SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 89685 / August 26, 2020

Admin. Proc. File No. 3-19360

In the Matter of the Application of

ALPINE SECURITIES CORP. and
SCOTTSDALE CAPITAL ADVISORS CORP.

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF FINRA ACTION

Jurisdiction to Review Association Action

FINRA member firms filed an application for review of FINRA action suspending their memberships for failure to file continuing membership applications following changes in their ownership structures. FINRA subsequently withdrew the suspensions when the firms agreed to unwind the changes. *Held*, the application for review is dismissed for lack of jurisdiction under Section 19(d) of the Securities Exchange Act of 1934.

APPEARANCES:

Maranda E. Fritz, Maranda E. Fritz P.C., for Alpine Securities Corp. and Scottsdale Capital Advisors Corp.

Alan Lawhead and *Celia L. Passaro* for FINRA.

Appeal filed: August 16, 2019
Last brief received: November 12, 2019

FINRA member firms Alpine Securities Corp. and Scottsdale Capital Advisors Corp. (collectively, "Applicants") filed an application for review challenging a FINRA decision suspending their memberships until they filed continuing membership applications seeking approval of previously effected changes in ownership.[1] After Applicants reverted to an earlier ownership structure, FINRA withdrew the suspensions. Because there is now no live disciplinary sanction for us to review, and no alternative basis of jurisdiction exists under Section 19(d) of the Securities Exchange Act of 1934, we dismiss the application for review.[2]

I. Background

On August 15, 2019, a FINRA hearing officer issued an Expedited Hearing Panel Decision (the "Decision") suspending Applicants from FINRA membership for failing to file continuing membership applications ("CMAs") in violation of NASD Rule 1017.[3] Rule 1017 requires that a FINRA member file an application for approval of a change in ownership that "results in one person or entity directly or indirectly owning or controlling 25 percent or more of the [member's] equity or partnership capital."[4] The Decision concluded that Applicants violated Rule 1017 when, having been indirectly owned by a single trust, they each became indirectly owned by two trusts, and later six trusts, without filing CMAs. The Decision noted that no CMAs were pending before FINRA and provided that the suspensions would remain in effect until Applicants filed CMAs that complied with FINRA rules.

On August 16, 2019, Applicants filed an application for review of the Decision. Applicants contended that the changes in their ownership structure did not require them to file CMAs under Rule 1017 because, although the specific form of their ownership through trusts had changed, the trustees and beneficiaries of those trusts remained the same. Applicants also contended that the Decision incorrectly required them to submit the documents establishing the trusts, which they asserted were confidential, with their CMAs.

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1 *Dep't of Enf. v. Alpine Sec. Corp.*, Expedited Proceeding No. FPI190001 (Aug. 15, 2019), *available at* https://www.finra.org/sites/default/files/2019-08/OHO_Alpine-Securities_Scottsdale-Capital_FPI190001-FPI190002_081519.pdf. Although issued by a hearing panel, this decision was the final decision of FINRA in this matter.

2 *See* 15 U.S.C. § 78s(d).

3 Effective May 8, 2019, FINRA adopted NASD Rule 1017 as FINRA Rule 1017 without substantive change. *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Remaining Legacy NASD and Incorporated NYSE Rules as FINRA Rules*, Exchange Act Release No. 85589 (Apr. 10, 2019), 84 Fed. Reg. 15,646 (Apr. 16, 2019), *available at* https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-07504.pdf (adopting the NASD Rule 1010 Series into the FINRA Rule 1000 Series without substantive change).

4 NASD Rule 1017(a)(4).

At the same time as they filed their application for review, Applicants filed a motion seeking (1) a stay of their suspensions pending a determination on the merits on their application, and (2) an interim stay pending the Commission's decision on their request for a stay. On August 20, 2019, the Commission granted Applicants' request for an interim stay and issued a briefing schedule for their motion for a stay pending resolution of this proceeding.[5]

On August 29, 2019, Applicants filed a notice stating that the parties had agreed that the suspensions were "no longer operative" and that Applicants "may continue to conduct their respective businesses." FINRA explained on its BrokerCheck website that Applicants had "determined to unwind their change in ownership returning to the previous structure," and that, as a result, FINRA had approved Applicants' requests to terminate the suspensions.[6] Applicants later explained that their ownership had been transferred "out of the trust structure, and back to individual ownership,"[7] that FINRA had "lifted" the suspensions as a result, and that Applicants sought to withdraw their stay motion because it had become "moot" in light of these events.

On September 27, 2019, the Commission issued orders granting Applicants' motion to withdraw their request for a stay, terminating the interim stay, and directing the parties to brief the issue of whether the termination of Applicants' suspensions required dismissal of their appeal.[8] FINRA sought dismissal of the proceeding. Applicants opposed dismissal.

II. Analysis

Exchange Act Section 19(d) governs our jurisdiction to review self-regulatory organization ("SRO") action.[9] As relevant here, Section 19(d) authorizes us to review SRO actions that (1) impose any final disciplinary sanction on a member, (2) deny membership or

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[5] *Alpine Sec. Corp.*, Exchange Act Release No. 86719, 2019 WL 3933691, at *1 (Aug. 20, 2019).

[6] https://files.brokercheck.finra.org/firm/firm_14952.pdf at 17 (stating "the suspension is lifted" as to Alpine); https://files.brokercheck.finra.org/firm/firm_118786.pdf at 17 (same as to Scottsdale).

[7] Applicants had previously transitioned from indirect ownership by John and Justine Hurry to indirect ownership by a single trust (the Hurry Family Trust).

[8] *Alpine Sec. Corp.*, Exchange Act Release No. 87146, 2019 WL 4738065, at *1 (Sept. 27, 2019); *Alpine Sec. Corp.*, Exchange Act Release No. 87151, 2019 WL 4738066, at *1 (Sept. 27, 2019).

[9] 15 U.S.C. § 78s(d).

participation to any applicant, or (3) prohibit or limit any person in respect to services offered by the SRO.[10] If we find that we do not have jurisdiction, we must dismiss the proceeding.[11]

A. Section 19(d) does not provide us with jurisdiction over Applicants' appeal because there is no longer a live disciplinary sanction for us to review.

We have held that a conditional suspension imposed on a FINRA member firm for failure to take a required action, such as that at issue here, is a disciplinary sanction.[12] But in proceedings to review a final disciplinary sanction, "'[w]e construe Section 19(d) as requiring a 'live' sanction—that is, a sanction that exists at the time of review for us to potentially affirm, modify, or set aside.'"[13] The Ninth Circuit has found this interpretation of Section 19(d) permissible by explaining that if "FINRA imposed a disciplinary sanction but then fully retracted the sanction by, for example, setting aside a suspension and returning any fine levied, it would make little sense for the Commission to proceed with review."[14] In this case, there is no live sanction for us to review because FINRA imposed no fine and lifted the suspensions imposed on the Applicants after they reverted to their original ownership structures.

Applicants argue that their suspensions are simply being "not enforced" and thus remain at issue. But Applicants themselves characterize their suspensions as "no longer operative" and repeatedly recognize in their briefing that FINRA "lifted" their suspensions. Thus, this is not a

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[10] *Id.* Section 19(d) also permits us to review SRO action that imposes a final disciplinary sanction on a person associated with an SRO member or bars any person from being associated with an SRO member. *Id.* As FINRA member firms, Applicants do not argue that jurisdiction is available here on either of these bases, nor do we find that it is.

[11] *See, e.g., WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 WL 5245244, at *3-5 (Sept. 9, 2015) (dismissing FINRA member firm's application for review for lack of jurisdiction where there existed no basis for review under Section 19(d)).

[12] *Dakota Sec. Int'l, Inc.*, Exchange Act Release No. 85238, 2019 WL 995510, at *1-3 (Mar. 1, 2019) ("We have held previously that a member would be subject to a 'final disciplinary sanction' if it failed to pay an arbitration award and was suspended for that failure." (citing *Wedbush Morgan Sec., Inc.*, Exchange Act Release No. 57138, 2008 WL 123907, at *3 (Jan. 14, 2008))); *see also Sharemaster*, Exchange Act Release No. 83138, 2018 WL 2017542, at *2 (Apr. 30, 2018) (reflecting Commission's prior determination that suspension imposed on member firm in expedited proceeding for failing to file annual report was a disciplinary sanction).

[13] *Dakota Sec.*, 2019 WL 995510, at *3 (quoting *Sharemaster*, 2018 WL 2017542, at *3).

[14] *Sharemaster v. SEC*, 847 F.3d 1059, 1068 (9th Cir. 2017); *see also id.* at 1071 ("We hold that the Commission's interpretation of Section 19(d)(2) as limiting its review authority to final disciplinary sanctions that remain live is entitled to *Chevron* deference.").

situation in which a final disciplinary sanction has been stayed pending appeal;[15] rather, the suspensions have been lifted and there is no live sanction for us to review.

Applicants also argue that we should nonetheless exercise jurisdiction because they reverted to individual ownership "to operate during the pendency of the appeal." According to Applicants, it would be "overly harsh and inefficient" to require them to "go through the entire disciplinary process again and become suspended to obtain review" of the basis for the Decision. In previously dismissing a FINRA member firm's application for review where there was no live sanction, we recognized that the firm "could have appealed to the Commission and sought a stay of the suspension pending our resolution of the matter."[16] Applicants did precisely that here, and the Commission granted an interim stay pending consideration of their request for a stay until their appeal was resolved. But Applicants chose not to pursue this pathway to review when they reverted their ownership to a previous structure, and we lack jurisdiction because their suspensions were lifted as a result. We see no basis to exercise jurisdiction where the reason Applicants need to "go through the entire disciplinary process again and become suspended to obtain review" of the Decision is that they chose not to pursue their stay pending appeal and instead reverted their ownership structure and had their suspensions lifted.

Applicants argue further that we should exercise jurisdiction to review "the rationale underlying" the Decision. According to Applicants, the "actual issue" for which they seek review is whether their "desired ownership structure—the six trusts—trigger[s] the CMA requirement" and whether FINRA's conclusion in the Decision that they should have filed CMAs improperly applies its rules and is contrary to general legal principles of trust law. But a challenge to the application of a rule must fall within a grant of jurisdiction provided to the Commission under the Exchange Act.[17] That the appeal involves a rule or SRO subject to

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[15] *Cf.* FINRA Rule 9370(a) (providing for automatic stay of certain final disciplinary sanctions on filing of application for review with the Commission); *Elec. Transaction Clearing, Inc.*, Exchange Act Release No. 73698, 2014 WL 6680112, at *1 (Nov. 26, 2014) (staying six-month suspension imposed by options exchange pending review by the Commission where to do otherwise would have put applicants "in jeopardy of losing the benefit of a successful appeal"). In contrast, FINRA Rule 9559(r), applicable to appeals of FINRA expedited actions such as that at issue here, provides that the "filing of an application for review by the [Commission] shall not stay the effectiveness of final FINRA action, unless the [Commission] otherwise orders."

[16] *Dakota Sec.*, 2019 WL 995510, at *3 n.17; *see also Sharemaster*, Exchange Act Release No. 70290, 2013 WL 4647204, at *3 (Aug. 29, 2013) ("Sharemaster could have, but did not, seek a stay of the suspension pending our resolution of this matter."), *petition for review granted on other grounds*, 847 F.3d 1059 (9th Cir. 2017); *see also id.* at *4 n.22 ("[I]n expedited proceedings such as this where FINRA's rules do not provide for an automatic stay, the applicant may, of course, seek a stay, which if granted would preserve our jurisdiction.").

[17] *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at *5 (July 15, 2016), *aff'd sub nom. Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018).

Commission review does not automatically mean jurisdiction exists.[18] Because, as we have said, arguments regarding the merits of a dispute do not by themselves create jurisdiction under Section 19(d), review of the Decision's rationale is not an independent basis for our review.[19]

B. Applicants do not establish jurisdiction under the other prongs of Section 19(d).

Applicants argue that jurisdiction exists because, by holding that their indirect ownership by trusts "required a new Continuing Membership Application and full disclosure of trust documents," FINRA "effectively denied, and continues to deny, membership and participation to [them] and imposed a restrictive condition on [their] membership, participation, and access to FINRA's services." Applicants do not base this argument on any action taken against them by the Decision but rather rest their argument on the Decision's reasoning, which they contend is erroneous. But as we explained above, a challenge to the rationale of an SRO decision does not independently bestow jurisdiction under Section 19(d).[20] Had Applicants pursued their challenges to their suspensions they could have litigated their challenges to the Decision—including by arguing that their change in ownership did not require that they file a CMA.[21] Applicants surrendered that opportunity when they unwound the changes in ownership that gave rise to their suspensions and FINRA lifted the suspensions.[22]

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[18] *Id.*

[19] *See Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 WL 2338414, at *4 (June 3, 2019) (finding that applicant's arguments regarding the merits did not create jurisdiction under Exchange Act Section 19(d) for the Commission to consider his application for review); *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 WL 6044106, at *5 n.20 (Nov. 15, 2013) (recognizing that, because the Commission lacked jurisdiction under Section 19(d), it lacked the ability to review applicant's contention that SRO violated Exchange Act rules); *W.C.W. W. Canada Water Enters., Inc.*, Exchange Act Release No. 27254, 1989 WL 992833, at *1 (Sept. 18, 1989) (rejecting request that the Commission issue "a declaratory judgment as to the proper interpretation of the NASD's NASDAQ listing criteria" where applicant argued that "it may once again be confronted with the task of trying to convince the NASD of the correctness of its position" because there was "no longer any adverse NASD determination upon which WCW can base an appeal under Section 19(d)(2) of the Securities Exchange Act"); *see also Sharemaster*, 2013 WL 4647204, at *5 & n.34 ("Because the harm Sharemaster alleges is that FINRA *might* discipline it, rather than a claim that it is currently under sanction—or has been disciplined—for engaging in business [while suspended from membership], the issue is not ripe for review." (emphasis in original)); *see also id.* at *5 & n.34 (collecting similar authority).

[20] *See supra* note 19 and accompanying text.

[21] In light of our disposition here, we express no views as to the merits of such an argument or any other arguments regarding the propriety of the Decision's reasoning.

[22] *See supra* note 16 and accompanying paragraph (explaining that Applicants could seek review by effecting change in ownership, appealing resulting suspension to the Commission, and seeking stay of suspension pending Commission review).

The fact that FINRA lifted the suspensions means there is no longer a final disciplinary sanction for us to review, and Applicants cannot base jurisdiction on a denial of membership or participation. The Decision did not deny Applicants membership or participation in FINRA.[23] "This jurisdictional basis for review is directed at SRO decisions actually denying applications for membership or imposing restrictions on business activities as a condition of membership."[24] The Decision did not deny any application for FINRA membership. Indeed, the Decision noted specifically that no application was pending. FINRA ordered Applicants to file CMAs and did not prejudge whether any CMA they might file in the future should be granted.

The Decision also did not impose restrictions on Applicants' business activities as a condition of membership. We previously have found jurisdiction to review an SRO's "imposition of or refusal to modify a restriction agreement, under which a firm agrees to certain restrictions on its business activities as a condition of [its] membership," because such restrictions "relate[] to the membership process."[25] But Applicants do not challenge a restriction agreement or identify any restriction on their business activities that was imposed when they became FINRA members or as a result of the Decision.

Applicants cite two cases to support their argument that they effectively have been denied FINRA membership, but neither is apposite. In *Beatrice J. Feins*, we found that we had jurisdiction to review an individual's appeal from an exchange's denial of her application to have her grandson's membership in the exchange transferred to her.[26] In *Jon G. Symon*, we found that we had jurisdiction to review an individual's appeal from an SRO's denial of a waiver of requirements that he pass appropriate qualification examinations because that denial effectively

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[23] *See supra* text accompanying note 10 (listing bases of jurisdiction under Section 19(d)).

[24] *WD Clearing*, 2015 WL 5245244, at *3.

[25] *Morgan Stanley & Co.*, Exchange Act Release No. 39459, 1997 WL 802072, at *3 (Dec. 17, 1997) (citing cases in which we have found jurisdiction); *see also First Potomac Inv. Servs., Inc.*, Exchange Act Release No. 30282, 1992 WL 15628, at *2 (Jan. 23, 1992) (finding that we had jurisdiction to review NASD's denial of a member firm's requested modification of a restriction agreement to permit the trading of uncovered put options under certain conditions).

[26] Exchange Act Release No. 33374, 1993 WL 538913, at *1 ("On November 19, 1992, Amex denied the application of Beatrice Feins for regular membership in the Exchange."). Applicants also cite *Feins* for the proposition that we have "substantial discretion in determining whether to decline to decide an appeal on mootness grounds." *Id.* at *2 n.8. But in *Feins* we first found that we had jurisdiction to review the denial of the membership application and then determined that the appeal was not moot as a result of the grandson's transfer of his membership to his father rather than his grandmother. We held that "Ms. Feins was denied AMEX membership and thus continues to have an interest in this appeal." *Id.* Our holding was that an appeal over which we had jurisdiction was not moot; we did not hold that we had discretion to review an appeal over which Exchange Act Section 19(d) did not provide us with jurisdiction. To the extent Applicants argue that we have, and should exercise, discretion to consider their appeal, we decline to do so in the absence of jurisdiction under Exchange Act Section 19(d).

barred him from association in a supervisory capacity with the SRO's member firms.[27] But, unlike in these cases, Applicants, which are FINRA member firms, do not contend that any membership application that they filed was denied, that they were barred from association with member firms, or that FINRA denied any waiver request they made. Applicants could have filed CMAs and sought Commission review had they been denied, but they did not do so and FINRA took no action effectively denying them membership or barring them from membership.

Applicants also assert that the Decision limited or prohibited their access to FINRA services.[28] We exercise jurisdiction on this basis where an applicant challenges an SRO decision that limits or prohibits its access to "fundamentally important services offered by the SRO" that were "not merely important to the applicant but were central to the function of the SRO."[29] Applicants do not identify any such services that they are prohibited or limited from accessing.[30]

Finally, Applicants contend that Exchange Act Section 19(f) "indicates that relief is available." As Applicants note, Exchange Act Section 19(f) provides that where an SRO action denying an applicant membership is not "in accordance with the rules" of the SRO or those rules have not been applied "consistent with the purposes of" the Exchange Act, the Commission must require the SRO to "admit such applicant" to its membership.[31] But FINRA has not denied Applicants membership. Because "a petition for review must first satisfy the jurisdictional requirements in Section 19(d) before the Commission can review the action under Section

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[27] Exchange Act Release No. 41285, 1999 WL 212709, at *3 (Apr. 14, 1999).

[28] *See supra* text accompanying note 10 (listing bases of jurisdiction under Section 19(d)).

[29] *Morgan Stanley & Co.*, 1997 WL 802072, at *3; *see, e.g.*, *Tower Trading, L.P.*, Exchange Act Release No. 47537, 2003 WL 1339179, at *5 (Mar. 19, 2003) (concluding that "Tower's loss of its guaranteed participation fundamentally altered its access to services offered by CBOE"); *Scattered Corp.*, Exchange Act Release No. 37249, 1996 WL 284622, at *2 (May 29, 1996) (finding that "the Exchange's determination not to process Scattered's application for registration as a market maker limits the firm's access to the CHX's services"); *William J. Higgins*, Exchange Act Release No. 24429, 1987 WL 757509, at *5 (May 6, 1987) (concluding that "denial of a member's request to be permitted to communicate from the Exchange floor with non-members located off-floor would constitute a prohibition of, or limitation on, access to services").

[30] *See Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at *4 (Sept. 30, 2016) (finding that applicant failed to establish the existence of jurisdiction where he "d[id] not identify any services to which he ha[d] been denied access by virtue of" the challenged action); *see also Cristo*, 2019 WL 2338414, at *4 (finding that applicant had failed to establish jurisdiction based on a prohibition or limitation of access to services where he identified no "FINRA action prohibiting or limiting [his] access to services").

[31] 15 U.S.C. § 78s(f).

19(f),"[32] or grant relief pursuant to it,[33] Section 19(f) does not create jurisdiction over Applicants' application for review. Indeed, Applicants state in their reply brief that they "do not contend that [S]ection 19(f) provides a jurisdictional basis."

We therefore dismiss the application for review because we lack jurisdiction under Exchange Act Section 19(d). An appropriate order will issue.[34]

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, LEE, and CRENSHAW).

Vanessa A. Countryman
Secretary

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[32] *See John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *4 (Oct. 22, 2019) (dismissing appeal because the Commission lacked jurisdiction under Section 19(d) of the Exchange Act and stating that the Commission could apply the substantive standard of review in Section 19(f) only if jurisdiction under Section 19(d) first exists).

[33] *See Cristo*, 2019 WL 2338414, at *4 ("Cristo must first establish that we have jurisdiction over his application for review before we could afford him any relief. Because relief, if appropriate, comes at the end of the process, a request for certain relief does not create jurisdiction.").

[34] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89685 / August 26, 2020

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In the Matter of the Application of

ALPINE SECURITIES CORP. and
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For Review of Action Taken by

FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the application for review filed by Alpine Securities Corp. and Scottsdale Capital Advisors Corp. is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary