

Finfluencers and Other Tech Disruptions to Corporate Law -Insights from South Korea and India

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Abstract

Technology has disrupted corporate law in many ways and continues to do so. Influencers on social media who have started having influence in the space of personal finance which includes providing ideas and tips about how and where to invest, have come to be known as finfluencers. Whether or not what they do qualifies as 'financial advice' has been a matter of regulatory interest across jurisdictions. This paper provides an account of the rise of finfluencers with a focus on two Asian jurisdictions-South Korea and India, and argues that social media has enabled them to connect corporations and society like never before. Thus, while the focus on the paper is finfluencers, the infrastructure making it possible for finfluencers to operate and have an impact-social media-is also an important consideration. The paper further argues that it is key to ensure that any regulation of finfluencers should address the dark side of the finfluencing world without stymieing the many benefits. The paper's aim is to stake out the phenomenon in the context of broader social media disruptions of corporate law.

Keywords: Finfluencers, India, South Korea, retail investors, social media, corporate governance

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FINFLUENCERS AND OTHER TECH DISRUPTIONS TO CORPORATE LAW – INSIGHTS FROM SOUTH KOREA AND INDIA

Akshaya Kamalnath*

Abstract

Technology has disrupted corporate law in many ways and continues to do so. Influencers on social media who have started having influence in the space of personal finance which includes providing ideas and tips about how and where to invest, have come to be known as finfluencers. Whether or not what they do qualifies as ‘financial advice’ has been a matter of regulatory interest across jurisdictions. This paper provides an account of the rise of finfluencers with a focus on two Asian jurisdictions – South Korea and India, and argues that social media has enabled them to connect corporations and society like never before. Thus, while the focus on the paper is finfluencers, the infrastructure making it possible for finfluencers to operate and have an impact – social media – is also an important consideration. The paper further argues that it is key to ensure that any regulation of finfluencers should address the dark side of the finfluencing world without stymieing the many benefits. The paper’s aim is to stake out the phenomenon in the context of broader social media disruptions of corporate law.

1. Introduction

More young people are engaging with companies as shareholders, stakeholders, or simply members of society, using different social media platforms like X (formerly Twitter), TikTok, Instagram, and Reddit groups.¹ Individuals, who have come to be known as finfluencers, are able to influence large sections of the online crowd to invest in particular companies.²

As I explain in a forthcoming paper titled ‘Hashtag Capitalism: An Introduction’, social media has facilitated an exchange between society and companies that is different from what we had

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¹ Sergio Alberto Gramitto Ricci and Christina M. Sautter ‘The Wireless Investors Movement’ (*University of Chicago Business Law Review Blog*, 2022) < <https://businesslawreview.uchicago.edu/online-archive/wireless-investors-movement>> accessed on 26th May 2024.

² Sue Guan, ‘The Rise of the Finfluencer’ (2023) 19(3) *New York University Journal of Law and Business* 489.

seen before in three ways.³ First, people are able to coordinate their actions vis-à-vis companies in a way that has made corporations take notice and respond. Recent #MeToo and #BLM movements are examples. Second, companies are unable to distinguish between shareholders, stakeholders, and everyone else on social media. Third, irrespective of who is talking about or engaging with companies on social media, and in what capacity they are engaging (for instance, some might be both shareholders and customers), most companies are responding to it because of the reputational impact of issues highlighted on social media. This changing dynamic between business and society, facilitated by social media, can be termed as Hashtag Capitalism because the decisions of companies are being influenced by feedback (or campaigns, or complaints, or activism, or engagement) from society (consisting of shareholders and stakeholders broadly defined) via social media. A hashtag is a common way of aggregating views on social media. To go back to the #MeToo and #BLM examples, the use of these phrases/ acronyms alongside the hashtag helped others who were also engaging with the issue online to converse with the person posting their message with the hashtag.

Within this new phenomenon of hashtag capitalism, influencers, i.e., individuals who have gained a large number of followers because of the content and entertainment value of their posts about personal finance and investments, have become key players in steering the narrative about companies. So much so, that many companies are paying influencers to market themselves. This paper is specifically concerned with the implications of the rise of influencers within the wider hashtag capitalism phenomenon. Because of this focus, the paper will mainly examine the first of three points listed under the explanation of hashtag capitalism, above – social media facilitating coordination of engagement with companies. Even within this, the paper is especially concerned with shareholders because the influence of influencers is most felt when they are able to influence buying and selling of shares. (Thus, while movements like #MeToo and #BLM are examples of coordinated engagement via social media, they are not the focus of this paper because the coordination was not orchestrated by influencers and because those movements did not result in the buying and selling of shares.)

While influencers have gained influence in some western markets especially in the United States, Asian jurisdictions have also seen the rise of influencers. This is interesting because while many Asian jurisdictions are not traditionally known to have dispersed shareholding, influencers bring more members of society into the market as retail investors and then

³ Akshaya Kamalnath, 'Hashtag Capitalism: An Introduction' (2024) *Alternative Law Journal* '(forthcoming)'.

coordinate their engagement with companies. This paper will briefly survey the impact of finfluencers globally and will discuss the situation in India and South Korea in greater detail.

2. The rise of finfluencers

The story of the rise of finfluencers is tangled with the story of the rise of retail investors, social media, the Covid-19 pandemic, and investing apps that made it easy and fun for retail investors to make and manage investments. Robinhood, a commission free trading app in the US allowed retail investors to invest small amounts and used animations like confetti to celebrate an investment being made.⁴ This gamification coupled with disposable income and free time as a result of the pandemic and consequent lockdowns and pandemic payouts, caused an increase in retail investing.⁵

All of this came to a head when retail investors coordinated the buying of shares in the U.S. company GameStop which is a retail chain that sells video games, based on social media posts and emotional support for a company they had fond memories of, despite the company having poor fundamentals. The context in which retail investors were coordinating this was a market in which the stock of GameStop was heavily shorted by hedge funds. In other words, the institutional players were claiming that the stock of GameStop was overpriced.⁶ Many retail investors seemed to be motivated by an ethos of going against the establishment i.e., large corporations and traditional financial institutions, when they came together to buy and hold on to stock of a company that was being shorted by the big market players.⁷ The idea of short-selling itself was disliked by retail investors and this reflects the popular view that short sellers

⁴ For a detailed discussion on the rise of low cost trading platforms, see Allan M. Malz, 'The GameStop Episode: What Happened and What Does It Mean?' (2021) 41(3) *Cato Journal* 529, 531. ["Robinhood is heir to a half-century evolution making equity trading cheap and accessible to the nonprofessional public in the United States and other countries. Before 1970, individuals and households that weren't wealthy invested in stocks mainly via pension claims and insurance products, rather than direct ownership of stocks and through mutual funds. From the mid-1970s, changes in regulation, technical progress, rising wealth, and better understanding of long-term investing brought about a shift. The Securities and Exchange Commission (SEC) abolished fixed stock trading commissions on May 1, 1975.]

⁵ Jill E. Fisch, 'GameStop and the Reemergence of the Retail Investor' (2022) 102 *BU L Rev* 1799, 1803.

⁶ *ibid.*

⁷ Sergio Alberto Gramitto Ricci and Christina M. Sautter 'Wireless Investors & Apathy Obsolescence' (2022) 100 *Washington University Law Review* 1653-1686.

are bad (a villain in one of the Bond movies was a short seller).⁸ The intuition for this negative view of short selling is that one person or institution is making money while everyone else is losing money.⁹ Organising online also allowed people, especially millennial and GenZ (also called Net Gen or Zoomers) investors, to connect with each other, find common ground, and trade jokes and online memes with each other.¹⁰ Ultimately, while retail investors caused the price of GameStop stock to go up, there is a view that this inflated price did not reflect the company's fundamentals.¹¹ The term 'meme stock' was coined to make sense of this phenomenon where retail investors caused the stock of a company to go up, not based on its fundamentals but on the fact that they are popular on the internet.¹²

At the epicentre of the Gamestock movement was a finfluencer, Keith Gill, who went by the name of Roaring Kitty. Gill influenced people's decisions to buy shares in GameStop even when the price of a share had gone from \$4 to \$80 and then to not sell the shares even when they could have made a profit by selling.¹³ How did Gill manage this? He posted frequent videos where he spoke about linking Gamestock, buying its shares, and holding on to them ("diamond hands").¹⁴ He was also active on Reddit where he went by the name 'DeepF-----Value' and it was within the Reddit thread/ forum, WallStreetBets, that retail investors discussed Gill's advice and formed a community of sorts.¹⁵ One explanation for why retail investors followed Gill's advice

⁸ Ryan Kailath, 'Wall Street Short Sellers: Hated For Centuries' (NPR 15 February 2021) <<https://www.npr.org/2021/02/15/966877259/wall-street-short-sellers-hated-for-centuries>> accessed on 26th May 2024.

⁹ *ibid.*

¹⁰ Sergio Alberto Gramitto Ricci & Christina M. Sautter, 'The Wireless Investors Movement', (*University of Chicago Business Law Review Blog*, Jan. 28 2022) <<https://businesslawreview.uchicago.edu/online-archive/wireless-investors-movement>> accessed on 26th May 2024.

¹¹ Jill E. Fisch (n 5) 1802.

¹² Elizabeth Gravier 'Meme stocks: What are they and why you should be careful buying them' (*CNBC* 28 March 2024) <<https://www.cNBC.com/select/what-is-a-meme-stock/>> accessed on 26th May 2024.

¹³ Sue S. Guan (n 2) 493; Srivindhya Kolluru, 'The new wave of money-smart mentors or 'fin-fluencers' is here' (*CPA Canada*, 23 February, 2023) <<https://www.cpacanada.ca/news/pivot-magazine/fin-fluencers-trend>> accessed on 26th May 2024.

¹⁴ Guan (n 2) 493. See also **Dumb Money**.

¹⁵ Yun Li, 'Reddit user who helped inspire GameStop mania says he lost \$13 million on Tuesday, but is still holding on' (*CNBC*, 2 February 2021) < <https://www.cNBC.com/2021/02/02/reddit-user-who-helped-inspire-gamestop-mania-says-he-lost-13-million-on-tuesday-but-is-still-holding-on.html#:~:text=still%20holding%20on->

even when they risked losing a lot of money by doing so is that at the height of the pandemic, the discussion on the reddit forums and other social media offered investors a sense of community.¹⁶ Gill referred to this in his congressional testimony when he said they had ‘fun’.¹⁷ The people on the WallStreetBets discussion boards even developed shared ways of celebrating when they made money on their investments – by eating chicken tenders which they referred to as ‘tendies’.¹⁸ These retail investors on WallStreetBets came to be called apes and in honour of this, they adopted some gorillas through the Dian Fossey Gorilla Fund International.¹⁹ This too was a matter of one redditer doing it and the others following suit.²⁰

Apart from Gill, the retail investors betting on GameStop also got support from Elon Musk who was then already a prominent poster on Twitter which has now been acquired by Musk and renamed X. Musk, although unconnected to GameStop, posted a link to WallStreetBets with the words ‘Gamestonk!!’ on X (or Twitter as it was then), in January 2021 when the GameStop frenzy had just begun.²¹ GameStop’s stock price went up by 60% as a result of this tweet. Musk’s posts on social media, especially X, even prior to the Gamestonk tweet had been known to have an impact on the market, thus making him a finfluencer as well.²² Musk has been known to dislike short sellers and has been vocal about this in the context of the stock of Tesla, one of

,Reddit%20user%20who%20helped%20inspire%20GameStop%20mania%20says%20he%20lost,but%20is%20still%20holding%20on&text=Keith%20Gill%2C%20AKA%20Reddit's%20DeepF,as%20the%20shares%20dropped%2060%25. > accessed on 26th May 2024

¹⁶ *ibid.*

¹⁷ Sergio Alberto Gramitto Ricci & Christina M. Sautter, ‘Corporate Governance Gaming: The Collective Power of Retail Investors’ (2021) 22(1) *Nev. L.J.* 51.

¹⁸ *ibid.* 72.

¹⁹ *ibid.* 72.

²⁰ *ibid.* 73.

²¹ Elon Musk, ‘Gamestonk’ (*Twitter*, an. 26 2021)

<<https://twitter.com/elonmusk/status/1354174279894642703?lang=EN>> accessed on 26th May 2024; Guan (n 2) 494.

²² Jessica Bursztynsky, ‘GameStop jumps after hours as Elon Musk tweets out Reddit board that’s hyping stock’ (*CNBC* 26 January, 2021) <<https://www.cnbc.com/2021/01/26/gamestop-jumps-as-elon-musk-tweets-out-reddit-board-thats-hyping->

stock.html#:~:text=Shares%20of%20GameStop%20were%20up,closed%20up%2092.7%25%20on%20Tuesday.> accessed on 26th May 2024. [Musk’s call-outs to certain companies have influenced stock prices before. Earlier Tuesday, he tweeted about a hand-knit wool hat he bought for his dog on Etsy. That sent shares of the company up as much as 8% in premarket trading, though it ultimately closed down 2.1%.]

his companies, being shorted.²³ He is also known to voice his views on social media. Sue Guan has provided a useful taxonomy to help distinguish various kinds of finfluencers. She terms Gill and others like him ‘ordinary investor finfluencers’; and Musk as an ‘identity finfluencer’, i.e. one whose influence comes from their identity as a business person. Guan also identifies a third category – celebrity finfluencers who are often paid. For example, if Kim Kardashian was paid to promote a financial product, she would fall into this category.²⁴ These are represented in Chart 1 below.

There is also a generational dimension to this phenomenon. Younger people comprising of millennials and GenZ entered the market as retail investors during the pandemic and are continuing to do so.²⁵ These are digital natives who are comfortable sharing things with strangers online and finding meaning in the shared experience of actively investing as we saw with WallStreetBets. Further, they are motivated by a ‘you only live once’ or YOLO philosophy which might make them have a higher tolerance for risk.²⁶

This phenomenon of retail investors coordinating their activities around finfluencers and online communities has continued beyond GameStop. AMC, Hertz, and Bed Bath & Beyond are examples of some other companies impacted by coordinated retail investor activity.²⁷ In March 2024, retail investors were also wooed by Disney management in the ongoing proxy contest at Disney. Activist investors had nominated their own slate of directors to the Disney board and

²³ Luc Olinga, ‘Elon Musk Sends a Loud Message to His Enemies’ (*The Street*, 5 April 2023) <<https://www.thestreet.com/technology/elon-musk-aims-to-counter-his-worst-enemies>> accessed on 26th May 2024. [‘Musk has just stepped up his efforts to take on the short-sellers. Tesla is building a team of in-house lawyers, the company’s general counsel said on April 4. The goal is clear: to counter the short sellers.’]

²⁴ Guan (n 2).

²⁵ Maggie Fitzgerald, ‘The GameStop mania might be over, but retail investors look here to stay’ (CNBC 13 February 2021) <<https://www.cnbc.com/2021/02/13/why-retail-investors-are-here-to-stay.html#:~:text=here%20to%20stay-,The%20GameStop%20mania%20might%20be%20over%2C%20but,investors%20look%20here%20to%20stay&text=A%20new%2C%20younger%2C%20more%20social,brokerage%20companies%20and%20traditional%20investors>> accessed on 26th May 2024.

²⁶ Katie Martin & Robin Wigglesworth, ‘Rise of the Retail Army: the amateur traders transforming markets’ (*Financial Times*, 9 March 2021) <<https://www.ft.com/content/7a91e3ea-b9ec-4611-9a03-a8dd3b8bddb5>> accessed on 26th May 2024.

²⁷ Madison Darbyshire and Nicholas Megaw ‘Investors spend \$200mn on ‘worthless’ Bed Bath & Beyond shares’ (*Financial Times*, 5 July 2023) <<https://www.ft.com/content/2f3cfaac-6641-4d66-b143-a5ae1b1e4e50>> accessed on 26th May 2024.

had asked shareholders to vote for their nominees. On the other side, Disney CEO, Bob Iger, has asked shareholders not to support the proposal.²⁸ Because of Disney's sizable retail investor base, it employed innovative ways to reach them.²⁹ These include a LinkedIn page for retail investors to learn about the issues at stake in the proxy contest, and a VoteDisney.com website which amongst other things, included an animated video with popular characters created under the Disney umbrella telling shareholders how to vote.³⁰ The other side also has a dedicated page called restorethemagic.com which also aimed to provide information that retail investors might easily consume.³¹ In the final days of the proxy contest, a celebrity finfluencer also emerged. George Lucas, the creator and director of the Star Wars franchise came out in support of Bob Iger. As noted in an article in the Wall Street Journal, Lucas' 'support in the proxy fight could help Disney spread the word to the millions of individual investors who together control over a third of the company's stock'.³² Indeed, Disney emerged victorious in the proxy contest with nearly three quarters of its retail investor base voting for Disney, thus playing a role in Disney being able to fend off the activists.³³

Thus, retail investors are now a force to be reckoned with in the U.S. and this makes the role of finfluencers very important. What's more, even though retail investing and finfluencers have been most highlighted in the U.S., it has also had an impact in different jurisdictions including in Asia.³⁴ Of course the rise of finfluencers and related issues like retail investing and

²⁸ Chris Morris 'Why is Disney facing a possible proxy fight?' (*Fast Company*, 18 January 2024) <<https://www.fastcompany.com/91013137/why-is-disney-facing-a-possible-proxy-fight>> accessed on 26th May 2024.

²⁹ Eleanor Hawkins, 'Disney's defensive strategy in the most expensive proxy battle in history' (*AXIOS*, 21 March 2024) <<https://www.axios.com/2024/03/21/disney-proxy-fight-nelson-peltz-defense-strategy>> accessed on 26th May 2024.

³⁰ *ibid.*

³¹ *ibid.*

³² Alyssa Lukpat, 'George Lucas Endorses Disney and CEO Bob Iger in Proxy Fight: 'Creating Magic Is Not for Amateurs'' (*Wall Street Journal*, 19 March 2024) <<https://wsj.com/business/media/george-lucas-disney-bob-iger-nelson-peltz-proxy-fight-cda1f47c>> accessed on 26th May 2024.

³³ Ortenca Aliaj, Anna Nicolaou and James Fontanella-Khan, 'Bob Iger defeats Nelson Peltz by wide margin in Disney board clash' (*Financial Times*, 4 April 2024) <https://www.ft.com/content/e16dda03-f976-43b0-a8cf-c2ecb0185694>.

³⁴ *ibid.* ["The retail trading boom is a global phenomenon, with stock trading clubs, messaging groups, chat forums and even "rooms" on audio social networking site Clubhouse mushrooming across the world, from South Korea to Norway. But the US is the epicentre of an international stock market earthquake."]

engagement by retail shareholders in each jurisdiction has its own unique flavour. Below, I explore the stories in South Korea and India. Learnings from these jurisdictions are important not only for those respective jurisdictions, but also more generally to understand the different ways in which finfluencers and other tech related disruptions might impact corporate governance and corporate law.

2.1 The finfluencer story in South Korea

In South Korea, the new wave retail investing was having an impact as early as in 2020 when it was reported that young retail investors were pumping parts of their salary into the stock market, especially into instruments that allowed them to bet on movements on the price of oil.³⁵ These investors made huge losses when oil prices collapsed.³⁶ In that context, an analyst had noted that retail investors did not seem to understand how productions with exposure to volatile commodities worked.³⁷ However, by 2021, YouTube channels providing investment advice had mushroomed, perhaps because the number of retail investors in the market had sky rocketed. Young retail investors had begun to educate themselves and investing accordingly, rather than through mutual funds.³⁸ The host of one such popular YouTube channel said that they scheduled impromptu shows when demand was high.³⁹

The GameStop episode in the US also had an impact in Korea where retail investing was already something young people were doing. For instance, a little after the GameStop episode, the Korean Stockholders Alliance, which represents retail investors, painted. ‘I hate short selling!’ in bold letters on the side of its bus.⁴⁰ Rather than apes (as retail investors in the US called themselves on Reddit), Korean retail investors called themselves ants to underscore their underdog status. It is little wonder then that GameStop’s anti-establishment ethos was enthusiastically received in South Korea.⁴¹ A thread called kstreetbets was formed on Never

³⁵ June Yoon, ‘South Korean retail investors come a cropper on oil’ (*Financial Times*, 24 April 2020) <<https://www.ft.com/content/3cad20d0-ec6f-4f3a-a948-8eff2e09cbf3>> accessed on 26th May 2024.

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ Jihoon Lee, Cynthia Kim and Scott Murdoch, ‘In S.Korea, an army of retail investors flocks to YouTube for stock trading advice’ (*Reuters*, 21 October 2021) <<https://www.reuters.com/technology/skorea-an-army-retail-investors-flocks-youtube-stock-trading-advice-2021-10-21/>> accessed on 26th May 2024.

³⁹ *ibid.*

⁴⁰ Max Kim, ‘Young Koreans are echoing r/WallStreetBets in their war against short sellers’ (*rest of world*, 3 March 2021) <<https://restofworld.org/2021/south-korea-wallstreetbets-moment/>> accessed on 26th May 2024.

⁴¹ *ibid.*

Café, Korea's equivalent of Reddit.⁴² Korean retail investors have also felt short-changed by short sellers who were mainly big institutions at the time. However, by 2021, retail investors accounted for about 60% of the daily stock market turnover, and so in theory, they could have political heft if their trading is coordinated.⁴³ Yet, because of concerns about violating regulations, the 'ants' have focused on lobbying government to change the rules rather than working against the short sellers through coordinated trading.⁴⁴ These efforts have been partially successful with the Korean government temporarily imposing a ban on short-selling, and then extending it up to 2024.⁴⁵

Finfluencers as popular as Gill, if not more, have also caused GameStop-esque episodes in South Korea. In 2023, retail investors caused the shares of EcoPro and its subsidiary, EcoPro BM which is a battery company to go up nine times, based on recommendations and encouragement of local finfluencers like Park Soon-hyuk (affectionately called 'Battery Ajeossi'⁴⁶).⁴⁷ Just like in the GameStop episode, according to experts, this stock price too did not reflect the fundamentals of that company.⁴⁸ While nostalgia for GameStop coupled with other pandemic related factors might have contributed to retail investors rallying for GameStop, in this case, retail investors in South Korea seem to have made a calculated decision. They are betting that 'South Korean battery makers and material producers will benefit from a booming market in electric vehicles and US president Joe Biden's landmark programme of subsidies for clean energy' which has restricted Chinese components in green technologies in order to qualify for carbon credits.⁴⁹ However, Goldman Sachs had opined that the global market for

⁴² *ibid.*

⁴³ Song Jung-a, 'South Korea's retail investor army declares war on short-sellers' (*Financial Times*, 25 April 2021) <<https://www.ft.com/content/060b527e-8f8c-48f8-9809-8f0e6d60fc37>> accessed on 26th May 2024.

⁴⁴ *ibid.*

⁴⁵ Christian Davies and Song Jung-a and Hudson Lockett 'South Korea bans short selling until 2024' (*Financial Times*, 6 November 2023) <<https://www.ft.com/content/d70585d4-295e-4484-94db-49cc7efb9635>> accessed on 26th May 2024.

⁴⁶ Lee Yeon-woo, 'Are 'finfluencers' helping or harming investment community?' (*Korea Times*, 25 September, 2023) <https://www.koreatimes.co.kr/www/biz/2024/01/602_360032.html> accessed on 26th May 2024.

⁴⁷ Song Jung-a and Christian Davies, 'South Korean 'ant' traders battle hedge funds in swarm on battery shares' (*Financial Times*, 17 July, 2023) <<https://www.ft.com/content/dbaf5e89-289c-4a34-b8db-a29ef3bfeae4>> accessed on 26th May 2024.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

cathodes was oversupplied, which would mean that there was no basis for EcoPro and its subsidiary to be valued so highly.⁵⁰ In any case, EcoPro BM signed a five-year contract to supply cathodes to Samsung at the end of 2023, as a result of which shares of the company went up.⁵¹

Beyond making an impact by coordinated buying and then, holding, of shares in certain companies, retail investors have also begun to actively participate as shareholders of the companies they hold shares in. In 2023, retail investors supported a campaign by a domestic activist fund, Align Partners, to appoint an independent auditor on the board of SM Entertainment, which is a K-Pop management company. The campaign was also able to put an end to related party transactions that the company was involved in.⁵² In a way Align Partners might be coordinating retail investor actions because they claim to also have a vision for ‘society’s advancement’.⁵³ The founder of Align Partners, Changhwan Lee at thirty-five years of age, is himself a millennial and participated in a YouTube debate about the SM Entertainment campaign to speak directly to retail investors.⁵⁴ Perhaps activist funds that speak to retail investors might emerge as a new type of finfluencer in other parts of the world as well.

However, it should be noted here that retail investors in South Korea do not always jump on the bandwagon of activist shareholder proposals. There have also been instances where retail investor supported management.⁵⁵ For instance, retail investors favour the decision of Samsung C&T’s management about ‘the appropriate amount of treasury stocks to be cancelled during the company’s general meeting of shareholders, March 15 2024’. Activist funds had sought a much higher amount of stock to be cancelled so as to secure increased stock prices, and had also ‘demanded the distribution of dividends amounting to 4,500 won per common share and

⁵⁰ *ibid.*

⁵¹ Hyung-Kyu Kim ‘EcoPro BM hits \$34 billion jackpot to supply cathodes to Samsung SDI’ (*The Korea Economic Daily: Global Edition*, 3 December 2023)

<<https://www.kedglobal.com/batteries/newsView/ked202312030001>> accessed on 26th May 2024.

⁵² Song Jung-a, ‘Activist investors smoke out South Korea’s undervalued companies’ (*Financial Times*, 28 March 2023) <<https://www.ft.com/content/9c58c90d-9a9d-46d5-8e57-5d2fffd8acf0>> accessed on 26th May 2024.

⁵³ Anna J. Park ‘Activist fund Align aims to dispel Korean stocks' undervaluation’ (*Korea Times*, 15 February 2023) <https://www.koreatimes.co.kr/www/biz/2024/03/602_345361.html> accessed on 26th May 2024.

⁵⁴ Christian Davies, ‘K-pop’s big corporate showdown boosts Korean activists’ (*Financial Times*, 4 May 2022) <<https://www.ft.com/content/5202ee36-e2a3-45ee-a920-d91e0951e2bc>> accessed on 26th May 2024.

⁵⁵ Yi Whan-woo ‘Shareholder activism falters as retail investors back management’ (*Korea Times* 25 March 2024) <https://www.koreatimes.co.kr/www/biz/2024/03/602_371354.html> accessed on 26th May 2024.

4,550 won per preferred share'.⁵⁶ Similarly, retail investors supported management in Kumho Petrochemical against activist investors who along with the former managing director of the company asked for a quick cancellation of Treasury stock.⁵⁷ Speaking anonymously, one analyst noted that retail investors might have been aware of the fact that allocating excess dividend to shareholders might diminish the company's ability to invest in its future, thus explaining their voting in favour of management.⁵⁸ These examples seem to suggest two things. First, retail investors in South Korea are more discerning than the 'meme stock' retail investors seen in the U.S. Second, retail investors in South Korea, similar to their U.S. counterparts are interested in more than just short-term shareholder returns.

In 2024, South Korea reinstated the option of virtual shareholder meetings (which had been a temporary measure during the pandemic) to make it easier for retail investors to participate.⁵⁹ This might allow us to observe further trends in retail investor participation in corporate governance.

Chart 1.

Type	Examples
Ordinary Finfluencer	Keith Gill (roaring kitty) and Park Soon-hyuk (Mr. Battery)
Identity influencer	Elon Musk Changhwan Lee of Align Partners in South Korea
Celebrity influencer (can be paid or unpaid)	George Lucas

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ Jane Moir, 'Retail shareholders: you're on mute' (*ACGA* 8 January 2024) <<https://www.acga-asia.org/blog-detail.php?id=78>> accessed on 26th May 2024.; See also Joon Hyug Chung, 'Korea's shareholder activism – A game-changing transformation since 2022' (*ECGI Blog*, September 2023) <<https://www.ecgi.global/blog/korea%E2%80%99s-shareholder-activism-%E2%80%93-game-changing-transformation-2022>> accessed on 26th May 2024.

2.3 The finfluencer story in India

In India, finfluencers rose in popularity during the pandemic just like in U.S. and South Korea. Further, Indian retail investors are millennials and Gen Zs, which is also consistent with global trends. Overall, the increased number of retail investors is seen as a good development in India.⁶⁰ Although there was no GameStop type episode in India, finfluencers have made headlines in the country for other reasons and the Indian story offers some unique insights about the rise of finfluencers.

One thing worth noting about the rise of finfluencers in India is that a number of finfluencers providing content in local languages have also emerged during this time.⁶¹ This is interesting because although people in most Indian cities speak and work in English, sections of the rural population are more comfortable in their respective local languages. Thus, finfluencers who speak to their audiences in local languages are driving financial education in the far reaches of the country.⁶² Stressing the educative role that finfluencers play, a Business Times feature of prominent Indian finfluencers notes as follows⁶³:

The popularity of these 10-20 minute-long videos is explained by India's low financial literacy rate of 27 per cent, according to the National Centre for Financial Education's 2019 survey. So naturally, first-time investors, especially from far-flung towns and cities, are drawn to these finfluencers. This also explains why some of their most-viewed videos are "How to buy your first share", "Get regular income from gold", or even "Earn 2.5 crores in 20 years! How?"

Apart from content that meets the requirements of sections of the population that were not financially literate, finfluencers also need to be relatable, authentic, and entertaining to ensure that their viewers and followers keep coming back for more. For instance, they might

⁶⁰ Hemant Kakkar with ET contributors, 'Retail investors driving India's stock market surge: What has changed over the years?' (*Economic Times*, 16 February 2024) <<https://economictimes.indiatimes.com/markets/stocks/news/retail-investors-driving-indias-stock-market-surge-what-has-changed-over-the-years/articleshow/107742841.cms?from=mdr>> accessed on 26th May 2024.

⁶¹ 'Rise of the Finfluencers' (*Business Today*, 2021) <<https://www.businesstoday.in/interactive/immersive/rise-of-the-finfluencers>> accessed on 26th May 2024.

⁶² *ibid.*

⁶³ *ibid.*

emphasise their failures and how they overcome them so as to be relatable to their followers.⁶⁴ One finfluencer, Sharan Hegde, claim to have pioneered finfluencer comedy through his videos, this delivering content that not only informs but also entertains.⁶⁵

Of course, the motivation to gain more viewership and followers might also incentivise finfluencers to dilute the content on offer in favour of entering more politically charged debates. This came to light in the context of U.S. firm Hindenburg Research publishing a report about the Adani group of companies, stating that the group's stocks were overvalued.⁶⁶ It also accused Gautam Adani, founder of the Adani group, of accounting fraud and stock market manipulation.⁶⁷ Hindenburg Research is not just a research company but an activist short seller, and so it had 'a financial incentive in seeing Adani's stock price fall'.⁶⁸ This paper has previously discussed how short sellers are often seen negatively because they benefit from other people losing money. However, it can be argued that society benefits from corporate fraud being brought to light.⁶⁹ This ultimately depends on whether Hindenburg's report was truthful. Despite Adani claiming that these allegations were false, its stock value fell significantly.⁷⁰ Not only this, the political opposition in India used the report to attack Prime Minister Narendra Modi who was viewed as being close to Mr. Adani.⁷¹ All this resulted in a public relations disaster for the Adani group with its stock only rising again a year later, largely because the wider Indian markets were rallying at that time.⁷² In the meantime, India's market regulator

⁶⁴ Krithi D. Ramaswamy, 'Finfluencers in India: New Paradigms of Financial Trust and Authority' in S. De, A. Arya, M. Young, D. Ramesh, & J. Pal (Eds.), *SOCIAL MEDIA AND SOCIETY IN INDIA*, 133, 136.

⁶⁵ *ibid* 137.

⁶⁶ Hindenburg Research, 'Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History' (24 January 2023) <<https://hindenburgresearch.com/adani/>> accessed on 26th May 2024.

⁶⁷ *ibid*.

⁶⁸ Mark Humphery-Jenner, 'Short selling Adani: how an obscure US firm profited from triggering the Indian giant's price plunge' (*UNSW Newsroom*, 3 February 2023) <<https://www.unsw.edu.au/newsroom/news/2023/02/short-selling-adani--how-an-obscure-us-firm-profited-from-trigge>> accessed on 26th May 2024.

⁶⁹ *ibid*.

⁷⁰ Chloe Cornish and Hudson Lockett, 'Adani stocks regain half of losses from Hindenburg report fallout' (*Financial Times*, 2 January 2024) <<https://www.ft.com/content/60205ec6-2798-4085-a4f1-0f162b624ed7>> accessed on 26th May 2024.

⁷¹ *ibid*.

⁷² *ibid*.

had also investigated the claims in the Hindenburg report and said that nothing problematic had been uncovered.⁷³

Contrary to the finfluencers in the US and South Korea who were against short-sellers, some local finfluencers in India seemed to support the Hindenburg Report. Some commentators have argued that such finfluencers were ‘spreading negativity in the quest for views and likes’ and providing content that is coloured by political bias.⁷⁴ It is not clear that these finfluencers had any impact in terms of retail investors selling stock. On the contrary there are reports of retail investors buying shares in some companies within the Adani group after the Hinenburg report.⁷⁵ Still, finfluencers marrying politics with their content which is ideally aimed at financial education, may be an issue. However, while some have argued that this is a cause for regulators to step in and target finfluencers⁷⁶, it can also be argued that the population might be able to distinguish between good content providers and politically motivated sensationalism as indeed they seem to have done in the context of the Adani group of companies.

To sum up, the rise of finfluencers in each of the two Asian jurisdictions discussed here have raised some unique issues. In South Korea, finfluencers have playing an educative and coordinating role and retail investors have become a force that is able to lobby government to introduce protections for small and minority shareholders. Retail investors in South Korea have even begun to participate actively in corporate governance of companies that they hold shares in. In India, finfluencers have brought financial inclusion beyond cities by providing simple and educative content in local languages. At the same time, there have been common features across these two jurisdictions and perhaps also across the U.S. These include social media discussions catalysing retail investor involvement and retail investors comprising mostly of young people.

⁷³ *ibid.*

⁷⁴ Arjun Ghosh, ‘Meet the Hypocrisy of Finfluencers on Youtube — Diverging From Facts to Biased Opinions for Money and Publicity’ (*Medium*, 5 July 2023) <<https://medium.com/@arjunghosh081994/meet-the-hypocrisy-of-finfluencers-on-youtube-diverging-from-facts-to-biased-opinions-for-money-ea72bd236a4f>> accessed on 26th May 2024

⁷⁵ Rounak Jain, ‘Retail investors ‘buy the dip’ in all ten Adani group stocks’ (*Business Insider*, 12 April 2023) <<https://www.businessinsider.in/business/corporates/news/retail-investors-increase-stakes-in-all-adani-stocks-after-hindenburg-report/articleshow/99429000.cms>> accessed on 26th May 2024.

⁷⁶ Basil Gupta & Ayush Mangal, 'Dethroned Adani, Unstabilised Market and Distressed Investors: The Domino Effect of Adani-Hindenburg Saga' (2023) 16 NUJS L Rev 74.

3. Regulatory responses

The discussion above highlights that retail investors, coordinated and influenced by finfluencers, are a force to be reckoned with. This would suggest that the power wielded by finfluencers might come under scrutiny and indeed it has in a number of countries. Market regulators in a few countries have said that those who provide financial advice, even if this is on social media, should comply with the requirements for financial advisors in the jurisdiction. Further, if finfluencers are sponsored by a company, this relationship should be disclosed.

It is pertinent to look at the Australian regulatory approach here although the focus of this paper is not on Australia, because it is another jurisdiction within the Asia/ Oceania region, and because it offers a comparative context for South Korea and India in terms of regulatory steps taken. In Australia, the Australian Securities and Investment Commission (ASIC) issued the following guidance to finfluencers in March 2022⁷⁷:

ASIC monitors select online financial discussion by influencers who feature or promote financial products for any misleading or deceptive representations or unlicensed financial services. Carrying on a financial services business without an AFS [Australian Financial Services] licence is an offence under the Corporations Act 2001 (Corporations Act), unless you are authorised as a representative of an AFS licensee or an exemption applies. The Corporations Act imposes significant penalties, including up to five years' imprisonment for an individual and financial penalties into the millions of dollars for a corporation.

ASIC then went on to successfully bring an action in the Federal Court of Australia against a finfluencer who was not in compliance.⁷⁸ Additionally, the Australian Competition & Consumer Commission (ACCC) in January 2023 announced a social media sweep to 'misleading testimonials and endorsements by social media influencers'.⁷⁹ Although finfluencers were not mentioned in the report following the January 2023 social media sweep, not disclosing relationships with brands were a key point of focus. Many finfluencers in

⁷⁷ ASIC, Information Sheet 269 (21 March 2022), <<https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/>> accessed on 26th May 2024.

⁷⁸ *Australian Securities and Investments Commission (ASIC) v Scholz* (No 2) 2022 FCA 1542; and *Australian Securities and Investments Commission (ASIC) v Scholz* (No 2) [2022] FCA 1542.

⁷⁹ ACCC, 'ACCC Social Media Sweep Targets Influencers' (27 January 2023) <<https://www.accc.gov.au/media-release/accc-social-media-sweep-targets-influencers>> accessed on 26th May 2024

Australia have responded by proactively complying with the requirements. For example, Australian Finfluencer, Natasha Etschmann who posts under the handle @tashinvests on Instagram and Twitter is now 'authorised to provide general advice under an arrangement with financial planning firm Guideway'.⁸⁰

The Australian example shows that a mix of information releases followed by enforcement has led to proactive compliance rather than chilling the finfluencer market. In the U.S., no specific guidance has been issued regarding regulation of finfluencers. However, as in Australia, existing regulations in the U.S. may already provide protection. Guan notes that more robust disclosures may be required from finfluencers.⁸¹ Guan also suggests that the market regulator can work with finfluencers that follow best practices to inform social media users about misinformation.⁸² Thus she envisages a proactive approach from the regulator.

In South Korea, although the market regulator, Financial Supervisory Service (FSS), has investigated finfluencers on specific issues, it seems that there is no clear guidance on regulating finfluencers.⁸³ Rather, the FSS seems to be working collaboratively with finfluencers and retail investors in the context of deciding on rules regarding short-selling.⁸⁴

In India, the market regulator, Securities Exchange Board of India (SEBI) began a consultation on the issue in 2023 by releasing a consultation paper wherein it proposed that enforcement actions will be taken against unregistered finfluencers and that registered intermediaries will be prohibited from entering into partnerships with unregistered entities.⁸⁵ However, as Kapadia and Kotval have noted, it is unclear wither existing regulations, namely SEBI (Investment

⁸⁰ Lucy Dean, 'Finfluencers turn pro after ASIC warnings' (*Australian Financial Review*, 16 November 2022) <<https://www.afr.com/wealth/investing/finfluencers-turn-pro-after-asic-warnings-20221115-p5byfh>> accessed on 26th May 2024.

⁸¹ Guan (n 2) 554 – 562.

⁸² *ibid* 562.

⁸³ Lee Yeon-woo, 'Are 'finfluencers' helping or harming investment community?' (*The Korea Times*, 25 September 2023) <https://www.koreatimes.co.kr/www/biz/2024/03/602_360032.html> accessed on 26th May 2024.

⁸⁴ Kim Taesung, 'Open debate will be held on the 13th of next month. I'm going to attend "Mr. Battery"' (25 February 2024) <https://www.mk.co.kr/en/stock/10950352> accessed on 26th May 2024 (translated).

⁸⁵ SEBI, 'Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers)' (Consultation Paper, 25 August 2023) <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html> accessed on 26th May 2024.

Advisors) Regulations, 2013 and the SEBI (Research Analysts) Regulations, 2014, would apply to finfluencers.⁸⁶ Particularly, The SEBI (Investment Advisors) Regulations note that ‘investment advice’, explicitly excludes ‘advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public’.⁸⁷ Presumably this exclusion provides a safe harbour for finfluencers. SEBI has also brought an enforcement action against a finfluencer, however, the issue of whether finfluencers are covered under the SEBI (Research Analysts) Regulations was not answered because the case as settled.⁸⁸ Another point made by Kapadia and Kotval are of relevance beyond India as well. They note that finfluencers operate on social media and hence, can have influence across jurisdictions. They suggest, for India, that SEBI recognise finfluencers who are registered in other jurisdictions as well.⁸⁹

While all the above-mentioned jurisdictions differ slightly in their approach to regulating finfluencers, it is useful to identify the desirable aspects of each jurisdiction’s regulator approach. Chart 2 below identifies these aspects. ASIC in Australia has done a good job of disseminating information on how existing regulations will apply before taking an enforcement action. In contrast, India’s SEBI has attempted an enforcement action prior to clear guidance on how existing regulations might apply. South Korea’s FSS, perhaps because of the political heft of retail investors in South Korea, has been consulting with finfluencers and retail investors informally. While these consultations are in the context of rules on short selling, one might imagine that concerns around activities of finfluencers will also be addressed after effective consultation. In India, SEBI’s consultation on the issue is a useful process to take in feedback from various stakeholders and other commenters. Finally, it might be worthwhile for regulators to collaborate on the issue and agree to recognise the registration of finfluencers in another jurisdiction either through reciprocity agreement or unilaterally. Noting that finfluencers have

⁸⁶ Aamir Kapadia and Avinash Kotval, ‘SEBI’s Proposed Regulations on Finfluencers: Navigating Unresolved Practicalities’ (*IndiaCorpLaw*, 11 September 2023) <<https://indiacorplaw.in/2023/09/sebis-proposed-regulations-on-finfluencers-navigating-unresolved-practicalities.html>> accessed on 26th May 2024.

⁸⁷ *ibid.*

⁸⁸ SEBI, ‘Settlement Order in respect of Mansun Consultancy Private Limited, Mr. P.R.Sundar and Ms. Mangayarkarasi Sundar’ (25 May 2023) <https://www.sebi.gov.in/enforcement/orders/may-2023/settlement-order-in-respect-of-mansun-consultancy-private-limited-mr-p-r-sundar-and-ms-mangayarkarasi-sundar_71701.html> accessed on 26th May 2024.

⁸⁹ *ibid.*

an important role in enhancing financial inclusion, it may not be advisable to chill finfluencer activity.

Chart 2

<i>Country</i>	<i>Useful feature within the country's regulatory approach</i>
Australia	Clear guidance from ASIC about what is required from finfluencers
South Korea	FSS engaging with retail investors and finfluencers about rules on short selling.
India	Consultation period to allow various stakeholders and other commenters to provide relevant comments.

4. Implications of the rise of finfluencers for corporate governance and corporate law

The regulations discussed in Part 3 above are useful to address some important issues like making finfluencers accountable for the content they disseminate, and ensuring that consumers of their content are aware of any conflicts of interest as a result of the finfluencer partnering with a company or other entity.

The regulations and policy discussions also play an educative role for both finfluencers and retail investors. Retail investors learn about the possible risks of not informing themselves adequately and in countries where finfluencers need to be registered, retail investors can learn to look for such registration before relying on content of a finfluencer. For finfluencers, their compliance obligations become clear.

However, the significance of finfluencers and the corresponding increase in retail investors extends beyond the issues being addressed by these regulations. Finfluencers have not only brought about financial literacy in some sections of society thus enhancing financial inclusion, they are also democratising capitalism by encouraging more people to engage with markets as shareholders. Young people (mostly members of Gen Z) are clued into corporate policies and are seeking to influence change through their share ownership and voting rights. The example from Korea where activists, because of retail investor support, were able to bring about a corporate governance reform in the company SM Entertainment underscores the significance

of the rise of influencers and an increase in retail investing.⁹⁰ While we could imagine that SM Entertainment being a famous K-Pop producer, was able to capture the attention of retail investors just like the retail investors in the U.S. GameStop episode who were fans of the video gaming company, retail investors have also been involved in corporate governance issues of other companies in South Korea. This is especially significant in the context of South Korea and other Asian jurisdictions where shareholder activism has not been successful thus far. One could expect instances of shareholder activism powered by retail investors in India as well once the retail investor market matures. There is scope for activist funds to specifically appeal to retail investors in India as well. The South Korean experience would suggest that retail investors are not only interested in short-term profits, but instead, care about the company being able to invest in its business as well.⁹¹ The importance given to retail investors in the Disney proxy contest also underscores the fact that retail investors will play an active role in corporate governance in the coming years.⁹²

There are other episodes of not only retail investors but also the general public organising on social media to call for change and corporate management responding to these calls.⁹³ The #MeToo and #BlackLivesMatter movements are big examples of this phenomenon.⁹⁴ If Millennials and Gen Zs have become more active in the market, not only in terms of stock holding, but as activists, then it is a significant moment in corporate law. It would indicate that the rise of retail investing, along with influencers, and social media activism, and the internet more generally, has led to an increased connection between corporations and society.⁹⁵ Corporations are responding to retail investors, and others on social media, and in some cases, corporate policies have been changed based on feedback from social media.⁹⁶ In light of these

⁹⁰ Chung (n 59).

⁹¹ Whan-woo (n 55).

⁹² See discussion in Part 2 above.

⁹³ Akshaya Kamalnath, 'Social Movements, Diversity, and Corporate Short-Termism' (2022) 23 *Geo J Gender & L* 449.

⁹⁴ *ibid.*

⁹⁵ Kamalnath (n 3).

⁹⁶ See eg. Yonathan A. Arbel & Roy Shapira, 'Consumer Activism: From the Informed Minority to the Crusading Minority' (2019) 69 *DePaul L Rev* 233, 253. ["In 2017, British Airways lost Hasan Syed's father's luggage in an international flight to Paris. Syed took his grievance to social media, where he tweeted: "Don't fly with @BritishAirways. They can't keep track of your luggage." This tweet had a twist. Syed paid \$1,000 to Twitter to have this tweet promoted to as many followers of British Airways as possible. Over a short period of time, his

developments, it has become important to examine how regulatory tools of corporate governance that are currently in use – disclosure requirements which rely on shareholder engagement for enforcement, stewardship codes which have proliferated to different parts of the world including Asia, etc. – would be impacted. Further, since millennials and GenZs are interested in sustainability issues compared to previous generations, they are likely to vote for more sustainable corporate decisions.⁹⁷ Allowing finfluencers, and by extension, retail investors, to ensure a shift towards sustainable business practices, while addressing some of the risks posed by finfluencers will be a worthwhile challenge for corporate law and regulations.

Thus, although regulators across jurisdictions may be seeking to address the rise of finfluencers through licensing and transparency requirements, the issue needs to be viewed from the lens of the broader context of social-media powered developments and its implications. That way, policy makers will not only be able to focus on the immediate issues of accountability and transparency but also on possible opportunities to use the finfluencer and retail investor phenomenon to steer corporations towards sustainable practices.

4. Conclusion

This article has provided an account of the rise of finfluencers with a focus on two Asian jurisdictions – South Korea and India. The article argued that it is key to ensure that any regulation of finfluencers should address the dark side of the finfluencing world without stymieing the many benefits. The two accounts from South Korea and India have highlighted benefits like increasing shareholder activism even in countries where this was not traditionally prevalent, financial education and inclusion; and risks like politics intermixing with the advice provided by finfluencers. The regulatory choices in these two countries (as against other jurisdictions like Australia) also offer interesting insights for regulators in other jurisdictions.

tweet was seen by over 70,000 users. His tweet received considerable media attention and was dubbed as the first instance of "complaintvertising." Soon after his campaign, British Airways sent him a special apologetic message, located the bag, hand-delivered it to his dad in Paris, and issued a public apology.”]

⁹⁷ Chris Versace and Mark Abssy ‘How Millennials and Gen Z Are Driving Growth Behind ESG’ (*NASDAQ*, 23 September 2022) <<https://www.nasdaq.com/articles/how-millennials-and-gen-z-are-driving-growth-behind-esg>> accessed on 26th May 2024. [“A Pew Research Center survey finds Millennials and Gen Z stand out for their high levels of engagement with the issue of climate change.”]

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