COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION

ROBINHOOD FINANCIAL LLC,

Plaintiff,

v.

WILLIAM F. GALVIN, SECRETARY OF THE COMMONWEALTH, in his official capacity, and the MASSACHUSETTS SECURITIES DIVISION OF THE OFFICE OF THE SECRETARY OF THE COMMONWEALTH,

Defendants.

CIVIL ACTION NO.:_____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Preliminary Statement

Last year Defendant William F. Galvin, Secretary of the Commonwealth, acting through Defendant, the Massachusetts Securities Division, promulgated a new "fiduciary rule." Less than four months after the new rule took effect, the Division filed an Administrative Complaint against Robinhood Financial LLC ("Robinhood") as a "test case" for the new regulation. Both facially and as applied to Robinhood, the new rule is invalid under both Massachusetts and federal law.

The new rule is invalid on its face because it contradicts the Supreme Judicial Court's ("SJC") determination that, as a matter of Massachusetts law, brokerage firms are *not* general-purpose fiduciaries of their customers. The Legislature has done nothing to change the SJC's determination, nor given the Secretary any legal authority to do so himself. To the contrary, Massachusetts law carefully distinguishes between brokerage firms and investment advisers and cabins the Secretary's authority such that he cannot make fundamental changes to the legal

relationship between brokerage firms and their customers. The Massachusetts Constitution also prohibits the Secretary from usurping the authority of the Judicial Branch to explain the common law, or assuming the authority of Legislature and Governor to create or amend the law.

The new rule is also invalid on its face because, by design, it creates an obstacle to the effectiveness of federal regulation. Less than two years ago, the U.S. Securities and Exchange Commission ("SEC") drew upon nearly ten years of study—and decades of regulating brokerage firms and asset managers—to adopt a rule explicitly rejecting the fiduciary standard the Secretary now seeks to impose in Massachusetts. As part of its rulemaking, the SEC found that the Secretary's preferred policy—a uniform fiduciary duty—would restrict access to financial services for small investors and increase their costs. The SEC also found that investors benefit from their ability to select a non-fiduciary brokerage firm for their investments. The Supremacy Clause of the U.S. Constitution prohibits the Secretary from preventing Massachusetts investors from choosing an option that the SEC purposefully preserved for investors nationwide.

As applied to Robinhood, the Secretary's new rule is even more problematic. Robinhood is a "self-directed" brokerage firm that does not make investment recommendations or provide investment advice. By its own terms, the new rule does not apply to self-directed firms. By trying to bring Robinhood within the scope of the new rule, the Secretary violates the basic administrative law requirement that regulators define their rules clearly enough so that regulated entities can know what is expected of them. In addition, by attempting to apply his new rule to Robinhood, the Secretary is in direct conflict with SEC rules, the Dodd Frank Act, the Commerce Clause and the First Amendment.

For all these reasons, and as further explained below, this Court should enjoin enforcement of the Secretary's new rule and declare that it is contrary to state and federal law, both on its face and as applied to Robinhood.

Introduction to the Parties and the Case

1. Robinhood's mission is to democratize finance for all. It was founded on the belief that *everyone*—including smaller investors, younger investors, diverse investors, and new investors—should have equal access to our financial markets. To enable that kind of access, Robinhood eliminated traditional barriers to investing. Robinhood does not charge its customers commissions to trade securities and it does not have any account minimums. Robinhood also allows customers to purchase fractional shares of securities, instead of only full shares, so that more securities are accessible to all investors. Robinhood is succeeding in its mission, and millions of investors—including many who have historically been excluded from the financial markets—now have the ability to invest and build wealth for the future. Robinhood's first priority has *always* been (and *always* will be) its customers, and Robinhood continues to look for new ways to improve market access and empower people from all backgrounds to invest responsibly.

2. The Secretary of the Commonwealth (the "Secretary") and the Massachusetts Securities Division ("the Division") have unfairly attacked Robinhood. On December 16, 2020, the Division filed an Administrative Complaint ("Admin. Compl.") against Robinhood in *In the Matter of: Robinhood Financial LLC* (Docket No. E-2020-0047), alleging that several aspects of Robinhood's business model are "dishonest and unethical" (the "Administrative Action").[1]

3. The Administrative Action against Robinhood hinges upon the Secretary's newly-promulgated regulation—a "fiduciary rule" for brokerage firms—that went into effect in

[1] A copy of the Administrative Complaint is attached hereto as Exhibit A.

September 2020.[2] The Secretary's fiduciary rule attempts to establish a new standard of conduct for all broker-dealers by overriding Massachusetts common law, which was established by the SJC more than 20 years ago. The Secretary's fiduciary rule also conflicts with recently-enacted federal regulations promulgated by the SEC that impose a national "best interest" standard of conduct for all brokerage firms that provide investment recommendations—not a fiduciary standard.

4. The Secretary lacks authority both to rewrite Massachusetts law and to enforce new Massachusetts regulations that are *expressly designed* to conflict with federal policy decisions. As such, the rule is invalid.

5. These issues cannot be decided by the presiding officer in the Administrative Action. First, the presiding officer in this case is a senior attorney at the Division who: has worked for the Secretary for decades; was instrumental in enacting the very regulation that Robinhood is challenging; and participated in the Division's investigation of Robinhood.[3] Second, the Division's presiding officers are not authorized to decide Constitutional issues, and thus it is futile for Robinhood to challenge the Secretary's fiduciary rule in the Administrative Action. And even if a presiding officer were to agree with Robinhood, and decline to enforce the fiduciary rule over the Division's objection, the Division could overrule that decision because the Director issues final orders in an administrative proceeding.

6. The Secretary's new fiduciary rule affects every brokerage firm doing business in Massachusetts and every Massachusetts brokerage customer. As a consequence, the viability of the new rule and its scope are legal questions of substantial public importance. Unless and until

[2] The fiduciary rule is codified at 950 Code Mass. Regs. §§ 12.204 & 12.207 (eff. Sept. 1, 2020).

[3] Robinhood filed a Motion for Recusal of Presiding Officer and for Appointment of Independent Presiding officer on January 29, 2021. A decision on the motion is pending.

this Court enjoins the Secretary from exceeding his authority, the law regarding the duties that brokerage firms owe their customers in the Commonwealth will remain unclear.

7. For these reasons and those explained further below, Robinhood respectfully asks the Court to take jurisdiction of this case and declare that the Secretary's new fiduciary rule, as well as the Secretary's attempted application of the new rule to Robinhood's business, violates state and federal law.[4]

Parties

8. Plaintiff Robinhood Financial LLC ("Robinhood") is a Delaware limited liability company with its principal place of business in California. Robinhood is registered with the Division as a broker-dealer and as of December 2020 has approximately 500,000 self-directed accounts registered to customers in Massachusetts. Robinhood is also registered with the SEC and the Financial Industry Regulatory Authority ("FINRA").

9. Defendant William F. Galvin was and is the Secretary of the Commonwealth and is being sued solely in his official capacity. Securities regulation in Massachusetts is substantively governed by G.L. c. 110A, the Massachusetts Uniform Securities Act of 1956. Under G.L. c. 110A, § 406, Secretary Galvin is the Commonwealth's securities administrator. The Secretary is personally involved in securities regulation and often issues press releases and appears on television commenting on his regulatory decisions and enforcement initiatives. However, the Secretary has delegated certain securities regulatory responsibilities to the Division, which is part of the Secretary's office. For simplicity, the Secretary, the Division, and the Division's sub-sections and officers are referred to collectively herein as "the Secretary."

[4] Robinhood is filing a Motion for Preliminary Injunction and an accompanying Memorandum of Law contemporaneously with this Complaint.

10. Pursuant to Mass. R. Civ. P. 4(d)(3), this Complaint will be served upon the Boston office of the Attorney General.

Jurisdiction and Venue

11. Plaintiff brings this action pursuant to G.L. c. 231A, §§ 1, 2, Article 30 of the Massachusetts Declaration of Rights, and 42 U.S.C. § 1983.

12. The Massachusetts Administrative Procedures Act, G.L. c. 30A, § 7, provides that "judicial review of any regulation . . . may be had through an action for declaratory relief" under G.L. c. 231A, except where "an exclusive mode of review is provided by law." G.L. c. 110A, does not provide an alternative mode of review. *See* G.L. c. 110, § 411.

13. It is appropriate for this Court to take jurisdiction of this case before completion of the Administrative Action because this case centers on legal questions of broad public importance and there is no reasonable prospect of resolving those issues promptly in the administrative forum. *See Temple Emanuel of Newton v. Mass. Comm'n Against Discrimination*, 463 Mass. 472, 479-80 (2012).

14. Venue is proper in Suffolk County, as this is the site of the Secretary's main office. Venue is proper in the Business Litigation Session because this case centers on "claims relating to or arising out of securities transactions" and represents "claims by or against a business enterprise to which a government entity is a party." Mass. Super. Ct. Admin. Directive No. 17-1. In addition, this case raises consumer matters "involving complex issues." *Id.*

Regulation of Broker-Dealers and Investment Advisers

15. In the United States, individuals can obtain investment services from brokerage firms (technically called "broker-dealers") or from investment advisers.

16. Since passage of the foundational federal securities laws between 1933 and 1940, federal and Massachusetts law have recognized broker-dealers, on the one hand, and investment advisers, on the other hand, as having separate and distinct business models and different responsibilities to their customers.

17. As the SEC has summarized, "[b]oth investment advisers and broker-dealers play an important role in our capital markets and our economy more broadly. Investment advisers and broker-dealers have different types of relationships with investors, offer different services, and have different compensation models. This variety is important because it presents investors with choices regarding the types of relationships they can have, the services they can receive, and how they can pay for those services." Commission Interpretation Regarding Standard of Conduct for Investment Advisors, Investment Advisors Act Release No. IA-5248, 84 Fed. Reg. 33681 (July 12, 2019).

18. Since 1940, the primary distinction between broker-dealers and investment advisers is that broker-dealers *are not* fiduciaries in the business of effecting transactions in securities while investment advisers *are* fiduciaries in the business of providing investment advice. *See Financial Planning Assoc. v. SEC*, 482 F.3d 481, 487-89 (D.C. Cir. 2007) (explaining that broker-dealers are exempted from the fiduciary standards imposed upon investment advisers under the Investment Advisers Act of 1940).

19. Insofar as their relationships involve retail customers, broker-dealers typically earn transaction-based compensation by charging commissions from client transactions and/or receiving payments for the orders that clients place with other market participants (often referred to as "payment for order flow"). Investment advisers, on the other hand, usually charge a monthly or quarterly fee calculated as a percentage of customer assets under the adviser's management. As

a result, investment advisers often cater to relatively wealthy investors. Brokerage firms, on the other hand, are typically less expensive and can service smaller accounts.

20. By eliminating commissions and doing away with account minimums, Robinhood opened the door to brokerage services to an entirely new class of investors, many of whom could not have afforded the costs of traditional brokerage or investment advisory services. It is important to preserve and protect brokerage services so that all investors—and especially those with smaller accounts—continue to have access to the financial markets.

A. Broker-Dealers

21. Under federal and Massachusetts law, "broker-dealer" "means any person engaged in the business of effecting transactions in securities for the account of others or for his own account." G.L. c. 110A, § 401 (emphasis added); *see also* 15 U.S.C. § 78c.

22. While a broker-dealer is permitted to provide recommendations about securities "incidental" to their business in effecting transactions, broker-dealers cannot charge their customers a fee for investment advice. *See Financial Planning Assoc.*, 482 F.3d at 488. Instead, broker-dealers are *required* to draw "transaction-based" compensation—such as brokerage commissions or payment for order flow. *Id.*

23. Until recently, many brokerage firms required customers to pay commissions to trade securities while also receiving payment for order flow. For example, historically a broker-dealer might charge a client a brokerage commission (sometimes termed a "mark-up") of one-percent of the purchase price, or $0.25 per share, or $10.00 per trade. That same broker-dealer may also receive payments for order flow from a market maker.

24. Under Massachusetts law, the common-law rule, which G.L. c. 110A left unaltered, is that "general fiduciary duties [apply] *only* to those stockbrokers who have the ability to, and in

fact do, make most if not all of the investment decisions for their customers . . . ." *Patsos v. First Albany Corp.*, 433 Mass. 323, 336 (2001) (emphasis added). This means that broker-dealers, as a matter of law, do not owe their customers general fiduciary duties, even when providing customers with investment advice and recommendations. Instead, under Massachusetts law, broker-dealers owe their customers fiduciary duties only when they act with discretion and make the investment decisions for their customers. Robinhood does neither of those things.

B. Investment Advisers

25. Conversely to broker-dealers, which are *prohibited* from charging asset-based fees, investment advisers are *required* to draw their remuneration from fees and *cannot* charge their customers on a per-transaction basis, such as through commissions. *See, e.g.*, 15 U.S.C. § 80b-2(a)(11).

26. In stark contrast to the provisions governing broker-dealers, Section 206 of the Investment Advisers Act of 1940 makes investment advisers general fiduciaries of their clients.

C. Self-Directed Brokerage

27. Certain customers of broker-dealers neither seek nor receive any advice or recommendations about securities transactions but instead make their own investment decisions and then direct their broker-dealer to effect the transactions that they have selected. These customers are often termed "self-directed" investors, because they make their own investment decisions, and their trades are not recommended or "solicited" by their broker-dealer.

28. The hallmark of a self-directed brokerage relationship is that the broker-dealer does not make recommendations to the customer about what securities to buy or sell or when to buy and sell.

29. Under the common law and federal securities rules, brokerage firms can take orders from self-directed customers and are not required to make any inquiry as to whether the customer's trade is appropriate (*i.e.*, "suitable") for the customer. *See, e.g., Valelly v. Merrill Lynch, Pierce, Fenner & Smith Inc*., 464 F. Supp. 3d 634, 646 (S.D.N.Y. 2020) (applying Massachusetts law) (holding that there is neither a "common law duty to recommend suitable investments for self-directed accounts" nor a cause of action under G.L. c. 93A for allegedly failing to do so); *Antczak v. TD Ameritrade Clearing, Inc.*, No. CV 17-4947, 2018 WL 2298494, at *5 (E.D. Pa. May 21, 2018) ("An investor-directed account over which the broker-dealer has no discretion cannot support an unsuitability claim against the broker-dealer.").

30. It follows, and the SJC has held, that Massachusetts common law does not extend fiduciary duties to broker-dealers in self-directed accounts. *See Patsos*, 433 Mass. at 336.

Robinhood and the "Robinhood Effect"

31. Robinhood is a self-directed broker-dealer that interacts with its customers through its website and mobile application. Robinhood is not registered as an investment adviser, does not give advice about investing, and does not provide recommendations to its customers.

32. Robinhood challenged the traditional broker-dealer business model by electing not to charge its customers commissions or require account minimums.

33. In lieu of commissions, Robinhood draws revenue from other sources, including payments for order flow. This process, used by many broker-dealers, has been defined by the SEC as "a method of transferring some of the trading profits from market making to the brokers that route customer orders to specialists for execution." *SEC Special Study: Payment for Order Flow and Internalization in the Options Markets*, SEC.GOV (Dec. 2000), https://www.sec.gov/news/studies/ordpay.htm#P126_6002. Payment for order flow is a legal and

long-established practice that is regulated by the SEC.

34. By eliminating commissions, Robinhood has eliminated a significant cost of investing for all of its customers, including its Massachusetts customers. These customers have collectively saved tens of millions of dollars by not paying commissions on trades in their Robinhood accounts.

35. Robinhood's business model has also benefited other Massachusetts investors who are not Robinhood customers. Robinhood's new model created competition in the brokerage industry, which led other broker-dealers to eliminate commissions, all to the benefit of their customers. This trend is known as the "Robinhood effect," and it has reduced costs for investors nationwide, including those in Massachusetts.

The Dodd-Frank Act and Authorized SEC Rulemaking

36. In Section 913 of the Dodd-Frank Act of 2010, Congress directed the SEC to evaluate the long-existing distinctions between broker-dealers and investment advisers. Specifically, Congress authorized the SEC to consider:

> Promulgat[ing] rules to provide that, with respect to a broker or dealer, ***when providing personalized investment advice about securities to a retail customer*** . . . the standard of conduct for such broker or dealer with respect to such customer shall be the same as the standard of conduct applicable to an investment adviser under section 211 of the Investment Advisers Act of 1940. . . . ***Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.***

(emphasis added.)

37. The SEC spent nearly ten years studying and debating the decision Section 913 charged it to make.

38. Ultimately, the SEC determined that broker-dealers and investment advisers should continue to be subject to *different* duties in their interactions with retail customers. That

determination was incorporated into the SEC's new Regulation Best Interest (now commonly termed "Reg BI"), which became effective on June 30, 2020. *See* Exchange Act Release No. 34-86031 (June 5, 2019), 84 Fed. Reg. 134 at 33318 (July 12, 2019) (referred to here as the "Reg BI Adopting Release," with page citations to the Federal Register).

39. The Second Circuit has summarized the Reg BI Adopting Release as follows: "The SEC responded to [more than 6000 comments about proposed Reg BI] in a 173-page Adopting Release explaining why it chose the best-interest standard. ***It considered and rejected a uniform fiduciary standard for investment advisers and broker-dealers, explaining that 'a "one size fits all" approach would risk reducing investor choice' and that a uniform fiduciary standard 'would [not] provide any greater investor protection (or, in any case, that any benefits would [not] justify the costs imposed on retail investors in terms of reduced access to services . . .).'"*** *XY Planning Network, LLC v. SEC*, 963 F.3d 244, 250 (2d Cir. 2020) (*quoting* the Reg BI Adopting Release at 33332) (emphasis added).

40. *XY Planning* was a case brought by seven states and financial planners that challenged the SEC's decision to establish a best interest standard of conduct for broker-dealers instead of a fiduciary standard. As the Second Circuit held, "Regulation Best Interest was not arbitrary and capricious because the SEC gave adequate reasons for its decision ***to prioritize consumer choice and affordability over the possibility of reducing consumer confusion, and it supported its findings with substantial evidence***." *Id*. at 257 (internal quotation marks omitted) (emphasis added).

41. Reg BI also preserved the continued operation of self-directed brokerage firms. In its adopting release, the SEC affirmed that brokerage firms do not have "best interest" obligations

as to "self-directed or otherwise unsolicited transactions by a retail customer . . . ." Reg BI Adopting Release at 33335.

The Secretary's Opposition to Reg BI

42. The Secretary has been a vocal proponent of a "uniform fiduciary standard" for broker-dealers—an idea that the SEC rejected in adopting Reg BI.

43. When Reg BI was initially proposed in 2018, the Secretary objected to the proposal because it did not subject broker-dealers to a uniform fiduciary standard. In August 2018, the Secretary wrote a letter to all five SEC Commissioners and posted the letter on the Division's public website. The letter opened by stating:

> I write in my capacity as the chief securities regulator for Massachusetts. The Office of the Secretary of the Commonwealth administers and enforces the Massachusetts Uniform Securities Act, M.G.L. c. 110A, through the Massachusetts Securities Division. We welcome this opportunity to comment on the Securities and Exchange Commission's (the "SEC" or the "Commission") Regulation Best Interest ("Regulation BI") proposal, the related Form CRS proposal, and the proposed Commission interpretation regarding investment adviser conduct (together, the "Proposals").
>
> The Proposals address the most fundamental of investor protection issues: the duties that providers of investment advice owe their customers and clients. As a regulator, I have seen the grievous harm suffered by Main Street investors who mistakenly trusted and relied on conflicted investment advice. The Commission now has the opportunity of a generation to protect them. Unfortunately, the Proposals are inadequate to provide this protection. ***I urge the Commission to replace the current Proposals with a strong uniform fiduciary standard***, comparable to the standard applicable under the Investment Advisers Act of 1940, that will apply to advice provided to retail investors by both investment advisers and broker-dealers. ***If the Commission does not adopt a strong and uniform fiduciary standard, Massachusetts will be forced to adopt its own fiduciary standard to protect our citizens from conflicted advice by broker-dealers***.

Letter from Sec. William Galvin to SEC Chairman Clayton (Aug. 7, 2018), https://www.sec.state.ma.us/sct/sctpdf/SECCommissioners.pdf (emphasis added).

44. The Secretary's letter took specific issue with the SEC's tentative determination that it was important to preserve customers' and firms' ability to choose the non-fiduciary broker-dealer business model. The letter stated:

> . . . it is evident that ***the Commission has abandoned a fiduciary standard in the name of choice and the preservation of the broker-dealer advice model***. The Commission should not move away from a true fiduciary standard based on a spurious claim of investor choice. We urge the Commission to reject the status quo and to upgrade the Proposals to a true fiduciary investor protection standard.
>
> The Commission has shaped its "best interest" regulation ***to preserve the traditional broker-dealer advice model***, with investor protection taking a back seat.

Id. (emphasis added).

45. The Secretary made several other public statements urging the adoption of a uniform fiduciary standard that would apply to broker-dealers and investment advisers without distinction, and criticizing the SEC for tentatively adopting a contrary view.

The Secretary's Attempt to Defy the SEC

46. On June 5, 2019, the SEC announced the final version of Reg BI after nearly a decade of debate and consideration. The final version of Reg BI confirmed the SEC's rejection of the Secretary's demand for a uniform fiduciary standard in lieu of a best interests standard for broker-dealers.

47. Nine-days later the Secretary proposed his own regulation that would implement a uniform fiduciary standard. *See* Massachusetts Securities Division, *Preliminary Solicitation of Public Comments: Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives* (June 14, 2019), https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryconductstandardidx.htm.

48. The Secretary's proposal criticized Reg BI because, in the Secretary's view, it "fails to establish a strong and uniform fiduciary standard." *Id.*

49. The Secretary told the press that: "We are proposing [a new Massachusetts fiduciary rule], because the SEC has failed to provide investors with the protections they need against conflicts of interest in the financial industry, with its recent 'Regulation Best Interest' rule." Melanie Waddell, *Galvin Proposes Fiduciary Rule in Massachusetts*, THINKADVISOR (June 14, 2019), https://www.thinkadvisor.com/2019/06/14/galvin-proposes-fiduciary-rule-in-massachusetts/.

50. On December 13, 2019, the Secretary solicited comments on a revised version of his proposed fiduciary rule. *See* Massachusetts Securities Division, *Solicitation of Comments on Proposed Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives* (Dec. 13, 2019), https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryruleidx.htm.

51. The Secretary's new proposal generated more than 600 comment letters, which overwhelmingly opposed the proposed fiduciary rule.

52. One notable comment came from the Governor of the Commonwealth of Massachusetts. In a letter addressing the Secretary's proposed regulation, the Governor cautioned the Secretary to remember that the non-fiduciary broker-dealer business model is legal under Massachusetts law. Specifically, the Governor's letter stated in part:

> I write regarding the proposed rule entitled, "Fiduciary Conduct Standard for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives," from the Securities Division.
>
> * * *
>
> Based on feedback provided in public comments and directly to my Administration, we are concerned the draft regulation may create confusion. The draft regulation does not appear to sufficiently account for differences

> in the industry, inadequately defines key terms and how regulated entities can resolve potential conflicts of interest, ***and departs from federal regulations and regulations adopted in other states***. In short, we fear the draft regulation may create more confusion rather than more clarity in the industry and for investors.
>
> ***Specifically, we are concerned the current draft of the regulation could:***
>
> * * *
>
> ***Harm the business models of broker-dealers, which are legal, and who are significant employers in Massachusetts and put such employers here at a competitive disadvantage with other states . . . .***

Letter from Gov. Charles D. Baker to Sec. William Galvin (Jan. 7, 2020), https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/comments/2020-01-07-Governor-Charles-D.-Baker.pdf (emphasis added.)

53. The Secretary adopted his fiduciary rule despite the Governor's objection (and hundreds of other objections). While the final rule changed some aspects of the proposal, it maintained the "uniform fiduciary standard" under which both broker-dealers and investment advisers have fiduciary obligations in providing advice or recommendations to their customers.

54. On March 6, 2020, the Secretary announced the adoption of his fiduciary rule. *See* Massachusetts Securities Division, *Adoption of Amendments to Fiduciary Conduct Standard Regulations* (Mar. 6, 2020), https://www.sec.state.ma.us/sct/sctfiduciaryconductstandard/fiduciaryrule-adoption.htm.

55. The Secretary touted his new fiduciary rule as meaningfully different from Reg BI, telling the *Wall Street Journal* that Reg BI was "basically a souped-up version of the suitability standard," while his new Massachusetts rule, on the other hand, would be a "strict fiduciary standard" under which "recommendations and advice must be given without regard to the interests of any person other than the client." Justin Baer & Jason Zweig, *After Courts Kill a Federal Fiduciary Rule, Massachusetts Launches Its Own*, WALL. ST. J. (Feb. 21, 2020, 3:25 PM),

https://www.wsj.com/articles/after-courts-kill-a-federal-fiduciary-rule-massachusetts-launches-its-own-11582311348.

56. The section of the new fiduciary rule most relevant here provides:

> (1) The following practices are a non-exclusive list of practices by a broker-dealer or agent which shall be deemed "unethical or dishonest conduct or practices" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):
>
> > (a) Failing to act in accordance with a fiduciary duty to a customer when providing investment advice or recommending an investment strategy, the opening of or transferring of assets to any type of account, or the purchase, sale, or exchange of any security.

950 Mass. Reg. § 12.207.

57. The Secretary claims authority to issue his new standard of conduct based on a subsection in the Massachusetts Uniform Securities Act that states:

> Section 204. (a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—
>
> * * *
>
> (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business . . . .

G.L. c. 110A.

58. Upon the finalization of his new rule, the Secretary expressed his readiness to engage with legal challenges. In an email to a securities industry publication, the Secretary reportedly commented: "My office was the first and currently the only state to adopt a fiduciary rule for broker-dealers." Melanie Waddell, *As Mass. Starts Enforcing Fiduciary Rule, Galvin Puts His Game Face On*, THINKADVISOR (Aug. 31, 2020),

https://www.thinkadvisor.com/2020/08/31/as-mass-starts-enforcing-fiduciary-rule-galvin-puts-his-game-face-on/. He also said: "If challenged, my office is ready to defend this rule to the full extent of the law . . . ." *Id.*

59. The new fiduciary rule became effective on September 1, 2020.

The Secretary's "Test Case" Against Robinhood

60. According to the Secretary's website, the first enforcement action taken by the Secretary against a brokerage firm after the effective date of the new fiduciary rule was the Division's Administrative Action against Robinhood, filed on December 16, 2020.[5] Immediately after filing the Administrative Complaint, the Secretary posted an announcement to his website indicating that "*Secretary Galvin Sues Robinhood*." Massachusetts Securities Division, *Secretary Galvin Charges Robinhood over Gamification and Options Trading* (Dec. 16, 2020), https://www.sec.state.ma.us/sct/current/sctrobinhood/robinhoodidx.htm. (emphasis added).

61. The Secretary's Administrative Complaint against Robinhood is attached as Exhibit A. Insofar as relevant here, the three-count Administrative Complaint charges Robinhood with violating the new fiduciary rule (Count II) and with failing to supervise its employees (Count III). Based on the same alleged facts, the Secretary also charges Robinhood with having engaged in unethical or dishonest conduct (Count I).

62. In the Administrative Complaint the Secretary describes his new fiduciary rule as unlimited in scope, and "requiring broker-dealers registered in Massachusetts to meet a fiduciary conduct standard ***when dealing with their customers***." Admin. Compl. at 6 (emphasis added).

[5] The Wall Street Journal reported on the Administrative Complaint before it was actually filed. Caitlin McCabe, Massachusetts Regulators File Complaint Against Robinhood, WALL ST. J. (Dec. 16, 2020, 4:20 pm), https://www.wsj.com/articles/massachusetts-regulators-to-file-complaint-against-robinhood-11608120003?mg=prod/com-wsj ("The Wall Street Journal first reported early Wednesday the state's intention to file the administrative complaint.").

This is a fundamental departure from the text of the actual rule itself, which only applies a fiduciary duty only to broker-dealers "***when providing investment advice or recommending an investment strategy***, the opening of or transferring of assets to any type of account, or the purchase, sale, or exchange of any security." 950 Code Mass. Regs. § 12.207(1)(a) (emphasis added). Even by its own terms, the fiduciary rule is triggered only upon the provision of "investment advice" or a "recommend[ation]." *Id*. It does not govern all "dealing[s]" a broker-dealer has "with their customers," as the Administrative Complaint expansively asserts.

63. The Administrative Complaint identifies six activities by Robinhood as alleged violations of the new fiduciary rule. None of the activities have anything to do with providing investment advice or recommendations to customers. In paragraphs 88-93 of his complaint the Secretary alleges that Robinhood has violated the fiduciary rule:

> By failing to implement policies and procedures reasonably designed to prevent and respond to outages and disruptions on its trading platform . . . .
>
> By providing lists to encourage customers to purchase securities without any consideration of suitability . . . .
>
> By employing a number of strategies to encourage and incentivize customers to engage continuously and repeatedly with the Robinhood application . . . .
>
> . . . by successfully encouraging inexperienced investors to continuously and repeatedly execute trades on its platform . . . .
>
> By approving customers for options trading that did not meet the necessary criteria . . . .
>
> By inviting and enticing customers to use its platform in the manner that Robinhood does . . . .

64. This conception of broker-dealer duties would represent a sea change from Massachusetts common law, which makes broker-dealers fiduciaries ***only*** where the broker dealer can, and does, "make most if not all of the investment decisions for [its] customer[] . . . ." *Patsos,*

433 Mass. at 336. It is also a radical departure from established law recognizing that broker-dealers' only duty in regard to self-directed accounts is to execute customers' orders.

65. The Secretary's vision of broker-dealers' responsibilities, articulated in his complaint against Robinhood, is a direct attack on what the Governor has aptly termed "the business models of broker-dealers, which are legal."

The Secretary Has Acted Outside His Statutory Authority

66. The Secretary does not have plenary authority to reshape the standard of conduct applicable to broker-dealers as he deems most appropriate. Instead, his authority is constrained by statute. "An agency 'has no authority to promulgate rules and regulations which are in conflict with the statutes or exceed the authority conferred by the statutes' under which the agency operates." *Duarte v. Comm'r of Revenue*, 451 Mass. 399, 411 (2008) (quoting *Telles v. Comm'r of Ins.*, 410 Mass. 560, 564 (1991)).

67. The Secretary must act within the bounds of the enabling statute, G.L. c. 110A. Regulations exceeding that statutory authority are invalid. *See Moot v. Dep't of Envtl. Prot.*, 448 Mass. 340, 352 (2007).

68. Nothing in G.L. c. 110A gives the Secretary authority to redefine the common law duties of broker-dealers, or to make broker-dealers fiduciaries of their customers in circumstances where no fiduciary relationship exists under current Massachusetts law. Indeed, the *Patsos* case—in which the SJC determined that broker-dealers are *not* general fiduciaries—was decided at a time when G.L. c. 110A was substantively identical to its current language.

69. The Secretary's attempt to define Robinhood as a fiduciary, even though Robinhood offers only self-directed brokerage accounts, and does not make investment decisions

for customers (or even recommend securities) defies the common law of Massachusetts, as set forth by the SJC in *Patsos.*

70. The common law has the force of statute. Just as administrative agencies cannot change statutes, they cannot change the common law. *See Commonwealth v. Adams*, 482 Mass. 514, 518 (2019) ("The common law of the Commonwealth, when it can be authentically established and sustained, is of equal authority and binding force to laws enacted by the Legislature.") (internal quotation marks omitted).

71. The Secretary relied upon G.L. c. 110A, § 204(a)(G) in promulgating his fiduciary rule. That provision conveys to the Secretary only the narrow authority to impose certain administrative penalties against an individual who "has engaged in an unethical or dishonest conduct or practices in the securities . . . business." The language of § 204(a)(G) has appeared in the statute in its present form since 1991, *see* Stat. 1991, c. 490, § 2, and has never been interpreted as granting the Secretary broad power to abrogate the common-law. *Cf. Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 187 (2009) (deference to agency more appropriate "where an agency's interpretation is contemporaneous with the enactment of the statute construed"). The Secretary's interpretation of this provision as authorizing his fiduciary rule is incorrect. *See Atlanticare Med. Ctr. v. Comm'r of Div. of Med. Assistance*, 439 Mass. 1, 6 (2003) ("[A]n incorrect interpretation of a statute . . . is not entitled to deference.") (internal quotation marks omitted).

72. The Secretary's attempt to redefine "the business models of broker-dealers, which are legal" as "unethical or dishonest conduct" is also contrary to the recognized meaning of those terms. Under the Uniform Securities Act (which G.L. c. 110A codifies in Massachusetts) "[t]he term 'dishonest and unethical' has a meaningful referent in business practice and usage," as

reflected in professional association standards, and does not give a state securities commissioner license to depart from those standards. *See Brewster v. Maryland Sec. Com'r,* 76 Md. App. 722, 729 (1988) (interpreting language from uniform act); *see also* Cohen & Snyder, "Sanctions and Remedies," in *MCLE, A Practical Guide to Defending Investigations and Administrative Proceedings Before the Massachusetts Securities Division Enforcement Section,* § 3.3.1 (2020) (explaining that the concept of "unethical or dishonest conduct" incorporated into G.L. c. 110A is "based" on professional association standards).

The Secretary has Violated Separation of Powers Principles

73. The Secretary has also violated separation of powers principles by construing § 204(a)(G)'s reference to "unethical or dishonest conduct" as if it were a broad grant of authority to remake common law and statutory standards. Such a reading of § 204(a)(G) would constitute an impermissible delegation of legislative authority to the Secretary, as it "delegate[s] the making of fundamental policy decisions," without "adequate direction," and without "safeguards such that abuses of discretion can be controlled." *See Commonwealth v. Clemmey*, 447 Mass. 121, 135 (2006).

74. Furthermore, Article 30 of the Declaration of Rights provides that: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

75. Under separation of powers principles, only the legislature may make laws, including laws that alter or abrogate the common law. The Secretary is not endowed with

legislative authority; indeed, the Massachusetts Constitution provides that the Office of the Secretary may not be occupied by any person also sitting as a legislator.

76. Under separation of powers principles, it is the prerogative of the judicial branch to explicate the common law. The Secretary is not endowed with judicial authority.

77. Since only the judicial branch is able to state the common law, and only the legislative branch is able to change the common law, it is a violation of separation of powers principles, and therefore of Article 30 of the Declaration of Rights, for the Secretary to make a rule that purports to alter or abrogate the common law rule that broker-dealers are generally not the fiduciaries of their retail customers.

78. The Secretary has sought to change Massachusetts common law without any legislative mandate to do so. In stark contrast, when the SEC established new broker-dealer duties in promulgating Reg BI, it did so pursuant to an express Congressional grant of authority. Similarly, when other state securities agencies have considered promulgating fiduciary rules, they have done so through authorizing legislation.[6] The Secretary stands alone in asserting the innate regulatory authority to redefine broker-dealers as fiduciaries. *See Galvin v. Gillette Co.*, No. 05-1453, 2005 WL 1155253, at *3 (Mass. Super. Ct. Apr. 28, 2005) ("The Secretary is not invested with the powers of a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. Rather, to the extent the powers he seeks to exercise are specifically constrained by the legislation he cites as their source, he ought not be free to pursue them.").

[6] For example, Congress through the Dodd Frank Act authorized the SEC, if they wished, to enact a fiduciary rule for broker-dealers. Dodd Frank Act, § 913. Similarly, in Nevada the state legislature passed a law giving the securities regulator authorization to set a fiduciary standard for broker-dealers. Nev. Rev. Stat. § 90-575 (2019).

The Secretary's Actions Violate Federal Law

A. The Fiduciary Rule is Conflict Preempted

79. Federal law preempts the Secretary's effort to promulgate a "uniform fiduciary standard" or to make Robinhood a fiduciary of its customers, all of whom have self-directed brokerage accounts.

80. Since the 1930s, Congress has maintained a system of securities regulation that allows the alternative business models of broker-dealer and investment adviser. Congress and the SEC have recognized that the broker-dealer business model has continued purpose and importance, especially for self-directed customers. In Reg BI, the SEC purposefully and expressly made the policy decision to preserve the investing public's ability to choose between non-fiduciary (broker-dealer) and fiduciary (investment adviser) models of investment services.

81. In the Dodd Frank Act, Congress reiterated that under federal law broker-dealers *do not* have "a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities." Dodd Frank Act § 913(g). Consistent with Congress's directive, in promulgating Reg BI, the SEC determined that broker-dealers *should not* be deemed fiduciaries, and that broker dealers *should not* have obligations to interfere with the investment decisions of self-directed customers.

82. In promulgating Reg BI, the SEC deliberately chose not to impose a fiduciary duty on broker-dealers because it determined that doing so would harm both customers and broker-dealers, and that that harm would outweigh any benefit of a heightened standard of conduct. The Secretary's new fiduciary rule does exactly what the SEC determined was *not* in the public interest—it imposes a fiduciary duty that threatens to cause restricted access and increased costs for investors (especially small investors) who may prefer a brokerage model.

83. The Secretary's attempt to establish a "uniform fiduciary standard" is in direct and purposeful contravention of the SEC's reasoned policy decision to maintain customers' ability to choose a non-fiduciary model of investment services. As such, the new fiduciary rule "stands as an obstacle to the accomplishment and execution of [the SEC's] full purposes and objectives" enacted through Reg BI, and Reg BI therefore preempts the Secretary's new rule. *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011).

84. Additionally, the Secretary's attempt to apply his new fiduciary rule to self-directed broker-dealers such as Robinhood is preempted because it stands as an obstacle not only to the SEC's regulation in Reg BI, but also to Congress's instruction in § 913 of the Dodd Frank Act that fiduciary duties should not be applied to self-directed accounts.

B. The Fiduciary Rule is Preempted by NSMIA

85. The Secretary's effort to extend the new fiduciary rule to cover self-directed broker-dealers is a further affront to the federal law and policy embodied in the National Securities Markets Improvement Act of 1996 ("NSMIA"), through which Congress expressly forbade state regulators from adding burdens to broker dealers as to, among other things, recordkeeping.

86. The Secretary's attempt to force broker-dealers like Robinhood to act as a fiduciary to self-directed customers would impose burdensome and unnecessary additional recordkeeping on self-directed broker-dealers that would substantially increase expenses and would almost certainly endanger the ability of firms such as Robinhood to effect transactions without charging commissions. For example, the Secretary's allegation that Robinhood ought to have conducted individual suitability analyses for each of its customers, even though the customers were making self-directed trades, would require Robinhood to create new records about every one of its

customers and every single one of their trades. That is exactly the type of burden NSMIA prevents states from creating.

C. The Secretary's Actions Violate Robinhood's First Amendment Right to Engage in Commercial Speech

87. The Secretary takes exception to Robinhood's advertisements and application features and argues that Robinhood should not be allowed to "use[] advertising and marketing techniques that target[] younger individuals, including Massachusetts residents, with little, if any, investment experience." The Secretary does not argue that anything about Robinhood's advertising or application features were untrue, deceptive, or misleading, only that Robinhood's marketing tended to lead "younger individuals" to make perfectly legal securities transactions. Robinhood has a federal constitutional right to make truthful statements about the services it makes available—including services that appeal to "younger [adults] . . . with little, if any, investment experience." "[C]ommercial speech" is protected by the First Amendment precisely because it "serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system." *Bates v. State Bar of Arizona*, 433 U.S. 350, 364 (1977).

88. By applying the new fiduciary rule in a manner that seeks to restrict broker-dealers' ability to make truthful statements about their services, the Secretary has infringed inappropriately upon Robinhood's right to engage in commercial speech under the First Amendment.

89. The Secretary's efforts to prevent Robinhood from providing customers access to lists of securities in various categories is similarly an impermissible effort to mask "the availability, nature, and prices of products and services," and is therefore also a violation of the First Amendment's protections for commercial speech. *Bates*, 433 U.S. at 364.

D. The Secretary's Actions Violate the Dormant Commerce Clause

90. The Secretary's efforts to apply the new fiduciary rule to Robinhood are an attempt to alter the course of securities regulation nationwide. Robinhood makes the same services available to customers nationwide, regardless of the state in which they reside. The Secretary's efforts to limit Robinhood's business therefore threaten consequences far beyond Massachusetts's borders. This violates the Dormant Commerce Clause. "When a state directly regulates interstate commerce, it 'exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the [state enacting the regulation].'" *Legato Vapors, LLC v. Cook*, 847 F.3d 825, 830 (7th Cir. 2017) (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 642 (1982) (plurality opinion)). At least as applied to Robinhood, the Secretary's new fiduciary rule is prototypical of regulations held impermissible under the Dormant Commerce Clause due to their unavoidable "ripple effects in other states," and "effective[]" impact on "transactions outside the regulating state." *Id.*

The Court Should Decide these Issues Now

91. For two reasons, it would be futile for Robinhood to challenge the legality of the Secretary's case through the administrative process.

92. First, in his administrative forum, the Division has declared that a presiding officer *is not permitted to entertain arguments about the constitutionality or preemption of regulatory decisions*. For instance, in a recent matter, the Division told an independent hearing officer that he would "overstep[]" his "authority within this administrative forum" if he were to entertain the respondent's argument that federal law preempted the case. *See* Massachusetts Securities Division's Brief Regarding the National Securities Markets Improvement Act of 1996 at 19, *In the Matter of: Fidelity Brokerage Services LLC* (Docket No. E-2015-0078) (Feb. 21, 2017). In another

matter the presiding officer found that: "It is outside the Presiding Officer's jurisdiction and authority to rule on [Respondent]'s challenges to the constitutionality of provisions of the [Massachusetts Uniform Securities] Act." *See* Ruling on Respondent's Motion and Memorandum for Default Judgment, Summary Decision or to Strike the Division's Requests for Rescission or Restitution at 4, *In the Matter of Oppenheimer & Co., Inc.*, et al., Docket No. E-2008-0090 (Jan. 15, 2010).

93. Second, the Secretary himself will be the final decision-maker in the Administrative Action. *See* G.L. c. 110A §§ 407A; 411. Even if a presiding officer were to reject the Secretary's view of the presiding officer's authority, the Secretary could overrule that determination. That is important, because the Secretary was personally involved in the creation of the new fiduciary rule and has already decided both that the new rule is legally valid and that Robinhood has violated the new fiduciary rule. In fact, when he charged Robinhood in the Administrative Action, the Secretary issued a statement in which he said that Robinhood "falls far short of the standards we require in Massachusetts [under the new fiduciary rule]." Nate Raymond, *Massachusetts regulator accuses Robinhood of failing to protect investors*, REUTERS (Dec. 16, 2020, 9:54 AM), https://www.reuters.com/article/us-massachusetts-robinhood-idCAKBN28Q22J. The Secretary even appeared on CNBC that day to declare that "[Robinhood's] practices that we outline in our complaint are dishonest and unethical and . . . they violate our state's fiduciary rule. . . . [Robinhood] is a reckless company when it comes to these investors. They are interested in expanding their market base and they are not interested in serving their investors." *Why Massachusetts is filing a complaint against Robinhood*, CNBC TELEVISION (Dec. 16, 2020), https://www.youtube.com/watch?v=ImfZ9BrG0Fs.

94. In addition, the issues with the Administrative Complaint are fundamentally questions of law. Most of the Secretary's allegations against Robinhood rise or fall on two legal questions: (1) is the new fiduciary rule legally valid under state and federal law, and (2) even if the rule is valid in the abstract, can the new fiduciary rule legally be applied to a self-directed broker-dealer such as Robinhood?

95. In the Administrative Complaint, the Secretary alleges that every allegation of fact supports a finding that Robinhood violated the new fiduciary rule.

96. In addition, the Secretary alleges that Robinhood failed to supervise its employees to refrain from violating the new fiduciary rule.

97. To the extent the Secretary seeks to allege that Robinhood's conduct would be the basis for an administrative action in the absence of the fiduciary rule, the Secretary does not explain how or why. Even if the Secretary would pursue a case against Robinhood in the absence of the new fiduciary rule, the case would be fundamentally different from what has been pled in the Administrative Complaint.

98. The issues raised by this case are new and important. The Secretary's new fiduciary rule has never been examined by a court of law. Moreover, there is no analogous rule in any other state that has ever been examined by a court of law to determine whether the rule is consistent with the Uniform Securities Act or preempted by federal law.[7]

99. As alleged in the Secretary's Administrative Complaint, Robinhood maintains approximately 500,000 accounts associated with Massachusetts residents.

100. The Secretary's new fiduciary rule also introduces uncertainty about the duties of broker-dealers over all brokerage accounts in Massachusetts (not just Robinhood accounts). If the

[7] The Secretary is the first and currently only regulator to adopt a fiduciary rule for broker-dealers.

Secretary is permitted to use the new fiduciary rule against other firms as he has against Robinhood, it will affect other broker-dealers and their customers to their detriment. In addition, a lengthy period of uncertainty about the duties of broker-dealers over Massachusetts customer accounts may lead to customers and firms having different expectations about their accounts.

101. There is no good reason to delay adjudication of the issues raised in this case, and delay would adversely affect Robinhood as well as many people beyond the parties to this case.

COUNT I
Declaratory Judgment

102. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 101 above.

103. The Secretary and the Division are not permitted to adopt rules that abrogate the common law.

104. Regulations promulgated by the Division that extend beyond, or are inconsistent with, its enabling statute are invalid.

105. The Secretary and the Division are also not permitted to use enforcement actions to create policies inconsistent with, or beyond the purview of, their enabling statutes.

106. The Secretary and the Division are not permitted to violate Article 30 separation of powers principles.

107. The Secretary and the Division are not permitted to create policy through enforcement action.

108. The Secretary and the Division cannot promulgate rules that violate the U.S. Constitution because they are preempted by federal law, violate First Amendment Rights to commercial speech, or violate the Dormant Commerce Clause.

109. There is a genuine case in controversy in that: (1) Robinhood asserts the new rule is unlawful and invalid, while the Secretary has purported to issue a lawful regulation; and (2) Robinhood asserts that the Secretary cannot lawfully impose fiduciary duties upon broker-dealers offering self-directed accounts, while the Secretary has instituted an enforcement action seeking to do exactly that. Declaratory relief is therefore appropriate, and due to the immediate irreparable harm being suffered by Robinhood and the public, Robinhood is entitled to preliminary and permanent injunctive relief against the new rule.

110. This Court should enter a declaratory judgment that the new fiduciary rule is invalid under state and federal law insofar as it would expand broker-dealer fiduciary duties beyond those recognized under the common law and make broker-dealers fiduciaries over self-directed brokerage accounts.

COUNT II
42 U.S.C. § 1983

111. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 101 above.

112. Under Article VI of the United States Constitution, "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

113. Congress and the SEC have established as the law and policy of the United States that retail customers should have access to brokerage accounts and that broker-dealers offering brokerage accounts should not be subject to general fiduciary duties, and shall not have obligations to police customer decisions in self-directed accounts.

114. The Secretary's new rule, and the Secretary's attempted application of the new rule to self-directed accounts at Robinhood, conflicts with the law and policy of the United States.

115. 42 U.S.C. § 1983 therefore entitles Plaintiffs to preliminary and permanent injunctive relief against the new rule.

PRAYER FOR RELIEF

WHEREFORE, Robinhood respectfully requests that the Court:

(1) Stay the Administrative Action against Robinhood until the important and novel legal issues raised herein can be decided;

(2) Permanently enjoin enforcement of the new fiduciary rule;

(3) Declare that the new fiduciary rule is contrary to law, invalid, unenforceable, and of no effect;

(4) Declare that the Secretary cannot make broker-dealers fiduciaries of self-directed customer accounts; and

(5) Award such other relief that the Court determines is just and proper.

ROBINHOOD FINANCIAL LLC,

by its attorneys,

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Dated: April 15, 2021

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:	)	
ROBINHOOD FINANCIAL, LLC,	)	
RESPONDENT.	)	Docket No. E-2020-0047

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Enforcement Section" and the "Division," respectively) files this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against Robinhood Financial, LLC ("Robinhood") for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the "Act"), and 950 MASS. CODE REGS. 10.00 – 14.413 (the "Regulations"). The Enforcement Section alleges that Respondent engaged in acts and practices in violation of the Act and Regulations by aggressively marketing itself to Massachusetts investors without regard for the best interests of its customers and failing to maintain the infrastructure and procedures necessary to meet the demands of its rapidly growing customer base.

The Enforcement Section seeks an order: 1) finding as fact the allegations set forth below; 2) finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 3) requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations

in the Commonwealth; 4) censuring Respondent; 5) requiring Respondent to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing; 6) requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 7) requiring Respondent to engage an independent compliance consultant to review Respondent's platform, the underlying infrastructure, and its customer service system related to trading platform outages and disruptions; 8) requiring Respondent to engage an independent compliance consultant to review and enhance its policies and procedures related to the approval of options trading; 9) requiring Respondent to review its supervisory procedures to ensure compliance with applicable state and federal laws; 10) imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and 11) taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

II. SUMMARY

The Enforcement Section brings this action against Robinhood for violations of Massachusetts law in connection with Robinhood's: 1) aggressive tactics to attract new, often inexperienced, investors; 2) failure to implement policies and procedures reasonably designed to prevent and respond to outages and disruptions on its trading platform; 3) use of strategies such as gamification to encourage and entice continuous and repetitive use of its trading application; 4) failure to follow its own written supervisory procedures regarding the approval of options trading; and 5) breach of the fiduciary conduct standard required by the Act and Regulations.

Since its founding in 2013, Robinhood has experienced a rapid growth in its customer base. Between 2016 and October 2018, Robinhood grew its customer accounts from approximately one million to approximately six million, a 500% increase. Between the end of 2019 and May 2020, Robinhood grew its customer accounts from approximately ten million to approximately thirteen million, an increase of 30% in only a few short months. As of December 8, 2020, Robinhood had 486,598 Massachusetts customer accounts with a total value of over $1.6 billion.

During this period of exponential growth, Robinhood used advertising and marketing techniques that targeted younger individuals, including Massachusetts residents, with little, if any, investment experience. The median age of a Robinhood customer has been reported as 31 years old and approximately 68% of Massachusetts customers approved for options trading on the Robinhood platform identified as having no or limited investment experience.

Although successful in rapidly expanding its customer base, Robinhood failed to take adequate steps to set up internal controls to protect both its customers and its platform. For example, Robinhood failed to implement policies and procedures reasonably designed to prevent and respond to outages and disruptions on its trading platform. From January 1, 2020, through November 30, 2020, Robinhood experienced as many as seventy outages or disruptions on its trading platform. One of the most notable outages occurred March 2 and 3, 2020. On March 2, 2020, the Dow Jones Industrial Average experienced what was the largest point gain in its history at that time. However, Robinhood's trading platform collapsed at market opening on March 2, 2020, leaving its millions of customers unable to

benefit from the historic market gains. The collapsed platform remained inoperative for the entire day of March 2, 2020, and part of the day on March 3, 2020.

Robinhood knew or should have known well before March 2020 that the infrastructure of its trading platform was incapable of supporting its rapidly expanding customer base. However, Robinhood was plagued by outages or disruptions every month throughout the remainder of the year, including six in April 2020, 15 in June 2020, and seven in August 2020. Robinhood even admitted that the outages and disruptions on its trading platform were in part the result of a lack of sufficient infrastructure.

Despite its inability to maintain an adequate infrastructure, Robinhood continues to invite more and more customers to open accounts, and once these accounts are open, encourages customers to use the platform constantly. Once individuals become customers, Robinhood relentlessly bombards them with a number of strategies designed to encourage and incentivize continuous and repeated engagement with its application. The use of these strategies is often referred to as gamification: the application of typical elements of game playing to other activities, typically as a marketing technique to boost engagement with a product or service. Robinhood rewards customers with colorful confetti raining down their screens after executing trades on its application. In 2019, Robinhood rolled out a new cash management feature with an early access waitlist and utilized gamification to reward customers who interacted daily with the application by improving their positions on the waitlist. Customers who did not interact daily with the application watched their position on the waitlist precipitously decline, while those who succumbed to the psychological effects of Robinhood's gamification soared up and up the waitlist.

Robinhood gives customers the platform and tools to make potentially an unlimited number of trades. In an effort to encourage trading, Robinhood provides lists of securities on its application, including lists of the most-traded securities on Robinhood's platform and the most popular securities traded by Robinhood customers. This is no different from a broker-dealer agent handing a list of securities to a customer, pretending to be surprised when the customer purchases securities from that list, and then proclaiming that he made no recommendations to the customer. Robinhood gave hundreds of customers with limited or no investment experience the ability to make thousands of trades in a matter of months. At least 670 Robinhood customers with limited or no investment experience averaged at least five trades per day, with two customers averaging close to 100 trades per day. As one example, Robinhood allowed a customer with no investment experience to make more than 12,700 trades in just over six months.

While encouraging constant engagement with its platform, Robinhood failed to properly screen customer profiles and allowed thousands of inexperienced investors to engage in very risky trading activity. Robinhood failed to follow its own policies and procedures in place regarding the approval of options trading in customer accounts. In order to be approved for the lowest level of options trading, a customer must have both: (1) at least four filled orders or self-reported investment experience greater than none; and (2) self-reported medium or high risk tolerance. Robinhood inappropriately, and in violation of company policy, approved customers for options trading despite those customers having no investment experience and less than four trades on its platform. In fact, 340 customers had no investment experience and had not made a single trade on the platform prior to Robinhood approving them for options trading.

As a broker-dealer in Massachusetts, Robinhood has an obligation to protect its customers and their assets. However, its business model and lack of adequate procedures has put both customers and their assets at risk. By doing so, Robinhood has failed to comply with recently adopted standards of conduct for Massachusetts-registered broker-dealers. On March 6, 2020, the Division adopted amendments to its Regulations requiring broker-dealers registered in Massachusetts to meet a fiduciary conduct standard when dealing with their customers.[1] In order to meet their fiduciary duty, broker-dealers must adhere to duties of utmost care and loyalty to customers. The duty of care requires a broker-dealer or agent to use the attention, caution, and prudence that a reasonable person in the same circumstance would use. The duty of loyalty requires disclosure of material conflicts of interest, avoiding or eliminating conflicts of interest, and prioritization of the customer's interests.

For years, Robinhood has unscrupulously engaged in conduct that exposes Massachusetts investors to potential harm. Specifically, Robinhood has: targeted young individuals with little or no investment experience; lacked adequate infrastructure and, as a result, experienced repeated outages and disruptions on its trading platform; used gamification strategies to manipulate customers into continuous interaction and constant engagement with its application; encouraged inexperienced investors to execute trades frequently; and failed to follow its own written supervisory procedures when approving customers for options trading. This behavior has continued unabatedly ever since the adoption of the fiduciary conduct standard in Massachusetts. These actions do not represent the behavior of a fiduciary and are inconsistent with the duty Robinhood owes

[1] Enforcement of the fiduciary conduct standard began on September 1, 2020.

Massachusetts investors. By instituting this proceeding, the Enforcement Section charges Robinhood with aggressively targeting young, inexperienced investors, exposing Massachusetts investors and their assets to unnecessary trading risks, and falling far short of the fiduciary standard required of a broker-dealer registered in Massachusetts.

III. JURISDICTION AND AUTHORITY

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Sections 407A and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.

3. This proceeding is brought in accordance with Sections 204, 407A, and 414 of the Act.

4. The Enforcement Section reserves the right to amend this Complaint and bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of December 1, 2017, through the present (the "Relevant Time Period").

V. RESPONDENT

6. Robinhood Financial, LLC ("Robinhood") is a broker-dealer with headquarters in California. Robinhood has a Financial Industry Regulatory Authority Central Registration

Depository number of 165998. Robinhood has been registered as a broker-dealer in Massachusetts since January 7, 2014.

VI. STATEMENT OF FACTS

A. Background

7. Robinhood is a limited liability company organized under the laws of Delaware with a principal place of business located at 85 Willow Road, Menlo Park, California.

8. Robinhood is a broker-dealer that offers commission-free trading for stocks and options.

9. In lieu of commissions and fees, Robinhood earns revenue through a process known as payment for order flow.

10. Payment for order flow is a process in which market makers or exchanges pay broker-dealers to route trades to the market maker or the exchange for execution. Therefore, the more trades Robinhood customers execute, the more revenue Robinhood receives from market makers or exchanges.

11. Since its founding in 2013, Robinhood has experienced exponential growth.

12. Robinhood grew its customer accounts from approximately one million in 2016 to approximately six million in October 2018, a growth of 500% over that time period.

13. As of the end of 2019, Robinhood had approximately ten million customer accounts.

14. By May 2020, only five months later, that number had grown by 30% to approximately thirteen million accounts.

15. As of December 8, 2020, Robinhood had 486,598 Massachusetts customer accounts with a total value of $1,671,435,739.

B. Robinhood's Advertising Targets Younger Individuals with Little or No Investment Experience

16. Robinhood's stated mission is to "democratize finance for all."

17. In its attempt to "democratize" investing, Robinhood has targeted younger individuals with its advertising, many of whom have limited or no investment experience.

18. According to Robinhood, the median customer age is 31 years old.

19. Of the more than 71,744 Massachusetts residents that Robinhood identified as being approved for options trading during the Relevant Time Period, at least 14,439 customers had no investment experience and 34,374 customers had limited investment experience. These customers represent 68% of all Massachusetts residents approved for options trading.

20. Robinhood advertisements use young actors and illustrate Robinhood's attempt to lure young, inexperienced investors into using its platform to make investments.

21. For example, one such advertisement contains a clip of a young adult stating, "I'm a broke college student and investments might help my future tremendously."

22. In another example, another young adult says, "I didn't know anything about investing before I started using Robinhood. As soon as I set up my account I had a free stock, so I immediately was an investor. From there I was learning stuff as I went along. It was really simple. Download the app and see for yourself."

C. Robinhood Failed to Implement Policies and Procedures Reasonably Designed to Prevent and Respond to Outages and Disruptions on its Trading Platform

23. Despite its active attempts to grow its customer base, Robinhood failed to protect its customers by adequately maintaining and updating its platform infrastructure to support such growth.

24. Upon information and beflief, Robinhood experienced as many as seventy outages or disruptions on its trading platform from January 1, 2020, through November 30, 2020, as a result of its failures. At least seven of these impacted the ability of Robinhood customers to access their accounts and purchase and sell securities.

25. Upon information and belief, Robinhood allowed its trading platform to be inoperative or disrupted for some period of time every month during the 2020 calendar year. In all but one month, Robinhood had at least several outages or disruptions. For example, Robinhood experienced 21 such events in March 2020, six in April 2020, 15 in June 2020, and seven in August 2020.

26. Several of the most impactful Robinhood outages occurred in March 2020. On March 2, 2020, the Dow Jones Industrial Average had what was then its largest one day gain in history, a gain of 1,290 points.

27. During this record-setting day, and on the following day, March 3, 2020, Robinhood experienced an almost two-day long outage that prevented customers from making trades in their accounts.

28. On March 9, 2020, amid a stock market plunge, Robinhood experienced another outage on its trading platform that prevented customers from making trades in their accounts for a portion of the day.

29. Robinhood knew or should have known that the infrastructure of its trading platform was not sufficient to support its rapidly expanding customer base.

30. During these outages or disruptions, Robinhood failed to properly serve its customers and address their concerns. For example, during the March 2, 2020, outage,

Robinhood's help center shut down completely, leaving customers unable to contact any Robinhood representative via telephone or e-mail.

31. Robinhood had inadequate policies and controls in place to keep customers informed of developments.

32. In company statements, Robinhood has admitted that at least a portion of the outages and disruptions on its trading platform were the result of a lack of sufficient "infrastructure."

33. Robinhood's failure to maintain an adequate technological infrastructure and a robust customer service system to support its rapidly expanding customer base directly impacted the ability of Massachusetts customers to make trades on Robinhood's platform, resulting in harm to Massachusetts investors that was both foreseeable and preventable.

D. Robinhood Provides Lists to Encourage Customers to Purchase Securities Without any Consideration of Suitability

34. Robinhood's application includes a "first list" that includes stocks "chosen based on their popularity on Robinhood's platform." This list is provided on the home screen of the application and is one of the first items that a new customer sees.

35. Robinhood's application provides a section titled "Popular Lists" that encourages customers to search for and make investments. The Popular Lists section includes the following lists of investment categories for Robinhood customers: (1) 100 Most Popular; (2) Top Movers; (3) Technology; (4) Food & Drink; (5) Finance; (6) ETFs; (7) Energy; (8) Entertainment; (9) Business; (10) Agriculture; (11) Automotive; (12) Upcoming Earnings; (13) Crypto; (14) Index ETFs; (15) Consumer Goods; (16) Tech, Media, & Telecom; (17) Consumer Services & Retail; (18) 2019 IPOs; (19) Real Estate; (20) Apparel & Accessories; (21) Cannabis; (22) Healthcare Supplies; (23) China; (24) Pharma; (25)

Energy & Water; (26) Healthcare; (27) Hospitality; (28) Manufacturing & Materials; (29) Healthcare Services; and (30) Banking.

36. The lists have the potential to influence the securities that new, unsophisticated customers with no investment experience purchase.

37. Despite providing these lists to all customers by default, Robinhood does not conduct a suitability analysis of the securities contained in the lists for customers.

38. Through these lists, Robinhood encourages customers, especially those with little or no investing experience, to purchase securities that other Robinhood customers purchase regardless of the suitability of the security.

39. By promoting securities through the use of lists without conducting suitability analyses for customers, Robinhood encouraged risky, unsuitable trading inconsistent with its obligations as a Massachusetts-registered broker-dealer.

E. Robinhood Employed a Number of Strategies to Encourage and Incentivize Customers to Engage Continuously and Repeatedly with its Application

40. Robinhood uses gamification strategies in order to lure customers into consistent participation and long-term engagement with its trading platform.

41. Each time a customer makes a trade on Robinhood's platform, confetti rains down on the screen of the application, instilling a sense of celebration and accomplishment as a result of simply buying or selling securities.

42. On October 8, 2019, Robinhood announced its new cash management feature along with a waitlist for Robinhood customers to sign up for early access when the program launched at a later date.

43. Robinhood assigned customers that joined the cash management waitlist a numbered position. Customers were able to view their numerical position in comparison to other customers on the waitlist.

44. Robinhood provided customers with the ability to improve their position on the early access waitlist by "tapping" a fake debit card displayed in the application up to 1,000 times per day. Customers' positions on the waitlist were dependent upon how frequently they interacted with the Robinhood application and tapped on the fake debit card. Customers who failed to tap on the fake debit card daily would watch their position on the waitlist fall.

45. Robinhood displayed a message to customers who "tapped" 1,000 times in a day that they were "out of taps today! Come back tomorrow if you're feeling tappy." This encouraged Robinhood customers to interact with the application on a daily basis or watch while they fell to a lower position on the waitlist.

46. Robinhood uses the promise of free stock to lure new customers, highlighting the possibility to receive stocks such as "Microsoft, Visa, or Apple," despite the low probability of Robinhood actually awarding shares of Microsoft, Visa, or Apple.

47. Robinhood gives existing customers the ability to earn up to $500 per year in free stocks by recommending Robinhood to others.

48. Robinhood sends push notifications to customers to encourage interaction with the application and trading.

49. Customers receive daily push notifications regarding the change in value of stocks in their accounts.

50. A customer that has not yet traded in their account may receive a push notification that states: "Top Movers: Choosing stocks is hard. [flexing bicep emoji] Get started by checking which stock prices are changing the most." Upon clicking on the push notification, the customer redirects to the aforementioned Top Movers list.

51. Customers may also receive a push notification that states, "Popular Stocks: Can't decide which stocks to buy? [thinking emoji] Check out the most popular stocks on Robinhood." Upon clicking on the push notification, the customer redirects to the aforementioned 100 Most Popular list.

52. Robinhood uses these gamification techniques to increase revenue by stimulating customers to interact with the application more frequently and thereby execute more trades.

53. By utilizing the tactics described above, Robinhood facilitated frequent, risky, and unsuitable trading in Massachusetts customer accounts.

F. Robinhood Successfully Encouraged Inexperienced Investors to Execute Trades Frequently on its Platform

54. Robinhood's gamification techniques have resulted in many customers with little or no investment experience making a large number of trades on Robinhood's platform.

55. During the Relevant Time Period, at least 241 Robinhood customers with no investment experience averaged at least 5 trades per day on Robinhood's trading platform.

56. Since February 1, 2020, Customer One has made 12,748 trades with Robinhood, an average of approximately 92 trades per day during that timeframe. Customer One had no investment experience prior to trading with Robinhood.

57. Since April 1, 2020, Customer Two has made 7,317 trades with Robinhood, an average of approximately 75 trades per day during that timeframe. Customer Two had no investment experience prior to trading with Robinhood.

58. Since April 1, 2020, Customer Three has made 5,674 trades with Robinhood, an average of approximately 58 trades per day during that timeframe. Customer Three had no investment experience prior to trading with Robinhood.

59. Since June 1, 2020, Customer Four has made 2,141 trades with Robinhood, an average of approximately 38 trades per day during that timeframe. Customer Four had no investment experience prior to trading with Robinhood.

60. Since February 1, 2020, Customer Five has made 3,988 trades with Robinhood, an average of approximately 29 trades per day during that timeframe. Customer Five had no investment experience prior to trading with Robinhood.

61. Since December 1, 2017, Customer Six has made 18,622 trades with Robinhood, an average of approximately 27 trades per day during that timeframe. Customer Six had no investment experience prior to trading with Robinhood.

62. Since May 1, 2020, Customer Seven has made 2,005 trades with Robinhood, an average of approximately 26 trades per day during that timeframe. Customer Seven had no investment experience prior to trading with Robinhood.

63. Since June 1, 2009, Customer Eight has made 7,811 trades with Robinhood, an average of approximately 25 trades per day during that timeframe. Customer Eight had no investment experience prior to trading with Robinhood.

64. Since October 1, 2018, Customer Nine has made 11,772 trades with Robinhood, an average of approximately 25 trades per day during that timeframe. Customer Nine had no investment experience prior to trading with Robinhood.

65. Since March 1, 2020, Customer Ten has made 2,940 trades with Robinhood, an average of approximately 25 trades per day during that timeframe. Customer Ten had no investment experience prior to trading with Robinhood.

66. Since April 1, 2020, Customer Eleven has made 2,342 trades with Robinhood, an average of approximately 24 trades per day during that timeframe. Customer Eleven had no investment experience prior to trading with Robinhood.

67. Since May 1, 2020, Customer Twelve has made 1,653 trades with Robinhood, an average of approximately 22 trades per day during that timeframe. Customer Twelve had no investment experience prior to trading with Robinhood.

68. Since March 1, 2020, Customer Thirteen has made 2,576 trades with Robinhood, an average of approximately 22 trades per day during that timeframe. Customer Thirteen had no investment experience prior to trading with Robinhood.

69. Since March 1, 2020, Customer Fourteen has made 2,275 trades with Robinhood, an average of approximately 19 trades per day during that timeframe. Customer Fourteen had no investment experience prior to trading with Robinhood.

70. Since March 1, 2020, Customer Fifteen has made 2,234 trades with Robinhood, an average of approximately 19 trades per day during that timeframe. Customer Fifteen had no investment experience prior to trading with Robinhood.

71. Since May 1, 2019, Customer Sixteen has made 6,132 trades with Robinhood, an average of approximately 19 trades per day during that timeframe. Customer Sixteen had no investment experience prior to trading with Robinhood.

72. Since March 1, 2020, Customer Seventeen has made 2,204 trades with Robinhood, an average of approximately 19 trades per day during that timeframe. Customer Seventeen had no investment experience prior to trading with Robinhood.

73. Since May 1, 2020, Customer Eighteen has made 1,398 trades with Robinhood, an average of approximately 18 trades per day during that timeframe. Customer Eighteen had no investment experience prior to trading with Robinhood.

74. Since June 1, 2020, Customer Nineteen has made 984 trades with Robinhood, an average of approximately 18 trades per day during that timeframe. Customer Nineteen had no investment experience prior to trading with Robinhood.

75. Since December 1, 2019, Customer Twenty has made 3,146 trades with Robinhood, an average of approximately 17 trades per day during that timeframe. Customer Twenty had no investment experience prior to trading with Robinhood.

76. Since February 1, 2020, Customer Twenty-One has made 2,386 trades with Robinhood, an average of approximately 17 trades per day during that timeframe. Customer Twenty-One had no investment experience prior to trading with Robinhood.

77. Since December 1, 2017, Customer Twenty-Two has made 11,790 trades with Robinhood, an average of approximately 17 trades per day during that time frame. Customer Twenty-Two had no investment experience prior to trading with Robinhood.

78. Since March 1, 2020, Customer Twenty-Three has made 2,048 trades with Robinhood, an average of approximately 17 trades per day during that timeframe. Customer Twenty-Three had no investment experience prior to trading with Robinhood.

79. Since March 1, 2019, Customer Twenty-Four has made 5,630 trades with Robinhood, an average of approximately 15 trades per day during that timeframe. Customer Twenty-Four had no investment experience prior to trading with Robinhood.

80. Since August 1, 2019, Customer Twenty-Five has made 3,974 trades with Robinhood, an average of approximately 15 trades per day during that timeframe. Customer Twenty-Five had no investment experience prior to trading with Robinhood.

81. Robinhood profited by allowing inexperienced Massachusetts investors to trade without limitation on its platform.

G. Robinhood Failed to Supervise the Review and Approval of Options Trading in Customer Accounts

82. Robinhood utilizes an automated process, approved by a registered principal, in order to approve customers for options trading. Accounts approved for options trading are subject to review through a manual spot-checking process.

83. In order to gain approval for level 2 options trading, the lowest level of options trading that Robinhood offers, customers must have both: (1) at least four filled orders or self-reported investment experience greater than none; and (2) self-reported medium or high risk tolerance. The customer must also have a margin account.

84. Robinhood approved at least 680 Massachusetts customers that did not meet the requisite criteria for options trading.

85. By approving Massachusetts customers that did not meet the required criteria under its policies and procedures, Robinhood failed in its duty to supervise the review and approval of options trading in customer accounts, including those in Massachusetts.

H. Robinhood Failed to Meet the Fiduciary Duty it Owes its Customers

86. On March 6, 2020, the Division adopted amendments to its Regulations applying a fiduciary conduct standard to broker-dealers registered in Massachusetts. Enforcement of the fiduciary conduct standard began on September 1, 2020.

87. To meet the fiduciary duty, broker-dealers must adhere to duties of utmost care and loyalty to customers. The duty of care requires a broker-dealer to use the care, skill, prudence, and diligence that a person acting in a like capacity and familiar with such matters would use, taking into consideration all of the relevant facts and circumstances. The duty of loyalty requires a broker-dealer to: 1) disclose all material conflicts of interest; 2) make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that cannot reasonably be avoided, and mitigate conflicts that cannot reasonably be avoided or eliminated; and 3) make recommendations and provide investment advice without regard to the financial or any other interest of any party other than the customer.

88. By failing to implement policies and procedures reasonably designed to prevent and respond to outages and disruptions on its trading platform, Robinhood failed to protect its customers and their assets adequately.

89. By providing lists to encourage customers to purchase securities without any consideration of suitability, Robinhood failed to consider the investment experience or objectives of its customers.

90. By employing a number of strategies to encourage and incentivize customers to engage continuously and repeatedly with the Robinhood application, Robinhood facilitated frequent, risky, and unsuitable trading in Massachusetts customer accounts.

91. Similarly, by successfully encouraging inexperienced investors to continuously and repeatedly execute trades on its platform, Robinhood prioritized its revenue over the best interests of its customers.

92. By approving customers for options trading that did not meet the necessary criteria, Robinhood violated its own written policies and procedures.

93. By inviting and enticing customers to use its platform in the manner that Robinhood does, without sufficiently robust policies and procedures in place, Robinhood failed to act in the best interests of its customers. Instead, Robinhood exploited its customers in pursuit of higher profits.

94. Robinhood failed to bring its behavior in line with the obligations required by the Massachusetts fiduciary conduct standard.

95. Robinhood's aggressive advertising and marketing led to the exponential growth of its customer accounts and assets. Robinhood focused on its own growth and revenue at the expense of its customers, including those in Massachusetts, and its business practices are inconsistent with the duties of utmost care and loyalty it owes its customers.

VII. VIOLATIONS OF LAW

Count I – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

96. Section 204(a)(2)(G) of the Act provides:

> The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds … (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
>
> (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

97. The Enforcement Section re-alleges and incorporates the allegations of fact set forth in Section VI above.

98. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

Count II – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

99. Section 204(a)(2)(G) of the Act provides:

> The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds ... (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
>
> (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]
>
> MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

100. 950 MASS. CODE REGS. 12.207(1)(a) provides:

> The following practices are a non-exclusive list of practices by a broker-dealer or agent which shall be deemed "unethical or dishonest conduct or practices" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):
>
> (a) Failing to act in accordance with a fiduciary duty to a customer when providing investment advice or recommending an investment strategy, the opening of or transferring of assets to any type of account, or the purchase, sale, or exchange of any security.
>
> 950 MASS. CODE REGS. 12.207(1)(a).

101. The Enforcement Section re-alleges and incorporates the allegations of fact set forth in Section VI above.

102. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

Count III – Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

103. Section 204(a)(2)(J) of the Act provides:

> The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds ... (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
>
> (J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]
>
> MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

104. The Enforcement Section re-alleges and incorporates the allegations of fact set forth in Section VI above.

105. The conduct of Respondent, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. STATUTORY BASIS FOR RELIEF

Section 407A of the Act provides:

> (a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].
>
> MASS. GEN. LAWS ch. 110A, § 407A.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A]."

X. RELIEF REQUESTED

The Enforcement Section of the Division requests that an order be entered:

A. Finding as fact all allegations set forth in Section VI of the Complaint;

B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

C. Requiring Respondent to permanently cease and desist from further conduct in violation of the Act and Regulations in the Commonwealth;

D. Censuring Respondent;

E. Requiring Respondent to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing;

F. Requiring Respondent to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing;

G. Requiring Respondent to engage an independent compliance consultant to review Respondent's platform, the underlying infrastructure, and its customer service system related to trading platform outages and disruptions;

H. Requiring Respondent to engage an independent compliance consultant to review and enhance its policies and procedures related to the approval of options trading;

I. Requiring Respondent to review its supervisory procedures to ensure compliance with applicable state and federal laws;

J. Imposing an administrative fine on Respondent in such amount and upon such terms and conditions as the Director or Presiding Officer may determine; and

K. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION

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