Administrative Proceeding
File No. 3-20485

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UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

In the Matter of ALPINE SECURITIES CORPORATION, a Utah corporation Respondent	Admin. Proc. File. No. 3-20485

RESPONDENT ALPINE SECURITIES CORP.'S ANSWER AND DEFENSES TO ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING

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Pursuant to Rule 220 or the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice, 17 C.F.R. § 201.220, Respondent Alpine Securities Corporation ("Alpine" or "Respondent"), by and through counsel of record, hereby submits the following Answer and Defenses to the allegations of the SEC's Division of Enforcement ("Division" or "Enforcement") in the Order Instituting Proceedings ("OIP"):

ANSWER TO SECTION II OF THE OIP[1]

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Alpine is a Utah corporation headquartered in Salt Lake City, Utah. Alpine is a self-clearing broker-dealer and has been registered with the Commission since 1984.

ALPINE'S RESPONSE: Alpine admits the allegations in this paragraph.

B. ENTRY OF THE INJUNCTION

2. On October 9, 2019, a final judgment was entered against Alpine permanently enjoining it from future violations of Section 17 of the Exchange Act and Rule 17a-8 thereunder in the civil action entitled Securities and Exchange Commission v. Alpine Securities Corporation, Civil Action Number 1:17-cv-04179, in the United States District Court for the Southern District of New York. Entry of this injunction followed the Court's grant of summary judgment as to 2,720 violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder by Alpine. On December 4, 2020, the Second Circuit Court of Appeals affirmed the final judgment. *SEC v. Alpine Securities Corp.*, 982 F.3d 68 (2d Cir. 2020); *petition for cert. filed, Alpine Securities Corp. v. SEC*, No. 21-82.

[1] Respondent has answered Section II of the OIP, the only section in which allegations by the Division against Respondent are made. *See* OIP, SEA Release No. 92775 (August 26, 2021), § IV (directing Respondent to file an answer to "the allegations contained in this Order" pursuant to Rule 220 of the Commission's Rules of Practice (emphasis added)); *see also* 17 C.F.R. § 201.220(a), (c) (directing a party respondent to file an answer to the "allegations" containing in an OIP). To the extent the Commission or any assigned hearing officer deems appropriate, Respondent reserves the right to amend and address the other sections as needed.

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ALPINE'S RESPONSE: Alpine admits the allegations in the first sentence of Paragraph 2 that a final judgment and permanent injunction was entered against Alpine on October 9, 2019 in the referenced action, but states that these allegations are incomplete in that they omit that the final judgment in the referenced action also imposed a $12 million civil money penalty against Alpine. Alpine also affirmatively alleges that it has timely made all payments towards the civil monetary penalty, for a total of $7 million as of the date of this Answer, under a stipulated installment payment order entered by the district court on June 16, 2021. Alpine admits the remaining allegations in Paragraph 2.

> 3. The Commission's complaint alleged that, from at least May 2011 to December 2015, Alpine omitted from Suspicious Activity Reports ("SARs") material red flags and other information of which it was aware and required to report under its own Bank Secrecy Act compliance program, failed to file required SARs on transactions, failed to file SARs within the required time period after the suspicious activity was detected, and failed to maintain and/or retain underlying files supporting its SARs filings.

ALPINE'S RESPONSE: Alpine admits the allegations of this paragraphs to the extent they purport to generally summarize the four categories of violations alleged in the complaint in the underlying civil action ("Civil Action"), which is incorporated by reference and controls over any inconsistent allegations to the contrary, and avers that Alpine filed its Answer setting forth defenses to those allegations and that the SEC received judgment on only certain violations alleged in the complaint. It did not obtain judgment on the allegation that Alpine failed to file SARs within the required time period after the suspicious activity was reported, along with additional alleged violations in the other categories, and in the final judgment in the Civil Action, all claims as to alleged violations on which the SEC did not obtain summary judgment were dismissed with prejudice.

DEFENSES

While it is the Division's burden of proof to establish, as stated in Section III of the OIP, that the "allegations set forth in Section II are true," and that any further relief is in the public interest pursuant to Section 15(b) of the Exchange Act, which burden Respondent does not assume, Respondent states the following defenses:

1. The OIP fails to state a claim upon which relief can be granted, including because the OIP does not identify what further relief or action is being sought against Alpine pursuant to Section 15(b) of the Exchange Act, or include any allegations sufficient to meet Division's burden under Section 15(b) to establish that the extreme remedy of suspension or revocation would be appropriate or serve the "public interest." *See* 15 U.S.C. § 15(b) (requiring the Commission to, *inter alia,* "find[], on the record after notice and an opportunity for hearing, that such censure, placing of limitations, suspension or revocation is in the public interest"). The OIP also fails to comport with Rule 200 of the Commission's Rules of Practice which requires that an OIP "set forth the factual and legal basis alleged therefore in such detail as will permit a specific response thereto," and "state the nature of any relief or action sought or taken." 17 C.F.R. § 201.200(b)(3)-(4).

2. By entry of final judgment in the Civil Action, Alpine has already been permanently enjoined from future violations of Section 17 of the Exchange Act and Rule 17a-8 and ordered to pay a civil money penalty in the amount of $12 million. Alpine has complied with the permanent injunction and timely made all payments towards the civil money penalty – $1 million per month – under its stipulated installment payment plan order with the Commission, as entered by the district court on June 16, 2021, for total payments of $7 million as of the date of this Answer and

payment in full by June 5, 2022. No further relief or sanction under Section 15(b) is necessary or appropriate for deterrence or in the public interest.

3. The Division cannot demonstrate it is in the public interest to impose additional relief or sanctions against Alpine under Section 15(b), including based on consideration of evidence of mitigating factors and the circumstances surrounding the underlying conduct at issue, because, *inter alia*:

a. Approximately ten years has passed since the bulk of the conduct at issue in the underlying case. The period at issue in the Civil Action was May of 2011 through December of 2015. The evidence submitted in the Civil Action, as acknowledged by the district court, demonstrated that the vast majority of the violations at issue – at least two-thirds – occurred between May of 2011 and September 28, 2012. On that date, Alpine received from FINRA a report of examination stating that Alpine needed to provide more information in the narrative portion of the SARs and the evidence confirmed that Alpine thereafter provided more comprehensive narratives. *See S.E.C. v. Alpine Securities Corp.*, 354 F.Supp.3d 396, 418 (2018). The district court declined to consider this and substantial other evidence concerning Alpine's AML programs, including testimony from its compliance personnel, because the district court concluded that it was not relevant to the issue of strict liability relating to the SAR violations at issue.[2] Alpine will present evidence of those circumstances, including, without limitation,

[2] The district court decided the Civil Action on the basis of strict liability and determined that Alpine's evidence of its AML and SAR programs and processes, improvements thereto, efforts at good faith compliance, and the historical nature of the violations was not material to liability. *See S.E.C. v. Alpine*, 354 F.Supp.3d at 418 (refusing to consider Alpine's evidence of efforts at good faith compliance with SAR obligations and demonstrated improvements in compliance because "even if Alpine is correct that its program improved over time, this does not immunize Alpine for its past failures to include required information in any SAR narrative, or to file a SAR when it was required to do so. A broker-dealer's duty to maintain an AML program reasonably calculated to ensure compliance with the BSA is distinct from the duty to file a complete report of suspicious transactions."); *see also S.E.C. v. Alpine*, 2018 WL 3198889, at *2 (June 18, 2018) (declining to consider Alpines' evidence of its compliance program and processes because "this case is not a test of the adequacy of Alpine's AML program as a program, but instead a test of whether the SARs identified by the SEC satisfy the requirements of 31 C.F.R. § 1023.320." (emphasis in original)).

Alpine's enhancement of its legal and compliance capabilities, the guidance that it received and relied on in relation to its SAR filings, and Alpine's remediation on the critical issues pertaining to the public interest considerations before the Commission in this proceeding. *See In the Matter of Arete Ltd.*, Release No. 780, 2015 WL 1885467, * 5 (Apr. 27, 2015).

b. On the issue of whether further sanctions are necessary or in the public interest, Alpine will demonstrate that it had a robust AML and SAR program and processes, pursuant to which it reviewed each transaction for suspicious activity, and engaged in good faith efforts at compliance with the SAR requirements, in accordance with its interpretation of the SAR filing guidance that existed at the time. Alpine will demonstrate that, under the direction of its Chief Compliance Officer and in consultation with attorneys working closely with the firm, Alpine continually made good faith efforts at improving its SAR compliance and AML/BSA program, hiring new and experienced compliance personnel, implementing more robust SAR and AML training and procedures for compliance personnel, retaining in-house counsel to assist in SAR and AML compliance, retaining independent auditors to review Alpine SARs and AML programs and processes, and incorporating examination findings by FINRA and OCIE into its SAR compliance and AML programs. These good faith efforts at compliance led to the demonstrable improvements in Alpine's SARs over time detailed above. As indicated, the district court declined to consider evidence of Alpine's good faith compliance and improvements because the books and records requirements of Section 17(a) and Rule 17a-8 are strict liability provisions. *See fn. 2, supra.* The district court therefore concluded that Alpine's evidence concerning the circumstances surrounding its actions was irrelevant. *See fn. 2, supra.* Particularly where, as here, the case against Alpine was a matter of first impression, the evidence of Alpine's good faith efforts at compliance and improvements in its SAR filing and AML program and policies are mitigating

factors, not assessed by the district court, that are critical to the issue before the Commission in this proceeding.

c. The violations alleged in the complaint and found by the district court in the Civil Action did not involve fraud or scienter, but were based on strict liability. As confirmed by the Second Circuit on appeal, the district court did not conclude that "Alpine acted with 'scienter,' but expressly noted that a 'finding of scienter is *not* required to impose the tier-one penalty sought by the SEC.'" *SEC v. Alpine Securities Corp.*, 982 F.3d 68, 86 (2d Cir. 2020) (emphasis in original) (citation to district court opinion omitted).

d. Alpine has no prior history of SAR violations or AML program violations, and Alpine has had no further violations of SAR or AML program requirements.

e. Alpine acknowledges the decision of the courts in this action with respect to Alpine's violations of Section 17, and Alpine can assure the Commission that no future violations of the SAR requirements will occur. In addition to the demonstrated improvements before the SEC filed its complaint, Alpine has replaced the compliance personnel involved during the period at issue in the Civil Action with new, experienced compliance personnel, and has incorporated the SAR filing requirements identified by the district court into its SAR filings and AML programs. Alpine has successfully eliminated most of its retail accounts that led to a number of the SARs at issue, and coordinated with its introducing brokers on SAR review and filings. Alpine also remains subject to, and has complied with, the permanent injunction against future violations of Section 17(a) and Rule 17a-8, and would agree to also retain, at its expense, an independent compliance monitor, approved by the Division, to further guard against and prevent the possibility of future violations.

f. Other relevant considerations are also present, including for example, that Alpine did not profit from the violations and there was no evidence or finding of harm to investors or the marketplace from the violations.

4. To the extent sought by the Division in this proceeding, revocation or suspension of Alpine's registration, or imposition of limitations on its core business activities, such as a limitation on Alpine's ability to provide clearing services for microcap or penny stock transactions for its customers, would not be in the public interest because it is too severe and would have "adverse consequences" on innocent third parties, including its current employees (none of whom were employed at the time of the underlying violations) and current customers, as Congress recognized in enacting the Securities Law Enforcement Remedies Act of 1990, S. Rep. No. 101-337, at 11 (1990) (observing that "in practice" the remedies under Section 15(b) may be "too severe" and that "revocation of a firm's registration or temporary suspension of its operations could impose hardship on a firm's customers, public shareholders, and innocent employees," and "[w]ith the option of imposing a monetary penalty, the SEC may appropriately sanction a violation requiring a penalty more severe than censure, but without the adverse consequences of a suspension or revocation.").

5. To the extent sought by the Division in this proceeding, revocation or suspension of Alpine's registration, or imposition of limitations on its core business activities, is inconsistent with relief the Commission has ordered under Section 15(b) in prior matters involving SAR violations by broker-dealers, including in matters involving "willful" violations of Section 17(a) and Rule 17a-8. Imposition of such harsh sanctions here – what would amount to a corporate death penalty – based on conduct that largely occurred ten years ago and in light of the other surrounding circumstances to be presented at a hearing, would also be unduly harsh and punitive, rather than

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remedial. *See, e.g., Arthur Lipper Corp. v. S.E.C.*, 547 F.2d 171, 184-85 (2d Cir. 1976) (finding that revocation or a bar was "too severe" where, *inter alia,* over 8 years had passed since the conduct at issue, there was "tremendous disparity" in sanctions imposed against the regulated-party petitioner and other brokers, and there was uncertainty in the regulatory climate with respect to the violation at issue); *cf. Johnson v. S.E.C.,* 87 F.3d 484, 490-92 (D.C. Cir. 1988) (describing sanctions imposed under Section 15(b) as "punishment," rather than "remedial," where it is based on past conduct rather than "current competence or the danger [respondent] posed to the public"); *cf. Saad v. S.E.C.,* 718 F.3d 904, 912-13 (D.C. Cir. 2013) (holding that, where the Commission seeks to impose severe sanctions in the public interest and protection of investors, the "purpose of the order [must be] remedial, not penal," and the Commission must account for all "potentially mitigating factors" presented in the record to guard against arbitrary or excessive sanctions).

6. The claims and/or relief sought in the OIP are barred, in whole or in part, by the doctrines of res judicata, collateral estoppel and/or claim splitting, including, but not necessarily limited to, the extent that the Division attempts to establish the appropriateness of further relief against Alpine under Section 15(b) by reference to any alleged claim or violation that was dismissed with prejudice in the Civil Action.

7. Respondent expressly and affirmatively reserves the right to amend this Answer to add, delate and/or modify defense based upon legal theories, facts and circumstances as may hereafter arise

WHEREFORE, Respondent requests a hearing on the allegations of the OIP and on factors and considerations of the public interest, and respectfully requests that an Order be entered finding that no additional relief under Section 15(b) is warranted, and dismissing this proceeding with prejudice.

DATED this 13th day of December 2021.

PARSONS BEHLE AND LATIMER

Aaron D. Lebenta

MARANDA FRITZ, P.C.

Maranda E. Fritz

Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I, Aaron D. Lebenta, certify that this filing complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

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CERTIFICATE OF SERVICE

I, Aaron D. Lebenta, certify that on this 13th day of December 2021, I caused a copy of the foregoing **Respondent Alpine Securities Corporation's Answer and Defenses to Order Instituting Proceedings Pursuant to Section 15(B) of the Securities Exchange Act of 1934 and Notice of Hearing**, in this matter, Administrative Proceeding File No. 3-20485, to be filed through the SEC's eFAP system and served by electronic mail on:

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