IB

Union Calendar No. 165

117TH CONGRESS
2D SESSION

H. R. 4685

[Report No. 117–231]

To require the Government Accountability Office to carry out a study on the impact of the gamification, psychological nudges, and other design techniques used by online trading platforms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2021

Mr. CASTEN (for himself and Mr. FOSTER) introduced the following bill; which was referred to the Committee on Financial Services

JANUARY 20, 2022

Additional sponsors: Mrs. AXNE and Ms. UNDERWOOD

JANUARY 20, 2022

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 26, 2021]

A BILL

To require the Government Accountability Office to carry out a study on the impact of the gamification, psychological nudges, and other design techniques used by online trading platforms, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Trading Isn't a Game Act".

SECTION 2. GAO STUDY ON THE GAMIFICATION OF INVESTING.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on the impact of the gamification, psychological nudges, and other design techniques of online trading platforms, including the following:

(1) How, and to what extent gamification, psychological nudges, and other design techniques are being used by online platforms in ways that are detrimental to investors.

(2) How, and to what extent gamification, psychological nudges, and other design techniques are being used by online platforms in ways that empower, inform, and educate investors.

(3) The various ways brokers use gamification, psychological nudges, and other design techniques in marketing strategies that attempt to attract retail customers.

(4) The various ways investment advisers or "robo-advisers" use gamification, psychological

nudges, and other design techniques in marketing strategies that target or include retail customers.

(5) The various ways in which brokers, investment advisers, or "robo-advisers" incorporate "game-like" features and designs in their online trading applications used by retail customers.

(6) Whether certain platform use of gamification, psychological nudges, and other design techniques, including "game-like" features, may constitute investment advice or recommendations under Federal securities laws and regulations, including Regulation Best Interest (17 C.F.R. 240.15l-1).

(7) A comparison between the investment activity, habits, and risk tolerance, including a comparison between the stated preference of retail investors and their actual trading activity, of—

(A) retail customers of firms that use gamification, psychological nudges, and other design techniques in marketing, or that incorporate "game-like" features and designs in their online trading applications; and

(B) retail customers of firms that do not use, or have limited use of, gamification, psychological nudges, and other design techniques in marketing and that do not incorporate "game-

like" features and designs in their online trading applications.

(8) How, and how prominently, brokers, investment advisers or "robo-advisers" that use gamification, psychological nudges, and other design techniques in marketing strategies that target or include retail investors, or that incorporate "game-like" features and designs in their online trading applications, are disclosing the risks associated with leverage, complex products, or excessive or frequent trading.

(9) The various customer demographic categories (including age, net worth, and investment experience) of brokers or investment advisers, or "robo-advisers" that use gamification, psychological nudges, and other design techniques in marketing strategies that target or include retail investors, or that incorporate "game-like" features and designs in their online trading applications.

(10) The relationship between (and any correlation between) zero commission trading and gamification or investor susceptibility to "game-like" features.

(11) The degree to which the types of retail trading activity that is incentivized by gamification (including the specific asset classes promoted via

gamification) benefits, harms, or otherwise affects other market participants, and an analysis thereof.

(12) The degree to which Securities and Exchange Commission's Form BD and Form ADV can be revised to help the Commission better identify which registered firms use gamification, psychological nudges, and other design techniques.

(13) Whether gamification, psychological nudges, and other design techniques have created investment activity or interest in the capital markets by women and minority groups.

(14) Whether gamification, psychological nudges, and other design techniques have targeted women and minority groups or created particular risks for them.

(15) Any data or legal challenges (e.g., so-called proprietary practices) that the Comptroller General encounters in preparing the report.

(b) INVESTOR TESTING AUTHORITY.—The Investor Advocate of the Securities and Exchange Commission is authorized to carry out investor testing as part of the study required under subsection (a).

(c) GAO REPORT.—Not later than the end of the 270-day period beginning on the date of enactment of this Act, the Comptroller General shall issue a report to the Securities and Exchange Commission, the Investor Advocate of the

Commission, and the Congress containing all findings and recommendations made in carrying out the study required under subsection (a).

(d) CONSULTATION.—In carrying out the study required under subsection (a), the Comptroller General shall consult with—

(1) the Securities and Exchange Commission;

(2) the Investor Advocate of the Commission;

(3) the Director of the Office of Investor Education and Advocacy of the Commission;

(4) the North American Securities Administrators Association;

(5) the Financial Industry Regulatory Authority;

(6) academics, including gamification and behavioral psychology experts; and

(7) investor advocacy organizations and experts.

(e) REPORT AND RECOMMENDATIONS OF THE INVESTOR ADVOCATE.—Not later than the end of the 90-day period beginning on the date that the Investor Advocate of the Commission receives the report issued under subsection (c), the Investor Advocate shall—

(1) review the report; and

(2) issue a report to the Congress containing any regulatory (including rules and policies of Financial

Industry Regulatory Authority and the Municipal Securities Rulemaking Board) or legislative recommendations the Investor Advocate may have.

(f) GAMIFICATION DEFINED.—In this section, the term "gamification" means tactics or strategies used to engage customers and incentivize or nudge them to transact and spend time on an investment platform, including increased use of notifications, prizes, use of ladders and leader boards, psychological tools, and design elements to incentivize customers to spend more time on an investment platform, to increase rapid trading, and to increase the number of trades.

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