SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 98868 / November 6, 2023

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

OPINION OF THE COMMISSION

REGISTERED CLEARING AGENCY PROCEEDING

Alleged Prohibition or Limitation of Access to Clearing Services

Member of registered clearing agency filed application for review under Section 19(d) of the Securities Exchange Act of 1934 asserting that components of daily deposit that agency required it to post were improper prohibitions or limitations of access to clearing services. *Held*, because Section 19(d) is not available as a means to review a member firm's challenges to generally applicable rules establishing these charges and subsequent events have mooted member's claims, application for review is *dismissed*.

APPEARANCES:

Brent R. Baker and *Aaron D. Lebenta*, Parsons Behle & Latimer, and *Maranda E. Fritz*, Maranda E. Fritz P.C., for Alpine Securities Corporation

Gregg M. Mashberg, *Benjamin J. Catalano*, and *Brian A. Hooven*, Proskauer Rose LLP, for National Securities Clearing Corporation

Appeal filed: December 26, 2018
Last brief received: February 10, 2020

Alpine Securities Corp. is a registered broker-dealer that specializes in providing clearing and settlement services for trades in microcap securities and a member of the National Securities Clearing Corporation ("NSCC"). In December 2018, Alpine filed an application for review under Section 19(d) of the Securities Exchange Act of 1934, asserting that NSCC had prohibited or limited Alpine's access to the clearing services that NSCC provides. Alpine asserted that several components of the deposits, *i.e.*, margin, it must post with NSCC pursuant to NSCC's rules in connection with certain trades should be set aside as improper limitations of access.

Alpine also filed a motion to stay NSCC's assessment of the "Illiquid Charge"—one of the components it challenged—while we considered its application for review. We denied the motion, finding that Alpine had not shown it was likely to demonstrate it had timely challenged the Illiquid Charge or that "extraordinary circumstances" excused a belated challenge.[1]

In light of these determinations, we ordered the parties to address whether Alpine's entire application for review should be dismissed as untimely.[2] NSCC filed briefs requesting dismissal, and Alpine filed briefs opposing it. Subsequently, in *NASDAQ Stock Market, LLC v. SEC*, the United States Court of Appeals for the District of Columbia Circuit held that Exchange Act Section 19(d) was not available as a means to challenge generally applicable fee rules established by two national securities exchanges.[3] Also subsequently, the Commission approved an NSCC rule change that both eliminated the Illiquid Charge and changed other rules that Alpine challenges. The parties filed letter briefs addressing the effect of *NASDAQ Stock Market* and the rule change on this proceeding. Considering the parties' contentions, we now dismiss this proceeding because Section 19(d) is not available as a means to challenge NSCC's generally applicable rules and because Alpine's application is moot.

I. Background

A. Alpine is a small broker-dealer and a member of NSCC, a registered clearing agency.

Alpine is a small, self-clearing broker-dealer that primarily provides clearing and settlement services for microcap and over-the-counter ("OTC") stock transactions. Alpine submits trades to NSCC for clearing on behalf of itself, other broker-dealers, and customers.

NSCC is a clearing agency registered with the Commission pursuant to Exchange Act Section 17A, and because it provides central counterparty ("CCP") services, NSCC is a covered

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1 *Alpine Sec. Corp.*, Exchange Act Release No. 87599, 2019 WL 6251313, at *1, *5-9, *13 (Nov. 22, 2019); *see also* Rule of Practice 420(b), 17 C.F.R. § 201.420(b).

2 *Alpine Sec. Corp.*, 2019 WL 6251313, at *13.

3 961 F.3d 421, 424 (D.C. Cir. 2020), *vacating Sec. Indus. & Fin. Mkts. Ass'n*, Exchange Act Release No. 84432, 2018 WL 5023228 (Oct. 16, 2018).

clearing agency as defined in Exchange Act Rule 17Ad-22(a).[4] NSCC provides CCP services with respect to equity securities transactions in the United States.[5] For settlement purposes, NSCC becomes the counterparty of each of its members' netted transactions for a particular settlement date.[6] NSCC thus assumes the obligations of members that are receiving securities to receive and pay for them and of members that are delivering securities to deliver them.[7]

To address the risk that it assumes from its CCP status, NSCC maintains a Clearing Fund that consists of Required Fund Deposits made by each of its members, *i.e.*, margin.[8] NSCC collects a Required Fund Deposit from each of its members to mitigate potential losses to NSCC associated with the liquidation of the member's portfolio in the event of a member default.[9] NSCC would access the Clearing Fund if a defaulting member's Required Fund Deposit were insufficient to satisfy NSCC's losses upon liquidation of the defaulting member's portfolio.[10]

NSCC determines the Required Fund Deposit and assesses the charges on its members by using a risk-based margin methodology reflected in its rules.[11] NSCC collects Required Fund Deposits in order to satisfy regulatory requirements that it cover its credit exposure to its members by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, including the microcap and OTC securities in which Alpine typically

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4 15 U.S.C. § 78q-1; 17 C.F.R. § 240.17Ad-22(a)(5); *Definition of "Covered Clearing Agency,"* Exchange Act Release No. 88616, 85 Fed. Reg. 28,853, 28,855 n.21 (May 14, 2020); *Standards for Covered Clearing Agencies*, Exchange Act Release No. 78961, 81 Fed. Reg. 70,786, 70,788 n.20 (Oct. 13, 2016); *see also* Clearing Agencies, https://www.sec.gov/tm/clearing-agencies (listing registered clearing agencies); *Alpine Sec. Corp.*, 2019 WL 6251313, at *2 & nn.6-11 (discussing obligations of registered clearing agencies and covered clearing agencies).

5 National Securities Clearing Corporation: Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, at 5, 8 (Mar. 2023), http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf ("Disclosure Framework").

6 *Id.* at 10.

7 *Id.*

8 *Id.* at 48. NSCC's rules describe the capitalized terms that we use in this order.

9 *Order Approving a Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Municipal Bonds*, Exchange Act Release No. 88191, 85 Fed. Reg. 9,843 (Feb. 20, 2020).

10 *Id.*

11 *See generally* NSCC Rule 4, Sec. 1 (defining the Required Fund Deposit as the deposit "determined by [NSCC] in accordance with Procedure XV and other applicable Rules and Procedures"), http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf; Disclosure Framework at 48, 57.

transacts.[12] The Required Fund Deposit applies to a member's open positions pending before NSCC.[13] NSCC adjusts the amount of each member's Required Fund Deposit at least once a day to reflect the status of its open positions, and provides daily notices of the amount of the Required Fund Deposit to its members.[14] The margin deposits that NSCC members post are credited back to NSCC members when the open positions to which they pertain close.[15]

The Required Fund Deposit may consist of a number of components. When Alpine filed its application, these components included the Illiquid Charge, which NSCC assessed on certain Illiquid Positions.[16] Whether a member was assessed the Illiquid Charge depended on, among other things, the member's rating on NSCC's Credit Risk Rating Matrix ("CRRM").[17] Members with the weakest CRRM rating did not receive the "DTC Offset," an offset of shares in the member's inventory at the Depository Trust Company ("DTC") against shares potentially subject to the Illiquid Charge.[18] If applicable to a net sell position, the DTC Offset might effectively eliminate any Illiquid Position attributable to it, along with any associated Illiquid Charge.[19] Alpine asserted that it generally could avoid the assessment of the Illiquid Charge if it were eligible for the DTC Offset because it sells securities that are already on deposit with DTC.

The Required Fund Deposit may also include other charges such as the Excess Capital Premium ("ECP"), Mark-to-Market Charge, and Volatility Charge, which was substantially

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12 17 C.F.R. § 240.17Ad-22(e)(6)(i).

13 Disclosure Framework at 48, 57.

14 *Id.* at 57.

15 *Alpine Sec. Corp.*, 2019 WL 6251313, at *7.

16 NSCC Procedure XV, Sec. I.(A)(1)(h) (as effective in 2018); NSCC Rule 1, Definition of Illiquid Position (as effective in 2018); *see also Alpine Sec. Corp.*, 2019 WL 6251313, at *3 (discussing the Illiquid Charge and Illiquid Positions). The NSCC rule change discussed below that eliminated the Illiquid Charge and the definition of Illiquid Position became effective on February 1, 2021. *See infra* notes 40-43 and accompanying text.

17 *See* NSCC Rule 1, Definition of Credit Risk Rating Matrix; *Alpine Sec. Corp.*, 2019 WL 6251313, at *3-4 (discussing CRRM ratings and calculation of the Illiquid Charge).

18 The DTC Offset was set forth in the now repealed definition of Illiquid Position. *See Alpine Sec. Corp.*, 2019 WL 6251313, at *3 (discussing DTC Offset). DTC is an affiliate of NSCC and a registered clearing agency that provides central securities depository services. *See Int'l Power Group, Ltd.*, Exchange Act Release No. 66611, 2012 WL 892229, at *1 n.1 (Mar. 15, 2012) (describing DTC). NSCC and DTC are subsidiaries of the Depository Trust & Clearing Corporation. *See Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt a Recovery & Wind-Down Plan and Related Rules*, Exchange Act Release No. 82908, 83 Fed. Reg. 12,986, 12,986 (Mar. 26, 2018).

19 *See Alpine Sec. Corp.*, 2019 WL 6251313, at *3 (describing operation of the DTC Offset and explaining how it might eliminate potential assessment of the Illiquid Charge).

revised after Alpine filed its application for review.[20] These components of the Required Fund Deposit are also set forth in NSCC's Rules and Procedures.[21]

B. Alpine did not appeal the orders approving the NSCC rules it now challenges.

Generally, the Commission must approve the rules of self-regulatory organizations ("SROs"), such as NSCC, before they take effect.[22] The Exchange Act provides that the Commission shall publish notice of proposed SRO rule changes and "give interested persons an opportunity to submit written data, views, and arguments."[23] An aggrieved party may appeal a proposed rule change that the staff approves by delegated authority to the Commission[24] and may appeal a final Commission order to a court of appeals within 60 days of its issuance.[25]

Between April 2006 and January 2018, the Commission published notices of, and requested comment on, NSCC's proposed rules concerning the Illiquid Charge, CRRM rating, ECP, Volatility Charge, and Mark-to-Market Charge (collectively, the "Challenged Rules").[26] Except for a 2006 letter requesting that the Commission not approve the proposed rule governing

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20 The rule change that eliminated the Illiquid Charge also modified the Volatility Charge.

21 *See* NSCC Procedure XV, at §§ I.(A)(l)(a)(i) & (ii), I.(A)(l)(b) & (c), and I.(B)(2).

22 *See* Exchange Act Section 19(b)(1), 15 U.S.C. § 78s(b)(1) (providing that an SRO rule change shall not take effect "unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection"). *But see* Exchange Act Section 19(b)(3)(A), 15 U.S.C. § 78s(b)(3)(A) (providing that certain SRO rule changes may take effect upon filing).

23 Exchange Act Section 19(b)(1), 15 U.S.C. § 78s(b)(1).

24 Rule of Practice 430, 17 C.F.R. § 201.430 (setting forth procedure for aggrieved persons to seek Commission review of action made pursuant to delegated authority).

25 Exchange Act Section 25(a), 15 U.S.C. § 78y(a) (governing filing of petitions for review of final Commission orders in the courts of appeals by aggrieved persons).

26 *Notice of Filing of a Proposed Rule Change to Describe the Illiquid Charge That May Be Imposed on Members*, Exchange Act Release No. 80260, 82 Fed. Reg. 14,781, 14,785 (Mar. 22, 2017); *Notice of Filing of Proposed Rule Change to Enhance the Credit Risk Rating Matrix and Make Other Changes*, Exchange Act Release No. 80381, 82 Fed. Reg. 17,475, 17,481 (Apr. 11, 2017); *Notice of Filing of Proposed Rule Changes to Institute a Clearing Fund Premium Based upon a Member's Clearing Fund Requirement to Excess Regulatory Capital Ratio*, Exchange Act Release No. 53671, 71 Fed. Reg. 21,060, 21,062 (Apr. 24, 2006); *Notice of Filing of a Proposed Rule Change to Enhance the Calculation of the Volatility Component of the Clearing Fund Formula That Utilizes a Parametric Value-at-Risk Model and Eliminate the Market Maker Domination Charge*, Exchange Act Release No. 82494, 83 Fed. Reg. 2828, 2834 (Jan. 19, 2018); *Notice of Filing of Proposed Rule Change to Accelerate Its Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of "Off-the-Market Transactions," and Make Other Changes*, Exchange Act Release No. 79245, 81 Fed. Reg. 79,071, 79,078 (Nov. 10, 2016).

the ECP,[27] Alpine did not comment on any of the Challenged Rules. Between September 2006 and February 2018, the Commission approved each of the Challenged Rules through orders issued pursuant to delegated authority.[28] No one, including Alpine, sought further review of any of the Commission orders approving the Challenged Rules.

C. NSCC assessed each challenged component of the Required Fund Deposit on Alpine.

After the Commission approved the rules and they became effective, NSCC assessed on Alpine each component of the Required Fund Deposit that it challenges in this proceeding.[29] Alpine learned of these charges through notices that NSCC provided on a daily basis.

In June 2017, NSCC assigned Alpine the weakest CRRM rating—making it ineligible for the DTC Offset under the rules that NSCC then used to calculate the Required Fund Deposit. Alpine asserts that it attempted to avoid the Required Fund Deposit, including the Illiquid Charge, by using ex-clearing relationships to clear trades without NSCC's assistance but that the last of these ex-clearing relationships expired in April 2018.[30]

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[27] Letter from Greggory A. Teeter, on behalf of the International Association of Small Broker-Dealers and Advisors, Wilson-Davis & Co., Inc., and Alpine Securities Corporation, to Nancy M. Morris, Secretary (June 1, 2006), https://www.sec.gov/comments/sr-nscc-2006-03/gateeter5566.pdf (opposing proposed ECP rule change and asserting that it "would have a disproportionately negative impact on small to mid-size broker-dealers").

[28] *Order Approving Proposed Rule Change to Describe the Illiquid Charge That May Be Imposed on Members*, Exchange Act Release No. 80597, 82 Fed. Reg. 21,863 (May 10, 2017); *Order Approving Proposed Rule Changes to Enhance the Credit Risk Rating Matrix and Make Other Changes*, Exchange Act Release No. 80734, 82 Fed. Reg. 24,177, 24,179 (May 25, 2017); *Order Granting Accelerated Approval of Proposed Rule Changes to Institute a Clearing Fund Premium Based upon a Member's Clearing Fund Requirement to Excess Regulatory Capital Ratio*, Exchange Act Release No. 54457, 71 Fed. Reg. 55,239, 55,243 (Sept. 21, 2006); *Order Granting Approval of Proposed Rule Change to Accelerate Its Trade Guaranty, Add New Clearing Fund Components, Enhance Its Intraday Risk Management, Provide for Loss Allocation of "Off-the-Market Transactions," and Make Other Changes*, Exchange Act Release No. 79598, 81 Fed. Reg. 94,462 (Dec. 23, 2016); *Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Enhance the Calculation of the Volatility Component of the Clearing Fund Formula That Utilizes a Parametric Value-at-Risk Model and Eliminate the Market Maker Domination Charge*, Exchange Act Release No. 82781, 83 Fed. Reg. 9042 (Mar. 2, 2018) (File No. SR-NSCC-2017-020).

[29] NSCC filed declarations identifying the charges it assessed over the relevant period. Alpine does not object to this evidence, and we admit it. *See* Rule of Practice 452, 17 C.F.R. § 201.452 (stating that "the Commission may allow the submission of additional evidence").

[30] *See generally Collection Practices Under Section 31 of the Exchange Act*, Exchange Act Release No. 49928, 69 Fed. Reg. 41,060, 41,063 n.45 (July 7, 2004) ("An 'ex-clearing

In June 2018, NSCC raised Alpine's CRRM rating to the second weakest rating, making it eligible to receive the DTC Offset. As a result, the Illiquid Charge was not assessed on Alpine during that month. But by August 2018, NSCC had again assigned Alpine the weakest CRRM rating, making it again ineligible for the DTC Offset. NSCC assessed the Illiquid Charge on Alpine on each trading day in August 2018 and every subsequent trading day in 2018.

During July and August 2018, NSCC also assessed on Alpine the ECP, Volatility Charge, and Mark-to-Market Charge. Other than the ECP, NSCC assessed these charges on Alpine in the 30 days before Alpine filed its application for review. The last time NSCC assessed the ECP on Alpine before it filed its application for review was on July 26, 2018.

D. In December 2018, Alpine filed an application for review and a motion for a stay.

On December 26, 2018, Alpine filed an application for review under Exchange Act Section 19(d). Section 19(d) provides that an aggrieved person may challenge an SRO action that "prohibits or limits any person in respect to access to services offered by such organization" by filing a timely application for review.[31] In its application, Alpine asserted that by requiring payment of the Required Fund Deposit—including the Illiquid Charge (subject to the CRRM system), ECP, Volatility Charge, and Mark-to-Market Charge—NSCC impermissibly prohibited or limited Alpine's access to NSCC's clearing services (the "Application").

Alpine contended that NSCC's "calculation and imposition of the Required [Fund] Deposit" violated the Exchange Act because "the CRRM and the charges at issue, and the rules on which they are based" are "arbitrary and unsupported by any adequate rationale," "result in charges that are onerous and facially unreasonable in relation to the value of the underlying transaction," and "impose an unnecessary discriminatory and anticompetitive burden by targeting smaller NSCC members in the OTC and microcap markets." Alpine also asserted that its Application was timely because it was "seeking review and prospective relief within 30 days of receiving . . . NSCC's Notices of Daily Margin Statement" for transactions it submitted to NSCC. At the same time that it filed its Application, Alpine filed a motion to stay NSCC's implementation or assessment of the Illiquid Charge, or to stay NSCC's decision not to allow Alpine to utilize the DTC Offset in determining the applicability of the Illiquid Charge.

On November 22, 2019, we issued an order denying Alpine's stay motion.[32] We found that Alpine had failed to establish that it was likely to prevail on the merits of its challenge to the Illiquid Charge.[33] Specifically, Alpine had not shown that it timely challenged the Illiquid Charge or its CRRM rating or that extraordinary circumstances justified excusing a belated

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transaction' is a securities transaction that is not reported to a designated clearing agency and clears and settles otherwise than through a designated clearing agency.").

31 15 U.S.C. § 78s(d).

32 *Alpine Sec. Corp.*, 2019 WL 6251313, at *1, *5, *13 (finding that Alpine had not established that any of the four factors the Commission traditionally considers favored relief).

33 *Id.* at *6.

filing.[34] We also concluded that Alpine had not demonstrated that it challenged the particular deposit charges that NSCC assessed during the 30 days before Alpine filed the Application, which had already been refunded to Alpine.[35] We ordered the parties to brief whether the Application should be dismissed as untimely in its entirety.[36] Alpine filed briefs arguing that its claims were timely. NSCC filed briefs requesting that we dismiss the proceeding.

E. Subsequently, the D.C. Circuit issued a decision regarding the scope of review under Exchange Act Section 19(d), and NSCC amended the rules at issue here.

On June 5, 2020, the D.C. Circuit issued its opinion in *NASDAQ Stock Market, LLC v. SEC*, which held that Exchange Act Section 19(d) could not be used to challenge the reasonableness of generally applicable fee rules.[37] The court vacated our opinion in *Securities Industry and Financial Markets Association*, in which we held that certain generally applicable fees charged by national securities exchanges for market data could be challenged as limitations of access to services and set them aside as inconsistent with the Exchange Act.[38]

Following the D.C. Circuit's decision, NSCC submitted a letter brief arguing that under *NASDAQ Stock Market* we lacked the authority to review Alpine's pending Application. NSCC also noted that it had submitted a rule change proposing to eliminate the Illiquid Charge and substantially modify the Volatility Charge.[39] NSCC contended that, if approved, the elimination of the Illiquid Charge would moot Alpine's claims. In response, Alpine contended that we could review its Application under Section 19(d) and that its Application was not moot.

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34 *Id.* at *8-9.

35 *Id.* at *7.

36 *Id.* at *13.

37 961 F.3d at 424.

38 *Sec. Indus. & Fin. Mkts. Ass'n*, 2018 WL 5023228, at *11 ("The fees that SIFMA challenges are limitations of access to exchange services.").

39 *Notice of Filing of Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, Exchange Act Release No. 88474, 85 Fed. Reg. 17,910, 17,910 (Mar. 31, 2020); *see also Notice of Filing of Advance Notice To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, Exchange Act Release No. 88615, 85 Fed. Reg. 21,037 (Apr. 15, 2020); Exhibit 5 to *Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, https://www.sec.gov/rules/sro/nscc/2020/34-88474-ex5.pdf (text of proposed rule change).

On November 24, 2020, the Commission approved NSCC's rule change (the "2020 Rule Change").[40] Although Alpine had submitted a comment letter opposing the proposed rule change,[41] it did not challenge the Commission's subsequent approval of the rule, and the 2020 Rule Change became effective on February 1, 2021.[42] On March 2, 2021, Alpine filed an additional application for review challenging the 2020 Rule Change under Exchange Act Section 19(d), and on March 5, 2021, it filed a motion seeking to stay various NSCC actions "purportedly [taken] pursuant to" the 2020 Rule Change.[43]

II. Analysis

We conclude that Exchange Act Section 19(d) is not available as a means for Alpine to obtain review of the Challenged Rules, and that even if Alpine could bring a challenge to the Challenged Rules under Section 19(d), the Application is moot. We therefore dismiss it.[44]

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[40] *Order Approving a Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, Exchange Act Release No. 90502, 85 Fed. Reg. 77,281 (Dec. 1, 2020) (issued pursuant to delegated authority); *see also Notice of No Objection to Advance Notice to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, Exchange Act Release No. 90367, 85 Fed. Reg. 73,099 (Nov. 16, 2020).

[41] Letter from Christopher R. Doubek, CEO, Alpine Securities Corporation, to Vanessa Countryman, Office of the Secretary (Apr. 21, 2020), https://www.sec.gov/comments/sr-nscc-2020-003/srnscc2020003-7113312-215951c.pdf.

[42] *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Implementation Date of National Securities Clearing Corporation's Enhancements to the Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Making Certain Other Changes to Procedure XV*, Exchange Act Release No. 90606, 85 Fed. Reg. 80,852 (Dec. 14, 2020) (notice issued pursuant to delegated authority providing that rule change would be implemented by February 28, 2021); *Important Notice: Implementation Date of the Enhancements to the Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Making Certain Other Changes to Procedure XV*, https://www.dtcc.com/-/media/Files/pdf/2021/1/13/a8954.pdf (setting February 1, 2021 as the effective date).

[43] We will address Alpine's outstanding stay motion in that case by issuing a separate order that also sets a briefing schedule to facilitate final resolution of that proceeding.

[44] We deny Alpine's request for oral argument because our decisional process would not be significantly aided by it. *See* Rule of Practice 451(a), 17 C.F.R. § 201.451(a).

A. Exchange Act Section 19(d) is not available as a means for Alpine to bring its challenge.

1. Alpine cannot challenge NSCC's generally applicable rules governing the amount of the Required Fund Deposit under Exchange Act Section 19(d).

Alpine contends that the Challenged Rules "result in a denial or limitation of Alpine's access to [clearing] services at NSCC."[45] According to Alpine, this denial or limitation "adversely impact[s]" Alpine "on a continuous and ongoing basis" and should be set aside as inconsistent with the Exchange Act.[46] Applying *NASDAQ Stock Market*, we conclude that Alpine may not challenge these generally applicable rules under Section 19(d).

a. Under *NASDAQ Stock Market*, Alpine's challenges to generally applicable fee rules are not reviewable under Exchange Act Section 19(d).

NASDAQ Stock Market held that "Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules."[47] The court explained that "Section 19(d)'s text does not contemplate challenges to generally-applicable fee rules," but rather "speaks to 'limits [on] any *person*' with regard to accessing the SRO's services."[48] Thus, "for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities."[49] The court added that the structure of the Exchange Act supports this conclusion.[50] The Exchange Act provides that the fee rules at issue are effective upon filing with the Commission, but also mandates that an SRO comply with certain procedural requirements

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45 *See* Exchange Act Section 19(d), 15 U.S.C. § 78s(d) (providing that an aggrieved person may file an application for review of an SRO decision that "prohibits or limits any person in respect to access to services offered by" the SRO).

46 *See* Exchange Act Section 19(f), 15 U.S.C. § 78s(f) (providing that we must determine if "the specific grounds on which [a challenged] . . . prohibition or limitation is based exist in fact," if the "prohibition or limitation is in accordance with the rules" of the SRO that imposed it, and if "such rules are, and were applied in a manner, consistent with the purposes of" the Exchange Act). This standard applies only when review is available under Section 19(d).

47 961 F.3d at 424.

48 *Id.* (emphasis in original); *see also* 15 U.S.C. § 78s(d) (also addressing SRO action "impos[ing] any final disciplinary sanction on any [SRO] member . . . or participant" or on "any person associated with a member"; "den[ying] membership or participation to any applicant"; "prohibit[ing] or limit[ing] any person in respect to access to services offered by [the SRO] or member thereof"; or "bar[ring] any person from becoming associated with a member").

49 *NASDAQ Stock Mkt.*, 961 F.3d at 427-28; *see also id.* at 428 (stating that assuming "some fees are challengeable under Section 19(d), the text indicates that they must at least be targeted at specific people").

50 *Id.* at 429.

before imposing a limitation on access to its services that is reviewable under Section 19(d).[51] The court concluded that Section 19(d) could not "be reasonably read" as requiring SROs to comply with these requirements with respect to rules designated as effective upon filing.[52]

The reasoning of *NASDAQ Stock Market* controls here. We see no basis to distinguish between generally applicable fee rules and generally applicable rules governing clearing fund deposits for purposes of Section 19(d). Like generally applicable fee rules, generally applicable rules governing a clearing agency's margin requirements, here NSCC's clearing fund deposits, do not target specific individuals or entities. Indeed, NSCC's rules do not address Alpine or any other person specifically; rather, they govern the assessment of the Required Fund Deposit and apply to all of NSCC's members generally. Thus, they may not be challenged as prohibitions or limitations of access to SRO services.[53] As a result, Section 19(d) is not available as a means for Alpine to pursue its challenge.[54]

The structure of the Exchange Act supports this conclusion with even greater force than in *NASDAQ Stock Market*.[55] The fee rules at issue in *NASDAQ Stock Market* were not subject to

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51 *Id*. (citing Exchange Act Sections 6(d)(2), 19(b)(3), 15 U.S.C. §§ 78f(d)(2), 78s(b)(3)).

52 *Id.* at 430.

53 Limitations of access reviewable under Section 19(d) typically involve revocations of membership or denials of services, not the assessment of fees or charges under generally applicable rules. *See MFS Sec. Corp. v. New York Stock Exch., Inc.*, 277 F.3d 613, 620 (2d Cir. 2002) ("The NYSE's revocation of MFS's membership and its actions to cut off phone service manifestly limited MFS's access to services."), *cited with approval in NASDAQ Stock Mkt.*, 961 F.3d at 428-29; *Tower Trading, L.P.*, Exchange Act Release No. 47537, 2003 WL 1339179, at *5 (Mar. 19, 2003) (concluding that "Tower's loss of its guaranteed participation fundamentally altered its access to services offered by CBOE"); *Scattered Corp.*, Exchange Act Release No. 37249, 1996 WL 284622, at *2 (May 29, 1996) (finding that "the Exchange's determination not to process Scattered's application for registration as a market maker limits the firm's access to the CHX's services"); *Leon Greenblatt III*, Exchange Act Release No. 34953, 1994 WL 640090, at *1 (Nov. 9, 1994) ("We believe that the action taken by the [Chicago Stock Exchange denying access to the trading floor] constitutes a denial of Greenblatt's access to services offered by the Exchange."), *cited in MFS Sec. Corp.*, 277 F.2d at 619; *William J. Higgins*, Exchange Act Release No. 24429, 1987 WL 757509, at *5 (May 6, 1987) (concluding that "denial of a member's request to be permitted to communicate from the Exchange floor with non-members located off-floor would constitute a prohibition of, or limitation on, access to services").

54 Our order denying Alpine's motion to stay the Challenged Rules similarly recognized that Alpine sought to stay "generally applicable rules," which "formed part of the integrated risk management system that NSCC applies to Alpine and its numerous other members." *Alpine Sec. Corp.*, 2019 WL 6251313, at *11. We explained that granting the stay Alpine sought "could provide it an unfair advantage over competing NSCC members" subject to those rules. *Id.*

55 *NASDAQ Stock Mkt.*, 961 F.3d at 429 (the "structure of the Exchange Act" supports the conclusion that the generally applicable fee rules are not reviewable under Section 19(d)).

Commission approval prior to their effectiveness,[56] so the Commission did not have to issue an order approving them, which would have been subject to judicial review. Similarly, the Commission chose not to suspend the fee rules at issue in *NASDAQ Stock Market* after their effectiveness, and the statute provided that a determination not to suspend immediately effective SRO rules is not subject to judicial review.[57] Nonetheless, the court rejected the argument that the fee rules at issue had to be reviewable under Section 19(d) because the Commission did not have to take any action with respect to those rules under Section 19(b) that would be subject to judicial review. The court held that if Congress wanted more rigorous judicial review of the Commission's refusal to review generally-applicable fee rules it could amend the statute.[58]

Here, by contrast, the Commission reviewed the Challenged Rules governing NSCC's clearing fund deposits under Section 19(b), which provides that the Commission "shall approve" such rules if they are consistent with the Exchange Act and the applicable rules and regulations thereunder.[59] The Commission approved the Challenged Rules, and Alpine (or other aggrieved persons) could have sought judicial review under Section 25(a) of the Commission's approval orders.[60] It would make little sense to allow parties to alternatively challenge these rules under Section 19(d) as a prohibition or limitation of access when the statute already expressly provides for Commission review under Section 19(b) and judicial review of a Commission approval order under Section 25(a). And it would make even less sense to argue that review under Section 19(d) should follow the culmination of the Section 19(b) review process; this would result in Commission review (under Section 19(d)) following Commission approval (under Section 19(b)). Indeed, a finding that one could seek review under Section 19(d) of a generally applicable rule that the Commission had reviewed and approved under Section 19(b) would allow an applicant to ignore Section 25(a)'s requirement that one seek review of the Commission's approval order within sixty days.[61]

The remedies available to the Commission if it finds that an SRO has improperly limited access to the SRO's services reinforce our conclusion that Alpine may not use Section 19(d) to challenge NSCC's margin rules. As noted in *NASDAQ Stock Market*, the remedy for a successful challenge is to set aside the action of the SRO and grant the aggrieved person access to the SRO's services.[62] Even Alpine does not contend that NSCC can or should provide CCP

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56 *Id.* at 425 (citing 15 U.S.C. § 78s(b)(3)(A), (C)).

57 *Id*. (citing 15 U.S.C. § 78s(b)(3)(C)).

58 *NASDAQ Stock Mkt*., 961 F.3d at 430.

59 15 U.S.C. § 78s(b)(2)(C)(i); *see also supra* note 28 and accompanying text.

60 15 U.S.C. § 78y(a); *see also supra* notes 24 and 25 and accompanying text.

61 *See* 15 U.S.C. § 78y(a); *see also Corley v. United States*, 556 U.S. 303, 314 (2009) (stating that "one of the most basic interpretive canons" is that a "'statute should be construed so that effect is given to all its provisions'" (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004))).

62 961 F.3d at 430 (citing 15 U.S.C. § 78s(f)).

services to Alpine without collecting *any* margin.[63] But if the Commission were to set aside NSCC's generally applicable margin rule, it is unclear on what terms the Commission could grant access to NSCC's CCP services or how NSCC could provide that access consistent with its own regulatory requirements.[64] The impracticality of setting aside a rule as the remedy for a successful challenge highlights that the structure of the Exchange Act supports the conclusion that Section 19(d) is not available to challenge NSCC's generally applicable margin rule.[65]

b. We reject Alpine's view that *NASDAQ Stock Market* is inapposite.

We reject Alpine's view that *NASDAQ Stock Market* does not apply to challenges to generally applicable rules governing the margin that a registered clearing firm requires that its members post. First, Alpine argues that *NASDAQ Stock Market* does not control this case because, it contends, NSCC has previously taken the position that the challenged components of the Required Fund Deposit are "not 'fees.'" But it is irrelevant whether the challenged components are fees. The provisions governing the challenged components of the Required Fund Deposit are generally applicable rules, so *NASDAQ Stock Market* controls.

Second, Alpine argues that the Challenged Rules are not generally applicable but rather specifically target it and other "smaller NSCC members in the OTC and microcap markets" because they impose charges that apply to those market segments. But the fact that Alpine is a member of a class to which the rules apply does not convert a generally applicable rule into a reviewable limitation of access.

In *NASDAQ Stock Market*, the D.C. Circuit provided an example of a fee that did target a single entity specifically: a decision by an SRO "to impose a fee after one-on-one negotiations with the only subscriber that would have paid the fee."[66] This is not that case. As discussed, Alpine is one of several NSCC members that submit microcap trades to NSCC to clear, so Alpine is not the only NSCC member upon whom the charges at issue may be assessed. Nor did NSCC impose the charges here after one-on-one negotiations with Alpine. Furthermore, as noted above, if Alpine felt that any of the Challenged Rules would adversely affect it as an NSCC member who primarily submits microcap trades for clearing, Alpine did have a remedy: to comment on those rules when the Commission was considering whether to approve them pursuant to Section 19(b), and to seek judicial review after the Commission approved them; Alpine failed to do so.

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63 As noted above, NSCC is required to collect margin, among other things, sufficient to cover its credit exposure to its members. *See* 17 C.F.R. § 240.17Ad-22(e)(6).

64 As noted above, NSCC is required to manage its credit exposure to its members by collecting sufficient financial resources to do so. *E.g.*, 17 C.F.R. §§ 240.17Ad-22(e)(4), (e)(6).

65 *See NASDAQ Stock Market*, 961 F.3d at 430 (noting that "allow[ing] challenges to generally-applicable fee rules would be incompatible with the statutory remedy" because the available remedy would appear to require that the Commission set aside the rules and have the SROs grant access to their services without charging any fee at all).

66 *Id.* at 429 (citing *NASD v. SEC*, 801 F.2d 1415, 1417, 1419-21 (D.C. Cir. 1986)).

In its most recent letter brief, Alpine also argues that the charges at issue target "a very specific set of circumstances" applicable "only to Alpine." But Alpine conflates NSCC's *application* of the Challenged Rules with the rules themselves. That a rule is applied in particular circumstances—as the Challenged Rules were to the positions that Alpine had open with NSCC—does not establish that the rule is targeted at the person to whom it was applied. Indeed, the generally applicable rules at issue in *NASDAQ Stock Market* also had to be applied to determine the amount of fees assessed on data purchasers.[67]

For all of these reasons, we find that because each of the Challenged Rules applies to NSCC members generally, Alpine may not challenge those rules under Section 19(d).

2. Alpine cannot proceed under Section 19(d) by framing its appeal as challenging individual charges calculated pursuant to the Challenged Rules.

Alpine contends that review is proper under Section 19(d) because it contests particular charges assessed in the 30 days before it filed its Application and, it asserts, each charge constitutes a separate prohibition or limitation of access.[68] Thus, according to Alpine, the Commission must consider whether the rules pursuant to which the charges were assessed are consistent with the Exchange Act. But Alpine cannot obtain review of the Challenged Rules under Section 19(d) by framing its challenge as a challenge to particular margin amounts calculated pursuant to those rules. The margin amounts that NSCC imposes are not actions targeted at Alpine specifically but rather the results of the application of the Challenged Rules. The charges apply only to the particular positions open on the day that they are assessed and, as deposits, are soon credited back to the member that posted them. We thus cannot order them refunded or reversed,[69] and "[w]e do not have authority to award damages" under Section 19(d).[70] Indeed, Alpine challenges, and seeks "prospective relief" to address, certain

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67 *See Sec. Indus. & Fin. Mkts. Ass'n*, 2018 WL 5023228, at *30 (showing that NYSE Arca fee rule imposed per subscriber fees on firms that differed based on user's status as a professional or nonprofessional and capped the amount of a firm's total professional fees); *Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7019*, Exchange Act Release No. 62907, 75 Fed. Reg. 57,314, 57,314 (Sept. 20, 2010), https://www.gpo.gov/fdsys/pkg/FR-2010-09-20/pdf/2010-23385.pdf (specifying method for calculating fees for Nasdaq data based on particular use of data and class of securities at issue).

68 NSCC did not assess the ECP on Alpine during the 30-day period before it filed its Application. As a result, even under Alpine's theory that it is challenging only specific applications of the Challenged Rules and not the Challenged Rules themselves, Alpine's challenge to the ECP does not fall within the scope of the Application.

69 *Cf. W.C.W. Western Canada Water Enters., Inc.*, Exchange Act Release No. 27254, 1989 WL 992833, at *1 (Sept. 18, 1989) (rejecting request that the Commission issue "a declaratory judgment" because there was "no longer any adverse NASD determination upon which WCW can base an appeal under Section 19(d)(2) of the Securities Exchange Act").

70 *Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at *3 & n.5 (July 15, 2016), *aff'd sub nom. Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018).

"components" of the Required Fund Deposit, which it acknowledges "are set forth in NSCC's Rules and Procedures." Alpine's challenge is thus to the rules themselves, and *NASDAQ Stock Market* holds that Section 19(d) is not available as a means to bring that challenge.

Moreover, the statutory scheme for review of limitations of access is a poor fit for review of individual deposit charges, for reasons the court explained in *NASDAQ Stock Market*. The court declined to construe Section 19(d) "to mean that every generally-applicable fee rule could be a 'limit[ation]'on 'access to services'" because doing so would mean the notice requirements of Section 6(d) would apply and those requirements would be "unworkable" with regard to generally-applicable fee rules.[71] The same logic applies here. If the assessment of individual deposit charges were a limitation of access actionable under Section 19(d), it would require NSCC to provide notice of, and "an opportunity to be heard upon, the specific grounds for" the charges, "keep a record" of the proceeding, provide "a statement setting forth the specific grounds" on which the charge is based, and file with the Commission notice of the charges imposed.[72] Requiring that NSCC satisfy these requirements for every individual charge would be as unworkable as *NASDAQ Stock Market* found it to be for fees.[73]

If we accepted Alpine's argument, Section 19(d) would always be available to challenge generally applicable SRO rules that had been applied in the previous 30 days. This would bypass the scheme for our review of SRO rules.[74] And the decision in *NASDAQ Stock Market*

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71 *NASDAQ Stock Mkt.*, 961 F.3d at 429-30.

72 Exchange Act Section 17A(b)(5)(B), 15 U.S.C. § 78q–1(b)(5)(B); Exchange Act Section 19(d)(1), 15 U.S.C. § 78s(d)(1); *see also* Exchange Act Section 17A(b)(3)(H), 15 U.S.C. § 78q–1(b)(3)(H) (requiring clearing agency rules to provide fair procedures with respect to "the prohibition or limitation by the clearing agency of any person with respect to access to services").

73 *Cf. supra* notes 63-66 and accompanying text (noting that, if a generally applicable margin rule constituted a limitation of access to NSCC's services under Section 19(d), the only available remedy would be to provide such access to the SRO's services, and that it is unclear NSCC could do so consistently with its statutory obligation to collect sufficient financial resources).

74 *See* Exchange Act Section 19(b), 15 U.S.C. § 78s(b); *see also Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 833 (1976) ("It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading."); *Brooks v. District of Columbia*, 375 F. Supp. 3d 41, 45 (D.D.C. 2019) ("Plaintiffs' crafty pleading cannot hide the true nature of their claims. Nor can Plaintiffs' clever phrasing be used to avoid a bar on judicial review." (citation omitted)); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *5 (Oct. 22, 2019) ("Nor can Kincaid establish jurisdiction by re-framing his arguments . . . .'").

would be meaningless if an applicant seeking to challenge generally applicable rules under Section 19(d) could do so simply by challenging particular instances of their application.[75]

B. The 2020 Rule Change renders the Application moot.

Even if Section 19(d) were available as a means for Alpine to bring its challenge to NSCC's generally applicable rules, we would dismiss Alpine's Application as moot. Exchange Act Section 19(d) authorizes "aggrieved" persons to seek review of specified SRO actions.[76] We have dismissed as moot challenges filed under Section 19(d) where the SRO requirement or action at issue has been superseded or vacated.[77]

In *Scattered Corp.*, an exchange member challenged the exchange's determination not to process its application for registration as a market maker because the applicant had not established a specific type of account with a member clearing firm (a requirement that the applicant contended was inconsistent with the Exchange Act).[78] While the proceeding was pending, the Commission approved an exchange rule change that eliminated the requirement at issue.[79] As a result, we dismissed the firm's application for review as moot.[80] Similarly, in *Alpine Securities Corp.*, FINRA member firms challenged suspensions that FINRA had imposed based on changes the firms had made to their ownership structures.[81] But the firms unwound the changes after filing their challenge, and FINRA then lifted the suspensions.[82] We dismissed their application for review because the suspensions were no longer in effect.[83]

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75 Alpine also asks us to consider NSCC's assessment of Required Fund Deposit charges beginning in July 2019, which, according to Alpine, are not "based on the Required Fund Deposit rules and formula, but rather are targeted charges imposed only on Alpine based on NSCC's unilateral view of Alpine." But Alpine's Application, which was filed in 2018, challenges only the Challenged Rules and does not reference these charges, so they are not properly before us here. *See* 15 U.S.C. § 78s(d)(2) (stating that a party challenging an SRO determination pursuant to Exchange Act Section 19(d) must file an application for review of that action with the Commission); Rule of Practice 420(c), 17 C.F.R. § 201.420(c) (stating that the application for review must identify all "alleged errors" in the challenged SRO determination).

76 15 U.S.C. § 78s(d)(2).

77 *See, e.g.*, *Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 WL 5076741 (Aug. 26, 2020); *Scattered Corp.*, 1996 WL 284622, at *3.

78 1996 WL 284622, at *1, *2.

79 *Id.*

80 *Id.* at *3.

81 2020 WL 5076741, at *1.

82 *Id.* at *4.

83 *Id.* at *2-3.

Were a Section 19(d) challenge available here, the 2020 Rule Change would similarly moot Alpine's Application.[84] The Challenged Rules concern the Illiquid Charge, the DTC Offset, the CRRM rating as it relates to the Illiquid Charge and DTC Offset, the Volatility Charge, and the Mark-to-Market Charge. But the 2020 Rule Change repealed the rules governing the Illiquid Charge and the DTC Offset, so we could not grant any relief with respect to Alpine's challenge to them or its related challenge to the CRRM rules.[85] And the 2020 Rule Change substantially modified the rules governing the Volatility Charge, so that challenge is also moot.[86] With respect to the Mark-to-Market Charge, Alpine's challenge is that NSCC's rules did not authorize NSCC to round up the price of sub-penny stocks to $0.01 when determining that charge, but the 2020 Rule Change expressly authorizes this practice.[87]

Alpine argues that its challenge is not moot because the 2020 Rule Change "continues" and "exacerbates" the issues it identifies in its Application. But Alpine's Application predates—and does not include a challenge to—the 2020 Rule Change. As a result, any challenge Alpine wishes to bring to the 2020 Rule Change has no bearing on the mootness of its claims here.[88]

Finally, Alpine argues that this case is not moot because mootness requires that "the challenged conduct ceases," that there be "no reasonable expectation that the wrong will be repeated," and that it has "become[] impossible for the court to grant any effectual relief."[89] According to Alpine, that standard is not met here. But the 2020 Rule Change eliminated or

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[84] The 2020 Rule Change did not affect the ECP. But Alpine says that it seeks relief only with respect to those charges that NSCC assessed during the 30 days before Alpine filed the Application. Because NSCC did not assess the ECP on Alpine during that period, it does not fall within the scope of the Application. *See supra* note 68.

[85] *Scattered Corp.*, 1996 WL 284622, at *3; *cf. Larsen v. U.S. Navy*, 525 F.3d 1, 4 (D.C. Cir. 2008) (finding challenge to policy moot and explaining that "because the [agency has] already eliminated the [challenged] [p]olicy and plaintiffs never allege that the [agency] will reinstitute it, any injunction or order declaring it illegal would accomplish nothing").

[86] *Cf. Nat'l Mining Ass'n v. U.S. Dep't of Interior*, 251 F.3d 1007, 1011 (D.C. Cir. 2001) (finding challenge to former rules moot in light of "substantial changes" to the challenged rules).

[87] Exhibit 5 to *Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV*, https://www.sec.gov/rules/sro/nscc/2020/34-88474-ex5.pdf, at 85 n.7 (text of proposed rule change providing that "[t]he Current Market Price for each sub-penny security is deemed to be one cent"). To the extent Alpine argues that this practice is inconsistent with the Exchange Act, Alpine could have filed a petition for review of the order approving the 2020 Rule Change. Alpine did not do so.

[88] Alpine did not appeal our order approving the 2020 Rule Change, though it has filed a separate application (and associated stay motion) for review of that action under Section 19(d). Because that challenge is distinct from the challenge at issue here, we will consider it separately.

[89] *Citizens for Responsibility & Ethics in Washington v. SEC*, 858 F. Supp. 2d 51, 61 (D.D.C. 2012) (internal quotation marks and citation omitted).

materially modified the Challenged Rules, so the rules no longer exist in the form Alpine challenges them, nor is there any reasonable expectation that NSCC will attempt to undo the 2020 Rule Change. Further, Alpine has identified no effective relief we could grant it now, since the specific charges that it purports to challenge were refunded to it long ago. As a result, Alpine's Application is moot.

An appropriate order will issue.[90]

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

Vanessa A. Countryman
Secretary

[90] 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

SECURITIES EXCHANGE ACT OF 1934
Release No. 98868 / November 6, 2023

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 DISMISSING APPLICATION FOR REVIEW

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

ORDERED that the application for review filed by Alpine Securities Corporation is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary