, and when NSCC provided a white paper to Alpine and other members of the potential impacts when it first considered the rule change years ago. (NSCC Objection, at 6 (emphasis in original)). Of course, NSCC provides no authority to support its position that Alpine was required to file its application *before the Rule Change was approved*, let alone implemented, and it would lead to patently absurd results. Among other things, the Commission would be fielding appeals based on rules that may never be passed, and persons actually impacted by a rule change would lose any right of review unless they filed preemptive petitions. The Commission should reject this argument out of hand.

To be timely, the Application must be filed “within thirty days after receiving notice of the action.”<sup>30</sup> Alpine met these requirements. Alpine filed its Application on March 2, 2021, within 30 days of the date (February 1, 2021) that NSCC first implemented and applied the Rule Change and sent Alpine notices of its daily charges associated with its Required Deposit. Significantly, in denying Alpine’s motion to stay in connection with its First Application, the Commission made

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<sup>29</sup> *In re Bloomberg*, 2004 WL 67566, at \*\*4-5.

<sup>30</sup> *See Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 WL 6044106, at \*3 & n.12 (Nov. 15, 2013); *see also* 15 U.S.C § 78s(d)(2); SEC Rule of Practice, Rule 420(b).

clear that a challenge to a “Rule Change brought within 30 days of the first time the rule was applied” is timely filed.<sup>31</sup>

Moreover, Alpine needed to wait to until the rule was implemented to file its Application in order to gain an understanding of the manner in which NSCC was applying the Rule Change to calculate Alpine’s Required Deposit, and its impacts on Alpine’s ability to access NSCC’s clearing and settlement services. To be certain, Alpine could not have brought its challenges to NSCC’s new assessment of the MRD, CC and Backtesting Charge before they were implemented because, as indicated, NSCC did not disclose or receive approval for changes to these components. Accordingly, Alpine’s Application and Motion were timely filed.<sup>32</sup>

### **CONCLUSION**

For the foregoing reasons, NSCC’s challenges to the Commission’s jurisdiction over Alpine’s Application and Motion to Stay, and NSCC’s attempt to reserve a further response to Alpine’s Motion, should be rejected. Further, because NSCC chose not to address, let alone rebut, the merits of any of Alpine’s arguments, the Commission should grant Alpine’s Motion to Stay,

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<sup>31</sup> See Order Denying Stay and Denying Motion for Protective Order, SEC Release No. 97599, at p. 12 (November 22, 2019), Admin Proc. File No. 3-18979 (“because Alpine waited more than a year after it had notice of the application to it of the rules it challenges, it has not demonstrated that it timely filed its application for review within the 30-day period mandated by Section 19(d).”); see also *id.*, at 12 n. 62 (“A challenge to the Illiquid Charge Rule Change brought within 30 days of the first time the rule was applied to Alpine would not suffer from this same defect [untimeliness] because Alpine would be challenging the rule itself ...”).

<sup>32</sup> To the extent NSCC claims that its failure to file notices with the Commission of its daily Required Deposit charges on Alpine affects the timeliness or applicability of Section 19(d), the argument must be rejected. The Commission has repeatedly confirmed that “the failure of an SRO to file the required notice does not prevent Commission review,” and that it can review any action where the SRO was obligated to file notice, regardless of whether it complied with that obligation. See *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at \*6 n.13 (Apr. 3, 2003) (“[T]he failure of an SRO to file the required notice does not prevent Commission review” because “Section I 9(d)(2) grants the Commission the authority to review any SRO action ‘with respect to which a self-regulatory organization is required ... to file notice ... , whether or not such notice is filed.’” (emphasis added); *In re Higgins*, 51 Fed.Reg. at 6188, 1986 WL 89969 (same).



until Alpine's Application for Review is decided, on the basis that it is unopposed.

DATED this 17th day of March, 2021.

**PARSONS BEHLE AND LATIMER**



Aaron D. Lebenta  
Jonathan D. Bletzacker

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



Maranda E. Fritz  
*Counsel for Alpine Securities Corporation*

**ATTORNEY CERTIFICATION**

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that the foregoing document contains 5,067 words, exclusive of the tables of contents and authorities.

**PARSONS BEHLE AND LATIMER**



Aaron D. Lebenta  
Jonathan D. Bletzacker

# **EXHIBIT 2**

## **Declaration of Raymond Maratea in Support**

## **DECLARATION OF RAYMOND MARATEA**

I, Raymond Maratea, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. My name is Raymond Maratea and I am a resident of DuPage County, Illinois, am over 18 years of age, and make the statements herein based on my personal knowledge.

2. I am currently the Chief Executive Officer (“CEO”) and a board member of Alpine Securities Corporation (“Alpine”). I have held these positions since July of 2021.

3. I, along with the other officers of Alpine, manage and oversee the operations of Alpine.

4. Since assuming the position of CEO, I have familiarized myself with the history of Alpine’s business and its present financial circumstances.

5. Alpine is a small, self-clearing broker-dealer, registered with the Securities and Exchange Commission (“SEC”). Alpine’s business primarily involves clearing liquidation (or sale-side) microcap or over the counter (“OTC”) stock transactions for other firms, including, frequently, stocks with a price less than \$.01/share.

6. A clearing broker, such as Alpine, provides clearing and settlement services for itself and for its correspondent clients (“correspondents” or “clients”), who are generally broker-dealers, and its clients’ non-broker-dealer customers (“customers”), who are the beneficial buyers and sellers of a security.

7. Alpine facilitates tens of millions of dollars of capital financing for small business each month through the deposit, clearance and liquidation of microcap securities on behalf of its correspondent customers who provide direct financing to thousands of innovative, startup and early-stage development business that operate in the U.S. This is undeniably a critically

important segment of the market, that represents the core of the U.S. economy and jobs.

8. In order for Alpine to provide clearing and settlement services and function as a clearing firm for its correspondent firms, Alpine must be a member of National Securities Clearing Corporation (“NSCC”). Alpine is a clearing broker member in good standing of the NSCC and a Depository Trust Company (“DTC”) participant.

9. As an ongoing condition to membership, and thus use of NSCC’s clearance, settlement and other essential services for Alpine and its customers, NSCC requires members, including Alpine, to contribute daily to a “Clearing Fund,” by making “Required Deposits,” that NSCC indicates serves as “margin” against risk of default.

10. The formula that NSCC uses to calculate the Required Deposit charges is very complex, and is calculated and assessed on per-member basis, based on many discretionary and fact-specific variables set forth in Procedure XV of the NSCC’s Rules and Procedures.

11. Since I took over as Alpine’s CEO, NSCC’s calculation and assessment of Alpine’s Required Deposit has been significant and onerous, generally exceeding the amount of the underlying transactions to be cleared and settled through NSCC, often by several orders of magnitude.

12. I am familiar with Alpine’s Application for Review, filed March 2, 2021, pursuant to Sections 19(d) and (f) of the Securities & Exchange Act of 1934, and Alpine’s Motion for an Interim Stay, filed March 5, 2021 (“Initial Motion to Stay”) with respect to certain actions, practices and rules of the NSCC in calculating and assessing Alpine’s Required Fund Deposit (“Required Deposit”).

13. I am also familiar with Alpine’s Motion for an Emergency Interim Stay and Other Appropriate Commission Relief (“Alpine’s Emergency Stay Motion”) with respect to NSCC’s

recent imposition on Alpine of an approximately \$2.1 million “Backtesting Charge,” as detailed herein.

14. I am submitting this Declaration in Support of Alpine’s Application for Review and Alpine’s Emergency Stay Motion, and it is my understanding that Alpine intends to file the Emergency Stay Motion, together with this declaration, on October 27, 2022.

15. The genesis for Alpine’s Emergency Stay Motion and this Declaration is that on October 24, 2022, NSCC (through an employee of DTCC, NSCC’s parent company), notified Alpine that that due to “Backtesting Deficiencies” observed for Alpine, effective November 1, 2022, NSCC was imposing a “total Backtesting Charge of \$2,154,101.23 (comprised of \$545,166.69 End of Day Backtesting Charge and \$1,608,934.54 Intraday Backtesting Charge)” in addition to Alpine’s Clearing Fund Requirement. A true and correct copy of the October 24, 2022 email from the DTCC employee, and subsequent email communications on this issue in the string, is attached hereto as **Exhibit A**.

16. NSCC further stated that that this Backtesting Charge would remain in place for a “12 month rolling period,” subject to reassessment on a “monthly basis for any changes.” *See Ex. A*.

17. NSCC further represented that the “deficiencies” that were driving the Backtesting Charge occurred on September 29, 2022 and were attributable to a “concentrated net short position of ticker GTII.” *See Ex. A*.

18. Before receiving the October 24, 2022 email from NSCC/DTCC, Alpine had no notice that this Backtesting Charge would be imposed.

19. In subsequent discussions with NSCC/DTCC, Alpine was informed that if it is unable to pay the Backtesting Charge, NSCC will deduct that amount from Alpine’s current

deposit of \$3 million, leaving Alpine effectively unable to pay the already exorbitant margin charges imposed by NSCC every day to process its customers trades.

20. Alpine was surprised and distressed when it received notification that it would be assessed a \$2.1 million Backtesting Charge, to say the least, including because it seems both unnecessary from a risk-mitigation perspective and punitive.

21. For example, prior to submitting the trades in GTII through NSCC's CNS system that created the purported net "short" (sell) position in this stock, Alpine had sufficient shares of GTII in its account at DTC to fully cover its net sell position.

22. In fact, as a matter of practice, since I have been CEO (and I understand before that time), Alpine always ensures that it has sufficient shares in its account at DTC to cover every sell order and position in every sale-side trade before submitting a sell order on behalf of a customer to NSCC. In other words, Alpine's sell positions in every trade are always covered because Alpine is long the stock at DTC.

23. While I appreciate that NSCC must protect itself and other members against the possibility that NSCC would have to buy-in the shares to close out an open sell position after its trade guaranty sets in (on T+0) in the event of a member default, this risk is nonexistent in relation to Alpine's transactions because Alpine is always long the shares to fully cover the position at DTC. Thus, even if Alpine were to default, NSCC could simply access the shares from Alpine's DTC account to close the position and satisfy NSCC's central counterparty obligation to the buyer.

24. In addition to having the sufficient shares of GTII in its account at DTC to fully cover the net-sell position, Alpine also received a margin call from NSCC with respect to this asserted deficiency and short position in GTII as it occurred. It is my understanding that these

trading-specific margin charges far exceeded the value of Alpine's net sell (short) position in GTII, including volatility and mark to market charge. Alpine promptly posted sufficient funds (approximately \$2 million) to cover the required margin call and cure any asserted "deficiency" on September 30, 2022.

25. In fact, it is my belief that because of the cumulative margin charges that NSCC imposes, NSCC is almost always, if not always, significantly over-secured on Alpine's trading positions, requiring Alpine to post margin that far exceeds the value of the trade orders, primarily because OTC and microcap stock is involved.

26. In other words, in addition to having the shares in its inventory at DTC to fully cover the position in GTII before it placed the trades, Alpine also paid additional money as margin to fully cover the asserted deficiency as it occurred. NSCC's demand that Alpine now post an additional \$2.1 million for the deficiency as an after-the-fact "Backtesting Charge," and that Alpine must continue to keep that amount on deposit with NSCC as "charge" for up to a year, such that Alpine is unable to access these funds and use them to cover other margin charges associated with every-day trading, simply seems punitive.

27. It is also my understanding that NSCC has proposed a rule change to eliminate the "Intraday Backtesting Charge," because its asserted risks are apparently adequately covered by the multitude of other margin charges. As indicated above, the Intraday Margin Charge comprises an overwhelming majority (\$1.6 million) of the approximately \$2.1 million Backtesting Charge. It is concerning that NSCC is imposing an enormous *discretionary* margin charge that it concedes is unnecessary, especially given that the asserted "deficiency" was cured long ago and the destructive impacts of this Backtesting Charge on Alpine, as detailed below.

28. Most problematic, Alpine currently has insufficient capital to pay the \$2.1 million



Backtesting Charge by November 1, 2022, keep it on deposit with DTCC for a year, and still cover the additional margin necessary for its customers' trading activity.

29. NSCC's imposition of that \$2.1 million Backtesting Charge will therefore prevent Alpine from being able to access NSCC's services, including its CNS settlement system to process its customers trade orders.

30. This, in turn, will result in Alpine losing customers and counterparties and prevent Alpine from earning sufficient revenue, which it does by clearing trades for its customers, to be able to cover its operating expenses. If Alpine is unable to process trades for its customers, it will go out of business, plain and simple.

31. For a firm that specializes in microcap and OTC stocks to not be able to execute sell orders due to margin is also significant injury to its reputation, goodwill and relationships with its customers and in the industry.

32. Even if Alpine were able to eventually acquire enough capital to cover the Backtesting Charge, it will likely face substantial costs of acquisition of that capital and a business interruption in the meantime, which impacts not just Alpine, but also its customers who will be unable to trade their shares.

33. Since being notified of the Backtesting Charge, and in an effort to resolve the issue and mitigate the harm to Alpine, I and counsel for Alpine have participated in meet-and-confer discussions with DTCC/NSCC to see whether, in these circumstances, it would agree to exercise its discretion to withdraw the Backtesting Charge, agree to reduce it by eliminating the Intraday Backtesting Charge component in accordance with NSCC's proposed rule change, or (at the very least) delay imposition of the charge either until the Emergency Stay Motion is considered by the Commission.

34. Although the Backtesting Charge is discretionary, to my understanding, DTCC declined to the efforts at informal resolution or to delay imposition of the charge.

WHEREFORE, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of October 27, 2022

  
Raymond Maratea

# EXHIBIT A

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**From:** Parady, Dong Y. <[dparady@dtcc.com](mailto:dparady@dtcc.com)>  
**Sent:** Monday, October 24, 2022 9:42 AM  
**To:** Raymond Maratea <[rmaratea@alpine-securities.com](mailto:rmaratea@alpine-securities.com)>  
**Cc:** Joe Walsh <[jwalsh@alpine-securities.com](mailto:jwalsh@alpine-securities.com)>; Rosales, Sandro <[SRosales@dtcc.com](mailto:SRosales@dtcc.com)>; Softye, Tatiana <[tsoftye@dtcc.com](mailto:tsoftye@dtcc.com)>; Brunton, Alistair A. <[abrunton@dtcc.com](mailto:abrunton@dtcc.com)>; Vinci, John <[jvinci@dtcc.com](mailto:jvinci@dtcc.com)>  
**Subject:** RE: Backtesting Charge - #8072 Alpine Securities Corporation

Hi Ray,

Please see the list of deficiencies incurred during the past rolling 12-month period. Backtesting deficiencies listed causing <99% coverage with the 3<sup>rd</sup> and 5<sup>th</sup> ranked deficiencies being the applicable End of Day and Intraday Backtesting charges, respectively.

Deficiencies observed in September 2022 are attributed to net short portfolios with the top driver being a concentrated net short position in GTII.

CTA (cease to act) Dates 10/19/2021 to 10/18/2022

End-of-Day:

Slice	CTA Date	Deficiency
EOD	09/28/2022	2,312,285.02
EOD	09/27/2022	1,575,948.07
EOD	09/29/2022	545,166.69
EOD	09/26/2022	445,813.67
EOD	09/23/2022	51,199.83

Intraday:

Slice	CTA Date	Deficiency
2PM	09/28/2022	5,625,643.01
11AM	09/28/2022	5,594,384.64
2PM	09/27/2022	3,925,439.23
11AM	09/27/2022	3,587,589.20
2PM	09/29/2022	1,608,934.54
11AM	09/29/2022	1,323,736.09
2PM	09/26/2022	1,033,522.64
11AM	09/26/2022	1,016,033.24
2PM	09/30/2022	338,542.78

Regards,

**Dong Parady**

Equity Risk Management

DTCC Jersey City

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Team: +1 (212) 855-5770 | [equityrisk@dtcc.com](mailto:equityrisk@dtcc.com)



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**From:** Parady, Dong Y.

**Sent:** Monday, October 24, 2022 10:22 AM

**To:** [jwalsh@alpine-securities.com](mailto:jwalsh@alpine-securities.com)

**Cc:** Rosales, Sandro <[SRosales@dtcc.com](mailto:SRosales@dtcc.com)>; Softye, Tatiana <[tsoftye@dtcc.com](mailto:tsoftye@dtcc.com)>

**Subject:** Backtesting Charge - #8072 Alpine Securities Corporation

Hi Joe,

Per our discussion due to Backtesting Deficiencies observed for #8072 Alpine Securities Corporation, effective November 1, 2022 a total Backtesting Charge of **\$2,154,101.23** (comprised of \$545,166.69 End of Day Backtesting Charge and \$1,608,934.54 Intraday Backtesting Charge) will be applied to the Clearing Fund Requirement.

This will be maintained during the 12-month rolling period and reassessed on a monthly basis for any changes. The deficiencies are driven by the concentrated net short position of ticker GTII in September 2022.

Additional Background on NSCC Backtesting:

NSCC incorporates daily backtesting to ensure that the Clearing Fund Requirements are sufficient to cover the potential loss in the event of a member default. The count of backtest deficiencies are tracked, and if a member falls below 99% coverage, NSCC assesses a Backtesting Charge to maintain adequate margin coverage. For more details, please refer to Procedure XV of [NSCC Rules and Procedures](#).

Regards,

**Dong Parady**

Equity Risk Management

DTCC Jersey City

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