

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20090205458**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Alpine Securities Corporation, Respondent
CRD No. 14952

Pursuant to Rule 9216 of FINRA's Code of Procedure, Alpine Securities Corporation, ("Alpine Securities" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Member alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

The Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA.

BACKGROUND

Alpine Securities, a FINRA regulated broker-dealer since 1984, has its principal place of business in Salt Lake City, Utah. At the end of the third quarter of 2009, the Firm employed 10 registered representatives ("RRs") and three non-registered persons. Moreover, for the third quarter of 2009, the Firm had total revenues of \$473,329.

OVERVIEW

From July 2006 through July 2007 (the "Relevant Period"), the Firm executed customers' unsolicited sale orders of approximately 2,157,000,000 unregistered shares of Universal Express, Inc. ("USXP") stock, in violation of Section 5 of the Securities Act of 1933 ("Section 5") and NASD Rule 2110. No exemption applied to the sale of these shares. Moreover, the Firm violated NASD Rules 3010 and 2110 by failing to establish, maintain and enforce a system to supervise the activities of its associated persons that was reasonably designed to detect and prevent the sale of unregistered securities. Two firm customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions for total net proceeds of approximately \$2.7 million, resulting in approximately \$47,000 in commissions for the Firm.

FACTS AND VIOLATIVE CONDUCT

Universal Express, Inc. (USXP)

USXP was a publicly-traded Nevada corporation, with offices in New York and Florida, purportedly involved in the businesses of shipping and transportation. On March 24, 2004, the U.S. Securities and Exchange Commission (the "SEC" or "Commission") filed a complaint seeking a temporary restraining order and other emergency relief against USXP and others for their alleged involvement in the distribution of USXP common stock in violation of Section 5. The Commission's allegations included that from April 2001 through January 2004, USXP issued more than 500 million shares of unregistered stock for distribution to the public, issued a series of false press releases regarding funding commitments for the company, and made other false and misleading statements. The shares were issued purportedly as compensation under consulting agreements to co-defendants named in the lawsuit who sold to the public over 470 million shares of USXP for \$17.9 million. On February 21, 2007, the SEC successfully moved for summary judgment in *SEC v. Universal Express, Inc. et al*, 475 F. Supp. 2d 412 (SDNY 2007), *aff'd in a summary order sub nom., SEC v. Altomare*, 2008 U.S. App. Lexis 23408 (2d. Cir. Nov. 13, 2008), *cert denied*, 129 S. Ct. 2745, 2009 U.S. Lexis 413 (June 1, 2009), which found that Universal Express violated Section 5 and that no exemption applied.

Customer Accounts Held at Alpine Securities sold Unregistered Securities

During the Relevant Period, the Firm executed two customers' unsolicited sale orders for over 2 billion unregistered shares of USXP earning the Firm approximately \$47,000 in commissions. No exemption applied to the sale of these shares. None of the USXP certificates that the Firm's customers deposited into their accounts contained any restrictive legends and USXP and its transfer agent confirmed on several occasions that the shares had been issued in transactions registered on Form S-8. The liquidation of these shares provided the account holders with approximately \$2.7 million in proceeds. During the Relevant Period, the Firm utilized a Large Stock Position Questionnaire (the "Questionnaire") which a customer was required to complete and sign in certain circumstances. The Firm utilized the Questionnaire as part of its reasonable inquiry process, and the Questionnaire sought information relating to such areas as whether the customer was an affiliate of the issuer, how the customer acquired the shares and other questions relevant to assessing whether a customer was a statutory underwriter. As discussed in more detail below, while the Firm did utilize the Questionnaire during the Relevant Period, the Firm failed to follow up on material information disclosed in the Questionnaires which was relevant to an assessment of whether the shares to be sold were in fact registered and/or freely tradable.

NC account

NC, a corporate entity, opened an account at the Firm in 2006. The Firm sold to the public approximately 85,000,000 unregistered shares of USXP on behalf of the NC account. No exemption applied to the sale of these shares. The liquidation of these shares provided NC with net proceeds of approximately \$295,000, and the Firm earned nearly \$7,000 in commissions. On July 17, 2006, NC deposited a certificate for 85,000,000 shares of USXP. Between July 20, 2006 and July 25, 2006, the Firm, on behalf of the NC account, executed a total of 15 sale

transactions of USXP liquidating all the shares deposited at the Firm. The USXP stock certificate delivered to the Firm bore no restrictive legends and was dated close in time to when it was deposited into the NC account. Following each of the 15 sale transactions, NC transferred the proceeds from those transactions to an account that NC held outside the Firm. For the NC account, the beneficial owner filled out a Large Stock Position Questionnaire and signed it for the deposit of 85,000,000 USXP shares on July 17, 2006. The Questionnaire indicated that NC acquired the shares on July 14, 2006 for \$95,000 in a private transaction. It also indicated that NC owned a total of 100,000,000 shares and Universal Express had a total of 2.4 billion shares issued and outstanding. Although the shares were purchased only six days before the re-sell efforts began, this red flag did not trigger an analysis at the Firm of whether the shares were restricted.

BM account

BM, a corporate entity, opened an account at the Firm in 2005. The Firm sold to the public approximately 2,072,000,000 unregistered shares of USXP on behalf of the BM account. No exemption applied to the sale of these shares. The liquidation of these shares provided BM with net proceeds of approximately \$2.4 million and the Firm earned nearly \$41,000 in commissions. From November 2006 to July 2007, BM deposited a total of 30 USXP stock certificates totaling 2,072,000,000 shares into its account. Between November 29, 2006 and July 10, 2007, the Firm, on behalf of the BM account, executed a total of 244 sale transactions of USXP shares. The 30 USXP stock certificates delivered to the Firm bore no restrictive legends and were dated close in time to when they were deposited into the BM account. Following each of the 244 sale transactions, BM transferred the proceeds from those transactions to an account that BM held outside the Firm.

For the BM account, BM's president executed seven Questionnaires for the deposit of 2,072,000,000 USXP shares. The Questionnaires reported that Universal Express issued USXP shares to BM for consulting services as part of an S-8 registration on file with the SEC and that in each case the shares constituted less than 10% of the outstanding shares of USXP. However, the Firm failed to follow up on this information to the extent required. For example, the Questionnaire indicated that BM received the USXP shares pursuant to an S-8 registration statement. An inquiry by the Firm of the S-8 registrations on file for the issuer would have revealed that BM was not eligible to receive shares from USXP pursuant to an S-8 registration since it was a corporate entity and not a natural person. Issuers can only issue stock as compensation to consultants for bona fide services if they are "natural persons." *See SEC v. iBiz Tech. Corp., et al.*, 2008 U.S. Dist. LEXIS 107297 (D. Ariz., July 21, 2008).

Additionally, the Firm received several letters from the chief executive office and the general counsel of Universal Express representing that the 2,072,000,000 USXP shares issued to BM were freely tradable under the S-8 registration of the Company's 1994 Stock Plan. However, further inquiry by the Firm would have revealed that these statements were untrue because Universal Express had only authorized 104,167 shares pursuant to its employee stock compensation plan, much less than that purportedly granted to BM. Moreover, there was no Form S-8 registration statement filed with the SEC pertaining to BM or its president with regard to the resale of the shares as restricted securities. To register a consultant's resale of shares on

Form S-8, the company must include a re-offer prospectus with its filing on Form S-8, the restricted shares must be acquired by the selling shareholders prior to the filing of the registration statement, and the reselling shareholder must be named in the filed re-offer prospectus. *See John A. Carley*, Initial Decision Rel. No. 292, 2005 SEC LEXIS 1745, at *107-13 (July 18, 2005). The Firm engaged outside counsel to review the USXP transactions in the BM account. Based on representations from Universal Express, outside counsel wrongly concluded that the resale of the shares would not constitute a distribution as they qualified for an exemption from registration under section 4(1) of the Securities Act of 1933. Outside counsel's opinion was entirely based on information provided to him by Universal Express and that fact was clearly set forth in his communication to the Firm. As such, it was not reasonable for the Firm to rely on outside counsel's advice without conducting a reasonable inquiry to independently verify the information provided by Universal Express.

Notwithstanding red flags including: numerous stock certificates were deposited bearing no restrictive legends and which were dated close in time to when they were deposited; the shares were sold immediately after deposit and then the proceeds were quickly transferred out of the Firm; and the customer and USXP represented information concerning the source of the shares that reasonable inquiry would have demonstrated to be untrue; the Firm failed to take adequate steps to verify whether the USXP shares were registered and/or whether they were freely tradable. Consequently, the sales of USXP shares in the BM account violated NASD Rule 2110 by selling unregistered securities in violation of Section 5.

Firm Violated NASD Rule 2110 by Selling Unregistered Securities in Violation of Section 5

Section 5 prohibits the offer or sale of any security unless there is a registration in effect as to that security or there is an exemption available for that securities transaction. To establish a *prima facie* case of a violation of Section 5, Enforcement must show that (1) no registration with the SEC was in effect; (2) the respondents sold or offered to sell the security; and (3) respondents used the means of interstate commerce in connection with the offer or sale.¹ Although "[t]he provisions of section 5 shall not apply to ... brokers' transactions executed upon customers' orders or any exchange or in the over-the-counter market but not the solicitation of such orders,"² this exemption is available only when the broker has conducted a "reasonable inquiry" of the circumstances surrounding the customer's sale.³

The SEC has imposed responsibilities on brokers, because of their responsibilities under certain circumstances to act as gatekeepers to the public markets, to conduct a "searching inquiry" to ensure they are not in violation of Section 5:

[A] dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a

¹ *SEC v. Ralston Purina*, 346 U.S. 119 (1953); *SEC v. Murphy*, 626 F.2d 633, 640 (9th Cir. 1980).

² 15 U.S.C. § 77d(4).

³ 17 C.F.R. § 230.144(g)(4); *Wonsover v. SEC*, 205 F.3d 408, 415 (D.C.Cir. 2000).

control relationship with an issuer or an underwriter. . . . [W]here the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.⁴

During the Relevant Period, the Firm offered and sold through the means of interstate commerce approximately 2,157,000,000 unregistered shares. No exemption applied to the sale of these unregistered shares. The Firm thus participated in a distribution of unregistered shares in violation of Section 5 and NASD Rule 2110.

Firm Violated NASD Rules 3010 and 2110

NASD Notice to Members (“NTM”) 99-45 explained that members are required to specifically tailor supervisory systems to address all of the types of business that the member conducts. Under NASD Rule 3010(a), a member is obligated to “establish and maintain a system to supervise the activities of each registered representative . . . that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member.”⁵ Moreover, NASD Rule 3010(b)(1) requires each member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages. . . .”⁶ Failure to adopt supervisory procedures tailored to a member’s business is itself a violation of the rule.⁷

The Firm procedures did not mandate that any specific steps be taken in order to ensure that a reasonable inquiry was conducted by Firm personnel to determine whether shares were registered and/or freely tradable. Moreover, the written procedures did not indicate how the information on the Questionnaire was to be reviewed or used, or by whom, to determine whether the shares were unregistered or the seller was a statutory underwriter. In summary, the Firm’s investigation of the surrounding circumstances of the certificate deposits and sales was insufficient, notwithstanding the utilization of the Questionnaires, because the information gathered on the Questionnaires was not meaningfully reviewed and evaluated.

By virtue of the foregoing, the Firm violated NASD Rules 3010 and 2110.

During 2008 and before the commencement of Enforcement’s investigation, the Firm adopted additional formal written policies with regard to sales of unregistered securities which include

⁴ *Distribution by Broker-Dealers of Unregistered Securities*, Securities Act Rel. No. 4445, 1962 SEC LEXIS 74 (Feb. 2, 1962) (quoting *SEC v. Culpepper*, 270 F.2d 241, 251 (2d Cir. 1959)).

⁵ See *DOE v. Stonegate Partners, LLC*, Disciplinary Proceeding No. E112005002003, 2008 FINRA Discip. LEXIS 26 (OHO May 15, 2008); see also *DOE v. Kirlin Securities, Inc.*, Disciplinary proceeding No. EAF0400300001, 2007 FINRA Discip. LEXIS 15 (OHO Nov. 28, 2007).

⁶ *Id.*

⁷ See *DOE v. J. Alexander Securities, Inc.*, Complaint No. CAF010011, 205 NASD Discip. LEXIS 42 (OHO June 14, 2005).

detailed procedures concerning when the Questionnaire was required to be completed and describing how and by whom the Questionnaires should be evaluated. The Firm also held continuing education meetings with its RRs in which the use of the Questionnaire and the need to detect and avoid sales of unregistered securities was discussed. Additionally, in 2009, the Firm adopted new policies and procedures which limit the types of stock certificates that will be accepted for deposit.

VIOLATIONS

As a result of the conduct described above, the Firm violated the following rules:

1. Alpine Securities violated NASD Rule 2110, by selling unregistered securities in violation of Section 5 of the Securities Act of 1933; and
2. Alpine Securities violated NASD Rules 3010 and 2110 by failing to establish, maintain and enforce a system, to supervise the activities of its associated persons that were reasonably designed to detect and prevent the sale of unregistered securities.

SANCTIONS

The Firm consents to the imposition of the following sanctions:

1. A censure; and
2. A fine of \$40,000.

Alpine Securities specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Alpine Securities specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Alpine Securities specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The Firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Member; and
- C. If accepted:
 - 1. This AWC will become part of the Member's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Member;
 - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and

the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-3; and

4. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, has agreed to its provisions voluntarily, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

Alpine Securities Corporation

12 / 22 / 09
Date

Clark Johnston
Clark Johnston
President

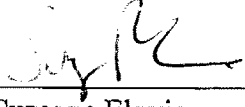
Reviewed by:

Mark N. Schneider
Counsel for Respondent
Mark N. Schneider, Esq.
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Salt Lake City, Utah 84117

Accepted by FINRA:

1-11-09
Date

Signed on behalf of the
Director of ODA, by delegated authority



Suzanne Elovic
Chief Counsel
FINRA Department of Enforcement
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