

**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  NATIONAL SECURITIES CLEARING CORPORATION AND THE DEPOSITORY TRUST AND CLEARING COMPANY	File No. 3-21924
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**ALPINE’S RESPONSE TO NSCC’S AND DTC’S OBJECTIONS TO  
REQUESTS FOR EXPEDITED TREATMENT AND FOR  
LEAVE TO FILE OVERLENGTH BRIEF**

In the wake of DTCC’s<sup>1</sup> Decision of April 25, 2024 affirming the cease to act determination in this matter, Alpine Securities Corporation (“Alpine”) promptly submitted its motion for a stay of that Decision seeking to ensure that Alpine could continue to operate during the pendency of the appeal. In that motion, Alpine sought to address the host of critical issues raised by DTCC’s procedures and by its Decision, seeking adequately to address the merits of the underlying proceeding, the statutory and Constitutional issues that are raised by DTCC’s process, and the relative balance of harms that would flow from the closure of this decades old clearing firm in a regulatory environment in which Alpine is one of the few remaining firms that participates in microcap transactions.

In response, DTCC has filed objections with respect to Alpine’s expedited filing and the length of its brief, complaining that they have been placed under “undue time pressure.”

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<sup>1</sup> Alpine refers to the entities involved in this proceeding collectively as “DTCC.”

Objections at 3. DTCC also tells the Commission that Alpine's counsel "did not agree" to a lengthier period for response to the motion and "instead requested a further extension of time. *Id.*

DTCC's claim is misleading. In discussions with DTCC, Alpine has sought only to ensure that DTCC's "death penalty" not be implemented until after the Commission has had an adequate opportunity to consider the extent and the nature of the appellate issues. To that end, Alpine suggested that the parties should agree to a briefing schedule that would enable DTCC to take *additional time* to file its response and that DTCC agree not to implement the cease to act until after the Commission has ruled on this motion for a stay. Through that process, any "time pressure" associated with either the briefing *or* the Commission's ruling would be eliminated. While not even claiming that Alpine's continued operation presents any risk, since Alpine is in fact in compliance with the new \$10 million ENC requirement, DTCC rejected that proposal.<sup>2</sup>

DTCC also objected to the length of Alpine's submission, arguing that Alpine failed to put forth any "justification" for its request and that "there is nothing about this case that warrants a departure from the limitation on length." *Id.* at 3. To the contrary, this case involves not only DTCC's forced closure of a decades-old firm and significant factual disputes but also a series of issues of first impression before the Commission concerning DTCC's rules and procedures. According to DTCC, this is only the second proceeding in which it has sought to cease to act for a firm, and this proceeding is dramatically different from the prior one. There, DTCC appeared to acknowledge that its cease to act determination had to be supported by evidence that the cease to

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<sup>2</sup> While Alpine does not object to DTCC's request for additional time to submit its opposing brief, Rule 401(d)(3) of the SEC Rules of Practice indicates that expedited consideration is appropriate where the action complained of has or will be effective within a period of time. Because the decision by DTCC was and is immediately effective, Alpine filed under that provision while also advising the Commission that DTCC stated that it would delay implementation for thirty days.

act was necessary for the protection of DTCC, its members and participants. And the Commission expressly held that DTCC had in fact demonstrated that, in light of the volume of trading and firm's financing methods, it posed a meaningful risk to DTCC. Here, DTCC failed even to argue that any such risk existed and, because Alpine has satisfied DTCC's own ENC requirements, the Commission can be confident that no such risk exists. That critical fact not only differentiates this case but also underscores the substantial issue concerning the proper interpretation of DTCC's own rules, and whether DTCC can disregard the limitations on ceasing to act.

This case thus presents substantial questions concerning whether DTCC complied with its own rules in the conduct of the proceeding, whether its procedures constitute fair process under the Exchange Act, and whether its procedures contravene the private non-delegation doctrine and/or the Constitution. By way of example, DTCC's rules do not permit adjudication of a cease to act proceeding by individuals who have a conflict of interest and yet, as Alpine argued prior to the hearing, the members of the DTCC Board suffered from a combination of conflicts arising from the Board's own prior action on the matter and the obligations that they have as Board members and as employees of financial firms subject to DTCC's regulation. The seemingly unique method used by DTCC – having its Board members approve the cease to act and then having fellow Board members adjudicate the propriety of that action – raises very real issues concerning the lack of a neutral arbiter and a fair process.

Problematic also is that DTCC is purportedly given authority to act “in its discretion” *and* its decision becomes effective prior to any plenary review by the delegating agency – circumstances that appear to contravene the fundamental requirement that a private entity exercising governmental power must function in a manner subordinate to the delegating agency and must apply clear standards enunciated by the agency. And these issues are exacerbated in this

case by the apparent failure of DTCC to acknowledge or apply the few provisions that do exist that govern when a cease to act is appropriate. These are only a few of the substantial and fundamental issues that have not previously addressed by the Commission and that, in Alpine's view, warrant overlength briefing. Alpine therefore has no opposition to DTCC receiving a "commensurate" enlargement.

### **CONCLUSION**

Wherefore, Alpine requests that the Commission grant its request to file an overlength brief and consider and decide Alpine's motion on an expedited basis.

Dated: May 2, 2024

/s/ Maranda E. Fritz  
MARANDA E. FRITZ PC

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 2, 2024, I caused to be served a copy of Alpine's Response to NSCC's and DTC's Objections to Requests for Expedited Treatment and for Leave to File Overlength Brief, via email to the following individuals:

Mark Harris – mharris@proskauer.com  
Margaret Dale – mdale@proskauer.com  
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Dated: May 2, 2024

/s/ Maranda E. Fritz  
MARANDA E. FRITZ PC