


UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
March 12, 2021

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

PLEASE TAKE NOTICE that, pursuant to Rule 15l(d) of the Commission's Rules of Practice, the undersigned hereby gives notice that Respondent filed its Notice of Appearance of Counsel for the National Securities Clearing Corporation, on behalf of Benjamin J. Catalano, Margaret A. Dale, and Adam L. Deming, and the National Securities Clearing Corporation's Objection to Alpine Securities Corporation's Application for Review by means of facsimile transmission to the Office of the Secretary of the Commission at (202) 772-9324, on March 12, 2021. The same was also submitted to the Office of the Secretary of the Commission by email at apfilings@sec.gov pursuant to Securities Act Release No. 10767 (Mar. 18, 2020), and instructions on the Office of the Secretary's website.

New York, NY
March 12, 2021

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UNITED STATES OF AMERICA
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SECURITIES AND EXCHANGE COMMISSION
March 12, 2021

In the Matter of	:	
ALPINE SECURITIES CORPORATION, a	:	OBJECTION OF
Utah limited liability company	:	NATIONAL
For Review of Adverse Action Taken By	:	SECURITIES
NATIONAL SECURITIES CLEARING	:	CLEARING
CORPORATION	:	CORPORATION
	:	TO
	:	APPLICATION FOR
	:	REVIEW AND MOTION
	:	FOR INTERIM STAY

The National Securities Clearing Corporation (“NSCC”) is a clearing agency registered with the Securities and Exchange Commission (“SEC” or the “Commission”) under Section 17A of the Securities Exchange Act of 1934 (the “Exchange Act”),¹ subject to specific requirements under Section 17A(b)(3) of the Exchange Act,² and a self-regulatory organization (“SRO”) under Section 19 of the Exchange Act.³ NSCC objects to Alpine Securities Corporation’s (“Alpine”) Application for Review purportedly brought pursuant to Section 19(d) and (f) of the Exchange Act filed on March 2, 2021 (the “Application”),⁴ and motion for an interim stay in connection with the

¹ 15 U.S.C. § 78q-1.

² *Id.* at § 78q-1(b)(3).

³ 15 U.S.C. § 78s.

⁴ Application for Review, *In the Matter of Alpine Securities Corporation, a Utah limited liability company, for Review of Adverse Action Taken by National Securities Clearing Corporation (“Alpine II”)*, Admin. Proc. File No. 3-20238 (Mar. 2, 2021) (“Alpine II App. for Rev.”).

Application filed on March 5, 2021 (the “Stay Motion”). Among other things, Alpine’s Application is not justiciable under Section 19(d).⁵ The Application should be dismissed and the Stay Motion should be denied.

(1)

The Application is substantially the same as the Application for Review Alpine filed on December 19, 2018 (the “December 2018 Application;” together with the Application, the “Applications”).⁶ The December 2018 Application is a facial attack on NSCC’s SEC-approved rules and procedures governing Required Fund Deposits by members under NSCC’s Clearing Fund Rules (the “Clearing Fund Rules” or “Rules”). The Required Fund Deposits mitigate potential losses to NSCC and its members resulting from liquidating open positions in the event of a member default. The December 2018 Application primarily challenges the “Illiquid Charge,” an approved component of the Clearing Fund Rules that applied to transactions in microcap securities, which are the focus of Alpine’s business. In conjunction with the December 2018 Application, Alpine also filed a rulemaking proposal for new Clearing Fund Rules. The December 2018 Application and proposed rulemaking are pending before the Commission.

In connection with the December 2018 Application, Alpine sought to stay enforcement of the Illiquid Charge or, alternatively, NSCC’s determination the “DTC offset” was not available to Alpine.⁷ The Commission denied the stay motion on November 22, 2019, finding Alpine had

⁵ 15 U.S.C. § 78q-1(d). Section 19(f) contains standards for review proceedings under Section 19(d), which are inapplicable where jurisdiction is lacking under Section 19(d). *See id.* at § 78q-1(f).

⁶ Application for Review, *In the Matter of Alpine Securities Corporation, a Utah limited liability Company, for Review of Adverse Action Taken By National Securities Clearing Corporation (“Alpine I”)*, Admin. Proc. File No. 3-18979 (Dec. 19, 2018) (“Alpine I App. for Rev.”).

⁷ In both Applications, Alpine complains about the unavailability of a reduction in its Required Fund Deposits for short positions in securities on deposit with respect to it at NSCC’s affiliate, The Depository Trust Company (“DTC”): In the December 2018 Application, because Alpine was not eligible for a “DTC offset” under the Clearing Fund Rules due to the fact it was assigned the lowest credit rating under the Rules, *see* Alpine I App. for Rev.; in this Application, because the DTC offset was eliminated (for all members) by amendments made to the Rules

failed to meet *any* of the four factors relevant to relief, including likelihood of success on the merits.⁸

The present Application and Stay Motion constitute an updated but equally infirm version of the December 2018 Application and stay request. First, Alpine mounts an invalid substantive challenge to NSCC’s Clearing Fund Rules, this time focusing on the “Volatility Component” for illiquid securities (which replaced the Illiquid Charge). The Volatility Component, among other amendments, was approved by the Commission on November 24, 2020, pursuant to Section 19(b)(2) of the Exchange Act.⁹ Second, Alpine brings another meritless request for a stay, including reinstatement for itself of the DTC offset eliminated by the amendments.

The Volatility Component and related changes were subject to a public comment period,¹⁰ during which Alpine or others raised most, if not all, of the issues identified in Alpine’s Application,¹¹ including Alpine’s principal objections to the Volatility Component and the unavailability of a reduction in Required Fund Deposits for positions in securities on deposit at

approved by the Commission on November 24, 2020, *see* Alpine II App. for Rev.; *see also* Order Approving a Proposed Rule Change to Enhance [NSCC]’s Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-90502 (Nov. 24, 2020), 85 Fed. Reg. 77,281 (Dec. 1, 2020) (“Order Adopting Amendments”).

⁸ Order Denying Stay and Denying Motion for Protective Order at 1–2, 21, Release No. 87599, *Alpine I*, Admin. Proc. File No. 3-18979 (Nov. 22, 2019) (“Alpine I Order Denying Stay”).

⁹ *See* Order Adopting Amendments.

¹⁰ *See* Notice of Filing of Proposed Rule Change to Enhance [NSCC]’s Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-88474 (Mar. 25, 2020), 85 Fed. Reg. 17910 (Mar. 31, 2020) (“Notice of Proposed Changes”).

¹¹ *See generally* Order Adopting Amendments; Alpine Securities Corporation Comment Letter to SEC Release No. 34-88474 (Apr. 21, 2020) (“Alpine Comment Letter”).

DTC.¹² The SEC considered these issues in approving the amendments as consistent with NSCC's statutory and regulatory obligations.¹³

(2)

For the same reasons explained in NSCC's briefs in connection with the December 2018 Application and the prior stay request, the current Application and Stay Motion are jurisdictionally invalid under Section 19(d). Section 19(d) does not provide a statutory vehicle for Alpine to avoid or change the Volatility Component or any other aspect of NSCC's Clearing Fund Rules promulgated under Section 19(b)(2), which is the whole purpose of this proceeding.¹⁴

The Required Fund Deposits challenged here (and in the December 2018 Application) are an integral part of NSCC's services, key to its clearance and settlement risk-management function

¹² See Alpine Comment Letter at 2–4 (raising objections to proposed rule based on increased charges and minimum clearing risk for securities on deposit); Order Adopting Amendments at 77,290, 77,292–77,293 (addressing same).

¹³ See Order Adopting Amendments at 77,285–77,295 (finding consistency with applicable Exchange Act provisions and rules promulgated thereunder).

¹⁴ See NSCC's Opposition to Alpine's Motion for an Interim Stay and Incorporated Memorandum of Points and Authorities in Support at 11–14, *Alpine I*, Admin. Proc. File No. 3-18979 (Jan. 23, 2019); 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 at 11–15, *Alpine I*, Admin. Proc. File No. 3-18979 (Jan. 17, 2020) (together, "NSCC's *Alpine I* Briefs").

Alpine suggests the Commission did not consider all aspects of the changes made pursuant to the amendments it approved by order on November 24, 2020. Alpine II App. for Rev. at i, 2; Alpine's Motion for an Interim Stay and Incorporated Memorandum of Points and Authorities in Support at 3, 7–8, *Alpine II*, Admin. Proc. File No. 3-20238 (Mar. 5, 2021). NSCC disagrees with Alpine's assertion. Nevertheless, to the extent Alpine takes issue with the process in approving the amendments, its recourse is to appeal the Commission's order under Section 25(a) of the Exchange Act, 15 U.S.C. § 78y(a) (providing for review of Commission orders in the United States Courts of Appeals), not to invoke Section 19(d) to challenge the rules subject to the order. See Alpine I Order Denying Stay at 6 & n.40 (noting "[n]either Alpine nor anyone else appealed the Illiquid Charge Approval Order to the Commission").

under the Exchange Act.¹⁵ They are not fees or charges for delivering those services.¹⁶ They are applied uniformly to *all* members engaging in transactions subject to the Rules and the funds are returned when the transactions settle. Ultimately, Alpine is objecting to components of NSCC's services, not a limitation on access to them. Section 19(d) is not implicated simply because certain aspects of those services allegedly affect Alpine's cost of doing business (albeit no more or less than any other member doing the same business). Section 19(d) provides for recourse to review an SRO's actions prohibiting or limiting a particular member's access to the services *offered by an* SRO, not an avenue to modify those services.

To be sure, Alpine remains a NSCC member in good standing receiving all services for which it is eligible under NSCC's rules. NSCC has not taken any disciplinary action against Alpine for violation of or non-compliance with its Rules. To date, Alpine has met all of its obligations related to Required Fund Deposits.

In summary, Section 19(d) has no application to Alpine's complaints regarding NSCC Required Fund Deposits and the Application should be rejected. The Stay Motion also should be denied for the same reasons relied upon by the Commission in denying the prior stay request, chief among them that there is no likelihood Alpine will succeed on the merits.

Should the Commission determine to consider the merits of the Application or the Stay Motion, NSCC reserves the right to address all substantive issues posed by each, including whether

¹⁵ Required Fund Deposits are deposits of funds and other eligible assets required of each member, generally assessed according to the risk the member's trades pose to the clearance and settlement system, which may be used to secure the clearance and settlement risk of trades in the system to the benefit of all members, and are returned to the member upon withdrawal from membership. *See generally* NSCC Rules & Procedures, *available at* https://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf ("NSCC Rules"), Rule 4 "Clearing Fund" (containing provisions pertaining to Required Fund Deposits, including return upon withdrawal).

¹⁶ *See* NSCC Rules, Rule 24 "Charges for Services Rendered" (pertaining to "fees" and "charges" members "shall pay . . . to the Corporation" for the services rendered to them by NSCC).

the Application was timely under Section 19(d),¹⁷ and would request that the Commission set a schedule for briefing any issues of concern.

Finally, as was the case in *Alpine I*, because NSCC has not prohibited or limited Alpine's access to NSCC's services, there is no proceeding or record of such action for purposes of Rule 420(e) of the Rules of Practice.

¹⁷ Under Section 19(d)(2) of the Exchange Act, 15 U.S.C. § 78s(d)(2), a member or other person challenging the prohibition or limitation of services by an SRO must file its challenge within 30 days after the date the SRO filed with the Commission and the person received the "required" notice under Section 19(d)(1) of the Exchange Act, 15 U.S.C. § 78s(d)(1), and Rule 19d-1 thereunder, 17 C.F.R. 240.19d-1. NSCC has not filed (and does not intend to file) any Section 19(d)(1) notice in this case because NSCC has not prohibited or limited any services it offers to Alpine—it has simply administered its Rules. As NSCC argued in its briefs in connection with *Alpine I*, if such a notice were required in this case, similar notices would have to be filed in connection with the Required Fund Deposits assessed on every member doing business in illiquid securities through NSCC, as the effects are substantially the same for all of them. Such an absurd result demonstrates Alpine's grievance is not contemplated by Section 19(d).

Faced with the impossibility of applying the statutory trigger for calculating the commencement of the 30-day period, Alpine has constructed its own notice requirement, contending its action is timely because it was filed within 30 days after the Volatility Component and other amendments to the Required Fund Deposits were "implemented," on February 1, 2021. *Alpine II App. for Rev.* at 2–3. Apart from the fact the construction has no support in the statute, Alpine was on "notice" of the effects the amendments would have *well in advance* of the implementation date. NSCC described the increased deposits for illiquid securities in the release proposing the amendments on March 16, 2020. *See Notice of Proposed Changes at 17,911–17,920.* Alpine acknowledged the impact they would have on its business in its comment letter on the proposed amendments dated April 21, 2020. *See Alpine Comment Letter; Order Adopting Amendments at 77289 & n.76* (addressing comment Alpine submitted that "the proposal would discriminate against small [NSCC m]embers because the proposal would *demand higher margin*") (emphasis added). Moreover, as NSCC explained to the Commission, and the Commission acknowledged in its order approving the amendments on November 24, 2020, NSCC provided members, including Alpine, with specific assessments of the impact of the proposed changes, and furnished them with tools to enable them to estimate amounts that would be required on their positions under the proposed changes, well before then. *See Notice of No Objection to Advance Notice To Enhance [NSCC]'s Haircut-Based Volatility Charge Application to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-90367* (Nov. 6, 2020), 85 Fed. Reg. 73,099, 73,108–73,109 (Nov. 16, 2020) (detailing various tools NSCC provides and outreach that NSCC conducted to inform members of the individualized impact of the proposed changes); *Order Adopting Amendments at 77,294–77,295* (same, and finding that "NSCC provided sufficient information to [m]embers to identify and evaluate the risks and other material costs they would incur due to securities with illiquid characteristics under the proposal"); *Alpine Comment Letter at 2* (admitting Alpine received "a White Paper outlining the proposed changes [to] the volatility component and an additional breakdown of the amounts Alpine would have been charged during the last year under the proposed changes"). Alpine's filing on March 2, 2021, was, in fact, long beyond 30 days after the time Alpine had notice (constructive and actual) on what it mischaracterizes as "limitation on service" in seeking to apply Section 19(d). Even if Section 19(d) were applicable, which it is not, the Application and Stay Motion are untimely.

Conclusion

For the reasons set forth above and in its papers submitted in opposition to the December 2018 Application and stay request, NSCC respectfully requests the SEC reject the Application and Stay Motion. Alpine should not be permitted to burden NSCC and the Commission with endless litigation of the same jurisdictionally defective and otherwise meritless claims.

New York, NY
March 12, 2021

Respectfully submitted,

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