UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Application of Alpine Securities Corporation (CRD No. 14952), For Review of Action Taken By FINANCIAL INDUSTRY REGULATORY AUTHORITY	File No. 3-20818

ALPINE SECURITIES CORP.'S OPPOSITION TO FINRA MOTION FOR DISMISSAL OF APPLICATION FOR REVIEW AND FURTHER MOTION IN SUPPORT OF THE STAY

On April 8, 2022, Alpine Securities Corp. ("Alpine") filed an Application for Review and an Emergency Application for a Stay of a FINRA decision issued April 7, 2022 in *Department of Enforcement v. Alpine Securities Corp*., Expedited Proceeding No. FPI210010, Star No. 20210729963, ("Decision"). In that Decision, a FINRA Hearing Panel interpreted a provision of the Net Capital Rules, deciding that, notwithstanding the plain language of Rule 15c3-1(c)(2)(i)(F), it does not permit Alpine to exclude from its net capital calculation a liability that has been assumed by a third party with adequate resources independent of the broker dealer to pay the liability. The Hearing Panel further ordered that Alpine was required immediately to file a revised audit report in accordance with FINRA's interpretation of that rule, and that Alpine would be suspended until it completed that filing.

Alpine immediately filed an Emergency Application for a Stay of that Decision and filed its Application for Review, based on the ability to obtain review of FINRA action that "imposes

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a final disciplinary sanction" or "denies membership or participation to any applicant," or "prohibits or limits access to services offered by FINRA or a FINRA member." 15 U.S.C. § 78s(d)(1). In its Application for Review, Alpine confirmed that it was seeking the Commission's consideration of FINRA's interpretation of the Net Capital rule. Specifically, Alpine is seeking review of "each and every aspect of the Decision including the conclusions that Alpine failed to provide a materially accurate audit report under FINRA Rule 4140, that Alpine failed accurately to calculate its net capital, that Rule 15c3-1(c)(2)(i)(F) does not permit Alpine to exclude from its net capital calculation a liability that has been assumed by a third party with adequate resources independent of the broker dealer to pay the liability, and that Alpine's use of an add back of the amount of the liability was not the proper means by which to effectuate the terms of that Rule."

Although Alpine filed the Emergency Application for a stay immediately upon issuance of the Decision, it has not been able – even to this point – to obtain a ruling from the Commission on that motion. Given the fact that no automatic stay exists, that even the filing of the motion for a stay did not operate as a stay, and that it was not able to obtain a ruling on its motion for a stay, all avenues of meaningful and proper legal redress were closed to Alpine; it had file revised financial as directed by the Decision to avoid being forced out of business. Even now, weeks later, the Commission has failed to consider or decide Alpine's motion for a stay and the firm has been able to operate only because it acceded to the directive in the Decision.

FINRA now insists that Alpine's motion and appeal should be dismissed because "there is no suspension of other disciplinary sanction ***currently*** in place." FINRA Motion at 1 (emphasis added). ***In other words, according to FINRA, even though the Decision obviously falls within Section 19(d) in that it "impose[d] a final disciplinary sanction," a respondent has a right to appeal that decision only if one is willing and able to be forced out of business.*** In

the financial realm, it would be tantamount to stating that one can appeal a death penalty only if one has already allowed him or herself to be executed.[1] And FINRA can thereby completely insulate itself from appeal by imposing a sanction that is so harsh, so devastating, that a firm must either capitulate or die. And that is the case, FINRA maintains, even where the firm has immediately sought a stay of the decision but the SEC has declined to address the application.

That contention is perverse and contrary to the most fundamental principles of due process and rational adjudicative process. In the face of an adverse decision by a FINRA Hearing Panel, a firm should not be deprived of an ability to appeal only where it remains shut down by the underlying Hearing Panel ruling, particularly where its effort to obtain an emergency stay are not even considered by the SEC.

Nor is FINRA's heads-we-win tails-you-close[2] contention consistent with any fair reading of Section 19(d) or the basic principles applicable to an appeal from a FINRA Hearing Panel decision.[3] Only a tortured reading of Section 19(d) would preclude an appeal where the Decision "imposed a final disciplinary sanction" but the firm, in order to survive, took action to avoid its closure while it pursued its motion for a stay and an appeal. FINRA's strained contention – that an appeal exists only if there is a "live" or "current" sanction – does not comport with the basic due process right to have a Hearing Panel Decision reviewed which even FINRA generally acknowledges. It deprives the Respondent of ***both*** property ***and*** due process of law, all in one fell swoop.

[1] The FINRA suspension is not subject to an automatic stay, and so takes effect immediately and proceeds to cause the destruction of the business.

[2] That variation on the phrase is intended and apt in relation to FINRA.

[3] In support of its position, FINRA cites an unrelated decision pertaining to Alpine in which Alpine had acceded to the directive contained in the underlying decision, although still challenging the basis for that decision. Here, Alpine has taken steps directed by the Decision in order to resume its operations but its application for a stay of the Decision is still pending and its ability to then revise its financials, if necessary to pursue an appeal, still exists.

FINRA's claim that there is no live controversy here is also inaccurate. Alpine's motion for a stay remains *sub judice* although FINRA also seeks "a stay of the issuance of a briefing schedule" in relation to the motion for a stay. *If the Commission agrees with FINRA*, that a revised financial statement deprives Alpine of the ability to appeal from FINRA's interpretation of the net capital rule, then the Commission certainly should agree to a stay of that Decision pending consideration of the appeal so that the proper interpretation of an SEC rule can be reviewed by the Commission. In that event, and if necessary for purposes of the appeal, Alpine could again revise its financials to apply the net capital rule as written. Of course, none of that is or should be necessary since the Decision presents a proper and substantial basis for the Commission's jurisdiction over this appeal from FINRA's interpretation of the applicable net capital provision.

CONCLUSION

For the foregoing reasons, we ask that the Commission deny FINRA's motion and proceed with a briefing schedule associated with Alpine's motion for a stay.

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CERTIFICATE OF SERVICE

I, Maranda Fritz, certify that on this 2nd day of May 2022, I caused a copy of the foregoing OPPOSITION TO FINRA MOTION FOR DISMISSAL OF APPLICATION FOR REVIEW AND FURTHER MOTION IN SUPPORT OF THE STAY to be filed through the Commission's electronic filing system and served by email, effecting service on:

Vanessa A. Countryman
Acting Secretary
Securities and Exchange Commission
Secretarys-Office@sec.gov

On this date, I also caused a copy of the opposition to be served by email on:

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