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October 1, 2021

VIA ELECTRONIC SUBMISSION

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

Re: *Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Advisor Use of Technology to Develop and Provide Investment Advice, Rel. Nos. 34-92766; IA-5833; File No. S7-10-21*

Dear Ms. Countryman,

Robinhood Financial, LLC ("Robinhood" or "the Firm")¹ submits this letter in response to the U.S. Securities and Exchange Commission ("Commission" or "SEC") request for information and public comment on customer engagement practices by broker-dealers and registered investment advisers through digital "platforms" such as websites and mobile applications (the "Request"), what the SEC has termed "digital engagement practices" (or "DEPs").² Robinhood appreciates the opportunity to provide comments. Due to the brevity of the comment period, Robinhood may seek to supplement its comments, and if it does, the Firm respectfully requests that the Commission take such comments into consideration.

Robinhood's mission is to democratize finance for all, regardless of a customer's background, income, or wealth. There is a large investment and wealth gap in the United States, which has created a divide in our country between the "haves" and the "have nots."³ Robinhood has helped close this gap

¹ Robinhood is a wholly-owned subsidiary of Robinhood Markets, Inc. ("Robinhood Markets").

² *Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice*, 86 Fed. Reg. 49,067 (Sept. 1, 2021). By using the term "digital engagement practices," we do not agree with any characterization that customer engagement is new or problematic when it is technology-based. As described in this letter, the examples of "DEPs" — or customer engagement — the SEC identifies in its Request are activities that broker-dealers and advisers have engaged in for decades. As acknowledged in the Request and described below, such engagement provides important benefits to investors.

³ We use the term "have not" to mean members of communities who traditionally have been underserved by financial institutions and faced barriers preventing or limiting access to traditional brokerage and investment advisory services.



with its “every customer” product offering that has no account minimums, no trading commissions, a uniform margin interest rate, fractional trading, and a user-friendly interface that is easily accessible. Robinhood further promotes financial opportunities for all by communicating with its customers in ways that are designed to enhance retail investors’ financial literacy, increase investment awareness, and empower customers to actively manage their investments. An accessible, enjoyable interface that engages customers benefits those customers; and the more time investors spend accessing our free educational tools and resources, the more informed those investors are and the better equipped they are to achieve their financial goals. We believe our efforts to reach investors through straightforward and easy to understand educational content are working. For example, from January 1, 2020 to March 31, 2021, our Robinhood “Learn” content, which we discuss in more detail below, was viewed more than 8 *million* times.

By removing traditional barriers to investing, Robinhood opened the markets to tens of millions of retail investors from all backgrounds. But equally important to providing access, we have demystified Wall Street and engaged these investors. Through our mobile app and website, Robinhood provides its customers with tools, information, and interactions that many could not afford when investors were required to pay commissions and/or advisory fees. Customers are able to engage with their investments and access our capital markets as they plan for their financial well-being and their futures. Engagement in this context is good; the more retail customers are involved in their finances, paying attention to their assets, and learning about investing, the better equipped they are able to build for their financial futures.

To be clear, Robinhood engages with its customers by providing them information they want or need, such as updates on stocks they own or track, answers to questions they or other customers frequently ask, or confirmations when their trades are executed. In other words, we engage our customers with the same types of information that broker-dealers have engaged their customers with for decades. Only now, using our mobile application and website, we are able to engage with everyone, regardless of their wealth, income or background, whenever and wherever they want. Robinhood does *not* use predictive analytics or “deep learning” to make any recommendation that our customers invest in specific securities. And Robinhood does not target customers to induce trading based on who they are or what we predict they will do. Instead, Robinhood does allow customers to subscribe to notifications that alert them to certain news affecting securities in their portfolio or on their watch list. We also provide lists of securities in the same industry (which have been developed by independent third parties) and lists of securities that are popular among Robinhood customers. Our lists are not personalized or tailored to any particular customer; Robinhood simply aggregates and presents complex information in ways that customers find useful, through a mobile app and website interface that is understandable and convenient.

We believe those “have nots” have been deprived of opportunities for wealth creation and financial well-being previously enjoyed by “haves” who could afford the cost of investing. We do not use the term “have not” disparagingly or to suggest anyone falling under this category lacks the intelligence or capacity to make well-informed investment decisions. We believe every “have not” is capable of managing his or her finances, and deserves the opportunity to participate in the markets and in his or her own financial future. Our belief in empowering previously underserved segments of investors is at the heart of our mission and the core of our values.



Mobile applications, such as the one Robinhood offers, are increasingly important for engaging customers across industries. Customers are accustomed to interacting with apps to order food and groceries, arrange transportation from one place to another, and, importantly, manage their finances. Today, customers want to and do use mobile apps to manage their bank accounts, file their taxes, and even apply for mortgages. Many customers also wish to interact with their broker through an easy to use and understand mobile app. In fact, according to a study from February 2021, nearly half (48 percent) of new investors reported accessing their brokerage accounts primarily through a mobile app.⁴

Our rapid growth proves that retail investors find our mobile app and website helpful and user-friendly; and our customers were waiting for the right platform to help them access and understand the markets. We have over 22 million funded customer accounts as of June 30, 2021, and we are seeing new customers open accounts every day. Over half of the Firm's new customers state that they are new to investing.⁵ We believe that this is *unequivocally* a good thing as we have opened the door to investing for a new generation of investors who are younger and more diverse than ever before.⁶ Everyday investors have clearly demonstrated their desire and need for understandable information in an accessible medium and a platform that is welcoming and convenient.

As we explain below, Robinhood's use of digital communications and features is driven by our mission to democratize finance for all, including by promoting financial literacy. Section I of this comment letter provides additional background regarding Robinhood, our customers, and our use of so-called DEPs.⁷ Section II provides information regarding broker-dealer customer engagement practices generally, the extensive regulatory framework governing brokers' engagement and communication with their customers, and certain legal considerations as the SEC considers potential regulatory actions in response to the Request.⁸ Exhibit A ("DEP Categories Identified by the SEC") provides supplemental information regarding Robinhood's use of so-called digital engagement practices as they relate to the nine categories identified in the Request; as noted, Robinhood does not engage in many of the practices

⁴ FINRA Investor Education Foundation & NORC at the University of Chicago, *Investing 2020: New Accounts and the People Who Opened Them* (Feb. 2021) ("FINRA New Account Study"), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

⁵ Based on data for the period from January 2015 to March 21, 2021.

⁶ See FINRA New Account Study (finding the majority of new investors were under the age of 45 and were more racially and ethnically diverse than investors who already owned taxable investment accounts prior to 2020); see also Aaron Brown, *Stock Investors are Younger and More Racially Diverse*, Yahoo! (Sept. 21, 2020) (reporting the results of a Yahoo Finance Harris poll revealing that the percentage of younger Americans, African-Americans, and Hispanics owning at least one individual stock not held in retirement account increased from 2016 to 2020), <https://www.yahoo.com/now/stock-investors-younger-more-racially-100004820.html>.

⁷ This section responds, in part, to Item II.A (Use of DEPs) and II.B (Development of DEPs; Use of Artificial Intelligence or Machine Learning) of the SEC's Request.

⁸ This section responds to Item II.C (Regulation of DEPs) of the SEC's Request.



identified in the Release.⁹ Lastly, Exhibit B provides visual examples of several forms of digital communications and features described in this letter.

While we recognize that appropriately tailored regulation is necessary to ensure that our markets are fair and efficient, and we appreciate the opportunity to respond to the Request, we are concerned that any effort by the SEC to curb broker-dealers' communications with their customers beyond the comprehensive framework that exists today may jeopardize the progress the industry has made in making our markets more diverse and accessible to everyone.

I. Robinhood's Mission Is to Shrink the Investment Gap and Wealth Disparity, and Technology Is Key to Accomplishing That Goal.

A. Robinhood's Digital Platform Empowers Everyday Retail Investors.

Robinhood seeks to eliminate the disparity between the "haves" and the "have nots." Investing has traditionally been the domain of the "haves." People who can afford high commissions, minimum account balances, and hundred-dollar single shares of stock—the "haves"—historically had access to the U.S. capital markets. The "have nots"—workers and women and people of color, first time investors, people from rural communities and inner cities alike, gig economy workers and freelancers—did not. By introducing commission-free trading, eliminating minimum account balances, and offering fractional trading, Robinhood changed that.

But providing access alone does not level the playing field. The "haves" do not only benefit from access—they also benefit from continuous engagement. High-net-worth customers paying large commissions to their brokers or fees to their investment advisers to receive information and attention that keeps them engaged in their financial planning. A "have" might receive information from friends and colleagues discussing the markets and finances over dinner, golf, or a cocktail party. A "have" has an investment professional who will answer questions, provide explanations, and highlight relevant information—for example, a broker who monitors the market all day might call to inform a "have" if the price of a stock he owns moves significantly, or invite his client to exclusive events to hear the views of other investment professionals. A "have" receives financial rewards, such as breakpoint or rollover discounts, when he increases his already-substantial investment activity; he also receives rewards such as tickets to professional sporting events, concerts, or shows with his broker, who entertains his client in order to maintain and deepen the relationship. A "have," in other words, receives information and incentives that keep him engaged with the markets and focused on growing his financial wealth.

The Commission is focused here on *digital* engagement. Now that technology has created cost-effective ways for brokers to engage customers who have been historically underserved and/or who cannot afford to pay investment professionals, we fear that at the heart of the Commission's inquiry is a paternalistic view that, these "have nots" simply cannot be trusted to make rational decisions to engage in self-directed trading when presented with the types of information and engagement that have benefited the "haves" for generations.

A "have not" might not have friends and colleagues willing or able to discuss the markets and finances, invitations to hear from investment professionals, or access to a broker who will answer questions and provide explanations. Indeed, a "have not" may not even live in an area where a broker-

⁹ This Exhibit responds, in part, to Item II.A (Use of DEPs) of the SEC's Request.



dealer or investment adviser has an office—or if they do, the “have not” may not be able to afford that broker or investment adviser’s required minimum investment amount or take time off to meet with the broker or adviser. But with innovations by broker-dealers like Robinhood, a “have not” can now access information and educational resources through a different, accessible, and enjoyable medium wherever and whenever she wants. A “have not” may not be able to pay a broker or investment adviser to monitor the market all day, but she can receive notifications from Robinhood about changes in stock prices or material developments in stocks that she holds or is watching (for example, by placing a stock on her “watch list” and requesting to receive certain notifications about that stock). A “have not” is unlikely to invest enough money to receive discounts (like breakpoints) or gifts (like concert tickets) or business entertainment (like dinners and sporting events) to encourage further investments—but our customers generally remain engaged and committed to their financial health.

In connection with this Request, Chair Gensler recently asked, “How might [the SEC] protect investors in light of the potential conflicts of interest that may exist when DEPs optimize for platform revenues, data collection, or investor behavior?”¹⁰ We do not believe there are conflicts of interest associated with our web- and app-based customer engagement that require additional regulatory action. But even if other broker-dealers’ so-called digital engagement practices may create conflicts of interest, we note that conflicts of interest are not new to the financial industry—indeed, the regulatory frameworks established by the SEC, such as Regulation Best Interest (“Reg BI”) and the disclosure requirements of the Investment Advisers Act of 1940, rest on the principle that conflicts of interest exist, but investors are able to navigate them when they are adequately disclosed. The current Request concerns whether digital “rewards” like confetti and prize boards (neither of which are available on Robinhood’s platform), or artificial intelligence (“AI”) or machine learning (“ML”) (neither of which Robinhood uses to recommend securities), cause investors to increase their investments, in turn generating more revenue for the customer’s broker. Any so-called conflicts of interest presented by digital features pale in comparison to the conflicts presented by the financial discounts and substantial gifts and entertainment that brokers have provided to more traditional investors for decades. Engaging customers is not new; the key difference between human and digital customer engagement is that human engagement is expensive and therefore accessible only by the wealthy. Through digital customer engagement, technology has now leveled the playing field and empowered first-time investors of limited means to engage in the same way with their investments and financial future.

Robinhood’s innovative approach seeks to break down the traditional financial barriers to entering the market by offering:

- Zero-commission accounts and no account minimums;¹¹

¹⁰ See Chair Gensler, *Statement on Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches* (Aug. 27, 2021).

¹¹ Robinhood’s move to eliminate commissions, which was adopted by the rest of the industry, has saved investors billions of dollars and counting in unnecessary, regressive fees and has made it easier to invest.



- A simple suite of products—exchange-listed equities, exchange-traded funds (“ETFs”), and options;¹²
- Dividend reinvestment, recurring investments (which enable customers to set up recurring investments in particular stocks or ETFs), and fractional trading (which enables customers to purchase large-cap stocks and build diverse portfolios they could not otherwise build, in light of market prices reaching thousands of dollars for a single share of some stocks);
- A mobile app that is easy to use and easy to understand;¹³ and
- Tools to enhance financial literacy and enrich retail investors’ awareness of the market and their investments, including simple and intuitive ways to access and assimilate large volumes of data to help customers make their own investment decisions.

In addition to making investing more accessible, we recognize that investing is a serious responsibility. Accordingly, Robinhood designed its app to include features that, based on our outreach and research, provide the intuitive experience customers want and expect in a mobile product, while also giving them tools and information to learn about investing, to keep tabs on their finances, and to conduct their own self-directed trading.

B. Robinhood’s Customers Represent the Diversity of the United States.

Despite the importance of active financial planning for the future, the average U.S. retail investor has historically faced significant obstacles to accessing and participating in the capital markets.¹⁴ U.S. investors traditionally faced significant costs related to investing, low levels of financial literacy, and daunting amounts of quickly-changing information about increasingly complex and volatile

¹² Robinhood also offers a limited number of American Depositary Receipts (“ADRs”) of globally-listed foreign companies.

¹³ Unlike some other retail brokers, Robinhood does not offer uncovered options contracts or the ability of customers to sell securities short, and limits the over-the-counter market securities to certain ADRs Receipts of globally-listed foreign companies.

¹⁴ Judy T. Lin & Christopher Bumcrot, *Investors in the United States, A Report of the National Finance Capability Study*, FINRA Investor Education Foundation (Dec. 2019), <https://www.finrafoundation.org/files/investors-united-states-report-2019>.



markets. We believe democratizing finance for all is an unstoppable movement, and a movement that policymakers on both sides of the aisle have long desired.¹⁵

Robinhood has made great progress removing barriers to investing and brokerage services for everyday investors. As of February 2021, the median age of our customers was 31, and about half of these customers self-identified as first-time investors.¹⁶ Also as of February, our median customer account size was about \$240, with an average account size of about \$5,000. What we see is not consistent with narratives suggesting that most of our customers are unsophisticated day traders taking inordinate risks with complex financial products. Those broad mischaracterizations of our customers are false, and only marginalize and alienate a large group of Americans who have been left behind by Wall Street.¹⁷ In fact, our customers are not reckless traders. They engage with our digital application far more often than they execute investment decisions. Each month, on average, more than 21 million customers engage with our application (such as to read the news or educational content, follow their portfolio, and research investments), while only about 7.2 million buy or sell equity securities. The overwhelming majority of our customers—approximately 98% of Robinhood customers—would not qualify as pattern day traders under FINRA’s rules.¹⁸

Our welcoming and user-friendly platform is particularly appealing to investors who have historically been underserved by the financial community. For example, we are proud that the number of women trading on Robinhood’s platform nearly tripled in 2020, and women today represent a higher percentage of our customer base than ever before. Based on a representative sampling between July and December 2020, Robinhood customers are also more racially and ethnically diverse than the industry average. African American investors represented nine percent of Robinhood’s customer base,

¹⁵ See Chair Gary Gensler, *Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs* (Sept. 14, 2021) (“We keep our markets the best in the world through efficiency, transparency, and competition. These features lower the cost of capital for issuers, raise returns for investors, reduce economic rents, and democratize markets”); Chair Jay Clayton, *Testimony before the Financial Services and General Government Subcommittee of the U.S. Senate Committee on Appropriations* (May 8, 2019) (“Other countries want to replicate [U.S. retail investor participation] because such broad investor participation in our capital markets is a significant competitive advantage for our economy, and participation in our capital markets has made many Americans’ lives better and their retirements more secure”); Chair Mary Jo White, *Opening Remarks at the Fintech Forum* (Nov. 14, 2016) (“There is relatively widespread agreement that fintech innovations have the potential to transform key parts of the securities industry—and to do so in ways that could significantly benefit investors and our capital markets.”); Chair Mary L. Schapiro, *Remarks at the Stanford University Law School Directors College* (June 20, 2010) (“in an area very near to my heart, how can we increase voter participation by retail investors?”); Chair Arthur Levitt, *Plain Talk About Online Investing* (May 4, 1999) (“All of us are participants in an extraordinary social phenomena. The democratization of our markets is a desirable development which regulators should not frustrate. Our mission is not to prevent losers or to modulate the sometimes mercurial movement of our markets.”).

¹⁶ All Robinhood customers must be at least 18 years of age.

¹⁷ We believe the generalization that younger investors are taking on excessive risk is also false. For example, a recent study of Millennial and Generation Z investors found that 61% of respondents indicated they were investing for long-term financial stability. See The Outsiders, Public.com (Sept. 2021), https://public.com/wp-content/uploads/2021/09/The_Outsiders_Public.com_September2021-FINAL.pdf.

¹⁸ See FINRA Rule 4210(f)(8) (defining pattern day trader).



compared with just three percent at incumbent firms. Over the same period, Hispanic investors accounted for 16 percent of Robinhood's customers, compared with seven percent at incumbent firms. Across all brokerage firms in the United States, stock ownership is younger and more diverse than when Robinhood was founded back in 2013, and we believe that our platform has helped to propel those changes across the industry.¹⁹

From the beginning, we have built products for everyday people. By untethering investment from the desktop computer or brick-and-mortar brokerage offices and demystifying the process, we have seen new groups of people discovering Robinhood and becoming investors.

C. Robinhood's Customer Engagement Is Key to its Mission of Democratizing Finance for All.²⁰

Robinhood, like all businesses, seeks to engage its customers—and that engagement is what empowers our customers to learn about investing and save for longer term financial goals such as paying for college or graduate school, starting a family, or purchasing a home. To this end, Robinhood uses technology to communicate with its customers in a number of ways designed to promote financial literacy, increase investment awareness, and empower customers to actively manage their investments, consistent with our mission. Before describing these practices in more detail, there are six fundamental points to emphasize regarding our customer communications:

- *Customers have the right to opt out of push notifications.* At Robinhood, notifications and alerts are configurable both within the mobile app and the customer's phone. This means that customers may turn off most push notifications in two ways, by setting their preferences in the mobile app or on their mobile device. The only push notifications that customers cannot disable are notifications that serve a regulatory purpose or relate to important account information, such as a margin call.²¹
- *Robinhood's use of technology does not perpetuate social biases or disparities.* We do not differentiate among customers based on race, gender, religion, politics, or sexual orientation or identification; and we do not use predictive data analytics. Our digital engagement is based on relevant objective factors such as a customer's account balance and portfolio holdings, or on a customer's stated preferences, such as notification settings. As described above, Robinhood's accessible platform is a key reason why many people of all backgrounds and socio-economic status are participating in the markets today.
- *We do not use technology to recommend securities or investment strategies involving securities and we do not use AI or ML to engage in such activities.* Under well-established securities law precedent, Robinhood's current customer engagement does not involve making "recommendations." Robinhood does not recommend securities to particular investors or groups of investors using AI, ML (for example by sending or pushing specific

¹⁹ See FINRA New Account Study, *supra* note 4.

²⁰ This section responds, in part, to Item II.A (Use of DEPs) and II.B (Development of DEPs; Use of Artificial Intelligence or Machine Learning) of the SEC's Request.

²¹ See *e.g.*, Exchange Act Rules 10b-10 (confirmations); 15c3-3 (account statements); 17a-14 (Form CRS), FINRA Rule 2231 (Customer Account Statements).



investment recommendations or trade ideas tailored to specific customers), or any other method.²² Rather, Robinhood maintains a self-directed brokerage model, meaning customers have control over their investments, are empowered to make their own decisions, and place their unsolicited orders with us. The SEC acknowledged the benefits of a self-directed model such as Robinhood's in adopting Reg BI,²³ explicitly stating that Reg BI does not apply to this model.²⁴

- *Robinhood promotes investor education and financial literacy.* While we do not provide investment advice or recommendations to our customers, we are committed to helping our customers build sustainable, long-term financial success and offer a variety of educational tools and resources to help them achieve their goals. With Robinhood Learn, this commitment extends beyond our customers to the general public. We discuss our educational efforts in more detail below and in our responses to DEP Categories Identified by the SEC, attached as Exhibit A.
- *Our mobile app and website are not social media platforms for customer-to-customer interaction.* Unlike other firms, Robinhood does not provide social forums within our app or our website where customers can “like,” “follow” or “share” their investments with other customers; Robinhood does not offer a “chat” feature for customer-to-customer messaging; and Robinhood does not offer a “copy trading” feature. All engagement on our app and platform today is directly between Robinhood and its customers.
- *Our mobile app is not a game.* Unlike other firms, we do not host trading competitions, we do not maintain a “leaderboard,” and we do not offer badges or visual markers of achievement. Our app is a tool for investing that is welcoming and understandable for every investor; it is not a game.

As stated above, many of our digital features are designed to promote financial literacy and investment awareness and to provide customers with information they need and want in order to make informed and self-directed decisions about their future investment goals and needs. While these practices have been commonplace in the brokerage industry for decades, we have adapted them for a digital age and a digital platform. These features include the following and are further discussed in Exhibit A (“DEP Categories Identified by the SEC”).

²² *BNP Paribas Mortg. Corp. v. Bank of Am., N.A.*, 866 F. Supp. 2d 257, 268 (S.D.N.Y. 2012) (citing NASD NTM 01-23 (Apr. 2001)) (internal quotations omitted).

²³ *Regulation Best Interest: The Broker-Dealer Standard of Conduct*, 84 Fed. Reg. 33,318, 33,322 (Jul. 12, 2019) (“Reg BI Adopting Release”) (concluding that a standard of conduct not appropriately tailored to the structure and characteristics of a broker-dealer business model (i.e., transaction-specific recommendations and compensation) would “significantly reduce retail investor access to differing types of investment services and products” and “reduce retail investor choice in how to pay for those product and services”).

²⁴ *Id.* at 33,384 (“Nor does Regulation Best Interest apply to self-directed or otherwise unsolicited transactions by a retail customer...”).



- *Robinhood Learn* (“Learn”) is at the center of the Firm’s effort to make investing more accessible and provide financial education to both our customers and to those who have not yet started their investing journey.²⁵ Learn is available to everyone on the Robinhood website and does not require a Robinhood account to access. Through Learn, Robinhood provides an extensive hub of educational articles for investors of every experience level in an easy-to-read format. We regularly collect feedback from readers to understand whether content is helpful, and this feedback helps guide updates to our Learn articles. Robinhood Financial has published more than 850 articles to help people learn about investing and answer their most basic questions about investing such as “What is a Limit Order?” along with articles covering a host of more complex subjects. As previously mentioned, from January 1, 2020 to March 31, 2021, Robinhood Learn content was viewed more than 8 million times.
- *In-App Education*. Robinhood provides customers with news and educational content directly in the app to empower our customers to learn about the markets and make their own informed investment decisions. For example, Robinhood offers *free* news from reliable sources including *Barron’s*, *Reuters* and *The Wall Street Journal*. We also recently rolled out interactive lessons that help customers learn and build a knowledge base as they use the app, and we have begun to integrate Learn directly into the app. We believe our customers prefer and benefit from educational content delivered in-context, as they are using our app. Consistent with our mission, Robinhood is committed to continually increasing the amount of content provided to customers on their mobile phones, recognizing that our customers want digestible information wherever and whenever they need it.
- *Robinhood Snacks*. Robinhood Snacks is another avenue for educating our customers and the general public about investing in a very approachable and entertaining format. Snacks is a curated digest of business news stories delivered both daily and weekly. Snacks can be accessed in written, audio, or video formats, including via a podcast and newsletter, and allows subscribers to start their days with the top business news of the day in an accessible, digestible medium. Our Robinhood Snacks Newsletter was opened more than 200 million times in the first half of 2021, while the podcast was downloaded over 21 million times in the same period. We believe the Robinhood Snacks Newsletter is one of the most read newsletters today.
- *Watch Lists*. Robinhood also allows customers to create their own lists of companies that the customer is interested in “watching,” and based on these watch lists, it provides customers with news updates regarding the companies and stocks the customer has elected to add to the list. When a customer opens an account, Robinhood pre-populates a “watch list” that the customer can change or eliminate. The same default “watch list” is displayed to all new customers.

²⁵ See *The building blocks of your financial journey*, Robinhood, <https://learn.robinhood.com/> (last visited Sept. 30, 2021).



- *Cards.* “Cards,” are brief messages that surface on the app and the website and link to additional content. Cards provide a customer with updated news about companies that the customer has placed on his or her watch list or general information about certain products and services available on our platform. Clicking on a card regarding a company takes the customer to a news article concerning that company; clicking on the card does not take the customer to a trading screen.
- *Notifications.* One of the great advantages of using mobile devices is the ability to receive notifications and alerts regarding everything from your account being logged into by another device for the first time, to a notice that someone is at your front door, to a notice that your mortgage has been approved. Likewise, Robinhood believes that many customers expect to have notifications/alerts about their investments available to them and rely upon them. Robinhood has the ability to send notifications and alerts as (1) push notifications that appear on a customer’s mobile device; (2) e-mail communications; and (3) in-app messages. As stated above, push notifications and e-mail alerts are configurable by a customer to that customer’s preferences.

We believe it is unequivocally a good thing, and in our customers’ best interest, for Robinhood to have the ability to notify our customers of certain events and occurrences regarding their accounts or securities they own or have chosen to watch. For example, through notifications we are able to notify customers about unique risks associated with certain products (e.g., leveraged or inverse ETFs) so they can make better informed investment decisions.²⁶ We are also able to share with customers important information regarding their holdings, such as corporate actions, bankruptcies, and shareholder votes. Other examples include: notifying a customer when the price of a stock the customer already owns reaches a 52-week high or low or changes by 5% or 10%; suspicious activity in the customer’s account; margin maintenance alerts or margin call warnings; and options expiration reminders.²⁷ With the exception of certain notifications that serve a regulatory purpose or provide important account information, a customer may opt out of receiving push notifications and emails in her app and/or on her phone.

- *Sector & Other Lists.* Robinhood (like most brokerage firms) provides customers with lists of well-known stock sectors such as: Technology, Energy, Energy & Water, Healthcare, Software, Automotive, Finance, Food & Drink, Banking, Pharma and one category titled, “Tech, Media and Telecom.” These lists are developed using data from a third-party vendor (FactSet for equities and Morningstar for ETFs) and are not personalized for any particular customer. Robinhood also provides lists reflecting data from our platform—the 100 Most Popular Stocks on Robinhood, Daily Movers, and IPOs that are available on Robinhood.²⁸ By providing information categorized in these ways for free, Robinhood empowers its customers to access and synthesize information about thousands of different

²⁶ For an example of this type of notice, see Exhibit B (“Examples of Customer Engagement”).

²⁷ For a more detailed description of Robinhood’s notifications, see Exhibit A (“DEP Categories Identified by the SEC”).

²⁸ The Robinhood generated lists are compiled with objective parameters. As noted above, this is consistent with the practice of many other broker-dealers.



publicly-traded companies without paying the fees/commissions often associated with this type of data in more traditional advisory and brokerage models.

- *Celebrations for milestones.* Robinhood does celebrate certain milestone events such as a customer opening an account, funding an account, and first investment. These digital “celebrations” may take the form of animation and graphics that create a familiar and welcoming experience for the customer. The SEC’s own Office of Investor Education and Advocacy recognized the importance of celebrating milestones in a recent tweet, stating that “[w]hen you realize the importance of diversification, that’s knowledge worth celebrating.” Notably, this statement was accompanied by some of the DEPs the SEC has identified for comment—specifically, a video featuring confetti, balloons, and a couple celebrating.²⁹ In the past, Robinhood used animated confetti—which is a widely-recognized symbol of celebration—to acknowledge milestones. Robinhood, however, stopped this practice and now uses a different form of animation to mark milestones in our customers’ financial journeys.³⁰
- *User-Friendly Application Interface.* Another important way that Robinhood engages retail customers is through a mobile-design feature that is user-friendly and easily accessible. Designing a mobile-first platform for customers is challenging because of the limited space on a phone screen, which varies from phone to phone. Screens must be used efficiently—visual cues, colors, and the use of plain English all combine to create a user interface that is simple to understand and use. The efficiency of design that creates a delightful customer experience should not be considered “gamification” and does not indicate any intent to manipulate customers. Just as Apple designs iPhones to look, feel, and operate for the convenience and enjoyment of its customers, mobile applications can, and should, be designed for customer use and enjoyment. By making our mobile application straightforward and enjoyable, we make investing more accessible and less intimidating. In fact, securities regulators traditionally have endorsed the use of user-friendly and accessible communications as something that should be promoted, not penalized.³¹

In short, education and information are core to accomplishing our mission, and one of the primary ways we educate and inform is through our so-called DEPs. We believe access to easy-to-understand investment information and education is fundamental to expanding participation in the U.S.

²⁹ SEC Investor Ed (@SEC_Investor_Ed), TWITTER (Jun. 23, 2021, 4:33PM), https://twitter.com/SEC_Investor_Ed/status/1407799023210319874. This statement and video were for the purpose of promoting a new SEC webpage, “investor.gov.”

³⁰ *A New Way to Celebrate with Robinhood*, Robinhood (Mar. 31, 2021), <https://blog.robinhood.com/news/2021/3/31/a-new-way-to-celebrate-with-robinhood>.

³¹ For example, the instructions to the SEC’s new Form CRS specifically encourage registrants to use charts, graphs, tables, and other graphics, text features, colors, and graphical cues designed to enhance a retail investor’s understanding of the material in the relationship summary. See Form CRS, Instruction 3.A. Although we have heard some officials state that creating a customer experience that causes users to stay on an app may be a “recommendation,” it is not possible to find support in the law for such a far reaching interpretation (much less, a definition) of what constitutes a recommendation.



financial system. Avoiding complex industry jargon is crucial to our goal of demystifying finance for retail investors. We fully recognize, and have always taken seriously, the responsibility that comes with giving customers the tools to invest on their own terms. That's why Robinhood provides free educational resources available to everyone—not just our customers—on the Robinhood Learn website. We have also rolled out features like our “Year in Review” feature that helps customers reflect on their investing activity and understand the diversity of their investments—all with a focus on simplicity and ease-of-understanding.

Historically, the U.S. securities regulators have recognized the importance of customer engagement to overcome barriers to entry that prevent underserved communities from participating in the wealth opportunities provided by U.S. capital markets. As recognized by FINRA, financial literacy is highly correlated with positive future financial outcomes and behaviors.³² Furthermore, differing levels of financial literacy may contribute to inequality.³³ The SEC also recognized the importance of investor education efforts in the Reg BI Adopting Release, agreeing that “Regulation Best Interest should not stifle investment education as a means to encourage financial wellness.”³⁴

II. Digital Engagement Practices Are Well Established and, for U.S. Broker-Dealers, Already Subject to Extensive Regulation.

A. The U.S. Economy Is a Digital Economy.

Digital engagement is not only a lower-cost way to engage customers; it is now the most effective way to interact with individuals in business, education, and everyday life. Today, people can pay their taxes, purchase a car, and obtain a loan or a mortgage, all through a mobile app on their smartphone. Even state and federal governments rely heavily on their ability to engage constituencies through digital means. State and local governments, for example, use direct text messaging campaigns, social media, and customized “exposure alerts” to encourage people to obtain COVID vaccinations and to notify citizens of potential exposures. Governmental engagement is not limited to the health crisis. Individuals rely on mobile apps as their primary source for government-provided information, interaction, and entertainment.³⁵ As described above, the SEC itself relies on various forms of

³² Marco Angrisani, Jeremy Burke, Annamaria Lusardi, and Gary Mottola, *The Stability and Predictive Power of Financial Literacy: Evidence from Longitudinal Data* (Oct. 2020), <https://www.finrafoundation.org/sites/finrafoundation/files/stability-and-predictive-power-financial-literacy-evidence-longitudinal-data.pdf>.

³³ See e.g., FINRA New Account Study (“because New Investors and Experienced Entrants differ markedly along racial/ethnic and age groups, these needs may be further impacted by cultural differences and familiarity with investing, as well as disparities in investor education.”); Gutter, M.S., and Fontes, A., *Racial Differences in Risky Asset Ownership: A Two-Stage Model of the Investment Decision-Making Process*. *Journal of Financial Counseling and Planning*, 17(2), 64–78 (2006).

³⁴ Reg BI Adopting Release at 33,338.

³⁵ For example, the state of Massachusetts created a “Mass Lottery app” that purports to offer various features designed to promote the state’s lottery. According to the website, the app was recently re-designed so that participants can “enjoy the thrill of winning wherever [they] are.” Mobile App, MassLottery (last visited Sept. 30, 2021), <https://www.masslottery.com/tools/mobile-app>.



technology to communicate information to investors and market participants.³⁶ For the same reasons the government relies on digital forms of engagement, businesses also rely on customer engagement through digital forms to maintain customer relationships in a safe, efficient, and effective manner.

The same is true for the equity markets, where 30% of retail investors in the United States placed orders using a mobile app, according to 2018 FINRA surveys. That number grows to 59% when looking solely at participants aged 18-34. Innovative technology-based companies are challenging traditional norms and engaging people in new ways.

Customers now expect and demand intuitive, engaging, and easy-to-use products. According to a report by PricewaterhouseCoopers LLP (“PwC”), 73% of consumers worldwide point to customer experience as an important factor in their purchasing decisions, and 65% of U.S. consumers find a positive experience with a brand to be more influential than great advertising.³⁷ At the same time, smartphone usage is not only the norm, but a critical component of how people interact with the world around them. Americans rely on their phones for information, interaction, and entertainment. And they expect access whenever and wherever it is needed.

The securities industry’s use of DEPs is just part of this bigger picture. There is nothing inherently more problematic about web- or app-based communications than there is about in-person, written, or oral engagement. To be sure, the securities regulators have acknowledged customer preferences for accessing their accounts primarily through mobile applications, particularly new investors.³⁸ There is no reason why the use of digital engagement in the securities industry should be singled out for enhanced scrutiny and suspicion.

B. Broker-Dealer Communications and Customer Engagement Practices—Whether Digital or Traditional—Are Already Subject to Extensive Regulation.³⁹

Unlike other industries that rely on digital engagement, broker-dealer communications and customer engagement practices are already subject to extensive regulations under SEC and FINRA rules. The existing regulatory framework is focused on promoting conduct that, among other things, protects investors from abusive practices. This framework applies equally to DEPs as well as to more traditional forms of communication and customer engagement.

First and foremost, as noted in the SEC’s Request, the anti-fraud provisions of the federal securities laws and FINRA rules require broker-dealers to deal fairly with their customers and observe high standards of commercial honor and just and equitable principles of trade.⁴⁰ To the extent the SEC

³⁶ See *supra* note 29 and surrounding text. See also the SEC’s “Howey Coins” website (last visited Sept. 30, 2021), <https://www.howeycoins.com/index.html>.

³⁷ Future of Customer Experience Survey, PwC (2018), <https://www.pwc.com/us/en/zz-test/assets/pwc-consumer-intelligence-series-customer-experience.pdf>.

³⁸ FINRA New Account Study.

³⁹ This section responds to Item II.C of the SEC’s Request.

⁴⁰ See, e.g., Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(c) of the Securities Exchange Act of 1934; FINRA Rule 2010.



is concerned that broker-dealers or investment advisers will use the types of practices described in the Request to commit fraud or manipulation, existing securities laws and regulations address such conduct. And engagement practices that promote investor education and more information would help combat such schemes. In addition, broker-dealers are subject to an extensive set of specific rules governing communications with the public, including advertising and marketing communications.⁴¹ All communications must be based on principles of fair dealing and good faith, be fair and balanced, and comply with a number of other content standards.⁴²

We believe reasonable regulation is essential for the fair working of the securities industry and protection of investors. For example, existing regulations prohibit broker-dealers from sending false or misleading notifications to customers. Existing regulations also require broker-dealers to reasonably supervise their customer communications for compliance with applicable securities laws and regulations. We agree with the SEC's statement in the Request that, at least in some circumstances, "[t]he use of a DEP by a broker-dealer may, depending on the relevant facts and circumstances, constitute a recommendation for purposes of Reg BI." If a broker-dealer were to send a customer a notification actually recommending that the particular customer buy or sell a specific stock, whether that recommendation comes directly from a person or through the use of AI, we agree that the broker-dealer would be required to comply with Reg BI.

However, none of Robinhood's digital features today include "recommendations," and they would not trigger Reg BI. A recommendation is a "call to action" in which a broker-dealer brings a specific security to the attention of a customer. The regulators have recognized the "content, context, and presentation of the particular communication or set of communications" must be analyzed in order to determine whether a communication is considered a recommendation.⁴³ The more individually tailored the communication is to a particular customer or group of customers, the more likely the communication will be viewed as a "recommendation."⁴⁴ FINRA has stated that a broker does not make a recommendation if it "allows customers to subscribe to emails or other electronic communications that alert customers to news affecting the securities in the customer's portfolio or on the customer's 'watch list.'"⁴⁵ Further, a broker does not make a recommendation when it provides tools on its website or mobile app allowing customers to screen through a wide universe of securities and to request lists of securities meeting broad, objective criteria.⁴⁶

As discussed in Section I, Robinhood does not use digital engagement practices to recommend securities or strategies involving securities. While Robinhood provides information about securities a particular customer owns or places on her "watch list" (e.g., push notifications about market movement or cards concerning recent news), these are not "calls to action" under well-established guidance and

⁴¹ See e.g., FINRA Rule 2210.

⁴² *Id.*

⁴³ See NASD NTM 01-23 (Apr. 2001); FINRA Regulatory Notice 11-02 (Oct. 7, 2011).

⁴⁴ FINRA Regulatory Notice 11-02 (Oct. 7, 2011).

⁴⁵ NASD NTM 01-23 (Apr. 2001).

⁴⁶ *Id.*



are commonly used by broker-dealers offering self-directed brokerage.⁴⁷ Any SEC rulemaking that results in applying Reg BI to self-directed brokerage activity merely because a broker-dealer uses digital features to engage with customers would be inappropriate and inconsistent with Reg BI itself.⁴⁸

Importantly, none of the engagement practices identified in the Release are new to the industry: as discussed above, broker-dealers have engaged in these practices in a non-digital form for years, and FINRA and the SEC have regulated these practices for years. For example, professionals at brick and mortar broker-dealers have always been able to congratulate new customers for opening an account with the firm or making their first investment. Broker-dealers have always been able to distribute educational materials and research reports to customers and provide curated lists of securities categorized by sector, market capitalization, dividend yield, or otherwise. Broker-dealers regularly entertain their customers—which at brick and mortar firms may include engaging in-person with high net worth and institutional customers at expensive dinners, sporting events, and performances (subject to FINRA rules on gifts and entertainment). And the brokerage industry has provided notifications by phone, fax, and electronic mail for decades to their customers (both institutional and retail) when there are notable events (e.g., price target changes). As early as 2001, FINRA addressed how these notifications should be handled when provided in electronic form.⁴⁹ FINRA provided these interpretations using a technology neutral, principles-based framework that we believe has withstood the test of time.

Many of the digital practices that the SEC characterizes as “DEPs” do nothing more than expand access to traditional forms of engagement to everyone, regardless of their wealth, income, or background, and wherever and whenever they want. Practices such as notifications, graphics, visual cues and curated lists are low-cost ways to present market information to individuals and families that previously faced systemic barriers to receiving it. These practices provide demonstrable benefits for customers in the form of information (as opposed to expensive meals or tickets to sporting events). To be sure, if firms stopped providing timely information about market conditions or the status of a customer’s account to customers, they could face criticism by the SEC and FINRA because in many instances, digital engagement may be the most effective way to provide important information to customers. To this end, singling out DEPs for special scrutiny or suspicion because they create a positive experience is antithetical to the idea that investors should be free and empowered to invest in the companies they believe in, and to take greater control of their finances. Indeed, the Chair recently endorsed the view that “investors get to decide what risks they wish to take.”⁵⁰ This view is consistent with the whole purpose of the self-directed retail brokerage model where investors affirmatively elect

⁴⁷ *Id.*

⁴⁸ “Regulation Best Interest *would not* ... apply to self-directed or otherwise unsolicited transactions by a retail customer.” Reg BI Adopting Release, at 33,384-85.

⁴⁹ NASD NTM 01-23 (Apr. 2001).

⁵⁰ Gary Gensler, *Chinese Firms Need to Open Their Books*, Wall St. J. (Sept. 13, 2021) (“In response to the Great Depression, President Franklin Roosevelt and Congress established a basic bargain. Investors get to decide what risks they wish to take. Companies that are raising money from the public must make full and fair disclosures to investors. This bargain has been a source of America’s economic success for 90 years.”), <https://www.wsj.com/articles/china-accounting-standards-shell-company-vie-investment-sarbanes-oxley-sec-gensler-11631563524>.



to engage in investment activities, and it is up to the investors what that investment activity involves—be it ETFs, options, or fractional shares.

Ultimately, any regulation that results in less customer engagement and less customer choice is a bad policy outcome.⁵¹ Today, many retail investors choose a self-directed brokerage model because it is more cost-efficient and provides them with the tools they want and need to invest. These customers may not be able to afford commissions or qualify for the asset thresholds that investment advisers demand. Other customers simply prefer the autonomy that comes with a self-directed model. When it adopted Reg BI, the SEC recognized the important benefits of a self-directed brokerage model.⁵² Providing customers with recommendations and advice requires brokers and investment advisers to implement significant supervisory structures and compliance processes to ensure compliance with the securities laws. Those costs are passed along to investors who use those services. Self-directed brokerages, in contrast, offer investors access to the capital markets without these additional fees and expenses.

Retail investors have had more opportunities to participate in the financial markets than ever before because of self-directed firms like Robinhood. The SEC should be celebrating this fact, not engaging in rulemaking that undermines this retail participation by preferencing brokerage models that only the “haves” can afford. In the adopting release to Reg BI, the SEC recognized that over-regulation could limit choices for retail investors. Specifically, the SEC discussed the now-vacated Department of Labor (“DOL”) Fiduciary Rule, which would have imposed significant costs on broker-dealers providing recommendations to certain accounts. The SEC noted that the Fiduciary Rule would have resulted in “significant reduction in retail investor access to brokerage services,” and stated the belief that “the available alternative services were higher priced in many circumstances.”⁵³ The SEC also cited a SIFMA Study finding that, for the majority of retail customers whose brokers limited their services because of the Fiduciary Rule, customers chose to move to self-directed accounts rather than fee-based accounts.⁵⁴ The SEC should heed the lessons from the failed Fiduciary Rule and not make the same mistakes in the context of digital engagement.

Limiting digital engagement practices will have the practical effect of limiting retail customers’ ability to access easily digestible information and make their own self-directed decisions. Rulemaking that would expand regulations such as Reg BI to the self-directed model based on ordinary engagement practices made through digital platforms would increase the cost of offering self-directed brokerage,

⁵¹ We believe regulatory efforts to curtail digital engagement is also contrary to the SEC leadership’s stated policy of encouraging investors to start saving early and regularly. See Gary Gensler (@GaryGensler), TWITTER (Sept. 22, 2021, 11:53 AM), <https://twitter.com/GaryGensler/status/1440705940567719944> (Statement of Chair Gensler on Twitter encouraging college students to “start saving early, and save regularly”); SEC (@SECGov), TWITTER (Jun. 23, 2021, 4:26 PM), <https://twitter.com/SECGov/status/1407797340342304771> (statement of the official SEC twitter announcing a public service campaign to educate investors on the benefits of investing and encouraging investors to use the SEC’s free financial planning tools).

⁵² Reg BI Adopting Release at 33,319-22.

⁵³ *Id.* at notes 32, 34, and surrounding text.

⁵⁴ *Id.* at note 34.



and therefore increase the cost of investing. It would also draw an arbitrary distinction between the ways in which a digital platform and a traditional broker-dealer are permitted to engage with customers.

Rather than engaging in new rulemaking that may result in less investor education, less customer engagement, and less affordable market access for retail investors, we believe the industry would benefit from the SEC evaluating how it can further reduce the costs of investment and barriers to entry. For example, the SEC could assess prescriptive and potentially outdated existing rules that impose significant costs on market participants—costs that are ultimately passed along to the retail customer.⁵⁵ By eliminating extraneous costs and expenses and making investing more affordable, the SEC could *increase* customer choice. In contrast, regulation that would drive up the cost of currently affordable self-directed brokerage services will only *decrease* choices for those “have nots” who only recently entered the market and have begun to appreciate the benefits enjoyed by the “haves” for generations. The SEC also could enforce current laws to ensure that practices that may contravene existing regulation are curtailed—such as “copy trading” where a copied trader may be receiving transaction-based compensation without registering as a broker-dealer.

C. Potential DEP Rulemaking Will Face Significant Administrative Procedure Act (“APA”) Challenges and Require the SEC to Build a Comprehensive and Rigorous Record and Assess the Significant Costs of Regulation.

To be justified and lawful, any DEP rulemaking will need to address significant issues. Under the APA, the SEC has a foundational duty of reasoned decisionmaking when it comes to rulemakings, particularly rulemakings addressing issues so consequential to retail investors. In order to conduct a proper rulemaking, the SEC will need to “examine the relevant data”—including quantitative and qualitative evidence submitted—“and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choices made.’”⁵⁶ This core APA requirement includes the obligation to “consider ... important aspect[s] of the problem” before the agency,⁵⁷ and it will obligate the SEC to respond to significant points raised in public comments.⁵⁸

Robinhood firmly believes that once the SEC collects, discloses, and analyzes relevant evidence and data, that record will make crystal clear that calls by some for enhanced DEP regulation are in fact solutions in search of a problem. As described in detail above, DEPs used by Robinhood and others are not harming retail investors, rather they are a proven means for educating investors and for lowering barriers to investment.⁵⁹ On this score, short-term anecdotes and speculation must not be allowed to

⁵⁵ The SEC’s Exchange Act Rule 17a-4(f) consists of technology-specific rules that are more than 20-years old and require broker-dealers to maintain outdated and unnecessarily expensive technology. *See, e.g., Petition for Rulemaking to Amend Exchange Act Rule 17a-4(f)*, Futures Industry Association, Securities Industry and Financial Markets Association et al. (Nov. 14, 2017), <https://www.sec.gov/rules/petitions/2017/petn4-713.pdf>.

⁵⁶ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁵⁷ *Id.*

⁵⁸ *See PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000).

⁵⁹ *See supra* pp. 3-12.



substitute for a rigorous review of available evidence. And Robinhood is confident that such a rigorous review of the evidence will conclusively demonstrate the absence of any investor harm that could justify additional DEP regulation. To this end, potential DEP rulemaking will face significant APA challenges:

First, as a crucial threshold matter, the SEC will be obligated to demonstrate—with real-world evidence and reliable data—that there are sufficient problems in the marketplace that warrant additional regulatory intervention.⁶⁰

As the D.C. Circuit recently explained, “[r]ules are not adopted in search of regulatory problems to solve,” and “unless an agency’s authorizing statute says otherwise, an agency regulation *must* be designed to address *identified* problems.”⁶¹ In other words, the APA presupposes that the agency has identified a “problem” in need of a government-mandated remedy;⁶² it follows that a regulation cannot be a “solution in search of a problem.”⁶³ In fact, a “regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”⁶⁴

When it comes to assessing the risk of harms that might justify regulation, moreover, conjecture by the SEC will not do. “[M]ere speculation” does not constitute “adequate grounds upon which to sustain [an agency’s] conclusion.”⁶⁵ Indeed, “agency actions based upon speculation are arbitrary and capricious.”⁶⁶ The Request is a step in the right direction in terms of collecting evidence bearing on the existence of harm, if any, from current practices, but the SEC must follow the evidence and avoid using speculation about future risks to fill evidentiary gaps.

As part of this evidence-gathering process, basic APA principles will require the SEC to disclose and make available for comment and public input all key materials (including data and studies) on which the SEC relies.⁶⁷ “Integral to an agency’s notice requirement” under the APA “is its duty to ‘identify and make available technical studies and data that it has employed in reaching the decisions to propose

⁶⁰ *E.g.*, *National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 843 (D.C. Cir. 2006) (“Professing that an order ameliorates a real industry problem but” citing no reliable “evidence demonstrating that there is in fact an industry problem is not reasoned decisionmaking.”).

⁶¹ *New York Stock Exch. LLC v. SEC*, 962 F.3d 541, 556 (D.C. Cir. 2020) (emphases added).

⁶² *State Farm*, 463 U.S. at 43.

⁶³ *New York v. U.S. Dep’t of Health & Human Servs.*, 414 F. Supp. 3d 475, 546 (S.D.N.Y. 2019).

⁶⁴ *City of Chicago v. Fed. Power Comm’n*, 458 F.2d 731, 742 (D.C. Cir. 1971).

⁶⁵ *Natural Res. Def. Council, Inc. v. EPA*, 859 F.2d 156, 210 (D.C. Cir. 1988); *see also Otay Mesa Prop., L.P. v. Dep’t of the Interior*, 344 F. Supp. 3d 355, 370 (D.D.C. 2018).

⁶⁶ *Horsehead Res. Dev. Co., Inc. v. Browner*, 16 F.3d 1246, 1269 (D.C. Cir. 1994).

⁶⁷ *See U.S. Lines, Inc. v. Fed. Mar. Comm’n*, 584 F.2d 519, 534 (D.C. Cir. 1978) (explaining “require[ment]” that “information in agency ... reports identified by the agency as relevant ... be disclosed ... for adversarial comment”); *Chamber of Commerce v. SEC*, 443 F.3d 890, 900 (D.C. Cir. 2006); *Air Transp. Ass’n of Am. v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999).



particular rules.”⁶⁸ This requirement is “anchored” in the APA’s “statutory provision[s]” governing rulemakings, and is bedrock administration law.⁶⁹

Second, and closely related to the SEC’s obligation to demonstrate an actual need for additional regulation, the SEC will need comprehensively and thoughtfully to examine existing regulations of broker-dealers and investment advisers and to explain why those protections are sufficient or not to accomplish the SEC’s purported regulatory objectives.⁷⁰ As detailed above, customer engagement practices, now manifesting as digital engagement practices, not new and they are already subject to significant existing regulatory controls designed to protect retail investors.⁷¹ Before the SEC rushes to impose new and costly regulatory mandates on the market, the SEC must analyze this “existing regime” and determine whether “sufficient protections” already exist.⁷² A “failure to analyze” carefully existing regulations would render any SEC final regulation “arbitrary and capricious.”⁷³

Third, even assuming the SEC could identify a justification for enhanced regulation of DEPs, the SEC will be obligated to give careful consideration to alternatives to any additional regulations that the SEC ultimately adopts.⁷⁴ This “reasonable alternatives” standard is not a pro forma legal requirement, but one that strikes at the heart of the APA’s duty of reasoned decisionmaking by ensuring that agencies identify which alternatives they have considered and reasonably explain why those alternatives could not achieve the relevant regulatory objectives. Failure to do so here would result in vacatur of any final DEP regulation.

Fourth, we observe that any SEC rulemaking restricting the use of digital engagement practices must be consistent with the statutory grants of rulemaking authority to the SEC in the Exchange Act. The SEC does not have *carte blanche* under the Exchange Act to restrict non-deceptive, non-manipulative DEPs that do not constitute “personalized investment advice.” DEPs that engage subscribers by providing truthful information and making the platform more convenient, accessible, and user-friendly are not ones that the SEC has clear authority to regulate. The SEC should be conscious of the limits on its statutory authority in any proposed regulation of DEPs.

Fifth, and critically, the SEC will be obligated to pay careful attention to the potentially significant costs, as well as supposed benefits, of additional regulation of DEPs. As the Supreme Court has explained, “reasonable regulation ordinarily requires paying attention to the advantages *and* the

⁶⁸ *Kern Cty. Farm Bureau v. Allen*, 450 F.3d 1072, 1076 (9th Cir. 2006).

⁶⁹ *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236-237, 239 (D.C. Cir. 2008) (citing 5 U.S.C. § 553(b)-(c)).

⁷⁰ *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 179 (D.C. Cir. 2010) (SEC had obligation “to determine whether, under the existing regime, sufficient protections ... exist[.]”).

⁷¹ *See supra* pp.14-19.

⁷² *American Equity*, 613 F.3d at 179.

⁷³ *Id.*

⁷⁴ *See Laclede Gas Co. v. FERC*, 873 F.2d 1494, 1498 (D.C. Cir.1989) (failure to consider reasonable alternatives is arbitrary and capricious).



disadvantages of agency decisions.”⁷⁵ And here, the SEC will face heightened obligations to quantify and consider the costs, as well as the benefits, of any additional regulations. For example, under the Exchange Act, Congress has required the SEC to consider whether its rules will “promote efficiency, competition, and capital formation.”⁷⁶ And, under the Securities Act, the SEC must “consider ... whether the action will promote efficiency, competition, and capital formation.”⁷⁷ These requirements “impose[] on the [SEC] an obligation to consider the economic implications of certain rules it proposes.”⁷⁸ When the SEC fails to meet this obligation and accord “proper[]” consideration to the economic implications of its rules, the agency acts arbitrarily and capriciously.⁷⁹

Consideration of costs will be critical to any rulemaking process for DEPs. Many DEP regulations could have significant costs to the extent that regulatory overreach or one-size-fits-all mandates stifle investment and innovation in products that are designed to educate investors and democratize access to capital markets.⁸⁰ It will be imperative that the SEC collect robust and reliable evidence of these costs and give due weight to these interests in any subsequent rulemaking. As the D.C. Circuit has said, an agency thus must “face the trade-off[s]” caused by its decisions and explain why “the trade-off” it selected “was worth it.”⁸¹ A one-sided or cursory analysis of costs and benefits of DEP regulation would not satisfy the APA. Moreover, it will be critical that the SEC fully identify and *explain* the trade-offs and costs inherent in any regulation: the APA demands that an agency “give adequate reasons for its decisions,”⁸² and, it follows, “conclusory statements will not do; an ‘agency’s statement must be one of *reasoning*.’”⁸³ This bedrock requirement will demand that the SEC collect and fairly evaluate evidence bearing on advantages and disadvantages of additional DEP regulation.

What is more, as part of its analysis of the disadvantages of any new regulations in this area, the SEC will be required to identify and account for the “significant reliance interests” of broker-dealers, retail investors, and others on existing regulations and practices.⁸⁴ This obligation will require the SEC, for example, “to assess whether there were reliance interests, determine whether they were significant,

⁷⁵ *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

⁷⁶ 15 U.S.C. § 78c(f).

⁷⁷ 15 U.S.C. § 77b(b).

⁷⁸ *American Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) (considering 15 U.S.C. § 77b(b)).

⁷⁹ *See id.* at 179; *see also Business Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011); *Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005).

⁸⁰ *See supra* pp. 8-13.

⁸¹ *Competitive Enter. Inst. v. National Highway Traffic Safety Admin.*, 956 F.2d 321, 323-324 (D.C. Cir. 1992).

⁸² *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016).

⁸³ *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014).

⁸⁴ *Encino Motorcars*, 136 S. Ct. at 2126.



and weigh any such interests against competing policy concerns.”⁸⁵ Relatedly, if the SEC purports to “change[] prior policy” toward DEPs, it will be required to acknowledge the change and provide a “reasoned explanation” for it.⁸⁶ Firms such as Robinhood have invested substantially in bringing innovative products to retail investors in reliance on the existing regulatory framework. Retail investors, moreover, have benefited immensely from these practices and now rely on these practices and features. An abrupt about-face by the SEC in its regulatory approach to DEPs will need to account for these well-founded reliance interests.

The above discussion presents just a sampling of the substantive and procedural requirements to which the SEC will need to conform any rulemaking addressing DEPs. The bottom line is that additional regulation in this area will undoubtedly raise significant legal issues, require a robust record (including a rigorous assessment of the costs and benefits of regulatory action), and demand substantial engagement with stakeholders. A failure by the SEC to adhere to these principles will invite judicial vacatur of new regulation in this area.⁸⁷

D. The First Amendment Strictly Limits The SEC’s Ability To Regulate Digital Engagement Practices Based On Their Communicative Content.

Also among the “significant aspects of the problem” the SEC will need to consider are the First Amendment implications of any regulation in this area. Robinhood’s services are popular and effective in large part because they provide truthful, relevant information about market activity in conjunction with accessible mechanisms for market participation. Its platform fosters a vibrant “marketplace of ideas,” producing in the financial sector the same social goods of self-realization, public participation, and improved understanding that other marketplaces of ideas produce for political, cultural, and social issues. Many of the criticisms of consumer-focused trading platforms reflect an unjustified hostility toward retail trading, skepticism of the benefits of individual autonomy in financial decision-making, and unwarranted assumptions that “advised” or “guided” trading is more appropriate for retail investors. These critics effectively claim that it is wrong to make trading too easy or too attractive, discounting investors’ ability to make decisions regarding their own interests and the benefits of doing so.

Although it is unclear what regulations the SEC may be considering, many types of regulations of digital engagement practices would raise serious questions under the First Amendment. Whether through words or other modes of communication such as animation and graphics, these practices convey ideas and information and thus constitute speech entitled to First Amendment protection. An

⁸⁵ *Regents of the Univ. of Cal.*, 140 S. Ct. at 1913.

⁸⁶ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-515 (2009).

⁸⁷ It should go without saying that the SEC will need to identify the source of its statutory authority to regulate DEPs in the manner that may ultimately be proposed and to ensure that the exercise of any regulatory authority conforms to the limits imposed on the agency by the text, structure, and purposes of its organic statutes. As a federal agency, the SEC “literally has no power to act ... unless and until Congress confers power upon it.” *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). And it is axiomatic that “[r]egardless of how serious the problem an administrative agency seeks to address ..., it may not exercise its authority ‘in a manner that is inconsistent with the administrative structure that Congress enacted into law.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125-126 (2000). In issuing any NPRM, the SEC should take care to describe the source of its authority and to explain how the proposed regulations adhere to the relevant statutory framework.



effort to regulate digital engagement practices based on their communicative content would therefore face strict First Amendment scrutiny—which regulations rarely survive. The SEC may, of course, prevent the dissemination of false or misleading information. But the agency may not suppress ideas, opinions, or truthful information because it fears investors exposed to such expression will make decisions the SEC believes are not in their best interests. That is no less true simply because broker-dealer communications are, as discussed above, already regulated for certain purposes. *See Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 521 (D.C. Cir. 2015) (rejecting argument that SEC disclosure regulations can evade First Amendment scrutiny “because the United States is thick with laws forcing ‘[i]ssuers of securities’ to ‘make all sorts of disclosures about their products’”). As in other spheres, regulation in this area must respect the First Amendment principle “that information is not in itself harmful, that people will perceive their own interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them.” *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 578 (2011).

1. *Digital Engagement Practices Are Fully Protected Speech.*

At the outset, there can be no real dispute that the digital engagement practices at issue in the Request implicate protected speech under the First Amendment. Many of these practices—as the SEC’s own description of them makes clear—are expressly designed to convey ideas and information to investors. *See* 86 Fed. Reg. at 49,069 (discussing digital platforms that “present ‘ideas’” to investors such as “curated lists” and “news headlines”); *id.* (discussing the use of “notifications” regarding, e.g., movements in stock prices); *id.* (discussing the provision of “additional features,” such as “access to research reports, briefs, webcasts, and newspaper subscriptions”). Without question, the expression of ideas and “the creation and dissemination of information are speech within the meaning of the First Amendment.” *Sorrell*, 564 U.S. at 570; *see also Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) (“if the acts of ‘disclosing’ and ‘publishing’ information do not constitute speech, it is hard to imagine what does”).

So, too, are other features used by digital platforms such as animation and graphics that, although they may not present information in so many words, nonetheless convey protected ideas. Visual and auditory devices communicate *ideas*, e.g., that retail investors’ participation in the financial markets is a good thing and that taking charge of one’s financial affairs by learning to invest is an important achievement. Just as a painting or a symphony is entitled to no less First Amendment protection than a novel or a newspaper article, digital platforms do not lose First Amendment protection when they express ideas through “animation and graphics” or “visual cues.” 86 Fed. Reg. at 49,069. Indeed, the very use of such features, which are ubiquitous on today’s e-commerce and other digital platforms, itself conveys the message that investing in the financial markets is not an activity reserved for the wealthy, but one that should be broadly accessible to the masses. *See Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 790 (2011) (affording full First Amendment protection to video games, which “communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music) and through features distinctive to the medium (such as players’ interaction with the virtual world”).



Nor do digital engagement practices fall within the category the Supreme Court has referred to as “commercial speech.” To the extent the “commercial speech” doctrine retains vitality,⁸⁸ it is a narrow exception generally reserved for commercial communications, like advertisements, that do “no more than propose a commercial transaction.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993); *see also City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993); *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983). The practices at issue do not propose commercial transactions at all, let alone do “no more” than propose commercial transactions. Rather, they provide truthful information that investors can use to inform their investment decisions and enhance their investment experience. The mere fact that the speech concerns economic activity does not make it less worthy of First Amendment protection; nor does the fact that digital platforms are for-profit businesses that have economic incentives for communicating with their subscribers. *See Sorrell*, 564 U.S. at 567 (“While the burdened speech results from an economic motive, so too does a great deal of vital expression.”). Were it otherwise, for-profit financial news services (and much else besides) would be commercial speech. That is not the law. And, in all events, even speech that is deemed “commercial speech” is still entitled to “substantial” First Amendment protection, *Bolger*, 463 U.S. at 68, requiring “heightened scrutiny,” *Sorrell*, 564 U.S. at 571–72.

Finally, regulations of digital engagement practices cannot evade First Amendment scrutiny as purported regulations of “professional speech.” Digital platforms like Robinhood—unlike, e.g., investment advisers—do not offer investment advice, let alone do so within the confines of a professional relationship of trust and confidence. *See Lowe v. SEC*, 472 U.S. 181, 228–29 (1985) (White, J., concurring) (discussing the government’s latitude to regulate investment advisory services in light of the fiduciary relationship between investment advisers and their clients). They therefore are not “professionals” for First Amendment purposes. In any event, the Supreme Court has afforded lesser protection for “professional speech” in only two circumstances—when laws either (i) “require professionals to disclose factual, noncontroversial information in their ‘commercial speech,’” or (ii) “regulate professional conduct, even though that conduct incidentally involves speech.” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372 (2018). Neither circumstance is present here. As just explained, digital engagement practices involve fully protected speech, not commercial speech. And if the SEC sought to regulate how digital platforms use such practices to communicate with their customers, it would clearly be regulating speech, not conduct. *See Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2347 (2020) (holding that law restricting robocalls regulated speech, not conduct, because it “focuse[d] on whether the caller [was] *speaking* about a particular topic”); *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1151 (2017) (holding that, although a law regulating prices regulates conduct, a law regulating “how sellers may communicate their prices” regulates speech).

⁸⁸ The extent to which the “commercial speech” doctrine survives as a distinct tier of First Amendment scrutiny is open to question, with the Supreme Court not having invoked the doctrine to uphold a commercial speech regulation in decades. *See* Martin H. Redish, *Commercial Speech and the Value of Free Expression*, Cato Inst. Pol’y Anal. No. 813, 2 (2017) (noting “it is difficult to find a Supreme Court decision upholding governmental suppression of truthful commercial speech in the last 25 years”); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 523–28 (1996) (Thomas, J., concurring) (calling for strict scrutiny of laws suppressing truthful commercial speech).



2. *Many Regulations Of Digital Engagement Practices Could Be Subject To—And Would Likely Fail—Strict First Amendment Scrutiny.*

Because digital engagement practices constitute fully protected speech, efforts by the SEC to regulate them on the basis of their content or the viewpoints they express would likely trigger strict First Amendment scrutiny. Content- and viewpoint-based regulations of fully protected speech are “presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Nat’l Inst. of Family & Life Advocates*, 138 S. Ct. at 2371. Few regulations pass this “stringent standard,” which “reflects the fundamental principle that governments have no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Id.*; see also *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019) (striking down as viewpoint discriminatory Lanham Act provision prohibiting registration of “immoral or scandalous” trademarks); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (striking down as content discriminatory town sign code that applied different restrictions to different messages); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 818 (2000) (“It is rare that a regulation restricting speech because of its content will ever be permissible.”).

Although the constitutionality of any regulation would depend on the specifics of the regulation and the record underlying it, heightened First Amendment review would impose real constraints on many types of regulation in this area. *First*, a regulation restricting digital engagement practices in an effort to prevent them from influencing investor behavior in ways the SEC disapproves would almost certainly be a content- or viewpoint-based restriction triggering strict scrutiny. For example, regulations restricting platforms’ ability to send notifications or otherwise communicate information about, e.g., movements in stock prices or the activity of other investors would be content-based because they would turn on the subject matter of the speech. See *Barr*, 140 S. Ct. at 2346 (a law that disfavors speech on certain topics “is a content-based restriction on speech”); *Reed*, 576 U.S. at 169 (“a speech regulation targeted at specific subject matter is content based”). Similarly, a regulation restricting practices that convey the message that self-directed trading is a good thing would be viewpoint-based, reflecting a preference for “guided” investing. See *Iancu*, 139 S. Ct. at 2299 (“The government may not discriminate against speech based on the ideas or opinions it conveys.”).

Second, the SEC could not shield its regulations from strict scrutiny by claiming that its purpose is to protect investors, not suppress ideas. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.” *Reed*, 576 U.S. at 165; see also *id.* at 166 (“an innocuous justification cannot transform a facially content-based law into one that is content neutral”). Moreover, the paternalistic notion that the government can suppress truthful speech to protect individuals from the lawful choices they might make if they heard it is “incompatible with the First Amendment.” *Sorrell*, 564 U.S. at 577.

Third, the SEC would bear a heavy burden to demonstrate that there is “an actual problem in need of solving,” i.e., that the purported harms it seeks to prevent are real and that there is a “direct causal link” between the practices the SEC seeks to regulate and the purported harms it seeks to prevent. *Brown*, 564 U.S. at 799. “This burden is not satisfied by mere speculation or conjecture,” *Edenfield*, 507 U.S. at 770, or even by “predictive judgment” based on empirical studies, *Brown* 564 U.S. at 799. Rather, the SEC would be required to substantiate its assertions with evidence; and because the



SEC would bear the burden of proof and “the risk of uncertainty, ambiguous proof will not suffice.” *Id.* at 799–800; *see id.* at 801 n.8 (concluding that empirical studies did not establish a causal link between violent video games and antisocial behavior “with the degree of certitude that strict scrutiny requires”).

Fourth, in addition to establishing a compelling government interest, the SEC would be required to show that its regulations are “narrowly drawn to serve that interest,” i.e., that “the curtailment of free speech [is] actually necessary to the solution.” *Id.* at 799. To satisfy this requirement, the regulations would have to be “the least restrictive alternative that can be used to achieve” the SEC’s asserted interests. *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). That is an exacting standard that is rarely met, especially when the government’s asserted interests could be achieved through more speech, rather than less speech. *See Citizens United v. FEC*, 558 U.S. 310, 361 (2010) (“it is our law and our tradition that more speech, not less, is the governing rule”); *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) (when the government objects to speech, “the remedy to be applied is more speech, not enforced silence”). Conversely, a regulation that burdens some speech while leaving unrestricted other speech or practices that create the same problem will be struck down as underinclusive. *See Reed*, 576 U.S. at 172 (“[A] law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited.”); *Brown*, 564 U.S. at 802 (“Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.”). As the Supreme Court has often instructed, “[p]recision must be the touchstone when it comes to regulations of speech.” *Nat’l Inst. of Family & Life Advocates*, 138 S. Ct. at 2372.

Fifth, as with other forms of underinclusiveness, the Supreme Court’s “precedents are deeply skeptical of laws that distinguish among different speakers, allowing speech by some but not others,” as such laws “run the risk that the State has left unburdened those speakers whose messages are in accord with its own views.” *Id.* at 2378. Thus, regulations that target the speech of digital platforms without addressing more traditional forms of communication used by broker-dealers and financial advisers—such as financial publications that routinely publish lists or information about the most active stocks or other widely traded securities—are unlikely to survive First Amendment scrutiny. *See Sorrell*, 564 U.S. at 564 (striking down law that “disfavor[ed] specific speakers” by “preventing detailers—and only detailers—from communicating with physicians in an effective and informative manner”); *Reed*, 576 U.S. at 170 (“Because speech restrictions based on the identity of the speaker are all too often simply a means to control content, we have insisted that laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.”).

Finally, rigorous First Amendment scrutiny would apply not only to a complete ban on particular forms of speech by digital platforms, but also to measures that burden such speech through regulations. “The distinction between laws burdening and laws banning speech is but a matter of degree,” and “the Government’s content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.” *Sorrell*, 564 U.S. at 565–66. “Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content.” *Id.* at 566.

In short, although much will depend on the specific nature of the regulations the SEC is considering, the First Amendment will likely present a substantial obstacle to any attempt by the SEC to



regulate digital engagement practices because the SEC disapproves of the messages they convey or believes that investors will make unwise decisions if given truthful information.

* * * * *

We appreciate the opportunity to comment on the Request. Please contact the undersigned or Robinhood's Deputy General Counsel, Lucas Moskowitz, at [REDACTED] if you have any questions or comments.

Sincerely,

DocuSigned by:

2FD230F46B54425
David Dusseault
President
Robinhood Financial, LLC

Exhibit A:

DEP Categories Identified by the SEC

<i>SEC Identified DEP</i>	<i>Response</i>
<i>Social networking tools</i>	<p>Robinhood does not provide social forums within our app or our website where customers can “like,” “follow” or “share” their investments with other customers; Robinhood does not offer a “chat” feature for customer-to-customer messaging; and Robinhood does not offer a “copy trading” feature. All engagement on our app and platform today is directly between Robinhood and its customers.</p> <p>As part of the account creation process, Robinhood assigns investors a unique account profile identifier and allows customers to upload a picture to their application profile. However, all profile information is private and users are not permitted to share their Robinhood application profiles with other users.</p>
<i>Games, streaks and other contests with prize</i>	<p>Robinhood does not employ games that use interactive graphics to offer prizes for completing investing tasks.</p> <p>Robinhood does offer customers free stock when a customer opens and funds a new account and for referring new customers. Customers may decline, and must opt in to accept the free stock before it is deposited in the customer’s account. Robinhood also conducts sweepstakes for brand awareness and to promote customer loyalty. For example, Robinhood offered \$500 to 200 sweepstakes winners who referred friends or signed up for a Robinhood account and linked their bank account, in the summer of 2021. No purchase was necessary to participate in the sweepstakes, and any customer or non-customer was also free to participate in the sweepstakes by using a mail-in entry, without making any referral or account application.</p>
<i>Points, badges, and leaderboards</i>	<p>We understand that some digital platforms may use points or similar “scorekeeping” related to trading activity. For example, some platforms offer “paper trading” (i.e., simulated trading) competitions that enable investors to practice trading without real money. Certain platforms also offer badges as visual markers of achievement as well as leaderboards to rank individuals based on investment performance-based criteria developed by the firm. Robinhood does not offer “paper trading” (i.e., simulated trading) competitions that enable investors to practice trading or other rankings or scorekeeping in connection with investment performance. We understand, however, that such competitions are not unique to online firms and have been offered by traditional “brick and mortar” broker-dealers.</p>

Robinhood, however, does not host trading competitions, we do not maintain a “leaderboard,” and we do not offer badges or visual markers of achievement.

Notifications

At Robinhood, notifications and alerts are generally configurable by customers. This means that customers may turn-off push notifications by going into the settings of their mobile device unless the notifications serve a regulatory purpose or relate to important account information. Robinhood has the ability to send notifications and alerts as (1) push notifications that appear on a customer’s mobile device; (2) email communications; and (3) in-app messages. As stated above, push notifications and e-mail alerts are configurable by a customer to that customer’s preferences. With the exception of certain notifications that serve a regulatory purpose or relate to important account information, a customer may opt out of receiving push notifications and e-mails in her app and/or on her phone. These notifications are provided for informational purposes and alert customers to important news regarding their accounts or investments. Examples of notifications include: the price of a stock the customer owns reaching a 52-week high or low or changing by 5% or 10%; suspicious activity in the customer’s account; margin maintenance alerts or margin call warnings; options expiration reminders; upcoming dividend payments by companies who stock the customer owns; upcoming earnings announcements by companies whose securities the customer owns; and a friend whom the customer referred through the Stock Referral Program joining Robinhood.

Notifications and alerts are not new or novel. Market participants with significant assets have, for years, paid investment professionals to monitor these types of circumstances and provide real-time updates. The securities industry has used these notifications for decades and the securities regulators have been comfortable with it for decades. *See* FINRA Regulatory Notice 11-02 (Oct. 7, 2011). Digital platform notifications are not only faster and more efficient than other forms of communication, but also more fair and equitable because they provide information to all interested customers at the same time. This is an improvement over the days when brokers would call their customers and some customers received information much earlier than others – which in turn creates information disparity and may result in unfair advantages for some customers.

Celebrations for trading

Robinhood does celebrate certain milestone events such as a customer’s opening an account, funding an account, and a first investment. These digital “celebrations” may take the form of animation and graphics. In the past, Robinhood used animated confetti – which is a widely-recognized symbol of celebration – to

acknowledge milestones. Now, we use a different form of animation to mark milestones in our customers' financial journeys. U.S. securities regulators traditionally have viewed retail investor participation in the securities markets as important because of the opportunities for wealth accumulation that accompanies this participation. Cf. <https://www.finra.org/media-center/newsreleases/2021/finra-launches-educational-initiative-aimed-newer-investors>. Robinhood's acknowledgment of investors' milestones is consistent with these views.

Visual cues

As with most broker-dealers, Robinhood's application contains visual cues such as objects, pictures, symbols and words. Visual cues are not new or novel. Every broker-dealer or investment adviser's website, storefront, print ad, desk inside an affiliated bank, TV commercial, and news segment is a visual cue that increases brand awareness and may trigger further engagement by a customer with that entity. U.S. securities regulators traditionally have endorsed the use of "visually engaging and effective designs" to appeal to retail customers and make information more accessible, noting that "[t]here is also empirical evidence that visualization improves individual perception of information." Cf. Form CRS, 84 Fed. Reg. 33492, 33581 (Jul. 12, 2019).

Ideas presented at order placement and other curated lists or features

Robinhood does not present ideas at order placement. Robinhood does not recommend clients purchase any particular securities or engage in any investment strategies. Robinhood does not send client-specific investment recommendations based on their investment profile, demographic information, or geographic information confirm.

Robinhood does offer customers the ability to create their own "Watch Lists" or other lists of securities of interest. Based on these customer-generated lists, Robinhood provides customers with news updates regarding the stocks the customer has elected to add to the list. Customers may choose not to create any custom lists. When a customer opens an account, Robinhood pre-populates a "Watch List" that the customer can change or eliminate. The same default "Watch List" is displayed to all customers. Robinhood also generates 5 lists of securities based on Robinhood customer data, including the "100 Most Popular" listing the stocks that are most commonly held by Robinhood customers. Robinhood-generated lists generated are based on objective standards and are not personalized to the customer; the same content is displayed to every customer.

Additionally, Robinhood offers lists generated by an interdependent research firm, Morningstar, Inc., which categorizes and lists

securities by sector (e.g., the technology list includes 894 individual stocks).

By providing information categorized in these ways, Robinhood empowers its customers to assimilate and synthesize information about thousands of different publicly-traded companies without paying the fees/commissions associated with this type of data in more traditional advisory and brokerage models.

Notably, the securities industry has provided customers with lists of issuers by category (e.g., most actively traded or current buy ratings), trade ideas, and research reports for decades, and FINRA has confirmed that providing customers with tools to screen through a wide universe of securities, as well as lists of securities meeting broad, objective criteria does not constitute a recommendation. *See* FINRA Regulatory Notice 11-02 (Oct. 7, 2011).

Subscriptions and membership tiers

At Robinhood, the “upgraded” membership tier is an upgrade to Gold, which costs \$5 per month and provides an investor with advanced research, instant deposits, market data, and the first \$1,000 in margin interest. Robinhood offers customers the opportunity to try one month of Gold membership for free. Customers can cancel their Gold membership at any time (including after their trial period has ended).

Subscription services at broker-dealers are not new. Broker-dealers have historically offered services such as research and access to certain market data for a subscription fee. Subscription services provide customers the option to pay for additional products and services, and tailor their investment experience to their own preferences.

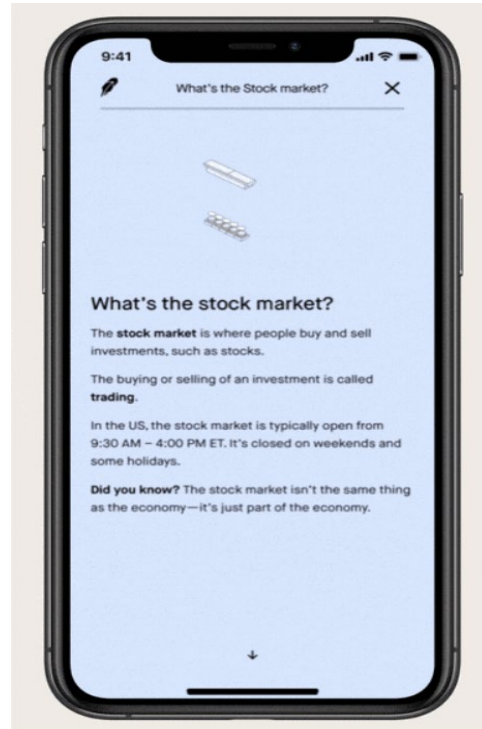
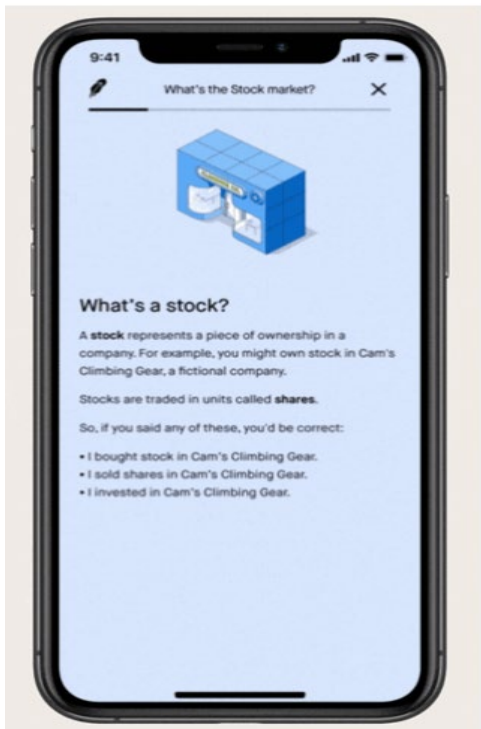
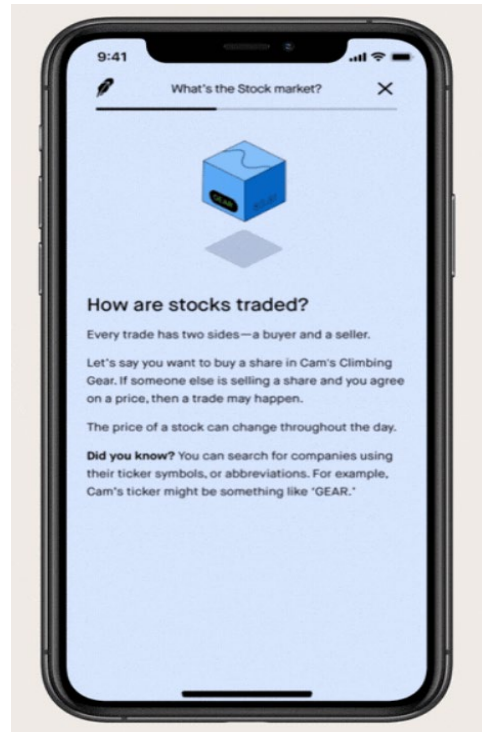
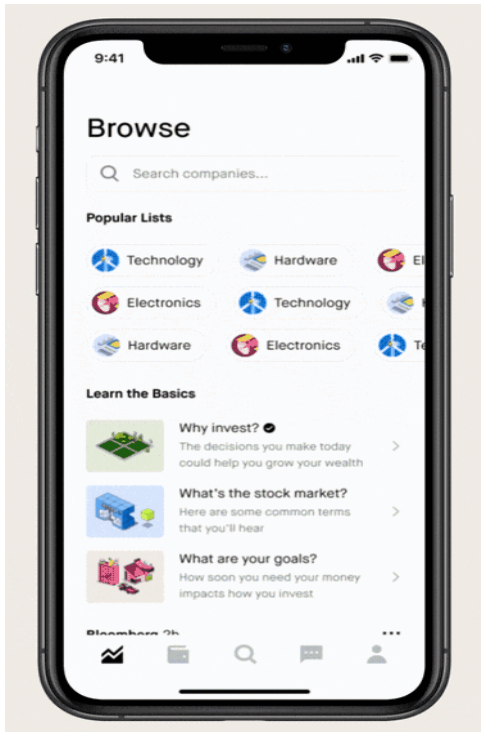
Chatbots

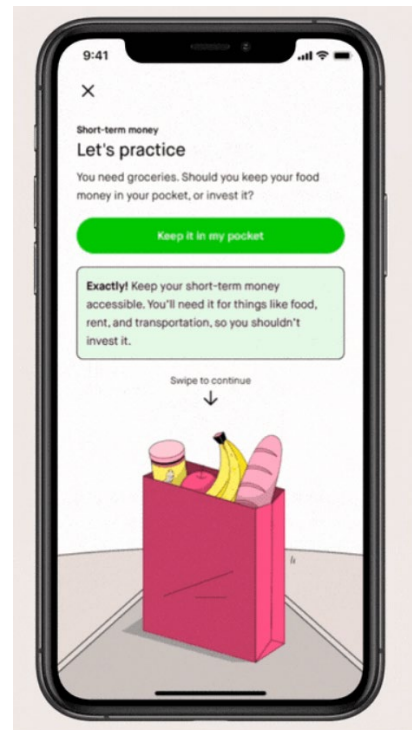
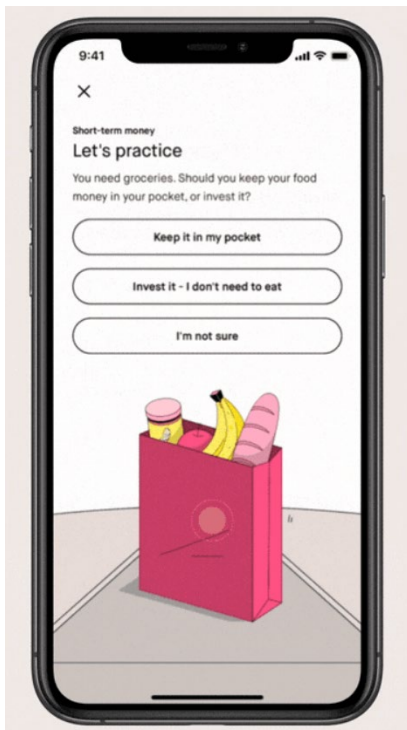
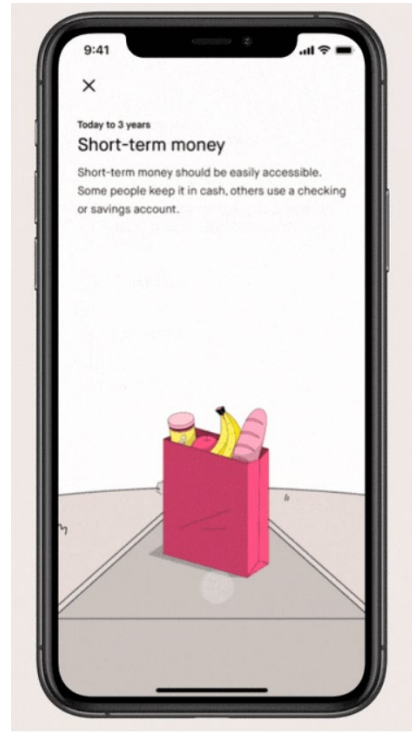
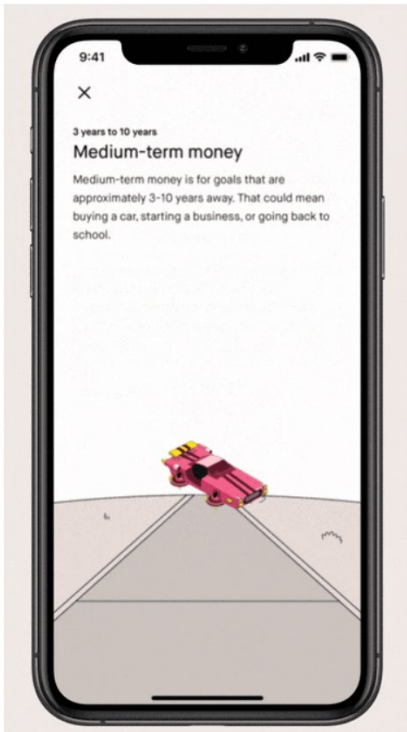
Robinhood uses automated chats within its in-app messaging function when customers request certain information. For example, through the in-app messaging system, customers may cancel an order or request additional information. A chatbot is technology that simulates human conversation. Conversations with customers have always existed and when the industry leverages technology to communicate with customers, the customer can remain informed and empowered to ask questions without increasing the cost of brokerage services by requiring human interaction.

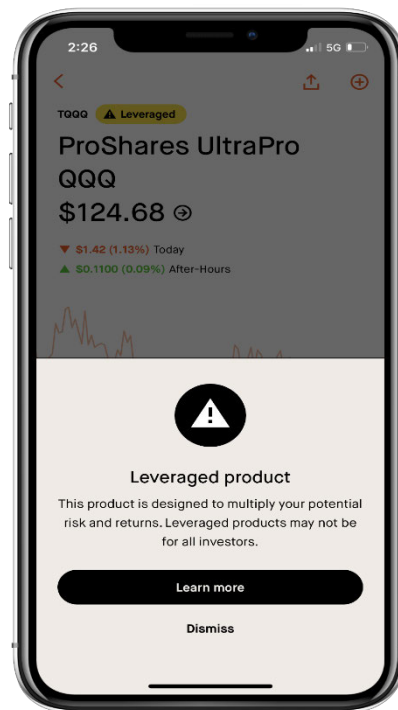
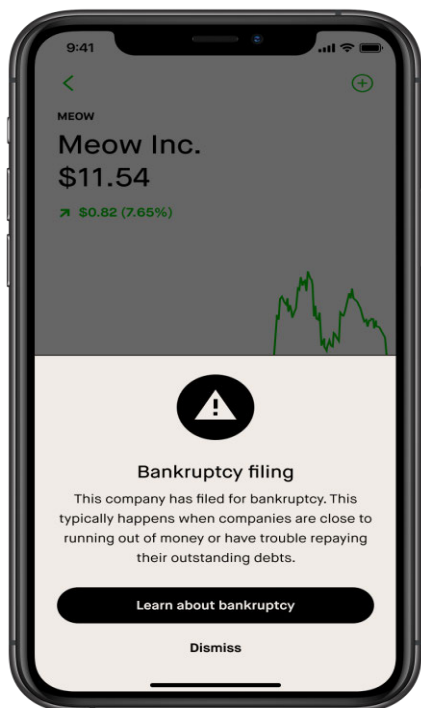
Exhibit B:

Example Digital Communications and Features

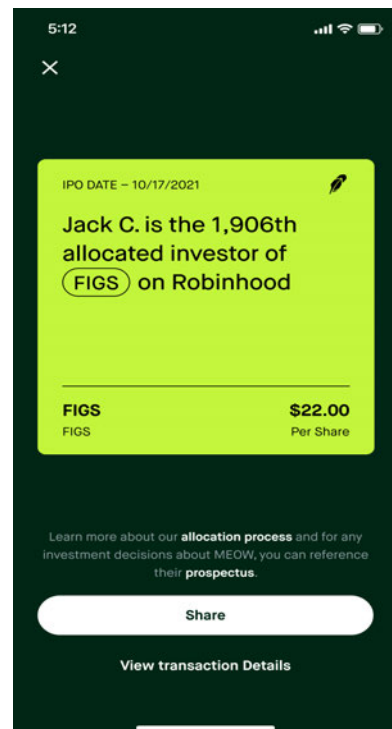
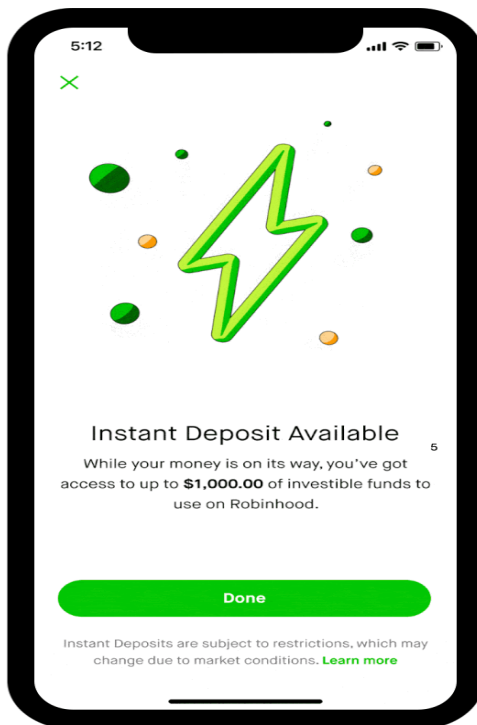
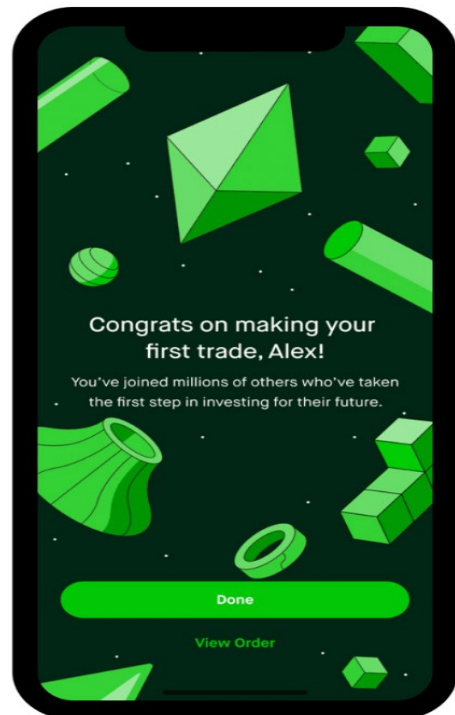
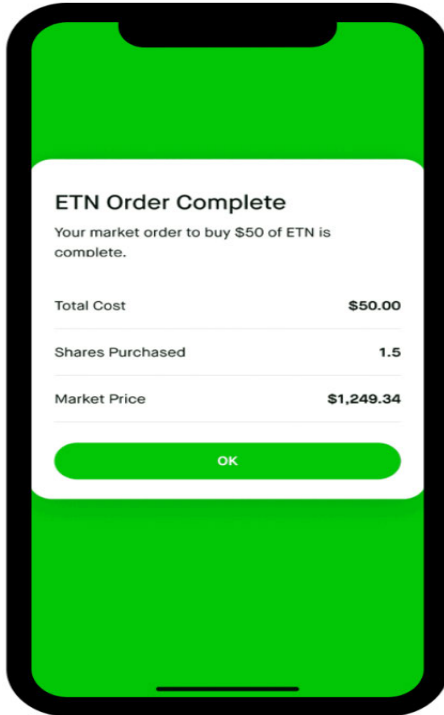
Educational Materials



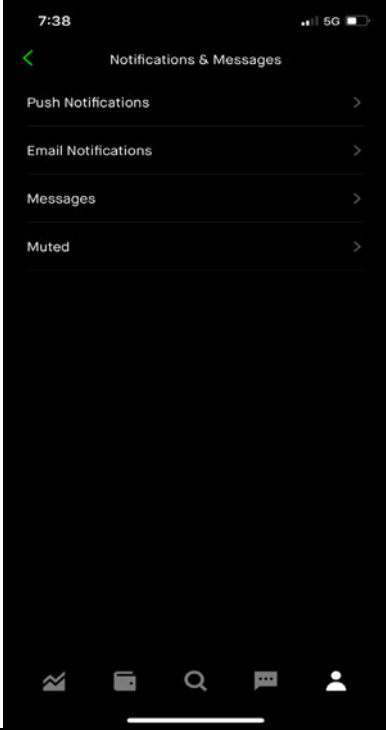
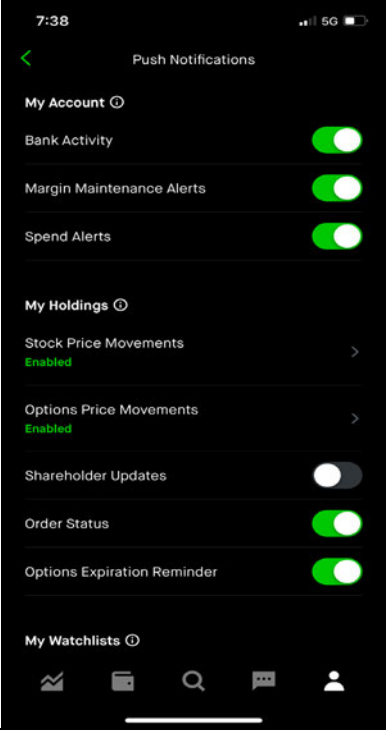
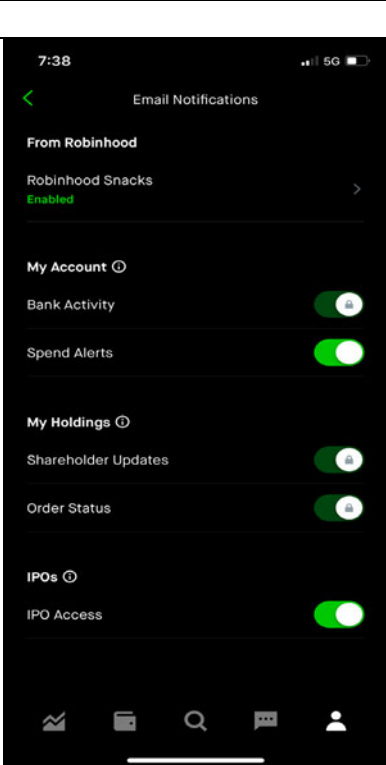
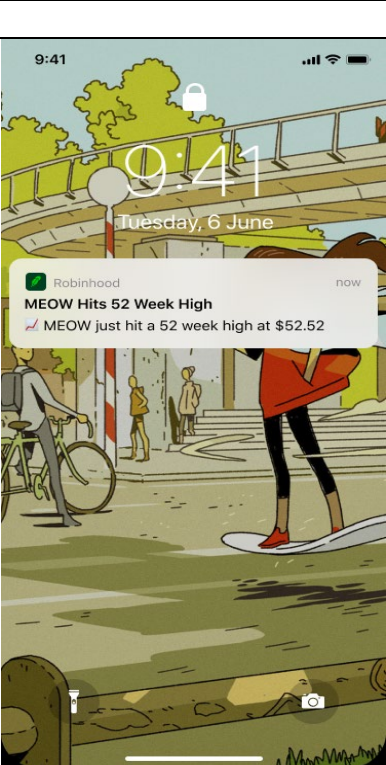




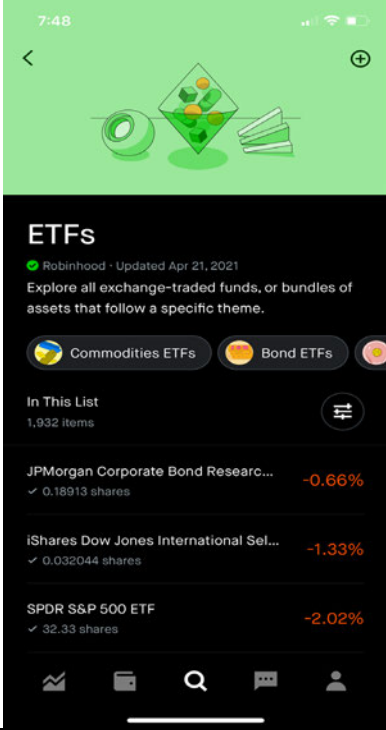
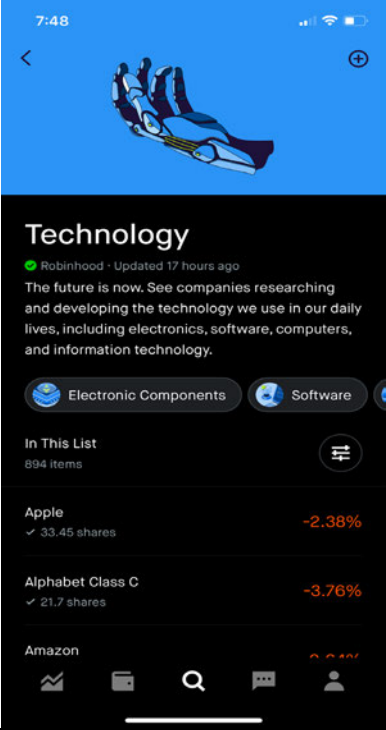
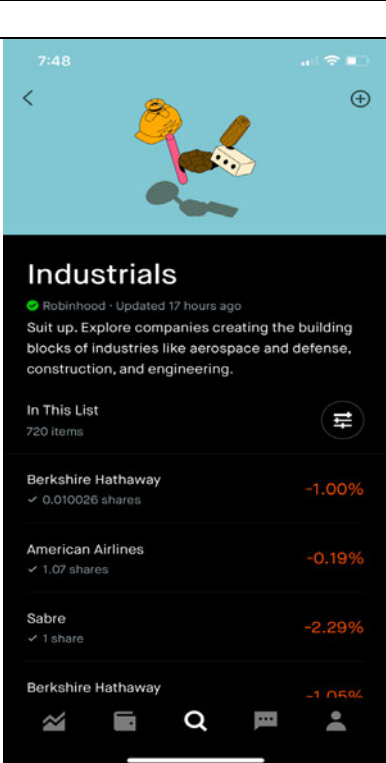
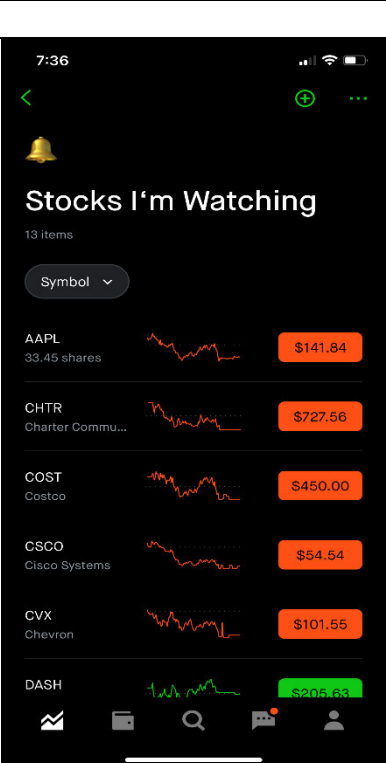
Celebrations



Notifications

Lists

 <p>7:48</p> <p>ETFs</p> <p>Robinhood · Updated Apr 21, 2021</p> <p>Explore all exchange-traded funds, or bundles of assets that follow a specific theme.</p> <p>Commodities ETFs Bond ETFs</p> <p>In This List 1,932 items</p> <p>JPMorgan Corporate Bond Researc... ✓ 0.18913 shares -0.66%</p> <p>iShares Dow Jones International Sel... ✓ 0.032044 shares -1.33%</p> <p>SPDR S&P 500 ETF ✓ 32.33 shares -2.02%</p>		 <p>7:48</p> <p>Technology</p> <p>Robinhood · Updated 17 hours ago</p> <p>The future is now. See companies researching and developing the technology we use in our daily lives, including electronics, software, computers, and information technology.</p> <p>Electronic Components Software</p> <p>In This List 894 items</p> <p>Apple ✓ 33.45 shares -2.38%</p> <p>Alphabet Class C ✓ 21.7 shares -3.76%</p> <p>Amazon</p>
 <p>7:48</p> <p>Industrials</p> <p>Robinhood · Updated 17 hours ago</p> <p>Suit up. Explore companies creating the building blocks of industries like aerospace and defense, construction, and engineering.</p> <p>In This List 720 items</p> <p>Berkshire Hathaway ✓ 0.010026 shares -1.00%</p> <p>American Airlines ✓ 1.07 shares -0.19%</p> <p>Sabre ✓ 1 share -2.29%</p> <p>Berkshire Hathaway ✓ 1 share -1.06%</p>		 <p>7:36</p> <p>Stocks I'm Watching</p> <p>13 items</p> <p>Symbol ▾</p> <p>AAPL 33.45 shares \$141.84</p> <p>CHTR Charter Commu... \$727.56</p> <p>COST Costco \$450.00</p> <p>CSCO Cisco Systems \$54.54</p> <p>CVX Chevron \$101.55</p> <p>DASH \$205.63</p>