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UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of ALPINE SECURITIES CORPORATION, For Review of Adverse Action Taken By THE DEPOSITORY TRUST AND CLEARING CORPORATION AND NATIONAL SECURITIES CLEARING CORPORATION	**REQUEST FOR LEAVE TO FILE OVERLENGTH BRIEF**

Alpine hereby requests, in accordance with SEC Rule of Practice 154(c), leave to file an overlength brief in support of its motion under SEC Rule of Practice 401(d)(3) to stay on an expedited basis the Determination to Cease to Act for Alpine Securities (the "Determination") made by the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") and affirmed by a Hearing Panel of the Depository Trust & Clearing Corporation ("DTCC")[1] in a decision entered on April 25, 2024 (the "Decision").

Alpine's makes this request because, pursuant to DTCC Rules, the Decision will become effective prior to and without plenary review by the SEC, will prevent Alpine from being able to

[1] The proceeding against Alpine was pursued on behalf of NSCC and DTC and conducted by their parent corporation, DTCC. The rules of DTC and NSCC are largely identical, the Board of DTCC also serves as the Board of the subsidiaries and management overlaps. In this brief, the entities are referred to collectively as "DTCC."

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conduct its business as a clearing firm, and will force the closure of the firm. Resolution of the motion for a stay requires consideration, first, of the relative harms that would be occasioned by a grant of a stay and so Alpine had to discuss its satisfaction of existing capitalization requirements, the absence of any risk associated with the transactions in which its customers engage. In addition, discussion of the merits of Alpine's appeal involved a description of the substantial factual and legal errors in the Decision including recitation of testimony and evidence that took place at the hearing, application of that evidence to applicable DTCC rules, and a summary of the aspects of DTCC's proceeding that violate Alpine's rights to a fair hearing, due process of law and compliance with Constitutional directives.

For these reasons, Alpine request leave to file its overlength brief.

Dated: April 30, 2024

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Before a Hearing Panel of The Depository Trust & Clearing Corporation

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In the matter of

ALPINE SECURITIES CORPORATION.

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This Hearing Panel of the Depository Trust & Clearing Corporation ("DTCC") has been duly constituted pursuant to the rules applicable to DTCC, including the Rules of the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") (collectively, the "Clearing Agencies").

This Hearing Panel previously issued six Decisions in this proceeding.[1] These are reaffirmed and incorporated herein by reference.

THE SCOPE AND SUBJECT OF THIS HEARING PANEL'S AUTHORITY AND DECISION

This Hearing Panel's role and authority are set forth in the relevant Clearing Agency Rules.[2] The sole question to be decided by this Hearing Panel is:

> [W]hether, based upon the facts and circumstances as existed on or prior to Determination Date, NSCC acted consistently with its Rules in making the Determination.

NSCC Hearing Procedures Rule 4.1.[3]

By letter dated November 9, 2023, Michael Leibrock, Managing Director of DTCC, provided to Alpine Securities Corporation ("Alpine") a certain "Notice of NSCC and DTC Determination to Cease to Act for Alpine Securities Corporation (Member/Participant No. #8072)" (the "November 9 Notice" or the "Determination"). By letters dated November 12, 2023, and November 20, 2023, counsel for Alpine formally objected to NSCC's and DTC's determinations and requested a hearing regarding the determinations pursuant to NSCC and DTC Rules.

The issue before this Hearing Panel is whether NSCC and DTC acted consistently within their Rules in issuing the Determination announced in the November 9 Notice, based upon the facts and circumstances as existed on or prior to the Determination Date of November 9, 2023.

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[1] These were the Decisions of February 9, 2024; February 12, 2024; February 28, 2024; March 14, 2024; March 15, 2024; and March 17, 2024.

[2] Each of DTC and NSCC has its own Rules and Hearing Procedures, but they are identical for the purpose of the conduct of this hearing, which has been convened in connection with Alpine's requested review of actions taken by each.

[3] As noted, the DTC Hearing Procedures Rule 4.1 is substantively identical.

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The Determination was based on the recommendation of DTCC's corporate risk management department and approved by an Executive Committee of DTCC's Board of Directors, which Committee was made up of outside Directors. While two of the Hearing Panel members are members of DTCC's Board level Risk Management Committee, none are members of the Executive Committee, none took part in or had any responsibility for the Determination.

The Determination was based on two findings by DTCC. First, that Alpine, as of the date of the Determination, had failed to meet the applicable Excess Net Capital ("ENC") requirement imposed upon all members and participants in the DTCC system; second, that Alpine's reporting of its ENC to DTCC was made with misinformation, omissions, and evasion. The November 9 Notice stated that pursuant to NSCC Rule 46, Section 1, NSCC Rule 2A, Section 1.G.ii, and DTC Rule 10, Section 1, the Clearing Agencies had the authority to, and were exercising their authority to, cease to act on behalf of Alpine (a "CTA").[4] A CTA acts as an exclusion from the DTCC system.

As noted, Alpine timely objected to the Determination and, as provided for in NSCC Rules 37 and 46 and DTC Rule 22, requested a hearing with respect to the Determination before a hearing panel made up of members of the DTCC Board of Directors. Pursuant to the Rules of NSCC and DTC, this Hearing Panel was formed and a hearing held.

Pursuant to the Hearing Procedures established by both NSCC and DTC and scheduling orders issued by this Hearing Panel, this Hearing Panel considered: (i) written pre-hearing memoranda from each side setting forth each side's respective position along with written testimony from witnesses for each side[5]; (ii) written reply pre-hearing memoranda with further written testimony from each of the same witnesses who had originally submitted testimony; oral cross-examination (as well as oral re-direct and re-cross testimony) from each witness[6]; written post-hearing memoranda from each side[7]; and written reply post-hearing memoranda from each side.

The parties engaged in some discussion regarding which party bore the burden of proof in this proceeding. Without finding that the applicable Rules impose upon the Clearing Agencies the burden of proof in this proceeding, the Hearing Panel finds that in this proceeding the Clearing Agencies accepted the burden of proof and more than adequately met it.

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[4] *See* Clearing Agencies Exhibit 28.

[5] The Clearing Agencies submitted sworn testimony from two witnesses, Michael Leibrock and Timothy Cuddihy, and Alpine submitted sworn testimony from three witnesses, Raymond Maratea, James A. Cosman, and John Hurry.

[6] The hearing was held live and in-person with the Panel and all parties and counsel in attendance, with the exception of Mr. Cosman, who testified remotely via the Zoom platform).

[7] Alpine's post-hearing memorandum was submitted the day after it was due, approximately eight hours late. The Clearing Agencies objected to the late submission and Alpine responded to the Clearing Agencies' objection. While Alpine's submission should have been on time, the Hearing Panel accepts Alpine's representations that the late submission was innocent and its submission was not revised following receipt of the Clearing Agencies' memorandum. The Hearing Panel considered Alpine's memorandum in reaching its decision.

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As discussed below, this Hearing Panel finds that the Clearing Agencies acted within their Rules in making the Determination and issuing the November 9 Notice.

DTCC, NSCC and DTC

DTCC, through its several subsidiaries, serves as the leading post-trade market infrastructure in the securities industry. It stands at the center of global trading activity, daily processing trillions of dollars of securities transactions. Through its subsidiaries, DTCC offers services in clearance, settlement, asset servicing, global data management and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, derivatives, money market instruments, syndicated loans, mutual funds, alternative investment products and insurance transactions. DTCC is owned and governed by its user members, also known as participants, all of whom commit capital as owners, pay fees for its services and ultimately benefit from the safeguards, efficiencies and risk mitigation that DTCC provides to all its members.

NSCC provides central counter-party clearance and settlement services, guaranteeing payment and delivery of securities for counterparties through its Continuous Net Settlement system for virtually all transactions in equities and other types of securities in the United States. DTC is a central securities depository for U.S. transactions in equity and other securities.

Each of NSCC and DTC has been named a “Systemically Important Financial Market Utility,” or “SIFMU,” by the Federal Financial Stability Oversight Council. A SIFMU is systemically important because the failure of or a disruption to a FMU that is so designated as a SIFMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the entire United States financial system. Among other things, SIFMUs face heightened standards for their Boards of Directors, comprehensive and broader risk management expectations, and expanded rules and procedures requirements concerning liquidity risks.

To help fulfill its obligations, DTCC maintains robust risk management systems, including groups devoted to analyzing and managing risk functions. Both NSCC and DTC are clearing agencies registered with the United States Securities and Exchange Commission (“SEC”) and are subject to strict requirements by the SEC and other regulatory bodies. DTCC’s risk management functions identify and monitor potential threats to NSCC, DTC, their respective members and participants, and the securities marketplace generally, from risks of a member’s default in its settlement obligations.

The general risks and regulatory tools utilized by DTCC to manage the particular types of risk at issue here are well presented in paragraphs 7 - 17 the Affirmation of Timothy Cuddihy dated March 4, 2024, are accepted by the Hearing Panel, and need not be repeated here.

THE ENC REQUIREMENT

On August 26, 2023, the United States Securities and Exchange Commission (“SEC”) approved a rule change increasing the NSCC minimum ENC requirement for US broker-dealers

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like Alpine.[8] Cuddihy Aff. at ¶ 19. Shortly after SEC approval, on September 26, 2022, NSCC communicated the new requirement to all its members, including Alpine, though an "Important Notice" sent to all members. Leibrock Aff. ¶ 21; Clearing Agencies Ex. 7. The rule change was effective one year after SEC approval; i.e., August 26, 2023 (the "Effective Date"). *Id.* DTCC also gave notice to members that there would be a 60 day grace period following the Effective Date of the ENC requirement; DTCC referred to the end of the grace period, October 25, 2023, as the "Compliance Deadline." Leibrock Aff. ¶ 20. Alpine was the only NSCC member that failed to meet its ENC requirements by the Compliance Deadline. Leibrock ¶ 39.

Alpine was given repeated notice of the new requirement and the Effective Date in the next several months. DTCC sent notices of the new ENC requirements to all members on September 26, 2022, January 31, 2023, and July 11, 2023, and specifically in letters or notices sent directly and only to Alpine on January 27, 2023 and on July 31, 2023 regarding the ENC requirement as applied specifically to Alpine. Clearing Agencies Ex. 14; Leibrock Aff. ¶¶ 21, 23, 28, 29. NSCC staff also had discussions with Alpine regarding the ENC requirement at least as early as October 24, 2022. Leibrock Aff. ¶ 22. Alpine does not dispute that it received any of these notices. Thus, Alpine had more than sufficient notice of the new ENC requirement.

Alpine frequently referred to the Compliance Deadline of October 25, 2023 (and the Clearing Agencies often did as well) as "the" deadline. While it is correct that this was the Compliance Deadline, the Hearing Panel disagrees to the extent this characterization implies that the Effective Date of August 23, 2023 was irrelevant or insubstantial. It was neither.

August 23, 2023, was the Effective Date by which members should have come into compliance, and the Compliance Deadline was the end of the grace period and the date upon which members could expect regulatory action to be taken if they had not. As seen by the facts presented in this proceeding, discussed further herein, Alpine does not appear to have taken the Effective Date of August 23, 2023, as being of any import at all, and took no steps to try to meet it. Rather, the only actions brought to the Hearing Panel's attention began well after the Effective Date and no concrete steps were taken until literally a few days before the Compliance Deadline. Alpine's attitude of pushing everything including deadlines to the farthest possible extreme in an apparent effort to find the lowest threshold of compliance it could find seemingly permeated its every action examined in this proceeding. That Alpine pushed its efforts at compliance to the last possible moment was its own decision, and if the efforts fell short, as they did, it has no one to blame but itself.

Alpine's failure to meet the ENC requirement by the Compliance Deadline cannot be viewed in isolation. Alpine has a long history of regulatory interaction with the Clearing

[8] Alpine has argued in this proceeding that the increased ENC requirement is unfair or unnecessary for the protection of DTCC and DTCC's members and participants. The Hearing Panel notes that Alpine addressed similar concerns to the SEC in the context of opposing adoption of the new rule increasing ENC requirements. Cuddihy Aff. ¶ 18. Regardless of whether the arguments are new or the same as Alpine presented to the SEC, they are irrelevant to this proceeding and consideration of the Determination. The ENC rule is the ENC rule. This Hearing Panel has neither the authority nor the desire to second guess adoption of the rule.

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Agencies. The Clearing Agencies' submissions detail these, and with one notable exception the fact that these events occurred – and moreover that Alpine was aware of its heightened reporting obligations regarding its financial condition - were unchallenged.[9]

Since 2017, Alpine has been on DTCC's "Watch List," meaning that the Clearing Agencies believe those on the Watch List to be among their riskiest members, from a credit perspective. Leibrock ¶ 9. Members on the Watch List are subject to increased scrutiny by DTCC's risk management department and such members are often required to submit additional reports to DTCC. In Alpine's case, the additional reporting included reports regarding its capital. In 2017, as part of its enhanced monitoring of Alpine's financial condition, the Clearing Agencies began requiring Alpine to submit weekly capital reports. Leibrock ¶ 10; Clearing Agencies' Ex. 5. Alpine failed to submit these reports as required. By July 2019, Alpine was "chronically delinquent" in delivering its weekly capital reports and was also frequently late in responding or failed to respond entirely to the Clearing Agencies' inquiries about its financial statements. Leibrock ¶ 11. On August 2, 2019, the Clearing Agencies began requiring Alpine to submit capital reports on a daily basis. Leibrock ¶ 14; Clearing Agencies' Ex. 6. The background of Alpine reporting its capital position to DTCC is important in interpreting the events reporting Alpine's ENC around the time of the Compliance Deadline.

FAILURE TO MEET THE ENC REQUIREMENT

As noted above, Alpine, along with all other NSCC members, was given notice of the new ENC requirement as soon as it was approved by the SEC.[10] Clearing Agencies' Ex. 7, which linked to the full test of the new rule on the DTCC website. The new ENC requirements were as follows:

[9] Mr. Leibrock's Affirmation includes a discussion of a finding by FINRA against Alpine's affiliate Scottsdale Capital Advisors ("Scottsdale") and the indirect owner of both Alpine and Scottsdale, John Hurry, (Leibrock Aff. ¶ 9 at pp. 3-4) that Alpine points out was reversed by the SEC (Hurry Reply Aff. ¶ 15. It is unfortunate that the Clearing Agencies cited this decision without noting its subsequent reversal, but in the final analysis this regulatory matter in 2018, which predates several later regulatory incidents involving Alpine, does not affect our review.

[10] Indeed, as also noted above, Alpine was well aware of the new requirement already, as it had taken part in the rule-making process and opposed the rule before the SEC.

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Clearing Status	Value-at-Risk Tier (“VaR Tier”)	Minimum Excess Net Capital
Self-Clearing	<$100,000	$1 million Excess Net Capital
	$100,000-$500,000	$2.5 million Excess Net Capital
	>$500,000	$5 million Excess Net Capital
Clears for Others	<$100,000	$2.5 million Excess Net Capital
	$100,000-$500,000	$5 million Excess Net Capital
	>$500,000	$10 million Excess Net Capital

Under these requirements, as of the effective date of the new requirement, and at any rate no later than the Compliance Date, Alpine was required to have at least $10 million in ENC.

There are two components that determine the ENC requirement for any given member: the “VaR Tier” and the “clearing status” of the member. First, Alpine’s “Value-at-Risk” throughout this period was over $500,000 for purposes of determining which “VaR Tier” Alpine was in. Leibrock ¶ 23; Clearing Agencies’ Ex. 8. Alpine does not dispute that its Value-at-Risk placed it in this category. For the second component, at the time of these discussions prior to the Compliance Date, Alpine’s clearing status was as a “Clears for Others” member. *Id.*

Alpine does not dispute that as of this time, it was a Clears for Others member, though it claims that its status should have been considered to be “Self-Clearing” as of the Compliance Date.[11]

In the next several months following the September 26, 2022 notice of the SEC’s approval of the rule change to the ENC requirements (Clearing Agencies Ex. 7), DTCC’s risk management staff engaged in repeated dialogue with Alpine regarding Alpine’s need to meet the requirement and inquiring as to how Alpine planned to do so. In communications on January 27, 2023, and July 31, 2023, the Clearing Agencies’ staff reiterated that a $10 million ENC requirement would apply to Alpine and that as of the time of each communication Alpine was well below that level of ENC. Clearing Agencies Exs. 8, 10. Accordingly, the Clearing Agencies’ staff asked Alpine for a written explanation as to how it planned to meet the ENC requirement. *Id.* Alpine responded to DTCC’s January 27, 2023 letter with a letter from its chief executive officer Raymond Maratea dated February 23, 2023, and to DTCC’s letter dated July 31, 2023 by a letter from its outside counsel Maranda Fritz dated August 7, 2023. Clearing Agencies Exs. 9 and 11. In each case, Alpine’s response was brief and non-specific. All Alpine

[11] As discussed below, this Hearing Panel finds that the Clearing Agencies were acting within their Rules in rejecting this contention.

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offered was that its (unnamed) ownership had access to the necessary capital and that Alpine believed that its ownership would provide it.[12]

As discussed below, Alpine did not meet the ENC requirement by the Effective Date of August 23, 2023.

Alpine asserts four principal reasons why the rule requiring a certain level of ENC should not be the basis for a CTA notice from the Clearing Agencies, two of which are addressed below in detail and two of which are not the province of this Hearing Panel to consider.

ALPINE'S OBJECTIONS THIS PANEL MAY NOT CONSIDER

While at times phrased differently, Alpine asserts two principal arguments that are not within the ambit of this Hearing Panel's authority.

One is that the structure of the DTCC system itself, and its enforcement functions in particular, are unconstitutional. *See, e.g.,* Alpine's Post-Hearing Brief at p. 5, *et seq*. This question is not within the scope of this Hearing Panel's authority and will not be addressed.

The second is that the ENC requirement is in excess of what would be normally needed to cover the risk to DTCC and its members from Alpine's historical trading activity and the rule is actually a pretext to act against small firms like Alpine. *See, e.g.,* Alpine's Reply Pre-Hearing Brief at p. 2, *et seq*. This argument is irrelevant given the plain text of the ENC rule. The rule setting ENC requirements at their current level was proposed by DTCC and approved by the SEC after a full public comment procedure – a procedure that in fact included Alpine asserting these same arguments to the SEC. The rule was approved and is now in force. The wisdom of the rule is not before this Hearing Panel. The only question before this Hearing Panel is whether DTCC acted within its rules in making the Determination and issuing the November 9 Notice.

ALPINE'S OBJECTIONS UNDER CONSIDERATION

Alpine makes two arguments against DTCC's Determination that this Hearing Panel has considered in detail. The first is that by declaring itself to be a "self-clearing" broker rather than a "clears-for-others" broker, Alpine was only required to meet a lower $5 million ENC requirement, which Alpine claims it met, and the other is that a cash transfer by Alpine's indirect owner satisfied the ENC requirement.

Each is examined in turn.

ALPINE'S ATTEMPT TO CHANGE ITS CLEARING STATUS

Alpine's next communication with DTCC regarding the ENC requirement was an email from Mr. Maratea on September 27, 2023. Clearing Agencies Ex. 12. This three-sentence communication was equivocal as to Alpine's plans. It stated that Alpine was working through

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[12] Ms. Fritz's letter in fact specifically disclaims any actual knowledge by Alpine of what funds would be transferred by ownership to meet the requirement or how the process would work, but repeated Alpine's previous assurance that Alpine was confident its ownership would meet the requirement. *See* Clearing Agencies Ex. 11 at p. 1.

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several options, one which was that the firm put in the required amount of capital for a Clearing Firm, and the other was that the only introducing firm Alpine cleared for (Scottsdale) would cease business and Alpine would "essentially" be self-clearing. Plainly, as this email spoke only in terms of options under consideration, this did not serve as notice of any change of Alpine's business model or even an application for a change of clearing status. Mr. Maratea confirmed at the hearing that at this time Alpine was continuing to assess its options and had made no determination on a plan. March 19, 2024 Tr. at 385, line 17 – 386, line 14. Indeed, Mr. Maratea also conceded that by the time of Alpine's next letter to DTCC, dated October 16, 2023 (nearly three weeks after the September 27 email and barely more than a week before the Compliance Deadline), Alpine still had not decided what to do to meet the ENC requirement. *Id.* at 386, line 15 – 387, line 12.

Mr. Maratea in his Reply Affirmation testified that "DTCC failed to respond[]" to his September 27, 2023 email. This statement is false.

The evidence shows that on October 5, 2023, DTCC representatives had a telephone conference with Mr. Maratea regarding his September 27 email. Mr. Leibrock testified in detail regarding the October 5 telephone conference. Leibrock Aff. ¶¶ 33-34; March 18, 2024 Tr. at 109, line 23 – 115, line 13. Mr. Leibrock testified that Alpine was told expressly that it could not simply re-designate itself as self-clearing regardless of what its business transactions were at the time and that in the event Alpine ever did wish to change its clearing status from clears-for-others to self-clearing, that would require a formal notice to that effect, that DTCC would consider that to be a material change to Alpine's business model, and such a change would require diligence on DTCC's part and additional information from Alpine and would require formal approval by DTCC. *Id.* Typically, a NSCC member seeking to make a material change to its business provides sufficient advance notice to DTCC to allow for "discussion, diligence, and transparency." Cuddihy Reply Aff. ¶5.

Had he disagreed with any of the particulars testified to by Mr. Leibrock, Maratea could have rebutted these with testimony of his own about the October 5 call, but he did not. Mr. Leibrock testified regarding the October 5, 2023, call in his opening Affirmation, yet in his Reply Affirmation all Mr. Maratea said was the false and misleading statement that "DTCC failed to respond." Then, the day after Mr. Leibrock testified on cross-examination regarding additional details of the October 5 call, not only did Mr. Maratea's own testimony on cross-examination confirm that at the time of his September 27, 2023, email and for nearly a month thereafter Alpine had not decided whether it was indeed going to request to shift its business to a self-clearing only model or informed DTCC of its formal request to do so. Indeed, his re-direct testimony elicited by Alpine's counsel confirmed that there indeed had been a conference call following his September 27 email without ever disputing the substance of that call as testified to by Mr. Leibrock. March 19, 2024 Tr. at 490, lines 18 – 20.

Thus, no later than October 5, 2023, following Alpine's first communication with DTCC where Alpine expressed the possibility of changing its clearing status on September 27, 2023, Alpine was informed by DTCC that it could not simply change its clearing status for purposes of the ENC requirement by its own declaration, and that such a change would require a formal

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request, due diligence, and approval. Regardless of what its current business transactions were, Alpine could not in good faith expect its status as a clears-for-others member be changed overnight.

The next communication on the subject was on October 16, 2023. On that day, Alpine sent a brief letter to Alistair Brunton, its relationship manager at DTCC. *See* Clearing Agencies Ex. 13. In that letter, Alpine stated that it was continuing to analyze the rules on ENC requirements. Alpine also asked for confirmation regarding the ENC requirements for Alpine if it were self-clearing, stated that it was attempting to get approval for a loan to satisfy the ENC requirement, and asked for an extension of the Compliance Deadline. DTCC responded with a letter from Mr. Leibrock dated October 19, 2023. Clearing Agencies Ex. 14. DTCC's letter denied the extension, noting the extent of the advance notice of the ENC requirement Alpine had received. DTCC's letter also responded to Alpine's question about treating Alpine as self-clearing. Mr. Leibrock wrote that Alpine's question was based on a false premise and that Alpine's obligation to meet the clears-for-others ENC requirement was based on its clearing status and not on its particular trading activity at any given time.

Mr. Maratea responded to Mr. Leibrock's letter of October 19, 2023, with an email later that day. Alpine Ex. 11.[13] Mr. Maratea stated that Alpine's business model could not support operation as a clearing firm with a $10 million ENC requirement, said that Alpine wanted to discuss further an alternate solution, and inquired as to the steps necessary to effect a change in Alpine's clearing status. On October 23, 2023, Mr. Maratea sent another email to DTCC, this time a very short one to Mr. Brunton, that stated that Alpine was requesting "to change our Clearing Status to 'Self-Clearing' in order to qualify for the $5 million ENC requirement." Alpine Ex. 12. Mr. Maratea also said, "I hope we can get this issue resolved today." On its face, Mr. Maratea's statement cannot be seen as a reasonable, good faith communication.

Alpine had already been informed on October 5, 2023, that changing its status would require a formal request and submission, diligence on the part of DTCC, and an approval process. Mr. Maratea was reminded of this in Mr. Leibrock's letter of October 19 (Clearing Agencies Ex. 14), where Mr. Leibrock told Mr. Maratea that the idea that Alpine could change its clearing status simply by a declaration and reference to its trading activity was a "false premise." Therefore, to ignore what he had been told and instead seek a resolution to Alpine's failure to meet its ENC requirement through such a change "today" cannot be seen as a serious request.[14]

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[13] This document was among a number of additional exhibits Alpine submitted on March 13, after the deadline for submission of evidence in this proceeding. Alpine referred to these as supplemental exhibits for purposes of cross-examination. In the interests of fairness and a complete record, the Hearing Panel accepted the additional exhibits and has considered them, although, there was no reason these documents could not have been submitted at the proper time.
[14] Mr. Maratea's brief email on October 20, 2023 does not claim that Alpine had to date done anything to pursue any internal steps to effectuate the business change. Indeed, it conceded that even the most basic steps had not been done and were indeed at that point hypothetical. In discussing Alpine's relationship with its correspondent broker Scottsdale (the "other" that Alpine

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Nevertheless, Mr. Leibrock responded by email on October 23, 2023. *See* Alpine Ex. 13. Mr. Leibrock reiterated, in substance, what Alpine had been told already in the October 5, 2023 telephone conference. In particular, Mr. Leibrock noted that changing Alpine's clearing status from clears-for-others to self-clearing would be a material change to Alpine's business, the first step of which would be a detailed proposal from the member of the proposed change, which would be followed by requests for information from DTCC, among other things.

On October 24, 2023, the day before the Compliance Deadline, Mr. Maratea of Alpine sent a letter to DTCC with the "Re" line of "Notification of Changes in Condition Under NSCC Rule 2B.Sec. 2B(b)." Clearing Agencies Ex. 46. The NSCC Rule cited deals with notifications by members of material changes in their businesses. Alpine in the letter requested "that its clearing firm status be reflected as 'Self-Clearing [sic] for purposes of Addendum B in the NSCC Rules." Mr. Maratea's very short letter made no statements regarding what, if anything, had been done at Alpine or Scottsdale to effectuate Alpine's contemplated change in clearing status. The body of the letter, other than the quoted request and a closing, consisted of a few conclusory sentences concerning Alpine's view that the change would not change its business.

At Alpine's request, Alpine and DTCC had a conference call late in the day on October 24, 2023, to discuss Alpine's notice of change of clearing status. Clearing Agencies Ex. 45.

DTCC, through a detailed letter from Mr. Leibrock, responded to Alpine's October 24 letter the next day, October 25, 2023, which was also the Compliance Deadline. Clearing Agencies' Ex. 15. Mr. Leibrock's letter stated that Mr. Maratea's letter of October 24 did not meet the requirements as previously explained to Alpine for such a declaration and were insufficient even to allow DTCC to evaluate the request. DTCC's October 25 letter set forth a number of detailed requests for further information and analysis. DTCC's October 25 letter concluded by emphasizing that, as Alpine was still a clears-for-others firm as of the Compliance Date and as it had been told several times previously would be the case, Alpine was subject to the rule imposing a $10 million ENC requirement.

In the view of DTCC's risk management professionals, a view with which this Panel agrees, to cease being a clears-for-others member and shift to self-clearing would be a material change in Alpine's business.[15] *See, e.g.*, Mr. Leibrock's testimony, March 18, 2024 Tr. at 124, line 5 – 129, line 2. At this time, a day before the Compliance Deadline, Alpine was a clears-for-others member. *See, e.g.*, Mr. Maratea's testimony, March 19, 2024 Tr. at 399, line 8 – 401, line 11. To shift from one clearing model to another involves a myriad of factors, which are determined by the facts of the particular situation.

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cleared for), Mr. Maratea stated that terminating that relationship was something "we **can** do." Alpine Ex. 12 (emphasis added).

[15] The correct term is "would be" rather than "was" because any change from clears-for-others to self-clearing was not completed by the Compliance Deadline; in fact, it still was not done by the time of the hearing in this matter. *See, e.g.,* Cuddihy Reply Aff. ¶ 7; March 19 Tr. at 350, line 2 – 353, line 21.

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As examples, agreements with corresponding firms have to be terminated or modified and customers' accounts have to be moved. See also Cuddihy Reply Aff. ¶ 6 for additional facts that would need to be examined and verified before any change in clearing status could be confirmed. Furthermore, DTCC has no ability to verify at any point in time whether Alpine in fact is clearing for customers, clearing for an introducing broker, or clearing for itself. Cuddihy Reply Aff. ¶ 4. DTCC does not have the ability to block specific trades or turn off Alpine's ability to clear-for-others as its clear-for-others status allows it to do, short of ceasing to act altogether. *Id.* As Mr. Cuddihy concluded, Alpine could not have reasonably expected DTCC to simply accept its conclusory statements that it was making a material change to its business from clear-for-others to self-clearing in a matter of days. Cuddihy Reply Aff. ¶ 5.[16]

It was not until September 27, 2023, more than a month after the Effective Date and less than a month before the Compliance Deadline, that Alpine raised the idea of changing its clearing status with DTCC. And still, at least as late as October 16, 2023, Alpine was telling DTCC that it was considering its options and had not settled on a plan for meeting the ENC requirement, and in particular had not informed DTCC that it formally wished to change its clearing status from clears-for-others to self-clearing. At the earliest, Alpine did not inform DTCC of a definite desire to change its clearing status until an email on October 20, 2023, and that statement was immediately met with a response from DTCC that Alpine had already been told it could not change its clearing status through a mere declaration of intent. Indeed, Alpine had been informed on October 5, 2023, of the general steps it would need to go through to change its clearing status, beginning with a detailed proposal to DTCC of the business change followed by diligence and information sharing. Alpine did not submit anything that could be described as a formal request to change its clearing status until October 24, 2023, one day before the Compliance Deadline, and even that request consisted only of a few conclusory sentences and not a detailed proposal containing a review of the changes made and to be made and their impact on risk.

Much of the argument and testimony presented by Alpine in this proceeding are simply conclusory statements that are mischaracterizations of these facts and misleading allegations based on these mischaracterizations, often accompanied by equally meritless accusations. Alpine's justification appears to be that it either didn't need to do anything other than declare

[16] Alpine's witnesses, while conceding that Alpine referred to the rule requiring a member to report a material change in its business to the Clearing Agencies in declaring its intent to change its clearing status, opined that they did not believe the shift in clearing status was a material change. Their testimony, however, was just as non-specific and conclusory as Alpine's written communications. Mr. Hurry, Alpine's indirect owner, conceded he was not even familiar with the NSCC or DTC rules regarding material changes and was only familiar with the FINRA rule. Moreover, his testimony can be summarized as opining that since Scottsdale and Alpine had common ownership, he could shift business around without it being a material change. Further, all of his testimony regarding the change was about what could be done in the future; he did not testify that Alpine had actually completed the process (or any part of it) at the time of the Compliance Deadline. *See, e.g.*, March 18, 2024 Hearing Tr. 263, line 2 - 271, line 16.

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itself to be self-clearing or, to the extent it did need to receive approval from DTCC, DTCC willfully failed to tell it what to do.

For example, Mr. Maratea accused DTCC of "dragg[ing] their heels regarding Alpine being self-clearing but continued at high volume to make demands that Alpine hold $10 million . . ." Maratea Reply Aff. ¶ 7.[17] The apparent basis for Mr. Maratea's characterization of DTCC's conduct as foot-dragging are his statements that DTCC failed to respond to his September 27 email or otherwise provide requested information, which are false.

The evidence is uncontradicted that DTCC informed Alpine as early as October 5, 2023, of the general steps that would be necessary before Alpine's hearing status could be changed. This was repeated several times over the next few weeks. Alpine was also told repeatedly that there would be no "confirmation" that its clearing status would change and it be subject to the self-clearing ENC requirement without going through this process. As for its frequent complaints that DTCC failed to tell it what to do to change its clearing status, the evidence is clear that that is not the case. Not only are NSCC members and regulated entities generally are expected to understand the rules that apply to them and be able to conduct themselves accordingly. In this matter, to the extent guidance is needed by a member, DTCC staff provided guidance in explaining what needed to be done. Alpine simply ignored what it was told.

Had it wished to change its clearing status from clears-for-others to self-clearing in order to qualify for the lower ENC requirement for self-clearing members, Alpine had over fourteen months from the time of SEC approval of the rule change to effect such a change. Alpine did not ever raise the question as a possibility with DTCC until less than a month before the Compliance Deadline, at which time it was promptly informed of the general terms of the approval process required for such a change. Even then, Alpine never complied with the advice to submit a detailed proposal of the change and only submitted a brief, conclusory letter by way of formal notice the day before the Compliance Deadline. Alpine did not act in a timely fashion or ever submit what it needed to submit. But instead of actually trying to meet its requirements and obligations, Alpine sent a series of inadequate communications and demands, which it was promptly told were inadequate. Even assuming for the sake of argument Alpine could ever have met the requirements for effectuating a material change to its business model and been accepted

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[17] Another example of a misleading characterization was in Alpine's counsel's opening statement, where counsel asserted that "In fact, as of September 27th, and that's Exhibit 12, Ray Maratea began communicating over to Alpine's relationship manager, Alistair Brunton, that it was going to become self-clearing and specifically pressed DTC to confirm that it would be the $5 million requirement that would be applicable. That's a full month in advance of the date." March 18, 2023 Tr. at 31, lines 13-22. This is neither correct nor a fair inference from the facts. At most, Mr. Maratea expressed for the first time ever on September 17 that Alpine was considering seeking to change its status to self-clearing, but no request was actually made until either at the earliest October 20 or more formally October 24. Given the brinksmanship exhibited by Alpine throughout this process, waiting until past the 11th hour before the Compliance Deadline to take even partial measures, counsel's statement goes beyond a fair argument from the facts.

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by DTCC as a self-clearing broker, that it was unable to effectuate such a change in clearing status by the Compliance Deadline was entirely its own doing.[18]

ALPINE'S ENC

As discussed above, Alpine was required by the applicable Rules to have at least $10 million in ENC every day beginning on the Compliance Deadline, October 25, 2023. It did not.

As part of its placement on a DTCC "watch list" and also being subject to additional reporting requirements because of its risk profile for several years prior to the Compliance Deadline, Aat the time of the Compliance Deadline Alpine was required to submit daily capital reports to DTCC, showing its capital position for the previous day. DTCC submitted copies of Alpine's daily capital reports for each day from October 20, 2023 through November 10, 2023, inclusive. DTCC Ex. 47. DTCC also included as an Appendix to its Reply Pre-Hearing Memorandum an Appendix consisting of a table showing the ENC reported for each day in that period. This Appendix is set forth immediately below.

Alpine Capital Reporting
October 20, 2023 – November 10, 2023

Date (Period Ending)	**Reported Excess Net Capital**
October 20, 2023	$3,644,326
October 23, 2023	$3,637,381
October 24, 2023	$3,481,313
October 25, 2023	$9,878,252
October 26, 2023	$9,872,982
October 27, 2023	$9,869,225
October 30, 2023	$9,862,281
October 31, 2023	$9,855,276
November 1, 2023	$9,826,106
November 2, 2023	$9,804,246
November 3, 2023	$5,057,862
November 6, 2023	$4,854,685
November 7, 2023	$4,854,594
November 8, 2023	$4,865,726
November 9, 2023	$4,887,354
November 10, 2023	$10,101,389

Source: Ex. 47, Consolidated Daily Capital Reports.

As can be readily seen, as shown in Alpine's own reporting to DTCC, Alpine did not have the required level of ENC on the Compliance Deadline. Indeed, it did not report the required level of ENC for any day until November 10, the day after it received the November 9

[18] The Hearing Panel notes that, even as of the time of the Hearing in March 2024, Alpine still has not completed at least some of the basic tasks needed to complete such a change. *See, e.g.,* Cuddihy Reply Aff. ¶ 7; March 19, 2024 Tr. at March 19 Tr. at 350, line 2 – 353, line 21.

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Notice. Given the heightened risk sensitivity regarding Alpine, these failures without more would justify the CTA Determination under the applicable NSCC and DTC Rules. However, the shifting nature of Alpine's reporting of its ENC, together with the obvious manner in which Alpine attempted to game the system, doubly justify the CTA Determination.

The records show that in the days before October 25, 2023, Alpine had far less ENC than would be required on and after the Compliance Deadline. On October 26, 2023, Mr. Maratea emailed Mr. Leibrock to claim that Alpine had over $10 million in ENC. Clearing Agencies Ex. 18. Mr. Leibrock responded by email that day that it was "very important" to DTCC that this representation be confirmed in the daily capital reports. *Id.* In reply, later that same day, Mr. Maratea forwarded a calculation from Alpine's internal accountant that purported to show ENC in excess of $10 million. *Id.* This email attributed the increase in Alpine's net capital to a "transfer received (10/25/2023)" in the amount of $6,400,000. *Id.* Mr. Maratea's second email on October 26, with the calculation, attached a copy of a page from KS State Bank for an Alpine account (no account number) showing a "Pending Trsf from SCA Clearing 2 Capital paid under Protest" in the amount of 6,400,000.[19] The calculation of Alpine's capital included in Mr. Maratea's October 26, 2023, email to Mr. Leibrock was later changed internally at Alpine and the official daily capital report submitted by Alpine on October 26, 2023, reported that on October 25, 2023, Alpine had only $9,878,252 in ENC – below the $10 million requirement. As seen on the table set forth above, Alpine's ENC continued to be below the required level for the next several days, and in fact declined. On October 27, 2023, NSCC sent Alpine an email asking for a written explanation of the discrepancy between Mr. Maratea's emails of October 26, 2023 and the daily capital report. Alpine never responded.[20]

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[19] This transfer of $6,400,000 increased the balance in the account to $6,408,343.90, showing that wherever Alpine's capital was held previously to this transfer, it was not in cash in this account.

[20] There were several times during the course of the hearing on this matter that it became distressingly apparent that, whether from lack of resources or some other reason, Alpine was deficient in its ability to properly manage its compliance and regulatory obligations. This situation presented one such glaring example. During Mr. Maratea's testimony, he was asked about Alpine's failure to ever respond to DTCC's request for information about a discrepancy between his communication to DTCC on October 26, 2023, asserting that Alpine had in excess of $10 million of ENC when the capital reports submitted by Alpine showed that it did not. Mr. Maratea testified that while he agreed the inquiry was very important to DTCC, he did not believe the inquiry was ever responded to because Alpine was "a very small organization, and there [was] a whirlwind of things going on." March 19, 2023 Tr. at 420, line 8 – 426, line 23; *see also* Clearing Agencies Exhibits 18, 20. For the CEO of a regulated entity, particularly one under heightened reporting obligations because of its financial condition, to simply throw up his hands and plead the company was too busy or lacked the resources to respond to an inquiry about the failure to meet a requirement that had been under high level discussion and attention at Alpine for years (including the notice period prior to SEC approval of the rule) and the fact that a direct representation made by the CEO to DTCC's risk management staff on a critically important issue turned out to be inaccurate is very disturbing. Alpine's many other failures and

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On November 2, 2023, Mr. Leibrock sent a letter to Mr. Maratea noting that Alpine's daily capital reports showed that Alpine had been below the ENC requirement of $10 million every days since and including the Compliance Deadline, namely October 25, October 26, October 27, October 30, October 31, and November 1, 2023. Clearing Agencies Ex. 20. Mr. Leibrock's letter also noted that Alpine had sent DTCC a pdf of a printout of an account transaction for Alpine showing a transfer of $6.4 million credited to an Alpine KS State Bank account. DTCC's November 2, 2023 letter asked for Alpine to provide certain information and documentation concerning the ENC issue no later than November 3. The information and documentation requested included evidence that the $6.4 million was deposited in a bank account owned by Alpine, the source of the $6.4 million transfer, an updated capital calculation, and a corporate resolution documenting that the full $6.4 million was intended to be contributed to Alpine as capital. *Id.*

Alpine responded on November 3, 2023 to Mr. Leibrock's November 2, 2023 letter with a letter from its outside legal counsel Maranda Fritz to Mr. Leibrock. Clearing Agencies Ex. 21. Little of Ms. Fritz's November 3 letter is devoted to responding to DTCC's requests for information. Rather, Ms. Fritz argues first that Alpine should not be required to comply with the ENC requirements as, in Alpine's view, they were unnecessary for DTCC's protection. Ms. Fritz went on to argue that Alpine should be considered self-clearing and subject to the lower $5 million ENC requirement.

Finally, Ms. Fritz stated that Alpine did not have its bank statement showing the deposit but would forward it to DTCC when it was available, which was expected to be on November 6. Ms. Fritz stated that "Alpine does not have the bank statement from SCA Clearing," the source of the funds.[21] Ms. Fritz represented that Alpine "currently has funds in an amount greater than $10 million." Clearing Agencies Ex. 21. After this, Ms. Fritz stated that not all of the funds were authorized as capital. She stated this was because a portion of the funds had not been authorized as capital pending a decision from FINRA on an escrow requirement. Ms. Fritz's letter of November 3, Clearing Agencies Ex. 21, also attached two documents. One was a "Unanimous Written Consent of the Sole Director and Sole Shareholder of Alpine Securities Corporation" dated October 26, 2023 (the "October 26 Resolution"). The other document attached was a different copy of the same bank transfer information showing a $6.4 million

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obfuscations in this period have to be seen in light of an organization that is plainly deficient in internal controls.

[21] Alpine would be expected to have access to SCA Clearing documentation, as SCA Clearing is the direct owner of Alpine and under the common control of Alpine's indirect owner and Alpine's corporate representative at the hearing, Mr. Hurry. Testimony of Mr. Hurry, Tr. at 260, lines 15 – 25. This is one more indication of the lack of transparency, cooperation, and candor shown by Alpine with DTCC, especially given the fact that Alpine argued in questioning at the hearing that because Alpine and Scottsdale were under common ownership (SCA), transferring accounts, employees, and documentation would be a simple process. March 18, 2023 Tr. at 129, line 3 – 130, line 13.

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transfer on October 25, 2023 that had been sent previously by Mr. Maratea with his email on October 26, 2023 (Clearing Agencies Ex. 19).[22]

Ms. Fritz's November 3, 2023 letter (Clearing Agencies Ex. 21) was not only a wholly inadequate response to DTCC's November 2, 2023 information request (Clearing Agencies Ex. 20), it indeed confirmed that Alpine was not in compliance with its ENC requirements for several reasons. First, Ms. Fritz referred to Alpine having "funds" in an amount greater than $10 million. This is irrelevant. Cash in an account is not capital.[23] Cash or other assets has to be denominated as capital and accounted for as such before it can be considered capital. The ENC requirement is specific that Alpine, like all other clears-for-others members in the same VAR tier, had to have at least $10 in Excess Net Capital. Alpine's frequent references in this proceeding to cash in an account or to funds are a knowing obfuscation. Ms. Fritz's November 3 letter confirms that Alpine understood this at the time. Alpine concedes in this letter that a portion of the "funds" referred to as being in Alpine's possession were not authorized as capital.

Thus, Alpine knew that funds were not equivalent to capital. Second, while Ms. Fritz's November 3, 2023 letter concedes that not all of the over $10 million in funds Alpine represented it had in in its possession were considered capital because of an issue with an escrow account, the October 26 Resolution discloses that only $1.6 million of the $6.4 million transfer on October 25, 2023 was actually capital.[24] On October 26, 2023, Mr. Maratea told DTCC that Alpine had met its $10 million ENC requirement and pointed to the transfer of $6.4 million into Alpine's KS State Bank account as proof of that. Clearing Agencies Ex. 18. However, the October 26 Resolution, signed by Mr. Maratea and by Mr. Hurry, discloses that only $1.6 million of that transfer was authorized as capital. Fully two-thirds of the transfer, $4.8 million, was not capital. Therefore, not only were Mr. Maratea's two specific representations to DTCC in emails on October 26, 2023 knowingly untrue,[25] but all of Alpine's daily capital reports submitted to DTCC for October 25, 2023 through at least November 2, 2023 (see Clearing Agencies Ex. 47) were also false.

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[22] The two copies of the KS State Bank transfer information have the same substantive information regarding the transfer but have different time stamps on when they were printed.
[23] James Cosman, who at the time was the senior Alpine accountant and is now serving as Alpine's chief financial officer, testified that cash in a bank account is not capital and "Cash doesn't enter into excess net capital contributions at all." March 19, 2023 Tr. at 511, lines 7 – 12. See also, e.g., testimony of Mr. Leibrock, March 18, 2024 Tr. at 170, lines 8 – 16. ("We were told the firm had 10 million in funds. Funds is not ENC.")
[24] The letter's failure to discuss the impact of the October 26 Resolution in the text was a material omission on Alpine's part, made more egregious by the letter text's discussion of the escrow issue as if that were the only reason the cash in Alpine's possession might not be considered capital.
[25] Mr. Maratea was the chief executive officer of Alpine and claimed long experience in the securities industry in highly responsible positions. March 19, 2024 Tr. at 485, line 19 – 486, line 25. In his position and with his experience, if he didn't consciously know that including funds not designated as capital was a misrepresentation, he should have known.

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As discussed extensively at the hearing, it appears that the Alpine accountant who prepared the daily capital reports, James Cosman, was unaware of the October 26 Resolution at the time he prepared the reports covering October 25, 2023 through November 2, 2023. However, once he became aware of the October 26 Resolution, he appropriately adjusted Alpine's reported ENC downward for November 3, 2023 through November 9, 2023. *See* Clearing Agencies Ex. 47. *See generally* Mr. Cosman's testimony, March 19, 2024 Tr. at 530, line 5 - 541, line 12.[26]

DTCC and Alpine had a conference call on November 6, 2023, where DTCC inquired about the conflicting and inconsistent information it had received regarding Alpine's ENC. Leibrock Aff. ¶ 46; Alpine Ex. 14; March 18, 2024 Tr. at 168, line 17 – 172, line 21. On the call, Alpine's counsel confirmed the October 26 Resolution and that only $1.6 million of the $6.4 million cash transfer was authorized capital. Alpine stressed the cash in the account and also discussed the issue with an escrow account that was being considered by FINRA. Alpine offered no indication on when its ENC issue would be resolved.

Alpine's daily capital reports as submitted to DTCC showed ENC of $5,057,862 on November 3, 2023, $4,854,685 on November 6, 2023, $4,854,594 on November 7, 2023, $4,865,726 on November 8, 2023, and $4,887,354 on November 9, 2023. Obviously, these numbers are below the $10 million ENC requirement.

Thereafter, DTCC sent the November 9 Notice conveying the CTA Determination.[27]

As discussed above, Alpine had been told repeatedly that it was not a self-clearing member and that it was required to meet the $10 million ENC requirement no later than the Compliance Date. Alpine understood that it was subject to regulatory action, including a cease to act notice, if it didn't meet the ENC requirement. Clearing Agencies Ex. 11.

Alpine prepared and executed a second corporation resolution with the heading "Unanimous Written Consent of the Sole Director and Sole Shareholder of Alpine Securities Corporation," this one dated November 9, 2023 (the "November 9 Resolution"). Alpine Ex. 20. The stated purpose of this resolution, on the face of the document, is that Alpine believed the ENC requirement applied to it was unconstitutional and that the November 9 Resolution's

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[26] Furthermore, that Mr. Cosman, who was the most senior accounting officer in the firm, was preparing financial documents for submission to DTCC without being made aware of an important corporate resolution on the capital contribution is another troubling example of the lack of internal controls at Alpine. Certainly, whether or not Mr. Cosman was aware of the October 26 Resolution, Alpine as an entity is charged with knowledge and it was Alpine that submitted what were willfully inaccurate reports for October 25, 2023 through November 2, 2023.

[27] DTCC staff began the process of preparing the CTA Determination and receiving the necessary approvals on November 7, 2023. March 18, 2024 Tr. at 163, line 20 – 164, line 16. Between November 7, 2023 and November 9, 2023, other than a further information request on November 8, 2023, there were no further substantive communications with Alpine and Alpine's ENC continued at under half the required level.

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purpose was to preserve Alpine's rights to challenge the constitutionality of the ENC requirement. The operative provision of the November 9 Resolution is a declaration that the shareholder, SCA Clearing, made a capital contribution of $4.8 million on October 25, 2023 that would be deemed capital as of October 25, 2023 Alpine's daily capital report for November 10, 2023, submitted on November 11, 2023, reported ENC of $10,101,389.

It is hard to conclude otherwise than that the November 9 Resolution was created in response to the November 9 Notice.

While Mr. Maratea denied that it was in response to the CTA Determination, his testimony was that it was done in response to DTCC's demands after DTCC questioned the earlier October 26 Resolution, but that Alpine just hadn't gotten around to doing it for nearly two weeks because Alpine had been "busy." March 19, 2023 Tr. at 442, line 24 – 443, line 21. This is not a credible explanation. Further, the time stamp on Mr. Hurry's digital signature on the November 9 Resolution shows that it was digitally signed 19:55 on November 9, 2023; whether this refers to just before 8:00 pm Eastern time or Mountain time not indicated, but in either event it was likely after the November 9 Notice was received.

At any rate, the November 9 Resolution does not change our decision. First, our mandate is to determine if the CTA Determination was proper within the Rules as of the time it was made. Second, as already discussed and discussed further immediately following, we find that Alpine made repeated misrepresentations or omitted material information in its communications with DTCC on the ENC issue. No entity in DTCC's position can have members who are willing to make knowing misrepresentations regarding important regulatory requirements and only if and when they are caught try to fix the violations retroactively.

Sifting the facts presented, it seems readily apparent what motivated Alpine and its indirect owner, Mr. Hurry.

Mr. Hurry and Alpine were well aware that any cash transferred by Mr. Hurry (or a company he controlled) to Alpine and denominated capital had to stay in place at Alpine for at least a year. See Cosman Reply Aff. ¶ 5; Mr. Hurry testimony, March 19, 2024 Tr. at 569, line 7 – 572, line 7; Mr. Cosman testimony March 19 Tr. at 513, lines 10 - 20. Mr. Hurry plainly did not want to transfer the cash to Alpine on October 25, 2023. The notation on Alpine's bank record states that Mr. Hurry transferred the funds "under protest."

Alpine's frequent refrain throughout its communications with DTCC and in this proceeding has been that its declaration that it should be considered a self-clearing member rather than a clears-for-others member and a lower ENC requirement applied to it. Despite being told repeatedly that it could not simply declare itself to a different clearing status and that changing its status would require a process, Alpine continued to hope that DTCC would for some reason change its status. If DTCC had acceded to this request without the full cash transfer on October 25, 2023, being officially denominated as capital, Mr. Hurry could have gotten the portion not denominated as capital back. It was not until after Alpine had received the CTA Determination that it designated the majority of the cash transfer as capital. But, by then, Alpine in the pursuit of its aims had made numerous misrepresentations to DTCC regarding its ENC,

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which at no point until at least November 10, 2023, actually met the requirement. No entity in DTCC's position can be expected to allow a member that violates an important rule despite notice and then makes misrepresentations about its non-compliance to remain a member.

Alpine was deliberately vague in its daily capital balance submissions to DTCC in an attempt to find some half-measure that would placate DTCC's risk department. Alpine had a certain amount of cash in a bank account at KS State Bank, but Alpine's owner did not wish to commit it firmly as capital in hopes that DTCC would relent in its demand that Alpine adhere to the ENC requirements rule for a clears-for-others member. So Alpine and Alpine's owner did not commit the full amount of cash to the capital account. When Alpine's accountant saw the October 26 Resolution, he adjusted the capital balance and ENC as reported to DTCC, sending it far below the required level. It was only after Alpine's lawyer specifically visited the accountant that the November 9 Resolution was prepared, and the reported capital balance went back up. The pattern of inadequate capitalization, based on whatever story of the day Alpine wished to pursue, was inappropriate and deceptive.

CONCLUSION

This Hearing Panel finds that in issuing the CTA Determination and the November 9 Notice the Clearing Agencies NSCC and DTC acted within their Rules. Alpine was in violation of its ENC requirements for multiple days and made material misrepresentations and omissions to DTCC staff regarding its ENC.

April 25, 2024

/s/	/s/	/s/
Deborah Cunningham	Andrea Pfenning	James Tabacchi

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