

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-2989-MDL-ALTONAGA/Torres

In re:

JANUARY 2021 SHORT SQUEEZE
TRADING LITIGATION

This Document Relates to the Antitrust Actions

ORDER

THIS CAUSE came before the Court on Defendants'¹ Motion to Dismiss the Antitrust Tranche Complaint [ECF No. 408]. Plaintiffs² filed a [Response] in Opposition [ECF No. 413], to which Defendants filed a Reply [ECF No. 419]. The Court has carefully considered The Corrected Consolidated Class Action Complaint (the "CCAC") [ECF No. 416], the parties' written submissions, the record, and applicable law. For the following reasons, the Motion is granted.

I. BACKGROUND

This putative class action is brought on behalf of individual investors (the "Retail Investors") who suffered losses as a result of Defendants' response to a "short squeeze" — a situation in which stocks or other assets rise sharply in value, distressing short positions.³ (*See id.*

¹ The Defendants are E*Trade Securities LLC; E*Trade Financial Holdings, LLC; Interactive Brokers LLC; Robinhood Markets, Inc.; Robinhood Financial LLC; Robinhood Securities, LLC; Citadel Securities LLC; Apex Clearing Corp.; Electronic Transaction Clearing, Inc.; and PEAK6 Investments LLC (collectively, "Defendants"). (*See* CCAC ¶¶ 51–75).

² The Plaintiffs are Angel Guzman, Burke Minahan, Christopher Miller, and Terell Sterling (collectively, "Plaintiffs"). (*See* CCAC ¶¶ 23–41).

³ A "short" seller borrows a security believing the price of the security will decrease. (*See* CCAC ¶ 8). If the price of the security drops, the short seller buys the security back at a lower price and returns it to the lender. (*See id.*). Because the difference between the sell price and the buy price is the short seller's profit, the short seller loses money if the price of the security increases. (*See id.*).

¶ 12). This short squeeze occurred in late January 2021, as the Retail Investors rapidly purchased the Relevant Securities,⁴ exposing those with short positions in the Relevant Securities to “massive potential losses[.]” (*Id.* ¶ 7 (alteration added); *see id.* ¶ 6). According to Plaintiffs, Defendants conspired to prevent these losses by “artificially constrict[ing] the price appreciation of the Relevant Securities,” in violation of the Sherman Act, 15 U.S.C. § 1. (CCAC ¶ 16 (alteration added); *see id.* ¶¶ 494–507).

The parties.

The Defendants. The CCAC categorizes Defendants into three⁵ groups: the Clearing Defendants, the Brokerage Defendants, and the Market Maker Defendants. (*See id.* ¶¶ 51–75).

⁴ The “Relevant Securities” are certain stocks the Retail Investors believed would increase in price: GameStop (GME), AMC Entertainment (AMC), Bed Bath & Beyond (BBBY), BlackBerry (BB), Express (EXPR), Koss (KOSS), Nokia (NOK), Tootsie Roll Industries (TR), and Trivago NV (TRVG). (*See* CCAC ¶ 6).

⁵ In the CCAC, Plaintiffs allege there was a fourth group called the Introducing Brokerage Defendants (*see* CCAC ¶¶ 42–50), but they have since voluntarily dismissed those Defendants (*see* [ECF No. 380] (Stash Financial, Inc.); [ECF No. 396] (Open to the Public Investing, Inc.); [ECF No. 397] (Ally Financial Inc.); [ECF No. 398] (Alpaca Securities, LLC); [ECF No. 400] (Dough LLC); [ECF No. 401] (Tastyworks, Inc.); [ECF No. 402] (Webull Financial LLC); [ECF No. 404] (SoFi Securities LLC)). The Court refers to this group as the “Introducing Brokerages.”

The Introducing Brokerages provide financial trading services through an electronic trading platform. (*See* CCAC ¶¶ 42–44, 46, 47, 49, 50). During the relevant period, each Introducing Brokerage restricted and/or limited the ability of investors to purchase the Relevant Securities. (*See id.*).

Because the Introducing Brokerages are only introducing brokerages — as opposed to self-clearing brokerages — they contract with an independent clearing firm to handle the execution and settlement of securities trade orders from clients or their own trading desks, rather than handle the process themselves. (*See id.* ¶¶ 105, 111). The independent clearing firm receives payments and maintains custody of the security. (*See id.* ¶ 111). At all relevant times, each Introducing Brokerage used a Clearing Defendant as its clearing firm. (*See id.* ¶¶ 42–44, 46, 47, 49, 50).

The Clearing Defendants. Defendants, Apex Clearing Corporation (“Apex”) and Electronic Transaction Clearing, Inc. (“ETC”), are, collectively, the “Clearing Defendants[.]”⁶ (*Id.* ¶¶ 66–75 (alteration added)).

The Clearing Defendants are independent clearing firms: they handle the back-office details of securities transactions for broker-dealers, such as the Introducing Brokerages. (*See id.* ¶ 105). Independent clearing firms are supervised by the Financial Industry Regulatory Authority (“FINRA”) and the Depository Trust and Clearing Corporation (“DTCC”).⁷ (*See id.* ¶¶ 96–97, 108, 110). Apex and ETC acted as the clearing firms for one or more of the Introducing Brokerages. (*See id.* ¶¶ 42–44, 46, 47, 49, 50).

The Brokerage Defendants. Defendants, E*Trade;⁸ Interactive Brokers LLC; and Robinhood,⁹ are, collectively, the “Brokerage Defendants[.]” (*Id.* ¶¶ 51–63 (alteration added)).

⁶ Apex Clearing Holdings LLC and Defendant, PEAK6 Investments LLC, are the parent corporations of Defendants, Apex and ETC. (*See* CCAC ¶¶ 67, 70).

⁷ The DTCC is a holding company that owns and operates three clearing agencies registered with the U.S. Securities and Exchange Commission (“SEC”): the National Securities Clearing Corporation (“NSCC”), the Fixed Income Clearing Corporation (“FICC”), and the Depository Trust Company (“DTC”). (*See* CCAC ¶ 96). The NSCC is the central counterparty that clears cash transactions in the U.S. equities markets by netting securities deliveries and payments among NSCC’s clearing members and guaranteeing the completion of trades, even if one party to the transaction defaults. (*See id.* ¶ 98). It takes two business days for the NSCC to transfer the security to the buyer and the cash to the seller. (*See id.* ¶ 101). If a clearing member defaults on its settlement obligations, the NSCC guarantees the delivery of cash and securities to its non-defaulting members. (*See id.* ¶ 102).

In line with the CCAC and the parties’ briefings, the Court refers to the DTCC and NSCC interchangeably.

⁸ Defendant, E*Trade Financial Holdings, LLC (*see* CCAC ¶ 52), is the parent corporation of Defendant, E*Trade Securities LLC (*see* Mot. 22 n.9; Resp. 47). The Court refers to these two Defendants collectively as “E*Trade[.]” Doing so has no impact on the Court’s analysis.

The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

⁹ Defendants, Robinhood Markets, Inc.; Robinhood Financial LLC; and Robinhood Securities, LLC, are, collectively, “Robinhood[.]” Robinhood Financial LLC and Robinhood Securities, LLC are wholly-owned subsidiaries of Robinhood Markets, Inc. (*See* CCAC ¶¶ 58, 60). Defendants dispute the inclusion of Robinhood as a self-clearing broker, arguing Robinhood Financial LLC is an introducing broker entity

The Brokerage Defendants act as self-clearing brokers: they act as both an introducing broker and as their own clearing firm. (*See id.* ¶¶ 54, 56, 63, 113). In other words, the Brokerage Defendants handle orders to buy and sell securities, as well as execute and settle orders, maintain custody of securities and other assets, and maintain the paperwork associated with clearing and executing a transaction. (*See id.* ¶ 113). Self-clearing brokers are subject to DTCC rules and regulations. (*See id.* ¶ 116).

The Market Maker Defendant.¹⁰ Defendant, Citadel Securities LLC, is the only named “Market Maker Defendant[] [.]” (*Id.* ¶¶ 64–65 (alterations added)).

Citadel Securities is a market maker: it acts as a market participant by providing bid prices and ask prices for securities; maintaining an inventory of securities from its own trading; and matching incoming buy and sell orders to fill those orders. (*See id.* ¶ 118). Relevant here, “if a market maker receives an order to buy a certain security, it may route that order to an exchange or it may execute the orders off-exchange in its capacity as a dealer by transacting against the buy orders with contra-side sell order, either from its own inventory or by selling the security short.” (*Id.* ¶ 124). Citadel Securities took short positions in the Relevant Securities during the relevant period. (*See id.* ¶ 65).

Agents and co-conspirators. Defendants’ alleged acts “were authorized, ordered or performed by the Defendants’ respective officers, agents, employees, representatives, or shareholders while actively engaged in the management, direction, or control of the Defendants’ businesses or affairs.” (*Id.* ¶ 76). The Defendant parent entities exercise dominance and control

separate from Robinhood Securities, LLC, the clearing entity. (*See Mot.* 13, 14 n.2). This distinction, however, has no impact on the Court’s analysis.

¹⁰ Although Plaintiffs refer to “Market Maker Defendants” (*see, e.g.,* CCAC ¶ 92), Plaintiffs name only one Market Maker Defendant (*see id.* ¶¶ 64–65).

over all their subsidiary entities; and the Defendant subsidiary entities have a unity of purpose and interest with their respective parents. (*See id.* ¶¶ 76–78). In addition, “[e]ach Defendant acted as the principal, agent, or joint venture of, or for other Defendants with respect to the acts, violations, and common course of conduct alleged[.]” (*Id.* ¶ 80 (alterations added)). Plaintiffs allege there may be various persons and/or firms that have participated as co-conspirators but are unknown at this time. (*See id.* ¶ 79).

The Plaintiffs. The named Plaintiffs are four individual investors who were subject to trading limitations imposed on the Relevant Securities between January 28, 2021 and February 4, 2021 (the “Class Period”). (*See id.* ¶¶ 23–41). Each Plaintiff held shares of one or more of the Relevant Securities at the close of the stock market on January 27, 2021. (*See id.* ¶¶ 23, 28, 33, 38). The next day, January 28, 2021, each Plaintiff was prohibited from purchasing the Relevant Securities on Robinhood’s trading platform. (*See id.* ¶¶ 24, 29, 34, 39).

That same day, Guzman and Miller applied for accounts with Charles Schwab, Fidelity, and TD Ameritrade — who were not prohibiting customers from purchasing the Relevant Securities — but were unable due to the amount of time required to set up the accounts. (*See id.* ¶¶ 25, 35). Minahan successfully applied for an account with Fidelity and was able to purchase a share of GameStop Corp. stock that day. (*See id.* ¶ 30). Each Plaintiff then sold his or her shares of the Relevant Securities on Robinhood between January 28, 2021 and February 4, 2021. (*See id.* ¶¶ 26–27, 31–32, 36–37, 40–41).

Injury and proposed class. According to the named Plaintiffs:

As a direct and intended result of Defendants [sic] contract, combination, agreement and restraint of trade or conspiracy, Defendants caused injury to Plaintiffs by restricting purchases of Relevant Securities. The Brokerage Defendants deactivated the buy option on their platforms and left Plaintiffs with no option but to sell shares of the stocks on their platforms. Plaintiffs and Class members, faced with an imminent decrease in the price of their positions in the

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