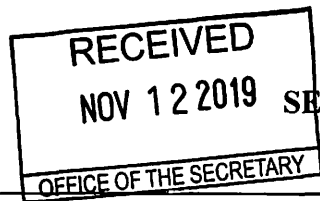


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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

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 REPLY BRIEF CONCERNING THE COMMISSION'S JURISDICTION

Alan Lawhead
Vice President and
Director – Appellate Group

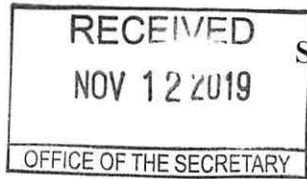
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November 12, 2019

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The initial brief of Alpine Securities Corp. (“Alpine”) and Scottsdale Capital Advisors Corp. (“Scottsdale”), as well as FINRA’s brief, underscore the reality that FINRA’s initial reviewable action, suspending Alpine and Scottsdale, is no longer in effect. Although Alpine and Scottsdale argue that FINRA’s imposition of the suspensions in an August 15, 2019 FINRA expedited proceeding decision (the “Decision”) was wrong, the Commission does not have jurisdiction to review the “rationale” of the Decision when the sanction is not now in place.¹ (App. Br. at 1.) Commission precedent establishes that, where the sanction imposed by FINRA is no longer in effect, the Commission does not have jurisdiction to hear the appeal under Exchange Act Section 19(d). Indeed, the Commission has repeatedly dismissed cases for lack of jurisdiction where a live sanction no longer exists at the time of review.

¹ “App. Br. at ___” refers to Applicants’ October 28, 2019 Brief in Response to the Commission’s September 27, 2019 Order.

The Applicants attempt to distinguish their case from Commission precedent by arguing that, here, the “adverse decision remains in place,” even though FINRA terminated the suspensions. (App. Br. at 5.) The Commission, however, has rejected similar arguments in other cases. For example, in *Dakota Securities*, FINRA ordered Dakota to be suspended for failure to pay arbitration fees. Exchange Act Release No. 85238, 2019 SEC LEXIS 288, at *4-5, 10 (Mar. 1, 2019). Dakota paid the arbitration fees prior to the effective date of the suspension and the suspension was never imposed. *Id.* at *5. Dakota nonetheless sought Commission review of the underlying adverse decision—i.e., the determination by FINRA that Dakota owed the arbitration fees. *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.*, the NASD denied the applicant’s request to list its common stock on NASDAQ because the company had not met the required minimum asset amount for listing. Exchange Act Release No. 27254, 1989 SEC LEXIS 1798, at *1 (Sept. 18, 1989). While its appeal was pending, W.C.W. Western Canada Water Enterprises, Inc. (“Western Canada”) complied with the minimum asset requirements and was listed on NASDAQ. *Id.* Western Canada argued that the Commission should review the basis for the initial denial by NASD—i.e., the amount of the required minimum net assets—even though the denial was no longer in effect. *Id.* at *1-2. The Commission dismissed the application for review for lack of jurisdiction because NASD was no longer denying Western Canada listing on the NASDAQ exchange. *Id.* at *2.

The Commission’s lack of jurisdiction is conclusively established by the holdings in *Dakota Securities* and *W.C.W. Western Canada Water Enterprises, Inc.* For Alpine and

Scottsdale, FINRA suspended them for failure to file required continuing membership applications (“CMAs”) when they made changes to their ownership structures. Applicants, however, unwound those ownership changes and requested the termination of the suspensions; a request FINRA granted. Applicants now seek Commission review of the basis for the Decision—i.e., whether they were required to file CMAs—even though the suspensions are no longer in effect. As established in *Dakota Securities* and *W.C.W. Western Canada Water Enterprises, Inc.*, the Commission does not have jurisdiction under these circumstances.

Applicants also erroneously claim that Exchange Act Section 19(f) provides a statutory basis for jurisdiction here. (App. Br. at 6.) As discussed in FINRA’s initial brief, however, it is well established 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, Section 19(f) provides the standard of review the Commission will apply to matters for which there is a basis for jurisdiction under Section 19(d). *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 the standard provided in Section 19(f)).

Finally, Applicants argue that they had no choice but to undo the ownership changes and request that FINRA terminate their suspensions because they were “unable to conduct their business.” (App. Br. at 3.) This argument ignores the facts. The Decision was issued on Thursday, August 15, 2019. (R. at 1699-1713.) Alpine and Scottsdale filed an application for review and a motion to stay the suspension with the Commission on the next day, Friday, August 16, 2019. (R. at 1889-91, 1893-1908.) The Applicants also requested an interim stay pending a

decision on their motion to stay. (R. at 1893-1908.) On Tuesday, 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.)

Accordingly, as of August 20, 2019, the Commission had stayed the suspensions, and the Applicants were able to conduct business. As the Commission has previously noted, the Applicants could have preserved the Commission's jurisdiction over their appeal by pursuing their motion to stay. *See Dakota Securities*, 2019 SEC LEXIS 288, at *9 n.17 (noting that Dakota Securities could have sought a stay of the suspension, rather than paying the arbitration fees). The Applicants chose, however, to unwind the ownership changes and request that FINRA terminate the suspension.² As a result, FINRA has no suspensions in place and the Commission therefore no longer has jurisdiction over Alpine and Scottsdale's application for review.

The Commission should dismiss this appeal because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. Applicants' arguments to the contrary have no merit. Alternatively, as discussed on FINRA's initial brief, the Commission

² Applicants requested that FINRA terminate the suspensions on August 28, 2019, eight days after the Commission granted their request for an interim stay.

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

Respectfully submitted,



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November 12, 2019

CERTIFICATE OF SERVICE

I, Celia Passaro, certify that on this 12th day of November 2019, I caused a copy of the foregoing FINRA's Reply Brief Concerning the Commission's Jurisdiction 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:

Maranda E. Fritz, Esq.
Thompson Hine LLP
335 Madison Ave.
New York, NY 10017
maranda.fritz@thompsonhine.com

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



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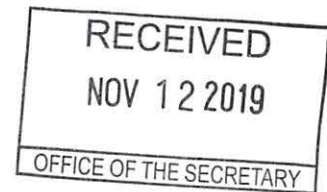


Financial Industry Regulatory Authority

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November 12, 2019

VIA MESSENGER AND FACSIMILE

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

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 Reply 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 blue ink, appearing to be "C. Passaro", written over a light blue horizontal line.

Celia L. Passaro

Enclosures

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