BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

In the Matter of the Application of

Alpine Securities Corporation

For Review of Action Taken by

FINRA

File No. 3-20535

FINRA'S MOTION TO DISMISS ALPINE SECURITIES CORPORATION'S PETITION FOR REVIEW AND STAY ISSUANCE OF A BRIEFING SCHEDULE

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I. INTRODUCTION

Alpine Securities Corporation is the respondent in a FINRA disciplinary case pending before a FINRA Hearing Panel. After a delay in the evidentiary hearing caused by the COVID-19 pandemic, FINRA's Chief Hearing Officer issued an order (the "August 9 Order") directing the hearing to resume by videoconference on September 20, 2021, which it did. Alpine objects to continuing the hearing via videoconference and filed a petition seeking review of the August 9 Order.

The Commission should dismiss Alpine's petition because it lacks jurisdiction to review the August 9 Order at this time. Although Alpine asks the Commission to grant its petition based on Sections 19(d) or (f) of the Securities Exchange Act of 1934 (the "Exchange Act"), neither provision establishes jurisdiction. The disciplinary action against Alpine is in progress; it is not final, no violations have been found, and no sanctions have been imposed. Alpine nevertheless asserts that the August 9 Order is an action that denies or limits its access to a service offered by

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FINRA. The Commission should reject Alpine's obvious attempt to repackage a ruling in a disciplinary case as a denial of access to services. Procedural rulings—especially rulings to which a respondent objects—are potential issues for an appeal. Under FINRA's disciplinary process, a respondent can appeal an adverse Hearing Panel decision to FINRA's National Adjudicatory Council (the "NAC") and then to the Commission. Commission precedent establishes that there is no jurisdiction for a respondent to file a motion for interlocutory review of a ruling by a Hearing Officer or the Chief Hearing Officer. Because the Commission has no jurisdiction to review the August 9 Order, the Commission should dismiss Alpine's petition.[1]

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Alpine Moves to Adjourn Its In-Person Disciplinary Proceeding

Alpine has been a FINRA member since 1984.[2] (R. at 108.) In August 2019, FINRA's Department of Enforcement ("Enforcement") filed a disciplinary complaint against Alpine, alleging that Alpine charged customers excessive fees. (R. at 1-38.) An in-person hearing was scheduled to begin on February 18, 2020, and continue through February 28, 2020, in Salt Lake City, Utah. (R. at 71.) The hearing proceeded through February 22, 2020, when Alpine moved to temporarily adjourn it due to "an urgent personal matter" affecting Alpine's counsel. (*Id.*) Before the adjournment, testimony was taken from eight witnesses, seven of whom testified in

[1] Pursuant to Commission Rule of Practice 161, FINRA also requests that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive argument that Alpine's petition should be dismissed on jurisdictional grounds before it reaches the underlying substance of this appeal.

[2] "R. at __" refers to the page number in the certified record filed by FINRA on October 1, 2021.

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person. Seven witnesses were presented by Enforcement and one by Alpine. (*Id.*) Four of Enforcement's witnesses, however, also appeared on Alpine's witness list, and Alpine's counsel conducted both direct and cross examinations of these witnesses. (*Id.*)

The hearing was scheduled to resume in late April 2020. (R. at 39-40.) But the COVID-19 pandemic necessitated several additional continuances that delayed the hearing for several more months.[3] (R. at 43-51.) The hearing subsequently was scheduled to resume in person on November 30, 2020, in the Washington, D.C. metropolitan area. (R. at 55-56.)

B. FINRA Temporarily Amends its Rules to Allow Disciplinary Hearings to Proceed by Videoconference

In August 2020, before Alpine's hearing had resumed, FINRA filed a proposed temporary rule change in response to the COVID-19 pandemic.[4] Among other things, the temporary rule change amended FINRA Rule 9261 to allow the Chief Hearing Officer or Deputy Chief Hearing Officer to order all or part of a disciplinary hearing to be conducted by

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[3] In July and August 2020, the parties agreed to proceed with the testimony of three witnesses by videoconference. (R. at 49-54, 63-65.) The Hearing Officer also granted Enforcement's motion to have two other witnesses appear by telephone or videoconference. (R. at 57-61.)

[4] *Proposed Rule Change to Temporarily Amend FINRA Rules 1015, 9261, 9524 and 9830 to Permit OHO and NAC Hearings Under Those Rules to Be Conducted by Video Conference - Text of the Proposed Rule Change*, SR-FINRA-2020-027 (August 31, 2020). The effective period of the temporary rule change was extended multiple time. *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027*, Exchange Act Release No. 34-90619, 85 Fed. Reg. 81250 (Dec. 9, 2020); *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027*, Exchange Act Release No. 34-91495, 86 Fed. Reg. 19306 (Apr. 7, 2021); *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments set Forth in SR–FINRA–2020–015 and SR–FINRA–2020–027*, Exchange Act Release No. 34-92685, 86 Fed Reg. 47169 (Aug. 17, 2021).

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videoconference (the "Videoconference Amendment"). The Videoconference Amendment was immediately effective pursuant to Exchange Act Section 19(b)(3)(A).

C. The Chief Hearing Officer Orders Alpine's Hearing to Resume by Videoconference and Alpine Asks a Federal Court to Enjoin FINRA From Conducting the Hearing by Videoconference

On November 2, 2020, the Chief Hearing Officer ordered that Alpine's hearing resume by videoconference beginning on November 30, 2020. (R. at 67-69.)

About a week later, Alpine filed a complaint against FINRA in the United States District Court for the District of Utah seeking to enjoin FINRA from resuming the hearing by videoconference. *See Alpine Sec. Corp. v. Fin. Indus. Regul. Auth.*, No. 2:20-cv-00794-DBB-DBP, 2021 U.S. Dist. LEXIS 170482 (D. Utah Sept. 7, 2021). Alpine's complaint sought a declaratory judgement that FINRA had breached its agreement with Alpine and that the Videoconference Amendment was invalid. Alpine alleged that FINRA had violated its due process rights and sought permanent and temporary injunctive relief. FINRA moved to dismiss Alpine's complaint on several grounds, including that the court lacked subject matter jurisdiction.

On November 16, 2020, after hearing objections from the parties, the Hearing Officer assigned to the case postponed the November 30, 2020, resumption of the hearing and ordered the parties to submit briefing on whether the Chief Hearing Officer should reconsider her November 2, 2020, order that the hearing proceed by videoconference. (R. at 71-74.)

Four months later, in March 2021, the Chief Hearing Officer issued an order declining to reconsider her earlier order and directing the parties to agree to new hearing dates in August or September 2021. (R. at 75-77.) The Chief Hearing Officer explained that she would assess the feasibility of proceeding with an in-person hearing six weeks before the hearing was scheduled

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to resume. If, after considering the guidance of FINRA's health and safety consultant in conjunction with COVID-19 data and guidance issued by public health officials, she determined that the hearing could proceed in person, it would be held in the Washington, D.C. metropolitan area. (R. at 76.) If, however, the feasibility and safety of proceeding in person was uncertain six weeks prior to the scheduled hearing, the hearing would proceed by videoconference. (*Id.*) The parties subsequently agreed to hearing dates in September 2021. (R. at 79-80.)

D. The Chief Hearing Officer Issues the August 9 Order Confirming that Alpine's Disciplinary Proceeding Will Resume by Videoconference

In August 2021, while Alpine's complaint for injunctive relief was still pending before the federal court, the Chief Hearing Officer entered the August 9 Order confirming that the hearing would proceed by videoconference starting on September 20, 2021. (R. at 81-83.) In the order, the Chief Hearing Officer explained that she had "determined that the feasibility and safety of a traditional in-person hearing is uncertain," and that "FINRA, in conjunction with its outside health and safety consultant, ha[d] determined that the Washington, D.C. metropolitan area does not meet the criteria for holding an in-person hearing." *Id.*

E. The Federal Court Dismisses Alpine's Complaint for Injunctive Relief

On September 7, 2021, the federal court in Utah granted FINRA's motion to dismiss Alpine's complaint. *See Alpine Sec. Corp.*, 2021 U.S. Dist. LEXIS 170482. The court found that it lacked subject matter jurisdiction because the Exchange Act provided a statutory scheme that precludes a separate action in district court. *Id.* at *6, 14. As the court noted, the Exchange Act provides a process for the orderly review of self-regulatory organization ("SRO") actions and if after a remote disciplinary hearing Alpine "receives an unsatisfactory result," Alpine would be entitled to "multiple layers of review" pursuant to that exclusive appellate process. *Id.* at *14.

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F. Alpine Files Its Petition with the Commission

Two days after the court dismissed Alpine's complaint, Alpine filed its "combined petition" with the Commission seeking two distinct types of relief. First, Alpine, seeks review under Exchange Act Sections 19(d) and (f) of the Chief Hearing Officer's August 9 Order. Second, Alpine asks the Commission to exercise its authority under Exchange Act Sections 19(c) and 19(b)(3)(C) to "repeal or suspend" the Videoconference Amendment. Alpine describes its filing as a "combined petition."

G. FINRA's Requested Relief

On September 17, 2021, the Commission's Office of the Secretary provided an acknowledgment letter which stated that Alpine was "seeking review by the Commission under Section 19(d) and (f) of the Securities Exchange Act of 1934 of an order entered by FINRA's Chief Hearing Officer." (R. at 103.) It is this aspect of Alpine's petition for review that FINRA moves to dismiss. FINRA is not requesting in this motion any action with respect to Alpine's petition for the Commission to exercise its authority to "abrogate, add to, and delete from" the rules of an SRO. *See* Exchange Act Section 19(c), 15 U.S.C. § 78s. In the event that the Commission publishes a notice of proposed amendments to FINRA's rules, FINRA will submit a written comment on the proposal. FINRA seeks here an order from the Commission that severs Alpine's Section 19(d) and (f) petition from its Section 19(c) petition and dismisses the Rule 19(d) and (f) petition.

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III. ARGUMENT

The Commission lacks jurisdiction to review Alpine's petition. An action by an SRO such as FINRA is not reviewable merely because it adversely affects an applicant. *See Joseph Dillon & Co.*, 54 S.E.C. 960, 964 (2000). Rather, there must be a statutory basis for the Commission's review. *See WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 SEC LEXIS 3699, at *10 (Sept. 9, 2015). Exchange Act Section 19(d) defines the Commission's jurisdiction to review FINRA's action. *See* 15 U.S.C. § 78s(d). Under Section 19(d)(2), the Commission may review a FINRA action that (1) imposes any final disciplinary sanction on any member or person associated with a member, (2) denies membership or participation to any applicant, (3) prohibits or limits any person in respect to services offered by the SRO, or (4) bars any person from being associated with a member. 15 U.S.C. § 78s(d)(1); *see Joseph Dillon & Co.*, 54 S.E.C. at 962 (finding the Commission lacked jurisdiction over the appeal of an NASD action where the action did not fall within any of the four jurisdictional bases of Section 19(d)). Alpine's petition does not fall within any of these bases for jurisdiction and, accordingly, the Commission should dismiss it.

A. The Chief Hearing Officer's Order that the Hearing Proceed by Videoconference Is Not a Final Disciplinary Sanction

The Commission does not have jurisdiction because Alpine's petition challenges a FINRA action that does not impose a final disciplinary sanction.[5] The Commission has held that Section 19(d) "allows appeals only where disciplinary actions result in imposition of final disciplinary sanctions." *Russell A. Simpson*, 53 S.E.C. 1042, 1046-47 (1998). A disciplinary action "is an action that responds to an alleged violation of an SRO rule or Commission statute

[5] Alpine's petition makes no claim that the August 9 Order denies Alpine membership or participation or bars any person from being associated with Alpine.

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or rule, or an action in which a punishment is sought or intended." *Sky Capital LLC*, Exchange Act Release No. 55828, 2007 SEC LEXIS 1179, at *11 (May 30, 2007); *see also Eric David Wagner*, Exchange Act Release No. 79008, 2016 SEC LEXIS 3770, at *12 (Sept. 30, 2016) (finding that the Commission lacked jurisdiction because in the challenged matter FINRA "did not invoke its disciplinary procedures, did not determine that [the respondent] had violated a statute or rule, and did not impose a final disciplinary sanction on him"). Although Alpine is a respondent in a FINRA disciplinary proceeding, that matter is on-going, and the Hearing Panel has not made any findings of violation by Alpine; nor has it imposed any disciplinary sanction. Accordingly, the Commission does not have jurisdiction under Exchange Act Section 19(d).

1. The Commission Does Not Have Jurisdiction to Hear a Motion for Interlocutory Review Before a Final Action by FINRA

The August 9 Order is not a final FINRA action, and the Commission previously has rejected similar attempts to obtain interlocutory review before a final decision is rendered in a disciplinary proceeding. In *Anthony Johnson*, Johnson was a respondent in a pending NASD disciplinary proceeding. *See* 58 S.E.C. 756 (2005). Before the hearing was held, the Hearing Panel disqualified Johnson's attorney, finding that the attorney had a conflict of interest. *Id.* at 756-57. Johnson appealed the Hearing Panel's disqualification to the NAC, which remanded the matter to the Hearing Panel for further consideration of the disqualification motion. *Id.* at 757. Johnson then attempted to appeal the NAC's remand to the Commission. *Id.* at 756. The Commission found that it did not have jurisdiction to hear Johnson's appeal because it was "evident that the [appeal] does not fall within any of the categories identified in Section 19(d)."

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Id. at 757. The Commission explained that "[i]t would be premature and inappropriate for us to intervene in this proceeding before NASD has rendered a final decision."[6] *Id.*

Likewise, in *Florence Sarah Pollard*, the Commission rejected a premature appeal. *See* Exchange Act Release No. 55978, 2007 SEC LEXIS 1430 (June 28, 2007). Pollard was the respondent in an NASD disciplinary proceeding alleging certain NASD rule violations. *Id.* at *1. The Hearing Panel issued a decision in Pollard's favor. On appeal, the NAC reversed the Hearing Panel and found that Pollard had committed the alleged violations. The NAC remanded the case to the Hearing Panel for consideration of sanctions. *Id.* at *1. The Hearing Panel subsequently issued a decision imposing sanctions on Pollard. *Id.* at *2. Pollard appealed to the Commission, arguing that she was not appealing the sanctions on remand, which she had not appealed to the NAC, but that she was appealing the NAC's liability findings in its decision remanding the case. *Id.* at *4. The Commission dismissed Pollard's appeal, stating that she "misconstrue[d] the scope" of its jurisdiction, which is limited to appeals of final disciplinary sanctions. *Id.* at *5. The Commission found that the NAC's remand decision was not reviewable because it "did not impose a final disciplinary sanction but merely made findings that Pollard had violated NASD rules." *Id.* The Commission clarified that Pollard must appeal the Hearing Panel's decision imposing sanctions to the NAC before any appeal to the Commission, and in that appeal to the Commission Pollard could "raise[] any issue raised in the course of the proceeding, including her challenge to" the NAC's liability findings. *Id.* at *5, 7.

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[6] The Commission's disfavor of interlocutory appeals is evident in the rules that apply to its own administrative proceedings. Commission Rule of Practice 400 states that petitions for interlocutory review by parties are "disfavored" and will be granted only "in extraordinary circumstances." 17 C.F.R. § 201.400. The rule requires a motion for interlocutory review to be certified by the hearing officer and limits such certification to specific narrow circumstances. *Id.*

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The Commission's review here would be premature and not within the Commission's jurisdiction. Just as in *Johnson* and *Pollard*, FINRA has made no findings of violations by Alpine, nor has it imposed any final disciplinary sanction on the firm. If the Hearing Panel issues a decision imposing a final disciplinary sanction, Alpine may appeal those findings to the NAC and file briefs. After FINRA issues its final decision, in the event FINRA imposes a sanction, Alpine can appeal to the Commission under Rule of Practice 420. *See* 17 C.F.R. § 201.420. In its appeals to the NAC and the Commission, Alpine may raise its objection to the Chief Hearing Officer's order to conduct the hearing by videoconference. Until such time, however, there is no FINRA final disciplinary action that is ripe for Commission review.

2. Commission Review of the August 9 Order Would Undermine an Orderly Appellate Process Under FINRA and Commission Rules

The Commission's decisions finding that an applicant failed to exhaust administrative remedies are instructive here. The Commission has long held that "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review." *Royal Sec. Corp.*, 36 S.E.C. 275, 277 (May 20, 1955). If FINRA members were permitted to appeal to the Commission without first exhausting FINRA's remedies, "the self-regulatory function of [FINRA] could be compromised." *Marcos A. Santana*, Exchange Act Release No. 74138, 2015 SEC LEXIS 312, at *8-9 (Jan. 26, 2015) *quoting MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621-22 (2d Cir. 2004). Requiring a respondent to exhaust FINRA's remedies "promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review." *Id.* at *9; *see also WD Clearing, LLC*, 2015 SEC LEXIS 3699, at *20 (stating that requiring exhaustion of FINRA remedies "helps ensure that there is an actual dispute and a fully-developed record for us to

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review"). Moreover, following the proper appellate procedures "also provides [FINRA] with the opportunity to correct [its] own errors prior to review by the Commission." S*antana*, 2015 SEC LEXIS 312, at *9; *see also Pollard*, 2007 SEC LEXIS 1430, at *7-8 (explaining that "an essential goal of an orderly appeal process [is] allowing the lower body to articulate its rationale or correct mistakes").

In *Sky Capital*, the applicant sought to appeal, among other things, the continuation of several examinations of the firm by the NASD. 2007 SEC LEXIS 1179, at *16. The Commission dismissed the appeal, explaining that "NASD actions generally may not be appealed to the Commission until they have been reviewed by the NAC." *Id.* The Commission explained that if the examination resulted in a disciplinary proceeding, the firm would have the opportunity for a hearing before a hearing panel and review by the NAC, and that the firm "cannot now deprive NASD of its review function by filing a premature appeal to us." *Id.*

Dismissal of Alpine's petition is squarely in accord with these principles. There is no final FINRA decision imposing disciplinary sanctions on Alpine and, accordingly, no certainty that there will be an actual dispute for the Commission to review. Moreover, if the Hearing Panel does issue a decision imposing sanctions on Alpine, Alpine should first appeal that decision, along with its objection to proceeding with the hearing by videoconference, to the NAC, thereby allowing FINRA the opportunity to further develop the record, including a discussion of the issues raised, and correct any error by the Hearing Panel.

B. FINRA Has Not Denied or Limited Alpine's Access to any Service

The Chief Hearing Officer's August 9 Order is a procedural ruling in an on-going disciplinary action. It is not a denial or limitation of Alpine's access to a service offered by FINRA.

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Alpine attempts to avoid the established precedent discussed in Section A, by asserting that the Commission has jurisdiction to consider its petition because, it claims, FINRA has limited Alpine's access to a service offered by FINRA. (R. at 86.) According to Alpine, the disciplinary process is a "service," and by requiring Alpine to resume its hearing by videoconference, FINRA has limited Alpine's access to it. (R. at 86.). To establish jurisdiction on this basis, Alpine must show (1) that the disciplinary process is a "service" that is central to the function of FINRA and (2) FINRA has limited Alpine's access to that service. Alpine has shown neither.

1. FINRA's Disciplinary Process Is Not a "Service"

While the disciplinary process is a necessary aspect of FINRA fulfilling its function as an SRO, the Commission already has determined that it is not a "service" for purposes of Section 19(d). In *Russell A. Simpson*, the Commission held that it lacked jurisdiction under Section 19(d) to review NASD's dismissal of a customer's disciplinary proceeding against a member firm as a denial of or limitation on the customer's access to a service provided by NASD. 53 S.E.C. 1042.[7] The customer initiated and prosecuted the disciplinary complaint against the firm under NASD rules in effect at that time.[8] After NASD found the customer's allegations unfounded and dismissed the complaint, the customer sought the Commission's review of

[7] *See also Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at *10-11 (June 3, 2019) (finding that FINRA's refusal to initiate a disciplinary proceeding against a member firm in response to a customer's complaint was not a denial or limitation on the customer's access to a service offered by FINRA).

[8] At the time, NASD Rules of Fair Practice provided that any person feeling aggrieved by an act of an NASD member or associated person that he or she believed to be in violation of those rules could file a complaint and that any such complaint would be handled in accordance with the NASD Code of Procedure.

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NASD's dismissal. The Commission held that it lacked jurisdiction to review the dismissal as a denial or limitation on access to services because the disciplinary process was not a "service" offered by the NASD for purposes of Section 19(d). *Id.* at 1046. Specifically, the Commission stated that it "d[id] not view [NASD's] permitting any person to file a complaint against an NASD member or associated person and conducting any resulting [disciplinary] proceeding as offering a 'service' for purposes of Section 19(d)." *Id.*

Because the NASD process at issue in *Simpson* was not a "service," then FINRA's current disciplinary process is certainly not either. Unlike NASD's rules at the time of *Simpson*, nobody but FINRA can "access" the disciplinary process by filing a complaint. Neither FINRA members nor the public can initiate the disciplinary process by filing a complaint. *See* FINRA Rule 9211. Once Enforcement files a complaint against a member, the matter proceeds through the disciplinary process to a final action with or without the respondent's participation. *See* FINRA Rule 9215.[9]

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[9] FINRA's disciplinary process is inherently different from the services at issue in cases in which the Commission found that an SRO had denied or limited an applicant's access to a service. In *William J. Higgins*, for example, the Commission held that the SRO, a stock exchange, denied the applicant's access to a service by refusing to allow a member to speak by telephone from the exchange floor with a non-member. 48 S.E.C. 713 (1987). The Commission reasoned that "[t]he operation of a trading floor and access to that floor is the principal service offered by a national securities exchange to its members, and by its members to investors." *Id.* at 718. Similarly, in *Tower Trading, LP*, the Commission held that the SRO, an options exchange, denied the applicant's access to a service by terminating the applicant's appointment as a Designated Primary Market-Maker ("DPM"). 56 S.E.C. 270 (2003). The Commission found that the exchange's decision "effectively required [the applicant] 'to cease doing business . . . in specified ways . . . with respect to . . . particular securit[ies],'" and that the applicant could no longer obtain "the substantial benefit that flows from serving as a DPM[.]" *Id.* at 80. And in *Consolidated Arbitration Applications*, the Commission held that FINRA denied the applicants' access to a service by declining to accept for arbitration in its forum the applicants' claims for expungement of adverse arbitration awards. Exchange Act Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020). In each of these cases, the SRO denied or limited the applicant's access to a service the SRO offered for the benefit of its members. By contrast, no FINRA

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Indeed, characterizing the disciplinary process as a "service" would eviscerate Section 19(d)'s limits on the Commission's jurisdiction. As discussed in Section A, the Commission repeatedly has held that it lacks jurisdiction under Section 19(d) to review an SRO's non-final action in a disciplinary proceeding. Under Alpine's theory here, however, the Commission's jurisdiction under Section 19(d) to review SRO disciplinary proceedings would no longer be limited to reviewing disciplinary actions imposing a final disciplinary sanction. Instead, a respondent in an SRO disciplinary proceeding could immediately appeal to the Commission any adverse interlocutory ruling by characterizing it as a limitation on access to services.

Alpine's argument that the Commission has jurisdiction distorts the Exchange Act's four-part framework for appealable SRO actions. To treat a ruling in an on-going disciplinary proceeding as a denial of access to a FINRA service would erase from Section 19(d) the important requirement that an SRO disciplinary proceeding is a final action before it can serve as the basis for an appeal to the Commission. The Commission should consider, as courts do when they interpret a statute, "the whole statutory text," and analyze its individual terms for relationships between one another that create and affect meaning. *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006); s*ee Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 643 (2006) ("[W]e do not read statutes in little bites."). As a result, "[t]he definition[s] of words in isolation . . . [are] not necessarily controlling in statutory construction." *Dolan*, 546 U.S. at 486. Alpine's contention that the disciplinary process is a "service" for jurisdictional purposes dismantles the

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member seeks to "access" FINRA's disciplinary process by having Enforcement file a complaint against it. Indeed, members expend significant resources on compliance in the hope of avoiding the disciplinary process.

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framework of Section 19(d) and is inconsistent with Commission precedent. The Commission should reject it.

2. Even if FINRA's Disciplinary Process Were a Service, FINRA Has Not Limited Alpine's Access to It

Even if the disciplinary process were a "service" for purposes of Section 19(d), FINRA has not limited Alpine's access to it. Access to FINRA's disciplinary process is governed by the FINRA Code of Procedure. Under the Code of Procedure, once Enforcement initiates the disciplinary process by filing a complaint, a hearing "shall be granted" upon the respondent's request. FINRA Rule 9221(a). Also under the Code of Procedure, as amended by the Videoconference Amendment, the hearing may be held in person or by videoconference, depending on "the current public health risks[.]" FINRA Rule 9261(b). In accordance with the Code of Procedure, the Chief Hearing Officer determined that, due to public health risks posed by an in-person hearing, Alpine's hearing would resume by videoconference rather than an in-person hearing. The August 9 Order did not limit Alpine's access to the disciplinary process. Indeed, Alpine participated in the disciplinary process by videoconference and the hearing is near reaching a conclusion. FINRA therefore did not limit Alpine's access to the disciplinary process.

Despite Alpine's assertion that FINRA is limiting its access to the disciplinary process, Alpine's actual grievance is with the manner in which FINRA is providing the disciplinary process. For various reasons, Alpine contends that FINRA's decision to provide its disciplinary hearing by videoconference is not fair. (R. at 89-91.) As discussed in Section A Part 2, if the Hearing Panel issues an adverse decision, Alpine is free to challenge the fairness of its hearing before the NAC and, if necessary, the Commission. But Alpine's assertion that conducting its

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hearing by videoconference is not fair does not establish any limitation on its access to the disciplinary process.

Because FINRA has not denied Alpine access to a service that FINRA provides, the Commission does not have jurisdiction to consider Alpine's petition.

IV. CONCLUSION

The Commission should dismiss this appeal because, under Section 19(d) of the Exchange Act, the Commission lacks jurisdiction to hear it. The Chief Hearing Officer's August 9 Order directing the hearing to proceed by videoconference is not a final FINRA action imposing a disciplinary proceeding and interlocutory appeals of such orders are not permitted. Moreover, the August 9 Order does not deny Alpine access to any service provided by FINRA. Accordingly, the Commission should dismiss Alpine's petition.

Respectfully submitted,

/s/Celia Passaro

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CERTIFICATE OF COMPLIANCE

I, Celia Passaro, certify that this motion 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).

/s/*Celia Passaro*

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CERTIFICATE OF SERVICE

I, Celia Passaro, certify that on this 1st day of October 2021, I caused a copy of the foregoing FINRA's Motion to Dismiss Alpine Securities Corporation's Petition for Review and Stay Issuance of a Briefing Schedule, in the matter of the Application for Review of Alpine Securities Corp., Administrative Proceeding File No. 3-20535, to be filed through the SEC's eFAP system.

And I further certify that, on this date, I caused copy of FINRA's Motion to Dismiss Alpine Securities Corporation's Petition for Review and Stay Issuance of a Briefing Schedule in the foregoing matter to be served by electronic service on:

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