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May 9, 2022

Via E-Mail to [pubcom@finra.org](mailto:pubcom@finra.org)

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 22-08 (Complex Products and Options)**

Dear Ms. Piorko Mitchell:

Robinhood Financial, LLC (“Robinhood” or “the Firm”)<sup>1</sup> appreciates the opportunity to comment on Regulatory Notice 22-08 regarding Complex Products and Options (“Reg Notice 22-08” or the “Notice”).<sup>2</sup> The Notice solicits comments on potential rule changes relating to customers’ ability to buy and sell options and complex products from member firms, and whether additional regulatory requirements should be imposed on member firms to effectively limit their customers’ access to certain products. It does not cite any evidence that trading in options and complex products has suddenly changed in nature; trading in options has existed for decades, and the various rules imposed by the SEC, FINRA, and numerous options exchanges governing options trading have been considered sufficient and effective throughout those decades. As a basis for potential rule changes, the Notice cites only recent increases in options and complex products trading and “evolving retail customer access.”<sup>3</sup>

Contrary to FINRA’s apparent position, Robinhood believes that “evolving retail customer access”—that is, increased participation in the market by more investors—is a good thing. Robinhood is proud that as a result of innovation and technology, first-time and other retail investors are finally able to participate in the U.S. markets and join in the wealth creation that institutional and high-net-worth investors have traditionally taken advantage of for decades. FINRA should encourage, not discourage, these trends. Robinhood’s mission is to democratize finance for all by providing access to investing regardless of a customer’s background, income, or wealth. Robinhood seeks not only to make investing available to tens of millions of previously underserved customers, but also to make investing *understandable*. Robinhood believes that even investors with low account balances should be encouraged to learn about investing, engage in their finances, and manage their assets using various strategies that have existed for

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<sup>1</sup> Robinhood is a wholly owned subsidiary of Robinhood Markets, Inc. (“Robinhood Markets”).

<sup>2</sup> FINRA Regulatory Notice 22-08, *Complex Products and Options* (Mar. 8, 2022) (hereinafter “Reg Notice 22-08” or the “Notice”), <https://www.finra.org/sites/default/files/2022-03/Regulatory-Notice-22-08.pdf>. For purposes of this comment letter, when we refer to “options,” we mean listed options traded on an options exchange.

<sup>3</sup> *Id.* at 12.



decades. We want to equip everyday investors with tools to independently build for their financial futures.

To this end, Robinhood offers its customers the opportunity to apply for approval to trade certain types of options, including long puts and calls, covered calls, cash-covered puts, and certain types of spreads. Robinhood also provides its customers and the broader investing public with straightforward and easy-to-understand educational content about the options markets. Because Robinhood's total product offerings are limited to options, liquid equities, and exchange-traded funds, our submission is largely focused on options trading, which has long been available to institutional and other entrenched market participants as an effective tool for managing risk and leverage. The opportunity to learn about and trade options is an important part of Robinhood's offerings to retail customers, many of whom were previously excluded from the options market by prohibitive commissions. But investors who have fewer assets or less extensive history of trading options should not be prevented from becoming educated traders and stewards of their own financial resources.

Robinhood is concerned that many of the proposed rule changes raised in the Notice would do just that—essentially turn back the clock to a time when important investment products, such as options, were only available to elite and privileged investors. For example, FINRA contemplates imposing a specific account equity requirement for options approval.<sup>4</sup> Such a proposal would effectively create an “accredited investor” standard for options, which has never been deemed necessary for a class of exchange traded and fully transparent securities. This type of overly paternalistic regulation would prevent many lower income and diverse investors from utilizing an important financial tool, previously reserved for the wealthy and connected, that can provide a valuable risk mitigation strategy. The view that certain products that have met all registration and disclosure requirements should, nevertheless, be unattainable for some investors, based on the personal characteristics of the investor is fundamentally anti-democratic and inconsistent with more than 80 years of securities regulation.

However, many of FINRA's potential rule proposals seem to reflect this notion that certain retail investors cannot be trusted to manage their own assets and should not be allowed to avail themselves of public information and make their own choices. FINRA's proposals present a bias against self-directed brokerage and the retail investors who choose to manage their own money rather than hiring a paid professional. This bias runs counter to the SEC's recognition that a self-directed model offers important benefits to retail investors, and FINRA's historic promotion of diversity in firm models and investor choice.<sup>5</sup> While we recognize that appropriately tailored regulation is important to ensure that our markets are fair and efficient, making the listed options market inaccessible to most retail investors would only harm the ordinary investor and make the securities markets more unfair and less efficient.

In support of our position, [Section I](#) of this comment letter provides additional background regarding Robinhood, our customers, and the types of options trading our customers conduct. Robinhood customers do not currently trade uncovered (or naked) options or other types of more complex options strategies. As discussed below, Robinhood's customers also have access to extensive educational tools provided by Robinhood, consistent with our mission to democratize finance.

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<sup>4</sup> *Id.* at 16 (Options Question 2.a.v).

<sup>5</sup> Regulation Best Interest: The Broker-Dealer Standard of Conduct, 84 Fed. Reg. 33,318, 33,322, 33,390 (July 12, 2019) (hereinafter “Reg BI Adopting Release”).



Section II provides information on the extensive regulatory framework that already applies to options trading, which is based on principles of disclosure and transparency and has operated to protect markets and investors for decades. There is no need for additional regulation of options trading and FINRA's Notice does not provide any evidence to justify additional regulation. Instead of promoting fair markets and helping retail investors, many of the proposed changes that FINRA has identified in Reg Notice 22-08 would harm everyday retail investors by raising barriers to entry and increasing costs, which in turn ultimately makes the markets less fair. Rather than additional regulation, Robinhood urges FINRA to consider issuing guidance providing greater clarity and consistency around existing regulation and required disclosures, and to encourage investor education about options trading and disclosures that are more tailored to the types of options a customer actually trades. These suggestions are also addressed in Section II.

We are deeply concerned about any effort by FINRA to implement new barriers on top of the comprehensive framework that already exists today. Such steps would jeopardize the recent progress we have seen across the industry, as our nation's capital markets become more diverse and accessible to everyone. In Reg Notice 22-08, FINRA acknowledged the potential benefits of options trading for investors and the comprehensive regulatory framework surrounding this trading<sup>6</sup>—and yet it also suggested that FINRA might, for the first time, implement regulations that limit which listed products can and cannot be purchased by specific types of investors. By suggesting that additional barriers to entry may be warranted, FINRA's Notice seems to be a solution in search of a problem. Rather than creating a framework that would discriminate against retail investors by increasing barriers to entry, FINRA should empower investors by supporting education, promoting equal access, and encouraging diversity and choice. We appreciate the opportunity to comment on these important issues.

**I. Robinhood's Mission Is To Provide Investment Opportunities to All, Including by Allowing Everyday Investors To Access the Benefits of Options Trading. Many of the Proposals in the Notice Run Counter to this Objective by Effectively Limiting Access to the Wealthy.**

**A. Many Proposals in the Notice Would Effectively Create a Two-Tiered System, Where Only the "Haves" Would Be Given the Opportunity to Benefit from Options Trading.**

There is a large investment and wealth gap in the United States, which has created a divide in our country between the "haves" and the "have nots."<sup>7</sup> People who can afford high commissions, minimum account balances, and hundred-dollar single shares of stock—the "haves"—historically had access to the U.S. capital markets. The "have nots"—workers and women and people of color, first time investors, people from rural communities and inner cities alike, gig economy workers and freelancers—did not. Robinhood has helped to close this gap through business practices such as no account minimums, no

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<sup>6</sup> Reg Notice 22-08, at 5, 8-9.

<sup>7</sup> We use the term "have not" to mean members of communities who traditionally have been underserved by financial institutions and faced barriers preventing or limiting access to traditional brokerage and investment advisory services. We believe those "have nots" have been deprived of opportunities for wealth creation and financial well-being previously enjoyed by "haves" who could afford the cost of investing. We do not use the term "have not" disparagingly or to suggest anyone falling under this category lacks the intelligence or capacity to make well-informed investment decisions. We believe every "have not" is capable of managing his or her finances, and deserves the opportunity to participate in the markets and in his or her own financial future. Our belief in empowering previously underserved segments of investors is at the heart of our mission and the core of our values.



trading commissions, a uniform margin interest rate, fractional trading, IPO access, and a customer-friendly interface.

The “haves” historically—and currently—have been able to access options trading through the full-service brokers to which they pay high commissions or investment advisors to which they pay high fees. The “have nots” traditionally have not had access to intuitive and affordable ways to trade options, but those who are approved for options trading have enjoyed increased access with the rise of self-directed brokerage firms, like Robinhood. By removing traditional barriers to investing, Robinhood opened the markets to tens of millions of retail investors from all backgrounds. Equally important to providing access, Robinhood works to demystify investing and engage investors. Through our mobile app and website, Robinhood provides its customers with tools, information, and interactions that many could not afford when investors were required to pay commissions and/or advisory fees. Customers are able to engage with their investments and access our capital markets on a self-directed basis, as they plan for their financial well-being and their futures.

This democratization of the securities markets is a goal that policymakers have long desired.<sup>8</sup> And because options trading offers benefits to all investors (as discussed in Section I.B below), all investors should be afforded the opportunity to learn about them and, if they chose, trade them. But several of the proposals in Reg Notice 22-08 threaten this equality of opportunity. For example, FINRA asks whether customers should be required to meet certain criteria, such as having a specific amount of equity in their account, prior to trading options.<sup>9</sup> Such a proposal would effectively create an “accredited investor” standard for trading options. However, there is no logical or evidentiary reason to believe that wealthier customers are better able to educate themselves and manage their options positions than other customers. We are left to infer that FINRA is making a value judgment that high-net-worth investors—the “haves”—are more sophisticated or knowledgeable options traders than the “have nots.” Such a view is both unfair and unwarranted; both types of investors are equally capable of educating themselves on the benefits, risks, and practices around options trading and both types of

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<sup>8</sup> See Chair Gary Gensler, Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs (Sept. 14, 2021) (“We keep our markets the best in the world through efficiency, transparency, and competition. These features lower the cost of capital for issuers, raise returns for investors, reduce economic rents, and democratize markets.”), <https://www.sec.gov/news/testimony/gensler-2021-09-14>; Chair Jay Clayton, Testimony before the Financial Services and General Government Subcommittee of the U.S. Senate Committee on Appropriations (May 8, 2019) (“Other countries want to replicate [U.S. retail investor participation] because such broad investor participation in our capital markets is a significant competitive advantage for our economy, and participation in our capital markets has made many Americans’ lives better and their retirements more secure.”), <https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-us-senate-committee>; Chair Mary Jo White, Opening Remarks at the Fintech Forum (Nov. 14, 2016) (“There is relatively widespread agreement that fintech innovations have the potential to transform key parts of the securities industry—and to do so in ways that could significantly benefit investors and our capital markets.”), <https://www.sec.gov/news/statement/white-opening-remarks-fintech-forum.html>; Chair Mary L. Schapiro, Remarks at the Stanford University Law School Directors College (June 20, 2010) (“[I]n an area very near to my heart, how can we increase voter participation by retail investors?”), <https://www.sec.gov/news/speech/2010/spch062010mls.htm>; Chair Arthur Levitt, Plain Talk About Online Investing (May 4, 1999) (“All of us are participants in an extraordinary social phenomena. The democratization of our markets is a desirable development which regulators should not frustrate. Our mission is not to prevent losers or to modulate the sometimes mercurial movement of our markets.”), <https://www.sec.gov/news/speech/speecharchive/1999/spch274.htm>.

<sup>9</sup> Reg Notice 22-08, at 16 (Options Question 2.a.v).



investors should be afforded the same level of respect and autonomy by being allowed to make the investment decisions they believe are best for their personal situations.<sup>10</sup> A regulatory regime that makes it harder for a particular segment of investors to access an exchange-traded, transparent, well-defined product that may be used to mitigate and manage their risk (among other things) is, at best, overly paternalistic and reminiscent of a “Nanny State.” At worst, it is unfairly discriminatory and inconsistent with the missions of the SEC and FINRA to promote free and fair markets.

Additionally, many of the potential rule proposals in Reg Notice 22-08 reflect a bias against a self-directed brokerage model and presume that investors who choose to trade options on their own after conducting their own research, and who do not hire a financial adviser, are not qualified to trade these products. For example, the Notice asks whether firms, including self-directed ones, should conduct individualized conversations with investors who apply to trade options.<sup>11</sup> The Reg Notice also asks whether a “suitability” determination for options trading levels should be imposed.<sup>12</sup> Both of these proposals run directly counter to a self-directed business model. Although Reg Notice 22-08 states that the risks associated with buying or selling options “may be heightened when retail investors make self-directed decisions through online platforms without the assistance of a financial professional,”<sup>13</sup> the Notice does not cite any research or evidence in support of this proposition and, in our view, this position is unfounded. There are many examples of cases where customers with human brokers or advisers suffered as a result of bad recommendations, bad advice, conflicts of interest and/or incomplete information regarding financial products. It is not clear why the Notice takes the position that flawed humans who may provide incomplete or inaccurate information present less risk to investors than a broker-dealer that provides objective and easy-to-understand educational information. A review of FINRA settlements over the last ten years shows that nothing could be further from the truth.<sup>14</sup>

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<sup>10</sup> Cf. Letter from Pat Toomey, Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs, to Hon. Gary Gensler, Chair, SEC (Sept. 30, 2021) (“[T]he SEC should proceed cautiously and remember that adults investing their own money should be free to decide how to do so. Ordinary Americans are just as well aware as the sophisticated ones who manage assets and operate hedge funds that risk is a fundamental part of investing. Retail investors do not need big government limiting access to, and choices in, the stock market.”), [https://www.banking.senate.gov/imo/media/doc/toomey\\_letter\\_to\\_gensler\\_on\\_digital\\_engagement\\_practices.pdf](https://www.banking.senate.gov/imo/media/doc/toomey_letter_to_gensler_on_digital_engagement_practices.pdf).

<sup>11</sup> Reg Notice 22-08, at 17 (Options Question 2.b).

<sup>12</sup> *Id.* at 16 (Options Question 2.a.iii).

<sup>13</sup> *Id.* at 5 (“[B]uying or selling options can be risky for retail investors who trade options without understanding their vocabulary, strategies and risks. Like the concerns associated with complex products, these concerns may be heightened when retail investors make self-directed decisions through online platforms without the assistance of a financial professional.”).

<sup>14</sup> For example, there have been numerous cases against individual representatives or advisers for recommending options trading strategies that were inappropriate based on their customers’ trading experience, knowledge, and/or goals. *E.g.*, *In re Hai Khoa Dang*, Advisers Act Release No. 5730 (May 5, 2021); *In re Michael D. Jackson*, FINRA AWC No. 2017055684102 (Dec. 10, 2018); *Dep’t of Enf’t v. Glen Rauch*, FINRA Disciplinary Proceeding No. 2014039358002 (OHO Nov. 28, 2016) (order accepting offer of settlement); *In re William J. Murphy and Carl M. Birkelbach*, Exchange Act Release No. 69923 (July 2, 2013); *Dep’t of Enf’t v. Paul Gomez*, FINRA Disciplinary Proceeding No. 2009019302101 (OHO Jan. 7, 2013) (order accepting offer of settlement). There have also been several cases against firms that failed to supervise representatives or advisors who made inappropriate



Moreover, the research we have identified suggests that investors who trade options on a self-directed basis do not consider options to be too risky and have positive perceptions of their investment performance. In a 2020 study commissioned by the Options Industry Council, only 7% of options users said they trade options through an advisor who makes recommendations.<sup>15</sup> Nonetheless, 80% of options users ranked their investment performance over the past two years as “better than most” or “about the same as most” (compared to 78% of non-options users).<sup>16</sup> And study participants appeared satisfied with their experience trading options, willing to continue or even expand options trading—36% said they were likely to increase their options trading over the next 12 months (compared to 7% who said they were likely to increase bond trading and 32% who said they were likely to increase stock trading).<sup>17</sup>

Notably, the SEC has acknowledged the benefits of self-directed models such as Robinhood’s as providing greater access to the financial markets and a variety of products at a lower cost.<sup>18</sup> The SEC recently had the opportunity to consider whether a heightened standard of involvement by brokers with respect to customer accounts—the “best interest” standard in Regulation Best Interest (also referred to as “Reg BI”)—should apply to self-directed or otherwise unsolicited transactions by a retail customer. It declined to extend Reg BI to such transactions. In the adopting release to Reg BI, the SEC recognized that over-regulation could limit choices for retail investors. Specifically, the SEC discussed the now-vacated Department of Labor (“DOL”) Fiduciary Rule, which would have imposed significant costs on broker-dealers providing recommendations to certain accounts. The SEC noted that the Fiduciary Rule would have resulted in “significant reduction in retail investor access to brokerage services,” and stated the belief that “the available alternative services were higher priced in many circumstances.”<sup>19</sup> The SEC also cited a SIFMA Study finding that, for the majority of retail customers whose brokers limited their services because of the Fiduciary Rule, customers chose to move to self-directed accounts rather than fee-based accounts.<sup>20</sup> Some of the potential regulation FINRA is considering through Reg Notice 22-08 would effectively reverse the SEC’s decision to preserve the self-directed brokerage model. The result would be to disproportionately harm customers that use the self-directed model, either directly by preventing participation in the options markets by certain participants or indirectly by increasing costs

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recommendations related to options or options-like investment strategies or misled investors about options trading in their portfolios. *E.g.*, *In re McNally Fin. Servs. Corp.*, FINRA AWC No. 2018058820103 (Nov. 23, 2021); *In re Frontier Wealth Mgmt., LLC & Shawn Sokolosky*, Securities Act Release No. 10978 (Sept. 3, 2021); *In re PHX Fin., Inc. & Robert Delaplain*, FINRA AWC No. 2016048921103 (Dec. 18, 2020); *In re Matthew R. Rossi and SJL Capital, LLC*, SEC Initial Decision Release No. 1393 (ALJ Dec. 23, 2019); *In re Biltmore Wealth Mgmt., LLC & Caleb R. Overton*, Advisers Act Release No. 4990 (Aug. 21, 2018); *In re UBS Fin. Servs. Inc.*, Exchange Act Release No. 78958 (Sept. 28, 2016); *In re Cambridge Inv. Research Advisors, Inc.*, Advisers Act Release No. 4361 (Apr. 5, 2016).

<sup>15</sup> Greenwich Associates, *OCC Options Market Research 32* (Sept. 2020) (hereinafter “OCC 2020 Study”), <https://www.optionseducation.org/referencelibrary/research-articles/page-assets/2020-options-investor-study.aspx>. In the OCC 2020 Study, 82% of respondents who trade options “disagreed somewhat” or “disagreed strongly” with the statement, “I rely on my financial advisor for investment advice.” *Id.* at 18. 95% of respondents use “direct access online trading execution” and 45% use a mobile app. *Id.* at 29.

<sup>16</sup> *Id.* at 22.

<sup>17</sup> *Id.* at 36.

<sup>18</sup> Reg BI Adopting Release, 84 Fed. Reg. at 33,422-23.

<sup>19</sup> *Id.* at 33,322.

<sup>20</sup> *Id.* at 33,322 n.34.



to self-directed firms. If adopted, these changes would ultimately harm the least affluent and least connected investors. It does not benefit customers to make it difficult for them to trade products that allow them to hedge risk or generate profits in a cost-effective manner.

We agree that options trading is not for everyone and the risks associated with buying or selling options may be heightened when customers trade options products without a sufficient understanding of the potential risks and benefits. However, that issue exists whether the customer is engaging in self-directed trading or trading through a full-service broker. Investors—whether self-directed or working with a financial professional—should educate themselves on any products that they are trading or that are being recommended in order to stay abreast of and manage their investment risks. Education can help a self-directed investor avoid common pitfalls, and it can help a represented investor avoid being taken advantage of by human brokers or advisers. Ultimately, the solution to any perceived problem with increased retail investor access to options trading should be education and meaningful disclosure, not additional barriers to entry.<sup>21</sup> That is how the U.S. securities markets have operated for decades. There is no reason for FINRA, the SEC, or member firms to second-guess investors who make their own choices, particularly where the product is exchange traded, transparent, and offers important benefits to investors.

## B. Options Trading Offers Important Benefits to Investors.

Robinhood agrees with Reg Notice 22-08's observations that options trading has the potential to expand opportunities for retail investors.<sup>22</sup> Listed options are exchange-traded products with widely disseminated pricing and quote information and well-defined return characteristics. As such, they may be an important part of the investment strategies of many investors. Retail investors can obtain the same benefits from investing in options as any institutional or other large investor, including the following: (1) to enhance income; (2) to help manage and minimize market risk on their existing portfolios; and (3) to take advantage of market movements in a cost-efficient manner.<sup>23</sup> These benefits are not in doubt; they are acknowledged by FINRA in Reg Notice 22-08:

- **Collecting income.** Investors—even those pursuing a conservative investment strategy—can collect income by receiving premiums for writing options on their own

<sup>21</sup> See FINRA Media Center, *A Reflection on the Research Brief: Financial Education Matters* (Apr. 21, 2022) (concluding that “[t]he research clearly shows that financial education is a cost-effective way to increase financial knowledge and improve a host of behaviors related to budgeting, saving, credit, insurance and more”), <https://www.finra.org/media-center/blog/reflection-research-brief-financial-education-matters>.

<sup>22</sup> Reg Notice 22-08, at 1, 5.

<sup>23</sup> *E.g.*, OCC 2020 Study, at 9 (“Options users have a wide range of reasons for using options. Their primary uses are generating income and acting on investment views”); OCC, *Characteristics and Risks of Standardized Options 4-5* (Mar. 2022) (hereinafter “ODD”), <https://www.theocc.com/getmedia/a151a9ae-d784-4a15-bdeb-23a029f50b70/riskstoc.pdf>; Robinhood Learn, *Getting started with options*, <https://learn.robinhood.com/articles/getting-started-with-options/> (last updated Jan. 28, 2021); Reg Notice 22-08, at 5; OIC, *US Listed Equity Options: A Primer for Hedge Funds 2020*, at 4-5 (observing that options can be an important defensive piece of an investor’s portfolio, allowing them to hedge risk and weather periods of high volatility), <https://www.optionseducation.org/referencelibrary/white-papers/page-assets/2017-02-28-hedge-fund-articles-v4-update-2020> (last visited May 6, 2022); Thomas F. McKeon, CFA, Principal and Chief Investment Officer, West Chester Capital Advisors, *Options Based Portfolio Management Strategies 2* (May 2009) (“As it turns out, options are the perfect tool to manage portfolio risk. They can be used to augment income, enhance return potential and limit portfolio risk.”), <https://www.optionseducation.org/referencelibrary/white-papers/page->



stock (selling a covered call),<sup>24</sup> or by selling a cash-covered put.<sup>25</sup> In this inflationary environment, this strategy may offer an opportunity to generate revenue within an existing portfolio.

- ***Managing and mitigating risks through defensive strategies.*** Options trading also allows investors to manage their risks and minimize the market downsides of investing.<sup>26</sup> Investors may employ defensive strategies to protect and preserve their investments in a cost-effective manner. Reg Notice 22-08 provides as an example an investor buying a put option to limit losses on downward movement of the underlying stock that is owned by the investor. If the price of the stock falls below the strike price of the option, the investor can exercise the put option and sell shares at the strike price instead of the current market price. This strategy could limit the negative market impact to a position if the stock price falls.<sup>27</sup> Federal courts have also recognized the benefits of options trading, stating that they may be used as a tool to help investors hedge against future movement in the price of securities and mitigate market risk.<sup>28</sup>
- ***Capitalizing on market movements in a cost-efficient manner.*** Options trading allows customers to trade options that give them exposure to the underlying stock, generally for much less upfront costs than buying or short selling the underlying.<sup>29</sup> This can be especially significant to retail investors, who may not necessarily have the resources to spend on shares of high-value underliers, whose stock prices may be hundreds of dollars per share. As an example, Reg Notice 22-08 explains that an investor could buy a \$12 call option (\$1,200 total upfront cost) overlying a stock that is valued at \$60 per share, gaining exposure to the price movement in the underlying stock for less than the cost of buying 100 shares at \$60 (\$6,000).<sup>30</sup>

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[assets/www-obpms-may-2009.aspx](https://www.optionseducation.org/referencelibrary/white-papers/page-assets/2001-highnetworth.aspx); Cboe Investor Series, Paper No. 6, *High-net-worth Investors & Listed Options: Portfolio Management Strategies 1-2* (2001), <https://www.optionseducation.org/referencelibrary/white-papers/page-assets/2001-highnetworth.aspx>.

<sup>24</sup> Reg Notice 22-08, at 20 n.18. (“[A]n investor may engage in covered call writing whereby an investor can write (sell) a call option on a stock the investor owns to earn the options premium.”)

<sup>25</sup> Seth Shalov & Kurt Nye, MAI Investment Management, *Beyond the Covered Call, Enhancing a Covered Call Strategy with Cash-Secured Puts 1* (May 2015), <https://www.optionseducation.org/referencelibrary/white-papers/page-assets/mai-beyond-covered-call.aspx>.

<sup>26</sup> *E.g.*, OIC, *What are the Benefits & Risks?* (“For many investors, options are useful tools of risk management. They act as insurance policies against a drop in stock prices.”), <https://www.optionseducation.org/optionoverview/what-are-the-benefits-risks> (last visited May 6, 2022).

<sup>27</sup> Reg Notice 22-08, at 20 n.17.

<sup>28</sup> *See, e.g.*, *Fry v. UAL Corp.*, 895 F. Supp. 1018, 1035 (N.D. Ill. 1995) (noting that “it is commonly recognized that options markets serve valuable functions”); *Deutschman v. Beneficial Corp.*, 841 F.2d 502, 504 (3d Cir. 1988) (noting that option contracts “permit investors to hedge against future movements in the market price of securities”), *cert. denied*, 490 U.S. 1114 (1989).

<sup>29</sup> *E.g.*, OIC, *What are the Benefits & Risks?*, *supra* note 25 (“Transactions generally require less capital than equivalent stock transactions. They may return smaller dollar figures but a potentially greater percentage of the investment than equivalent stock transactions.”).

<sup>30</sup> Reg Notice 22-08, at 20 n.19.





These are not merely theoretical benefits—the OCC 2020 Study demonstrates that these are actual reasons that individual investors trade options. Participants in the study—the majority of whose annual income was under \$250,000—cited as reasons for trading options: short-term gains (71%), selling options to generate income (63%), and hedging an investment against losses (30%), among other reasons (e.g., stock alternative; selling puts to acquire stock).<sup>31</sup> The OCC 2020 Study suggests that real people trading options value the fact that options are “more flexible” than stocks and funds.<sup>32</sup>

The acknowledged benefits of options trading in Reg Notice 22-08—obtaining “favorable investment outcomes” through “enhancing returns, limiting losses or improving diversification”<sup>33</sup>—are consistent with many retail investors’ investment strategies. These benefits should not be available only for rich, well-connected investors. Limiting access to these products will hurt investors with smaller accounts, who in the past had limited access to the benefits of options trading.

### **C. Robinhood Empowers Retail Investors To Take Advantage of the Benefits of Options Trading Through Education and Low-Cost Trading.**

Trading any type of security—including exchange-listed options—can be complex or risky without appropriate tools, education, and disclosures. However, the way the U.S. securities markets generally work is that once an investor has access to necessary or appropriate disclosures, and the broker-dealer has complied with the relevant FINRA and SEC rules and regulations, the investor is permitted to make her own decision, without second-guessing by her brokerage firm, FINRA, or the SEC.

Consistent with this long-standing tradition, Robinhood strongly believes that investors should be able to access reliable, accurate, and digestible information to educate themselves on options trading, and then should be allowed the discretion to make their own decisions—assuming they meet account approval criteria—about whether and which level of options trading is right for their risk tolerance, investment goals, and overall financial strategy. The OCC 2020 Study found that investors who use options and those who do not have similar risk tolerances, similar net wealth, similar levels of diligence with respect to their investments, similar levels of curiosity about new instruments, and similar levels of comfort taking significant risks in the hope of earning significant rewards.<sup>34</sup> The biggest difference between investors who use options and those who do not use options is perceived level of knowledge: options users are more likely to consider themselves knowledgeable investors.<sup>35</sup> The study suggested that improved ease of access to options education would likely increase the number of options users.<sup>36</sup>

Robinhood agrees that investors are best served when they have access to the right educational materials and a low-cost means of trading and investing based on the investor’s own knowledge, confidence, and experience.<sup>37</sup> At Robinhood, when customers who are approved for Level 2 options

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<sup>31</sup> OCC 2020 Study, at 6, 39.

<sup>32</sup> *Id.* at 41.

<sup>33</sup> Reg Notice 22-08, at 1, 5.

<sup>34</sup> OCC 2020 Study, at 6.

<sup>35</sup> *Id.* at 7, 21 (88% of options users “agree strongly” or “agree somewhat” with the statement, “I consider myself to be an extremely knowledgeable investor,” compared to 63% of respondents who have never traded options).

<sup>36</sup> *Id.* at 11.

<sup>37</sup> At Robinhood, education and access are supported by 24/7 customer support, which was first made available to options customers.



trading seek to be approved for Level 3 options trading, they are required to complete an options-related educational segment. In addition, Robinhood Learn (“Learn”) is at the center of the Firm’s efforts to make investing more accessible and provide financial education both to Robinhood customers and to those who have not yet started their investing journey. Educational articles on Learn were accessed by more than 5.9 million visitors throughout 2021. Learn is available to everyone on the Robinhood website and does not require a Robinhood account to access. Through Learn, Robinhood provides an extensive hub of educational articles for investors of every experience level in an easy-to-read format. With respect to options, Learn includes a nine-part series on “Options trading essentials.”<sup>38</sup> The educational content that Learn provides about options ranges from basic definitional content—for example, explaining what it means to take a long or a short position—to more sophisticated explanations of multi-leg spread strategies and volatility. Learn provides investors with detailed information that they can use to assess the financial risks associated with a contemplated options transaction, including, for example:

- how to determine how much it will cost to open an options position;
- the theoretical maximum gain associated with a particular type of options position;
- the theoretical maximum loss associated with a particular type of options position; and
- factors that make it more or less likely that an options investment will be profitable (e.g., time to expiration, characteristics of the underlying stock).

Robinhood also offers a “Help Center,” which provides substantial options trading-related education. Relative to Learn, the Help Center has a practical bent, with tips and screenshots related to using the Robinhood app for options trading and more definitive information about how Robinhood in particular (as opposed to brokers in general) handles certain events in the options trading lifecycle, like exercise and assignment. Between Learn and the Help Center, Robinhood’s educational materials explain to potential investors all of the risks identified in Reg Notice 22-08, namely:<sup>39</sup>

- Investors purchasing puts and calls may not recoup any of their premium if the stock price fails to move as expected.
- There is risk of these investments becoming nearly worthless significantly prior to expiration if the market rises (for long puts) or falls (for long calls) sharply.
- Options have risk driven by the time to expiration of the option. Options lose value over time and once the option expires “out of the money,” it is worthless.
- There is also a risk at expiration if the investor does not have the funds to exercise an in-the-money option.
- Options have risk driven by exercise provisions, such as exercise style.

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<sup>38</sup> Robinhood Learn, *Options trading essentials*, <https://learn.robinhood.com/options-trading-essentials/> (last visited May 6, 2022).

<sup>39</sup> Reg Notice 22-08, at 5-6. Reg Notice 22-08 also mentions the risk of uncovered trading; Robinhood does not currently support trading that would result in uncovered short positions.



- For writers (sellers) of options, the risks can include the assignment of the option.<sup>40</sup>

To further promote educational efforts relating to options trading, Robinhood recently launched Options Trading Essentials on YouTube, a comprehensive video series that is designed to teach viewers about options trading. It starts with the basics—the first ten episodes cover “Options 101” and include topics such as introduction to options, options contracts, and pricing. Each episode includes facts, history, and analogies that make learning about options trading an understandable and informative experience. Future episodes will cover more complex concepts like options strategies, probabilities, and implied volatility. Each episode is written and produced by licensed professionals. The goal of the series is to provide customers with educational information about options trading.

In addition to options-specific educational tools and programs, Robinhood provides customers with news and educational content directly in the app to empower them to learn, more broadly, about the markets and make their own informed investment decisions. For example, Robinhood offers free news from reliable sources including Barron’s, Reuters, and The Wall Street Journal. We recently rolled out interactive lessons that help customers learn and build a knowledge base as they use the app, and we have begun to integrate Learn directly into the app. We believe our customers prefer and benefit from educational content delivered in-context, as they are using our app.

Finally, Robinhood Snacks is yet another avenue for educating our customers and the general public about investing in a very approachable and accessible format. Snacks is a curated digest of business news stories delivered both daily and weekly via a newsletter that allows subscribers to start their days with the top business news of the day in an accessible, digestible medium. Our Robinhood Snacks Newsletter has more than 40 million subscribers as of December 2021. We believe the Robinhood Snacks Newsletter is one of the most read investor newsletters today.

## **II. Certain Proposed Rule Changes in the Notice Are Not Only Unnecessary Given the Extensive Regulatory Regime for Options, But Also Would Be Harmful to Ordinary Retail Investors Because They Would Decrease Equal Access and Investor Choice.**

### **A. Existing Options Regulations Strike an Appropriate Balance Between Protecting Investors and Unjustifiably Eliminating or Reducing Retail Investor Access to Options Trading.**

As Reg Notice 22-08 explains, there is a significant regulatory infrastructure already in place across FINRA and the 16 options exchanges (collectively, the “SROs”) with respect to options accounts and trading. These regulatory requirements address not only recommendations to trade options and other options communications and disclosures, but also account opening and approval requirements,

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<sup>40</sup> *E.g.*, Robinhood Learn, *Trading calls & puts* (explaining that customers can lose the entire price they paid for their call and put options, that a long call will lose value and potentially become worthless as the market goes down and that a long put will lose value and potentially become worthless as the market goes up), <https://learn.robinhood.com/articles/trading-calls-and-puts/> (last updated Jan. 28, 2021); Robinhood Learn, *A big little primer on options* (explaining risks associated with the time to expiration of the option and that if an option expires out of the money it is worthless), <https://learn.robinhood.com/articles/a-big-little-primer-on-options/> (last updated Feb. 4, 2021); Robinhood Help Center, *Expiration, Exercise, and Assignment* (explaining (i) that if an investor does not have the funds to exercise an in-the-money option, Robinhood will attempt to close the position prior to expiration, (ii) procedures around exercise and assignment, and (iii) if assigned, the customer has the obligation to fulfill the terms of the contract and how assignment works for the products offered by Robinhood and that assignment can occur at any point prior to expiration), <https://robinhood.com/us/en/support/articles/expiration-exercise-and-assignment/> (last visited May 6, 2022).



including enhanced eligibility and approval requirements for different types of options trading. In addition to these options-specific requirements, the SEC's Regulation Best Interest imposes specific disclosure obligations, conflicts of interest obligations, and care obligations on broker-dealers that recommend options products or investment strategies involving options to retail customers.

### **1. The Options Communications and Disclosure Rules Ensure That Customers Have Access to Important Information About the Risks of Options Trading.**

FINRA Rule 2220 contains several provisions that require options-related communications to be accurate, fair, and balanced. These provisions require, among other things, disclosure of risks and warnings that options are not suitable for all investors. FINRA has not identified any particular shortcoming of these requirements or why the changing market dynamics the Notice highlights—increased options trading and increased self-directed trading—have lessened the effectiveness of these requirements. The current requirements suffice to ensure that a member firm, particularly one like Robinhood that is not recommending specific options or options strategies to customers, provides its customers sufficient disclosure of the risks of trading options. For example, FINRA Rule 2220 currently requires that:

- a Registered Options Principal must approve any “retail communication” concerning options;
- all “retail communications” concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted to FINRA at least ten calendar days prior to use for approval;
- options communications are subject to a “routine spot-check procedure”;
- options communications cannot be used if they fail “to reflect the risks attendant to options transactions and the complexities of certain options investment strategies”;
- options communications cannot be used if they fail “to include a warning to the effect that options are not suitable for all investors or contain[] suggestions to the contrary”; and
- any statement in options communications referring to potential opportunities or advantages shall be balanced by a statement—of the same degree of specificity—of the corresponding risks.

In addition to FINRA Rule 2220's ensuring that member firm communications are appropriate, FINRA Rule 2360(b)(16)(A) requires dissemination of the options disclosure document (“ODD”) prior to accepting an options order from a customer or approving the customer's account for trading options. The ODD contains all of the points about options trading that Reg Notice 22-08 indicates that members should consider whether investors understand, as listed in the following bullets. FINRA has not explained why the ODD is insufficient to meet the goals regarding informing investors that it outlined in Reg Notice 22-08—if FINRA believes the ODD is not understandable to investors, it may consider shortening or clarifying the ODD, rather than imposing additional regulations. Specifically, the “various risks of options trading” identified by Reg Notice 22-08<sup>41</sup> that are already included in the ODD are:

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<sup>41</sup> Reg Notice 22-08, at 5-6.



- For uncovered call writers (sellers) there is risk of unlimited potential loss if the market rises sharply.
- For uncovered put writers (sellers), there is risk of losses if the market falls sharply.
- Investors purchasing puts and calls may not recoup any of their premium if the stock price fails to move as expected.
- There is risk of these investments becoming nearly worthless significantly prior to expiration if the market rises (for long puts) or falls (for long calls) sharply.
- Options have risk driven by the time to expiration of the option. Options lose value over time and once the option expires “out of the money,” it is worthless.
- There is also a risk at expiration if the investor does not have the funds to exercise an in-the-money option.
- Options have risk driven by exercise provisions, such as exercise style.
- For writers (sellers) of options, the risks can include the assignment of the option.<sup>42</sup>

## 2. The Options Account Opening Rules Require Firms to Exercise Diligence in Approving Accounts for Options Trading.

Current FINRA rules also require that a customer’s account must be specifically approved for options trading.<sup>43</sup> This approval must be based on the member’s exercise of “due diligence to ascertain the essential facts relative to the customer, his financial situation and investment objectives.”<sup>44</sup> The minimum information to be sought includes “investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)” and “investment experience and knowledge (e.g., number of years, size, frequency and type of transactions) for options, stocks and bonds, commodities, and other financial instruments.”<sup>45</sup> The account opening requirements are diligence requirements and based on preset, objective criteria that are applied consistently across all customers. The account opening requirements are not, and should not, be viewed as the equivalent of a customer-specific suitability determination or Regulation Best Interest “Care Obligation,” which require a customer-specific analysis and only apply when a firm *recommends* a transaction or investment strategy involving securities to a particular customer.<sup>46</sup>

Robinhood does not recommend options transactions, options accounts, or investment strategies involving options to its customers. It does use the above-referenced due diligence information to approve certain customer accounts for specified “levels” of options trading, and it believes the existing account opening rules are sufficient for this purpose. Robinhood currently offers two levels of options

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<sup>42</sup> See ODD at 15, 54-55, 60-64. Robinhood does not currently permit uncovered call or put writing.

<sup>43</sup> FINRA Rule 2360(b)(16)(A); FINRA Regulatory Notice 21-15, *Options Account Approval Supervision and Margin 2* (Apr. 9, 2021) (hereinafter “Reg Notice 21-15”), <https://www.finra.org/sites/default/files/2021-04/Regulatory-Notice-21-15.pdf>.

<sup>44</sup> FINRA Rule 2360(b)(16)(B).

<sup>45</sup> FINRA Rule 2360(b)(16)(B)(i).

<sup>46</sup> FINRA Rule 2360(b)(19). See also discussion *infra* at Section II.C.



trading. Neither level permits uncovered positions or strategies where the risk of loss is theoretically unlimited. Robinhood's two levels of options trading permit customers to use the following strategies:

Level 2	Level 3
<ul style="list-style-type: none"> <li>• Long calls</li> <li>• Long puts</li> <li>• Covered calls</li> <li>• Cash covered puts (margin cash covered puts for Gold<sup>47</sup>)</li> <li>• Long straddles</li> <li>• Long strangles</li> </ul>	<ul style="list-style-type: none"> <li>• All Level 2 products</li> <li>• Credit spreads</li> <li>• Debit spreads</li> <li>• Iron condors</li> <li>• Iron butterflies</li> <li>• Calendar spreads</li> </ul>

Robinhood collects the information required by Rule 2360(b)(16) electronically, and Robinhood's procedures call for phone conversations with applicants for options trading when certain red flags are identified in the application process. Robinhood will open accounts for investors who meet objective, preset diligence criteria. It is up to each investor, however, to decide whether to trade and what to trade, based on that investor's unique risk tolerance, objectives, and current portfolio.

**B. The Notice Does Not Provide Any Evidence That There Is a Need for Additional Regulation of Listed Options Trading.**

Reg Notice 22-08 does not articulate any persuasive reason why the current options regulatory infrastructure, which has been in place and worked well for decades, needs revisiting at this point in time. The Notice cites, as a basis for rule changes, an increase in options trading volume: "listed options trading volume has grown to over 38.6 million contracts a day on average, more than 30 percent higher than the 29.5 million contracts traded per day in 2020 and almost 100 percent higher than the 19.8 million contracts per day traded in 2019."<sup>48</sup> However, FINRA has not explained why it believes that volume of trading might make the existing rules, which apply regardless of volume of options trading, inadequate. The only substantive difference between "then" and "now" is described by the Notice—when existing options regulations were first implemented, an investor could only transact in options through a registered professional and on a limited number of exchanges. Now, Reg Notice 22-08 states, self-directed investors can actively trade online through multiple exchanges without engaging with individuals or seeking professional advice.<sup>49</sup>

That's not quite right—investors have been able to trade options online for years without paying for the expensive services of a financial adviser or other intermediary. But even accepting FINRA's premise, FINRA does not explain why increases in investor choice and opportunity would merit a wholesale revision of the options regulatory framework in the dramatic manner proposed. The implication is that FINRA is concerned about less experienced or younger investors trading options. But younger investors have been active in the options markets for decades,<sup>50</sup> and the existing options rules around diligence in

<sup>47</sup> Robinhood Gold is a subscription-based product that provides customers with access to margin trading, larger instant deposits, access to Level II market data, and access to professional research from Morningstar.

<sup>48</sup> Reg Notice 22-08, at 12.

<sup>49</sup> *Id.*

<sup>50</sup> Chair Arthur Levitt, Remarks at the Annual Options Industry Conference (May 5, 2020) ("New data, which will be presented to you tomorrow, indicates that options investors are younger, more sophisticated, and trading more than ever before. According to one survey, options traders spend a weekly average of 3 more hours on-line than those who do not invest in options."), <https://www.sec.gov/news/speech/spch368.htm>.



opening accounts, account approval, and agreement and disclosure requirements already apply across the board. If these requirements are satisfied, there is no rationale for treating investors differently solely for a demographic reason like age. Listed options are well-defined, exchange-traded products that are already subject to significant regulation and disclosure requirements. Accordingly, neither increased options trading volume nor the rise of self-directed brokerages should justify changes to the core rules governing options accounts and options disclosures, which have worked well for decades.

To this point, Robinhood disagrees with Reg Notice 22-08's categorical conflation of all exchange-traded options with "complex products" such as the structured notes, speculative and illiquid securities, inverse floating rate collateralized mortgage obligations, and high-risk business development companies that were the subject of the FINRA Enforcement actions enumerated in the Notice. A trade involving an option is not inherently riskier than buying the underlying equity, or a mutual fund or ETF. Options trading can be used to limit market risk to the investor, and may create less downside exposure than trading other products. For example, trades in covered calls have defined and limited risk. There is a spectrum of options trading, from basic covered puts and calls up through multi-leg strategies. Accordingly, it is inappropriate for FINRA to view all listed options as inherently and categorically risky, complex products. Rather, we believe that FINRA should emphasize the importance of investor education with regard to these products and continue—as it has done in the past—to treat exchange traded options, where there are well-defined terms, market makers, and price transparency, as distinct from "complex products" for rulemaking purposes.<sup>51</sup>

Robinhood's experience with its own customer base underscores that additional rulemaking is not necessary with regard to listed options. As of May 5, 2022, approximately 13% of Robinhood's accounts were approved to access Level 2 strategies and approximately 4.5% of Robinhood's accounts were approved to access Level 3 strategies. Customers who seek approval for options trading are not necessarily frequent traders of options—in fact, over one-third of options-approved accounts have not yet traded options. In general, customers approved to trade options are not neophytes; customers who are currently approved to trade options have had brokerage accounts open at Robinhood for an average of 33 months. Moreover, Robinhood's customers currently do not trade uncovered options, so their options trading is risk-limited. This trading can be more cost efficient than trading the underlying equity or products such as mutual funds. The trading is not a high-risk strategy that requires a new prescriptive regulatory framework mandating who may or may not engage in it.

### **C. Robinhood's Responses to the Specific Proposals in Reg Notice 22-08.**

Notwithstanding the lack of evidence cited in Reg Notice 22-08 for imposing additional regulation on options, the Notice suggests a number of potential, onerous new requirements that: (1) could increase barriers to opening options accounts and decrease access to the benefits of options trading; (2) make it more difficult for customers to trade options after they have opened an account; (3) are not practical and would require member firms to assume additional risk, including by second-guessing their customers' independent decisions; (4) could reduce helpful options-related information provided to customers; and (5) impose a Regulation Best Interest "Care Obligation" on firms before they may approve different levels of options trading, even though these firms are not providing recommendations

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<sup>51</sup> Robinhood agrees with SIFMA's recommendation that the term "complex product" should be more clearly and narrowly defined. Letter from Kevin M. Carroll, Managing Dir. and Assoc. Gen. Counsel, SIFMA, to Jennifer Piorko Mitchell, FINRA, at 2, 4-5 (May 9, 2022), available at <https://www.sifma.org/wp-content/uploads/2022/05/FINRA-Regulatory-Notice-22-08-Complex-Products-and-Options-5.9.2022.pdf>.



and are not subject to Regulation Best Interest as a legal matter. Given these negative consequences, we strongly share the concerns raised by Options Question 2.k in the Notice, which asks whether any of the proposals would unduly restrict investor access to options. We believe they would. Should FINRA determine additional regulation of listed options trading is necessary, Robinhood supports the formation of an industry-led advisory committee that would study and advise on how such regulation can best support investors without undermining access or investor choice.

### **1. Proposals That Would Increase Barriers to Opening Options Accounts and Decrease Access.**

There are a number of proposed changes that are designed to implement barriers to opening options accounts and would reduce access, such as:

- Requiring firms to conduct conversations with retail customers to vet whether it is “appropriate” for these customers to trade options;<sup>52</sup>
- requiring retail customers to *demonstrate* their understanding of options;<sup>53</sup> and
- requiring customers to have a minimum amount of equity to even trade options.<sup>54</sup>

#### **Our Concerns and Comments:**

These proposals run counter to well-recognized principles of securities market regulation dating back to the passage of the Securities Exchange Act in 1934. Absent a “recommendation” of a financial product, regulation of the securities markets within the United States has always been focused on disclosure—market participants are required to disclose their key businesses and practices, and the risks associated with particular investments. This allows investors to make informed decisions about whether and how they would like to participate in the securities markets. Several ideas proposed in Reg Notice 22-08, including the ones identified above, go well beyond this traditional regulatory framework. Moreover, these proposals are harmful because they appear to be designed to create additional barriers to utilizing options, which in turn would reduce access to what can be an important financial tool to generate income and mitigate risk. They also would reduce investor choice because they are antithetical to a self-directed brokerage model.<sup>55</sup>

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<sup>52</sup> Reg Notice 22-08, at 17 (Options Question 2.b) (“Should members be required to have a conversation with each customer, regardless of whether an account is self-directed or options are being recommended, prior to approval to trade options to ensure that it is appropriate to approve the customer to trade options? How would this best be implemented for a customer who has an online account?”).

<sup>53</sup> *Id.* (Options Question 2.f.i) (“After receiving additional education or training, should customers be required to demonstrate to the member the customer’s understanding about options? What form of demonstration would be most efficient and effective? Should the demonstration include answering questions or otherwise demonstrating understanding of options?”).

<sup>54</sup> *Id.* at 16 (Options Question 2.a.v).

<sup>55</sup> Testing customers or requiring specific acknowledgments before they are allowed to invest in certain products is a slippery slope toward making markets and opportunities inaccessible. It would also likely create concerns that member firms cannot practically address—for example, will firms be expected to police the internet for posts about their requirements and seek to take them down? To change their criteria on a regular basis to protect against gaming?





Rather than requiring customers to *demonstrate* their understanding about options, it should be sufficient to give customers access to information about options, so that investors can make their own decisions about the potential benefits and risks, based on their individual objectives and risk tolerance. Regarding the Notice's question about whether firms should provide additional disclosures to investors beyond the ODD,<sup>56</sup> Robinhood does not believe that *additional* disclosures are needed, but would not be opposed to better tailoring the ODD. For example, the ODD could be restructured in such a way as to enable members to provide customers with only the sections that are relevant to that member's business and/or the type of options the customer may trade. Alternatively, a short form of the ODD could be developed that provides customers with basic disclosures regarding options trading, to complement the lengthy, detailed version that currently exists.

To this end, Robinhood does not currently allow uncovered options trading, binary options, or range options, which take up a substantial amount of space in the ODD. The ODD could be reorganized around the common types of options products and members could be permitted to share only the relevant disclosures with their customers, thereby making the disclosures more targeted and digestible to customers. Robinhood agrees there may be value in a requirement that firms receive a one-time acknowledgement of understanding the risks of trading options from customers before approving a customer to trade options.<sup>57</sup> There would be no utility, however, in requiring customers to provide this same acknowledgement every year. If anything, as more time goes by, customers would gain more investment experience and a greater understanding of options trading and the related risks.

With regard to the minimum equity test, as we discussed above in Section I.A, we believe such a proposal effectively creates an "accredited investor" standard for options, which is inappropriate. This type of regulation would prevent many investors with smaller accounts from utilizing an important financial tool previously reserved for the wealthy and connected. Robinhood would, however, support updating the criteria listed in FINRA Rule 2360(b)(16) to remove existing antiquated factors that reflect a bias and are not correlated to a customer's ability to trade options, such as marital status.

## **2. Proposals That Would Make It More Difficult for Retail Customers To Trade Options After Account Opening.**

The Notice asks whether members should conduct periodic *reassessments* of retail customers' accounts to test that the initial account approval for options trading remains appropriate.<sup>58</sup> It also asks whether "heightened" or "more frequent" supervisory review should be required after a customer is approved to trade options, including for self-directed customers.<sup>59</sup>

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<sup>56</sup> Options Questions 2.f and 2.f.ii of the Notice ask, respectively: "Should members be required to provide customers specific educational or training materials in addition to what is already required before a customer, including a self-directed customer, may be approved to trade options?" "Should a simple, perhaps single page, disclosure document that focuses on the key risks of trading options be required to be delivered, in addition to the ODD, to a customer prior to approval for options trading?" Reg Notice 22-08, at 17.

<sup>57</sup> *Id.* (Options Question 2.f.ii.B).

<sup>58</sup> *Id.* (Options Question 2.c) ("Should periodic reassessment of the retail customer's account be required to ensure that the initial account approval for options trading remains appropriate?").

<sup>59</sup> *Id.* at 18 (Options Question 2.h) ("Should members conduct heightened or more frequent supervisory review after they have approved a customer, including a self-directed customer, to trade options? What form of heightened supervisory review would be most efficient and effective? If distinct from heightened supervisory



### **Our Concerns and Comments:**

With regard to reassessments, there is no value in making it more difficult and expensive for customers to trade options by requiring member firms to reassess, on an annual basis, a customer's account for options trading. Once a customer is approved to trade options, they only become more knowledgeable about the benefits and risks, so it is unclear why reassessments would be necessary. To the extent FINRA is concerned that a customer's investor profile has changed such that options are no longer a suitable investment strategy for the customer, such concern is only relevant after account opening where a member firm recommends a security or investment strategy involving securities and therefore assumes a suitability or Regulation Best Interest "Care Obligation." And, in those cases, there are existing rules for updating the customer's investment profile under Regulation Best Interest and Exchange Act Rule 17a-4.

With regard to "heightened" or "more frequent" supervisory reviews, it is not clear what FINRA is contemplating. If, in this proposed change, FINRA is suggesting that self-directed brokerage firms have an obligation to "supervise" or "monitor" their customers' trading in the absence of a recommendation, such a suggestion is deeply problematic. Not only is it antithetical to Regulation Best Interest and many decades of suitability law, but it effectively would turn self-directed broker-dealers into investment advisers or fiduciaries who are responsible for monitoring the suitability of their customers' self-directed trading. Broker-dealers who do not recommend trades are not guarantors of their clients' trades and should not be second-guessing these trades.

If, instead, in this proposed change, FINRA is suggesting that Firms should do more of what they are already doing, this proposed change is unnecessary. FINRA's supervision rules require firms to have a supervisory system that is "reasonably designed" and "adequately addresses" the member's options business.<sup>60</sup> Accordingly, it is unclear what a requirement for "heightened" or "more frequent" supervisory review would look like when firms are already obligated to have reasonably designed and tailored procedures. To this end, members are already required to establish and maintain a supervisory system that is "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."<sup>61</sup> This overarching (not options-specific) requirement includes "written procedures to supervise the types of business in which [the member] engages"; "procedures for the review by a registered principal ... of all transactions relating to the investment banking or securities business of the member"; "procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications"; and "procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints."<sup>62</sup> Supervisory activities must take into account, among other things, the firm's scope of business activities, the nature and complexity of the products and services offered by the firm, and any indicators of irregularities or misconduct (i.e., red flags).<sup>63</sup> Accordingly, a firm's supervision must—by operation of FINRA's normal supervision rule—be tailored to the firm's options business. And even beyond the general supervision standards, FINRA has an additional rule stating that members that conduct "a public

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review, what form of frequent supervisory review would be most efficient and effective? How often should the review occur?").

<sup>60</sup> FINRA Rules 3110, 3120, 3130, 2360(b)(20).

<sup>61</sup> FINRA Rule 3110(a).

<sup>62</sup> FINRA Rule 3110(b)(1)-(5).

<sup>63</sup> FINRA Rule 3110, Supplementary Material .12.



customer options business shall ensure that its written supervisory system policies and procedures ... adequately address the member's public customer options business."<sup>64</sup>

Moreover, the existing options requirements described above in Section II.A are subject to periodic examination and to the SEC's and/or SROs' enforcement authority.<sup>65</sup> These exam and enforcement efforts are the proper vehicles by which to evaluate whether a firm is complying with the already extensive requirements in place for firms that offer options trading to customers. Additional regulation is not required to ensure that firms are providing customers with accurate and comprehensive disclosures, making only suitable options recommendations when recommending options trading, and otherwise supervising their business.

Robinhood, as a self-directed brokerage firm, already has a robust supervisory system with respect to its options business, which encompasses several of the topics identified by FINRA in Reg Notice 22-08. Among other steps, Robinhood has established criteria for identifying "red flags" in the options application process. Flagged accounts are subject to manual review, which as a matter of course include client outreach by phone or email. And, on a monthly basis, Robinhood reviews its options-approved accounts against the relevant eligibility criteria to make sure the account still meets the requirements for options accounts; if not, it will downgrade the account. Robinhood also periodically conducts risk-based audits and other reviews of accounts that are approved for options and downgrades accounts as needed. These procedures are more than reasonable to address any perceived concerns that FINRA may have with listed options trading.

Finally, it is not clear why FINRA is singling out all listed options products as worthy of "heightened" or "more frequent" supervision as opposed to other products. As discussed above in Section I.B, listed options may be used to mitigate risk, are exchange traded and fully transparent, and are not categorically inherently high-risk products.

### **3. Proposals That Are Not Practical and Would Require Member Firms To Assume Unwarranted Risk, Including by Second-Guessing Their Customers' Independent Decisions.**

Certain of the proposed changes are not practical. Two of these proposals would subject member firms to unwarranted risk and liability, and require them to second-guess their customers' independent trading decisions based on incomplete information. Specifically, the Notice asks:

- whether firms should be required to display the total position risk for retail customers holding positions in options, or holding positions that have been entered into as the result of an options assignment (e.g., where a customer holds positions in both an option and the underlying instrument, or in multiple options on the same security, such that the exercise of an option may act to limit overall risk, should members display the

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<sup>64</sup> FINRA Rule 2360(b)(20)(A).

<sup>65</sup> *E.g.*, Reg Notice 22-08, at 8; Testimony of Michael Piwowar, Milken Institute (former SEC Commissioner), "Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II" (Mar. 17, 2021) (options trading is "highly regulated" by the SEC; there is a dedicated options team within the SEC's Division of Trading and Markets and dedicated individuals within the Divisions of Examinations and Enforcement), <https://www.govinfo.gov/content/pkg/CHRG-117hrg44343/html/CHRG-117hrg44343.htm>.



maximum potential loss and gain for each underlying asset based on their combined option and underlying exposure);<sup>66</sup> and

- whether firms should be required to pause or suspend their customers from further transacting in options or certain kinds of options if they identify that a customer has entered into an options transaction (such as a spread traded above parity) whereby it is impossible for the customer to profit from the transaction.<sup>67</sup>

The third proposal, to allow investors until 5:30 p.m. ET to make a final options exercise decision, is also not practical and would require member firms to assume additional risk with regard to processing exercise instructions.<sup>68</sup>

**Our Concerns and Comments:**

Regarding the proposed obligation for firms to display total position risk for retail customers, we believe such a requirement would create unwarranted risk for firms and, at the same time, could provide customers with a misleading picture of overall risk. Options pricing and valuation may change continually throughout the trading day and it may be very difficult for firms to keep this information up-to-date and accurate given these fluctuations. Moreover, such a display is of limited utility and may provide an incomplete and, therefore, misleading picture because customers could hold positions and hedges away from firms that are not reflected in the so-called “total position risk” calculation.

For similar reasons, the proposed obligation for firms to second-guess customers’ independent trading decisions and prevent them from trading options is also inappropriate. A single firm does not know whether it has visibility into a customer’s entire portfolio. A customer may have an options position at firm 1 which, when viewed in isolation, appears unprofitable. However, this options position may be hedging another position the customer holds at firm 2. While we believe it is inappropriate for a broker-dealer, particularly a self-directed broker-dealer, to second guess the independent trading decisions of its customers who have been approved for options trading, it is particularly inappropriate where the broker-dealer does not have a complete picture of the customer’s investment portfolio.

Finally, the proposal to allow investors until 5:30 p.m. ET to exercise their options is not practical and creates operational and regulatory risks for firms. Introducing brokers need time to process exercise instructions received by customers and provide these instructions to their clearing firms, which in turn provide them to the OCC. It is not uncommon for introducing and clearing broker-dealers to receive inquiries from FINRA or other regulators when instructions are provided “late.” Extending the time for customers to provide exercise instructions would place additional pressure and burdens on firms and likely increase the number of “late” instructions and, relatedly, the number of regulatory inquiries. Such burdens and risks are unnecessary because customers have plenty of time—several hours on any given trading day—to provide instructions to their brokerage firms.

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<sup>66</sup> Reg Notice 22-08, at 18 (Options Question 2.g).

<sup>67</sup> *Id.* (Options Question 2.i).

<sup>68</sup> *Id.* (Options Question 2.j).



#### 4. Proposals That Could Reduce Helpful Information Provided to Customers.

Certain proposed changes in the Notice could reduce helpful information that firms provide to their customers. In particular, the Notice asks:

- whether targeted communications regarding options, such as push notifications to self-directed retail customers, should be subject to specific restrictions (e.g., should they be restricted unless certain conditions have been satisfied, such as that the account has been approved for options);<sup>69</sup>
- whether there should be additional “guardrails” for communications involving options, including through self-directed platforms, even where the communication does not rise to the level of a recommendation under Reg BI;<sup>70</sup> and
- whether firms should file all retail communications that promote or recommend options or options strategies prior to use.<sup>71</sup>

#### Our Concerns and Comments:

It is not clear what types of restrictions FINRA is envisioning, but we would be concerned if these restrictions have the effect of reducing information to customers. For example, Robinhood provides notifications to customers that have opted to receive them that are tailored to an individual’s positions and provide important position information, such as updates on whether the customer’s options are in or out of the money. Robinhood’s customers may also request certain types of notifications such as: (i) alerts when the mark-to-market price is up or down more than 20, 50, or 100% (configurable); (ii) alerts when total gain/loss exceeds 20, 50, 75, 100% (configurable); (iii) alerts regarding early assignment risk; (iv) alerts regarding upcoming dividends; and (v) options expiration reminders (one month, one week, today).

Limiting a customer’s ability to ask for and receive timely information about their accounts is antithetical to the disclosure-based nature of securities regulation. Accordingly, any communications that FINRA identifies as requiring additional restrictions should be focused on communications that clearly represent a “call to action” or recommendation under Regulation Best Interest.

With regard to filing all options communications with FINRA *prior* to use, we do not believe such a filing requirement is necessary because FINRA already imposes a pre-use filing requirement for options communications where an ODD has not been delivered to the recipient and a pre-use approval requirement for retail options communications by a Registered Options Principal.<sup>72</sup>

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<sup>69</sup> *Id.* at 17 (Options Question 2.d).

<sup>70</sup> *Id.* at 15 (Complex Products Question 12).

<sup>71</sup> *Id.* at 17 (Options Question 2.e).

<sup>72</sup> FINRA Rules 2220(b)(1) and (c)(1).



## 5. Additional Regulations for Specific Options Levels That Appear To Impose a Reg BI Care Obligation on Firms That Do Not and Should Not Have a Reg BI Care Obligation Under the Law.

Reg Notice 22-08 contains a number of proposals relating to specific levels of options trading.<sup>73</sup> The Notice states that many firms have developed a system of option “levels” ranging from less risky options and strategies to more risky options strategies, based on the customer’s risk tolerance, investment experience, and upon the customer opening a margin account. The Notice asks whether new regulations should be applied to options levels and, in particular, whether specific standards should be required.<sup>74</sup> Other questions in Reg Notice 22-08 (and some of FINRA’s prior guidance<sup>75</sup>) also appear to conflate the concepts of suitability and account opening due diligence. For example, FINRA asks whether members should “make a suitability determination” for different levels of options trading, regardless of whether an account is self-directed.<sup>76</sup>

### Our Concerns and Comments:

We are deeply concerned by any proposed rule change that would have the effect of imposing a suitability or Regulation Best Interest “Care Obligation” on firms, such as self-directed firms, that do not legally have these obligations. Approving customers for levels of options trading is *not* a recommendation to the customers that they should be engaging in particular options trades or strategies. Conflating the *ability* to trade options with a *recommendation* to trade certain options is problematic because it would (i) set a dangerous precedent that could apply to other straightforward investment products or strategies, (ii) create an untenable amount of work for member firms, and (iii) drive up the costs of investing for retail customers, which will likely result in less access for retail customers. It is also not practicable or desirable for a self-directed brokerage firm to conduct a suitability analysis. This is not the sort of service that customers seek from a self-directed brokerage firm; customers value self-directed brokerage firms for the cost efficiencies they offer, choosing to invest more money and spend less on fees and charges. Increasing the costs of self-directed brokerage would reduce the choices available to investors and impose impossible burdens on self-directed firms, which do not possess the type of information they would need to second-guess a customer’s options trading choices, for example, positions and strategies a customer may have in place at other firms.

The inquiry required of a member firm that is providing *recommendations* under Rule 2360(b)(19) to buy or sell a particular security at a particular point in time is and should be construed as different from the due diligence required of a member that is simply determining whether to approve an account for theoretical and prospective options trading under Rule 2360(b)(16).

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<sup>73</sup> Reg Notice 22-08, at 16 (Options Question 2.a).

<sup>74</sup> Options Question 2.a in the Notice asks, “Should specific standards apply for the kinds of options and strategies that are permitted at a given level and standards for a customer to be approved for each level?” *Id.* It also asks “Should members be expected to provide specified information and customers to meet specified objective criteria, such as having a certain number of years of trading experience or having a specific amount of equity in their account prior to trading options? Should members be required to provide additional information and for customers to meet additional objective criteria (for example a higher level of equity or more years of trading experience) as the level of options trading increases?” *Id.* (Options Question 2.a.v).

<sup>75</sup> FINRA Reg Notice 21-15, at 6 n.7.

<sup>76</sup> Reg Notice 22-08, at 16 (Options Question 2.a.iii).



Account approval for options trading is distinct from separate FINRA provisions related to the suitability of *recommendations* related to options trades or strategies.<sup>77</sup> Although FINRA has conflated these two requirements,<sup>78</sup> the suitability rule only applies when a member *recommends* to a customer the purchase or sale of an option contract. It provides that the member must have reasonable grounds to believe that the recommended transaction is not unsuitable for the customer, on the basis of any information known by the member and information furnished by the customer related to their investment objectives, financial situation, and needs.<sup>79</sup> The rule also states that no member shall recommend to a customer a transaction in any option contract unless the person making the recommendation has a reasonable basis for believing that the customer has sufficient knowledge and experience in financial matters to be reasonably expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.<sup>80</sup>

In short, Robinhood would object to regulation or guidance purporting to set industry-wide standards for what criteria would make a customer eligible for certain types of options trading. Member firms should be permitted to tailor approval to their respective customer bases and business model. For example, in order to manage the firm's credit risk, some firms might find it appropriate to impose a requirement as to net worth, existing investment value, or annual income for what Robinhood calls Level 2 options access. Robinhood does not believe this is appropriate for its customer base or business model; many of its customers have lower net worth and less discretionary income to invest than customers of a traditional brokerage model. But that does not mean these customers are less educated or less capable, or that they should be blocked from the benefits of trading options. Not all firms will want to use the same approval criteria when deciding which customers should be extended credit for the purpose of trading options, and FINRA should not require them to. Member firms know their own business models, risk tolerances, and customer bases better than the SROs do, and must be able to determine the criteria under which they are willing to extend credit and approve trading levels based on these firm-specific factors.

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We appreciate the opportunity to comment on Reg Notice 22-08. Please contact the undersigned or Robinhood's Deputy General Counsel, Lucas Moskowitz, if you have any questions.

Sincerely,

DocuSigned by:

A handwritten signature in black ink that reads "Steve Quirk".

C15454D9007244A...

Steve Quirk

Chief Brokerage Officer

Robinhood Markets

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<sup>77</sup> FINRA Rule 2360(b)(19).

<sup>78</sup> FINRA Reg Notice 21-15, at 6 n.7 ("In this context of evaluating customer information for the purposes of approving a customer to trade options, FINRA views the options trading approval standard ... as comparable to a suitability standard as used in Rule 2360(b)(19).").

<sup>79</sup> FINRA Rule 2360(b)(19)(A).

<sup>80</sup> FINRA Rule 2360(b)(19)(B).