

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4685
OFFERED BY MR. CASTEN OF ILLINOIS**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Trading Isn’t a Game
3 Act”.

**4 SECTION 2. GAO STUDY ON THE GAMIFICATION OF INVEST-
5 ING.**

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

10 (1) How, and to what extent gamification, psy-
11 chological nudges, and other design techniques are
12 being used by online platforms in ways that are det-
13 rimental to investors.

14 (2) How, and to what extent gamification, psy-
15 chological nudges, and other design techniques are
16 being used by online platforms in ways that em-
17 power, inform, and educate investors.

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

5 (4) The various ways investment advisers or
6 “robo-advisers” use gamification, psychological
7 nudges, and other design techniques in marketing
8 strategies that target or include retail customers.

9 (5) The various ways in which brokers, invest-
10 ment advisers, or “robo-advisers” incorporate
11 “game-like” features and designs in their online
12 trading applications used by retail customers.

13 (6) Whether certain platform use of
14 gamification, psychological nudges, and other design
15 techniques, including “game-like” features, may con-
16 stitute investment advice or recommendations under
17 Federal securities laws and regulations, including
18 Regulation Best Interest (17 C.F.R. 240.15l-1).

19 (7) A comparison between the investment activ-
20 ity, habits, and risk tolerance, including a compari-
21 son between the stated preference of retail investors
22 and their actual trading activity, of—

23 (A) retail customers of firms that use
24 gamification, psychological nudges, and other
25 design techniques in marketing, or that incor-

1 porate “game-like” features and designs in
2 their online trading applications; and

3 (B) retail customers of firms that do not
4 use, or have limited use of, gamification, psy-
5 chological nudges, and other design techniques
6 in marketing and that do not incorporate
7 “game-like” features and designs in their online
8 trading applications.

9 (8) How, and how prominently, brokers, invest-
10 ment advisers or “robo-advisers” that use
11 gamification, psychological nudges, and other design
12 techniques in marketing strategies that target or in-
13 clude retail investors, or that incorporate “game-
14 like” features and designs in their online trading ap-
15 plications, are disclosing the risks associated with le-
16 verage, complex products, or excessive or frequent
17 trading.

18 (9) The various customer demographic cat-
19 egories (including age, net worth, and investment ex-
20 perience) of brokers or investment advisers, or
21 “robo-advisers” that use gamification, psychological
22 nudges, and other design techniques in marketing
23 strategies that target or include retail investors, or
24 that incorporate “game-like” features and designs in
25 their online trading applications.

1 (10) The relationship between (and any correla-
2 tion between) zero commission trading and
3 gamification or investor susceptibility to “game-like”
4 features.

5 (11) The degree to which the types of retail
6 trading activity that is incentivized by gamification
7 (including the specific asset classes promoted via
8 gamification) benefits, harms, or otherwise affects
9 other market participants, and an analysis thereof.

10 (12) The degree to which Securities and Ex-
11 change Commission’s Form BD and Form ADV can
12 be revised to help the Commission better identify
13 which registered firms use gamification, psycho-
14 logical nudges, and other design techniques.

15 (13) Whether gamification, psychological
16 nudges, and other design techniques have created in-
17 vestment activity or interest in the capital markets
18 by women and minority groups.

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

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

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

5 (c) GAO REPORT.—Not later than the end of the
6 270-day period beginning on the date of enactment of this
7 Act, the Comptroller General shall issue a report to the
8 Securities and Exchange Commission, the Investor Advo-
9 cate of the Commission, and the Congress containing all
10 findings and recommendations made in carrying out the
11 study required under subsection (a).

12 (d) CONSULTATION.—In carrying out the study re-
13 quired under subsection (a), the Comptroller General shall
14 consult with—

- 15 (1) the Securities and Exchange Commission;
- 16 (2) the Investor Advocate of the Commission;
- 17 (3) the Director of the Office of Investor Edu-
18 cation and Advocacy of the Commission;
- 19 (4) the North American Securities Administra-
20 tors Association;
- 21 (5) the Financial Industry Regulatory Author-
22 ity;
- 23 (6) academics, including gamification and be-
24 havioral psychology experts; and
- 25 (7) investor advocacy organizations and experts.

1 (e) REPORT AND RECOMMENDATIONS OF THE INVES-
2 TOR ADVOCATE.—Not later than the end of the 90-day
3 period beginning on the date that the Investor Advocate
4 of the Commission receives the report issued under sub-
5 section (c), the Investor Advocate shall—

6 (1) review the report; and

7 (2) issue a report to the Congress containing
8 any regulatory (including rules and policies of Fi-
9 nancial Industry Regulatory Authority and the Mu-
10 nicipal Securities Rulemaking Board) or legislative
11 recommendations the Investor Advocate may have.

12 (f) GAMIFICATION DEFINED.—In this section, the
13 term “gamification” means tactics or strategies used to
14 engage customers and incentivize or nudge them to trans-
15 act and spend time on an investment platform, including
16 increased use of notifications, prizes, use of ladders and
17 leader boards, psychological tools, and design elements to
18 incentivize customers to spend more time on an invest-
19 ment platform, to increase rapid trading, and to increase
20 the number of trades.

