

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 93611 / November 18, 2021

Admin. Proc. File No. 3-20485

In the Matter of  
  
ALPINE SECURITIES CORPORATION

ORDER REQUESTING BRIEFS

On August 26, 2021, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Alpine Securities Corporation pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> The OIP alleged that a federal district court had entered an injunction against Alpine and instituted proceedings to determine whether any remedial action was in the public interest.<sup>2</sup>

On October 15, 2021, the Division of Enforcement filed a Stipulated Motion for Entry of Stipulated Protective Order (“Stipulated Motion”) pursuant to Commission Rule of Practice 322.<sup>3</sup> The Division represents that Alpine has stipulated to the relief sought in the motion.

Commission Rule of Practice 230(a)(1) provides that the Division generally “shall make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division’s recommendation to institute proceedings.”<sup>4</sup> In the Stipulated Motion, the Division represents that its investigative file contains documents that “comprise, include, or reflect the existence or non-existence of” Suspicious Activity Reports (“SARs”) filed with the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) pursuant to the Bank Secrecy

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<sup>1</sup> *Alpine Sec. Corp.*, Exchange Act Release No. 92775, 2021 WL 3836056 (Aug. 26, 2021).

<sup>2</sup> *Id.*; *see also SEC v. Alpine Sec. Corp.*, 413 F. Supp. 3d 235, 251 (S.D.N.Y. 2019) (explaining imposition of injunction against future violations of Exchange Act Section 17(a) and Rule 17a-8), *aff’d*, 982 F.3d 68 (2d Cir. 2020), *cert. denied*, 595 U.S. \_\_\_, No. 21-82, 2021 WL 5167847 (U.S. Nov. 8, 2021).

<sup>3</sup> 17 C.F.R. § 201.322(a), (c) (providing for entry of protective order with respect to confidential information “upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure”).

<sup>4</sup> 17 C.F.R. § 201.230(a)(1); *see also id.* § 201.230(b) (describing documents that the Division may withhold or redact).

Act (“BSA”) and its implementing regulations. The BSA’s implementing regulations provide that a federal government authority or any director, officer, employee, or agent of such an authority “shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act.”<sup>5</sup> Similarly, the BSA’s implementing regulations provide that, generally, “[n]o broker-dealer, and no director, officer, employee, or agent of any broker-dealer, shall disclose a SAR or any information that would reveal the existence of a SAR.”<sup>6</sup>

The Division represents that it has “consulted with staff of FinCEN and has determined that it may make available and produce, and the parties may use, documents that include or reflect the existence or non-existence of SARs in connection with this [proceeding] subject to an appropriate protective order,” and that it understands that the stipulated proposed Protective Order (“Proposed Order”) is “acceptable to FinCEN.”

To aid its consideration of the Stipulated Motion, the Commission requests briefing regarding the following issues:

- The Proposed Order recognizes that the district court in the underlying civil action entered a protective order (“Civil Action Protective Order”) that by its terms “govern[s] confidential and proprietary information produced in th[at] action.”<sup>7</sup> Among other things, the Civil Action Protective Order limits the use by the parties to that proceeding—the Commission and Alpine—of “Discovery Material designated as a SAR.”<sup>8</sup> The Proposed Order states that “the Civil Action Protective Order remains binding on the parties to the Civil Action regarding discovery material produced during the Civil Action.” Does the Civil Action Protective Order prohibit the parties or the Commission from using for the purposes of the instant proceeding SAR-related materials that were received or produced in the civil action, and/or documents generated from these materials, including materials in the Division’s investigative

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<sup>5</sup> 31 C.F.R. § 1023.320(e)(2); *see also* 31 U.S.C. § 5318(g)(2)(A)(ii) (“[N]o current or former officer or employee of or contractor for the Federal Government . . . , who has any knowledge that [a report of a suspicious transaction] was made may disclose to any person involved in the transaction that the transaction has been reported, or otherwise reveal any information that would reveal that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.”).

<sup>6</sup> 31 C.F.R. § 1023.320(e)(1)(i); *see also* 31 U.S.C. § 5318(g)(2)(A)(i) (providing that, when a financial institution reports a suspicious transaction to a government agency, “neither the financial institution . . . nor any . . . current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported or otherwise reveal any information that would reveal that the transaction has been reported”); *id.* § 5312(a)(2)(G)-(H) (defining “financial institution” to include brokers and dealers).

<sup>7</sup> Protective Order Pursuant to Fed. R. Civ. P. 26(c) at 1, *SEC v. Alpine Sec. Corp.*, No. 17-cv-04179-DLC (S.D.N.Y. Sept. 25, 2017), ECF No. 38.

<sup>8</sup> *Id.* ¶ 5; *see also, e.g., id.* ¶¶ 6-8.

file?<sup>9</sup> If so, how do the parties plan to ensure that the materials covered by the Civil Action Protective Order are not used for the purposes of the instant proceeding? In the alternative, do the parties intend to request that the district court amend the Civil Action Protective Order to permit the use of SAR Discovery Material in this proceeding? In their answers, the parties should discuss and cite the provisions of the Civil Action Protective Order.

- In the Proposed Order, the term “SAR Discovery Material” is defined twice—first on page 1, and then on page 3. Which definition should apply throughout the Proposed Order?
- Several public judicial decisions discuss Alpine’s past SAR filings.<sup>10</sup> Would the Proposed Order, the Civil Action Protective Order, the BSA, or the BSA’s implementing regulations prohibit a party or the Commission itself from citing and discussing in public briefs, opinions, orders, or other documents information contained in these judicial decisions regarding SARs or the existence or non-existence of SARs?
- Under the Proposed Order, could the Commission publicly issue an opinion or order that cites or discusses filings containing SAR Discovery Material? The parties should explain their answers by citing specific provisions of the Proposed Order.<sup>11</sup> In the alternative, the parties should propose a revised protective order that clarifies this issue.
- If SAR Discovery Material is disclosed to the members of the Commission or their staff, the Office of the Secretary or its staff, or the Office of the General Counsel or its staff, would the Proposed Order require any of these entities or individuals to return or destroy the SAR Discovery Material after the final disposition of these proceedings? For example, would the Proposed Order require the Office of the Secretary to destroy or return SAR Discovery Material that is contained or cited in filed documents, including those that constitute the record of action in this proceeding? And would the Proposed Order require the destruction of any internal analysis and communications; drafts of opinions, orders, or action memoranda; or any similar documents that are produced based on filings containing SAR Discovery Material? The parties should explain their answers by citing specific provisions of the Proposed Order.<sup>12</sup> In the alternative, the parties should propose a revised protective order that clarifies these issues.

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<sup>9</sup> See, e.g., *id.* ¶¶ 1, 5(d).

<sup>10</sup> See, e.g., *Alpine Sec. Corp.*, 982 F.3d 68; *Alpine Sec. Corp.*, 413 F. Supp. 3d 235.

<sup>11</sup> See, e.g., Proposed Order ¶¶ 3-7.

<sup>12</sup> See, e.g., *id.* ¶¶ 3-7, 13.

The parties shall file briefs, or a joint brief, responding to these questions by December 9, 2021. If separate opening briefs are filed, each party may respond to the other party's opening brief by December 16, 2021.

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

Vanessa A. Countryman  
Secretary