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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: Digital Engagement Practices

File No. S7-10-21

Dear SEC:

In summary:

1. There is nothing wrong with having fun with investing.

¹ All opinions are strictly my own and do not necessarily represent those of Georgetown University or anyone else. I am very grateful to Georgetown University for financial support. Over the years I have served as a Visiting Academic Fellow at the NASD (predecessor to FINRA), served on the boards of the EDGX and EDGA stock exchanges, served as Chair of the Nasdaq Economic Advisory Board, and performed consulting work for brokerage firms, stock exchanges, other self-regulatory organizations, market makers, industry associations, and law firms. I've also visited over 75 stock and derivative exchanges around the world. As a finance professor, I practice what I preach in terms of diversification and own modest and well-diversified holdings in most public companies, including brokers, asset managers, market makers, and exchanges.

2. The Commission should use its Dodd-Frank §913 authority to protect investors from abusive practices in all products sold by broker-dealers and RIAs, not just securities. The Commission can and should use this authority with crypto products.

Introduction

The GameStop episode has focused attention on the purported “gamification” of investing.² Some allege that brokers are hiring evil mad scientists to use the dark magical tools of artificial intelligence to turn innocent young investors into zombie gaming addicts. Like drug dealers, these evil masterminds allegedly get people hooked by giving them a free first hit with free stock, then reinforce that dopamine rush with reinforcements like confetti when the cash register rings. The addicts, desperate for cash to support their habits, will break bad and start cooking meth using the heat generated by their crypto-mining gaming rigs. The Commission seeks comment on whether this is happening, and, if so, what, if anything, should be done about it.

I suspect that mostly the opposite is occurring: A generation of gaming addicts, raised on massive multiplayer online games, has finally discovered financial markets.

There is nothing wrong with having fun with investing.

Some moralists decry the fact that some brokerage firms make it fun to invest. The firms do what any good business does and tries to use modern technology to make its product as appealing as possible. There is nothing inherently wrong with trying to make a product more appealing. The issue is whether some firms are subconsciously tricking investors into doing things they should not be doing. Are firms effectively churning customer accounts through AI?

Some moralists appear to think that the only thing retail investors should be allowed to do is invest in an index fund that they can never trade. They want to protect investors from having fun or perhaps ever losing money. This is a very narrow view of investing and financial markets.

Some investors get entertainment value from “playing” the market. There is nothing wrong with that. Even if their trading results are less than they would have gotten from an index fund, they have also gotten entertainment value. People pay for entertainment all the time, and the entertainment industry is very large.

² For my analysis of what happened in GameStop, see Angel, James J., GameStonk: What Happened and What to Do About It (February 8, 2021). Available at SSRN: <https://ssrn.com/abstract=3782195>.

It is far better for society for investors to scratch their gaming itch by participating in the stock market than to play the lottery. Such investors bring in capital to the market, which enhances capital formation and economic growth. They also bring in information, which helps in price discovery.

There are two major issues here: First, are firms fraudulently misrepresenting their services? Emphasizing extraordinarily higher returns unlikely to be obtained by most customers certainly borders on misrepresentation. It is hard to determine when a display of information, such as a list of active stocks, crosses the border into a recommendation triggering Regulation Best Interest requirements. I suspect that such determinations will end up depending on the facts and circumstances of each individual case, with the courts applying their usual smell test to enforcement actions.

The second issue has to do with the gaming element. Some people have problems with compulsive gambling. Should all gambling be banned just because some people are harmed by it? There is a tradeoff between entertainment for the many versus the risk of damage to the few. Society's attitudes toward gambling have changed, with some forms of gambling legal in most states. For the firms that are pandering to the gaming element, do they have policies and procedures in place to deal with compulsive gamblers who may be harming themselves or others? Bars cut off those who have drunk too much. Should brokers do the same?

The Commission should not attempt to force firms to be boring. The SEC should expend its scarce regulatory and enforcement resources on more important things. It should only go after firms that egregiously commit fraud.

Dodd-Frank gave the SEC authority over ALL sales practices of broker-dealers and RIAs, not just securities.

§914(h) of Dodd-Frank reads (**emphasis added**) “
(h) OTHER MATTERS.—The Commission shall—
“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and
“(2) **examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.**”

Indeed, Congress felt so strongly about this that it inserted the same language both in the Securities Exchange Act and the Investment Advisers Act. Congress didn't even attempt to customize the language to make the Securities Exchange Act amendment refer to brokers and dealers and the Adviser's Act amendment only to RIAs. Instead, both sections refer to brokers, dealers, and investment advisers.

Note that this is in addition to the grant of authority in §914(f) regarding the standard of care for advice supplied to retail investors about securities. This additional authority relates to all sales practices. This authority is NOT limited to securities. As Congress repeated this in Dodd-Frank, let me repeat this again: This authority is NOT limited to securities. Thus, the Commission has explicit and broad rulemaking authority to deal with ALL sales practices of broker dealers and RIAs, not just those having to do with individualized advice to retail investors about securities. In particular, the Commission has authority over the sales practices of everything that broker dealers and RIAs sell, including crazy cryptos and dodgy annuities. The Commission should exercise this authority.

I miss the confetti.

Respectfully submitted,

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