UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85245 / March 4, 2019

Admin. Proc. File No. 3-18979

In the Matter of the Application of

ALPINE SECURITIES CORPORATION

For Review of Action Taken by the

NATIONAL SECURITIES CLEARING CORPORATION

ORDER DIRECTING ADDITIONAL WRITTEN SUBMISSIONS

On December 26, 2018, Alpine Securities Corporation ("Alpine") filed an application for review of action taken by the National Securities Clearing Corporation ("NSCC") and a motion seeking a stay of certain NSCC action pending a final decision on the application. NSCC subsequently filed papers opposing Alpine's motion, and thereafter Alpine filed a reply brief. NSCC and Alpine each submitted applications pursuant to Commission Rule of Practice 190 for confidential treatment of portions of their filings.[1] Each party stated that it would meet and confer with the other party regarding the confidential treatment of the materials filed under seal. The parties have not yet supplemented their initial applications for confidential treatment.

[1] 17 C.F.R. § 201.190. Rule 190 specifies several statutory and regulatory provisions contemplating the availability of confidential treatment. 17 C.F.R. § 201.190(a). The parties did not identify which, if any, of these provisions formed the basis of their requests for relief. *Cf.* Rule of Practice 154(a), 17 C.F.R. § 201.154(a) (providing that motion "shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon").

The Commission has addressed requests for confidentiality in proceedings subject to its Rules of Practice, such as this one, under Rule 322.[2] Rule 322 provides that "a party . . . may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony that contain confidential information."[3] "Documents and testimony introduced in a public hearing are presumed to be public."[4] "A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure."[5] The parties' submissions do not address this standard.

The parties are directed to file additional briefs supplementing their requests for confidential treatment and addressing the standards in Rule 322 by March 11, 2019. The parties "should clearly identify which information [they] seek to protect and should offer an explanation as to why the harm resulting from disclosure would outweigh the benefits of disclosure."[6] Agreement of the parties regarding confidentiality does not bind the Commission.[7]

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[2] *See* Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,754 (June 23, 1995) (explaining that "Rule 322 applies to requests for a protective order for materials introduced at hearings conducted pursuant to these Rules of Practice," and Rule 190 "governs applications for confidential treatment with respect to information required to be filed with the Commission in connection with a registration statement, report, application or other such materials"); *see also id.* at 32,742 ("The Commission has decided that a separate rule for protective orders would be more efficient and easier for adjudicatory litigants to use than a rule that encompassed not only protective orders, but also requests for confidential treatment under the federal securities laws or the Freedom of Information Act.").

[3] 17 C.F.R. § 201.322(a); *see also generally Laurie Bebo*, Exchange Act Release No. 77204, 2016 WL 702363 (Feb. 22, 2016) (granting in part motion for protective order).

[4] 17 C.F.R. § 201.322(b).

[5] *Id.*

[6] *Kabani & Co.*, Exchange Act Release No. 76266, 2015 WL 6447449, at *2 (Oct. 26, 2015) (citing Rule of Practice 322, 17 C.F.R. § 201.322).

[7] *Cf. ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at *2 (Aug. 15, 2018) (recognizing that the Commission was "not bound by the parties' stipulation as to a deferential standard of review"); *ZPR Inv. Mgm't*, Advisors Act Release No. 4872, 2018 WL 1559758, at *2 (Mar. 30, 2018) (recognizing that the Commission was "not bound by the parties' proposal" regarding imposition of civil money penalties).

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.[8]

Brent J. Fields
Secretary

[8] Rule of Practice 420(e) provides that 14 days after the Commission receives an application for review challenging a self-regulatory organization's action, the SRO shall certify and file with the Commission the record on which the challenged action was taken and file and serve an index of the record. In a February 6, 2019 letter, NSCC asserted that these requirements are not applicable to it because NSCC did not institute a proceeding to impose disciplinary sanctions or to deny or limit Alpine's access to services as contemplated by Section 19(d)(1) of the Securities Exchange Act of 1934. In support of this contention, NSCC referred to its brief in opposition to Alpine's stay motion. In a February 12, 2019 letter, Alpine disputed NSCC's position. Alpine cited its own application for review and stay motion, which it contends establish that NSCC's challenged actions are reviewable under the Exchange Act. Alpine's stay motion is pending, and the Commission has yet to address the parties' arguments. An order directing further proceedings will issue at the appropriate time.