

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of

Alpine Securities Corporation

For Review of Action Taken by

FINRA

File No. 3-20818

**FINRA'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS ALPINE  
SECURITIES CORPORATION'S APPLICATION FOR REVIEW AND TO STAY  
ISSUANCE OF A BRIEFING SCHEDULE**

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**I. INTRODUCTION**

Alpine Securities Corporation (“Alpine”) filed an application on April 8, 2022, requesting that the Commission review an April 7, 2022 decision that was issued by a FINRA Expedited Hearing Panel (“Hearing Panel”) in a FINRA Rule 9552 proceeding. The Hearing Panel’s decision suspended Alpine from FINRA membership until the firm filed a corrected audited report with FINRA under FINRA Rule 4140. It is undisputed, however, that FINRA terminated Alpine’s suspension after Alpine provided to FINRA an audited report accurately calculating the firm’s net capital. Accordingly, there is no live disciplinary sanction in this case, and the Commission should grant FINRA’s April 22, 2022 motion to dismiss Alpine’s application for review.

Alpine’s response to FINRA’s motion (“App. Br.”) is without merit. The firm fails to establish any statutory basis for the Commission to exercise jurisdiction to review the Hearing

Panel's decision. Because there is no live disciplinary sanction in this case, and Alpine has established no other basis for the Commission to use its review authority under Section 19(d) of the Securities Exchange Act of 1934 ("Exchange Act"), the Commission should dismiss Alpine's appeal.

## **II. ARGUMENT**

The Commission lacks jurisdiction to consider Alpine's application for review because there is no statutory basis for the Commission to review the Hearing Panel's decision under Section 19(d) of the Exchange Act. *See Allen Douglas Sec., Inc.*, 57 S.E.C. 950, 954 (2004) ("Our authority to review an action of a self-regulatory organization . . . is governed by Section 19 of the Exchange Act."). There is no live disciplinary sanction in this case, and the firm has not established any alternative statutory basis for the Commission to exercise its review authority. *See* 15 U.S.C. § 78s(d)(1). Alpine's attempt to manufacture such a basis by evoking an emergency stay motion that it filed earlier in these proceedings is meritless. The firm's motion requesting a stay of the suspension that FINRA has terminated is moot, and that motion does not provide the Commission with any independent statutory authority to review the Hearing Panel's decision. Accordingly, the Commission should dismiss Alpine's appeal. *See Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 SEC LEXIS 4008, at \*12 (Aug. 26, 2020) (dismissing the application for review for lack of jurisdiction because there was no live disciplinary sanction and no other basis for Commission jurisdiction).

### **A. Alpine's Appeal Should Be Dismissed Because There Is No Disciplinary Sanction for the Commission to Review**

A disciplinary sanction must be "live" at the time of Commission review for the Commission to exercise jurisdiction under Section 19(d) of the Exchange Act. *Id.* at \*5; *Dakota*

*Sec. Int'l*, Exchange Act Release No. 85328, 2019 SEC LEXIS 288, at \*7-8 (Mar. 1, 2019); *Sharemaster*, Exchange Act Release No. 70290, 2013 SEC LEXIS 2597, at \*10 (Aug. 29, 2013), *aff'd in relevant part*, 847 F.3d 1059, 1068 (9th Cir. 2017). Although Alpine deems this well-settled interpretation of the Exchange Act “perverse” or “tortured,” App. Br. at 3, it is based on “common-sense” observations and “reasonable policy considerations.” *Sharemaster v. SEC*, 847 F.3d 1059, 1068 (9th Cir. 2017). These considerations include the language of the Exchange Act, which contemplates that there be a sanction in place for the Commission to act upon, the fact that conditional suspensions, like the one the Hearing Panel imposed on Alpine, operate like civil contempt sanctions that are not subject to appellate review when lifted, and the lack of any statutory language authorizing the Commission to issue advisory opinions. *See Sharemaster*, 2013 SEC LEXIS 2597, at \*13-18. As the United States Court of Appeals for the Ninth Circuit explained, “if an SRO such as FINRA imposed a disciplinary sanction but then fully retracted the sanction by, for example, setting aside a suspension and returning any fine levied, it would make little sense for the Commission to proceed with review.” *Sharemaster*, 847 F.3d at 1068.

Alpine does not—and cannot—contend that there is a live disciplinary sanction for the Commission to review in this case. The Commission therefore must dismiss Alpine’s appeal. *See Alpine*, 2020 SEC LEXIS 4008, at \*6-7 (“[W]e lack jurisdiction because their suspensions were lifted as a result.”); *Dakota*, 2019 SEC LEXIS 288, at \*9 (“[T]here is no ‘live’ disciplinary sanction for us to review.”); *Sharemaster*, 2013 SEC LEXIS 2597, at \*18 (“[W]e conclude that the Commission lacks jurisdiction to review the now-lifted coercive sanction imposed in this case.”). Alpine’s wish to litigate the merits of the Hearing Panel’s decision, App. Br. at 2, does not alter or diminish the certainty of this conclusion. Any arguments Alpine may submit to the Commission concerning the details of the Hearing Panel’s decision do not create an independent

basis for Commission review. *See Alpine*, 2020 SEC LEXIS 4008, at \*7-8 & n. 19 (collecting cases). Instead, Alpine must first establish that the Commission possesses statutory authority to review its application for review under Section 19(d) of the Exchange Act before the Commission can reach the merits of the Hearing Panel’s decision. *See Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, at \*21 (June 3, 2019) (“But Cristo must first establish that we have jurisdiction over his application for review before we can afford him any relief.”). Alpine yielded the opportunity for it to pursue any challenges to the Hearing Panel’s decision when it submitted a corrected audited report and FINRA, at Alpine’s request, terminated the firm’s suspension.<sup>1</sup> *See Alpine*, 2020 SEC LEXIS 4008, at \*8 (“Applicants surrendered that opportunity when they unwound the changes in ownership that gave rise to their suspensions and FINRA lifted the suspensions.”).

**B. Alpine Has Established No Other Statutory Basis for Commission Jurisdiction Under Exchange Act Section 19(d)**

Alpine suggests, without evidence or argument, that the Commission possesses jurisdiction to review the Hearing Panel’s decision because it “denies membership or participation to an applicant” or “prohibits or limits access to services offered by FINRA or a

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<sup>1</sup> Alpine’s view that this was the firm’s only choice, App. Br. at 2, has no bearing on a decision concerning FINRA’s motion to dismiss Alpine’s application for review. *See Sharemaster*, 847 F.3d at 1064, 1068 (finding permissible the Commission’s interpretation of Section 19(d) as requiring that a sanction remain in place for it to be subject to review, even though the applicant claimed that it was presented with a “Hobson’s choice; comply immediately or risk going bankrupt waiting for the Commission to decide the motion to stay”). The fact that Alpine no longer possesses an avenue to seek review of the Hearing Panel’s decision does not confer upon the Commission any authority to review that decision under the Exchange Act. *See Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 SEC LEXIS 2670, at \*10 (July 7, 2020) (“The lack of a mechanism for the relief he seeks does not confer jurisdiction.”).

FINRA member.” App. Br. at 2. The Hearing Panel’s decision, however, does not implicate either of these two bases for review under Section 19(d) of the Exchange Act.<sup>2</sup>

The Hearing Panel’s decision did not deny any application for FINRA membership, and Alpine does not challenge any restriction agreement or any restriction on its business activities that was imposed on the firm when it became a FINRA member or as a result of the Hearing Panel’s decision. *See Alpine*, 2020 SEC LEXIS 4008, at \*9 (“This jurisdictional basis for review is directed at SRO decisions actually denying applications for membership or imposing restrictions on business activities as a condition of membership.”); *see also Cristo*, 2019 SEC LEXIS 1284, at \*14-15 (“Cristo did not file, and FINRA did not deny, any such application.”). The Hearing Panel’s decision also did not limit or prohibit Alpine’s access to any FINRA services, and Alpine does not, and cannot, identify any FINRA services that it was prohibited or limited from accessing by the Hearing Panel’s decision. *See Alpine*, 2020 SEC LEXIS 4008, at \*11 (“Applicants do not identify any such services that they are prohibited or limited from accessing.”); *see also Graham*, 2020 SEC LEXIS 2670, at \*8 (“Section 19(d) authorizes review of a prohibition or limitation of access to services; it does not authorize review where the SRO has not prohibited or limited the applicant’s access to a service that it offers.”).

**C. Alpine’s Stay Request Is Moot and Provides No Independent Basis for Commission Review in This Case**

Having failed to establish a statutory basis for Commission jurisdiction under Section 19(d) of the Exchange Act, Alpine nevertheless attempts to manufacture grounds for Commission review of the Hearing Panel’s decision by evoking the emergency motion that the firm filed with the Commission on April 7, 2022, which requested a stay of the conditional

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<sup>2</sup> The Hearing Panel’s decision does not bar any person from being associated with a FINRA member under Exchange Act Section 19(d), and Alpine does not argue otherwise.

suspension that FINRA has now terminated. Alpine's sleight of hand, however, unmistakably fails. Alpine's motion is moot, and it does not confer any independent basis for the Commission to exercise its review authority in this case.

As an initial matter, just as Alpine's appeal is now moot, so too is its motion requesting a stay in this case.<sup>3</sup> *See Alpine Sec. Corp.*, Exchange Act Release No. 87146, 2019 SEC LEXIS 3392, at \*1-2 (Sept. 27, 2019) (granting applicants' request to withdraw their stay motion as moot because the parties agreed that the challenged suspensions "were no longer operative"). The test for mootness is whether the relief the applicant seeks, if granted, would affect the legal interests of the parties. *Marshall Fin., Inc.*, 57 S.E.C. 869, 877 (2004). Here there is no relief that is available for the Commission to grant Alpine because there is no suspension for the Commission to stay. Alpine's stay request is thus moot.<sup>4</sup> *See Marshall*, 57 S.E.C. at 877 ("We perceive no relief that is available here. . . . [T]here is no suspension that we can lift.").

More importantly, the Commission's authority to issue stays of FINRA action is explained in Rule 401(d) of the Commission's Rules of Practice. 17 C.F.R. § 201.401(d). That authority derives from, and is limited by, Rule 420 of the Commission's Rules of Practice. *See id.* (explaining the Commission may entertain motions to stay any self-regulatory organization

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<sup>3</sup> Numerous Commission decisions have dismissed as moot applications for review filed in cases similar to this one where FINRA terminated a suspension or bar imposed on the applicants after their applications were filed with the Commission. *See, e.g., Keath Allen Ward*, Exchange Act Release No. 66173, 2012 SEC LEXIS 160, at \*2 (Jan. 18, 2012); *Denise Lynn Gizankis*, Exchange Act Release No. 64391, 2011 SEC LEXIS 1576, at \*2 (May 4, 2011).

<sup>4</sup> Alpine states that FINRA's motion to dismiss included a request to stay the issuance of a briefing schedule "in relation to the motion for a stay." App. Br. at 4. Alpine is mistaken. FINRA requested, under Commission Rule of Practice 161, that the Commission stay the issuance of a briefing schedule under Rule 450(a) to address the merits of the Hearing Panel's decision. Alpine's emergency motion for a stay has been briefed by the parties, and in any event, for the reasons outlined in FINRA's opposition to that motion, Alpine has not satisfied its burden of establishing that it is entitled to a stay under Rule 401 of the Commission's Rules of Practice.

action for which review may be sought pursuant to Rule 420). The grounds for Commission jurisdiction enumerated in Rule 420 are, in turn, coextensive with those identified in Section 19(d) of the Exchange Act. *Lawrence Gage*, Exchange Act Release No. 54600, 2006 SEC LEXIS 2327, at \*11-12 (Oct. 13, 2006); *see also* 17 C.F.R. § 201.420(a). Because there is no live disciplinary sanction for the Commission to review here, and FINRA neither denied Alpine membership or participation in FINRA nor prohibited or limited the firm's access to any fundamentally important FINRA services, the Commission does not have any basis under Exchange Act Section 19(d) to exercise its review authority. Alpine's emergency motion to stay the now-terminated suspension imposed by the Hearing Panel does not confer upon the Commission any independent basis to review that decision. *Cf. Sharemaster*, Exchange Act Release No. 80705, 2017 SEC LEXIS 1483, at \*3 (May 16, 2017) (“[T]he only relief we could provide under Rule 401(d) would be a stay of FINRA’s 2010 decision. We note that FINRA already lifted the suspension imposed in that decision.”); *cf. also Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 SEC LEXIS 1153, at \*17 (May 20, 2008) (“Given that we have determined to dismiss Ryerson’s late-filed petition for review, his request that we stay NASD’s collection efforts pending his appeal is moot.”).

### **III. CONCLUSION**

The Commission should dismiss Alpine's application for review. The firm has not established any statutory basis under Section 19(d) of the Exchange Act for the Commission to exercise jurisdiction over the Hearing Panel's decision. There is no live disciplinary sanction in this case, and Alpine has established no other basis for the Commission to use its review authority under the Exchange Act.



Respectfully submitted,

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May 5, 2022

**CERTIFICATE OF COMPLIANCE**

I, Gary Dernelle, certify that FINRA's Reply Brief in Support of Its Motion to Dismiss Alpine Securities Corporation's Application for Review and to Stay Issuance of a Briefing Schedule complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information.

Respectfully submitted,

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May 5, 2022

**CERTIFICATE OF SERVICE**

I, Gary Dernelle, certify that on this 5<sup>th</sup> day of May 2022, I caused FINRA's Reply Brief in Support of Its Motion to Dismiss Alpine Securities Corporation's Application for Review and to Stay Issuance of a Briefing Schedule, Administrative Proceeding No. 3-20818, to be filed through the SEC's eFAP system on:

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