UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 103775 / August 25, 2025

Admin. Proc. File No. 3-21924

In the Matter of the Application of

ALPINE SECURITIES CORPORATION

For Review of Action Taken by

NATIONAL SECURITIES CLEARING CORPORATION
and THE DEPOSITORY TRUST COMPANY

Appeal filed: April 30, 2024
Motion for stay filed: April 30, 2024
Last brief received: May 9, 2024

ORDER GRANTING STAY AND SETTING BRIEFING SCHEDULE

On April 25, 2024, a hearing panel of the Depository Trust & Clearing Corporation ("DTCC") affirmed cease-to-act determinations for Alpine Securities Corporation made by the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") (together, the "Clearing Agencies"). Alpine filed an application for Commission review of DTCC's affirmance of the cease-to-act determinations (the "Decision") and concurrently filed a motion for an emergency stay pending Commission review. On May 14, 2024, the Commission administratively stayed the Decision, pending its ruling on Alpine's stay request.[1] Based on the record and briefing to date, we now grant Alpine's motion for a stay for the reasons below.[2]

[1] *Alpine Securities Corp.*, Exchange Act Release No. 100128, 2024 WL 2155269 (May 14, 2024).

[2] Alpine's request for oral argument on its motion is also denied because it would not significantly aid the decisional process. *See* Rule of Practice 451(a), 17 C.F.R. § 201.451(a).

On October 2, 2024, Alpine amended its application for review to challenge a September 19, 2024, DTCC decision ordering Alpine to pay $261,263.22 in costs associated with the underlying proceeding. NSCC Rule 37 and DTC Rule 22 both provide that a Hearing Panel, in

(continued…)

I. Background

Alpine is a broker-dealer that provides clearance and settlement services for trades in microcap securities and is a NSCC and DTC member. For the entirety of its membership in the Clearing Agencies, Alpine, at least until the events at issue here, operated as a "clears-for-others" member of the Clearing Agencies, meaning that Alpine could submit trades to NSCC on behalf of other brokers with which it has a correspondent clearing relationship. "Self-clearing" member status, by comparison, permits members to clear trades for their own customers (a practice in which Alpine also engaged), but not for other brokers' customers.

NSCC, a registered clearing agency, provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and certain other securities. DTC, also a registered clearing agency, is a central securities depository for U.S transactions in equities and other securities. NSCC and DTC are each wholly owned subsidiaries of the DTCC, a holding company that is not itself registered with the Commission.

A. NSCC imposed new minimum excess net capital requirements.

On August 22, 2022, the Commission approved a NSCC proposed rule change, which, among other things, increased minimum excess net capital ("ENC") requirements for NSCC's U.S. broker-dealer participants.[3] Under the new rule, a broker-dealer member's ENC requirement would be based on the member's clearing status and a daily measure of the volatility of the member's trading activity ("VaR Tier").[4] As a clears-for-others member with a VaR Tier greater than $500,000,[5] the new rule would require Alpine to maintain $10 million in ENC. If

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its discretion, may charge an Interested Person for costs associated with the hearing in the event that the hearing decision is adverse to the Interested Person. In light of our determination to stay the Hearing Panel's cease-to-act determination, which was adverse to Alpine, we also stay the Hearing Panel's subsequent assessment of hearing costs.

[3] *See Order Approving of Proposed Rule Change to Enhance Capital Requirements and Make Other Changes*, Exchange Act Release No. 95618, 87 FR 53796 (Sep. 1, 2022). Excess net capital is the amount of "net capital greater than the minimum required, as calculated in accordance with the broker-dealer's regulatory and/or statutory requirements." *Id.* at 53797 n.11. ENC is an important source of protection for the Clearing Agencies because it "ensure[s] members have sufficient capital to meet their obligations and to absorb losses." *Id*. at 53801.

[4] NSCC Rules, add B § 1.B.1.

[5] While Alpine disputed its clearing status during the DTCC proceeding, it does not dispute that its VaR Tier has been greater than $500,000 throughout the relevant period.

Alpine were a self-clearing broker with a VaR tier greater than $500,000, by comparison, the new rule would require $5 million in ENC.[6]

The new ENC requirement was set to become effective August 26, 2023 (the "Effective Date"), but NSCC provided members a 60-day grace period of October 25, 2023, to comply (the "Compliance Deadline"). NSCC reminded Alpine multiple times after the rule's approval of the need to meet the new ENC requirement and inquired how Alpine planned to do so. Alpine acknowledged these reminders, representing that "its current ownership has ensured that Alpine has met any and all capital requirements."

B. The parties communicated about Alpine's ENC requirement and clearing status.

On September 27, 2023, approximately one month before the Compliance Deadline, Alpine's CEO emailed the Clearing Agencies that Alpine was "working through several options" regarding its ENC requirement, including either obtaining the funding necessary to meet the $10 million ENC requirement or taking steps that would "essentially" leave Alpine as a "self-clearing" firm (and thus subject to a $5 million ENC requirement).

On October 5, 2023, the Clearing Agencies' staff held a conference call with Alpine's CEO, during which staff told Alpine's CEO that the firm could not simply redesignate its status from a clears-for-others to a self-clearing member. The parties otherwise disagree about what was said at that meeting. The Clearing Agencies, for example, claim that they discussed the process required for Alpine to become designated as a self-clearing firm. Alpine disputes that and asserts that it conveyed that it intended to cease its activities as a clears-for-others member but continue its self-clearing activities—self-clearing activities that Alpine claims the Clearing Agencies had previously approved and in which Alpine had been engaging for decades.

On October 16, 2023, Alpine asked the Clearing Agencies for confirmation that, if Alpine satisfied the $5 million ENC requirement, the Clearing Agencies would continue to act for the firm with respect to self-clearing trading. Alpine also asked for a 60-day extension of the Compliance Deadline, which Alpine asserted would have enabled it to finalize a loan in order to comply with the $10 million ENC requirement. The Clearing Agencies denied the extension request, noting that the firm had been repeatedly notified about the new ENC requirement for more than a year. The Clearing Agencies also responded that, as to Alpine's inquiry about satisfying only the $5 million ENC requirement, Alpine's ENC obligation was based on the firm's clears-for-others membership status and that, unless Alpine met its $10 million ENC requirement by the Compliance Deadline (and continued to do so afterwards), NSCC would take action against the firm.

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[6] 87 FR 53797. ENC requirements are higher for clears-for-others members because such members have "the potential to present different and greater risk" to the clearing agency than broker-dealers who only clear for themselves. *Id*. Further, NSCC requires higher ENC for clears-for-others members because it has "generally less transparency" into the indirect activity of its clears-for-others members. *Id*.

On October 23, 2023, two days before the Compliance Deadline, Alpine emailed the Clearing Agencies a request to change its status to self-clearing. The Clearing Agencies responded that Alpine's email was insufficient to change the firm's clearing status and that such a change would require a "detailed proposal" from Alpine, followed by requests for information from DTCC. The next day, October 24, 2023, Alpine sent the Clearing Agencies a letter titled "Notification of Changes in Condition under NSCC Rule 2B.Sec. 2B(b)," in which it represented that the firm would cease to function as a clears-for-other member as of the Compliance Deadline and requested that Alpine's status therefore be changed to self-clearing for purposes of the ENC rule.[7]

C. The Clearing Agencies determined to cease to act after Alpine filed reports indicating that it had less than $10 million in ENC after the Compliance Deadline.

On each of the three days preceding the Compliance Deadline (October 25, 2023), Alpine reported having an ENC of approximately $3.5 million. On the Compliance Deadline, the Clearing Agencies sent Alpine a request for additional information about Alpine's clearing status, asserting that Alpine remained a clears-for-others member and was therefore subject to the $10 million ENC requirement. On the Compliance Deadline, Alpine's CEO responded to DTCC, stating that, under DTCC and NSCC rules, he did not believe either entity was entitled not to accept Alpine's attempts to change its clearing status to self-clearing. He further asserted that, although Alpine had "fully satisfied" the applicable ENC rule by maintaining at least $5 million in ENC, Alpine had nevertheless "obtained a financing commitment that would enable it to satisfy the $10 million ENC requirement."

The following day, Alpine's CEO emailed DTCC's staff that Alpine now had more than $10 million in ENC; Alpine attributed the increase to a $6.4 million capital contribution from Alpine's parent company, SCA Clearing. Alpine's owner testified at the DTCC hearing that he contributed this capital contribution "under protest" so that the firm could meet the higher $10 million ENC, while trying to "preserve" the argument that Alpine's ENC should be only $5 million. The same day, Alpine notified DTCC staff that Alpine had more than $10 million in ENC. The firm contemporaneously submitted a daily capital report to NSCC, however, indicating that, as of the Compliance Deadline, the firm had approximately $9.8 million in ENC.

The Clearing Agencies requested additional information about the apparent discrepancy between the CEO's email (reporting over $10 million in ENC) and the daily report (reporting $9.8 million). Alpine did not respond. On November 2, 2023, the Clearing Agencies again asked Alpine about the discrepancy and to confirm that the full $6.4 million contribution was available for Alpine to use as ENC. Through an attorney, Alpine responded that it still believed

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[7] NSCC Rule 2B.Sec. 2B(b) provides that "[e]ach Member shall submit to the Corporation written notice of any event that . . . could have a material impact on such participant's business and/or financial condition, including but not limited to . . . material changes in business lines." It is unclear from our review of NSCC's Rules whether Rule 2B.Sec. 2B is in fact the appropriate method for a Member to change its status from clears-for-others to self-clearing or how that rule applies to the facts at issue here.

that DTCC was applying an incorrect $10 million deposit requirement to Alpine, because the firm would "engage only in self-clearing activities going forward." In response to DTCC's specific questions about the $6.4 million contribution, Alpine stated that "a portion of the funds had not been authorized as capital pending a decision from FINRA on an escrow requirement." Alpine's attorney also attached a shareholder resolution indicating that only $1.6 million of the $6.4 million contribution reflected available capital.

On November 9, 2023, the Clearing Agencies provided Alpine with written notice of their determinations to cease to act for Alpine (the "Notice"). The effect of the cease-to-act determinations would be that Alpine could no longer operate as a clearing broker, and the Clearing Agencies would no longer do business with Alpine. The Clearing Agencies based their determinations on findings that (1) Alpine was subject to and had not met the $10 million ENC requirement on any day from the Compliance Deadline through the Notice date; and (2) Alpine had engaged in a pattern of intentional misinformation, omissions, and evasions in reporting the amount of its ENC to the Clearing Agencies.

D. A DTCC hearing panel affirmed the Clearing Agencies' cease to act determinations.

Alpine sought review of the Clearing Agencies' determinations before a DTCC hearing panel. In that proceeding, Alpine argued (1) that, because it declared itself to be a "self-clearing" broker, it was required to meet only the lower $5 million ENC requirement, which it claimed to have met; and (2) that, in any event, the $6.4 million capital contribution had satisfied the higher $10 ENC requirement. After a two-day hearing, a panel of DTCC's Boards of Directors issued a decision on April 25, 2024, upholding the Clearing Agencies' cease-to-act determinations. The DTCC hearing panel found that Alpine had not "effectuate[d] a change in clearing status by the Compliance Deadline" and was thus subject to—but failed to meet—the $10 million ENC requirement.

On April 30, 2024, Alpine filed an appeal and stay request with the Commission. Alpine concurrently requested that the Clearing Agencies grant it thirty days to wind down operations before implementing the cease-to-act determinations. The Clearing Agencies responded that they would implement the cease-to-act determinations no earlier than May 26, 2024, though we issued an administrative stay of the cease-to-act determinations on May 14, 2024, pending our consideration of Alpine's stay request. We now turn to the merits of that request.

II. Analysis

In determining whether to grant a stay, we consider whether (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest.[8] The appropriateness of a

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[8] *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017).

stay turns on a weighing of the strengths of these four factors, though the first two are the most critical, and not all four must favor a stay for a stay to be granted.[9]

A movant need not establish that it is likely to succeed on the merits to obtain a stay, but it must at least show "that the other factors weigh heavily in its favor" and that it has "raised a 'serious legal question' on the merits."[10] "Because the moving party must not only show that there are 'serious questions' going to the merits, but must additionally establish that 'the balance of hardships tips *decidedly* in its favor,' its overall burden is no lighter than the one it bears under the 'likelihood of success' standard."[11]

Here, we find that Alpine has raised a serious legal question on the merits and that the balance of hardships tips decidedly in Alpine's favor.[12] Accordingly, we grant a stay of the Clearing Agencies' cease-to-act determinations.

A. Alpine has raised a serious legal question about whether it was still a clears-for-others member at the Compliance Deadline and thus required to maintain $10 million in ENC.

We find that Alpine has raised a serious legal question about whether the Clearing Agencies properly determined that it had not effectively changed its status from a clears-for-others member to a self-clearing member. If the answer to that question is no, then Alpine was not, as the Clearing Agencies contend, subject to a $10 million ENC requirement during the relevant time. Rather, the $5 million ENC requirement would have applied. The record indicates that, with the exception of four days when Alpine reported ENC between $4.85 and $4.9 million, Alpine had at least $5 million in ENC during the relevant period.

When explaining why, in its view, Alpine did not effectively convert its status from a clears-for-others member to a self-clearing member before the Compliance Deadline, DTCC observed that "[t]ypically, a NSCC member seeking to make a material change to its business provides sufficient advance notice to DTCC to allow for 'discussion, diligence, and

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9 *Bloomberg*, 2018 WL 3640780, at *7.

10 *Zipper*, 2017 WL 5712555, at *6 (quoting *Sherley v. Sebelius*, 644 F.3d 388, 398 (D.C. Cir. 2011)).

11 *Id.* (quoting Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original)).

12 *See, e.g., Scottsdale Capital Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at *2 & n.13 (Aug. 6, 2018) (citing *Scattered Corp.*, 52 S.E.C. 1314, 1997 SEC LEXIS 2748, at *11-12 (Apr. 28, 1997) (granting a stay where it was "unclear . . . due to the complexity" of the case whether applicants had "a strong likelihood" of success, because the applicants had "shown this to be a substantial case on the merits and . . . the three other factors" supported a stay)).

transparency.'" DTCC found that Alpine did not provide such notice and therefore did not effectively convert to a self-clearing member before the ENC requirement became effective.

Alpine, by contrast, contends that it has been engaged in self-clearing for decades and, in fact, had limited (and has continued to limit) its business to only self-clearing since before the Compliance Deadline. Alpine further asserts that it notified the Clearing Agencies of the possibility that it may change its clearing status a month before the Compliance Deadline—and subsequently notified the Clearing Agencies that it was, in fact, converting its status to self-clearing before the Compliance Deadline. Moreover, Alpine argues, the Clearing Agencies have not identified any rule or regulation that requires Alpine to have done more before the Compliance Deadline.

Based on the record before us, we find that Alpine has raised a serious question about DTCC's determination that Alpine had not in fact changed its status to that of a self-clearing member by the Compliance Deadline. In support of its decision, DTCC cites only to a statement submitted in the hearing below by a DTCC managing director, who represented—without citing any DTCC rules—that "Members intending to make a material change to their businesses typically provide advance notice to NSCC to allow for discussion, diligence, and transparency." The managing director further explained that "Alpine could not have reasonably expected that NSCC would accept at face value that, without much planning and on the basis of incomplete and contradictory information, Alpine would fully change its business model within one or two days, and that there would be no change in risk." But NSCC's rules state only that "[e]ach Member shall submit to the Corporation written notice of any event that . . . could have a material impact on such participant's business and/or financial condition, including but not limited to . . . material changes in business lines."[13] DTCC identifies no other rule or authority setting forth what amount of advance notice would be "sufficient" and never explains precisely what, in its view, Alpine was required to do to effectuate its transition to self-clearing status.

Moreover, on the record currently before us, we are unable to determine whether Alpine's change in its membership status from clears-for-others to self-clearing constituted a material change in business lines and therefore whether Alpine was required to provide notice "as soon as practicable" upon Alpine's having knowledge that it would change its membership from clears-for-others to self-clearing, as required under NSCC Rules.[14] Similarly, at this preliminary stage, it is unclear whether Alpine's communication about no longer clearing for others was sufficient under NSCC Rules to constitute such notice of a change in business lines and thereby subject the firm to the lower $5 million ENC requirement.[15]

DTCC also contends that, after Alpine's initial communication to the Clearing Agencies that it intended to convert to self-clearing status, Alpine failed to respond to the Clearing

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13 NSCC Rule 2B.2.B(b).D

14 NSCC Rule 2B.Sec. 2B(b).

15 *See* NSCC Rule 2B.Sec. 2B(d) ("Notice provided to the Corporation pursuant to this Section shall be provided in the form and to the persons or departments specified by the Corporation from time to time. . . .").

Agencies' repeated requests that the firm provide more information about its anticipated conversion. But again, DTCC has not explained the basis for its position.

Although our analysis of the merits of Alpine's appeal is preliminary,[16] based on the submissions to date, we find that Alpine has identified a serious question regarding DTCC's finding that the firm had not changed its clearing status by the Compliance Deadline.[17] Likewise, because we cannot determine Alpine's clearing status as of the Compliance Deadline, we cannot determine the amount of ENC that Alpine was obligated to maintain on that date. Nor can we determine at this preliminary stage whether—even assuming, *arguendo*, that Alpine did not change its clearing status by the Compliance Date—the $6.4 million transfer enabled Alpine to meet the higher $10 million ENC.

Under these circumstances, we find it would be premature to analyze whether Alpine's various statements about its ENC to the Clearing Agencies were, as DTCC found, "knowingly untrue" and "willfully inaccurate"—the other basis for the Clearing Agencies' cease-to-act determinations.[18] At this preliminary stage of these proceedings, there appear to be factual questions as to whether Alpine made intentional misstatements about its net capital levels during the period in question. We therefore invite the parties to brief these issues further and defer those questions about Alpine's alleged misstatements and whether they provide an independent basis for DTCC to cease to act for Alpine to the merits stage of this proceeding.

B. The remaining factors weigh in favor of granting a stay.

Given the limited record before us here, we find that the remaining stay factors tip decidedly in Alpine's favor. Alpine argues that the cease-to-act determinations will cause it irreparable harm because, without the ability to clear trades for its customers, Alpine will be forced to close its business. Although the Clearing Agencies challenge this assertion, we find, based on the record before us, that the cease to act determinations will cause Alpine irreparable harm.[19]

Further, based on the evidence before us, it is unclear that a stay would cause the Clearing Agencies and their members substantial harm. We recognize the vital importance of

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16 *Zipper*, 2017 WL 5712555, at *4.

17 *Cf. United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 40 (5th Cir. 1983) (granting stay by noting, in part, that the court "would want to make a detailed and in-depth examination of this serious legal issue" given the potentially broad impact).

18 *See* NSCC Rule 2A.1.G(ii) (authorizing NSCC to cease to act for a participant if it has reason to believe that the participant made "a misstatement of a material fact or omitt[ed] to state a material fact to the [NSCC] in connection with its application to become a Member or thereafter"); DTC Rule 10, Sec. 1(vi) (same with respect to DTC).

19 *Cf. Lek Secs. Corp.*, Exchange Act Release No. 95014, 2022 WL 1769802, at *8 (May 31, 2022) (stating that "[w]e do not dispute that the cease to act determinations will cause Lek to suffer irreparable harm" in order denying motion to stay).

the Clearing Agencies' ability to protect themselves and their members by enforcing ENC requirements: Members must maintain adequate ENC to ensure that they have "sufficient capital to sustain unexpected and/or sustained increases in margin requirements" and, thereby, "to increase the stability of the financial markets in order to reduce systemic risk."[20] A member's failure to maintain such adequate ENC poses the risk of disruptions to this clearing and settlement process.

But because we cannot determine Alpine's clearing status from the current limited record—and thus whether Alpine satisfied the applicable ENC requirement—we cannot yet determine whether (or to what extent) Alpine presents risks to the Clearing Agencies and market stability. For the same reasons, given the questions discussed above about the merits of DTCC's allegations against Alpine, we also cannot determine at this preliminary stage whether a stay on the cease-to-act determinations against Alpine is likely to serve the public interest.

Finally, because we are granting Alpine's motion for a stay of the cease-to-act determinations, we need not address Alpine's constitutional challenges to DTCC's decision.[21]

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Accordingly, IT IS ORDERED that Alpine Securities Corporation's motion for a stay of DTCC's affirmance of the cease-to-act determinations pending Commission review of Alpine's appeal of the actions taken by the National Securities Clearing Corporation and The Depository Trust Company is granted. In doing so, we note that, regardless of this stay, Alpine must continue to comply with its ongoing obligation to adhere to the Clearing Agencies' rules, and DTCC should continue to ensure all of its members' continued compliance with those rules.

It is further ORDERED that, pursuant to Rule of Practice 450(a),[22] a brief in support of Alpine's application for review shall be filed by September 24, 2025. A brief in opposition shall be filed by October 24, 2025, and any reply brief shall be filed by November 7, 2025; and

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[20] Notice of Filing of Proposed Rule Change to Enhance Capital Requirements and Make Other Changes, 86 FR 74185-01, 74186 (Dec. 22, 2021).

[21] *Compare Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1325–29 (D.C. Cir. 2024) (concluding that applicant had made sufficient showing of likelihood of success and irreparable harm as to its private non-delegation claim in the context of an expulsion sanction that was allowed to take effect before the completion of Commission review proceedings), *with Alpine Sec. Corp. v. Nat'l Sec. Clearing Corp.*, No. 223CV00782JNPJCB, 2024 WL 1011863, at *6 (D. Utah Mar. 8, 2024) (concluding that the applicant "has not demonstrated a likelihood of success" as to its claim that the self-regulatory organization in question were "unconstitutionally structured under the Appointments Clause" or that the authority "delegated to [them] violates the . . . nondelegation doctrine").

[22] 17 C.F.R. § 201.450(a).

it is further ORDERED that, in addition to any matters the parties choose to raise, the parties should address the following issues:

1. Which Clearing Agency rules apply to a member that seeks to change its clearing status?

2. What do those rules require a member firm to show in order to change its clearing status and did Alpine's request here comply with those rules?

3. What was the source of the Clearing Agencies' authority to request more information about Alpine's purported change of clearing status to self-clearing, and what information did Alpine fail to provide?

4. What amount of ENC did Alpine have each day during the relevant time of October 25, 2023, through November 9, 2023?

5. Is there a past practice of the Clearing Agencies granting or denying Alpine's or another member's attempt to change its clearing status? If so, what notice or other steps did the member take in attempting to effect that change and is that relevant to the Commission's merits consideration?

6. Regardless of whether Alpine changed its clearing status, did Alpine make misstatements and omissions about its amount of ENC to DTCC? If so, did such misstatements and omissions provide DTCC with an independent basis for its cease-to-act determinations?

By the Commission.

Vanessa A. Countryman
Secretary