

**UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
October 31, 2022**

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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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**OPPOSITION OF NATIONAL SECURITIES CLEARING CORPORATION  
TO ALPINE'S MOTION FOR AN EMERGENCY INTERIM STAY AND OTHER  
APPROPRIATE COMMISSION RELIEF**

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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”),<sup>1</sup> subject to specific requirements under Section 17A(b)(3) of the Exchange Act;<sup>2</sup> a self-regulatory organization (“SRO”) under Section 19 of the Exchange Act; and a Systematically Important Financial Market Utility (“SIFMU”) under Title VIII of the Dodd-Frank Act, given the critical nature of its clearing and risk management functions for market liquidity and, in turn, the stability of the United States’ financial system.<sup>3</sup> NSCC opposes Alpine Securities Corporation’s (“Alpine”) Motion for an Emergency Interim Stay and Other Appropriate Commission Relief (“Stay Motion”) filed pursuant to SEC Rule of Practice 401(d)(3).

## INTRODUCTION

Alpine’s Stay Motion should be denied and dismissed for several reasons. First and foremost, it represents the latest in Alpine’s sustained pattern of attempts to misuse Section 19(d) procedures, which are intended to provide review of SRO sanctions on members. Instead, Alpine is using Section 19(d) to improperly challenge the routine and uniform application of NSCC rules, promulgated in accordance with Section 19(b), that are designed to mitigate risk for all members. As a registered clearing agency and SIFMU, NSCC is obligated to mitigate risk for its members as a part of its clearance and settlement services by, among other things,

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<sup>1</sup> 15 U.S.C. § 78q-1.

<sup>2</sup> *Id.* at § 78q-1(b)(3).

<sup>3</sup> 15 U.S.C. § 78s; As a SIFMU, NSCC must place a special emphasis on risk management. DTCC, NSCC’s parent organization, has therefore adopted a rigorous risk management program designed to protect NSCC, its members, and the securities marketplace against the credit risk stemming from a member default. This program is described in detail in the risk management disclosure framework of NSCC. NSCC, *Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures* (Dec. 2021) (“Disclosure Framework”), available at [http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/NSCC\\_Disclosure\\_Framework.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf) (last visited Oct. 31, 2022).

maintaining a Clearing Fund comprised of Required Fund Deposits from members to account for, with a high degree of confidence, the risk that a member default or insolvency will prevent the completion of transactions. While Alpine mischaracterizes NSCC's assessment of a Backtesting Charge as a denial of service subject to Section 19(d), in reality it is a critical risk management component for the services NSCC provides. Thus, like Alpine's underlying Application for Review in this proceeding, the Stay Motion is not justiciable under Section 19(d), and should be dismissed on that basis.

Even if the Stay Motion were justiciable, the stay factors require its denial. Alpine is not likely to demonstrate a likelihood of success on the merits because, contrary to its claims, the risks necessitating the Backtesting Charge do "exist in fact." NSCC must cover its intraday credit risk exposures and meet its target backtesting coverage, and that is the function of the Intraday Backtesting Charge. While it is true that NSCC has proposed a rule to eliminate the Intraday Backtesting Charge (which is only one component of the Backtesting Charge to which Alpine is subject), Alpine fails to mention that the proposed elimination of the Intraday Backtesting Charge would be implemented in conjunction with a proposed new charge—the intraday volatility charge—which would address intraday exposures presented by price volatility and changes to members' positions intraday, and help mitigate the intraday risk exposures that are currently addressed by the Intraday Backtesting Charge. While the rule proposal is pending, NSCC must cover intraday risks using the approved rules available for such a purpose, and the established NSCC Rules today include the application of the Intraday Backtesting Charge for such purpose.

Nor is Alpine's contention that it "always has sufficient shares of the stock in its account at DTC to cover its sell-side positions before it submits trades to NSCC" relevant or material.

The purpose of the Required Fund Deposit (otherwise known as margin)—of which Backtesting Charges are a part—is to mitigate potential losses to NSCC *associated with liquidating* a member’s portfolio in the event NSCC ceases to act for that member. As Alpine should be well aware as a member of both DTC and NSCC, NSCC has no legal basis to access participants’ inventory at DTC in the event of a default and, therefore, it would be unreasonable to account for those positions in computing the Required Fund Deposit. NSCC has no lien or other guaranty of being able to obtain holdings on deposit at DTC in the event of a member default or insolvency. Stated another way, DTC inventory is not a guarantee of settlement date value, and therefore it is not a part of the calculation of members’ Required Fund Deposit.

The other stay factors also weigh against granting an emergency stay. Alpine will not suffer irreparable harm from the application of a Backtesting Charge, a charge that it has previously been subject to and has paid in the past. This is doubly so where it has represented to NSCC that it will be able to acquire the required capital to cover the present charge. And in any event, Alpine has failed to substantiate its claim that irreparable financial injury is “likely” to occur, as it has not submitted information regarding its expenses, level of profitability, or exhaustion of available resources as necessary for the Commission to grant the extraordinary relief Alpine seeks. On the other hand, granting Alpine’s requested stay *will* harm others and negatively impact the public interest. A stay would work to the detriment of NSCC’s other members by detracting from NSCC’s ability to effectively mitigate default risk on their behalf (and thereby forcing the other members to take on undue exposure to the risk that Alpine is responsible for addressing by paying the Backtesting Charges) and potentially providing Alpine an unfair advantage over members that are in competition with Alpine.

Rather than preserving the status quo, a stay would alter it, exempting Alpine from a Backtesting Charge, a routine Clearing Fund component to which all members are subject, shifting the risk Alpine's positions present to NSCC and its other members. NSCC thus respectfully requests that the Commission dismiss the Stay Motion for lack of jurisdiction, or in the alternative deny it.

## **BACKGROUND**

### **I. Alpine's Initial Application for Review ("Alpine I")**

Before the present administrative proceeding was instituted, Alpine filed its first Application for Review on December 19, 2018 (the "December 2018 Application").<sup>4</sup> That Application purported to raise several issues with NSCC's SEC-approved rules and procedures governing the Required Fund Deposit obligations of its members under NSCC's Clearing Fund Rules (the "Clearing Fund Rules" or "Rules"). Members' Required Fund Deposits to the NSCC Clearing Fund mitigate potential losses to NSCC and its members that may result 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, 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 remain pending before the Commission.

In connection with the December 2018 Application, Alpine also sought to stay enforcement of the Illiquid Charge or, alternatively, NSCC's determination that Alpine could not offset its

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<sup>4</sup> 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*, Admin. Proc. File No. 3-18979 (Dec. 19, 2018) ("*Alpine I* Application").

Illiquid Charge with short positions in securities Alpine had on deposit at NSCC's affiliate, The Depository Trust Company ("DTC offset").<sup>5</sup> The Commission denied the stay motion on November 22, 2019, finding Alpine had failed to meet *any* of the four factors relevant to relief, including likelihood of success on the merits.<sup>6</sup>

## **II. Alpine's Application for Review in this Proceeding ("Alpine II")**

Alpine filed the Application for Review that initiated this proceeding on March 5, 2021, doing so purportedly pursuant to Section 19(d) and (f) of the Exchange Act (the "March 2021 Application"). Alpine filed a motion for an interim stay contemporaneously (the "March 2021 Stay Motion"). The March 2021 Application and Stay Motion advance claims materially similar to those in the December 2018 Application and stay request.<sup>7</sup> Alpine once again mounts a 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 for Illiquid Securities, among other amendments to that margin component, was approved by the Commission on November 24, 2020, pursuant to Section 19(b)(2) of the Exchange Act.<sup>8</sup> Additionally, Alpine again requested a stay, including access for itself of the DTC offset eliminated by the amendments (and to which it previously lacked access due to its credit rating).

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<sup>5</sup> See 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").

<sup>6</sup> *Id.* at 9-18.

<sup>7</sup> See 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*, Admin. Proc. File No. 3-20238 (Mar. 2, 2021) ("*Alpine II* Application").

<sup>8</sup> See 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*").

The proposed amendments to the Volatility Component and related changes were subject to a public comment period,<sup>9</sup> during which Alpine or others raised most, if not all, of the issues identified in Alpine’s Application,<sup>10</sup> including Alpine’s principal objections to the Volatility Component proposal and the unavailability of a reduction in Required Fund Deposits for positions in securities on deposit at DTC.<sup>11</sup> The SEC considered these issues in approving the amendments as consistent with NSCC’s statutory and regulatory obligations.<sup>12</sup>

The March 2021 Application and Stay Motion remain pending.

### **III. July 7, 2022 Proposed Rule Change**

On July 7, 2022, NSCC filed proposed rule change SR-NSCC-2022-009 (the “Rule Filing”) with the SEC.<sup>13</sup> The Rule Filing seeks to enhance NSCC’s Clearing Fund methodology by implementing an intraday volatility charge that would mitigate certain intraday risks presented by a member’s adjusted intraday net unsettled positions.<sup>14</sup> In connection with this new charge, the Rule Filing also seeks to modify existing backtesting charges.<sup>15</sup> Backtesting is a

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<sup>9</sup> 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).

<sup>10</sup> See generally Order Adopting Amendments; Alpine Securities Corporation Comment Letter to SEC, Release No. 34-88474 (Apr. 21, 2020) (“Alpine Comment Letter”).

<sup>11</sup> 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 77290, 77292–77293 (addressing same).

<sup>12</sup> See Order Adopting Amendments at 77285–77295 (finding consistency with applicable Exchange Act provisions and rules promulgated thereunder).

<sup>13</sup> See Notice of Filing of Proposed Rule Change to Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge, Release No. 34-95386 (July 14, 2022), 87 Fed. Reg. 43355 (July 20, 2022) (“Rule Filing”).

<sup>14</sup> *Id.* at 43355.

<sup>15</sup> *Id.*

method NSCC uses to determine the adequacy of each member's Required Fund Deposit through an analysis of member historical portfolio and performance return data.<sup>16</sup>

As the Rule Filing explained, NSCC had found that the current methodology for calculating one component of the Backtesting Charge, the Intraday Backtesting Charge, was potentially *undercounting* backtesting deficiencies. However, adjusting the methodology to address this issue may result in a calculation that penalizes members for making intraday margin deposits and effectively result in double margining. NSCC also determined that implementing the proposed intraday volatility charge would allow it to continue to address its intraday risk exposures and meet its target backtesting coverage without the Intraday Backtesting Charge. Therefore, NSCC proposed eliminating the charge.<sup>17</sup>

Notwithstanding Alpine's claims to the contrary, at no point has NSCC stated that the Intraday Backtesting Charge has no value or use in mitigating counterparty risk. Indeed, though the rule filing proposes elimination of the charge, it also commits NSCC to continue monitoring "the [adjusted] intraday backtesting metric to assess the continued effectiveness of its intraday margining process," which would include the proposed intraday volatility charge.<sup>18</sup>

On October 14, 2022, the SEC issued an Order instituting proceedings to determine whether it would approve of the rule change proposed in the Rule Filing.<sup>19</sup> The Rule Filing

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<sup>16</sup> *Id.* at 43356.

<sup>17</sup> *Id.* at 43357, 43360 ("NSCC believes it will continue to be able to adequately address both its intraday market risk exposures and its backtesting coverage metrics if it eliminates the Intraday Backtesting Charge. On an intraday basis, NSCC would continue to rely on both [an existing charge] and the proposed intraday volatility charge to address intraday exposures presented by price volatility and changes to its Members positions intraday.").

<sup>18</sup> *Id.* at 43360.

<sup>19</sup> See Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge, Release No. 34-96088 (Oct. 14, 2022) (File No. SR-NSCC-2022-009).

currently remains pending, leaving the Intraday Backtesting Charge in effect.<sup>20</sup>

#### **IV. Alpine's Backtesting Charges and the Instant Motion**

Pursuant to Procedure XV of the NSCC Rules, Alpine has previously been subject to Backtesting Charges.<sup>21</sup> From March 1, 2021 through January 31, 2022, Alpine was assessed and paid a Backtesting Charge of \$1,114,376.01.<sup>22</sup>

On October 24, 2022, NSCC informed Alpine that it was imposing a Backtesting Charge of \$2,154,101.23 (comprised of a \$545,166.69 “start of day” Backtesting Charge and a \$1,607,934.54 “intraday” Backtesting Charge), effective November 1, 2022. The charge is applied when a member’s 12-month rolling backtest coverage falls below the 99% backtesting coverage target.<sup>23</sup> Alpine’s “start of day” Backtesting Charge equals its third largest end of day backtest deficiency, and its “intraday” Backtesting Charge equals its fifth largest intraday backtest deficiency, each over the last 12 months.<sup>24</sup> Deficiencies were observed in September 2022 and were attributed to net short portfolios in several stocks, with the “top driver being a concentrated short position in GTII.”<sup>25</sup>

In a phone call also held on October 24 regarding the charge, Ray Maratea, Alpine’s CEO, represented to an NSCC employee, Dong Parady, that financing the charge would not

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<sup>20</sup> Decl. of Timothy J. Cuddihy in Support of the Opposition of NSCC to Alpine’s Motion for an Emergency Interim Stay and Other Appropriate Relief. ¶ 11 (hereinafter “Cuddihy Decl.”).

<sup>21</sup> See NSCC Rules, Procedure XV § I(B)(3).

<sup>22</sup> Cuddihy Decl. ¶ 8.

<sup>23</sup> NSCC Rules, Procedure XV § I(B)(3).

<sup>24</sup> *Id.*; see Declaration of Raymond Maratea in Support of Alpine’s Stay Motion (“Maratea Decl.”) Ex. A.

<sup>25</sup> Maratea Decl. Ex. A.

present an issue for Alpine.<sup>26</sup> Mr. Parady recounted this conversation to a colleague in an email sent on the same day, shortly after the call.<sup>27</sup>

On October 28, Alpine filed the Stay Motion.

## ARGUMENT

Alpine’s Stay Motion should be dismissed for want of jurisdiction under Exchange Act Section 19, or otherwise denied for failure to demonstrate that any stay is warranted.

### I. The Commission Should Dismiss the Stay Motion as Non-Justiciable

For the same reasons explained in NSCC’s briefs in connection with the December 2018 Application, the March 2021 Application, and the corresponding stay requests,<sup>28</sup> the current Application and Stay Motion are jurisdictionally invalid under Section 19(d).<sup>29</sup> As the Commission stated in denying the stay request in *Alpine I*, “[u]nder Rule of Practice 401(d)(1), an aggrieved person may move to stay an SRO action *reviewable under Exchange Act Section 19(d)*.”<sup>30</sup> Section 19(d) does not provide a statutory vehicle for Alpine to avoid or change the Intraday Backtesting Charge or any other aspect of NSCC’s Clearing Fund Rules promulgated

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<sup>26</sup> Decl. of Dong Y. Parady in Support of the Opposition of NSCC to Alpine’s Mot. for an Emergency Interim Stay and Other Appropriate Commission Relief ¶ 4 (hereinafter “Parady Decl.”).

<sup>27</sup> Parady Decl. ¶ 4 & Ex. 2.

<sup>28</sup> NSCC incorporates the contents and arguments of the following submissions from *Alpine I* and *Alpine II*, as if fully stated herein: NSCC’s Opposition to Alpine’s Motion for an Interim Stay and Incorporated Memorandum of Points and Authorities in Support, *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, *Alpine I*, Admin. Proc. File No. 3-18979 (Jan. 17, 2020); NSCC’s Reply Brief Regarding the Timeliness of Alpine’s Application for Review and SEC Jurisdiction, *Alpine I*, Admin. Proc. File No. 3-18979 (Feb. 5, 2020) (together, “NSCC’s *Alpine I* Briefs”); NSCC’s Objection to Alpine’s Application for Review and Motion for Interim Stay, *Alpine II*, Admin. Proc. File No. 3-20238 (Mar. 12, 2021) (“NSCC’s *Alpine II* Brief”).

<sup>29</sup> 15 U.S.C. § 78q-1(d); *see also* SEC Rule of Practice 401(d) cmt. (d) (stating that SRO stay procedures are “based on Section 19(d) of the Exchange Act,” and that the “provision for expedited consideration in paragraph (d)(3) is based on the requirement of Section 19(d)(2) that the Commission establish an expedited procedure for consideration and determination of the question of a stay for ‘appropriate cases’”).

<sup>30</sup> *Alpine I* Order Denying Stay at 8 (citing 17 C.F.R. § 201.401(d)(1); 15 U.S.C. § 78s(d)) (emphasis added).

under Section 19(b)(2), which is the purpose of the Stay Motion and, indeed, this whole proceeding.<sup>31</sup>

The Required Fund Deposit components challenged here (and in the December 2018 Application) are a member requirement for participation in NSCC, and are key to NSCC's clearance and settlement risk-management function under the Exchange Act.<sup>32</sup> They are not fees or charges for delivering clearance services.<sup>33</sup> Nor is the Intraday Backtesting Charge component of the Required Fund Deposits "discretionary" as Alpine claims,<sup>34</sup> rather, it is an operative Rule still in effect that must be enforced pursuant to Exchange Act Section 19(g)(1).<sup>35</sup> Indeed, a central reason NSCC proposed and continues to apply the Intraday Backtesting Charge was to comply with its regulatory risk management obligations under Commission rules for clearing agencies, specifically Rules 17Ad-22(b)(2), (e)(4), and (e)(6).<sup>36</sup> Intraday Backtesting Charges are a part of

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<sup>31</sup> See generally NSCC's *Alpine I* Briefs; *Alpine II* Brief at 4-6 (March 12, 2021).

<sup>32</sup> 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](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).

<sup>33</sup> 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).

<sup>34</sup> See Stay Mot. at 4.

<sup>35</sup> 15 U.S.C. § 78q-1(g)(1); Cuddihy Decl. ¶ 6. The Rules currently limit enforcement discretion to "adjust[ing]" the Intraday Backtesting Charge in the event there are "circumstances particular to a Member's settlement activity and/or market price volatility [that] warrant a different approach to determining or applying [the Charge] in a manner consistent with achieving [its] backtesting coverage target," NSCC Rules, Procedure XV § I(B)(3) (emphasis added), but the NSCC found no such circumstances with respect to Alpine, Cuddihy Decl. ¶ 10.

<sup>36</sup> See 17 C.F.R. § 240.17Ad-22(b)(2), (e)(4), & (e)(6). At the time the Backtesting Charge was proposed, NSCC was subject to the requirements of Rule 17Ad-22(b)(2). 17 C.F.R. § 240.17Ad-22(b)(2). Following the adoption of the Standards for Covered Clearing Agencies, NSCC also became subject to the requirements of Rule 17Ad-22(e) as a "covered clearing agency" as defined in Rule 17Ad-22(a)(5). SEC Standards for Covered Clearing Agencies, Release No. 78961 (Sept. 28, 2016), 81 Fed. Reg. 70786 (Oct. 13, 2016). When the Commission adopted the requirements for covered clearing agencies, it provided that where a registered clearing agency is one that both provides CCP services and is a covered clearing agency, then it is subject to the requirements in both rule sets, with

the margin computations that arise from these regulatory requirements. In sum, the Required Fund Deposits and all components thereof are designed to meet NSCC’s regulatory obligations to manage the risks presented by its members’ clearing activity and are applied uniformly to *all* members engaging in transactions subject to the Rules.

For this reason alone, the recent decision in *NASDAQ Stock Market, LLC v. SEC* forecloses Alpine’s present motion (and Application).<sup>37</sup> There, the United States Court of Appeals for the D.C. Circuit held “that Section 19(d) is not available as a means to challenge generally-applicable fee rules,” but rather only “action targeted at individuals.”<sup>38</sup> As relevant here, the Court reasoned that it would be “non-sensical and likely impossible” to comply with Section 19(d) procedures for generally applicable fees because, if they constituted limitations on access to service, then for each new fee, every “person to whom the fee could conceivably apply, potentially including” those it merely *might* apply to in the future, would need to receive individualized notice and an opportunity to be heard on the limitation.<sup>39</sup> The same is true here, and the result would be equally unworkable.

Ultimately, Alpine is objecting to risk management functions critical to NSCC’s services, not a limitation on access to such services. Section 19(d) is not implicated simply because certain risk management requirements 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 the uniform requirements of those

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the more general requirements in Rule 17Ad-22(b) supplemented by the requirements of Rule 17Ad-22(e). *See id.* at 70794.

<sup>37</sup> 961 F.3d 421 (D.C. Cir. 2020).

<sup>38</sup> *Id.* at 430.

<sup>39</sup> *Id.* at 429.

services.

Alpine remains an NSCC member in good standing and receives 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, including paying previous Backtesting Charges imposed between March 1, 2021 and January 31, 2022 of \$1,114,376.01.<sup>40</sup> Such margin charges are neither a sanction nor a limitation on service.

In sum, Section 19(d) has no application to Alpine's stay motions or complaints regarding NSCC Required Fund Deposits and both this Motion and the underlying application should be dismissed for this reason alone.<sup>41, 42</sup>

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<sup>40</sup> Cuddihy Decl. ¶ 8.

<sup>41</sup> NSCC further reiterates its timeliness objection previously stated in its Objection. *See* NSCC's *Alpine II* Brief at 6 n.17. Alpine was not only aware of the Intraday Backtesting Charge before the current one was assessed; it has previously had at least one other Backtesting Charge assessed over 11 months between 2021 and 2022 for approximately \$1.1 million and timely paid it. *See* Cuddihy Decl. ¶ 8. As with the Volatility Component Alpine challenges in the underlying Application, the appropriate avenue for Alpine to challenge the rule implementing Backtesting Charges was during the notice-and-comment procedures accompanying its proposal and approval. *See* Notice of Filing of Proposed Rule Change to Accelerate [NSCC's] Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of "Off-the-Market Transactions," and Make Other Changes, Release No. 34-79245 (Nov. 4, 2016), 81 Fed. Reg. 79071, 79071 (Nov. 10, 2016) ("The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons."); Order Granting Approval of NSCC's Proposed Rule Change To Accelerate its Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of "Off-the-Market Transactions," and Make Other Changes, Release No. 34-79598 (Dec. 19, 2016), 81 FR 94462 (Dec. 23, 2016) ("The Commission did not receive any comments on the Proposed Rule Change."). Because the charge has existed, and Alpine has been on notice of it far beyond 30 days prior to this Stay Motion, even if Section 19(d) were applicable (it is not), the Motion would be untimely.

<sup>42</sup> In addition to a stay, Alpine also requests that the Commission "require NSCC to file a certified copy of the administrative record pursuant to Rule of Practice 420(e)." Stay Mot. at 4. However, as in *Alpine I*, and as NSCC explained in its *Alpine II* Briefing, *see* NSCC's *Alpine II* Briefing at 6, 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.

## II. The Commission Should Deny the Stay Motion Because No Stay Is Warranted

The Stay Motion also should be denied for the same reasons relied upon by the Commission in denying the prior stay request. As the moving party, Alpine bears the burden of establishing that this “extraordinary remedy” is warranted.<sup>43</sup> In determining whether to issue a stay, the Commission considers “(i) the likelihood that the moving party will eventually succeed on the merits of the appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of the stay; and (iv) a stay’s impact on the public interest.”<sup>44</sup> All four weigh in favor of denying the Stay Motion here.

### A. Alpine Fails to Establish a Likelihood of Success on the Merits.

Alpine cannot establish a likelihood of success on the merits for several reasons. First, Alpine cannot demonstrate that the Backtesting Charge (or any other charges) limit Alpine’s access to NSCC’s services. On the contrary, these margin charges serve one of NSCC’s primary functions—risk mitigation. They are therefore not a limitation on service, but rather, as described above,<sup>45</sup> a core part of NSCC’s risk management functions.<sup>46</sup>

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<sup>43</sup> *Alpine I* Order Denying Stay at 9 (citations omitted).

<sup>44</sup> *Id.* (citations omitted).

<sup>45</sup> See Argument Section I *supra*; accord *NASDAQ Stock Market*, 961 F.3d at 429-30.

<sup>46</sup> Alpine’s cited authorities on this issue are inapposite. See Mot. 13 n.34-35. *In re Bloomberg, L.P.* did not deal with fees at all, but rather with material limitations on how Bloomberg could use certain NYSE data. See *In re Bloomberg, L.P.*, Release No. 49076, 2004 WL 67566, at \*2 (Jan. 14, 2004). *In re International Power Grp., Ltd.* unambiguously involved a limitation on service, as it concerned SRO action “to suspend indefinitely book-entry clearing and settlement services to [Appellants] with respect to Appellee’s common stock. Release No. 66611, 2012 WL 892229 at \*2 (Mar. 15, 2012). Finally, *Application of William Higgins* dealt with a limitation on non-NYSE member phone access to the trading floor. Though Alpine paints this as trivial, the Commission found that “operation of a trading floor and access to that floor is perhaps the principal service offered by a national security exchange to its members and by its members to customers.” 51 Fed. Reg. 6186-04, 6188, 1986 WL 89969 (Feb. 20, 1986).

Second, Alpine has failed to show any violation of Exchange Act Section 19(f). Alpine first claims that NSCC “cannot establish that the risks that purportedly necessitated the imposition of this Backtesting Charge on Alpine ‘exist in fact.’”<sup>47</sup> To support this, Alpine claims “NSCC has now conceded” that the Intraday Backtesting Charge is unnecessary to mitigate NSCC’s central counterparty risk from a member default “by stating it should be eliminated.”<sup>48</sup> Not so. As discussed further above, the Rule Filing that Alpine mischaracterizes makes clear that NSCC believes (i) the current methodology for calculating the Intraday Backtesting Charge may *undercount* potential backtesting deficiencies, (ii) if the issue were fixed, the alternative methodology may result in a calculation that is considered double margining, and (iii) NSCC believes that the proposed intraday volatility charge would assist it in continuing to cover its intraday risk exposures such that NSCC has proposed to eliminate the Intraday Backtesting Charge in connection with the implementation of the intraday volatility charge.<sup>49</sup> Thus, contrary to Alpine’s assertion that the Intraday Backtesting Charge does not mitigate risk, the Rule Filing shows that it does, and NSCC is waiting for the SEC to approve a proposed intraday margin charge that would assist it in mitigating intraday risks before it eliminates the Intraday Backtesting Charge. Indeed, if the Rule Filing is approved, intraday backtesting will still be carried out to monitor and ensure that the risk the Intraday Backtesting Charge formerly targeted is still being adequately mitigated.<sup>50</sup>

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<sup>47</sup> See Stay Mot. at 14 (quoting 15 U.S.C. § 78s(f)).

<sup>48</sup> *Id.* at 15 (quoting Rule Filing at 1, 22-23).

<sup>49</sup> See Background Section III *supra*; Cuddihy Decl. ¶ 5.

<sup>50</sup> Rule Filing at 43360 (“Further, in connection with its daily backtesting, NSCC will monitor the intraday backtesting metric inclusive of all intraday collections to assess the continued effectiveness of its intraday margining process.”).

In arguing that the Backtesting Charge does not serve any legitimate risk-mitigation purpose, Alpine misquotes the Rule Filing, telling a series of half-truths. Alpine is correct that NSCC said it “will continue to be able to adequately address both its intraday market risk exposures and its backtesting coverage metrics if it eliminates the Intraday Backtesting Charge,” but that is *because*, assuming the Commission even approves the proposal, NSCC believes that the proposed intraday volatility charge would be important in assisting it in addressing intraday risks.<sup>51</sup> Likewise, while it is true that NSCC commissioned impact studies that indicated “backtesting results would not be materially impacted” by elimination of the Intraday Backtesting Charge, that was *because* any Clearing Fund deficits would be offset by “the proposal to introduce an intraday volatility charge[, which] would, when applicable, allow NSCC to collect additional amounts.”<sup>52</sup> Indeed, NSCC summed up all of this aptly when it concluded:

[G]iven the deficiencies in the current calculation of the Intraday Backtesting Charge [i.e., underestimating deficiencies] and the risks related to adjustments to the calculation that would address those deficiencies [i.e., the risk of double margining], and in light of both the enhancements NSCC has made to its intraday margining since the adoption of the Intraday Backtesting Charge as well as its proposal to now adopt an intraday volatility charge, NSCC has determined it is appropriate to eliminate the Intraday Backtesting Charge.<sup>53</sup>

Alpine’s argument that the Intraday Backtesting Charge serves no legitimate risk mitigation purpose is thus without merit.

Alpine also argues that NSCC faces no central counterparty risk from Alpine’s sell-side trading activity “because Alpine always has sufficient shares of the stock in its account at DTC

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<sup>51</sup> Stay Mot. at 15 (citing Rule Filing at 22); *see* Rule Filing at 43360.

<sup>52</sup> Rule Filing at 43361.

<sup>53</sup> Rule Filing at 43360.

to cover its sell-side positions before it submits the trades to NSCC.”<sup>54</sup> This argument ignores how the Required Fund Deposit is calculated and how NSCC risk mitigation strategy works. NSCC does not have a lien on its members’ inventory at DTC and cannot predict the availability of such inventory to it following a member default, which would depend on the actions of the bankruptcy court, and so it cannot be included as an available resource in NSCC’s calculation of member margin requirements.

As part of its market risk management strategy, NSCC manages its credit exposure to members by determining the Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules. The Required Fund Deposit serves as each member’s margin. Pursuant to the Rules, each member’s Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.

Stock custodied at DTC on behalf of a DTC participant pursuant to DTC’s rules has no bearing on the calculation of that firm’s Required Fund Deposits that it would owe to NSCC as an NSCC member and calculated pursuant to NSCC Rules. NSCC has no lien on or any other legal right to the assets of its members that may be on deposit at DTC. Thus, in the event of a member default and any subsequent insolvency proceeding against any given member, NSCC may not be able to obtain access (or be granted timely access) to those securities.<sup>55</sup> Therefore, NSCC cannot rely on it as a factor in the calculation of Required Fund Deposits.

Alpine therefore fails to show a likelihood of success on the merits.

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<sup>54</sup> Stay Mot. at 16 (citation omitted).

<sup>55</sup> See NSCC Rule 18 § 5. Contrary to Alpine’s claims, the delivery of stock on deposit with DTC to NSCC to cover short positions can only be executed, in the event of insolvency of a member, “to the extent permitted by the applicable rules of the relevant insolvency regime.” *Id.*

**B. Alpine Will Not Be Irreparably Harmed Absent a Stay.**

Alpine also cannot demonstrate irreparable harm. To make a showing of irreparable harm, the alleged harm “must be actual and not theoretical,” and must likewise be “both certain and great.”<sup>56</sup> “Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to [stay].”<sup>57</sup> A movant cannot merely allege financial ruin—the movant must “substantiate the claim that irreparable injury is likely to occur” by submitting “information regarding, among other things, [the movant’s] expenses, level of profitability, or exhaustion of available resources” that would allow one to conclude the movant is “likely to cease operations without a stay.”<sup>58</sup>

Alpine does not provide any of that information here, just as it failed to do so when it could not demonstrate a likelihood of irreparable harm in *Alpine I*.<sup>59</sup> Instead, Alpine merely asserts that it does not have sufficient capital to cover the charge, and further states that if it “is unable to process trades for its customers, it will go out of business.”<sup>60</sup> Nor does the Supplemental Declaration that Alpine submitted today change the analysis. As the Commission has recognized in a closely analogous context, it is the member’s responsibility to meet the

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<sup>56</sup> *Alpine I* Order Denying Stay at 15 (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

<sup>57</sup> *Id.* (alteration in original).

<sup>58</sup> *Id.* at 16 (citations omitted).

<sup>59</sup> *Id.*

<sup>60</sup> Stay Mot. at 17. Alpine also inaccurately represents that “if it is unable to pay the Backtesting Charge, NSCC will deduct that amount from Alpine’s current deposit of \$3 million.” Maratea Decl. ¶ 19. The Backtesting Charge is added to the Required Fund Deposit, which is calculated anew each day. If the Backtesting Charge and the Required Fund Deposit exceed what Alpine has on deposit for a given day, Alpine will be required to fund the deficit.

clearing agency's capital requirements, and an inability to do so is the responsibility of the member, not the clearing agency.<sup>61</sup>

Indeed, there are significant reasons to doubt Alpine's claim of irreparable harm. When the Backtest Charge was communicated to Alpine, Alpine represented to the NSCC that funding would not be an issue.<sup>62</sup> NSCC also concedes in its Stay Motion it may be "able to eventually acquire enough capital" to cover the charge,<sup>63</sup> though Alpine argues it will still face additional costs to secure the capital and a possible business interruption. Financial injuries do not constitute irreparable harm sufficient to warrant a stay however.<sup>64</sup> Moreover, these speculative outcomes veer outside the boundaries of the irreparable harm showing, bearing no direct relationship with the "destruction of Alpine's business" that Alpine foretells.<sup>65</sup> Nor did such terrible consequences come to fruition when the Commission delayed adjudication of Alpine's prior stay motion in this proceeding.<sup>66</sup>

Furthermore, though Alpine complains about having "one week to come up with over \$2.1 million," Alpine was well aware of the potential for Backtesting Charges. NSCC's rules are

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<sup>61</sup> See *Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes to Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement to Excess Capital Ratio*, Release No. 34-54457 (Sept. 15, 2006), 71 Fed. Reg. 55239, 55239-40 (Sept. 21, 2006) (approving clearing fund premium on NSCC and FICC members whose clearing fund requirements exceeds their regulatory excess capital, stating "[a]ffected firms have a choice to raise excess regulatory capital or to limit their trading activities so that the risk to which the clearing agency and its other members is exposed is proportionate to the firm's excess regulatory capital").

<sup>62</sup> Parady Decl. ¶ 4 & Ex. 2.

<sup>63</sup> *Id.*

<sup>64</sup> *In the Matter of the Application of Scottsdale Capital Advisors Corp., John J. Hurry, Timothy B. Diblasi, & D. Michael Cruz for Review of Disciplinary Action Taken by Finra*, Release No. 34-83783, 2018 WL 3738189 (Aug. 6, 2018) (internal quotations and citations omitted).

<sup>65</sup> *Id.* at 18.

<sup>66</sup> *Cf. Alpine I* Order Denying Stay at 17 ("Alpine's claim of irreparable harm appears to be inconsistent with . . . its continued operations over the prolonged period during which it has been subject to the Illiquid Charge.")

public and the margin components, including the Backtesting Charges, are transparent, in addition to being presented and explained in a number of tools and guides available to all members.<sup>67</sup> As such, members can and do anticipate margin charges, and they manage their clearing activity accordingly. Further, Alpine’s awareness of such Backtesting Charge was not just theoretical—it paid a \$1.1 million Backtesting Charge for a period of eleven months between 2021 and 2022.<sup>68</sup> This previous Backtesting Charge did not lead to Alpine’s financial ruin, and Alpine has not shown that the present one will either.

**C. A Stay Will Substantially Harm Other Parties and Negatively Impact the Public Interest.**

Alpine also fails to establish that the final two stay relief factors—the likelihood of harm to others from a stay and a stay’s impact on the public interest—weigh in favor of granting relief.<sup>69</sup> Namely, granting the stay Alpine seeks would harm market participants, NSCC’s ability to mitigate risk, and the public interest thereby. As the Commission found when it denied Alpine’s request for a stay of similar Required Fund Deposit charges (and the underlying rules creating them) in *Alpine I*, staying rules assessing specific charges as to Alpine or allowing it to offset charges against its DTC holdings “could provide an unfair advantage over competing NSCC members—particularly those members specializing in the microcap sector.”<sup>70</sup> Moreover, doing so also undermines NSCC’s risk-mitigation function by interfering with consistent application of the rules, detracting from NSCC’s ability to fulfill its duty as a clearing agency

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<sup>67</sup> See, e.g., DTCC, *NSCC Risk Margin Component Guide* at 25 (Aug. 29, 2022) available at <https://dtcclearing.com/documents/equities-clearing-1/nscc/nscc-risk-management/3992-nscc-risk-margin-component-guide/file.html>.

<sup>68</sup> Cuddihy Decl. ¶ 8.

<sup>69</sup> See *Alpine I* Order Denying Stay at 18.

<sup>70</sup> *Id.*

and a SIFMU to mitigate risk for its members and the broader financial system. By degrading the risk management function of NSCC, the stay would also unfairly force members to take on the additional risk Alpine's positions pose above and beyond what they bargained for pursuant to the NSCC Rules and the risk management requirements therein.

In sum, the stay Alpine seeks would harm third parties and detract from the public interest, weighing heavily against its issuance.

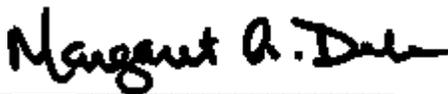
### CONCLUSION

For the reasons set forth above, NSCC respectfully requests the SEC dismiss or deny this Stay Motion. NSCC further respectfully reiterates its request that the Commission reject the Application and prior stay motion as well. 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  
October 31, 2022

Respectfully submitted,

PROSKAUER ROSE LLP

By: 

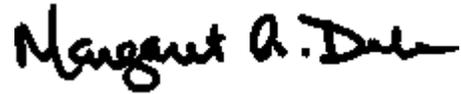
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*Attorneys for Respondent National  
Securities Clearing Corporation*

## ATTORNEY CERTIFICATIONS

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that the foregoing document contains 6,591 words, exclusive of tables and authorities. I further certify that all sensitive personal information has been omitted or redacted in compliance with Rule 151(e).

A handwritten signature in black ink that reads "Margaret A. Dale". The signature is written in a cursive, slightly slanted style.

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Margaret A. Dale

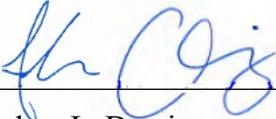
## CERTIFICATE OF SERVICE

Adam L. Deming HEREBY CERTIFIES PURSUANT TO Rule 151(d) of the Commission's Rules of Practice that, on October 31, 2022, he caused to be served with this Certificate of Service the foregoing Opposition of NSCC to Alpine's Motion for an Emergency Interim Stay and Other Appropriate Commission Relief, along with all declarations attached thereto, by the following means:

1. By electronic mail to counsel for Alpine Securities Corporation Aaron D. Lebenta and Jonathan D. Bletzacker of Parsons Behle & Latimer at [alebenta@parsonsbehle.com](mailto:alebenta@parsonsbehle.com) and [jbletzacker@parsonsbehle.com](mailto:jbletzacker@parsonsbehle.com), respectively, and at [ecf@parsonsbehle.com](mailto:ecf@parsonsbehle.com);

2. By electronic mail to counsel for Alpine Securities Corporation Maranda E. Fritz of Maranda E. Fritz, P.C. at [maranda@fritzpc.com](mailto:maranda@fritzpc.com);

3. By eFAP filing and electronic mail to the Securities and Exchange Commission at [apfilings@sec.gov](mailto:apfilings@sec.gov).

  
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Adam L. Deming

UNITED STATES OF AMERICA  
Before The  
SECURITIES AND EXCHANGE COMMISSION  
October 31, 2022

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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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NATIONAL SECURITIES CLEARING CORPORATION'S  
INDEX OF ATTACHMENTS

<u>Attachment</u>	<u>Description</u>
A	Declaration of Timothy J. Cuddihy in Support of the Opposition of NSCC to Alpine's Motion for an Emergency Interim Stay and Other Appropriate Relief
B	Declaration of Dong Y. Parady in Support of the Opposition of NSCC to Alpine's Motion for an Emergency Interim Stay and Other Appropriate Relief

**Attachment A:**  
**Declaration of Timothy J. Cuddihy in Support of the**  
**Opposition of NSCC to Alpine's Motion for an**  
**Emergency Interim Stay and Other Appropriate**  
**Relief**

**UNITED STATES OF AMERICA**  
**Before The**  
**SECURITIES AND EXCHANGE COMMISSION**  
**October 31, 2022**

<b>In the Matter of</b>  <b>ALPINE SECURITIES CORPORATION, a</b> <b>Utah limited liability company</b>  <b>For Review of Adverse Action Taken By</b>  <b>NATIONAL SECURITIES CLEARING</b> <b>CORPORATION</b>	: : : : : : : : : : : :	<b>DECLARATION OF TIMOTHY J.</b> <b>CUDDIHY IN SUPPORT OF THE</b> <b>OPPOSITION OF NATIONAL</b> <b>SECURITIES CLEARING</b> <b>CORPORATION</b> <b>TO ALPINE’S MOTION FOR AN</b> <b>EMERGENCY INTERIM STAY</b> <b>AND OTHER APPROPRIATE</b> <b>COMMISSION RELIEF</b>
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I, Timothy J. Cuddihy, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. I am a Managing Director and Group Chief Risk Officer for The Depository Trust & Clearing Corporation and its regulated clearing agencies, including the National Securities Clearing Corporation (“NSCC”) and The Depository Trust Company (“DTC”) (NSCC and DTC together, as applicable “DTCC”).

2. I make this declaration in support of NSCC’s Opposition to the Motion by Alpine Securities Corporation (“Alpine) for An Emergency Interim Stay and Other Appropriate Commission Relief, which was filed on October 28, 2022 (the “Stay Motion”).

Professional Background

3. As a Managing Director and Group Chief Risk Officer at DTCC, I am responsible for risk management, including designing and implementing new risk modeling, enhancing existing risk systems, counterparty surveillance, educating market participants, working with regulators on the business approach of DTCC’s operating subsidiaries, and developing and

executing best risk management practices. I am also responsible for developing, communicating and ensuring adherence to risk policies and procedures employed by DTCC.

4. In addition, I am the chair of DTCC's Management Risk Committee. I have more than 30 years' experience in risk management in connection with financial services that include previous positions with insurance companies and an investment banking firm in roles that required forecasting, profitability analysis, hedging peak exposures, liquidity management, and counterparty risk mitigation across a broad range of traditional and complex fixed income and equity products. I hold a M.B.A in finance and a B.A. in mathematics and statistics from Rutgers University.

#### NSCC's Rule Filing

5. In the Stay Motion, Alpine mischaracterizes the purpose and content of NSCC's rule filing. On July 7, 2022, NSCC filed proposed rule change SR-NSCC-2022-009 (the "Rule Filing") with the SEC. In its Rule Filing, NSCC proposes to enhance its Clearing Fund methodology by implementing an intraday volatility charge to mitigate certain intraday risks presented by a Member's adjusted intraday net unsettled positions. The Rule Filing also explains that, following an assessment of its margin methodology and regulatory feedback, NSCC determined that the methodology for calculating a different intraday charge, the Intraday Backtesting Charge, may undercount potential backtesting deficiencies. However, NSCC determined that an alternative methodology that would address these concerns may result in the double margining of certain Members. As a result, given the risks related to the adjustment of the calculation of the Intraday Backtesting Charge, and in conjunction with the proposed

adoption of an intraday volatility charge,<sup>1</sup> NSCC determined that it would be appropriate to eliminate the Intraday Backtesting Charge. Contrary to statements made by Alpine in its Stay Motion, at no point has NSCC stated that the Intraday Backtesting Charge has no value or use in mitigating counterparty risk.

6. The Rule Filing has not yet been approved by the SEC and the proposed changes are not yet effective. NSCC is obligated, pursuant to Section 19(g)(1) of the Exchange Act, to both comply with, and enforce, compliance with its Rules by its Members. Therefore, so long as the Intraday Backtesting Charge is in its Rules and the risk management considerations that would permit it to exercise discretion regarding this charge are not present, NSCC shall continue to assess the Intraday Backtesting Charge on its Members as provided under its Rules.

#### Backtesting Charges Assessed Against Alpine

7. Alpine mischaracterizes the Intraday Backtesting Charge as “entirely discretionary.” Stay Motion at 4. This is wrong. Pursuant to Procedure XV of NSCC’s Rules, NSCC may collect a Backtesting Charge on either an intraday or start of day basis, when a Member has a 12-month trailing backtesting coverage below the 99 percent backtesting coverage target.

8. Alpine previously was assessed and paid a Backtesting Charge of \$1,114,376.01, imposed from March 1, 2021 through January 31, 2022, in accordance with NSCC’s Rules.

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<sup>1</sup> While the proposed intraday volatility charge would address different risks presented to NSCC by its Members’ clearing activity than the Intraday Backtesting Charge, the adoption of this separate intraday margin charge enhances NSCC’s ability to reduce its overall intraday risk exposures.

9. On October 24, 2022, NSCC informed Alpine that it was imposing a Backtesting Charge of \$2,154,101.23 (comprised of a \$545,166.69 “start of day” Backtesting Charge<sup>2</sup> and a \$1,608,934.54 “intraday” Backtesting Charge), effective November 1, 2022. The charge is applied when a Member’s 12-month rolling backtest coverage falls below 99% for either intraday or start of day. The charge to Alpine represents the largest third start of day backtest deficiency and the largest fifth intraday backtest deficiency. (See Declaration of Raymond Matera in Support of Alpine’s Motion, Ex. A (email from Dong Parady to Raymond Maratea dated 10/24/22 at 9:42 AM).) Deficiencies were observed in September 2022 and were attributed to net short portfolios in several stocks, with the “top driver being a concentrated short position in GTII”. Id.

10. As provided in Section I(B)(3) of Procedure XV of NSCC’s Rules, NSCC may, in its discretion, adjust an Intraday Backtesting Charge applying to a Member *if* NSCC determines that “circumstances particular to a Member’s settlement activity and/or market price volatility warrant a different approach to determining or applying [the Intraday Backtesting Charge] in a manner consistent with achieving [its] backtesting coverage target.” With respect to the Intraday Backtesting Charge to be imposed on Alpine on November 1, 2022, NSCC does not believe that circumstances exist to warrant a different approach.

11. On October 14, 2022, the SEC issued an *Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge* regarding the Rule Filing. With all potentially applicable extensions, the SEC must approve or reject the Rule Filing by March

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<sup>2</sup> This is sometimes also referred to as the “end of day” Backtesting Charge. Because margin collection is typically conducted at the start of the day based on positions from the end of the previous day, the two terms are used interchangeably to refer to the same charge.

17, 2023. If the SEC approves NSCC's Rule Filing after NSCC's imposition of the Intraday Backtesting Charge on November 1, 2022, upon NSCC's implementation of the proposed rule, Alpine will no longer be subject to the \$1.6 million attributable to the Intraday Backtesting Charge. If the SEC does not approve the Rule Filing, then NSCC shall continue to assess the Intraday Backtesting Charge on its Members, including Alpine, as provided under its Rules.

#### Components of the Required Fund Deposit

12. NSCC and DTC have SEC-approved Rules and Procedures to manage their legal, credit, liquidity, operational, business, custody and other risks, as well as their credit exposures to each Member, with a high degree of confidence. In NSCC's case, this means that it must employ a risk-based "margin" system designed to cover its potential future exposure to default by a Member to a level of assurance that exceeds 99 percent. To meet these standards, NSCC uses a number of risk management controls to manage each Member's credit risk, thereby avoiding mutualizing losses among NSCC's Members (and thus the securities marketplace).

13. As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules. The Required Fund Deposit serves as each Member's margin. Pursuant to the Rules, each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.

14. Alpine's contention that it was long stock in GTII custodied at DTC sufficient to cover its net "short" (sell) position at NSCC in the same stock is wrong and reflects a misunderstanding of, among other things, the risk management systems at NSCC and DTC.

Under the Rules, NSCC has no lien on the securities that a DTC Participant maintains on account at DTC.<sup>3</sup>

15. Similarly, the margin that was assessed to cover the risk of Alpine's short sales in GTII (and other stock) prior to settlement is a different risk management component than the Backtesting Charge. See Rule Filing at page 6-7.

16. Notably, the Backtesting Charges were not attributed solely to Alpine's concentrated net short position in GTII. (See Declaration of Raymond Matera in Support of Alpine's Motion, Ex. A (email from Dong Parady to Raymond Maratea dated 10/24/22 at 9:42 AM).)

The Backtesting Charge Is Not "In Addition To" Alpine's Clearing Fund Deposit

17. Alpine mischaracterizes how the Backtesting Charge will affect its current Clearing Fund deposit. Alpine's minimum Clearing Fund Deposit is \$3 million. Each trading day, NSCC calculates Alpine's Required Fund Deposit, which is usually less than the \$3 million Alpine maintains on account. Starting on November 1, 2022, the Backtesting Charge of \$2,154,101.23 (comprised of a \$545,166.69 "end of day" Backtesting Charge and a \$1,608,934.54 "intraday" Backtesting Charge) will be added to Alpine's Required Fund Deposit. To the extent the sum of the Required Fund Deposit and the Backtesting Charge exceeds \$3 million, Alpine will be required to fund the difference.

DATED this 31st day of October, 2022.



Timothy J. Cuddihy

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<sup>3</sup> Moreover, if a DTC Participant defaults, DTC has a lien only on the securities in the defaulting Participant's account that the Participant has designated as collateral.

**Attachment B:  
Declaration of Dong Y. Parady in Support of the  
Opposition of NSCC to Alpine's Motion for an  
Emergency Interim Stay and Other Appropriate  
Relief**

**UNITED STATES OF AMERICA**  
**Before The**  
**SECURITIES AND EXCHANGE COMMISSION**  
**October 31, 2022**

<b>In the Matter of</b>  <b>ALPINE SECURITIES CORPORATION, a</b> <b>Utah limited liability company</b>  <b>For Review of Adverse Action Taken By</b>  <b>NATIONAL SECURITIES CLEARING</b> <b>CORPORATION</b>	: : : : : : : : : : : :	<b>DECLARATION OF DONG Y.</b> <b>PARADY IN SUPPORT OF THE</b> <b>OPPOSITION OF NATIONAL</b> <b>SECURITIES CLEARING</b> <b>CORPORATION</b> <b>TO ALPINE’S MOTION FOR AN</b> <b>EMERGENCY INTERIM STAY</b> <b>AND OTHER APPROPRIATE</b> <b>COMMISSION RELIEF</b>
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I, Dong Y. Parady, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the following statements are true and correct:

1. I am an employee of The Depository Trust and Clearing Corporation (“DTCC”), the parent company of National Securities Clearing Corporation (“NSCC”) and The Depository Clearing Company (“DTC”). I work in the Equity Risk Management Group at DTCC.

2. I make this declaration in support of NSCC’s Opposition to the Motion by Alpine Securities Corporation (“Alpine) for An Emergency Interim Stay and Other Appropriate Commission Relief, which was filed on October 28, 2022 (the “Stay Motion”).

Backtesting Charge as of November 1, 2022

3. On October 24, 2022, on behalf of NSCC, I contacted Joe Walsh of Alpine by telephone to advise him that NSCC was imposing a Backtesting Charge of \$2,154,101.23 (comprised of a \$545,166.69 “end of day” Backtesting Charge and a \$1,608,934.54 “intraday” Backtesting Charge), effective November 1, 2022. Mr. Walsh indicated that he would have to

speak to “his boss” and asked if I was able to send an email confirmation, which I said I would do. That telephone conversation lasted less than one minute. I followed up that call with an email explaining the Backtesting Charge that was to be assessed against Alpine on November 1, 2022. (The email string is attached hereto as Ex. 1)

4. After I had sent the email, Alpine’s CEO, Raymond Maratea, contacted me by telephone regarding the Backtesting Charge. Mr. Maratea asked that I explain how the charge was calculated. In response, I explained how the charge was assessed and the amount of the charge. During that conversation, Mr. Maratea said that funding the Backtesting Charge would not be an issue and that he would need to talk to “higher powers” at Alpine. A contemporaneous email that I sent to my manager after my call with Mr. Maratea is attached hereto as Exhibit 2. In that email, I explained that “Ray from Alpine called and asked for the 'formula' of how the charge was derived. He stated funding wouldn’t be an issue, however, he would need to explain on his side more details of how charges were calculated.”

5. Thereafter, I sent Mr. Maratea the email that he had requested and explained the same information I had provided by telephone. (See Ex. 1.)

DATED this 31st day of October, 2022.

  
\_\_\_\_\_  
Dong Y. Parady

# **Exhibit 1**

**From:** [Parady, Dong Y.](mailto:Parady, Dong Y.)  
**To:** [rmaratea@alpine-securities.com](mailto:rmaratea@alpine-securities.com)  
**Cc:** [jwalsh@alpine-securities.com](mailto:jwalsh@alpine-securities.com); [Rosales, Sandro](mailto:Rosales, Sandro); [Softye, Tatiana](mailto:Softye, Tatiana); [Brunton, Alistair A.](mailto:Brunton, Alistair A.); [Vinci, John](mailto:Vinci, John)  
**Subject:** RE: Backtesting Charge - #8072 Alpine Securities Corporation  
**Attachments:** [image001.png](#)  
[ATT00001.txt](#)

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Hi Ray,

Please see the list of deficiencies incurred during the past rolling 12-month period. Backtesting deficiencies listed causing <99% coverage with the 3<sup>rd</sup> and 5<sup>th</sup> ranked deficiencies being the applicable End of Day and Intraday Backtesting charges, respectively. Deficiencies observed in September 2022 are attributed to net short portfolios with the top driver being a concentrated net short position in GTII.

CTA (cease to act) Dates 10/19/2021 to 10/18/2022

End-of-Day:

Slice	CTA Date	Deficiency
EOD	09/28/2022	2,312,285.02
EOD	09/27/2022	1,575,948.07
EOD	09/29/2022	545,166.69
EOD	09/26/2022	445,813.67
EOD	09/23/2022	51,199.83

Intraday:

Slice	CTA Date	Deficiency
2PM	09/28/2022	5,625,643.01
11AM	09/28/2022	5,594,384.64
2PM	09/27/2022	3,925,439.23
11AM	09/27/2022	3,587,589.20
2PM	09/29/2022	1,608,934.54
11AM	09/29/2022	1,323,736.09
2PM	09/26/2022	1,033,522.64
11AM	09/26/2022	1,016,033.24
2PM	09/30/2022	338,542.78
11AM	09/30/2022	323,123.57

Regards,

**Dong Parady**

Equity Risk Management

DTCC Jersey City

Direct: +1 (212) 855-4664 | [dparady@dtcc.com](mailto:dparady@dtcc.com)

Team: +1 (212) 855-5770 | [equityrisk@dtcc.com](mailto:equityrisk@dtcc.com)



---

**From:** Parady, Dong Y.

**Sent:** Monday, October 24, 2022 10:22 AM

**To:** [jwalsh@alpine-securities.com](mailto:jwalsh@alpine-securities.com)

**Cc:** Rosales, Sandro <[SRosales@dtcc.com](mailto:SRosales@dtcc.com)>; Softye, Tatiana <[tsoftye@dtcc.com](mailto:tsoftye@dtcc.com)>

**OS Received 10/31/2022**

**Subject:** Backtesting Charge - #8072 Alpine Securities Corporation

Hi Joe,

Per our discussion due to Backtesting Deficiencies observed for #8072 Alpine Securities Corporation, effective November 1, 2022 a total Backtesting Charge of **\$2,154,101.23** (comprised of \$545,166.69 End of Day Backtesting Charge and \$1,608,934.54 Intraday Backtesting Charge) will be applied to the Clearing Fund Requirement.

This will be maintained during the 12-month rolling period and reassessed on a monthly basis for any changes. The deficiencies are driven by the concentrated net short position of ticker GTII in September 2022.

Additional Background on NSCC Backtesting:

NSCC incorporates daily backtesting to ensure that the Clearing Fund Requirements are sufficient to cover the potential loss in the event of a member default. The count of backtest deficiencies are tracked, and if a member falls below 99% coverage, NSCC assesses a Backtesting Charge to maintain adequate margin coverage. For more details, please refer to Procedure XV of [NSCC Rules and Procedures](#).

Regards,

**Dong Parady**

Equity Risk Management

DTCC Jersey City

Direct: +1 (212) 855-4664 | [dparady@dtcc.com](mailto:dparady@dtcc.com)

Team: +1 (212) 855-5770 | [equityrisk@dtcc.com](mailto:equityrisk@dtcc.com)



## **Exhibit 2**

**From:** [Parady, Dong Y.](#)  
**To:** [Softye, Tatiana](#)  
**Cc:** [Rosales, Sandro](#)  
**Subject:** RE: Backtesting Charge - #8072 Alpine Securities Corporation  
**Date:** Monday, October 24, 2022 11:20:24 AM  
**Attachments:** [image001.png](#)  
[ATT00001.txt](#)

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Ray from Alpine called and asked for the "formula" of how the charge was derived. He stated funding wouldn't be an issue, however, he would need to explain on his side more details of how charges were calculated. He also wanted to know if this charge would be applied for 12-months. Informed him a call will be set up by RM to discuss any other questions.

Similar to what we've provided other members I can send the following details:

Hi Ray,

Please see the list of deficiencies incurred during the past rolling 12-month period. Backtesting deficiencies listed causing <99% coverage with the 3<sup>rd</sup> and 5<sup>th</sup> ranked deficiencies being the applicable End of Day and Intraday Backtesting charges, respectively. Deficiencies observed in September 2022 are attributed to net short portfolios with the top driver being a concentrated net short position in GTII.

CTA Dates 10/19/2021 to 10/18/2022  
End-of-Day:

Slice	CTA Date	Deficiency
EOD	09/28/2022	2,312,285.02
EOD	09/27/2022	1,575,948.07
EOD	09/29/2022	545,166.69
EOD	09/26/2022	445,813.67
EOD	09/23/2022	51,199.83

Intraday:

Slice	CTA Date	Deficiency
iDay	09/28/2022	5,625,643.01
iDay	09/28/2022	5,594,384.64
iDay	09/27/2022	3,925,439.23
iDay	09/27/2022	3,587,589.20
iDay	09/29/2022	1,608,934.54
iDay	09/29/2022	1,323,736.09
iDay	09/26/2022	1,033,522.64
iDay	09/26/2022	1,016,033.24
iDay	09/30/2022	338,542.78
iDay	09/30/2022	323,123.57

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**From:** Parady, Dong Y.  
**Sent:** Monday, October 24, 2022 10:22 AM  
**To:** [jwalsh@alpine-securities.com](mailto:jwalsh@alpine-securities.com)  
**Cc:** Rosales, Sandro <[SRosales@dtcc.com](mailto:SRosales@dtcc.com)>; Softye, Tatiana <[tsoftye@dtcc.com](mailto:tsoftye@dtcc.com)>  
**Subject:** Backtesting Charge - #8072 Alpine Securities Corporation

Hi Joe,

Per our discussion due to Backtesting Deficiencies observed for #8072 Alpine Securities Corporation, effective November 1, 2022 a total Backtesting Charge of **\$2,154,101.23** (comprised of \$545,166.69 End of Day Backtesting Charge and \$1,608,934.54 Intraday Backtesting Charge) will be applied to the

**OS Received 10/31/2022**

## Clearing Fund Requirement.

This will be maintained during the 12-month rolling period and reassessed on a monthly basis for any changes. The deficiencies are driven by the concentrated net short position of ticker GTII in September 2022.

### Additional Background on NSCC Backtesting:

NSCC incorporates daily backtesting to ensure that the Clearing Fund Requirements are sufficient to cover the potential loss in the event of a member default. The count of backtest deficiencies are tracked, and if a member falls below 99% coverage, NSCC assesses a Backtesting Charge to maintain adequate margin coverage. For more details, please refer to Procedure XV of [NSCC Rules and Procedures](#).

Regards,

### **Dong Parady**

Equity Risk Management

DTCC Jersey City

Direct: +1 (212) 855-4664 | [dparady@dtcc.com](mailto:dparady@dtcc.com)

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