IN UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
May 6, 2024

ADMINISTRATIVE PROCEEDING

File No. 3-21924

In the Matter of the Application of

ALPINE SECURITIES CORPORATION

OPPOSITION OF NSCC AND DTC TO ALPINE SECURITIES CORPORATION'S MOTION FOR AN EMERGENCY INTERIM STAY AND OTHER RELIEF

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

OS Received 05/06/2024

STATUTES AND REGULATIONS

OTHER AUTHORITIES

PRELIMINARY STATEMENT

This case concerns a decision by National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") (together, the "Clearing Agencies") to cease acting for a Member that violated a critical financial requirement and then repeatedly lied about it. Under new risk-management regulations that took effect in August 2023, with a grace period extending until October 2023, Alpine Securities Corporation was required to hold $10 million in excess net capital ("ENC"). Not only did Alpine fail to meet the ENC deadline, but it mispresented its true available capital to the Clearing Agencies. The Clearing Agencies determined that Alpine's actions violated their rules and created grave financial risk. After a formal evidentiary hearing, featuring written affirmations from multiple witnesses, documentary evidence, and live cross-examination, a Panel of DTCC approved the determination to cease to act.

Alpine now comes before the Commission seeking an emergency stay of the Hearing Panel's decision. But Alpine cannot remotely satisfy *any* of the elements for stay relief.

To begin with, Alpine cannot show that its challenges have a substantial likelihood of success on the merits. To this day, Alpine contends that it did not actually violate the ENC requirement; and that, even if it did, its violation and accompanying misrepresentations were not serious or deliberate. The Hearing Panel saw that story for what it was—a fairy tale. In the Panel's words: "Much of the argument and testimony presented by Alpine in this proceeding are simply conclusory statements that are mischaracterizations of the facts and misleading allegations based on these mischaracterizations, often accompanied by equally meritless accusations."[1]

The evidence at the Hearing made crystal clear that Alpine did not have $10 million in ENC by the deadline. The bulk of the funds that Alpine claimed as "capital" was actually cash

[1] April 25, 2024 Hearing Panel Decision ("Decision") at 11.

held in a non-capital account, which Alpine's owner had deliberately designated as not authorized for corporate purposes. The Panel found that Alpine displayed a "pattern of inadequate capitalization, based on whatever story of the day Alpine wished to pursue, [which] was inappropriate and deceptive."[2]

Moreover, Alpine's communications with the Clearing Agencies about its ENC were "knowingly untrue" and "willfully inaccurate."[3] As Alpine's own witnesses conceded, the daily capital reports it submitted for more than a week overstated its ENC by as much as 50%. Even now, Alpine continues to fabricate a misleading narrative of the key events. Remarkably, Alpine effectively admits in its motion that one of the key documents submitted to the Clearing Agencies and the Panel—a shareholder resolution alleged to demonstrate the availability of its capital—was *backdated*, a further demonstration of Alpine's deception.

Alpine cannot satisfy any of the other prongs necessary for a stay. It is suffering no immediate irreparable injury because the Clearing Agencies have agreed to take no action until May 26, 2024, at the earliest. Even after that, Alpine can continue operations by clearing its trades through another Member, and provides no concrete facts about the impact on its business, absent a stay. By contrast, the Clearing Agencies and their membership face the real danger posed by a Member that defied important risk-management duties and then tried to cover it up. As the Panel said: "No entity in [the Clearing Agencies'] 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."[4] The market's interest in running a safe, efficient clearing system is also of

[2] *Id.* at 19.

[3] *Id.* at 16 & 17 n.26.

[4] *Id.* at 19.

paramount importance.

Alpine's arguments fall woefully short of satisfying its burden of demonstrating a need for emergency action by the Commission. The motion for a stay and other relief should be denied.

BACKGROUND

A. NSCC and DTC.

NSCC and DTC are clearing agencies registered with the SEC pursuant to Section 17A of the Securities and Exchange Act of 1934 (the "Exchange Act" or "Act"), as well as self-regulatory organizations ("SROs") subject to Section 19 of the Act.[5] NSCC provides central counter-party clearance and settlement services, guaranteeing payment and delivery of securities between its Members for transactions in equities and other types of securities in the United States.[6] DTC is a central securities depository for U.S. transactions in equity and other securities.[7]

B. Alpine Securities Corporation.

Alpine is a broker-dealer Member of NSCC and DTC. From the outset of its membership, it has been a Member with a "Clears for Others" Clearing Status, meaning that it was a Member that could (and did) submit trades to NSCC on behalf of other brokers with which it has a correspondent clearing relationship.[8] Since 2017, Alpine has been on the Clearing Agencies' "Watch List," which places it among the Clearing Agencies' riskiest members due to financial, operational, and regulatory issues that have increased its credit risk.[9] Members on the Watch List are often subject to additional monitoring or adequate assurances to permit the Clearing Agencies to manage

[5] 15 U.S.C. § 78s; 15 U.S.C. § 78q-l(b)(2).

[6] *Id.*

[7] *Id.*

[8] Decision 6; *see also* Leibrock Aff. ¶ 7. In contrast, Self-Clearing Members clear for their own customers. *See* Cuddihy Aff. ¶ 16.

[9] Decision 5.

better the risk they present.[10] In Alpine's case, the Clearing Agencies took a number of steps to manage Alpine's risk, which included requiring Alpine to submit daily capital reports.[11]

C. The Minimum ENC Requirement Rule Change.

On August 26, 2022, the SEC approved a rule change that increased the NSCC minimum ENC requirement for U.S. broker-dealers like Alpine (the "Rule Change").[12] The new rule calculated each broker-dealer's required minimum ENC based on (i) the broker-dealer Member's Clearing Status, either "Self-Clearing" or "Clears for Others," and (ii) a daily measure of the volatility of the Member's trading activity ("Value-at-Risk Tier," or "VaR Tier"), with higher volatility leading to a higher ENC requirement. NSCC Rules, add. B § 1.B.1. Alpine, as a Clears for Others Member with a VaR of above $500,000, had a minimum ENC requirement of $10 million.

Alpine knew about the new ENC requirements—and, specifically, that it would be expected to satisfy the minimum ENC requirement of $10 million—for more than a year. After SEC approval, NSCC told its Members that the new rule would become effective on August 26, 2023 (the "Effective Date"), with a grace period of 60 days until October 25, 2023 (the "Compliance Deadline").[13] NSCC communicated with Alpine multiple times over the course of several months regarding Alpine's need to meet the requirement and inquired how Alpine planned to do so.[14]

---

[10] *Id.*

[11] *Id.*; Leibrock Aff. ¶ 10

[12] Decision 3–4. Alpine submitted objections to the Rule Change during the public notice-and-comment period. Clearing Agencies Ex. 26, Alpine Comment Letter to Rule Change.

[13] Decision 3–4; *see also* Cuddihy Aff. ¶¶ 19–20.

[14] Decision 6 (citing Clearing Agencies Exs. 7, 8, 9, 10, 11).

OS Received 05/06/2024

Throughout that process, Alpine acknowledged the new requirement and represented to the Clearing Agencies that it (or more accurately, its owner) would come up with the required capital, though it refused to say how.[15]

D. Alpine's Last Minute and Unsuccessful Attempt to Change its Clearing Status.

Despite having engaged with NSCC about the ENC requirement for months, after the Effective Date had passed and within days before the grace period would expire, Alpine told NSCC for the first time that it was considering changing its business model from "Clears for Others" to "Self-Clearing" in order to avoid being subject to the higher ENC requirement.[16] Although there were numerous emails, letters, and phone calls with Alpine discussing its options to meet the ENC requirement,[17] Mr. Maratea confirmed at the Hearing that after the Effective Date and all the way to the day before the Compliance Deadline, "Alpine was continuing to assess its options and had made no determination on a plan."[18]

On or about October 24—that is, on the very last day before the Compliance Deadline and well after the Effective Date—Alpine's CEO sent NSCC a notice of material change in condition pursuant to NSCC Rule 2B, § 2B(b).[19] The notice requested that NSCC change Alpine's Clearing Status to "Self-Clearing for purposes of Addendum B in the NSCC Rules." But, as the Hearing Panel found, Alpine's notice "made no statements regarding what, if anything, had been done at

[15] Decision 6–7; *see also* Leibrock Aff. ¶¶ 25–27; Hearing Tr. (Mar. 18) 360:15–20, 362:3–16 (knew of Rule Change and how ENC would be calculated since 2022).

[16] *Id.* at 7–8; *see also* Leibrock Aff. ¶¶ 32–33.

[17] *Id.* at 8–10.

[18] *Id.* at 8.

[19] *Id.* at 10 (citing Clearing Agencies Ex. 47).

OS Received 05/06/2024

Alpine or Scottsdale to effectuate Alpine's contemplated change in clearing status."[20] Even after NSCC requested additional information about the change, Alpine did not provide the information, and the evidence showed that it was not successful in making the required changes to its business prior to (or even after) the Compliance Deadline.[21]

E. Alpine's Failure to Meet the Minimum ENC Requirement.

Alpine did not have $10 million in ENC on the Compliance Deadline.[22] In fact, Alpine's ENC remained below $10 million every day from the Compliance Deadline until November 10, after the Clearing Agencies had made the formal determination to cease to act for Alpine, and had even notified the latter of its decision.[23]

During the same time span, Alpine repeatedly misrepresented and obfuscated its true ENC level to the Clearing Agencies. Prior to the Compliance Deadline, Alpine's ENC had been well below the $10 million minimum.[24] On October 26, Alpine's CEO claimed in a series of emails that Alpine had over $10 million in ENC, attributing its increased ENC to a $6.4 million transfer from its parent, SCA Clearing.[25] But later that day, after being informed "that it was 'very important' to [the Clearing Agencies] that this representation be confirmed in the daily capital reports," Alpine internally lowered its ENC and then submitted a daily capital report reflecting only

[20] *Id.*

[21] Decision 11 & n.16 (noting Alpine's CEO "did not testify that Alpine had actually completed the process (or any part of it) at the time of the Compliance Deadline").

[22] Decision 13.

[23] Decision 13–14 (citing Clearing Agencies Ex. 47).

[24] Decision 14 (citing Clearing Agencies Ex. 18).

[25] *Id.*

OS Received 05/06/2024

about $9.8 million in ENC.[26] The Clearing Agencies asked Alpine for an explanation of the discrepancy between the CEO's emails and the daily capital reports, but Alpine never responded.[27]

On November 2, the Clearing Agencies sent Alpine another letter asking for an explanation of the discrepancy and requesting documentation that the $6.4 million transfer was in fact capital.[28] Alpine responded on November 3 with a letter from its outside counsel, Maranda Fritz. The Hearing Panel noted that "[l]ittle 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."[29] Ms. Fritz's letter did confirm, however, that "not all of the funds were authorized as capital," a representation she made again on a conference call on November 6.[30] The letter also attached a shareholder resolution dated October 26, 2023 (the "October 26 Resolution"), signed by Alpine's CEO and Mr. Hurry, Alpine's ultimate indirect owner. The October 26 Resolution "disclose[d] that only $1.6 million of the $6.4 million transfer on October 25, 2023 was actually capital."[31] The testimony at the Hearing also confirmed that "Alpine and Alpine's owner did not commit the full amount of cash to the capital account."[32]

While the Resolution is dated October 26, Alpine now claims "that it was prepared and provided in response to [the Clearing Agencies'] inquiry on November 2, 2023, and it referenced

---

[26] *Id.*

[27] *Id.*

[28] Decision 15 (citing Clearing Agencies Ex. 20).

[29] *Id.* (citing Clearing Agencies Ex. 21).

[30] *Id.* at 15–16.

[31] *Id.*

[32] *Id.* at 19.

only a portion of the contributed capital to preserve Alpine's argument that it was subject only to the $5 million requirement."[33] When Alpine's CFO first saw the resolution on November 3, he "appropriately adjusted Alpine's reported ENC downward," such that Alpine's ENC was below even the $5 million minimum for Self-Clearing Members between November 6 and 9.[34]

On November 9, NSCC and DTC sent a consolidated notice to Alpine informing it that the Clearing Agencies would cease to act for Alpine pursuant to NSCC Rule 46, § 1, NSCC Rule 2A, § 1.G.ii, and DTC Rule 10, § 1, subject to a hearing. The Clearing Agencies' determinations were based on (i) Alpine's failure to timely meet its $10 million minimum ENC requirement by the Compliance Deadline and each day until at least November 9, despite having well over a year to comply and repeated warnings, and (ii) Alpine's pattern of intentional misinformation, omissions, and evasion in the reporting of the amount of its ENC to the Clearing Agencies, including misrepresenting the availability of "funds" as good capital for ENC purposes.[35] Alpine timely requested a Hearing.

F. The Hearing Panel's Decision Affirming the Determinations.

The Hearing Panel received direct testimony by affirmation from three Alpine witnesses and two Clearing Agency witnesses, along with dozens of exhibits of documentary evidence. The Panel then heard opening statements and cross-examination over two days on March 18 and 19, 2024.

---

[33] Mot. 13 & 8 n.26.

[34] Decision at 17.

[35] *Id.*; *see also* Cuddihy Aff. ¶ 26; NSCC Rules 2A, 46, *available at* https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf; DTC Rule 10, *available at* https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf.

On April 25, 2024, the Hearing Panel issued its Decision upholding the Clearing Agencies' determinations to cease to act for Alpine. The Hearing Panel found that Alpine was subject to the $10 million minimum ENC requirement as a Clears for Others Member because it was "unable to effectuate [] a change in clearing status by the Compliance Deadline"[36] and that the evidence "confirmed that Alpine was not in compliance with its ENC requirements."[37] The Hearing Panel also found that Alpine's representations about its capital amounted to "knowing obfuscation[s]," and that Alpine's "specific representations to [the Clearing Agencies] about its capital" were "knowingly untrue."[38]

The Hearing Panel also agreed with the Clearing Agencies' conclusion that ceasing to act for Alpine was justified under the circumstances. In the Hearing Panel's view, the Clearing Agencies cannot "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."[39]

G. Alpine's Application and Stay Motion.

On April 30, 2024, Alpine served the Application, which seeks review of the April 25 Hearing Panel Decision. Concurrently, Alpine filed a Motion for an Emergency Interim Stay and Other Appropriate Commission Relief to stay the Clearing Agencies' determinations to cease to act for Alpine and requested expedited consideration. That same day, Alpine requested that NSCC and DTC give it 30 days for a wind-down period. The next day, on May 1, counsel for NSCC and

[36] *Id.* at 13.

[37] *Id.* at 16.

[38] *Id.*

[39] *Id.* at 19.

DTC informed Alpine's counsel that they would implement the cease to act no sooner than 30 days from April 25.[40]

ARGUMENT

Alpine has the burden to show that it is entitled to the "extraordinary remedy" of a stay pending review by the Commission.[41] The Commission weighs four factors to decide if a stay is warranted: (1) whether the movant has established a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm without a stay; (3) any substantial harm that another party would suffer as a result of the stay; and (4) whether the stay is in the public interest.[42] Even if a movant demonstrates that it is likely to suffer irreparable harm if a stay is not granted, it is still required to show "at a minimum, 'serious questions going to the merits.'"[43] The movant's "overall burden is no lighter" under this formulation because it must show both serious questions on the merits and that the balance of hardships tips "decidedly" in its favor."[44] Here, each of the four factors weighs against granting the Motion.

---

[40] For the reasons set forth in the Clearing Agencies' Objection submitted to the SEC on May 1, Rule 401(d)(3) is not applicable because the action complained of (the Clearing Agencies' intention to cease to act) would not take effect for at least thirty days. Alpine submitted a reply which, instead of responding to the Objection, made further arguments on the merits, effectively violating the word limit by several hundred more words.

[41] *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432–34 (2009)).

[42] *See* Rule 401(d) of the Commission's Rules of Practice, 17 C.F.R. § 201.401.

[43] *In the Matter of the Application of KJM Sec., Inc.*, No. 88053, 2020 WL 416696, at *2 (Jan. 27, 2020) (quoting *In re Revel AC, Inc.*, 802 F.3d 558, 570 (3d Cir. 2015)).

[44] *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *6 (Nov. 27, 2017) (quoting *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original) (internal quotation marks and citation omitted)).

A. Alpine Has Not Established a Strong Likelihood of Success on the Merits.

Alpine challenges five aspects of the Hearing Panel's Decision, specifically, its findings that (1) Alpine was subject to the $10 million minimum ENC requirement for Clears for Others Members; (2) Alpine failed to have at least $10 million in ENC by the Compliance Deadline and in the weeks that followed; (3) Alpine engaged in material misrepresentations about its capital; (4) the cease to act is proper under the Clearing Agencies' Rules and necessary for the protection of the Clearing Agencies; and (5) Alpine received a fair procedure. As discussed below, all of its challenges are baseless and Alpine's argument is unlikely to succeed on any of them.

1. The Decision Correctly Found that Alpine is Subject to the $10 Million ENC Requirement.

Under the new NSCC ENC rule, Alpine was required to have a minimum of $10 million in ENC by August 26, 2023 (the Effective Date), with a grace period until October 25, 2023 (the Compliance Deadline). Over the course of the year leading up to the Effective Date, NSCC repeatedly advised Alpine that its projected minimum ENC requirement would be $10 million, based on Alpine's Clearing Status as a Clears for Others Member and its Value-at-Risk Tier ("VaR Tier") of over $500,000.[45] Alpine's CEO, Mr. Maratea, also admitted during the Hearing that Alpine was aware it would need an ENC of $10 million by August 26, "[g]iven the fact that [Alpine was] clearing for others."[46]

Alpine claims that it should have been subject to the lower minimum ENC requirement applicable to Self-Clearing Members. Alpine claims that it "had been engaged in self-clearing for decades,"[47] but the evidence showed that it also cleared for correspondent brokers during that time.

---

[45] Decision 6 (citing Clearing Agencies Exs. 7, 8, 9, 10, 11); NSCC Rules, add. B, § 1.B.1.

[46] Hearing Tr. (Maratea) 364:7–11; *see also* Clearing Agencies Ex. 26 at 3.

[47] Mot. 18.

Indeed, since 2018, Alpine held itself out to the Clearing Agencies and to the investing public as a broker that *exclusively* cleared for other brokers, including confirming in recent due diligence responses to the Clearing Agencies that its only client was Scottsdale Capital Advisors, as an introducing broker.[48] Presented with this evidence, the Panel correctly concluded that Alpine was not a Self-Clearing Member at the time of the Compliance Deadline.

Next, Alpine contends that even if it was a Clears for Others Member, it reclassified itself the day before the Compliance Deadline. But that is not true either. As the Panel correctly observed, "to cease being a clears-for-others Member and shift to self-clearing would be a material change in Alpine's business,"[49] which "would require diligence on [the Clearing Agencies'] part and additional information from Alpine and would require formal approval by [the Clearing Agencies]."[50] The documentation Alpine sent to the Clearing Agencies *after* the Compliance Deadline confirmed that Alpine was still in the process of transferring customer accounts and making other necessary changes to its business.[51] Indeed, the Panel found that Alpine had not completed the process of changing its business to self-clearing by the Compliance Deadline[52]—or even by the time of the Hearing, months after the October 25 deadline.[53]

[48] Leibrock Aff. ¶ 8 (explaining that in in 2018 Alpine exited the direct customer business and continued to be a clearing broker exclusively for Scottsdale); Hearing Tr. (Mar. 18) 114:4–15; 117:22–118:4.

[49] Decision 10 & n.15 (citing Cuddihy Reply Aff. ¶ 7; Hearing Tr. (Mar. 19) at 350:2–353:21).

[50] *Id.* at 8; *see also 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.'" (quoting Cuddihy Reply Aff. ¶ 5)).

[51] Alpine Ex. 3.

[52] Decision 11 & n.16 (citing Hearing Tr. (Mar. 18) at 263:2–271:16).

[53] *Id.* at 10 & n.15 (citing Cuddihy Reply Aff. ¶ 7; Hearing Tr. (Mar. 19) at 350:2–353:21).

Finally, Alpine's attempt to shift blame to the Clearing Agencies for its own failure to change its business model overnight is baseless. The Panel correctly noted that Alpine had over fourteen months between when the ENC Rule Change was announced and the Compliance Deadline to effectuate a change of status.[54] Instead, Alpine "wait[ed] until past the 11th hour before the Compliance Deadline to take even partial measures."[55] In fact, Alpine's CEO admitted that the first time he notified NSCC in writing of Alpine's decision to materially change its business and request Self-Clearing status was on October 24—the day before the Compliance Deadline.[56] But then the very next day, he effectively rescinded the request, telling NSCC that "Alpine is not 'changing' its status; it will be a firm that is authorized to clear for others."[57]

Alpine's suggestion that the Clearing Agencies were somehow dilatory in communicating with Alpine is similarly false. While Alpine's witnesses testified that the Clearing Agencies "failed to respond" to Alpine's requests, the Panel called that claim "false."[58] Over the course of several pages, the Decision detailed the extensive engagement between the Clearing Agencies and Alpine concerning Alpine's inquiries and last-minute purported decision to change status—complete with citations to the record.[59] As such, Alpine's contention that the Clearing Agencies "refused to acknowledge" Alpine's questions "or take the simple step of communicating to the firm its position"[60] is contradicted by the evidence.

---

[54] *Id.* at 12.

[55] *Id.* at 12 n.17.

[56] Hearing Tr. (Mar. 18) 395:22–396:14; Clearing Agencies Ex. 46.

[57] Clearing Agencies Ex. 18.

[58] Decision 8.

[59] *Id.* at 8–12.

[60] Mot. 19.

Alpine has not raised a serious question going to the merits of whether it was subject to the $10 million ENC requirement on the Compliance Deadline.

2. Alpine Admits, and the Decision Correctly Found, that Alpine Failed to Meet the $10 Million ENC Requirement.

Alpine next takes issue with the Panel's finding that Alpine did not meet its minimum ENC requirement.[61] In fact, however, Alpine already conceded the point. Alpine's CEO testified that it "had a deficit" and that its ENC was "deficient" at the deadline.[62] And its chief accountant testified that Alpine had "in excess of $9.8 million" in ENC at the deadline.[63] If Alpine had met or exceeded the $10 million ENC minimum, he would have said so. As the Hearing Panel found, "Alpine's own reporting to DTCC [showed that] Alpine did not have the required level of ENC on the Compliance Deadline" or any day prior to November 10.[64] Here, too, Alpine has failed to raise a serious question going to the merits.

Alpine's main argument is that because $6.4 million had been transferred to one of its bank accounts (not a capital account)[65] on October 25, Alpine satisfied its $10 million ENC requirement by the Compliance Deadline. The Decision correctly observed that "having 'funds' in an amount greater than $10 million" is irrelevant. "Cash in an account is not capital."[66] Although Alpine

[61] *Id.* at 19–20.

[62] Hearing Tr. (Mar. 19) at 420:14–422:22.

[63] Cosman Aff. ¶ 10.

[64] Decision 13.

[65] Hearing Tr. (Hurry) 570:12–571:2.

[66] Decision 15 & n.23 (citing testimony of Alpine's CFO, James Cosman, and DTCC's Michael Leibrock, both agreeing that funds or cash in an account is not the same thing as capital).

claims (without citation) that Mr. Hurry testified "that he provided the funds as capital,"[67] in fact Mr. Hurry testified that the funds were not transferred into an Alpine capital account.[68]

Further, the October 26 Shareholder Resolution makes expressly clear that Alpine's parent "shall make and [Alpine] shall accept, a capital contribution of $1,600,000 to Alpine."[69] In other words, while there may have been a cash transfer of $6.4 million, the October 26 Shareholder Resolution confirms that there was a *capital* contribution of only $1.6 million. Conversely, "[f]ully two-thirds of the transfer, $4.8 million, was *not* capital."[70] Whether or not a resolution was required in the first place is irrelevant.[71]

Nor was the Clearing Agencies' understanding of Alpine's capital position based on "inaccurate information from FINRA."[72] It was based on what Alpine itself was telling the Clearing Agencies. This included a representation from Alpine's counsel, Ms. Maranda Fritz, following the transfer of funds that "[a] portion of those funds have not yet been authorized as capital *pending a decision from FINRA*."[73] Plainly, Alpine knew that not all of the $10 million was authorized as capital, and so did FINRA.

Alpine also contends that its ENC should be evaluated retroactively, based on its October 31 FOCUS Report, which showed an ENC of over $10 million. But that FOCUS Report was prepared and submitted in late November, long after the relevant events, and reflected accounting

[67] Mot. 19.

[68] Hearing Tr. (Mar. 19) 570:12–571:2.

[69] Clearing Agencies Ex. 21.

[70] Decision 16 (emphasis added).

[71] *See* Mot. 20.

[72] *Id.*

[73] Clearing Agencies Ex. 21.

adjustments made over those weeks.[74] The FOCUS Report was therefore not available for the Clearing Agencies to rely upon when assessing Alpine's ENC in real time, and does not change the fact that Alpine did not "have and maintain" minimum ENC over $10 million when required by the Rule.

Alpine also misleadingly quotes from Mr. Cuddihy's testimony to suggest that he and the Clearing Agencies were somehow confused about Alpine's capital situation.[75] That could not be further from the truth. The Clearing Agencies' decisions were based on their evaluation of the information that *Alpine* was providing, including its daily capital reports reflecting ENC less than $10 million,[76] statements by Alpine's lawyer in a letter and on a phone call that not all of the funds transferred to Alpine had been authorized as capital pending a decision from FINRA,[77] and the October 26 Shareholder Resolution reflecting a capital contribution from Alpine's ownership of only $1.6 million.[78] Alpine seems to be faulting Mr. Cuddihy for not anticipating Alpine's made-for-litigation arguments that all of these representations were mistakes and that the documents did not mean what they said.

[74] Alpine Ex. 8. Though this evidence was submitted late, "[i]n 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." Decision 9.

[75] Mot. 20.

[76] Clearing Agencies Ex. 47.

[77] Decision 15 (citing Clearing Agencies Ex. 21).

[78] Clearing Agencies Ex. 21.

The Panel took proper notice of Alpine's gamesmanship, finding that "[n]o entity in [the Clearing Agencies'] 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."[79]

3. The Decision's Finding that Alpine Engaged in Material Misrepresentations is Supported by the Evidence.

Alpine admits that it made "inaccurate statements," but seems to be arguing that the inaccuracies do not matter because the statements were "made in error."[80] Even that is untrue. While Mr. Maratea was telling the Clearing Agencies that Alpine had *over* $10 million in ENC,[81] Mr. Cosman was filing daily capital reports from October 25 through November 2 that reported capital just *under* $10 million.[82] In fact, that whole time, Alpine was intentionally overreporting its capital because it had received a capital contribution of at most $1.6 million. That was all Alpine's indirect owner had contributed as capital, as evidenced by the October 26 Resolution.[83] Therefore, Alpine's contention now that "the claimed misstatements were not designed to deceive DTCC into believing that its capital situation was better than reported" is patently false.[84]

Alpine attempted to downplay the significance of the October 26 Resolution to the Hearing Panel and makes the same arguments here. Alpine argues that the Hearing Panel erred in relying on the October 26 Resolution because it is "clear that it was prepared and provided in response to

---

[79] Decision 18.

[80] Mot. 13.

[81] Clearing Agencies Ex. 18.

[82] Clearing Agencies Ex. 47.

[83] Clearing Agencies Ex. 21.

[84] *See* Mot. 21.

DTCC's inquiry on November 2, 2023."[85] But if Alpine did in fact prepare the Resolution on November 2 or 3, that would mean it was deliberately *backdated* to make it appear that it was signed a week earlier. That would be a serious act of deception.

Based on these facts, the Panel determined that "not only were Mr. Maratea's two specific representations to DTCC in emails on October 26, 2023 knowingly untrue, 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."[86] The Panel also concluded that Alpine's conduct, through its owner Mr. Hurry, its CEO Mr. Maratea, and its lawyer Ms. Fritz, "was inappropriate and deceptive."[87]

Alpine's argument that the Decision "misstates the sequence of events"[88] leading up to the Clearing Agencies' November 9 cease to act notice is inaccurate and a red herring. Mr. Cuddihy testified that when Alpine did not have the required minimum ENC by October 25, NSCC began contemplating what actions it could take to bring Alpine into compliance and manage the unchecked risk from Alpine's unexplained ENC shortfall. But the Clearing Agencies did not cease to act at that time.[89] The cease to act decision only came *after* the Clearing Agencies realized that Alpine made a series of misrepresentations on and after the Compliance Deadline, at which point it became clear to the Clearing Agencies that ceasing to act for Alpine was the only way to comply with their Exchange Act obligations to protect themselves, their Members, and the securities markets from the risk presented by Alpine.

---

[85] *Id.* at 13.

[86] Decision 16.

[87] *Id.* at 19.

[88] Mot. 21.

[89] Decision 17 & n.27 (citing Clearing Agencies Ex. 28).

None of Alpine's arguments raise a serious question on the merits of whether the Hearing Panel properly found that Alpine made misrepresentations of material fact to the Clearing Agencies.

4. The Cease to Act is Justified Under the Clearing Agencies' Rules and Necessary to Protect the Clearing Agencies.

Alpine's contention that the cease to act determinations were not "necessary for the protection" of the Clearing Agencies, and therefore unwarranted or overly harsh, is also wrong.

First, Alpine simply misreads the rules. NSCC Rule 46 lists multiple possible grounds for a cease to act determination. The one applicable here is that the member has "failed to comply with any financial or operational requirement of [NSCC]."[90] A different ground is that the member is "in such financial or operating difficulty, that [NSCC] determined, in its discretion, that *such action is necessary for the protection* of [NSCC], the participants, creditors, or investors."[91] The italicized phrase is appended to that single ground, not to the other five grounds listed in that section, including the one applicable here. Elementary rules of construction thus reject Alpine's attempt to read the phrase as a free-standing requirement. The same structure is found in DTC Rule 10, which authorizes a cease to act determination where the Member "make[s] a misstatement of a material fact or omit[s] a material fact to [DTC],"[92] or (separately) where ceasing to act is "necessary for the protection of [DTC]."[93]

[90] NSCC Rule 46 § 1(f).

[91] NSCC Rule 46 § 1(c).

[92] DTC Rule 10 § 1(a)(vi)(A)(2). The NSCC Rule covering misstatements or omissions does not mention "necessity" at all. NSCC Rule 2A § 1(G)(ii).

[93] DTC Rule 10 § 1(a)(vi)(B).

Second, even if there were a "necessity" requirement, it was amply demonstrated here.[94] The Panel noted the "distressingly apparent" reality that "Alpine was deficient in its ability to properly manage its compliance and regulatory obligations."[95] That extended from Alpine's admitted inaccurate reporting its complete failure to respond to inquiries from the Clearing Agencies—even those that Alpine's CEO agreed were "very important."[96] Risk-management issues permeated the business. "Alpine's many other failures and obfuscations in this period have to be seen in light of an organization that is plainly deficient in internal controls."[97] As the Panel summarized: "No entity in [the Clearing Agencies'] 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."[98] In other words, the Hearing Panel found that Clearing Agencies' determinations to cease to act were necessary measures to protect the Clearing Agencies.

5. Alpine is Highly Unlikely to Prevail on its Constitutional and Fairness-based Claims.

Alpine asserts that the Clearing Agencies are "engaged in governmental action" and must therefore comply with the Appointments Clause of the United States Constitution.[99] It also claims that the Clearing Agencies acted pursuant to "an unconstitutional delegation of legislative power to a private entity" in violation of the private non-delegation doctrine.[100] Neither of those claims

[94] Mot. 17.

[95] Decision 14 n.20.

[96] *Id.* "[T]he 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." *Id.*

[97] Decision 14 n.20.

[98] Decision 19.

[99] Mot. 25.

[100] *Id*.

belongs in this proceeding, and therefore neither one raises a serious question on the merits. Indeed, Alpine is already pursuing the very same claims against DTCC and the Clearing Agencies in a case pending before the District of Utah. The court's jurisdiction in that proceeding arises from *Axon Enterprises, Inc. v. Federal Trade Commission,* 598 U.S. 175 (2023) and is exclusive relative to other claims Alpine may bring for consideration before the Commission.

In *Axon*, a plaintiff brought a Separation of Powers claim challenging the appointment structure of SEC administrative law judges, opting to bring the claim in district court instead of through the review mechanism provided by SEC regulation and the Exchange Act, 15 U.S.C. § 78y(a). 598 U.S. at 180–83. In permitting that maneuver, the Supreme Court held that the Exchange Act review scheme does not "reach[] the claim in question." *Id.* at 186; *see id.* at 185 ("[A] statutory review scheme [like the one provided in the Exchange Act] does not necessarily extend to every claim concerning agency action."). In particular, the plaintiff's claim could not "receive meaningful judicial review through the . . . Exchange Act"; it was "collateral to any decisions the Commission[] could make in individual enforcement proceedings"; and it "f[e]ll outside the [SEC's] sphere of expertise." *Id.* Alpine's Appointments Clause and private non-delegation claims are the same kind of "fundamental" constitutional challenges to the Clearing Agencies' structure and existence; they are materially indistinguishable from the Separation of Powers claim in *Axon* that was held to be outside the Exchange Act review scheme. Accordingly, federal court is the sole venue that may hear those claims.

Even if the SEC determines that it can hear those claims, it should decline to do so. To bring its challenges in the District of Utah, Alpine had to show that its claims were "wholly col-

lateral" to the proceedings here, and that such claims were not "of the type Congress thought belonged within [the] statutory scheme" captured in the Exchange Act.[101] The district court accepted jurisdiction on that basis.[102] Alpine should be barred from now taking precisely the opposite position here, that its constitutional challenges do fall within the scope of the SEC's review. Alpine is bound by its choice of tribunal to hear those claims.

Finally, even if the Commission reaches the merits, Alpine still cannot demonstrate a likelihood of prevailing, just as it could not in the District of Utah or the Tenth Circuit, both of which declined to enjoin the Clearing Agencies' proceedings here.[103] Alpine's Appointments Clause argument failed because the Clearing Agencies are private, non-governmental actors under controlling Supreme Court precedent, rendering them outside the bounds of the Constitution's structural mandates for government entities, including the Appointments Clause.[104]

---

[101] *See Axon,* 598 U.S. at 185–96; *see also Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489–91 (2010) (finding district court had jurisdiction over petitioner's Appointments Clause challenge and rejecting proposal that challenge be brought before the SEC and then appealed to Court of Appeals under the Exchange Act's review scheme in large part because the claim was wholly collateral to any SEC orders or rules from which review might be sought).

[102] *See Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp.*, 2024 U.S. Dist. LEXIS 41402, at *9–15 (D. Utah Mar. 8, 2024) (holding that the court did not have *Axon* jurisdiction over Alpine's Due Process claim, but exercising *Axon* jurisdiction to decide Alpine's TRO motion based on its Appointments Clause and private non-delegation claims).

[103] *See id.* at *25; Order, *Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp.*, Appeal No. 24-4027, Doc. 010111016954 (10th Cir. Mar. 15, 2024).

[104] *Alpine Sec. Corp.*, 2024 U.S. Dist. LEXIS 41402, at *16–20 (applying private entity test found in *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 399 (1995), to hold that DTCC and NSCC are private, non-governmental entities). Indeed, a virtually unbroken line of cases has held that securities SROs like the Clearing Agencies are private actors not subject to Appointments Clause and similar challenges. *See Free Enter. Fund,* 561 U.S. at 484–85 (expressly contrasting "private self-regulatory organizations" subject to SEC oversight from "Government-created, Government-appointed" entities); *see also, e.g.*, *Epstein v. SEC*, 416 F. App'x 142, 148 (3d Cir. 2010) (holding NASD is a private actor, not a government entity subject to constitutional due process claim); *Galuska v. N.Y. Stock Exch.*, 2000 WL 347851, at *2 (7th Cir. Apr. 3, 2000) ("NYSE is not a governmental actor subject to the Constitution's mandates."); *Desiderio v. NASD, Inc.*, 191 F.3d

Alpine's private non-delegation argument was likewise rejected, as the Clearing Agencies operate subordinately to the SEC such that any delegation of government power is constitutional, in line with precedent across circuits.[105] The Clearing Agencies' rules must be approved by the SEC, and they must notify the SEC of sanctions they impose on Members, which the SEC may review unilaterally or upon application.[106] Contrary to Alpine's supposition, the SEC's review of the Clearing Agencies' sanctions is not merely for abuse of discretion[107]; it evaluates the accuracy of the Clearing Agencies' factual findings, whether those findings amount to a violation of the Clearing Agencies' rules, and whether such rules were applied in a manner consistent with the Exchange Act.[108]

The Commission also has the power to enforce the Clearing Agencies' compliance with the Exchange Act, the Clearing Agencies' own rules, and the rules of the SEC; to prescribe "such rules and regulations" for registered clearing agencies "as necessary or appropriate in the public interest, for the protection of investors," or in furtherance of the purposes of the Exchange Act;[109] and to suspend or revoke clearing agencies' registrations based on the same considerations.[110] This

198, 206 (2d Cir. 1999) (holding NASD is a private entity, not a government actor subject to constitutional claims).

[105] *Alpine Sec. Corp.*, 2024 U.S. Dist. LEXIS 41402, at *20–24; *see id.* at *24 (collecting cases); *accord Kim*, 2023 U.S. Dist. LEXIS 180456, at *27–30; *see also Oklahoma v. United States*, 62 F.4th 221, 243 (6th Cir. 2023) (noting that courts have consistently upheld the public-private regulatory regime created by the Exchange Act in the face of private nondelegation challenges). The Tenth Circuit likewise rejected Alpine's bid, based on the same claims and arguments, to enjoin the Clearing Agency proceedings here. *See* Order, n.103, *supra*.

[106] 15 U.S.C. §§ 78q-1; 78s(b)(1); *id.* § 78s(d)(1)–(2).

[107] Mot. 26–27.

[108] 15 U.S.C. § 78s(e)(1)(A); *see also* Mot. 16–17 (asserting *de novo* standard of review applies, not abuse of discretion).

[109] 15 U.S.C. § 78s(g)–(h); *id*. § 78q-1(d)(1).

[110] *Id.* § 78s(h)(1).

comprehensive oversight scheme has been touted as the quintessential example of an agency supervisory relationship sufficient to render a delegation of government authority constitutional.[111]

Alpine concludes with a cursory and factually unsubstantiated challenge to the fairness of the Clearing Agencies' adjudicatory process on due process grounds.[112] But the Clearing Agencies are private entities that are not engaged in state action, so they are not subject to due process requirements.[113] And to the extent Alpine is also challenging the hearing process under the Exchange Act's "fair procedure" requirement,[114] the Clearing Agencies' rules provide reasonable procedures to ensure that the Hearing Panel will be impartial,[115] and the Act allows procedures where different actors within the same SRO investigate and adjudicate rule violations.[116] Accordingly, Alpine's procedural claim—whether it is construed as a constitutional or an Exchange Act claim—is not likely to succeed on the merits.

---

[111] *See, e.g.*, *Oklahoma*, 62 F.4th at 229. Alpine also argues that a delegation is constitutionally permissible only if the supervising government agency conducts *pre-enforcement* review of SRO adjudicative determinations. Mot. 26. That is flatly wrong. The Sixth Circuit said an SRO's decisions are "not final" until the agency has the opportunity to review them, *Oklahoma*, 62 F.4th at 243 (citing *Todd & Co. v. SEC*, 557 F.2d 1008, 1012–14 (3d Cir. 1977)), but that does not mean they do not take effect. In fact, agency review of disciplinary actions taken by the SRO in *Oklahoma* does not even stay those actions. 15 U.S.C. § 3058(d); *see also Oklahoma*, 62 F.4th at 243 (Cole, J., concurring). *Todd & Co.*, which Alpine cites, Mot. 25, reinforces this point. That case rejected a private non-delegation challenge because the SEC could review a securities SRO's already-imposed penalties. *Todd & Co.*, 557 F.2d at 1012–14.

[112] Mot. 27.

[113] *See, e.g.*, *Epstein*, 416 F. App'x at 148 (NASD not state actor); *Loftus v. Fin. Indus. Regul. Auth., Inc.*, 2021 U.S. Dist. LEXIS 18823, at *12 (S.D.N.Y. Feb. 1, 2021) (FINRA not state actor) (collecting Second Circuit cases).

[114] 15 U.S.C. § 78q-1(b)(3)(H).

[115] *See* NSCC R. 37 § 4 (panel shall not include "any person who had responsibility for the action or proposed action of [NSCC] as to which the hearing relates"); DTC R. 22 § 5 (same for DTC).

[116] *See, e.g.*, *D'Alessio v. SEC*, 380 F.3d 112, 121–22 (2d Cir. 2004) (rejecting challenge to NYSE hearing officer); *Epstein*, 416 F. App'x at 149 (rejecting same for NASD hearing officer).

B. Alpine Has Not Established that it Will Suffer Irreparable Harm Absent a Stay.

Alpine has not carried its burden to demonstrate that it will suffer irreparable harm absent a stay. To meet its burden on this issue, the movant must provide specific factual information demonstrating that the impact, absent a stay, would result in the destruction of its business.[117] "[M]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough to constitute irreparable harm."[118]

Alpine makes conclusory statements about how termination of its membership will mean that it will go out of business because it would not be able to clear trades,[119] but offers no evidence or support for the proposition that its entire business will be shuttered. In fact, implementation of the cease to act would not prevent Alpine from participating in the securities industry. Membership in NSCC and DTC is voluntary. In contrast to membership in other SROs (*e.g.*, the national securities exchanges or FINRA), membership in the Clearing Agencies is not a prerequisite to participating in the securities industry or becoming registered as a broker-dealer.[120] Thus, even if

---

[117] *See In the Matter of the Application of Robbi J. Jones & Kipling Jones & Co., Ltd.*, No. 91045 (Feb. 2, 2021) ("Without submitting evidence about an inability to meet financial obligations or continue in business because of the bars, we cannot find that Applicants have established they will suffer irreparable harm."); *In the Matter of the Application of Alpine Sec. Corp.*, No. 87599 (Nov. 22, 2019) (suggesting failure to submit "information regarding, among other things, its expenses, level of profitability, or exhaustion of available resources" prevented SEC from determining a likelihood applicant is "likely to cease operations").

[118] *In the Matter of the Application of Bruce Zipper*, 2017 WL 5712555, at *4 (quoting *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *3 (Nov. 13, 2015) (internal quotation marks omitted) (collecting cases)).; *see, e.g.*, *In the Matter of the Application of Se. Invs., N.C., Inc. & Frank Harmon Black*, No. 86097 (June 12, 2019) (finding a claim that impact, absent a stay, will "severely hamper" operations is not irreparable injury.)

[119] Mot. 15, 23.

[120] *See* Cuddihy Aff. ¶ 9.

the Clearing Agencies cease to act for Alpine, it could continue to engage in broker-dealer activities by clearing its trades through another NSCC Member.

Making such a change would not cause Alpine irreparable harm—at most, it would result in a momentary disruption to Alpine's business while it transitioned to clearing its trades through another NSCC Member instead of accessing those services directly as a Member.[121] Thus, Alpine has not demonstrated that it will suffer irreparable harm.

C. A Stay Would Have a Substantial Negative Impact on the Clearing Agencies.

The Clearing Agencies (and their Members) would suffer substantial negative impact if the Commission grants a stay. The Clearing Agencies' SEC-approved Rules reflect a risk-management framework designed to protect the Clearing Agencies, their Members, and the markets from the risk of a Member default. Assessing whether individual members will be able meet their financial obligations and requirements to NSCC on an ongoing basis is central to the risk-management framework, and the Clearing Agencies are required identify, monitor, and protect against the risks from a Member's default in its settlement obligations.[122] Alpine undermined that framework when it failed to maintain the required minimum ENC and then made misrepresentations about it.

Alpine incorrectly claims that its clearance and settlement activities pose no risk because "all stock that is the subject of a sell order from Alpine is already on deposit at DTC and available for settlement."[123] That is not true for several reasons. There is no requirement that Alpine have stock on deposit at DTC and no guarantee that it will continue to do so going forward.[124] In

[121] *See, e.g.*, *Salt Lake Trib. Pub. Co., LLC v. AT&T Corp.*, 320 F.3d 1081, 1105 (10th Cir. 2003) (rejecting argument that change or elimination of certain services constitutes irreparable harm).

[122] Decision 3 (citing Cuddihy Aff. ¶¶ 7–17).

[123] Mot. 16.

[124] Cuddihy ¶ 35.

addition, contrary to Alpine's representations, the delivery of stock on deposit with DTC to NSCC to cover short positions can be executed only in the event of a Member's insolvency and only to the extent permitted by a bankruptcy court.[125] Thus, the ENC requirement is critical to preventing that type of default scenario from occurring because it helps ensure that broker-dealer Members have "sufficient capital to sustain unexpected and/or sustained increases in margin requirements."[126]

Alpine argues that the Clearing Agencies' willingness to provide services to Alpine during the Hearing process somehow proves that it no longer poses risk.[127] That is akin to arguing that since the defendant was allowed to post bail while standing trial, he poses no danger upon conviction. The Clearing Agencies' Rules afforded Alpine due process before any sanction would be imposed. Now that the Panel has affirmed the Clearing Agencies' determinations—after a Hearing that presented voluminous evidence against Alpine—the Clearing Agencies are fully authorized to cease to act for Alpine. To stay such determinations now would make a mockery of that process.

The reality is that the risks Alpine presents are ongoing and will continue for as long as Alpine remains a Member. Alpine's history of misrepresentations broke the covenant of trust between the Clearing Agencies and their Members—trust that each Member will fairly, accurately, and completely report its financial condition, so that the Clearing Agencies can assess and manage any accompanying risks. Whether or not Alpine is now in compliance with the ENC requirement is beside the point. It does not change the fact of Alpine's prior willful non-compliance, nor its

[125] NSCC Rule 18, § 5.

[126] Cuddihy ¶ 13 (citing Clearing Agencies' Ex. 24, *Notice of Filing of Proposed Rule to Enhance Capital Requirements and Make Other Changes*, Release No. 34-93856, 86 Fed. Reg. 74,185, 74,186 (Dec. 22, 2021).

[127] Mot. 15–16.

affirmative misrepresentations. Put simply, NSCC cannot be sure each trading day that Alpine has sufficient capital and capacity to absorb losses and avoid default without risk to NSCC and the other Members, or that it is being truthful about its financial condition or operational capabilities.

D. A Stay is Not in the Public Interest.

Alpine offers no argument on whether a stay would be in the public interest. It would not. A stay would have a negative impact on the public interest for many of the same reasons that it would negatively affect the Clearing Agencies.

The Hearing Panel correctly recognized that the Clearing Agencies' risk-management functions not only protect the Clearing Agencies themselves, but also their other Members and the securities market at large.[128] The Clearing Agencies rely on their Members to properly identify and account for capital availability "to ensure that each Member is able to cover the risk it presents to other Members in the collective enterprise that is self-regulated central clearing."[129]

Because the Clearing Agencies have the ability to mutualize these risks among their Members, the failure of one Member to perform its obligations would present risk to other Members who would be obligated to cover resulting losses.[130] That means that a default by one Member could cause a cascading series of defaults that could affect all of the Members and potentially the broader markets. Injunctive relief would unfairly continue to force the Members to take on the additional risk that Alpine's activities pose above and beyond what they bargained for pursuant to the Clearing Agencies' Rules.

[128] Decision 3.

[129] Cuddihy Aff. ¶ 17.

[130] Cuddihy Aff. ¶ 10.

Injunctive relief would also harm the investing public more generally. The Clearing Agencies "stand[] at the center of global trading activity, daily processing trillions of dollars of securities transactions."[131] They have been designated as SIFMUs in recognition of the fact that failure or disruption could create or increase the risk of liquidity or credit problems spreading throughout the entire financial system.[132] As such, all of the risks that Alpine presents to the Clearing Agencies are in effect risks to their Members and to the financial markets. When a Member like Alpine fundamentally undermines the risk-management framework by failing to follow the Rules, "the Clearing Agencies' ability to operate safely as SROs, covered clearing agencies, and SIFMUs is fundamentally compromised."[133]

For these reasons, the public interest requires that the Rules be enforced so that the Clearing Agencies can assure the markets of their ability to perform one of their most fundamental roles: to protect against the risk of default by a Member. As the Hearing Panel correctly observed, a Member like Alpine cannot place the Clearing Agencies in a position that jeopardizes such a role. The other Members, their customers, investors, and the securities market at large depend on the integrity of the Exchange Act's national system for clearance and settlement. Alpine's ongoing status as a Member undermines that integrity.[134] Therefore, a stay does not serve the public interest.

---

[131] Decision 3.

[132] *Id.*

[133] Cuddihy Aff. ¶ 17.

[134] *See Dawson James Sec.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *3 (Nov. 13, 2015) (any potential harm to customers outweighed by FINRA's concerns about movant's ability to comply with securities laws and the threat movant posed to investors); *In the Matter of the Application of Paul H. Giles*, No. 92177 (June 14, 2021) ("[A]ssertions that [broker's] clients could be harmed in some unspecified way are insufficient to meet his burden of demonstrating irreparable harm. . . . [Broker] has not produced any evidence or even alleged that his clients would be unable to find another comparable broker pending this appeal.").

CONCLUSION

For the foregoing reasons, Alpine's request for an emergency interim stay should be denied.

Respectfully submitted,

PROSKAUER ROSE LLP

New York, New York
May 6, 2024

By: /s/ *Mark D. Harris*

Mark D. Harris
Margaret A. Dale
Amy B. Gordon
11 Times Square
New York, New York 10036
(212) 969-3000
mdale@proskauer.com
mharris@proskauer.com
agordon@proskauer.com

James R. Anderson
One International Place
Boston, Massachusetts 02110
(617) 526-9600
jaanderson@proskauer.com

Attorneys for National Securities Clearing Corporation and The Depository Trust Company

ATTORNEY CERTIFICATION

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that the foregoing document contains 8,768 words, exclusive of the tables of contents and authorities.

Dated: May 6, 2024

/s/ *Mark D. Harris*

Mark D. Harris
Margaret A. Dale
Amy B. Gordon
11 Times Square
New York, New York 10036
(212) 969-3000
mdale@proskauer.com
mharris@proskauer.com
agordon@proskauer.com

James R. Anderson
One International Place
Boston, Massachusetts 02110
(617) 526-9600
jaanderson@proskauer.com

Attorneys for National Securities Clearing Corporation and The Depository Trust Company

CERTIFICATE OF SERVICE

Pursuant to Rule 151(d) of the Commission's Rules of Practice, on May 6, 2024, the undersigned caused a true and accurate copy of this *Opposition of NSCC and DTC to Alpine Securities Corporation's Motion for an Emergency Interim Stay and Other Appropriate Commission Relief*, as well as the accompanying Table of Attachments and Attachments 1–22, to be served by electronic mail on the following persons:

DTCC Corporate Secretary (corporatesecretary@dtcc.com)
Maranda Fritz (maranda@fritzpc.com)
Matthew Iverson (matthew@fritzpc.com)

Dated: May 6, 2024

/s/ *Mark D. Harris*

Mark D. Harris
Margaret A. Dale
Amy B. Gordon
11 Times Square
New York, New York 10036
(212) 969-3000
mdale@proskauer.com
mharris@proskauer.com
agordon@proskauer.com

James R. Anderson
One International Place
Boston, Massachusetts 02110
(617) 526-9600
jaanderson@proskauer.com

Attorneys for National Securities Clearing Corporation and The Depository Trust Company

IN UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
May 6, 2024

ADMINISTRATIVE PROCEEDING

File No. 3-21924

In the Matter of the Application of

ALPINE SECURITIES CORPORATION

ATTACHMENTS

TO

OPPOSITION OF NSCC AND DTC TO ALPINE SECURITIES CORPORATION'S MOTION FOR AN EMERGENCY INTERIM STAY AND OTHER RELIEF