

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 103552 / July 28, 2025

Admin. Proc. File No. 3-20238

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 clearing agency's rules regarding certain margin requirements are an improper limitation of access to clearing services. *Held*, because Section 19(d) is not available to review a member firm's challenges to generally applicable rules, application for review is *dismissed*.

APPEARANCES:

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

Benjamin J. Catalano, *Margaret A. Dale*, and *Adam L. Deming*, Proskauer Rose LLP, for National Securities Clearing Corporation.

Appeal filed: March 2, 2021
Last brief received: January 19, 2024

On March 2, 2021, Alpine Securities Corporation filed an application for review of certain National Securities Clearing Corporation (“NSCC”) rules that govern fund deposits that members such as Alpine must post with NSCC. Alpine argues that Section 19(d) of the Securities Exchange Act of 1934 authorizes the Commission to consider this application for review because, according to Alpine, the capital necessary to fund NSCC’s required deposit charge limits Alpine’s access to NSCC’s services by forcing Alpine to deny customer trades that it otherwise would have submitted to NSCC.¹ Although Alpine frames its application as a challenge against an NSCC action that limits its access to services, the rules Alpine challenges are generally applicable to all NSCC members, and Section 19(d) does not authorize the Commission to review generally applicable rules. We therefore dismiss Alpine’s appeal.

I. Background

Alpine is a registered broker-dealer that specializes in providing clearing and settlement services for trades in microcap securities and is a member of NSCC. NSCC is a self-regulatory organization (“SRO”) and a registered clearing agency that provides central counterparty (“CCP”) services for U.S. equity securities and requires its members to post deposits to address the risk NSCC takes due to its CCP status. To mitigate its CCP-related risk, NSCC maintains a Clearing Fund that consists of Required Fund Deposits made by each of its members.²

NSCC collects Required Fund Deposits to satisfy regulatory requirements and uses a risk-based margin system to cover its credit exposure to its members by, at a minimum, considering (and producing margin levels commensurate with) the risks and particular attributes of each relevant product, portfolio, and market, including the microcap and OTC securities in

¹ See 15 U.S.C. § 78s(d) (authorizing Commission review of an SRO action that “prohibits or limits any person in respect to access to services offered by” the SRO).

² National Securities Clearing Corporation: Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, at 48 (Mar. 2023), https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf (“Disclosure Framework”); *see also* NSCC Rule 1 (defining “Clearing Fund” and “Required Fund Deposit” by reference to NSCC Rule 4, which governs the amount of each member’s contribution toward the Clearing Fund), http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf (version effective June 27, 2025).

We take official notice of the contents of the Disclosure Framework pursuant to Commission Rule of Practice 323 as a matter that “might be judicially noticed by a district court of the United States.” 17 C.F.R. § 201.323; *see also* Fed. R. Evid. § 201(b)(2) (courts may take judicial notice of facts “not subject to reasonable dispute”).

which Alpine typically transacts.³ NSCC determines the Required Fund Deposit and assesses the charges on its members by using a risk-based margin methodology reflected in its rules.⁴

In March 2020, NSCC filed with the Commission a proposed rule change that would modify certain aspects of how NSCC calculates its members' Required Fund Deposits: namely, by modifying NSCC's Volatility Charge—a component of the margin NSCC requires its members to post to cover potential market price volatility for members' portfolios—and eliminating the Illiquid Charge—a deposit that NSCC previously required its members to post to clear certain net unsettled positions in securities that NSCC considered illiquid, such as microcap securities (collectively, the “Volatility Rule Change”).⁵ Before filing that notice with the Commission, NSCC provided members with various details of its proposal. In March 2019, for example, NSCC sent Alpine a white paper outlining the proposed changes and informing Alpine that, under those changes, Alpine would experience an “increase of approximately 198%” in its daily clearing fund requirement.

After NSCC filed its proposed rule change, Alpine submitted a comment letter to the Commission opposing it. Among other things, Alpine asserted that the Volatility Rule Change would “destroy the microcap securities market and small firms like Alpine that service this space by increasing the costs, and thus the amount of necessary capital, to provide clearing services in this space to an unsustainable level.” On November 24, 2020, the Commission approved the

³ 17 C.F.R. § 240.17Ad-22(e)(6)(i).

⁴ 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”); Disclosure Framework at 48, 57.

⁵ *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) (“Volatility Rule Change Notice”); 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).

Volatility Rule Change by an order issued pursuant to delegated authority.⁶ Neither Alpine nor any other party challenged that order,⁷ and it became effective on February 1, 2021.⁸

Instead of challenging the Commission's approval of the rule change, Alpine filed this application for review under Exchange Act Section 19(d), arguing that the Volatility Rule Change—along with alleged changes to other related charges involving NSCC's Margin Requirement Differential ("MRD"), Coverage Component ("CC"), and Backtesting—impermissibly limited Alpine's access to NSCC's clearing and settlement services. Alpine also sought an interim stay of the revised Volatility Charge pending the Commission's consideration of Alpine's underlying application for review.

On November 6, 2023, the Commission denied Alpine's motion for a stay, concluding in part that Alpine was unlikely to establish that Section 19(d) was an available means to challenge generally applicable margin rules.⁹ On the same day, the Commission denied a separate application for review that Alpine had previously filed seeking to challenge other aspects of how NSCC calculated the Required Fund Deposits, including NSCC's calculation and imposition of the Illiquid Charge. In doing so, the Commission held that Section 19(d) did not authorize the

⁶ *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 for the Commission by the Division of Trading and Markets pursuant to delegated authority) ("Volatility Rule Change Approval Order"); *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).

NSCC's rules describe the capitalized terms that we use in this opinion.

⁷ *See* Rules of Practice 430, 431(e), 17 C.F.R. §§ 201.430, .431(e) (providing for Commission review of action taken by delegated authority).

⁸ *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 (Dec. 8, 2020), 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 effective date).

⁹ The Commission also denied a separate emergency motion that Alpine filed to stay NSCC's imposition of a backtesting charge on Alpine. *Alpine Sec. Corp.*, Exchange Act Release No. 96293, 2022 WL 16839451 (Nov. 9, 2022).

Commission to review Alpine’s challenge to generally applicable margin rules, such as the Illiquid Charge.¹⁰

For the reasons below, we similarly find that Section 19(d) does not authorize us to consider Alpine’s latest challenge to NSCC’s margin rules.

II. Analysis

Exchange Act Section 19(d) authorizes the Commission to review actions taken by SROs such as NSCC only in specific circumstances.¹¹ One such circumstance, which Alpine claims to apply here, is where an SRO “prohibits or limits any person in respect to access to services offered by [that SRO].”¹² For reasons we and the D.C. Circuit have previously articulated, however, Alpine’s challenge to generally applicable rules does not fit within this prong of Section 19(d).¹³

A. Exchange Act Section 19(d) is not available as a means for Alpine to challenge the Volatility Rule Change.

In *NASDAQ Stock Market v. SEC*, the D.C. Circuit held that “Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.”¹⁴ The court explained that, “for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities,” rather than generally applicable fees charged by a national exchange.¹⁵ We subsequently held that the same reasoning applies to generally applicable rules governing clearing fund deposits, including the Volatility Rule Change at issue here.¹⁶ Such rules, we explained, do not target specific individuals or entities, but rather

¹⁰ The Commission also held that the Volatility Rule Change mooted Alpine’s challenge. *Alpine Sec. Corp.*, Exchange Act Release No. 98868, 2023 WL 7379401 (Nov. 6, 2023) (“*Alpine I*”).

¹¹ 15 U.S.C. § 78s(d)(1)-(2).

¹² *Id.*

¹³ The Exchange Act provides three other bases for our review of an SRO action: if the action imposes a final disciplinary sanction on a member of the SRO or an associated person; if it denies membership or participation to the applicant; or if it bars a person from becoming associated with a member. *See id.* Alpine does not assert that any of these alternate bases apply, so we do not address them. *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at *3 & n.13 (July 7, 2020) (not reaching “alternate bases for Commission review” where applicant did not contend that those bases applied).

¹⁴ 961 F.3d 421, 424 (D.C. Cir. 2020).

¹⁵ *Id.* at 427-28.

¹⁶ *See, e.g., Alpine I*, 2023 WL 7379401, at *6–8 (applying *NASDAQ Stock Market* to conclude that Section 19(d) did not authorize Alpine’s petition for review of NSCC’s generally applicable margin rule); *Alpine Sec. Corp.*, Exchange Act Release No. 98867, 2023 WL 7379397, at *6–8 (Nov. 6, 2023) (“*Alpine II*”) (applying *NASDAQ Stock Market* to conclude that
(continued . . .)

apply to all members that engage in the covered practice. More specifically, we held in *Alpine I* that the Volatility Rule Change applies to all NSCC members that deal in Illiquid Securities and thus do not fit within a category of SRO actions that the Commission can review under Section 19(d).¹⁷ We reach that same conclusion again here.

Alpine disputes that the margin charges it challenges here are generally applicable because, Alpine claims, they impact only a “specific group” of investors and NSCC member firms “who have acquired and are seeking to liquidate microcap securities.” As we have explained, however, “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.”¹⁸ Nor are the margin charges facially general rules that are actually aimed to single out one person or a very small group, although Alpine attempts to make such an argument. Alpine argues that the margin charges target a specific person because they impact different members differently based on a particular member’s characteristics and trading activity.¹⁹ But this reasoning, we have explained, “conflates NSCC’s *application* of the [c]hallenged [r]ules with the rules themselves” and “does not establish that the rule is targeted at the person to whom it was applied.”²⁰ Indeed, as we have noted, even the generally applicable fee rules in *NASDAQ Stock Market*—which the D.C. Circuit found that the Commission could not review under Section 19(d)—had to be applied to particular data purchasers to determine the amount of fees assessed.²¹

Moreover, Alpine was aware of the potential impacts that the proposed Volatility Rule Change would have on it, and Alpine had a means to offer its view on that proposal (and offer modification or alternatives) through Section 19(b)’s proposal, notice-and-comment, and approval process—a process in which Alpine participated by filing its comment letter. Alpine also could have sought Commission review of the order approving NSCC’s rule change under Section 19(b) and subsequently appealed any final adverse decision to a U.S. Court of Appeals under Section 25. Alpine chose not to do so.

Despite these repeated opportunities to challenge the Volatility Rule Change under the Section 19(b) process, Alpine argues that it should nevertheless be provided another opportunity

Alpine was unlikely to establish that Section 19(d) provided a means for Alpine to challenge the Volatility Rule Change).

¹⁷ See *Alpine II*, 2023 WL 7379397, at *7 (finding “no basis to distinguish between generally applicable fee rules and generally applicable rules governing clearing fund deposits, such as the Volatility Rule Change, for purposes of Section 19(d)”).

¹⁸ *Alpine I*, 2023 WL 7379401, at *8.

¹⁹ *Id.* (“That a rule is applied in particular circumstances . . . does not establish that the rule is targeted at the person to whom it was applied.”)

²⁰ *Id.* (emphasis in original); see also *infra* note 32 and accompanying text (explaining that one cannot transform a generally applicable rule into targeted SRO action by reframing the challenge as one directed at the particular margin amounts calculated pursuant to the challenged rule).

²¹ See *Alpine I*, 2023 WL 7379401, at *8.

under what it calls the Commission’s “broader” scope of review under the “Section 19(d)/(f) review process.” Specifically, Alpine points to Section 19(f), which provides the standard for Commission review under Section 19(d). Alpine argues that a critical feature of Section 19(f)—which Section 19(b) lacks—is the requirement that the Commission determine whether an SRO’s prohibition or limitation of access is and was applied in a manner consistent with the Exchange Act. What this argument misses, however, is that before assessing whether NSCC’s actions were permissible under Section 19(f), we must first determine the threshold question whether Section 19(d) authorizes us to consider Alpine’s application for review. As we have repeatedly held, Section 19(d) does not authorize us to review all disputes over the merits of an SRO’s actions.²² Nor does an action become reviewable under Section 19(d) simply because an applicant alleges that such review is necessary or important.²³

We also reject Alpine’s contention that the Commission’s decision in *Bloomberg L.P.*, supports a different conclusion.²⁴ There, NYSE had amended a vendor contract with Bloomberg L.P. that placed restrictions on Bloomberg’s receipt and dissemination of NYSE market data. Based on those restrictions, NYSE rejected Bloomberg’s right to transmit data to customers using certain formats that Bloomberg proposed for transmitting that data. The Commission set those restrictions aside under Section 19(f) as inconsistent with NYSE’s existing rules. But unlike what Alpine is asking us to do here, Bloomberg was not seeking Commission review of a generally applicable rule, but rather review of NYSE’s particularized refusal to provide access to its service through an individualized vendor contract.

We find Alpine’s citation to *NASD v. SEC* similarly unpersuasive.²⁵ There, unlike here, an SRO’s challenged action was targeted at one particular entity and was not a generally applicable rule.²⁶ In particular, the SRO’s fee proposal rule arose “after one-on-one negotiations with the only subscriber that would have paid the fee, and there was a particularized showing that it made no economic sense for *that vendor* to pay the fee.”²⁷ Thus, the D.C. Circuit found

²² See, e.g., *Alpine Sec. Corp.*, Exchange Act Release No. 89685, 2020 WL 5076741, at *3 & n.19 (Aug. 26, 2020) (collecting cases).

²³ See, e.g., *Graham*, 2020 WL 3820988, at *4 (providing that applicant’s “claim that there is no mechanism for obtaining the relief that he seeks does not mean that” we may exercise review under Section 19(d)); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *4 (Oct. 22, 2019) (explaining that “the alleged importance or necessity of our review does not confer jurisdiction where we have determined Congress has not authorized it”).

²⁴ Exchange Act Release No. 49076, 2004 WL 67566 (Jan. 14, 2004).

²⁵ 801 F.2d 1415 (D.C. Cir. 1986).

²⁶ See *NASDAQ Stock Mkt.*, 961 F.3d at 428 (noting that *NASD* is consistent with the holding that, even if “some fees are challengeable under Section 19(d), the text indicates that they must at least be targeted at specific people”).

²⁷ *Id.* at 429 (emphasis in original) (distinguishing *NASD* from the challenged fee in *NASDAQ Stock Market*). The challenge to NASD’s action was also brought under a different statutory provision—Section 11A(b)(5) versus Section 19(d). See *id.*

that the Commission had “quite properly” concluded that the proposal constituted an “improper prohibition or limitation of access to services” under Section 19(f).

B. Section 19(d) is not available as a means for Alpine to challenge NSCC’s calculation and implementation of the MRD, CC, and Backtesting charges.

Alpine also challenges NSCC’s calculation and implementation of the MRD, CC, and Backtesting charges, which Alpine claims increased substantially because of the Volatility Rule Change and thus limited Alpine’s access to NSCC’s services. The changes to these calculations, Alpine contends, amount to SRO rule changes that required Commission approval under Section 19(b)(1) before they could properly take effect.²⁸ Alpine argues that we thus have authority to consider its challenge to these changes under Section 19(d) to determine whether, under Section 19(f), those rules “are and were applied in a manner consistent with the purposes of the Exchange Act.” We disagree.

As explained, we must first determine whether Section 19(d) authorizes us to consider Alpine’s application for review before turning to whether, under Section 19(f), NSCC had the authority to take the actions that it did.²⁹ Here, the MRD, CC, and Backtesting charges are not targeted at Alpine specifically; rather, they reflect NSCC’s application of the newly amended Volatility Charge to another set of rules related to MRD, CC, and Backtesting charges.³⁰ Alpine also concedes that these charges would be assessed in the same manner for any NSCC members that, like Alpine, deal in microcap securities.

We thus conclude that NSCC’s calculation and implementation of the MRD, CC, and Backtesting charges reflect the application of generally applicable rules rather than ones targeted

²⁸ See 15 U.S.C. § 78s(b)(1) (providing for filing of proposed rule changes with the Commission and stating that “[n]o proposed rule change shall take effect unless approved by the Commission or otherwise permitted”); see also *ABN AMRO Clearing Chicago, LLC*, Exchange Act Release No. 83849, 2018 WL 3869452, at *2 (Aug. 15, 2018) (stating that Section 19(b)(1) “generally requires an SRO’s rules to be filed with and approved by the Commission”).

²⁹ Alpine’s reliance on *Bloomberg L.P.* for challenging the MRD, CC, and Backtesting charges is again misplaced for this same reason. That the Commission set aside the NYSE’s action there under Section 19(f) as being inconsistent with the NYSE’s rules is not relevant to the threshold issue here of whether Section 19(d) authorizes Alpine’s application for review. And the targeted action in *Bloomberg* is not analogous to the generally applicable rules that Alpine challenges here. See *supra* note 24 and accompanying text.

³⁰ See NSCC Procedure XV, Sec. I.(A)(1)(d) (defining the MRD Charge to depend on, among other things, the “volatility component [i.e., the Volatility Charge]”); NSCC Procedure XV, Sec. I.(A)(1)(e) (defining the CC Charge to depend on, among other things, the Volatility Charge and MRD charge); NSCC Procedure XV, Sec. I.(B)(3) (providing that NSCC may require a member to make an additional deposit to mitigate exposures to NSCC “caused by settlement risks that may not be adequately captured by [its] portfolio volatility model”).

at Alpine specifically.³¹ Accordingly, Alpine’s challenge is not reviewable under Section 19(d). Alpine’s effort to frame its challenge as an objection to “particular margin amounts calculated pursuant to those rules”³² does not change the underlying nature of the rules, converting them from ones of general applicability to ones targeted at a specific entity.

Finally, Alpine suggests that Section 19(d) should provide for the Commission’s review of Alpine’s challenge, because otherwise NSCC’s changes to the MRD, CC, and Backtesting charges would be effectively unreviewable. Exchange Act Section 19(d), however, does not authorize us to review an SRO action because an applicant claims, as Alpine does, that the SRO’s action “is harming investors and the companies in which they invest.”³³ Moreover, as discussed, Alpine and other NSCC members had notice of, and could have objected to, the Volatility Rule Change and its effects, but they chose not to.³⁴

* * *

An appropriate order will issue.³⁵

By the Commission (Chairman ATKINS and Commissioners PEIRCE, CRENSHAW, and UYEDA).

Vanessa A. Countryman
Secretary

³¹ We similarly reject Alpine’s suggestion that we have authority to consider its challenge because, it claims, NSCC impermissibly applied the new Volatility Charge retroactively to create “a backtesting deficiency that did not exist prior to the use of the new Volatility Charge.” Alpine has not shown, or claimed, that NSCC has calculated Alpine’s backtesting deficiencies differently as to Alpine as compared to how NSCC would do so for other members.

³² *Alpine I*, 2023 WL 7379401, at *8.

³³ *BOX Holdings Grp. LLC*, Exchange Act Release No. 100545, 2024 WL 3444274, at *3 (July 17, 2024) (finding that Section 19(d) did not provide for Commission review despite claim that SRO’s action would allegedly circumvent Section 19(b)’s requirements for proposed rule changes); *see also supra* note 23.

³⁴ 15 U.S.C. § 78s(c); *see also NASDAQ Stock Mkt.*, 961 F.3d at 421, 430-31 (noting this possible avenue for Commission and eventually judicial review of an SRO rule change).

³⁵ 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.

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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