

Title: BROKER WARS: Part 1 — How will they handle the worst-case squeeze scenario?

Author: iownbrokers

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It's like a game of musical chairs. What have retail brokers been doing since January to make sure they have somewhere to sit when the music stops? They've been busy!

This post is a deep dive looking at the strategies brokers implemented since the price spike in GME on January 2021. How are they managing the risk? By looking at the official Client Agreements of multiple brokers, the patterns are more obvious so it's easier to understand how events could play out in the worst case.

TL;DR: Brokers have rewritten or adapted their contracts to ensure their customers take on almost all the risk. Legal challenges to this (after the fact) will be difficult unless there's a trail of evidence holding those brokers accountable before it happens. Worst case, brokers can terminate your account without notice and you should assume that any share that has not been DRS'd could be withheld or liquidated with little recourse.

This post is split into four sections (EDIT: also see [Part

2])(https://www.reddit.com/r/DDintoGME/comments/r6lvvj/broker_wars_part_2_when_are_your_shares/):

1. What brokers can do to reduce their own risk.
2. When brokers can liquidate your position.
3. Who is liable when a liquidation happens.
4. How to increase your chances of getting paid.

Documents referenced in this post (see [archive.org])(<https://web.archive.org>) for previous versions of the contracts):

* [Interactive Brokers Client Agreement](https://gdcdyn.interactivebrokers.com/Universal/servlet/Registration_v2.formSampleView?formdb=3203) [1]

* [DeGiro Client Agreement](https://www.degiro.ie/data/pdf/ie/Client_Agreement_Investment_Services_Terms_and_Conditions.pdf) [2]

* [Fidelity Account Customer Agreement](https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/customer-service/updated-agreements/Updated-Fidelity-Account-Customer-Agreement.pdf) [3]

DISCLAIMER: I'm not a lawyer and this is not legal nor investment advice. If you get worried about the implications of this post, DRS resolves that.UPDATE: I have revised this post based on your comments and feedback from the mods (see

[CHANGELOG])(<https://www.reddit.com/r/DDintoGME/comments/r500fc/comment/hmnjkt7/>)*). There's more evidence to support the original thesis.*

1. TERMINATION

What can brokers do in the worst case when they encounter major problems? For example, say there are unexpected events in the market due to stocks with idiosyncratic risks... Most brokers can just terminate your account unconditionally; it's in the client agreements.

→ Fidelity

For Fidelity, see page 18 of the agreement where they claim the right to terminate your account unconditionally: [3]

>*Closing Your Account***We can close your account, or terminate any optional feature, at any time, for any reason, and without prior notice.** You can close your account, or terminate any optional feature, by

notifying us in writing or calling us on a recorded line. We may automatically close accounts with zero balances.

You may think this is boilerplate legalese, but in worst-case scenarios that's exactly why it's there: to be used in case there are no other options.

****➔ Interactive Brokers****

For IBKR, also see page 18 of the agreement where they claim the right to terminate its services at any time: \[1\]

>*Assignment and Termination:*Client may not assign or transfer any rights or obligations hereunder without the prior written consent of IBKR (through its Chief Executive Officer or General Counsel). IBKR may assign any debts or deficits owed by Client to an IBKR affiliate. In addition, upon notice to Client, IBKR may assign this Agreement to another brokerage firm. This Agreement shall inure to the benefit of IBKR's successors and assigns. ****IBKR may terminate this Agreement or its services to Client at any time.**** Client may close their account upon written Notice to IBKR, but only after all positions are closed and all other requirements specified on the IBKR website regarding account closure are satisfied.

Again, this looks like boilerplate legal language, but other brokers (like DeGiro) have better conditions and/or longer notice periods:

****➔ DeGiro****

For DeGiro, see page 24 of the agreement for termination. It has the right to terminate the account unconditionally with two months notice: \[2\]

>*26.2 Termination of the Investment Services Agreement***DEGIRO and the Client always have the right to terminate the Investment Services Agreement by email. For DEGIRO a notice period of 2 months will apply.** For the Client, no notice period applies. After receiving and processing the termination received by the Client, the Investment Services Agreement will terminate at the first moment that no open transactions and positions exist between the Client and DEGIRO.

Additionally, DeGiro can terminate the account immediately under any of these five conditions — abbreviated for clarity, see \[2\] for the full text:

>*26.6 Immediate termination*DEGIRO is authorized to terminate the Client Agreement ****with immediate effect without serving prior notice**** if one or more of the following situations occur:• a limited right such as a charge towards a third party is granted or created over the Balance \[...\];• The Client has provided incorrect information when entering into the Client Agreement \[...\];• The Client breaches a principal contractual obligation under the Client Agreement \[...\];• The Client has acted in violation of the Rules and Regulations \[...\];• the relationship between DEGIRO and the Client has been damaged \[...\].

DeGiro claims the right to terminate your account ****without notice**** if any of these situations occur. Since it's without notice and can take immediate effect, you would not have the ability to challenge the decision at the time before your account is terminated — whether DeGiro's interpretation of the situation is correct or not. You'd have to challenge the decision after termination.

TL;DR: Termination can happen instantly and without notice for all these brokers. The termination is either unconditional or under conditions whose interpretation you can challenge only later once the account has been terminated.

2. LIQUIDATION

Now let's look at the conditions under which the brokers would be allowed to perform liquidations (full or partial), whether or not it's during the termination of your account. When can they liquidate accounts? Since the events of January 2021, these conditions have become much more broad.

****→ Fidelity****

Fidelity claims limited rights to discharge your obligations, but only if your account has these "obligations" in the first place (e.g. insufficient debit or failed margin): \[3\]

>*Resolving Unpaid Obligations or Other Obligations*

>

>\[...\]

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>It is important to understand that we do have additional choices for resolving unsatisfied obligations. Like many other securities brokers, ****we reserve the right to sell or otherwise use assets in an account to discharge any obligations the account owner(s) may have to us**** (including unmatured and contingent obligations), and to do so without further notice or demand. For example, if you have bought securities but not paid for them, we may sell them ourselves and use the proceeds to settle the purchase.

However, while Fidelity may not liquidate your positions directly, it does claim the right to ***delay disbursement*** of your assets:

>***Closing Your Account*** \[...\] Regardless of how or when your account is closed, you will remain responsible for all charges, debit items, or other transactions you initiated or authorized, whether arising before or after termination. ****Note that a final disbursement of assets may be delayed until any remaining issues have been resolved.****

This means Fidelity claims the right to terminate your account unconditionally (per Section 1) and then keep hold of your assets until it has "resolved" remaining "issues". This contractual clause is broad enough that it gives Fidelity the ability to address any problems that come up with your GME shares, e.g. if shares fail to deliver and they need time to address it. (The price could drop in the meantime.)

****→ DeGiro****

In DeGiro's Client Agreement, there's more information how they would carry out a procedure in case there's a deficit in a certain stock (e.g. assuming there aren't enough GME shares available). There is more detail in this contract because Europe has stronger regulations, and DeGiro had legal challenges from the Dutch financial authorities — see [Research Report on DeGiro B.V. with regard to supervision of compliance with the Financial Act Supervision](<https://www.afm.nl/~/-/profmedia/files/maatregelen/lasten-on-der-dwangsom/2020/onderzoeksrapport-bedrijfsvoering-degiro.pdf?la=nl-NL>) by the Autoriteit Financiële Markten (AFM) in Dutch — spanning multiple years about DeGiro's management of risk. Here's the relevant section: \[2\]

>*18.1 Deficits*

>

>It may nonetheless occur that at a given moment there is a deficit in money in a certain currency or in certain Financial Instruments that SPV holds for the clients of DEGIRO. ****This could for instance be caused by an error of DEGIRO, a custodian or a prime broker.****

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>*18.1.1. Pro rata division of deficits*

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>As long as there is a deficit which has not been allocated to one or more clients, the following applies in order to protect the clients of DEGIRO: if there is a deficit in a certain currency or in a certain Financial Instrument, which DEGIRO and SPV holds for the account and risk of the clients of DEGIRO, then ****DEGIRO will be entitled to divide this deficit over all clients of DEGIRO**** for whose account such currency or Financial Instrument is or should be held, pro rata to the total position of such currency of Financial Instrument that should be held for each of them.

If DeGiro makes a mistake or if their prime broker makes a mistake that leads to a "deficit" (e.g. shares

that fail to deliver and they can't fix it), they claim the right to divide those deficits pro-rata among its customers. What does this mean? DeGiro would spread out the losses proportionally over every customer that owns GME. So, based on how many GME shares are missing, the difference would be split based on how many shares you theoretically owned before the deficit.

****➔ Interactive Brokers****

IBKR's agreement grants itself very broad permissions to liquidate any position or asset, and for any reason in its sole discretion: \[1\]

>*16. Liquidation of Positions and Offsetting Transactions*

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>A. CLIENT AGREES THAT IBKR HAS THE RIGHT, IN ITS SOLE DISCRETION, BUT NOT THE OBLIGATION, ****TO LIQUIDATE ALL OR ANY PART OF CLIENT'S POSITIONS OR ASSETS IN ANY OF CLIENT'S IBKR ACCOUNTS****, INDIVIDUAL OR JOINT, AT ANY TIME AND IN ANY MANNER (INCLUDING BUT NOT LIMITED TO PRE-MARKET/AFTER-MARKET TRADING AND PRIVATE SALES) AND THROUGH ANY MARKET OR DEALER, WITHOUT PRIOR NOTICE OR MARGIN CALL TO CLIENT IF AT ANY TIME:\[...\]****7. IBKR DETERMINES (IN ITS SOLE DISCRETION) THAT LIQUIDATION IS NECESSARY OR ADVISABLE FOR IBKR'S PROTECTION.****

So in the case of IBKR, if there's the need to protect the company, it has the right to liquidate your positions or assets. This is clause that was rewritten since January 2021 as it was previously similar in scope to Fidelity's to "meet margin requirements" or is "in deficit" (see [IBKR Client Agreement from 2021/01/28](https://web.archive.org/web/20210128195205/https://gdcdyn.interactivebrokers.com/Universal/servlet/Registration_v2.formSampleView?formdb=3203) on archive.org). Speculation: These new additions in the contract result of internal risk management procedures setup based on Thomas Peterffy's assessment of the situation and the risk involved ([Peterffy: Markets Were 'Frighteningly Close' to Collapse Amid GameStop Turmoil](https://www.youtube.com/watch?v=Yq4jdShG_PU)).

TL;DR: Brokers use different strategies to manage their risk: they can either (i) directly liquidate your assets, (ii) divide their deficits over customers, or (iii) withhold your assets until issues are resolved.

3. LIABILITY

Brokers claim the rights to terminate your account unconditionally, liquidate your position or divide the deficit pro-rata in case there are problems in the markets. Who is liable for the losses or damages? Contractually, brokers claim they are not responsible for any losses relating to this. There is theoretically coverage for losses, but they may not apply in this case...

****➔ Fidelity****

In the case of Fidelity, the customer agreement specifies the conditions when they are responsible: \[3\]

>*Limits to Our Responsibility*

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>You therefore agree that we are not responsible for any losses you incur (meaning claims, damages, actions, demands, investment losses, or other losses, as well as any costs, charges, attorneys' fees, or other fees and expenses) as a result of any of the following:\[...\]

>

>• occurrences related to governments or markets, such as restrictions, ****suspensions of trading****, or ****high market volatility**** or trading volumes

>

>• ****uncontrollable circumstances**** in the world at large, such as wars, natural disasters, power outages, unusual weather conditions, or ****government restrictions****

What's relevant here? These conditions include "high market volatility", "suspension of trading" and "government restrictions". In these cases, assuming one or more of these conditions happen for GME, Fidelity claims it would not be responsible.

For Fidelity, there's also coverage of \$500,000 provided under the SIPC (see [Safeguarding Your Accounts](<https://www.fidelity.com/why-fidelity/safeguarding-your-accounts>) from their FAQ), however, this likely would not apply in case of intentional liquidation under the conditions above:

>"SIPC protects against the loss of cash and securities – such as stocks and bonds – held by a customer at a **financially-troubled** SIPC-member brokerage firm. The limit of SIPC protection is \$500,000, which includes a \$250,000 limit for cash. Most customers of **failed brokerage firms** are protected when assets are missing from customer accounts."

In the case of another GME price spike, brokers would apply the contractual clauses described above and they would neither have "failed" nor become "financially-troubled" — so ~I personally believe~ SIPC coverage may not apply in this case. (EDIT: See [Part 2](https://www.reddit.com/r/DDintoGME/comments/r6lvvj/broker_wars_part_2_when_are_your_shares/) of this series for DD on this.)

****→ Interactive Brokers****

The IBKR client agreement is very specific about liabilities in connection with liquidation: \[1\]

>CLIENT SHALL BE LIABLE AND WILL PROMPTLY PAY IBKR FOR ANY DEFICIENCIES IN CLIENT'S ACCOUNT THAT ARISE FROM SUCH LIQUIDATION OR REMAIN AFTER SUCH LIQUIDATION. **IBKR HAS NO LIABILITY FOR ANY LOSS SUSTAINED BY CLIENT IN CONNECTION WITH SUCH LIQUIDATION** (OR IF IBKR DELAYS EFFECTING, OR DOES NOT EFFECT, SUCH LIQUIDATION), EVEN IF CLIENT RE-ESTABLISHES A LIQUIDATED POSITION AT A WORSE PRICE. CLIENT SHALL REIMBURSE AND HOLD IBKR HARMLESS FOR ALL ACTIONS, OMISSIONS, COSTS, FEES (INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES), OR LIABILITIES ASSOCIATED WITH ANY SUCH LIQUIDATION UNDERTAKEN BY IBKR.

Like for Fidelity, there's also coverage by SIPC up-to \$500,000 (see [Information Regarding SIPC Coverage](<https://ibkr.info/node/1968>)), however ~I currently believe~ it wouldn't apply in the case of an intentional liquidation of a subset of the account and not the complete failure of the brokerage firm. (EDIT: Read [Part 2](https://www.reddit.com/r/DDintoGME/comments/r6lvvj/broker_wars_part_2_when_are_your_shares/) of this series for DD on this.)

****→ DeGiro****

Again, DeGiro's clauses on liability are much clearer — likely because of the aforementioned litigation with the AFM. Here are the details from the client agreement: \[2\]

>*25.2 Liability*

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>DEGIRO accepts liability for damage caused by its actions or failure to act. The liability of DEGIRO is limited to damage which is the direct and foreseeable result of the gross negligence or wilful misconduct of DEGIRO (in Dutch: opzet of grove schuld).

DeGiro explicitly accepts liability in certain cases. However, holding DeGiro liable would require proving that the broker did indeed act with gross negligence or wilful misconduct as written in the agreement. Which leads into the next section...

TL;DR: Brokers all disclaim any liability for the damages they cause during termination of accounts or liquidation of assets.

4. REMEDIES

So what can you do? Try to determine if your broker is handling the situation with due care, and collect all the information you can about this before the problem happens. Not only do you have the right to do this (e.g. first send an email to ask and then follow-up with legal notices), but you also may be required to do legally and/or contractually.

****➔ Fidelity****

For example, you will need to contact Fidelity the moment there's a problem anyway: [3]

>*Monitoring Your Account and Notifying Us of Errors*

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>You agree to notify us immediately if:

>

>[...]

>

>• there is any other type of discrepancy or suspicious or unexplained occurrence relating to your account

>

>[...]

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>****If any of these conditions occurs and you fail to notify us immediately, neither we nor any other Fidelity affiliate will be liable for any consequences.** If you do immediately notify us, our liability is limited as described in this Agreement.**

Since you must notify brokers of problems when they occur, you might as well contact them beforehand to clarify foreseen problems too. For example, you can ask them how they are managing the risks knowing that liquidity is dropping and volatility is increasing. What have they done to ensure your shares don't fail to deliver? Can they provide documentation of what actions they took to secure your shares? These are questions you have the right to ask then keep documents with the answers.

CONCLUSION

NOTE: This part is more speculative, extrapolating based on the facts and evidence presented above.

Brokers are well prepared to handle anything GME could throw at them without flinching. In the worst case, their customers would likely end up with losses that brokers won't cover. There's an increasingly strong contractual basis for this, and regulators won't be able to do anything unless consumers demand their rights to be enforced — and take the necessary legal measures **now** in anticipation for this.

Alternatively, you can use the [Direct Registration System (DRS) from Computer Share](<https://cda.computershare.com/Content/47b47cd0-4275-4c6c-b713-74ea92436529>) [PDF] as share ownership is recorded under your name in a book-entry for GME — and not a "security" traded on the market that carries more risk.

As a consequence, this effectively becomes a two-tier system: 1) GME holders who managed to DRS have less risk will get paid accordingly as they exit when the price increases, and 2) GME holders who are stuck at the whim of their brokers may get their accounts terminated without notice according to the agreements they signed.

No ape left behind? Really? How?

Unless people take action to hold all brokers accountable, those who are stuck with uncooperative brokers and unable to DRS may end up with little or nothing!

****I believe shareholder activism is another solid way forward to deal with brokers.** Take the same energy**

that you put into GME and do the same for your broker! More about this in another post... EDIT: In the meantime here's [Part 2](https://www.reddit.com/r/DDintoGME/comments/r6lvvj/broker_wars_part_2_when_are_your_shares/) of the series!