AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2620

OFFERED BY Mr. Foster

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the “Investor Choice Act of 2021”.

SEC. 2. FINDINGS.
Congress finds the following:

(1) Investor confidence in fair and equitable recourse is essential to the health and stability of the securities markets and to the participation of retail investors in those markets.

(2) Issuers, brokers, dealers, and investment advisers hold powerful advantages over investors, and mandatory arbitration clauses, including contracts that force investors to submit claims to arbitration or to waive the right of investors to participate in a class action lawsuit, leverage those advantages to severely restrict the ability of defrauded investors to seek redress.

(3) Investors should be free to—
(A) choose arbitration to resolve disputes if they assess that arbitration truly offers them the best opportunity to efficiently and fairly settle disputes; and

(B) pursue remedies in court should they view that option as superior to arbitration.

SEC. 3. ARBITRATION AGREEMENTS IN THE SECURITIES EXCHANGE ACT OF 1934.


(1) in section 6(b) (15 U.S.C. 78f(b)), by adding at the end the following:

“(11) The rules of the exchange prohibit the listing of any security if the issuer of the security, in the bylaws of the issuer, other governing documents, or any contract with a shareholder relating to the parties as issuer and shareholder, mandates arbitration for any dispute between the issuer and the shareholders of the issuer, without regard to whether such a provision in the bylaws, documents, or contract is otherwise permissible under title 9, United States Code.”; and

(2) in section 15 (15 U.S.C. 78o), by amending subsection (o) to read as follows:
“(o) LIMITATIONS ON PRE-DISPUTE AGREEMENTS.—Notwithstanding any other provision of law, including any provision of title 9, United States Code, it shall be unlawful for any broker, dealer, funding portal, or municipal securities dealer to enter into, modify, or extend an agreement with customers or clients of that entity with respect to a future dispute between the parties that—

“(1) mandates arbitration for that dispute;

“(2) restricts, limits, or conditions the ability of a customer or client of that entity to select or designate a forum for resolution of that dispute; or

“(3) restricts, limits, or conditions the ability of a customer or client of that entity to pursue a claim relating to that dispute in an individual or representative capacity or on a class action or consolidated basis.”.

(b) APPLICATION TO EXISTING AGREEMENTS.—

(1) IN GENERAL.—With respect to an agreement described in section 15(o) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(o)), as amended by subsection (a) of this section, that was entered into before the date of enactment of this Act, any provision of that agreement that is prohibited by such section 15(o), as amended by subsection (a) of this section, is void.
(2) **ONGOING ARBITRATION.**—A provision of an agreement prohibited by section 15(o) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(o)), as amended by subsection (a) of this section, shall not be void under paragraph (1) if arbitration required by that provision was initiated by any party on or before the date of enactment of this Act.

**SEC. 4. ARBITRATION AGREEMENTS IN THE SECURITIES ACT OF 1933.**

Section 6 of the Securities Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

“(f) **LIMITATION ON ARBITRATION REQUIREMENTS.**—A security may not be registered with the Commission if the issuer of the security, in the bylaws of the issuer, other governing documents, or any contract with a shareholder relating to the parties as issuer and shareholder, mandates arbitration for any dispute between the issuer and the shareholders of the issuer, without regard to whether such a provision in the bylaws, documents, or contract is otherwise permissible under title 9, United States Code.”.
SEC. 5. ARBITRATION AGREEMENTS IN THE INVESTMENT ADVISERS ACT OF 1940.

(a) IN GENERAL.—Section 205(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(f)) is amended to read as follows:

“(f) Notwithstanding any other provision of law, including any provision of title 9, United States Code, it shall be unlawful for any investment adviser to enter into, modify, or extend an agreement with customers or clients of the investment adviser with respect to a future dispute between the parties to that agreement that—

“(1) mandates arbitration for that dispute;

“(2) restricts, limits, or conditions the ability of a customer or client of the investment adviser to select or designate a forum for resolution of that dispute; or

“(3) restricts, limits, or conditions the ability of a customer or client of the investment adviser to pursue a claim relating to that dispute in an individual or representative capacity or on a class action or consolidated basis.”.

(b) APPLICATION TO EXISTING AGREEMENTS.—

(1) IN GENERAL.—With respect to an agreement described in section 205(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as amended by subsection (a) of this section, that was...
entered into before the date of enactment of this Act, any provision prohibited by such section 205(f), as amended by subsection (a) of this section, is void.

(2) ONGOING ARBITRATION.—A provision of an agreement prohibited by section 205(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as amended by subsection (a) of this section, shall not be void under paragraph (1) if arbitration required by that provision was initiated by any party on or before the date of enactment of this Act.

SEC. 6. APPLICATION.

Except as otherwise stated, the amendments made by this Act shall apply with respect to any agreement entered into, modified, or extended after the date of enactment of this Act.