28 No. 2 PIABA B.J. 159

PIABA Bar Journal
2021

Melanie Cherdack [a1]

TRADING IN THE TIME OF COVID: A ROBINHOOD BROMANCE

Introduction

In ancient times, circa 1960, an investor would dial his stockbroker on a rotary phone, place an order to purchase shares in IBM stock, the broker would call his trader on the floor of the NYSE, the trader would make a bid to the specialist for the shares, the buy order would be matched with an order to sell, the trade would be recorded with a pencil and a scrap of paper, the order would be filled, the stock certificate would be sent through the mail, and the investor would hold the shares for decades. Not so anymore. Every aspect of investing has changed. The types of securities sold, the proliferation of exchanges, and the disparate trading systems have altered the ways in which the business of securities trading is conducted. [1] And, the era of algorithms and electronic high speed trading, [2] coupled with individual investors' ease of access to the markets through apps and trading platforms, has drastically changed the nature of trading securities. With that, the profile of the individual investor has also morphed. Suffice it to say, "Its not your father's stock market anymore."

An App Is Born

The shift to discount brokerage firms and internet trading through platforms like E*Trade and Charles Schwab opened the markets to include a ***160** new breed of individual investor seeking to make investments on their own without the use of a traditional broker. Historically, although some products were commission free, these "DIY" online trading firms generally charged commissions on every stock trade. [3] The creators of Robinhood Financial LLC ("Robinhood"), Vlad Tenev and Baiju Bhatt, two young engineers who met while studying at Stanford, saw an untapped opportunity in the niche of younger investors who did not have large sums of money to invest. The duo, who were creating software for hedge funds and other firms enabling high frequency trading, noticed that online brokerage firms had a stronghold on investors in their 40s and 50s but were failing to capture younger, less profitable investors who had smaller sums to invest. [4] They were struck by the economics, where institutions were paying fractions of a penny for trading and transactions, but where the everyday retail investor would cough up $10 in fees for executing a single trade on other platforms. In creating their platform, Tenev and Bhatt estimated that there were approximately 1.5 million individual active traders trading securities more than 10x per month--and that this could add up to thousands of dollars each year to the then existing online brokerage firms. [5]

After two years of development and raising $16 million in funding, Robinhood had 500,000 potential users on a waitlist before its "official" launch on the iOS Apple Store on December 11, 2014. [6] Most users were under the age of 30. [7] The mission, and the name of the company, derive from the founders' ***161** stated goal to create "products that would provide *everyone* with access to the financial markets, not just the wealthy." [8]

The app took off immediately. In 2015, the first full year of its existence, Robinhood executed $2 billion in trades. [9] On April 26, 2017, Robinhood announced that it had reached 2 million users and executed over $50 billion in trades. [10] In December 2017, Robinhood added options trading to its commission-less platform. [11] In December 2019, Robinhood announced the ability to buy "fractional shares" in stocks and Exchange Traded Funds ("ETFs") on its trading app stating that this feature "will open up investing to even more people, and we'll continue to find ways to democratize the financial system so everyone can participate." [12]

Robinhood's user base has ballooned since the pandemic began, with app downloads soaring. According to the *Wall Street Journal*, Robinhood, which had about 13 million accounts in May 2020, had amassed 20 million users by the year's end. [13] On January 30, 2021, it reached a record of one million downloads in a day. [14]

Charles Schwab, Meet Candy Crush

When a Robinhood investor opens the app, they are welcomed with a burst of candy colored and eye-catching offerings: showers of confetti to celebrate ***162** transactions, the hot pink price of bitcoin and a list of popular stocks to trade. [15] As one reporter noted, "Charles Schwab meet Candy Crush." [16] It is designed this way to encourage people to engage in trading since Robinhood is paid more if its customers trade more. Robinhood's success appears to have been built on a Silicon Valley playbook of behavioral nudges and push notifications, which has drawn inexperienced investors into the riskiest trading. [17] And, data shows, the more that customers engage in such behavior, the better it is for the company. [18]

People in the industry note that Robinhood's home page features a prominent ticker for bitcoin along with quotes for stocks with big daily swings in price, while exchange-traded funds--a low-cost way of diversifying a stock portfolio-- are not as accessible, leading people to get into individual stocks and cryptocurrency. [19] Even more enticing is Robinhood's business model-- "Commission-Free Investing." And, as its home page touts, if you sign up now, you can "get your first stock for free." [20]

*163 Money for Nothing: How is Trading "Free"?

So, you might ask, if Robinhood doesn't charge commissions, how does it make money? Its income comes from three primary sources: the interest earned on customer balances, payment for order flow, and margin lending. [21] Payment for order flow was the original business model. [22] It is essentially a back end payment paid to Robinhood by a third party that executes the trade. Payment for order flow is when a market maker (a firm that buys and sells securities on a regular and continuous basis at a publicly quoted price) agrees to pay another brokerage firm for routing an order to it. [23] Because Robinhood executes millions of trades, its profits from payment for order are quite substantial. According to its public filings, Robinhood made $271 million from this type of payment in the first half of 2020. [24] The trading by the third party market makers, such as Citadel Securities, is referred to as "off market," meaning that small investors' orders are executed privately instead of routing them to public markets including the New York Stock Exchange and the Nasdaq Stock Market. [25]

***164** This payment for order flow to Robinhood gets jacked up when trading is short term and frequent, such as trading in options. "Commission free" options trading, which was rolled out in December 2017, [26] is a huge profit center for Robinhood. The popularity of Robinhood's options platform soared during the pandemic when millions of investors opened accounts using the app to pass time and earn cash. [27] According to data compiled by Bloomberg Intelligence from regulatory filings, at the end of 2020, Robinhood's monthly volume of options contracts traded jumped 197% from the start of the year, eclipsing the 54% collective increase on Schwab and TD Ameritrade's platforms, as well as a 46% uptick at E*Trade. [28]

Options Trading, Democratized

For a fraction of what it costs to buy a 100 shares of a stock, a small investor can purchase a call option on that stock. Below is Robinhood's explanation of buying a call option in Uber:

> On July 15, 2019, Uber's stock was trading at $44. If you were bullish on Uber and thought the stock was going to rise, you could have bought a call with an exercise price of $48 that expired Jan 17, 2020. That option cost $3.40, and since it gives you the right to buy 100 shares of Uber for $48 any time before January 17, 2020, it cost $340 (plus fees and commissions). That premium is your cost, and you hope that Uber's price rises above $48. If

> it does, you could make a gain. If the price increases to $55 (for example), you could exercise the option, buying 100 shares for $48 each even though they're worth $55. If the stock stays below $48 through the expiration, that option won't have any value for you and you'll lose the $340. [29]

This explanation outlines how an investor can buy call options on Uber stock for 100 a contract, or a mere $340, where that investor may not have the ***165** means to buy 100 actual shares of Uber stock for $4400. To the young investor with not a lot of cash, this could appear quite enticing as it seems to make investing both easy and affordable. Unlike stock, though, this option contract has an expiration date and if it does not reach the target price of $48 by that date, it will become worthless. In essence, it is a simple bet of 100% of the option premium paid. It is also the most basic type of options trading. While Robinhood does disclose on this page that "Options often expire with no value, so you should understand their risks before investing. Also, be aware some complex options might expose you to losses beyond what you paid or earned in your original transaction." [30] It then provides this puzzling analogy:

> Takeaway
>
> An option is like an umbrella ...
>
> It could be valuable for you, or it could end up having no value at all. The beauty with an option, and with an umbrella, is that you don't have to use it. You bought it, now it's your option whether to exercise it or not. You use the umbrella when it rains. You exercise the option if it's in the money. Options expire though, umbrella's (sic) [31] don't (no analogy is perfect). [32]

Ah yes, the imperfect analogy. The imperfection is that it's missing the end of the sentence which should read "Options expire, though, umbrella's don't, AND YOU COULD LOSE YOUR ENTIRE INVESTMENT." One might say that spoiled mango yogurt which you bought six month ago on a whim, found in the back of your refrigerator, and had to throw out, might be a more apt analogy. But alas, Robinhood's Takeaway's--nothing to worry about here-- umbrella message (subtly suggesting the investor is protected) prevailed.

And, more good news, Robinhood empowers its customers "to place your first options trade directly from your app."

***166** As stated on the app, here's how its done:

> **Placing an Options Trade**
>
> 1. Tap the magnifying glass in the top right corner of your home page.
>
> 2. Search the stock you'd like to trade options for.
>
> 3. Tap the name of the stock you're looking for.

4. Tap **Trade** in the bottom right corner of the stock's Detail page.

5. Tap **Trade Options**. [33]

Voila! Your trade is placed in a matter of seconds. At the bottom of these instructions, Robinhood links to the levels of options trading strategies that it offers to its customers: "You can learn about different options trading strategies in our (sic) by checking out Basic Options Strategies (Level 2) and Advanced Options Strategies (Level 3)." [34] It was reported last year that there were fewer hurdles at Robinhood for investors to get approval for options trading based upon investor's own suitability assessments and their ability to revise their answers. [35]

As of December 2020, applying for access to options on Robinhood's app was reportedly relatively frictionless. After tapping "continue" on successive screens and setting profile parameters such as income and risk tolerance, the app greets entrants to its most advanced level with a green fireworks graphic and congratulatory message: "You're Level 3! You can now trade vertical spreads, calendar spreads, iron condors and more." [36]

As 2020 ended, options trading on Robinhood skyrocketed. Bloomberg reported that Robinhood earned an average of about 64 cents per options contract executed in December 2020, which was more than most major brokerages. [37] This is almost double the earnings of 36 cents per every 100 shares which Robinhood reportedly made on trades in S&P 500 companies that month. [38] The options platform was integral to Robinhood's earnings last ***167** year; it accounted for $440 million, or roughly two-thirds, of the company's order-flow revenue in 2020. [39]

The *New York Times* has reported that more than at any other retail brokerage firm, Robinhood's users trade the riskiest products and at the fastest pace. [40] The majority of its users are male. [41] Its users are young, with an average age of 31, and half of its customers have never invested before. [42] Robinhood estimates that the average amount in their accounts is less than $5,000, versus an estimated six figures at competing firms. [43]

But, luring young investors with no experience has come at a cost.

Suicide of an Options Customer

Robinhood came under scrutiny after it was reported that a 20 year old took his life as a result of seeing a misleading negative balance of $730,000 in his account after executing a "bull put spread" options trade. A civil lawsuit filed by his parents details the facts underlying their son's suicide. [44] The complaint alleges that one day in June, Kearns made an options trade that he thought carried a maximum loss exposure of $10,000. Later that evening, he received an email from Robinhood notifying him that his account had been restricted. He then checked the app and saw a negative cash balance of $730,165.72. But that staggering figure may have simply reflected the processing of only one side of the options transaction the lawsuit states. Kearns repeatedly contacted Robinhood's customer support team to ask what was ***168** going on, but was unable to speak with anyone. Instead, he received an email from the company at 3:26 a.m. notifying him that he did not meet the "cash requirements" for an earlier trade, and would need to deposit $178,612.73 within days. In truth, according to the lawsuit, other options that Kearns held in his account would have "more than covered his obligation." But that wasn't clear from the automatically generated emails he received in response to his desperate queries. Several hours later he ended his life, leaving a note to his family stating "How was a 20 year old with no income able to get assigned almost a million dollars worth of leverage?" [45]

After this tragic event, Robinhood announced that it had made improvements to options offerings including the ability to exercise contracts in the app, guidance to help customers through early assignment, updates to how we display buying power, more educational materials on options, and new financial criteria and revised experience requirements for new customers seeking to trade Level 3 options. [46]

The Regulators Expose the True Costs of "Free" Trading

As renegade as Robinhood likes to appear, it is still, however, governed by a complex system of securities laws and regulations. Robinhood faced a major regulatory issue in the form of an agreed to SEC fine of $65 million for its failures to fully disclose its payments for order flow business model on its website, as well as misleading representations about obtaining the "best execution"[47] for their customers on their trades. In December 2020, the SEC announced an agreement with Robinhood for this civil penalty as well as a corrective action plan. In announcing this substantial fine, the SEC stated that ***169** "Robinhood provided misleading information to customers about the true costs of choosing to trade with the firm," and that "Robinhood failed to seek to obtain the best reasonably available terms when executing customers' orders, causing customers to lose tens of millions of dollars."[48]

The SEC's complaint alleged that in FAQs on its website describing how it made money, and in certain communications with customers addressing the same issue, Robinhood omitted payment for order flow when it described its revenue sources because it believed that payment for order flow might be viewed as controversial by customers. Robinhood also instructed its customer service representatives not to mention payment for order flow in responding to questions about Robinhood's sources of revenue.

The SEC also charged Robinhood with failing to meet its "best execution" obligation to its customers. It alleged that in October 2018, after media outlets raised questions about whether Robinhood's payment for order flow rates negatively affected the execution prices that Robinhood customers received on their orders, Robinhood responded by claiming as part of an FAQ page on its website that its order execution quality matched or beat that of its competitors. However, at that time, Robinhood had begun comparing Robinhood's execution quality to competitors' and was aware it was worse in many respects. By March 2019, Robinhood had conducted a more extensive internal analysis that found Robinhood's execution quality and price improvement metrics were substantially worse than other retail broker-dealers' in many respects, and senior Robinhood personnel were aware of this analysis. Nevertheless, the claim about Robinhood's execution quality matching or beating its competitors was not removed from its website until June 2019.

The SEC found that the failure of Robinhood to comply with its best execution obligation to its customers resulted in Robinhood's customers losing significant money, making trading *more expensive* to its customers even taking into account that traditional discount firms were charging an average of $5 dollars per trade. The SEC's action alleges that "Between October 2016 and June 2019, certain Robinhood orders lost a total of approximately $34.1 million in price improvement compared to the price improvement they would have received had they been placed at competing retail broker-dealers, even after netting the approximately $5 per-order commission costs those broker-dealers were charging at the time."[49] On December 19, 2020, Financial ***170** Industry Regulatory Authority ("FINRA") also sanctioned Robinhood for violating its rules regarding best execution and its failure to supervise for best execution.[50]

A State Regulator Chimes In ....

Suffice it to say that Christmas 2020 was not a merry time for Robinhood. On December 16, the same month as the large regulatory fines against it were announced, the Massachusetts Securities Division filed an administrative complaint against Robinhood alleging violations of state securities laws for, among other things, "aggressive tactics to attract new, often inexperienced investors" and "use of strategies such as gamification to encourage and entice continuous and repetitive use of its trading application."[51] As an example of aggressive marketing, the complaint alleges that one advertisement is a clip of a young adult stating "I'm a broke college student and investments might help my future tremendously."[52] And, Robinhood provides "First Lists" on its home screen displaying "stocks chosen based upon their popularity on Robinhood's platform," which, the regulator alleges, "have the potential to influence the securities that new, unsophisticated customers with no investment experience purchase."[53] This is alleged to encourage risky, unsuitable trading in violation of the Massachusetts suitability rules.[54]

The state regulator alleges that Robinhood uses gamification strategies such as confetti raining down when a trade is completed, promises of "winning" free stock despite the low probability of this, sending constant push notifications, and contests such as "tapping" on a virtual debit card to encourage "constant participation and long term engagement" with the app with the goal of facilitating frequent risky and unsuitable trading. [55] The complaint also alleges that Robinhood failed to implement policies and ***171** procedures designed to prevent and respond to outages and disruptions on its trading platform. [56]

Robinhood filed a 50 page answer in which it disagrees with the Massachusetts regulator's allegations. In particular, it states that the newly enacted Massachusetts fiduciary duty rule does not apply to it because it is only relevant when a broker-dealer gives a customer a recommendation or provides investment advice and thus it is inapplicable since its customers make their own trading decisions. [57] It also argues that the claim fails because the regulator lacked authority to adopt a state fiduciary rule. [58] Calling out the regulator in true "Ok Boomer" fashion, Robinhood denies that it "gamifies" the experience for investors claiming that this perception of digital confetti "reflects a distinctly antiquated view of communication in the digital age." [59]

Perhaps the regulators were onto something. Events related to risk-taking and game playing in the stock market manifested themselves in a big way in January 2021, with Robinhood as an accomplice.

r/WallStreetBets: Winner Winner Chicken Dinner

The Covid-19 lockdown became a heyday for day-trading apps as people were looking to escape from the isolation and boredom in their everyday lives. [60] With the increase in day traders, digital communities of stock gurus sprouted up on Twitter and Discord, a chat app popular with gamers. [61] Social ***172** media became a space for an entire subculture of irreverent investors. Investors began transforming social-media platforms into a place to swap tips, hype stocks and brag about extraordinary trading gains (and losses). Nowhere is this more prevalent than in the subreddit forum r/WallStreetBets ("r/WSB"). The r/WSB forum is a cacophony of memes and screenshots of gigantic losses (captioned "loss porn") and gains, both of which are equally applauded. The underlying principle for r/WSB users is extreme betting with the highest possible risks; generally, this means short-term options trading. [62] This type of investor is speculating in the securities markets as a form of gambling, and their decisions are entirely unrelated to the fundamentals of the underlying company. [63] The average person would have never heard of r/WSB but for the colossal stunt they attempted to orchestrate on the hedge fund investors.

As r/WSB users began to look at GameStop, a retail video game store, as an undervalued stock, they also noticed how heavily shorted the stock was by institutional investors. [64] Some user suggested that, if they acted all together, they could stick it to the short sellers (*i.e.*, the hedge funds) and make a profit doing so. [65] They encouraged forum users to buy the GameStock stock to drive up the price and to also buy calls options which similarly had the effect of driving the price up. This caused a "Short Squeeze" forcing the short sellers (hedge funds) to go into the market and buy the shares that they shorted to reduce their leverage and cover their potential market exposure. As a result, during the month of January 2021, GameStop's stock price ballooned to a high of $483 from a low of $17. [66]

But what does this have to do with Robinhood? A lot. The /rWSB crowd did much of their frenzied trading on Robinhood, which added more than ***173** 500,000 users during that time period while their app zoomed to the top of the Apple store. [67] The unprecedented trading came to a halt on January 28, 2021, when Robinhood temporarily blocked purchases of GameStop stock and other volatile stocks which were also being pumped up by the /rWSB traders. [68] Much speculation swirled as to the reasons why this occurred. Robinhood insists that the restrictions were a result of its inability to meet their clearinghouses' requirements of collateral deposits to cover the unanticipated surge in trading volume. [69] The trading restrictions have resulted in a number of class action lawsuits [70] and congressional hearings. [71]

The congressional hearings had a circus like element as the Reddit user who started the frenzy, Roaring Kitty, seemed to poke fun at the establishment. [72] Political pundits referred to the hearings as "a lot of yelling," but believe that no real legislation will come of it. [73] Instead, it may be up to ***174** the regulators, such as the SEC, to act. FINRA has announced one of its initiatives for 2021 is to focus on communications with the public risks associated with app-based platforms with interactive or "game-like" features that are intended to influence customers, their related forms of marketing, and the appropriateness of the activity that they are approving clients to undertake through those platforms, (*e.g.*, options). [74] FINRA is also focusing on best execution by "zero commission" firms. [75]

The Ultimate Bro Move, Robinhood and Reddit Showboat at the SuperBowl

In the aftermath of the Short Squeeze, many of the retail /rWSB investors who didn't get out of their positions suffered huge losses. [76] There were posts on /rWSB by people who cashed out of their 401(k) at the start of the pandemic, invested at the wrong time, and lost everything. [77] They may also have incurred significant tax liability, with an inability to pay it.

***175** In the meantime, Reddit was a proclaiming victory. It plunked down its entire advertising budget for a five second SuperBowl advertisement using this screen shot: [78]

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE
Reddit applauds itself as helping the little guys take on Wall Street in the Short Squeeze. The ad references “tendies” which is /rWSB speak meaning profits-in a sly wink to the bros. Robinhood also ran its own SuperBowl ad with the tag line “We're all Investors,” perpetuating its “democratization” of the stock market ideal. [79] All this amounted to some expensive chest beating for helping the little guys' massive participation in the securities markets during Covid.

***176 Robinhood Keeps its Eyes on Its Public Offering**

Worlds collided when Reddit's Internet sharing platform met Robinhood's instant trading app, creating havoc in the financial markets for a few days. The /rWSB investors tried to weaponize the market against the hedge funds-- their perceived enemies-- and did in fact succeed in increasing the price of GameStock and some other waning brick and mortar stocks that were shorted. But in the end, for every winner in the market, there is a loser. And, many of those losers were /rWSB users who traded through Robinhood. It seems, however, that no matter what, Robinhood and Wall Street capitalists who invested in it may still end up on the winning side. Shortly after the Robinhood trading shutdown, it raised an additional $3.4 billion though convertible debt, allowing it to maintain its $11.7 billion valuation. [80] It also obtained a $600 million line of credit from Goldman Sachs and JP Morgan, making it poised for an anticipated IPO, direct listing or Special Purposed Acquisition Company merger. [81] Hmm, doesn't sound much like “investing for *everyone.”*

The Future Is In The App

Robinhood has made the stock market more accessible to all though its innovative ideas. It's responsible for a reduction in trading fees across the board at the traditional brokerage firms. [82] And, it appears that trading apps are here to stay as they are becoming wildly popular downloads on Apple's app store. [83] While Robinhood's zero-commission bait and its offers of free stock to new users attracts a stampede of new investors, the downside is that many of these folks are inexperienced, reducing their true ability to reap the benefits from their new market access. Most of the Robinhood trades are made based ***177** upon price fluctuations rather than stock fundamentals. [84] Research shows that many individual investors would do better using a different trading model and that investors underperform the market by trying to time it or by acting as short term traders, such as those trading options. [85] This leads to an inherent conflict because Robinhood makes more money if its customers frequently trade stocks and options, whether or not their customers make money. [86] As a result, Robinhood customers may end up overtrading, to their own detriment. Without increased financial literacy, the app merely provides a newbie investor access to a type of slot machine, rather than an opportunity to create wealth for the future. [87]

Incoming SEC Chairman Gary Gensler has set his sights on new trading platforms which he characterizes as “using psychological props to get people to trade more.” [88] Addressing the House Committee on Financial Services, Mr. Gensler stated that new rules may be needed to address the gamification of stock trading on such brokerage apps. He announced that an SEC report addressing the issues raised by the Game Stop episode will be released this summer. [89]

New technology and app based trading platforms allowing small retail customers instant access to the financial markets is the new frontier. With proper regulation and oversight, including investor education and financial literacy elements, this could possibly be a win for the bros.

Footnotes

a1 Copyright © 2021 Melanie S. Cherdack, All Rights Reserved. Ms. Cherdack is of counsel to the law firm of Genovese Joblove & Battista, P.A. Her practice primarily consists of representing individual and institutional investors in securities arbitration claims. She formerly served as assistant general counsel to PaineWebber Inc. (now known as UBS Financial). For more information, go to: www.investorfraudlaw.com.

1 By year end 2018, trading in the U.S. equity markets was spread among a number of highly automated trading centers: 13 registered exchanges, more than 40 alternative trading systems and over 200 over-the-counter market-makers. Press Release, *SEC Adopts Rules That Increase Information Brokers Must Provide to Investors on Order Handling*, SEC, (Nov. 2, 2018), https://www.sec.gov/news/press-release/2018-253.

2 Bob Pisani, *Man Vs. Machine: How Stock Trading Got So Complex*, CNBC, (Sept. 13, 2010, 6:03 P.M.), https://www.cnbc.com/id/38978686.

3 *See* Casey Bond, *Brokerage Companies That Let You Trade For Free*, HUFFINGTON POST, (May 6, 2019, 9:40 P.M.), https://www.huffpost.com/entry/trade-free-commission-investing_l_5cd07733e4b0e4d757369f28.

4 Halah Touryalai, *Forget 10 dollar trades, Meet Robinhood: The New Brokerage Targets Millennials With Little Cash*, FORBES, (Feb. 26, 2014, 10:03 A.M), https://www.forbes.com/sites/halahtouryalai/2014/02/26/forget-10-trades-meet-robinhood-new-brokerage-targets-millennials-with-little-cash/?sh=d460d577f483.

5 *Id.*

6 Josh Constine, *Robinhood Launches Zero-Fee Stock Trading App*, TECHCRUNCH, (Dec. 11, 2014, 9:01 A.M.), https://techcrunch.com/2014/12/11/robinhood-free-stock-trading/.

7 Janet Morrissey, *With No Frills and No Commissions, Robinhood App Takes on Big Brokerages*, N.Y. TIMES, (Feb. 18, 2017), https://www.nytimes.com/2017/02/18/business/robinhood-stock-trading-app.html.

8 *Our Story,* ROBINHOOD, https://robinhood.com/us/en/support/articles/our-story/ (last visited Apr. 21, 2021).

9 Morrissey, *supra* note 7.

10 *Two Million Thanks,* ROBINHOOD, https://blog.robinhood.com/news/2017/4/26/two-million-thanks (last visited Apr. 21, 2021).

11 *Introducing Options Trading,* ROBINHOOD, https://blog.robinhood.com/news/2017/12/12/introducing-options-trading (last visited Apr. 21, 2021).

12 *Id.*

13 Peter Rudegeair, Kirsten Grind & Maureen Farrell, *Robinhood's Reckoning: Facing Life After GameStop*, WALL ST. J., (February 5, 2021), https://www.wsj.com/articles/robinhoods-reckoning-can-it-survive-the-gamestop-bubble-11612547759?mod=searchresults_pos16&page=1.

14 Eliza Haverstock, Alex Conrad & Antoine Gara, FORBES, *Robinhood Upping Emergency Funding to $3 Billion as Download Hits Record 1 Billion Per Day,* (Feb. 1, 2021, 11:44 A.M.), https://www.forbes.com/sites/elizahaverstock/2021/02/01/exclusive-robinhood-secures-another-1-billion-in-funds-and-is-in-talks-for-more-as-downloads-hit-record-1-million-per-day/?sh=824fac030055.

15 David Ingram, *Designed to Distract: Stock App Robinhood Nudges Users to Take Risks*, NBC NEWS, (Sept. 12, 2019, 2:59 P.M.), https://www.nbcnews.com/tech/tech-news/confetti-push-notifications-stock-app-robinhood-nudges-

investors-toward-risk-n1053071. Robinhood has recently abandoned the confetti, replacing it with new imagery congratulating the user on investing milestones. Maggie Fitzgerald, *Robinhood Gets Rid of Confetti Feature Amid Scrutiny Over Gamification of Investing*, CNBC, (Mar. 31, 2020, 9:05 a.m.), https://www.cnbc.com/2021/03/31/robinhood-gets-rid-of-confetti-feature-amid-scrutiny-over-gamification.html.

16 *Id.*

17 Nathaniel Popper, *Robinhood Has Lured Young Traders, Sometimes with Devastating Results,* N.Y. TIMES, (Feb. 2, 2021), https://www.nytimes.com/2020/07/08/technology/robinhood-risky-trading.html.

18 *Id.*

19 Ingram, *supra* note 15.

20 *Investing for Everyone,* ROBINHOOD, https://robinhood.com/us/en/ (last visited Apr. 21, 2021).

21 Morrissey, *supra* note 7.

22 One of the early services Robinhood rolled out to create a revenue stream is called “Robinhood Gold.” Launched in September 2016, Robinhood Gold offered after hours trading, margin loans and instant bank deposits for a monthly fee. *Robinhood Gold,* ROBINHOOD, (Sept. 29, 2016), https://blog.robinhood.com/news/2016/9/28/robinhood-gold. Of the $1.4 billion Robinhood in margin which it loaned out as of June 30, 2020, the company had just over $47 million in “doubtful accounts.” This amount, although a small percentage, has been called remarkably high by industry standards. Stephen Gandel, *Robinhood offers loans to buy stock - they were 14 times more likely to default,* CBS NEWS, (Feb. 5, 2021, 6:09 P.M.), https://www.cbsnews.com/news/robinhood-stock-loans-were-14-times-more-likely-to-default-than-rivals/.

23 *Executing an Order,* SEC, https://www.sec.gov/fast-answers/answerspayordfhtm.html.

24 ROBINHOOD, RHS SEC Rule 606a and 607 Disclosure Report Q2 2020, https://cdn.robinhood.com/assets/robinhood/legal/RHS%20SEC%C20Rule%C20606a%C20and%C20607%C20Disclosure%C20Report%C20Q2%202020.pdf?source=content_type% 3Areact%7Cfirst_level_url% 3Anews%7Csection% 3Amain_content%7Cbutton% 3Abody_link.

25 Alexander Osipovich, *GameStop Mania Highlights Shift to Dark Trading*, WALL ST. J., (Feb. 12, 2021, 5:33 A.M.), https://www.wsj.com/articles/gamestop-mania-highlights-shift-to-dark-trading-11613125980.

26 *Introducing Options Trading,* ROBINHOOD, https://blog.robinhood.com/news/2017/12/12/introducing-options-trading (last visited Apr. 21, 2021).

27 Annie Massa and Sara Ponczek, *Robinhood's Lucrative Options-Trading Platform Attracts Mounting Scrutiny*, BLOOMBERG, (Feb. 4, 2021, 7:00 A.M.), https://www.bloomberg.com/news/articles/2021-02-04/robinhood-tallies-an-options-bonanza-while-newcomers-wreak-havoc.

28 *Id.*

29 *What is an Option?,* ROBINHOOD, https://learn.robinhood.com/articles/4q86vJm1iPRWhoPVzvD63r/what-is-an-option/ (last visited Apr. 21, 2021).

30 *Id.*

31 This is not the only grammatical error or typo on the website. Remember, these guys are genius engineers, not liberal arts majors.

32 *Id.*

33 *Placing an Options Trade,* ROBINHOOD, https://robinhood.com/us/en/support/articles/placing-an-options-trade/ (last visited Apr. 21, 2021).

34 *Id.*

35 Gunjan Banjeri and Alexander Osipovich, *Free Trades, Jackpot Dreams Lure Small Investors to Options*, WALL ST. J., (June 24, 2020, 5:30 A.M.), https://www.wsj.com/articles/free-trades-jackpot-dreams-lure-small-investors-to-options-11592991000?mod=hp_lead_pos3.

36 Massa and Ponczek, *supra* note 27.

37 *Id.*

38 *Id.*

39 *Id.*

40 Popper, *supra* note 17.

41 Veronica Dagher and Caitlin McCabe, *Robinhood Wants More Female Investors. So Does Everyone Else,* WALL ST. J., (Jan. 7, 2021, 5:30 A.M.), https://www.wsj.com/articles/robinhood-wants-more-female-investors-so-does-everyone-else-11610015400.

42 *Id.*

43 Avi Salzman, *Robinhood's User Base is Still Growing, Analyst Says,* BARRON'S, (Oct. 7, 2020, 3:40 P.M.), https://www.barrons.com/articles/robinhoods-growth-rate-is-still-super-hot-analyst-projects-51602099647.

44 Maggie Fitzgerald*, Robinhood sued by family of 20-year-old trader who killed himself after believing he racked up huge losses,* CNBC, (Feb. 8, 2021, 9:26 P.M.), https://www.cnbc.com/2021/02/08/robinhood-sued-by-family-of-alex-kearns-20-year-old-trader-who-killed-himself-.html.

45 *Id.*

46 *An Update on Robinhood's Options Offering,* ROBINHOOD, https://blog.robinhood.com/news/2020/9/7/an-update-on-robinhoods-options-offering (Sept. 7, 2020).

47 The SEC's action against Robinhood reiterated that broker-dealers such as Robinhood owe their customers a duty of "best execution." *See* In the Matter of Robinhood Fin., LLC, Respondent, Release No. 10906 (Dec. 17, 2020), https://www.sec.gov/litigation/admin/2020/33-10906.pdf [hereinafter "SEC 12/17/20 Order"]. Best execution requires that a broker-dealer endeavor to execute customer orders on the most favorable terms reasonably available in the market under the circumstances. This includes taking into account price, order size, trading characteristics of the security, as well as the potential for price improvement and other factors. *Id. at* ¶ 13 (citations omitted).

48 Press Release, *SEC Charges Robinhood Financial With Misleading Customers About Revenue Sources and Failing to Satisfy Duty of Best Execution*, SEC, https://www.sec.gov/news/press-release/2020-321 (last visited May 11, 2021).

49 SEC 12/17/20 Order at ¶ 42, *supra* note 47.

50 FINRA, Letter of Consent, Waiver and Consent, No. 2017056224001, https://www.finra.org/sites/default/files/2019-12/robinhood-awc-121919.pdf.

51 *In re Robinhood Financial, LLC,* Docket No. E-2020-0047, Massachusetts Securities Division, https://www.sec.state.ma.us/sct/current/sctrobinhood/MSD-Robinhood-Financial-LLC-Complaint-E-2020-0047.pdf

52 *Id* at ¶ 21.

53 *Id* at ¶ ¶ 34, 36.

54 *Id* at ¶ 39.

55 *Id.* at ¶ ¶ 40-51.

56 *Id.* at ¶ ¶ 23-33. Some of these outages have resulted in several class action lawsuits which have been consolidated *Beckman v. Robinhood Financial, LLC et al.* (3:20-cv-01626-JD) (N.D. Cal. 2020).

57 Caitlin McCabe, *Robinhood, Facing Ire on Many Fronts, Defends its App to Regulators*, WALL ST. J., (Jan. 29, 2021 6:43 P.M.), https://www.wsj.com/articles/robinhood-facing-ire-on-many-fronts-defends-its-app-to-regulators-11611963829.

58 Nate Raymond, *Robinhood Rejects Massachusetts Regulator's Charges it Encourages Risky Trading,* REUTERS, (Jan. 29, 2021 6:37 P.M.), https://www.reuters.com/article/us-massachusetts-robinhood/robinhood-rejects-massachusetts-regulators-charges-it-encourages-risky-trading-idUSKBN29Y343.

59 *See* McCabe, *supra* note 57.

60 Michale Wurstorn, Misha Frankl-Duval and Gregory Zuckerman, *Everyone's a Day Trader Now*, WALL ST. J., (July 25, 2020 12:01 A.M.), https://www.wsj.com/articles/everyones-a-day-trader-now-11595649609.

61 *Id.*

62 John Sarlin, *Inside the Reddit army that's crushing Wall Street*, CNN, (Jan. 30, 2021 7:10 A.M.), https://www.cnn.com/2021/01/29/investing/wallstreetbets-reddit-culture/index.html.

63 Jason Zweig, *Playing the Market Has a Whole New Meaning*, WALL ST. J., (June 12, 2020 11:00 A.M.), https://www.wsj.com/articles/playing-the-market-has-a-whole-new-meaning-11591974010.

64 Emily Stewart, *The GameStop stock frenzy, explained,* VOX, (Jan. 28, 2021 12:29 P.M.), https://www.vox.com/the-goods/22249458/gamestop-stock-wallstreetbets-reddit-citron.

65 *Id.*

66 Annie Nova, *More bubbles, less shorting. What the GameStop craziness could mean for the future of investing,* CNBC, (Feb. 10, 2021 9:49 A.M), https://www.cnbc.com/2021/02/06/what-the-gamestop-craziness-could-mean-for-the-stock-markets-future.html.

67 Peter Rudegeair and Orla McCaffrey, *Robinhood Raises $1 Billion to Meet Surging Cash Demands*, WALL ST. J., (Jan. 29, 2021 10:25 P.M.), https://www.wsj.com/articles/robinhood-raises-1-billion-to-meet-surging-cash-demands-11611928504?page=1.

68 Ben Winck. *Robinhood blocks purchases of GameStop, AMC, and others after days of Reddit-fueled Rallies*, BUSINESS INSIDER, (Jan. 28, 2021 2:54 P.M.), https://markets.businessinsider.com/news/stocks/robinhood-removes-gamestop-amc-reddit-wallstreetbets-fueled-stock-rally-gme-2021-1-1030015292.

69 *What happened this week,* ROBINHOOD, https://blog.robinhood.com/news/2021/1/29/what-happened-this-week (Sept. 7, 2020).

70 Megan Leonhardt, *Robinhood now faces roughly 90 lawsuits after GameStop trading halt--here's how customers might actually get their day in court*, CNBC, (Feb. 17, 2021, 3:04 P.M.) https://www.cnbc.com/2021/02/17/robinhood-faces-lawsuits-after-gamestop-trading-halt.html.

71 Alex Gangitano and Sylvan Lane, *Robinhood braces for lawmaker outrage at GameStop hearings,* THE HILL (Feb.4, 2021 6:00 A.M.), https://thehill.com/policy/technology/537266-robinhood-braces-for-lawmaker-outrage-at-gamestop-hearings.

72 Jessica Menton and Savannah Behrmann, '*I am not a cat': Chaotic GameStop hearing provides tense exchanges, humor as lawmakers grill key players in saga*, USA TODAY, (Feb. 18, 2021 6:45 P.M.) https://www.usatoday.com/story/money/markets/2021/02/18/robinhood-vladimir-tenev-keith-gill-roaring-kitty-gamestop-hearing/6799946002/.

73 Tory Newmyer, Douglas MacMilliam and Hamaz Shaban, *Congress presses Robinhood CEO on Company's role in GameStop stock frenzy*, WASH. POST: BUSINESS, (Feb. 18, 2021 7:32 P.M.), https://www.washingtonpost.com/business/2021/02/18/gamestop-robinhood-citadel-roaring-kitty-hearing-live-updates/.

74 FINRA, *2021 Report on FINRA's Examination and Risk Monitoring Program,* https://www.finra.org/rules-guidance/guidance/reports/2021-finras-examination-and-risk-monitoring-program/selected-highlights (last visited May 12, 2021).

75 *Id.*

76 Abram Brown, *Reddit Traders Have Lost Millions Over GameStop. But Many Are Refusing to Quit.*, FORBES, (Feb. 4, 2021 9:05 A.M.), https://www.forbes.com/sites/abrambrown/2021/02/04/reddit-traders-have-lost-millions-over-gamestop-but-many-are-refusing-to-quit/?sh=2a227fed2d8f.

77 Emily Stewart, *Who gets to be reckless on Wall Street*?, VOX, (July 9, 2020 8:00 A.M.), https://www.vox.com/business-and-finance/2020/7/9/21314119/stock-market-day-trading-reddit-dave-portnoy-barstool-robinhood.

78 Tiffany Hsu, *Reddit's 5-Second Ad Was an Unlikely Superbowl Winner*, N.Y. TIMES, (Feb. 8, 2021), https://www.nytimes.com/2021/02/08/business/media/reddit-super-bowl-ad.html.

79 Jordan Valinsky, *Robinhood is airing a Super Bowl ad amid its GameStop fiasco*, CNN, (Feb. 5, 2021 9:09 A.M.), https://www.cnn.com/2021/02/03/media/robinhood-super-bowl-commercial/index.html.

80 Kate Rooney, *Why investors were willing to write Robinhood a $3 billion check during the GameStop chaos*, CNBC, (Feb. 3, 2021 6:36 P.M.), https://www.cnbc.com/2021/02/03/why-investors-were-willing-to-write-robinhood-a-3-billion-check-during-the-gamestop-chaos-.html.

81 *Id.*

82 Varun Jadia, *The Drivers and Obstacles of Financial Democratization*, BUSINESS REVIEW BERKLEY (May 3, 2019), https://businessreview.berkeley.edu/the-drivers-and-obstacles-of-financial-democratization.

83 *See*, Audrey Conklin, *Robinhood rival apps aim to make mobile trading easy for amateur investors*, FOX BUSINESS, (Jan. 29, 2021), https://www.foxbusiness.com/technology/robinhood-alternative-apps.

84 *Id.*

85 David Jackson, *Robinhood and its customers are changing the brokerage industry - here's how,* SEEKING ALPHA, (Sept. 1, 2020 7:31 A.M.), https://seekingalpha.com/news/3610381-robinhood-and-customers-are-changing-brokerage-industry-how.

86 *Id.*

87 Jadia, *supra*, note 82.

88 Matthew Goldstein, *S.E.C. chair Gensler emphasizes transparency in markets*, N.Y. TIMES, (May 6, 2021), https://www.nytimes.com/2021/05/06/business/gary-gensler-priorities-gamestop.html.

89 *Id.*

28 No. 2 PIABABJ 159

End of Document