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**UNITED STATES OF AMERICA**

**SECURITIES AND EXCHANGE COMMISSION**

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In the Matter of

ALPINE SECURITIES CORPORATION, a  
Utah limited liability company

Respondent

Admin. Proc. File. No. 3-20485

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**RESPONDENT ALPINE'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR  
AN INTERIM STAY OR EXTENSION/POSTPONEMENT/ADJOURNMENT OF  
PROCEEDINGS**

**Expedited Consideration and Oral Argument Requested**

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Respondent Alpine Securities Corporation (“Alpine”) submits this Reply Memorandum in Support of its Motion for an Interim Stay and/or Extension, Postponement or Adjournment of All Deadlines and Hearing Date in this Administrative Proceeding (“Alpine’s Motion”).

### **INTRODUCTION**

The SEC’s “Rules of Practice shall be construed and administered to secure the just, speedy and inexpensive determination of every proceeding.”<sup>1</sup> The only way to satisfy each of these laudable goals is to grant Alpine’s Motion and enter a modest postponement of the deadlines in these follow-on proceedings until Alpine’s pending petition for writ of certiorari to the United States Supreme Court (“Petition for Certiorari”) with respect to the underlying court decisions is resolved.<sup>2</sup> *Alpine’s Motion does not seek to delay the date for completion of this proceeding.*

Alpine’s Petition for Certiorari challenges the SEC’s jurisdiction and authority to pursue an enforcement action for violations of the suspicious activity reporting (“SAR”) requirements of the Bank Secrecy Act (“BSA”). That was the only basis for the Division of Enforcement’s (“Enforcement”) claims in the Underlying Civil Action, and which, in turn, is the only basis for this follow-on proceeding. Enforcement does not dispute that a decision by the Supreme Court on Alpine’s Petition is expected in December of 2021, or that a reversal by the Supreme Court would establish that both the Underlying Civil Action and this follow-on proceeding were not lawfully commenced. Given this, any resources expended in this proceeding in the meantime would be a prejudicial and wasteful expense, and any sanction imposed would be patently unjust, particularly a sanction that revokes Alpine’s registration or otherwise precludes or limits Alpine’s ability to

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<sup>1</sup> Rule of Practice 103(a), 17 C.F.R. § 201.103(a).

<sup>2</sup> *S.E.C. v. Alpine Securities Corp.*, Civil Action No. 1:17-cv-04179 (“Underlying Civil Action”)

continue to operate, which cannot be undone after the fact by vacating an order.<sup>3</sup> Contrary to Enforcement's assertions, the Commission has stayed proceedings pending an appeal in order to conserve resources, prevent unnecessary expense, and promote administrative efficiency.<sup>4</sup>

Preventing an unjust, inefficient and wasteful result outweighs Enforcement's desire for a "speedy" resolution in these unique circumstances. Enforcement has identified no prejudice that would result to the SEC or the public from the delay requested. Indeed, Enforcement concedes that the injunction entered in the Underlying Civil Action protects against future violations of the SAR rules by Alpine, and that there have been no violations SAR regulations by Alpine alleged since 2015.

All Alpine is seeking in this Motion is an extension and postponement of all deadlines until the Supreme Court decides whether to grant Alpine's Petition. Such a request should be granted because it would not delay the ultimate resolution of this proceeding beyond the timeframe set forth in Rule 360(a)(2),<sup>5</sup> and because it would promote efficiency and save expense, while preventing prejudice and the possible injustice if a sanction were to be imposed before the Supreme Court has an opportunity to rule.

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<sup>3</sup> This includes a sanction that temporarily suspends Alpine's registration or otherwise limits its core business operations including, for example, its clearing services for microcap or over-the-counter ("OTC") stock.

<sup>4</sup> See *In re Michael S. Steinberg*, S.E.C. Release No. 4008, 2015 WL 331125, at \*2 (Jan. 27, 2015); *cf. also In the Matter of Jean-Paul Bolduc, et. al.*, S.E.C. Release No. 41812, 1999 WL 740399, at \*2 (Aug. 31, 1999).

<sup>5</sup> This is so, unless the Supreme Court grants certiorari, at which point Alpine would file another motion to postpone these proceedings until the Supreme Court issues a ruling on the merits. As indicated in Alpine's Motion, the Commission has already agreed to stay payment of the civil penalty in such circumstances. See Stipulated Installment Payment Order, at ¶ G, Ex. F to Alpine's Motion.

## ARGUMENT

### **I. Consideration of the Good Cause Factors Support Extending and Postponing All Deadlines Until the Supreme Court Decides Alpine’s Petition for Certiorari.**

Alpine agrees with Enforcement that its Motion is properly considered under Rule of Practice 161.<sup>6</sup> Rule of Practice 161(a) allows the Commission or a hearing officer, at any time, to extend or shorten any time limits and to postpone or adjourn any hearing, upon a showing of good cause. In determining whether good cause exists to grant such a request, the following factors are relevant: (1) “the length of the proceeding to date”; (2) “the number of postponements, adjournments, or extensions already granted”; (3) “the stage of the proceedings at the time of the request”; (4) “the impact of the request on the hearing officer’s ability to complete the proceeding in the time specified by the Commission”; and (5) “any other such matters as justice may require.”<sup>7</sup>

Each of these factors support granting the extension and postponement requested by Alpine. The first and third factors support Alpine’s Motion because this proceeding is in its infancy. Alpine filed its Motion on September 8, 2021 – less than a week after it was served with a copy of the OIP. The second factor also favors Alpine because Alpine has not sought any prior extensions or postponements.

The fourth factor supports Alpine’s Motion because, as indicated, Alpine’s request to extend/postpone all deadlines until the Supreme Court’s decides whether to grant Alpine’s Petition for Certiorari would not delay the ability to complete the proceeding in the time frame set by Rule

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<sup>6</sup> Based on the authorities cited by Enforcement in its Opposition Memorandum, Alpine agrees that Rule 401 does not govern the relief sought in Alpine’s Motion, and withdraws any request for relief under that Rule. However, this is immaterial because Alpine also brought its Motion pursuant to Rule 161 and because, as Enforcement acknowledges, the Commission routinely considers motions citing Rule 401 in such circumstances as a request for an extension of time, postponement or adjournment under Rule 161. *See* Enforcement’s Memorandum in Opposition, at 5; *see also, e.g., Steinberg*, 2015 WL 331125, at \*2 (“Although Rule 401 is inapplicable, we will consider Steinberg’s request under Rule of Practice 161, which authorizes us to order postponements for ‘good cause shown.’”).

<sup>7</sup> Rule of Practice 161(b)(1)(i)-(v).

360(a)(2)(i)-(ii). Alpine and Enforcement agree that the Supreme Court is expected to render a decision on Alpine’s Petition in December of 2021.<sup>8</sup> The hearing in this proceeding can be scheduled to begin at any time up to six months after service of the OIP – or by the end of February/early March 2022 – and the 75-day timeline to issue an initial decision runs from completion of post-hearing briefing or briefing on a dispositive motion.<sup>9</sup> Although raised in Alpine’s Motion (at pp. 19-20), Enforcement does not dispute that there would be ample time for Alpine to file another motion to stay/postpone if the Petition is granted or, if the Petition is denied, for Alpine to file an answer and for the parties to complete the hearing or briefing on a dispositive motion within the mandated time frame.

Instead, Enforcement curiously claims, *without any support*, that the fact that the Supreme Court is “highly likely” to decide Alpine’s Petition, *before* the deadlines pass to complete this proceeding, is a reason to deny Alpine’s Motion.<sup>10</sup> Enforcement is wrong. This factor weighs heavily in support as of Alpine’s Motion by demonstrating that there would be no prejudice to any party or undue delay to this proceeding from the modest extension/postponement requested.

Furthermore, to the extent Enforcement opposes Alpine’s Motion so that it can seek an immediate summary disposition or try to obtain a sanction against Alpine, before the Supreme Court can rule, this creates yet a further reason – “as justice may require” – to grant Alpine’s Motion: to prevent the waste of substantial resources and a decision that could put Alpine out of business in a proceeding that the Supreme Court may determine in the relatively near future should have never been brought. The comment to Rule 161 requires the hearing officer “to consider

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<sup>8</sup> See Enforcement’s Memorandum in Opposition, at 8.

<sup>9</sup> See Rule of Practice 360(a)(2)(i)-(ii).

<sup>10</sup> See Enforcement’s Memorandum in Opposition, at 7-9.

explicitly the *efficient* and timely *administration of justice*.”<sup>11</sup> Enforcement’s position that this proceeding should forge immediately ahead in these circumstances does not serve the efficient administration of justice; it prioritizes only speed for the sake of speed, without regard to other substantial interests of efficiency and justice that would be furthered by a postponement of the deadlines until the Supreme Court rules on Alpine’s Petition. As the Commission has held in different, but analogous circumstances: “Since substantial resources will be expended in anticipation of a hearing that may be further postponed if we ultimately determine to grant interlocutory review, it is in the public interest to stay the proceeding now.”<sup>12</sup>

## **II. A Postponement Pending an Appeal is Not Precluded, Particularly Where the Postponement Would Not Delay Completion of the Proceeding.**

Enforcement also argues that the pendency of an appeal cannot “justify any delay in related ‘follow-on’ administrative proceedings.”<sup>13</sup> However, the cases on which Enforcement relies involve circumstances where an adjournment pending appeal could significantly delay the *completion* of the proceeding.<sup>14</sup> That is not the case here. As indicated, the instant Motion would not “prolong this proceeding” because both sides expect the Supreme Court to rule on Alpine’s Petition for Certiorari in December of 2021, well before a hearing must occur or an initial decision must issue in this proceeding under Rule 360(a)(2). To be clear, if the Supreme Court grants Alpine’s Petition, Alpine intends to file a new motion seeking a further postponement of these

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<sup>11</sup> See comment to Rule of Practice 161, available at <https://www.sec.gov/about/rulesprac072003.htm#161> (emphasis added).

<sup>12</sup> *In the Matter of Jean-Paul Bolduc, et al.*, 1999 WL 740399, at \*2.

<sup>13</sup> Enforcement’s Memorandum in Opposition, at 6 (quotations and citation omitted).

<sup>14</sup> See *id.* at 6 and n. 3, citing, for example: *In re Paul Free, CPA*, SEC Release No. 66260, 2012 WL 266986 (January 26, 2012) (“[T]he pendency of an appeal *generally* is an insufficient basis upon which to *prolong* a Commission proceeding.” (emphasis added)); *In re Donald Fowler*, SEC Release No. 89226, 2020 WL 3791560, at \*2 (July 6, 2020) (“The adjournment Fowler seeks could delay significantly the *outcome* of these proceedings ....” (emphasis added)).



proceedings under Rule 161. And, as indicated in Alpine’s Motion, the Commission has already “agreed,” in the Stipulated Installment Payment Order submitted to, and entered by, the district court in the Underlying Civil Action that, “if the United States Supreme Court grants Alpine’s petition for writ of certiorari, Alpine’s obligation to pay ... *shall be stayed during the pendency of that appeal.*”<sup>15</sup>

There is also no universal rule holding that a pending appeal cannot serve as a basis for an extension or postponement of deadlines. No such provision appears in the Commission’s Rules of Practice, and the Commission has postponed administrative proceedings based on a pending civil appeal. In *In re Steinberg*, for example, the Commission found that “good cause” existed to grant the respondent’s request for a postponement, under Rule 161, of a follow-on proceeding that was based on respondent’s criminal conviction in circumstances where a panel of the Second Circuit in a separate case (*Newman*) had issued a decision that would “likely impact” respondent’s conviction unless the *Newman* decision were vacated or modified.<sup>16</sup> The postponement continued until the *Newman* case was finally resolved, including through the filing of any petition for writ of certiorari.<sup>17</sup>

Similarly, the instant follow-on proceeding is wholly based on decisions in the Underlying Civil Action that are the subject of a pending Petition for Writ of Certiorari. Given the relief sought, if the Supreme Court accepts certiorari and reverses, the judgment and injunction in the Underlying Civil Action would be vacated and the action would be dismissed with prejudice, which would in turn require the OIP to also be dismissed with prejudice. As the Commission held in *Steinberg*, “[p]ostponement” under such circumstances “will not prejudice either party and will

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<sup>15</sup> See Stipulated Installment Payment Plan, **Ex. F** to Alpine’s Motion (emphasis added).

<sup>16</sup> See *Steinberg*, 2015 WL 331125, at \*\*1-2.

<sup>17</sup> *Id.* at \*2.

serve the public interest in administrative efficiency.”<sup>18</sup> Indeed, this is an even more compelling case for a postponement than *Steinberg*, because Alpine is not awaiting the exhaustion of appeals in another case between different parties, over which it has no control.

Finally, Enforcement’s argument that Alpine’s Motion should be denied because petitions for certiorari are rarely granted should be rejected. Petitions for certiorari are not all created equal, and Alpine’s Petition has received *amici curiae* support from the former directors of FinCEN – the administrator of the BSA and the SAR regime – urging the Supreme Court to grant the Petition on the basis that the Supreme Court lacks enforcement authority over the SAR regulations. Moreover, the *Lorenzo* case that Enforcement cites for this proposition was not a follow-on proceeding, but had been pending for years before the respondent filed his motion to stay.<sup>19</sup> Even still, what happened in *Lorenzo* actually establishes why the Commission should grant Alpine’s Motion now: after the Commission denied the respondent’s Rule 161 motion, the respondent’s petition for certiorari in *Lorenzo* was *granted*.<sup>20</sup> Once that happened, the administrative proceeding halted until the Supreme Court’s decision issued.<sup>21</sup> Certainly, Alpine’s Petition for Certiorari could also be granted, and postponing these proceedings for the short period of time to allow the Supreme Court to consider it serves the public interest, including by increasing administrative efficiency, and, as demonstrated below, is necessary to prevent prejudice to Alpine.

### **III. Denial of Alpine’s Motion Would Substantially Prejudice its Case.**

Enforcement claims that requests for an extension, postponement or adjournment under Rule 161(b) are disfavored except in circumstances where the requesting party “makes a strong

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

<sup>19</sup> See *In re Lorenzo, et al.*, Admin Proc. File No. 3-15211.

<sup>20</sup> See *Lorenzo v. S.E.C.*, 138 S.Ct. 2650 (2018).

<sup>21</sup> See *In re Lorenzo, et al.*, Admin Proc. File No. 3-15211

showing that the denial of the request or motion would substantially prejudice their case.”<sup>22</sup> However, Enforcement ignores that on March 18, 2020, the Commission issued an Order, applicable in “all proceedings initiated by an order instituting proceedings,” that “pending further order of the Commission, all reasonable requests for extension of time will not be disfavored as stated in Rule 161.”<sup>23</sup> To Alpine’s knowledge, the Commission has not entered a “further order” that rescinds the March 18, 2020 Order altering the policy in Rule 161, and notes that a link to the March 18, 2020 Order remains active on the Commission’s website.<sup>24</sup>

Moreover, the denial of Alpine’s Motion would prejudice its case in several ways. First, it would prejudice Alpine’s defense. For example, one of Alpine’s defenses to the allegations is, as asserted in the Petition for Writ of Certiorari, that the SEC lacks authority/jurisdiction to bring an enforcement action for violation of the SAR provisions of the BSA. Given the decisions in the Underlying Civil Action, however, Alpine is likely precluded from raising that defense here, notwithstanding that it would be a total defense to the allegations in the OIP. Even requiring Alpine to answer the OIP while its Petition for Certiorari remains pending thus puts Alpine in an untenable position of potentially having to proceed without raising this dispositive defense, or having to brief a likely motion by Enforcement to strike this defense if asserted.

Second, given Enforcement’s signal that it intends to move for summary disposition, unless deadlines/proceedings are extended or postponed until after the Supreme Court rules, Alpine could bear the costs of defending nearly the entirety of this proceeding before its Petition is considered. The prejudice would be magnified substantially if a decision were to be entered in favor of

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<sup>22</sup> Rule 161(b).

<sup>23</sup> See Exch. Act Release No. 88415 (March 18, 2020), available at <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

<sup>24</sup> See <https://www.sec.gov/sec-coronavirus-covid-19-response>.

Enforcement, and a sanction imposed, before Alpine's Petition could be ruled on by the Supreme Court, which could deprive Alpine of the benefit of a successful appeal. Such damage could not be undone if an adverse decision in this proceeding were later vacated, particularly if any sanction resulted in a suspension or revocation of Alpine's registration, or eliminated a core business line. Unlike an individual, Alpine cannot survive a sanction that would prevent it from operating or that removes its core business line for any period of time because Alpine has no other means of generating revenue to pay employees or other expenses.

Conversely, no identifiable prejudice to Enforcement, the Commission at large, or the public would result from the requested extension/postponement of these proceedings for approximately three months to allow the Supreme Court to rule on Alpine's Petition. This proceeding has not languished; it was just commenced, after Enforcement waited nearly six months following completion of the appellate proceedings in the Second Circuit in the Underlying Civil Action.<sup>25</sup> Enforcement does not dispute that Alpine is currently subject to, and in compliance with, the injunction entered by the district court against future violations of Section 17(a) and Rule 17a-8, and Enforcement does not claim that there have been any new violations of the SAR requirements since 2015.<sup>26</sup>

Therefore, good cause exists to grant Alpine's Motion.

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<sup>25</sup> Enforcement mischaracterizes Alpine's argument in this regard. Alpine does *not* claim that Enforcement has acted "improper in the timing of this proceeding or [in] the SEC's conduct on appeal in the civil action," as Enforcement contends. See Enforcement's Opposition Memorandum, at 11-12. Alpine's point is that Enforcement should not be heard to insist that the public interest requires this action to proceed urgently before Alpine's Petition can be decided, when Enforcement waited approximately six months to bring it.

<sup>26</sup> Enforcement's attempt to mischaracterize Alpine's arguments that the violations were "historical," in order for Enforcement to claim that Alpine is trying to minimize the conduct and try to cast Alpine in a bad light in this proceeding should be disregarded. It is a fact that Alpine has had no SAR violations alleged since 2015. It is a fact observed by the district court that the majority of the SAR violations at issue in the Underlying Proceeding occurred prior to the FINRA exam in 2012. *SEC v. Alpine*, 354 F.Supp.3d 396, 418 (S.D.N.Y. 2018). These facts are relevant to the issue of, and support Alpine's position on, whether a short postponement of these proceedings would cause any prejudice to the public.

**CONCLUSION**

For the foregoing reasons, and those set forth in Alpine's opening memorandum, this Motion should be granted.

DATED this 16th day of September, 2021.

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