

118TH CONGRESS  
2D SESSION

# H. R. 9985

To subject certain private funds to joint and several liability with respect to the liabilities of firms acquired and controlled by those funds, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2024

Mr. POCAN (for himself, Ms. JAYAPAL, Mr. GRIJALVA, Mr. LARSEN of Washington, Ms. LEE of California, Ms. NORTON, Mrs. RAMIREZ, Ms. SCHAKOWSKY, and Ms. OCASIO-CORTEZ) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services, the Judiciary, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To subject certain private funds to joint and several liability with respect to the liabilities of firms acquired and controlled by those funds, 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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Stop Wall Street Looting Act”.

1           (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—CORPORATE RESPONSIBILITY

- Sec. 101. Joint and several liability for controlling private funds and holders of active interests in controlling private funds.
- Sec. 102. Indemnification void as against public policy.

TITLE II—ANTI-LOOTING

- Sec. 201. Limitations on post-acquisition dividends, distributions, redemptions, buybacks, and outsourcing.
- Sec. 202. Prevention of fraudulent transfers.
- Sec. 203. Surtax on certain amounts received by investment firms from controlled target firms.
- Sec. 204. Limitation on deduction for business interest of certain businesses owned by private funds.
- Sec. 205. Guardrails around accessing public funds.
- Sec. 206. Prohibiting payments from Federal health care programs to entities that sell assets to or use assets as collateral for a loan with a real estate investment trust.
- Sec. 207. Repeal of special rule for taxable REIT subsidiaries with interests in certain health care property.
- Sec. 208. Elimination of qualified REIT dividends from qualified business income.
- Sec. 209. Protections for striking workers.

TITLE III—PROTECTING WORKERS WHEN COMPANIES GO  
BANKRUPT

- Sec. 301. Increased priority for wages.
- Sec. 302. Priority for severance pay and contributions to employee welfare benefit plans.
- Sec. 303. Priority for violations of Federal and State laws.
- Sec. 304. Limitation on executive compensation enhancements.
- Sec. 305. Prohibition against special compensation payments.
- Sec. 306. Executive compensation upon exit from bankruptcy.
- Sec. 307. Collateral surcharge for employee obligations.
- Sec. 308. Voidability of preferential compensation transfers.
- Sec. 309. Protection for employees in a sale of assets.
- Sec. 310. Protection of gift card purchasers.
- Sec. 311. Commercial real estate.

TITLE IV—CLOSING TAX LOOPHOLES

- Sec. 401. Amendment of 1986 Code.
- Sec. 402. Partnership interests transferred in connection with performance of services.
- Sec. 403. Special rules for partners providing investment management services to partnerships.

## TITLE V—INVESTOR PROTECTION AND MARKET TRANSPARENCY

Sec. 501. Disclosure of fees and returns.

Sec. 502. Fiduciary obligations.

Sec. 503. Disclosures relating to the marketing of private equity funds.

Sec. 504. Greater visibility into non-bank direct lending and private credit.

## TITLE VI—RESTRICTIONS ON SECURITIZING RISKY CORPORATE DEBT

Sec. 601. Risk retention requirements for securitization of corporate debt.

## TITLE VII—MISCELLANEOUS

Sec. 701. Anti-evasion.

Sec. 702. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) During the 20-year period preceding the  
4 date of enactment of this Act, activity by private equity funds has exploded.

6 (2) Millions of people in communities across the  
7 United States rely on companies that are owned by  
8 private equity funds, including nearly 12,000,000 individuals who work for companies owned by those  
9 funds. For millions of additional individuals, a private investment fund acts as a landlord, a lender, or  
10 an owner of a local grocery store, newspaper, or hospital. Many pension funds are also investors in private investment funds.

15 (3) Private investment funds have taken controlling stakes in companies in a wide variety of industries, including the financial services, real estate,  
16 media, and healthcare industries, but some of the

1 largest impacts from private investment funds have  
2 been in the retail sector. In the 10 years preceding  
3 the date of enactment of this Act, cases have been  
4 commenced under title 11, United States Code, with  
5 respect to dozens of retailers in the United States,  
6 including Sears, Toys “R” Us, Shopko, Payless  
7 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,  
8 David’s Bridal, Claire’s, J. Crew, Neiman Marcus,  
9 Guitar Center, Art Van Furniture, and Southeastern  
10 Grocers, which was the parent company for BI-LO  
11 and Winn-Dixie.

12 (4) Private investment funds have also targeted  
13 entities that serve low-income or vulnerable popu-  
14 lations, including affordable housing developments,  
15 for-profit colleges, payday lenders, medical providers,  
16 and nursing homes.

17 (5) While private investment funds often pur-  
18 port to take over struggling companies and make  
19 those companies viable, the opposite is often true.  
20 Leveraged buyouts impose enormous debt loads on  
21 otherwise viable companies and then strip those  
22 companies of assets, hobbling the operations of those  
23 companies and preventing them from making nec-  
24 essary investments for future growth. If an invest-  
25 ment goes well, the fund reaps most of the rewards,

1 but if the investment does not go well, workers and  
2 customers of the company, and the community rely-  
3 ing on the company, suffer.

4 (6) Regardless of the performance of a private  
5 investment fund, the managers of the fund often  
6 make profits through fees, dividends, and other fi-  
7 nancial engineering. Private funds should have a  
8 stake in the outcome of their investments, enjoying  
9 returns if those investments are successful but ab-  
10 sorbing losses if those investments fail.

11 (7) When a case is commenced under title 11,  
12 United States Code, with respect to a portfolio com-  
13 pany, workers not only lose jobs, but also lose wages  
14 and benefits that are owed, severance pay that has  
15 been promised, and pensions that have been earned.  
16 Workers should not be sent to the back of the line  
17 behind other creditors if, through no fault of those  
18 workers, an investment fails.

19 (8) The performance of private investment  
20 funds is often cloaked in secrecy. Those funds have  
21 full control over the information that the funds dis-  
22 close to investors, which allows the funds to manu-  
23 facture their own performance metrics and makes it  
24 difficult for an investor to compare the returns to  
25 other investment options. Funds also increasingly re-

quire investors to waive the fiduciary obligations applicable to the funds. Investors should have the information and bargaining power to take control over their own investments.

(9) An increasing amount of risky debt is being introduced into the market and the quality of that debt is deteriorating, raising concerns with regulators and lawmakers about systemic risk. The institutions that make and securitize risky loans collect large fees and then pass on risk to unwitting investors. The financial system should not bear all of the risk while lenders and securitizers reap the rewards.

(10) The Federal Government should—

(A) protect workers, companies, consumers, and investors in the United States; and

(B) put an end to the practice of looting economically viable companies for the enrichment of private investment fund managers.

**SEC. 3. DEFINITIONS.**

Except as otherwise expressly provided, in this Act:

(1) **AFFILIATE.**—The term “affiliate” means—

(A) a person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting secu-

1           rities of another entity, other than a person  
2           that holds such securities—

3                   (i) in a fiduciary or agency capacity  
4                   without sole discretionary power to vote  
5                   such securities; or

6                   (ii) solely to secure a debt, if such en-  
7                   tity has not in fact exercised such power to  
8                   vote;

9           (B) a corporation, 5 percent or more of  
10          whose outstanding voting securities are directly  
11          or indirectly owned, controlled, or held with  
12          power to vote, by another entity (referred to in  
13          this subparagraph as a “covered entity”), or by  
14          an entity that directly or indirectly owns, con-  
15          trols, or holds with power to vote, 5 percent or  
16          more of the outstanding voting securities of the  
17          covered entity, other than an entity that holds  
18          such securities—

19                   (i) in a fiduciary or agency capacity  
20                   without sole discretionary power to vote  
21                   such securities; or

22                   (ii) solely to secure a debt, if such en-  
23                   tity has not in fact exercised such power to  
24                   vote;

1 (C) a person whose business is operated  
2 under a lease or operating agreement by an-  
3 other entity, or person substantially all of whose  
4 property is operated under an operating agree-  
5 ment with that other entity; or

6 (D) an entity that operates the business or  
7 substantially all of the property of another enti-  
8 ty under a lease or operating agreement.

9 (2) CAPITAL DISTRIBUTION.—The term “cap-  
10 ital distribution” means—

11 (A) a cash or share dividend;

12 (B) a share repurchase;

13 (C) a share redemption;

14 (D) a share buyback;

15 (E) a payment of interest or fee on a share  
16 of stock; and

17 (F) any other transaction similar to a  
18 transaction described in any of subparagraphs  
19 (A) through (E).

20 (3) CHANGE IN CONTROL.—The term “change  
21 in control” means a change in a legal right with re-  
22 spect to—

23 (A) the power to vote more than 5 per cen-  
24 tum of any class of voting securities of a cor-



poration that engages in interstate commerce;  
or

(B) any lesser per centum of any class of  
voting securities of a corporation that engages  
in interstate commerce that is sufficient to  
make the acquirer of such an interest a person  
that has the ability to direct the actions of that  
corporation.

(4) CHANGE IN CONTROL TRANSACTION.—The  
term “change in control transaction” means a trans-  
action, or a set of related transactions, that effec-  
tuates a change in control.

(5) COMMISSION.—The term “Commission”  
means the Securities and Exchange Commission.

(6) CONTROL PERSON.—The term “control per-  
son”—

(A) means—

(i) a person—

(I) that directly or indirectly  
owns, controls, or holds with power to  
vote, including through coordination  
with other persons, 5 percent or more  
of the outstanding voting interests of  
a corporation; or

1 (II) that operates the business or  
2 substantially all of the property of a  
3 corporation under a lease or an oper-  
4 ating or management agreement;

5 (ii) a corporation, other than a target  
6 firm, that has 5 percent or more of its out-  
7 standing voting interests directly or indi-  
8 rectly owned, controlled, or held with  
9 power to vote by a person that directly or  
10 indirectly owns, controls, or holds with  
11 power to vote, including through coordina-  
12 tion with other persons, 5 percent or more  
13 of the outstanding voting interests of an-  
14 other corporation; or

15 (iii) a person that otherwise has the  
16 ability to direct the actions of a corpora-  
17 tion; and

18 (B) does not include a person that—

19 (i)(I) is a limited partner with respect  
20 to a controlling private fund that is a part-  
21 nership;

22 (II) does not participate in the direc-  
23 tion of the management or policy of a cor-  
24 poration; and

1 (III) is not an insider with respect to  
2 the controlling private fund described in  
3 subclause (I);

4 (ii) is a pension fund or employee wel-  
5 fare benefit plan, if neither the fund nor  
6 plan (as applicable), nor any beneficiary or  
7 affiliate of the benefit or plan, is an insider  
8 with respect to a controlling private fund;  
9 or

10 (iii) holds the voting interests of a  
11 corporation solely—

12 (I) in a fiduciary or agency ca-  
13 pacity without sole discretionary  
14 power to vote the securities; or

15 (II) to secure a debt, if the per-  
16 son has not—

17 (aa) exercised the power to  
18 vote; or

19 (bb) exercised any other gov-  
20 ernance rights with respect to the  
21 corporation.

22 (7) CONTROLLING PRIVATE FUND.—The term  
23 “controlling private fund” means a private fund  
24 that, directly or through an affiliate, becomes a con-  
25 trol person with respect to a target firm through the

1 change in control transaction with respect to the tar-  
2 get firm.

3 (8) CORPORATION.—The term “corporation”  
4 means—

5 (A) a joint-stock company;

6 (B) a company or partnership association  
7 organized under a law that makes only the cap-  
8 ital subscribed or callable up to a specified  
9 amount responsible for the debts of the associa-  
10 tion, including a limited partnership and a lim-  
11 ited liability company;

12 (C) a trust; and

13 (D) an association having a power or privi-  
14 lege that a private corporation, but not an indi-  
15 vidual or a partnership, possesses.

16 (9) EMPLOYEE WELFARE BENEFIT PLAN.—The  
17 term “employee welfare benefit plan” has the mean-  
18 ing given the term in section 3 of the Employee Re-  
19 tirement Income Security Act of 1974 (29 U.S.C.  
20 1002).

21 (10) HOLDER OF AN ACTIVE INTEREST.—The  
22 term “holder of an active interest”—

23 (A) subject to subparagraph (B)(ii),  
24 means—

1 (i) a person that directly or indirectly  
2 has the right to participate in the govern-  
3 ance of a controlling private fund, without  
4 regard to the form or source of that right;  
5 and

6 (ii) any insider with respect to a con-  
7 trolling private fund; and

8 (B) does not include—

9 (i) a person that—

10 (I) holds an economic interest  
11 solely to secure a debt, if that person  
12 does not exercise any voting or other  
13 governance right with respect to the  
14 interest;

15 (II)(aa) is a limited partner with  
16 respect to a controlling private fund  
17 that is a partnership;

18 (bb) does not participate in the  
19 direction of the management or policy  
20 of a corporation; and

21 (cc) is not an insider with respect  
22 to the controlling private fund de-  
23 scribed in item (aa); or

24 (III) is a pension fund or em-  
25 ployee welfare benefit plan, if neither

1 the pension fund nor employee welfare  
2 benefit plan (as applicable), nor any  
3 affiliate or beneficiary of the pension  
4 fund or employee welfare benefit plan,  
5 is an insider with respect to, or affil-  
6 iate of, a controlling private fund; or  
7 (ii) if the source of the right described  
8 in subparagraph (A)(i) is a security—

9 (I) a person that is engaged in  
10 business as an underwriter of securi-  
11 ties and that acquires that security  
12 through the good faith participation  
13 of the person in a firm commitment  
14 underwriting registered under the Se-  
15 curities Act of 1933 (15 U.S.C. 77a  
16 et seq.), until the date that is 40 days  
17 after the date on which that acquisi-  
18 tion occurs; or

19 (II) a member of a national secu-  
20 rities exchange solely because that  
21 member is the record holder of that  
22 security and, under the rules of that  
23 exchange—

1 (aa) may direct the vote of  
2 that security, without instruction,  
3 on—

4 (AA) other than con-  
5 tested matters; or

6 (BB) matters that may  
7 substantially affect the  
8 rights or privileges of the  
9 holders of the security to be  
10 voted; and

11 (bb) is otherwise precluded  
12 from voting without instruction.

13 (11) INSIDER.—The term “insider” means  
14 any—

15 (A) director of a corporation;

16 (B) officer of a corporation;

17 (C) managing agent of a corporation;

18 (D) control person with respect to a cor-  
19 poration;

20 (E) affiliate of a corporation;

21 (F) general partner of a corporation that  
22 is a partnership;

23 (G) consultant or contractor retained by a  
24 corporation;

1 (H) affiliate, relative, or agent of a person  
2 described in any of subparagraphs (A) through  
3 (F); or

4 (I) affiliate, relative, or agent of a person  
5 described in subparagraph (H).

6 (12) INVESTMENT ADVISER.—The term “in-  
7 vestment adviser” has the meaning given the term  
8 in section 202(a) of the Investment Advisers Act of  
9 1940 (15 U.S.C. 80b–2(a)).

10 (13) ISSUER.—The term “issuer” has the  
11 meaning given the term in section 3(a) of the Secu-  
12 rities Exchange Act of 1934 (15 U.S.C. 78c(a)).

13 (14) NATIONAL SECURITIES EXCHANGE.—The  
14 term “national securities exchange” means an ex-  
15 change that is registered as a national securities ex-  
16 change under section 6 of the Securities Exchange  
17 Act of 1934 (15 U.S.C. 78f).

18 (15) PENSION FUND.—The term “pension  
19 fund” has the meaning given the term “pension  
20 plan” in section 3 of the Employee Retirement Secu-  
21 rity Act of 1974 (29 U.S.C. 1002).

22 (16) PRIVATE FUND.—The term “private fund”  
23 means a corporation that—

24 (A) would be considered an investment  
25 company under section 3 of the Investment



1           Company Act of 1940 (15 U.S.C. 80a–3) but  
2           for the application of paragraph (1) or (7) of  
3           subsection (c) of such section 3;

4           (B) is not a venture capital fund, as de-  
5           fined in section 275.203(l)–1 of title 17, Code  
6           of Federal Regulations, as in effect on the date  
7           of enactment of this Act; and

8           (C) is not an institution selected under sec-  
9           tion 107 of the Community Development Bank-  
10          ing and Financial Institutions Act of 1994 (12  
11          U.S.C. 4706).

12          (17) RELATIVE.—The term “relative” means  
13          an individual related by affinity or consanguinity  
14          within the third degree as determined by the com-  
15          mon law, or individual in a step or adoptive relation-  
16          ship within such third degree.

17          (18) SECURITY.—The term “security” has the  
18          meaning given the term in section 2(a) of the Secu-  
19          rities Act of 1933 (15 U.S.C. 77b(a)).

20          (19) TARGET FIRM.—The term “target firm”  
21          means a corporation that is acquired in a change in  
22          control transaction.

# **TITLE I—CORPORATE RESPONSIBILITY**

## **SEC. 101. JOINT AND SEVERAL LIABILITY FOR CONTROLLING PRIVATE FUNDS AND HOLDERS OF ACTIVE INTERESTS IN CONTROLLING PRIVATE FUNDS.**

(a) IN GENERAL.—Notwithstanding any other provision of law, or the terms of any contract or agreement, a controlling private fund, and any holder of an active interest with respect to a controlling private fund, shall be jointly and severally liable for all liabilities of each target firm for which the controlling private fund is a control person, and for all liabilities of any affiliate of each such target firm, including—

(1) any debt incurred by the target firm or an affiliate of the target firm, including as part of the acquisition of the target firm by the controlling private fund;

(2) any Federal or State civil monetary penalty, or obligation under a settlement or consent order with a Federal or State governmental agency or instrumentality, including a consumer restitution obligation, for which the target firm, or an affiliate of the target firm, is liable;

1           (3) any liability resulting from a violation of  
2           section 3 of the Worker Adjustment and Retraining  
3           Notification Act (29 U.S.C. 2102) by the target firm  
4           or an affiliate of the target firm;

5           (4) any withdrawal liability determined under  
6           part 1 of subtitle E of title IV of the Employee Re-  
7           tirement Income Security Act of 1974 (29 U.S.C.  
8           1381 et seq.) that is incurred by the target firm or  
9           an affiliate of the target firm; and

10          (5) any claim for unfunded benefit liabilities  
11          owed to the Pension Benefit Guaranty Corporation  
12          under subtitle D of title IV of the Employee Retirement  
13          Income Security Act of 1974 (29 U.S.C. 1361  
14          et seq.) with respect to the termination of a pension  
15          plan sponsored by the target firm or an affiliate of  
16          the target firm.

17          (b) RULE OF CONSTRUCTION.—Nothing in this sec-  
18          tion may be construed to diminish existing, as of the date  
19          of enactment of this Act, controlled group liability under  
20          the Employee Retirement Income Security Act of 1974  
21          (29 U.S.C. 1001 et seq.).

1 **SEC. 102. INDEMNIFICATION VOID AS AGAINST PUBLIC**  
2 **POLICY.**

3 It shall be void as against public policy for a target  
4 firm, or an affiliate of a target firm, to indemnify a con-  
5 trolling private fund with respect to—

6 (1) the target firm;

7 (2) any affiliate of the target firm; or

8 (3) any person that is the holder of an active  
9 interest in the controlling private fund with respect  
10 to the liabilities of that person under section 101.

11 **TITLE II—ANTI-LOOTING**

12 **SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS,**  
13 **DISTRIBUTIONS, REDEMPTIONS, BUYBACKS,**  
14 **AND OUTSOURCING.**

15 (a) IN GENERAL.—No target firm may, directly or  
16 indirectly, after the closing date of a change in control  
17 transaction that results in a private fund becoming a con-  
18 trolling private fund with respect to the target firm—

19 (1) for a 4-year period, make a capital distribu-  
20 tion or similarly reduce the equity capital of the tar-  
21 get firm;

22 (2) make a capital distribution greater than 10  
23 percent of the sum of all financial obligations of the  
24 target firm for each of the previous 2 years or simi-  
25 larly reduce the equity capital of the target firm;

1           (3) incur an obligation that commits the target  
2       firm to making a capital distribution of greater than  
3       10 percent of the new sum of all financial obliga-  
4       tions of the firm or a similar reduction of the equity  
5       capital of the target firm for each of the following  
6       2 years; or

7           (4) order a plant closing or mass layoff (as de-  
8       fined in section 2(a) of the Worker Adjustment and  
9       Retraining Notification Act (29 U.S.C. 2101(a)))  
10      and relocate the trade or business conducted by the  
11      employees in the United States to one or more facili-  
12      ties outside the United States, in accordance with  
13      regulations issued by the Secretary of Labor.

14      (b) VOID.—Any transfer made or obligation incurred  
15      by a target firm or an affiliate with respect to a target  
16      firm in violation of subsection (a) shall be void.

17      (c) JOINT AND SEVERAL LIABILITY FOR AIDERS AND  
18      ABETTORS.—Any controlling private fund, any holder of  
19      an active interest in a controlling private fund, or any af-  
20      filiate of a target firm that aids, abets, facilitates, sup-  
21      ports, or instructs a target firm's violation of subsection  
22      (a) shall be jointly and severally liable under this sub-  
23      section for any transfer made or obligation incurred, in-  
24      cluding for reasonable attorney's fees and costs awarded  
25      to a plaintiff under subsection (d)(2).

1 (d) CAUSE OF ACTION.—

2 (1) IN GENERAL.—Any employee or creditor, or  
3 representative of an employee or creditor, of a target  
4 firm that is a debtor under title 11, United States  
5 Code, or of an affiliate of a target firm that is such  
6 a debtor, may bring an action in an appropriate dis-  
7 trict court of the United States against the direct or  
8 indirect transferee or obligee or beneficiary of the  
9 transfer or obligation to void the transfer or obliga-  
10 tion and recover any transferred property for the  
11 target firm.

12 (2) AWARD.—In a successful action to recover  
13 a transfer, the court shall also award the plaintiff  
14 reasonable attorney’s fees and costs.

15 **SEC. 202. PREVENTION OF FRAUDULENT TRANSFERS.**

16 (a) LIMITATION ON SAFE HARBORS.—Section 546(e)  
17 of title 11, United States Code, is amended by inserting  
18 after “548(b) of this title,” the following: “and except in  
19 the case of a transfer made in connection with a change  
20 in control transaction, as defined in section 3 of the Stop  
21 Wall Street Looting Act, or during the protected period,  
22 as defined in section 548(f) of this title,”.

23 (b) PRESUMPTION OF INSOLVENCY IN TRANSFERS  
24 UNDERTAKEN IN CONNECTION WITH CHANGE IN CON-  
25 TROL TRANSACTIONS.—Section 548 of title 11, United

1 States Code, is amended by adding at the end the fol-  
2 lowing:

3 “(f)(1) In this subsection—

4 “(A) the terms ‘change in control trans-  
5 action’, ‘control person’, and ‘target firm’ have  
6 the meanings given those terms in section 3 of  
7 the Stop Wall Street Looting Act; and

8 “(B) the term ‘protected period’ means the  
9 shorter of—

10 “(i) the 15-year period beginning on  
11 the date on which a change in control  
12 transaction closed; or

13 “(ii) the period beginning on the date  
14 on which a change in control transaction  
15 closed and ending on the earliest subse-  
16 quent date on which a public offering of a  
17 controlling share of the common equity se-  
18 curities of the target firm occurs.

19 “(2) For purposes of this section, if the debtor  
20 is a target firm, the debtor is presumed to have  
21 made a transfer or incurred an obligation described  
22 in subparagraphs (A) and (B) of subsection (a)(1)  
23 if—

24 “(A) the transfer was made to or obliga-  
25 tion was incurred by the debtor or an affiliate

1 in connection with a change in control trans-  
2 action; or

3 “(B) during a protected period—

4 “(i) the transfer was made by the  
5 debtor or an affiliate to a control person,  
6 an affiliate, or an insider; or

7 “(ii) the obligation was incurred by  
8 the debtor or an affiliate from a control  
9 person, an affiliate, or an insider.

10 “(3) For the purposes of this section, a court  
11 shall, in analyzing related transactions, link together  
12 as a single transaction any interrelated yet formally  
13 distinct steps in an integrated transaction (com-  
14 monly known as the ‘step transaction doctrine’).”.

15 (c) STATUTE OF LIMITATIONS.—

16 (1) TITLE 11.—Section 548 of title 11, United  
17 States Code, is amended—

18 (A) in subsection (a)(1), by striking para-  
19 graph “that was made or incurred on or within  
20 15 years before the date of the filing of the pe-  
21 tition” and inserting “that was made or in-  
22 curred during the period described in subsection  
23 (g)”; and

24 (B) adding at the end the following:



1 “(g) The trustee may avoid under subsection (a) a  
2 transfer of an interest of the debtor in property or any  
3 obligation incurred by the debtor on or within—

4 “(1) 15 years before the date of the filing of  
5 the petition if the transfer was made or obligation  
6 incurred in connection with a change in control  
7 transaction, as defined in section 3 of the Stop Wall  
8 Street Looting Act; or

9 “(2) 15 years before the date of the filing of  
10 the petition for all other transfers and obligations.”.

11 (2) TITLE 28.—Section 3306(b) of title 28,  
12 United States Code, is amended—

13 (A) in paragraph (2), by striking “or” at  
14 the end;

15 (B) in paragraph (3), by striking the pe-  
16 riod at the end and inserting “; or”; and

17 (C) by adding at the end the following:

18 “(4) within 15 years after the transfer was  
19 made or the obligation was incurred, if the transfer  
20 was made or the obligation was incurred—

21 “(A) in connection with a change in con-  
22 trol transaction, as defined in section 3 of the  
23 Stop Wall Street Looting Act; or

24 “(B) during a protected period, as defined  
25 in section 548(f) of title 11.”.

1 (d) POWERS AND DUTIES OF COMMITTEES.—Section  
2 1103(c) of title 11, United States Code, is amended—

3 (1) by redesignating paragraphs (3) through  
4 (5) as paragraphs (4) through (6), respectively; and  
5 (2) by inserting after paragraph (2) the fol-  
6 lowing:

7 “(3) upon motion, undertake an examination of  
8 a director, officer, general partner, or person in con-  
9 trol of the debtor regarding potential conflicts of in-  
10 terest;”.

11 (e) ELIMINATION OF SHAM INDEPENDENT DIREC-  
12 TORS.—Section 1107 of title 11, United States Code, is  
13 amended—

14 (1) in subsection (a), by striking “Subject to”  
15 and inserting, “Except as provided in subsection (c),  
16 subject to”; and

17 (2) by adding at the end the following:

18 “(c) Notwithstanding subsection (a), if a debtor in  
19 possession is serving in a case under this title, a committee  
20 of creditors appointed under section 1102 of this title shall  
21 have the exclusive right of a trustee serving in a case  
22 under this chapter to bring or settle on behalf of the es-  
23 tate—

24 “(1) an action under section 544, 547, 548, or  
25 553 to avoid a transfer made or obligation incurred

1 by the debtor in connection with a change of control  
 2 transaction, as defined in section 3 of the Stop Wall  
 3 Street Looting Act; or

4 “(2) an action against an insider, a former in-  
 5 sider, or an agent or aider and abettor of an insider  
 6 or former insider.”.

7 **SEC. 203. SURTAX ON CERTAIN AMOUNTS RECEIVED BY IN-**  
 8 **VESTMENT FIRMS FROM CONTROLLED TAR-**  
 9 **GET FIRMS.**

10 (a) IMPOSITION OF TAX.—Subchapter A of chapter  
 11 1 of the Internal Revenue Code of 1986 is amended by  
 12 adding at the end the following new part:

13 **“PART VIII—SURTAX ON CERTAIN AMOUNTS**  
 14 **RECEIVED BY INVESTMENT FIRMS**

“Sec. 59B. Surtax on certain amounts received by investment firms from controlled target firms.

15 **“SEC. 59B. SURTAX ON CERTAIN AMOUNTS RECEIVED BY**  
 16 **INVESTMENT FIRMS FROM CONTROLLED**  
 17 **TARGET FIRMS.**

18 “(a) IMPOSITION OF TAX.—

19 “(1) IN GENERAL.—If one or more applicable  
 20 payments are included in the gross income of a tax-  
 21 payer for any taxable year, then there is hereby im-  
 22 posed on the taxpayer for the taxable year a tax  
 23 equal to the applicable percentage of the aggregate

1 amount of such payments. Such tax shall be in addi-  
2 tion to any other tax imposed by this subtitle.

3 “(2) APPLICABLE PERCENTAGE.—For purposes  
4 of this subsection, the term ‘applicable percentage’  
5 means 100 percent, minus the highest rate of tax  
6 under section 1 or 11 (whichever is applicable) for  
7 the taxable year.

8 “(b) APPLICABLE PAYMENT.—For purposes of this  
9 section—

10 “(1) IN GENERAL.—The term ‘applicable pay-  
11 ment’ means any amount paid or incurred by an ap-  
12 plicable entity (or any person related within the  
13 meaning of section 267(b) or 707(b) to such entity)  
14 to any other person which, at the time such amount  
15 is paid or incurred, is an applicable controlling enti-  
16 ty. An amount shall be treated as an applicable pay-  
17 ment without regard to whether it is paid or in-  
18 curred to the taxpayer including it in gross income  
19 and to which subsection (a) applies.

20 “(2) EXCEPTIONS.—Such term shall not in-  
21 clude any of the following:

22 “(A) INTEREST.—Any amount paid or in-  
23 curred which is treated as interest for purposes  
24 of this chapter.

1           “(B) DISTRIBUTIONS OF PROPERTY WITH  
2           RESPECT TO STOCK.—Any distribution of prop-  
3           erty (as defined in section 317(a)) to which sec-  
4           tion 301(a) applies.

5           “(c) DEFINITIONS RELATING TO ENTITIES.—For  
6           purposes of this section—

7           “(1) APPLICABLE ENTITY.—The term ‘applica-  
8           ble entity’ means any person—

9           “(A) which is engaged in the active con-  
10          duct of a trade or business, and

11          “(B) with respect to which any other per-  
12          son conducts activities in connection with an  
13          applicable trade or business.

14          “(2) APPLICABLE CONTROLLING ENTITY.—The  
15          term ‘applicable controlling entity’ means, with re-  
16          spect to any applicable entity, any person—

17          “(A) which is engaged in an applicable  
18          trade or business some or all of the activities of  
19          which are conducted in connection with the ap-  
20          plicable entity, and

21          “(B) which controls (or is related within  
22          the meaning of section 267(b) or 707(b) to a  
23          person which controls) the applicable entity.

24          “(3) APPLICABLE TRADE OR BUSINESS.—The  
25          term ‘applicable trade or business’ means any activ-

1       ity conducted on a regular, continuous, and substan-  
 2       tial basis which, regardless of whether the activity is  
 3       conducted in one or more entities, consists, in whole  
 4       or in part, of—

5               “(A) raising or returning capital, and

6               “(B) either—

7                       “(i) investing in or disposing of speci-  
 8                       fied assets (or identifying specified assets  
 9                       for such investing or disposition), or

10                      “(ii) developing specified assets.

11               “(4) SPECIFIED ASSET.—The term ‘specified  
 12       asset’ means—

13                      “(A) securities (as defined in section  
 14                      475(c)(2) but without regard to the phrase  
 15                      ‘widely held or publicly traded’ in subparagraph  
 16                      (B) thereof and without regard to the last sen-  
 17                      tence thereof), and

18                      “(B) real estate held for rental or invest-  
 19                      ment.

20               “(d) RULES AND DEFINITIONS RELATING TO OWN-  
 21       ERSHIP ATTRIBUTION AND CONTROL.—For purposes of  
 22       this section—

23                      “(1) CONSTRUCTIVE OWNERSHIP RULES USED  
 24                      IN DETERMINING RELATED PARTY.—In determining  
 25                      whether persons are related within the meaning of

1 section 267(b) or 707(b), the constructive ownership  
2 rules of section 318 shall apply in lieu of the con-  
3 structive ownership rules which would otherwise  
4 apply, except that in applying such rules the term  
5 ‘stock’ shall include capital, profits, or other bene-  
6 ficial interests in persons other than corporations.

7 “(2) CONTROL.—

8 “(A) CORPORATIONS.—In the case of a  
9 corporation, the term ‘control’ has the meaning  
10 given such term by section 304(c) (without re-  
11 gard to paragraph (3)(B) thereof).

12 “(B) OTHER ENTITIES.—In the case of a  
13 person other than a corporation, such term  
14 means the ownership, directly or indirectly, of  
15 at least 50 percent of the capital, profits, or  
16 other beneficial interests in the person.

17 “(e) REGULATIONS.—The Secretary shall prescribe  
18 such regulations or other guidance as may be necessary  
19 or appropriate to carry out the provisions of this section,  
20 including regulations—

21 “(1) providing for such adjustments to the ap-  
22 plication of this section as are necessary to prevent  
23 the avoidance of the purposes of this section, includ-  
24 ing through the use of unrelated persons, or conduit  
25 transactions, and

1           “(2) modifying the constructive ownership rules  
 2           under section 318 to the extent necessary to apply  
 3           such rules to capital, profits, or other beneficial in-  
 4           terests as well as stock.”.

5           (b) DISALLOWANCE OF CREDITS AGAINST TAX.—  
 6           Subparagraph (B) of section 26(b)(2) of the Internal Rev-  
 7           enue Code of 1986 is amended by inserting “or section  
 8           59B (relating to surtax on certain amounts received by  
 9           investment firms from controlled target firms)” after  
 10          “anti-abuse tax)”.

11          (c) CONFORMING AMENDMENTS.—

12           (1) The table of parts for subchapter A of chap-  
 13           ter 1 of the Internal Revenue Code of 1986 is  
 14           amended by adding after the item relating to part  
 15           VII the following new item:

“PART VIII. SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT  
 FIRMS”.

16           (2) Section 871(b)(1) of such Code is amended  
 17           by inserting “, and as provided in section 59B on  
 18           applicable payments included in gross income which  
 19           are effectively connected with the conduct of a trade  
 20           or business within the United States” before the pe-  
 21           riod.

22           (3) Section 882(a)(1) of such Code is amend-  
 23           ed—



1 (A) by striking “59A,” and inserting  
2 “59A”; and

3 (B) by inserting “, and as provided in sec-  
4 tion 59B on applicable payments included in  
5 gross income which are effectively connected  
6 with the conduct of a trade or business within  
7 the United States” before the period.

8 (4) Subparagraph (A) of section 6425(c)(1) of  
9 such Code is amended by striking “plus” at the end  
10 of clause (i), by striking “plus” at the end of clause  
11 (ii), by striking “over” at the end of clause (iii) and  
12 inserting “and”, and by adding at the end the fol-  
13 lowing new clause:

14 “(iv) the tax imposed by section 59B,  
15 over”.

16 (5) Paragraph (1) of section 6654(f) of such  
17 Code is amended by striking “tax” each place it ap-  
18 pears and inserting “taxes”.

19 (6) Subparagraph (A) of section 6655(g)(1) of  
20 such Code is amended by striking “plus” at the end  
21 of clause (iii), by redesignating clause (iv) as clause  
22 (v), and by inserting after clause (iii) the following  
23 new clause:

24 “(iv) the tax imposed by section 59B,  
25 and”.

1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to applicable payments (as defined  
 3 in section 59B(b) of the Internal Revenue Code of 1986,  
 4 as added by this section) paid or accrued on or after the  
 5 date of the enactment of this Act.

6 **SEC. 204. LIMITATION ON DEDUCTION FOR BUSINESS IN-**  
 7 **TEREST OF CERTAIN BUSINESSES OWNED BY**  
 8 **PRIVATE FUNDS.**

9 (a) IN GENERAL.—Section 163(j) of the Internal  
 10 Revenue Code of 1986 is amended by redesignating para-  
 11 graph (11) as paragraph (12) and by inserting after para-  
 12 graph (10) the following new paragraph:

13 “(11) MODIFICATION OF LIMITATION FOR CER-  
 14 TAIN BUSINESSES OWNED BY PRIVATE FIRMS.—

15 “(A) IN GENERAL.—In the case of a tax-  
 16 payer which is an applicable entity controlled by  
 17 an applicable controlling entity (or any person  
 18 related within the meaning of section 267(b) or  
 19 707(b) to such entity) at any time during the  
 20 taxable year—

21 “(i) if the ratio of debt to equity of  
 22 the taxpayer as of the close of the taxable  
 23 year (or on any other day during the tax-  
 24 able year as the Secretary may prescribe in  
 25 regulations) exceeds 1, then paragraph (1)

1 shall be applied by substituting a percent-  
2 age that the Secretary determines appro-  
3 priate (and which shall be not less than 30  
4 percent) for ‘30 percent’, and

5 “(ii) in the case of the election under  
6 paragraph (7)(B) to treat any trade or  
7 business of the taxpayer as an electing real  
8 property trade or business—

9 “(I) the taxpayer may not make  
10 any such election during such taxable  
11 year, and

12 “(II) any such election of the  
13 taxpayer in effect as of the close of  
14 the taxable year preceding such tax-  
15 able year with respect to a trade or  
16 business shall be revoked, effective for  
17 such taxable year and all succeeding  
18 taxable years.

19 “(B) RATIO OF DEBT TO EQUITY.—For  
20 purposes of this paragraph, the term ‘ratio of  
21 debt to equity’ means, with respect to any tax-  
22 payer, the ratio which the total indebtedness of  
23 the taxpayer bears to the sum of the taxpayer’s  
24 money and all other assets reduced (but not

below zero) by such total indebtedness. For purposes of the preceding sentence—

“(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

“(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

“(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

“(C) COORDINATION WITH DEPRECIATION RULES.—If the alternative depreciation system under section 168(g) applies to property by reason of an election under paragraph (7)(B) which is revoked under subparagraph (A)(ii)(II), then the depreciation deduction under section 167(a) with respect to such property for the taxable year of revocation and all

1           succeeding taxable years shall be determined  
2           under section 168 in the same manner as if  
3           such revocation were a change in use of the  
4           property under section 168(i)(5) and the regu-  
5           lations thereunder.

6           “(D) DEFINITIONS AND RULES.—For pur-  
7           poses of this paragraph—

8                   “(i) any term used in this paragraph  
9                   which is also used in section 59B shall  
10                  have the same meaning as when used in  
11                  such section, and

12                  “(ii) the constructive ownership rules  
13                  of section 318 shall apply in the same  
14                  manner as such rules apply for purposes of  
15                  section 59B.”.

16       (b) EFFECTIVE DATES.—

17           (1) IN GENERAL.—The amendments made by  
18           this section shall apply to taxable years beginning on  
19           or after the date of enactment of this Act.

20           (2) REVOCATION OF ELECTIONS.—Subpara-  
21           graphs (A)(ii)(II) and (C) of section 163(j)(11) of  
22           the Internal Revenue Code of 1986, as added by this  
23           section, shall apply to taxable years beginning on or  
24           after the date of enactment of this Act, with respect

1 to elections under section 163(j)(7)(B) of such Code  
2 made before, on, or after such date.

3 **SEC. 205. GUARDRAILS AROUND ACCESSING PUBLIC**  
4 **FUNDS.**

5 The Investment Company Act of 1940 (15 U.S.C.  
6 80a–1 et seq.) is amended by adding at the end the fol-  
7 lowing:

8 **“SEC. 66. DISCLOSURES.**

9 “Any person described in paragraph (1) or (7) of sec-  
10 tion 3(c) that receives funds from a Federal or State agen-  
11 cy—

12 “(1) shall publicly disclose—

13 “(A) the total funds received from the  
14 agency;

15 “(B) the workforce demographics of the  
16 person;

17 “(C) the amount of loans, grants, or other  
18 benefits provided;

19 “(D) the use of the proceeds;

20 “(E) how many jobs were saved or wages  
21 preserved;

22 “(F) any loans forgiven or discharged;

23 “(G) the beneficial owners of the person;

1           “(H) the pay ratio between the chief execu-  
 2           utive officer and the median pay of employees;  
 3           and

4           “(2) may not, during the 2-year period begin-  
 5           ning on the date on which the person receives the  
 6           funds—

7           “(A) acquire any company; or

8           “(B) make any distribution to a share-  
 9           holder of the person.”.

10 **SEC. 206. PROHIBITING PAYMENTS FROM FEDERAL**  
 11 **HEALTH CARE PROGRAMS TO ENTITIES THAT**  
 12 **SELL ASSETS TO OR USE ASSETS AS COLLAT-**  
 13 **ERAL FOR A LOAN WITH A REAL ESTATE IN-**  
 14 **VESTMENT TRUST.**

15       Section 1128(a) of the Social Security Act (42 U.S.C.  
 16 1320a–7(a)) is amended by adding at the end the fol-  
 17 lowing new paragraph:

18           “(5) SELLING ASSETS TO OR USING ASSETS AS  
 19       COLLATERAL FOR A LOAN WITH A REAL ESTATE IN-  
 20       VESTMENT TRUST.—

21           “(A) IN GENERAL.—Any individual or en-  
 22       tity that, on or after the date of enactment of  
 23       this paragraph, sells any assets to, or newly  
 24       pledges any assets as collateral for a loan with,  
 25       a real estate investment trust (as defined in

1 section 856(a) of the Internal Revenue Code of  
2 1986).

3 “(B) CLARIFICATION.—Subparagraph (A)  
4 shall not apply in the case where an individual  
5 or entity agreed to pledge an asset as collateral  
6 for a loan with a real estate investment trust  
7 prior to the date of enactment of this para-  
8 graph, including with respect to any future  
9 agreement between the individual or entity and  
10 the real estate investment trust regarding that  
11 same asset.”.

12 **SEC. 207. REPEAL OF SPECIAL RULE FOR TAXABLE REIT**  
13 **SUBSIDIARIES WITH INTERESTS IN CERTAIN**  
14 **HEALTH CARE PROPERTY.**

15 (a) IN GENERAL.—Section 856(d)(8)(B) of the Inter-  
16 nal Revenue Code of 1986 is amended—

17 (1) by striking “or a qualified health care prop-  
18 erty (as defined in subsection (e)(6)(D)(i))”, and

19 (2) by striking “qualified health care property  
20 or”.

21 (b) CONFORMING AMENDMENTS.—Section 856(d)(9)  
22 of such Code is amended—

23 (1) in subparagraph (A)—



1 (A) by striking “or a qualified health care  
 2 property (as defined in subsection  
 3 (e)(6)(D)(i))”,

4 (B) by striking “or qualified health care  
 5 property”, and

6 (C) by striking “or qualified health care  
 7 properties”, and

8 (2) in subparagraph (B)—

9 (A) by striking “or qualified health care  
 10 property (as so defined)”, and

11 (B) by striking “or qualified health care  
 12 property” each place it appears in clauses (i),  
 13 (ii), and (iii)(II).

14 (c) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to taxable years beginning after  
 16 the date of the enactment of this Act.

17 **SEC. 208. ELIMINATION OF QUALIFIED REIT DIVIDENDS**  
 18 **FROM QUALIFIED BUSINESS INCOME.**

19 (a) IN GENERAL.—Paragraph (1) of section 199A(b)  
 20 of the Internal Revenue Code of 1986 is amended to read  
 21 as follows:

22 “(1) IN GENERAL.—The term ‘combined quali-  
 23 fied business income amount’ means, with respect to  
 24 any taxable year, an amount equal to the sum of the  
 25 amounts determined under paragraph (2) for each

1 qualified trade or business carried on by the tax-  
2 payer.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 199A(c)(1) of such Code is amend-  
5 ed by striking the last sentence.

6 (2) Section 199A(e) of such Code is amended  
7 by striking paragraph (3) and by redesignating  
8 paragraph (4) as paragraph (3).

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 the date of the enactment of this Act.

12 **SEC. 209. PROTECTIONS FOR STRIKING WORKERS.**

13 (a) IN GENERAL.—Section 8 of the National Labor  
14 Relations Act (29 U.S.C. 158) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (5), by striking the pe-  
17 riod and inserting “;”;

18 (B) by adding at the end the following:

19 “(6) to promise, threaten, or take any action—

20 “(A) to permanently replace an employee  
21 who participates in a strike as defined by sec-  
22 tion 501(2) of the Labor Management Rela-  
23 tions Act, 1947 (29 U.S.C. 142(2));

24 “(B) to discriminate against an employee  
25 who is working or has unconditionally offered to

1 return to work for the employer because the  
2 employee supported or participated in such a  
3 strike; or

4 “(C) to lockout, suspend, or otherwise  
5 withhold employment from employees in order  
6 to influence the position of such employees or  
7 the representative of such employees in collec-  
8 tive bargaining prior to a strike; and

9 “(7) to communicate or misrepresent to an em-  
10 ployee under section 2(3) that such employee is ex-  
11 cluded from the definition of employee under section  
12 2(3).”;

13 (2) in subsection (b)—

14 (A) by striking paragraphs (4) and (7);

15 (B) by redesignating paragraphs (5) and  
16 (6) as paragraphs (4) and (5), respectively;

17 (C) in paragraph (4), as so redesignated,  
18 by striking “affected;” and inserting “affected;  
19 and”; and

20 (D) in paragraph (5), as so redesignated,  
21 by striking “; and” and inserting a period;

22 (3) in subsection (c), by striking the period at  
23 the end and inserting the following: “: *Provided*,  
24 That it shall be an unfair labor practice under sub-  
25 section (a)(1) for any employer to require or coerce

1 an employee to attend or participate in such employ-  
2 er's campaign activities unrelated to the employee's  
3 job duties, including activities that are subject to the  
4 requirements under section 203(b) of the Labor-  
5 Management Reporting and Disclosure Act of 1959  
6 (29 U.S.C. 433(b))."; and

7 (4) in subsection (d), in the matter preceding  
8 paragraph (1), by inserting "and to maintain cur-  
9 rent wages, hours, and terms and conditions of em-  
10 ployment pending an agreement" after "arising  
11 thereunder".

12 (b) CONFORMING AMENDMENTS.—The National  
13 Labor Relations Act is amended—

14 (1) in section 8(e) (29 U.S.C. 158(e)), by strik-  
15 ing "and section 8(b)(4)(B)"; and

16 (2) in section 10 (29 U.S.C. 160)—

17 (A) by repealing subsection (k); and

18 (B) in subsection (l)—

19 (i) by striking "of paragraph" and all  
20 that follows through "the preliminary" and  
21 inserting "of section 8(e), the prelimi-  
22 nary";

23 (ii) by striking the second proviso;  
24 and

25 (iii) by striking the final sentence.

1 **TITLE III—PROTECTING WORK-**  
2 **ERS WHEN COMPANIES GO**  
3 **BANKRUPT**

4 **SEC. 301. INCREASED PRIORITY FOR WAGES.**

5 Section 507(a) of title 11, United States Code, is  
6 amended—

7 (1) in paragraph (4)—

8 (A) by redesignating subparagraphs (A)  
9 and (B) as clauses (i) and (ii), respectively;

10 (B) in the matter preceding clause (i), as  
11 so redesignated, by inserting “(A)” before  
12 “Fourth”;

13 (C) in subparagraph (A), as so designated,  
14 in the matter preceding clause (i), as so rededesignated—  
15

16 (i) by striking “\$10,000” and insert-  
17 ing “\$20,000”;

18 (ii) by striking “within 180 days”;  
19 and

20 (iii) by striking “or the date of the  
21 cessation of the debtor’s business, which-  
22 ever occurs first”; and

23 (D) by adding at the end the following:

24 “(B) Severance pay described in subparagraph  
25 (A)(i) shall be deemed earned in full upon the layoff

or termination of employment of the individual to whom the severance pay is owed.”; and

(2) in paragraph (5)—

(A) in subparagraph (A)—

(i) by striking “within 180 days”; and

(ii) by striking “or the date of the cessation of the debtor’s business, whichever occurs first”; and

(B) by striking subparagraph (B) and inserting the following:

“(B) for each such plan, to the extent of the number of employees covered by each such plan multiplied by \$20,000.”.

**SEC. 302. PRIORITY FOR SEVERANCE PAY AND CONTRIBUTIONS TO EMPLOYEE WELFARE BENEFIT PLANS.**

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (8)(B), by striking “and” at the end;

(2) in paragraph (9), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

“(10) severance pay owed to employees of the debtor (other than to an insider of the debtor or a

1 senior executive officer of the debtor), under a plan,  
 2 program, or policy generally applicable to employees  
 3 of the debtor (but not under an individual contract  
 4 of employment), or owed pursuant to a collective  
 5 bargaining agreement, for layoff or termination on  
 6 or after the date of the filing of the petition, which  
 7 pay shall be deemed earned in full upon such layoff  
 8 or termination of employment; and

9 “(11) any contribution due on or after the date  
 10 of the filing of the petition under an employee wel-  
 11 fare benefit plan, as defined in section 3 of the Stop  
 12 Wall Street Looting Act.”.

13 **SEC. 303. PRIORITY FOR VIOLATIONS OF FEDERAL AND**  
 14 **STATE LAWS.**

15 (a) ALLOWANCE OF ADMINISTRATIVE EXPENSES IN  
 16 BANKRUPTCY CASES.—Section 503(b)(1)(A)(ii) of title  
 17 11, United States Code, is amended by inserting after  
 18 “(ii)” the following: “any back pay, civil penalty, or dam-  
 19 ages for a violation of any Federal or State labor and em-  
 20 ployment law, including the Worker Adjustment and Re-  
 21 training Notification Act (29 U.S.C. 2101 et seq.) and any  
 22 comparable State law, and”.

23 (b) ADMINISTRATION AND ENFORCEMENT OF WORK-  
 24 ER ADJUSTMENT AND RETRAINING NOTIFICATION RE-  
 25 QUIREMENTS.—Section 5(a)(1) of the Worker Adjustment

1 and Retraining Notification Act (29 U.S.C. 2104(a)(1))  
 2 is amended, in the matter following subparagraph (B)—

3 (1) by inserting “which for purposes of this  
 4 sentence shall consist of the days, in the notification  
 5 period, that are or that follow the date of the pro-  
 6 hibited closing or layoff under this Act,” after “pe-  
 7 riod of the violation,”; and

8 (2) by inserting “calendar” after “60”.

9 **SEC. 304. LIMITATION ON EXECUTIVE COMPENSATION EN-**  
 10 **HANCEMENTS.**

11 Section 503(c) of title 11, United States Code, is  
 12 amended—

13 (1) in the matter preceding paragraph (1), by  
 14 inserting “and subject to section 363(b)(3),” after  
 15 “Notwithstanding subsection (b),”;

16 (2) in paragraph (1), in the matter preceding  
 17 subparagraph (A)—

18 (A) by inserting “, a senior executive offi-  
 19 cer of the debtor, or any of the 20 next most  
 20 highly compensated employees of the debtor, de-  
 21 partment or division managers of the debtor, or  
 22 consultants providing services to the debtor (re-  
 23 gardless of whether the executive officer, em-  
 24 ployee, manager, or consultant is an insider)”  
 25 after “insider of the debtor”;



1 (B) by inserting “or for the payment of  
2 performance or incentive compensation, a bonus  
3 of any kind, or any other financial return de-  
4 signed to replace or enhance incentive, stock, or  
5 other compensation in effect before the date of  
6 the commencement of the case,” after “remain  
7 with the debtor’s business,”; and

8 (C) by inserting “clear and convincing” be-  
9 fore “evidence in the record”;

10 (3) in paragraph (2), in the matter preceding  
11 subparagraph (A), by inserting “, a senior executive  
12 officer of the debtor, or any of the 20 next most  
13 highly compensated employees of the debtor, depart-  
14 ment or division managers of the debtor, or consult-  
15 ants providing services to the debtor (regardless of  
16 whether the executive officer, employee, manager, or  
17 consultant is an insider)” after “an insider of the  
18 debtor”; and

19 (4) by striking paragraph (3) and inserting the  
20 following:

21 “(3) any other transfer or obligation to or for  
22 the benefit of an insider of the debtor, a senior exec-  
23 utive officer of the debtor, or any of the 20 next  
24 most highly compensated employees of the debtor,  
25 department or division managers of the debtor, or

1 consultants providing services to the debtor (regard-  
2 less of whether the executive officer, employee, man-  
3 ager, or consultant is an insider), absent a finding  
4 by the court, based upon clear and convincing evi-  
5 dence in the record, and without deference to a re-  
6 quest by the debtor for such payment, that—

7 “(A) because of the essential and particu-  
8 larized nature of the services provided by the  
9 insider, executive officer, employee, manager, or  
10 consultant, the transfer or obligation is essen-  
11 tial to—

12 “(i) the survival of the business of the  
13 debtor; or

14 “(ii) in a case in which some or all of  
15 the assets of the debtor are liquidated, the  
16 orderly liquidation of the assets;

17 “(B) in the case of a transfer or obligation  
18 under an incentive program, the transfer or ob-  
19 ligation is part of a workforce incentive pro-  
20 gram generally applicable to the nonmanage-  
21 ment workforce of the debtor; and

22 “(C) the cost of the transfer or obliga-  
23 tion—

24 “(i) is reasonable;

1 “(ii) is not excessive in the context of  
2 the financial circumstances of the debtor;  
3 and  
4 “(iii) is not disproportionate in light  
5 of any economic loss incurred by the non-  
6 management workforce of the debtor dur-  
7 ing the case.”.

8 **SEC. 305. PROHIBITION AGAINST SPECIAL COMPENSATION**  
9 **PAYMENTS.**

10 Section 363 of title 11, United States Code, is  
11 amended—

12 (1) in subsection (b), by adding at the end the  
13 following:

14 “(3) No plan, program, or other transfer or obliga-  
15 tion to or for the benefit of an insider of the debtor, a  
16 senior executive officer of the debtor, or any of the 20  
17 next most highly compensated employees of the debtor, de-  
18 partment or division managers of the debtor, or consult-  
19 ants providing services to the debtor (regardless of wheth-  
20 er the executive officer, employee, manager, or consultant  
21 is an insider) shall be approved if the debtor has, on or  
22 after the date that is 1 year before the date of the filing  
23 of the petition—

1           “(A) discontinued any plan, program, policy or  
2           practice of paying severance pay to the nonmanage-  
3           ment workforce of the debtor; or

4           “(B) modified any plan, program, policy, or  
5           practice described in subparagraph (A) in order to  
6           reduce benefits under the plan, program, policy or  
7           practice.”; and

8           (2) in subsection (c)(1), by inserting before the  
9           period at the end the following: “, except that, for  
10          any transaction that constitutes a transfer or obliga-  
11          tion subject to section 503(c), the trustee shall be  
12          required to obtain the prior approval of the court  
13          after notice and an opportunity for a hearing”.

14 **SEC. 306. EXECUTIVE COMPENSATION UPON EXIT FROM**  
15 **BANKRUPTCY.**

16          Section 1129(a) of title 11, United States Code, is  
17          amended—

18               (1) in paragraph (4), by adding at the end the  
19               following: “Except for compensation subject to re-  
20               view under paragraph (5), any payment or other dis-  
21               tribution under the plan to or for the benefit of an  
22               insider of the debtor, a senior executive officer of the  
23               debtor, or any of the 20 next most highly com-  
24               pensated employees of the debtor, department or di-  
25               vision managers of the debtor, or consultants pro-

1       viding services to the debtor (regardless of whether  
2       the executive officer, employee, manager, or consult-  
3       ant is an insider), shall not be approved by the court  
4       except as part of a program of payments or distribu-  
5       tions generally applicable to employees of the debtor,  
6       and only to the extent that the court determines  
7       that the payment or other distribution is not exces-  
8       sive or disproportionate in comparison to payments  
9       or other distributions to the nonmanagement work-  
10      force of the debtor.”; and

11               (2) in paragraph (5)—

12                       (A) in subparagraph (A)(ii), by striking  
13               “and” at the end;

14                       (B) in subparagraph (B), by striking the  
15               period at the end and inserting “; and”; and

16                       (C) by adding at the end the following:

17               “(C) the compensation disclosed pursuant to  
18       subparagraph (B) has been approved by, or is sub-  
19       ject to the approval of, the court as—

20                       “(i) reasonable in comparison to compensa-  
21       tion paid to individuals holding comparable po-  
22       sitions at comparable companies in the same in-  
23       dustry; and

1           “(ii) not disproportionate in light of any  
2           economic concession made by the nonmanage-  
3           ment workforce of the debtor during the case.”.

4 **SEC. 307. COLLATERAL SURCHARGE FOR EMPLOYEE OBLI-**  
5 **GATIONS.**

6           Section 506(c) of title 11, United States Code, is  
7 amended—

8           (1) by inserting “(1)” before “The trustee”;  
9           and

10           (2) by adding at the end the following:

11           “(2) If one or more employees of the debtor have not  
12 received wages, accrued vacation, severance, or any other  
13 compensation owed under a plan, program, policy, or prac-  
14 tice of the debtor, or pursuant to the terms of a collective  
15 bargaining agreement, for services rendered on or after  
16 the date of the commencement of the case, or the debtor  
17 has not made a contribution due under an employee wel-  
18 fare benefit plan, as defined in section 3 of the Stop Wall  
19 Street Looting Act, on or after the date of the commence-  
20 ment of the case, such unpaid obligations shall be—

21           “(A) deemed—

22           “(i) reasonable, necessary costs and ex-  
23 penses of preserving, or disposing of, property  
24 securing an allowed secured claim; and

1           “(ii) benefiting the holder of the allowed  
2           secured claim; and

3           “(B) recovered by the trustee for payment to  
4           the employees or the employee welfare benefit plan,  
5           as defined in section 3 of the Stop Wall Street  
6           Looting Act, as applicable, even if the trustee, or a  
7           predecessor or successor in interest, has otherwise  
8           waived the provisions of this subsection under an  
9           agreement with the holder of the allowed secured  
10          claim or a successor or predecessor in interest of the  
11          holder of the allowed secured claim.”.

12 **SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION**  
13 **TRANSFERS.**

14          Section 547 of title 11, United States Code, is  
15 amended by adding at the end the following:

16          “(j)(1) The trustee may avoid a transfer to or for  
17 the benefit of an insider of the debtor, a senior executive  
18 officer of the debtor, or any of the 20 next most highly  
19 compensated employees of the debtor, department or divi-  
20 sion managers of the debtor, or consultants providing serv-  
21 ices to the debtor (regardless of whether the executive offi-  
22 cer, employee, manager, or consultant is an insider),  
23 that—

1           “(A) is made or incurred under a retention,  
2           bonus, or incentive plan devised before the date of  
3           the filing of the petition; and

4           “(B) does not meet the requirements under sec-  
5           tion 363(b)(3) or 503(c).

6           “(2) Subsection (c) shall not constitute a defense  
7           against the recovery of a transfer under paragraph (1) of  
8           this subsection.

9           “(3)(A) The trustee, or a committee appointed under  
10          section 1102, may commence an action to recover a trans-  
11          fer under paragraph (1) of this subsection.

12          “(B) If neither the trustee nor a committee com-  
13          mences an action to recover a transfer under subpara-  
14          graph (A) before the date of the commencement of a hear-  
15          ing on the confirmation of a plan, any party in interest  
16          may apply to the court for authority to recover the trans-  
17          fer for the benefit of the estate, in which case the costs  
18          of recovery shall be borne by the estate.”.

19       **SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF AS-**  
20                               **SETS.**

21           (a) REQUIREMENT RELATING TO PRESERVING JOBS  
22          AND MAINTAINING TERMS AND CONDITIONS RELATING  
23          TO EMPLOYMENT.—Section 363 of title 11, United States  
24          Code, is amended by adding at the end the following:



1       “(q)(1) In approving a sale or lease of property of  
2 the estate under this section, or under a plan under chap-  
3 ter 11, the court shall give substantial weight to the extent  
4 to which a prospective purchaser or lessee, respectively,  
5 of the property will—

6               “(A) preserve the jobs of the workforce of the  
7 debtor; and

8               “(B) maintain the terms and conditions of em-  
9 ployment of the workforce of the debtor.

10       “(2) If there are two or more offers to purchase or  
11 lease property of the estate under this section, or under  
12 a plan under chapter 11, that qualify under the procedures  
13 for the sale or lease, respectively, approved by the court,  
14 the court shall approve the offer that best—

15               “(A) preserves the jobs of the workforce of the  
16 debtor; and

17               “(B) maintains the terms and conditions of em-  
18 ployment of the workforce of the debtor.

19       “(r)(1) Any party seeking to purchase or lease prop-  
20 erty of the estate under this section, or under a plan under  
21 chapter 11, shall represent to the court the effect of such  
22 a transaction with respect to—

23               “(A) the preservation of the jobs of the work-  
24 force of the debtor; and

1           “(B) the maintenance of the terms and condi-  
2           tions of employment of the workforce of the debtor.

3           “(2) The court shall expressly include in an order ap-  
4           proving a purchase or lease of property of the estate under  
5           this section, or under a plan under chapter 11, any rep-  
6           resentation made by a purchaser or lessee of the property  
7           under paragraph (1).

8           “(3) With respect to a purchase or lease of property  
9           of the estate under this section, or under a plan under  
10          chapter 11—

11           “(A) the court shall have jurisdiction over the  
12           purchaser or lessee of the property in order to en-  
13           force the terms of the order approving the purchase  
14           or lease;

15           “(B) the purchaser or lessee shall promptly dis-  
16           close to the court any material noncompliance with  
17           the terms of the order described in subparagraph  
18           (A) and explain the basis for such noncompliance;  
19           and

20           “(C) with respect to material noncompliance de-  
21           scribed in subparagraph (B), the court may impose  
22           any appropriate remedy, including injunctive relief,  
23           to address the noncompliance.”.

24          (b) PLANS UNDER CHAPTER 11.—

1           (1) CONTENTS OF PLAN.—Section 1123(b)(4)  
 2           of title 11, United States Code, is amended by in-  
 3           serting “, which sale shall be subject to the require-  
 4           ments under subsections (q) and (r) of section 363  
 5           of this title,” after “property of the estate”.

6           (2) CONFIRMATION OF PLAN.—Section 1129(a)  
 7           of title 11, United States Code, is amended by add-  
 8           ing at the end the following:

9           “(17) If the plan provides for the sale of all or  
 10          substantially all of the property of the estate, the  
 11          sale meets the requirements under subsections (q)  
 12          and (r) of section 363 of this title.”.

13 **SEC. 310. PROTECTION OF GIFT CARD PURCHASERS.**

14          (a) DEFINITION OF GIFT CARD.—Section 101(a) of  
 15          title 11, United States Code, is amended by inserting after  
 16          paragraph (26) the following:

17               “(26A) The term ‘gift card’ means a paper or  
 18               electronic promise, plastic card, or other payment  
 19               code or device that is—

20                       “(A) redeemable at—

21                               “(i) a single merchant; or

22                               “(ii) an affiliated group of merchants  
 23                               that share the same name, mark, or logo;

24                       “(B) issued in a specified amount, regard-  
 25               less of whether that amount may be increased

1 in value or reloaded at the request of the hold-  
2 er;

3 “(C) purchased on a prepaid basis in ex-  
4 change for payment; and

5 “(D) honored by the single merchant or af-  
6 filiated group of merchants described in sub-  
7 paragraph (A) upon presentation for goods or  
8 services.”.

9 (b) CONSUMER DEPOSIT.—Section 507(a) of title 11,  
10 United States Code, is amended by striking paragraph (7)  
11 and inserting the following:

12 “(7) Seventh, allowed unsecured claims of indi-  
13 viduals, to the extent of \$1,800 for each such indi-  
14 vidual, arising from the deposit, before the com-  
15 mencement of the case, of money in connection  
16 with—

17 “(A) the purchase, lease, or rental of prop-  
18 erty;

19 “(B) the purchase of services, for the per-  
20 sonal, family, or household use of such individ-  
21 uals, that were not delivered or provided; or

22 “(C) the purchase of a gift card with re-  
23 spect to which funds exist that have not been  
24 redeemed.”.

1 **SEC. 311. COMMERCIAL REAL ESTATE.**

2 Section 365(d) of title 11, United States Code, is  
3 amended—

4 (1) by striking paragraph (4); and

5 (2) by redesignating paragraph (5) as para-  
6 graph (4).

7 **TITLE IV—CLOSING TAX**  
8 **LOOPHOLES**

9 **SEC. 401. AMENDMENT OF 1986 CODE.**

10 Except as otherwise expressly provided, whenever in  
11 this title an amendment or repeal is expressed in terms  
12 of an amendment to, or repeal of, a section or other provi-  
13 sion, the reference shall be considered to be made to a  
14 section or other provision of the Internal Revenue Code  
15 of 1986.

16 **SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN**  
17 **CONNECTION WITH PERFORMANCE OF SERV-**  
18 **ICES.**

19 (a) MODIFICATION TO ELECTION TO INCLUDE PART-  
20 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF  
21 TRANSFER.—Subsection (c) of section 83 is amended by  
22 redesignating paragraph (4) as paragraph (5) and by in-  
23 serting after paragraph (3) the following new paragraph:

24 “(4) PARTNERSHIP INTERESTS.—Except as  
25 provided by the Secretary—

1           “(A) IN GENERAL.—In the case of any  
2           transfer of an interest in a partnership in con-  
3           nection with the provision of services to (or for  
4           the benefit of) such partnership—

5                   “(i) the fair market value of such in-  
6                   terest shall be treated for purposes of this  
7                   section as being equal to the amount of the  
8                   distribution which the partner would re-  
9                   ceive if the partnership sold (at the time of  
10                  the transfer) all of its assets at fair market  
11                  value and distributed the proceeds of such  
12                  sale (reduced by the liabilities of the part-  
13                  nership) to its partners in liquidation of  
14                  the partnership, and

15                  “(ii) the person receiving such interest  
16                  shall be treated as having made the elec-  
17                  tion under subsection (b)(1) unless such  
18                  person makes an election under this para-  
19                  graph to have such subsection not apply.

20           “(B) ELECTION.—The election under sub-  
21           paragraph (A)(ii) shall be made under rules  
22           similar to the rules of subsection (b)(2).”.

23           (b) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to interests in partnerships trans-  
25           ferred after the date of enactment of this Act.

1 **SEC. 403. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
2 **VESTMENT MANAGEMENT SERVICES TO**  
3 **PARTNERSHIPS.**

4 (a) IN GENERAL.—Part I of subchapter K of chapter  
5 1 is amended by adding at the end the following new sec-  
6 tion:

7 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
8 **VESTMENT MANAGEMENT SERVICES TO**  
9 **PARTNERSHIPS.**

10 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF  
11 PARTNERSHIP ITEMS.—For purposes of this title, in the  
12 case of an investment services partnership interest—

13 “(1) IN GENERAL.—Notwithstanding section  
14 702(b)—

15 “(A) an amount equal to the net capital  
16 gain with respect to such interest for any part-  
17 nership taxable year shall be treated as ordi-  
18 nary income, and

19 “(B) subject to the limitation of paragraph  
20 (2), an amount equal to the net capital loss  
21 with respect to such interest for any partner-  
22 ship taxable year shall be treated as an ordi-  
23 nary loss.

24 “(2) RECHARACTERIZATION OF LOSSES LIM-  
25 ITED TO RECHARACTERIZED GAINS.—The amount  
26 treated as ordinary loss under paragraph (1)(B) for

1 any taxable year shall not exceed the excess (if any)  
2 of—

3 “(A) the aggregate amount treated as ordi-  
4 nary income under paragraph (1)(A) with re-  
5 spect to the investment services partnership in-  
6 terest for all preceding partnership taxable  
7 years to which this section applies, over

8 “(B) the aggregate amount treated as or-  
9 dinary loss under paragraph (1)(B) with re-  
10 spect to such interest for all preceding partner-  
11 ship taxable years to which this section applies.

12 “(3) ALLOCATION TO ITEMS OF GAIN AND  
13 LOSS.—

14 “(A) NET CAPITAL GAIN.—The amount  
15 treated as ordinary income under paragraph  
16 (1)(A) shall be allocated ratably among the  
17 items of long-term capital gain taken into ac-  
18 count in determining such net capital gain.

19 “(B) NET CAPITAL LOSS.—The amount  
20 treated as ordinary loss under paragraph (1)(B)  
21 shall be allocated ratably among the items of  
22 long-term capital loss and short-term capital  
23 loss taken into account in determining such net  
24 capital loss.



1           “(4) TERMS RELATING TO CAPITAL GAINS AND  
2       LOSSES.—For purposes of this section—

3           “(A) IN GENERAL.—Net capital gain, long-  
4       term capital gain, and long-term capital loss,  
5       with respect to any investment services partner-  
6       ship interest for any taxable year, shall be de-  
7       termined under section 1222, except that such  
8       section shall be applied—

9           “(i) without regard to the recharacter-  
10       ization of any item as ordinary income or  
11       ordinary loss under this section,

12          “(ii) by only taking into account items  
13       of gain and loss taken into account by the  
14       holder of such interest under section 702  
15       (other than subsection (a)(9) thereof) with  
16       respect to such interest for such taxable  
17       year, and

18          “(iii) by treating property which is  
19       taken into account in determining gains  
20       and losses to which section 1231 applies as  
21       capital assets held for more than 1 year.

22          “(B) NET CAPITAL LOSS.—The term ‘net  
23       capital loss’ means the excess of the losses from  
24       sales or exchanges of capital assets over the  
25       gains from such sales or exchanges. Rules simi-

1           lar to the rules of clauses (i) through (iii) of  
 2           subparagraph (A) shall apply for purposes of  
 3           the preceding sentence.

4           “(5) SPECIAL RULE FOR DIVIDENDS.—Any div-  
 5           idend allocated with respect to any investment serv-  
 6           ices partnership interest shall not be treated as  
 7           qualified dividend income for purposes of section  
 8           1(h).

9           “(6) SPECIAL RULE FOR QUALIFIED SMALL  
 10          BUSINESS STOCK.—Section 1202 shall not apply to  
 11          any gain from the sale or exchange of qualified small  
 12          business stock (as defined in section 1202(c)) allo-  
 13          cated with respect to any investment services part-  
 14          nership interest.

15          “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

16               “(1) GAIN.—

17                   “(A) IN GENERAL.—Any gain on the dis-  
 18                   position of an investment services partnership  
 19                   interest shall be—

20                           “(i) treated as ordinary income, and

21                           “(ii) recognized notwithstanding any  
 22                   other provision of this subtitle.

23                   “(B) GIFT AND TRANSFERS AT DEATH.—

24           In the case of a disposition of an investment

1 services partnership interest by gift or by rea-  
2 son of death of the taxpayer—

3 “(i) subparagraph (A) shall not apply,

4 “(ii) such interest shall be treated as  
5 an investment services partnership interest  
6 in the hands of the person acquiring such  
7 interest, and

8 “(iii) any amount that would have  
9 been treated as ordinary income under this  
10 subsection had the decedent sold such in-  
11 terest immediately before death shall be  
12 treated as an item of income in respect of  
13 a decedent under section 691.

14 “(2) LOSS.—Any loss on the disposition of an  
15 investment services partnership interest shall be  
16 treated as an ordinary loss to the extent of the ex-  
17 cess (if any) of—

18 “(A) the aggregate amount treated as ordi-  
19 nary income under subsection (a) with respect  
20 to such interest for all partnership taxable  
21 years to which this section applies, over

22 “(B) the aggregate amount treated as or-  
23 dinary loss under subsection (a) with respect to  
24 such interest for all partnership taxable years  
25 to which this section applies.

1           “(3) ELECTION WITH RESPECT TO CERTAIN EX-  
2       CHANGES.—Paragraph (1)(A)(ii) shall not apply to  
3       the contribution of an investment services partner-  
4       ship interest to a partnership in exchange for an in-  
5       terest in such partnership if—

6           “(A) the taxpayer makes an irrevocable  
7       election to treat the partnership interest re-  
8       ceived in the exchange as an investment serv-  
9       ices partnership interest, and

10          “(B) the taxpayer agrees to comply with  
11       such reporting and recordkeeping requirements  
12       as the Secretary may prescribe.

13          “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
14       ERTY.—

15          “(A) IN GENERAL.—In the case of any dis-  
16       tribution of property by a partnership with re-  
17       spect to any investment services partnership in-  
18       terest held by a partner, the partner receiving  
19       such property shall recognize gain equal to the  
20       excess (if any) of—

21               “(i) the fair market value of such  
22               property at the time of such distribution,  
23               over

24               “(ii) the adjusted basis of such prop-  
25               erty in the hands of such partner (deter-

1           mined without regard to subparagraph  
2           (C)).

3           “(B) TREATMENT OF GAIN AS ORDINARY  
4           INCOME.—Any gain recognized by such partner  
5           under subparagraph (A) shall be treated as or-  
6           dinary income to the same extent and in the  
7           same manner as the increase in such partner’s  
8           distributive share of the taxable income of the  
9           partnership would be treated under subsection  
10          (a) if, immediately prior to the distribution, the  
11          partnership had sold the distributed property at  
12          fair market value and all of the gain from such  
13          disposition were allocated to such partner. For  
14          purposes of applying subsection (a)(2), any gain  
15          treated as ordinary income under this subpara-  
16          graph shall be treated as an amount treated as  
17          ordinary income under subsection (a)(1)(A).

18          “(C) ADJUSTMENT OF BASIS.—In the case  
19          a distribution to which subparagraph (A) ap-  
20          plies, the basis of the distributed property in  
21          the hands of the distributee partner shall be the  
22          fair market value of such property.

23          “(D) SPECIAL RULES WITH RESPECT TO  
24          MERGERS AND DIVISIONS.—In the case of a  
25          taxpayer which satisfies requirements similar to

1           the requirements of subparagraphs (A) and (B)  
2           of paragraph (3), this paragraph and paragraph  
3           (1)(A)(ii) shall not apply to the distribution of  
4           a partnership interest if such distribution is in  
5           connection with a contribution (or deemed con-  
6           tribution) of any property of the partnership to  
7           which section 721 applies pursuant to a trans-  
8           action described in section 708(b)(2).

9           “(c) INVESTMENT SERVICES PARTNERSHIP INTER-  
10       EST.—For purposes of this section—

11           “(1) IN GENERAL.—The term ‘investment serv-  
12       ices partnership interest’ means any interest in an  
13       investment partnership acquired or held by any per-  
14       son in connection with the conduct of a trade or  
15       business described in paragraph (2) by such person  
16       (or any person related to such person). An interest  
17       in an investment partnership held by any person—

18           “(A) shall not be treated as an investment  
19       services partnership interest for any period be-  
20       fore the first date on which it is so held in con-  
21       nection with such a trade or business,

22           “(B) shall not cease to be an investment  
23       services partnership interest merely because  
24       such person holds such interest other than in  
25       connection with such a trade or business, and

1           “(C) shall be treated as an investment  
2           services partnership interest if acquired from a  
3           related person in whose hands such interest was  
4           an investment services partnership interest.

5           “(2) BUSINESSES TO WHICH THIS SECTION AP-  
6           PLIES.—A trade or business is described in this  
7           paragraph if such trade or business primarily in-  
8           volves the performance of any of the following serv-  
9           ices with respect to assets held (directly or indi-  
10          rectly) by one or more investment partnerships re-  
11          ferred to in paragraph (1):

12           “(A) Advising as to the advisability of in-  
13           vesting in, purchasing, or selling any specified  
14           asset.

15           “(B) Managing, acquiring, or disposing of  
16           any specified asset.

17           “(C) Arranging financing with respect to  
18           acquiring specified assets.

19           “(D) Any activity in support of any service  
20           described in subparagraphs (A) through (C).

21           “(3) INVESTMENT PARTNERSHIP.—

22           “(A) IN GENERAL.—The term ‘investment  
23           partnership’ means any partnership if, at the  
24           end of any two consecutive calendar quarters

1 ending after the date of enactment of this sec-  
2 tion—

3 “(i) substantially all of the assets of  
4 the partnership are specified assets (deter-  
5 mined without regard to any section 197  
6 intangible within the meaning of section  
7 197(d)), and

8 “(ii) less than 75 percent of the cap-  
9 ital of the partnership is attributable to  
10 qualified capital interests which constitute  
11 property held in connection with a trade or  
12 business of the owner of such interest.

13 “(B) LOOK-THROUGH OF CERTAIN WHOL-  
14 LY OWNED ENTITIES FOR PURPOSES OF DETER-  
15 MINING ASSETS OF THE PARTNERSHIP.—

16 “(i) IN GENERAL.—For purposes of  
17 determining the assets of a partnership  
18 under subparagraph (A)(i)—

19 “(I) any interest in a specified  
20 entity shall not be treated as an asset  
21 of such partnership, and

22 “(II) such partnership shall be  
23 treated as holding its proportionate  
24 share of each of the assets of such  
25 specified entity.



1           “(ii) SPECIFIED ENTITY.—For pur-  
2           poses of clause (i), the term ‘specified enti-  
3           ty’ means, with respect to any partnership  
4           (hereafter referred to as the upper-tier  
5           partnership), any person which engages in  
6           the same trade or business as the upper-  
7           tier partnership and is—

8                       “(I) a partnership all of the cap-  
9                       ital and profits interests of which are  
10                      held directly or indirectly by the  
11                      upper-tier partnership, or

12                     “(II) a foreign corporation which  
13                     does not engage in a trade or business  
14                     in the United States and all of the  
15                     stock of which is held directly or indi-  
16                     rectly by the upper-tier partnership.

17           “(C) SPECIAL RULES FOR DETERMINING  
18           IF PROPERTY HELD IN CONNECTION WITH  
19           TRADE OR BUSINESS.—

20                     “(i) IN GENERAL.—Except as other-  
21                     wise provided by the Secretary, solely for  
22                     purposes of determining whether any inter-  
23                     est in a partnership constitutes property  
24                     held in connection with a trade or business  
25                     under subparagraph (A)(ii)—

1           “(I) a trade or business of any  
2           person closely related to the owner of  
3           such interest shall be treated as a  
4           trade or business of such owner,

5           “(II) such interest shall be treat-  
6           ed as held by a person in connection  
7           with a trade or business during any  
8           taxable year if such interest was so  
9           held by such person during any 3 tax-  
10          able years preceding such taxable  
11          year, and

12          “(III) paragraph (5)(B) shall not  
13          apply.

14          “(ii) CLOSELY RELATED PERSONS.—  
15          For purposes of clause (i)(I), a person  
16          shall be treated as closely related to an-  
17          other person if, taking into account the  
18          rules of section 267(c), the relationship be-  
19          tween such persons is described in—

20                 “(I) paragraph (1) or (9) of sec-  
21                 tion 267(b), or

22                 “(II) section 267(b)(4), but solely  
23                 in the case of a trust with respect to  
24                 which each current beneficiary is the  
25                 grantor or a person whose relationship

1 to the grantor is described in para-  
2 graph (1) or (9) of section 267(b).

3 “(D) ANTI-ABUSE RULES.—The Secretary  
4 may issue regulations or other guidance which  
5 prevent the avoidance of the purposes of sub-  
6 paragraph (A), including regulations or other  
7 guidance which treat convertible and contingent  
8 debt (and other debt having the attributes of  
9 equity) as a capital interest in the partnership.

10 “(E) CONTROLLED GROUPS OF ENTI-  
11 TIES.—

12 “(i) IN GENERAL.—In the case of a  
13 controlled group of entities, if an interest  
14 in the partnership received in exchange for  
15 a contribution to the capital of the part-  
16 nership by any member of such controlled  
17 group would (in the hands of such mem-  
18 ber) constitute property held in connection  
19 with a trade or business, then any interest  
20 in such partnership held by any member of  
21 such group shall be treated for purposes of  
22 subparagraph (A) as constituting (in the  
23 hands of such member) property held in  
24 connection with a trade or business.

1                   “(ii) CONTROLLED GROUP OF ENTI-  
2                   TIES.—For purposes of clause (i), the term  
3                   ‘controlled group of entities’ means a con-  
4                   trolled group of corporations as defined in  
5                   section 1563(a)(1), applied without regard  
6                   to subsections (a)(4) and (b)(2) of section  
7                   1563. A partnership or any other entity  
8                   (other than a corporation) shall be treated  
9                   as a member of a controlled group of enti-  
10                  ties if such entity is controlled (within the  
11                  meaning of section 954(d)(3)) by members  
12                  of such group (including any entity treated  
13                  as a member of such group by reason of  
14                  this sentence).

15               “(F) SPECIAL RULE FOR CORPORA-  
16               TIONS.—For purposes of this paragraph, in the  
17               case of a corporation, the determination of  
18               whether property is held in connection with a  
19               trade or business shall be determined as if the  
20               taxpayer were an individual.

21               “(4) SPECIFIED ASSET.—The term ‘specified  
22               asset’ means securities (as defined in section  
23               475(c)(2) without regard to the last sentence there-  
24               of), real estate held for rental or investment, inter-  
25               ests in partnerships, commodities (as defined in sec-

tion 475(e)(2)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

“(5) RELATED PERSONS.—

“(A) IN GENERAL.—A person shall be treated as related to another person if the relationship between such persons is described in section 267(b) or 707(b).

“(B) ATTRIBUTION OF PARTNER SERVICES.—Any service described in paragraph (2) which is provided by a partner of a partnership shall be treated as also provided by such partnership.

“(d) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

“(1) IN GENERAL.—In the case of any portion of an investment services partnership interest which is a qualified capital interest, all items of gain and loss (and any dividends) which are allocated to such qualified capital interest shall not be taken into account under subsection (a) if—

“(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by part-

ners who do not provide any services described in subsection (c)(2) and who are not related to the partner holding the qualified capital interest, and

“(B) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(2) AUTHORITY TO PROVIDE EXCEPTIONS TO ALLOCATION REQUIREMENTS.—To the extent provided by the Secretary in regulations or other guidance—

“(A) ALLOCATIONS TO PORTION OF QUALIFIED CAPITAL INTEREST.—Paragraph (1) may be applied separately with respect to a portion of a qualified capital interest.

“(B) NO OR INSIGNIFICANT ALLOCATIONS TO NONSERVICE PROVIDERS.—In any case in which the requirements of paragraph (1)(B) are not satisfied, items of gain and loss (and any dividends) shall not be taken into account under subsection (a) to the extent that such items are properly allocable under such regulations or other guidance to qualified capital interests.

“(C) ALLOCATIONS TO SERVICE PROVIDERS’ QUALIFIED CAPITAL INTERESTS WHICH

1 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-  
2 tions shall not be treated as failing to meet the  
3 requirement of paragraph (1)(A) merely be-  
4 cause the allocations to the qualified capital in-  
5 terest represent a lower return than the alloca-  
6 tions made to the other qualified capital inter-  
7 ests referred to in such paragraph.

8 “(3) SPECIAL RULE FOR CHANGES IN SERVICES  
9 AND CAPITAL CONTRIBUTIONS.—In the case of an  
10 interest in a partnership which was not an invest-  
11 ment services partnership interest and which, by  
12 reason of a change in the services with respect to as-  
13 sets held (directly or indirectly) by the partnership  
14 or by reason of a change in the capital contributions  
15 to such partnership, becomes an investment services  
16 partnership interest, the qualified capital interest of  
17 the holder of such partnership interest immediately  
18 after such change shall not, for purposes of this sub-  
19 section, be less than the fair market value of such  
20 interest (determined immediately before such  
21 change).

22 “(4) SPECIAL RULE FOR TIERED PARTNER-  
23 SHIPS.—Except as otherwise provided by the Sec-  
24 retary, in the case of tiered partnerships, all items  
25 which are allocated in a manner which meets the re-

1        requirements of paragraph (1) to qualified capital in-  
2        terests in a lower-tier partnership shall retain such  
3        character to the extent allocated on the basis of  
4        qualified capital interests in any upper-tier partner-  
5        ship.

6            “(5) EXCEPTION FOR NO-SELF-CHARGED  
7        CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-  
8        cept as otherwise provided by the Secretary, an in-  
9        terest shall not fail to be treated as satisfying the  
10       requirement of paragraph (1)(A) merely because the  
11       allocations made by the partnership to such interest  
12       do not reflect the cost of services described in sub-  
13       section (c)(2) which are provided (directly or indi-  
14       rectly) to the partnership by the holder of such in-  
15       terest (or a related person).

16           “(6) SPECIAL RULE FOR DISPOSITIONS.—In the  
17        case of any investment services partnership interest  
18        any portion of which is a qualified capital interest,  
19        subsection (b) shall not apply to so much of any  
20        gain or loss as bears the same proportion to the en-  
21        tire amount of such gain or loss as—

22                   “(A) the distributive share of gain or loss  
23                   that would have been allocated to the qualified  
24                   capital interest (consistent with the require-  
25                   ments of paragraph (1)) if the partnership had



1           sold all of its assets at fair market value imme-  
2           diately before the disposition, bears to

3           “(B) the distributive share of gain or loss  
4           that would have been so allocated to the invest-  
5           ment services partnership interest of which such  
6           qualified capital interest is a part.

7           “(7) QUALIFIED CAPITAL INTEREST.—For pur-  
8           poses of this section—

9           “(A) IN GENERAL.—The term ‘qualified  
10          capital interest’ means so much of a partner’s  
11          interest in the capital of the partnership as is  
12          attributable to—

13               “(i) the fair market value of any  
14               money or other property contributed to the  
15               partnership in exchange for such interest  
16               (determined without regard to section  
17               752(a)),

18               “(ii) any amounts which have been in-  
19               cluded in gross income under section 83  
20               with respect to the transfer of such inter-  
21               est, and

22               “(iii) the excess (if any) of—

23                       “(I) any items of income and  
24                       gain taken into account under section  
25                       702 with respect to such interest, over

1 “(II) any items of deduction and  
2 loss so taken into account.

3 “(B) ADJUSTMENT TO QUALIFIED CAPITAL  
4 INTEREST.—

5 “(i) DISTRIBUTIONS AND LOSSES.—

6 The qualified capital interest shall be re-  
7 duced by distributions from the partner-  
8 ship with respect to such interest and by  
9 the excess (if any) of the amount described  
10 in subparagraph (A)(iii)(II) over the  
11 amount described in subparagraph  
12 (A)(iii)(I).

13 “(ii) SPECIAL RULE FOR CONTRIBU-  
14 TIONS OF PROPERTY.—In the case of any  
15 contribution of property described in sub-  
16 paragraph (A)(i) with respect to which the  
17 fair market value of such property is not  
18 equal to the adjusted basis of such prop-  
19 erty immediately before such contribution,  
20 proper adjustments shall be made to the  
21 qualified capital interest to take into ac-  
22 count such difference consistent with such  
23 regulations or other guidance as the Sec-  
24 retary may provide.

1           “(C) TECHNICAL TERMINATIONS, ETC.,  
2           DISREGARDED.—No increase or decrease in the  
3           qualified capital interest of any partner shall re-  
4           sult from a termination, merger, consolidation,  
5           or division described in section 708, or any  
6           similar transaction.

7           “(8) TREATMENT OF CERTAIN LOANS.—

8           “(A) PROCEEDS OF PARTNERSHIP LOANS  
9           NOT TREATED AS QUALIFIED CAPITAL INTER-  
10          EST OF SERVICE PROVIDING PARTNERS.—For  
11          purposes of this subsection, an investment serv-  
12          ices partnership interest shall not be treated as  
13          a qualified capital interest to the extent that  
14          such interest is acquired in connection with the  
15          proceeds of any loan or other advance made or  
16          guaranteed, directly or indirectly, by any other  
17          partner or the partnership (or any person re-  
18          lated to any such other partner or the partner-  
19          ship). The preceding sentence shall not apply to  
20          the extent the loan or other advance is repaid  
21          before the date of enactment of this section un-  
22          less such repayment is made with the proceeds  
23          of a loan or other advance described in the pre-  
24          ceding sentence.

1           “(B) REDUCTION IN ALLOCATIONS TO  
 2           QUALIFIED CAPITAL INTERESTS FOR LOANS  
 3           FROM NONSERVICE-PROVIDING PARTNERS TO  
 4           THE PARTNERSHIP.—For purposes of this sub-  
 5           section, any loan or other advance to the part-  
 6           nership made or guaranteed, directly or indi-  
 7           rectly, by a partner not providing services de-  
 8           scribed in subsection (c)(2) to the partnership  
 9           (or any person related to such partner) shall be  
 10          taken into account in determining the qualified  
 11          capital interests of the partners in the partner-  
 12          ship.

13          “(9) SPECIAL RULE FOR QUALIFIED FAMILY  
 14          PARTNERSHIPS.—

15               “(A) IN GENERAL.—In the case of any  
 16               specified family partnership interest, paragraph  
 17               (1)(A) shall be applied without regard to the  
 18               phrase ‘and who are not related to the partner  
 19               holding the qualified capital interest’.

20               “(B) SPECIFIED FAMILY PARTNERSHIP IN-  
 21               TEREST.—For purposes of this paragraph, the  
 22               term ‘specified family partnership interest’  
 23               means any investment services partnership in-  
 24               terest if—

1 “(i) such interest is an interest in a  
2 qualified family partnership,

3 “(ii) such interest is held by a natural  
4 person or by a trust with respect to which  
5 each beneficiary is a grantor or a person  
6 whose relationship to the grantor is de-  
7 scribed in section 267(b)(1), and

8 “(iii) all other interests in such quali-  
9 fied family partnership with respect to  
10 which significant allocations are made  
11 (within the meaning of paragraph (1)(B)  
12 and in comparison to the allocations made  
13 to the interest described in clause (ii)) are  
14 held by persons who—

15 “(I) are related to the natural  
16 person or trust referred to in clause  
17 (ii), or

18 “(II) provide services described  
19 in subsection (c)(2).

20 “(C) QUALIFIED FAMILY PARTNERSHIP.—  
21 For purposes of this paragraph, the term  
22 ‘qualified family partnership’ means any part-  
23 nership if—

24 “(i) all of the capital and profits in-  
25 terests of such partnership are held by—

1 “(I) specified family members,

2 “(II) any person closely related  
3 (within the meaning of subsection  
4 (c)(3)(C)(ii)) to a specified family  
5 member, or

6 “(III) any other person (not de-  
7 scribed in subclause (I) or (II)) if  
8 such interest is an investment services  
9 partnership interest with respect to  
10 such person, and

11 “(ii) such partnership does not hold  
12 itself out to the public as an investment  
13 advisor.

14 “(D) SPECIFIED FAMILY MEMBERS.—For  
15 purposes of subparagraph (C), individuals shall  
16 be treated as specified family members if such  
17 individuals would be treated as one person  
18 under the rules of section 1361(c)(1) if the ap-  
19 plicable date (within the meaning of subpara-  
20 graph (B)(iii) thereof) were the latest of—

21 “(i) the date of the establishment of  
22 the partnership,

23 “(ii) the earliest date that the com-  
24 mon ancestor holds a capital or profits in-  
25 terest in the partnership, or

1 “(iii) the date of enactment of this  
2 section.

3 “(e) OTHER INCOME AND GAIN IN CONNECTION  
4 WITH INVESTMENT MANAGEMENT SERVICES.—

5 “(1) IN GENERAL.—If—

6 “(A) a person performs (directly or indi-  
7 rectly) investment management services for any  
8 investment entity,

9 “(B) such person holds (directly or indi-  
10 rectly) a disqualified interest with respect to  
11 such entity, and

12 “(C) the value of such interest (or pay-  
13 ments thereunder) is substantially related to  
14 the amount of income or gain (whether or not  
15 realized) from the assets with respect to which  
16 the investment management services are per-  
17 formed,

18 any income or gain with respect to such interest  
19 shall be treated as ordinary income. Rules similar to  
20 the rules of subsections (a)(5) and (d) shall apply  
21 for purposes of this subsection.

22 “(2) DEFINITIONS.—For purposes of this sub-  
23 section—

24 “(A) DISQUALIFIED INTEREST.—

1 “(i) IN GENERAL.—The term ‘dis-  
2 qualified interest’ means, with respect to  
3 any investment entity—

4 “(I) any interest in such entity  
5 other than indebtedness,

6 “(II) convertible or contingent  
7 debt of such entity,

8 “(III) any option or other right  
9 to acquire property described in sub-  
10 clause (I) or (II), and

11 “(IV) any derivative instrument  
12 entered into (directly or indirectly)  
13 with such entity or any investor in  
14 such entity.

15 “(ii) EXCEPTIONS.—Such term shall  
16 not include—

17 “(I) a partnership interest,

18 “(II) except as provided by the  
19 Secretary, any interest in a taxable  
20 corporation, and

21 “(III) except as provided by the  
22 Secretary, stock in an S corporation.

23 “(B) TAXABLE CORPORATION.—The term  
24 ‘taxable corporation’ means—

25 “(i) a domestic C corporation, or



1 “(ii) a foreign corporation substan-  
2 tially all of the income of which is—

3 “(I) effectively connected with  
4 the conduct of a trade or business in  
5 the United States, or

6 “(II) subject to a comprehensive  
7 foreign income tax (as defined in sec-  
8 tion 457A(d)(2)).

9 “(C) INVESTMENT MANAGEMENT SERV-  
10 ICES.—The term ‘investment management serv-  
11 ices’ means a substantial quantity of any of the  
12 services described in subsection (c)(2).

13 “(D) INVESTMENT ENTITY.—The term ‘in-  
14 vestment entity’ means any entity which, if it  
15 were a partnership, would be an investment  
16 partnership.

17 “(f) EXCEPTION FOR DOMESTIC C CORPORATIONS.—  
18 Except as otherwise provided by the Secretary, in the case  
19 of a domestic C corporation—

20 “(1) subsections (a) and (b) shall not apply to  
21 any item allocated to such corporation with respect  
22 to any investment services partnership interest (or  
23 to any gain or loss with respect to the disposition of  
24 such an interest), and

25 “(2) subsection (e) shall not apply.

1       “(g) REGULATIONS.—The Secretary shall prescribe  
2 such regulations or other guidance as is necessary or ap-  
3 propriate to carry out the purposes of this section, includ-  
4 ing regulations or other guidance to—

5           “(1) require such reporting and recordkeeping  
6 by any person in such manner and at such time as  
7 the Secretary may prescribe for purposes of enabling  
8 the partnership to meet the requirements of section  
9 6031 with respect to any item described in section  
10 702(a)(9),

11          “(2) provide modifications to the application of  
12 this section (including treating related persons as  
13 not related to one another) to the extent such modi-  
14 fication is consistent with the purposes of this sec-  
15 tion,

16          “(3) prevent the avoidance of the purposes of  
17 this section (including through the use of qualified  
18 family partnerships), and

19          “(4) coordinate this section with the other pro-  
20 visions of this title.

21       “(h) CROSS REFERENCE.—For 40-percent penalty  
22 on certain underpayments due to the avoidance of this sec-  
23 tion, see section 6662.”.

1 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-  
2 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-  
3 TERESTS.—

4 (1) IN GENERAL.—Subsection (a) of section  
5 751 is amended by striking “or” at the end of para-  
6 graph (1), by inserting “or” at the end of paragraph  
7 (2), and by inserting after paragraph (2) the fol-  
8 lowing new paragraph:

9 “(3) investment services partnership interests  
10 held by the partnership,”.

11 (2) CERTAIN DISTRIBUTIONS TREATED AS  
12 SALES OR EXCHANGES.—Subparagraph (A) of sec-  
13 tion 751(b)(1) is amended by striking “or” at the  
14 end of clause (i), by inserting “or” at the end of  
15 clause (ii), and by inserting after clause (ii) the fol-  
16 lowing new clause:

17 “(iii) investment services partnership  
18 interests held by the partnership,”.

19 (3) APPLICATION OF SPECIAL RULES IN THE  
20 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of  
21 section 751 is amended—

22 (A) by striking “or” at the end of para-  
23 graph (1), by inserting “or” at the end of para-  
24 graph (2), and by inserting after paragraph (2)  
25 the following new paragraph:

1 “(3) an investment services partnership interest  
2 held by the partnership,”; and

3 (B) by striking “partner.” and inserting  
4 “partner (other than a partnership in which it  
5 holds an investment services partnership inter-  
6 est).”.

7 (4) INVESTMENT SERVICES PARTNERSHIP IN-  
8 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section  
9 751 is amended by adding at the end the following  
10 new subsection:

11 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-  
12 ESTS.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘investment serv-  
14 ices partnership interest’ has the meaning given  
15 such term by section 710(c).

16 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL  
17 INTERESTS.—The amount to which subsection (a)  
18 applies by reason of paragraph (3) thereof shall not  
19 include so much of such amount as is attributable  
20 to any portion of the investment services partnership  
21 interest which is a qualified capital interest (deter-  
22 mined under rules similar to the rules of section  
23 710(d)).

24 “(3) EXCEPTION FOR PUBLICLY TRADED PART-  
25 NERSHIPS.—Except as otherwise provided by the

1 Secretary, in the case of an exchange of an interest  
 2 in a publicly traded partnership (as defined in sec-  
 3 tion 7704) to which subsection (a) applies—

4 “(A) this section shall be applied without  
 5 regard to subsections (a)(3), (b)(1)(A)(iii), and  
 6 (f)(3), and

7 “(B) such partnership shall be treated as  
 8 owning its proportionate share of the property  
 9 of any other partnership in which it is a part-  
 10 ner.

11 “(4) RECOGNITION OF GAINS.—Any gain with  
 12 respect to which subsection (a) applies by reason of  
 13 paragraph (3) thereof shall be recognized notwith-  
 14 standing any other provision of this title.

15 “(5) COORDINATION WITH INVENTORY  
 16 ITEMS.—An investment services partnership interest  
 17 held by the partnership shall not be treated as an  
 18 inventory item of the partnership.

19 “(6) PREVENTION OF DOUBLE COUNTING.—  
 20 Under regulations or other guidance prescribed by  
 21 the Secretary, subsection (a)(3) shall not apply with  
 22 respect to any amount to which section 710 applies.

23 “(7) VALUATION METHODS.—The Secretary  
 24 shall prescribe regulations or other guidance which  
 25 provide the acceptable methods for valuing invest-

1       ment services partnership interests for purposes of  
2       this section.”.

3       (c) TREATMENT FOR PURPOSES OF SECTION  
4       7704.—Subsection (d) of section 7704 is amended by add-  
5       ing at the end the following new paragraph:

6               “(6) INCOME FROM CERTAIN CARRIED INTER-  
7       ESTS NOT QUALIFIED.—

8               “(A) IN GENERAL.—Specified carried in-  
9       terest income shall not be treated as qualifying  
10      income.

11              “(B) SPECIFIED CARRIED INTEREST IN-  
12      COME.—For purposes of this paragraph—

13              “(i) IN GENERAL.—The term ‘speci-  
14      fied carried interest income’ means—

15              “(I) any item of income or gain  
16      allocated to an investment services  
17      partnership interest (as defined in  
18      section 710(c)) held by the partner-  
19      ship,

20              “(II) any gain on the disposition  
21      of an investment services partnership  
22      interest (as so defined) or a partner-  
23      ship interest to which (in the hands of  
24      the partnership) section 751 applies,  
25      and

1                   “(III) any income or gain taken  
2                   into account by the partnership under  
3                   subsection (b)(4) or (e) of section  
4                   710.

5                   “(ii) EXCEPTION FOR QUALIFIED CAP-  
6                   ITAL INTERESTS.—A rule similar to the  
7                   rule of section 710(d) shall apply for pur-  
8                   poses of clause (i).

9                   “(C) COORDINATION WITH OTHER PROVI-  
10                  SIONS.—Subparagraph (A) shall not apply to  
11                  any item described in paragraph (1)(E) (or so  
12                  much of paragraph (1)(F) as relates to para-  
13                  graph (1)(E)).

14                  “(D) SPECIAL RULES FOR CERTAIN PART-  
15                  NERSHIPS.—

16                  “(i) CERTAIN PARTNERSHIPS OWNED  
17                  BY REAL ESTATE INVESTMENT TRUSTS.—  
18                  Subparagraph (A) shall not apply in the  
19                  case of a partnership which meets each of  
20                  the following requirements:

21                         “(I) Such partnership is treated  
22                         as publicly traded under this section  
23                         solely by reason of interests in such  
24                         partnership being convertible into in-

1           terests in a real estate investment  
2           trust which is publicly traded.

3           “(II) Fifty percent or more of  
4           the capital and profits interests of  
5           such partnership are owned, directly  
6           or indirectly, at all times during the  
7           taxable year by such real estate in-  
8           vestment trust (determined with the  
9           application of section 267(c)).

10          “(III) Such partnership meets  
11          the requirements of paragraphs (2),  
12          (3), and (4) of section 856(c).

13          “(ii) CERTAIN PARTNERSHIPS OWN-  
14          ING OTHER PUBLICLY TRADED PARTNER-  
15          SHIPS.—Subparagraph (A) shall not apply  
16          in the case of a partnership which meets  
17          each of the following requirements:

18               “(I) Substantially all of the as-  
19               sets of such partnership consist of in-  
20               terests in one or more publicly traded  
21               partnerships (determined without re-  
22               gard to subsection (b)(2)).

23               “(II) Substantially all of the in-  
24               come of such partnership is ordinary



1 income or section 1231 gain (as de-  
 2 fined in section 1231(a)(3)).

3 “(E) TRANSITIONAL RULE.—Subpara-  
 4 graph (A) shall not apply to any taxable year  
 5 of the partnership beginning before the date  
 6 which is 10 years after the date of enactment  
 7 of this paragraph.”.

8 (d) IMPOSITION OF PENALTY ON UNDERPAY-  
 9 MENTS.—

10 (1) IN GENERAL.—Subsection (b) of section  
 11 6662 is amended by inserting after paragraph (9)  
 12 the following new paragraph:

13 “(10) The application of section 710(e) or the  
 14 regulations or other guidance prescribed under sec-  
 15 tion 710(g) to prevent the avoidance of the purposes  
 16 of section 710.”.

17 (2) AMOUNT OF PENALTY.—

18 (A) IN GENERAL.—Section 6662 is amend-  
 19 ed by adding at the end the following new sub-  
 20 section:

21 “(m) INCREASE IN PENALTY IN CASE OF PROPERTY  
 22 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
 23 ICES.—In the case of any portion of an underpayment to  
 24 which this section applies by reason of subsection (b)(10),

1 subsection (a) shall be applied with respect to such portion  
 2 by substituting ‘40 percent’ for ‘20 percent’.”.

3 (B) CONFORMING AMENDMENT.—Subpara-  
 4 graph (B) of section 6662A(e)(2) is amended  
 5 by striking “or (i)” and inserting “, (i), or  
 6 (m)”.

7 (3) SPECIAL RULES FOR APPLICATION OF REA-  
 8 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-  
 9 tion 6664 is amended—

10 (A) by redesignating paragraphs (3) and  
 11 (4) as paragraphs (4) and (5), respectively;

12 (B) by striking “paragraph (3)” in para-  
 13 graph (5)(A), as so redesignated, and inserting  
 14 “paragraph (4)”; and

15 (C) by inserting after paragraph (2) the  
 16 following new paragraph:

17 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-  
 18 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-  
 19 ICES.—

20 “(A) IN GENERAL.—Paragraph (1) shall  
 21 not apply to any portion of an underpayment to  
 22 which section 6662 applies by reason of sub-  
 23 section (b)(10) unless—

1 “(i) the relevant facts affecting the  
2 tax treatment of the item are adequately  
3 disclosed,

4 “(ii) there is or was substantial au-  
5 thority for such treatment, and

6 “(iii) the taxpayer reasonably believed  
7 that such treatment was more likely than  
8 not the proper treatment.

9 “(B) RULES RELATING TO REASONABLE  
10 BELIEF.—Rules similar to the rules of sub-  
11 section (d)(4) shall apply for purposes of sub-  
12 paragraph (A)(iii).”.

13 (e) INCOME AND LOSS FROM INVESTMENT SERVICES  
14 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-  
15 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

16 (1) INTERNAL REVENUE CODE.—

17 (A) IN GENERAL.—Section 1402(a) is  
18 amended by striking “and” at the end of para-  
19 graph (16), by striking the period at the end of  
20 paragraph (17) and inserting “; and”, and by  
21 inserting after paragraph (17) the following  
22 new paragraph:

23 “(18) notwithstanding the preceding provisions  
24 of this subsection, in the case of any individual en-  
25 gaged in the trade or business of providing services

1 described in section 710(c)(2) with respect to any  
 2 entity, investment services partnership income or  
 3 loss (as defined in subsection (m)) of such individual  
 4 with respect to such entity shall be taken into ac-  
 5 count in determining the net earnings from self-em-  
 6 ployment of such individual.”.

7 (B) INVESTMENT SERVICES PARTNERSHIP  
 8 INCOME OR LOSS.—Section 1402 is amended by  
 9 adding at the end the following new subsection:  
 10 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME  
 11 OR LOSS.—For purposes of subsection (a)—

12 “(1) IN GENERAL.—The term ‘investment serv-  
 13 ices partnership income or loss’ means, with respect  
 14 to any investment services partnership interest (as  
 15 defined in section 710(c)) or disqualified interest (as  
 16 defined in section 710(e)), the net of—

17 “(A) the amounts treated as ordinary in-  
 18 come or ordinary loss under subsections (b) and  
 19 (e) of section 710 with respect to such interest,

20 “(B) all items of income, gain, loss, and  
 21 deduction allocated to such interest, and

22 “(C) the amounts treated as realized from  
 23 the sale or exchange of property other than a  
 24 capital asset under section 751 with respect to  
 25 such interest.

1           “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-  
2           TERESTS.—A rule similar to the rule of section  
3           710(d) shall apply for purposes of applying para-  
4           graph (1)(B).”.

5           (2) SOCIAL SECURITY ACT.—Section 211(a) of  
6           the Social Security Act is amended by striking  
7           “and” at the end of paragraph (15), by striking the  
8           period at the end of paragraph (16) and inserting “;  
9           and”, and by inserting after paragraph (16) the fol-  
10          lowing new paragraph:

11          “(17) Notwithstanding the preceding provisions  
12          of this subsection, in the case of any individual en-  
13          gaged in the trade or business of providing services  
14          described in section 710(c)(2) of the Internal Rev-  
15          enue Code of 1986 with respect to any entity, invest-  
16          ment services partnership income or loss (as defined  
17          in section 1402(m) of such Code) shall be taken into  
18          account in determining the net earnings from self-  
19          employment of such individual.”.

20          (f) SEPARATE ACCOUNTING BY PARTNER.—Section  
21          702(a) is amended by striking “and” at the end of para-  
22          graph (7), by striking the period at the end of paragraph  
23          (8) and inserting “, and”, and by inserting after para-  
24          graph (8) the following:

1           “(9) any amount treated as ordinary income or  
2           loss under subsection (a), (b), or (e) of section  
3           710.”.

4           (g) CONFORMING AMENDMENTS.—

5           (1) Subsection (d) of section 731 is amended by  
6           inserting “section 710(b)(4) (relating to distribu-  
7           tions of partnership property),” after “to the extent  
8           otherwise provided by”.

9           (2) Section 741 is amended by inserting “or  
10          section 710 (relating to special rules for partners  
11          providing investment management services to part-  
12          nerships)” before the period at the end.

13          (3) The table of sections for part I of sub-  
14          chapter K of chapter 1 is amended by adding at the  
15          end the following new item:

“Sec. 710. Special rules for partners providing investment management services  
to partnerships.”.

16          (4)(A) Part IV of subchapter O of chapter 1 is  
17          amended by striking section 1061.

18          (B) The table of sections for part IV of sub-  
19          chapter O of chapter 1 is amended by striking the  
20          item relating to section 1061.

21          (h) EFFECTIVE DATE.—

22          (1) IN GENERAL.—Except as otherwise pro-  
23          vided in this subsection, the amendments made by

1       this section shall apply to taxable years ending after  
2       the date of enactment of this Act.

3           (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
4       CLUDE EFFECTIVE DATE.—In applying section  
5       710(a) of the Internal Revenue Code of 1986 (as  
6       added by this section) in the case of any partnership  
7       taxable year which includes the date of enactment of  
8       this Act, the amount of the net capital gain referred  
9       to in such section shall be treated as being the lesser  
10      of the net capital gain for the entire partnership tax-  
11      able year or the net capital gain determined by only  
12      taking into account items attributable to the portion  
13      of the partnership taxable year which is after such  
14      date.

15           (3) DISPOSITIONS OF PARTNERSHIP INTER-  
16      ESTS.—

17           (A) IN GENERAL.—Section 710(b) of such  
18      Code (as added by this section) shall apply to  
19      dispositions and distributions after the date of  
20      enactment of this Act.

21           (B) INDIRECT DISPOSITIONS.—The amend-  
22      ments made by subsection (b) shall apply to  
23      transactions after the date of enactment of this  
24      Act.

1           (4) OTHER INCOME AND GAIN IN CONNECTION  
 2           WITH INVESTMENT MANAGEMENT SERVICES.—Sec-  
 3           tion 710(e) of such Code (as added by this section)  
 4           shall take effect on the date of enactment of this  
 5           Act.

6       **TITLE V—INVESTOR PROTEC-**  
 7       **TION AND MARKET TRANS-**  
 8       **PARENCY**

9       **SEC. 501. DISCLOSURE OF FEES AND RETURNS.**

10       The Investment Company Act of 1940 (15 U.S.C.  
 11       80a–1 et seq.), as amended by this Act, is amended by  
 12       adding at the end the following:

13       **“SEC. 67. DISCLOSURE OF FEES AND RETURNS.**

14       “(a) DEFINITIONS.—In this section—

15               “(1) the terms ‘controlling private fund’, ‘pri-  
 16               vate fund’, and ‘target firm’ have the meanings  
 17               given the terms in section 3 of the Stop Wall Street  
 18               Looting Act; and

19               “(2) the term ‘expenditure for political activi-  
 20               ties’—

21                       “(A) means—

22                               “(i) an independent expenditure, as  
 23                               that term is defined in section 301(17) of  
 24                               the Federal Election Campaign Act of  
 25                               1971 (52 U.S.C. 30101(17));



1 “(ii) a disbursement for an election-  
2 eering communication, as that term is de-  
3 fined in section 304(f)(3) of the Federal  
4 Election Campaign Act of 1971 (52 U.S.C.  
5 30104(f)(3)) or any other public commu-  
6 nication, as defined in section 301(22) of  
7 that Act (52 U.S.C. 30101(22)), that  
8 would be an electioneering communication  
9 if it were a broadcast, cable, or satellite  
10 communication; or

11 “(iii) dues or other payments to trade  
12 associations or organizations described in  
13 section 501(c) of the Internal Revenue  
14 Code of 1986 and exempt from tax under  
15 section 501(a) of that Code that are, or  
16 could reasonably be anticipated to be, used  
17 or transferred to another association or or-  
18 ganization for the purposes described in  
19 clause (i) or (ii); and

20 “(B) does not include an expenditure for—

21 “(i) direct lobbying efforts through  
22 registered lobbyists employed or hired by a  
23 controlling private fund;

24 “(ii) communications by a controlling  
25 private fund to—

1                   “(I) a partner of the fund or ex-  
2                   ecutive or administrative personnel  
3                   with respect to the fund; or

4                   “(II) a family member of any in-  
5                   dividual described in subclause (I); or

6                   “(iii) the establishment and adminis-  
7                   tration of contributions to a separate seg-  
8                   regated private fund to be utilized for po-  
9                   litical purposes by a controlling private  
10                  fund.

11           “(b) RULES.—Not later than 1 year after the date  
12 of enactment of this section, the Commission shall issue  
13 final rules that require a controlling private fund to, using  
14 generally accepted accounting principles, annually report  
15 the following information with respect to that controlling  
16 private fund:

17                   “(1) The name, address, and vintage year of  
18                  the fund.

19                   “(2) The name of each general partner of the  
20                  fund.

21                   “(3) The name of each limited partner of the  
22                  fund.

23                   “(4) A list of each entity with respect to which  
24                  the fund owns an equity interest.

1           “(5) In dollars, the total amount of regulatory  
2 assets under management by the fund.

3           “(6) In dollars, the total amount of net assets  
4 under management by the fund.

5           “(7) The percentage of fund equity contributed  
6 by the general partners of the fund and the percent-  
7 age of fund equity contributed by the limited part-  
8 ners of the fund.

9           “(8) Information on the debt owed by the fund,  
10 including—

11               “(A) the dollar amount of total debt;

12               “(B) the percentage of debt for which the  
13 creditor is a financial institution in the United  
14 States;

15               “(C) the percentage of debt for which the  
16 creditor is a financial institution outside of the  
17 United States;

18               “(D) the percentage of debt for which the  
19 creditor is an entity that is located in the  
20 United States and is not a financial institution;  
21 and

22               “(E) the percentage of debt for which the  
23 creditor is an entity that is located outside of  
24 the United States and is not a financial institu-  
25 tion.

1           “(9) The gross performance of the fund during  
2 the year covered by the report.

3           “(10) For the year covered by the report, the  
4 difference obtained by subtracting the financial  
5 gains of the fund by the fees that the general part-  
6 ners of the fund charged to the limited partners of  
7 the fund (commonly referred to as the ‘performance  
8 net of fees’).

9           “(11) For the year covered by the report, an  
10 annual financial statement, which shall include in-  
11 come statements, a balance sheet, and cash flow  
12 statements.

13           “(12) The average debt-to-equity ratio of each  
14 target firm with respect to the fund and the debt-  
15 to-equity ratio of each such target firm.

16           “(13) The total gross asset value of each target  
17 firm with respect to the fund and the gross asset  
18 value of each such target firm.

19           “(14) The total amount of debt held by each  
20 target firm with respect to the fund and the total  
21 amount of debt held by each such target firm.

22           “(15) The total amount of debt held by each  
23 target firm with respect to the fund that, as of the  
24 date on which the report is submitted, are cat-

1 egorized as liabilities, long-term liabilities, and pay-  
2 ment in kind or zero coupon debt.

3 “(16) The total number of target firms with re-  
4 spect to the fund that experienced default during the  
5 period covered by the report, including the name of  
6 any such target firm.

7 “(17) The total number of the target firms with  
8 respect to the fund with respect to which a case was  
9 commenced under title 11, United States Code, dur-  
10 ing the period covered by the report, including the  
11 name of any such target firm.

12 “(18) The percentage of the equity of the fund  
13 that is owned by—

14 “(A) citizens of the United States;

15 “(B) individuals who are not citizens of the  
16 United States;

17 “(C) brokers or dealers;

18 “(D) insurance companies;

19 “(E) investment companies that are reg-  
20 istered with the Commission under this Act;

21 “(F) private funds and other investment  
22 companies not required to be registered with  
23 the Commission;

24 “(G) nonprofit organizations;

1           “(H) pension plans maintained by State or  
2           local governments (or an agency or instrumen-  
3           tality of either);

4           “(I) pension plans maintained by non-  
5           governmental employers;

6           “(J) State or municipal government enti-  
7           ties;

8           “(K) banking or thrift institutions;

9           “(L) sovereign wealth funds; and

10          “(M) other investors.

11          “(19) The total dollar amount of aggregate fees  
12          and expenses collected by the fund, the manager of  
13          the fund, or related parties from target firms for  
14          which the fund is a controlling private fund, which  
15          shall—

16                 “(A) be categorized by the type of fee; and

17                 “(B) include a description of the purpose  
18          of the fees.

19          “(20) The total dollar amount of aggregate fees  
20          and expenses collected by the fund, the manager of  
21          the fund, or related parties from the limited part-  
22          ners of the fund, which shall—

23                 “(A) be categorized by the type of fee; and

24                 “(B) include a description of the purpose  
25          of the fees.

1           “(21) The total carried interest claimed by the  
2           fund, the manager of the fund, or related parties  
3           and the total dollar amount of carried interest dis-  
4           tributed to the limited partners of the fund.

5           “(22) A description of, during the year covered  
6           by the report, any material changes in risk factors  
7           at the fund level, including—

8                   “(A) concentration risk;

9                   “(B) foreign exchange risk; and

10                  “(C) extra-financial risk, including envi-  
11                  ronmental, social, and corporate governance  
12                  risk.

13           “(23) Disclosures that satisfy the Recommenda-  
14           tions of the Task Force on Climate-related Financial  
15           Disclosures of the Financial Stability Board, as re-  
16           ported in June 2017.

17           “(24) A description of the human capital man-  
18           agement practices of the fund, including—

19                   “(A) fund workforce demographic informa-  
20                   tion, including the number of full-time employ-  
21                   ees, the number of part-time employees, the  
22                   number of contingent workers (including tem-  
23                   porary and contract workers), and any policies  
24                   or practices of the firm relating to subcon-  
25                   tracting, outsourcing, and insourcing;

1           “(B) fund workforce composition, including  
2           data on the diversity of that workforce, includ-  
3           ing the racial and gender composition of that  
4           workforce, and any policies and audits relating  
5           to the diversity of that workforce;

6           “(C) any incident of alleged workplace har-  
7           assment during the 5 years preceding the year  
8           in which the report is submitted; and

9           “(D) any health or safety incident during  
10          the 5 years preceding the year in which the re-  
11          port is submitted.

12          “(25) A description of any expenditure for po-  
13          litical activities made during the year preceding the  
14          year in which the report is submitted, including—

15               “(A) the date on which each such expendi-  
16               ture for political activities was made;

17               “(B) the amount of each such expenditure  
18               for political activities;

19               “(C) if such an expenditure for political ac-  
20               tivities was made in support of, or in opposition  
21               to, a candidate, the name of the candidate, the  
22               office sought by the candidate, and the political  
23               party affiliation of the candidate;

24               “(D) a summary of—



1 “(i) each such expenditure for political  
2 activities that is in amount that is not less  
3 than \$10,000; and

4 “(ii) each expenditure for political ac-  
5 tivities with respect to a particular election  
6 if the total amount of expenditures for po-  
7 litical activities by the firm with respect to  
8 that election is in an amount that is not  
9 less than \$10,000;

10 “(E) a description of the specific nature of  
11 any expenditure for political activities that the  
12 firm intends to make for the year in which the  
13 report is submitted, to the extent that the spe-  
14 cific nature is known to the firm; and

15 “(F) the total amount of expenditures for  
16 political activities that the fund intends to make  
17 for the year in which the report is submitted.

18 “(26) For the year preceding the year in which  
19 the report is submitted, the total amount of Federal  
20 support, if any, received by—

21 “(A) the fund; and

22 “(B) any entity with respect to which the  
23 fund is a beneficial owner, as that term is de-  
24 fined in section 5336(a)(3) of title 31, United  
25 States Code.

1           “(27) Any other information that the Commis-  
 2           sion determines is necessary and appropriate for the  
 3           protection of investors.

4           “(c) PERIODIC REVIEW.—The Commission shall,  
 5           with respect to the rules issued under subsection (b)—

6           “(1) review the rules once every 5 years; and

7           “(2) revise the rules as necessary to ensure that  
 8           the disclosures required under the rules reflect con-  
 9           temporary (as of the date on which the rules are re-  
 10          vised) trends and characteristics with respect to pri-  
 11          vate investment markets.

12          “(d) PUBLIC AVAILABILITY.—Notwithstanding any  
 13          provision of section 204 of the Investment Advisers Act  
 14          of 1940 (15 U.S.C. 80b–4), the information disclosed  
 15          under the rules issued under subsection (b) shall be made  
 16          available to the public.”.

17   **SEC. 502. FIDUCIARY OBLIGATIONS.**

18          (a) FIDUCIARY DUTIES UNDER ERISA.—

19               (1) PLAN ASSETS.—Section 401(b)(1) of the  
 20          Employee Retirement Income Security Act of 1974  
 21          (29 U.S.C. 1101(b)(1)) is amended—

22                       (A) by inserting “or a private fund (as de-  
 23                       fined in section 3 of the Stop Wall Street  
 24                       Looting Act)” before “, the assets”; and

1 (B) by inserting “or such private fund, as  
2 applicable” before the period at the end.

3 (2) FIDUCIARY OBLIGATIONS OF FUND MAN-  
4 AGERS.—Section 3(21)(A) of such Act (29 U.S.C.  
5 1002(21)) is amended by inserting “, and, in the  
6 case of a plan which invests in a security issued by  
7 a private fund (as such term is defined in section 3  
8 of the Stop Wall Street Looting Act), includes the  
9 manager of such private fund” before the period at  
10 the end.

11 (b) PROHIBITION AGAINST WAIVING FIDUCIARY DU-  
12 TIES.—Section 211(h) of the Investment Advisers Act of  
13 1940 (15 U.S.C. 80b–11(h)) is amended—

14 (1) in paragraph (1), by striking “and” at the  
15 end;

16 (2) in paragraph (2), by striking the period at  
17 the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(3) promulgate rules that prohibit an invest-  
20 ment adviser from requiring any person to which the  
21 investment adviser provides investment advice, in-  
22 cluding a pension plan (as defined in section 3 of the  
23 Employee Retirement Income Security Act of 1974  
24 (29 U.S.C. 1002)) that is subject to title I of the  
25 Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1001 et seq.), to, as a condition of the  
 2 investment adviser providing that advice, sign a con-  
 3 tract or other agreement in which that person waives  
 4 a fiduciary duty owed by that person to another per-  
 5 son.”.

6 (c) APPLICABILITY OF BENEFITS.—The general  
 7 partner of a controlling private fund that is a partnership  
 8 may not provide any term or benefit to any limited partner  
 9 of the fund unless the general partner provides that term  
 10 or benefit to all limited partners of the fund.

11 **SEC. 503. DISCLOSURES RELATING TO THE MARKETING OF**  
 12 **PRIVATE EQUITY FUNDS.**

13 Any investment adviser to a private fund shall dis-  
 14 close to potential investors with respect to the other pri-  
 15 vate funds, as defined in section 202(a) of the Investment  
 16 Advisers Act of 1940 (15 U.S.C. 80b–2(a)), managed by  
 17 that investment adviser (referred to in this section as  
 18 “managed firms”) the following information:

19 (1) A list of all managed firms with respect to  
 20 the investment adviser, including those managed  
 21 firms that, as of the date on which the disclosure is  
 22 made—

23 (A) have active investments; and

24 (B) have liquidated the assets of the firms.

1           (2) For each managed firm listed under para-  
2 graph (1), the following information:

3           (A) As applicable, the total term of the  
4 listed firm beginning with the commencement of  
5 the commitment period with respect to the firm  
6 and ending on the date on which the firm is  
7 dissolved, including, with respect to a listed  
8 firm that, as of the date on which the disclosure  
9 is made, is actively investing—

10           (i) the term specified by any limited  
11 partnership agreement; and

12           (ii) the nature of any provisions that  
13 would allow for the extension of that term.

14           (B) The performance of the listed firm's  
15 net of fees, as measured by the public market  
16 equivalent or a similar measure.

17           (C) A list of target firms with respect to  
18 which the listed firm was a control person, the  
19 nature of the control person relationship, and  
20 the period of that control.

21           (D) The number of employees at each tar-  
22 get firm identified under subparagraph (C), as  
23 of the date on which the listed firm became a  
24 control person with respect to the target firm,  
25 and the date on which the listed firm ceased to

1 be a control person with respect to the target  
2 firm.

3 (E) A list of target firms with respect to  
4 the listed firm with respect to which a case has  
5 been commenced under title 11, United States  
6 Code.

7 (F) For each target firm with respect to  
8 the listed firm, and with respect to which the  
9 listed firm is a control person—

10 (i) a list of actions taken by any State  
11 or local regulatory agency; and

12 (ii) any legal or regulatory penalties  
13 paid, or settlements entered into, by the  
14 general partners of the target firm or the  
15 target firm itself.

16 (3) The percentage breakdown of the means  
17 employed by the investment adviser to divest owner-  
18 ship or control of target firms, including—

19 (A) the sale of target firms to other pri-  
20 vate funds;

21 (B) the sale of target firms to private enti-  
22 ties, other than private funds;

23 (C) the sale of target firms to issuers, the  
24 securities of which are traded on a national se-  
25 curities exchange;

1 (D) the commencement of cases under title  
 2 11, United States Code, with respect to target  
 3 firms; and

4 (E) initial public offerings with respect to  
 5 target firms.

6 **SEC. 504. GREATER VISIBILITY INTO NON-BANK DIRECT**  
 7 **LENDING AND PRIVATE CREDIT.**

8 Not later than 180 days after the date of enactment  
 9 of this Act, the Commission shall amend the rules of the  
 10 Commission to require investment advisers required to  
 11 submit the form described in section 279.9 of title 17,  
 12 Code of Federal Regulations (commonly known as “Form  
 13 PF”), or any successor regulation, to report quarterly to  
 14 the Commission all—

15 (a) investments of the private funds advised by that  
 16 investment adviser; and

17 (b) loans made by the applicable investment adviser  
 18 during the period covered by the disclosure.

19 **TITLE VI—RESTRICTIONS ON**  
 20 **SECURITIZING RISKY COR-**  
 21 **PORATE DEBT**

22 **SEC. 601. RISK RETENTION REQUIREMENTS FOR SECURITI-**  
 23 **ZATION OF CORPORATE DEBT.**

24 Section 15G of the Securities Exchange Act of 1934  
 25 (15 U.S.C. 78o–11) is amended—

1 (1) in subsection (a)(3)—

2 (A) in subparagraph (A), by striking “or”  
3 at the end;

4 (B) in subparagraph (B), by striking  
5 “and” at the end and inserting “or”; and

6 (C) by adding at the end the following:

7 “(C) a manager of a collateralized debt ob-  
8 ligation; and”;

9 (2) by redesignating subsection (i) as subsection  
10 (j); and

11 (3) by inserting after subsection (h) the fol-  
12 lowing:

13 “(i) RULES OF CONSTRUCTION.—With respect to a  
14 securitizer described in subsection (a)(3)(C)—

15 “(1) any provision of this section that requires  
16 that securitizer to retain a portion of the credit risk  
17 for an asset that such securitizer does not hold, or  
18 has never held, shall be construed as requiring that  
19 securitizer to—

20 “(A) obtain that portion of the credit risk  
21 for that asset; and

22 “(B) retain that portion of the credit risk,  
23 either directly by the securitizer or through a  
24 wholly-owned affiliate of the securitizer; and



1           “(2) any reference in this section to an asset  
2           transferred by the securitizer shall be construed to  
3           include any transfer caused by the securitizer.”.

## 4           **TITLE VII—MISCELLANEOUS**

### 5   **SEC. 701. ANTI-EVASION.**

6           It shall be unlawful to conduct any activity, including  
7           by entering into an agreement or contract, engaging in  
8           a transaction, or structuring an entity, to willfully evade  
9           or attempt to evade any provision of this Act.

### 10   **SEC. 702. SEVERABILITY.**

11          If any provision of this Act or the application of such  
12          a provision to any person or circumstance is held to be  
13          invalid or unconstitutional, the remainder of this Act and  
14          the application of the provisions of this Act to any person  
15          or circumstance shall remain and shall not be affected by  
16          that holding.

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