

119TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

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.

2

Sec. 3. Definitions.

TITLE I—CORPORATE RESPONSIBILITY

Sec. 101. Joint and several liability for controlling private funds and holders of active interests in controlling private funds.

Sec. 102. Indemnification void as against public policy.

TITLE II—ANTI-LOOTING

Sec. 201. Limitations on post-acquisition dividends, distributions, redemptions, buybacks, and outsourcing.

Sec. 202. Prevention of fraudulent transfers.

Sec. 203. Surtax on certain amounts received by investment firms from controlled target firms.

Sec. 204. Limitation on deduction for business interest of certain businesses owned by private funds.

Sec. 205. Guardrails around accessing public funds.

Sec. 206. Prohibiting payments from Federal health care programs to entities that sell assets to or use assets as collateral for a loan with a real estate investment trust.

Sec. 207. Repeal of special rule for taxable REIT subsidiaries with interests in certain health care property.

Sec. 208. Elimination of qualified REIT dividends from qualified business income.

Sec. 209. Protections for striking workers.

TITLE III—PROTECTING WORKERS WHEN COMPANIES GO
BANKRUPT

Sec. 301. Increased priority for wages.

Sec. 302. Priority for severance pay and contributions to employee welfare benefit plans.

Sec. 303. Priority for violations of Federal and State laws.

Sec. 304. Limitation on executive compensation enhancements.

Sec. 305. Prohibition against special compensation payments.

Sec. 306. Executive compensation upon exit from bankruptcy.

Sec. 307. Collateral surcharge for employee obligations.

Sec. 308. Voidability of preferential compensation transfers.

Sec. 309. Protection for employees in a sale of assets.

Sec. 310. Protection of gift card purchasers.

Sec. 311. Commercial real estate.

TITLE IV—CLOSING TAX LOOPHOLES

Sec. 401. Amendment of 1986 Code.

Sec. 402. Partnership interests transferred in connection with performance of services.

Sec. 403. Special rules for partners providing investment management services to partnerships.

TITLE V—INVESTOR PROTECTION AND MARKET TRANSPARENCY

Sec. 501. Disclosure of fees and returns.

Sec. 502. Fiduciary obligations.

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

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

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

15 (3) Private investment funds have taken con-
16 trolling stakes in companies in a wide variety of in-
17 dustries, including the financial services, real estate,
18 media, and healthcare industries, but some of the
19 largest impacts from private investment funds have
20 been in the retail sector. In the 10 years preceding
21 the date of enactment of this Act, cases have been

1 commenced under title 11, United States Code, with
2 respect to dozens of retailers in the United States,
3 including Sears, Toys “R” Us, Shopko, Payless
4 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,
5 David’s Bridal, Claire’s, J. Crew, Neiman Marcus,
6 Guitar Center, Art Van Furniture, and Southeastern
7 Grocers, which was the parent company for BI-LO
8 and Winn-Dixie.

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

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

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

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

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

1 formation and bargaining power to take control over
2 their own investments.

3 (9) An increasing amount of risky debt is being
4 introduced into the market and the quality of that
5 debt is deteriorating, raising concerns with regu-
6 lators and lawmakers about systemic risk. The insti-
7 tutions that make and securitize risky loans collect
8 large fees and then pass on risk to unwitting inves-
9 tors. The financial system should not bear all of the
10 risk while lenders and securitizers reap the rewards.

11 (10) The Federal Government should—

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

14 (B) put an end to the practice of looting
15 economically viable companies for the enrich-
16 ment of private investment fund managers.

17 **SEC. 3. DEFINITIONS.**

18 Except as otherwise expressly provided, in this Act:

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

20 (A) a person that directly or indirectly
21 owns, controls, or holds with power to vote, 5
22 percent or more of the outstanding voting secu-
23 rities of another entity, other than a person
24 that holds such securities—

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

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

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

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

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

23 (C) a person whose business is operated
24 under a lease or operating agreement by an-
25 other entity, or person substantially all of whose

1 property is operated under an operating agree-
2 ment with that other entity; or

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

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

8 (A) a cash or share dividend;

9 (B) a share repurchase;

10 (C) a share redemption;

11 (D) a share buyback;

12 (E) a payment of interest or fee on a share
13 of stock; and

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

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

20 (A) the power to vote more than 5 per cen-
21 tum of any class of voting securities of a cor-
22 poration that engages in interstate commerce;
23 or

24 (B) any lesser per centum of any class of
25 voting securities of a corporation that engages

1 in interstate commerce that is sufficient to
2 make the acquirer of such an interest a person
3 that has the ability to direct the actions of that
4 corporation.

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

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

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

13 (A) means—

14 (i) a person—

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

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

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

11 (iii) a person that otherwise has the
12 ability to direct the actions of a corpora-
13 tion; and

14 (B) does not include a person that—

15 (i)(I) is a limited partner with respect
16 to a controlling private fund that is a part-
17 nership;

18 (II) does not participate in the direc-
19 tion of the management or policy of a cor-
20 poration; and

21 (III) is not an insider with respect to
22 the controlling private fund described in
23 subclause (I);

24 (ii) is a pension fund or employee wel-
25 fare benefit plan, if neither the fund nor

1 plan (as applicable), nor any beneficiary or
2 affiliate of the benefit or plan, is an insider
3 with respect to a controlling private fund;
4 or

5 (iii) holds the voting interests of a
6 corporation solely—

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

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

12 (aa) exercised the power to
13 vote; or

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

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

23 (8) CORPORATION.—The term “corporation”
24 means—

25 (A) a joint-stock company;

1 (B) a company or partnership association
2 organized under a law that makes only the cap-
3 ital subscribed or callable up to a specified
4 amount responsible for the debts of the associa-
5 tion, including a limited partnership and a lim-
6 ited liability company;

7 (C) a trust; and

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

11 (9) EMPLOYEE WELFARE BENEFIT PLAN.—The
12 term “employee welfare benefit plan” has the mean-
13 ing given the term in section 3 of the Employee Re-
14 tirement Income Security Act of 1974 (29 U.S.C.
15 1002).

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

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

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

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

3 (B) does not include—

4 (i) a person that—

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

10 (II)(aa) is a limited partner with
11 respect to a controlling private fund
12 that is a partnership;

13 (bb) does not participate in the
14 direction of the management or policy
15 of a corporation; and

16 (cc) is not an insider with respect
17 to the controlling private fund de-
18 scribed in item (aa); or

19 (III) is a pension fund or em-
20 ployee welfare benefit plan, if neither
21 the pension fund nor employee welfare
22 benefit plan (as applicable), nor any
23 affiliate or beneficiary of the pension
24 fund or employee welfare benefit plan,

1 is an insider with respect to, or affil-
2 iate of, a controlling private fund; or
3 (ii) if the source of the right described

4 in subparagraph (A)(i) is a security—

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

15 (II) a member of a national secu-
16 rities exchange solely because that
17 member is the record holder of that
18 security and, under the rules of that
19 exchange—

20 (aa) may direct the vote of
21 that security, without instruction,
22 on—

23 (AA) other than con-
24 tested matters; or

1 (BB) matters that may
2 substantially affect the
3 rights or privileges of the
4 holders of the security to be
5 voted; and

6 (bb) is otherwise precluded
7 from voting without instruction.

8 (11) INSIDER.—The term “insider” means
9 any—

10 (A) director of a corporation;

11 (B) officer of a corporation;

12 (C) managing agent of a corporation;

13 (D) control person with respect to a cor-
14 poration;

15 (E) affiliate of a corporation;

16 (F) general partner of a corporation that
17 is a partnership;

18 (G) consultant or contractor retained by a
19 corporation;

20 (H) affiliate, relative, or agent of a person
21 described in any of subparagraphs (A) through
22 (F); or

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

1 (12) INVESTMENT ADVISER.—The term “in-
2 vestment adviser” has the meaning given the term
3 in section 202(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–2(a)).

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

8 (14) NATIONAL SECURITIES EXCHANGE.—The
9 term “national securities exchange” means an ex-
10 change that is registered as a national securities ex-
11 change pursuant to section 6 of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78f).

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

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

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

24 (B) is not a venture capital fund, as de-
25 fined in section 275.203(l)–1 of title 17, Code

1 of Federal Regulations, as in effect on the date
2 of enactment of this Act; and

3 (C) is not an institution selected under sec-
4 tion 107 of the Community Development Bank-
5 ing and Financial Institutions Act of 1994 (12
6 U.S.C. 4706).

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

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

15 (19) TARGET FIRM.—The term “target firm”
16 means a corporation that is acquired in a change in
17 control transaction.

TITLE I—CORPORATE RESPONSIBILITY

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

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

**“SEC. 66. JOINT AND SEVERAL LIABILITY FOR CONTROL-
LING PRIVATE FUNDS AND HOLDERS OF AC-
TIVE INTERESTS IN CONTROLLING PRIVATE
FUNDS.**

“(a) DEFINITIONS.—In this section, the terms ‘affil-
iate’, ‘control person’, ‘controlling private fund’, ‘holder of
an active interest’, and ‘target firm’ have the meanings
given those terms in section 3 of the Stop Wall Street
Looting Act.

“(b) JOINT AND SEVERAL LIABILITY.—Notwith-
standing any other provision of law, or the terms of any
contract or agreement, a controlling private fund, and any
holder of an active interest with respect to a controlling
private fund, shall be jointly and severally liable for all
liabilities of each target firm for which the controlling pri-

1 vate fund is a control person, and for all liabilities of any
2 affiliate of each such 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 pen-
8 alty, or obligation under a settlement or consent
9 order with a Federal or State governmental agency
10 or instrumentality, including a consumer restitution
11 obligation, for which the target firm, or an affiliate
12 of the target firm, is liable;

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

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

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

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

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

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

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

14 **“SEC. 67. INDEMNIFICATION VOID AS AGAINST PUBLIC**
15 **POLICY.**

16 “(a) DEFINITIONS.—In this section, the terms ‘affil-
17 iate’, ‘controlling private fund’, ‘holder of an active inter-
18 est’, and ‘target firm’ have the meanings given those terms
19 in section 3 of the Stop Wall Street Looting Act.

20 “(b) VOID AS AGAINST PUBLIC POLICY.—It shall be
21 void as against public policy for a target firm, or an affil-
22 iate of a target firm, to indemnify a controlling private
23 fund with respect to—

24 “(1) the target firm;

25 “(2) any affiliate of the target firm; or

1 “(3) any person that is the holder of an active
2 interest in the controlling private fund with respect
3 to the liabilities of that person under section 66.”.

4 **TITLE II—ANTI-LOOTING**

5 **SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS,** 6 **DISTRIBUTIONS, REDEMPTIONS, BUYBACKS,** 7 **AND OUTSOURCING.**

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

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

15 (2) make a capital distribution greater than 10
16 percent of the sum of all financial obligations of the
17 target firm for each of the previous 2 years or simi-
18 larly reduce the equity capital of the target firm;

19 (3) incur an obligation that commits the target
20 firm to making a capital distribution of greater than
21 10 percent of the new sum of all financial obliga-
22 tions of the firm or a similar reduction of the equity
23 capital of the target firm for each of the following
24 2 years; or

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

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

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

20 (d) CAUSE OF ACTION.—

21 (1) IN GENERAL.—Any employee or creditor, or
22 representative of an employee or creditor, of a target
23 firm that is a debtor under title 11, United States
24 Code, or of an affiliate of a target firm that is such
25 a debtor, may bring an action in an appropriate dis-

1 trict court of the United States against the direct or
2 indirect transferee or obligee or beneficiary of the
3 transfer or obligation to void the transfer or obliga-
4 tion and recover any transferred property for the
5 target firm.

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

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

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

17 (b) PRESUMPTION OF INSOLVENCY IN TRANSFERS
18 UNDERTAKEN IN CONNECTION WITH CHANGE IN CON-
19 TROL TRANSACTIONS.—Section 548 of title 11, United
20 States Code, is amended by adding at the end the fol-
21 lowing:

22 “(f)(1) In this subsection—

23 “(A) the terms ‘change in control trans-
24 action’, ‘control person’, and ‘target firm’ have

1 the meanings given those terms in section 3 of
2 the Stop Wall Street Looting Act; and

3 “(B) the term ‘protected period’ means the
4 shorter of—

5 “(i) the 15-year period beginning on
6 the date on which a change in control
7 transaction closed; or

8 “(ii) the period beginning on the date
9 on which a change in control transaction
10 closed and ending on the earliest subse-
11 quent date on which a public offering of a
12 controlling share of the common equity se-
13 curities of the target firm occurs.

14 “(2) For purposes of this section, if the debtor
15 is a target firm, the debtor is presumed to have
16 made a transfer or incurred an obligation described
17 in subparagraphs (A) and (B) of subsection (a)(1)
18 if—

19 “(A) the transfer was made to or obliga-
20 tion was incurred by the debtor or an affiliate
21 in connection with a change in control trans-
22 action; or

23 “(B) during a protected period—

1 “(i) the transfer was made by the
2 debtor or an affiliate to a control person,
3 an affiliate, or an insider; or

4 “(ii) the obligation was incurred by
5 the debtor or an affiliate from a control
6 person, an affiliate, or an insider.

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

12 (c) STATUTE OF LIMITATIONS.—

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

15 (A) in subsection (a)(1), by striking para-
16 graph “that was made or incurred on or within
17 15 years before the date of the filing of the pe-
18 tition” and inserting “that was made or in-
19 curred during the period described in subsection
20 (g)”; and

21 (B) adding at the end the following:

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

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

6 “(2) 15 years before the date of the filing of
7 the petition for all other transfers and obligations.”.

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

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

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

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

15 “(4) within 15 years after the transfer was
16 made or the obligation was incurred, if the transfer
17 was made or the obligation was incurred—

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

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

23 (d) POWERS AND DUTIES OF COMMITTEES.—Section
24 1103(c) of title 11, United States Code, is amended—

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

3 (2) by inserting after paragraph (2) the fol-
4 lowing:

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

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

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

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

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

22 “(1) an action under section 544, 547, 548, or
23 553 to avoid a transfer made or obligation incurred
24 by the debtor in connection with a change of control

1 transaction, as defined in section 3 of the Stop Wall
2 Street Looting Act; or

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

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

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

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

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

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

17 “(a) IMPOSITION OF TAX.—

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

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

6 “(b) APPLICABLE PAYMENT.—For purposes of this
7 section—

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

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

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

23 “(B) DISTRIBUTIONS OF PROPERTY WITH
24 RESPECT TO STOCK.—Any distribution of prop-

1 erty (as defined in section 317(a)) to which sec-
2 tion 301(a) applies.

3 “(c) DEFINITIONS RELATING TO ENTITIES.—For
4 purposes of this section—

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

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

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

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

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

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

22 “(3) APPLICABLE TRADE OR BUSINESS.—The
23 term ‘applicable trade or business’ means any activ-
24 ity conducted on a regular, continuous, and substan-
25 tial basis which, regardless of whether the activity is

1 conducted in one or more entities, consists, in whole
2 or in part, of—

3 “(A) raising or returning capital, and

4 “(B) either—

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

8 “(ii) developing specified assets.

9 “(4) SPECIFIED ASSET.—The term ‘specified
10 asset’ means—

11 “(A) securities (as defined in section
12 475(c)(2) but without regard to the phrase
13 ‘widely held or publicly traded’ in subparagraph
14 (B) thereof and without regard to the last sen-
15 tence thereof), and

16 “(B) real estate held for rental or invest-
17 ment.

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

21 “(1) CONSTRUCTIVE OWNERSHIP RULES USED
22 IN DETERMINING RELATED PARTY.—In determining
23 whether persons are related within the meaning of
24 section 267(b) or 707(b), the constructive ownership
25 rules of section 318 shall apply in lieu of the con-

1 structive ownership rules which would otherwise
2 apply, except that in applying such rules the term
3 ‘stock’ shall include capital, profits, or other bene-
4 ficial interests in persons other than corporations.

5 “(2) CONTROL.—

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

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

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

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

24 “(2) modifying the constructive ownership rules
25 under section 318 to the extent necessary to apply

1 such rules to capital, profits, or other beneficial in-
2 terests as well as stock.”.

3 (b) DISALLOWANCE OF CREDITS AGAINST TAX.—

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

9 (c) CONFORMING AMENDMENTS.—

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

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

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

20 (3) Section 882(a)(1) of such Code is amend-
21 ed—

22 (A) by striking “59A,” and inserting
23 “59A”; and

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

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

12 “(iv) the tax imposed by section 59B,
13 over”.

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

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

22 “(iv) the tax imposed by section 59B,
23 and”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to applicable payments (as defined

1 in section 59B(b) of the Internal Revenue Code of 1986,
2 as added by this section) paid or accrued on or after the
3 date of the enactment of this Act.

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

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

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

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

19 “(i) if the ratio of debt to equity of
20 the taxpayer as of the close of the taxable
21 year (or on any other day during the tax-
22 able year as the Secretary may prescribe in
23 regulations) exceeds 1, then paragraph (1)
24 shall be applied by substituting a percent-
25 age that the Secretary determines appro-

1 priate (and which shall be not less than 30
2 percent) for ‘30 percent’, and

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

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

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

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

1 “(i) the amount taken into account
2 with respect to any asset shall be the ad-
3 justed basis thereof for purposes of deter-
4 mining gain,

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

13 “(iii) there shall be such other adjust-
14 ments as the Secretary may by regulations
15 prescribe.

16 “(C) COORDINATION WITH DEPRECIATION
17 RULES.—If the alternative depreciation system
18 under section 168(g) applies to property by rea-
19 son of an election under paragraph (7)(B)
20 which is revoked under subparagraph
21 (A)(ii)(II), then the depreciation deduction
22 under section 167(a) with respect to such prop-
23 erty for the taxable year of revocation and all
24 succeeding taxable years shall be determined
25 under section 168 in the same manner as if

1 such revocation were a change in use of the
2 property under section 168(i)(5) and the regu-
3 lations thereunder.

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

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

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

14 (b) EFFECTIVE DATES.—

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

18 (2) REVOCATION OF ELECTIONS.—Subpara-
19 graphs (A)(ii)(II) and (C) of section 163(j)(11) of
20 the Internal Revenue Code of 1986, as added by this
21 section, shall apply to taxable years beginning on or
22 after the date of enactment of this Act, with respect
23 to elections under section 163(j)(7)(B) of such Code
24 made before, on, or after such date.

1 **SEC. 205. GUARDRAILS AROUND ACCESSING PUBLIC**
2 **FUNDS.**

3 The Investment Company Act of 1940 (15 U.S.C.
4 80a–1 et seq.), as amended by this Act, is amended by
5 adding at the end the following:

6 **“SEC. 68. DISCLOSURES.**

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

10 “(1) shall publicly disclose—

11 “(A) the total funds received from the
12 agency;

13 “(B) the workforce demographics of the
14 person;

15 “(C) the amount of loans, grants, or other
16 benefits provided;

17 “(D) the use of the proceeds;

18 “(E) how many jobs were saved or wages
19 preserved;

20 “(F) any loans forgiven or discharged;

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

22 “(H) the pay ratio between the chief exec-
23 utive officer and the median pay of employees;
24 and

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

4 “(A) acquire any company; or

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

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

12 Section 1128(a) of the Social Security Act (42 U.S.C.
13 1320a–7(a)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(5) SELLING ASSETS TO OR USING ASSETS AS
16 COLLATERAL FOR A LOAN WITH A REAL ESTATE IN-
17 VESTMENT TRUST.—

18 “(A) IN GENERAL.—Any individual or en-
19 tity that, on or after the date of enactment of
20 this paragraph, sells any assets to, or newly
21 pledges any assets as collateral for a loan with,
22 a real estate investment trust (as defined in
23 section 856(a) of the Internal Revenue Code of
24 1986).

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

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

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

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

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

21 (1) in subparagraph (A)—

22 (A) by striking “or a qualified health care
23 property (as defined in subsection
24 (e)(6)(D)(i))”,

1 (B) by striking “or qualified health care
2 property”, and

3 (C) by striking “or qualified health care
4 properties”, and

5 (2) in subparagraph (B)—

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

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

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

14 **SEC. 208. ELIMINATION OF QUALIFIED REIT DIVIDENDS**
15 **FROM QUALIFIED BUSINESS INCOME.**

16 (a) IN GENERAL.—Subparagraph (B) of section
17 199A(b)(1) of the Internal Revenue Code of 1986 is
18 amended by striking “qualified REIT dividends and”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 199A(c)(1) of such Code is amend-
21 ed by striking “qualified REIT dividends or” in the
22 last sentence.

23 (2) Section 199A(e) of such Code is amended
24 by striking paragraph (3) and by redesignating
25 paragraph (4) as paragraph (3).

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

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

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

7 (1) in subsection (a)—

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

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

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

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

16 “(B) to discriminate against an employee
17 who is working or has unconditionally offered to
18 return to work for the employer because the
19 employee supported or participated in such a
20 strike; or

21 “(C) to lockout, suspend, or otherwise
22 withhold employment from employees in order
23 to influence the position of such employees or
24 the representative of such employees in collec-
25 tive bargaining prior to a strike; and

1 “(7) to communicate or misrepresent to an em-
2 ployee under section 2(3) that such employee is ex-
3 cluded from the definition of employee under section
4 2(3).”;

5 (2) in subsection (b)—

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

7 (B) by redesignating paragraphs (5) and
8 (6) as paragraphs (4) and (5), respectively;

9 (C) in paragraph (4), as so redesignated,
10 by striking “affected;” and inserting “affected;
11 and”; and

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

14 (3) in subsection (c), by striking the period at
15 the end and inserting the following: “: *Provided*,
16 That it shall be an unfair labor practice under sub-
17 section (a)(1) for any employer to require or coerce
18 an employee to attend or participate in such employ-
19 er’s campaign activities unrelated to the employee’s
20 job duties, including activities that are subject to the
21 requirements under section 203(b) of the Labor-
22 Management Reporting and Disclosure Act of 1959
23 (29 U.S.C. 433(b)).”; and

24 (4) in subsection (d), in the matter preceding
25 paragraph (1), by inserting “and to maintain cur-

1 rent wages, hours, and terms and conditions of em-
2 ployment pending an agreement” after “arising
3 thereunder”.

4 (b) CONFORMING AMENDMENTS.—The National
5 Labor Relations Act is amended—

6 (1) in section 8(e) (29 U.S.C. 158(e)), by strik-
7 ing “and section 8(b)(4)(B)”;

8 (2) in section 10 (29 U.S.C. 160)—

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

10 (B) in subsection (l)—

11 (i) by striking “of paragraph” and all
12 that follows through “the preliminary” and
13 inserting “of section 8(e), the prelimi-
14 nary”;

15 (ii) by striking the second proviso;

16 and

17 (iii) by striking the final sentence.

18 **TITLE III—PROTECTING WORK-**
19 **ERS WHEN COMPANIES GO**
20 **BANKRUPT**

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

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

24 (1) in paragraph (4)—

1 (A) by redesignating subparagraphs (A)
2 and (B) as clauses (i) and (ii), respectively;

3 (B) in the matter preceding clause (i), as
4 so redesignated, by inserting “(A)” before
5 “Fourth”;

6 (C) in subparagraph (A), as so designated,
7 in the matter preceding clause (i), as so reded-
8 icated—

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

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

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

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

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

21 (2) in paragraph (5)—

22 (A) in subparagraph (A)—

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

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

4 (B) by striking subparagraph (B) and in-
5 serting the following:

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

9 **SEC. 302. PRIORITY FOR SEVERANCE PAY AND CONTRIBU-**
10 **TIONS TO EMPLOYEE WELFARE BENEFIT**
11 **PLANS.**

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

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

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

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

19 “(10) severance pay owed to employees of the
20 debtor (other than to an insider of the debtor or a
21 senior executive officer of the debtor), under a plan,
22 program, or policy generally applicable to employees
23 of the debtor (but not under an individual contract
24 of employment), or owed pursuant to a collective
25 bargaining agreement, for layoff or termination on

1 or after the date of the filing of the petition, which
2 pay shall be deemed earned in full upon such layoff
3 or termination of employment; and

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

8 **SEC. 303. PRIORITY FOR VIOLATIONS OF FEDERAL AND**
9 **STATE LAWS.**

10 (a) ALLOWANCE OF ADMINISTRATIVE EXPENSES IN
11 BANKRUPTCY CASES.—Section 503(b)(1)(A)(ii) of title
12 11, United States Code, is amended by inserting after
13 “(ii)” the following: “any back pay, civil penalty, or dam-
14 ages for a violation of any Federal or State labor and em-
15 ployment law, including the Worker Adjustment and Re-
16 training Notification Act (29 U.S.C. 2101 et seq.) and any
17 comparable State law, and”.

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

23 (1) by inserting “which for purposes of this
24 sentence shall consist of the days, in the notification
25 period, that are or that follow the date of the pro-

1 hibited closing or layoff under this Act,” after “pe-
2 riod of the violation,”; and

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

4 **SEC. 304. LIMITATION ON EXECUTIVE COMPENSATION EN-**
5 **HANCEMENTS.**

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

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

11 (2) in paragraph (1), in the matter preceding
12 subparagraph (A)—

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

21 (B) by inserting “or for the payment of
22 performance or incentive compensation, a bonus
23 of any kind, or any other financial return de-
24 signed to replace or enhance incentive, stock, or
25 other compensation in effect before the date of

1 the commencement of the case,” after “remain
2 with the debtor’s business,”; and

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

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

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

16 “(3) any other transfer or obligation to or for
17 the benefit of an insider of the debtor, a senior exec-
18 utive officer of the debtor, or any of the 20 next
19 most highly compensated employees of the debtor,
20 department or division managers of the debtor, or
21 consultants providing services to the debtor (regard-
22 less of whether the executive officer, employee, man-
23 ager, or consultant is an insider), absent a finding
24 by the court, based upon clear and convincing evi-

1 dence in the record, and without deference to a re-
2 quest by the debtor for such payment, that—

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

8 “(i) the survival of the business of the
9 debtor; or

10 “(ii) in a case in which some or all of
11 the assets of the debtor are liquidated, the
12 orderly liquidation of the assets;

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

18 “(C) the cost of the transfer or obliga-
19 tion—

20 “(i) is reasonable;

21 “(ii) is not excessive in the context of
22 the financial circumstances of the debtor;
23 and

24 “(iii) is not disproportionate in light
25 of any economic loss incurred by the non-

1 management workforce of the debtor dur-
2 ing the case.”.

3 **SEC. 305. PROHIBITION AGAINST SPECIAL COMPENSATION**
4 **PAYMENTS.**

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

7 (1) in subsection (b), by adding at the end the
8 following:

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

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

22 “(B) modified any plan, program, policy, or
23 practice described in subparagraph (A) in order to
24 reduce benefits under the plan, program, policy or
25 practice.”; and

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

7 **SEC. 306. EXECUTIVE COMPENSATION UPON EXIT FROM**
8 **BANKRUPTCY.**

9 Section 1129(a) of title 11, United States Code, is
10 amended—

11 (1) in paragraph (4), by adding at the end the
12 following: “Except for compensation subject to re-
13 view under paragraph (5), any payment or other dis-
14 tribution under the plan to or for the benefit of an
15 insider of the debtor, a senior executive officer of the
16 debtor, or any of the 20 next most highly com-
17 pensated employees of the debtor, department or di-
18 vision managers of the debtor, or consultants pro-
19 viding services to the debtor (regardless of whether
20 the executive officer, employee, manager, or consult-
21 ant is an insider), shall not be approved by the court
22 except as part of a program of payments or distribu-
23 tions generally applicable to employees of the debtor,
24 and only to the extent that the court determines
25 that the payment or other distribution is not exces-

1 sive or disproportionate in comparison to payments
2 or other distributions to the nonmanagement work-
3 force of the debtor.”; and

4 (2) in paragraph (5)—

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

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

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

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

13 “(i) reasonable in comparison to compensa-
14 tion paid to individuals holding comparable po-
15 sitions at comparable companies in the same in-
16 dustry; and

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

20 **SEC. 307. COLLATERAL SURCHARGE FOR EMPLOYEE OBLI-**
21 **GATIONS.**

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

24 (1) by inserting “(1)” before “The trustee”;
25 and

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

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

12 “(A) deemed—

13 “(i) reasonable, necessary costs and ex-
14 penses of preserving, or disposing of, property
15 securing an allowed secured claim; and

16 “(ii) benefiting the holder of the allowed
17 secured claim; and

18 “(B) recovered by the trustee for payment to
19 the employees or the employee welfare benefit plan,
20 as defined in section 3 of the Stop Wall Street
21 Looting Act, as applicable, even if the trustee, or a
22 predecessor or successor in interest, has otherwise
23 waived the provisions of this subsection under an
24 agreement with the holder of the allowed secured

1 claim or a successor or predecessor in interest of the
2 holder of the allowed secured claim.”.

3 **SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION**
4 **TRANSFERS.**

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

7 “(j)(1) The trustee may avoid a transfer to or for
8 the benefit of an insider of the debtor, a senior executive
9 officer of the debtor, or any of the 20 next most highly
10 compensated employees of the debtor, department or divi-
11 sion managers of the debtor, or consultants providing serv-
12 ices to the debtor (regardless of whether the executive offi-
13 cer, employee, manager, or consultant is an insider),
14 that—

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

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

20 “(2) Subsection (c) shall not constitute a defense
21 against the recovery of a transfer under paragraph (1) of
22 this subsection.

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

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

8 SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF AS-
9 SETS.

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

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

19 “(A) preserve the jobs of the workforce of the
20 debtor; and

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

23 “(2) If there are two or more offers to purchase or
24 lease property of the estate under this section, or under
25 a plan under chapter 11, that qualify under the procedures

1 for the sale or lease, respectively, approved by the court,
2 the court shall approve the offer that best—

3 “(A) preserves the jobs of the workforce of the
4 debtor; and

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

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

11 “(A) the preservation of the jobs of the work-
12 force of the debtor; and

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

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

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

23 “(A) the court shall have jurisdiction over the
24 purchaser or lessee of the property in order to en-

1 force the terms of the order approving the purchase
2 or lease;

3 “(B) the purchaser or lessee shall promptly dis-
4 close to the court any material noncompliance with
5 the terms of the order described in subparagraph
6 (A) and explain the basis for such noncompliance;
7 and

8 “(C) with respect to material noncompliance de-
9 scribed in subparagraph (B), the court may impose
10 any appropriate remedy, including injunctive relief,
11 to address the noncompliance.”.

12 (b) PLANS UNDER CHAPTER 11.—

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

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

21 “(17) If the plan provides for the sale of all or
22 substantially all of the property of the estate, the
23 sale meets the requirements under subsections (q)
24 and (r) of section 363 of this title.”.

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

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

5 “(26A) The term ‘gift card’ means a paper or
6 electronic promise, plastic card, or other payment
7 code or device that is—

8 “(A) redeemable at—

9 “(i) a single merchant; or

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

12 “(B) issued in a specified amount, regard-
13 less of whether that amount may be increased
14 in value or reloaded at the request of the hold-
15 er;

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

18 “(D) honored by the single merchant or af-
19 filiated group of merchants described in sub-
20 paragraph (A) upon presentation for goods or
21 services.”.

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

25 “(7) Seventh, allowed unsecured claims of indi-
26 viduals, to the extent of \$1,800 for each such indi-

1 vidual, arising from the deposit, before the com-
2 mencement of the case, of money in connection
3 with—

4 “(A) the purchase, lease, or rental of prop-
5 erty;

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

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

12 **SEC. 311. COMMERCIAL REAL ESTATE.**

13 Section 365(d) of title 11, United States Code, is
14 amended—

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

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

18 **TITLE IV—CLOSING TAX**
19 **LOOPHOLES**

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

21 Except as otherwise expressly provided, whenever in
22 this title an amendment or repeal is expressed in terms
23 of an amendment to, or repeal of, a section or other provi-
24 sion, the reference shall be considered to be made to a

1 section or other provision of the Internal Revenue Code
2 of 1986.

3 **SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN**
4 **CONNECTION WITH PERFORMANCE OF SERV-**
5 **ICES.**

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

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

13 “(A) IN GENERAL.—In the case of any
14 transfer of an interest in a partnership in con-
15 nection with the provision of services to (or for
16 the benefit of) such partnership—

17 “(i) the fair market value of such in-
18 terest shall be treated for purposes of this
19 section as being equal to the amount of the
20 distribution which the partner would re-
21 ceive if the partnership sold (at the time of
22 the transfer) all of its assets at fair market
23 value and distributed the proceeds of such
24 sale (reduced by the liabilities of the part-

1 nership) to its partners in liquidation of
2 the partnership, and

3 “(ii) the person receiving such interest
4 shall be treated as having made the elec-
5 tion under subsection (b)(1) unless such
6 person makes an election under this para-
7 graph to have such subsection not apply.

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

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

14 **SEC. 403. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
15 **VESTMENT MANAGEMENT SERVICES TO**
16 **PARTNERSHIPS.**

17 (a) IN GENERAL.—Part I of subchapter K of chapter
18 1 is amended by adding at the end the following new sec-
19 tion:

20 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
21 **VESTMENT MANAGEMENT SERVICES TO**
22 **PARTNERSHIPS.**

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

1 “(1) IN GENERAL.—Notwithstanding section
2 702(b)—

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

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

12 “(2) RECHARACTERIZATION OF LOSSES LIM-
13 ITED TO RECHARACTERIZED GAINS.—The amount
14 treated as ordinary loss under paragraph (1)(B) for
15 any taxable year shall not exceed the excess (if any)
16 of—

17 “(A) the aggregate amount treated as ordi-
18 nary income under paragraph (1)(A) with re-
19 spect to the investment services partnership in-
20 terest for all preceding partnership taxable
21 years to which this section applies, over

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

1 “(3) ALLOCATION TO ITEMS OF GAIN AND
2 LOSS.—

3 “(A) NET CAPITAL GAIN.—The amount
4 treated as ordinary income under paragraph
5 (1)(A) shall be allocated ratably among the
6 items of long-term capital gain taken into ac-
7 count in determining such net capital gain.

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

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

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

22 “(i) without regard to the recharacter-
23 ization of any item as ordinary income or
24 ordinary loss under this section,

1 “(ii) by only taking into account items
2 of gain and loss taken into account by the
3 holder of such interest under section 702
4 (other than subsection (a)(9) thereof) with
5 respect to such interest for such taxable
6 year, and

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

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

18 “(5) SPECIAL RULE FOR DIVIDENDS.—Any div-
19 idend allocated with respect to any investment serv-
20 ices partnership interest shall not be treated as
21 qualified dividend income for purposes of section
22 1(h).

23 “(6) SPECIAL RULE FOR QUALIFIED SMALL
24 BUSINESS STOCK.—Section 1202 shall not apply to
25 any gain from the sale or exchange of qualified small

1 business stock (as defined in section 1202(c)) allo-
2 cated with respect to any investment services part-
3 nership interest.

4 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

5 “(1) GAIN.—

6 “(A) IN GENERAL.—Any gain on the dis-
7 position of an investment services partnership
8 interest shall be—

9 “(i) treated as ordinary income, and

10 “(ii) recognized notwithstanding any
11 other provision of this subtitle.

12 “(B) GIFT AND TRANSFERS AT DEATH.—

13 In the case of a disposition of an investment
14 services partnership interest by gift or by rea-
15 son of death of the taxpayer—

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

17 “(ii) such interest shall be treated as
18 an investment services partnership interest
19 in the hands of the person acquiring such
20 interest, and

21 “(iii) any amount that would have
22 been treated as ordinary income under this
23 subsection had the decedent sold such in-
24 terest immediately before death shall be

1 treated as an item of income in respect of
2 a decedent under section 691.

3 “(2) LOSS.—Any loss on the disposition of an
4 investment services partnership interest shall be
5 treated as an ordinary loss to the extent of the ex-
6 cess (if any) of—

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

11 “(B) the aggregate amount treated as or-
12 dinary loss under subsection (a) with respect to
13 such interest for all partnership taxable years
14 to which this section applies.

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

20 “(A) the taxpayer makes an irrevocable
21 election to treat the partnership interest re-
22 ceived in the exchange as an investment serv-
23 ices partnership interest, and

1 “(B) the taxpayer agrees to comply with
2 such reporting and recordkeeping requirements
3 as the Secretary may prescribe.

4 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
5 PERTY.—

6 “(A) IN GENERAL.—In the case of any dis-
7 tribution of property by a partnership with re-
8 spect to any investment services partnership in-
9 terest held by a partner, the partner receiving
10 such property shall recognize gain equal to the
11 excess (if any) of—

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

15 “(ii) the adjusted basis of such prop-
16 erty in the hands of such partner (deter-
17 mined without regard to subparagraph
18 (C)).

19 “(B) TREATMENT OF GAIN AS ORDINARY
20 INCOME.—Any gain recognized by such partner
21 under subparagraph (A) shall be treated as or-
22 dinary income to the same extent and in the
23 same manner as the increase in such partner’s
24 distributive share of the taxable income of the
25 partnership would be treated under subsection

1 (a) if, immediately prior to the distribution, the
2 partnership had sold the distributed property at
3 fair market value and all of the gain from such
4 disposition were allocated to such partner. For
5 purposes of applying subsection (a)(2), any gain
6 treated as ordinary income under this subpara-
7 graph shall be treated as an amount treated as
8 ordinary income under subsection (a)(1)(A).

9 “(C) ADJUSTMENT OF BASIS.—In the case
10 a distribution to which subparagraph (A) ap-
11 plies, the basis of the distributed property in
12 the hands of the distributee partner shall be the
13 fair market value of such property.

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

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

3 “(1) IN GENERAL.—The term ‘investment serv-
4 ices partnership interest’ means any interest in an
5 investment partnership acquired or held by any per-
6 son in connection with the conduct of a trade or
7 business described in paragraph (2) by such person
8 (or any person related to such person). An interest
9 in an investment partnership held by any person—

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

14 “(B) shall not cease to be an investment
15 services partnership interest merely because
16 such person holds such interest other than in
17 connection with such a trade or business, and

18 “(C) shall be treated as an investment
19 services partnership interest if acquired from a
20 related person in whose hands such interest was
21 an investment services partnership interest.

22 “(2) BUSINESSES TO WHICH THIS SECTION AP-
23 PLIES.—A trade or business is described in this
24 paragraph if such trade or business primarily in-
25 volves the performance of any of the following serv-

1 ices with respect to assets held (directly or indi-
2 rectly) by one or more investment partnerships re-
3 ferred to in paragraph (1):

4 “(A) Advising as to the advisability of in-
5 vesting in, purchasing, or selling any specified
6 asset.

7 “(B) Managing, acquiring, or disposing of
8 any specified asset.

9 “(C) Arranging financing with respect to
10 acquiring specified assets.

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

13 “(3) INVESTMENT PARTNERSHIP.—

14 “(A) IN GENERAL.—The term ‘investment
15 partnership’ means any partnership if, at the
16 end of any two consecutive calendar quarters
17 ending after the date of enactment of this sec-
18 tion—

19 “(i) substantially all of the assets of
20 the partnership are specified assets (deter-
21 mined without regard to any section 197
22 intangible within the meaning of section
23 197(d)), and

24 “(ii) less than 75 percent of the cap-
25 ital of the partnership is attributable to

1 qualified capital interests which constitute
2 property held in connection with a trade or
3 business of the owner of such interest.

4 “(B) LOOK-THROUGH OF CERTAIN WHOL-
5 LY OWNED ENTITIES FOR PURPOSES OF DETER-
6 MINING ASSETS OF THE PARTNERSHIP.—

7 “(i) IN GENERAL.—For purposes of
8 determining the assets of a partnership
9 under subparagraph (A)(i)—

10 “(I) any interest in a specified
11 entity shall not be treated as an asset
12 of such partnership, and

13 “(II) such partnership shall be
14 treated as holding its proportionate
15 share of each of the assets of such
16 specified entity.

17 “(ii) SPECIFIED ENTITY.—For pur-
18 poses of clause (i), the term ‘specified enti-
19 ty’ means, with respect to any partnership
20 (hereafter referred to as the upper-tier
21 partnership), any person which engages in
22 the same trade or business as the upper-
23 tier partnership and is—

24 “(I) a partnership all of the cap-
25 ital and profits interests of which are

1 held directly or indirectly by the
2 upper-tier partnership, or

3 “(II) a foreign corporation which
4 does not engage in a trade or business
5 in the United States and all of the
6 stock of which is held directly or indi-
7 rectly by the upper-tier partnership.

8 “(C) SPECIAL RULES FOR DETERMINING
9 IF PROPERTY HELD IN CONNECTION WITH
10 TRADE OR BUSINESS.—

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

17 “(I) a trade or business of any
18 person closely related to the owner of
19 such interest shall be treated as a
20 trade or business of such owner,

21 “(II) such interest shall be treat-
22 ed as held by a person in connection
23 with a trade or business during any
24 taxable year if such interest was so
25 held by such person during any 3 tax-

1 able years preceding such taxable
2 year, and

3 “(III) paragraph (5)(B) shall not
4 apply.

5 “(ii) CLOSELY RELATED PERSONS.—
6 For purposes of clause (i)(I), a person
7 shall be treated as closely related to an-
8 other person if, taking into account the
9 rules of section 267(c), the relationship be-
10 tween such persons is described in—

11 “(I) paragraph (1) or (9) of sec-
12 tion 267(b), or

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

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

1 “(E) CONTROLLED GROUPS OF ENTI-
2 TIES.—

3 “(i) IN GENERAL.—In the case of a
4 controlled group of entities, if an interest
5 in the partnership received in exchange for
6 a contribution to the capital of the part-
7 nership by any member of such controlled
8 group would (in the hands of such mem-
9 ber) constitute property held in connection
10 with a trade or business, then any interest
11 in such partnership held by any member of
12 such group shall be treated for purposes of
13 subparagraph (A) as constituting (in the
14 hands of such member) property held in
15 connection with a trade or business.

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

1 meaning of section 954(d)(3)) by members
2 of such group (including any entity treated
3 as a member of such group by reason of
4 this sentence).

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

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

19 “(5) RELATED PERSONS.—

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

24 “(B) ATTRIBUTION OF PARTNER SERV-
25 ICES.—Any service described in paragraph (2)

1 which is provided by a partner of a partnership
2 shall be treated as also provided by such part-
3 nership.

4 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-
5 ESTS.—

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

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

20 “(B) the allocations made to such other in-
21 terests are significant compared to the alloca-
22 tions made to such qualified capital interest.

23 “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO
24 ALLOCATION REQUIREMENTS.—To the extent pro-

1 vided by the Secretary in regulations or other guid-
2 ance—

3 “(A) ALLOCATIONS TO PORTION OF QUALI-
4 FIED CAPITAL INTEREST.—Paragraph (1) may
5 be applied separately with respect to a portion
6 of a qualified capital interest.

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

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

24 “(3) SPECIAL RULE FOR CHANGES IN SERVICES
25 AND CAPITAL CONTRIBUTIONS.—In the case of an

1 interest in a partnership which was not an invest-
2 ment services partnership interest and which, by
3 reason of a change in the services with respect to as-
4 sets held (directly or indirectly) by the partnership
5 or by reason of a change in the capital contributions
6 to such partnership, becomes an investment services
7 partnership interest, the qualified capital interest of
8 the holder of such partnership interest immediately
9 after such change shall not, for purposes of this sub-
10 section, be less than the fair market value of such
11 interest (determined immediately before such
12 change).

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

22 “(5) EXCEPTION FOR NO-SELF-CHARGED
23 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-
24 cept as otherwise provided by the Secretary, an in-
25 terest shall not fail to be treated as satisfying the

1 requirement of paragraph (1)(A) merely because the
2 allocations made by the partnership to such interest
3 do not reflect the cost of services described in sub-
4 section (c)(2) which are provided (directly or indi-
5 rectly) to the partnership by the holder of such in-
6 terest (or a related person).

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

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

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

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

1 “(A) IN GENERAL.—The term ‘qualified
2 capital interest’ means so much of a partner’s
3 interest in the capital of the partnership as is
4 attributable to—

5 “(i) the fair market value of any
6 money or other property contributed to the
7 partnership in exchange for such interest
8 (determined without regard to section
9 752(a)),

10 “(ii) any amounts which have been in-
11 cluded in gross income under section 83
12 with respect to the transfer of such inter-
13 est, and

14 “(iii) the excess (if any) of—

15 “(I) any items of income and
16 gain taken into account under section
17 702 with respect to such interest, over

18 “(II) any items of deduction and
19 loss so taken into account.

20 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
21 INTEREST.—

22 “(i) DISTRIBUTIONS AND LOSSES.—
23 The qualified capital interest shall be re-
24 duced by distributions from the partner-
25 ship with respect to such interest and by

1 the excess (if any) of the amount described
2 in subparagraph (A)(iii)(II) over the
3 amount described in subparagraph
4 (A)(iii)(I).

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

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

23 “(8) TREATMENT OF CERTAIN LOANS.—

24 “(A) PROCEEDS OF PARTNERSHIP LOANS
25 NOT TREATED AS QUALIFIED CAPITAL INTER-

1 EST OF SERVICE PROVIDING PARTNERS.—For
2 purposes of this subsection, an investment serv-
3 ices partnership interest shall not be treated as
4 a qualified capital interest to the extent that
5 such interest is acquired in connection with the
6 proceeds of any loan or other advance made or
7 guaranteed, directly or indirectly, by any other
8 partner or the partnership (or any person re-
9 lated to any such other partner or the partner-
10 ship). The preceding sentence shall not apply to
11 the extent the loan or other advance is repaid
12 before the date of enactment of this section un-
13 less such repayment is made with the proceeds
14 of a loan or other advance described in the pre-
15 ceding sentence.

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

1 capital interests of the partners in the partner-
2 ship.

3 “(9) SPECIAL RULE FOR QUALIFIED FAMILY
4 PARTNERSHIPS.—

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

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

15 “(i) such interest is an interest in a
16 qualified family partnership,

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

22 “(iii) all other interests in such quali-
23 fied family partnership with respect to
24 which significant allocations are made
25 (within the meaning of paragraph (1)(B)

1 and in comparison to the allocations made
2 to the interest described in clause (ii)) are
3 held by persons who—

4 “(I) are related to the natural
5 person or trust referred to in clause
6 (ii), or

7 “(II) provide services described
8 in subsection (c)(2).

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

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

15 “(I) specified family members,

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

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

1 “(ii) such partnership does not hold
2 itself out to the public as an investment
3 advisor.

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

11 “(i) the date of the establishment of
12 the partnership,

13 “(ii) the earliest date that the com-
14 mon ancestor holds a capital or profits in-
15 terest in the partnership, or

16 “(iii) the date of enactment of this
17 section.

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

20 “(1) IN GENERAL.—If—

21 “(A) a person performs (directly or indi-
22 rectly) investment management services for any
23 investment entity,

1 “(B) such person holds (directly or indi-
2 rectly) a disqualified interest with respect to
3 such entity, and

4 “(C) the value of such interest (or pay-
5 ments thereunder) is substantially related to
6 the amount of income or gain (whether or not
7 realized) from the assets with respect to which
8 the investment management services are per-
9 formed,

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

14 “(2) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) DISQUALIFIED INTEREST.—

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

20 “(I) any interest in such entity
21 other than indebtedness,

22 “(II) convertible or contingent
23 debt of such entity,

1 “(III) any option or other right
2 to acquire property described in sub-
3 clause (I) or (II), and

4 “(IV) any derivative instrument
5 entered into (directly or indirectly)
6 with such entity or any investor in
7 such entity.

8 “(ii) EXCEPTIONS.—Such term shall
9 not include—

10 “(I) a partnership interest,

11 “(II) except as provided by the
12 Secretary, any interest in a taxable
13 corporation, and

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

16 “(B) TAXABLE CORPORATION.—The term
17 ‘taxable corporation’ means—

18 “(i) a domestic C corporation, or

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

21 “(I) effectively connected with
22 the conduct of a trade or business in
23 the United States, or

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

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

8 “(D) INVESTMENT ENTITY.—The term ‘in-
9 vestment entity’ means any entity which, if it
10 were a partnership, would be an investment
11 partnership.

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

15 “(1) subsections (a) and (b) shall not apply to
16 any item allocated to such corporation with respect
17 to any investment services partnership interest (or
18 to any gain or loss with respect to the disposition of
19 such an interest), and

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

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

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

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

12 “(3) prevent the avoidance of the purposes of
13 this section (including through the use of qualified
14 family partnerships), and

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

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

20 (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-
21 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-
22 TERESTS.—

23 (1) IN GENERAL.—Subsection (a) of section
24 751 is amended by striking “or” at the end of para-
25 graph (1), by inserting “or” at the end of paragraph

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

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

5 (2) CERTAIN DISTRIBUTIONS TREATED AS
6 SALES OR EXCHANGES.—Subparagraph (A) of sec-
7 tion 751(b)(1) is amended by striking “or” at the
8 end of clause (i), by inserting “or” at the end of
9 clause (ii), and by inserting after clause (ii) the fol-
10 lowing new clause:

11 “(iii) investment services partnership
12 interests held by the partnership,”.

13 (3) APPLICATION OF SPECIAL RULES IN THE
14 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of
15 section 751 is amended—

16 (A) by striking “or” at the end of para-
17 graph (1), by inserting “or” at the end of para-
18 graph (2), and by inserting after paragraph (2)
19 the following new paragraph:

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

22 (B) by striking “partner.” and inserting
23 “partner (other than a partnership in which it
24 holds an investment services partnership inter-
25 est).”.

1 (4) INVESTMENT SERVICES PARTNERSHIP IN-
2 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section
3 751 is amended by adding at the end the following
4 new subsection:

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

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

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

18 “(3) EXCEPTION FOR PUBLICLY TRADED PART-
19 NERSHIPS.—Except as otherwise provided by the
20 Secretary, in the case of an exchange of an interest
21 in a publicly traded partnership (as defined in sec-
22 tion 7704) to which subsection (a) applies—

23 “(A) this section shall be applied without
24 regard to subsections (a)(3), (b)(1)(A)(iii), and
25 (f)(3), and

1 “(B) such partnership shall be treated as
2 owning its proportionate share of the property
3 of any other partnership in which it is a part-
4 ner.

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

9 “(5) COORDINATION WITH INVENTORY
10 ITEMS.—An investment services partnership interest
11 held by the partnership shall not be treated as an
12 inventory item of the partnership.

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

17 “(7) VALUATION METHODS.—The Secretary
18 shall prescribe regulations or other guidance which
19 provide the acceptable methods for valuing invest-
20 ment services partnership interests for purposes of
21 this section.”.

22 (c) TREATMENT FOR PURPOSES OF SECTION
23 7704.—Subsection (d) of section 7704 is amended by add-
24 ing at the end the following new paragraph:

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

3 “(A) IN GENERAL.—Specified carried in-
4 terest income shall not be treated as qualifying
5 income.

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

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

10 “(I) any item of income or gain
11 allocated to an investment services
12 partnership interest (as defined in
13 section 710(c)) held by the partner-
14 ship,

15 “(II) any gain on the disposition
16 of an investment services partnership
17 interest (as so defined) or a partner-
18 ship interest to which (in the hands of
19 the partnership) section 751 applies,
20 and

21 “(III) any income or gain taken
22 into account by the partnership under
23 subsection (b)(4) or (e) of section
24 710.

1 “(ii) EXCEPTION FOR QUALIFIED CAP-
2 ITAL INTERESTS.—A rule similar to the
3 rule of section 710(d) shall apply for pur-
4 poses of clause (i).

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

10 “(D) SPECIAL RULES FOR CERTAIN PART-
11 NERSHIPS.—

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

17 “(I) Such partnership is treated
18 as publicly traded under this section
19 solely by reason of interests in such
20 partnership being convertible into in-
21 terests in a real estate investment
22 trust which is publicly traded.

23 “(II) Fifty percent or more of
24 the capital and profits interests of
25 such partnership are owned, directly

1 or indirectly, at all times during the
2 taxable year by such real estate in-
3 vestment trust (determined with the
4 application of section 267(c)).

5 “(III) Such partnership meets
6 the requirements of paragraphs (2),
7 (3), and (4) of section 856(c).

8 “(ii) CERTAIN PARTNERSHIPS OWN-
9 ING OTHER PUBLICLY TRADED PARTNER-
10 SHIPS.—Subparagraph (A) shall not apply
11 in the case of a partnership which meets
12 each of the following requirements:

13 “(I) Substantially all of the as-
14 sets of such partnership consist of in-
15 terests in one or more publicly traded
16 partnerships (determined without re-
17 gard to subsection (b)(2)).

18 “(II) Substantially all of the in-
19 come of such partnership is ordinary
20 income or section 1231 gain (as de-
21 fined in section 1231(a)(3)).

22 “(E) TRANSITIONAL RULE.—Subpara-
23 graph (A) shall not apply to any taxable year
24 of the partnership beginning before the date

1 which is 10 years after the date of enactment
2 of this paragraph.”.

3 (d) IMPOSITION OF PENALTY ON UNDERPAY-
4 MENTS.—

5 (1) IN GENERAL.—Subsection (b) of section
6 6662 is amended by inserting after paragraph (10)
7 the following new paragraph:

8 “(11) The application of section 710(e) or the
9 regulations or other guidance prescribed under sec-
10 tion 710(g) to prevent the avoidance of the purposes
11 of section 710.”.

12 (2) AMOUNT OF PENALTY.—

13 (A) IN GENERAL.—Section 6662 is amend-
14 ed by adding at the end the following new sub-
15 section:

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

22 (B) CONFORMING AMENDMENT.—Subpara-
23 graph (B) of section 6662A(e)(2) is amended
24 by striking “or (i)” and inserting “, (i), or (n)”.

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

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

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

9 (C) by inserting after paragraph (2) the
10 following new paragraph:

11 “(3) SPECIAL RULE FOR UNDERPAYMENTS AT-
12 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
13 ICES.—

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

18 “(i) the relevant facts affecting the
19 tax treatment of the item are adequately
20 disclosed,

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

23 “(iii) the taxpayer reasonably believed
24 that such treatment was more likely than
25 not the proper treatment.

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

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

8 (1) INTERNAL REVENUE CODE.—

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

15 “(18) notwithstanding the preceding provisions
16 of this subsection, in the case of any individual en-
17 gaged in the trade or business of providing services
18 described in section 710(c)(2) with respect to any
19 entity, investment services partnership income or
20 loss (as defined in subsection (m)) of such individual
21 with respect to such entity shall be taken into ac-
22 count in determining the net earnings from self-em-
23 ployment of such individual.”.

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

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

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

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

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

16 “(C) the amounts treated as realized from
17 the sale or exchange of property other than a
18 capital asset under section 751 with respect to
19 such interest.

20 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-
21 TERESTS.—A rule similar to the rule of section
22 710(d) shall apply for purposes of applying para-
23 graph (1)(B).”.

24 (2) SOCIAL SECURITY ACT.—Section 211(a) of
25 the Social Security Act is amended by striking

1 “and” at the end of paragraph (15), by striking the
2 period at the end of paragraph (16) and inserting “;
3 and”, and by inserting after paragraph (16) the fol-
4 lowing new paragraph:

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

14 (f) SEPARATE ACCOUNTING BY PARTNER.—Section
15 702(a) is amended by striking “and” at the end of para-
16 graph (7), by striking the period at the end of paragraph
17 (8) and inserting “, and”, and by inserting after para-
18 graph (8) the following:

19 “(9) any amount treated as ordinary income or
20 loss under subsection (a), (b), or (e) of section
21 710.”.

22 (g) CONFORMING AMENDMENTS.—

23 (1) Subsection (d) of section 731 is amended by
24 inserting “section 710(b)(4) (relating to distribu-

1 tions of partnership property),” after “to the extent
2 otherwise provided by”.

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

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

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

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

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

15 (h) EFFECTIVE DATE.—

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

20 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
21 CLUDE EFFECTIVE DATE.—In applying section
22 710(a) of the Internal Revenue Code of 1986 (as
23 added by this section) in the case of any partnership
24 taxable year which includes the date of enactment of

1 this Act, the amount of the net capital gain referred
2 to in such section shall be treated as being the lesser
3 of the net capital gain for the entire partnership tax-
4 able year or the net capital gain determined by only
5 taking into account items attributable to the portion
6 of the partnership taxable year which is after such
7 date.

8 (3) DISPOSITIONS OF PARTNERSHIP INTER-
9 ESTS.—

10 (A) IN GENERAL.—Section 710(b) of such
11 Code (as added by this section) shall apply to
12 dispositions and distributions after the date of
13 enactment of this Act.

14 (B) INDIRECT DISPOSITIONS.—The amend-
15 ments made by subsection (b) shall apply to
16 transactions after the date of enactment of this
17 Act.

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

1 **TITLE V—INVESTOR PROTEC-**
2 **TION AND MARKET TRANS-**
3 **PARENCY**

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

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

8 **“SEC. 69. DISCLOSURE OF FEES AND RETURNS.**

9 “(a) DEFINITIONS.—In this section—

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

14 “(2) the term ‘expenditure for political activi-
15 ties’—

16 “(A) means—

17 “(i) an independent expenditure, as
18 that term is defined in section 301(17) of
19 the Federal Election Campaign Act of
20 1971 (52 U.S.C. 30101(17));

21 “(ii) a disbursement for an election-
22 eering communication, as that term is de-
23 fined in section 304(f)(3) of the Federal
24 Election Campaign Act of 1971 (52 U.S.C.
25 30104(f)(3)) or any other public commu-

nication, as defined in section 301(22) of
 that Act (52 U.S.C. 30101(22)), that
 would be an electioneering communication
 if it were a broadcast, cable, or satellite
 communication; or

“(iii) dues or other payments to trade associations or organizations described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of that Code that are, or could reasonably be anticipated to be, used or transferred to another association or organization for the purposes described in clause (i) or (ii); and

“(B) does not include an expenditure for—

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

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

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

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

1 “(iii) the establishment and adminis-
2 tration of contributions to a separate seg-
3 regated private fund to be utilized for po-
4 litical purposes by a controlling private
5 fund.

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

12 “(1) The name, address, and vintage year of
13 the fund.

14 “(2) The name of each general partner of the
15 fund.

16 “(3) The name of each limited partner of the
17 fund.

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

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

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

24 “(7) The percentage of fund equity contributed
25 by the general partners of the fund and the percent-

1 age of fund equity contributed by the limited part-
2 ners of the fund.

3 “(8) Information on the debt owed by the fund,
4 including—

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

6 “(B) the percentage of debt for which the
7 creditor is a financial institution in the United
8 States;

9 “(C) the percentage of debt for which the
10 creditor is a financial institution outside of the
11 United States;

12 “(D) the percentage of debt for which the
13 creditor is an entity that is located in the
14 United States and is not a financial institution;
15 and

16 “(E) the percentage of debt for which the
17 creditor is an entity that is located outside of
18 the United States and is not a financial institu-
19 tion.

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

22 “(10) For the year covered by the report, the
23 difference obtained by subtracting the financial
24 gains of the fund by the fees that the general part-
25 ners of the fund charged to the limited partners of

1 the fund (commonly referred to as the ‘performance
2 net of fees’).

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

7 “(12) The average debt-to-equity ratio of each
8 target firm with respect to the fund and the debt-
9 to-equity ratio of each such target firm.

10 “(13) The total gross asset value of each target
11 firm with respect to the fund and the gross asset
12 value of each such target firm.

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

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

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

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

6 “(18) The percentage of the equity of the fund
7 that is owned by—

8 “(A) citizens of the United States;

9 “(B) individuals who are not citizens of the
10 United States;

11 “(C) brokers or dealers;

12 “(D) insurance companies;

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

15 “(F) private funds and other investment
16 companies not required to be registered with
17 the Commission;

18 “(G) nonprofit organizations;

19 “(H) pension plans maintained by State or
20 local governments (or an agency or instrumen-
21 tality of either);

22 “(I) pension plans maintained by non-
23 governmental employers;

24 “(J) State or municipal government enti-
25 ties;

1 “(K) banking or thrift institutions;

2 “(L) sovereign wealth funds; and

3 “(M) other investors.

4 “(19) The total dollar amount of aggregate fees
5 and expenses collected by the fund, the manager of
6 the fund, or related parties from target firms for
7 which the fund is a controlling private fund, which
8 shall—

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

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

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

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

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

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

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

1 “(A) concentration risk;

2 “(B) foreign exchange risk; and

3 “(C) extra-financial risk, including envi-
4 ronmental, social, and corporate governance
5 risk.

6 “(23) Disclosures that satisfy the Recommenda-
7 tions of the Task Force on Climate-related Financial
8 Disclosures of the Financial Stability Board, as re-
9 ported in June 2017.

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

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

19 “(B) fund workforce composition, including
20 data on the diversity of that workforce, includ-
21 ing the racial and gender composition of that
22 workforce, and any policies and audits relating
23 to the diversity of that workforce;

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

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

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

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

12 “(B) the amount of each such expenditure
13 for political activities;

14 “(C) if such an expenditure for political ac-
15 tivities was made in support of, or in opposition
16 to, a candidate, the name of the candidate, the
17 office sought by the candidate, and the political
18 party affiliation of the candidate;

19 “(D) a summary of—

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

23 “(ii) each expenditure for political ac-
24 tivities with respect to a particular election
25 if the total amount of expenditures for po-

1 litical activities by the firm with respect to
2 that election is in an amount that is not
3 less than \$10,000;

4 “(E) a description of the specific nature of
5 any expenditure for political activities that the
6 firm intends to make for the year in which the
7 report is submitted, to the extent that the spe-
8 cific nature is known to the firm; and

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

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

15 “(A) the fund; and

16 “(B) any entity with respect to which the
17 fund is a beneficial owner, as that term is de-
18 fined in section 5336(a) of title 31, United
19 States Code.

20 “(27) Any other information that the Commis-
21 sion determines is necessary and appropriate for the
22 protection of investors.

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

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

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

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

11 **SEC. 502. FIDUCIARY OBLIGATIONS.**

12 (a) FIDUCIARY DUTIES UNDER ERISA.—

13 (1) PLAN ASSETS.—Section 401(b)(1) of the
14 Employee Retirement Income Security Act of 1974
15 (29 U.S.C. 1101(b)(1)) is amended—

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

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

21 (2) FIDUCIARY OBLIGATIONS OF FUND MAN-
22 AGERS.—Section 3(21)(A) of such Act (29 U.S.C.
23 1002(21)) is amended by inserting “, and, in the
24 case of a plan which invests in a security issued by
25 a private fund (as such term is defined in section 3

1 of the Stop Wall Street Looting Act), includes the
2 manager of such private fund” before the period at
3 the end.

4 (b) PROHIBITION AGAINST WAIVING FIDUCIARY DU-
5 TIES.—Section 211(h) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–11(h)) is amended—

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

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

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

12 “(3) promulgate rules that prohibit an invest-
13 ment adviser from requiring any person to which the
14 investment adviser provides investment advice, in-
15 cluding a pension plan (as defined in section 3 of the
16 Employee Retirement Income Security Act of 1974
17 (29 U.S.C. 1002)) that is subject to title I of the
18 Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1001 et seq.), to, as a condition of the
20 investment adviser providing that advice, sign a con-
21 tract or other agreement in which that person waives
22 a fiduciary duty owed by that person to another per-
23 son.”.

24 (c) APPLICABILITY OF BENEFITS.—The general
25 partner of a controlling private fund that is a partnership

1 may not provide any term or benefit to any limited partner
2 of the fund unless the general partner provides that term
3 or benefit to all limited partners of the fund.

4 **SEC. 503. DISCLOSURES RELATING TO THE MARKETING OF**
5 **PRIVATE EQUITY FUNDS.**

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

12 (1) A list of all managed firms with respect to
13 the investment adviser, including those managed
14 firms that, as of the date on which the disclosure is
15 made—

16 (A) have active investments; and

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

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

20 (A) As applicable, the total term of the
21 listed firm beginning with the commencement of
22 the commitment period with respect to the firm
23 and ending on the date on which the firm is
24 dissolved, including, with respect to a listed

1 firm that, as of the date on which the disclosure
2 is made, is actively investing—

3 (i) the term specified by any limited
4 partnership agreement; and

5 (ii) the nature of any provisions that
6 would allow for the extension of that term.

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

10 (C) A list of target firms with respect to
11 which the listed firm was a control person, the
12 nature of the control person relationship, and
13 the period of that control.

14 (D) The number of employees at each tar-
15 get firm identified under subparagraph (C), as
16 of the date on which the listed firm became a
17 control person with respect to the target firm,
18 and the date on which the listed firm ceased to
19 be a control person with respect to the target
20 firm.

21 (E) A list of target firms with respect to
22 the listed firm with respect to which a case has
23 been commenced under title 11, United States
24 Code.

1 (F) For each target firm with respect to
2 the listed firm, and with respect to which the
3 listed firm is a control person—

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

6 (ii) any legal or regulatory penalties
7 paid, or settlements entered into, by the
8 general partners of the target firm or the
9 target firm itself.

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

13 (A) the sale of target firms to other pri-
14 vate funds;

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

17 (C) the sale of target firms to issuers, the
18 securities of which are traded on a national se-
19 curities exchange;

20 (D) the commencement of cases under title
21 11, United States Code, with respect to target
22 firms; and

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

1 **SEC. 504. GREATER VISIBILITY INTO NON-BANK DIRECT**
2 **LENDING AND PRIVATE CREDIT.**

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

10 (a) investments of the private funds advised by that
11 investment adviser; and

12 (b) loans made by the applicable investment adviser
13 during the period covered by the disclosure.

14 **TITLE VI—RESTRICTIONS ON**
15 **SECURITIZING RISKY COR-**
16 **PORATE DEBT**

17 **SEC. 601. RISK RETENTION REQUIREMENTS FOR**
18 **SECURITIZATION OF CORPORATE DEBT.**

19 Section 15G of the Securities Exchange Act of 1934
20 (15 U.S.C. 78o–11) is amended—

21 (1) in subsection (a)(3)—

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

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

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

1 “(C) a manager of a collateralized debt ob-
2 ligation; and”;

3 (2) by redesignating subsection (i) as subsection
4 (j); and

5 (3) by inserting after subsection (h) the fol-
6 lowing:

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

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

14 “(A) obtain that portion of the credit risk
15 for that asset; and

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

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

22 **TITLE VII—MISCELLANEOUS**

23 **SEC. 701. ANTI-EVASION.**

24 It shall be unlawful to conduct any activity, including
25 by entering into an agreement or contract, engaging in

1 a transaction, or structuring an entity, to willfully evade
2 or attempt to evade any provision of this Act or any
3 amendment made by this Act.

4 **SEC. 702. SEVERABILITY.**

5 If any provision of this Act (or an amendment made
6 by this Act), or the application of such a provision or
7 amendment, to any person or circumstance is held to be
8 invalid or unconstitutional, the remainder of this Act (and
9 the amendments made by this Act) and the application
10 of the provisions of this Act (and the amendments made
11 by this Act) to any person or circumstance shall remain
12 and shall not be affected by that holding.