

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALPINE SECURITIES CORPORATION
(CRD No. 14952),

Respondent.

Expedited Proceeding
No. PCDO230001

RCM No. 2019061232603

Hearing Officer—RES

**ORDER DEFERRING RULING ON ALPINE SECURITIES
CORPORATION'S MOTION FOR DISMISSAL, MOTION
TO STRIKE, AND MOTION FOR A NEW TRIAL**

I. Introduction

FINRA's Department of Enforcement filed and served a Petition ("Petition") requesting a hearing and the imposition of sanctions against Respondent Alpine Securities Corporation for allegedly violating a Permanent Cease and Desist Order issued against the firm ("PCDO").¹ As the predicate for this PCDO, an Extended Hearing Panel found that Respondent had violated FINRA Rules by charging its customers unreasonable and discriminatory fees and unfair prices and commissions ("Hearing Panel Decision").² FINRA's National Adjudicatory Council affirmed in part and modified the findings of the Extended Hearing Panel ("NAC Decision").³

Enforcement's Petition alleged that Respondent had violated the PCDO by again charging unreasonable and discriminatory fees and unfair prices and commissions, totaling \$2.3 million.⁴ These challenged fees were: a DTC custody fee, a capital allocation ("ACA") charge, a safekeeping fee, a market-making fee, and trade-related fees that exceed 5 percent of the principal amount of the affected transactions and \$75.⁵ As for the ACA charge, because of

¹ The PCDO is contained in the Extended Hearing Panel Decision reported at *Dep't of Enforcement v. Alpine Sec. Corp.*, No. 2019061232601, 2022 FINRA Discip. LEXIS 5 (OHO Mar. 22, 2022).

² *Alpine Sec. Corp.*, 2022 FINRA Discip. LEXIS 5, at *138.

³ *Dep't of Enforcement v. Alpine Sec. Corp.*, No. 2019061232601, 2025 FINRA Discip. LEXIS 6 (NAC Mar. 25, 2025), *appeal docketed*, No. 3-22471 (SEC Apr. 7, 2025).

⁴ Petition ¶¶ 2, 3.

⁵ Petition ¶¶ 3, 4.

findings in the NAC Decision—to the effect that Enforcement had failed to meet its burden of proving the predecessor of the ACA charge violated FINRA Rules—Enforcement has withdrawn its claim that this charge violated the PCDO. Thus, the ACA charge is no longer part of this proceeding.

Yet Enforcement maintains the other fees alleged in the Petition are still in violation of the PCDO. Enforcement still argues that Respondent is undeterred by constraints on its imposition of fees, prices, and commissions, and must be expelled and ordered to pay restitution.⁶

In a pre-hearing submission filed with the Office of Hearing Officers in 2023, Respondent made several arguments in opposition to the Petition. First, Respondent argued the Petition was premature because Respondent had appealed the Hearing Panel Decision to the NAC, and the Decision remained non-final.⁷ Second, Enforcement's claims improperly stemmed from the problematic assertion of alleged violations of an "obey-the-law" injunction in the PCDO.⁸ Third, in connection with the market-making fee, Enforcement raised a new and different set of facts and a new theory of liability—a theory that had not been litigated before the Extended Hearing Panel and did not support the PCDO.⁹ Fourth, if Respondent were found to have charged unreasonable, discriminatory, or unfair fees in violation of the PCDO, expulsion of the firm would be a disproportionate sanction. It would be more appropriate to order customer restitution of any fees that had violated FINRA Rules.

For four days in 2023, I held the evidentiary hearing in this expedited proceeding. Before the hearing, the parties had filed and served their pre-hearing submissions, including exhibit lists and witness lists. In the hearing, Enforcement presented seven witnesses for testimony. I stayed the hearing because of certain orders issued by the United States Court of Appeals for the District of Columbia. Most recently, the D.C. Circuit issued a decision and order allowing the hearing to resume, under certain conditions. Although I have not set an exact date to resume the hearing, I expect this date will be sometime in the first week of June.

II. Respondent's Motion and Enforcement's Opposition

With my leave, and according to a briefing schedule I set, Respondent has filed a motion for an order of dismissal of the proceeding or, in the alternative, for an order striking certain portions of the Petition and providing for a completely new hearing, as if the four days of the hearing had not taken place ("Motion").

⁶ Petition ¶ 6.

⁷ Alpine Securities Corporation's Pre-Hearing Submission ("Alpine Securities Submission") 2.

⁸ Alpine Securities Submission 3.

⁹ Alpine Securities Submission 4.

In its Motion, Respondent makes several arguments. First, Respondent argues that the Petition relies on aspects of the Hearing Panel Decision to allege the firm's fees, prices, and commissions violated the PCDO. But according to Respondent, the NAC Decision renders the Hearing Panel Decision largely irrelevant and the Petition defective. Second, Enforcement's claims provide a concrete example of the misuse of the generic "obey-the-law" injunction in the PCDO, and it is important that a claim of violation of an injunction be based on specific language contained in the four corners of the injunction.¹⁰

Third, in connection with the market-making fee, Respondent argues that Enforcement improperly pivots to a claim different from those it made in the underlying disciplinary proceeding. This new claim is that the imposition of a market-making fee constitutes a violation of the PCDO because Respondent allegedly does not engage in bona fide market-making.¹¹ Yet Enforcement does not allege in the Petition that Respondent's market-making fee is prohibited by specific language in the PCDO.¹² Fourth, Respondent argues that because of the NAC Decision, the analytical framework and applicable law have changed in material ways that will impact the litigation and defense of the proceeding, necessitating a new hearing.¹³

Enforcement has filed an Opposition ("Opposition") to Respondent's Motion. In its Opposition, Enforcement makes several arguments. First, Enforcement argues it is simply not true that the NAC Decision found invalid all the claims in the Petition.¹⁴ Second, a PCDO can appropriately prohibit violations of a broad regulatory rule, and there is no requirement that a PCDO be so narrow that in the absence of copy-cat violations, there can be no possibility of finding a violation of the PCDO.¹⁵

Third, Enforcement argues the PCDO complied with FINRA Rule 9291 because it identified specific FINRA Rules and ordered Respondent to refrain from specific misconduct—i.e., charging unreasonable fees and unfair prices and commissions.¹⁶ Fourth, it is not necessary to restart the hearing from scratch because Respondent has failed to provide any example of how it would have acted differently in the hearing if it had had the benefit of the NAC Decision.¹⁷

¹⁰ Motion 9.

¹¹ Motion 5.

¹² Motion 14.

¹³ Motion 17.

¹⁴ Opposition 1.

¹⁵ Opposition 8–9. Among other things, FINRA Rule 9291 requires that a PCDO "describe in reasonable detail the act or acts the Respondent . . . shall take or refrain from taking." FINRA Rule 9291(a)(3).

¹⁶ Opposition 9.

¹⁷ Opposition 16.

III. Discussion

Enforcement filed its Petition under FINRA Rule 9556 alleging that Respondent failed to comply with the PCDO. Under that FINRA Rule, Enforcement may seek a hearing.¹⁸ On the filing of the Petition, FINRA Rule 9559 governs the proceeding.¹⁹ Under that FINRA Rule, the hearing shall be held within ten days after Respondent is served with the Petition.²⁰ In proceedings under FINRA Rule 9559, the FINRA Rules do not authorize dispositive motions such as motions to dismiss, motions for summary disposition, or similar procedural devices.²¹

These authorities compel that I disfavor dismissing the Petition before Enforcement has finished presenting its case-in-chief in the hearing and Respondent presents its case-in-chief. Also, it is not necessary that I start the hearing again from the first day. If the NAC Decision has changed the analytical framework and applicable law of the proceeding, Respondent can adapt and change its litigation and defense strategies accordingly. Respondent has not begun presenting its case-in-chief in the hearing. I will provide all parties the time they need in the hearing to present any new arguments. If anything unfairly prejudicial occurred in the four days of hearing that have already been completed, I am a capable Hearing Officer and the sole finder of fact. I will disregard any unfair prejudice when writing my Decision.²²

For these reasons, I **DEFER RULING** on Respondent's Motion.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: May 7, 2025

Copies to:

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¹⁸ FINRA Rule 9556(h).

¹⁹ FINRA Rule 9556(h)(3).

²⁰ FINRA Rule 9559(f)(2).

²¹ *Dep't of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *11 (NAC Feb. 18, 2016).

²² Respondent will be granted leave to recall any witnesses that testified so far in Enforcement's case-in-chief, to address any new subjects that have arisen because of the NAC Decision.