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## COMMENTARY

### *ROBINHOOD RESTRICTS TRADING OF “MEME” STOCKS: LEGAL OR ILLEGAL?*

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On January 28, 2020, Robinhood placed trading restrictions on the stocks of several companies.<sup>1</sup> Traders were prevented from buying stocks like GameStop, AMC, and Bed Bath & Beyond.<sup>2</sup> Robinhood justified its actions in a blog post stating that its “clearinghouse-mandated deposit requirements related to equities increased ten-fold. And that’s what led [it] to put temporary buying restrictions in place on a small number of securities that the clearinghouses had raised their deposit requirements on.”<sup>3</sup> To put it simply, by restricting trading, Robinhood saved itself from collapse.<sup>4</sup> Over the next few weeks, over ninety lawsuits were filed against Robinhood by users.<sup>5</sup> And the question is whether any of these users will be able to recover damages for losses they incurred as a result of Robinhood’s actions.

Various members of the legal community have commented on the likelihood of Robinhood users being able to recover, and the consensus among legal professionals is no.<sup>6</sup> Brokerages

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<sup>1</sup> Oscar Gonzalez & David Priest, *Robinhood Backlash: Here’s What You Should Know About the GameStop Stock Controversy*, CNET (Feb. 5, 2021, 5:00 AM), <https://www.cnet.com/personal-finance/robinhood-backlash-heres-what-you-should-know-about-the-gamestop-stock-controversy/>.

<sup>2</sup> *Id.*

<sup>3</sup> Robinhood, *What Happened this Week*, ROBINHOOD: UNDER THE HOOD (January 20, 2021), <https://blog.robinhood.com/news/2021/1/29/what-happened-this-week>.

<sup>4</sup> Matt Egan, *The ‘Enormous Catastrophe’ that Robinhood Only Narrowly Avoided*, CNN (Feb. 18, 2021, 4:36 PM), <https://www.cnn.com/business/live-news/robinhood-gamestop-reddit-hearing-congress/index.html>.

<sup>5</sup> 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 PM), <https://www.cnbc.com/2021/02/17/robinhood-faces-lawsuits-after-gamestop-trading-halt.html>.

<sup>6</sup> Chris Dolmetsch, Christopher Yasiejko & Christian Berthelsen, *Robinhood Users Suing Over Trade Limits Face High Legal Bar*, BLOOMBERG (Jan. 28, 2021, 9:47 AM), <https://www.bloomberg.com/news/articles/2021-01-28/robinhood-customers-sue-over-removal-of-gamestop>.

typically have board discretion to limit trades pursuant to their user agreements.<sup>7</sup> And Robinhood's user agreement clearly states it "may at any time, in its sole discretion and without prior notice to [users], prohibit or restrict [users] ability to trade securities."<sup>8</sup> While some users are likely to be mad as a result of the sudden restrictions, the user agreement clearly states that Robinhood was permitted to restrict trading.<sup>9</sup> The user agreement is a contract; thus, the contract said it could do this.<sup>10</sup>

Still, user agreements are not "always an absolute protection from aggrieved clients."<sup>11</sup> It depends on the particular situation that occurs.<sup>12</sup> For example, there could be liability if a brokerage allowed trading by "some clients but not others."<sup>13</sup> Additionally, many lawsuits are also alleging negligence on the part of Robinhood, some are even alleging violations of various states' laws, and a few are alleging securities law and antitrust law violations.<sup>14</sup> While it is too early to know whether any of these lawsuits will actually be successful, it is troubling that a brokerage may be able to, by way of a simple user agreement, deprive retail investors of access to the open-market while hedge funds and institutional investors can still access it.<sup>15</sup>

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<sup>7</sup> Egan, *supra* note 4.

<sup>8</sup> Tom Hals, *Analysis: Robinhood and Reddit Protected from Lawsuits by User Agreement*, Congress, REUTERS (Jan. 30, 2021, 5:20 AM), <https://www.reuters.com/article/us-retail-trading-robinhood-liability-an/analysis-robinhood-and-reddit-protected-from-lawsuits-by-user-agreement-congress-idUSKBN29Z0HI>.

<sup>9</sup> Egan, *supra* note 4.

<sup>10</sup> Hals, *supra* note 8.

<sup>11</sup> Dolmetsch, *supra* note 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Leonhardt, *supra* note 5.

<sup>15</sup> Gonzalez, *supra* note 1.