

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2620
OFFERED BY M r. Foster

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Investor Choice Act
3 of 2021”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Investor confidence in fair and equitable re-
7 course is essential to the health and stability of the
8 securities markets and to the participation of retail
9 investors in those markets.

10 (2) Issuers, brokers, dealers, and investment
11 advisers hold powerful advantages over investors,
12 and mandatory arbitration clauses, including con-
13 tracts that force investors to submit claims to arbi-
14 tration or to waive the right of investors to partici-
15 pate in a class action lawsuit, leverage those advan-
16 tages to severely restrict the ability of defrauded in-
17 vestors to seek redress.

18 (3) Investors should be free to—

1 (A) choose arbitration to resolve disputes if
2 they assess that arbitration truly offers them
3 the best opportunity to efficiently and fairly set-
4 tle disputes; and

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

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

9 (a) IN GENERAL.—The Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.) is amended—

11 (1) in section 6(b) (15 U.S.C. 78f(b)), by add-
12 ing at the end the following:

13 “(11) The rules of the exchange prohibit the
14 listing of any security if the issuer of the security,
15 in the bylaws of the issuer, other governing docu-
16 ments, or any contract with a shareholder relating to
17 the parties as issuer and shareholder, mandates ar-
18 bitration for any dispute between the issuer and the
19 shareholders of the issuer, without regard to whether
20 such a provision in the bylaws, documents, or con-
21 tract is otherwise permissible under title 9, United
22 States Code.”; and

23 (2) in section 15 (15 U.S.C. 78o), by amending
24 subsection (o) to read as follows:

1 “(o) LIMITATIONS ON PRE-DISPUTE AGREE-
2 MENTS.—Notwithstanding any other provision of law, in-
3 cluding any provision of title 9, United States Code, it
4 shall be unlawful for any broker, dealer, funding portal,
5 or municipal securities dealer to enter into, modify, or ex-
6 tend an agreement with customers or clients of that entity
7 with respect to a future dispute between the parties that—

8 “(1) mandates arbitration for that dispute;

9 “(2) restricts, limits, or conditions the ability of
10 a customer or client of that entity to select or des-
11 ignate a forum for resolution of that dispute; or

12 “(3) restricts, limits, or conditions the ability of
13 a customer or client of that entity to pursue a claim
14 relating to that dispute in an individual or rep-
15 resentative capacity or on a class action or consoli-
16 dated basis.”.

17 (b) APPLICATION TO EXISTING AGREEMENTS.—

18 (1) IN GENERAL.—With respect to an agree-
19 ment described in section 15(o) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78o(o)), as amended
21 by subsection (a) of this section, that was entered
22 into before the date of enactment of this Act, any
23 provision of that agreement that is prohibited by
24 such section 15(o), as amended by subsection (a) of
25 this section, is void.

1 (2) ONGOING ARBITRATION.—A provision of an
2 agreement prohibited by section 15(o) of the Securi-
3 ties Exchange Act of 1934 (15 U.S.C. 78o(o)), as
4 amended by subsection (a) of this section, shall not
5 be void under paragraph (1) if arbitration required
6 by that provision was initiated by any party on or
7 before the date of enactment of this Act.

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

10 Section 6 of the Securities Act of 1933 (15 U.S.C.
11 77f) is amended by adding at the end the following:

12 “(f) LIMITATION ON ARBITRATION REQUIRE-
13 MENTS.—A security may not be registered with the Com-
14 mission if the issuer of the security, in the bylaws of the
15 issuer, other governing documents, or any contract with
16 a shareholder relating to the parties as issuer and share-
17 holder, mandates arbitration for any dispute between the
18 issuer and the shareholders of the issuer, without regard
19 to whether such a provision in the bylaws, documents, or
20 contract is otherwise permissible under title 9, United
21 States Code.”.

1 **SEC. 5. ARBITRATION AGREEMENTS IN THE INVESTMENT**
2 **ADVISERS ACT OF 1940.**

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

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

12 “(1) mandates arbitration for that dispute;

13 “(2) restricts, limits, or conditions the ability of
14 a customer or client of the investment adviser to se-
15 lect or designate a forum for resolution of that dis-
16 pute; or

17 “(3) restricts, limits, or conditions the ability of
18 a customer or client of the investment adviser to
19 pursue a claim relating to that dispute in an indi-
20 vidual or representative capacity or on a class action
21 or consolidated basis.”.

22 (b) APPLICATION TO EXISTING AGREEMENTS.—

23 (1) IN GENERAL.—With respect to an agree-
24 ment described in section 205(f) of the Investment
25 Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as
26 amended by subsection (a) of this section, that was

1 entered into before the date of enactment of this
2 Act, any provision prohibited by such section 205(f),
3 as amended by subsection (a) of this section, is void.

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

11 **SEC. 6. APPLICATION.**

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

