



November 10, 2023
9 am – 10:15 am

Session 102 | *Hit That Pause Button! A 360 Review on the Gamification of Investing for Retail Investors*

Retail investors are increasingly engaging with financial institutions through digital means, as technological advancements make it easier and faster to instantaneously trade. Giving investors information and access at their fingertips expands investor choice, but it has also led to regulatory concerns over harmful gamification of retail investor experiences - think GameStop trading frenzy of 2021. Most recently, the SEC has heightened its focus on how broker-dealers and investment advisors' use tools that rely on data analytics to engage retail investors to trade securities, through a new series of proposed regulation..

This topic not only sits at the intersection of fast-moving technologies (including AI, behavioral science, and data analytics), investor protection and access to investment opportunities, ethical considerations, and the blurring of the line between brokerage and advice, it goes beyond investing and impacts the broader banking and blockchain ecosystems.

This panel of law firm practitioners and in-house attorneys, including former SEC and CFTC regulators, will discuss the broad regulatory focus currently on this issue, how financial services firms and FinTech companies are wrestling with balancing innovation with investor protection, and most importantly, what every retail individual should be thinking about as an every day investor.

Speakers:

- Rosalynn Hsu Cormier, *Associate General Counsel, Head of Retail Brokerage Legal, The Vanguard Group, Inc.*
- Elizabeth Lan Davis, *Partner, Co-chair, Financial Services Practice, Davis Wright Tremaine LLP*
- Joon Kim, *General Counsel & Board Member, Mina Foundation*
- Jennifer Lee, *Partner, Jenner & Block LLP*
- Curtis K. Tao, *Deputy General Counsel – Bank Regulatory, Citigroup*



Hit That Pause Button!

A 360 Review on the
Gamification of Investing for
Retail Investors

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COMMUNITY
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Speakers

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Fun Meets Finance - What is Investment Gamification?

- Investment gamification involves the integration of gaming elements, such as points, badges, and leaderboards, into investment platforms to encourage investors to take action and engage with the platform.
- Investment gamification aims to make investing more engaging, interactive, and accessible to a greater number of individuals.



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Investment Gamification a Double-Edged Sword



- Democratization of investing to all
- Greater access to education and insight
- Digital engagement can prompt better investment practices in investors

- Preys on human behavioral psychology and changes investing to gambling
- Uninformed and uneducated investors
- Creates day traders and incentivizes short-term trading
- Investor harm and financial risk



SEC's Focus on Digital Engagement Practices



Exam Priority
for 2023

- Recommendations/advice through social media marketing and social trading platforms
- Representations are fair and accurate
- Operations and controls are consistent with investor disclosures
- Recommendations/advice are in the best interest of the investor
- Risks considered for seniors



Enforcement

No cases yet, but likely will focus on traditional breaches of fiduciary duty



Proposed
rules

A firm must evaluate whether its use of technologies in investor interactions involves a conflict of interest and then eliminate the conflict.

Considerations for SEC Regulation

- Digital engagement practices are harmful
- Investor protection means elimination of the conflict, not just disclosure



SEC

- AI can affect market integrity and needs to be regulated
- Informed investors should be able to think for themselves



Investor

Gamification in Other Areas

- CFTC
 - Similar GameStop activity in precious metals markets: commodity-backed exchange traded products, gold, silver, commodity futures and options
 - Silver Rises With Hype It's the Next GameStop, but a Backlash Mutes Gains - The New York Times (nytimes.com)
 - Stocks End Higher as Online Traders Send Silver Soaring – WSJ
 - *Customer Advisory: Understand Risks and Markets Before Reacting to Internet Hype, CFTC Release No. 8373-21 (April 6, 2021)*

Gamification in Other Areas

- Other Regulators
 - FINRA
 - 2021 Report on FINRA's Examination and Risk Monitoring Program (FINRA, Feb. 2021)
 - DOJ
 - [GameStop Mania Is Focus of Federal Probes Into Possible Manipulation – WSJ](#)
 - States: New York, Texas, Massachusetts
 - [States Move to Probe GameStop Trading, Brokerage Issues | ThinkAdvisor](#)
 - *In re Robinhood Financial, LLC*, Mass. Secur. Div., Dkt. No. E-2020-0047 (Complt., Dec. 16, 2020)
 - UK Financial Conduct Authority
 - [Lessons to learn from the GameStop episode | FCA](#)

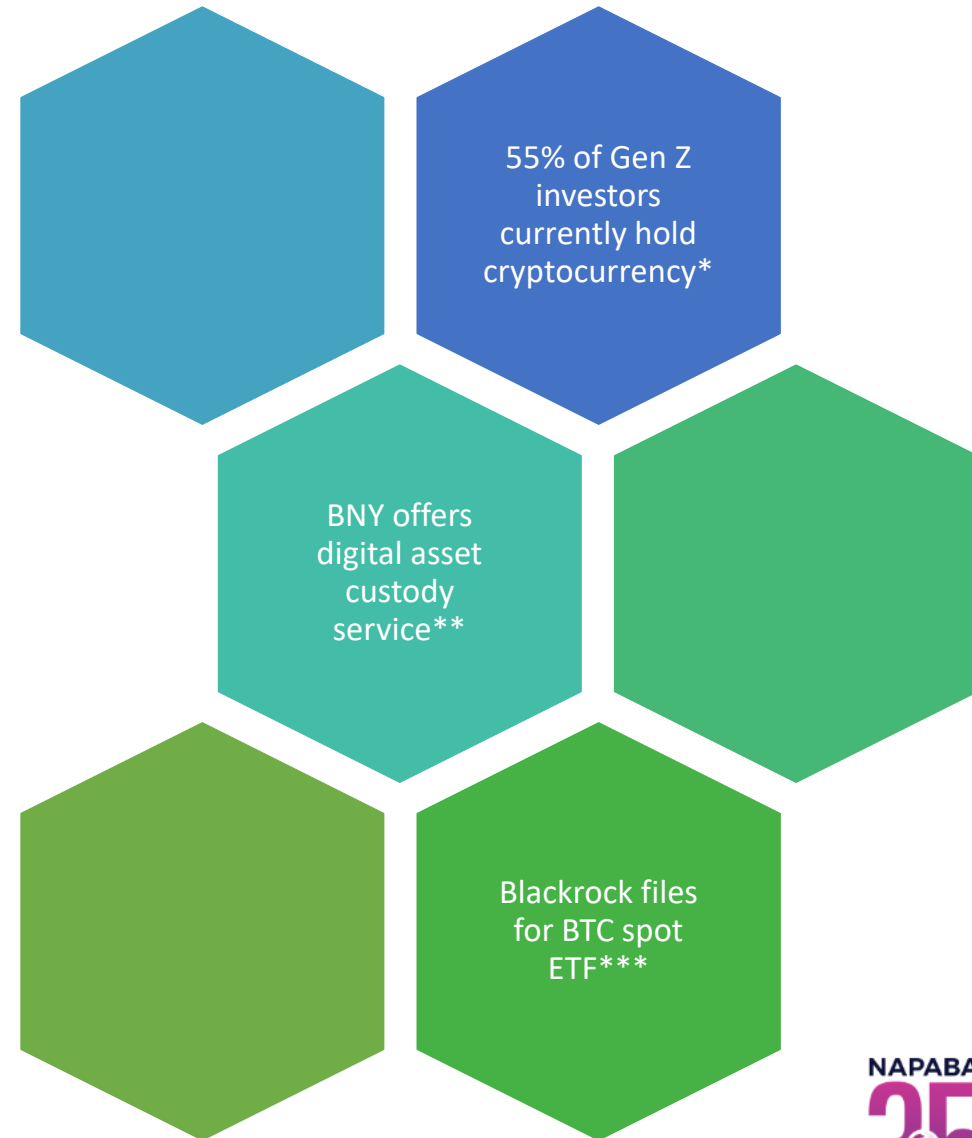
Gamification in Other Areas

- Common Concerns
 - Market volatility
 - Investor protection-potential risks to customers and disclosure of same
 - Potential fraud and manipulation
 - System outages and disruptions
 - Capital requirements

Cryptocurrency

What is blockchain?

What is
cryptocurrency?



* <https://www.cnbc.com/2023/06/07/crypto-is-gen-zs-most-common-investment-that-may-be-risky.html>

** <https://www.reuters.com/business/finance/bny-mellon-offer-crypto-services-2022-10-11/>

*** <https://www.cnbc.com/2023/06/15/blackrock-files-for-spot-bitcoin-etf-with-coinbase-as-a-crypto-custodian.html>

Cryptocurrency

- Cryptocurrency & gamification
 - An asset class that trades 24/7
 - Validator & node operators
 - MEV (Maximum Extractable Value)
- One of the SEC's biggest concerns in approving spot ETFs
 - Market surveillance
- Take-aways for investment advisers, broker-dealers and financial institutions





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Questions?

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