

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 97347 / April 21, 2023

Admin. Proc. File No. 3-20818

In the Matter of the Application of
ALPINE SECURITIES CORPORATION
For Review of Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF FINRA ACTION

FINRA member firm filed an application for review of FINRA action suspending its membership for failure to file a materially accurate audit report upon request as required by FINRA Rule 4140. FINRA subsequently withdrew the suspension when the firm filed a compliant audit report. *Held*, review proceeding is *dismissed*.

APPEARANCES:

Maranda E. Fritz, for Alpine Securities Corporation.

Gary Dernelle and *Ashley Martin*, for FINRA.

Appeal filed: April 8, 2022
Last brief received: May 5, 2022

Alpine Securities Corp. (“Alpine”) filed an application for review of a final FINRA decision suspending it from FINRA membership for failing to file a materially accurate audit report upon request as required by FINRA Rule 4140.¹ Alpine moved for an emergency stay of the suspension order, which FINRA opposed. Before the Commission acted on the motion to stay, Alpine filed with FINRA an audit report that cured the defects FINRA previously identified and, at Alpine’s request, FINRA terminated the suspension. Because there is now no live disciplinary sanction for us to review, we dismiss the application for review.

I. Background

On April 7, 2022, a FINRA hearing panel issued an Expedited Hearing Panel Decision (the “Decision”) suspending Alpine from FINRA membership for failing to file a materially accurate audit report, as required by FINRA Rule 4140. Rule 4140 enables FINRA to require a member firm to produce an audit report when FINRA has concerns about the integrity of the member’s books and records. The hearing panel concluded that Alpine violated Rule 4140 when it filed an audit report that failed to calculate its net capital consistent with the requirements of the Net Capital Rule.² The Decision informed Alpine that if it filed an audit report correctly calculating the firm’s net capital, the firm could apply with FINRA’s Department of Enforcement for termination of the suspension.

On April 8, 2022, Alpine filed with the Commission an application for review of the Decision. Alpine argued that its audit was compliant with the Net Capital Rule, and therefore the firm did not violate FINRA Rule 4140. At the same time, Alpine filed an emergency motion seeking a stay of the suspension pending the Commission’s determination regarding the proper method of calculating Alpine’s net capital. FINRA opposed the stay and represented to the Commission that FINRA had agreed to permit Alpine to engage in certain unsolicited liquidating transactions for current customers notwithstanding the suspension.

On April 13, 2022, before the Commission acted on Alpine’s emergency stay motion, FINRA filed a letter informing the Commission that Alpine submitted to FINRA an audit report that, in FINRA’s view, “contain[ed] a materially accurate copy of the firm’s net capital computation.” The letter also informed the Commission that because of the compliant audit

¹ *Dep’t of Enforcement v. Alpine Sec. Corp.*, Expedited Proceeding No. FPI210010 (NASDR Apr. 7, 2022).

² Exchange Act Rule 15c3-1, 17 C.F.R. § 240.15c3-1.

report, FINRA had terminated Alpine’s suspension.³ FINRA then moved to dismiss the proceeding. Alpine opposes dismissal.

II. Analysis

Exchange Act Section 19(d) governs our authority to review self-regulatory organization (“SRO”) action.⁴ As relevant here, Section 19(d) authorizes us to review SRO actions that (1) impose any final disciplinary sanction on a member, (2) deny membership or participation to any applicant, or (3) prohibit or limit any person in respect to services offered by the SRO.⁵ Absent one of these statutory bases for Commission review, we must dismiss the proceeding.⁶

We have held that a conditional suspension imposed on a FINRA member firm for failure to take a required action, such as that at issue here, is a disciplinary sanction.⁷ For purposes of our review, though, “[w]e construe Section 19(d) as requiring a ‘live’ sanction—that is, a sanction that exists at the time of review for us to potentially affirm, modify, or set aside.”⁸ Because FINRA terminated Alpine’s suspension, we find that no such live sanction exists for us to review.

Alpine argues that requiring a live sanction to obtain review is a “perverse” and “tortured” interpretation of Section 19(d) and that, by requiring a live sanction, the Commission places the firm in the untenable position of having to choose between compliance with FINRA’s

³ https://files.brokercheck.finra.org/firm/firm_14952.pdf at 17 (stating “FINRA terminated the suspension”). We take official notice of this information pursuant to Rule of Practice 323. 17 C.F.R. § 201.323; *see also Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at *1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records).

⁴ 15 U.S.C. § 17s(d).

⁵ Section 19(d) also permits us to review SRO action that imposes a final disciplinary sanction on a person associated with an SRO member or bars any person from being associated with an SRO member. *Id.* As a FINRA member firm, Alpine does not argue that either of these bases provide a basis for review here, nor do we find that they do.

⁶ *See, e.g., WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 WL 524244, at *3-5 (Sept. 9, 2015) (dismissing FINRA member firm’s application for review where there existed no basis for review under Section 19(d)).

⁷ *See Alpine Sec., Inc.*, Exchange Act Release No. 34-89685, 2020 WL 5076741, at *2 n. 12 (Aug. 26, 2020) (citing *Dakota Sec. Int’l, Inc.*, Exchange Act Release No. 85238, 2019 WL 995510, at *1-3 (Mar. 1, 2019) (“We have held previously that a member would be subject to a ‘final disciplinary sanction’ if it failed to pay an arbitration award and was suspended for that failure.”)). In *Alpine Securities*, we addressed a substantially similar issue—whether Section 19(d) confers us with authority to consider an application for review of a FINRA order of suspension where the suspension was withdrawn following the FINRA members’ unwinding of a challenged change in ownership—and concluded that we lacked such authority.

⁸ *Alpine Sec.*, 2020 WL 5076741, at *2 (quoting *Dakota Sec.*, 2019 WL 995510, at *3) (internal quotation marks omitted).

allegedly improper sanction on the one hand, and a costly, protracted appeal on the other. But our authority to review SRO actions is granted by Congress, and in the absence of such authorization, Alpine’s purported inability to obtain relief does not confer a basis for review.⁹ Indeed, Alpine surrendered its opportunity to challenge the Decision when it submitted a corrected audit report and requested that FINRA terminate the suspension.¹⁰ And, as the Ninth Circuit has previously explained, it would “make little sense” for us to proceed with review if “FINRA imposed a disciplinary sanction but then fully retracted the sanction by, for example, setting aside a suspension and returning any fine levied.”¹¹

Alpine also suggests that the Commission has authority to review the Decision because it “denies membership or participation to an applicant” or “prohibits or limits access to services offered by FINRA or a FINRA member.” But the Decision did not deny an application for membership or impose restrictions on Alpine’s business activities as a condition of membership.¹² And Alpine does not identify a FINRA service that the Decision prohibited the firm from or limited the firm from accessing.¹³

Alpine finally argues that its pending motion to stay the suspension presents a live controversy that provides an independent basis for us to review the Decision. But without an underlying sanction for us to stay, Alpine’s motion to stay is now moot and we accordingly deny it.¹⁴ Alpine contends that this is unfair, because (it claims) the only reason the firm filed a compliant audit report was that waiting for the Commission to act on Alpine’s motion to stay the suspension would have forced the firm out of business. But Alpine could have sought an interim stay—as it has done in other proceedings—to preserve the status quo while the Commission

⁹ *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at *3 (July 7, 2020).

¹⁰ *See Alpine Sec.*, 2020 WL 5076741, at *4 (“Applicants surrendered that opportunity when they unwound the changes in ownership that gave rise to their suspensions and FINRA lifted the suspensions.”).

¹¹ *Sharemaster v. SEC*, 847 F.3d 1059, 1068 (9th Cir. 2017) (“[T]he Commission’s interpretation of Section 19(d)(2) to require a sanction to remain in place in order to be subject to review is permissible.”).

¹² *See Alpine Sec.*, 2020 WL 5076741, at *4 (finding that this basis for review “is directed at SRO decisions actually denying applications for membership or imposing restrictions on business activities as a condition of membership.”)

¹³ *See id.*

¹⁴ *Cf. Alpine Sec. Corp.*, Exchange Act Release No. 87146, 2019 WL 4738065, *2 (Sept. 27, 2019) (granting motion to withdraw request for stay on the basis that the stay motion “had become moot” upon FINRA’s lifting challenged suspension); *see also Sharemaster*, Exchange Act Release No. 80705, 2017 WL 2117529, at *1 (May 16, 2017) (denying request for stay of suspension in part because “FINRA then lifted the suspension . . . [a]nd FINRA returned to Sharemaster the costs that the decision imposed”).

considered its stay motion and application for review.¹⁵ Alpine did not do so. Instead, it filed its compliant audit report. And FINRA then terminated the suspension at Alpine's request.

Because there is no live sanction, there is no basis under Section 19(d) to review the Decision. We therefore dismiss the application for review.

An appropriate order will issue.¹⁶

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

¹⁵ See *Alpine Sec. Corp.*, Exchange Act Release No. 86719, 2019 WL 3933691 (Aug. 20, 2019) (granting firm's request for an interim stay "to preserve the status quo ante pending determination of the stay motion"); see also *Alpine Sec.*, 2020 WL 5076741, at *3 (finding no basis for review under Section 19(d) "where the reason Applicants need to 'go through the entire disciplinary process again and become suspended to obtain review' of the Decision is that they chose not to pursue their stay pending appeal and instead reverted their ownership structure and had their suspensions lifted.").

¹⁶ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

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ALPINE SECURITIES CORPORATION
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ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY
REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Alpine Securities Corporation be, and hereby is, dismissed.

By the Commission.

Vanessa A. Countryman
Secretary