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Public Comment to the Securities and Exchange Commission on the Regulation of Digital Engagement Practices (DEPs)

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I appreciate the opportunity to comment on the Securities and Exchange Commission's request for information on the regulation of digital engagement practices (DEPs). I am a law professor who teaches and researches about the regulation of broker-dealers in securities, and enforcement of broker-dealer rules. I also worked for five years from 2015 to 2020 on the staff of the adjudications unit of the SEC's Office of the General Counsel, mostly focusing on broker-dealer and FINRA matters. I joined the faculty of the University of Nebraska College of Law after leaving the OGC staff in August 2020.

My research generally focuses on retail securities markets where investors act like ordinary consumers. In these markets, competition and psychology affect the optimal regulation of services that money managers offer. Firms design contracts so consumers focus on perceived price, underestimating total cost of goods and services. They compete on salient attributes like price, and pair these with nonsalient attributes that are ignored (like costly contract terms, disclosed but opaque conflicts of interest, or long streams of micropayments in the form of inferior trade executions). There are perhaps one or two other securities regulation scholars in the United States studying this issue directly.