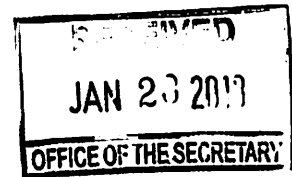


Administrative Proceeding  
File No. 3-18979

UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
January 2, 2019



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**In the Matter of** :

**ALPINE SECURITIES CORPORATION, a** :

**Utah limited liability Company** :

**For Review of Adverse Action Taken By** :

**NATIONAL SECURITIES CLEARING CORPORATION** :

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**BRIEF OF NATIONAL SECURITIES CLEARING CORPORATION IN SUPPORT OF  
ITS MOTION FOR AN EXTENSION OF TIME TO FILE OPPOSITION TO THE  
ALPINE SECURITIES CORPORATION'S APPLICATION FOR A STAY**

Pursuant to Rule 161 of the Rules of Practice ("Rules" or "Rule") of the U.S. Securities and Exchange Commission (the "Commission"), the National Securities Clearing Corporation ("NSCC") submits this brief in support of its motion for an extension of time of 21-days, or such other period that the Commission may prescribe, to file opposition objection to the application of Alpine Securities Corporation ("Alpine"), purportedly pursuant to 401, for an interim stay of the implementation of NSCC's "Illiquid Charge" or, alternatively, an interim stay of NSCC's decision to not allow Alpine to utilize The Depository Trust Company's ("DTC") offset (the "DTC Offset") in calculating the applicable volume limitations for the Illiquid Charge, until Alpine's Application for Review is considered and decided (the "Stay Application").

The Stay Application accompanies Alpine's petition to review the entire panoply of risk management tools utilized by NSCC. Although the Stay Application is purportedly

predicated on Section 19(d) and (f) of the Securities Exchange Act of 1934, NSCC has not denied access to clearing agency services and the statutory basis for the underlying proceeding is not apparent.

As explained more fully below, the Stay Application focuses primarily on one aspect of NSCC's essential functions in implementing risk management safeguards, the Illiquid Charge. Alpine seeks to stay continued implementation of the Illiquid Charge during the pendency of this proceeding.<sup>1</sup>

Pursuant to Pursuant to Rules 154 and 160, NSCC's objection to the Stay Application was due to be filed on January 2, 2019 (except for the consequences of the government shut down<sup>2</sup>). However, given that NSCC received the Stay Application on Friday, December 28, before the holiday weekend, NSCC has not had adequate time assemble the relevant legal and factual materials for its presentation to the Commission in opposing the Stay Application.

Accordingly, NSCC respectfully requests an extension of 21-days (until January 23, 2019), to file its opposition to the Stay Application.

## **BACKGROUND**

NSCC is a clearing agency registered with the Commission and a self-regulatory organization. NSCC provides settlement, risk management, central counterparty services and a guarantee of completion for certain transactions for virtually all broker-to-broker trades involving equities, corporate and municipal debt, and certain other financial products. Risk

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<sup>1</sup> Although the primary focus of Alpine's request for a stay is the Illiquid Charge, Alpine also seeks alternatively, an interim stay of NSCC's decision not to allow Alpine to utilize The DTC Offset in calculating the applicable volume limitations for the Illiquid Charge. NSCC's arguments in support of its motion for an extension of time apply equally to the Illiquid Charge and the DTC offset.

<sup>2</sup> Pursuant to Rule 160(b), due to the Government shut down, the time to file is extended until after the Commission reopens following the conclusion of the shut down.

management is central to NSCC's mission and its continued ability to perform its core functions. In that connection it employs various strategies to provide effective and efficient identification, measurement, monitoring and control of credit, market, liquidity, systemic, operational and other risks for NSCC and the overall DTCC complex, its users and the marketplace.

Alpine's petition for review challenges NSCC's overall risk management program and the Stay Application seeks to block continued implementation of one aspect of that program, the Illiquid Charge.<sup>3</sup> The Illiquid Charge, which has been in effect for many years, is designed to mitigate the risk that NSCC may face when liquidating illiquid securities in a particular Illiquid Security or limitations on the share price of the Illiquid Security.<sup>4</sup> In May 2017, the Commission approved NSCC's proposed rule change designed to provide transparency with respect the Illiquid Charge and to codify NSCC's then current practices with respect to the assessment and collection of the Illiquid Charge.<sup>5</sup>

Alpine did not submit any comments in response following a Member default and such liquidation is difficult or delayed due to a lack of interest to the filing of the rule change application in March 2017 and, despite having been subject to the Illiquid Charge both prior to and after the rule change was approved in May 2017, it took no legal action to challenge the rule until commencing this proceeding in December 2018.

### **ARGUMENT**

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<sup>3</sup> See NSCC Rules, Procedure XV, Sections I(A)(1)(e) and I(A)(2)(d).

<sup>4</sup> See Securities Exchange Act Release No. 80260 (March 16, 2017), 82 FR 14781 (March 22, 2017) (SR-NSCC-2017-001); *see also id.* at 6., n.8 ("The methodology for calculating the Illiquid Charge has been effective for many years.").

<sup>5</sup> See Securities Exchange Act Release No. 34-80597; File No. SR-NSCC-2017-001 (May 4, 2017).

NSCC's request for an extension of time to file its opposition to the Stay Application meets each of the elements of Rule 161(b), which sets forth the standards pursuant to which the Commission will determine whether to approve a request for an extension:

(i) This proceeding is in its infancy, having been filed on December 19, 2018; NSCC was not aware that this matter had been commenced and did not receive any of the papers until December 28, 2018;

(ii) There have been no prior postponements, adjournments or extensions granted in this proceeding;

(iii) Although Alpine states that it commenced this proceeding within 30 days of having received the "Notice of Daily Margin Statement for transactions at issue,"<sup>6</sup> this is misleading and this proceeding appears to be untimely:

- First, since the Commission approved the Illiquid Charge rule change application in May 2017, NSCC has provided Alpine with *several hundred* Notice of Daily Margin Statements, implementing the Illiquid Charge. And during the preceding years, NSCC submitted hundreds more of such statements to Alpine;
- Second, Alpine's effort to establish the timeliness of this proceeding appears predicated on its claim that it commenced this proceeding within thirty days "after the date such notice was filed [by the NSCC] . . ." presumably with respect to the alleged denial of service.<sup>7</sup> But this effort fails. NSCC did not file any "notice" with the Commission as there has not been any denial of service or any other action requiring any notice to be filed. Indeed, Alpine's

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<sup>6</sup> Application for Review at 2

<sup>7</sup> *Id.* at 2, n.11.

underlying claim that it is entitled to Commission review, pursuant to Section 19(d) and (f) of a “denial of access” appears to be without foundation,<sup>8</sup>

(iv) Alpine’s complaints that the Illiquid Charge is discriminatory and anti-competitive are inconsistent with the Commission’s May 2017 approval order; and

(v) Perhaps most significantly, Alpine’s claim that the Illiquid Charge and related charges are not fair or rational implicates NSCC’s overall risk management strategies, designed to advance the safe, proper, and orderly administration of the National Clearance and Settlement System.


Given the scope of issues presented by Stay Application, and the potential implications for the National Clearance and Settlement System, the requested extension is necessary and appropriate in order that NSCC is able to evaluate Alpine’s arguments fully and present the Commission with the appropriate legal and factual record necessary to adjudicate Alpine’s requested relief.

**CONCLUSION**

The Commission should grant NSCC’s request for an extension of 21-days to file its objection to the Stay Application, until January 23, 2019 (assuming Commission availability), and for such other and further relief that the Commission deems just and proper.

New York, NY  
January 2, 2019

PROSKAUER ROSE LLP

By: 

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11 Times Square  
New York, NY 10036

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<sup>8</sup> To the extent that Alpine claims a “denial of access,” it has failed to exhaust its remedies pursuant to Rule 37 of NSCC’s Rules.

*Attorneys for Respondent  
National Securities Clearing  
Corporation*

**UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
January 2, 2019**

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<b>In the Matter of</b>	:	
	:	
<b>ALPINE SECURITIES CORPORATION, a Utah limited liability Company</b>	:	<b>CERTIFICATE OF <u>SERVICE</u></b>
	:	
<b>For Review of Adverse Action Taken By</b>	:	
	:	
<b>NATIONAL SECURITIES CLEARING CORPORATION</b>	:	
	:	

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WAYNE HENDERSON, HEREBY CERTIFIES PURSUANT TO Rule 15l(d) of the Commission's Rules of Practice that, on January 2, 2019, he caused the National Securities Clearing Corporation's within MOTION FOR AN EXTENSION OF TIME TO FILE AN OPPOSITION to Alpine Securities Corporation's MOTION FOR AN INTERIM STAY to be served by the following means:

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

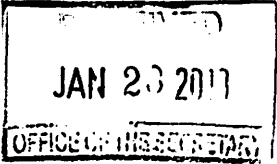
New York, New York  
January 2, 2019

  
Wayne L. Henderson



3-18979

UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
January 2, 2019



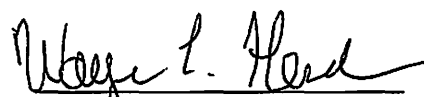
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In the Matter of :  
ALPINE SECURITIES CORPORATION, a :  
Utah limited liability Company :  
For Review of Adverse Action Taken By :  
NATIONAL SECURITIES CLEARING :  
CORPORATION :  
\_\_\_\_\_ :

**CERTIFICATE OF  
SERVICE**

WAYNE HENDERSON, HEREBY CERTIFIES PURSUANT TO Rule 15l(d) of the Commission's Rules of Practice that, on January 2, 2019, he caused the National Securities Clearing Corporation's within BRIEF IN SUPPORT OF ITS MOTION FOR AN EXTENSION OF TIME TO FILE AN OPPOSITION to Alpine Securities Corporation's MOTION FOR AN INTERIM STAY to be served by the following means:

1. By the U.S. Postal Service, by means of first class 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 the U.S. Postal Service, by means of first class 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.
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New York, New York  
January 2, 2019

  
Wayne L. Henderson