

Maranda E. Fritz
MARANDA E. FRITZ, P.C.
521 Fifth Avenue
New York, New York 10175
Telephone: 646.584.8231
Email: maranda@fritzpc.com

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

FINRA

Admin Proc. File No. 3-22471

**ALPINE'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF IN SUPPORT
OF APPEAL FROM DECISION OF NATIONAL ADJUDICATORY COUNCIL
AND FOR STAY OF EXPEDITED PROCEEDING**

***** EXPEDITED CONSIDERATION REQUESTED UNDER RULE 401(d)(3) *****

PRELIMINARY STATEMENT

Pursuant to SEC Rule of Practice 401(d)(3), through counsel of record, Alpine Securities Corporation (“Alpine”) moves for expedited relief in the form of rescheduling in relation to the two pending related actions which are currently scheduled to proceed simultaneously in a manner that would lead to inconsistent results, a waste of regulatory resources and duplication. Alpine submits that a stay and/or an adjournment of those matters will avoid the waste of administrative resources and ensure consistent and fair results.¹

Further, because of the recent scheduling of both the filing of Alpine’s appeal in this matter *and* the resumption of an expedited proceeding, Alpine separately seeks an extension of time to file the brief in this appeal because counsel for Alpine is not able to meet the schedules that have been set in these two related matters.

Alpine requests *expedited consideration* of this motion because, under the recent scheduling relating to both of these matters, Alpine’s counsel’s is not able to address both matters simultaneously *and* a reasonable adjustment of the schedule will prevent the inevitable waste of resources and inconsistent results that would result from proceeding apace on the current schedule.

¹ There is yet another related case that flowed from the underlying 2019 FINRA action. In August 2022, the Securities and Exchange Commission (“SEC”) initiated an action against Alpine in Federal District Court in Las Vegas, Nevada based on the same movements of stock that were central to the initial 2019 FINRA proceeding. Securities & Exchange Comm’n v. Alpine Securities Corp., No. 2:22-cv-01279 (D. Nev. filed Aug. 10, 2022). Both parties in that case filed for summary judgment and oral argument was conducted in the District Court in Las Vegas last Thursday, May 28, 2025. No decision has yet issued. The decision of the district court on those summary judgment motions will likely also impact the issues presented by the two FINRA matters.

Procedural Background

1. The Underlying FINRA Proceeding and Initial Hearing Panel Decision

At issue in this application are two related proceedings that both arise from an action initiated by FINRA six years ago in 2019. In that case, FINRA alleged that Alpine had imposed unreasonable fees and engaged in improper movements of customer stock. See FINRA Dep't of Enforcement v. Alpine Securities Corp., Disciplinary Proceeding No. 2019061232601 (FINRA Hearing Panel Mar. 22, 2022). A hearing was held in that matter before FINRA's Office of Hearing Officers ("OHO") at which Alpine provided extensive evidence of the relevant circumstances with which it was confronted during 2018 and 2019, the escalating compliance and transactional costs associated with trading in microcap securities, and the decisions made by Alpine's management and board to change the firm's business plan to survive the changing landscape. Pivotal to Alpine's viability was its decision to cease carrying retail accounts and return to its core business as a clearing firm. The evidence was plain and undisputed that the actions taken from that point forward were designed to have *customers* direct the disposition of their assets and close their accounts while also adjusting Alpine's clearing fees to reflect the rising costs and risks of trading microcap securities for those who remained.

Approximately three years later, in March 2022, the Hearing Panel issued its decision. Alpine promptly filed its appeal to the National Adjudicatory Council ("NAC") and the matter was argued before the NAC in October of 2022.

2. FINRA's Expedited PCDO Proceeding

In March 2023, while the appeal to the NAC was pending, FINRA commenced an expedited proceeding against Alpine based on the portion of the Initial Hearing Panel Decision that contained a cease-and-desist order (the "PCDO Proceeding"). The hearing in that PCDO

proceeding commenced in July 2023 and FINRA relied heavily in the proceeding on the contents of the non-final Hearing Panel decision. Alpine had no choice but to try to respond to the allegations drawn by FINRA from the non-final Hearing Panel Decision.

The hearing in the PCDO Proceeding began on June 5, 2023.

3. The Stay Issued by the Circuit Court of Appeals for the District of Columbia

In the midst of the testimony in that proceeding, on July 5, 2023, a stay of the PCDO proceeding was ordered by the Circuit Court of Appeals for the District of Columbia.² Exhibit A to Declaration of Maranda Fritz (“Fritz Dec.”). That stay was based on Alpine’s allegations concerning the constitutionality and legality of FINRA’s operations, structure and procedures and directed that the proceeding be stayed pending consideration of Alpine’s arguments. It also directed that no expulsion would be effective unless and until reviewed by the SEC.

The PCDO Proceeding remained stayed until, in November 2024, the D.C. Circuit Court of Appeals issued a further decision. Exhibit B to Fritz Dec. That decision left in place the

² The D.C. Circuit Court of Appeals found that FINRA’s expedited proceeding likely constituted a violation of the private non-delegation doctrine because it allowed FINRA to pursue an action against the firm and order its immediate expulsion without any review by the SEC.

Consistent with that decision, FINRA has now filed with the SEC a proposal to amend FINRA rules to provide that certain expulsions of member firms, cancellations of membership, and denials of applications for continued membership would not become effective until either the SEC has completed its review or the deadline for filing an application for SEC review has passed and no application has been filed. FINRA, SR-FINRA-2025-004, Proposed Rule Change to Stay the Effectiveness of Specified Expulsions and FINRA Actions (filed June 2025).

Alpine continues to maintain, and will continue to litigate in federal court in the District of Columbia, that FINRA’s structure and operations do not comport with Constitutional requirements. Among other issues, Alpine has argued that FINRA’s use and selection of in-house Hearing Officers who “exercise significant authority pursuant to the laws of the United States” (to wit, the federal securities laws) and who are not accountable to the President, violates federal separation of powers doctrine as espoused by the Supreme Court in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010). *Scottsdale Capital Advisors Corp. v. FINRA*, No. 1:23-cv-01506. Further, Alpine maintains, FINRA does not, afford respondents the protections flowing from Article III or the Fifth, Seventh or Fourteenth Amendments to the United States Constitution. See *Lucia v. SEC*, 585 U.S. 237 (2018); *SEC v. Jarkesy*, 603 U.S. 109 (2024).

injunction against the effectiveness of any FINRA order of expulsion absent review by the SEC but lifted the stay with respect to whether the expedited proceeding could resume and conclude.

After the issuance of the mandate by the Court of Appeals, the Hearing Officer in the FINRA expedited proceeding began discussions concerning resumption of the hearing.

4. The March 2025 Decision of the National Adjudicatory Council

Then, in the midst of those discussions of resumption of the expedited PCDO Proceeding, the NAC issued its decision on the appeal of the underlying case, reversing in part and affirming in part the Hearing Panel Decision and, in the process, providing the current iteration of rulings regarding FINRA's contentions. For example, in the underlying proceeding, FINRA maintained that Alpine's imposition of an illiquidity fee, based on the NSCC requirement that it post cash collateral to complete customer trades, was unreasonable. After the PCDO issued, Alpine instead charged a flat fee of \$150.00 on every trade that required an allocation of Alpine's NSCC deposit. (Petition at ¶¶ 51-54). In the expedited proceeding, FINRA alleged that the charge of \$150.00 was prohibited by specific language in the PCDO in that it "equaled or exceeded 1% per day of the cash collateral requirement" in 554 instances for a total of \$83,100. That charge, FINRA alleged, violated the particular PCDO provision pertaining to an illiquidity of volatility fee. (Petition at ¶ 58).

The NAC specifically reversed the Hearing Panel's finding of a violation in relation to that fee. FINRA has now acknowledged that the NAC decision invalidated that claim in the expedited proceeding and has withdrawn that claim but argues that the PCDO proceeding should nonetheless continue and conclude.

The NAC's analysis is then developed and clarified in that portion of the NAC decision that finds that FINRA failed to carry its evidentiary burden to prove that the certificate withdrawal

fee was unreasonable. *Id.* at 43. As the NAC confirmed, “Enforcement does not claim nor does the record show that the \$1500 was not reasonably related to a service that Alpine supplied customers and related to “costs and expenditures that the firm incurred.” *Id.* at 44.

The NAC also specifically addressed -- and rejected -- FINRA’s claim, also asserted in the expedited proceeding, that the imposition of a DTC custody fee violated the PCDO. The NAC held, in no uncertain terms, that “the temporary cease and desist order did not expressly address these matters and Enforcement did not establish that this conduct otherwise fell within the scope of the order.” NAC Decision at 89 n. 206. Alpine has argued that the NAC’s conclusion applies with equal force to the safekeeping fee as well as FINRA’s newly minted theory as to market making.

5. The Continuation of the PCDO Proceeding and the Scheduling of Alpine’s Appeal from the Decision of the NAC Appeal

Based on the decision issued by the NAC, Alpine raised with the FINRA Hearing Officer objections to the resumption or continuation of that PCDO proceeding. Among other things, Alpine pointed out that the claims in the expedited proceeding were primarily based *not* on specific prohibitions in the order but instead on allegations that Alpine had imposed unreasonable fees in violation of an obey-the-law injunction.³ As a result, FINRA’s argument as to the alleged

³ Alpine has argued throughout the expedited proceeding that FINRA’s use of an obey-the-law injunction to fashion new theories as to unreasonable fees is impermissible. FINRA Rule 9291 provides that the order must “describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take or refrain from taking.” And that provision echoes and incorporates the law pertaining to enforcement of SEC injunctions. *SEC v. CKB168 Holdings, Ltd.*, 2016 U.S. Dist. LEXIS 18624 * (Dec. 16, 2016 E.D.N.Y.). *SEC v. Mattera*, 2012 U.S. Dist. LEXIS 138814 at *31 (S.D.N.Y. Sept. 26, 2012) (citing *New York State NOW v. Terry*, 886 F.2d 1339, 1352 (2d Cir.1989)); *A.V. by Versace, Inc. v. Gianni Versace, S.p.A.*, 87 F. Supp. 2d 281, 288-89 (S.D.N.Y. 2000). An “injunction prohibiting violations of the securities regulations must comply with [Federal Rule of Civil procedure 65(d)].” *SEC v. Goble*, 682 F.3d at 952. “Rule 65(d)(1) states that every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail — and not by referring to the complaint or other document — the act or acts restrained or required.” *SEC v. Keener*, 2022 U.S. Dist. LEXIS 220752 * (S.D.Fla. Dec. 7, 2022).

violations relied *not* on specific injunctive provisions but on the contents of the Initial Hearing Panel Decision. Alpine maintained in arguments to the Hearing Officer that the decision of the NAC effectively vitiated those conclusions of the Hearing Panel and established a different framework for analysis of the issue of the unreasonableness of Alpine's fees. The NAC decision had in fact *reversed* the bulk of the Initial Hearing Panel's conclusions regarding Alpine's fees, finding that only one of the fees at issue had been demonstrated by FINRA to be unreasonable and reducing the amount of restitution by more than 50%, to \$1.5 million.

Given these circumstances, Alpine argued to the Hearing Officer that the action no longer dealt with the Hearing Panel Decision that had formed the predicate for FINRA's expedited PCDO Proceeding. The NAC had established a different analytical framework and its rulings, Alpine argued, supported dismissal of the PCDO Proceeding.

In the alternative, because most of FINRA's witnesses had already testified, Alpine argued that the hearing should be restarted so that the examination of the witnesses would properly be based on and consider the operative decision *of the NAC* in relation to the reasonableness of fees.

6. The Schedules Now Set in the NAC Appeal and the PCDO Proceeding

On May 7, 2025, the Hearing Officer deferred ruling on Alpine's application. Exhibit C to Fritz Dec.: OHO Order Dated May 7, 2025. On May 9, 2025, the Hearing Officer ordered that the hearing would continue, and set the date of ***July 7, 2025*** for that hearing. Exhibit D to Fritz Dec.: OHO Order Dated May 9, 2025

On May 15, 2025, Alpine received a briefing schedule from the SEC that calls for the appeal brief to be filed on ***June 16, 2025***.

Thus, after litigating these two matters for more than five years, these matters suddenly converged and began to proceed simultaneously and schedules have now been set for both.

At the same time, given the extent and volume of the record, counsel's schedules in relation to other matters and the pendency of the other FINRA matter, counsel for FINRA and Alpine began discussing an extension of the date for the filing of the appeal from the NAC decision which had been set for ***June 16, 2025***. FINRA agreed to an extension to ***July 1, 2025*** for Alpine's briefing of the appeal but did not agree that the briefing should be delayed any further. Exhibit E to Fritz Dec.: Email communications regarding scheduling of appeal.

Discussion

At this point, the expedited PCDO proceeding would resume on July 7, 2025 while Alpine's briefing of the NAC appeal would be due on either June 16, 2025 or, pursuant to FINRA's suggested schedule, on July 1, 2025. Both matters would effectively proceed *simultaneously*. The expedited PCDO proceeding would go forward without the benefit of the decision that will issue from the SEC on Alpine's appeal from the NAC decision. *And* Alpine's appeal of the NAC decision would go forward but would *not* incorporate the related issues that will arise in the expedited PCDO proceeding; a subsequent and separate appeal would have to be filed to the SEC from the result of the expedited proceeding.

There is an illogic and a waste of resources that would result from continuing with that schedule. Arguably, the analysis that would apply to FINRA's allegations of unreasonable fees in the expedited PCDO proceeding should be based on the decision that will be issued *by the SEC* on Alpine's appeal from the NAC decision. FINRA went forward in that expedited proceeding based on findings and statements contained in the Initial Hearing Panel Decision. The NAC decision reversed many of those finding and significantly undermined FINRA's position. The decision that will come from the SEC on these matters will provide much needed clarity and finality regarding the critical issue, *i.e.*, FINRA's claim that Alpine's fees were unreasonable *because* they were not

shown to be based on direct costs associated with a given task or service. From that perspective, Alpine's appeal of the NAC decision, which addresses issues underlying the PCDO, should proceed while that expedited proceeding is delayed pending the SEC's decision which will, in all likelihood, address and resolve all relevant issues.

If, on the other hand, the expedited PCDO proceeding is allowed to proceed, then the scheduling of the appeal should be adjusted so that the result of the PCDO proceeding can be incorporated into a consolidated appeal. Under the current schedule, that would require only a limited adjournment of the appeal from the NAC to the SEC: the expedited proceeding would be completed and a decision issued by mid-August. The appeals could then be consolidated and Alpine's briefing of the appeal could occur roughly 60 days later, in October.

That adjournment of the NAC appeal would also be consistent with Alpine's need for additional time to prepare that appeal. Regardless of the resumption of the PCDO Proceeding, Alpine needed and planned to request additional time because of the extent of the record and the volume and significance of the issues. It was FINRA's view also that an adjournment would be appropriate, and they agreed to an extension until *July 1st, 2025*. That adjourned date obviously conflicts with the PCDO proceeding and fails to address the logic of setting the date of the appeal so that it could incorporate issues that arise in that PCDO Proceeding.

Alpine will suffer irreparable harm absent relief. An adjournment of Alpine's appeal to the NAC is necessitated by the scheduling of the two related matters. The SEC's scheduling order, scheduling Alpine's brief for mid-June, was issued just as the issue of the resumption of the expedited proceeding was being addressed. Alpine and FINRA had discussed an extension simply because of the extent of the record and counsel's schedules. The Hearing Officer then set the

resumption of the hearing for the same time frame. Alpine's counsel will not be able to address both of these matters in this limited time frame. Fritz Dec. at ¶ 17.

Further, "no other person will suffer substantial harm as a result of the stay" or adjournment. These proceedings began six years ago, in 2019, and were delayed in part because FINRA was employing a procedure against Alpine that, according to the D.C. Circuit Court of Appeals, contravened the private non-delegation doctrine. A stay issued by that Court remains in effect such that *no decision issued in the expedited proceeding would be effective* until it is reviewed by the SEC. And any expulsion order in the expedited PCDO proceeding is, in any event, duplicative of the order that is part of the underlying proceeding and that will be addressed in Alpine's appeal to the SEC.

CONCLUSION

For the foregoing reasons, Alpine respectfully requests that the Commission stay the expedited PCDO proceeding pending its decision on Alpine's appeal and that it grant an adjournment of Alpine's time to file its brief on its appeal to a date in or after October 2025.

Dated: June 9, 2025

/s/ Maranda E. Fritz
Maranda E Fritz PC
521 Fifth Avenue 17th Floor
New York, New York 10175
646 584-8231 maranda@fritzpc.com