

117TH CONGRESS  
1ST SESSION

# H. R. 5648

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 2021

Mr. POCAN (for himself, Ms. JAYAPAL, Ms. NORTON, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services, the Judiciary, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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  
5 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  
9 who work for companies owned by those  
10 funds. For millions of additional individuals, a private  
11 investment fund acts as a landlord, a lender, or  
12 an owner of a local grocery store, newspaper, or hospital.  
13 Many pension funds are also investors in private  
14 investment funds.

15 (3) Private investment funds have taken controlling  
16 stakes in companies in a wide variety of industries,  
17 including the financial services, real estate, media, and  
18 healthcare industries, but some of the largest impacts  
19 from private investment funds have been in the retail sector.  
20 In the 5 years preceding the date of enactment of this Act,  
21 cases have been commenced under title 11, United States Code,  
22 with respect to dozens of retailers in the United States,  
23 including Sears, Toys “R” Us, Shopko, Payless  
24

1 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,  
2 David's Bridal, Claire's, J. Crew, Neiman Marcus,  
3 Guitar Center, Art Van Furniture, and Southeastern  
4 Grocers, which was the parent company for BI-LO  
5 and Winn-Dixie.

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

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

23 (6) Regardless of the performance of a private  
24 investment fund, the managers of the fund often  
25 make profits through fees, dividends, and other fi-

1 nancial engineering. Private funds should have a  
2 stake in the outcome of their investments, enjoying  
3 returns if those investments are successful but ab-  
4 sorbing losses if those investments fail.

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

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

24 (9) An increasing amount of risky debt is being  
25 introduced into the market and the quality of that

1 debt is deteriorating, raising concerns with regu-  
2 lators and lawmakers about systemic risk. The insti-  
3 tutions that make and securitize risky loans collect  
4 large fees and then pass on risk to unwitting inves-  
5 tors. The financial system should not bear all of the  
6 risk while lenders and securitizers reap the rewards.

7 (10) The Federal Government should—

8 (A) protect workers, companies, con-  
9 sumers, and investors in the United States; and

10 (B) put an end to the practice of looting  
11 economically viable companies for the enrich-  
12 ment of private investment fund managers.

13 **SEC. 3. DEFINITIONS.**

14 Except as otherwise expressly provided, in this Act:

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

16 (A) a person that directly or indirectly  
17 owns, controls, or holds with power to vote, 20  
18 percent or more of the outstanding voting secu-  
19 rities of another entity, other than a person  
20 that holds such securities—

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

1 (ii) solely to secure a debt, if such en-  
2 tity has not in fact exercised such power to  
3 vote;

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

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

17 (ii) solely to secure a debt, if such en-  
18 tity has not in fact exercised such power to  
19 vote;

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

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

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

6 (A) a cash or share dividend;

7 (B) a share repurchase;

8 (C) a share redemption;

9 (D) a share buyback;

10 (E) a payment of interest or fee on a share  
11 of stock; and

12 (F) any other transaction similar to a  
13 transaction described in any of subparagraphs  
14 (A) through (E).

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

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

22 (B) any lesser per centum of any class of  
23 voting securities of a corporation that engages  
24 in interstate commerce that is sufficient to  
25 make the acquirer of such an interest a person



1           that has the ability to direct the actions of that  
2           corporation.

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

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

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

11                   (A) means—

12                           (i) a person—

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

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

23                                   (ii) a corporation, other than a target  
24                                   firm, that has 20 percent or more of its  
25                                   outstanding voting interests directly or in-

1 directly owned, controlled, or held with  
2 power to vote by a person that directly or  
3 indirectly owns, controls, or holds with  
4 power to vote, including through coordina-  
5 tion with other persons, 20 percent or  
6 more of the outstanding voting interests of  
7 another corporation; or

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

11 (B) does not include a person that—

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

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

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

21 (ii) is a pension fund or employee wel-  
22 fare benefit plan, if neither the fund nor  
23 plan (as applicable), nor any beneficiary or  
24 affiliate of the benefit or plan, is an insider

1 with respect to a controlling private fund;

2 or

3 (iii) holds the voting interests of a  
4 corporation solely—

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

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

10 (aa) exercised the power to  
11 vote; or

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

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

21 (8) CORPORATION.—The term “corporation”  
22 means—

23 (A) a joint-stock company;

24 (B) a company or partnership association  
25 organized under a law that makes only the cap-

1           ital subscribed or callable up to a specified  
2           amount responsible for the debts of the associa-  
3           tion, including a limited partnership and a lim-  
4           ited liability company;

5                   (C) a trust; and

6                   (D) an association having a power or privi-  
7           lege that a private corporation, but not an indi-  
8           vidual or a partnership, possesses.

9           (9) EMPLOYEE WELFARE BENEFIT PLAN.—The  
10          term “employee welfare benefit plan” has the mean-  
11          ing given the term in section 3 of the Employee Re-  
12          tirement Income Security Act of 1974 (29 U.S.C.  
13          1002).

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

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

18                   (i) a person that directly or indirectly  
19                  has the right to participate in the govern-  
20                  ance of a controlling private fund, without  
21                  regard to the form or source of that right;  
22                  and

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

25                   (B) does not include—

1 (i) a person that—

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

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

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

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

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

24 (ii) if the source of the right described  
25 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 Retirement  
25 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 ABETTORS.—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-

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

3 (d) CAUSE OF ACTION.—

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

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

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

18 (a) LIMITATION ON SAFE HARBORS.—Section 546(e)  
19 of title 11, United States Code, is amended by inserting  
20 after “548(b) of this title,” the following: “and except in  
21 the case of a transfer made in connection with a change  
22 in control transaction, as defined in section 3 of the Stop  
23 Wall Street Looting Act, or during the protected period,  
24 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)

1           which is revoked under subparagraph  
2           (A)(ii)(II), then the depreciation deduction  
3           under section 167(a) with respect to such prop-  
4           erty for the taxable year of revocation and all  
5           succeeding taxable years shall be determined  
6           under section 168 in the same manner as if  
7           such revocation were a change in use of the  
8           property under section 168(i)(5) and the regu-  
9           lations thereunder.

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

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

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

20           (b) EFFECTIVE DATES.—

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

24                   (2) REVOCATION OF ELECTIONS.—Subpara-  
25                   graphs (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 execu-  
7 tive 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(e) 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 sserting “, 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-

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

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

7                   “(ii) the adjusted basis of such prop-  
8                   erty in the hands of such partner (deter-  
9                   mined without regard to subparagraph  
10                  (C)).

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

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



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

1 Code of 1986 and exempt from tax under  
2 section 501(a) of that Code that are, or  
3 could reasonably be anticipated to be, used  
4 or transferred to another association or or-  
5 ganization for the purposes described in  
6 clause (i) or (ii); and

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

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

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

13 “(I) a partner of the fund or ex-  
14 ecutive or administrative personnel  
15 with respect to the fund; or

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

18 “(iii) the establishment and adminis-  
19 tration of contributions to a separate seg-  
20 regated private fund to be utilized for po-  
21 litical purposes by a controlling private  
22 fund.

23 “(b) RULES.—Not later than 1 year after the date  
24 of enactment of this section, the Commission shall issue  
25 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 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.

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

4           (A) the sale of target firms to other pri-  
5 vate funds;

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

8           (C) the sale of target firms to issuers, the  
9 securities of which are traded on a national se-  
10 curities exchange;

11           (D) the commencement of cases under title  
12 11, United States Code, with respect to target  
13 firms; and

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

16 **TITLE VI—RESTRICTIONS ON**  
17 **SECURITIZING RISKY COR-**  
18 **PORATE DEBT**

19 **SEC. 601. RISK RETENTION REQUIREMENTS FOR SECURITI-**  
20 **ZATION OF CORPORATE DEBT.**

21           Section 15G of the Securities Exchange Act of 1934  
22 (15 U.S.C. 78o–11) is amended—

23           (1) in subsection (a)(3)—

24           (A) in subparagraph (A), by striking “or”  
25 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.

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