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THE RISE OF THE FINFLUENCER

SUE S. GUAN*

In today's meme-riddled stock market, how viable do traditional theories of information exchange and price discovery remain? The conventional understanding of stock market price discovery focuses on the exchange of "information," typically tied to the present value of an issuer's future cash flows, between traders. This paper explores the impact of "finfluencers"—those who wield outsize influence on investing decisions through social media—on this understanding.

Finfluencers increasingly broker stock market information. Social media makes doing so easier than ever before. This paper explores two implications of the rise of finfluencers. First, finfluencers are not solely motivated to seek out fundamental value information and trade to profit off of it. Instead, they try to maximize popularity, be entertaining, and "grow their brand," among other motivations. Because they mediate the information that reaches retail investors and provide powerful coordination mechanisms across those investors, finfluencers' influence shapes the types of "information" and motivations that are reflected in stock price movements. Second, the more influence finfluencers wield, the more they can predict and even control trading patterns among their followers. From a finfluencer's perspective, stock price movements can become more predictable, which can weaken finfluencers' incentives to provide valuable information to their followers and make profiting at the expense of their followers more tempting.

* Albert J. Ruffo Assistant Professor of Law, Santa Clara University School of Law. For comments and helpful discussions, I am grateful to Afra Afsharipour, David Ball, Tom Brower, Steve Diamond, Lisa Fairfax, Jill Fisch, Merritt Fox, Larry Glosten, Eric Goldman, Deep Gulasekaram, Brad Joondeph, Don Langevoort, Amelia Miazad, Geeyoung Min, William Moon, Tyler Ochoa, Menesh Patel, Don Polden, Cathy Sandoval, David Sloss, and David Yosifon. I am also grateful for helpful comments from the participants at the Institute for Law & Economics (ILE) Junior Faculty Business and Financial Law Workshop, the 2nd Annual Workshop for AAPI and MENA Women in the Legal Academy, and faculty workshops at Santa Clara University School of Law and UC Davis School of Law.

Finfluencers are shifting the stock market information ecosystem. By drawing on microstructure and financial economics, this paper offers a new understanding of how and explores implications for price discovery, trading strategies, corporate behavior, and policy.

INTRODUCTION

In December 2022, the SEC charged eight social media influencers with fraud and stock market manipulation on Twitter and Discord.[1] According to the Chief of the SEC Enforcement Division's Market Abuse Unit, "the defendants used social media to amass a large following of novice investors and then took advantage of their followers by repeatedly feeding them a steady diet of misinformation, which resulted in fraudulent profits of approximately $100 million."[2] The defendants gained hundreds of thousands of followers on social media, encouraged their followers to purchase stocks the defendants had already bought, and then sold the promoted stocks once their prices rose.[3]

For years, federal and state securities regulators have cautioned against investment fraud on social media. The SEC has warned investors against those who impersonate legitimate sources of market information on social media or engage in pump-and-dump and other manipulative schemes using social media.[4] In August 2022, the North American Securities Administrators Association (NASAA), which "represents state and provincial securities regulators in the United States, Canada

1. *SEC Charges Eight Social Media Influencers in $100 Million Stock Manipulation Scheme Promoted on Discord and Twitter*, U.S. SEC. & EXCH. COMM'N (Dec. 14, 2022), https://www.sec.gov/news/press-release/2022-221; Complaint, SEC v. Constantin (S.D. Tex. 2022) (No. 22-cv-04306).

2. U.S. SEC. & EXCH. COMM'N, *supra* note 1.

3. *Id.*

4. *See Social Media and Investment Fraud – Investor Alert*, SEC (Aug. 29, 2022), https://www.sec.gov/oiea/investor-alerts-and-bulletins/social-media-and-investment-fraud-investor-alert, for the SEC's warning against fraudsters on social media who disseminate false or misleading information and detailing of common scams; *Investor Bulletin: Social Sentiment Investing Tools —Think Twice Before Trading Based on Social Media*, SEC (Apr. 3, 2019), https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-18 (informing investors about the risks of social sentiment investing tools, which analyze social media data).

and Mexico," posted an "Informed Investor Advisory" on "finfluencers."[5] An excerpt is below:

> A finfluencer is a person who, by virtue of their popular or cultural status, has the ability to influence the financial decision-making process of others through promotions or recommendations on social media. They may influence potential buyers by publishing posts or videos to their social media accounts, often stylized to be entertaining so that the post or video will be shared with other potential buyers. The financial influencer may be compensated by the business offering the product or service, the platform on which the message appears, or an undisclosed financier. While there is nothing new about marketers paying celebrities to endorse their products, what IS different is that such breezy and hyper-emotional endorsements are being made in what is otherwise a very regulated industry with stringent rules about performance claims and disclosure of potential conflicts of interest. Remember, investment promoters generally must provide potential investors with all information relevant to making an informed investment decision. Finfluencers are testing the limits of what is considered regulated investment advice and protected free speech.[6]

The information ecosystem of today's stock markets is changing. Retail trading increasingly affects stock price movements, social media shapes investing trends, and non-traditional entities mediate information. Understanding these

5. NASAA, *Informed Investor Advisory: Finfluencers* (Aug. 2022), https://www.nasaa.org/64940/informed-investor-advisory-finfluencers/. These types of warnings are increasingly common. *See, e.g.*, CA DEP'T OF FIN. PROTECTION AND INNOVATION, *Social Media Finfluencers – Who Should You Trust?* (Oct. 5, 2022), https://dfpi.ca.gov/2022/10/05/social-media-finfluencers-who-should-you-trust/ (detailing risks of trusting finfluencers); VA STATE CORP. COMM'N, *SCC Cautions Virginians About Social Media "Finfluencers" Providing Financial Advice* (Sept. 8, 2022), https://scc.virginia.gov/newsreleases/release/SCC-Cautions-Virginians-About-Online-Finfluencers (offering tips to avoid risks as social media displaces traditional sources of investing information); D.C. DEP'T OF INS., SEC. AND BANKING, *Beware of Financial Influencers*, https://disb.dc.gov/page/beware-financial-influencers (warning against financial advice shared by finfluencers).

6. NASAA, *supra* note 5.

shifts requires answering the following question: who, or what, drives investing decisions today? This Article (a) argues that stock market influencers, or "finfluencers," increasingly do, and (b) elucidates the impact of finfluencers on information and price discovery in stock markets.

The term "finfluencer" refers to a person or entity that has outsize impact on investor decisions through social media influence. Various types of finfluencers exist in today's markets, ranging from celebrities such as Kim Kardashian to corporate personalities like Elon Musk or Ryan Cohen to ordinary investors who develop followings on YouTube, TikTok, and other social media platforms. These finfluencers are not traditional financial analysts. Instead, their audience is mostly composed of retail investors,[7] and their message, if they have one, typically focuses on "democratizing" finance or increasing access to information. A few examples of finfluencer-driven trading are described below.

> In early 2021, retail investors on Reddit rallied around Keith Gill (username "Roaring Kitty") to collectively drive GameStop's stock price up from $4 to around $500 per share at one point. Gill had begun posting about his $53,000 investment in GameStop in 2019, arguing that GameStop was undervalued. Users repeated Gill's statement, "I like the stock," as they posted about their purchases of GameStop stock on Reddit. Even when GameStop's shares declined in value, many refused to sell so long as Gill did not sell, stating "if Roaring Kitty's still in, I'm still in" while encouraging each other to hold the stock with "diamond hands."

7. This Article will use the term retail investors or retail traders to refer to those who directly trade in stock for individual accounts, as distinguished from institutional investors, who trade for institutional accounts. *See* Adam Hayes, *Retail Investor: Definition, What They Do, and Market Impact,* INVESTOPEDIA (updated Feb. 17, 2021), https://www.investopedia.com/terms/r/retailinvestor.asp (defining retail investors as "non-professional market participants who generally invest smaller amounts than larger, institutional investors"); Donald C. Langevoort, *The SEC, Retail Investors, and the Institutionalization of the Securities Markets,* 95 VA. L. REV. 1025, 1025 (2009) (distinguishing retail investors—individuals and households—from institutional investors).

Elon Musk tweeted "GameStonk!!" on January 26, 2021.[8] In response, GameStop's stock price soared around 40%.[9]

On July 19, 2021, Ryan Cohen tweeted a picture of himself holding chopsticks up his nostrils.[10] Followers speculated that the chopsticks indicated an impending GameStop stock split (Cohen is the chair of GameStop's board).[11]

In late 2021, Steven Gallagher was arrested and charged with securities fraud, wire fraud, and manipulation for using his Twitter account to engage in a pump-and-dump scheme.[12] After amassing a large following on Twitter under the handle @AlexDelarge6553 (named for the character in A Clockwork Orange), Gallagher repeatedly purchased thinly-traded penny stocks and tweeted false and misleading information to encourage his followers to buy those stocks, enabling Gallagher to sell his shares at inflated prices.[13]

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8. Elon Musk (@elonmusk), TWITTER (Jan. 26, 2021, 4:08 PM), https://twitter.com/elonmusk/status/1354174279894642703?lang=EN.

9. GameStop Corp. (GME), YAHOO! FIN. (Jan. 27, 2021), https://finance.yahoo.com/quote/GME?p=GME.

10. Ryan Cohen (@ryancohen), TWITTER (Jul. 19, 2021, 7:48 PM), https://twitter.com/ryancohen/status/1417315406272864258?lang=EN.

11. *See* Miriam Gottfried and Caitlin McCabe, *GameStop's Ryan Cohen Wants to Be More Than a Meme-Stock King*, WALL ST. J. (Nov. 19, 2022, 12:00 AM), https://www.wsj.com/articles/gamestops-ryan-cohen-wants-to-be-more-than-a-meme-stock-king-11668834015; Joe Fonicello, *Ryan Cohen Splits Chopsticks 2:1; PG-13*, GMEDD (Jul. 20, 2021), https://www.gmedd.com/tw/ryan-cohen-splits-chopsticks-21-pg-13/ (speculating about the meaning of Cohen's chopsticks tweet); *Ryan Cohen on Twitter*, REDDIT, https://www.reddit.com/r/Superstonk/comments/ontbnm/ryan_cohen_on_twitter/ (hypothesizing about the meaning of Cohen's tweets).

12. *See* U.S. v. Gallagher, No. 21-mag-10220 (S.D.N.Y.); Complaint, SEC v. Gallagher, No. 1:21-civ-08739 (S.D.N.Y. filed October 26, 2021). YouTube and other "influencer" scams have occurred in other contexts as well. *See* Mara Leighton, *Thai Authorities Have Issued an Arrest Warrant Against a Popular YouTuber Accused of Scamming Followers out of $55 Million, Reports Say*, INSIDER (Aug. 31, 2022, 11:14 PM), https://www.insider.com/thai-influencer-youtuber-nutty-arrest-warrant-multimillion-dollar-forex-scam-2002-8 ("Victims say they were tricked into investing with Nutty in part because of the high-flying lifestyle she portrayed on her social media accounts, which included upscale vacations, luxury cars, and designer bags.").

13. Complaint, SEC v. Gallagher, *supra* note 12.

Steven Gallagher's pump-and-dump scheme is clearly illegal; his false information led his Twitter followers to purchase stocks and drive up the price. The other examples do not involve any obvious illegality. No false information or even any new information was disseminated; nevertheless, stock prices reacted as though new information had been disseminated.

Finfluencers are sparking a conversation about what constitutes market-moving "information" as well as access to and control of that information. The above examples also raise the possibility that finfluencers encourage investor response to non-information or stale information. What impact do finfluencers have on investing preferences and price discovery, including the meaning of "information" for investors? Are finfluencers incentivized to encourage their followers to trade for reasons unrelated to informational changes about an underlying company?

Central tenets of market microstructure and financial economics drive the normative framework for price discovery and information on which this Article relies. Normatively, equities markets help promote the efficient allocation of capital and risk across the economy.[14] Stock prices provide signals that improve corporate governance and facilitate the allocation of resources across firms and households over time.[15] The normative framework typically assumes a narrow range of trading motivations that generates stock price movements: investors seek out fundamental value information about an issuer, typically by using valuation mechanisms such as discounted cash flow analysis, and trade that issuer's stock to profit off of that information.[16] In a previous paper, I explored how today's retail traders have complicated that picture through low-cost, social forms of coordination.[17] I argued that retail trades are in-

14. *See* MERRITT B. FOX ET AL., THE NEW STOCK MARKET 33–47 (2019) (providing a normative framework whereby stock prices facilitate capital and risk allocation in the economy).

15. *See id.* (describing the utility of stock prices in directing managerial decisions and allocating resources and risk).

16. *See id.* at 33–58 (describing how stock prices move in response to informed trading).

17. *See* Sue S. Guan, *Meme Investors and Retail Risk*, 63 B.C. L. REV. 2053 (2022) (analyzing the impact of retail trading on prices and markets).

creasingly sticky and can substantially affect stock prices, corporate governance, and market functioning more broadly.[18]

This Article explores a related, evolving aspect of today's stock markets: the growing role of finfluencers as information brokers. Its contribution is twofold. First, it provides a descriptive account of the phenomenon of finfluencing. By detailing the impact of various kinds of finfluencers in the stock market, the Article develops a taxonomy of finfluencing that can be used to assess their impact.

Second, this Article provides a theoretical analysis of how finfluencers further complicate the traditional understanding of stock price movement in response to information. Finfluencers are motivated by a much broader set of incentives than simply seeking out fundamental value information. They seek to maximize popularity, be entertaining, and "grow their brand," among other motivations. Because they also increasingly mediate the information that reaches retail investors and provide powerful coordination mechanisms that allow their (and their followers') trading activity to affect stock price movements, they are shifting the types of "information" stock price movements reflect.

The Article then combines evidence and theory to illustrate how the broader stock market ecosystem is adjusting in response, with complex implications for capital flow. Finfluencers may make it increasingly rational for other market participants to treat finfluencer-driven activity as informative, even when that activity does not reference traditional forms of market information. As other market participants factor finfluencer-driven activity into trading decisions, these shifts are amplified and reinforced, creating a feedback loop. The boundaries of what constitutes market-moving information may expand. Finfluencer-driven activity may affect companies' cost of capital. Noise trading by creating or riding finfluencer-driven trading bubbles can become a rational trading strategy. Companies may increasingly recognize profit opportunities through finfluencer partnerships that can affect their own stock prices.

Positive and negative implications follow. On the one hand, finfluencers can improve financial literacy and broaden retail investor participation and market access. On the other

18. *Id.*

hand, finfluencers can influence large numbers of followers' trades in predictable ways. As a result, their incentives to provide valuable information to those followers may diminish, and profiting at the expense of their followers becomes more tempting. Moreover, if finfluencers do not need to make false or misleading statements in order to generate price movements, fewer current legal remedies are available to protect those who are harmed.

The remainder of this Article proceeds as follows. Part I discusses the history of finfluencers and develops a taxonomy of finfluencers. While finfluencers are not new, social media has significantly expanded their reach. Part II examines the price impact of finfluencer-driven trading. Part III provides a theoretical analysis of how finfluencer-driven trading affects the information reflected in stock prices. Part IV assesses broader market responses. Part V considers benefits and harms of these shifts. Part VI discusses the way forward. A brief conclusion follows.

I.
A Taxonomy of Finfluencers

Finfluencers have outsize impact on investors' trading decisions through their social media influence. They mediate the information that reaches their followers, shape those followers' investing preferences and trading patterns, and provide powerful coordination mechanisms across large groups of traders, which allows their (and their followers') trading motivations to affect stock price movements.

While finfluencers are not new to the stock market, their greatly expanded reach, driven by social media, is a recent phenomenon. Social media has also provided a low cost, easy mechanism for ordinary retail investors to become powerful finfluencers. Section A provides a brief survey of historical finfluencers. Section B lays out various types of contemporary social media influencers: mega, macro, micro, and nano. Sections C, D, and E discuss three main kinds of finfluencers: celebrity, identity, and ordinary.

A. *A Brief Survey of Finfluencers*

The broad phenomenon of finfluencing is neither new nor surprising. Influential speakers have always had a broad, sometimes market-wide impact.[19] Nearly a century ago, leading up to the stock market crash of 1929, an astrologer named Evangeline Adams amassed a sizeable influence among celebrity and amateur investors—including persons such as Charlie Chaplin and J.P. Morgan—based on stock tips she derived from star charts and astrology.[20] At one point, she disseminated a newsletter with 100,000 subscribers.[21]

Finfluence has long been a perfectly legal feature of stock markets. As one example, media personality Jim Cramer has had a stock market analysis platform on CNBC's Mad Money program for nearly two decades.[22] More broadly, financial analysts often have a documented influence over a company's stock price.[23] According to the SEC's website, "[t]he mere mention of a company by a popular analyst can temporarily cause its stock to rise or fall—even when nothing about the

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19. Nor is this impact limited to the securities market. In many ways, finfluencers are simply one type of a more traditional brand influencer. In 1986, the hip hop group, Run-D.M.C., came out with the hit "My Adidas." *See* Zak Maoui, *Run-DMC: "We were highly influenced by The Rolling Stones – we wanted to dress like Mick Jagger,"* GQ MAGAZINE (Nov. 2, 2019), https://www.gq-magazine.co.uk/fashion/article/run-dmc-adidas-interview; Alvin Blanco, *Run-DMC Recall 'My Adidas' Impact, 25 Years Later*, MTV (Nov. 11, 2011, 7:59 PM), https://www.mtv.com/news/sn2aa5/run-dmc-my-adidas. Run-D.M.C. had not been paid to promote Adidas. *See* Gary Warnett, *How Run-DMC Earned Their Adidas Stripes*, MR PORTER (May 27, 2016), https://www.mrporter.com/en-us/journal/lifestyle/how-run-dmc-earned-their-adidas-stripes-826882. The success of the hit led to a surge in popularity of Adidas sneakers, which led to a partnership with the brand Adidas. *See id.* Today, social media brand influencers are legion, using platforms such as TikTok, Instagram, and the like. *See infra* Part I.B.

20. *See The Crash of 1929: Program Transcript*, PBS 7, https://www-tc.pbs.org/wgbh/americanexperience/media/pdf/transcript/Crash_of_1929_transcript.pdf (describing the following around Adams).

21. *Id.* at 15.

22. Jim Cramer, *About Mad Money*, CNBC, https://www.cnbc.com/104189752/; Tyler Clifford, *The Evolution of Jim Cramer's 'Mad Money': From Stock Picking to Stock Educating*, CNBC, https://www.cnbc.com/2019/02/21/the-evolution-of-cramers-mad-money-from-stock-picking-to-educating.html.

23. *See Analyzing Investor Recommendations,* U.S. SEC. & EXCH. COMM'N (Aug. 30, 2010), https://www.sec.gov/tm/reportspubs/investor-publications/investorpubsanalystshtm.html (explaining that "analysts' recommendations or reports can influence the price of a company's stock—especially when the recommendations are widely disseminated through television appearances or through other electronic and print media").

company's prospects or fundamentals has recently changed."[24] Indeed, a 1990 study demonstrated significant stock price responses to analyst recommendations published in the Wall Street Journal's Heard on the Street column between 1982 and 1985.[25] Similarly, short seller reports routinely lead to significant price drops in the companies covered.[26]

Using finfluence to perpetrate fraud or manipulation is also not new. In 2005, a telemarketing firm was charged by the SEC for leaving hundreds of thousands of fraudulent "wrong number" voicemails designed to promote certain stocks.[27] Those stocks' combined market capitalization soared by roughly $179 million.[28] More recently, enforcement actions have been taken against manipulators on message boards.[29] The SEC previously found that authors on Seeking Alpha, a social media website, published fraudulent news in order to manipulate stock prices.[30] Similarly, a recent study revealed that manipulative short selling behavior on social media websites such as Seeking Alpha caused stock price distortions.[31]

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24. *See id.* Conflicts of interest may arise, and disclosure may be required. *Id.*

25. *See* Pu Liu et al., *Stock Price Reactions to The Wall Street Journal's Securities Recommendations*, 25 J. FIN. & QUANT. ANALYSIS 399, 400 (1990) (collecting studies demonstrating stock price responsiveness to information provided by investment advisory entities).

26. *See* Peter Molk & Frank Partnoy, *The Long-Term Effects of Short Selling and Negative Activism*, 2022 U. ILL. L. REV. 1, 53 (citing Peter Molk & Frank Partnoy, *Institutional Investors as Short Sellers?*, 99 B.U. L. REV. 837, 859–62 (2019)) (discussing price effect of short selling); Andrew Ross Sorkin et al., *A Short Seller Takes Aim at an Indian Corporate Giant*, N.Y. TIMES (Jan. 25, 2023), https://www.nytimes.com/2023/01/25/business/dealbook/short-seller-hindenburg-adani.html (after Hindenburg Research accused Adani Group of manipulation and fraud, shares in Adani fell precipitously).

27. *SEC Sues Telemarketers for Fraudulent "Wrong Number" Stock Tips,* U.S. SEC. & EXCH. COMM'N (May 3, 2005), https://www.sec.gov/news/press/2005-70.htm.

28. *Id.*

29. *See* Shimon Kogan, Tobias J. Moskowitz & Marina Niessner, Social Media and Financial News Manipulation 2, 35 (Sept. 15, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3237763 (showing that fraudulent articles on social media networks raised retail trading volume and on average led to an 8% rise in prices based on a dataset of 171 fraudulent articles).

30. *Id.* at 1, 2, 7–8.

31. Joshua Mitts, *Short and Distort*, 49 J. LEGAL STUD. 287, 330 (2020) (showing stock price manipulation through pseudonymous attacks and ma-

Finfluencing activity has raised thorny questions about the scope of the laws around fraud and manipulation. In 2000, the SEC settled a case with 15-year old Jonathan Lebed regarding a stock market manipulation scheme in which he promoted thinly-traded microcap stocks on Yahoo! Finance message boards and sold those stocks at a profit.[32] Lebed found that using exclamation marks and incorporating all capital letters made his messages seem more exciting, enabling him to generate more interest.[33] The case led to significant questions about the scope of the market manipulation prohibitions.[34] As one commentator noted, making stock price predictions without basis for those predictions "sounds a lot like what happens every day on Wall Street."[35] At the time, Wall Street analysts evidently could and often did underestimate corporate earnings while promoting stocks of companies that they helped go public, often reaping substantial profits.[36] The commentator continued, "If Wall Street analysts and fund managers and corporate C.E.O.s who appear on CNBC and CNN to plug stocks are not guilty of seeking to manipulate the market, what on earth does it mean to manipulate the market?"[37] Similarly, "[W]hen a Wall Street analyst can send the price of a stock of a company that is losing billions of dollars up 50 points in a day, what does it mean to 'artificially raise' the price of a stock?"[38]

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nipulative options trading); *see also* Petition for Rulemaking on Short and Distort from John C. Coffee Jr., Joshua Mitts, James D. Cox, Peter Molk et al., to Vanessa Countryman, Sec'y, U.S. Sec. & Exch. Comm'n 3–7 (Feb. 12, 2020), https://www.sec.gov/rules/petitions/2020/petn4-758.pdf (asking the SEC to promulgate rules against manipulative short selling).

32. *SEC Brings Fraud Charges in Internet Manipulation Scheme,* U.S. SEC. & EXCH. COMM'N (Sept. 20, 2000), https://www.sec.gov/news/press/2000-135.txt.

33. Michael Lewis, *Jonathan Lebed's Extracurricular Activities,* N.Y. TIMES (Feb. 25, 2001), https://www.nytimes.com/2001/02/25/magazine/jonathan-lebed-s-extracurricular-activities.html.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* As I and others have noted, interpreting the boundaries of the manipulation prohibitions has been notoriously difficult. *See, e.g.*, Merritt B. Fox et al., *Spoofing and Its Regulation*, 2021 COLUM. BUS. L. REV. 1244 (2022) (analyzing manipulation laws); Daniel R. Fischel & David J. Ross, *Should the Law Prohibit "Manipulation" in Financial Markets?*, 105 HARV. L. REV. 503, 506-07 (1991) (arguing that "the concept of manipulation should be aban-

As the Lebed example illustrates, social media allows ordinary persons who do not otherwise have an established media platform to wield significant influence over their followers. Social media has transformed the finfluencer landscape. The next sections discuss how.

B. *Mega, Macro, Micro, Nano Influencers*

Social media has fostered a multi-billion dollar influencer marketing industry.[39] Traditional brand influencers today can fall into a number of categories: mega, macro, micro, and nano and vary in terms of followers, engagement, and perceived trustworthiness.

Mega influencers are usually celebrities who have more than one million followers and often charge millions of dollars for promotions through their social media.[40] However, their large numbers of followers do not always translate into greater engagement: their followers can be skeptical of the fact that mega influencers are paid to promote certain products.[41] Macro influencers usually have between 100,000 and one million followers.[42] They might be social media stars who produce more specialized content (focusing on fitness or stock market advice, for example) but reach a broad base of followers nonetheless.[43] Micro influencers tend to have between 10,000 and 100,000 followers.[44] Nano influencers usually have fewer than 10,000 followers.[45] Micro and nano influencers

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doned" because "no satisfactory definition of [manipulation] exists"); Steve Thel, *Regulation of Manipulation Under Section 10(b): Security Prices and the Text of the Securities Exchange Act of 1934*, 1988 COLUM. BUS. L. REV. 359, 378–79 (1988) (noting how difficult it is to define manipulation under federal securities law).

39. *See* Werner Geyser, *The State of Influencer Marketing 2023: Benchmark Report*, INFLUENCER MARKETING HUB (Feb. 7, 2023), https://influencermarketinghub.com/influencer-marketing-benchmark-report/ (noting that the influencer industry is expected to grow to roughly $21.1 billion in 2023).

40. *See When to Work with Nano-, Micro- and Macro-Influencers*, IZEA (Feb. 25, 2022), https://izea.com/resources/nano-micro-macro-influencers/ (describing different kinds of influencers).

41. *Id.*

42. *Id.*

43. *Id.*; Jacinda Santora, *12 Types of Influencers You Can Use to Improve Your Marketing*, INFLUENCER MKTG. HUB (July 15, 2022), https://influencermarketinghub.com/types-of-influencers/ (detailing different kinds of influencers).

44. IZEA, *supra* note 40.

45. *Id.*

often have a much stronger "personal" connection to and level of engagement from their followers than mega influencers do.[46]

Authenticity and trust are central to the influencing business.[47] Consumers trust influencers as they would close friends and point to authenticity as a key driver for their engagement with influencers.[48] Moreover, influencing works.[49] Studies have shown that influencer advertising creates significantly greater "emotional intensity" and higher "memory encoding."[50] Another found a 520% return for every dollar companies spent on influencer marketing.[51]

Finfluencers thrive on much of the same psychological phenomena. They earn the trust of their followers, substantially impacting investment decisions. The next sections explore types of finfluencers and their relationship to traditional social media brand influencers.

C. *Paid Celebrity Finfluencers*

The most obvious category of finfluencer is a celebrity mega influencer such as Kim Kardashian. Indeed, Kardashian was recently fined $1.26 million for touting a cryptoasset on

46. *Id.* In other contexts, micro and nano influencers have been leveraged by political groups to influence political discourse and activity. *See Social Media Influencers and the 2020 U.S. Election: Paying 'Regular People' for Digital Campaign Communication*, U. TEX. AUSTIN CTR. FOR MEDIA ENGAGEMENT (Oct. 14, 2020), https://mediaengagement.org/research/social-media-influencers-and-the-2020-election/ (explaining how coordinated networks of social media influencers are a "powerful asset for political campaigns").

47. Alexandra J. Roberts, *False Influencing*, 109 GEO. L.J. 81, 83–84 (2019).

48. *See* Gavin O'Malley, *Many Followers Trust Influencers' Opinions More Than Friends'*, DIGIT. NEWS DAILY (Aug. 21, 2019), https://www.mediapost.com/publications/article/339579/many-followers-trust-influencers-opinions-more-th.html.

49. *See* Roberts, *supra* note 47, at 83–84 (collecting sources).

50. Blake Droesch, *What Does Your Brain on Influencer Marketing Look Like?,* INSIDER INTEL. (Aug. 26, 2019), https://www.insiderintelligence.com/content/your-brain-on-influencers-neuroscience-study-explains-the-effects-of-influencer-marketing.

51. Harrison Loew, *Influencer Marketing Benchmark Report 2019*, NEOREACH (Feb. 12, 2019), https://neoreach.com/influencer-marketing-benchmark-report-2019/.

her social media.[52] Like traditional mega influencers, celebrity mega finfluencers are typically paid to promote financial products by certain companies. They usually do not disseminate general investment advice. Celebrity mega finfluencers are not a new phenomenon and can be understood as a simple subset of traditional brand influencers.

D. *Identity Celebrity Finfluencers*

Other famous finfluencers—usually mega or macro—are not paid for any promotional content and may not disseminate financial advice or even promote any specific stock market positions. However, they wield enormous influence because of their identity or personality. Elon Musk and Ryan Cohen are illustrative examples. Elon Musk is known as "Daddy Elon" and Ryan Cohen as "Papa Cohen."[53] Their social media activity generates price movements through the activity of their followers even when its content is unrelated to stock market or financial information. As Cohen, founder of Chewy.com and chair of GameStop's board, stated: "I'm just being me; I'm just being myself," and "I don't want to speculate on how people interpret it."[54]

For example, Cohen has been referred to as a "meme stock king," and his tweets are routinely dissected by his nearly 400,000 followers as hints to future corporate decisions or stock price movements.[55] The term "meme stocks" refers to stocks of companies such as GameStop, AMC, or Bed Bath & Beyond that have been the subject of social media-driven trading rallies among "meme traders," a subset of retail traders.[56]

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52. *SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security*, U.S. SEC. & EXCH. COMM'N, (Oct. 3, 2022), https://www.sec.gov/news/press-release/2022-183.

53. Caitlin McCabe, *The Meme Lords Who Are Taking over the C-Suite*, WALL ST. J. (Aug. 27, 2021), https://www.wsj.com/articles/the-meme-lords-who-are-taking-over-the-c-suite-11630056603?mod=series_exchangeinternetpackage.

54. Gottfried & McCabe, *supra* note 11.

55. *Id.*; *see also* Fonicello, *supra* note 11 (speculating about the meaning of Cohen's chopsticks tweet); *Ryan Cohen on Twitter*, *supra* note 11 (hypothesizing about the meaning of Cohen's tweets).

56. *See, e.g.*, Guan, *supra* note 17; Dhruv Aggarwal, Albert H. Choi, & Yoon-Ho Alex Lee, *Meme Corporate Governance* 7-8, EUROPEAN CORPORATE GOVERNANCE INSTITUTE (Feb. 14, 2023), https://ssrn.com/abstract=4347885 (describing "meme traders" as those who are "executing transactions moti-

On July 19, 2021, Cohen tweeted a picture of himself holding chopsticks up his nostrils.[57] Followers speculated that the chopsticks indicated an impending GameStop stock split.[58] A picture with Carl Icahn posted on October 17, 2022 led Cohen's followers to speculate that said picture indicated Icahn's endorsement of GameStop.[59] And in August 2022, after Cohen abruptly sold his roughly 10% stake in Bed Bath and Beyond, its stock price plunged.[60] Cohen sold his shares at significant profits; the share price had previously jumped nearly 70% when retail investors purchased around $73 million in Bed Bath and Beyond in response to Cohen's filing indicating that he had not sold certain significantly out-of-the-money call options in the stock.[61]

Many identity finfluencers disdain the traditional financial industry and self-style as trolls or "meme lords."[62] For example, on January 26, 2021, Musk tweeted "GameStonk!!"[63] GameStop's stock price soared around 40% in response to the tweet.[64] Musk (who has over 1.25 million followers on Twitter) has also previously tweeted messages that "Tesla stock price is too high imo"[65] and "Am considering taking Tesla private at

vated by Reddit discussion threads and triggering 'short squeeze' attacks," such as they are not "investing in any traditional sense. Although these traders only represent a subset of retail investors. they exist in sufficient numbers to affect price movements in the market for meme stocks.").

57. Ryan Cohen (@ryancohen), TWITTER (Jul. 19, 2021, 7:48 PM), https://twitter.com/ryancohen/status/1417315406272864258?lang=EN.

58. *See* Gottfried & McCabe, *supra* note 11; Fonicello, *supra* note 11.

59. Ryan Cohen (@ryancohen), TWITTER (Oct. 17, 2022, 8:30 PM), https://twitter.com/ryancohen/status/1582212373985005569?ref_src=Twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1582212373985005569%7Ctwgr%5Ef5cf5fed2cf57294c9cebce739a14fb1aa3ab64e%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.wsj.com%2Farticles%2Fgamestops-ryan-cohen-wants-to-be-more-than-a-meme-stock-king-11668834015.

60. Lauren Hirsch, *Bed Bath & Beyond Shares Plunge 40 Percent After Ryan Cohen's Exit*, N.Y. TIMES (Aug. 18, 2022), https://www.nytimes.com/2022/08/18/business/bed-bath-beyond-shares.html.

61. *Id.*

62. *See* McCabe, *supra* note 53.

63. Musk, *supra* note 8.

64. *See* GameStop Corp., *supra* note 9.

65. Elon Musk (@elonmusk), TWITTER (May 1, 2020, 8:11 AM), https://twitter.com/elonmusk/status/1256239815256797184?ref_src=TWsrc%5Etfw.

$420,"[66] a number associated with marijuana consumption in popular culture. Such messages sent Tesla's stock price on dramatic short-term swings. As another example, Barstool Sports founder David Portnoy hosted a livestream during which he bought stocks based on Scrabble letter tiles he blindly selected from a bag.[67]

E. *Ordinary Investor Finfluencers*

Ordinary retail investors can also become finfluencers by developing followings on social media platforms such as Twitter, YouTube, TikTok, Instagram or Reddit that make it relatively easy to become this type of influencer.[68] These are usually nano, micro, or macro finfluencers. Because they are usually not famous for separate reasons, they often build their influence by demonstrating their expertise to their followers by, for example, providing general investment advice. They may also promote specific stocks or financial products. Most purport to disseminate information and are paid to partner with companies only after establishing a sizeable influence.

As one example, the rally around GameStop, arguably the first "meme" stock, was initiated by an ordinary investor finfluencer. In early 2021, Reddit users rallied around Keith Gill, known as "Roaring Kitty" on Reddit, who had invested $53,000 in GameStop since 2009. He started posting about his investment in GameStop and touting the company's potential, sparking heavy trading in which the stock price up from $4 to

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66. Elon Musk (@elonmusk), TWITTER (Aug. 7, 2018, 9:48 AM), https://twitter.com/elonmusk/status/1026872652290379776.

67. Akane Otani, *The New Stock Influencers Have Huge—and Devoted—Followings*, WALL ST. J. (Mar. 21, 2021, 5:30 AM), https://www.wsj.com/articles/the-new-stock-influencers-have-hugeand-devotedfollowings-11616319001; *see also* Matt Wirz, *Meme-Stock Traders Embrace Avaya Despite Wall Street Fears*, WALL ST. J. (Sept. 19, 2022, 8:00 AM), https://www.wsj.com/articles/meme-stock-traders-embrace-avaya-despite-wall-street-fears-11663540636 (describing meme investor followers of activist investor Theo King).

68. While this Article focuses on influencers in the equities markets, influencers are extremely active in other asset classes, for example, cryptocurrency and NFTs. *See* Connor Goodwin, *How TikTok Cryptocurrency Influencers Are Teaching a New Generation of Investors*, WALL ST. J. (May 21, 2021, 8:29 AM), https://www.wsj.com/articles/tiktok-cryptocurrency-influencers-investing-11621600121.

around $500 per share at one point.[69] Users repeated Gill's statement, "I like the stock," as they posted about their purchases of GameStop stock on Reddit. [70] Even when GameStop's shares fell, many refused to sell so long as Gill continued to hold his shares, stating "if Roaring Kitty's still in, I'm still in" and encouraging each other to have "diamond hands." [71]

Many other ordinary finfluencers exist and have been around for a number of years.[72] Kevin Paffrath, a YouTube finfluencer known as MeetKevin, has become so successful that he launched the Meet Kevin Pricing Power ETF in November 2022.[73] Haley Sacks, known as Mrs. Dow Jones, founded the company FINANCE IS COOL UNIVERSITY and has nearly half a million followers.[74] Dan Knight co-hosts a podcast called "P.G.I.R." which was recently ranked the top investing podcast in February 2021 and among the top fifty business podcasts in the United States.[75] Rose Han and Tori Dunlap seek to create

69. *See* Nathaniel Popper & Kellen Browning, *The 'Roaring Kitty' Rally: How a Reddit User and His Friends Roiled the Markets*, N.Y. TIMES (Jan. 29, 2021), https://www.nytimes.com/2021/01/29/technology/roaring-kitty-reddit-gamestop-markets.html; Nicolas Vega, *Here's How Much Money You'd Have if You Invested $1,000 in GameStop During Last Year's Rally*, CNBC (Jan. 19, 2022), https://www.cnbc.com/2022/01/19/how-much-money-youd-have-if-you-invested-1000-dollars-in-gamestop-in-2021.html#:~:text=Jan.,-28%2C%202021%20(Intraday&text=GameStop%20shares%20soared%20as%20high,of%20its%20value%20by%20Jan.

70. *See* The Journal, *To the Moon, Part 4: Diamond Hands*, WALL St. J. (June 13, 2021), https://www.wsj.com/podcasts/the-journal/to-the-moon-part-4-diamond-hands/c5e48f39-6ed6-414f-a0d6-0dc9986640ba; Noel Randewich, *GameStop Fan 'Roaring Kitty' to Tell Congress: 'I Like the Stock*,' REUTERS (Feb. 17, 2021, 6:23 PM), https://www.reuters.com/article/us-retail-trading-testimony-reddit-idUSKBN2AH2Y2 (summing up Roaring Kitty's congressional testimony in the phrase "I like the stock").

71. *See* Popper & Browning, *supra* note 69.

72. *See* Dieter Holger, *The Financial Gurus Millennials Listen To*, WALL ST. J. (Mar. 13, 2020, 9:41 AM), https://www.wsj.com/articles/the-financial-gurus-millennials-listen-to-11584104190.

73. Spencer Jakub, *Meet Kevin, the ETF*, WALL ST. J?. (Nov. 29, 2022), https://www.wsj.com/articles/meet-kevin-the-etf-11669743728; *The Meet Kevin Pricing Power ETF*, STOCKHACK, https://www.mketf.com (last visited June 13, 2023)

74. *See* Caleb Silver, *The Measure of Financial Influence with Mrs. Dow Jones*, INVESTOPEDIA (Aug. 22, 2022), https://www.investopedia.com/the-express-podcast-episode-100-6501269.

75. *See* Tara Siegel Bernard, *Trading Stock Tips on TikTok, Newbies Are Deeply Invested in Learning*, N.Y. TIMES (June 21, 2021), https://www.nytimes.com/2021/04/28/your-money/stocks-investing-tiktok.html.

investing communities for women.[76] Other examples of finfluencers on Instagram, TikTok, and YouTube abound.[77] The hashtag #stocktok on TikTok had over three billion views as of February 18, 2023.[78] The hashtag #fintok on TikTok also had over three billion views as of April 2, 2023.[79] Content tagged with #stocktok offered stock tips, investment advice, and lifestyle content of successful ordinary investors, among others.[80]

Trading platforms increasingly facilitate ordinary finfluencing and amplify finfluencers' reach. For example, Commonstock describes itself as "a social network that amplifies the knowledge of the best investors, verified by actual track records for signal over noise."[81] Investing posts receive upvotes to help retail investors identify valuable information "through all the noise and the meme and troll accounts that are on other platforms."[82] The Public Trading App encourages users to follow others in their social circles and mimic their investing portfolios.[83] Public advertises a "community of millions of investors, creators, and analysts."[84] Other platforms such as Zulutrade and FX Junction also offer "copy" or "mirror" ser-

76. Robbie Whelan, *The Social-Media Stars Who Move Markets*, WALL ST. J. (Aug. 27, 2021, 5:30 AM), https://www.wsj.com/articles/the-social-media-stars-who-move-markets-11630056601; *See* Tara Siegel Bernard, *From Her First $100K to 3 Million Followers*, N.Y. TIMES (Apr. 18, 2022), https://www.nytimes.com/2022/04/16/your-money/tori-dunlap-financial-influencers.html?searchResultPosition=1.

77. *See* Whelan, *supra* note 76.

78. TIKTOK, https://www.tiktok.com/tag/stocktok?lang=EN (last visited Apr. 21, 2023).

79. TIKTOK, https://www.tiktok.com/tag/fintok?lang=EN (last visited Apr. 21, 2023).

80. *Id.*

81. COMMONSTOCK, https://commonstock.com/security (last visited Apr. 21, 2023).

82. Natasha Dailey, *Social-Investing App Commonstock Wants to Be the 'Bloomberg Terminal Of Main Street' and Weed Out the Meme-Stock Trolls*, BUS. INSIDER (Oct. 9, 2021, 9:05 AM), https://markets.businessinsider.com/news/stocks/commonstock-app-weed-out-meme-stock-trolls-retail-investors-reddit-2021-10 (quoting David McDonough, CEO and Founder of Commonstock).

83. *See, e.g.*, PUBLIC, https://public.com/about-us (last visited Apr. 21, 2023) ("Members control how they invest with a suite of powerful tools and get insights from a community of millions of investors, creators, and analysts.").

84. *Id.*

vices.[85] For example, FX Junction encourages users to "[b]ecome a Signal Provider to earn extra money or AutoCopy signals of our best performing members."[86]

II.
Finfluencer-Driven Price Impact

The above taxonomy can be summed up in the following table:

Finfluencer Type	**Paid?**	**Source of influence**	**Purport to disseminate information?**	**Impact on stock prices**
Celebrity	Usually yes	Celebrity status	Often no	Yes
Identity	Usually no	Combination of celebrity status and potential stock market track record	Often no	Yes
Ordinary	Sometimes yes	Track record and perceived expertise	Usually yes	Yes

A number of observations can be made. First, social media has significantly expanded the reach of all types of finfluencers: celebrity, identity, and especially ordinary finfluencers. Ordinary finfluencers can easily and cheaply gain influence that might otherwise be reserved to celebrities and those with traditional forms of media or financial power.

Second, finfluencers can reach a wide audience and provide powerful coordination mechanisms across followers, am-

85. *See* ZuluTrade, https://www.zulutrade.com/ (last visited Apr. 21, 2023) ("Copy Top Performing Traders from different Brokers easily and reach your investment goals!"); FX Junction, https://www.fxjunction.com/ (last visited Apr. 21, 2023) ("Become a Signal Provider to earn extra money or AutoCopy signals of our best performing members."); *Cf.* Christine Hall, *Public vs. Robinhood: Competitors Target Hottest Retail Trading App*, Crunchbase (Feb. 18, 2021), https://news.crunchbase.com/news/public-vs-robinhood-competitors-take-aim-at-biggest-retail-trading-app/ (discussing social and community-based competitors to Robinhood).

86. FX Junction, *supra* note 85.

plifying the price impact of group-based or coordinated trading. Building trust with followers is central to finfluencer reach, which is amplified by the broad impact of retail traders, often the bulk of their following. This is especially true given that younger retail investors increasingly obtain information from social media sites. Studies have indicated, for example, that younger investors trust social media more than Google. Google's own studies have demonstrated that around forty percent of the younger demographic turn to TikTok or Instagram before Google.[87] In addition to expecting to see their personal values reflected by brands, retail traders also increasingly seek out "community, networking and self-education within financial services that make investing a fun, recreational activity."[88]

Third, as will be discussed further in Parts III-IV, finfluencer price impact does not necessarily reflect the informational content of finfluencers' social media matter. That is, regardless of the purported informativeness of their content, finfluencer-driven activity affects stock price movements.

This Part considers the price impact of social media and finfluencing in further detail. Part A surveys evidence of price impact of finfluencer-driven trading. Part B explores how recent trends in retail trading amplify finfluencer impact.

A. *Evidence of Finfluencer Price Impact*

There is little question that finfluencer activity can impact prices. Stock prices have long responded to Wall Street analyst recommendations (regardless of informativeness), influence from celebrities, and short seller reports.[89]

Contemporary evidence continues to support the link between finfluencing and price movements. Consider the price impact of the eight finfluencers charged with fraud and manipulation by the SEC in December 2022. The defendants purchased stocks, promoted those stocks to their followers on social media, and then sold those stocks at inflated prices caused

87. Kalley Huang, *For Gen Z, TikTok Is the New Search Engine*, N.Y. TIMES (Sept. 17, 2022), https://www.nytimes.com/2022/09/16/technology/gen-z-tiktok-search-engine.html.

88. Svati Kirsten Narula, *What Generation Z Wants From Financial Technology*, WALL ST. J. (Jan. 25, 2022), https://www.wsj.com/articles/generation-z-financial-technology-11642714326?mod=searchresults_pos2&page=1.

89. *Supra* Part I.A.

by their followers' trading activity,[90] amassing approximately $100 million in earnings in under three years.[91] The defendants' social media posts generated price increases as high as over 200% in some equities.[92] A similar price impact resulted from the social media and trading activity of Steven Gallagher, and Michael Beck, who was charged in February 2022 for penny stock fraud using his Twitter handle @BigMoney Mike6.[93]

The impact of influencing is certainly not limited to thinly-traded penny stocks. After Ryan Cohen sold his roughly 10% stake in Bed Bath & Beyond in August 2022 (at a significant profit), its share price plummeted.[94] The share price had previously jumped nearly 70% when retail investors purchased around $73 million in the stock in response to a filing update from Cohen indicating that he held significantly out-of-the-money call options in the stock.[95] Similarly, after Elon Musk tweeted "GameStonk!!" on January 26, 2021,[96] GameStop's stock price soared around 40% in response.[97] Other studies have found that Musk's Twitter activity contributes to price movements, both in equities and in cryptocurrency.[98] Studies have also found that former President Trump's tweets significantly affect stock prices, even when no new information is disseminated.[99]

90. Complaint, SEC v. Constantin et al., *supra* note 1 at ¶¶ 36–105.

91. *Id.* at 2.

92. *Id.* at 29.

93. Sealed Complaint, U.S. v. Gallagher, *supra* note 12 at 10*;* Complaint, SEC v. Gallagher, *supra* note 12*;* Complaint, SEC v. Michael M. Beck, a/k/a @BigMoneyMike6, and Relief Defendant Helen P. Robinson, No. 2:22-cv-00812 (C.D. Cal. filed Feb. 7, 2022).

94. Hirsch, *supra* note 60.

95. *Id.*

96. Elon Musk (@elonmusk), TWITTER (Jan. 26, 2021, 4:08 PM), https://twitter.com/elonmusk/status/1354174279894642703?lang=EN.

97. GameStop, *supra* note 9.

98. *See, e.g.*, Sanjeev Metta et al., *Power of 280: Measuring the Impact of Elon Musk's Tweets on the Stock Market*, 21 USHUS–J. BUS. MGMT 17 (2022) (assessing price impact of Musk's tweets); Lennart Ante, *How Elon Musk's Twitter Activity Moves Cryptocurrency Markets*, 186 TECH. FORECASTING & SOCIAL CHANGE (2023) (finding significant abnormal returns and trading volume in a sample of 47 cryptocurrency-related Elon Musk Twitter events).

99. Carl Ajjoub et al., *Social Media Posts and Stock Returns: The Trump Factor*, INT'L J. MANAGERIAL FIN. (2020) (analyzing Trump's Twitter messages

Recent studies have found that attention paid to social media and social news platforms predicts trading patterns, including returns and increased volume.[100] Twitter posts about stale stock news accelerate price pressure and reversal around the prices of those stocks, increasing liquidity and lowering bid-ask spreads.[101] Seeking Alpha content can "strongly predict" stock returns and earnings surprises.[102] In addition, earnings that go viral on social media can have negative price effects and social media virality generally can have effects on market quality.[103]

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between 2016 and 2018 that mention publicly traded companies and finding significant stock price impact).

100. *See, e.g.*, Ekkehart Boehmer et al., *Tracking Retail Investor Activity*, 76 J. FIN. 2249, 2303 (2021) (showing that "marketable retail order flow can predict the cross-section of future stock returns"); Selin Duz Tan & Oktay Tas, *Social Media Sentiment in International Stock Returns and Trading Activity*, 22 J. BEHAV. FIN. 221, 221 (2021) (demonstrating that Twitter sentiment can predict stock returns); Robert Jarrow & Siguang Li, Media Trading Groups and Short Selling Manipulation 36 (Oct. 31, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3804130 (demonstrating how traders in chatrooms can affect stock prices through impact trading); Michael S. Pagano et al., *How Did Retail Investors Respond to the COVID-19 Pandemic? The Effect of Robinhood Brokerage Customers on Market Quality*, FIN. RSCH. LETTERS, Nov. 2021, at 1, 2–6 (finding that collective Robinhood behavior can impact market quality); Jeremy Michels, Retail Investor Trade and the Pricing of Earnings 21–22 (Mar. 28, 2022) (unpublished manuscript), https://ssrn.com/abstract=3833565 (showing that retail trade can substantially affect the price-earnings relation, irrespective of information content).

101. *See* Nitesh Chawla et al., Information Diffusion on Social Media: Does It Affect Trading, Return, and Liquidity? 4–7 (Dec. 1. 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2935138 (finding that information diffusion is substantially correlated with intraday trading); Jim Kyung-Soo Liew & Tamás Budavári, Do Tweet Sentiments Still Predict the Stock Market? 12–13 (Aug. 8, 2016) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2820269 (finding evidence that Twitter sentiments predict market returns).

102. Hailiang Chen et al., *Wisdom of Crowds: The Value of Stock Opinions Transmitted Through Social Media*, 27 REV. FIN. STUD. 1367, 1370, 1374–77 (2014); *see also* Kogan et al., *supra* note 29, at 2, 35 (demonstrating that fraudulent articles on social media networks raised retail trading volume).

103. *See* Brett Campbell et al., *Earnings Virality*, 74 J. ACCT. & ECON. (forthcoming 2022) (manuscript at 6), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800399 (showing that viral earnings announcements negatively affect market quality and lead to excess retail trading, lower price efficiency, and exacerbate information asymmetry).

Additional evidence demonstrates that other market participants are paying attention to social media, finfluencers, and retail trading. One survey indicated that 85% of hedge funds and 42% of asset managers have been tracking retail-trading message boards as of early 2022.[104] JPMorgan has a product that tracks retail trading trends as well as sentiment on social media.[105] As JPMorgan's global co-head of cash equities trading stated, "The flow from retail is not something you can ignore if you are a professional investor . . . It's a whole new investor class that has emerged, and it's an investor class that's actually getting themes right."[106]

B. *Finfluencers and Retail Trading*

As I have explored elsewhere, today's retail trading is increasingly sticky and likely to affect or predict future price movements—irrespective of retail trades' information content.[107] This is because today's retail traders are more numerous and coordinated than ever, have more direct market access, and use new, low-cost trading technology that promotes social aspects of trading.[108]

Because retail traders make up the bulk of finfluencer followers, finfluencers act as powerful coordination mechanisms for retail investors and create a feedback loop, further amplifying price impact. Finfluencers can leverage the same emotional engagement from retail traders as traditional brand influencers do with their followers. A number of recent trends are enhancing this effect.[109]

First, retail trading volume is significant, by some accounts reaching that of mutual funds and hedge funds combined, increasing from roughly fifteen to eighteen percent of

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104. *See* Caitlin McCabe, *Day Traders as 'Dumb Money'? The Pros Are Now Paying Attention*, WALL ST. J., (Jan. 16, 2022), https://www.wsj.com/articles/fund-managers-pay-attention-to-retail-day-traders-11642132135.
105. *Id.*
106. *Id.*
107. *See* Guan, *supra* note 17, at 2055 (discussing the impact of coordinated retail trading).
108. *Id.*
109. For a more in-depth treatment of recent retail investing trends, *see id.*

all trades in early 2020 to thirty percent by early 2021.[110] Retail investors now own substantial portions of various companies. Roughly thirty percent of Costco[111], roughly forty percent of Apple,[112] more than thirty percent of Tesla, and more than eighty percent of AMC is owned by retail investors.[113] More broadly, studies have found that retail trading contributes to price movements around earnings surprises, as well as broader stock market selloffs and reversals.[114] Traders on Robinhood, the trading platform most popular with retail investors, accounted for "10% of the cross-sectional variation in stock returns during the second quarter of 2020" despite its tiny 0.2% market share.[115] Another study found that a trading strategy that involved purchasing stocks right after they debuted on the Robinhood Top 100 list and selling those stocks two days later achieved a return of 458%, in contrast to the twenty-four percent market return during the same period.[116]

Second, retail traders increasingly obtain investing information from peer-to-peer online social platforms, including social media, discussion fora, and other retail traders and fin-

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110. Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Governance Gaming: The Collective Power of Retail Investors*, 22 NEV. L.J. 51, 73 (2021).

111. *Costco Wholesale Corp Stock Ownership—Who Owns Costco?*, WALLSTREETZEN, https://www.wallstreetzen.com/stocks/us/nasdaq/cost/ownership (last visited Apr. 17 2023).

112. *Apple Inc Stock Ownership—Who Owns Apple?*, WALLSTREETZEN, https://www.wallstreetzen.com/stocks/us/nasdaq/aapl/ownership (last visited Apr. 17, 2023).

113. Alex Morrell, *How AMC CEO Adam Aron Conquered Twitter, Embraced the 'Apes' of Reddit, and Won Over a New Generation of Investors*, BUS. INSIDER (Dec. 14, 2021), https://www.businessinsider.com/amc-adam-aron-twitter-reddit-investors-meme-stock-2021-12; *Tesla Inc Stock Ownership—Who Owns Tesla?*, WALLSTREETZEN, https://www.wallstreetzen.com/stocks/us/nasdaq/tsla/ownership.

114. *See* Michels, *supra* note 100, at 22 (showing how retail trading affects the price-earnings relation); Ethan Wolff-Mann, *Retail Investors Played a Big Role in Both Wild Market Rout and the Reversal, Data Suggests*, YAHOO! FIN. (Jan. 25, 2022), https://finance.yahoo.com/news/retail-investors-market-rout-and-reversal-160655523.html.

115. Philippe van der Beck & Coralie Jaunin, *The Equity Market Implications of the Retail Investment Boom* 1 (Swiss Fin. Inst., Rsch. Paper Series, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3776421.

116. *See* Roberto Stein, The Top 5 Predictable Effects of New Entries in Robinhood's '100 Most Popular' List 1 (Sept. 17, 2020) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3694588.

fluencers. Social media platforms and investing news websites such as Seeking Alpha disseminate information to retail investors[117] and increasingly displace traditional financial information sources such as sell-side equity analyst research.[118] Another study found that more than fifty percent of millennials and Gen Z report obtaining financial advice on social media sites such as TikTok and Instagram, and a majority of those look to finfluencers for financial advice.[119] Indeed, the hashtags #stocktok and #fintok on TikTok had over three billion views as of April 2, 2023.[120]

Third, retail trading is increasingly coordinated. Social media is driving much of this transformation. Through social media and social investing platforms, retail investors have much greater direct access to information and can communicate with each other and coordinate their investing power in simple, low-cost ways. For example, retail investors came together to support heavy trading in GameStop and cultural movements in January 2021 and to "save" AMC from bankruptcy in 2020.[121]

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117. *See* Chen et al., *supra* note 102, at 1386 (discussing social media investing sources).

118. *See* Michael S. Drake et al., *Social Media Analysts and Sell-Side Analyst Research*, 27 REV. ACCT. STUD. (forthcoming 2022) (manuscript at 1, 7, 30–31) http://www.utah-wac.org/2020/Papers/moon_UWAC.pdf (discussing social media's "evolving role" in markets and the impact of social media equity research on sell-side equity research); *see also* Theresa Kuchler & Johannes Stroebel, *Social Finance*, 13 ANN. REV. FIN. ECON. 37, 45 (2021) (considering the role played by social interactions in financial decisions); Eric Chartier et al., Behavioral Finance: The Impact of Artificial Intelligence and Social Media Analytics 2–3 (Feb. 27, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3794039 (discussing social media influencers in the stock market).

119. *Gen Z Turns to TikTok and Instagram for Financial Advice and Actually Takes It, Study Finds*, CREDIT KARMA (July 13, 2021), https://www.creditkarma.com/about/commentary/gen-z-turns-to-tiktok-and-instagram-for-financial-advice-and-actually-takes-it-study-finds.

120. #stocktok, TIKTOK, https://www.tiktok.com/tag/stocktok?lang=EN;%20 (last visited Apr. 2, 2023); #fintock, TIKTOK, https://www.tiktok.com/tag/fintock?lang=EN (last visited Apr. 2, 2023).

121. *See, e.g.*, Matt Turner, *A Meme Stock Is Born: How to Spot the Next Reddit Favorite*, BLOOMBERG (June 13, 2021), https://www.bloomberg.com/news/articles/2021-06-13/a-meme-stock-is-born-how-to-spot-the-next-reddit-favorite; Erin Griffith, *No End to Whiplash in Meme Stocks, Crypto and More*, N.Y. TIMES (Nov. 8, 2021), https://www.nytimes.com/2021/06/23/technology/no-end-to-whiplash-in-meme-stocks-crypto-and-more.html. *See generally* MEME

Social trading technology has made it increasingly simple for retail traders to trade in a coordinated manner and impact prices as a group. Finfluencers only make this easier.[122] As discussed above, trading platforms like Public, Commonstock, and Zulutrade have emerged that promote social trading by encouraging retail investors to form communities and mimic others' trades. [123] These platforms encourage seamless "copy trading" or "mirror trading," allowing direct information access, feedback, and communication.[124] Unlike traditional investment platforms, these trading platforms enable millions of retail investors to directly connect with each other and with finfluencers.[125] Trading platforms encourage social trading in less obvious ways as well. For example, retail investors trade based on Robinhood's list of its one hundred most popular stocks, effectively copying other Robinhood users' trades. These users are five to seven times more likely to purchase stocks just added to Robinhood's "Top 100" list.[126] Anecdotal evidence also shows that Robinhood users trade based on the "slope" of a stock's price on the Robinhood app––the graphic that charts a stock's price movements––often buying stocks with the steepest slopes or the most dramatic increases in price.[127]

Trading platforms also offer free, zero-commission trading, which makes retail and finfluencer coordination even easier. One study by Aggarwal, Choi and Lee found that certain meme stocks saw abnormal returns when zero-commission

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STOCK TRACKER, https://memestocks.org/ (last visited Apr. 22, 2023) (listing stocks discussed on r/wallstreetbets).

122. *See* Dirk A. Zetzsche et al., From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance, 14 N.Y.U. J.L. & BUS. 393, 417 (2018) (discussing customer engagement opportunities on newer financial platforms).

123. *See* Jiaying Deng et al., *Social Trading, Communication, and Networks* 1–2 (Paderborn Univ. Ctr. for Tax & Acct. Rsch., Taxation, Acct. & Fin. Working Paper, Paper No. 74, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3802038 (discussing "copy trading" and "mirror trading," where investors to link their accounts to other investors).

124. Deng et al., *supra* note 123, at 1–2.

125. *Id.* at 2.

126. Stein, *supra* note 116, at 1.

127. UNSTRUCTURED INTERVIEW WITH ROBINHOOD USER IN SAN FRANCISCO, CALIFORNIA (Jan. 28, 2021) (discussing interviewee's use of Robinhood and whether the user would switch platforms due to Robinhood's GameStop trading halts).

trading became the norm in October 2019, more than a year prior to the Reddit-fueled rallies experienced by GameStop and others.[128] They also found that trading volume increased in both meme and non-meme stocks after the introduction of zero-commission trading.[129] This implies that zero-commission trading can further facilitate retail impact on other, non-meme public companies.[130]

Retail coordination is not always intentional, but retail trades that are unintentionally coordinated with each other can also be powerful enough to affect prices. Unintentional coordination can occur because the same sources funnel information to retail traders or because the social aspects of retail trading amplify cognitive biases and phenomena, such as herding, which have long been known to affect decision-making in various contexts.[131] Research shows that when investors learn through a social network, "fanatic and rational views dominate over time, and their relative importance depends on their following by influencers."[132] This can generate "social network

128. Aggarwal et al., *supra* note 56, at 3–4, 16–17.

129. *Id.* at 19.

130. *See id.* at 4 ("Furthermore, the emergence and the significance of zero-commission trading on the meme stock phenomenon implies more fundamental changes that can happen at other public companies.").

131. *See generally* Sushil Bikhchandani & Sunil Sharma, *Herd Behavior in Financial Markets*, 47 IMF STAFF PAPERS 279 (2001) (discussing herd behavior's effect on the market); Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263 (1979); Jill E. Fisch & Tess Wilkinson-Ryan, *Why Do Retail Investors Make Costly Mistakes? An Experiment on Mutual Fund Choice*, 162 U. PA. L. REV. 605, 620–23 (2014) (exploring underinvestment, "naïve diversification," and investing in excessive fee funds as reasons for common mistakes in retail investing); Donald C. Langevoort, *Behavioral Approaches to Corporate Law*, *in* RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATE LAW 442 (Claire A. Hill & Brett H. McDonell eds., 2012) (discussing behavioral biases in corporate law); Claire A. Hill, *Why Financial Appearances Might Matter: An Explanation for "Dirty Pooling" and Some Other Types of Financial Cosmetics*, 22 DEL. J. CORP. L. 141 (1997) (describing accounting methods used by companies to improve their financial appearance). Relatedly, substantial literature has explored the extent to which online marketing and communication leverages big data, predictive technologies, and targeted analytics to reach consumers and shape their preferences. *See, e.g.*, Helen Norton, *Manipulation and the First Amendment*, 30 WM. & MARY BILL RTS. J. 221, 228–29 (2021).

132. Lasse Heje Pedersen, Game On: Social Networks and Markets 1 (May 24, 2022) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3794616.

spillovers, large effects of influencers and thought leaders, bubbles, bursts of high volume, price momentum, fundamental momentum, and reversal."[133] Retail investors also tend to form "echo chambers" on discussion forums.[134] This further skews and limits the information they receive, amplifying their trading reactions in either direction. In this way, fintech can exacerbate the effects of feedback trading.[135] Similarly, some may interpret information repeated through a social network as new information.[136] This highlights the role of narrative in driving economic or trading behavior, creating feedback effects and amplifying price pressure.[137]

Finfluencers can leverage some of the same behavioral biases to maximize follower engagement, for example, by using colorful graphics and attention-grabbing content. Over twenty years ago, Jonathan Lebed found that using exclamation marks and incorporating all capital letters made his messages seem more exciting and enabled him to generate more interest.[138] Robinhood has become dominant among retail traders because of its fun user interface, with features ranging from

133. *Id.*

134. *See id.* at 4; J. Anthony Cookson et al., *Echo Chambers*, 36 REV. FIN. STUD. 450, 450–56 (2023) (discussing investors' exposure to confirmatory information on StockTwits).

135. *See analogously* Taha Havakhor et al., Tech-Enabled Financial Data Access, Retail Investors, and Gambling-like Behavior in the Stock Market 20–21 (Aug. 5, 2022) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3434812 (showing how feedback trading enabled by the Yahoo! Finance Application Programming Interface affects retail trading).

136. *See* Peiran Jiao et al., *Social Media, News Media and the Stock Market*, 176 J. ECON. BEHAV. & ORG. 63, 64 (2020).

137. *See generally, e.g.*, Robert J. Shiller, Narrative Economics: How Stories Go Viral and Drive Major Economic Events (2019) (considering the impact of stories on markets and the economy); George A. Akerlof & Robert J. Shiller, Animal Spirits: How Human Psychology Drives the Economy, and Why It Matters for Global Capitalism (2009) (exploring the effects of psychology on the economy); George A. Akerlof & Robert J. Shiller, Phishing for Phools: The Economics of Manipulation and Deception (2015) (discussing markets' susceptibility to deception and manipulation); Bradford Cornell, *Making Sense of Tesla's Run-up*, ADVISOR PERSPS. (July 19, 2021), https://www.advisorperspectives.com/articles/2021/07/19/making-sense-of-teslas-run-up (explaining how narratives and feedback effects can move stock prices, where investors interpret a stock price increase to indicate the truth of the narrative).

138. Lewis, *supra* note 33.

colorful graphics to confetti that bursts onto the screen to celebrate a trade.[139] Robinhood also leverages stock lotteries and other gamification methods to maximize user engagement.[140] As one Robinhood user put it, he would stay with Robinhood despite its functional limitations simply because "Robinhood has the prettiest UI [user interface]."[141] By contrast, platforms such as Fidelity or Chase, although functionally robust, can feel dull and clunky.[142]

This evidence undercuts major models of price discovery that deem retail investors largely unable to affect price.[143] The conventional understanding, drawn from microstructure theory, is that most retail investors are uninformed traders who make trading decisions in idiosyncratic, individual ways.[144] On the whole, retail investors are just as likely to be buying or selling in any given moment, which means that their trades tend to cancel each other out in the aggregate.[145] However, retail investors today are not necessarily just as likely to buy as they are to sell, such that their trades cancel each other out in aggregate.[146] Instead, retail investors increasingly engage in co-

139. *See* Michael Wursthorn & Euirim Choi, *Does Robinhood Make It Too Easy to Trade? From Free Stocks to Confetti*, WALL ST. J., https://www.wsj.com/articles/confetti-free-stocks-does-robinhoods-design-make-trading-too-easy-11597915801.

140. *See, e.g.*, Tory Hobson, *Gamification in the Most Delightful Way*, MEDIUM: PINCH PULL PRESS (Jan. 25, 2018), https://medium.com/pinch-pull-press/gamification-in-the-most-delightful-way-504caf72c1bc.

141. Unstructured Interview with Robinhood User, *supra* note 127.

142. *See, e.g.*, Logan Robison, *Robinhood vs Fidelity 2021: Best Stock Brokerage?*, INVESTING SIMPLE (Oct. 6, 2021), https://www.investingsimple.com/robinhood-vs-fidelity/; Nicole Casperson, *Robinhood Drops the Confetti, but Advisers Aren't Convinced,* INVESTMENTNEWS (Apr. 6, 2021), https://www.investmentnews.com/robinhood-drops-the-confetti-but-advisers-arent-convinced-204828 ("If anything, it's the duller-than-dishwater experience of most financial platforms that has opened the door for dynamic and engaging platforms like Robinhood and Stash Invest to thrive." (quoting William Trout, Director, Javelin Wealth Management)).

143. FOX ET AL., *supra* note 14, at 62 (describing the difference between informed and uninformed investors and explaining that retail investors are generally deemed to be uninformed).

144. *Id.* An individual investor's need to pay an upcoming bill is an example of an idiosyncratic reason to buy or sell stock that is not based on information. *Id.*

145. *Id.* at 67.

146. *See* Guan, *supra* note 17.

ordinated behavior through trading and social media.[147] Their trading is thus stickier and has a greater impact on prices.[148]

Finfluencers only stand to amplify these effects. Social media thus effectively does two things. It allows all types of finfluencers to expand their reach and their price impact, and it enables finfluencers to capitalize on growing retail investor price impact that is itself being supercharged by social media. This feedback loop is shifting the kinds of information that can move stock prices, as is discussed next.

III.
Finfluencer-Driven Information

Financial economics provides a theoretical framework of price discovery that assumes a narrow range of incentives that motivate trading decisions. Investors seek out fundamental value information about an issuer, usually by using valuation mechanisms such as discounted cash flow analysis, and trade that issuer's stock to profit off of that information.[149] As they trade, stock prices move to reflect the information.[150]

Finfluencers, however, are motivated by a much broader set of incentives than simply seeking out fundamental value information. For example, they seek to maximize popularity, be entertaining, and "grow their brand." They also mediate the information that reaches their followers and provide powerful coordination mechanisms that allow their (and their fol-

147. *See* Iris ten Teije, *The Rise and Evolution of Social Investing*, Forbes (Feb. 17, 2022), https://www.forbes.com/sites/forbesfinancecouncil/2022/02/17/the-rise-and-evolution-of-social-investing/?sh=29c9b8f462cc.

148. Indeed, as early as the 1990s, data indicated that retail trades could be systematic and coordinated. *See* Brad M. Barber et al., *Systematic Noise*, 12 J. Fin. Mkts. 547, 549–50 (2009). If retail traders introduce systematic noise, informed traders' ability to correct that noise might be limited, meaning that such noise will be reflected in prices. *See* J. Bradford De Long et al., *Noise Trader Risk in Financial Markets*, 98 J. Pol. Econ. 703, 705 (1990) (showing that noise traders can limit the effectiveness of arbitrage strategies).

149. *See* Fox et al., *supra* note 14, at 33–58 (describing the mechanisms by which equities trading can promote price accuracy and liquidity, which can in turn facilitate economic and social goals around efficient allocation of capital, resources, and risk).

150. *See id.* at 60–70 (describing how price discovery, or the means through which stock prices reach more accurate levels, is largely driven by the information asymmetries between informed traders and the liquidity suppliers with whom they interact).

lowers') trading motivations to affect stock price movements. If most finfluencer followers are retail investors, finfluencers amplify the effects of retail trading on stock markets, and in so doing, amplify the impact of retail motivations for trading as well. Further, if finfluencers and retail traders are not conducting discounted cash flow analysis in the narrow, traditional sense of information discovery, then their activity can shift the types of "information" stock price movements reflect. These shifts are amplified as other market participants factor finfluencer-driven motivations into trading decisions.

This Part provides a theoretical account of how finfluencer-driven trading shapes the types of information reflected in stock price movements, and how finfluencer-driven trading interacts with the traditional economic theory of price discovery. Section A lays out the normative framework drawn from microstructure and financial economics. Section B illustrates how stock prices might move in response to various kinds of finfluencer-driven information and motivations. Section C assesses the permanence of finfluencer-driven trading. Sections D and E consider the long term informativeness of finfluencer-driven trading while also examining the fine distinction between noise and signal in today's stock markets.

A. *The Traditional Normative Framework*

The stock market and its regulation perform central roles in furthering several critical economic and social goals. These goals are:

> (1) promoting the efficient allocation of capital to the best new investment projects in the economy; (2) promoting the efficient operation of the economy's existing productive capacity; (3) promoting the efficient allocation of resources between current and future periods so as to best satisfy the needs of firms seeking financing for real investments [trading the promise of future dollars to obtain current dollars], and the needs of savers seeking to forgo current consumption in order to enjoy future consumption [trading current dollars to obtain the promise of future dollars]; (4) promoting the efficient allocation among investors of the risks associated with holding securities so that risk-averse investors bear their vola-

tility with minimal disutility; and (5) operating fairly and fostering an overall sense of fairness.[151]

Two characteristics of the stock market—share price accuracy and market liquidity—interact with these goals in important ways.[152] The more accurate prices are and the more liquid the market is, the more easily these goals can be advanced. Price accuracy refers to whether share price accurately estimates the future cash flows of the issuer.[153] In general, greater price accuracy will facilitate more socially beneficial investment projects, help identify good and bad managers, and advance the other goals mentioned above.[154] Liquidity generally refers to transaction costs and how easily a trade can be completed.[155] The more liquid the market is, the easier it is to trade without incurring trade-offs; for example, a larger trade often worsens the execution price.[156]

Information asymmetries between informed traders and the liquidity suppliers with whom they trade largely drives price discovery, the mechanism by which stock prices become more accurate.[157] Vis-à-vis the rest of the market, informed traders trade based on superior information about the underlying company.[158] These traders identify mispriced stocks and trade to make profits based on their views.[159] Their trading thus moves prices toward a more accurate value.[160] Moreover, by seeking out and generating new information, usually from bits of publicly available information about an issuer that are

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151. Merritt B. Fox et al., *Informed Trading and Its Regulation*, 43 J. CORP. L. 817, 833 (2018).

152. *See id.* (citing Thierry Foucault et al., Market Liquidity: Theory, Evidence, and Policy 31 (2013)).

153. *Id.*

154. *See* Merritt B. Fox et al., *Stock Market Manipulation and Its Regulation*, 35 YALE J. ON REGUL. 67, 83 (2018) (explaining that greater stock price accuracy helps funnel capital toward more socially beneficial real investment projects). Greater stock price accuracy also drives better management decisions and improves investors' sense of fairness. *Id.*

155. FOX ET AL., *supra* note 14, at 34.

156. *Id.*

157. *Id.* at 65–66.

158. *Id.* at 60.

159. *Id.*

160. *See id.* at 70 (showing how more accurate stock prices result from informed trading, as liquidity suppliers adjust their quotes in response to information).

not yet reflected in price, informed traders substantially contribute to long term price accuracy.[161] By contrast, uninformed traders trade for reasons such as managing savings or rebalancing portfolios and do not trade based on information about an issuer.[162]

Most discussions of stock markets and their participants characterize retail investors as uninformed traders.[163] Because their reasons for trading, such as deferred consumption or rebalancing portfolios, are idiosyncratic and unrelated to information, uninformed traders are assumed to buy and sell roughly in the same quantities in aggregate.[164] They may also be categorized as "mistake" traders who trade based on incorrect information.[165] Although mistake traders may in the aggregate move stock prices, "anti-mistake" traders correct these movements by trading when they do not believe there is new information about the issuer.[166]

This framework largely dismisses the possibility that retail trading has any significant impact on price, but as discussed above, recent evidence has eroded the strength of these assumptions. Moreover, finfluencers provide powerful coordination mechanisms across retail followers that significantly amplify retail price effect, in turn expanding finfluencer and retail influence on price discovery. The next sections detail how.

B. *Finfluencer-Driven Stock Price Movements*

As finfluencers mediate and shape the market's understanding of information, the price movements they generate reflect the motivations behind their trades. This means that such price movements do not necessarily solely reflect discounted cash flow analysis; instead, they can reflect investor whims and preferences untethered to information as traditional theory understands it. In particular, finfluencers can accelerate and amplify stock prices' incorporation of retail moti-

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161. *See id.* at 140 ("The distinguishing feature of fundamental value informed trading is that, unlike the other . . . kinds of informed trading, the information on which it is based did not exist before it was generated as the result of the trader's own actions.").
162. *Id.* at 80.
163. *See id.* at 62–63.
164. *Id.* at 62, 67.
165. *Id.* at 63.
166. *Id.*

vations as "information." They also help overcome classic coordination problems among individual investors and heavily shape those investors' preferences.

1. *Cultural Preferences and Personal Values*

As an example, consider a self-driving car company's stock priced at ten dollars per share. Finfluencers and retail investors like the company's mission, which is to produce self-driving cars for underprivileged communities. As such, they buy as a group, driving the share price up to fifteen dollars. That fifteen dollar share price now reflects the cultural preferences or personal values of finfluencers and their followers.

Assume that the most accurate price based on a traditional discounted cash flow analysis would be thirteen dollars per share. Informed investors know that the stock should be priced at thirteen dollars per share and would otherwise place purchase orders that drive the stock price up from ten dollars to thirteen dollars. However, that profit would be completely taken through finfluencer-driven trading. So, ex ante, informed investors would be less incentivized to seek out the information indicating that the stock was undervalued in the first place.

Further, absent the permanence of finfluencer-driven price changes, informed anti-mistake traders might sell the stock until its price went down to thirteen dollars per share. But informed traders know that finfluencer-driven price effects can be sticky, such that informed sales may not impact the price, and that the price might continue to rise further, despite the informed traders' sell orders. A rational informed trader would accordingly choose *not* to sell. This might cause the self-driving car stock to remain at an inflated price for a longer period of time.[167]

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167. *See* Nicolae B. Gârleanu et al., *A Long and a Short Leg Make for a Wobbly Equilibrium* 1, 32 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28824, 2021), https://www.nber.org/papers/w28824 (discussing how short sellers might abandon short positions if prices increase). Others have set forth a model demonstrating how a coalition of traders on social media can affect stock price in a dynamic game with large short sellers. In this game, social media traders can discipline large short sellers and can decrease allocational efficiency if the stock is overpriced prior to the short selling, but can increase allocational efficiency if the stock is underpriced prior to the short selling. Jarrow & Li, *supra* note 100.

The finfluencer-driven price increase to fifteen dollars a share has now caused a substantial and sticky deviation from the stock's fundamental value. Critically, this deviation reflects cultural preferences and personal values rather than any valuation based on traditional cash flow analysis.

2. *Paid Promotions*

If corporations pay finfluencers to promote stocks, the finfluencer-driven information signal provided by price movements can reflect ad-based bias in addition to traditional information and non-traditional information.

As an example, consider the self-driving car company stock priced at ten dollars per share. The company knows that finfluencers can generate significant interest in the company and shape investment decisions among retail as well as institutional investors. The company pays certain finfluencers to promote its stock. With the promotion, the share price rises to thirteen dollars. Even if the most accurate price based on a traditional discounted cash flow analysis would be thirteen dollars, the share price increase reflects not only traditional "information," but also simple ad-based promotion.

Another version of the story could unfold as follows. The self-driving car company pays finfluencers to promote its stock. With the finfluencer's promotion, the share price rises from ten dollars to thirteen dollars. This time, let us assume that the most accurate price based on traditional metrics is eight dollars per share. The ad-driven price increase has caused a significant deviation from the stock's fundamental value.

Just as in the previous example, absent the permanence of finfluencer-driven trades, informed anti-mistake traders in this case would sell the stock until its price decreased to eight dollars. Again, informed traders understand that finfluencer-driven price effects can be sticky. And again, a rational informed trader would choose *not* to sell in this situation, resulting in the self-driving car stock remaining at an inflated price for longer.[168]

If this pattern of finfluencer-led trading and stock price movement occurs frequently enough, stock prices will increas-

168. *See* Gârleanu et al., *supra* note 167, at 30-31; Jarrow & Li, *supra* note 100, at 3.

ingly reflect these other types of values or characteristics—cultural values, social preferences, and ad-based motivations.

3. *Maximizing Popularity*

Today's finfluencers, especially ordinary influencers, are also incentivized to maximize popularity. Maximizing popularity increases finfluencers' impact on stock price movements, as well as revenue from ads and subscribers.

For example, the social trading network FX Junction encourages those who become approved as "Signal Providers" to "Get yourself noticed" by filling out a profile ("Your Profile page is the first thing potential copy traders can visit to see more information about yourself"); "rank high" on the Find Traders page; "get your profile more attention" by posting ideas and commentary on the Dashboard; and "attract more investors on FX Junction by sharing your performance and other information on other social networks and forums."[169] As another example, the trading platform Commonstock has a Leaderboard highlighting top investors and top followers,[170] as well as "% of mentions," which refers to how frequently an asset is mentioned on the platform.[171]

Because finfluencers are not necessarily compensated based on their investing track records but rather on their content and numbers of viewers and subscribers, their popularity might not be tied to giving objectively valuable investing advice.[172] Their social media content, catered to their followers, often focuses on selling an expensive lifestyle replete with designer possessions.[173] Their content might also reflect social trends: for instance, "loss porn," posting evidence of large losses from stock bets, is popular on fora such as Reddit.[174] At the very least, these finfluencers are usually not solely motivated by maximizing investment returns or the quality of the information they disseminate.

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169. *Become a Signal Provider*, FX JUNCTION, https://www.fxjunction.com/help/become_signal_provider.

170. COMMONSTOCK, https://commonstock.com/leaderboard.

171. COMMONSTOCK, https://commonstock.com/trending.

172. *See* Whelan, *supra* note 76.

173. *See id.*

174. *See, e.g.*, *Part 1: Largest WSB LOSS Porn Ever Posted!!!*, REDDIT, https://www.reddit.com/r/wallstreetbets/comments/pfirph/part_1_largest_wsb_loss_porn_ever_posted/ (1.2k comments).

The information a finfluencer disseminates can also be shaped by their followers' demands. Follower demand can drive the finfluencer information economy, rather than finfluencer supply. If followers do not like a finfluencer's message, their collective response can silence that message. This can happen, for example, when a finfluencer disseminates negative information about a company. As one commentator put it, "[t]here is a surrender-to-the-narrative-or-else attitude online, and it's really frightening, because if you say bitcoin is overvalued, or Tesla is overvalued or whatever popular SPAC is overvalued, these trolls in anonymous accounts come out of the woodwork and start attacking you."[175] However, if finfluencers with sizeable followings only disseminate positive advice, their followers tend to buy, which tends to inflate the share price. Ecosystems that depend on upvotes, such as Commonstock, can skew finfluencer incentives even more. Reasons for stock recommendations, and potentially stock price movements that occur in response, may drift further away from traditional conceptions of information and price accuracy and cater more closely to followers' interests.

Finally, finfluencers could be motivated to obtain fake followers, in order to "rank high" on certain social media platforms and otherwise inflate their engagement.[176] To the extent that more followers increase a finfluencer's impact on stock prices, this further decouples the link between "good" investment advice and price movement. That is, a large following may not signal valuable advice or information; it might simply reflect a fake number.

C. *The Limits of Arbitrage*

Finfluencers can make it harder for other traders to eliminate price differentials caused by nonfinancial trading reasons, which they could otherwise do through arbitrage. As it becomes more difficult for other traders to arbitrage prices because finfluencing makes those prices more resistant to informed trading, prices reflect even more nonfinancial, finfluencer-driven value.

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175. Whelan, *supra* note 76.

176. *See* Marit Hinnosaar & Toomas Hinnosaar, *Influencer Cartels* (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3786617 (studying groups of influencers who collude to inflate engagement).

As an example, consider a company planning to produce rocket ships for space tourism with stock priced at thirteen dollars per share. Retail traders and finfluencers like the company's self-proclaimed mission, which is to "send apes to the moon." The technology is still in the early stage of development, and the company will not be able to produce rocket ships for at least another decade. Yet finfluencer-driven trading drives the price up to sixteen dollars per share.

Assume that the most accurate share price based on discounted cash flow analysis would be twelve dollars. Absent the permanence of finfluencer-driven trades, informed anti-mistake traders in this case would sell the stock until its price decreased to thirteen dollars. However, informed traders understand that finfluencer-driven effects can be sticky, such that informed sales may not impact the price, and that the price might continue to increase irrationally, despite the informed traders' sell orders. That is, they understand that arbitrage is not profitable or may be impossible. A rational informed trader would therefore choose *not* to sell in this situation, resulting in the space tourism stock remaining at an inflated price for longer[177] and allowing the finfluencer and their followers to exert more power over markets. Thus, pressure from finfluencers (exerted through price movements) can influence firm choices with effects that are even more long-lasting the harder it is for other investors to eliminate the pressure through arbitrage.

D. *Is Finfluencer-Driven Trading Informed?*

The next question becomes: do finfluencers tend to expand the market's conception of information in a socially beneficial way or harm it by introducing noise that is socially wasteful? While this an open empirical question, the answer is complex from a theoretical standpoint: finfluencers likely add *both* information and noise. Indeed, the line between informative finfluencer activity and noisy finfluencer activity is thin.

On the one hand, existing normative frameworks state that fundamental value information traders seek to maximize investment returns. Doing so usually depends on seeking out information, because trading on good information leads to

177. *See* Gârleanu et al., *supra* note 167, at 30-31 (discussing how short sellers might abandon short positions if prices increase).

greater profits.[178] Through the trading of fundamental value traders, stock prices therefore become more accurate.[179] Finfluencer-driven trading as described here can loosen the link between profit and information, narrowly defined. Profit can be linked to a number of other characteristics: sentiment, influence, and advertising promotions. In other words, to the extent that the market's definition of information remains narrowly circumscribed to discounted cash flow analysis, finfluencers can make stock prices less accurate.[180] Moreover, finfluencer impact might dilute the impact of all information, good or bad.[181]

On the other hand, an argument can be made that "information" and profit can or should encompass nonfinancial characteristics like investor sentiment. For example, if retail investors trade for nonpecuniary reasons or select stocks based on factors not directly related to future cash flows, such as an issuer's sustainability or cultural values, a stock's price may grow to reflect those characteristics. Even though traditional theory might not deem this to be "information," it could be understood as information about the value of a company in a broader sense.[182]

Finfluencers could help expand "informativeness" in socially beneficial ways, precisely because they are not motivated

178. *See* FOX ET AL., *supra* note 14, at 70.

179. *See id.* at 36.

180. As such, one study found causal effects from social media sentiment without fundamental information on same day stock returns. *See* Xinjie Wang et al., *The Causal Relationship Between Social Media Sentiment and Stock Return: Experimental Evidence from an Online Message Forum*, 216 ECONOMICS LETTERS (2022). Others have studied the potential impact of Twitter sentiment on stock prices of sports companies during class actions. *See* Karim Derouiche & Marius Cristian Frunza, *Study of Tweets' Sentiment Impact on Stock Prices During Class Actions: An Application to Sports Companies* (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3653125.

181. *See* Shimon Kogan et al., *supra* note 29, at 35 (finding that all news on social media platforms, including legitimate news, was discounted following fraud revelations).

182. In related contexts, there is a debate as to the relationship between ESG ratings and stock returns. *See, e.g.*, George Serafeim & Aaron Yoon, *Stock Price Reactions to ESG News: The Role of ESG Ratings and Disagreement* (Jan. 13, 2021), https://ssrn.com/abstract=3765217 (examining whether ESG ratings affect stock prices); Florian Berg et al., *The Economic Impact of ESG Ratings* (Sept. 4, 2022), https://ssrn.com/abstract=4088545 (examining ESG ratings' impact on stock returns, fund holdings, and firm behavior).

by the narrow range of traditional valuation methods. For example, consider a jet fuel company stock priced at ten dollars per share. Finfluencers and retail investors like the company's dedication to creating zero-emission jet fuel. The most accurate price based on discounted cash flows is eight dollars per share, because the company is operating at a loss and conventional jet fuel is much less expensive, creating significant competition. Yet finfluencers and their followers are dedicated to promoting and owning companies that combat climate change. As such, they buy as a pack, driving the share price up to fifteen dollars. That fifteen dollar share price now reflects the environmental preferences of finfluencers and their followers.

Even though discounted cash flow analysis might deem the fifteen dollar per share price less "accurate," the "inflated" price reflects the social or cultural reality that a significant portion of investors prefer companies with climate-focused missions. The increase in price might allow the company to raise capital more cheaply and fund more projects that eventually become profitable, bringing its "underlying" value closer to its higher stock price. As a result, the fifteen dollar a share stock price no longer looks inflated; it looks informative of the company's future cash flows—and is therefore more accurate.

In this way, finfluencers can shape not only price movements, but social and market conceptions of information. In doing so, finfluencers and their followers stand to have significant impact on markets.

E. *Noise and Signal*

Of course, the thin line between noise and signal is a longstanding feature of stock markets. Noise is inevitable, and sophisticated and unsophisticated investors alike contribute to irrationality and inefficiency.[183] A substantial literature has ex-

183. *See, e.g.*, Bikhchandani & Sharma, *supra* note 131, at 282, 289–90 (discussing how herd behavior impacts the market); Ryan Bubb & Prasad Krishnamurthy, *Regulating Against Bubbles: How Mortgage Regulation Can Keep Main Street and Wall Street Safe—From Themselves*, 163 U. PA. L. REV. 1539, 1545–48 (2015) (considering the limits of rational behavior during bubbles). This implicates debates around the efficient market hypothesis. Some might argue that prices do not reflect fundamental value; rather, they simply reflect the intersection of supply and demand. *See, e.g.*, Ronald J. Gilson & Reinier H. Kraakman, *Market Efficiency after the Financial Crisis: It's Still a Mat-*

plored the limited ability of arbitrageurs to bet against noise traders when faced with longer-horizon noise risk or fundamental risk.[184] That is, it has long been understood that noise can be sticky. At what point does noise, conventionally understood, become information? In some ways, finfluencer activity represents another outpost of trading that reflects this complexity.

The Lebed example in Part I is illustrative. As one commentator pointed out, Lebed's stock promotions did not materially differ from Wall Street analyst stock promotions.[185] That is, "when a Wall Street analyst can send the price of a stock of a company that is losing billions of dollars up 50 points in a day, what does it mean to 'artificially raise' the price of a stock?"[186] This raises further questions regarding the activity of other more established finfluencers. Those such as media personality Jim Cramer or the short selling firm Hindenburg Research purport to disseminate information. Finfluencers such as Elon Musk and Ryan Cohen often do not. Ordinary finfluencers often do. But these finfluencers all have price impact, blurring the line between noise and signal. Given the range of possibilities, how might the rest of the market react? The next Part explores this question.

IV.
THE FINFLUENCER INFORMATION ECOSYSTEM

According to economist Robert Shiller, one strategy in a speculative market is to adopt a Keynesian beauty contest approach: select the stocks that others will select, the stocks that those others think still others will select, and so on.[187] Basi-

ter of Information Costs (Feb. 11, 2014), https://ssrn.com/abstract=2396608 (discussing informational efficiency and the efficient market hypothesis in the wake of the 2008 financial crisis); Sanford J. Grossman & Joseph E. Stiglitz, *On the Impossibility of Informationally Efficient Markets*, 70 AM. ECON. REV. 393, 404-05 (1980) (proposing a model where there is "an equilibrium degree of disequilibrium").

184. *See* De Long et al., *supra* note 148, at 705 (demonstrating how noise traders can limit the effectiveness of arbitrage strategies).

185. Lewis, *supra* note 33.

186. *Id.*

187. *See, e.g.*, Robert J. Shiller, *The Beauty Contest That's Shaking Wall St.*, N.Y. TIMES (Sept. 3, 2011), https://www.nytimes.com/2011/09/04/business/economy/on-wall-st-a-keynesian-beauty-contest.html (explaining that, according to Keynes, the optimal strategy in a speculative market is to choose

cally, an investor should aim to anticipate other investors' preferences, rather than necessarily trade on their own preferences. Finfluencers can short-circuit this process. Not only can finfluencers anticipate investors' preferences, but they can also control those investors' preferences to some degree and shape the types of information that affect stock price movements.

This Part explores further implications for the stock market ecosystem by considering the effects of finfluencer activity on other market participants' incentives and capital flow. It attempts to answer a number of questions by considering evidence and theory. First, will other market participants treat finfluencer-driven trading as information or as noise? Second, if they treat it as noise, will they be able to identify and avoid it? Sections A and B consider these queries. The following sections then assess broader market effects, beginning with a discussion of finfluencer incentives in Sections C and D. Section C lays out a core insight: the predictability and controllability of finfluencers' follower activity. Section D discusses the incentive of finfluencers and other market participants to create bubbles. Sections E and F explore corporate responses, including corporate finfluencers and managerial decisions shaped by finfluencer preferences. Section G considers the impact on capital raising. Finally, Section H discusses newly created financial products, such as certain ETFs, in response to finfluencer activity, and Section I considers wider market impact.

A. *Treating Finfluencer Activity as Informative*

On the one hand, other market participants may treat finfluencer-driven trading as informative. That is, if finfluencer-driven trading can predict or drive stock price movements, others will treat that as informative regardless of its relationship to a company's cash flows. This is because it would become more rational for other market participants to adjust their behavior in anticipation of finfluencer activity. Other informed investors might be motivated to take a company's meme stock status, its cultural mission, or its popularity with finfluencers into account as they seek to evaluate the "value" of a company. As those informed investors trade with liquidity suppliers, and as liquidity suppliers adjust their quotes to ac-

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the stocks that others will choose, the stocks that those others believe still others will choose, and so on).

count for perceived information from counterparties, stock prices will move to reflect the information that those investors have. That information might increasingly reflect values, including finfluencer-driven values, that are not necessarily tied to discounted cash flows.

For example, consider the hypothetical space tourism company discussed above. A traditional valuation of the company puts its stock at twelve dollars a share. Assume that the company is currently trading at thirteen dollars a share. Past experience with the stickiness of the company's inflated stock price may lead traders who would typically undertake discounted cash flow analysis in evaluating the accuracy of a company's share price to factor into their analysis the potential for "finfluencer hype." In doing so, they conclude that finfluencer hype increases their valuation, or at least sets their prediction for the stock price at fourteen dollars a share. Instead of selling the stock (which they otherwise might have done based on a traditional analysis demonstrating the stock is overvalued), they buy the stock, believing the price will rise to reflect finfluencer-driven trading. The price does indeed rise to fourteen dollars a share. In this way, if such traders systematically assign some value to this type of finfluencer factor, stock price movements will increasingly reflect those factors. And, if the higher stock price enables the company to raise capital to fund better projects, its value may rise to meet its stock price, making that initial price bump seem more informed.

Similarly, to the extent stock prices increasingly reflect decisions spurred by ads or sponsorships, other market participants adjust their behavior in anticipation. As investors trade with liquidity suppliers, and as liquidity suppliers adjust their quotes to account for perceived information from counterparties, stock prices move to reflect the information that those investors have. That information might increasingly reflect values not necessarily tied to discounted cash flows.

B. *Discounting Finfluencer Activity as Noise*

On the other hand, markets may discount finfluencer-driven trading as noise. They may seek to profit off a finfluencer-driven trading episode but will not seriously consider factors such as finfluencer popularity, hype, or cultural value as indicative of information. However, even if markets dismiss finfluencer-driven trading as noise, the question remains whether other participants can reliably avoid the noise.

The ability of other participants to avoid finfluencer-driven noise might be limited because of the potential profitability of participating in finfluencer-driven trading or even trying to become a finfluencer. Existing literature explores the trading strategy of rationally riding a bubble.[188] Predictable investor sentiment and limited ability to arbitrage are factors that contribute to an assessment whether to ride a bubble.[189] As discussed above, both of these factors apply to finfluencer-driven trading. Thus, it may be come rational and even optimal for sophisticated as well as unsophisticated investors to participate in finfluencer-created noise or bubbles.

For example, if the psychedelic drug industry is being hyped up by finfluencers, it may be a rational trading strategy for sophisticated and unsophisticated investors to buy psychedelic drug stocks, at least in the short term. Indeed, evidence increasingly demonstrates that other traders are paying attention to social media. Hedge funds and large financial institutions increasingly scrutinize social media and retail investor activity,[190] cementing retail and finfluencer impact on markets even further. In early October 2022, traders on Reddit jumped on concerns over the financial health of Credit Suisse, fueling speculation that the bank might collapse as Lehman Brothers did.[191] Credit Suisse's stock price fell 12% on October 3, 2022.[192]

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188. *See, e.g.*, Stefan Nagel & Markus Konrad Brunnermeier, *Hedge Funds and the Technology Bubble* (June 2003), https://ssrn.com/abstract=423940 (demonstrating that it may be optimal for rational investors to ride bubbles because of limits to arbitrage and predictable investor sentiment); Nadja Guenster et al., *Riding Bubbles* (Dec. 9, 2009), https://ssrn.com/abstract=1071670.

189. Nagel & Brunnermeier, *supra* note 188.

190. *See* Caitlin Ostroff & Paul Vigna, *Wall Street Is Looking to Reddit for Investment Advice*, WALL ST. J. (Aug. 27, 2021), https://www.wsj.com/articles/wall-street-is-looking-to-reddit-for-investment-advice-11630056648?mod=Series_exchangeinternetpackage.

191. Caitlin McCabe, *How a Social-Media Frenzy Around Credit Suisse Rattled Its Stock*, WALL St. J. (Oct. 5, 2022), https://www.wsj.com/articles/how-a-social-media-frenzy-around-credit-suisse-rattled-its-stock-11664978035.

192. *Id.*

C. *Predictable Price Movements*

The foregoing discussion highlights a central observation: if finfluencers can control, influence, or simply predict price movements due to trading by their followers, they can profit off of that trading. Finfluencers need not engage in fraud or manipulation to predictably profit off of their followers' trades, nor do they necessarily need to disseminate valuable information. Finfluencers simply tweet, post or trade, their followers pile in, and stock prices can move.

Recall the examples of Elon Musk's "Gamestonk!!" tweet and Ryan Cohen's sale of Bed Bath and Beyond's shares.[193] Neither example involved investing advice or any representations about GameStop or Bed Bath and Beyond. Neither example involved obvious intent to defraud or to manipulate. Nevertheless, both examples involved significant price movements in response: GameStop in soaring 40%, Bed Bath and Beyond in skyrocketing 70% then plummeting after Cohen's sale.[194]

Thus, finfluencers may not need to disseminate any investment advice or valuable information in order to set off a predictable set of trades by their followers. No wrongdoing has occurred, but it can be tempting to profit off of the predictable pattern. Because of this, finfluencer incentives might be skewed, limiting or worsening the information reaching investors.

D. *Creating Bubbles*

The ability to control preferences and profit off of predictable price movements may motivate finfluencers to create price bubbles by pushing the price of an asset away from its underlying value. While there may be some reputational risk, if finfluencer followers are directed to buy low and sell high at opportune times, this could become an extremely profitable strategy for the finfluencer, enabling the finfluencer to amass additional followers and become even more successful. Riding those bubbles may also be rational for other traders, as discussed previously.

193. Elon Musk (@elonmusk), TWITTER (Jan. 26, 2021, 4:08 PM), https://twitter.com/elonmusk/status/1354174279894642703?lang=EN; Hirsch, *supra* note 60.

194. GameStop, *supra* note 9; Hirsch, *supra* note 60.

For example, consider the stocks of a number of psychedelic drug companies, all of which are penny stocks. Volume traded is low, meaning that causing price movements through trading is relatively easy. A finfluencer with a sizeable social media following gins up significant hype around the psychedelics industry, perhaps speculating that psychedelic drugs will be increasingly used in mainstream medicine. The finfluencer has already bought a significant number of shares of these psychedelic drug companies and tells their followers that previous investments in these companies has been very lucrative. As a result of the hype, the finfluencer's followers pile in as well, causing significant price gains. At this point, the finfluencer sells their shares, making significant profits. Of course, some of the finfluencer's followers would also make significant profits.

Again, this simple example illustrates that profits are possible—and even simple—to make because follower activity is predictable. It also illustrates that finfluencers do not need to make false or misleading statements in order to generate price movements. Simple hype will do—and will be reflected in stock price movements. Some commentators have termed this "hype and dump" manipulation, noting that "it can be optimal for an informed trader to create false hype among uninformed traders provided that there is at least one naive trader in the market and the cost of dishonest rumor-mongering is not too low."[195]

Another situation is possible: hedge funds or other sophisticated entities could post anonymously on social media platforms and become pseudonymous or anonymous finfluencers. In so doing, they could contribute to and even create a bubble from which they can profit. Consider a hedge fund that invests significantly in social media strategy. The hedge fund is aware that finfluencers can create hype and drive bubbles. The hedge fund's employees aggressively post on social media under pseudonyms, amassing followings and becoming pseudonymous influencers. The hedge fund has been closely following retail interest in self-driving cars. It also has a large stake in a nascent self-driving car company, whose stock is trad-

195. Nevzat Eren & Han N. Ozsoylev, *Hype and Dump Manipulation* (Nov. 2006), https://ssrn.com/abstract=948814 (introducing an economic model where hype and dump manipulation can be sustained).

ing for three dollars per share with relatively low volume. In this situation, the hedge fund, acting as pseudonymous influencer, can easily generate excitement around the self-driving car company among its followers (without necessarily disseminating any false or misleading information). Buying pressure for the self-driving car company's stock might increase and lead to price gains, and the hedge fund could profit significantly as a result.

Again, the predictability and reach of finfluencing can make this an attractive profit strategy. Moreover, creating a bubble could inject additional noise into markets while masking that noise as information behind price impact.

E. *Corporate Finfluencers*

Corporations and their management might similarly be incentivized to develop followings themselves, allowing them to influence their own stock price. Elon Musk has wielded significant finfluence for years now. In this way, a company can gain more control over the types of information that are incorporated into their stock price.

Consider the history of Tesla. As of March 2022, around thirty-eight percent of Tesla was owned by retail investors.[196] Tesla's stock price history can be interpreted to reflect the growing power of retail trading driving out short sellers, partially driven by Musk's influence. As I have explored elsewhere, increased coordinated retail buying lowers the expected profitability of short selling.[197] And recent reports indicate that short sellers of Tesla are "giving up."[198] Short positions in Tesla were at 1.1%–3.2% by recent accounts, the lowest since Tesla went public in 2010.[199] Yet traditional metrics suggest that Tesla's stock is substantially overpriced.[200]

196. *Tesla Inc Stock Ownership–Who Owns Tesla?*, *supra* note 113.

197. *See* Guan, *supra* note 17, at 2057.

198. *See* Thyagaraju Adinarayan & Esha Dey, *Many Tesla Short Sellers Are Giving Up*, BLOOMBERG (Oct. 4, 2021), https://www.bloomberg.com/news/articles/2021-10-04/tesla-short-sellers-flee-as-musk-s-carmaker-sets-delivery-record.

199. *Id.*

200. Ian Bezek, *Tesla Vanquished the Short Sellers, but Risks Remain*, NASDAQ (Oct. 1, 2021), https://www.nasdaq.com/articles/tesla-vanquished-the-short-sellers-but-risks-remain-2021-10-01 (discussing Tesla's $690 million net income, or $0.64 per share with a $750 billion market capitalization, in com-

Corporations already actively use social media to disseminate information.[201] For example, several companies hired a ghostwriter on Twitter.[202] Betterment, an investing roboadvisor platform, saw a surge in signups after a TikTok influencer posted videos describing how to become a millionaire from Betterment.[203] One study used social media content analysis to confirm that in the "buy now, pay later" credit context, lenders engage with potential consumers on TikTok.[204] And companies are partnering with influencers to reach younger investors. This, of course, carries risks: companies can be promoted on social media fora, but they can also be panned by trolls.[205]

F. *Corporate Decisionmaking*

The ecosystem extends further. According to traditional theory, stock prices provide signals to managers and help direct limited real resources to the projects that generate the

parison with Toyota's $21 billion net income, or $15 per share with a $250 billion market capitalization).

201. *See, e.g.*, Press Release, U.S. Sec. & Exch. Comm'n, SEC Says Social Media OK for Company Announcements if Investors Are Alerted (Apr. 2, 2013), https://www.sec.gov/news/press-release/2013-2013-51htm (explaining that "companies can use social media outlets like Facebook and Twitter to announce key information in compliance with Regulation Fair Disclosure (Regulation FD) so long as investors have been alerted about which social media will be used to disseminate such information").

202. *See* Mattathias Schwartz, *I Made $200,000 Last Year Ghostwriting Tweets for Superstar VCs. It Takes Me 5 Hours a Week. Here's How I Found My Clients and Built a Booming Side Hustle from Scratch*, BUS. INSIDER (Oct. 12, 2022), https://www.businessinsider.com/twitter-ghostwriter-silicon-valley-vc-venture-founder-san-francisco-2022-10.

203. Misyrlena Egkolfopoulou, *Wall Street Influencers Are Making $500,000, Topping Even Bankers*, BLOOMBERG (Sept. 17, 2021), https://www.bloomberg.com/news/articles/2021-09-17/social-media-influencers-income-advertising-wall-street-products#xj4y7vzkg?leadSource=Uverify%20wall?leadSource=uverify%20wall.

204. Nikita Aggarwal et al., *#Fintok and Financial Regulation*, 54 ARIZ. ST. L.J. 333, 341 (2023).

205. *See, e.g.*, TAUTACHROME, INC., *Tautachrome (OTC: TTCM) Targets Criminal Stock Trolls and Forums that Protect Them* (Feb. 25, 2022), https://www.globenewswire.com/en/news-release/2022/02/26/2392603/0/en/Tautachrome-OTC-TTCM-Targets-Criminal-Stock-Trolls-and-Forums-that-Protect-Them.html.

most value in the economy.[206] A vast literature has evaluated this dynamic.[207] If prices contain information about finfluencer-driven preferences along nonfinancial values, those managers' decisions will also reflect those preferences, in responding to price movements that reflect these values. Managerial decisions may thus grow to reflect further retail or finfluencer-driven preferences.[208]

Consider an example where a firm is considering two projects. Project A has a net present value (NPV) of $80, and Project B has an NPV of $100. Project A involves partnering with Elon Musk, and Project B does not involve partnering with anyone. Once the two potential projects are announced, a particularly influential finfluencer aggressively promotes Project A despite its lower NPV, because the finfluencer knows their followers prefer content related to Elon Musk and Tesla. Choosing Project A might lead to a larger increase in the firm's stock price due to the finfluencer's impact, even though Project A has a lower NPV than Project B. Reasons for promoting Project A might vary, including that Project A might have sustainability or ecological implications, for example. In general, these reasons are not problematic and may be socially beneficial, if we take the view that prices naturally can or should reflect nonfinancial values. Corporations might simply pivot to considering nonfinancial values *ex ante* in choosing projects. In other words, those nonfinancial values may take on financial value, if corporations place a premium on projects such as Project A, which might be more sustainable or otherwise socially beneficial.

Companies may also deliberately attempt to attract the attention of finfluencers and retail investors by choosing

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206. *See* Fox et al., *Informed Trading*, *supra* note 151, at 833–34 (discussing the signaling effects of stock prices).

207. *See, e.g.*, FOX ET AL., *supra* note 154, at 83 (citations omitted) (aggregating sources).

208. This can be analogized to trends in corporate decision making that prefer projects that promote ESG goals. *See, e.g.*, Sharon Hannes et al., *The ESG Gap*, HEBREW UNIV. OF JERUSALEM LEGAL STUD. RSCH. PAPER SERIES NO. 23–4, 8–11 (Dec. 5, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4293914 (describing the rise of ESG focus in the corporate world and considering proponents' justifications—long-term value maximization, stakeholderism and social preferences of investors—for the view that corporations should pursue ESG goals in addition to simple profit maximization).

projects that are likelier to appeal to them.[209] Doing so might become increasingly sensible given that younger consumers tend to want their brands to reflect their values.[210]

G. *Capital Raises*

Stock prices also affect companies' ability to raise capital. Finfluencer-driven activity can shift a company's cost of capital, with both positive and negative implications.

On the one hand, if an issuer's share price is distorted, its cost of capital will not reflect its underlying viability. Weak underlying fundamentals may not prevent a company experiencing a finfluencer-driven rally from raising capital easily and cheaply.[211] Conversely, it may be harder for companies that

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209. *See, e.g.*, Matt Levine, Opinion, *Meme Activists Come for Macy's*, BLOOMBERG (Nov. 4, 2021), https://www.bloomberg.com/opinion/articles/2021-11-04/macy-s-targeted-by-meme-activists (citing Letter from Guy Phillips, Managing Member, NuOrion Advisors, LLC, to Jeffrey Gennette, Chairman & Chief Exec. Officer, Macy's, Inc. (Nov. 4, 2021), https://nuorionadvisorsbusiness.files.wordpress.com/2021/11/letter-to-m-chairman-3.pdf) (considering how companies can appeal to meme investors through strategies such as partnering with electric vehicle companies and cryptocurrencies).

210. *See* Narula, *supra* note 88. As one example, an activist investor sent a letter to Macy's in November 2021 with the following: "Macy's share price is materially undervalued and requires urgent action to unlock value. We believe that by adopting the strategies discussed below, Macy's would be worth more than $75 per share. . . Macy's should form partnerships with EV car companies (e.g., Tesla, Lucid or Rivian) to showcase their products on the ground floor of Macy's 100 top landmark stores (e.g., Herald Square, Marshall Field, Union Square) and to use their massive parking footprint to build an EV charging network. . . . We believe that direct association with EV companies will drive enormous traffic to Macy's stores. In addition, Macy's should announce immediately that they are partnering with various Crypto platforms to allow digital payments." Letter from Guy Phillips to Jeffrey Gennette, *supra* note 209, at 1.

211. For example, AMC raised $1 billion, while GameStop raised $1.7 million. Press Release, AMC Theatres Investor Relations, AMC Raises $917 Million of Fresh Investment Capital Since Mid-December of 2020 (Jan. 25, 2021), https://investor.amctheatres.com/newsroom/news-details/2021/AMC-Raises-917-Million-of-Fresh-Investment-Capital-Since-Mid-December-of-2020/default.aspx; *See* Myles Udland, *GameStop Gives Investors 1.6 Billion Reasons to Care About the Meme Trade: Morning Brief*, YAHOO! NEWS (June 23, 2021), https://news.yahoo.com/game-stop-gives-investors-16-billion-reasons-to-care-about-the-meme-trade-morning-brief-091020855.html.

have stronger fundamentals but that lack finfluencer-driven support to raise capital.[212]

On the other hand, finfluencer-driven trading could help companies committed to projects that might create social benefits in the future achieve financing more easily today. For example, a company that is committed to combating climate change but is currently operating at a loss might benefit from finfluencer activity. Raising capital might become less expensive during a finfluencer-driven rally, which would allow that company to fund additional projects. If those projects become profitable, the company's "underlying value" would move closer to its higher stock price. As a result, the higher stock price becomes informative of the company's future cash flows rather than inflated.

H. *Finfluencer Financial Products*

Finfluencers not only drive investor preferences among existing financial products but can also spur an expanded supply of financial instruments in response to changing investor demand. These innovations, or additional or new instruments, can also reflect an expanded understanding of "information."

Kate Judge has written on the phenomenon of investor-driven innovation, which describes the emergence of innovations in response to investors who value aspects of financial instruments other than their risk-adjusted returns.[213] These innovations can include repackaged cash flows or reliance on derivatives in creative ways.[214] As Judge notes, ETFs, as a historical matter, were created principally in response to investor demand for low-cost, diversified investment options.[215] In addition, the "rapid rise of funds catering to investors' interests in integrating [environmental or social] values into their invest-

212. *See* Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U. L. REV. (forthcoming Oct. 2022) (manuscript at 16-17), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4049896 (pointing out effects on cost of capital).

213. *See* Kathryn Judge, *Investor-Driven Innovation*, 8 HARV. BUS. L. REV. 291, 293 (2018) (providing an analysis of how financial innovation responds to investor demand).

214. *Id.*

215. *Id.* at 326–27.

ment strategies is a prime example of an investor-driven innovation."[216]

Finfluencers are already creating financial products that cater to retail preferences. Kevin Paffrath, a YouTube finfluencer, has applied to launch three ETFs called Meet Kevin All In ETF, Meet Kevin Select ETF and Meet Kevin Moderate ETF.[217] Certain ETFs actively chase meme returns, betting that momentum and sentiment indicate future returns.[218] Four of these funds—SFYF, FOMO, BUZZ, and MEME—look at online social media chatter and high short interest, among other indicators, to select stocks.[219]

Finfluencer-driven prices can also impact stock indices that contain certain stocks, as well as funds that incorporate those stocks or indices. For example, the Russell 2000 experienced significant volatility as a result of trading in AMC and other meme stocks that are in the index.[220] GameStop and AMC are in the twenty-five billion dollar Vanguard Small Cap Value ETF and the SPDR S&P 1500 Momentum Tilt ETF.[221] Tesla was added to the S&P 500 in late 2020, which means that

216. *Id.* at 319–20; *see also* Hannes et al., *supra* note 208, at 2, 8–11 (noting that ESG investment is expected to reach $50 trillion by 2025, with more than half of investors invested in ESG products in 2022, and describing the rise of ESG focus in the corporate world and considering proponents' justifications—long-term value maximization, stakeholderism and social preferences of investors—for the view that corporations should pursue ESG goals in addition to simple profit maximization).

217. Jakub, *supra* note 73.

218. *See* Michael Wursthorn, *Meet the ETF Portfolio Managers Trying Their Luck with Meme Stocks AMC and GameStop*, WALL ST. J. (June 19, 2021), https://www.wsj.com/articles/meet-the-etf-portfolio-managers-trying-their-luck-with-meme-stocks-amc-and-gamestop-11624110383; *see also* Lan Anh Tran, *What's in a Meme ETF?*, MORNINGSTAR (Oct. 8, 2021), https://www.morningstar.com/articles/1060452/whats-in-a-meme-etf.

219. *See* Tran, *supra* note 218 (noting that SFYF contains the 50 most-popular stocks that its self-directed brokerage customers hold; BUZZ and MEME look to social media presence to select stocks, and MEME factors in high short interest).

220. *See* Kristine Owram, *Russell 2000 Swells; Investors Await Update on AMC, GameStop*, BLOOMBERG NEWS (June 5, 2021), https://www.bloomberg.com/news/articles/2021-06-05/russell-2000-swells-investors-await-update-on-amc-and-gamestop; *see also* Gunjan Banerji & Michael Wursthorn, *You May Own AMC Stock After Its 2,850% Gain and Not Even Know It*, WALL ST. J. (June 2, 2021), https://www.wsj.com/articles/amc-rally-accelerates-as-stock-price-more-than-doubles-11622656821.

221. *See* Banerji & Wursthorn, *supra* note 220.

billions of dollars in index-held assets now also hold Tesla.[222] Because passive investing in many ways still dominates the U.S. investing landscape, enormous values of these funds are traded,[223] and changes to such indices have substantial downstream implications for funds with holdings tied to such indices.[224]

I. *Market Impact and Capital Flow*

Finfluencer-driven trading is positioned to have long-lasting effects on information and the stock market. This is because finfluencers magnify the social media-fueled impact of retail trades. It is also because other market participants may increasingly rationally participate in finfluencer-driven trading or shift financial decisions in response to or in anticipation of finfluencer-driven activity. The more pronounced these phenomena, the greater the shift in the types of information that drive stock price movements—especially as it becomes more difficult to differentiate information from noise.

The stock market's basic function is a simple one: to facilitate capital raising. While noise is an inevitable component of markets, accurate prices have been understood to facilitate smoother capital raising so that companies generating the greatest social value receive more capital at lower cost. On the one hand, finfluencers can distort prices, negatively affecting corporate governance, capital raises, securities litigation, and market confidence.[225] On the other hand, more positively, finfluencers may cause capital to flow more to projects that sim-

222. *See* Peter Santilli, *Tesla Stock Joins the S&P 500: A Game Changer*, WALL ST. J. (Dec. 21, 2020), https://www.wsj.com/graphics/tesla-stock-joins-the-sp500/.

223. *See, e.g.*, *SPDR S&P 1500 Momentum Tilt ETF*, WALL ST. J., https://www.wsj.com/market-data/quotes/etf/MMTM (showing the valuation of assets traded in the SPDR S&P 1500 Momentum Tilt ETF); *see* Dawn Lim, *Index Funds Are the New Kings of Wall Street*, WALL ST. J. (Sept. 18, 2019), https://www.wsj.com/articles/index-funds-are-the-new-kings-of-wall-street-11568799004 (highlighting the enormous value now traded in index funds).

224. *See* Sam Potter & Claire Ballentine, *AMC Drama Is Exposing Risks in $11 Trillion World of Indexing*, BLOOMBERG NEWS (June 5, 2021), https://www.bloomberg.com/news/articles/2021-06-05/amc-drama-is-exposing-risks-in-11-trillion-world-of-indexing; *see also* Banerji & Wursthorn, *supra* note 220.

225. *See* Guan, *supra* note 17 (detailing how retail trading can affect prices with downstream implications for pricing and corporate governance).

ply reflect nontraditional types of information or values, as investors more broadly have done with respect to corporate ESG commitments.[226] This may be through selection of corporate projects, investment flow to finfluencer ETFs, or rational participation in finfluencer-driven trading.

V.
Longer-Term Benefits and Dangers of Finfluencers

Finfluencer-driven activity interacts with the stock market information ecosystem in complex ways. This Part considers the longer-term implications of finfluencer impact. Sections A and B discuss benefits of finfluencers, which include improving financial literacy and increasing retail participation in markets. Section C explores deviating motives that may diminish benefits and distort prices. Section D discusses difficulties in disciplining finfluencers, and Section E considers the potential for fraud and manipulation.

A. *Improving Financial Literacy*

Finfluencers can improve financial literacy, which is critically important as retail investors increasingly participate in stock markets and must wade through huge amounts of information. Leveraging the same trust and engagement traditional brand influencers rely on, finfluencers can act as educators and reach investors otherwise resistant to traditional financial advice.[227]

This is already occurring. Investment platforms such as Betterment, Wealthfront, and even Fidelity, are already part-

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226. *See* Judge, *supra* note 213; Hannes et al., *supra* note 208, at 2 (noting that ESG investment is expected to reach $50 trillion by 2025, with more than half of investors invested in ESG products in 2022). The increasing relevance of non-financial, social concerns to disclosure in the context of securities fraud-on-the-market suits has also been noted. *See* Kevin S. Haeberle, *Fraud-on-the-Market Liability in the ESG Era*, L. & Econ. Ctr. at Geo. Mason 22–041 (Feb. 28, 2023), https://ssrn.com/abstract=4198386 (arguing that ESG disclosure merits reconsidering the scope of current fraud on the market doctrine).

227. *See* Taylan Yalcin et al., *Sustainability Influencers: Between Marketers and Educators,* 28 Bus. F. (Mar. 28, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800316; Egkolfopoulou, *supra* note 203.

nering with influencers.[228] Educational finfluencers exist across different social media platforms, ranging from those who promote specific stocks as a result of analysis to those who disseminate general investing tips.[229] Many retail investors turn to platforms such as TikTok or Instagram to learn about the stock market.[230] The finfluencer Mrs. Dow Jones has founded FINANCE IS COOL UNIVERSITY, a platform to disseminate market tips and information.[231] The website for FINANCE IS COOL UNIVERSITY states:

> What's up, rich person? It's me Haley aka Mrs. Dow Jones and you've been CATFISHED! Yep, all this time you thought managing your money was impossible but it turns out you just didn't have the right teacher. Enter: Me! I'm about to reveal all the money secrets I personally use to get (and stay) rich. Starting from square one. Let me pop your financial cherry & open your eyes to just how fulfilling & exciting life can be when you are financially literate.[232]

In so doing, finfluencers can significantly improve retail financial literacy, a critical goal that has proven notoriously difficult to achieve.[233] Indeed, while some studies have noted that recent new retail investors tend to be younger, lower-income, and more diverse, it is also important to note that for many Americans, stock market participation is still out of reach (and highly correlated with income, education, age and race).[234]

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228. *See* Egkolfopoulou, *supra* note 203; Tara Siegel Bernard, *Trading Stock Tips on TikTok, Newbies Are Deeply Invested in Learning*, N.Y. TIMES (June 21, 2021), https://www.nytimes.com/2021/04/28/your-money/stocks-investing-tiktok.html?searchResultPosition=2.

229. *See* Bernard, *supra* note 228.

230. *See id.*

231. *See* Caleb Silver, *The Measure of Financial Influence with Mrs. Dow Jones*, INVESTOPEDIA (Aug. 22, 2022), https://www.investopedia.com/the-express-podcast-episode-100-6501269.

232. FINANCE IS COOL, https://university.financeiscool.com/p/start-here (last visited Apr. 17, 2023).

233. *See, e.g.*, Fisch & Wilkinson-Ryan, *supra* note 131, at 605, 609 (exploring underinvestment, "naïve diversification," and investing in excessive fee funds as reasons for common mistakes in retail investing).

234. *See* Mark Lush et al., *Investing 2020: New Accounts and the People Who Opened Them*, NORC UNIV. CHI. (Feb. 2021); Lydia Saad & Jeffrey M. Jones, *What Percentage of Americans Owns Stock?*, GALLUP (May 12, 2022). *See also* Fox et al., *supra* note 38, at 1290–91 (noting that negative market perceptions

Many finfluencers thus aim to appeal directly to communities with historically low stock market involvement. For example, 32-year old Rose Han, a YouTube and Instagram finfluencer, stated that "[i]f you turn on CNBC, it's all these older white guys, and it's hard to relate to them because I don't look like them; a lot of my followers don't look like them . . . Being a woman, women trust me more, because they'd rather learn from someone like me than from a finance bro."[235] Tori Dunlap, along with a number of other female finfluencers, aims to help women reach each other in the investing community while being educational.[236] Dunlap has partnered with an app called Treasury, "an investing education platform for the Her First $100K [Dunlap's financial literacy company] community that combines non-judgmental discussion, jargon-free educational videos & articles and tools to easily understand and manage your investments."[237]

This is especially true as younger retail investors increasingly look to social media sites when seeking out information. As stated previously, studies have shown that around forty percent of the younger demographic turn to TikTok or Instagram prior to Google.[238]

B. *Increased Retail Participation*

Finfluencers can also promote more direct investor participation with companies by impacting shareholder governance—especially as finfluencer-driven trading increasingly affects corporate decisions. That is, retail traders might increas-

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can reduce retail participation in markets); *see also* Lydia Saad, *U.S. Stock Ownership Stays at Record Low*, GALLUP (May 8, 2013), http://news.gallup.com/poll/162353/stock-ownership-stays-record-low.aspx (describing stock ownership lows due to "fear the market is still too risky as long as joblessness remains a national problem," at least partially); MICHAEL LEWIS, FLASH BOYS: A WALL STREET REVOLT 200–01 (2014) (tying low stock ownership to perceptions of market unfairness); *see also* Editorial, *The Hidden Cost of Trading Stocks*, N.Y. TIMES (June 22, 2014), http://www.nytimes.com/2014/06/23/opinion/best-execution-and-rebates-for-brokers.html (explaining that sophisticated and everyday investors are not treated equally by the stock market).

235. Whelan, *supra* note 76.

236. *See* Bernard, *supra* note 75.

237. TREASURY, https://treasury.app/herfirst100k/investing-101-workshop?source=Homepage (last visited Apr. 24, 2023).

238. *See* Huang, *supra* note 87.

ingly be motivated to participate in stock markets and governance because their activity tangibly affects prices and corporate outcomes. This can create a feedback loop: as retail traders participate more, companies might more directly communicate with retail investors, spurring additional retail participation in governance.

As I and others have discussed elsewhere, retail investors have significantly increased their capacity to become actively involved in corporate and stakeholder governance.[239] Their social media and trading platforms have lowered the cost of acquiring information and facilitated retail governance participation.[240] Some commentators have thus argued that retail investors may generate substantial shifts in shareholder and corporate governance.[241] Another commentator pointed out that increased retail participation can benefit economic development, improving managerial accountability through direct investment and engagement with companies.[242] Finfluencer-driven trading could contribute to socially-oriented divestment

239. *See* Guan, *supra* note 17. Retail investors have historically been thought to be disinclined to vote. *See* Ricci & Sautter, *supra* note 110, at 80–81. More recently, scholars have begun interrogating that belief. *See* Sarah C. Haan, *Corporate Governance and the Feminization of Capital*, 74 STAN. L. REV. 515, 601 (2022); Jacob H. Russell, *Which Investors to Protect? Evolving Conceptions of the American Shareholder, 1900–Present*, *in* CAMBRIDGE HANDBOOK OF INVESTOR PROTECTION (Arthur B. Laby ed., forthcoming 2022) (manuscript at 43–44). Social media is also shifting that belief. *See* Seth C. Oranburg, *A Little Birdie Said: How Twitter Is Disrupting Shareholder Activism,* 20 FORDHAM J. CORP. & FIN. L. 695, 696 (2015); Ricci & Sautter, *supra* note 110, at 85; Fisch, *supra* note 212 (manuscript at 32) (discussing retail shareholders' role in stakeholder governance, given that "[r]etail shareholders do not simply represent, they embody the interests of employees, customers, the community and society at large"); *See* Alon Brav et al., *Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting*, 144 J. FIN. ECON. 492 (2022).

240. *See* Ricci & Sautter, *supra* note 110, at 83–88 (considering retail shareholder governance); Katja Langenbucher & Fizza Hasan, *GameStop—A Case for Empowering Retail Investors?: A Comparative Glance at the U.S. and the EU, in* SELBSTBESTIMMUNG: FREIHEIT UND GRENZEN 400–01 (Antje G.I. Tölle et al. eds., 2021) (discussing how retail investors might coordinate to monitor management and participate in shareholder governance).

241. *See* Ricci & Sautter, *supra* note 110, at 83–88; Langenbucher & Hasan, *supra* note 240. *But see* Aggarwal et al., *supra* note 56 (based on voting, shareholder proposal, and ESG metrics, finding little evidence that retail shareholders at meme stock companies led to more "democratic" governance regimes).

242. Fisch, *supra* note 212 (manuscript at 4).

and investment movements,[243] and some note that retail investors can even bring value through activist investing.[244]

This is already occurring in some ways. Executives, sometimes finfluencers, are actively seeking out retail investors to involve them in shareholder governance.[245] Companies—and corporate finfluencers—can communicate directly with retail investors on platforms such as Clubhouse, "a new type of social network based on voice—where people around the world come together to talk, listen and learn from each other in real-time."[246] Robinhood recently provided its users with a platform to communicate with other investors as well as with corporations.[247] During Tesla's second quarter 2021 earnings call, more than two thousand users upvoted one question (representing 367,000 shares of Tesla) on that platform.[248] Elon

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243. *See* Catharina Janz et al., *Does ESG Information Impact Individual Investors' Portfolio Choices? – Evidence from an Experiment* (Jan. 21, 2023), https://ssrn.com/abstract=4332893 (finding that ESG information impacts retail investors' portfolio choices); Qianqian Li et al., *Retail Investors and ESG News,* Jacobs Levy Equity Mgmt. Ctr. for Quantitative Fin. Rsch. Paper Series (Mar. 10, 2023), https://ssrn.com/abstract=4384675 (finding that retail investors care about ESG news to the extent they find it financially material to firm performance). This would be in line with broader ESG movements. *See* Hannes et al, *supra* note 208, at 3, 8–10 (noting that ESG investment is expected to reach $50 trillion by 2025, with more than half of investors invested in ESG products in 2022 and describing the rise of ESG focus in the corporate world and considering proponents' justifications—long-term value maximization, stakeholderism and social preferences of investors—for the view that corporations should pursue ESG goals in addition to simple profit maximization).

244. Ricci & Sautter, *supra* note 110, at 91–92.

245. *See* Nina Trentmann, *Connecting with Small Shareholders Remains a Challenge for Companies*, WALL ST. J. (Feb. 7, 2022), https://www.wsj.com/articles/connecting-with-small-shareholders-remains-a-challenge-for-companies-11644229801.

246. CLUBHOUSE, https://www.clubhouse.com/ (last visited May 18, 2023); Matt Phillips, *Hungry for Investors, Some Companies Woo the Little Guy*, N.Y. TIMES (Apr. 14, 2021), https://www.nytimes.com/2021/04/13/business/stock-market-investors.html; *AMC Entertainment Holdings, Inc.'s (AMC) CEO Adam Aron on Q1 2021 Results – Earnings Call Transcript*, SEEKING ALPHA (May 6, 2021), https://seekingalpha.com/article/4425374-amc-entertainment-holdings-inc-s-amc-ceoadam-aron-on-q1-2021-results-earnings-call.

247. *See* Lauren Solberg, *Robinhood Enters the Realm of Proxy Voting*, MORNINGSTAR (Oct. 6, 2021), https://www.morningstar.com/articles/1060879/robinhood-enters-the-realm-of-proxy-voting.

248. *Id.* The question was: "Elon has said that Tesla will be opening up the Supercharger network to other EVs later this year. Can you share more de-

Musk answered the question, and Tesla posted the question later on the platform.[249] Prior to AMC's 2021 annual shareholders' meeting, thousands of AMC's investors discussed voting strategies on Reddit.[250] Retail investors owned over eighty percent of AMC's shares, meaning that they could significantly impact the company.[251] Nikola Corporation and Lucid Group both recently used social media channels such as Reddit and YouTube to engage with retail investors in advance of shareholder votes, even directly engaging with a finfluencer in one instance.[252]

Just as they have driven the creation of certain ETFs and educational platforms, finfluencers might also drive the creation of voting platforms directed at retail shareholders. As one commentator has argued, direct retail investment in companies can make retail investors more likely to be informed about those companies,[253] and voting platforms for otherwise excluded retail investors would improve the shareholder voting process.[254] Voting platforms would enable retail traders to vote more easily, incentivizing companies and proxy solicitation firms to reach out directly to share information with traders.[255] This increased information-sharing by companies makes retail participants more informed and more likely to

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tails on how this will be structured? Will this be select brands? Will they contribute to the growth of the network?" (quoting Robert M., Retail Investor, Tesla).

249. *Id.*

250. *See id.* at 83 n.276.

251. *Aron, supra* note 246. Because of their nicknames, "apes," those investors also began adopting gorillas in 2021. *See* Jason Murdock, *WallStreetBets Users Adopt 3,500 Gorillas, Raise $377,000 for Charity*, NEWSWEEK (Mar. 18, 2021), https://www.newsweek.com/reddit-wallstreetbets-members-adopt-gorillas-charity-raisemoney-update-1577148.

252. *See* Steve Lipin & Keilley Banks*, Getting Out the Retail Vote: Targeting Reddit and New Social Tools in Proxy Solicitations* (Sept. 3, 2022), https://corpgov.law.harvard.edu/2022/09/03/getting-out-the-retail-vote-targeting-reddit-and-new-social-tools-in-proxy-solicitations/ ("The use of new channels and tools reflects the changing nature of the investor community, many of whom are investing through Robinhood and other new platforms and swapping commentary on Reddit, StockTwits, YouTube, Twitter and others.").

253. Fisch & Wilkinson-Ryan, *supra* note 131 (manuscript at 31).

254. Jill E. Fisch, *Standing Voting Instructions: Empowering the Excluded Retail Investor*, 102 MINN. L. REV. 11, 12–19 (2017).

255. *Id.* at 46.

participate, creating a feedback loop.[256] Similarly, the rise of pass-through voting has led to significant investments in infrastructure to reach retail investors and may indicate a growing willingness to consider social or cultural values important to investors. Vanguard is starting a program to give individual investors more options regarding their shares,[257] and Blackrock is implementing a similar program.[258]

Facilitating retail voting and encouraging more informed investor participation could have further benefits, including improving financial literacy and enhancing perceptions of market fairness and access. As noted elsewhere, retail investors could also increase trader heterogeneity, which could help counteract socially harmful behavior by other trading groups, such as active manager herding or speculative trading by hedge funds or day traders.[259] Retail traders could thus potentially diminish market volatility, as retail traders' buying activity during market dips throughout the past few years exemplifies.[260]

C. *Deviating Motives*

As discussed above, as finfluencers gain greater influence and a larger following, they can predict or control trading patterns more easily. This predictive ability can introduce incentives that deviate from providing valuable stock market information.

A central tension emerges. The more finfluencers mediate information, the more they cultivate their followers' trust and can add value for their followers. However, finfluencers

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256. *Id.*

257. *See* Silla Brush, *Vanguard to Test Giving Retail Investors More Voting Power*, BLOOMBERG (Nov. 2, 2022), https://www.bloomberg.com/news/articles/2022-11-02/vanguard-to-test-giving-retail-investors-more-voting-power.

258. Blackrock, *Empowering Investors through Voting Choice* (Nov. 2022), https://www.blackrock.com/corporate/literature/publication/voting-choice-factsheet.pdf.

259. *See, e.g.*, Bikhchandani & Sharma, *supra* note 131, at 279–80, 303 (discussing how and why investment managers herd); Nerissa C. Brown et al., *Analyst Recommendations, Mutual Fund Herding, and Overreaction in Stock Prices*, 60 MGMT. SCI. 1, 3 (2014) (finding price-destabilizing effects resulting from fund managers who herd); Bubb & Krishnamurthy, *supra* note 183, at 1540, 1545 (considering the limits of rational behavior during bubbles); Fisch, *supra* note 212 (manuscript at 4) (discussing benefits of retail participation).

260. Wolff-Mann, *supra* note 114.

become better positioned to gain from wrongdoing, manipulation, and the mere ability to predict and influence their followers' behavior. Profiting at the expense of their followers becomes more tempting. Finfluencers can also be thought of as possessing specific types of private information, such as hype-related characteristics or what they choose to promote next, that the finfluencer can trade on in advance of their followers or the rest of the market. Such information and activity are difficult to observe and predict, making finfluencers' private knowledge particularly valuable.

As finfluencers act as informational bottlenecks and shape the types of "information" reflected in stock prices, their incentives can become skewed and the information reaching investors can be limited or worsened. Finfluencers might lie, create bubbles, keep information private for longer, or release information only once it becomes stale (and after the finfluencer has traded on it).

D. *Finfluencer Discipline*

Traditional brand influencers that market products directly to followers often receive compensation from firms. To a certain degree, these influencers are motivated to write honest reviews because their reputation directly affects their ability to obtain future paid promotions and to reach additional consumers.[261] But even then, consumers struggle to adequately discipline traditional brand influencers for misrepresentations and bad behavior.[262]

To the extent they are sharing investment advice or market information, finfluencers may experience even less of a direct link between reputation and honest performance. When a traditional brand influencer promotes a product, their followers can test it out and assess the influencer's honesty and trustworthiness. But assessing investment advice is notoriously noisy. The behavior and performance of traditional broker-dealers and financial advisors is already difficult to monitor.

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261. Zijun Tian, *How Should Firms Cooperate with Honest Influencers?* (July 26, 2022), https://ssrn.com/abstract=4173460 (explaining that influencers value their authenticity); Amy Pei & Dina Mayzlin, *Influencing the Influencers* (Sept. 10, 2021), https://ssrn.com/abstract=3376904 (examining various degrees of affiliation between companies and influencers).

262. *See* Roberts, *supra* note 47, at 100–01 (documenting difficulties faced by unhappy consumers).

The assessment is even more difficult if a finfluencer is selling not just investment information, but also more intangible products, such as meme-based entertainment or contrarian content.[263]

Consequently, followers may be even less able to effectively discipline finfluencer behavior. Thus, from the finfluencer's perspective, the perceived cost of manipulation, fraud, or creating a bubble ex ante may be lower because the value of a finfluencer's content is less measurable and observable, at least in terms of reputational risk among followers. Moreover, unlike a firm such as Hindenburg Research or a person such as Jim Cramer, the consequences of providing bad information may be lower. The relative anonymity of social media may also provide a shield. A large literature has explored the negative impact of online anonymity on behavior.[264] Similarly, having standalone fame may cushion reputational harms. For example, Elon Musk may not suffer reputational repercussions when his non-informative tweets lead to stock price changes.

E. *Fraud and Manipulation*

At their worst, finfluencers may engage in fraud or manipulation. Successful frauds require disseminating falsehoods that induce others to trade in predictable ways that allow perpetrators to profit off the resulting price moves. Successful manipulations require predicting price movements or influencing price movements in predictable ways, likewise enabling the manipulator to trade in a way that profits off the resulting price moves. Finfluencers are particularly well-positioned to induce price-moving trades among their followers. If a group of traders that follows a finfluencer's advice can move stock prices, and if the finfluencer can control those movements, the finfluencer can buy low and sell high and make significant amounts of money at the expense of their followers.

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263. *See* Daniel Bradley et al., *Bucking the Trend: The Informativeness of Analyst Contrarian Recommendations*, 43 FIN. MGMT. 391 (2014) (finding larger market reactions in response to contrarian analyst recommendations).

264. *See, e.g.*, Maria Konnikova, *The Psychology of Online Comments*, NEW YORKER (Oct. 23, 2013), https://www.newyorker.com/tech/annals-of-technology/the-psychology-of-online-comments.

Several notable pump and dump schemes by finfluencers have made the news in recent years. In late 2021, Steven Gallagher was arrested and charged with securities fraud, wire fraud, and manipulation for using his Twitter account to engage in a pump and dump scheme.[265] After amassing a large following on Twitter under the handle @AlexDelarge6553 (named for the character in *A Clockwork Orange*), Gallagher repeatedly purchased thinly-traded penny stocks and tweeted false and misleading information to encourage his followers to buy those stocks, enabling Gallagher to sell his shares at inflated prices.[266] Similarly, in February 2022, the SEC charged Michael M. Beck for penny stock fraud using his Twitter handle @BigMoneyMike6.[267] And in December 2022, the SEC charged eight social media influencers with fraud and stock market manipulation on Twitter and Discord.[268] According to the Chief of the SEC Enforcement Division's Market Abuse Unit, ". . . [T]he defendants used social media to amass a large following of novice investors and then took advantage of their followers by repeatedly feeding them a steady diet of misinformation, which resulted in fraudulent profits of approximately $100 million."[269] The defendants gained hundreds of thousands of followers on social media, encouraged their followers to purchase stocks the defendants had already bought, and then sold the promoted stocks once their prices rose.[270]

Of course, pump and dump schemes are not new;[271] social media just makes fraud and manipulation easier to accom-

265. Sealed Complaint, U.S. v. Gallagher, *supra* note 12, at 1–3; Complaint, SEC v. Gallagher, *supra* note 12, at 3–4.

266. Sealed Complaint, U.S. v. Gallagher, at 2; Complaint, SEC v. Gallagher, *supra* note 12, at 6.

267. Complaint, SEC v. Beck, at 6.

268. U.S. SEC. & EXCH. COMM'N, *supra* note 1; Complaint, SEC v. Constantin et al., *supra* note 1, at 2.

269. U.S. Sec. & Exch. Comm'n, *supra* note 1.

270. *Id.*

271. *See, e.g.*, Fox et al., *supra* note 151, at 111–12 (discussing various types of stock market manipulation); Tom C.W. Lin, *The New Market Manipulation*, 66 EMORY L.J. 1253, 1292 (2017) ("Unscrupulous parties can now leverage the mechanisms of new media technology and new financial technology to disrupt and distort financial markets on an unprecedented scale by disseminating bad data, fake news, and faulty information into a marketplace that thrives on accurate information." (first citing Zohar Goshen & Gideon Parchomovsky, *The Essential Role of Securities Regulation*, 55 DUKE L.J. 711, 714 (2006); and then citing Sabrina Tavernise, *As Fake News Spreads Lies, More*

plish.[272] Josh Mitts has identified another recent outgrowth of social media-based manipulation: pseudonymous short attacks on public companies followed by price declines and subsequent reversals.[273] In these situations, followers traded on the perceived information disseminated by finfluencers or by pseudonymous writers on the investing site SeekingAlpha.com.[274] Finfluencers were able to generate price movements through follow-on retail trading due to their social media reputation and influence.

To further illustrate the ease of committing fraud or manipulation through finfluencing, consider a pharmaceutical company stock priced at two dollars per share. Volume traded is low, meaning that causing price movements through trading is relatively easy. A finfluencer with a sizeable social media following tells their followers that the company has a drug about to receive FDA approval, a falsehood. The finfluencer has already bought a significant number of shares of the stock at two dollars per share. Upon hearing the lie, the finfluencer's followers pile into the stock, buying until the price reaches five dollars per share. At this point, the finfluencer sells all their shares, making a profit of three dollars per share. The false-

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Readers Shrug at the Truth, N.Y. TIMES (Dec. 6, 2016), https://www.nytimes.com/2016/12/06/us/fake-news-partisan-republican-democrat.html)).

272. *See* Thomas Renault, *Market Manipulation and Suspicious Stock Recommendations on Social Media* (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3010850 (analyzing Twitter messages regarding small capitalization firms and finding evidence consistent with pump and dump schemes); David Skillicorn & David Nam, *Detecting Stock Market Manipulation from Online Forums* (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4041038 (building predictive models for pump and dump schemes using social media posts' language); Christian Leuz et al., *Who Falls Prey to the Wolf of Wall Street? Investor Participation in Market Manipulation* (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082266 (analyzing characteristics of the varying types of individuals who invest in pump and dump schemes); Jean-Yves Delort et al., *The Impact of Manipulation in Internet Stock Message Boards* (Oct. 30, 2009), https://ssrn.com/abstract=1497883; Sanjiv Sabherwal et al., *Do Internet Stock Message Boards Influence Trading? Evidence from Heavily Discussed Stocks with No Fundamental News*, 38 J. BUS. FIN. & ACCT. 1209 (2011) (finding that online message boards can predict trading in some situations).

273. Mitts, *supra* note 31.

274. *See, e.g.*, *id.* at 310 (noting that the market is likely to believe a pseudonym in two scenarios: cases in which an author's prior predictions have historically yielded nonreversals, on average, and cases in which the author has no history).

hood is exposed, and the share price reverses back to two dollars. Many followers who bought at high prices have now suffered substantial losses.

This example illustrates that profitable manipulation or fraud is possible—and even simple—because follower activity is predictable. So one major concern posed by the rise of finfluencers is their ability to amass followers and incentive to profit off of them. Those harmed might include retail investors who exit from the market after losing substantial amounts of money.[275] People who otherwise would invest in the stock market might suffer diminished savings, which might lead to broader negative macroeconomic repercussions.[276] Companies might also suffer reputational injury because of finfluencer activity.[277]

VI.
THE WAY FORWARD

This Part considers the way forward. How do we increase the benefits and decrease the dangers of finfluencing? Although a full explication of reforms is beyond the scope of this Article, this Part provides a preliminary treatment.

At one end, it is critical to incentivize valuable information generation by finfluencers. At the other end, existing prohibitions in the securities markets may offer sufficient protection against clear fraud and manipulation. In the middle, protections against information that is legal but poor quality are not currently robust and should be carefully considered. Section A discusses existing prohibitions against fraud and manipulation. Section B considers requiring more robust disclo-

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275. *See* Fox et al., *supra* note 38, at 1290–91 (discussing how retail market participation might decrease due to negative perceptions of the market); *see also* Saad, *supra* note 234 (describing stock ownership lows resulting at least partially from "fear the market is still too risky as long as joblessness remains a national problem."); LEWIS, *supra* note 234, at 200–01 (tying low stock ownership to perceptions of market unfairness); *see also* N.Y. TIMES, *supra* note 234 (explaining differences in how the stock market treats sophisticated and everyday investors).

276. Fox et al., *supra* note 38, at 1290–91 (pointing out that public perception may warrant a policy response if it is difficult to eradicate and is damaging market functioning).

277. *See* Roberts, *supra* note 47, at 99.

sure from finfluencers. Section C evaluates ways to incentivize better information.

A. *Regulating Fraud and Manipulation*

The antifraud and antimanipulation provisions of the securities laws prohibit clearly illegal misconduct in securities markets.[278] Regulators and courts primarily rely on two provisions of the Securities Exchange Act of 1934 to protect investors from fraud and manipulation: Section 10(b) and its accompanying Rule 10b-5, and Section 9(a).[279]

Section 9(a)(2) prohibits effecting "a series of transactions" in a security (1) that "creat[e] actual or apparent active trading" or affect its price, (2) "for the purpose of inducing the purchase or sale of such security by others."[280] Section 10(b) prohibits the use of "any manipulative or deceptive device" in connection with trading a security in violation of a Securities and Exchange Commission (SEC) rule.[281] Rule 10b-5 makes it unlawful, in connection with the purchase or sale of any security,

> (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person[.][282]

At its core, Section 9(a) depends on the manipulator's purpose, as purchasing or selling a security will necessarily create an actual trade and often affects the price of the security. Rule 10b-5 has largely been used to police deceit and misrepresentation.[283]

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278. By contrast, others have written on the difficulties of holding traditional brand influencers accountable, suggesting creative ways to discipline bad actors. *See generally id.*

279. Securities Exchange Act of 1934, 15 U.S.C. §§ 78i(a)(2), 78j(b).

280. *Id.* § 78i(a)(2).

281. *Id.* § 78j(b).

282. Employment of Manipulative and Deceptive Devices, 17 C.F.R. § 240.10b-5 (2021).

283. Chiarella v. United States, 445 U.S. 222, 234–35 (1980) ("Section 10(b) is aptly described as a catchall provision, but what it catches must be

Pump and dump schemes on social media fall easily within these proscriptions. However, one can imagine the difficulties in applying the regulations to a situation in which a finfluencer simply discloses a financial position in a company's stock or blindly pulls Scrabble tiles from a bag to dictate their trades. Limited remedies exist for investors who might claim they suffered losses as a result of Ryan Cohen's Bed Bath and Beyond stock sales, or because they bought risky stocks after Portnoy randomly selected them. In such situations, no falsehood has been told and intent to manipulate, if it exists, would be difficult to prove. In other words, finfluencers today can easily profit off of their followers' predictable trading behavior without running afoul of antifraud or antimanipulation laws. Merely profiting off other traders' behavior, without more, is not illegal; doing so is the basis of all trading behavior in the stock market.

In other words, the antifraud and antimanipulation laws can be used effectively to prohibit and punish clearly illegal deceptive and manipulative activity.[284] This will protect investors against the worst forms of finfluencer misconduct. On the other hand, legal but potentially harmful behavior requires more creative responses, as discussed next.

B. *Finfluencer Disclosure*

Disclosure can help deter bad behavior or at least mitigate harm. In the traditional brand influencing context, studies have demonstrated that consumers view influencer content more critically and find it less persuasive if they know it is sponsored. [285] In the securities context more broadly, disclo-

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fraud."). Fox et al., *supra* note 154, at 118 n.122 ("*See, e.g.*, Schreiber v. Burlington N., Inc., 472 U.S. 1. 8 n.6 (1985) ("Congress used the phrase "manipulative or deceptive" in § 10(b) and we have interpreted "manipulative" in that context to require misrepresentation." (citations omitted)); Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 476 (1977) (manipulation "refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity" (citations omitted)); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 199 (1976) ("[T]he word "manipulative" . . . is and was virtually a term of art when used in connection with securities markets. It connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities." (citations omitted))).

284. This is especially true if materiality is broadly defined.

285. *See* Roberts, *supra* note 47, at 99–100 (collecting sources).

sure plays a central role in market functioning.[286] At the same time, the limits to disclosures have also been widely discussed.[287]

Most disclosures in securities markets are company-specific, not finfluencer-specific. The distinction is potentially important. Whereas investors might find company-level disclosures confusing and challenging to process, investors may respond more effectively to finfluencer-specific disclosures. Knowing that a finfluencer's post is sponsored may cause viewers to engage with the content more critically and skeptically.[288] Finfluencer disclosures of paid promotions can make

286. *See, e.g.*, Goshen & Parchomovsky, *supra* note 271, at 756–57 (discussing the relationship between disclosure and governance).

287. *See, e.g.*, Robert A. Prentice, *Moral Equilibrium: Stock Brokers and the Limits of Disclosure*, 2011 WIS. L. REV. 1059, 1061–68 (2011) (considering the failures of stockbroker disclosure); James Fallows Tierney, *Investment Games*, 72 DUKE L.J. (forthcoming 2022–2023) (manuscript at 1, 6), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3916407 (arguing that "sophisticated financial intermediaries" largely control investor protection under modern securities law).

288. Disclosures should be utilized carefully. A substantial literature exists on the efficacy of trade-level disclosures, a large portion of which indicates that such warnings are often ineffective and potentially counterproductive. *See, e.g.*, Steven M. Davidoff & Claire A. Hill, *Limits of Disclosure*, 36 SEATTLE U. L. REV. 599, 599–604 (2013) (discussing the limits of disclosure, including for sophisticated investors); Prentice, *supra* note 287, at 1061–68. For example, companies like AMC and Hertz expressly warned investors that their stock might be worthless. *See* Joe Wallace, *AMC Shares Sink on Stock Sale Plan and Warning to Buyers*, WALL ST. J., (June 3, 2021) https://www.wsj.com/articles/meme-stocks-gyrate-after-amc-files-to-sell-more-shares-11622721750; Hertz Glob. Holdings, Inc., Prospectus Supplement to Prospectus Dated June 12, 2019 (Registration Statement No. 333-231878) (June 15, 2020) ("We are in the process of a reorganization under chapter 11 of title 11, or Chapter 11, of the United States Code, or Bankruptcy Code, which has caused and may continue to cause our common stock to decrease in value, or may render our common stock worthless. Investing in our common stock involves a high degree of risk."). These warnings did not prevent retail investors from purchasing the stock. *See* Virginie Montet, *AMC Completes Large Stock Offering Despite Blunt Investor Warning*, YAHOO! NEWS (June 3, 2021), https://news.yahoo.com/amc-completes-large-stock-offering-183303685.html (noting that AMC raised nearly $600 million despite warning that "'[u]nder the circumstances, we caution you against investing in our Class A common stock, unless you are prepared to incur the risk of losing all or a substantial portion of your investment'" (quoting AMC, Prospectus Supplement to Prospectus Dated December 30, 2020 (File No. 333-251805) (January 25, 2021))).

their followers feel more informed and encourage them to critically evaluate information, further contributing to financial literacy and retail participation.

Other types of disclosures can be considered.[289] For example, social media platforms could publish lists of finfluencers who have had been fined or had legal action taken against them, much as FINRA's BrokerCheck database provides information on credentials and violations for brokers.[290] Doing so could be voluntary, if social media companies believe that users prefer platforms with trustworthy finfluencers. Corporations or hedge funds could be encouraged to disclose social media activity as well, in the same way that commitment to social or environmental goals has gained significant traction in the corporate world.[291] In non-financial contexts, others have

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289. While beyond the scope of this Article, it bears noting that regulating finfluencer content may implicate certain First Amendment concerns. Under the Investment Advisers Act of 1940, which governs investment advice and advisers, individuals can disseminate financial advice without registering under the Act so long as it is through a "publication of regular and general circulation." In October 2021, Robinhood's submission to the SEC argued that "Whether through words or other modes of communication such as animation and graphics, [digital engagement] practices convey ideas and information and thus constitute speech entitled to First Amendment protection," and that "[a]n effort to regulate digital engagement practices based on their communicative content would therefore face strict First Amendment scrutiny — which regulations rarely survive." *See also, e.g.*, Norton, *supra* note 131 (exploring the intersection between First Amendment protections and manipulation). Norton explores the degree to which manipulative speech is prohibited and points out that the Supreme Court's commercial speech doctrine does not address commercial speech that is manipulative but not deceptive. *Id.* at 233. Norton proposes that the Court should extend its doctrine to include "manipulative" commercial speech. *Id.* False or misleading speech is not protected by the First Amendment. *See* Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 447 U.S. 557, 563–64 (1980).

290. BrokerCheck, FINRA, https://brokercheck.finra.org/.

291. *See, e.g.*, Hannes et al., *supra* note 208, at 8–10 (describing the rise of ESG focus in the corporate world and considering proponents' justifications—long-term value maximization, stakeholderism and social preferences of investors—for the view that corporations should pursue ESG goals in addition to simple profit maximization). A wide-ranging debate exists as to the effectiveness of ESG commitments. *See id.* at 3 (observing a "wide gap between the rhetoric that calls for the promotion of ESG goals and the advancement of ESG goals in practice"); Dorothy Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563; Marcel Kahan & Edward Rock, *Systemic Stewardship with Tradeoffs*, (N.Y.U. L. & Econ Rsch, Working Paper No. 22-01, 2022), https://ssrn.com/abstract=3974697.

proposed various tools to address harmful and manipulative activity online: limitations on autoplay and infinite scrolling, strict default privacy settings, and other content-neutral restrictions.[292] Others have argued that financial regulators such as the Consumer Financial Protection Bureau should engage in social media content analysis to monitor consumers, influencers, and market activity, treating platforms such as TikTok as "modern complaint boxes."[293] This could also chill predatory behavior, the authors argue.[294]

With respect to sponsored finfluencer activity, Section 17(b) of the Securities Act of 1933 contains anti-touting provisions that prohibit promoting a security without disclosing compensation or the amount of such compensation.[295] The SEC has recently settled with a number of celebrities over illegal touting of cryptocurrency on social media without disclosing that they received payments.[296] Courts have also held that news writers have a duty to disclose certain stock market financial interests.[297] Of course, broker-dealers and investment advisors are subject to a detailed regime of regulations governing many aspects of their practices, including disclosure, reporting, marketing, and so forth.[298] These regulations apply to their social media activity as well. However, most finfluencers

292. *See, e.g.*, Norton, *supra* note 131, at 241–42 (collecting sources).

293. Nikita Aggarwal et al., *#Fintok and Financial Regulation*, 54 ARIZ. ST. L. J. 333, 337 (2023).

294. *Id.*

295. 15 U.S.C. § 77q(b).

296. U.S. SEC. & EXCH. COMM'N, *supra* note 52; U.S. SEC. & EXCH. COMM'N, *NBA Hall of Famer Paul Pierce for Unlawfully Touting and Making Misleading Statements about Crypto Security* (Feb. 17, 2023), https://www.sec.gov/news/press-release/2023-34; U.S. SEC. & EXCH. COMM'N, *SEC Charges Crypto Entrepreneur Justin Sun and his Companies for Fraud and Other Securities Law Violations* (Mar. 22, 2023), https://www.sec.gov/news/press-release/2023-59 (charging Lindsay Lohan, Jake Paul, DeAndre Cortez Way (Soulja Boy), Austin Mahone, Michele Mason (Kendra Lust), Miles Parks McCollum (Lil Yachty), Shaffer Smith (Ne-Yo), and Aliaune Thiam (Akon)).

297. *See* Mitts et al., *supra* note 31, at 5 (collecting cases).

298. *See* U.S. Sec. & Exch. Comm'n, Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology to Develop and Provide Investment Advice (Aug. 27, 2021), https://www.sec.gov/rules/other/2021/34-92766.pdf, pp. 33–35 (asking for comments regarding digital engagement investment practices).

are not registered financial advisors and may not be subject to many of these regulations, especially if they are not receiving payment for their content.

Some jurisdictions have begun to issue advice regarding social media financial content. So far, the SEC has largely limited inquiries into the social media use of registered investment advisers or broker-dealers.[299] Financial regulators elsewhere have begun to issue guidance related to financial advice on social media, typically clarifying how financial content might breach relevant regulations.[300] For example, a statement issued in October 2021 by the European Securities and Markets Authority clarified the consequences of EU Market Abuse Regulation violations for investment recommendations on social media.[301] Similarly, an information sheet issued in March 2022 by the Australian Securities and Investments Commission warned against potential violations of the 2001 Corporations Act for social media influencers with financial content.[302]

C. *Better Finfluencer Information*

More broadly, it is important to incentivize better information generation by finfluencers. Of course, understanding what comprises "good" information remains a challenge. Information continues to evolve beyond financial statement analysis, even for traditional investors.[303] And as discussed pre-

299. *See id.* at 1.

300. *See* DELOITTE, *Regulatory Posture on Social Media Advertising and Finfluencers* (June 28, 2022), https://www2.deloitte.com/gu/en/pages/financial-services/articles/regulatory-posture-social-media-advertising-finfluencers.html (summarizing guidance provided by the Financial Market Authority of New Zealand, the European Securities and Markets Authority, the Australian Securities and Investments Commission, and the Monetary Authority of Singapore, among other regulatory bodies).

301. EUR. SEC. & MKTS. AUTH., *ESMA's Statement on Investment Recommendations on Social Media* (Oct. 28, 2021), https://www.esma.europa.eu/sites/default/files/library/esma70-154-2780_esmas_statement_on_investment_recommendations_on_social_media.pdf.

302. AUSTL. SECS. & INVS. Comm'n, *Discussing Financial Products and Services Online* (Mar. 2022), https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/.

303. *See, e.g.*, U.S. SEC. & Exch. COMM'N, *SEC Says Social Media OK for Company Announcements if Investors Are Alerted* (Apr. 2, 2013), https://www.sec.gov/news/press-release/2013-2013-51htm (clarifying that compa-

viously, the borders of the market's understanding of "information" may merit expansion.

If deployed productively, finfluencers and social media can play a substantial role in disseminating good information to retail investors, which would expand the retail investor base and help address broader financial literacy and fairness concerns.[304] Finfluencers' incentives to strengthen their reputations, develop trust, and amass additional followers should be leveraged. Research in analogous contexts has found that social monitoring may generate better informational content in financial reports.[305] If finfluencers who have historically provided valuable information generate more trust and engagement among followers, those finfluencers might be incentivized to continue to provide valuable information and discouraged from providing poor quality information.

Incentivizing finfluencers to generate good information that contributes to price accuracy would benefit retail investors as well as the market's price discovery mechanisms. Additional incentives could be given to finfluencers who make edu-

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nies can use social media to disseminate information in compliance with Regulation Fair Disclosure).

304. Fairness concerns and other structural disadvantages experienced by retail investors could also be alleviated by an improvement in the quality of information disseminated by social media. Theoretical conceptions of "fairness" in stock prices do not evaluate whether each investor nets a positive return. Instead, the evaluation of fairness generally depends on how it affects market participants' wealth positions *ex ante*. *See* Fox et al., *supra* note 38, at 1263. Fair prices, moreover, are commonly defined simply as prices that reflect all publicly available information. Of course, *perceived* fairness can significantly affect retail investing behavior. *See* FOX ET AL., *supra* note 14, at 49–54.

305. Fox et al., *supra* note 38, at 1368 (discussing how Seeking Alpha authors might be incentivized to contribute good information); *see also* Jonathan Clarke et al., *Fake News, Investor Attention, and Market Reaction*, 32 INFO. SYS. RSCH. 35, 49–51 (2021) (demonstrating that fake news attracts more attention than legitimate news on Seeking Alpha); Paulo B. Goes et al., *"Popularity Effect" in User-Generated Content: Evidence from Online Product Reviews*, 25 INFO. SYS. RSCH. 222, 236 (2014) (noting that more objective reviews result from more viewership). Of course, rational decision making can also be impeded by social monitoring, as others discussed in the context of disclosure. Peer activity may lead to more self-monitoring and better outcomes, but it can also worsen irrational behavior. *See* Davidoff & Hill, *supra* note 288, at 603, 632 (discussing the limits of disclosure) (citing Judith Chevalier & Glenn Ellison, *Career Concerns of Mutual Fund Managers*, 114 Q. J. ECON. 389, 389 (1999)).

cation a significant part of their platform. For example, regulators could consider partnering with platforms such as FINANCE IS COOL UNIVERSITY to warn against misinformation.

As discussed above, companies and institutional investors might consider communicating directly with finfluencers and retail investors. One way to do this is through voting platforms. Vanguard and Blackrock have launched programs to give individual investors more options regarding their shares.[306] Increased participation and communication could facilitate better information sharing while contributing to financial literacy.[307] Companies and institutional investors can also reach finfluencers and retail investors through direct retail communication. Companies are increasingly shifting their communication strategies to include direct conversations with retail investors, content on social media, and monitoring retail trading platforms.[308] Expanding access and communication could also increase companies' or institutions' willingness to consider social or cultural values that are important to finfluencers and retail investors in making financial decisions.

Finally, it may be worth considering developing some kind of a repository for "qualified" finfluencers. As one example, the Financial Planning Standards Board has recently provided recommendations to the International Organisation of Securities Commissions Retail Market Conduct Task Force, suggesting the establishment of a regulatory "sandbox" for finfluencers and publication of a list of participating finfluencers.[309]

CONCLUSION

This Article has documented the rise of finfluencers in today's stock markets, analyzed how finfluencer-driven trading interacts with the conventional normative framework for price

306. *See* Brush, *supra* note 257; Blackrock, *supra* note 258; Martha Carter et al., *Be Careful What You Wish For*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Dec. 28, 2022), https://corpgov.law.harvard.edu/2022/12/28/be-careful-what-you-wish-for/.

307. Fisch, *supra* note 212 (manuscript at 31).

308. *See* Trentmann, *supra* note 245.

309. Sonia Rach, *'Finfluencers' Are the Supply Filling a Demand*, FIN. TIMES (Aug. 25, 2022), https://www.ftadviser.com/your-industry/2022/08/25/finfluencers-are-the-supply-filling-a-demand/.

discovery, and assessed the benefits and dangers of finfluencers.

Finfluencers are disrupting the information-based ecosystem of today's stock markets by amplifying retail trading impact and expanding the types of "information" reflected in stock prices. Markets must reconsider what information is contained in stock prices and who controls or shapes that information. Capital flow in the real economy is being affected in complex ways and might increasingly reach projects that reflect nontraditional types of information or values. While finfluencers can benefit the market by improving financial literacy and increasing retail participation, they may also have skewed incentives to create bubbles or engage in fraud and manipulation. While the securities laws are equipped to punish clearly illegal behavior, other reforms should focus on improving communication and information.