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October 12, 2021

Ms. Vanessa Countryman  
Secretary  
U. S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2021-019 – Response to Comments**

Dear Ms. Countryman:

The Financial Industry Regulatory Authority, Inc. (“FINRA”) submits this letter in response to a comment related to the above-referenced rule filing,<sup>1</sup> a proposed rule change filed for immediate effectiveness that, among other things, extends for the third time during the pandemic the expiration date (from August 31, 2021, to December 31, 2021) of the temporary amendments to FINRA Rule 9261 set forth in SR-FINRA-2020-027.<sup>2</sup> These amendments grant FINRA’s Office of Hearing Officers (“OHO”) and the National Adjudicatory Council (“NAC”) the discretion, on a temporary basis, to determine a hearing will be conducted, in whole or in part, by video conference if warranted by the current COVID-19-related public health risks posed by an in-person hearing.<sup>3</sup> As FINRA stated in

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<sup>1</sup> See Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-019) (the “Extension Notice”).

<sup>2</sup> See Securities Exchange Act Release No. 89739 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-027). The proposed rule change also extends the expiration date of the temporary amendments set forth in SR-FINRA-2020-015; however, the comment letter received does not address the extension of those amendments.

<sup>3</sup> See Id. As stated in the recent Extension Notice, based on its assessment of current COVID-19 conditions, FINRA determined that there is a continued need for this temporary relief beyond August 31, 2021, given, for example, that the emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern. See Extension Notice, 86 FR 47169.

the most recent extension—as well as the prior two extensions—these temporary amendments to FINRA Rule 9261, among other rules, will revert to their original form at the conclusion of the temporary relief period and any extension thereof.<sup>4</sup>

The Securities and Exchange Commission (“Commission” or “SEC”) published the proposed rule change for comment in the Federal Register on August 23, 2021. The Commission received one comment from Alpine Securities Corporation (“Alpine”), which requests that the Commission, among other things, amend, appeal, or suspend FINRA’s recent extension of the temporary amendments to Rule 9261 outlined above.<sup>5</sup>

Alpine opposes the temporary amendments to Rule 9261 for several reasons. First, Alpine states that FINRA improperly designated SR-FINRA-2020-027 for immediate effectiveness under Section 19(b)(3) of the Act because the amendments involve FINRA’s Code of Procedure. Alpine further asserts that FINRA’s rationale for the immediate effectiveness designation (public health risks involving COVID-19) is “arbitrary and specious.” In addition, Alpine argues that the temporary amendments deprive Alpine of its right to an in-person hearing under FINRA Rule 9261 and a fair disciplinary procedure under Section 15A(b)(8) of the Act.<sup>6</sup>

The Commission published SR-FINRA-2020-027 for comment in the Federal Register on September 9, 2020, and received two comment letters.<sup>7</sup> FINRA notes that

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<sup>4</sup> See Extension Notice, 86 FR at 47169, n.4.

<sup>5</sup> See In the Matter of the Application of Alpine Securities Corporation for Review Pursuant to Sections 19(d) and 19(c) to Amend, Repeal or Suspend FINRA Improperly Promulgated Changes to FINRA Rule 9261, dated September 9, 2021 (“Alpine”). This letter responds only to Alpine’s assertions with respect to extending the temporary rules granting OHO and the NAC authority to conduct hearings by video conference. On October 1, 2021, FINRA separately responded to Alpine’s arguments in its petition regarding its request under Section 19(d) of the Securities Exchange Act of 1934 (“Act”). See Administrative Proceeding File No. 3-20535.

<sup>6</sup> In support of its fair procedure argument, Alpine states, “FINRA is conducting all arbitrations and mediations in person at FINRA’s locations.” See Alpine petition at p. 2. This statement is not accurate. Although all FINRA Dispute Resolution Services hearing locations reopened for in-person hearings on August 2, 2021, all arbitration and mediation hearings are not being conducted in person. In fact, many have taken place via video conference since the hearing locations reopened.

<sup>7</sup> See letter from Richard E. Brodsky, The Brodsky Law Firm, to Vanessa Countryman, Secretary, SEC, dated September 6, 2020; and letter from Richard F.

Alpine did not submit a comment to this filing or the two previous extensions to the temporary amendments. It is only now, after the dismissal by a federal district court of Alpine's request for a declaratory judgment regarding the temporary amendments, that Alpine comments on a third extension of the temporary amendments by raising the same arguments previously raised by the two commenters in response to the Commission's publication of the original proposed rule change.<sup>8</sup> FINRA responded to those comments in October 2020 and incorporates them herein by reference.<sup>9</sup> Thereafter, the Commission did not temporarily suspend the proposed rule change within 60 days of its filing as provided for under Section 19(b)(3)(C) of the Act, which the Commission could have done had it determined that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission similarly did not act to temporarily suspend the rule amendments when they were twice subsequently extended. FINRA believes it would be inappropriate, even illogical, for the SEC to now suspend the amendments where Alpine challenges the amendments a year later on the same grounds previously raised by other commenters.<sup>10</sup>

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Ensor and Evan S. Strassberg, Michael Best & Friedrich LLP, to Vanessa Countryman, Secretary, SEC, dated September 30, 2020.

<sup>8</sup> Alpine is currently a respondent in a FINRA disciplinary proceeding involving an order by the Chief Hearing Officer pursuant to the temporary amendments in Rule 9261 to proceed by video conference. Alpine previously sought declaratory judgment in federal court that the amendments were invalid. The United States District Court for the District of Utah dismissed the action on September 7, 2021 for lack of subject matter jurisdiction. See Alpine petition at n.8.

<sup>9</sup> See letter from Emily Goebel, Assistant General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated October 9, 2020, available at <https://www.finra.org/sites/default/files/2020-10/SR-FINRA-2020-027-response-to-comments.pdf>.

<sup>10</sup> FINRA further notes that since the filing of SR-FINRA-2020-027, OHO has conducted one in-person disciplinary hearing. OHO also has successfully conducted several hearings by video conference. Specifically, OHO has conducted 11 disciplinary hearings by video conference (decisions have been issued in 10 of these cases). In five of these disciplinary hearings, all of the parties agreed to proceed by video conference; the other six were ordered to proceed by video conference by the Chief Hearing Officer. OHO currently has hearings scheduled in six additional disciplinary matters. No determination has yet been made regarding whether these hearings will be in-person or by video conference.

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FINRA believes that the foregoing responds to the material issues raised by the commenter to the rule filing. If you have any questions, please contact me at (240) 386-4816, email: [john.nachmann@finra.org](mailto:john.nachmann@finra.org).

Best regards,

/s/ John D. Nachmann

John D. Nachmann  
Associate General Counsel