

117TH CONGRESS
1ST SESSION

S. 3022

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.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2021

Ms. WARREN (for herself, Ms. BALDWIN, Mr. BROWN, Mr. SANDERS, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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.

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 THE CARRIED INTEREST LOOPHOLE

- 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.

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
17 largest impacts from private investment funds have
18 been in the retail sector. In the 5 years preceding
19 the date of enactment of this Act, cases have been
20 commenced under title 11, United States Code, with
21 respect to dozens of retailers in the United States,
22 including Sears, Toys “R” Us, Shopko, Payless
23 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,
24 David’s Bridal, Claire’s, J. Crew, Neiman Marcus,

1 Guitar Center, Art Van Furniture, and Southeastern
2 Grocers, which was the parent company for BI-LO
3 and Winn-Dixie.

4 (4) Private investment funds have also targeted
5 entities that serve low-income or vulnerable popu-
6 lations, including affordable housing developments,
7 for-profit colleges, payday lenders, medical providers,
8 and nursing homes.

9 (5) While private investment funds often pur-
10 port to take over struggling companies and make
11 those companies viable, the opposite is often true.
12 Leveraged buyouts impose enormous debt loads on
13 otherwise viable companies and then strip those
14 companies of assets, hobbling the operations of those
15 companies and preventing them from making nec-
16 essary investments for future growth. If an invest-
17 ment goes well, the fund reaps most of the rewards,
18 but if the investment does not go well, workers and
19 customers of the company, and the community rely-
20 ing on the company, suffer.

21 (6) Regardless of the performance of a private
22 investment fund, the managers of the fund often
23 make profits through fees, dividends, and other fi-
24 nancial engineering. Private funds should have a
25 stake in the outcome of their investments, enjoying

1 returns if those investments are successful but ab-
2 sorbing losses if those investments fail.

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

11 (8) The performance of private investment
12 funds is often cloaked in secrecy. Those funds have
13 full control over the information that the funds dis-
14 close to investors, which allows the funds to manu-
15 facture their own performance metrics and makes it
16 difficult for an investor to compare the returns to
17 other investment options. Funds also increasingly re-
18 quire investors to waive the fiduciary obligations ap-
19 plicable to the funds. Investors should have the in-
20 formation and bargaining power to take control over
21 their own investments.

22 (9) An increasing amount of risky debt is being
23 introduced into the market and the quality of that
24 debt is deteriorating, raising concerns with regu-
25 lators and lawmakers about systemic risk. The insti-

tutions 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, 20 percent or more of the outstanding voting securities of another entity, other than a person that holds such securities—

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

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

1 (B) a corporation 20 percent or more of
2 whose outstanding voting securities are directly
3 or indirectly owned, controlled, or held with
4 power to vote, by another entity (referred to in
5 this subparagraph as a “covered entity”), or by
6 an entity that directly or indirectly owns, con-
7 trols, or holds with power to vote, 20 percent or
8 more of the outstanding voting securities of the
9 covered entity, other than an entity that holds
10 such securities—

11 (i) in a fiduciary or agency capacity
12 without sole discretionary power to vote
13 such securities; or

14 (ii) solely to secure a debt, if such en-
15 tity has not in fact exercised such power to
16 vote;

17 (C) a person whose business is operated
18 under a lease or operating agreement by an-
19 other entity, or person substantially all of whose
20 property is operated under an operating agree-
21 ment with that other entity; or

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

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

3 (A) a cash or share dividend;

4 (B) a share repurchase;

5 (C) a share redemption;

6 (D) a share buyback;

7 (E) a payment of interest or fee on a share
8 of stock; and

9 (F) any other transaction similar to a
10 transaction described in any of subparagraphs
11 (A) through (E).

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

15 (A) the power to vote more than 50 per
16 centum of any class of voting securities of a
17 corporation that engages in interstate com-
18 merce; or

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

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

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

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

9 (A) means—

10 (i) a person—

11 (I) that directly or indirectly
12 owns, controls, or holds with power to
13 vote, including through coordination
14 with other persons, 20 percent or
15 more of the outstanding voting inter-
16 ests of a corporation; or

17 (II) that operates the business or
18 substantially all of the property of a
19 corporation under a lease or an oper-
20 ating or management agreement;

21 (ii) a corporation, other than a target
22 firm, that has 20 percent or more of its
23 outstanding voting interests directly or in-
24 directly owned, controlled, or held with
25 power to vote by a person that directly or

1 indirectly owns, controls, or holds with
2 power to vote, including through coordina-
3 tion with other persons, 20 percent or
4 more of the outstanding voting interests of
5 another corporation; or

6 (iii) a person that otherwise has the
7 ability to direct the actions of a corpora-
8 tion; and

9 (B) does not include a person that—

10 (i)(I) is a limited partner with respect
11 to a controlling private fund that is a part-
12 nership;

13 (II) does not participate in the direc-
14 tion of the management or policy of a cor-
15 poration; and

16 (III) is not an insider with respect to
17 the controlling private fund described in
18 subclause (I);

19 (ii) is a pension fund or employee wel-
20 fare benefit plan, if neither the fund nor
21 plan (as applicable), nor any beneficiary or
22 affiliate of the benefit or plan, is an insider
23 with respect to a controlling private fund;
24 or

1 (iii) holds the voting interests of a
2 corporation solely—

3 (I) in a fiduciary or agency ca-
4 pacity without sole discretionary
5 power to vote the securities; or

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

8 (aa) exercised the power to
9 vote; or

10 (bb) exercised any other gov-
11 ernance rights with respect to the
12 corporation.

13 (7) CONTROLLING PRIVATE FUND.—The term
14 “controlling private fund” means a private fund
15 that, directly or through an affiliate, becomes a con-
16 trol person with respect to a target firm through the
17 change in control transaction with respect to the tar-
18 get firm.

19 (8) CORPORATION.—The term “corporation”
20 means—

21 (A) a joint-stock company;

22 (B) a company or partnership association
23 organized under a law that makes only the cap-
24 ital subscribed or callable up to a specified
25 amount responsible for the debts of the associa-

tion, including a limited partnership and a limited liability company;

(C) a trust; and

(D) an association having a power or privilege that a private corporation, but not an individual or a partnership, possesses.

(9) EMPLOYEE WELFARE BENEFIT PLAN.—The term “employee welfare benefit plan” has the meaning given the term in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

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

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

(i) a person that directly or indirectly has the right to participate in the governance of a controlling private fund, without regard to the form or source of that right; and

(ii) any insider with respect to a controlling private fund; and

(B) does not include—

(i) a person that—

1 (I) holds an economic interest
2 solely to secure a debt, if that person
3 does not exercise any voting or other
4 governance right with respect to the
5 interest;

6 (II)(aa) is a limited partner with
7 respect to a controlling private fund
8 that is a partnership;

9 (bb) does not participate in the
10 direction of the management or policy
11 of a corporation; and

12 (cc) is not an insider with respect
13 to the controlling private fund de-
14 scribed in item (aa); or

15 (III) is a pension fund or em-
16 ployee welfare benefit plan, if neither
17 the pension fund nor employee welfare
18 benefit plan (as applicable), nor any
19 affiliate or beneficiary of the pension
20 fund or employee welfare benefit plan,
21 is an insider with respect to, or affil-
22 iate of, a controlling private fund; or

23 (ii) if the source of the right described
24 in subparagraph (A)(i) is a security—

1 (I) a person that is engaged in
2 business as an underwriter of securi-
3 ties and that acquires that security
4 through the good faith participation
5 of the person in a firm commitment
6 underwriting registered under the Se-
7 curities Act of 1933 (15 U.S.C. 77a
8 et seq.), until the date that is 40 days
9 after the date on which that acquisi-
10 tion occurs; or

11 (II) a member of a national secu-
12 rities exchange solely because that
13 member is the record holder of that
14 security and, under the rules of that
15 exchange—

16 (aa) may direct the vote of
17 that security, without instruction,
18 on—

19 (AA) other than con-
20 tested matters; or

21 (BB) matters that may
22 substantially affect the
23 rights or privileges of the
24 holders of the security to be
25 voted; and

1 (bb) is otherwise precluded
2 from voting without instruction.

3 (11) INSIDER.—The term “insider” means
4 any—

5 (A) director of a corporation;

6 (B) officer of a corporation;

7 (C) managing agent of a corporation;

8 (D) control person with respect to a cor-
9 poration;

10 (E) affiliate of a corporation;

11 (F) general partner of a corporation that
12 is a partnership;

13 (G) consultant or contractor retained by a
14 corporation;

15 (H) affiliate, relative, or agent of a person
16 described in any of subparagraphs (A) through
17 (F); or

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

20 (12) INVESTMENT ADVISER.—The term “in-
21 vestment adviser” has the meaning given the term
22 in section 202(a) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–2(a)).

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

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

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

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

15 (A) would be considered an investment
16 company under section 3 of the Investment
17 Company Act of 1940 (15 U.S.C. 80a–3) but
18 for the application of paragraph (1) or (7) of
19 subsection (c) of such section 3;

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

24 (C) is not an institution selected under sec-
25 tion 107 of the Community Development Bank-

1 ing and Financial Institutions Act of 1994 (12
2 U.S.C. 4706).

3 (17) RELATIVE.—The term “relative” means
4 an individual related by affinity or consanguinity
5 within the third degree as determined by the com-
6 mon law, or individual in a step or adoptive relation-
7 ship within such third degree.

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

11 (19) TARGET FIRM.—The term “target firm”
12 means a corporation that is acquired in a change in
13 control transaction.

14 **TITLE I—CORPORATE** 15 **RESPONSIBILITY**

16 **SEC. 101. JOINT AND SEVERAL LIABILITY FOR CONTROL-** 17 **LING PRIVATE FUNDS AND HOLDERS OF AC-** 18 **TIVE INTERESTS IN CONTROLLING PRIVATE** 19 **FUNDS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, or the terms of any contract or agreement,
22 a controlling private fund, and any holder of an active in-
23 terest with respect to a controlling private fund, shall be
24 jointly and severally liable for all liabilities of each target
25 firm for which the controlling private fund is a control

1 person, and for all liabilities of any affiliate of each such
2 target firm, including—

3 (1) any debt incurred by the target firm or an
4 affiliate of the target firm, including as part of the
5 acquisition of the target firm by the controlling pri-
6 vate fund;

7 (2) any Federal or State civil monetary penalty,
8 or obligation under a settlement or consent order
9 with a Federal or State governmental agency or in-
10 strumentality, including a consumer restitution obli-
11 gation, for which the target firm, or an affiliate of
12 the target firm, is liable;

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

17 (4) any withdrawal liability determined under
18 part 1 of subtitle E of title IV of the Employee Re-
19 tirement Income Security Act of 1974 (29 U.S.C.
20 1381 et seq.) that is incurred by the target firm or
21 an affiliate of the target firm; and

22 (5) any claim for unfunded benefit liabilities
23 owed to the Pension Benefit Guaranty Corporation
24 under subtitle D of title IV of the Employee Retire-
25 ment Income Security Act of 1974 (29 U.S.C. 1361

1 et seq.) with respect to the termination of a pension
 2 plan sponsored by the target firm or an affiliate of
 3 the target firm.

4 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 5 tion may be construed to diminish existing, as of the date
 6 of enactment of this Act, controlled group liability under
 7 the Employee Retirement Income Security Act of 1974
 8 (29 U.S.C. 1001 et seq.).

9 **SEC. 102. INDEMNIFICATION VOID AS AGAINST PUBLIC**
 10 **POLICY.**

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

14 (1) the target firm;

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

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

19 **TITLE II—ANTI-LOOTING**

20 **SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS,**
 21 **DISTRIBUTIONS, REDEMPTIONS, BUYBACKS,**
 22 **AND OUTSOURCING.**

23 (a) IN GENERAL.—No target firm may, directly or
 24 indirectly, during the 2-year period beginning on the clos-
 25 ing date of a change in control transaction that results

1 in a private fund becoming a controlling private fund with
 2 respect to the target firm—

3 (1) make a capital distribution or similarly re-
 4 duce the equity capital of the target firm;

5 (2) incur an obligation that commits the target
 6 firm to making a capital distribution or a similar re-
 7 duction of the equity capital of the target firm after
 8 the end of that 2-year period; or

9 (3) order a plant closing or mass layoff (as de-
 10 fined in section 2(a) of the Worker Adjustment and
 11 Retraining Notification Act (29 U.S.C. 2101(a)) and
 12 relocate the trade or business conducted by the em-
 13 ployees in the United States to one or more facilities
 14 outside the United States, in accordance with regu-
 15 lations issued by the Secretary of Labor.

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

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

cluding for reasonable attorney’s fees and costs awarded
to a plaintiff under subsection (d)(2).

(d) CAUSE OF ACTION.—

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

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

SEC. 202. PREVENTION OF FRAUDULENT TRANSFERS.

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

1 (b) PRESUMPTION OF INSOLVENCY IN TRANSFERS
 2 UNDERTAKEN IN CONNECTION WITH CHANGE IN CON-
 3 TROL TRANSACTIONS.—Section 548 of title 11, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 “(f)(1) In this subsection—

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

11 “(B) the term ‘protected period’ means the
 12 shorter of—

13 “(i) the 8-year period beginning on
 14 the date on which a change in control
 15 transaction closed; or

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

22 “(2) For purposes of this section, if the debtor
 23 is a target firm, the debtor is presumed to have
 24 made a transfer or incurred an obligation described

1 in subparagraphs (A) and (B) of subsection (a)(1)
 2 if—

3 “(A) the transfer was made to or obliga-
 4 tion was incurred by the debtor or an affiliate
 5 in connection with a change in control trans-
 6 action; or

7 “(B) during a protected period—

8 “(i) the transfer was made by the
 9 debtor or an affiliate to a control person,
 10 an affiliate, or an insider; or

11 “(ii) the obligation was incurred by
 12 the debtor or an affiliate from a control
 13 person, an affiliate, or an insider.

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

19 (c) STATUTE OF LIMITATIONS.—

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

22 (A) in subsection (a)(1), by striking para-
 23 graph “that was made or incurred on or within
 24 2 years before the date of the filing of the peti-
 25 tion” and inserting “that was made or incurred

1 during the period described in subsection (g)”;
 2 and

3 (B) adding at the end the following:

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

7 “(1) 8 years before the date of the filing of the
 8 petition if the transfer was made or obligation in-
 9 curred in connection with a change in control trans-
 10 action, as defined in section 3 of the Stop Wall
 11 Street Looting Act; or

12 “(2) 2 years before the date of the filing of the
 13 petition for all other transfers and obligations.”.

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

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

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

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

21 “(4) within 8 years after the transfer was made
 22 or the obligation was incurred, if the transfer was
 23 made or the obligation was incurred—

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

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

6 (d) POWERS AND DUTIES OF COMMITTEES.—Section
 7 1103(c) of title 11, United States Code, is amended—

8 (1) by redesignating paragraphs (3) through
 9 (5) as paragraphs (4) through (6), respectively; and

10 (2) by inserting after paragraph (2) the fol-
 11 lowing:

12 “(3) upon motion, undertake an examination of
 13 a director, officer, general partner, or person in con-
 14 trol of the debtor regarding potential conflicts of in-
 15 terest;”.

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

19 (1) in subsection (a), by striking “Subject to”
 20 and inserting, “Except as provided in subsection (c),
 21 subject to”; and

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

23 “(c) Notwithstanding subsection (a), if a debtor in
 24 possession is serving in a case under this title, a committee
 25 of creditors appointed under section 1102 of this title shall

1 have the exclusive right of a trustee serving in a case
 2 under this chapter to bring or settle on behalf of the es-
 3 tate—

4 “(1) an action under section 544, 547, 548, or
 5 553 to avoid a transfer made or obligation incurred
 6 by the debtor in connection with a change of control
 7 transaction, as defined in section 3 of the Stop Wall
 8 Street Looting Act; or

9 “(2) an action against an insider, a former in-
 10 sider, or an agent or aider and abettor of an insider
 11 or former insider.”.

12 **SEC. 203. SURTAX ON CERTAIN AMOUNTS RECEIVED BY IN-**
 13 **VESTMENT FIRMS FROM CONTROLLED TAR-**
 14 **GET FIRMS.**

15 (a) IMPOSITION OF TAX.—Subchapter A of chapter
 16 1 of the Internal Revenue Code of 1986 is amended by
 17 adding at the end the following new part:

18 **“PART VIII—SURTAX ON CERTAIN AMOUNTS**
 19 **RECEIVED BY INVESTMENT FIRMS**

“Sec. 59B. Surtax on certain amounts received by investment firms from con-
 trolled target firms.

20 **“SEC. 59B. SURTAX ON CERTAIN AMOUNTS RECEIVED BY**
 21 **INVESTMENT FIRMS FROM CONTROLLED**
 22 **TARGET FIRMS.**

23 “(a) IMPOSITION OF TAX.—

1 “(1) IN GENERAL.—If one or more applicable
 2 payments are included in the gross income of a tax-
 3 payer for any taxable year, then there is hereby im-
 4 posed on the taxpayer for the taxable year a tax
 5 equal to the applicable percentage of the aggregate
 6 amount of such payments. Such tax shall be in addi-
 7 tion to any other tax imposed by this subtitle.

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

13 “(b) APPLICABLE PAYMENT.—For purposes of this
 14 section—

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

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

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

6 “(B) DISTRIBUTIONS OF PROPERTY WITH
7 RESPECT TO STOCK.—Any distribution of prop-
8 erty (as defined in section 317(a)) to which sec-
9 tion 301(a) applies.

10 “(c) DEFINITIONS RELATING TO ENTITIES.—For
11 purposes of this section—

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

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

16 “(B) with respect to which any other per-
17 son conducts activities in connection with an
18 applicable trade or business.

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

22 “(A) which is engaged in an applicable
23 trade or business some or all of the activities of
24 which are conducted in connection with the ap-
25 plicable entity, and

1 “(B) which controls (or is related within
2 the meaning of section 267(b) or 707(b) to a
3 person which controls) the applicable entity.

4 “(3) APPLICABLE TRADE OR BUSINESS.—The
5 term ‘applicable trade or business’ means any activ-
6 ity conducted on a regular, continuous, and substan-
7 tial basis which, regardless of whether the activity is
8 conducted in one or more entities, consists, in whole
9 or in part, of—

10 “(A) raising or returning capital, and

11 “(B) either—

12 “(i) investing in or disposing of speci-
13 fied assets (or identifying specified assets
14 for such investing or disposition), or

15 “(ii) developing specified assets.

16 “(4) SPECIFIED ASSET.—The term ‘specified
17 asset’ means—

18 “(A) securities (as defined in section
19 475(c)(2) but without regard to the phrase
20 ‘widely held or publicly traded’ in subparagraph
21 (B) thereof and without regard to the last sen-
22 tence thereof), and

23 “(B) real estate held for rental or invest-
24 ment.

1 “(d) RULES AND DEFINITIONS RELATING TO OWN-
 2 ERSHIP ATTRIBUTION AND CONTROL.—For purposes of
 3 this section—

4 “(1) CONSTRUCTIVE OWNERSHIP RULES USED
 5 IN DETERMINING RELATED PARTY.—In determining
 6 whether persons are related within the meaning of
 7 section 267(b) or 707(b), the constructive ownership
 8 rules of section 318 shall apply in lieu of the con-
 9 structive ownership rules which would otherwise
 10 apply, except that in applying such rules the term
 11 ‘stock’ shall include capital, profits, or other bene-
 12 ficial interests in persons other than corporations.

13 “(2) CONTROL.—

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

18 “(B) OTHER ENTITIES.—In the case of a
 19 person other than a corporation, such term
 20 means the ownership, directly or indirectly, of
 21 at least 50 percent of the capital, profits, or
 22 other beneficial interests in the person.

23 “(e) REGULATIONS.—The Secretary shall prescribe
 24 such regulations or other guidance as may be necessary

1 or appropriate to carry out the provisions of this section,
 2 including regulations—

3 “(1) providing for such adjustments to the ap-
 4 plication of this section as are necessary to prevent
 5 the avoidance of the purposes of this section, includ-
 6 ing through the use of unrelated persons, or conduit
 7 transactions, and

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

12 (b) DISALLOWANCE OF CREDITS AGAINST TAX.—
 13 Subparagraph (B) of section 26(b)(2) of the Internal Rev-
 14 enue Code of 1986 is amended by inserting “or section
 15 59B (relating to surtax on certain amounts received by
 16 investment firms from controlled target firms)” after
 17 “anti-abuse tax”).

18 (c) CONFORMING AMENDMENTS.—

19 (1) The table of parts for subchapter A of chap-
 20 ter 1 of the Internal Revenue Code of 1986 is
 21 amended by adding after the item relating to part
 22 VII the following new item:

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

23 (2) Section 871(b)(1) of such Code is amended
 24 by inserting “, and as provided in section 59B on

1 applicable payments included in gross income which
2 are effectively connected with the conduct of a trade
3 or business within the United States” before the pe-
4 riod.

5 (3) Section 882(a)(1) of such Code is amend-
6 ed—

7 (A) by striking “59A,” and inserting
8 “59A”; and

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

14 (4) Subparagraph (A) of section 6425(c)(1) of
15 such Code is amended by striking “plus” at the end
16 of clause (i), by striking “over” at the end of clause
17 (ii) and inserting “and”, and by adding at the end
18 the following new clause:

19 “(iii) the tax imposed by section 59B,
20 over”.

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

24 (6) Subparagraph (A) of section 6655(g)(1) of
25 such Code is amended by striking “plus” at the end

1 of clause (ii), by redesignating clause (iii) as clause
 2 (iv), and by inserting after clause (ii) the following
 3 new clause:

4 “(iii) the tax imposed by section 59B,
 5 and”.

6 (d) **EFFECTIVE DATE.**—The amendments made by
 7 this section shall apply to applicable payments (as defined
 8 in section 59B(b) of the Internal Revenue Code of 1986,
 9 as added by this section) paid or accrued on or after the
 10 date of the enactment of this Act.

11 **SEC. 204. LIMITATION ON DEDUCTION FOR BUSINESS IN-**
 12 **TEREST OF CERTAIN BUSINESSES OWNED BY**
 13 **PRIVATE FUNDS.**

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

18 “(11) **MODIFICATION OF LIMITATION FOR CER-**
 19 **TAIN BUSINESSES OWNED BY PRIVATE FIRMS.**—

20 “(A) **IN GENERAL.**—In the case of a tax-
 21 payer which is an applicable entity controlled by
 22 an applicable controlling entity (or any person
 23 related within the meaning of section 267(b) or
 24 707(b) to such entity) at any time during the
 25 taxable year—

1 “(i) if the ratio of debt to equity of
 2 the taxpayer as of the close of the taxable
 3 year (or on any other day during the tax-
 4 able year as the Secretary may prescribe in
 5 regulations) exceeds 1, then paragraph (1)
 6 shall be applied by substituting a percent-
 7 age that the Secretary determines appro-
 8 priate (and which shall be not less than 30
 9 percent) for ‘30 percent’, and

10 “(ii) in the case of the election under
 11 paragraph (7)(B) to treat any trade or
 12 business of the taxpayer as an electing real
 13 property trade or business—

14 “(I) the taxpayer may not make
 15 any such election during such taxable
 16 year, and

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

24 “(B) RATIO OF DEBT TO EQUITY.—For
 25 purposes of this paragraph, the term ‘ratio of

1 debt to equity’ means, with respect to any tax-
 2 payer, the ratio which the total indebtedness of
 3 the taxpayer bears to the sum of the taxpayer’s
 4 money and all other assets reduced (but not
 5 below zero) by such total indebtedness. For
 6 purposes of the preceding sentence—

7 “(i) the amount taken into account
 8 with respect to any asset shall be the ad-
 9 justed basis thereof for purposes of deter-
 10 mining gain,

11 “(ii) the amount taken into account
 12 with respect to any indebtedness with
 13 original issue discount shall be its issue
 14 price plus the portion of the original issue
 15 discount previously accrued as determined
 16 under the rules of section 1272 (deter-
 17 mined without regard to subsection (a)(7)
 18 or (b)(4) thereof), and

19 “(iii) there shall be such other adjust-
 20 ments as the Secretary may by regulations
 21 prescribe.

22 “(C) COORDINATION WITH DEPRECIATION
 23 RULES.—If the alternative depreciation system
 24 under section 168(g) applies to property by rea-
 25 son 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 succeeding taxable years shall be determined under section 168 in the same manner as if such revocation were a change in use of the property under section 168(i)(5) and the regulations thereunder.

“(D) DEFINITIONS AND RULES.—For purposes of this paragraph—

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

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

(b) EFFECTIVE DATES.—

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

(2) REVOCATION OF ELECTIONS.—Subparagraphs (A)(ii)(II) and (C) of section 163(j)(11) of

1 the Internal Revenue Code of 1986, as added by this
 2 section, shall apply to taxable years beginning on or
 3 after the date of enactment of this Act, with respect
 4 to elections under section 163(j)(7)(B) of such Code
 5 made before, on, or after such date.

6 **TITLE III—PROTECTING WORK-**
 7 **ERS WHEN COMPANIES GO**
 8 **BANKRUPT**

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

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

12 (1) in paragraph (4)—

13 (A) by redesignating subparagraphs (A)
 14 and (B) as clauses (i) and (ii), respectively;

15 (B) in the matter preceding clause (i), as
 16 so redesignated, by inserting “(A)” before
 17 “Fourth”;

18 (C) in subparagraph (A), as so designated,
 19 in the matter preceding clause (i), as so redesi-
 20 gnated—

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

23 (ii) by striking “within 180 days”;
 24 and

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

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

5 “(B) Severance pay described in subparagraph
 6 (A)(i) shall be deemed earned in full upon the layoff
 7 or termination of employment of the individual to
 8 whom the severance pay is owed.”; and

9 (2) in paragraph (5)—

10 (A) in subparagraph (A)—

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

12 (ii) by striking “or the date of the
 13 cessation of the debtor’s business, which-
 14 ever occurs first”; and

15 (B) by striking subparagraph (B) and in-
 16 serting the following:

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

20 **SEC. 302. PRIORITY FOR SEVERANCE PAY AND CONTRIBU-**
 21 **TIONS TO EMPLOYEE WELFARE BENEFIT**
 22 **PLANS.**

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

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

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

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

6 “(10) severance pay owed to employees of the
7 debtor (other than to an insider of the debtor or a
8 senior executive officer of the debtor), under a plan,
9 program, or policy generally applicable to employees
10 of the debtor (but not under an individual contract
11 of employment), or owed pursuant to a collective
12 bargaining agreement, for layoff or termination on
13 or after the date of the filing of the petition, which
14 pay shall be deemed earned in full upon such layoff
15 or termination of employment; and

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

20 **SEC. 303. PRIORITY FOR VIOLATIONS OF FEDERAL AND**
21 **STATE LAWS.**

22 (a) ALLOWANCE OF ADMINISTRATIVE EXPENSES IN
23 BANKRUPTCY CASES.—Section 503(b)(1)(A)(ii) of title
24 11, United States Code, is amended by inserting after
25 “(ii)” the following: “any back pay, civil penalty, or dam-

1 ages for a violation of any Federal or State labor and em-
 2 ployment law, including the Worker Adjustment and Re-
 3 training Notification Act (29 U.S.C. 2101 et seq.) and any
 4 comparable State law, and”.

5 (b) ADMINISTRATION AND ENFORCEMENT OF WORK-
 6 ER ADJUSTMENT AND RETRAINING NOTIFICATION RE-
 7 QUIREMENTS.—Section 5(a)(1) of the Worker Adjustment
 8 and Retraining Notification Act (29 U.S.C. 2104(a)(1))
 9 is amended, in the matter following subparagraph (B)—

10 (1) by inserting “which for purposes of this
 11 sentence shall consist of the days, in the notification
 12 period, that are or that follow the date of the pro-
 13 hibited closing or layoff under this Act,” after “pe-
 14 riod of the violation,”; and

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

16 **SEC. 304. LIMITATION ON EXECUTIVE COMPENSATION EN-**
 17 **HANCEMENTS.**

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

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

23 (2) in paragraph (1), in the matter preceding
 24 subparagraph (A)—

1 (A) by inserting “, a senior executive offi-
2 cer of the debtor, or any of the 20 next most
3 highly compensated employees of the debtor, de-
4 partment or division managers of the debtor, or
5 consultants providing services to the debtor (re-
6 gardless of whether the executive officer, em-
7 ployee, manager, or consultant is an insider)”
8 after “insider of the debtor”;

9 (B) by inserting “or for the payment of
10 performance or incentive compensation, a bonus
11 of any kind, or any other financial return de-
12 signed to replace or enhance incentive, stock, or
13 other compensation in effect before the date of
14 the commencement of the case,” after “remain
15 with the debtor’s business,”; and

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

18 (3) in paragraph (2), in the matter preceding
19 subparagraph (A), by inserting “, a senior executive
20 officer of the debtor, or any of the 20 next most
21 highly compensated employees of the debtor, depart-
22 ment or division managers of the debtor, or consult-
23 ants providing services to the debtor (regardless of
24 whether the executive officer, employee, manager, or

1 consultant is an insider)” after “an insider of the
2 debtor”; and

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

5 “(3) any other transfer or obligation to or for
6 the benefit of an insider of the debtor, a senior exec-
7 utive officer of the debtor, or any of the 20 next
8 most highly compensated employees of the debtor,
9 department or division managers of the debtor, or
10 consultants providing services to the debtor (regard-
11 less of whether the executive officer, employee, man-
12 ager, or consultant is an insider), absent a finding
13 by the court, based upon clear and convincing evi-
14 dence in the record, and without deference to a re-
15 quest by the debtor for such payment, that—

16 “(A) because of the essential and particu-
17 larized nature of the services provided by the
18 insider, executive officer, employee, manager, or
19 consultant, the transfer or obligation is essen-
20 tial to—

21 “(i) the survival of the business of the
22 debtor; or

23 “(ii) in a case in which some or all of
24 the assets of the debtor are liquidated, the
25 orderly liquidation of the assets;

1 “(B) in the case of a transfer or obligation
 2 under an incentive program, the transfer or ob-
 3 ligation is part of a workforce incentive pro-
 4 gram generally applicable to the nonmanage-
 5 ment workforce of the debtor; and

6 “(C) the cost of the transfer or obliga-
 7 tion—

8 “(i) is reasonable;

9 “(ii) is not excessive in the context of
 10 the financial circumstances of the debtor;
 11 and

12 “(iii) is not disproportionate in light
 13 of any economic loss incurred by the non-
 14 management workforce of the debtor dur-
 15 ing the case.”.

16 **SEC. 305. PROHIBITION AGAINST SPECIAL COMPENSATION**
 17 **PAYMENTS.**

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

20 (1) in subsection (b), by adding at the end the
 21 following:

22 “(3) No plan, program, or other transfer or obliga-
 23 tion to or for the benefit of an insider of the debtor, a
 24 senior executive officer of the debtor, or any of the 20
 25 next most highly compensated employees of the debtor, de-

1 partment or division managers of the debtor, or consult-
 2 ants providing services to the debtor (regardless of wheth-
 3 er the executive officer, employee, manager, or consultant
 4 is an insider) shall be approved if the debtor has, on or
 5 after the date that is 1 year before the date of the filing
 6 of the petition—

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

10 “(B) modified any plan, program, policy, or
 11 practice described in subparagraph (A) in order to
 12 reduce benefits under the plan, program, policy or
 13 practice.”; and

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

20 **SEC. 306. EXECUTIVE COMPENSATION UPON EXIT FROM**
 21 **BANKRUPTCY.**

22 Section 1129(a) of title 11, United States Code, is
 23 amended—

24 (1) in paragraph (4), by adding at the end the
 25 following: “Except for compensation subject to re-

1 view under paragraph (5), any payment or other dis-
 2 tribution under the plan to or for the benefit of an
 3 insider of the debtor, a senior executive officer of the
 4 debtor, or any of the 20 next most highly com-
 5 pensated employees of the debtor, department or di-
 6 vision managers of the debtor, or consultants pro-
 7 viding services to the debtor (regardless of whether
 8 the executive officer, employee, manager, or consult-
 9 ant is an insider), shall not be approved by the court
 10 except as part of a program of payments or distribu-
 11 tions generally applicable to employees of the debtor,
 12 and only to the extent that the court determines
 13 that the payment or other distribution is not exces-
 14 sive or disproportionate in comparison to payments
 15 or other distributions to the nonmanagement work-
 16 force of the debtor.”; and

17 (2) in paragraph (5)—

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

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

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

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

1 “(i) reasonable in comparison to compensa-
 2 tion paid to individuals holding comparable po-
 3 sitions at comparable companies in the same in-
 4 dustry; and

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

8 **SEC. 307. COLLATERAL SURCHARGE FOR EMPLOYEE OBLI-**
 9 **GATIONS.**

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

12 (1) by inserting “(1)” before “The trustee”;
 13 and

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

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

25 “(A) deemed—

1 “(i) reasonable, necessary costs and ex-
 2 penses of preserving, or disposing of, property
 3 securing an allowed secured claim; and

4 “(ii) benefiting the holder of the allowed
 5 secured claim; and

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

15 **SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION**
 16 **TRANSFERS.**

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

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

1 cer, employee, manager, or consultant is an insider),
 2 that—

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

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

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

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

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

21 **SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF AS-**
 22 **SETS.**

23 (a) REQUIREMENT RELATING TO PRESERVING JOBS
 24 AND MAINTAINING TERMS AND CONDITIONS RELATING

1 TO EMPLOYMENT.—Section 363 of title 11, United States
2 Code, is amended by adding at the end the following:

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

8 “(A) preserve the jobs of the workforce of the
9 debtor; and

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

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

17 “(A) preserves the jobs of the workforce of the
18 debtor; and

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

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

1 “(A) the preservation of the jobs of the work-
2 force of the debtor; and

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

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

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

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

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

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

1 (b) PLANS UNDER CHAPTER 11.—

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

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

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

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

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

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

21 “(A) redeemable at—

22 “(i) a single merchant; or

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

1 “(B) issued in a specified amount, regard-
 2 less of whether that amount may be increased
 3 in value or reloaded at the request of the hold-
 4 er;

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

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

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

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

19 “(A) the purchase, lease, or rental of prop-
 20 erty;

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

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

4 **SEC. 311. COMMERCIAL REAL ESTATE.**

5 Section 365(d) of title 11, United States Code, is
 6 amended—

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

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

10 **TITLE IV—CLOSING THE**
 11 **CARRIED INTEREST LOOPHOLE**

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

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

19 **SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN**
 20 **CONNECTION WITH PERFORMANCE OF SERV-**
 21 **ICES.**

22 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
 23 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
 24 TRANSFER.—Subsection (c) of section 83 is amended by

1 redesignating paragraph (4) as paragraph (5) and by in-
 2 serting after paragraph (3) the following new paragraph:

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

5 “(A) IN GENERAL.—In the case of any
 6 transfer of an interest in a partnership in con-
 7 nection with the provision of services to (or for
 8 the benefit of) such partnership—

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

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

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

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

7 **SEC. 403. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 8 **VESTMENT MANAGEMENT SERVICES TO**
 9 **PARTNERSHIPS.**

10 (a) IN GENERAL.—Part I of subchapter K of chapter
 11 1 is amended by adding at the end the following new sec-
 12 tion:

13 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 14 **VESTMENT MANAGEMENT SERVICES TO**
 15 **PARTNERSHIPS.**

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

19 “(1) IN GENERAL.—Notwithstanding section
 20 702(b)—

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

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

6 “(2) RECHARACTERIZATION OF LOSSES LIM-
 7 ITED TO RECHARACTERIZED GAINS.—The amount
 8 treated as ordinary loss under paragraph (1)(B) for
 9 any taxable year shall not exceed the excess (if any)
 10 of—

11 “(A) the aggregate amount treated as ordi-
 12 nary income under paragraph (1)(A) with re-
 13 spect to the investment services partnership in-
 14 terest for all preceding partnership taxable
 15 years to which this section applies, over

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

20 “(3) ALLOCATION TO ITEMS OF GAIN AND
 21 LOSS.—

22 “(A) NET CAPITAL GAIN.—The amount
 23 treated as ordinary income under paragraph
 24 (1)(A) shall be allocated ratably among the

1 items of long-term capital gain taken into ac-
 2 count in determining such net capital gain.

3 “(B) NET CAPITAL LOSS.—The amount
 4 treated as ordinary loss under paragraph (1)(B)
 5 shall be allocated ratably among the items of
 6 long-term capital loss and short-term capital
 7 loss taken into account in determining such net
 8 capital loss.

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

11 “(A) IN GENERAL.—Net capital gain, long-
 12 term capital gain, and long-term capital loss,
 13 with respect to any investment services partner-
 14 ship interest for any taxable year, shall be de-
 15 termined under section 1222, except that such
 16 section shall be applied—

17 “(i) without regard to the recharacter-
 18 ization of any item as ordinary income or
 19 ordinary loss under this section,

20 “(ii) by only taking into account items
 21 of gain and loss taken into account by the
 22 holder of such interest under section 702
 23 (other than subsection (a)(9) thereof) with
 24 respect to such interest for such taxable
 25 year, and

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

5 “(B) NET CAPITAL LOSS.—The term ‘net
 6 capital loss’ means the excess of the losses from
 7 sales or exchanges of capital assets over the
 8 gains from such sales or exchanges. Rules simi-
 9 lar to the rules of clauses (i) through (iii) of
 10 subparagraph (A) shall apply for purposes of
 11 the preceding sentence.

12 “(5) SPECIAL RULE FOR DIVIDENDS.—Any div-
 13 idend allocated with respect to any investment serv-
 14 ices partnership interest shall not be treated as
 15 qualified dividend income for purposes of section
 16 1(h).

17 “(6) SPECIAL RULE FOR QUALIFIED SMALL
 18 BUSINESS STOCK.—Section 1202 shall not apply to
 19 any gain from the sale or exchange of qualified small
 20 business stock (as defined in section 1202(c)) allo-
 21 cated with respect to any investment services part-
 22 nership interest.

23 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

24 “(1) GAIN.—

1 “(A) IN GENERAL.—Any gain on the dis-
 2 position of an investment services partnership
 3 interest shall be—

4 “(i) treated as ordinary income, and

5 “(ii) recognized notwithstanding any
 6 other provision of this subtitle.

7 “(B) GIFT AND TRANSFERS AT DEATH.—

8 In the case of a disposition of an investment
 9 services partnership interest by gift or by rea-
 10 son of death of the taxpayer—

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

12 “(ii) such interest shall be treated as
 13 an investment services partnership interest
 14 in the hands of the person acquiring such
 15 interest, and

16 “(iii) any amount that would have
 17 been treated as ordinary income under this
 18 subsection had the decedent sold such in-
 19 terest immediately before death shall be
 20 treated as an item of income in respect of
 21 a decedent under section 691.

22 “(2) LOSS.—Any loss on the disposition of an
 23 investment services partnership interest shall be
 24 treated as an ordinary loss to the extent of the ex-
 25 cess (if any) of—

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

5 “(B) the aggregate amount treated as or-
6 dinary loss under subsection (a) with respect to
7 such interest for all partnership taxable years
8 to which this section applies.

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

14 “(A) the taxpayer makes an irrevocable
15 election to treat the partnership interest re-
16 ceived in the exchange as an investment serv-
17 ices partnership interest, and

18 “(B) the taxpayer agrees to comply with
19 such reporting and recordkeeping requirements
20 as the Secretary may prescribe.

21 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
22 ERTY.—

23 “(A) IN GENERAL.—In the case of any dis-
24 tribution of property by a partnership with re-
25 spect to any investment services partnership in-

terest held by a partner, the partner receiving such property shall recognize gain equal to the excess (if any) of—

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

“(ii) the adjusted basis of such property in the hands of such partner (determined without regard to subparagraph (C)).

“(B) TREATMENT OF GAIN AS ORDINARY INCOME.—Any gain recognized by such partner under subparagraph (A) shall be treated as ordinary income to the same extent and in the same manner as the increase in such partner’s distributive share of the taxable income of the partnership would be treated under subsection (a) if, immediately prior to the distribution, the partnership had sold the distributed property at fair market value and all of the gain from such disposition were allocated to such partner. For purposes of applying subsection (a)(2), any gain treated as ordinary income under this subparagraph shall be treated as an amount treated as ordinary income under subsection (a)(1)(A).

1 “(C) ADJUSTMENT OF BASIS.—In the case
 2 a distribution to which subparagraph (A) ap-
 3 plies, the basis of the distributed property in
 4 the hands of the distributee partner shall be the
 5 fair market value of such property.

6 “(D) SPECIAL RULES WITH RESPECT TO
 7 MERGERS AND DIVISIONS.—In the case of a
 8 taxpayer which satisfies requirements similar to
 9 the requirements of subparagraphs (A) and (B)
 10 of paragraph (3), this paragraph and paragraph
 11 (1)(A)(ii) shall not apply to the distribution of
 12 a partnership interest if such distribution is in
 13 connection with a contribution (or deemed con-
 14 tribution) of any property of the partnership to
 15 which section 721 applies pursuant to a trans-
 16 action described in section 708(b)(2).

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

19 “(1) IN GENERAL.—The term ‘investment serv-
 20 ices partnership interest’ means any interest in an
 21 investment partnership acquired or held by any per-
 22 son in connection with the conduct of a trade or
 23 business described in paragraph (2) by such person
 24 (or any person related to such person). An interest
 25 in an investment partnership held by any person—

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

5 “(B) shall not cease to be an investment
 6 services partnership interest merely because
 7 such person holds such interest other than in
 8 connection with such a trade or business, and

9 “(C) shall be treated as an investment
 10 services partnership interest if acquired from a
 11 related person in whose hands such interest was
 12 an investment services partnership interest.

13 “(2) BUSINESSES TO WHICH THIS SECTION AP-
 14 PLIES.—A trade or business is described in this
 15 paragraph if such trade or business primarily in-
 16 volves the performance of any of the following serv-
 17 ices with respect to assets held (directly or indi-
 18 rectly) by one or more investment partnerships re-
 19 ferred to in paragraph (1):

20 “(A) Advising as to the advisability of in-
 21 vesting in, purchasing, or selling any specified
 22 asset.

23 “(B) Managing, acquiring, or disposing of
 24 any specified asset.

1 “(C) Arranging financing with respect to
2 acquiring specified assets.

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

5 “(3) INVESTMENT PARTNERSHIP.—

6 “(A) IN GENERAL.—The term ‘investment
7 partnership’ means any partnership if, at the
8 end of any two consecutive calendar quarters
9 ending after the date of enactment of this sec-
10 tion—

11 “(i) substantially all of the assets of
12 the partnership are specified assets (deter-
13 mined without regard to any section 197
14 intangible within the meaning of section
15 197(d)), and

16 “(ii) less than 75 percent of the cap-
17 ital of the partnership is attributable to
18 qualified capital interests which constitute
19 property held in connection with a trade or
20 business of the owner of such interest.

21 “(B) LOOK-THROUGH OF CERTAIN WHOL-
22 LY OWNED ENTITIES FOR PURPOSES OF DETER-
23 MINING ASSETS OF THE PARTNERSHIP.—

1 “(i) IN GENERAL.—For purposes of
2 determining the assets of a partnership
3 under subparagraph (A)(i)—

4 “(I) any interest in a specified
5 entity shall not be treated as an asset
6 of such partnership, and

7 “(II) such partnership shall be
8 treated as holding its proportionate
9 share of each of the assets of such
10 specified entity.

11 “(ii) SPECIFIED ENTITY.—For pur-
12 poses of clause (i), the term ‘specified enti-
13 ty’ means, with respect to any partnership
14 (hereafter referred to as the upper-tier
15 partnership), any person which engages in
16 the same trade or business as the upper-
17 tier partnership and is—

18 “(I) a partnership all of the cap-
19 ital and profits interests of which are
20 held directly or indirectly by the
21 upper-tier partnership, or

22 “(II) a foreign corporation which
23 does not engage in a trade or business
24 in the United States and all of the

1 stock of which is held directly or indi-
2 rectly by the upper-tier partnership.

3 “(C) SPECIAL RULES FOR DETERMINING
4 IF PROPERTY HELD IN CONNECTION WITH
5 TRADE OR BUSINESS.—

6 “(i) IN GENERAL.—Except as other-
7 wise provided by the Secretary, solely for
8 purposes of determining whether any inter-
9 est in a partnership constitutes property
10 held in connection with a trade or business
11 under subparagraph (A)(ii)—

12 “(I) a trade or business of any
13 person closely related to the owner of
14 such interest shall be treated as a
15 trade or business of such owner,

16 “(II) such interest shall be treat-
17 ed as held by a person in connection
18 with a trade or business during any
19 taxable year if such interest was so
20 held by such person during any 3 tax-
21 able years preceding such taxable
22 year, and

23 “(III) paragraph (5)(B) shall not
24 apply.

1 “(ii) CLOSELY RELATED PERSONS.—

2 For purposes of clause (i)(I), a person
 3 shall be treated as closely related to an-
 4 other person if, taking into account the
 5 rules of section 267(c), the relationship be-
 6 tween such persons is described in—

7 “(I) paragraph (1) or (9) of sec-
 8 tion 267(b), or

9 “(II) section 267(b)(4), but solely
 10 in the case of a trust with respect to
 11 which each current beneficiary is the
 12 grantor or a person whose relationship
 13 to the grantor is described in para-
 14 graph (1) or (9) of section 267(b).

15 “(D) ANTI-ABUSE RULES.—The Secretary
 16 may issue regulations or other guidance which
 17 prevent the avoidance of the purposes of sub-
 18 paragraph (A), including regulations or other
 19 guidance which treat convertible and contingent
 20 debt (and other debt having the attributes of
 21 equity) as a capital interest in the partnership.

22 “(E) CONTROLLED GROUPS OF ENTI-
 23 TIES.—

24 “(i) IN GENERAL.—In the case of a
 25 controlled group of entities, if an interest

1 in the partnership received in exchange for
2 a contribution to the capital of the part-
3 nership by any member of such controlled
4 group would (in the hands of such mem-
5 ber) constitute property held in connection
6 with a trade or business, then any interest
7 in such partnership held by any member of
8 such group shall be treated for purposes of
9 subparagraph (A) as constituting (in the
10 hands of such member) property held in
11 connection with a trade or business.

12 “(ii) CONTROLLED GROUP OF ENTI-
13 TIES.—For purposes of clause (i), the term
14 ‘controlled group of entities’ means a con-
15 trolled group of corporations as defined in
16 section 1563(a)(1), applied without regard
17 to subsections (a)(4) and (b)(2) of section
18 1563. A partnership or any other entity
19 (other than a corporation) shall be treated
20 as a member of a controlled group of enti-
21 ties if such entity is controlled (within the
22 meaning of section 954(d)(3)) by members
23 of such group (including any entity treated
24 as a member of such group by reason of
25 this sentence).

1 “(F) SPECIAL RULE FOR CORPORA-
2 TIONS.—For purposes of this paragraph, in the
3 case of a corporation, the determination of
4 whether property is held in connection with a
5 trade or business shall be determined as if the
6 taxpayer were an individual.

7 “(4) SPECIFIED ASSET.—The term ‘specified
8 asset’ means securities (as defined in section
9 475(c)(2) without regard to the last sentence there-
10 of), real estate held for rental or investment, inter-
11 ests in partnerships, commodities (as defined in sec-
12 tion 475(e)(2)), cash or cash equivalents, or options
13 or derivative contracts with respect to any of the
14 foregoing.

15 “(5) RELATED PERSONS.—

16 “(A) IN GENERAL.—A person shall be
17 treated as related to another person if the rela-
18 tionship between such persons is described in
19 section 267(b) or 707(b).

20 “(B) ATTRIBUTION OF PARTNER SERV-
21 ICES.—Any service described in paragraph (2)
22 which is provided by a partner of a partnership
23 shall be treated as also provided by such part-
24 nership.

1 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
2 ESTS.—

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

9 “(A) allocations of items are made by the
10 partnership to such qualified capital interest in
11 the same manner as such allocations are made
12 to other qualified capital interests held by part-
13 ners who do not provide any services described
14 in subsection (c)(2) and who are not related to
15 the partner holding the qualified capital inter-
16 est, and

17 “(B) the allocations made to such other in-
18 terests are significant compared to the alloca-
19 tions made to such qualified capital interest.

20 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
21 ALLOCATION REQUIREMENTS.—To the extent pro-
22 vided by the Secretary in regulations or other guid-
23 ance—

24 “(A) ALLOCATIONS TO PORTION OF QUALI-
25 FIED CAPITAL INTEREST.—Paragraph (1) may

1 be applied separately with respect to a portion
 2 of a qualified capital interest.

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

11 “(C) ALLOCATIONS TO SERVICE PRO-
 12 VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH
 13 ARE LESS THAN OTHER ALLOCATIONS.—Alloca-
 14 tions shall not be treated as failing to meet the
 15 requirement of paragraph (1)(A) merely be-
 16 cause the allocations to the qualified capital in-
 17 terest represent a lower return than the alloca-
 18 tions made to the other qualified capital inter-
 19 ests referred to in such paragraph.

20 “(3) SPECIAL RULE FOR CHANGES IN SERVICES
 21 AND CAPITAL CONTRIBUTIONS.—In the case of an
 22 interest in a partnership which was not an invest-
 23 ment services partnership interest and which, by
 24 reason of a change in the services with respect to as-
 25 sets held (directly or indirectly) by the partnership

1 or by reason of a change in the capital contributions
2 to such partnership, becomes an investment services
3 partnership interest, the qualified capital interest of
4 the holder of such partnership interest immediately
5 after such change shall not, for purposes of this sub-
6 section, be less than the fair market value of such
7 interest (determined immediately before such
8 change).

9 “(4) SPECIAL RULE FOR TIERED PARTNER-
10 SHIPS.—Except as otherwise provided by the Sec-
11 retary, in the case of tiered partnerships, all items
12 which are allocated in a manner which meets the re-
13 quirements of paragraph (1) to qualified capital in-
14 terests in a lower-tier partnership shall retain such
15 character to the extent allocated on the basis of
16 qualified capital interests in any upper-tier partner-
17 ship.

18 “(5) EXCEPTION FOR NO-SELF-CHARGED
19 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
20 cept as otherwise provided by the Secretary, an in-
21 terest shall not fail to be treated as satisfying the
22 requirement of paragraph (1)(A) merely because the
23 allocations made by the partnership to such interest
24 do not reflect the cost of services described in sub-
25 section (c)(2) which are provided (directly or indi-

1 rectly) to the partnership by the holder of such in-
2 terest (or a related person).

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

9 “(A) the distributive share of gain or loss
10 that would have been allocated to the qualified
11 capital interest (consistent with the require-
12 ments of paragraph (1)) if the partnership had
13 sold all of its assets at fair market value imme-
14 diately before the disposition, bears to

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

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

21 “(A) IN GENERAL.—The term ‘qualified
22 capital interest’ means so much of a partner’s
23 interest in the capital of the partnership as is
24 attributable to—

1 “(i) the fair market value of any
 2 money or other property contributed to the
 3 partnership in exchange for such interest
 4 (determined without regard to section
 5 752(a)),

6 “(ii) any amounts which have been in-
 7 cluded in gross income under section 83
 8 with respect to the transfer of such inter-
 9 est, and

10 “(iii) the excess (if any) of—

11 “(I) any items of income and
 12 gain taken into account under section
 13 702 with respect to such interest, over

14 “(II) any items of deduction and
 15 loss so taken into account.

16 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
 17 INTEREST.—

18 “(i) DISTRIBUTIONS AND LOSSES.—

19 The qualified capital interest shall be re-
 20 duced by distributions from the partner-
 21 ship with respect to such interest and by
 22 the excess (if any) of the amount described
 23 in subparagraph (A)(iii)(II) over the
 24 amount described in subparagraph
 25 (A)(iii)(I).

1 “(ii) SPECIAL RULE FOR CONTRIBU-
 2 TIONS OF PROPERTY.—In the case of any
 3 contribution of property described in sub-
 4 paragraph (A)(i) with respect to which the
 5 fair market value of such property is not
 6 equal to the adjusted basis of such prop-
 7 erty immediately before such contribution,
 8 proper adjustments shall be made to the
 9 qualified capital interest to take into ac-
 10 count such difference consistent with such
 11 regulations or other guidance as the Sec-
 12 retary may provide.

13 “(C) TECHNICAL TERMINATIONS, ETC.,
 14 DISREGARDED.—No increase or decrease in the
 15 qualified capital interest of any partner shall re-
 16 sult from a termination, merger, consolidation,
 17 or division described in section 708, or any
 18 similar transaction.

19 “(8) TREATMENT OF CERTAIN LOANS.—

20 “(A) PROCEEDS OF PARTNERSHIP LOANS
 21 NOT TREATED AS QUALIFIED CAPITAL INTER-
 22 EST OF SERVICE PROVIDING PARTNERS.—For
 23 purposes of this subsection, an investment serv-
 24 ices partnership interest shall not be treated as
 25 a qualified capital interest to the extent that

1 such interest is acquired in connection with the
2 proceeds of any loan or other advance made or
3 guaranteed, directly or indirectly, by any other
4 partner or the partnership (or any person re-
5 lated to any such other partner or the partner-
6 ship). The preceding sentence shall not apply to
7 the extent the loan or other advance is repaid
8 before the date of enactment of this section un-
9 less such repayment is made with the proceeds
10 of a loan or other advance described in the pre-
11 ceding sentence.

12 “(B) REDUCTION IN ALLOCATIONS TO
13 QUALIFIED CAPITAL INTERESTS FOR LOANS
14 FROM NONSERVICE-PROVIDING PARTNERS TO
15 THE PARTNERSHIP.—For purposes of this sub-
16 section, any loan or other advance to the part-
17 nership made or guaranteed, directly or indi-
18 rectly, by a partner not providing services de-
19 scribed in subsection (c)(2) to the partnership
20 (or any person related to such partner) shall be
21 taken into account in determining the qualified
22 capital interests of the partners in the partner-
23 ship.

24 “(9) SPECIAL RULE FOR QUALIFIED FAMILY
25 PARTNERSHIPS.—

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

6 “(B) SPECIFIED FAMILY PARTNERSHIP IN-
 7 TEREST.—For purposes of this paragraph, the
 8 term ‘specified family partnership interest’
 9 means any investment services partnership in-
 10 terest if—

11 “(i) such interest is an interest in a
 12 qualified family partnership,

13 “(ii) such interest is held by a natural
 14 person or by a trust with respect to which
 15 each beneficiary is a grantor or a person
 16 whose relationship to the grantor is de-
 17 scribed in section 267(b)(1), and

18 “(iii) all other interests in such quali-
 19 fied family partnership with respect to
 20 which significant allocations are made
 21 (within the meaning of paragraph (1)(B)
 22 and in comparison to the allocations made
 23 to the interest described in clause (ii)) are
 24 held by persons who—

1 “(I) are related to the natural
 2 person or trust referred to in clause
 3 (ii), or

4 “(II) provide services described
 5 in subsection (c)(2).

6 “(C) QUALIFIED FAMILY PARTNERSHIP.—
 7 For purposes of this paragraph, the term
 8 ‘qualified family partnership’ means any part-
 9 nership if—

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

12 “(I) specified family members,

13 “(II) any person closely related
 14 (within the meaning of subsection
 15 (c)(3)(C)(ii)) to a specified family
 16 member, or

17 “(III) any other person (not de-
 18 scribed in subclause (I) or (II)) if
 19 such interest is an investment services
 20 partnership interest with respect to
 21 such person, and

22 “(ii) such partnership does not hold
 23 itself out to the public as an investment
 24 advisor.

1 “(D) SPECIFIED FAMILY MEMBERS.—For
 2 purposes of subparagraph (C), individuals shall
 3 be treated as specified family members if such
 4 individuals would be treated as one person
 5 under the rules of section 1361(c)(1) if the ap-
 6 plicable date (within the meaning of subpara-
 7 graph (B)(iii) thereof) were the latest of—

8 “(i) the date of the establishment of
 9 the partnership,

10 “(ii) the earliest date that the com-
 11 mon ancestor holds a capital or profits in-
 12 terest in the partnership, or

13 “(iii) the date of enactment of this
 14 section.

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

17 “(1) IN GENERAL.—If—

18 “(A) a person performs (directly or indi-
 19 rectly) investment management services for any
 20 investment entity,

21 “(B) such person holds (directly or indi-
 22 rectly) a disqualified interest with respect to
 23 such entity, and

24 “(C) the value of such interest (or pay-
 25 ments thereunder) is substantially related to

1 the amount of income or gain (whether or not
 2 realized) from the assets with respect to which
 3 the investment management services are per-
 4 formed,

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

9 “(2) DEFINITIONS.—For purposes of this sub-
 10 section—

11 “(A) DISQUALIFIED INTEREST.—

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

15 “(I) any interest in such entity
 16 other than indebtedness,

17 “(II) convertible or contingent
 18 debt of such entity,

19 “(III) any option or other right
 20 to acquire property described in sub-
 21 clause (I) or (II), and

22 “(IV) any derivative instrument
 23 entered into (directly or indirectly)
 24 with such entity or any investor in
 25 such entity.

1 “(ii) EXCEPTIONS.—Such term shall
2 not include—

3 “(I) a partnership interest,

4 “(II) except as provided by the
5 Secretary, any interest in a taxable
6 corporation, and

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

9 “(B) TAXABLE CORPORATION.—The term
10 ‘taxable corporation’ means—

11 “(i) a domestic C corporation, or

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

14 “(I) effectively connected with
15 the conduct of a trade or business in
16 the United States, or

17 “(II) subject to a comprehensive
18 foreign income tax (as defined in sec-
19 tion 457A(d)(2)).

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

24 “(D) INVESTMENT ENTITY.—The term ‘in-
25 vestment entity’ means any entity which, if it

1 were a partnership, would be an investment
2 partnership.

3 “(f) EXCEPTION FOR DOMESTIC C CORPORATIONS.—

4 Except as otherwise provided by the Secretary, in the case
5 of a domestic C corporation—

6 “(1) subsections (a) and (b) shall not apply to
7 any item allocated to such corporation with respect
8 to any investment services partnership interest (or
9 to any gain or loss with respect to the disposition of
10 such an interest), and

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

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

16 “(1) require such reporting and recordkeeping
17 by any person in such manner and at such time as
18 the Secretary may prescribe for purposes of enabling
19 the partnership to meet the requirements of section
20 6031 with respect to any item described in section
21 702(a)(9),

22 “(2) provide modifications to the application of
23 this section (including treating related persons as
24 not related to one another) to the extent such modi-

1 fication is consistent with the purposes of this sec-
2 tion,

3 “(3) prevent the avoidance of the purposes of
4 this section (including through the use of qualified
5 family partnerships), and

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

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

11 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-
12 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-
13 TERESTS.—

14 (1) IN GENERAL.—Subsection (a) of section
15 751 is amended by striking “or” at the end of para-
16 graph (1), by inserting “or” at the end of paragraph
17 (2), and by inserting after paragraph (2) the fol-
18 lowing new paragraph:

19 “(3) investment services partnership interests
20 held by the partnership,”.

21 (2) CERTAIN DISTRIBUTIONS TREATED AS
22 SALES OR EXCHANGES.—Subparagraph (A) of sec-
23 tion 751(b)(1) is amended by striking “or” at the
24 end of clause (i), by inserting “or” at the end of

1 clause (ii), and by inserting after clause (ii) the fol-
 2 lowing new clause:

3 “(iii) investment services partnership
 4 interests held by the partnership,”.

5 (3) APPLICATION OF SPECIAL RULES IN THE
 6 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of
 7 section 751 is amended—

8 (A) by striking “or” at the end of para-
 9 graph (1), by inserting “or” at the end of para-
 10 graph (2), and by inserting after paragraph (2)
 11 the following new paragraph:

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

14 (B) by striking “partner.” and inserting
 15 “partner (other than a partnership in which it
 16 holds an investment services partnership inter-
 17 est).”.

18 (4) INVESTMENT SERVICES PARTNERSHIP IN-
 19 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section
 20 751 is amended by adding at the end the following
 21 new subsection:

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

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

4 “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL
 5 INTERESTS.—The amount to which subsection (a)
 6 applies by reason of paragraph (3) thereof shall not
 7 include so much of such amount as is attributable
 8 to any portion of the investment services partnership
 9 interest which is a qualified capital interest (deter-
 10 mined under rules similar to the rules of section
 11 710(d)).

12 “(3) EXCEPTION FOR PUBLICLY TRADED PART-
 13 NERSHIPS.—Except as otherwise provided by the
 14 Secretary, in the case of an exchange of an interest
 15 in a publicly traded partnership (as defined in sec-
 16 tion 7704) to which subsection (a) applies—

17 “(A) this section shall be applied without
 18 regard to subsections (a)(3), (b)(1)(A)(iii), and
 19 (f)(3), and

20 “(B) such partnership shall be treated as
 21 owning its proportionate share of the property
 22 of any other partnership in which it is a part-
 23 ner.

24 “(4) RECOGNITION OF GAINS.—Any gain with
 25 respect to which subsection (a) applies by reason of

1 paragraph (3) thereof shall be recognized notwith-
 2 standing any other provision of this title.

3 “(5) COORDINATION WITH INVENTORY
 4 ITEMS.—An investment services partnership interest
 5 held by the partnership shall not be treated as an
 6 inventory item of the partnership.

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

11 “(7) VALUATION METHODS.—The Secretary
 12 shall prescribe regulations or other guidance which
 13 provide the acceptable methods for valuing invest-
 14 ment services partnership interests for purposes of
 15 this section.”.

16 (c) TREATMENT FOR PURPOSES OF SECTION
 17 7704.—Subsection (d) of section 7704 is amended by add-
 18 ing at the end the following new paragraph:

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

21 “(A) IN GENERAL.—Specified carried in-
 22 terest income shall not be treated as qualifying
 23 income.

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

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

3 “(I) any item of income or gain
 4 allocated to an investment services
 5 partnership interest (as defined in
 6 section 710(c)) held by the partner-
 7 ship,

8 “(II) any gain on the disposition
 9 of an investment services partnership
 10 interest (as so defined) or a partner-
 11 ship interest to which (in the hands of
 12 the partnership) section 751 applies,
 13 and

14 “(III) any income or gain taken
 15 into account by the partnership under
 16 subsection (b)(4) or (e) of section
 17 710.

18 “(ii) EXCEPTION FOR QUALIFIED CAP-
 19 ITAL INTERESTS.—A rule similar to the
 20 rule of section 710(d) shall apply for pur-
 21 poses of clause (i).

22 “(C) COORDINATION WITH OTHER PROVI-
 23 SIONS.—Subparagraph (A) shall not apply to
 24 any item described in paragraph (1)(E) (or so

1 much of paragraph (1)(F) as relates to para-
 2 graph (1)(E)).

3 “(D) SPECIAL RULES FOR CERTAIN PART-
 4 NERSHIPS.—

5 “(i) CERTAIN PARTNERSHIPS OWNED
 6 BY REAL ESTATE INVESTMENT TRUSTS.—
 7 Subparagraph (A) shall not apply in the
 8 case of a partnership which meets each of
 9 the following requirements:

10 “(I) Such partnership is treated
 11 as publicly traded under this section
 12 solely by reason of interests in such
 13 partnership being convertible into in-
 14 terests in a real estate investment
 15 trust which is publicly traded.

16 “(II) Fifty percent or more of
 17 the capital and profits interests of
 18 such partnership are owned, directly
 19 or indirectly, at all times during the
 20 taxable year by such real estate in-
 21 vestment trust (determined with the
 22 application of section 267(c)).

23 “(III) Such partnership meets
 24 the requirements of paragraphs (2),
 25 (3), and (4) of section 856(c).

1 “(ii) CERTAIN PARTNERSHIPS OWN-
 2 ING OTHER PUBLICLY TRADED PARTNER-
 3 SHIPS.—Subparagraph (A) shall not apply
 4 in the case of a partnership which meets
 5 each of the following requirements:

6 “(I) Substantially all of the as-
 7 sets of such partnership consist of in-
 8 terests in one or more publicly traded
 9 partnerships (determined without re-
 10 gard to subsection (b)(2)).

11 “(II) Substantially all of the in-
 12 come of such partnership is ordinary
 13 income or section 1231 gain (as de-
 14 fined in section 1231(a)(3)).

15 “(E) TRANSITIONAL RULE.—Subpara-
 16 graph (A) shall not apply to any taxable year
 17 of the partnership beginning before the date
 18 which is 10 years after the date of enactment
 19 of this paragraph.”.

20 (d) IMPOSITION OF PENALTY ON UNDERPAY-
 21 MENTS.—

22 (1) IN GENERAL.—Subsection (b) of section
 23 6662 is amended by inserting after paragraph (9)
 24 the following new paragraph:

1 “(10) The application of section 710(e) or the
2 regulations or other guidance prescribed under sec-
3 tion 710(g) to prevent the avoidance of the purposes
4 of section 710.”.

5 (2) AMOUNT OF PENALTY.—

6 (A) IN GENERAL.—Section 6662 is amend-
7 ed by adding at the end the following new sub-
8 section:

9 “(m) INCREASE IN PENALTY IN CASE OF PROPERTY
10 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
11 ICES.—In the case of any portion of an underpayment to
12 which this section applies by reason of subsection (b)(10),
13 subsection (a) shall be applied with respect to such portion
14 by substituting ‘40 percent’ for ‘20 percent’.”.

15 (B) CONFORMING AMENDMENT.—Subpara-
16 graph (B) of section 6662A(e)(2) is amended
17 by striking “or (i)” and inserting “, (i), or
18 (m)”.

19 (3) SPECIAL RULES FOR APPLICATION OF REA-
20 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
21 tion 6664 is amended—

22 (A) by redesignating paragraphs (3) and
23 (4) as paragraphs (4) and (5), respectively;

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

4 (C) by inserting after paragraph (2) the
 5 following new paragraph:

6 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
 7 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
 8 ICES.—

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

13 “(i) the relevant facts affecting the
 14 tax treatment of the item are adequately
 15 disclosed,

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

18 “(iii) the taxpayer reasonably believed
 19 that such treatment was more likely than
 20 not the proper treatment.

21 “(B) RULES RELATING TO REASONABLE
 22 BELIEF.—Rules similar to the rules of sub-
 23 section (d)(4) shall apply for purposes of sub-
 24 paragraph (A)(iii).”.

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

4 (1) INTERNAL REVENUE CODE.—

5 (A) IN GENERAL.—Section 1402(a) is
 6 amended by striking “and” at the end of para-
 7 graph (16), by striking the period at the end of
 8 paragraph (17) and inserting “; and”, and by
 9 inserting after paragraph (17) the following
 10 new paragraph:

11 “(18) 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) with respect to any
 15 entity, investment services partnership income or
 16 loss (as defined in subsection (m)) of such individual
 17 with respect to such entity shall be taken into ac-
 18 count in determining the net earnings from self-em-
 19 ployment of such individual.”.

20 (B) INVESTMENT SERVICES PARTNERSHIP
 21 INCOME OR LOSS.—Section 1402 is amended by
 22 adding at the end the following new subsection:

23 “(m) INVESTMENT SERVICES PARTNERSHIP INCOME
 24 OR LOSS.—For purposes of subsection (a)—

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

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

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

11 “(C) the amounts treated as realized from
 12 the sale or exchange of property other than a
 13 capital asset under section 751 with respect to
 14 such interest.

15 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-
 16 TERESTS.—A rule similar to the rule of section
 17 710(d) shall apply for purposes of applying para-
 18 graph (1)(B).”.

19 (2) SOCIAL SECURITY ACT.—Section 211(a) of
 20 the Social Security Act is amended by striking
 21 “and” at the end of paragraph (15), by striking the
 22 period at the end of paragraph (16) and inserting “;
 23 and”, and by inserting after paragraph (16) the fol-
 24 lowing new paragraph:

1 “(17) Notwithstanding the preceding provisions
 2 of this subsection, in the case of any individual en-
 3 gaged in the trade or business of providing services
 4 described in section 710(c)(2) of the Internal Rev-
 5 enue Code of 1986 with respect to any entity, invest-
 6 ment services partnership income or loss (as defined
 7 in section 1402(m) of such Code) shall be taken into
 8 account in determining the net earnings from self-
 9 employment of such individual.”.

10 (f) SEPARATE ACCOUNTING BY PARTNER.—Section
 11 702(a) is amended by striking “and” at the end of para-
 12 graph (7), by striking the period at the end of paragraph
 13 (8) and inserting “, and”, and by inserting after para-
 14 graph (8) the following:

15 “(9) any amount treated as ordinary income or
 16 loss under subsection (a), (b), or (e) of section
 17 710.”.

18 (g) CONFORMING AMENDMENTS.—

19 (1) Subsection (d) of section 731 is amended by
 20 inserting “section 710(b)(4) (relating to distribu-
 21 tions of partnership property),” after “to the extent
 22 otherwise provided by”.

23 (2) Section 741 is amended by inserting “or
 24 section 710 (relating to special rules for partners

1 providing investment management services to part-
 2 nerships)” before the period at the end.

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

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

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

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

11 (h) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as otherwise pro-
 13 vided in this subsection, the amendments made by
 14 this section shall apply to taxable years ending after
 15 the date of enactment of this Act.

16 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
 17 CLUDE EFFECTIVE DATE.—In applying section
 18 710(a) of the Internal Revenue Code of 1986 (as
 19 added by this section) in the case of any partnership
 20 taxable year which includes the date of enactment of
 21 this Act, the amount of the net capital gain referred
 22 to in such section shall be treated as being the lesser
 23 of the net capital gain for the entire partnership tax-
 24 able year or the net capital gain determined by only

1 taking into account items attributable to the portion
 2 of the partnership taxable year which is after such
 3 date.

4 (3) DISPOSITIONS OF PARTNERSHIP INTER-
 5 ESTS.—

6 (A) IN GENERAL.—Section 710(b) of such
 7 Code (as added by this section) shall apply to
 8 dispositions and distributions after the date of
 9 enactment of this Act.

10 (B) INDIRECT DISPOSITIONS.—The amend-
 11 ments made by subsection (b) shall apply to
 12 transactions after the date of enactment of this
 13 Act.

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

19 **TITLE V—INVESTOR PROTEC-** 20 **TION AND MARKET TRANS-** 21 **PARENCY**

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

23 The Investment Company Act of 1940 (15 U.S.C.
 24 80a–1 et seq.) is amended by adding at the end the fol-
 25 lowing:

1 **“SEC. 66. DISCLOSURE OF FEES AND RETURNS.**

2 “(a) DEFINITIONS.—In this section—

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

7 “(2) the term ‘expenditure for political activi-
8 ties’—

9 “(A) means—

10 “(i) an independent expenditure, as
11 that term is defined in section 301(17) of
12 the Federal Election Campaign Act of
13 1971 (52 U.S.C. 30101(17));

14 “(ii) a disbursement for an election-
15 eering communication, as that term is de-
16 fined in section 304(f)(3) of the Federal
17 Election Campaign Act of 1971 (52 U.S.C.
18 30104(f)(3)) or any other public commu-
19 nication, as defined in section 301(22) of
20 that Act (52 U.S.C. 30101(22)), that
21 would be an electioneering communication
22 if it were a broadcast, cable, or satellite
23 communication; or

24 “(iii) dues or other payments to trade
25 associations or organizations described in
26 section 501(c) of the Internal Revenue

Code of 1986 and exempt from tax under section 501(a) of that Code that are, or could reasonably be anticipated to be, used or transferred to another association or organization for the purposes described in clause (i) or (ii); and

“(B) does not include an expenditure for—

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

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

“(I) a partner of the fund or executive or administrative personnel with respect to the fund; or

“(II) a family member of any individual described in subclause (I); or

“(iii) the establishment and administration of contributions to a separate segregated private fund to be utilized for political purposes by a controlling private fund.

“(b) RULES.—Not later than 1 year after the date of enactment of this section, the Commission shall issue final rules that require a controlling private fund to, using

1 generally accepted accounting principles, annually report
2 the following information with respect to that controlling
3 private fund:

4 “(1) The name, address, and vintage year of
5 the fund.

6 “(2) The name of each general partner of the
7 fund.

8 “(3) The name of each limited partner of the
9 fund.

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

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

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

16 “(7) The percentage of fund equity contributed
17 by the general partners of the fund and the percent-
18 age of fund equity contributed by the limited part-
19 ners of the fund.

20 “(8) Information on the debt owed by the fund,
21 including—

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

23 “(B) the percentage of debt for which the
24 creditor is a financial institution in the United
25 States;

1 “(C) the percentage of debt for which the
2 creditor is a financial institution outside of the
3 United States;

4 “(D) the percentage of debt for which the
5 creditor is an entity that is located in the
6 United States and is not a financial institution;
7 and

8 “(E) the percentage of debt for which the
9 creditor is an entity that is located outside of
10 the United States and is not a financial institu-
11 tion.

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

14 “(10) For the year covered by the report, the
15 difference obtained by subtracting the financial
16 gains of the fund by the fees that the general part-
17 ners of the fund charged to the limited partners of
18 the fund (commonly referred to as the ‘performance
19 net of fees’).

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

1 “(12) The average debt-to-equity ratio of each
2 target firm with respect to the fund and the debt-
3 to-equity ratio of each such target firm.

4 “(13) The total gross asset value of each target
5 firm with respect to the fund and the gross asset
6 value of each such target firm.

7 “(14) The total amount of debt held by each
8 target firm with respect to the fund and the total
9 amount of debt held by each such target firm.

10 “(15) The total amount of debt held by each
11 target firm with respect to the fund that, as of the
12 date on which the report is submitted, are cat-
13 egorized as liabilities, long-term liabilities, and pay-
14 ment in kind or zero coupon debt.

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

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

24 “(18) The percentage of the equity of the fund
25 that is owned by—

1 “(A) citizens of the United States;

2 “(B) individuals who are not citizens of the
3 United States;

4 “(C) brokers or dealers;

5 “(D) insurance companies;

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

8 “(F) private funds and other investment
9 companies not required to be registered with
10 the Commission;

11 “(G) nonprofit organizations;

12 “(H) pension plans maintained by State or
13 local governments (or an agency or instrumen-
14 tality of either);

15 “(I) pension plans maintained by non-
16 governmental employers;

17 “(J) State or municipal government enti-
18 ties;

19 “(K) banking or thrift institutions;

20 “(L) sovereign wealth funds; and

21 “(M) other investors.

22 “(19) The total dollar amount of aggregate fees
23 and expenses collected by the fund, the manager of
24 the fund, or related parties from target firms for

1 which the fund is a controlling private fund, which
2 shall—

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

4 “(B) include a description of the purpose
5 of the fees.

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

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

11 “(B) include a description of the purpose
12 of the fees.

13 “(21) The total carried interest claimed by the
14 fund, the manager of the fund, or related parties
15 and the total dollar amount of carried interest dis-
16 tributed to the limited partners of the fund.

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

20 “(A) concentration risk;

21 “(B) foreign exchange risk; and

22 “(C) extra-financial risk, including envi-
23 ronmental, social, and corporate governance
24 risk.

1 “(23) Disclosures that satisfy the Recommenda-
2 tions of the Task Force on Climate-related Financial
3 Disclosures of the Financial Stability Board, as re-
4 ported in June 2017.

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

7 “(A) fund workforce demographic informa-
8 tion, including the number of full-time employ-
9 ees, the number of part-time employees, the
10 number of contingent workers (including tem-
11 porary and contract workers), and any policies
12 or practices of the firm relating to subcon-
13 tracting, outsourcing, and insourcing;

14 “(B) fund workforce composition, including
15 data on the diversity of that workforce, includ-
16 ing the racial and gender composition of that
17 workforce, and any policies and audits relating
18 to the diversity of that workforce; and

19 “(C) any incident of alleged workplace har-
20 assment during the 5 years preceding the year
21 in which the report is submitted.

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

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

3 “(B) the amount of each such expenditure
4 for political activities;

5 “(C) if such an expenditure for political ac-
6 tivities was made in support of, or in opposition
7 to, a candidate, the name of the candidate, the
8 office sought by the candidate, and the political
9 party affiliation of the candidate;

10 “(D) a summary of—

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

14 “(ii) each expenditure for political ac-
15 tivities with respect to a particular election
16 if the total amount of expenditures for po-
17 litical activities by the firm with respect to
18 that election is in an amount that is not
19 less than \$10,000;

20 “(E) a description of the specific nature of
21 any expenditure for political activities that the
22 firm intends to make for the year in which the
23 report is submitted, to the extent that the spe-
24 cific nature is known to the firm; and

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

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

7 “(A) the fund; and

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

12 “(27) Any other information that the Commis-
13 sion determines is necessary and appropriate for the
14 protection of investors.

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

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

18 “(2) revise the rules as necessary to ensure that
19 the disclosures required under the rules reflect con-
20 temporary (as of the date on which the rules are re-
21 vised) trends and characteristics with respect to pri-
22 vate investment markets.

23 “(d) PUBLIC AVAILABILITY.—Notwithstanding any
24 provision of section 204 of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b-4), the information disclosed

1 under the rules issued under subsection (b) shall be made
 2 available to the public.”.

3 **SEC. 502. FIDUCIARY OBLIGATIONS.**

4 (a) FIDUCIARY DUTIES UNDER ERISA.—

5 (1) PLAN ASSETS.—Section 401(b)(1) of the
 6 Employee Retirement Income Security Act of 1974
 7 (29 U.S.C. 1101(b)(1)) is amended—

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

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

13 (2) FIDUCIARY OBLIGATIONS OF FUND MAN-
 14 AGERS.—Section 3(21)(A) of such Act (29 U.S.C.
 15 1002(21)) is amended by inserting “, and, in the
 16 case of a plan which invests in a security issued by
 17 a private fund (as such term is defined in section 3
 18 of the Stop Wall Street Looting Act), includes the
 19 manager of such private fund” before the period at
 20 the end.

21 (b) PROHIBITION AGAINST WAIVING FIDUCIARY DU-
 22 TIES.—Section 211(h) of the Investment Advisers Act of
 23 1940 (15 U.S.C. 80b–11(h)) is amended—

24 (1) in paragraph (1), by striking “and” at the
 25 end;

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

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

4 “(3) promulgate rules that prohibit an invest-
 5 ment adviser from requiring any person to which the
 6 investment adviser provides investment advice, in-
 7 cluding a pension plan (as defined in section 3 of the
 8 Employee Retirement Income Security Act of 1974
 9 (29 U.S.C. 1002)) that is subject to title I of the
 10 Employee Retirement Income Security Act of 1974
 11 (29 U.S.C. 1001 et seq.), to, as a condition of the
 12 investment adviser providing that advice, sign a con-
 13 tract or other agreement in which that person waives
 14 a fiduciary duty owed by that person to another per-
 15 son.”.

16 (c) APPLICABILITY OF BENEFITS.—The general
 17 partner of a controlling private fund that is a partnership
 18 may not provide any term or benefit to any limited partner
 19 of the fund unless the general partner provides that term
 20 or benefit to all limited partners of the fund.

21 **SEC. 503. DISCLOSURES RELATING TO THE MARKETING OF**
 22 **PRIVATE EQUITY FUNDS.**

23 Any investment adviser to a private fund shall dis-
 24 close to potential investors with respect to the other pri-
 25 vate funds, as defined in section 202(a) of the Investment

1 Advisers Act of 1940 (15 U.S.C. 80b–2(a)), managed by
2 that investment adviser (referred to in this section as
3 “managed firms”) the following information:

4 (1) A list of all managed firms with respect to
5 the investment adviser, including those managed
6 firms that, as of the date on which the disclosure is
7 made—

8 (A) have active investments; and

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

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

12 (A) As applicable, the total term of the
13 listed firm beginning with the commencement of
14 the commitment period with respect to the firm
15 and ending on the date on which the firm is
16 dissolved, including, with respect to a listed
17 firm that, as of the date on which the disclosure
18 is made, is actively investing—

19 (i) the term specified by any limited
20 partnership agreement; and

21 (ii) the nature of any provisions that
22 would allow for the extension of that term.

23 (B) The performance of the listed firm’s
24 net of fees, as measured by the public market
25 equivalent or a similar measure.

1 (C) A list of target firms with respect to
2 which the listed firm was a control person, the
3 nature of the control person relationship, and
4 the period of that control.

5 (D) The number of employees at each tar-
6 get firm identified under subparagraph (C), as
7 of the date on which the listed firm became a
8 control person with respect to the target firm,
9 and the date on which the listed firm ceased to
10 be a control person with respect to the target
11 firm.

12 (E) A list of target firms with respect to
13 the listed firm with respect to which a case has
14 been commenced under title 11, United States
15 Code.

16 (F) For each target firm with respect to
17 the listed firm, and with respect to which the
18 listed firm is a control person—

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

21 (ii) any legal or regulatory penalties
22 paid, or settlements entered into, by the
23 general partners of the target firm or the
24 target firm itself.

(3) The percentage breakdown of the means employed by the investment adviser to divest ownership or control of target firms, including—

(A) the sale of target firms to other private funds;

(B) the sale of target firms to private entities, other than private funds;

(C) the sale of target firms to issuers, the securities of which are traded on a national securities exchange;

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

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

TITLE VI—RESTRICTIONS ON SECURITIZING RISKY CORPORATE DEBT

SEC. 601. RISK RETENTION REQUIREMENTS FOR SECURITIZATION OF CORPORATE DEBT.

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

(1) in subsection (a)(3)—

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

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

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

4 “(C) a manager of a collateralized debt ob-
 5 ligation; and”;

6 (2) by redesignating subsection (i) as subsection
 7 (j); and

8 (3) by inserting after subsection (h) the fol-
 9 lowing:

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

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

17 “(A) obtain that portion of the credit risk
 18 for that asset; and

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

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

1 **TITLE VII—MISCELLANEOUS**

2 **SEC. 701. ANTI-EVASION.**

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

7 **SEC. 702. SEVERABILITY.**

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

○