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Diamond Hands and Regulatory Demands: GameStop and the Shortcoming of Current Securities Regulation

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DIAMOND HANDS AND REGULATORY DEMANDS: GAMESTOP AND THE SHORTCOMING OF CURRENT SECURITIES REGULATION

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I. INTRODUCTION

Since its formation under the Securities Exchange Act of 1934, the Securities and Exchange Commission's ("SEC") primary function has been overseeing organizations and individuals in the securities market.[1] The SEC uses securities regulations to promote disclosure of market-related information, fair dealing, and protection against fraud.[2] For the last 86 years, the SEC has maintained the same three part mission: protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.[3] The current state of securities regulation fails to maintain fair, orderly markets and this in turn hurts retail investors. These failures are evidenced by the events that caused the extreme volatility of GameStop Corporation's stock ("GME").

On January 28, 2021, GME traded at an all-time high of $483 per share, a 18,700% increase from its low of $2.57 per share less than a year before.[4] Soon after reaching $483 per share, Robinhood Financial LLC ("Robinhood") and several other commission free trading platforms implemented trading restrictions that prohibited customers from purchasing additional shares of select securities, namely GME and the like.[5] These restrictions caused a

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[1] *See What We Do*, SEC (Dec. 18, 2020), https://www.sec.gov/about/what-we-do.

[2] *Id.*

[3] *Id.*

[4] *GameStop Corp. (GME)*, YAHOO FIN., https://finance.yahoo.com/chart/GME.

[5] *See* Dave Michaels, *SEC to Review Brokers' Restrictions on GameStop, AMC Trading*, WALL ST. J. (Jan. 29, 2021) https://www.wsj.com/articles/sec-to-

widespread panic which resulted in a 77% decrease in GME's share price in the span of a few hours.[6] The extreme volatility resulted in a few individuals profiting significantly in a relatively short span of time whereas numerous other investors were left "holding the bag". GME's share price did not represent the fundamentals of the failing retailer and instead only reached these levels due to a combination of outside circumstances. Current regulation fails to prevent similar events from occurring in the future. In order to prevent the recurrence of these events, the SEC must amend current regulation with a focus on increasing transparency, maintaining orderly markets, and protecting retail investors.

This article will primarily discuss the events that led to GME's extreme volatility, the shortcomings of current securities regulation, and proposed changes to current regulation that better protects retail investors. The first section will review the events that resulted in the extreme volatility of GME. More specifically, it will explore securities regulations intended to protect consumers and how these regulations failed to prevent extreme volatility. The second section will briefly explore the concerns raised during the House Committee on Financial Services hearing for GameStop. The final section will propose changes to current regulation that better protect consumers. More specifically, these proposals are to produce a more transparent, free, and fair market that adequately protects retail investors.

II. GAMESTOP'S EXTREME PRICE VOLATILITY

A combination of outside circumstances lead to the extreme volatility of GME and several other similarly situated securities. This section will review the events surrounding GME's volatility and applicable regulations that allowed these events to occur.

A. Short Squeeze

Starting as early as August 2019, a group of amateur investors began posting about the upside potential of GME on the online

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review-brokers-restrictions-on-gamestop-amc-trading-11611932473?mod=article_inline.

[6] *See id.*

forum WallStreetBets.[7] One user noted that Michael Burry, the investor who famously bet against mortgage securities before the late-2000s financial crisis, built a stake in GME through his investment firm Scion Asset Management LLC.[8] The user claimed that Burry was "trying to start an epic short squeeze".[9] A short squeeze occurs when a company's stock price begins to increase which, in-turn, forces investors that have short positions against the stock to buy back shares at a loss, leading to further increases in the stock price.[10] WallStreetBets users repeatedly posted that GME could be a repeat of the "Mother of all Squeezes" that occurred in 2008 when a short squeeze of Volkswagen stock lead to thirty billion dollars' worth of losses for hedge funds.[11]

Starting in August 2020, Ryan Cohen, the co-founder of Chewy Inc., began to build a position in GME.[12] Cohen grew his position to 9.98% of the outstanding shares of GME.[13] In November 2020, Cohen sent a letter to GameStop's board, urging it to conduct a strategic review and to provide stockholders with a credible roadmap for cost containment and a return to profitability.[14] He further urged the company to cut excessive real estate costs, sell non-core operations in foreign markets, and hire talented people to transform the company.[15]

Following Ryan Cohen's open letter to the board, members of WallStreetBets frequently made posts placing their support

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[7] *See* Dave Michaels, *GameStop Frenzy Prompts SEC to Weigh More Short Sale Transparency*, WALL ST. J. (Feb. 17, 2021) https://www.wsj.com/articles/gamestop-frenzy-prompts-sec-to-weigh-more-short-sale-transparency-11613593827.

[8] *Id.*

[9] *Id.*

[10] *See Key Points About Regulation SHO*, SEC (Apr. 8, 2015) https://www.sec.gov/investor/pubs/regsho.htm.

[11] *See Hedge funds lose $30 billion on VW infinity* squeeze, MOX REPORTS (Dec. 9, 2018) https://moxreports.com/vw-infinity-squeeze/.

[12] Kenneth Squire, *Former Chewy CEO tries to push GameStop to become the Amazon of the video-game industry,* CNBC (Nov. 21, 2020) https://www.cnbc.com/2020/11/20/former-chewy-ceo-ryan-cohen-urges-gamestop-to-become-the-amazon-of-video-games.html.

[13] *Id.*

[14] *Id.*

[15] *Id.*

behind GME.[16] These posts claimed the over shorted nature of the stock paired with the work of activist investor Ryan Cohen made GME a perfect buying opportunity.[17] Posts on WallStreetBets touted GME's short interest as high as 141%, making it an ideal candidate for a short squeeze.[18] Put plainly, over 100% of the available shares for purchase in GME were sold short.

Short sellers borrow shares from brokers and then sell them into the market with the agreement that they will buy the shares back and return them to the lender at an agreed upon time.[19] Currently, there is no mechanism in place that prevents the same shares from being sold short multiples times, therefore, it is possible to have short interest higher than the entire float of a corporation.[20]

Regulation SHO was first adopted in 2005 to update short sale regulation due to significant market developments that had occurred since short sale regulation was initially adopted in 1938.[21] Since its adoption, the SEC has amended the regulation several times attempting to eliminate exceptions and strengthen requirements surrounding short selling.[22] Following the mid-2000s financial crisis, the SEC adopted Rule 201 of Regulation SHO which was an attempt to further restrict short selling.[23] Rule 201 restricts the price short sales may be effected in order to prevent potentially manipulative or abusive short selling that drives down the price of a security.[24] As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC was ordered to issue rules within two years that would enhance public information about the

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[16] *See generally https://*www.reddit.com/r/wallstreetbets/search?q=Ryan%20Cohen&restrict_sr=1 (showing popular posts on WallStreetBets discussing Ryan Cohen).

[17] *Id.*

[18] Megan Davies, *Short interest in GameStop declined to 15% vs 141% at peak - S3*, REUTERS (Mar. 24, 2021) https://www.reuters.com/article/us-retail-trading-gamestop-short/short-interest-in-gamestop-declined-to-15-vs-141-at-peak-s3-idUSKBN2BG28H.

[19] *See* SEC, *Key Points About Regulation SHO*, *supra* note 10.

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See* 17 CFR § 242.201; *See also* SEC, *Key Points About Regulation SHO*, *supra* note 10.

[24] *Id.*

lending or borrowing of securities.[25] It has been eleven years and these rules have yet to be implemented.[26] GME is proof that current regulation does not adequately prevent abusive short selling.

B. Commission Free Trading Platforms

Commission free trading platforms have made the stock market accessible to a whole new segment of retail investors. These gamified trading platforms are readily accessible from cell phones and are typically used by less experienced investors.[27] The influx of less knowledgeable investors using apps like Robinhood paired with widespread social media buzz led to an ever increasing number of retail investors piling into GameStop.[28]

The influx of retail investors purchasing shares of GME combined with options contracts that were far out of the money added fuel to the ever increasing likelihood of a short squeeze.[29] GME's share price began rapidly increasing mid-January which drove institutional investors to purchase shares of the stock in order to cover their short positions.[30] Institutional investors closing short positions combined with inexperienced retail investors' fear

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[25] *See* 15 U.S.C. § 78m(f)(2) (2012); *see also* Michaels, *GameStop Frenzy Prompts SEC to Weigh More Short Sale Transparency*, *supra* note 7.

[26] *Id.*

[27] *See* Christine Indzelis, *Robinhood Allegedly Lures Inexperienced Investors, Fails to Properly Screen for Options Trading, Massachusetts Complaint Says*, INSTITUTIONAL INV. (Dec. 16, 2020) https://www.institutionalinvestor.com/article/b1pq037y4pd6yr/Robinhood-Allegedly-Lures-Inexperienced-Investors-Fails-to-Properly-Screen-for-Options-Trading-Massachusetts-Complaint-Says (finding "68 percent of the company's Massachusetts customers approved for options trading have limited or no investment experience").

[28] *See* Sam Rega, *How Robinhood and Covid opened the floodgates for 13 million amateur stock traders*, CNBC (Oct. 7, 2020) https://www.cnbc.com/2020/10/07/how-robinhood-and-covid-introduced-millions-to-the-stock-market.html.

[29] *See Ben* Bain, *GameStop Prompts U.S. to Consider New Rules for Options, Shorts*, BLOOMBERG L.P. (Mar. 9, 2021) https://news.bloomberglaw.com/securities-law/gamestop-prompts-u-s-to-consider-new-rules-for-options-shorts; *see* also *Investor Bulletin: An Introduction to Options*, SEC (Mar. 18, 2015) https://www.sec.gov/oiea/investor-alerts-bulletins/ib_introductionoptions.html ("Option holders risk the entire amount of the premium paid to purchase the option. If a holder's option expires "out-of-the-money" the entire premium will be lost.").

[30] *GameStop Corp. (GME)*, YAHOO FIN., https://finance.yahoo.com/chart/GME.

of missing out led to GME's share price reaching an all time high of $483 on January 28th, 2021.[31]

C. Trading Restrictions

On the morning on January 28th, Robinhood and several other commission free trading platforms implemented trading restrictions that prohibited customers from purchasing additional shares of select securities, namely GME and the like.[32] Investors holding these securities were left with only two options, hold or sell. These restrictions, which primarily effected retail investors, resulted in GME's share price plummeting 77% from its intra-day high by market close.[33] At the time the trading restrictions were implemented, the platforms failed to provide users with an explanation for the restrictions.[34]

These companies later announced that the trading restrictions stemmed from mandates implemented by their clearinghouses.[35] Clearinghouses process the transaction on the back end after a user executes a trade.[36] Clearinghouses are required to put up collateral on behalf of the broker and customer to help facilitate the trade as an intermediary.[37] Because clearinghouses are required to put up collateral, the broker is required to make deposits in order to use the clearinghouse's services. Moreover, clearinghouse deposit requirements fluctuate based on volatility in the markets.[38] Anthony Denier, CEO of the commission free trading platform Webull, reported its clearinghouse was requiring a collateral requirement of nearly 100% for transactions of GameStop due

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[31] *Id.*

[32] *See* Michaels, *SEC to Review Brokers' Restrictions on GameStop*, *supra* note 5.

[33] *Id.*

[34] *See id.*

[35] *See* Caitlin McCabe, *GameStop Trading Restrictions Blamed on Wall Street's Clearing Firm by Online Broker*, WALL ST. J. (Jan. 28, 2021) https://www.wsj.com/articles/gamestop-trading-restrictions-blamed-on-wall-streets-clearing-firm-by-online-broker-11611867105; *see* also *Financial Clearing Houses*, CFA INST. https://www.cfainstitute.org/en/advocacy/issues/central-clearing-houses.

[36] *See id.*

[37] *See id.*

[38] *See id.*

to the extreme volatility surrounding the security at the time the trading restrictions were implemented.[39]

The Depository Trust & Clearing Corporation ("DTCC"), which operates the clearinghouses for U.S. stock and bond trades, issued a statement that the volatility in stocks like GameStop and AMC has "generated substantial risk exposures at firms that clear these trades".[40] This risk was especially pronounced for firms whose customers were primarily on one side of a trade, either heavily betting for a stock to rise or fall.[41] The DTCC further stated that "margin requirements protect the entire industry against defaults and systemic risk in volatile markets."[42] While margin requirements are necessary to protect the market as a whole, the current settlement cycle of two business days, "T+2", unnecessarily ties up the deposit until the transaction is settled.[43]

Every broker conducting a general securities business registered with the SEC must comply with the Net Capital Rule.[44] The Net Capital Rule is designed to protect the customers of a broker from losses that can be incurred upon a broker's collapse by requiring the broker to have adequate liquid assets to meet its obligations to investors and liabilities to other creditors.[45] While firms like Robinhood had substantial cash reserves on hand, the Net Capital Rule prevented these firms from using that cash to settle clearinghouse deposit requirements. Robinhood was forced to raise more than $1 billion to meet its clearinghouse deposit requirements before lifting the trading restrictions it implemented.[46]

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[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *See SEC Adopts T+2 Settlement Cycle for Securities Transactions*, SEC (Mar. 22, 2017) https://www.sec.gov/news/press-release/2017-68-0.

[44] *See NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS SEA Rule 15c3-1*, FINRA (2008) https://www.finra.org/sites/default/files/sea-rule-15c3-1-interpretations.pdf.

[45] *Id.*

[46] Peter Rudegeair & Orla McCaffrey, *Robinhood Raises $1 Billion to Meet Surging Cash Demands*, WALL ST. J. (Jan. 29, 2021) https://www.wsj.com/articles/robinhood-raises-1-billion-to-meet-surging-cash-demands-11611928504?mod=article_inline.

D. Payment for Order Flow

The events surrounding GameStop led to the SEC, several members of Congress, and the mainstream media questioning the method Robinhood uses to generate revenue. Robinhood generates the majority of its revenue from a process called Payment for Order Flow ("PFOF").[47] PFOF is a decades old method of transferring some of the profit generated from the market making process to the broker that routed a customer's order to that market maker.[48] These profits are typically fractions of a penny per share routed from the broker.[49] Brokers often pass some of this profit to the customer who placed the order in the form of a "price improvement".[50]

The SEC has previously noted that PFOF can lead to potential conflicts of interest for brokers because of the tension between the firm's interests in maximizing payment for order flow, *i.e.*, profits, and their fiduciary duty to route customer's orders to the best markets.[51] Brokers have a duty of Best Execution which legally requires it to seek the best price reasonably available for its customers' orders.[52]

The SEC has previously given PFOF its stamp of approval, but current events have led to it rethinking that position.[53] SEC Acting Chairwoman Allison Herren Lee said regulators should examine such arrangements to make sure practices are fully disclosed and "consistent with best execution obligations."[54] Critics of PFOF say the practice breeds bad incentives because it tempts brokers

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[47] *See How Robinhood Makes Money*, Robinhood Fin. LLC. (2021) https://robinhood.com/us/en/support/articles/how-robinhood-makes-money/.

[48] *See Special Study: Payment for Order Flow and Internalization in the Options Markets*, SEC (Dec. 2000) https://www.sec.gov/news/studies/ordpay.htm.

[49] *See id.*

[50] *See id.*

[51] *Id.*

[52] *See Best Execution*, SEC (May 9, 2011) https://www.sec.gov/fast-answers/answersbestexhtm.html; *see* also *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, SEC (June 5, 2019) https://www.sec.gov/rules/interp/2019/ia-5248.pdf.

[53] *See* Dave Michaels, *GameStop Saga Prompts SEC to Weigh Review of Payment for Order Flow*, WALL ST. J. (Mar. 9, 2021), https://www.wsj.com/articles/gamestop-saga-prompts-sec-to-weigh-review-of-payment-for-order-flow-11615316739.

[54] *Id.*

into sending customer orders to the market maker that pays the highest rate.[55] The number of brokers using PFOF has led to a significant increase in trades that are executed off of public exchanges; a record 47.2% of trading volume in January was executed away from public exchanges, up from 39.9% a year earlier.[56] Trades executed off public exchanges have less transparency and can increase the risk that a customer is not receiving the best price for a trade.[57]

III. HOUSE COMMITTEE ON FINANCIAL SERVICES HEARING

GameStop's extreme price volatility led to the House Committee on Financial Services calling a hearing to discuss the circumstances that led to these events. This section will briefly discuss a few of the main concerns raised during this hearing.

A. Trading Restrictions and Capital Requirements

Increased clearinghouse deposit requirements due to market volatility forced affected brokers to implement trading restrictions that negatively affected retail investors.[58] During the hearing, Ken Griffin, CEO of Citadel LLC, was asked whether or not an instantaneous settlement cycle would have solved the problem that resulted in trading restrictions being implemented.[59] Mr. Griffin stressed the difficulties surrounding an instantaneous settlement cycle but admitted instantaneous settlement would have prevented the concerns surrounding clearinghouse deposits.[60] Citing the difficulty of implementing instantaneous settlement, Mr. Griffin repeatedly pushed for a "T+1" settlement cycle which would result in deposits becoming available the next trading

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[55] *See id.*

[56] Alexander Osipovich, *GameStop Mania Highlights Shift to Dark Trading*, WALL ST. J. (Feb. 12, 2021) https://www.wsj.com/articles/gamestop-mania-highlights-shift-to-dark-trading-11613125980?mod=article_inline.

[57] *See* Asad Bhatti, *Lighting up the Dark: Hidden Trends In Off-Exchange Trading*, CBOE (July 15, 2020) https://www.cboe.com/insights/posts/lighting-up-the-dark-hidden-trends-in-off-exchange-trading/.

[58] *See* McCabe, *supra* note 35.

[59] *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part 1* Before the H. Comm. on Fin. Servs., 117th Cong. (2021) (statement of Ken Griffin, CEO, Citadel LLC).

[60] *See id.*

day.[61] Moreover, Vlad Tenev, CEO of Robinhood, expressed his belief that real time settlement would have prevented this situation from occurring.[62]

B. Payment for Order Flow and Best Execution

PFOF is the method of transferring some of the trading profits from the market making process to the broker that routed a customer's order to that market maker.[63] PFOF was discussed extensively during the House Committee on Financial Services hearing for GameStop.[64] Several members of Congress called into question the relationship between market makers and brokers that resulted in Citadel paying brokers $700 million to execute customer orders, how market makers balance Best Execution requirements while profiting from order flow, and the impacts PFOF has on the quality of trade execution retail investors receive.[65] Throughout the hearing, PFOF was defended as a legal practice that benefits customers through price improvement and the innovation that resulted in commission free trading.[66] While Mr. Griffin claimed Citadel LLC has vigorously advocated for execution quality and plays by the rules of the road regarding PFOF, he failed to address concerns that PFOF fails to satisfy Best Execution requirements.[67]

C. Financial Transaction Tax

Representative Rashida Tlaib questioned witnesses about a financial transaction tax ("FTT") and the benefits of a FTT such as preventing fraud, market manipulation, or market volatility.[68]

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[61] *See id.* (statement of Ken Griffin, CEO, Citadel LLC) (discussing the difficulties of instantaneous settlement and the requirement for synchronization between all parties due to instantaneous settlement eliminating time to recover in the event of a mistake).

[62] *See id.* (statement of Vlad Tenev, CEO, Robinhood Fin. LLC).

[63] *See SEC, Special Study: Payment for Order Flow and Internalization in the Options Markets, supra* note 48.

[64] *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part 1* Before the H. Comm. on Fin. Servs., 117th Cong. (2021).

[65] *See id.*

[66] *See id.*

[67] *See id.* (statement of Ken Griffin, CEO, Citadel LLC).

[68] *See id.* (statement of Congresswoman Rashida Tlaib).

The witnesses in attendance rebutted Rep. Tlaib's claims that a FTT would have any of these purported benefits. Moreover, the proposed 0.1 percent tax may seem like a small imposition on investors, but this tax would hurt average consumers, their long-term retirement goals, and would do nothing to address market volatility.[69]

IV. PROPOSED REGULATION CHANGES

This section will discuss proposed changes to current regulations in an attempt to better protect consumers and to prevent the occurrence of future events that result in extreme market volatility.

A. Trading Restrictions and Capital Requirements

The trading restrictions implemented by Robinhood, and other similar commission free brokers, resulted in a 77% drop in the price of GME over the course of a few hours. Increased clearinghouse deposit requirements due to market volatility along with Net Capital Requirements left the affected brokers with one option, place restrictions on customer orders.[70] Currently, clearinghouse deposit requirements and Net Capital requirements both provide adequate protection to consumers and the market as a whole; therefore, these requirements should remain unchanged.[71]

In financial markets, the current settlement period is "T+2", *i.e.*, the trade date plus two days.[72] This settlement period ties up clearinghouse deposits for two business days after a trade is executed instead of being readily available to settle additional trades. While there are many challenges with implementing a "T+0" settlement cycle, if it were the current standard, brokers would not have needed to implement trading restrictions.[73] The SEC should

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[69] *See id.*; *see generally* Colin Miller & Anna Tyger, *The Impact of a Financial Transaction Tax*, TAX FOUND. (Jan. 23, 2020) https://taxfoundation.org/financial-transaction-tax/ (discussing unforeseen harms of an FTT).

[70] *See* McCabe, *supra* note 35.

[71] *See id.*

[72] *See* SEC, *SEC Adopts T+2 Settlement Cycle for Securities Transactions*, *supra* note 51.

[73] *See* Griffin, *supra* note 66; *see also DTCC PROPOSES APPROACH TO SHORTENING U.S. SETTLEMENT CYCLE TO T+1 WITHIN 2 YEARS*, DTCC (Feb 24, 2021) https://www.dtcc.com/news/2021/february/24/dtcc-

commission a study to identify the risks associated with instantaneous settlement, ensure potential risks can be mitigated by brokers, and adopt an amendment to shorten the standard settlement cycle to instantaneous settlement.

B. Payment for Order Flow and Best Execution

The concept of PFOF conflicts with the Duty of Best Execution. PFOF can lead to potential conflicts of interest for brokers because of the tension between the firm's interests in maximizing payment for order flow, *i.e.*, profits, and their fiduciary duty to route customer's orders to the best markets.[74] Brokers have a duty of Best Execution which legally requires it to seek the best price reasonably available for its customers' orders. PFOF drives order flow away from public exchanges and instead routes that flow to market makers. Market makers do not offer the same level of transparency as public exchanges and therefore increases the chance of an order being filled at a suboptimal price.

To ensure that orders are fulfilled at the best possible price, the SEC should adopt an amendment that forces all retail order flow onto public exchanges and bans any sort of rebate associated with the execution of trades, including PFOF. Forcing all retail flow onto a public exchange allows the transparency necessary to ensure a broker meets its Duty of Best Execution. The CFA Institute reported that after the UK banned PFOF, retail trades executed at the best-quoted price increased from 65% to 90%.[75]

C. Short Sales

Unchecked short selling created a situation where GameStop had short interest higher than the entire float of the corporation.[76] Increased transparency and disclosures could prevent similar situations from occurring, but some investors claim too much transparency could have a negative impact on the practice

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proposes-approach-to-shortening-us-settlement-cycle-to-t1-within-two-years (identifying risks associated with decreasing settlement cycles).

[74] *See SEC, Special Study: Payment for Order Flow and Internalization in the Options Markets*, *supra* note 48.

[75] *See* Sviatoslav Rosov, *PAYMENT FOR ORDER FLOW IN THE UNITED KINGDOM*, CFA INST. (June 2016) https://www.cfainstitute.org/-/media/documents/article/position-paper/payment-for-order-flow-united-kingdom.ashx.

[76] *See* Davies, *supra* note 18.

that serves beneficial roles.[77] On the other hand, Nasdaq Inc. endorses increased disclosures of short positions for institutional investors, claiming the increased disclosure would help public companies engage with investors working behind the scenes to drive down share prices.[78] This interaction would give a corporation the opportunity to self-correct before short selling becomes widespread. Asset managers, hedge funds, and other institutional investors regularly disclose stock positions to the SEC. Currently, these reports do not have to disclose short positions.[79]

The SEC should adopt an amendment requiring institutional investors to regularly disclose short positions. Increased disclosure requirements can help facilitate transparency leading to a decrease in unchecked short selling.[80] Additionally, the SEC should complete the provision of Dodd-Frank requiring it to issue rules that would enhance public information about the lending or borrowing of securities.[81] The implementation of these changes would produce a system of checks and balances that reduces the risk of a future "short squeeze".[82]

V. CONCLUSION

The GameStop saga proves that the current state of securities regulation fails to protect retail investors and promote market stability. The SEC must first direct its focus to the implementation of instantaneous settlement in order to prevent future trading restrictions. Next, the SEC should amend current regulation with a focus on transparency, disclosure, and the protection of retail investors. More specifically, the SEC should complete the provision of Dodd-Frank requiring it to issue rules that would enhance public information about short selling and address PFOF's direct

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[77] *See* Michaels, *GameStop Frenzy Prompts SEC to Weigh More Short Sale Transparency, supra* note 7 (claiming short sales keep share prices closer to fair market value and allow investors to hedge their risk).

[78] *See THE PROMISE OF MARKET REFORM*, NASDAQ INC. (Feb. 2018) https://www.nasdaq.com/docs/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf.

[79] *See id.*

[80] *See* Truong Duong et al., *The Costs and Benefits of Short Sale Disclosure*, 53 J. BANKING & FIN. 124 (Nov. 5, 2015) (finding market-wide short selling disclosure requirements led to a decrease in short selling on the Tokyo Stock Exchange).

[81] *See* 15 U.S.C. § 78m(f)(2) (2012).

[82] *See* Duong, *supra* note 80.

conflict with a broker's Duty of Best Execution. Implementing these changes would allow the SEC to live up to its three part mission: protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.