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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

September 30, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: 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; File No. S7-10-21

Dear Chair Gensler:

As the U.S. Securities and Exchange Commission (SEC) stated in its request for information and comments, the advent and growth of digital platforms for investing “have multiplied the opportunities for retail investors to invest and trade in securities.”¹

Digital platform trading is indubitably one of the major reasons why a majority of U.S. households now own stocks.² Coupling the advent of user-friendly mobile apps with other recent innovations, such as commission-free trading, no minimum account balances, and low-fee mutual funds and exchange-traded funds, has empowered millions of Americans to share in the tremendous wealth gains generated by the stock market—an opportunity that used to be available only to wealthy persons and institutional investors.

The marked increase in investor participation shows that today is the best time in history to be a retail investor. It has never been easier, cheaper, or more convenient for a person of modest means to invest in—and share in the gains of—the stock market. That is why I am concerned by suggestions in the SEC’s request that “digital engagement platforms”—an ill-defined and overly broad term (i.e., anything containing “elements or features designed to engage with retail investors on digital platforms”)—may harm retail investors by encouraging strategies that carry additional risk, such as frequent trading, options trading, trading on margin, or other kinds of trading in complex securities products.

We both agree that the SEC has an important responsibility to protect investors, but that mission does not extend to protecting investors from themselves. Certainly, if new digital trading platforms harbored predatory features meant to unfairly separate investors from their money, then the SEC should investigate. However, the SEC should proceed cautiously and remember

¹ Exchange Act Release No. 92766 (Aug. 27, 2021) 86 FR 49067, 49068 (Sept. 1, 2021).

² Sarah Holden and Michael Bogdan, *Main Street Owns Wall Street*, ICI Viewpoints (Feb. 10, 2021) (citing data from the Federal Reserve Board Survey of Consumer Finances).

that adults investing their own money should be free to decide how to do so. Ordinary Americans are just as well aware as the sophisticated ones who manage assets and operate hedge funds that risk is a fundamental part of investing. Retail investors do not need big government limiting access to, and choices in, the stock market.

Furthermore, the SEC should not attempt to inappropriately regulate mobile apps or characterize app features as “gamification” merely because such apps make investing easy and enjoyable. Retail investing need not be an expensive, unpleasant, and difficult experience. I would object to any proposal that injects unnecessary friction into retail access to the stock market.

User-friendly technology like app-based trading platforms also has made it easier to access the stock market through the buying of fractional shares. Nearly all major brokers, not just start-ups, have a mobile-based app to facilitate commission-free trading for retail investors.

Recent market events, including trading activity in so-called “meme stocks,” indicate that some retail investors assumed a fair amount of investment risk. But these investors represent a fraction of retail investors as the majority were not caught up in the meme stock mania. Moreover, the federal securities laws do not authorize the SEC to act as a merit regulator and limit the choices of investors in the absence of fraudulent or manipulative conduct.

Investors understand that there are consequences—whether they gain or lose—from their investment decisions. It is not the government’s role to tell retail investors what they can and cannot buy, including through indirect measures that restrict how brokers can interact with their customers on digital platforms. While I appreciate the SEC’s review of digital trading technology, I urge the SEC to proceed cautiously and avoid the temptation to pursue paternalistic regulations that restrict investor freedom under the guise of investor protection.

Thank you for your consideration.

Sincerely,



Ranking Member

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner