

117TH CONGRESS
1ST SESSION

H. R. 4685

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. GAO STUDY ON THE GAMIFICATION OF INVEST-**
4 **ING.**

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

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

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

9 (3) The various ways brokers use gamification,
10 psychological nudges, and other design techniques in
11 marketing strategies that target or include retail
12 customers.

13 (4) The various ways investment advisers,
14 “robo-advisers”, or financial planners use
15 gamification, psychological nudges, and other design
16 techniques in marketing strategies that target or in-
17 clude retail customers.

18 (5) The various ways in which brokers, invest-
19 ment adviser, “robo-advisers”, or financial planners
20 incorporate “game-like” features and designs in
21 their online trading applications used by retail cus-
22 tomers.

23 (6) Whether certain platform use of
24 gamification, psychological nudges, and other design
25 techniques, including “game-like” features, may con-

1 stitute investment advice or recommendations under
2 Federal securities laws and regulations, including
3 Regulation Best Interest (17 C.F.R. 240.15l-1).

4 (7) A comparison between the investment activ-
5 ity, habits, and risk tolerance of—

6 (A) retail customers of firms that use
7 gamification, psychological nudges, and other
8 design techniques in marketing, or that incor-
9 porate “game-like” features and designs in
10 their online trading applications; and

11 (B) retail customers of firms that do not
12 use, or have limited use of, gamification, psy-
13 chological nudges, and other design techniques
14 in marketing and that do not incorporate
15 “game-like” features and designs in their online
16 trading applications.

17 (8) How, and how prominently, brokers, invest-
18 ment advisers, “robo-advisers”, or financial planners
19 that use gamification, psychological nudges, and
20 other design techniques in marketing strategies that
21 target or include retail investors, or that incorporate
22 “game-like” features and designs in their online
23 trading applications, are disclosing the risks associ-
24 ated with leverage, complex products, or excessive or
25 frequent trading.

1 (9) The average customer demographic (includ-
2 ing age and investment experience) of brokers, in-
3 vestment advisers, “robo-advisers”, or financial plan-
4 ners that use gamification, psychological nudges,
5 and other design techniques in marketing strategies
6 that target or include retail investors, or that incor-
7 porate “game-like” features and designs in their on-
8 line trading applications.

9 (10) The relationship between (and any correla-
10 tion between) zero commission trading and
11 gamification or investor susceptibility to “game-like”
12 features.

13 (11) The degree to which the types of retail
14 trading activity that is incentivized by gamification
15 (including the specific asset classes promoted via
16 gamification) benefits, harms, or otherwise affects
17 other market participants, and an analysis thereof.

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

23 (13) 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 and the Congress
9 containing all findings and determinations made in car-
10 rying out the study required under subsection (a).

11 (d) REQUIRED CONSULTATION.—In carrying out the
12 study required under subsection (a), the Comptroller Gen-
13 eral shall actively consult with—

- 14 (1) the Securities and Exchange Commission;
- 15 (2) the Investor Advocate of the Commission;
- 16 (3) the Office of Investor Education and Advo-
17 cacy of the Commission;
- 18 (4) the North American Securities Administra-
19 tors Association;
- 20 (5) the Financial Industry Regulatory Author-
21 ity;
- 22 (6) academics; and
- 23 (7) investor advocacy organizations and experts.

24 (e) GAMIFICATION DEFINED.—In this section, the
25 term “gamification” means tactics or strategies used to

1 engage customers and incentivize or nudge them to trans-
2 act and spend time on an investment platform, including
3 increased use of notifications, prizes, use of ladders and
4 leader boards, psychological tools, and design elements to
5 incentivize customers to spend more time on an invest-
6 ment platform, to increase rapid trading, and to increase
7 the number of trades.

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