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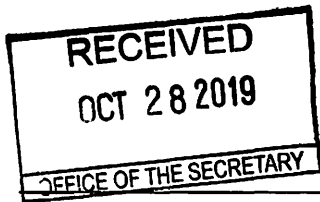
**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of
Alpine Securities Corp. and Scottsdale Capital Advisors Corp.

For Review of

FINRA Disciplinary Action

File No. 3-19360



FINRA'S BRIEF CONCERNING THE COMMISSION'S JURISDICTION

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October 28, 2019

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FINRA'S BRIEF CONCERNING THE COMMISSION'S JURISDICTION

I. INTRODUCTION

Alpine Securities Corp. ("Alpine") and Scottsdale Capital Advisors Corp. ("Scottsdale") (together, the "Applicants") ask the Commission to review an August 15, 2019 FINRA expedited proceeding decision suspending the Applicants for their failure to file continuing membership applications that were required when the Applicants made changes to their ownership structures. FINRA, however, terminated the suspensions when Applicants agreed to undo the ownership changes that were the subject of the expedited proceeding. Because there are no effective suspensions or other sanctions in place, the Commission lacks a statutory basis for exercising jurisdiction. Consequently, the Commission should dismiss the appeal.

Alternatively, the Commission should dismiss the appeal because it is moot. The Commission has long held that an appeal is moot when even a favorable decision by the Commission would not entitle an applicant to relief. Here, because the suspensions have been

terminated, there is no relief available to the Applicants. Accordingly, the appeal is moot, and the Commission should dismiss it.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Expedited Proceedings

On March 19, 2019, FINRA’s Department of Member Supervision (“Member Supervision”) issued separate notices of suspension to Alpine and Scottsdale pursuant to FINRA Rule 9552.¹ (R. at 877-80, 908-11.) The notices of suspension advised the firms that they would be suspended effective April 10, 2019, unless they filed required continuing membership applications (“CMAs”) by that date. (*Id.*) The notices explained that Alpine and Scottsdale had not complied with NASD Rule 1017 because they had not filed “the required materials for a [CMA]” despite undergoing changes in their ownership structures.² (*Id.*) The notices further advised the firms that the imposition of the suspensions would be stayed if they filed timely requests for a hearing. (*Id.*)

¹ “R. . . .” refers to the page numbers in the certified record filed by FINRA on September 6, 2019. Because this matter began as two separate proceedings that were consolidated, the first portion of the record is numbered from FINRA 1A through 138A, and the remainder is numbered starting at FINRA 1.

FINRA Rule 9552 provides that FINRA may serve a notice of suspension on a member that “fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, or fails to keep its membership application or supporting documents current.”

² NASD Rule 1017 requires FINRA members to file a CMA for approval of, among other things, certain changes in the member’s ownership. NASD Rule 1014 requires a CMA to be complete and accurate. Effective May 8, 2019, FINRA Rule 1017 superseded NASD Rule 1017, without substantive changes. Because the change occurred after these proceedings, this brief and the record refer to NASD Rule 1017.

Alpine and Scottsdale each filed timely requests for a hearing. (R. at 1A-5A, 1-6.) Because Alpine and Scottsdale shared common ownership, and the proceedings with respect to each firm involved common questions of fact and law, the Office of Hearing Officers consolidated the proceedings. (R. at 119A-121A, 120-31.) A hearing was held on June 18, 2019. (R. at 473-802.)

On August 15, 2019, the Hearing Officer issued a decision in the expedited proceeding (the "Decision"). (R. at 1699-1713.) The Decision found that Alpine and Scottsdale failed to file CMAs as required by NASD Rule 1017 and suspended both firms until they filed CMAs complying with NASD Rules 1014 and 1017. (R. at 1701-13.) The suspensions were effective upon issuance of the Decision.

B. Proceedings Before the Commission

On August 16, 2019, Alpine and Scottsdale filed an application for review with the Commission. (R. at 1889-91.) The firms filed a motion to stay the suspensions pending a decision by the Commission on the merits and requested an interim stay effective until the Commission issued a decision on the motion to stay. (R. at 1893-1908.) On August 20, 2019, the Commission granted the request for an interim stay and issued a briefing schedule for the motion to stay. (R. at 2001-02.) On August 29, 2019, Alpine and Scottsdale notified the Commission that the firms and Member Supervision had come to an agreement pursuant to which the suspensions were lifted. (R. at 2010-13.) Accordingly, the firms withdrew the motion to stay. (*Id.*)

On September 27, 2019, the Commission issued an order granting Applicants' motion to withdraw their request for a stay. That same day, the Commission also issued an order directing the parties to submit briefs limited to the issue of "whether the termination of Applicants'

suspensions requires dismissal of their application.” The Commission specifically requested that the parties address “whether Commission precedent requires dismissal of the application for review, and whether relief is available under Section 19(f) of the Securities Exchange Act of 1934 (the “Exchange Act”) in light of the termination of the suspensions.”

III. ARGUMENT

FINRA terminated the suspensions imposed on Applicants in the Decision. As supported by Commission precedent, the Commission lacks jurisdiction because there is no live, final disciplinary sanction for the Commission to review. Moreover, FINRA has not denied membership or participation to the Applicants. Alternatively, Applicants’ appeal is moot because the firms are no longer aggrieved by a FINRA decision and even a favorable decision by the Commission would not entitle the Applicants to any relief. Accordingly, the Commission should dismiss the application for review.

A. The Commission Lacks Jurisdiction Over This Appeal

An action by a self-regulatory organization (“SRO”) such as FINRA is not reviewable merely because it adversely affects an applicant. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 964 (2000). Rather, there must be a statutory basis for the Commission’s review of an SRO action. *See WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at *10 (Sept. 9, 2015).

Exchange Act Section 19(d) defines the Commission's jurisdiction to review SRO actions. *See* 15 U.S.C. § 78s(d). Section 19(d)(2) provides that the Commission may review the SRO actions enumerated in Section 19(d)(1) on its own motion or “upon application by any person aggrieved” by the action. 15 U.S.C. § 78s(d)(2). The SRO actions enumerated in Section

19(d)(1) include actions that (1) impose any final disciplinary sanction on any member or person associated with a member, (2) deny membership or participation to any applicant, (3) prohibit or limit any person in respect to services offered by the SRO, or (4) bar any person from being associated with a member. 15 U.S.C. § 78s(d)(1); see *Joseph Dillon & Co.*, 54 S.E.C. at 962 (finding the Commission lacked jurisdiction over the appeal of an NASD action where the action did not fall within any of the four jurisdictional bases of Section 19(d)).

The Commission construes Section 19(d) as “requiring a live sanction—that is, a sanction that exists at the time of review for [the Commission] to potentially affirm, modify, or set aside.” *Dakota Sec. Int’l, Inc.*, Exchange Act Release No. 85238, 2019 SEC LEXIS 288, at *7-8 (Mar. 1, 2019), citing *Sharemaster*, Exchange Act Release No. 83138, 2018 SEC LEXIS 1036, (Apr. 30, 2018), *appeal docketed*, No. 18-71485 (9th Cir. May 23, 2018). In *Dakota Securities*, an expedited proceeding, FINRA ordered Dakota to be suspended unless Dakota paid its outstanding arbitration fees within 14 days of the issuance of the decision. *Id.* at *4-5. Dakota paid the outstanding arbitration fees before the date of the suspension; FINRA, therefore, never imposed the suspension. *Id.* at *5. Dakota nonetheless filed an application for review, asking the Commission to review the amount of fees assessed in the arbitration. *Id.* at *5, 10. The Commission dismissed the application for review, explaining that, because there was no live sanction for it to review, there was no basis for Commission jurisdiction. *Id.* at *8-10.

In *W.C.W. Western Canada Water Enterprises, Inc.*, NASD denied the applicant’s request to list its common stock on NASDAQ because the company had not met certain required minimum asset amounts. Exchange Act Release No. 27254, 1989 SEC LEXIS 1798, at *1 (Sept. 18, 1989). Shortly after the appeal was filed, the applicant’s shares qualified for listing on NASDAQ, and NASD listed the shares for trading. *Id.* The applicant argued that even though

its shares now were listed on NASDAQ, the appeal should continue to determine whether NASD's required minimum assets to remain listed were correct. *Id.* at *1-2. The Commission rejected this argument, holding that because the applicant's stock was listed on NASDAQ, "there is no longer any adverse NASD determination upon which [the applicant] can base an appeal under Section 19(d)(2)" of the Exchange Act. *Id.* at *2.

If the suspensions were active, the Commission would review FINRA's denial of membership to the Applicants under Exchange Act Section 19(f). *See* 15 U.S.C. § 78s(f). Alpine and Scottsdale, however, currently are active FINRA members and are not being denied membership or participation. It is well settled that Section 19(f) does not provide an independent basis for Commission jurisdiction. *See Sky Capital LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at *9 n.10 (May 30, 2007) (stating that "Section 19(f) does not establish a basis for Commission jurisdiction"). Instead, there must be a basis for jurisdiction under Exchange Act Section 19(d) before the Commission can review an SRO action under Section 19(f). *See, John Boone Kincaid, III*, Exchange Act Release No. 87384, 2019 SEC LEXIS 4189, at *14 (Oct. 22, 2019) (explaining that a petition for review must first satisfy the jurisdictional requirements of Section 19(d) before the Commission can review it under 19(f)).

FINRA terminated the suspensions imposed on Alpine and Scottsdale and the firms are not currently subject to a live sanction. Consequently, the Commission does not have jurisdiction over the firms' application for review under Section 19(d), and the Commission should dismiss their appeal.

B. The Applicants' Appeal Is Moot Because Even a Favorable Commission Decision Would Not Entitle the Firms to Any Relief

Alternatively, the Commission should dismiss Applicants' appeal because it is moot. It is well settled that an application for review is moot when "even a favorable decision by the

Commission would entitle [the applicant] to no relief,” and the Commission has dismissed applications for review under circumstances comparable to the facts of this case. *Marshall Fin., Inc.*, Exchange Act Release No. 48917, 2003 SEC LEXIS 2956, at *1-3 (Dec. 12, 2003) (dismissing an appeal as moot).

In *Marshall Financial*, the applicant was ordered to be suspended in an expedited proceeding for failure to pay fees incurred in three arbitration proceedings. *Marshall Fin., Inc.*, 57 S.E.C. 869, 875 (2004). FINRA, however, did not impose the suspension because the firm paid the fees before the effective date of the suspension. *Id.* at 876. Marshall nonetheless appealed to the Commission, arguing that the assessment of fees was a breach of contract by NASD. The Commission dismissed the appeal explaining that a matter will be dismissed “as moot unless the complaining party has suffered some actual injury that can be redressed by a favorable judicial decision.” *Id.* at 875 (internal quotations omitted). The Commission explained that it “perceive[s] no relief that is available here”—*i.e.*, “no suspension that [it] can lift.” *Id.* at 877.

In *Keath Allen Ward*, FINRA suspended and barred the applicant in an expedited proceeding for failure to provide information pursuant to a FINRA Rule 8210 request. Exchange Act Release No. 66173, 2012 SEC LEXIS 160, at *1 (Jan. 18, 2012). Ward appealed to the Commission, but FINRA subsequently terminated the suspension and vacated the bar while the appeal was pending. *Id.* at *2. The Commission granted FINRA’s request to dismiss the application for review on the grounds that the appeal was moot because the sanctions were no longer in effect. *Id.*

Indeed, the Commission has consistently dismissed applications for review as moot in a variety of contexts when a favorable decision would not entitle the applicant to relief. *See, e.g.*,

Denise Lynn Gizankis, Exchange Act Release No. 64391, 2011 SEC LEXIS 1576, at *2 (May 4, 2011) (dismissing an appeal as moot where the applicant settled her dispute with FINRA and the bar imposed by FINRA was terminated); *Burst.Com, Inc.*, Exchange Act Release No. 43198, 2000 SEC LEXIS 1735 (Aug. 23, 2000) (dismissing as moot applicant's appeal of NASD's decision to remove quotations of the applicant's securities from the OTC Bulletin Board where, after reissuing the decision, NASD found that applicant met the requirements for being listed); *Blinder, Robinson & Co.*, Exchange Act Release No. 29496, 1991 SEC LEXIS 1479, at *4 (July 29, 1991) (dismissing as moot Blinder's appeal of NASD's denial of an exemption from a rule prohibiting certain sales and purchases of securities where Blinder would obtain no relief from a favorable decision because the firm had entered liquidation proceedings and Blinder "no longer has a direct cognizable interest in the outcome of the case"); *Tara Sec. Corp.*, 49 S.E.C. 1067, 1068 (1989) (dismissing as moot applicant's appeal to continue its NASD membership while employing a statutorily disqualified person where NASD revoked the applicant's registration on other grounds while the appeal was pending).

The Commission should dismiss this appeal based on this precedent. Even if the Commission should rule in Applicants' favor, there is no relief that it can provide to Applicants because the suspensions already have been terminated.

IV. CONCLUSION

The Commission should dismiss this appeal because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. Alternatively, the Commission

should dismiss this appeal as moot because the suspensions have been terminated and even a favorable decision by the Commission would not entitle the Applicants to any relief.

Respectfully submitted,



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October 28, 2019

CERTIFICATE OF SERVICE


I, Celia Passaro, certify that on this 28th day of October 2019, I caused a copy of the foregoing FINRA's Brief in Opposition to Request for Stay to be served by messenger on:

Vanessa A. Countryman
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5400

On this date, I also caused a copy of the opposition to be served via overnight FedEx (and a courtesy copy via electronic mail) on:

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Different methods of service were used because courier service could not be provided to applicant's attorneys.



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Financial Industry Regulatory Authority

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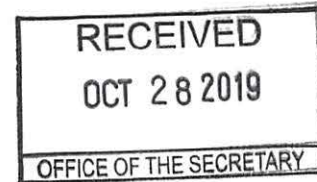
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October 28, 2019

VIA MESSENGER AND FACSIMILE

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RE: In the Matter of the Application for Review of Alpine Securities Corp. and
Scottsdale Capital Advisors Corp., Administrative Proceeding No. 3-19360

Dear Ms. Countryman:

Enclosed please find the original and three (3) copies of FINRA's Brief Concerning the Commission's Jurisdiction in the above-captioned matter.

Please contact me at (202) 728-8985 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to be "CLP", with a long horizontal flourish extending to the right.

Celia L. Passaro

Enclosures

cc: Maranda E. Fritz, Esq. (via FedEx and Email)