

## **Securities Regulation Daily Wrap Up, TOP STORY—Mass. Cmmw.: Robinhood fires back at Massachusetts, seeks to upend state’s fiduciary rule, (Apr. 16, 2021)**

Securities Regulation Daily Wrap Up

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A complaint filed in state court in Boston seeks to quash the state’s administrative action and prevent revocation of Robinhood’s broker-dealer license.

Robinhood Financial LLC has filed a complaint and motion for preliminary injunction seeking to prevent the Massachusetts Securities Division from proceeding with its administrative action against the firm under the Division’s recently-adopted fiduciary duty rule. In filings with the state trial court in Boston, Robinhood contends that the Massachusetts rule contradicts a determination by the state’s Supreme Judicial Court that broker-dealers are not general-purpose fiduciaries of their customers. The complaint also argues that federal law preempts the Massachusetts rule because the SEC explicitly determined when promulgating Regulation Best Interest that broker-dealers should not be deemed to be fiduciaries of their customers ([Robinhood Financial LLC v. Galvin](#), April 15, 2021).

The filing of Robinhood’s state court action came on the same day that the Massachusetts Securities Division announced it would seek to revoke Robinhood’s broker-dealer license in the state. In its original administrative complaint filed in December 2020, the Division had [charged](#) Robinhood with violating the Massachusetts fiduciary duty rule by aggressively marketing itself to investors without regard for its customers’ best interests. Among other things, the Division accused the pioneering no-commission broker-dealer of using aggressive tactics to attract inexperienced investors while also using strategies such as "gamification" to entice them to make continuous use of Robinhood’s mobile trading application.

In a [news release](#) issued in response to the Division’s latest action, Robinhood accused the state regulators of making an "elitist" attempt to prevent Massachusetts residents from choosing how they invest. "We don't believe our customers are naive as the Massachusetts Securities Division paints them to be," the firm stated. "The [Division’s] complaint reflects the old way of thinking: That new, younger, and more diverse investors don’t have a place in the markets. By trying to block Robinhood, the division is attempting to bring its residents back in time and reinstate the financial barriers that Robinhood was founded to break down."

**Defying the SEC.** Robinhood’s [complaint](#) characterizes the Massachusetts fiduciary rule as an attempt by Secretary of the Commonwealth William Galvin to defy the SEC. The complaint notes that Galvin has consistently been a vocal proponent of a "uniform fiduciary standard" for broker-dealers—an idea that the SEC rejected in adopting Regulation Best Interest. Nine days after the SEC announced the final version of Regulation Best Interest on June 5, 2019, Galvin proposed his own regulation that would implement a uniform fiduciary standard. Despite opposition from Massachusetts Governor Charlie Baker and hundreds of others, Galvin ultimately adopted a final rule under which both broker-dealers and investment advisers have fiduciary obligations in providing advice or recommendations to their customers, while expressing his readiness to engage with legal challenges, the complaint observes.

According to Robinhood’s complaint, however, Secretary Galvin exceeded his statutory authority under the Massachusetts Uniform Securities Act. Robinhood argues that nothing in the statute gives the Commonwealth Secretary authority to redefine the common law duties of broker-dealers, or to make broker-dealers fiduciaries of their customers in circumstances where no fiduciary relationship exists under current Massachusetts law. The complaint argues that Galvin’s attempt to define Robinhood as a fiduciary, even though the firm offers only

self-directed brokerage accounts, defies the common law of Massachusetts, as set forth by the Massachusetts Supreme Judicial Court in *Patsos v. First Albany Corp.* (2001).

The Massachusetts fiduciary rule is also conflict-preempted, according to Robinhood, because the SEC deliberately chose not to impose a fiduciary duty on broker-dealers when adopting Regulation Best Interest. The SEC determined that doing so would harm both customers and broker-dealers, and that that harm would outweigh any benefit of a heightened standard of conduct, the complaint contends. The Massachusetts fiduciary rule, therefore, does exactly what the SEC determined was not in the public interest—it imposes a fiduciary duty that threatens to restrict access and increase costs for investors who may prefer a brokerage model. The state's fiduciary rule also allegedly contravenes the National Securities Markets Improvement Act of 1996 (NSMIA), which expressly forbade state regulators from adding burdens to broker dealers, while violating Robinhood's First Amendment right to engage in commercial speech, Robinhood contends.

Companies: Robinhood Financial LLC

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