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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

**PETITIONER'S RENEWED  
REQUEST FOR ISSUANCE OF A  
BRIEFING SCHEDULE AND OTHER  
APPROPRIATE COMMISSION  
ACTION**

Admin. Proc. File No. 3-18979

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Petitioner Alpine Securities Corporation (“Alpine”), though counsel of record, submits this Renewed Request for the Securities & Exchange Commission (the “Commission”) to Issue a Briefing Schedule and Take Other Appropriate Action in Connection with Alpine’s Pending Application for Review of adverse action taken by the National Securities Clearing Corporation (“NSCC”).

**SPECIFIC RELIEF SOUGHT**

Alpine respectfully requests that the Commission take the following actions in relation to Alpine’s pending Application for Review:

1. Require NSCC to file a certified copy of the administrative record pursuant to Commission Rule of Practice 420(e) and issue a briefing schedule on Alpine's Application for Review, filed December 26, 2018, pursuant to Commission Rule of Practice 450(a);
2. Issue a decision on Alpine's Motion for an Interim Stay of certain "Required Deposit" charges imposed by, and/or other actions taken by, the NSCC; and/or
3. Take such further action as the Commission deems necessary and appropriate with respect to Alpine's Application for Review and Motion for Interim Stay.

### **GROUND FOR RELIEF**

#### ***Summary of Relevant Procedural Background***

1. Alpine commenced this proceeding on December 26, 2018, by filing an Application for Review, pursuant to Section 19(d) and (f) of the Securities Exchange Act of 1934, of certain "Required Deposit" charges and other actions that NSCC has imposed or taken against Alpine which have resulted in a denial or limitation of Alpine's access to services at NSCC.
2. In connection with its Application for Review, pursuant to Rule 401 of the Commission's Rules of Practice, on December 26, 2018, Alpine filed a Motion for an Interim Stay of the implementation and/or assessment by the NSCC of the "Illiquid Charge" or, alternatively, an interim stay of NSCC's decision to not allow Alpine to utilize the Depository Trust Company's ("DTC") offset in calculating the applicable volume limitations for the Illiquid Charge, until Alpine's Application for Review is considered and decided. NSCC filed a Memorandum in Opposition to Alpine's Motion for Interim Stay on January 23, 2019. Alpine filed a Reply Memorandum in Support of its Motion for Interim Stay on February 4, 2019. Accordingly, Alpine's Motion for Interim Stay is fully briefed and ready for decision.

3. On February 1, 2019, the Commission sent a letter to counsel for Alpine acknowledging receipt of the Application for Review and stating that: “[w]ithin 14 days after its receipt of your client’s application NSCC is required to file a certified copy of the record in your client’s proceeding, alpine with an index to the record,” and that “[w]ithin 21 days of the Commission’s receipt of the certified record, we will issue a briefing schedule order, setting forth the deadlines for submission by you and NSCC of your briefs.”

4. On February 6, 2019, NSCC filed a response to the Commission’s February 1, 2019, letter stating that it was unable to comply with the Commission’s order to file a certified copy of the record on the basis that “there was no underlying ‘proceeding’ and no resulting ‘record’ to be certified in the matter.” NSCC also argued in this letter that the “record certification process is not applicable.”

5. Alpine filed a response to NSCC’s February 6, 2019, letter on February 12, 2019, disputing NSCC’s position that no record existed and its legal argument that the record certification requirements of Commission Rule of Practice Rule 420(e) were “not applicable.”

6. Alpine has never received a certified copy of the record from NSCC.

7. On March 4, 2019, the Commission issued an Order Directing Additional Written Submissions with respect to Alpine’s and NSCC’s applications, pursuant to Commission Rule of Practice 190, for confidential treatment of portions of their filings. Alpine and NSCC each filed an additional written submissions in accordance with the Commission’s order on March 11, 2019.

8. As of the date of this filing, the Commission has taken no further action on, and has not provided any further communication with respect to Alpine’s Application for Review,

Alpine's Motion for Interim Stay, NSCC's failure to produce a certified copy of the record, or the request for confidential treatment.

***Request for Commission Action***

This is a matter of significant urgency for Alpine. As detailed in Alpine's filings, NSCC's onerous Required Deposit charges, which are often 100 times the underlying value of the trade, have caused, and continue to cause, a debilitating denial and limitation of Alpine's access to NSCC's essential clearing and settlement services upon which Alpine relies to conduct its business. Further reflecting the urgency of the situation, Alpine has sought an interim stay of certain components of the Required Deposit – the "Illiquid Charge" and/or NSCC's arbitrary decision to not allow Alpine to utilize the "DTC offset" to avoid the Illiquid Charge – to gain a measure of relief while the broader issues in Alpine's Application for Review are being considered by the Commission. However, Alpine has received no word from the Commission on the Motion for Interim Stay in the nearly six months since briefing on that Motion was completed.<sup>1</sup>

Alpine believes that NSCC's failure to produce a certified copy of the record as required by Commission Rule of Practice 420(e) has resulted in an inadvertent stalling of these proceedings. As indicated, consistent with Rule 420(e), the Commission's February 1, 2019, letter stated that NSCC was required to file and serve a certified copy of the administrative record within 14 days of the date NSCC received a copy of Alpine's Application for Review – a requirement with which NSCC was already delinquent in fulfilling as of the date of its February 6, 2019, letter. The Commission's February 1, 2019, letter also indicated, in accordance with

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<sup>1</sup> Recent actions by NSCC have made the situation even more dire. On July 11, 2019, NSCC notified Alpine by letter that, effective immediately, it was increasing its minimum Clearing Fund Requirement by 130%. NSCC failed to offer any explanation for its calculation of Alpine's new Clearing Fund Requirement or the basis for NSCC's purported determination that it was necessary to abruptly more than double Alpine's minimum Clearing Fund Requirement.

Commission Rule of Practice 450(a)(2) that it would issue a briefing schedule “[w]ithin 21 days of the Commission’s receipt of the certified record” from NSCC. Because NSCC’s filing and service of the record is a necessary predicate to issuance of a briefing schedule, which in turn is required to bring Alpine’s Application for Review before the Commission for consideration, it appears that NSCC’s failure to provide the record has short-circuited the process.

Alpine simply desires to move this matter forward with all possible alacrity.

Accordingly, Alpine respectfully requests that the Commission: (1) require NSCC comply with Rule 420(e) by promptly filing and serving a copy of the certified record; (2) render a decision on Alpine’s Motion for Interim Stay; (3) issue a briefing schedule on Alpine’s Application for Review; and/or (4) take such further action as the Commission deems necessary and appropriate with respect to Alpine’s Application for Review and Motion for Interim Stay.

DATED this 2<sup>nd</sup> day of August 2019.

**CLYDE SNOW & SESSIONS**



Aaron D. Lebenta  
Brent R. Baker

**THOMPSON HINE**



Maranda E. Fritz

*Attorneys for Alpine*

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**STATEMENT OF FACSIMILE  
FILING**

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PLEASE TAKE NOTICE that, pursuant to Rule 152(d) of the Commission's Rules of Practice, the undersigned hereby gives notice that Petitioner's Renewed Request for Issuance of a Briefing Schedule and Other Appropriate Commission Action, was filed by means of facsimile transmission to the Office of the Secretary of the Commission at (202) 772-9325, on August 2, 2019.

DATED this 2<sup>nd</sup> day of August 2019.

**CLYDE SNOW & SESSIONS**

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character, with a horizontal line extending to the right.

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Brent R. Baker

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**CERTIFICATE OF SERVICE**

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AARON D. LEBENTA, HEREBY CERTIFIES PURSUANT to Rule 151(d) of the Commission's Rules of Practice that, on August 2, 2019, he served, along with this Certificate of Service, Alpine's Renewed Request for Issuance of a Briefing Schedule and Other Appropriate Commission Action, by the following means:



1. By the U.S. Postal Service, by means of certified mail, directed to Brent J. Fields at the Office of the Secretary for the U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

2. By facsimile directed to Brent J. Fields at the Office of the Secretary of the U.S. Securities and Exchange Commission, at 202-772-9325.

3. By the U.S. Postal Service, by means of certified mail, directed to Gregg M. Mashberg, Benjamin J. Catalano, and Brian A. Hooven of Proskauer Rose LLP, at 11 Times Square, New York, NY 10036.

4. By facsimile directed to Gregg M. Mashberg, Benjamin J. Catalano, and Brian A. Hooven of Proskauer Rose LLP, at 212-969-2900.

DATED this 2<sup>nd</sup> day of August 2019.

**CLYDE SNOW & SESSIONS**



Aaron D. Lebenta  
Brent R. Baker