HARD COPY **Admin. Proc. File No. 3-18979**

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UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
February 3, 2020

In the Matter of :

ALPINE SECURITIES CORPORATION,
a Utah limited liability Company :

For Review of Adverse Action Taken By :

NATIONAL SECURITIES CLEARING CORPORATION :

NSCC'S REPLY BRIEF REGARDING THE TIMELINESS OF ALPINE'S APPLICATION FOR REVIEW AND SEC JURISDICTION

INTRODUCTION

Alpine's[1] Brief on Timeliness and Jurisdiction, filed Jan. 17, 2020, ("Alpine's Opening Brief"), fails to demonstrate the SEC was wrong in its preliminary finding that the Application was untimely. Nor does it advance any jurisdictional argument, despite the SEC's directions that the parties do so.[2]

In focusing on timeliness, Alpine blatantly misapplies settled D.C. Circuit law in an attempt to imprint the standard for *judicial* review of federal *agency* action onto the *SEC's* review of *NSCC's* action. None of Alpine's cases applies to SEC review of SRO actions or SRO rules, either directly or by analogy. And even if Alpine were correct in treating this proceeding as judicial review of agency action (which it is not), Alpine has not and cannot satisfy either of the D.C. Circuit's recognized procedures for obtaining such review after the limitations period has passed (neither of which involves Section 19(d) at any point). Indeed, rather than permitting Alpine to circumvent any statutory deadline under Section 19(d), Alpine's judicial review cases demonstrate that its challenge to the Challenged Margin Components cannot proceed at all under Section 19(d)—it must proceed through the rule making process (which Alpine commenced commensurate with filing the Application).

Alpine's remaining timeliness arguments, including its extraordinary circumstances claims, are no more persuasive now than when the SEC first rejected them.

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[1] Capitalized terms used, but not otherwise defined, shall have the meaning ascribed to them in 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, filed Jan. 17, 2020 ("NSCC's Opening Brief").

[2] Alpine circumvents the issue by focusing on the standards for review under Section 19(f) of the Exchange Act, which does not apply unless the SEC has jurisdiction under Section 19(d).

The SEC should dismiss Alpine's Application as both untimely and without jurisdictional basis.

ARGUMENT

I. Alpine Does Not Show That Its Section 19(d) Application Is Timely.

A. Alpine fails to establish that it is challenging the specific assessments of the Challenged Margin Components rather than the rules governing the Challenged Margin Components.

Alpine's effort to redefine this proceeding as challenging individual assessments of the Challenged Margin Components within the thirty days prior to filing its Application is as transparent as it is futile.[3] NSCC has demonstrated, and Alpine has failed to overcome, that this proceeding is a facial challenge to NSCC's Required Fund Deposit program. The individual assessments are manifestations of the underlying rules at issue and cannot operate, as Alpine essentially urges, to extend indefinitely any thirty-day deadline.[4]

Alpine also posits that its application is timely because the claimed denial or limitation of the "service" being challenged "is a product of the agency's evolving and present application of its rules," which occurred in the thirty days before Alpine filed its application.[5] First, as noted, NSCC is not an "agency," it is an SRO, a distinction that Alpine repeatedly ignores. Second, the

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[3] Artful pleading does not allow a challenge that is otherwise barred by the Exchange Act. *See, e.g., Scottsdale Capital Advisors Corp. v. Fin. Indus. Regulatory Auth.*, 390 F. Supp. 3d 72, 81-82 (D.D.C. 2019) ("Scottsdale's counterarguments fall flat. They all stem from one simple idea: that it is not challenging FINRA's rules and regulations but merely alleging a breach of contract between two private corporations. Scottsdale repeats this line as if it were an incantation. But this mantra does not obscure the true nature of its claims. As explained above, Scottsdale's breach of contract claim is nothing more than an artifice designed to obscure its challenges to FINRA's regulatory and disciplinary actions." (internal citations omitted)).

[4] *See* NSCC's Opening Brief at 4–7.

[5] Alpine's Opening Brief at 6.

notion that NSCC's "application" of the Challenged Margin Components "evolved" in the thirty days preceding Alpine's Application is a complete fallacy. The Challenged Margin Components are governed by rules approved by the SEC under Section 19(b)(2), the most recent of which was approved on February 26, 2018, ten months before Alpine's Application.[6] Except for the CRRM rule, each of the Challenged Margin Components is formulaic, with the latest assessed to Alpine no later than July 12, 2018, five months before Alpine filed its Application, and the others long before that.[7] As for the CRRM rule, Alpine has been consistently rated a 7 (and consequently unable to use the DTC Offset) since August 2018 (and was also rated a 7 before June of 2018). Clearly, nothing "evolved" or otherwise changed in the least concerning the formulas for the Challenged Margin Components or NSCC's application of them in the thirty days before Alpine's Application. The Challenged Margin Components have been applied to Alpine in the exact same manner for much longer than the thirty days before Alpine filed its Application, and Alpine's attempt to turn the specific assessments of these rules into some new "action" that it can legitimately challenge is pure fiction.

B. *The standard for untimely judicial review of agency actions is inapplicable to SRO action or SRO rules.*

Alpine's purported timeliness authorities universally miss the mark. Section 19(d) provides the procedure for agency oversight over SROs. Alpine, however, only cites cases addressing federal *court* review of *agency* actions—and in a variety of contexts other than SRO action under the Exchange Act.[8] None of these judicial review cases address the standard for

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[6] Volatility Charge Approval Order at 9,046; *see also* NSCC Opening Brief at 2-3 (laying out the approval dates of each of the Challenged Margin Components).

[7] NSCC Opening Brief at 2-3.

[8] *See N.L.R.B. Union v. Fed. Labor Relations Auth.*, 834 F.2d 191, 197 (D.C. Cir. 1987) (jurisdiction appropriate under 5 U.S.C. § 7123(a), which provides for judicial review of decisions

agency review, or so much as mention SEC review under Section 19(d). Indeed, the D.C. Circuit has recognized that the standards for judicial review under the APA do not apply to agency review of SROs or SRO rules.[9] As such, Alpine has failed to cite any authority that supports its arguments.

Even if Alpine's analogy were sound, the cases it cites merely show that courts have recognized two mechanisms to allow judicial review of an agency's action after the statutory limitations period has passed—not that Section 19(d) is part of either of those mechanisms.[10] To the contrary, and as described below, Alpine's authorities demonstrate that its proper recourse is not through Section 19(d), but through a rulemaking petition—which it already has filed.[11]

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by the Federal Labor Relations Authority); *Weaver v. Fed. Motor Carrier Safety Admin.*, 744 F.3d 142 (D.C. Cir. 2014) (jurisdiction appropriate under 28 U.S.C. § 2342(3)(A), which provides for judicial review of actions by the Secretary of Transportation); *NextWave Personal Commc'ns, Inc. v. F.C.C.*, 254 F.3d 130, 140 (D.C. Cir. 2001) (jurisdiction appropriate under 47 U.S.C. 402(a), which provides for judicial review of FCC decisions); *Wind River Mining Corp. v. United States*, 946 F.2d 710 (9th Cir. 1991) (evaluating jurisdiction under 43 U.S.C. § 1701(a)(6), which provides for judicial review of public land adjudications).

[9] *See North v. Smarsh, Inc.*, 160 F. Supp. 3d 63, 78 (D.D.C. 2015) ("the APA does not apply to SROs" because they are "not an agency within the meaning of the statute.") (internal citation omitted). The D.C. Circuit has also recognized that any exceptions to the system of SRO review described in the Exchange Act must be viewed with the utmost suspicion, as that system reflects Congress's specific intent for how SRO actions could be challenged. *See In re Series 7 Broker Qualification Exam Scoring Litig.*, 548 F.3d 110, 114 (D.C. Cir. 2008) ("As the Supreme Court has noted in another context, the structure of a statute may imply that Congress intended to preclude challenges arising under a statute when those challenges are outside the system of review prescribed by the statute ... The multiple layers of review evince Congress's intent to direct challenges based on denials of membership to the avenues Congress created.") (internal citation omitted). All of Alpine's cases fall under the APA except for *Commonwealth Edison Co. v. U.S. Nuclear Regulatory Comm'n*, 830 F.2d 610 (7th Cir. 1987), which implicates the APA in its analysis of the *Hobbs Act*. *See* n.10 *infra*.

[10] *See generally* Alpine's Opening Brief at 7–10 (quoting cases stating that there are two mechanisms by which rules are subject to judicial review after the statutory limitations period has passed: as a defense to an enforcement proceeding and as an appeal to a denied rulemaking petition or petition to rescind).

[11] Alpine also includes several cases in footnotes, each of which is also unavailing for the same reasons Alpine's main cases are inapposite. *See* Alpine's Opening Brief at n.10, *citing Oppenheim*

Alpine first relies on *N.L.R.B. Union v. F.L.R.A.*, for the proposition that "statutory timelines 'do not foreclose subsequent [judicial] examination of a rule'" so long as that rule continues to be applied.[12] The "subsequent examination" that the *N.L.R.B.* court found to be proper, however, was not a Section 19(d) application—*it was an appeal of a denied rulemaking petition*—a procedural pathway that Alpine is currently pursuing.[13] *N.L.R.B.* is clear that when a party contests a rule either because it "*conflicts with the statute* from which its authority derives" or because of "some *substantive* deficiency *other than the agency's lack of statutory authority*," it must bring that challenge by "petitioning the agency for amendment or rescission and then appealing the denial of that petition."[14] Accordingly, rather than supporting its timeliness argument, *N.L.R.B.* demonstrates that Alpine's proper recourse is its rulemaking petition.[15]

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v. Campbell, 571 F.2d 660 (D.C. Cir. 1978) (holding that a prospective plaintiff's civil claims were separate from his potential remedies under the APA and subject to two separate statutes of limitations); *id.* at n.11, *citing P & V Enters. v. U.S. Army Corps of Eng'rs*, 516 F.3d 1021 (D.C. Cir. 2008) (addressing whether a rule could be challenged under the "re-opening doctrine," and citing to the two mechanisms for untimely challenges described in *N.L.R.B.*); *id.*, *citing Koi Nation of N. Cal. V. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 36 (D.D.C. 2019) (holding that the limitations period began with the final agency action applying the rule); *id.* at n.12, *citing Commonwealth Edison Co. v. U.S. Nuclear Regulatory Comm'n*, 830 F.2d 610 (7th Cir. 1987) (same).

[12] Alpine's Opening Brief at 7 (*citing* 834 F.2d 191, 196 (D.C. Cir. 1987)).

[13] In finding that the N.L.R.B.'s appeal was timely, the court focused on the fact that the N.L.R.B. had "availed itself of the *only remaining path*" available to challenge the substance of the rule. 834 F.2d 191, 197 (D.C. Cir. 1987) (emphasis added). The same cannot be said of Alpine given its pending Rulemaking Petition.

[14] *See* 834 F.2d 191, 196 (D.C. Cir. 1987) (emphasis in original). In addition to appealing an agency's decision on a rulemaking petition, *N.L.R.B.* permits "a party who possesses standing [to] challenge regulations directly on the ground that the issuing agency acted in excess of its statutory authority in promulgating them . . . for example, by way of defense in an enforcement proceeding." *Id.* at 195–196. Alpine never asserts that the SEC "acted in excess of its statutory authority" in approving the Challenged Margin Components. *See generally* Application; Alpine's Opening Brief.

[15] Application at 2; *see also* Alpine's Opening Brief at 10 ("Alpine has also detailed in the many ways in which NSCC's arbitrary and discriminatory application of those rules . . . contravenes both specific provisions of the Exchange Act *and* SEC regulations"); *id.* at 9 (arguing that Section

Alpine then argues that *Weaver v. Fed. Motor Carrier Safety Admin.*,[16] supports its argument that Section 19(d) should be an acceptable pathway under *N.L.R.B.* to challenge the validity of a rule after the statutory limitations period has expired. *Weaver* says nothing of the sort.[17] During *Weaver's* brief discussion of timeliness, it merely notes that the government was mistaken in its view that Weaver could only have challenged the validity of the rule through a defense to an enforcement proceeding.[18] The court recognized that an affected party could "challenge that application on the grounds that it 'conflicts with the statute from which its authority derives,'" relying on authority (including *N.L.R.B.*) that generally holds such a challenge must be brought through the rulemaking petition (or petition to rescind) process.[19]

Alpine next turns to *NextWave Pers. Commc'ns, Inc. v. F.C.C.*, arguing "the D.C. Circuit has clearly and repeatedly held, 'a party against whom a rule is applied may, *at the time of application*, pursue substantive objections to the rule[,] *even where the petitioner had notice and*

19(f) requires the SEC to determine whether the Challenged Margin Components are "consistent with the Exchange Act"); *id.* at 11 (stating Alpine is asking the SEC to ensure that the Challenged Margin Requirements are "consistent with the Exchange Act").

[16] 744 F.3d 142, 145–46 (D.C. Cir. 2014).

[17] Alpine's Opening Brief at 8. The issues in *Weaver* are a far cry from those here. *Weaver* dealt with an individual challenging an agency decision declining to remove a minor traffic violation from his record, and whether jurisdiction for judicial review of that decision was properly before the court of appeals or the district court.

[18] 744 F.3d 142 at 145.

[19] 744 F.3d 142 at 145–46 (*citing Nat'l Air Transp. Ass'n v. McArtor*, 866 F.2d 483, 487 (D.C. Cir. 1989) (recognizing that *N.L.R.B.* permits "substantive review in the context either of agency *enforcement* of a rule against a violator or in the context of review of a petition to rescind or modify a rule")); *see also Functional Music, Inc. v. F.C.C.*, 274 F.2d 543, 545 (D.C. Cir. 1958) (petitioner challenged a rule through a timely appeal of the FCC's denial of its rulemaking petition); *Pub. Citizen v. Nuclear Regulatory Comm'n*, 901 F.2d 147, 152 (D.C. Cir. 1990) (noting the "circuit's long-standing rule that although a statutory review period permanently limits the time within which a petitioner may claim that an agency action was procedurally defective, a claim that agency action was violative of statute may be raised outside a statutory limitations period, by filing a petition for amendment or rescission of the agency's regulations, and challenging the denial of that petition").

opportunity to bring a direct challenge within statutory time limits but failed to do so.'"[20] This selective quotation grossly misrepresents *NextWave*. *NextWave* examined whether the time for a judicial challenge to a Federal Communications Commission decision began with notice of the decision or with notice that the decision would be specifically applied to the challenger.[21] The court ultimately held the latter to be the case:

> [E]ven if NextWave could have challenged the automatic cancellation policy at an earlier date—either when its licenses issued or during the *Restructuring Order* proceedings—the company remained free to do so '*within thirty days from the date upon which public notice [was] given' that the policy had been applied to it.*[22]

NextWave never implies that a challenger can attack a rule at any time that rule is applied. Even under the most liberal construction of the court's holding, Alpine only could have arguably challenged the Challenged Margin Components for thirty days after NSCC *made the determination* to assess them to Alpine—not *anytime* they were subsequently assessed to Alpine.

The D.C. Circuit reaffirmed this principle last January. In *Koi Nation of N. Cal. v. U.S. Dep't of Interior*, the D.C. Circuit emphasized that *NextWave* served to effectively toll the limitations period until "the agency makes a final determination about application of a rule against the party."[23] Beyond the fact that NSCC is not an agency, it made the final determination

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[20] Alpine's Opening Brief at 10 (citing *NextWave Pers. Commc'ns, Inc. v. F.C.C.*, 254 F.3d 130, 141 (D.C. Cir. 2001), *aff'd*, 537 U.S. 293, 123 S. Ct. 832, 154 L. Ed. 2d 863 (2003)) (emphasis in original).

[21] *NextWave,* 254 F.3d at 141–142.

[22] *NextWave,* 254 F.3d at 141 (citation omitted) (emphasis added). Alpine similarly misrepresents the Ninth Circuit's *Wind River* decision, which ultimately holds "that a substantive challenge to an agency decision alleging lack of agency authority may be brought within [the applicable statute of limitations beginning on the date] *of the agency's application of that decision to the specific challenger.* " Alpine's Opening Brief at 9 (*citing Wind River* at 715); *Wind River* 946 F.2d 710 at 716 (emphasis added).

[23] 361 F. Supp. 3d 14, 40 (D.D.C. 2019), *appeal dismissed sub nom. Koi Nation of N. Cal. v. U.S. Dep't of Interior*, No. 19-5069, 2019 WL 5394631 (D.C. Cir. Oct. 3, 2019) ("[NextWave] merely

to apply each of the Challenged Margin Components to Alpine in their present form long before Section 19(d)'s thirty-day limitations period.[24]

None of Alpine's authority relates to agency review of SROs, nor does it persuasively counsel that Section 19(d) should be added to the two existing procedures to challenge a rule after the statutory limitations period. Accordingly, the SEC should deny Alpine's Application as untimely.

II. Alpine Fails to Establish That Extraordinary Circumstances Exist to Excuse the Late Filing of Alpine's Application for Review.

With respect to its extraordinary circumstances arguments, Alpine merely pastes the same arguments from its SEC Stay Reply, which are addressed at length in NSCC's Opening Brief at 7–11.[25]

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applied well-settled precedent that prior notice and opportunity to bring a direct challenge to a rule does not preclude a party from bringing that challenge when the agency makes a final determination about application of a rule against the party").

[24] SEC Stay Order at 11 ("Alpine knew of NSCC's actions through notices Alpine received of daily charges associated with its Required Fund Deposit and concedes that it discussed its low CRRM rating with NSCC at least as early as September 6, 2018"); Alpine's Opening Brief at n.6 ("here, Alpine receives daily notices of margin charges from NSCC"); Supplemental Cuddihy Declaration Exhibit B.

[25] Alpine also argues that it "is aware of no Commission decision analyzing the validity of NSCC's calculation and imposition of the challenged Required Deposit charges as a denial or limitation of access under Sections 19(d) and (f)." Alpine's Opening Brief at 12. However, the absence of such analysis (or any similar analysis) is testimony as much to the speciousness of Alpine's claim. All major SROs have margin rules allowing them to impose *additional* margin in amounts they determine appropriate in various instances, without resort to further rulemaking or procedure. *See, e.g.*, FINRA Rule 4210(b)(3) (allowing FINRA to impose greater initial margin as it may require from time to time).

III. Even If Alpine's Section 19(d) Petition Were Timely, Section 19(d) Does Not Provide the SEC with Jurisdiction to Evaluate the Challenged Margin Components.

Alpine has barely responded to the SEC's direction that it address the jurisdictional basis for this proceeding, assuming the SEC were to find it to be timely brought.

First, Alpine fails to establish the Challenged Margin Components are prohibitions or limitations of access. The Challenged Margin Components are not fees, they are components of the service itself, and the cases where the SEC has found fees to be prohibitions or limitations on access are neither relevant nor persuasive.[26] Alpine is similarly unable to show that NSCC's margin requirements have actually *limited its access to NSCC's services.* Rather, Alpine has done no more than argue, in conclusory terms, that those requirements, at most, have *limited the monetary volume of Alpine's transactions* based on the risks that its business poses to the clearance and settlement system.[27]

Second, Alpine has not addressed NSCC's argument that Section 19(d) cannot be used to challenge rules approved under Section 19(b)(2), as opposed to rules effective upon filing under Section 19(b)(3).[28]

In any case, as the notice provision in Section 19(d) confirms, the section only grants the SEC jurisdiction to review an SRO administrative proceeding or action against a member or participant for *violation* or *noncompliance* with a rule made under Section 19(b)(2). In other words, Section 19(d) provides the SEC with jurisdiction to adjudicate whether the SRO's action was *inconsistent* with the rule as promulgated. To date, NSCC has not initiated any administrative proceeding nor taken any action against Alpine for violation or non-compliance

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[26] NSCC Opening Brief at 11–13.
[27] NSCC Opening Brief at 13–14.
[28] NSCC's Opening Brief at 14–15.

with the margin rules. Indeed, Alpine has made all deposits required under the rules it challenges.[29]

Finally, Alpine focuses on the "application" of the Challenged Margin Components as the basis for jurisdiction under Sections 19(d), but the statute vests the SEC with jurisdiction where the SRO has made a finding that the applicant has violated or otherwise failed to comply with the applicable rule.[30] Accordingly, the SEC does not have authority under Section 19(d) to hear and act upon Alpine's objections to the margin rules.[31]

CONCLUSION

For all these reasons, the Application is untimely and, even it were not, the SEC has no jurisdiction under Section 19(d) to consider claims that could and should have been addressed during the rule making process or subsequent judicial review.

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[29] As such, the Challenged Margin Components do not trigger the notice provision in Section 19(d). 15 U.S.C. 78s(d). Rule 19d-1 provides, in relevant part, that such notice is required only when the alleged denial or limitation of access is *based on an alleged failure* of any person to "[c]omply with any administrative requirements of such organization (including failure to pay entry or other dues or fees. . ." 17 C.F.R. § 240.19d-1(e). Alpine has not alleged any such failure, and none exists.

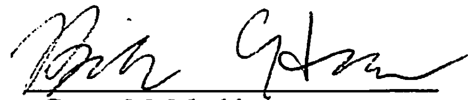
[30] Alpine's Opening Brief at 11; 15 U.S.C. § 78s(d); 15 U.S.C. § 78s(f).

[31] Further underscoring the absurdity of Alpine's position, Section 17A(b)(2)(H) of the Exchange Act contemplates that all actions taken referred to in Section 19(d) will be subject to rules providing for a "fair procedure." 15 U.S.C. § 78q–1(b)(2)(H). Here there was no such procedure, because NSCC's action was not of the sort governed by this statute, and indeed, it would be absurd to subject each instance of every margin call to the due process requirement of Section 17A(b)(2)(H). *See* NSCC Opening Brief at n.51.

New York, NY
February 3, 2020

Respectfully submitted,

PROSKAUER ROSE LLP



Gregg M. Mashberg
Benjamin J. Catalano
Brian A. Hooven
11 Times Square
New York, NY 10036

Attorneys for National Securities Clearing Corporation

Admin. Proc. File No. 3-18979

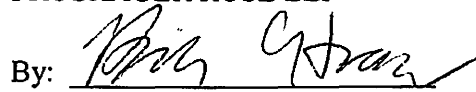
UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
February 3, 2020

In the Matter of **ALPINE SECURITIES CORPORATION, a Utah limited liability Company** **For Review of Adverse Action Taken By** **NATIONAL SECURITIES CLEARING CORPORATION**	**STATEMENT OF FACSIMILE FILING**

PLEASE TAKE NOTICE that, pursuant to Rule 151 of the SEC's Rules of Practice, the undersigned hereby gives notice that Respondent National Securities Clearing Corporation's ("NSCC") Reply Brief Regarding the Timeliness of Alpine's Application for Review and SEC Jurisdiction was filed by means of facsimile transmission to the Office of the Secretary of the Commission at (202) 772-9324, on February 3, 2020.

New York, NY
February 3, 2020

PROSKAUER ROSE LLP

By: 

Gregg M. Mashberg
Benjamin J. Catalano
Brian A. Hooven
11 Times Square
New York, NY 10036

Attorneys for Respondent National Securities Clearing Corporation

Administrative Proceeding File No. 3-18979

UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
February 3, 2020

In the Matter of **ALPINE SECURITIES CORPORATION, a Utah limited liability Company** **For Review of Adverse Action Taken By** **NATIONAL SECURITIES CLEARING CORPORATION**	**CERTIFICATE OF SERVICE**

VICTORIA L. KLEVAN, HEREBY CERTIFIES PURSUANT TO Rule 151(d) of the SEC's Rules of Practice that, on February 3, 2020, she caused the National Securities Clearing Corporation's Reply Brief Regarding the Timeliness of Alpine's Application for Review And SEC Jurisdiction, Dated February 3, 2020, to be served by the following means:

1. By the U.S. Postal Service, by means of Express mail, directed to Vanessa Countryman 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 Vanessa Countryman at the Office of the Secretary for the U.S. Securities and Exchange Commission, at 202-772-9324.
3. By the U.S. Postal Service, by means of Express mail, directed to Brent R. Baker and Aaron D. Lebenta of Clyde Snow & Sessions at 201 South Main Street, Suite 1300,

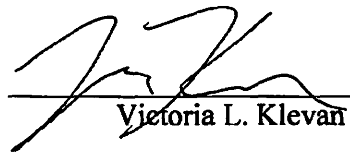
Salt Lake City, Utah 84111.

4. By facsimile directed to Brent R. Baker and Aaron D. Lebenta of Clyde Snow & Sessions at 801-521-6280.

5. By the U.S. Postal Service, by means of Express mail, directed to Maranda E. Fritz of Thompson Hine at 335 Madison Avenue, 12th Floor, New York, New York 10017.

6. By facsimile directed to Maranda E. Fritz of Thompson Hine at 212-344-6101.

New York, New York
February 3, 2020



Victoria L. Klevan

Proskauer» Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

COPY

Brian A. Hooven
d 212.969.3212
f 212.969.2900
bhooven@proskauer.com
www.proskauer.com

February 3, 2020

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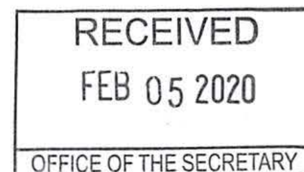

Ms. Vanessa Countryman
Office of the Secretary
U.S. Securities Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: In the Matter of Alpine Securities Corporation
Admin. Proc. File No. 3-18979

Dear Ms. Countryman:

We are counsel for the National Securities Clearing Corporation ("NSCC") in this administrative proceeding, Admin Proc. File No. 3-18979.

Enclosed please find (1) NSCC's Reply Brief Regarding the Timeliness of Alpine's Application for Review and SEC Jurisdiction, (2) a Statement of Facsimile Filing, and (3) a Certificate of Service for all of the foregoing.

Each of the aforementioned documents is being submitted by facsimile transmission to the Office of the Secretary at 202-772-9324 on February 3, 2020. Furthermore, one original and three copies of each of the above documents are being mailed to the Office of the Secretary via United States Postal Service, Express Mail, on February 3, 2020. Service is also being made today by facsimile and Express mail on Alpine's counsel.

Respectfully,

Brian A. Hooven

Cc (by facsimile and Express mail):

Brent R. Baker
Miranda E. Fritz