

November 9, 2022

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**By e-FAP Filing**

Ms. Vanessa A. Countryman  
Ms. Jill M. Peterson  
Office of the Secretary  
United States Securities and Exchange Commission  
100 F. Street NE  
Washington, D. C. 20549

Re: In the Matter of Application of Alpine Securities Corp., Admin. Proc. File No. 3-20238

Dear Ms. Countryman & Ms. Peterson:

We are counsel to the National Securities Clearing Corporation (“NSCC”), 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”), and a self-regulatory organization (“SRO”) subject to Section 19 of the Exchange Act. We write in response to Alpine’s Renewed Request for Expedited Ruling on its Motion for an Emergency Interim Stay, filed November 8, 2022.<sup>1</sup>

As mentioned in Alpine’s correspondence, on November 1, 2022, NSCC imposed a \$2.1 million Backtesting Charge on Alpine pursuant to Procedure XV § I(B)(3) of the NSCC Rules. The NSCC Rule regarding the Intraday Backtesting Charges that Alpine is challenging has been approved by the Commission,<sup>2</sup> and is a routine risk management charge that is triggered when conditions are met. Such charges do not impose a sanction or denial of service, but rather comprise a key part of NSCC’s clearance and settlement risk-management functions under the Exchange Act. As such, and for the reasons presented in NSCC’s Opposition to Alpine’s Motion for an Emergency Interim Stay filed on October 31, 2022 (“NSCC’s Opposition”), Alpine’s stay motion and its renewed request are not justiciable under Exchange Act Section 19(d) or cognizable under SEC Rule 401(d).<sup>3</sup>

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<sup>1</sup> Capitalized terms not defined herein have the meaning given to them under NSCC rules, as applicable.

<sup>2</sup> See Order Granting Approval of NSCC’s Proposed Rule Change To Accelerate its Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of “Off-the-Market Transactions,” and Make Other Changes, Release No. 34-79598 (Dec. 19, 2016), 81 Fed. Reg. 94462 (Dec. 23, 2016).

<sup>3</sup> See SEC Rule of Practice 401(d) cmt. (d) (stating that SRO stay procedures are “based on Section 19(d) of the Exchange Act,” and that the “provision for expedited consideration in paragraph (d)(3) is based on the requirement of Section 19(d)(2) that the Commission establish an expedited procedure for consideration and determination of the

On the merits, Alpine’s admitted payment of the Backtesting Charge and continued activity further undermine the need for the extraordinary relief Alpine seeks, let alone on an expedited basis. Contrary to Alpine’s claim in its Emergency Stay Motion that it “currently lacks the capital resources to pay” the Backtesting Charge, and “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,”<sup>4</sup> Alpine admits in its November 8<sup>th</sup> letter that the charge was imposed as planned on November 1, 2022, yet Alpine continues to clear trades for its customers.<sup>5</sup> Moreover, the interest rate on the financing available to Alpine presumably reflects the market’s assessment of Alpine’s financial condition. And while Alpine complains of the costs associated with financing the charge, it is well established that financial injuries do not constitute irreparable harm sufficient to warrant a stay.<sup>6</sup>

For these reasons, as well as those presented in NSCC’s Opposition, Alpine’s stay motion and its renewed request for expedited consideration thereof should be rejected.

Sincerely,



Margaret A. Dale

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question of a stay for “appropriate cases”); *In re Alpine Securities Corp.*, Release No. 87599, Admin. Proc. File No. 3-18979, at 8 (Nov. 22, 2019) (“Under Rule of Practice 401(d)(1) [discussing general availability of all stays of SRO actions under SEC Rules of Practice], an aggrieved person may move to stay an SRO action *reviewable under Exchange Act Section 19(d)*” (citations omitted) (emphasis added)).

<sup>4</sup> Alpine’s Mot. for an Emergency Interim Stay and Other Appropriate Commission Relief, Admin Proc. File No. 3-20238, at 2–3 (Oct. 28, 2022); *see also id.* at 16–18 & Ex. 2, Decl. of R. Maratea in Support ¶¶ 28–32.

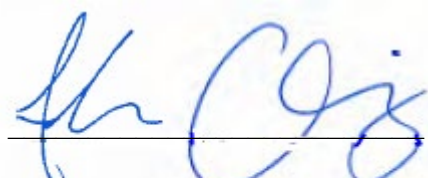
<sup>5</sup> *See* Renewed Request for Expedited Ruling on Petitioner’s Mot. for Interim Stay, Admin Proc. File No. 3-20238, at 2 (Nov. 8, 2022).

<sup>6</sup> *See, e.g., In the Matter of the Application of Scottsdale Capital Advisors Corp., John J. Hurry, Timothy B. Diblasi, & D. Michael Cruz for Review of Disciplinary Action Taken by Finra*, Release No. 34-83783, 2018 WL 3738189 (Aug. 6, 2018).

**CERTIFICATE OF SERVICE**

Adam L. Deming HEREBY CERTIFIES PURSUANT TO Rule 151(d) of the Commission's Rules of Practice that, on November 9, 2022, he caused to be served with this Certificate of Service the foregoing letter correspondence by the following means:

1. By electronic mail to counsel for Alpine Securities Corporation Aaron D. Lebenta and Jonathan D. Bletzacker of Parsons Behle & Latimer at alebenta@parsonsbehle.com and jbletzacker@parsonsbehle.com, respectively, and at ecf@parsonsbehle.com;
2. By electronic mail to counsel for Alpine Securities Corporation Maranda E. Fritz of Maranda E. Fritz, P.C. at maranda@fritzpc.com;
3. By eFAP filing to the Securities and Exchange Commission.



Adam L. Deming