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 **ORAL ARGUMENT REQUESTED**

ALPINE SECURITIES CORPORATION'S REPLY BRIEF IN SUPPORT OF ITS APPEAL FROM THE DECISION OF THE NATIONAL ADJUDICATORY COUNCIL

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PRELIMINARY STATEMENT

FINRA, in its submission on this appeal, works tirelessly to alter the reality of the underlying circumstances in its attempt to justify the untethered and overzealous assertions that have been cobbled together and deployed against Alpine. FINRA offers to the Commission nothing but a lengthy counter-narrative peppered with inflammatory language and drawn from carefully selected bits of testimony to paint a wholly inaccurate picture of Alpine, its actions and its intent. FINRA combines that with a striking disregard for relevant authority and unsupported legal contentions that enable it to seek the harshest of results.

The plain facts are that Alpine's Board decided on reasonable steps to address operational and financial issues, seeking to adjust fees and close orphan accounts. The Board carefully reviewed those issues and, in the end, its management put in place fees that were intended both to reflect costs and expenses and to facilitate closure of orphan and dormant accounts. Chris Doubek joined the firm in late 2018 and then, once he assumed the position of CEO in April of 2019, proceeded to do *improperly* that which could and should have been done correctly, ignoring and violating his obligations and instructions conveyed by ownership. The abrupt and improper movements of stock in May and June of 2019 were the actions of that dishonest CEO, undertaken by him solely for his own personal benefit. When Alpine's counsel learned of Doubek's actions, Alpine immediately directed the reversal of all improper stock movements and all securities were subsequently returned to customers. Alpine waived and reversed the $5,000 fee from the outset for customers who dealt with their accounts, beginning in *October 2018*, months before any regulatory

intervention. Since 2021, Alpine has operated under FINRA-approved management,[1] CEO Ray Maratea and CCO Mike Fox, with decades of combined experience and unblemished records.

FINRA's determined effort to shut down Alpine is predicated on exaggerations of those events and contradictory and untenable legal theories. FINRA relies on rules that do not exist. It insists the reasonableness of a firm's fee depends on whether it correlates to "actual costs," fervidly defending a rule it claims is "fairly and reasonably implied" despite citing no authority beyond narrow guidance about ACAT fees and postage. It then does an about face, insisting that it is *not* foreclosing other methods of pricing that do not involve detailed cost allocations. The NAC too applied inconsistent standards, accepting general cost categories and pass-through rationales for two fees while demanding granular cost allocation for the $5,000 fee. And FINRA's position is squarely at odds even with the Commission which, in BOX Exchange, expressly held that a cost-based analysis is *not* the only method of assessing the reasonableness of fees. FINRA seeks to create a rule that is unsupported by prior authority, defies rational economics, confounds even FINRA and the NAC and wreaks havoc with firms trying to keep pace with escalating costs associated with trading microcap securities.

Equally critical, FINRA conveniently redefines "conversion" to eliminate the elements of intent to deprive and even transfer of ownership, transforming fee disputes *and* administrative stock movements into theft charges. And FINRA manufactures from whole cloth a theory that distinct fees for distinct services can be aggregated to support an argument of "unfair pricing."

Expulsion on these facts is not an appropriate result. FINRA seeks to expel Alpine for actions that occurred more than six years ago and were reversed, with all customer securities being

[1] Under Alpine's Membership Agreement, FINRA receives notice of those selected for management and has the opportunity to disapprove them.

returned and fees waived or reversed.[2] The NAC agreed to imposition of the harshest penalty based largely on improper consideration of Alpine's prior litigations. Expulsion is plainly disproportionate to the circumstances, unprecedented for remediated fee-related violations, inconsistent with sanctions imposed for far more egregious misconduct and contrary to the interests of investors.

RESPONSE TO STATEMENT OF FACTS

A. FINRA Ignores the Substantial Evidence of the Costs Drivers That Underlie the Revisions to Alpine's Fee Schedule

FINRA's Opposition Brief is grounded on the mantra that Alpine provided "no analysis" of costs and that the $5,000 fee bore no relationship to the firm's expenses.[3] That claim is false. FINRA simply chooses to ignore the days of extensive testimony and documentary evidence establishing that Alpine's board and management analyzed specific, dramatic cost increases directly caused by regulatory actions targeting the microcap market. Even FINRA ultimately acknowledges "the testimony and other evidence that [Alpine's] business had grown expensive" and that Alpine's "costs and expenses, its staffing, [and] changes in compliance and regulatory requirements" caused the business to become "unprofitable."[4] But then FINRA declares with uncharacteristic lack of ambiguity that those costs cannot be used to justify a fee as reasonable

[2] The only amount still at issue in terms of restitution is the reduced figure of $802,678.77. That consists of $67,268.77 attributable to the unfair pricing allegations and $735,410 from closed accounts which FINRA agreed in the TCDO would not be returned at that point. NAC Decision at 24 n.69 (RA-016016). The $735,410 does not reflect approximately $200,000 in subsequent refunds Alpine made during the proceeding, which the NAC ordered credited upon proof. NAC Decision at 95 n.215 (RA-016087); see Tr. 4037-39 (Walsh testimony about ongoing reversals) (RA-008681-83). Alpine stands ready to provide such proof and continues to refund remaining amounts to former customers who contact the firm.

[3] Opp. Br. at 5, 18-21, 24-25.

[4] Opp. Br. at 18-19.

"without more."[5] FINRA then in its opposition brief discloses for the first time its newest formulation of a purported standard, saying that Alpine must provide a "discernible analysis based on observable data."[6]

The record is replete with the evidence of Alpine's Analysis of its costs in relation to fees. Richard Nummi, Alpine's board member and a former SEC attorney who joined the Board in 2017, testified that the board analyzed Alpine's costs, revenue, expenses, staffing, and regulatory requirements "on a regular basis."[7] The Board discussed bringing Alpine's fees "in alignment with other clearing firms doing a similar business,"[8] addressing the dramatic increase in costs.[9] Justine Hurry, another Alpine board member, corroborated that the board regularly discussed operational costs, including employee levels and the need to reduce staff while increasing revenue.[10] She confirmed there were board discussions about revising the fee schedule,[11] that Nummi and Frankel were part of discussions about adding a monthly fee,[12] that Frankel reviewed fees charged by other firms (up to $25,000) and discussed this with the board,[13] and that the board discussed adding the $5,000 monthly fee with Nummi who never indicated it would be impermissible.[14] The minutes

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[5] Opp. Br. at 19.

[6] Opp. Br. at 25.

[7] Tr. 2663 (Nummi) (RA-006033).

[8] Tr. 2710-11 (Nummi) (RA-006080-81).

[9] Tr. 2708 (Nummi) (RA-006078).

[10] Tr. 4309 (Justine Hurry) (RA-008993).

[11] Tr. 4314-15 (Justine Hurry) (RA-008998-99).

[12] Tr. 4316 (Justine Hurry) (RA-009000).

[13] Tr. 4317 (Justine Hurry) (RA-009001); Tr. 4547 (John Hurry) (RA-009272).

[14] Tr. 4318 (Justine Hurry) (RA-009002).

of the meetings of Alpine's Board also document extensive discussions of the firm's escalating costs and the need to revise its fee structure.[15] And the board's analysis necessarily considered Alpine's collection rates of 5% to 7%.[16] As John Hurry explained, "All fees, you have to consider when looking at all fees what you're actually going to get at the end of the day."[17]

The SEC had pursued a case that required that Alpine institute new procedures relating to its review of transactions in low priced securities and so "the biggest cost" the board considered was AML compliance for thousands of accounts.[18] Nummi explained that Alpine went "from doing business day to day" to having to devote its business to "regulatory response, number one [a]nd then number two [] the board's efforts to ramp up the AML efforts of the firm to do additional research and additional due diligence on its customers."[19]

Frankel also testified that "well over half" of Alpine employee time was spent "responding…to regulatory-oriented items"[20] and, in addition to those increased compliance costs, Alpine faced more than $800,000 per month in legal fees arising from regulatory actions.[21] As a result of these mounting expenses, there were "discussions between the board and management regarding increasing fees in order to try to collect some revenue."[22]

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[15] JX-6, JX-7, JX-8 (RA-014201-12).

[16] Tr. 4409 (John Hurry) (RA-009134).

[17] Tr. 4404 (John Hurry) (RA-009129).

[18] Tr. 4386 (John Hurry) (RA-009111).

[19] Tr. 2716-2717 (Nummi) (RA-006086-87).

[20] Tr. 1788:10-15 (Frankel) (RA-004278).

[21] Tr. 1692-93 (Frankel) (RA-004182-83); JX-6 at 2 (board minutes documenting employee reallocation from revenue-generating positions to full-time AML roles) (RA-014202); CX-176 (RA-011369-74), CX-179 (RA-011377-82) (profit-and-loss statements showing legal expenses).

[22] Tr. 2719 (Nummi) (RA-006089).

These escalating operational, compliance and legal costs weren't hypothetical. The record shows unprecedented regulatory actions occurring during the board's fee deliberations. In 2017, the SEC filed a novel enforcement action against Alpine which it described as a "case of first impression" alleging that Alpine's suspicious activity reports ("SARs") were "deficient" because they failed to include certain "red flags" in the narrative portion of the SAR.[23] Alpine was not accused of failing to file those SARs nor was there any allegation that any improper transaction occurred because of Alpine's procedures; rather, Alpine was charged with insufficient SAR content. In the end, the SEC sought and obtained summary judgment, Alpine paid a $12 million fine and it bore the substantial expense of increasing its compliance activities to comport with the particular decisions of the New York courts.[24]

Notably, the SEC later instituted a follow-on proceeding to address the issue of whether Alpine should be subject to further sanctions based on that underlying conduct; *the SEC on its own initiative dropped that action.*[25]

FINRA also initiated an unprecedent action against Alpine's related firm, Scottsdale, and obtained an industry bar of the firm's indirect owner, John Hurry, although he had little or no involvement in the events or transactions at issue. *After nearly five years*, the Commission reversed those sanctions, concluding that "Hurry was deprived of a fair opportunity to rebut the theory under which he was held liable" and FINRA "failed to correctly state and apply the appropriate legal standards."[26] Therefore, during the precise period when the board was deliberating on fees and

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[23] *SEC v. Alpine Securities Corp*., 17-cv-4179 (S.D.N.Y.).

[24] Tr. 1638 (Frankel) (RA-004128). FinCEN later sought to curtail the extent of the filings and content that had been required by the the New York courts. FinCEN, SAR FAQs (Oct. 9, 2025).

[25] *Alpine Sec. Corp.*, Exchange Act Release No. 102148 (Jan. 10, 2025).

[26] *Scottsdale Capital Advisors Corp.*, Exchange Act Release No. 93052 (Sept. 17, 2021).

when Doubek was implementing account closures, Mr. Hurry was prohibited from engaging in day-to-day management.

Alpine's business was also beset with the costs and risks flowing from thousands of orphaned and dormant accounts. Aggressive regulatory activity forced other firms out of the microcap market and those introducing brokers abandoned their orphaned accounts at Alpine.[27] Even FINRA's witness Stacie Jungling acknowledged the existence of those orphan accounts and the costs they imposed on Alpine.[28] Alpine had, for years, directed its then-CEO Chris Frankel to deal with closure of those accounts but he had failed to do so. And so those accounts continued to generate costs.[29]

At the same time, Alpine's trading capacity collapsed. After losing its last ex-clearing relationship in April 2018, Alpine's trading volume plummeted from 1,000 trades per day to only 10 to 20 trades per day.[30] Alpine went from needing $50-60 million in capital for trading to having only $2 to $3 million available.[31] With 95% fewer trades to spread fixed costs across, the cost per trade skyrocketed.

FINRA does not and cannot dispute that Alpine faced these enormous operational and legal costs and the record contains extensive documentation establishing that *these increases in costs were the trigger for Alpine's fee deliberations and its need to adjust outdated fees*. But, *because* Alpine did not present that information in the way that FINRA claims is necessary (specific and

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[27] Tr. 2711-16 (Nummi) (RA-006081-86).

[28] Tr. 1078-79 (Jungling) (RA-003421-22).

[29] Tr. 4386-4388 (John Hurry) (RA-009111-13).

[30] Tr. 4380 (John Hurry) (RA-009105).

[31] Tr. 4378 (John Hurry) (RA-009103).

"direct" costs for the performance of specific customer services) FINRA persists in maintaining that Alpine failed to establish that its fees related to services performed for its customers. Opp. Br. at 19.

But FINRA's rigid insistence on both the particular content and form of evidence *does not constitute a basis for FINRA to reject the analysis* that was conducted at Alpine or the documentation of it. In addition to the testimony referenced above, Alpine presented extensive documentary evidence supporting its cost analysis. Alpine's Fee Analysis Matrix, prepared by Chris Frankel, may be poorly worded but nonetheless identifies three cost categories associated with account maintenance: accounting, compliance, and operations.[32] The matrix explains that account maintenance "involves multiple people" (employee costs), requires "review[ing] and retain[ing] correspondence" (time and recordkeeping costs), incurs "postage and handling" (direct costs), and creates "unique AML and accounting risks" (soft costs). The analysis concludes these costs historically were "way under allocated for CPA [cost per account]."[33]

Alpine's Board minutes also memorialize its extensive discussions of the firm's escalating costs and the need to revise its fee structure.[34] Alpine's FOCUS reports and profit-and-loss statements document the actual costs underlying the fee analysis. Monthly accounts payable ranged from $2-3 million.[35] Monthly employee salaries exceeded $200,000.[36] Monthly equipment,

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[32] JX-10 at 2 (RA-014216).

[33] JX-10 at 2 (RA-014216).

[34] JX-6, JX-7, JX-8 (RA-014201-12).

[35] JX-24 (RA-014555-950), Items 1170/1640.

[36] JX-24 (RA-014555-950), Item 4040.

data processing, and regulatory fees exceeded $115,000.[37] FINRA's Opposition Brief ignores this documentary evidence entirely.

Perhaps most importantly, Alpine had carefully evaluated its fee policy and had communicated that analysis to FINRA in response to FINRA's specific inquiry about Alpine's fees. Alpine's formal written fee policy was provided to FINRA in 2017—a full year before the $5,000 fee was implemented.[38] That document, titled Statement on Establishing Reasonable Fees, explicitly laid out Alpine's fee methodology and explained that Alpine's fees were not based on granular cost allocations but on "items related to AML, BSA, and other regulatory compliance [that] generate costs."[39] The document explained Alpine's "unique business" in the OTC/microcap space: "The OTC business poses many unique risks that involve compliance with Sec. 5 of the Securities Act of 1933 and AML/Bank Secrecy Laws."[40] The document listed over 15 risk premium factors including: Capital Cost/NSCC/DTC calls, handling costs, regulatory/BSA/AML costs, banking risks, legal costs, due diligence costs, and reputational risks.[41] And it explained Alpine's cost allocation methodology: "It is not reasonable or even useful to specifically allocate each direct and RRR cost to a specific activity. Costs environment is dynamic, not static. Costs and risk continue to change as well as the revenues generated by such activity."[42]

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[37] JX-24 (RA-014555-950), Items 4080/4186/4195; CX-176 (RA-011369-74), CX-179 (RA-011377-82) (profit-and-loss statements showing legal expenses).

[38] RX-64 (RA-015687-96). FINRA argues that the Commission "should not consider" RX-64. Opp. Br. at 18 n.23. RX-64 was authenticated by Frankel, who testified it was Alpine's fee policy provided to FINRA in 2017. Tr. 1814-16 (Frankel) (RA-004304-06) and it is plainly material to this proceeding.

[39] RX-64 at 8 (RA-015694).

[40] RX-64 at 6 (RA-015692).

[41] RX-64 at 8-9 (RA-015694-95).

[42] RX-64 at 9 (RA-015695).

The fact that Alpine provided this policy document to FINRA in 2017, and that FINRA did not object to or challenge Alpine's position at that point, underscores that the purported "cost-based rule" FINRA now relies upon was not and is not a rule—it is just snippets from prior cases that FINRA latched onto to try to justify its actions against Alpine.

B. FINRA's Selective Presentation Ignores Contradictory Evidence from the Same Witnesses

FINRA's arguments depend on a version of facts that the record does not support. To support the aggressive claims that it deploys to put Alpine out of business, FINRA obtained and strung together testimony from former disgruntled Alpine employees who had their own animus toward Alpine and Hurry. It selected snippets of their testimony to bolster its narrative, while assiduously ignoring the extensive testimony that made clear that Alpine had developed a reasonable plan to address significant operational concerns only to have Doubek fail properly to implement them and then, at the eleventh hour, engage in plainly improper conduct to benefit himself. Instead of acknowledging that Doubek had acted on his own, and contrary to his instructions, the NAC Decision pointed to self-serving pieces of testimony and refused to address the unsupportable finding by the Hearing Panel that Doubek "appeared forthright and honest."[43] The record actually reflects that he lied to his employer while he was still working there, lied in his testimony, and colluded with an associate to steal more than $1 million—actions that render that finding not just unsupportable but inexplicable.

Oddly, FINRA claims Alpine failed to demonstrate that Doubek testified falsely or stole from the firm.[44] The record proves otherwise. Doubek admitted in OTRs that as CEO, the decisions

[43] NAC Decision at 79 (RA-016071).

[44] Opp. Br. at 35.

"were in [his] purview to make" and "it was ultimately [his] decision,"[45] but later blamed the conduct on Walsh,[46] and Mr. Hurry,[47] even though he admitted that Hurry "did not dictate how" to close accounts.[48] Prior to being terminated, Doubek orchestrated a $1.3 million payment to associate James Kelly based on a fabricated invoice.[49] After termination, Doubek contacted FINRA to blame Hurry,[50] then later blamed Kelly for coercing him.[51]

FINRA's Opposition relies also on mischaracterization of witness' testimony. For its central contention, that Alpine "never demonstrated that it performed any discernible analysis" to justify the $5,000 fee, FINRA cites Nummi's statement that he did not see a "specific analysis correlating costs to the $5000 fee."[52] But Nummi had focused precisely on those issues of revenue and expense, spending months gathering and reviewing financial information.[53] He testified at length that the board discussed those costs "on a regular basis" and considered the ways in which the firm could seek to defray those very real expenses.[54] He recalled discussions about "the number of attorneys that we had looking at those certificates providing providence [sic] for them and that that cost of those attorneys had not been passed through."[55] Having identified the source and

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[45] Tr. 3139 (Doubek) (RA-007609)

[46] Tr. 3240-41 (Doubek) (RA-007710-11).

[47] Tr. 3141-42 (Doubek) (RA-007611-12).

[48] Tr. 3096 (Doubek) (RA-007505).

[49] Tr. 2998-99 (Doubek) (RA-007407-08); CX-217 (RA-011487-506).

[50] Tr. 3008-09 (Doubek) (RA-007417-18).

[51] *SEC v. Alpine*, No. 2:22-cv-01279 (D. Nev. Oct. 31, 2024), ECF No. 90 at 20.

[52] Opp. Br. at 19 (citing Tr. 2665-66, 2746 (Nummi) (RA-006035-36, 006116)).

[53] Tr. 2663 (Nummi) (RA-006033).

[54] Tr. 2663-66 (Nummi) (RA-006033-36).

[55] Tr. 2665-66 (Nummi) (RA-006035-36).

volume of those escalating costs, Nummi also confirmed his view that the $5000 fee would be acceptable if it was a reflection of the firm's expenses.[56]

Chris Doubek also testified about the "Chris Frankel analysis," JX-10 (RA-014215-20), and explained the basis on which he implemented the new fees in late 2018 and 2019: "the fee is designed to fill a shortfall where expense is greater for an account that does not do any revenue but the firm still sustains expenses associated with maintaining that account… From an account that does not do any business, you have no revenue but you still have an expense."[57] The cost analysis occurred but is treated by FINRA as "irrelevant."

FINRA cites Frankel to claim no fee justification was offered, but Brant confirmed the fee analysis "was prepared solely by Christopher Frankel,"[58] and Frankel himself emailed the fee matrix and Alpine's fee policy memo to FINRA's examiner Stacie Jungling in 2017.[59] FINRA cites Brant to claim no analysis existed while ignoring his confirmation that Frankel prepared it. It ignores Jones' testimony that he explained to Alpine customers the fee 'was an outgrowth of the additional expense and cost' and that customers understood the need.[60] It ignores Tew's testimony that Hurry told Brant in October 2018 not to sell stock for fees—eight months before Utah

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[56] Tr. 2664-65 (Nummi) (RA-006034-35).

[57] Tr. 3308-3309 (Doubek) (RA-007778).

[58] Tr. 4766-67 (Brant) (RA-009545-46).

[59] Tr. 1814-15 (Frankel) (RA-004304-05). In disregarding Frankel's role in creating the fee analysis and instead focusing on excerpts from his testimony, FINRA ignored the fact that Frankel had abundant incentive to provide testimony harmful to Alpine. Frankel engaged in deception and theft from Alpine, obtaining a position at another firm by promising that he could bring with him Alpine's proprietary information and its customers. Alpine sued Frankel and a jury awarded damages in favor of Alpine of $900,000 for his theft of proprietary information. Tr. 4466-4468 (John Hurry) (RA-009191-93). At the time of his testimony in this proceeding, Frankel was continuing to work for that competing firm.

[60] Tr. 2077-78 (Jones) (RA-005295-96).

regulators contacted Alpine.[61] And it seizes on Walsh's statement that Utah regulators were "one of the reasons" for reversals, mischaracterizing it as the "only reason" despite Walsh's intentional correction to a leading question.[62]

FINRA suggests also that John Hurry issued the instructions to Doubek to close accounts *improperly*.[63] As has been repeatedly stated, Doubek himself confirmed that "John Hurry wanted the accounts closed, *he did not dictate how it should happen*."[64] Hurry was able only to communicate broad directives—close orphaned accounts, impose fees to address costs—but was barred from monitoring the daily implementation of those directives because of the FINRA case.[65]

C. Alpine Acted Before Regulatory Intervention

FINRA claims Alpine reversed fees and securities movements only after regulatory intervention.[66] The record proves otherwise. As discussed above, Robert Tew testified that in October 2018,"a few days after the fee was initiated," John Hurry told David Brant "he didn't want him selling any shares of stock for a customer to cover any part of that fee."[67] Alpine's reversal policy for the $5,000 fee was disclosed to customers from the outset and the reversals began almost immediately. David Brant testified that if customers contacted the firm and agreed to close their

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[61] Tr. 1175-76 (Tew) (RA-003518-19).

[62] Tr. 3552 (Walsh) (RA-008085).

[63] Opp. Br. at 27, 30.

[64] Tr. 3092-96 (Doubek) (RA-007501-05) (emphasis added).

[65] Because FINRA required a provision in Alpine's membership agreement mandating FINRA approval for new management, Alpine could not simply replace problematic executives without FINRA's consent. Yet even with the ability to review and approve all management changes (including approving current management, Opening Br. at 51), FINRA continues to insist that the firm poses a risk.

[66] NAC Decision at 23, 49 n. 121 (RA-016015, 016041); Opp. Br. at 8 n.10.

[67] Tr. 1175-76 (Tew) (RA-003518-19).

accounts, "that $5,000 fee was reversed and returned."[68] Alpine continued reversing the fee "throughout the end of 2018" and "through 2019."[69] By February 2019, Alpine had reported $11 million in fee reversals to FINRA—four months before Utah regulators contacted the firm.[70] Moreover, Alpine *reserved* the full amount of fee collections in its financials anticipating reversals.[71] This was not a response to regulatory intervention. It was what Alpine intended.

FINRA notes that Alpine "still holds $735,100" of customer cash.[72] But FINRA fails to acknowledge that those funds have been retained because ***FINRA agreed*** to that procedure. The NAC explicitly found this amount "includes cash taken from closed customer accounts" and that "the temporary cease and desist order did not require Alpine to return cash to closed customer accounts."[73] Further, this figure does not account for approximately $200,000 in subsequent refunds Alpine made during the proceeding, which the NAC ordered credited against restitution upon proof.[74] FINRA's implication that Alpine is improperly withholding funds ignores that the TCDO did not require these refunds and that Alpine has continued to refund amounts throughout the proceeding as former customers have contacted the firm.

Alpine also began reversing the securities movements almost as quickly as they occurred. Movements of stock to escheatment accounts were reversed beginning June 26, 2019 and

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[68] Tr. 4787, 4790 (Brant) (RA-009566, 009569).

[69] Tr. 4790 (Brant) (RA-009569).

[70] CX-185 at 7 (RA-011413).

[71] Tr. 4454 (John Hurry) (RA-009179).

[72] Opp. Br. at 7 n.7.

[73] NAC Decision at 24 n.69 (RA-016016).

[74] NAC Decision at 95 n.215 (RA-016087).

completed by July 3, 2019.[75] Alpine began reversing worthless securities positions in July 2019, with the bulk of reversals completed by November 2019.[76]

ARGUMENT

A. FINRA Continues to Propound But Fails to Provide Support for Its Requirement of "Actual Costs" Allocation

FINRA's submission offers only contradictory and inadequate responses to the threshold issue in this case, *i.e.,* the correct analysis applicable to assessment of the "reasonableness" of fees charged by a particular firm. FINRA continues to propound its "actual costs" standard *and* combines that with the claim that *only* a particular kind of evidence of "actual" costs relating to a particular service will satisfy that requirement. And FINRA's submission makes clear that its phrasing of that supposed evidentiary requirement is purposeful: FINRA's formulation of those purported rules are the clear basis on which FINRA shifts the burden of proof to Alpine and then chooses to ignore the abundant evidence of Alpine's consideration of its costs and its application of those considerations to its pricing. Alpine unquestionably provided literally days of testimony regarding the costs that it faced and its need to adjust its fees but FINRA, by claiming that *only* a specific kind of cost allocation will suffice, asks the Commission to ignore that evidence and endorse a concept of "reasonableness" that is inconsistent with existing authority and would prevent firms from being able to defray the increasing operational, regulatory and trading costs.

FINRA argues, in remarkably conclusory fashion, that Alpine's fee was unreasonable "for two reasons."[77] It maintains, first, that it was "deliberately" unreasonable and an "arbitrary sum

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[75] Tr. 3531 (Walsh) (RA-008064).

[76] Tr. 750-751 (Jungling) (RA-003027-28); NAC Decision at 27 n.82 (RA-016019).

[77] Opp. Br. at 13-14.

unrelated to costs" that was "not related to, let alone reasonably related to, a service provided to customers.[78] As its "second" reason, FINRA essentially restates the first, asserting that the fee "was not related reasonably to costs that Alpine incurred to supply a customer service."[79] FINRA goes on to insist that the fee "had no demonstrable, rationale [sic] relationship to the costs, either direct or indirect, that the firm sustained for a customer to have an account at Alpine."[80]

FINRA layers onto that rule a further requirement: the firm can prove its compliance only with "discernible analysis based on observable data" – a standard that appears nowhere in the OHO Decision, the NAC Decision, or FINRA's own prior briefs and was apparently invented by FINRA for the first time for its Opposition Brief.[81] This shifting of evidentiary standards on appeal is precisely the type of "haphazard and shape shifting administrative requirements" that constitute "arbitrary and capricious agency action."[82]

FINRA's claims that Alpine's fees were unrelated to "a service" and "unrelated to costs" is nonsensical, a rank distortion of the reality and extensive evidence concerning Alpine's business. Alpine maintains accounts and clears for customers who are engaged in liquidation of microcap securities. That is the specific and increasingly unique service that it provides. Providing that particular service requires that Alpine manage the changing regulatory environment and escalating

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[78] Opp. Br. at 14.

[79] Opp. Br. at 14.

[80] Opp. Br. at 14.

[81] Opp. Br. at 25. FINRA also argues that Alpine's imposition of the fee was "discriminatory" because it "reversed and waived the fee for 'favored customers.'" The NAC acknowledged that a firm may "differentiate among its customers for purposes of the charges or fees it imposes, including lesser fees or waiving fees for preferred customers" but found that Alpine failed to make "meaningful distinctions among its customers." NAC Decision at 33 n.104 (RA-016029). The evidence is clear that Alpine did make distinctions, reversing the fee for customers who were active and for those who contacted the firm and agreed to make arrangements to close their accounts. Tr. 333 (Jungling) (RA-002539); Tr. 4787 (Brant) (RA-009566).

[82] *Farrell v. Blinkin*, 4 F.4th 124, 139 (D.C. Cir. 2021).

costs associated with the handling of microcap securities. By definition, then, the AML, regulatory, legal and trading costs that were the subject of extensive testimony ***describe the costs related to the service provided by Alpine to customers***. The only explanation for FINRA's position – that Alpine did not demonstrate that its fees were related to the "cost" of "a service" – is the notion that "services" must be broken down into the component parts of the ultimate trade executed for the particular customer. According to FINRA, only the demonstrated and actual "cost" of conducting that specific trade could be allocated to a customer.[83] All of the expenses involved in operating the business that performs the service --including personnel costs, vendor costs, AML and regulatory compliance costs – all according to FINRA are irrelevant because they are not attributable to a cost of a component of a particular customer's trade.

FINRA continues to rely on a single bit of guidance for its cost-correlation rule: Notice to Members 92-11.[84] But NTM 92-11, an issuance from thirty years ago, addressed ACAT fees only. It did not state that, in every instance, a fee must correspond to "actual costs." To the contrary, it focused on the basic notion of reasonableness and the critical issue of adequate notification "at least 30 days prior to the implementation or change of any service charge."

FINRA ignores Rule 2121 regarding Fair Prices which mandates "consideration [of] all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved and the fact that he is entitled to a profit, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor." The Supplementary Material confirms

[83] Opp. Br. at 19 (according to FINRA, Alpine "'did not under[take] and appl[y] the analysis that [FINRA] repeatedly said is necessary to justify its fee'").

[84] Opp. Br. at 16.

that pricing should not be a rigid reflection of costs but should be based on consideration of a host of factors, stating that "transactions in lower priced securities may require more handling and expense" and that the firm may consider "the cost of providing such services and facilities, particularly when they are of a continuing nature." FINRA's Opposition Brief literally ignores that provision, effectively insisting that all of the detailed considerations discussed in Rule 2121 should be disregarded in the analysis applicable to the following provision, Rule 2122.

FINRA's "actual costs" standard also conflicts with the Commission's own recognition that fees may be justified through multiple methodologies. In *BOX Exchange LLC,* which FINRA itself cites,[85] the Commission explained that fees may be justified either through cost-based analysis or through a market-based test. Under the market-based test, the Commission examines whether the entity "was subject to significant competitive forces in setting the terms of its proposal."[86] FINRA and the NAC Decision apply an opposite approach, insisting that *only* a cost-based analysis can be used to assess reasonableness, and they fail even to acknowledge Alpine's market-based evidence: (1) testimony that competitors charged up to $25,000 monthly minimums, demonstrating Alpine's $5,000 fee was competitively lower;[87] (2) that Alpine encouraged customers to avoid its fee by transferring their accounts;[88] and (3) Alpine's board member's testimony that Frankel reviewed fees charged by other firms and discussed them with the board before setting Alpine's fee.[89]

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[85] Opp. Br. at 20-21

[86] *BOX Exchange LLC*, Exchange Act Release No. 88493, 2020 SEC LEXIS 863, at 10-11 (Mar. 27, 2020).

[87] Tr. 4547 (John Hurry) (RA-009272); Tr. 2076 (Jones) (RA-005294).

[88] JX-16 (RA-014257) ("We understand that many accountholders may not want to incur this fee, so we are working with every customer to close their accounts and avoid the fee.").

[89] Tr. 4317 (Justine Hurry) (RA-009001).

Given FINRA's insistence that costs were the only factor, Alpine also provided extensive cost-based evidence including board minutes, FOCUS reports, financial statements, fee analysis documents, and board member testimony. The NAC itself confirmed the sufficiency of this type of evidence by reversing unreasonableness findings for two other fees based on general cost categories and pass-through rationales.[90]

FINRA ignores this and instead resorts to dictionary definitions as its support for its analytical and evidentiary requirement of spreadsheet-like correlation of "actual costs" to fees.[91] Remarkably, it then points to Alpine's own prior statements which, FINRA argues, reflect that Alpine "knew" of the rule that it had to provide a particular written analysis showing **"expense per client."**[92] But FINRA's claim is flatly contrary to the evidence: as discussed above, FINRA received Alpine's detailed written policy document in 2017 that confirmed Alpine did not engage in "granular cost allocation."

FINRA also fails even to acknowledge the analysis of a "just and reasonable rate" and the issue of "unconstitutional confiscation" by the Supreme Court in *Verizon Communications v. FCC*, 535 U.S. 467, 479 (2002). And it wrongly continues to insist that *Mobile-Sierra*, and its discussion of the "reasonableness" of rates, "has no application to broker-dealers."[93] FINRA ignores the only case that has addressed the issue, *GT Securities,* in which the court applied to Rule 2122 "the well-established *Mobile-Sierra* presumption that contract rates freely negotiated

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[90] NAC Decision at 43-46 (RA-016035-38).

[91] Opp. Br. at 16.

[92] Opp. Br. at 17.

[93] Opp. Br. at 22.

between sophisticated parties meet the just and reasonable standard imposed by [statute]."[94] That case supports the view that Rule 2122's "broad standard of reasonableness" does not permit regulators to override fully disclosed and accepted fee structures.

FINRA's position is not only irrational and unsupported but also ignores basic economics and relevant cases. A broker-dealer maintaining thousands of accounts incurs AML compliance costs, regulatory examination costs, insurance costs, and employee costs that benefit all accounts collectively. FINRA's insistence on account-specific cost correlation would make it impossible for any firm to charge fees that would enable it to defray those expenses.

B. The Rule Did Not Provide Fair Notice of FINRA's Purported Rules; Even FINRA and the NAC Employ Inconsistent and Contradictory Standards Regarding Fee Reasonableness

In its effort to claim that it provided "fair notice" of its "actual costs" rule, FINRA flatly contradicts itself. It insists that it did not engage in impermissible rulemaking because its requirement of correlation to actual costs is "reasonably and fairly implied" by its rules. In the next breath it insists that it does *not* require detailed cost allocation. Its position, is says, "does not presage [] exactitude."[95] "More importantly," FINRA continues, "the requirement that a fee be based on a member's costs does not … either impose or foreclose any method of pricing or accounting for a service."[96] But that is precisely the problem: FINRA's position does in fact "impose" not only a rule of "actual costs" relating to a service but also a written methodology. It forecloses a firm from using other more appropriate pricing methods such as "activity-based costing" which do not require that a fee be based on an expense incurred in providing the particular

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[94] *GT Sec., Inc. v. Klastech GmbH,* No. 13-cv-03090 (N.D. Cal. May 15, 2015).

[95] Opp. Br. at 19.

[96] Opp. at 20 (emphasis added).

service to the customer. And FINRA's insistence that its rule permits firms to utilize other forms of pricing confirms that the rule *does not* "reasonably and fairly imply" the requirement of a specific correlation of actual costs for a particular service to fees.

The NAC's inconsistent application of that purported rule also demonstrates the fundamental flaw in FINRA's position. The NAC reversed findings of unreasonableness for Alpine's illiquidity/volatility fee and its $1,500 certificate withdrawal fee, accepting general cost categories and pass-through rationales without demanding granular cost allocation.[97] The NAC noted Alpine's Fee Schedule Analysis described the fee as a "Finance charge imposed on Alpine for funds used to cover NSCC illiquidity and volatility charges" with the rationale "Alpine draws on a line of credit to pay for NSCC illiquidity and volatility charges."[98] The NAC concluded that "Enforcement did not conduct or offer any analysis showing that the illiquidity and volatility fee that Alpine charged customers was not reasonably related to the costs Alpine incurred when it borrowed against the line of credit."[99]

For the $1,500 certificate withdrawal fee, the NAC found that Alpine's costs included "transfer agent fees, which Christopher Frankel testified could be as much as $600, paying staff to communicate with transfer agents regarding the withdrawals, and Alpine's handling, mailing, and insurance costs."[100] Based on these general cost component categories—with no requirement for

[97] NAC Decision at 43-46 (RA-016035-38).

[98] NAC Decision at 43 (RA-016035).

[99] NAC Decision at 44 (RA-016036).

[100] NAC Decision at 45 (RA-016037).

granular dollar-for-dollar allocation—the NAC declined to find that "Enforcement proved that the $1,500 fee was not reasonably related to the actual costs Alpine incurred."[101]

Alpine provided the same types of evidence for all three fees: cost category descriptions in its Fee Schedule Analysis, pass-through and risk premium rationales, and testimony about cost components. The NAC accepted this evidence for two fees but, with respect to the $5,000 fee, applied a different standard. Despite Alpine's Fee Schedule Analysis identifying cost categories (accounting, compliance, operations, AML risks), despite testimony about dramatically increasing regulatory costs, and despite Alpine's 2017 written fee policy explaining its risk-premium methodology, the NAC found the fee "was not correlated to any actual costs that Alpine incurred" and that "Alpine implemented this fee without ever attempting to allocate to it any quantified direct or indirect costs."[102] The NAC applied precisely the granular cost-allocation requirement it did not impose for the illiquidity/volatility fee or the certificate fee.

C. FINRA's Conversion Theory Is An Improper Bootstrap That Transforms Fee Disputes Into Theft Charges

FINRA claims that Alpine's disclosure and imposition of a fee, later found by FINRA to be "unreasonable," constitutes a conversion of customer assets, insisting that provisions that are central to the customer agreement can be completely disregarded and that no element of intent ***or*** change of ownership is required.[103] According to FINRA, stock movement, misappropriation, conversion and imposition of a fee later found to be unreasonable are all the same and all deserving of the harshest punishments. Those rulings should be reversed and the definition and meaning of

[101] NAC Decision at 46 (RA-016038).

[102] NAC Decision at 38-39 (RA-016030-31).

[103] Opp. Br. at 23.

conversion preserved not only because that is consistent with law but also because it properly reflects the critical distinctions in the purpose and the impact of the conduct.

As a first step in its conversion claim, FINRA seeks to invalidate the firm's account agreement that allows the firm to debit accounts for "any and all reasonable charges as it may deem necessary to cover its services and facilities."[104] FINRA contends that, where *it* asserts that fees are "unreasonable," it may at the same time charge the firm with "conversion," a maneuver that creates an impossible situation: any fee that is later determined to be excessive becomes grounds for a finding of theft, even if the fee was properly disclosed and the firm believed it was justified at the time. And the unfairness of that tactic is illustrated here: even the NAC was troubled by that machination[105] which elevates FINRA's imprecise rules and the absence of fair notice into a device to impose on the firm the death penalty, while the Hearing Panel and the NAC disagreed on whether "unreasonableness" had been established.

FINRA then redefined this serious offense by seeking to do away with both of the critical aspects of conversion: it claims that conversion is exactly the same as misuse of property, requiring no element of intent, and it claims that it does not even require a change of ownership. It elevates any appropriation or even movement of property to the offense of conversion.

The case most heavily relied on by FINRA, *Mission*, confirms the intent required for conversion: "Applicants not only intended to permanently deprive their customers of their property, but did, in fact, deprive their customers of their property."[106] Customers were "without

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[104] Opp. Br. at 24.

[105] The NAC sought to qualify its holding, stating "We do not suggest that every unreasonable fee may lead to claims of unauthorized trading if a firm takes funds or securities from customer accounts to pay for that fee." Decision at 47 n.118 (RA-016039). In fact, the decision allows for precisely that.

[106] *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at 20-21 (Dec. 7, 2010).

access to their Chartwell shares, or to the profits Applicants made from selling those shares, and have been so for years."[107] Alpine did neither.

In its further dilution of the concept of conversion, FINRA strips away even the element of a change in ownership. According to FINRA, the movement of stocks from the customer's account to custodial accounts established for purposes of escheatment constituted a "misuse and conversion of customer assets."[108] Of course, in that circumstance, the customer remains at all times the owner of the stock, the stock remains available to the customer, and the process occurs in large part because it is *mandated* by state law.[109] But FINRA insists that the administrative movement of a security to another of the firm's *custodial* (not proprietary) accounts is the same as a taking of title and a use of the property in contravention of the rights of the owner.

FINRA relies on *Johnson* for the proposition that conversion can occur without change of ownership. But Johnson involved funds moved "beyond RBC's control" to an account where Johnson had "sole control."[110] Here, the stocks were held in a custodial account in the name of the customer. Alpine never had "sole control" over customer property. The critical language from *Johnson*—that conversion occurred when Johnson "removed [funds] from the RBC Account and moved them to his Bank Account; this action deprived RBC of possession of that property and effectively gave Johnson sole control over funds"—has no application to Alpine's custodial movements where neither ownership nor control changed.[111]

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[107] *Id.* at 21.

[108] Opp. Br. at 32.

[109] Tr. 4020-4021 (Walsh) (RA-008664-65).

[110] *Thomas Lee Johnson*, Exchange Act Release No. 99596, 2024 SEC LEXIS 444, at *13 (Feb. 23, 2024).

[111] *Id.* at *13.

With respect to the securities that were transferred as "worthless," FINRA again takes the most aggressive and extreme position, arguing that Alpine's use of a negative consent letter was not appropriate and that, therefore, those movements of stock constitute conversion.[112] FINRA vaguely argues that it permits negative consent "only in limited circumstances" but fails to acknowledge that those circumstances include those that existed here. Notice to Members 02-57 identifies five specific situations where negative response letters may be appropriate for bulk account transfers. Two of these situations describe Alpine precisely: "Financial or Operational Difficulties," when a member experiences financial or operational difficulties; and when an **"Introducing Firm [is] No Longer in Business."** Alpine was dealing with severe financial and operational stress in relation to accounts where the introducing firm had gone out of business.[113]

D. Doubek's Conduct Should Not Be Imputed to Alpine Under the Adverse Interest Exception

The evidence established an incontrovertible set of specific facts relating to the movement of stocks in May and June of 2019:

1. Doubek was directed to deal with closure of dormant and orphaned accounts;
2. Closure of those accounts can easily be accomplished in compliance with regulations and the account agreement;
3. Doubek was responsible for and was directed to ensure that the firm acted compliantly;
4. As Doubek admitted, "John Hurry wanted the accounts closed, he did not dictate how it should happen";[114]

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[112] Opp. Br. at 28-30.

[113] Tr. 1078-79 (Jungling) (RA-003421-22); Tr. 2711-16 (Nummi) (RA-006081-86); Tr. 4385-88 (John Hurry) (RA-009110-13).

[114] Tr. 3092-96 (Doubek) (RA-007501-05) (emphasis added).

5. For more than six months, and unbeknownst to ownership, Doubek failed to take the steps necessary to close the accounts in accordance with regulations or the account agreement;
6. Having failed to properly close the accounts, and to avoid being fired, Doubek closed the accounts improperly;
7. Doubek's actions in abruptly and improperly shutting down accounts benefited only himself and were obviously devastating to the firm, having resulted in an order of expulsion;
8. Alpine's counsel learned of Doubek's actions and immediately intervened and the improper movements of stock were reversed.

Given those facts, FINRA failed to establish that Doubek's actions are attributable to Alpine. Doubek did not do as instructed, i.e., close accounts compliantly. He instead "totally abandoned" the firm's interest, engaged in patently improper conduct and concealed his methods from ownership.[115] The adverse interest exception prevents imputation when an agent "acts adversely to the principal in a transaction or matter, intending to act solely for the agent's own purposes or those of another person."[116] The exception applies when an employee has "totally abandoned the employer's interests, such as by stealing from it or defrauding it."[117] When Alpine's counsel learned what happened, they directed that the movements be reversed. This is textbook adverse interest—a concealing agent whose wrongdoing is remediated as soon at it comes to light.

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[115] Tr. 4491-4492 (John Hurry) (RA-009216-17).

[116] Restatement (Third) of Agency § 5.04 (2006).

[117] *ChinaCast Educ. Corp. v. Soha*, 809 F.3d 471, 476 (9th Cir. 2015). *In re CENDANT Corp. Sec. Litig*., 109 F. Supp. 2d 225, 232 (D.N.J. 2000). (held that when an agent conceals wrongdoing, any presumption that he informed his principal "is contrary to all experience of human nature.")

Joseph Walsh's remedial conduct demonstrates Alpine's true intent. Walsh testified that on June 25, 2019, he "received an e-mail [from Alpine's counsel] that concerned me that upper management was not all on the same page for this plan. So I immediately took down the out of office reply and began reversing all of the journals, putting all of the positions back into the customer's accounts."[118] The immediate reversal shows that Alpine's ownership did not approve Doubek's methods, that Alpine's intent was not to convert customer property and that the remediation was not the result of regulatory involvement.

The rationale used by FINRA to argue that Doubek's actions are attributable to the firm is simplistic and patently wrong.[119] FINRA cites only the fact that Doubek was instructed to close accounts, describing closure of accounts as "Alpine's plan to shutter its retail brokerage business," and that he did not therefore act "solely" for his own benefit.[120] There are innumerable such legal and proper directives that could be issued that could, at least theoretically, also be done through unlawful conduct. But the issuance of such a legal and proper directive does not carry with it the authorization to engage in unlawful conduct, particularly where that same employee was tasked with ensuring that the firm acted compliantly. Unquestionably, the *proper* completion of that task would have benefited the firm; his failure to act lawfully and his abrupt transfer of securities was obviously not part of Alpine's plan and occurred only because Doubek abrogated all obligations

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[118] Tr. 3407-08 (Walsh) (RA-007877-78).

[119] Opp. Br. at 36.

[120] Opp. Br. at 37. FINRA's "solely" standard is incorrect. Even where there is an incidental benefit to the corporation, the adverse interest exception applies where "the true motive of the wrongdoers was the preservation of their employment, salaries, emoluments, and reputations, as well as their liberty, at the expense of [the corporation's] well-being." *In re Phar-Mor, Inc. Sec. Litig.*, 900 F. Supp. 784, 787 (W.D. Pa. 1995); *see also Cobalt Multifamily Inv'rs*, 2009 U.S. Dist. LEXIS 60481 ("[A] court can find that a corporation's manager 'totally abandoned' a corporation's interests even if the manager's actions also benefitted the corporation, because the relevant inquiry is whether the manager intended to benefit the corporation."). FINRA cites to language from ChinaCast, that applies where there is reliance by "innocent third parties"—an issue not present in this case.

to the firm and took steps to try to avoid being fired. A dishonest and rogue employee's decision to forego lawful methods and employ illegal means precisely because he had failed to do it properly and wanted to avoid being fired does not support the imputation of liability to the firm.

E. FINRA Cites Modest Market-Making Fees as Independent Basis for Expulsion

According to FINRA, there were 224 principal transactions in which Alpine's total charges exceeded the 5% guideline–when the *2.5% market-making fee* was aggregated with other charges.[121] The NAC found that the total amount by which Alpine's compensation exceeded a 5% markdown was $67,268.77.[122] For that variation from FINRA's 5% guideline,[123] the NAC imposed the sanction of expulsion.[124]

As Alpine argued in its opening brief, this was both analytically improper and disproportionate. Alpine's separate market-making fee of 2.5% was actually *lower* than what its customers had been paying to other market-makers. And FINRA's idea of lumping those items together lacks authority. FINRA cites *DMR Securities* for the proposition that all compensation must be aggregated.[125] But *DMR* addressed whether a firm could exclude costs from mark-up calculations—*not* whether separate fees for separate services should be aggregated.[126]

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[121] NAC Decision at 60-64 (RA-016052-56)

[122] NAC Decision at 94 (RA-016086)

[123] The 5% Policy is expressly "a guide, not a rule." FINRA Rule 2121, Supplementary Material .01(a)(1). It "is not intended to impose a maximum ceiling." Id. Moreover, FINRA's own guidance recognizes that "inactive or infrequently traded" securities and trades for "small amounts of money" warrant compensation exceeding 5%. FINRA Notice to Members 13-07. FINRA's treatment of the 5% guideline as a rigid rule justifying expulsion is another example of FINRA inventing and enforcing standards that do not exist in its rules.

[124] NAC Decision at 85-87.

[125] Opp. Br. at 39.

[126] *DMR Sec., Inc*., 47 S.E.C. 180, 182 (1979).

F. The Remaining Sanctions Are Disproportionate and Unprecedented

In its arguments in favor of expulsion, FINRA uses the phrases and allegations that might support that death penalty sanction, but those phrases do not apply here. FINRA claims the conduct involved a "prolonged period" and that it resulted in "substantial injury to customers." Neither is true. The conduct that supports expulsion under the Guidelines, the conversion of stock, was an abrupt action over a matter of weeks by Chris Doubek that was addressed by Alpine's ownership and counsel and all customer stock was returned.

The Commission's recent decision in *Wilson-Davis* proves the disproportionality of FINRA's sanctions. In that case, FINRA found that the firm engaged in speculative short-selling strategies over multiple years, suffered a $4.2 million loss from reckless trading, failed supervision in four separate categories, and maintained an AML program that missed potential manipulation.[127] FINRA imposed $1.1 million in fines plus an independent consultant requirement. The SEC sustained the violations and the consultant requirement but set aside the fines and remanded, holding FINRA failed to explain why the cumulative sanctions were "necessary to protect the public" and "appropriately remedial and not punitive or otherwise excessive."[128]

FINRA's cited cases are also inapposite. *Lane* involved securities fraud under Section 10(b) and Rule 10b-5, with markups reaching 40.93% through a concealed interpositioning scheme and a finding of scienter.[129] *Mullins* involved personal theft—a broker stealing $4,000 in Four Seasons gift certificates for a London vacation and victimizing a 95-year-old hospitalized client,

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[127] Exchange Act Release No. 99248 (Dec. 28, 2023).

[128] *Id.* at 25.

[129] *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558 (Feb. 13, 2015).

for which he pled guilty to criminal misapplication of entrusted funds.[130] *Reyes* involved a Ponzi-like scheme where customers lost 100% of their investments and the broker personally stole $170,000 for rent and alimony.[131] None of these cases involved fee disputes and immediate remediation.

FINRA characterizes two prior matters as a pattern warranting "progressively escalating" sanctions.[132] Both were legal disputes resolved through compliance. The 2017 SEC action involved novel and technical Bank Secrecy Act issues; Alpine paid the fine and complied with all requirements. The Rule 4140 matter involved an accounting dispute over net capital computation in which Alpine's auditors agreed with its position; Alpine cured it by filing a corrected audit report. Neither involved customer harm. Litigating such issues is not "disciplinary history" warranting expulsion. Under FINRA's logic, any firm that defends itself has a "disciplinary history" that justifies harsher punishment.

G. FINRA's Constitutional and Procedural Violations

FINRA continues to insist that it is a "private entity" and so it can exercise its powers without regard for due process considerations, Article III or the Seventh Amendment. FINRA's position was questioned by the D.C. Circuit in *Alpine v. FINRA*, 121 F.4th 1314, 1343-45 (D.C. Cir. 2024) (Walker, J., concurring in part and dissenting in part), which found a likelihood of a violation of the private non-delegation doctrine. The remaining Constitutional issues were

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[130] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

[131] *Dep't of Enf't v. Reyes*, Complaint No. 2016051493704, 2021 FINRA Discip. LEXIS 29 (FINRA NAC Oct. 7, 2021).

[132] Opp. Br. at 56-57.

remanded for consideration by the district court and Alpine in that proceeding has addressed at length FINRA's claim that it can operate without regard for the Constitution.

Here, FINRA insists that *Lucia* is not applicable because, according to FINRA, it is only employing procedures for "investigating member compliance."[133] That is semantics and ignores the reality of FINRA's aggressive enforcement function.

In relation to specific procedural failures, FINRA claims Alpine was not prejudiced.[134] But the record proves otherwise. Alpine was prejudiced by being deprived of an in-person hearing after DOE presented its case-in-chief in person, by Enforcement's failure of production until mid-hearing, and by order excluding the testimony of General Counsel Mike Cruz, author of Alpine's fee policy document RX-64, as "cumulative." These and other procedural violations, viewed individually or collectively, warrant reversal or remand.

CONCLUSION

The Commission should reverse the NAC's findings that Alpine's $5,000 fee was unreasonable, that Alpine converted customer assets, and that Alpine's market-making fees violated the 5% Policy. The Commission should set aside the expulsion sanction. Alternatively, if the Commission affirms any findings of violation, it should remand for appropriate sanctions.

Dated: January 13, 2026

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[133] Opp. Br. at 46.

[134] Opp. Br. at 42-44.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule of Practice 450(c), I certify that this brief complies with the word limitation set forth in Rule of Practice 450(a). This brief contains 8,898 words, excluding the parts exempted by Rule of Practice 450(a). In making this certification, I have relied on the word count feature of the word processing system used to prepare this brief.

Dated: January 13, 2026

/s/ *Maranda E. Fritz*

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2026 I caused to be served a copy of ALPINE SECURITIES CORPORATION'S REPLY BRIEF IN SUPPORT OF ITS APPEAL FROM THE DECISION OF THE NATIONAL ADJUDICATORY COUNCIL on counsel for FINRA via email to the following individuals:

gary.dernelle@finra.org

Dated: January 13, 2026

/s/ *Maranda E. Fritz*