Congress of the United States
Washington, DC 20515

March 3, 2021

Mr. Vladimir Tenev
Co-Founder and Co-CEO
Robinhood
85 Willow Road
Menlo Park, CA 94025

Dear Mr. Tenev,

We write to follow up on your appearance before the Financial Services Committee on February 18, 2021, entitled "*Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide*." Among other things, the hearing highlighted a lack of transparency surrounding "payment for order flow" (PFOF) practices between retail broker-dealers such as Robinhood Financial LLC (Robinhood), and market makers that execute their customers' trades, such as Citadel LLC.

This lack of transparency can obfuscate conflicts of interest faced by retail broker-dealers such as Robinhood in providing best execution of their customers' orders. As noted by the Securities and Exchange Commission (SEC), "The duty of best execution derives from, among other sources, the common law agency duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. Payment for order flow has the potential to create a conflict of interest between the broker-dealer and its customer."[1] While routing and execution practices are material to a retail investor's choice of broker-dealer, we are concerned that currently, investors do not have the information needed to make an informed choice as to which broker-dealer offers the best execution policies and practices that are suitable to their individual needs and investment strategy.

As such, we wanted to follow up on your offer to provide us with the PFOF agreements that you are a party to, so that we can better evaluate the terms of such relationships, the method by which you are compensated, the duration and scope of such agreements, the types of information that flow to market makers, and other terms and conditions that could bear on the treatment of your retail investors. This information is critical to understanding whether the current disclosure regime we have in place is adequate to the needs of retail investors. While we frequently hear from PFOF participants that it has benefited retail investors, without viewing the detailed agreements it would be difficult to properly assess those benefits as policy makers. In particular, we would request that you provide us with all such agreements between you and your

[1] Payment for Order Flow, Securities and Exchange Commission Final Rule Release, Exchange Act Release No. 34902, 59 Fed. Reg. 55006, at 55009 (Oct. 27, 1994).

top five market makers for each of the past three years. Given your mission to democratize finance and your view that PFOF benefits retail investors, we would encourage you to post these agreements publicly in addition to sharing them with us.

In requesting this information, we note that while SEC Rule 606 requires Robinhood to release quarterly reports disclosing certain aggregate information regarding the net monthly PFOF payments it receives for executing certain types of orders, the information provided by such reports are high-level and do not detail the actual agreements between brokers like Robinhood and the market makers who pay for order flow – information you said you'd be happy to share.

For example, in its latest Rule 606 report covering the fourth quarter of 2020, the only "material" disclosures that Robinhood provided concerning its relationship with Citadel were the payments received, and the following: "Revenue that Robinhood Securities receives from the third-party market venues is shared pursuant to a fully-disclosed clearing agreement with Robinhood Financial LLC. The per share amounts represent the total amount of payments received by Robinhood Securities. Robinhood Securities receives payment from Citadel Execution Services for directing equity order flow to this venue. The payment varied based upon a fixed percentage of the spread between the National Best Bid and National Best Offer for the security at the time of order execution."[2] Given that this same disclosure appears for each market maker, this raises significant questions about what information is actually being communicated, and whether this includes all material aspects of Robinhood's relationship with each market maker.

Review of these agreements is also salient in light of Robinhood's recent settlement with the SEC.[3] In the order accompanying the settlement, the SEC noted certain practices that heighten our concerns surrounding these relationships, and the lack of transparency surrounding them. For example, the order stated that:

> In or around May 2016, Robinhood began negotiations with a number of principal trading firms about potentially routing Robinhood customer orders to those entities. In the course of those negotiations, certain of the principal trading firms told Robinhood that there was a trade-off between payment for order flow on the one hand and price improvement on the other: If Robinhood negotiated for higher payment for order flow revenue, according to the principal trading firms, there would be less money available for the principal trading firms to provide price improvement to Robinhood's customers.
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> At least one principal trading firm communicated to Robinhood that large retail broker-dealers that receive payment for order flow typically receive four times as much price improvement for customers than they do payment for order flow for themselves—an 80/20 split of the value between price improvement and payment for order flow.

[2] Robinhood Sec., LLC, Held NMS Stocks and Options Order Routing Public Report 1–8 (2021) https://cdn.robinhood.com/assets/robinhood/legal/RHS%20SEC%20Rule%20606a%20and%20607%20Disclosure%20Report%20Q4%202020.pdf.

[3] Robinhood Financial, LLC, File No. 3-20171 (Dec. 17, 2020), https://www.sec.gov/litigation/admin/2020/33-10906.pdf.

> Robinhood negotiated a payment for order flow rate that was substantially higher than the rate the principal trading firms paid to other retail broker-dealers—which resulted in approximately a 20/80 split of the value between price improvement and payment for order flow. Robinhood explicitly offered to accept less price improvement for its customers than what the principal trading firms were offering, in exchange for receiving a higher rate of payment for order flow for itself.

In light of the continuing review and oversight that we will be conducting regarding retail trading market practices, we thank you for your prompt consideration of this important matter, and request that you provide these agreements by March 16, 2021.

Sincerely,

Bill Foster
Member of Congress

Cindy Axne
Member of Congress