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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Stop Wall Street Looting Act".

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

SEC. 2. FINDINGS.

Congress finds the following:

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

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

(3) Private investment funds have taken controlling stakes in companies in a wide variety of industries, including the financial services, real estate, media, and healthcare industries, but some of the largest impacts from private investment funds have been in the retail sector. In the 10 years preceding the date of enactment of this Act, cases have been

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

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

(5) While private investment funds often purport to take over struggling companies and make those companies viable, the opposite is often true. Leveraged buyouts impose enormous debt loads on otherwise viable companies and then strip those companies of assets, hobbling the operations of those companies and preventing them from making necessary investments for future growth. If an investment goes well, the fund reaps most of the rewards, but if the investment does not go well, workers and customers of the company, and the community relying on the company, suffer.

(6) Regardless of the performance of a private investment fund, the managers of the fund often make profits through fees, dividends, and other financial engineering. Private funds should have a stake in the outcome of their investments, enjoying returns if those investments are successful but absorbing losses if those investments fail.

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

(8) The performance of private investment funds is often cloaked in secrecy. Those funds have full control over the information that the funds disclose to investors, which allows the funds to manufacture their own performance metrics and makes it difficult for an investor to compare the returns to other investment options. Funds also increasingly require investors to waive the fiduciary obligations applicable to the funds. Investors should have the in-

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

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

(10) The Federal Government should—

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

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

SEC. 3. DEFINITIONS.

Except as otherwise expressly provided, in this Act:

(1) AFFILIATE.—The term ''affiliate'' means—

(A) a person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of another entity, other than a person that holds such securities—

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

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

(B) a corporation, 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by another entity (referred to in this subparagraph as a ''covered entity''), or by an entity that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the covered entity, other than an entity that holds such securities—

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

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

(C) a person whose business is operated under a lease or operating agreement by another entity, or person substantially all of whose property is operated under an operating agreement with that other entity; or

(D) an entity that operates the business or substantially all of the property of another entity under a lease or operating agreement.

(2) CAPITAL DISTRIBUTION.—The term ''capital distribution'' means—

(A) a cash or share dividend;

(B) a share repurchase;

(C) a share redemption;

(D) a share buyback;

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

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

(3) CHANGE IN CONTROL.—The term ''change in control'' means a change in a legal right with respect to—

(A) the power to vote more than 5 per centum of any class of voting securities of a corporation that engages in interstate commerce; or

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

(4) CHANGE IN CONTROL TRANSACTION.—The term ''change in control transaction'' means a transaction, or a set of related transactions, that effectuates a change in control.

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

(6) CONTROL PERSON.—The term ''control person''—

(A) means—

(i) a person—

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

(II) that operates the business or substantially all of the property of a corporation under a lease or an operating or management agreement;

(ii) a corporation, other than a target firm, that has 5 percent or more of its outstanding voting interests directly or indirectly owned, controlled, or held with power to vote by a person that directly or indirectly owns, controls, or holds with power to vote, including through coordination with other persons, 5 percent or more of the outstanding voting interests of another corporation; or

(iii) a person that otherwise has the ability to direct the actions of a corporation; and

(B) does not include a person that—

(i)(I) is a limited partner with respect to a controlling private fund that is a partnership;

(II) does not participate in the direction of the management or policy of a corporation; and

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

(ii) is a pension fund or employee welfare benefit plan, if neither the fund nor plan (as applicable), nor any beneficiary or affiliate of the benefit or plan, is an insider with respect to a controlling private fund; or

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

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

(II) to secure a debt, if the person has not—

(aa) exercised the power to vote; or

(bb) exercised any other governance rights with respect to the corporation.

(7) CONTROLLING PRIVATE FUND.—The term ''controlling private fund'' means a private fund that, directly or through an affiliate, becomes a control person with respect to a target firm through the change in control transaction with respect to the target firm.

(8) CORPORATION.—The term ''corporation'' means—

(A) a joint-stock company;

(B) a company or partnership association organized under a law that makes only the capital subscribed or callable up to a specified amount responsible for the debts of the association, including a limited partnership and a limited liability company;

(C) a trust; and

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

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

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

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

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

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

(B) does not include—

(i) a person that—

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

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

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

(cc) is not an insider with respect to the controlling private fund described in item (aa); or

(III) is a pension fund or employee welfare benefit plan, if neither the pension fund nor employee welfare benefit plan (as applicable), nor any affiliate or beneficiary of the pension fund or employee welfare benefit plan, is an insider with respect to, or affiliate of, a controlling private fund; or

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

(I) a person that is engaged in business as an underwriter of securities and that acquires that security through the good faith participation of the person in a firm commitment underwriting registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), until the date that is 40 days after the date on which that acquisition occurs; or

(II) a member of a national securities exchange solely because that member is the record holder of that security and, under the rules of that exchange—

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

(AA) other than contested matters; or

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

(bb) is otherwise precluded from voting without instruction.

(11) INSIDER.—The term ''insider'' means any—

(A) director of a corporation;

(B) officer of a corporation;

(C) managing agent of a corporation;

(D) control person with respect to a corporation;

(E) affiliate of a corporation;

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

(G) consultant or contractor retained by a corporation;

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

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

(12) INVESTMENT ADVISER.—The term ''investment adviser'' has the meaning given the term in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)).

(13) ISSUER.—The term ''issuer'' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(14) NATIONAL SECURITIES EXCHANGE.—The term ''national securities exchange'' means an exchange that is registered as a national securities exchange pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(15) PENSION FUND.—The term ''pension fund'' has the meaning given the term ''pension plan'' in section 3 of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002).

(16) PRIVATE FUND.—The term ''private fund'' means a corporation that—

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

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

(C) is not an institution selected under section 107 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4706).

(17) RELATIVE.—The term ''relative'' means an individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

(18) SECURITY.—The term ''security'' has the meaning given the term in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

(19) TARGET FIRM.—The term ''target firm'' means a corporation that is acquired in a change in control transaction.

TITLE I—CORPORATE RESPONSIBILITY

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

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

"SEC. 66. JOINT AND SEVERAL LIABILITY FOR CONTROLLING PRIVATE FUNDS AND HOLDERS OF ACTIVE INTERESTS IN CONTROLLING PRIVATE FUNDS.

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

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

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

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

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

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

"(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to diminish existing, as of the date of enactment of this section, controlled group liability under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).".

SEC. 102. INDEMNIFICATION VOID AS AGAINST PUBLIC POLICY.

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

"SEC. 67. INDEMNIFICATION VOID AS AGAINST PUBLIC POLICY.

"(a) DEFINITIONS.—In this section, the terms 'affiliate', '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) VOID AS AGAINST PUBLIC POLICY.—It shall be void as against public policy for a target firm, or an affiliate of a target firm, to indemnify a controlling private fund with respect to—

"(1) the target firm;

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

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

TITLE II—ANTI-LOOTING

SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS, DISTRIBUTIONS, REDEMPTIONS, BUYBACKS, AND OUTSOURCING.

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

(1) for a 4-year period, make a capital distribution or similarly reduce the equity capital of the target firm;

(2) make a capital distribution greater than 10 percent of the sum of all financial obligations of the target firm for each of the previous 2 years or similarly reduce the equity capital of the target firm;

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

(4) order a plant closing or mass layoff (as defined in section 2(a) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101(a))) and relocate the trade or business conducted by the employees in the United States to one or more facilities outside the United States, in accordance with regulations issued by the Secretary of Labor.

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

(c) JOINT AND SEVERAL LIABILITY FOR AIDERS AND ABETTORS.—Any controlling private fund, any holder of an active interest in a controlling private fund, or any affiliate of a target firm that aids, abets, facilitates, supports, or instructs a target firm's violation of subsection (a) shall be jointly and severally liable under this subsection for any transfer made or obligation incurred, including for reasonable attorney's fees and costs awarded to a plaintiff under subsection (d)(2).

(d) CAUSE OF ACTION.—

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

trict court of the United States against the direct or indirect transferee or obligee or beneficiary of the transfer or obligation to void the transfer or obligation and recover any transferred property for the target firm.

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

SEC. 202. PREVENTION OF FRAUDULENT TRANSFERS.

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

(b) PRESUMPTION OF INSOLVENCY IN TRANSFERS UNDERTAKEN IN CONNECTION WITH CHANGE IN CONTROL TRANSACTIONS.—Section 548 of title 11, United States Code, is amended by adding at the end the following:

"(f)(1) In this subsection—

"(A) the terms 'change in control transaction', 'control person', and 'target firm' have the meanings given those terms in section 3 of the Stop Wall Street Looting Act; and

''(B) the term 'protected period' means the shorter of—

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

''(ii) the period beginning on the date on which a change in control transaction closed and ending on the earliest subsequent date on which a public offering of a controlling share of the common equity securities of the target firm occurs.

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

''(A) the transfer was made to or obligation was incurred by the debtor or an affiliate in connection with a change in control transaction; or

''(B) during a protected period—

"(i) the transfer was made by the debtor or an affiliate to a control person, an affiliate, or an insider; or

"(ii) the obligation was incurred by the debtor or an affiliate from a control person, an affiliate, or an insider.

"(3) For the purposes of this section, a court shall, in analyzing related transactions, link together as a single transaction any interrelated yet formally distinct steps in an integrated transaction (commonly known as the 'step transaction doctrine').".

(c) STATUTE OF LIMITATIONS.—

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

(A) in subsection (a)(1), by striking paragraph "that was made or incurred on or within 15 years before the date of the filing of the petition" and inserting "that was made or incurred during the period described in subsection (g)"; and

(B) adding at the end the following:

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

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

"(2) 15 years before the date of the filing of the petition for all other transfers and obligations.".

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

(A) in paragraph (2), by striking "or" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

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

"(A) in connection with a change in control transaction, as defined in section 3 of the Stop Wall Street Looting Act; or

"(B) during a protected period, as defined in section 548(f) of title 11.".

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

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

(2) by inserting after paragraph (2) the following:

"(3) upon motion, undertake an examination of a director, officer, general partner, or person in control of the debtor regarding potential conflicts of interest;".

(e) ELIMINATION OF SHAM INDEPENDENT DIRECTORS.—Section 1107 of title 11, United States Code, is amended—

(1) in subsection (a), by striking "Subject to" and inserting, "Except as provided in subsection (c), subject to"; and

(2) by adding at the end the following:

"(c) Notwithstanding subsection (a), if a debtor in possession is serving in a case under this title, a committee of creditors appointed under section 1102 of this title shall have the exclusive right of a trustee serving in a case under this chapter to bring or settle on behalf of the estate—

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

"(2) an action against an insider, a former insider, or an agent or aider and abettor of an insider or former insider.".

SEC. 203. SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT FIRMS FROM CONTROLLED TARGET FIRMS.

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

"PART VIII—SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT FIRMS

"SEC. 59B. SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT FIRMS FROM CONTROLLED TARGET FIRMS.

"(a) IMPOSITION OF TAX.—

"(1) IN GENERAL.—If one or more applicable payments are included in the gross income of a taxpayer for any taxable year, then there is hereby imposed on the taxpayer for the taxable year a tax equal to the applicable percentage of the aggregate amount of such payments. Such tax shall be in addition to any other tax imposed by this subtitle.

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

"(b) APPLICABLE PAYMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable payment' means any amount paid or incurred by an applicable entity (or any person related within the meaning of section 267(b) or 707(b) to such entity) to any other person which, at the time such amount is paid or incurred, is an applicable controlling entity. An amount shall be treated as an applicable payment without regard to whether it is paid or incurred to the taxpayer including it in gross income and to which subsection (a) applies.

"(2) EXCEPTIONS.—Such term shall not include any of the following:

"(A) INTEREST.—Any amount paid or incurred which is treated as interest for purposes of this chapter.

"(B) DISTRIBUTIONS OF PROPERTY WITH RESPECT TO STOCK.—Any distribution of property (as defined in section 317(a)) to which section 301(a) applies.

"(c) DEFINITIONS RELATING TO ENTITIES.—For purposes of this section—

"(1) APPLICABLE ENTITY.—The term 'applicable entity' means any person—

"(A) which is engaged in the active conduct of a trade or business, and

"(B) with respect to which any other person conducts activities in connection with an applicable trade or business.

"(2) APPLICABLE CONTROLLING ENTITY.—The term 'applicable controlling entity' means, with respect to any applicable entity, any person—

"(A) which is engaged in an applicable trade or business some or all of the activities of which are conducted in connection with the applicable entity, and

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

"(3) APPLICABLE TRADE OR BUSINESS.—The term 'applicable trade or business' means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

"(A) raising or returning capital, and

"(B) either—

"(i) investing in or disposing of specified assets (or identifying specified assets for such investing or disposition), or

"(ii) developing specified assets.

"(4) SPECIFIED ASSET.—The term 'specified asset' means—

"(A) securities (as defined in section 475(c)(2) but without regard to the phrase 'widely held or publicly traded' in subparagraph (B) thereof and without regard to the last sentence thereof), and

"(B) real estate held for rental or investment.

"(d) RULES AND DEFINITIONS RELATING TO OWNERSHIP ATTRIBUTION AND CONTROL.—For purposes of this section—

"(1) CONSTRUCTIVE OWNERSHIP RULES USED IN DETERMINING RELATED PARTY.—In determining whether persons are related within the meaning of section 267(b) or 707(b), the constructive ownership rules of section 318 shall apply in lieu of the constructive ownership rules which would otherwise apply, except that in applying such rules the term 'stock' shall include capital, profits, or other beneficial interests in persons other than corporations.

"(2) CONTROL.—

"(A) CORPORATIONS.—In the case of a corporation, the term 'control' has the meaning given such term by section 304(c) (without regard to paragraph (3)(B) thereof).

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

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

"(1) providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including through the use of unrelated persons, or conduit transactions, and

"(2) modifying the constructive ownership rules under section 318 to the extent necessary to apply such rules to capital, profits, or other beneficial interests as well as stock.''.

(b) DISALLOWANCE OF CREDITS AGAINST TAX.—Subparagraph (B) of section 26(b)(2) of the Internal Revenue Code of 1986 is amended by inserting ''or section 59B (relating to surtax on certain amounts received by investment firms from controlled target firms)'' after ''anti-abuse tax)''.

(c) CONFORMING AMENDMENTS.—

(1) The table of parts for subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding after the item relating to part VII the following new item:

''PART VIII. SURTAX ON CERTAIN AMOUNTS RECEIVED BY INVESTMENT FIRMS''.

(2) Section 871(b)(1) of such Code is amended by inserting '', and as provided in section 59B on applicable payments included in gross income which are effectively connected with the conduct of a trade or business within the United States'' before the period.

(3) Section 882(a)(1) of such Code is amended—

(A) by striking ''59A,'' and inserting ''59A''; and

(B) by inserting ", and as provided in section 59B on applicable payments included in gross income which are effectively connected with the conduct of a trade or business within the United States" before the period.

(4) Subparagraph (A) of section 6425(c)(1) of such Code is amended by striking "plus" at the end of clause (i), by striking "plus" at the end of clause (ii), by striking "over" at the end of clause (iii) and inserting "and", and by adding at the end the following new clause:

"(iv) the tax imposed by section 59B, over".

(5) Paragraph (1) of section 6654(f) of such Code is amended by striking "tax" each place it appears and inserting "taxes".

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

"(iv) the tax imposed by section 59B, and".

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

SEC. 204. LIMITATION ON DEDUCTION FOR BUSINESS INTEREST OF CERTAIN BUSINESSES OWNED BY PRIVATE FUNDS.

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

"(11) MODIFICATION OF LIMITATION FOR CERTAIN BUSINESSES OWNED BY PRIVATE FIRMS.—

"(A) IN GENERAL.—In the case of a taxpayer which is an applicable entity controlled by an applicable controlling entity (or any person related within the meaning of section 267(b) or 707(b) to such entity) at any time during the taxable year—

"(i) if the ratio of debt to equity of the taxpayer as of the close of the taxable year (or on any other day during the taxable year as the Secretary may prescribe in regulations) exceeds 1, then paragraph (1) shall be applied by substituting a percentage that the Secretary determines appropriate (and which shall be not less than 30 percent) for '30 percent', and

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

"(I) the taxpayer may not make any such election during such taxable year, and

"(II) any such election of the taxpayer in effect as of the close of the taxable year preceding such taxable year with respect to a trade or business shall be revoked, effective for such taxable year and all succeeding taxable years.

"(B) RATIO OF DEBT TO EQUITY.—For purposes of this paragraph, the term 'ratio of debt to equity' means, with respect to any taxpayer, the ratio which the total indebtedness of the taxpayer bears to the sum of the taxpayer's money and all other assets reduced (but not below zero) by such total indebtedness. For purposes of the preceding sentence—

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

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

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

"(C) COORDINATION WITH DEPRECIATION RULES.—If the alternative depreciation system under section 168(g) applies to property by reason of an election under paragraph (7)(B) which is revoked under subparagraph (A)(ii)(II), then the depreciation deduction under section 167(a) with respect to such property for the taxable year of revocation and all succeeding taxable years shall be determined under section 168 in the same manner as if such revocation were a change in use of the property under section 168(i)(5) and the regulations thereunder.

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

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

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

(b) EFFECTIVE DATES.—

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

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

SEC. 205. GUARDRAILS AROUND ACCESSING PUBLIC FUNDS.

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

"SEC. 68. DISCLOSURES.

"Any person described in paragraph (1) or (7) of section 3(c) that receives funds from a Federal or State agency—

"(1) shall publicly disclose—

"(A) the total funds received from the agency;

"(B) the workforce demographics of the person;

"(C) the amount of loans, grants, or other benefits provided;

"(D) the use of the proceeds;

"(E) how many jobs were saved or wages preserved;

"(F) any loans forgiven or discharged;

"(G) the beneficial owners of the person;

"(H) the pay ratio between the chief executive officer and the median pay of employees; and

"(2) may not, during the 2-year period beginning on the date on which the person receives the funds—

"(A) acquire any company; or

"(B) make any distribution to a shareholder of the person.".

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.

Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

"(5) SELLING ASSETS TO OR USING ASSETS AS COLLATERAL FOR A LOAN WITH A REAL ESTATE INVESTMENT TRUST.—

"(A) IN GENERAL.—Any individual or entity that, on or after the date of enactment of this paragraph, sells any assets to, or newly pledges any assets as collateral for a loan with, a real estate investment trust (as defined in section 856(a) of the Internal Revenue Code of 1986).

"(B) CLARIFICATION.—Subparagraph (A) shall not apply in the case where an individual or entity agreed to pledge an asset as collateral for a loan with a real estate investment trust prior to the date of enactment of this paragraph, including with respect to any future agreement between the individual or entity and the real estate investment trust regarding that same asset.".

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

(a) IN GENERAL.—Section 856(d)(8)(B) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or a qualified health care property (as defined in subsection (e)(6)(D)(i))", and

(2) by striking "qualified health care property or".

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

(1) in subparagraph (A)—

(A) by striking "or a qualified health care property (as defined in subsection (e)(6)(D)(i))",

(B) by striking ''or qualified health care property'', and

(C) by striking ''or qualified health care properties'', and

(2) in subparagraph (B)—

(A) by striking ''or qualified health care property (as so defined)'', and

(B) by striking ''or qualified health care property'' each place it appears in clauses (i), (ii), and (iii)(II).

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

SEC. 208. ELIMINATION OF QUALIFIED REIT DIVIDENDS FROM QUALIFIED BUSINESS INCOME.

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

(b) CONFORMING AMENDMENTS.—

(1) Section 199A(c)(1) of such Code is amended by striking ''qualified REIT dividends or'' in the last sentence.

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

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

SEC. 209. PROTECTIONS FOR STRIKING WORKERS.

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

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting ";"; and

(B) by adding at the end the following:

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

"(A) to permanently replace an employee who participates in a strike as defined by section 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2));

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

"(C) to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or the representative of such employees in collective bargaining prior to a strike; and

"(7) to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).";

(2) in subsection (b)—

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

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

(C) in paragraph (4), as so redesignated, by striking "affected;" and inserting "affected; and"; and

(D) in paragraph (5), as so redesignated, by striking "; and" and inserting a period;

(3) in subsection (c), by striking the period at the end and inserting the following: ": *Provided*, That it shall be an unfair labor practice under subsection (a)(1) for any employer to require or coerce an employee to attend or participate in such employer's campaign activities unrelated to the employee's job duties, including activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b))."; and

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

rent wages, hours, and terms and conditions of employment pending an agreement'' after ''arising thereunder''.

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

(1) in section 8(e) (29 U.S.C. 158(e)), by striking ''and section 8(b)(4)(B)''; and

(2) in section 10 (29 U.S.C. 160)—

(A) by repealing subsection (k); and

(B) in subsection (l)—

(i) by striking ''of paragraph'' and all that follows through ''the preliminary'' and inserting ''of section 8(e), the preliminary'';

(ii) by striking the second proviso; and

(iii) by striking the final sentence.

TITLE III—PROTECTING WORKERS WHEN COMPANIES GO BANKRUPT

SEC. 301. INCREASED PRIORITY FOR WAGES.

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

(1) in paragraph (4)—

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

(B) in the matter preceding clause (i), as so redesignated, by inserting ''(A)'' before ''Fourth'';

(C) in subparagraph (A), as so designated, in the matter preceding clause (i), as so redesignated—

(i) by striking ''$10,000'' and inserting ''$20,000'';

(ii) by striking ''within 180 days''; and

(iii) by striking ''or the date of the cessation of the debtor's business, whichever occurs first''; and

(D) by adding at the end the following:

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

(2) in paragraph (5)—

(A) in subparagraph (A)—

(i) by striking ''within 180 days''; and

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

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

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

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

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

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

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

(3) by adding at the end the following:

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

"(11) any contribution due on or after the date of the filing of the petition under an employee welfare benefit plan, as defined in section 3 of the Stop Wall Street Looting Act.".

SEC. 303. PRIORITY FOR VIOLATIONS OF FEDERAL AND STATE LAWS.

(a) ALLOWANCE OF ADMINISTRATIVE EXPENSES IN BANKRUPTCY CASES.—Section 503(b)(1)(A)(ii) of title 11, United States Code, is amended by inserting after "(ii)" the following: "any back pay, civil penalty, or damages for a violation of any Federal or State labor and employment law, including the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) and any comparable State law, and".

(b) ADMINISTRATION AND ENFORCEMENT OF WORKER ADJUSTMENT AND RETRAINING NOTIFICATION REQUIREMENTS.—Section 5(a)(1) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2104(a)(1)) is amended, in the matter following subparagraph (B)—

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

hibited closing or layoff under this Act,'' after ''period of the violation,''; and

(2) by inserting ''calendar'' after ''60''.

SEC. 304. LIMITATION ON EXECUTIVE COMPENSATION ENHANCEMENTS.

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

(1) in the matter preceding paragraph (1), by inserting ''and subject to section 363(b)(3),'' after ''Notwithstanding subsection (b),'';

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

(A) by inserting '', a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider)'' after ''insider of the debtor'';

(B) by inserting ''or for the payment of performance or incentive compensation, a bonus of any kind, or any other financial return designed to replace or enhance incentive, stock, or other compensation in effect before the date of the commencement of the case,'' after ''remain with the debtor's business,''; and

(C) by inserting ''clear and convincing'' before ''evidence in the record'';

(3) in paragraph (2), in the matter preceding subparagraph (A), by inserting '', a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider)'' after ''an insider of the debtor''; and

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

''(3) any other transfer or obligation to or for the benefit of an insider of the debtor, a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider), absent a finding by the court, based upon clear and convincing evidence in the record, and without deference to a request by the debtor for such payment, that—

"(A) because of the essential and particularized nature of the services provided by the insider, executive officer, employee, manager, or consultant, the transfer or obligation is essential to—

"(i) the survival of the business of the debtor; or

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

"(B) in the case of a transfer or obligation under an incentive program, the transfer or obligation is part of a workforce incentive program generally applicable to the nonmanagement workforce of the debtor; and

"(C) the cost of the transfer or obligation—

"(i) is reasonable;

"(ii) is not excessive in the context of the financial circumstances of the debtor; and

"(iii) is not disproportionate in light of any economic loss incurred by the nonmanagement workforce of the debtor during the case.''.

SEC. 305. PROHIBITION AGAINST SPECIAL COMPENSATION PAYMENTS.

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

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

''(3) No plan, program, or other transfer or obligation to or for the benefit of an insider of the debtor, a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider) shall be approved if the debtor has, on or after the date that is 1 year before the date of the filing of the petition—

''(A) discontinued any plan, program, policy or practice of paying severance pay to the nonmanagement workforce of the debtor; or

''(B) modified any plan, program, policy, or practice described in subparagraph (A) in order to reduce benefits under the plan, program, policy or practice.''; and

(2) in subsection (c)(1), by inserting before the period at the end the following: ‘‘, except that, for any transaction that constitutes a transfer or obligation subject to section 503(c), the trustee shall be required to obtain the prior approval of the court after notice and an opportunity for a hearing’’.

SEC. 306. EXECUTIVE COMPENSATION UPON EXIT FROM BANKRUPTCY.

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

(1) in paragraph (4), by adding at the end the following: ‘‘Except for compensation subject to review under paragraph (5), any payment or other distribution under the plan to or for the benefit of an insider of the debtor, a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider), shall not be approved by the court except as part of a program of payments or distributions generally applicable to employees of the debtor, and only to the extent that the court determines that the payment or other distribution is not exces-

sive or disproportionate in comparison to payments or other distributions to the nonmanagement workforce of the debtor.''; and

(2) in paragraph (5)—

(A) in subparagraph (A)(ii), by striking ''and'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) the compensation disclosed pursuant to subparagraph (B) has been approved by, or is subject to the approval of, the court as—

''(i) reasonable in comparison to compensation paid to individuals holding comparable positions at comparable companies in the same industry; and

''(ii) not disproportionate in light of any economic concession made by the nonmanagement workforce of the debtor during the case.''.

SEC. 307. COLLATERAL SURCHARGE FOR EMPLOYEE OBLIGATIONS.

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

(1) by inserting ''(1)'' before ''The trustee''; and

(2) by adding at the end the following:

"(2) If one or more employees of the debtor have not received wages, accrued vacation, severance, or any other compensation owed under a plan, program, policy, or practice of the debtor, or pursuant to the terms of a collective bargaining agreement, for services rendered on or after the date of the commencement of the case, or the debtor has not made a contribution due under an employee welfare benefit plan, as defined in section 3 of the Stop Wall Street Looting Act, on or after the date of the commencement of the case, such unpaid obligations shall be—

"(A) deemed—

"(i) reasonable, necessary costs and expenses of preserving, or disposing of, property securing an allowed secured claim; and

"(ii) benefiting the holder of the allowed secured claim; and

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

SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION TRANSFERS.

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

''(j)(1) The trustee may avoid a transfer to or for the benefit of an insider of the debtor, a senior executive officer of the debtor, or any of the 20 next most highly compensated employees of the debtor, department or division managers of the debtor, or consultants providing services to the debtor (regardless of whether the executive officer, employee, manager, or consultant is an insider), that—

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

''(B) does not meet the requirements under section 363(b)(3) or 503(c).

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

''(3)(A) The trustee, or a committee appointed under section 1102, may commence an action to recover a transfer under paragraph (1) of this subsection.

"(B) If neither the trustee nor a committee commences an action to recover a transfer under subparagraph (A) before the date of the commencement of a hearing on the confirmation of a plan, any party in interest may apply to the court for authority to recover the transfer for the benefit of the estate, in which case the costs of recovery shall be borne by the estate.".

SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF ASSETS.

(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:

"(q)(1) In approving a sale or lease of property of the estate under this section, or under a plan under chapter 11, the court shall give substantial weight to the extent to which a prospective purchaser or lessee, respectively, of the property will—

"(A) preserve the jobs of the workforce of the debtor; and

"(B) maintain the terms and conditions of employment of the workforce of the debtor.

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

"(A) preserves the jobs of the workforce of the debtor; and

"(B) maintains the terms and conditions of employment of the workforce of the debtor.

"(r)(1) Any party seeking to purchase or lease property of the estate under this section, or under a plan under chapter 11, shall represent to the court the effect of such a transaction with respect to—

"(A) the preservation of the jobs of the workforce of the debtor; and

"(B) the maintenance of the terms and conditions of employment of the workforce of the debtor.

"(2) The court shall expressly include in an order approving a purchase or lease of property of the estate under this section, or under a plan under chapter 11, any representation made by a purchaser or lessee of the property under paragraph (1).

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

"(A) the court shall have jurisdiction over the purchaser or lessee of the property in order to enforce the terms of the order approving the purchase or lease;

"(B) the purchaser or lessee shall promptly disclose to the court any material noncompliance with the terms of the order described in subparagraph (A) and explain the basis for such noncompliance; and

"(C) with respect to material noncompliance described in subparagraph (B), the court may impose any appropriate remedy, including injunctive relief, to address the noncompliance.".

(b) PLANS UNDER CHAPTER 11.—

(1) CONTENTS OF PLAN.—Section 1123(b)(4) of title 11, United States Code, is amended by inserting ", which sale shall be subject to the requirements under subsections (q) and (r) of section 363 of this title," after "property of the estate".

(2) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

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

SEC. 310. PROTECTION OF GIFT CARD PURCHASERS.

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

''(26A) The term 'gift card' means a paper or electronic promise, plastic card, or other payment code or device that is—

''(A) redeemable at—

''(i) a single merchant; or

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

''(B) issued in a specified amount, regardless of whether that amount may be increased in value or reloaded at the request of the holder;

''(C) purchased on a prepaid basis in exchange for payment; and

''(D) honored by the single merchant or affiliated group of merchants described in subparagraph (A) upon presentation for goods or services.''.

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

''(7) Seventh, allowed unsecured claims of individuals, to the extent of $1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with—

"(A) the purchase, lease, or rental of property;

"(B) the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided; or

"(C) the purchase of a gift card with respect to which funds exist that have not been redeemed.".

SEC. 311. COMMERCIAL REAL ESTATE.

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

(1) by striking paragraph (4); and

(2) by redesignating paragraph (5) as paragraph (4).

TITLE IV—CLOSING TAX LOOPHOLES

SEC. 401. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.

(a) MODIFICATION TO ELECTION TO INCLUDE PARTNERSHIP INTEREST IN GROSS INCOME IN YEAR OF TRANSFER.—Subsection (c) of section 83 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

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

"(A) IN GENERAL.—In the case of any transfer of an interest in a partnership in connection with the provision of services to (or for the benefit of) such partnership—

"(i) the fair market value of such interest shall be treated for purposes of this section as being equal to the amount of the distribution which the partner would receive if the partnership sold (at the time of the transfer) all of its assets at fair market value and distributed the proceeds of such sale (reduced by the liabilities of the partnership) to its partners in liquidation of the partnership, and

"(ii) the person receiving such interest shall be treated as having made the election under subsection (b)(1) unless such person makes an election under this paragraph to have such subsection not apply.

"(B) ELECTION.—The election under subparagraph (A)(ii) shall be made under rules similar to the rules of subsection (b)(2).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to interests in partnerships transferred after the date of enactment of this Act.

SEC. 403. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIPS.

(a) IN GENERAL.—Part I of subchapter K of chapter 1 is amended by adding at the end the following new section:

"SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIPS.

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

"(1) IN GENERAL.—Notwithstanding section 702(b)—

"(A) an amount equal to the net capital gain with respect to such interest for any partnership taxable year shall be treated as ordinary income, and

"(B) subject to the limitation of paragraph (2), an amount equal to the net capital loss with respect to such interest for any partnership taxable year shall be treated as an ordinary loss.

"(2) RECHARACTERIZATION OF LOSSES LIMITED TO RECHARACTERIZED GAINS.—The amount treated as ordinary loss under paragraph (1)(B) for any taxable year shall not exceed the excess (if any) of—

"(A) the aggregate amount treated as ordinary income under paragraph (1)(A) with respect to the investment services partnership interest for all preceding partnership taxable years to which this section applies, over

"(B) the aggregate amount treated as ordinary loss under paragraph (1)(B) with respect to such interest for all preceding partnership taxable years to which this section applies.

"(3) ALLOCATION TO ITEMS OF GAIN AND LOSS.—

"(A) NET CAPITAL GAIN.—The amount treated as ordinary income under paragraph (1)(A) shall be allocated ratably among the items of long-term capital gain taken into account in determining such net capital gain.

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

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

"(A) IN GENERAL.—Net capital gain, long-term capital gain, and long-term capital loss, with respect to any investment services partnership interest for any taxable year, shall be determined under section 1222, except that such section shall be applied—

"(i) without regard to the recharacterization of any item as ordinary income or ordinary loss under this section, "(ii) by only taking into account items of gain and loss taken into account by the holder of such interest under section 702 (other than subsection (a)(9) thereof) with respect to such interest for such taxable year, and

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

"(B) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from such sales or exchanges. Rules similar to the rules of clauses (i) through (iii) of subparagraph (A) shall apply for purposes of the preceding sentence.

"(5) SPECIAL RULE FOR DIVIDENDS.—Any dividend allocated with respect to any investment services partnership interest shall not be treated as qualified dividend income for purposes of section 1(h).

"(6) SPECIAL RULE FOR QUALIFIED SMALL BUSINESS STOCK.—Section 1202 shall not apply to any gain from the sale or exchange of qualified small business stock (as defined in section 1202(c)) allocated with respect to any investment services partnership interest.

"(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

"(1) GAIN.—

"(A) IN GENERAL.—Any gain on the disposition of an investment services partnership interest shall be—

"(i) treated as ordinary income, and

"(ii) recognized notwithstanding any other provision of this subtitle.

"(B) GIFT AND TRANSFERS AT DEATH.—In the case of a disposition of an investment services partnership interest by gift or by reason of death of the taxpayer—

"(i) subparagraph (A) shall not apply,

"(ii) such interest shall be treated as an investment services partnership interest in the hands of the person acquiring such interest, and

"(iii) any amount that would have been treated as ordinary income under this subsection had the decedent sold such interest immediately before death shall be treated as an item of income in respect of a decedent under section 691.

''(2) LOSS.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

''(A) the aggregate amount treated as ordinary income under subsection (a) with respect to such interest for all partnership taxable years to which this section applies, over

''(B) the aggregate amount treated as ordinary loss under subsection (a) with respect to such interest for all partnership taxable years to which this section applies.

''(3) ELECTION WITH RESPECT TO CERTAIN EXCHANGES.—Paragraph (1)(A)(ii) shall not apply to the contribution of an investment services partnership interest to a partnership in exchange for an interest in such partnership if—

''(A) the taxpayer makes an irrevocable election to treat the partnership interest received in the exchange as an investment services partnership interest, and

"(B) the taxpayer agrees to comply with such reporting and recordkeeping requirements as the Secretary may prescribe.

"(4) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—

"(A) IN GENERAL.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner, the partner receiving such property shall recognize gain equal to the excess (if any) of—

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

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

"(B) TREATMENT OF GAIN AS ORDINARY INCOME.—Any gain recognized by such partner under subparagraph (A) shall be treated as ordinary income to the same extent and in the same manner as the increase in such partner's distributive share of the taxable income of the partnership would be treated under subsection

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

"(C) ADJUSTMENT OF BASIS.—In the case a distribution to which subparagraph (A) applies, the basis of the distributed property in the hands of the distributee partner shall be the fair market value of such property.

"(D) SPECIAL RULES WITH RESPECT TO MERGERS AND DIVISIONS.—In the case of a taxpayer which satisfies requirements similar to the requirements of subparagraphs (A) and (B) of paragraph (3), this paragraph and paragraph (1)(A)(ii) shall not apply to the distribution of a partnership interest if such distribution is in connection with a contribution (or deemed contribution) of any property of the partnership to which section 721 applies pursuant to a transaction described in section 708(b)(2).

"(c) INVESTMENT SERVICES PARTNERSHIP INTEREST.—For purposes of this section—

"(1) IN GENERAL.—The term 'investment services partnership interest' means any interest in an investment partnership acquired or held by any person in connection with the conduct of a trade or business described in paragraph (2) by such person (or any person related to such person). An interest in an investment partnership held by any person—

"(A) shall not be treated as an investment services partnership interest for any period before the first date on which it is so held in connection with such a trade or business,

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

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

"(2) BUSINESSES TO WHICH THIS SECTION APPLIES.—A trade or business is described in this paragraph if such trade or business primarily involves the performance of any of the following services with respect to assets held (directly or indirectly) by one or more investment partnerships referred to in paragraph (1):

"(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

"(B) Managing, acquiring, or disposing of any specified asset.

"(C) Arranging financing with respect to acquiring specified assets.

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

"(3) INVESTMENT PARTNERSHIP.—

"(A) IN GENERAL.—The term 'investment partnership' means any partnership if, at the end of any two consecutive calendar quarters ending after the date of enactment of this section—

"(i) substantially all of the assets of the partnership are specified assets (determined without regard to any section 197 intangible within the meaning of section 197(d)), and

"(ii) less than 75 percent of the capital of the partnership is attributable to qualified capital interests which constitute property held in connection with a trade or business of the owner of such interest.

"(B) LOOK-THROUGH OF CERTAIN WHOLLY OWNED ENTITIES FOR PURPOSES OF DETERMINING ASSETS OF THE PARTNERSHIP.—

"(i) IN GENERAL.—For purposes of determining the assets of a partnership under subparagraph (A)(i)—

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

"(II) such partnership shall be treated as holding its proportionate share of each of the assets of such specified entity.

"(ii) SPECIFIED ENTITY.—For purposes of clause (i), the term 'specified entity' means, with respect to any partnership (hereafter referred to as the upper-tier partnership), any person which engages in the same trade or business as the upper-tier partnership and is—

"(I) a partnership all of the capital and profits interests of which are held directly or indirectly by the upper-tier partnership, or

"(II) a foreign corporation which does not engage in a trade or business in the United States and all of the stock of which is held directly or indirectly by the upper-tier partnership.

"(C) SPECIAL RULES FOR DETERMINING IF PROPERTY HELD IN CONNECTION WITH TRADE OR BUSINESS.—

"(i) IN GENERAL.—Except as otherwise provided by the Secretary, solely for purposes of determining whether any interest in a partnership constitutes property held in connection with a trade or business under subparagraph (A)(ii)—

"(I) a trade or business of any person closely related to the owner of such interest shall be treated as a trade or business of such owner,

"(II) such interest shall be treated as held by a person in connection with a trade or business during any taxable year if such interest was so held by such person during any 3 taxable years preceding such taxable year, and

"(III) paragraph (5)(B) shall not apply.

"(ii) CLOSELY RELATED PERSONS.—For purposes of clause (i)(I), a person shall be treated as closely related to another person if, taking into account the rules of section 267(c), the relationship between such persons is described in—

"(I) paragraph (1) or (9) of section 267(b), or

"(II) section 267(b)(4), but solely in the case of a trust with respect to which each current beneficiary is the grantor or a person whose relationship to the grantor is described in paragraph (1) or (9) of section 267(b).

"(D) ANTI-ABUSE RULES.—The Secretary may issue regulations or other guidance which prevent the avoidance of the purposes of subparagraph (A), including regulations or other guidance which treat convertible and contingent debt (and other debt having the attributes of equity) as a capital interest in the partnership.

"(E) CONTROLLED GROUPS OF ENTITIES.—

"(i) IN GENERAL.—In the case of a controlled group of entities, if an interest in the partnership received in exchange for a contribution to the capital of the partnership by any member of such controlled group would (in the hands of such member) constitute property held in connection with a trade or business, then any interest in such partnership held by any member of such group shall be treated for purposes of subparagraph (A) as constituting (in the hands of such member) property held in connection with a trade or business.

"(ii) CONTROLLED GROUP OF ENTITIES.—For purposes of clause (i), the term 'controlled group of entities' means a controlled group of corporations as defined in section 1563(a)(1), applied without regard to subsections (a)(4) and (b)(2) of section 1563. A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

"(F) SPECIAL RULE FOR CORPORATIONS.—For purposes of this paragraph, in the case of a corporation, the determination of whether property is held in connection with a trade or business shall be determined as if the taxpayer were an individual.

"(4) SPECIFIED ASSET.—The term 'specified asset' means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

"(5) RELATED PERSONS.—

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

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

"(d) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

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

"(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in subsection (c)(2) and who are not related to the partner holding the qualified capital interest, and

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

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

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

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

"(C) ALLOCATIONS TO SERVICE PROVIDERS' QUALIFIED CAPITAL INTERESTS WHICH ARE LESS THAN OTHER ALLOCATIONS.—Allocations shall not be treated as failing to meet the requirement of paragraph (1)(A) merely because the allocations to the qualified capital interest represent a lower return than the allocations made to the other qualified capital interests referred to in such paragraph.

"(3) SPECIAL RULE FOR CHANGES IN SERVICES AND CAPITAL CONTRIBUTIONS.—In the case of an interest in a partnership which was not an investment services partnership interest and which, by reason of a change in the services with respect to assets held (directly or indirectly) by the partnership or by reason of a change in the capital contributions to such partnership, becomes an investment services partnership interest, the qualified capital interest of the holder of such partnership interest immediately after such change shall not, for purposes of this subsection, be less than the fair market value of such interest (determined immediately before such change).

"(4) SPECIAL RULE FOR TIERED PARTNERSHIPS.—Except as otherwise provided by the Secretary, in the case of tiered partnerships, all items which are allocated in a manner which meets the requirements of paragraph (1) to qualified capital interests in a lower-tier partnership shall retain such character to the extent allocated on the basis of qualified capital interests in any upper-tier partnership.

"(5) EXCEPTION FOR NO-SELF-CHARGED CARRY AND MANAGEMENT FEE PROVISIONS.—Except as otherwise provided by the Secretary, an interest shall not fail to be treated as satisfying the requirement of paragraph (1)(A) merely because the allocations made by the partnership to such interest do not reflect the cost of services described in subsection (c)(2) which are provided (directly or indirectly) to the partnership by the holder of such interest (or a related person).

"(6) SPECIAL RULE FOR DISPOSITIONS.—In the case of any investment services partnership interest any portion of which is a qualified capital interest, subsection (b) shall not apply to so much of any gain or loss as bears the same proportion to the entire amount of such gain or loss as—

"(A) the distributive share of gain or loss that would have been allocated to the qualified capital interest (consistent with the requirements of paragraph (1)) if the partnership had sold all of its assets at fair market value immediately before the disposition, bears to

"(B) the distributive share of gain or loss that would have been so allocated to the investment services partnership interest of which such qualified capital interest is a part.

"(7) QUALIFIED CAPITAL INTEREST.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified capital interest' means so much of a partner's interest in the capital of the partnership as is attributable to—

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

"(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

"(iii) the excess (if any) of—

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

"(II) any items of deduction and loss so taken into account.

"(B) ADJUSTMENT TO QUALIFIED CAPITAL INTEREST.—

"(i) DISTRIBUTIONS AND LOSSES.— The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest and by the excess (if any) of the amount described in subparagraph (A)(iii)(II) over the amount described in subparagraph (A)(iii)(I).

"(ii) SPECIAL RULE FOR CONTRIBUTIONS OF PROPERTY.—In the case of any contribution of property described in subparagraph (A)(i) with respect to which the fair market value of such property is not equal to the adjusted basis of such property immediately before such contribution, proper adjustments shall be made to the qualified capital interest to take into account such difference consistent with such regulations or other guidance as the Secretary may provide.

"(C) TECHNICAL TERMINATIONS, ETC., DISREGARDED.—No increase or decrease in the qualified capital interest of any partner shall result from a termination, merger, consolidation, or division described in section 708, or any similar transaction.

"(8) TREATMENT OF CERTAIN LOANS.—

"(A) PROCEEDS OF PARTNERSHIP LOANS NOT TREATED AS QUALIFIED CAPITAL INTER-

EST OF SERVICE PROVIDING PARTNERS.—For purposes of this subsection, an investment services partnership interest shall not be treated as a qualified capital interest to the extent that such interest is acquired in connection with the proceeds of any loan or other advance made or guaranteed, directly or indirectly, by any other partner or the partnership (or any person related to any such other partner or the partnership). The preceding sentence shall not apply to the extent the loan or other advance is repaid before the date of enactment of this section unless such repayment is made with the proceeds of a loan or other advance described in the preceding sentence.

"(B) REDUCTION IN ALLOCATIONS TO QUALIFIED CAPITAL INTERESTS FOR LOANS FROM NONSERVICE-PROVIDING PARTNERS TO THE PARTNERSHIP.—For purposes of this subsection, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services described in subsection (c)(2) to the partnership (or any person related to such partner) shall be taken into account in determining the qualified capital interests of the partners in the partnership.

"(9) SPECIAL RULE FOR QUALIFIED FAMILY PARTNERSHIPS.—

"(A) IN GENERAL.—In the case of any specified family partnership interest, paragraph (1)(A) shall be applied without regard to the phrase 'and who are not related to the partner holding the qualified capital interest'.

"(B) SPECIFIED FAMILY PARTNERSHIP INTEREST.—For purposes of this paragraph, the term 'specified family partnership interest' means any investment services partnership interest if—

"(i) such interest is an interest in a qualified family partnership,

"(ii) such interest is held by a natural person or by a trust with respect to which each beneficiary is a grantor or a person whose relationship to the grantor is described in section 267(b)(1), and

"(iii) all other interests in such qualified family partnership with respect to which significant allocations are made (within the meaning of paragraph (1)(B) and in comparison to the allocations made to the interest described in clause (ii)) are held by persons who—

"(I) are related to the natural person or trust referred to in clause (ii), or

"(II) provide services described in subsection (c)(2).

"(C) QUALIFIED FAMILY PARTNERSHIP.—For purposes of this paragraph, the term 'qualified family partnership' means any partnership if—

"(i) all of the capital and profits interests of such partnership are held by—

"(I) specified family members,

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

"(III) any other person (not described in subclause (I) or (II)) if such interest is an investment services partnership interest with respect to such person, and "(ii) such partnership does not hold itself out to the public as an investment advisor.

"(D) SPECIFIED FAMILY MEMBERS.—For purposes of subparagraph (C), individuals shall be treated as specified family members if such individuals would be treated as one person under the rules of section 1361(c)(1) if the applicable date (within the meaning of subparagraph (B)(iii) thereof) were the latest of—

"(i) the date of the establishment of the partnership,

"(ii) the earliest date that the common ancestor holds a capital or profits interest in the partnership, or

"(iii) the date of enactment of this section.

"(e) OTHER INCOME AND GAIN IN CONNECTION WITH INVESTMENT MANAGEMENT SERVICES.—

"(1) IN GENERAL.—If—

"(A) a person performs (directly or indirectly) investment management services for any investment entity, "(B) such person holds (directly or indirectly) a disqualified interest with respect to such entity, and

"(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

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

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) DISQUALIFIED INTEREST.—

"(i) IN GENERAL.—The term 'disqualified interest' means, with respect to any investment entity—

"(I) any interest in such entity other than indebtedness,

"(II) convertible or contingent debt of such entity, "(III) any option or other right to acquire property described in subclause (I) or (II), and

"(IV) any derivative instrument entered into (directly or indirectly) with such entity or any investor in such entity.

"(ii) EXCEPTIONS.—Such term shall not include—

"(I) a partnership interest,

"(II) except as provided by the Secretary, any interest in a taxable corporation, and

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

"(B) TAXABLE CORPORATION.—The term 'taxable corporation' means—

"(i) a domestic C corporation, or

"(ii) a foreign corporation substantially all of the income of which is—

"(I) effectively connected with the conduct of a trade or business in the United States, or

"(II) subject to a comprehensive foreign income tax (as defined in section 457A(d)(2)).

"(C) INVESTMENT MANAGEMENT SERVICES.—The term 'investment management services' means a substantial quantity of any of the services described in subsection (c)(2).

"(D) INVESTMENT ENTITY.—The term 'investment entity' means any entity which, if it were a partnership, would be an investment partnership.

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

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

"(2) subsection (e) shall not apply.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance to—

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

"(2) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section,

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

"(4) coordinate this section with the other provisions of this title.

"(h) CROSS REFERENCE.—For 40-percent penalty on certain underpayments due to the avoidance of this section, see section 6662.".

(b) APPLICATION OF SECTION 751 TO INDIRECT DISPOSITIONS OF INVESTMENT SERVICES PARTNERSHIP INTERESTS.—

(1) IN GENERAL.—Subsection (a) of section 751 is amended by striking "or" at the end of paragraph (1), by inserting "or" at the end of paragraph

(2), and by inserting after paragraph (2) the following new paragraph:

"(3) investment services partnership interests held by the partnership,".

(2) CERTAIN DISTRIBUTIONS TREATED AS SALES OR EXCHANGES.—Subparagraph (A) of section 751(b)(1) is amended by striking "or" at the end of clause (i), by inserting "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) investment services partnership interests held by the partnership,".

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

(A) by striking "or" at the end of paragraph (1), by inserting "or" at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

"(3) an investment services partnership interest held by the partnership,"; and

(B) by striking "partner." and inserting "partner (other than a partnership in which it holds an investment services partnership interest).".

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

"(g) INVESTMENT SERVICES PARTNERSHIP INTERESTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'investment services partnership interest' has the meaning given such term by section 710(c).

"(2) ADJUSTMENTS FOR QUALIFIED CAPITAL INTERESTS.—The amount to which subsection (a) applies by reason of paragraph (3) thereof shall not include so much of such amount as is attributable to any portion of the investment services partnership interest which is a qualified capital interest (determined under rules similar to the rules of section 710(d)).

"(3) EXCEPTION FOR PUBLICLY TRADED PARTNERSHIPS.—Except as otherwise provided by the Secretary, in the case of an exchange of an interest in a publicly traded partnership (as defined in section 7704) to which subsection (a) applies—

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

"(B) such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner.

"(4) RECOGNITION OF GAINS.—Any gain with respect to which subsection (a) applies by reason of paragraph (3) thereof shall be recognized notwithstanding any other provision of this title.

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

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

"(7) VALUATION METHODS.—The Secretary shall prescribe regulations or other guidance which provide the acceptable methods for valuing investment services partnership interests for purposes of this section.".

(c) TREATMENT FOR PURPOSES OF SECTION 7704.—Subsection (d) of section 7704 is amended by adding at the end the following new paragraph:

"(6) INCOME FROM CERTAIN CARRIED INTERESTS NOT QUALIFIED.—

"(A) IN GENERAL.—Specified carried interest income shall not be treated as qualifying income.

"(B) SPECIFIED CARRIED INTEREST INCOME.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'specified carried interest income' means—

"(I) any item of income or gain allocated to an investment services partnership interest (as defined in section 710(c)) held by the partnership,

"(II) any gain on the disposition of an investment services partnership interest (as so defined) or a partnership interest to which (in the hands of the partnership) section 751 applies, and

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

"(ii) EXCEPTION FOR QUALIFIED CAPITAL INTERESTS.—A rule similar to the rule of section 710(d) shall apply for purposes of clause (i).

"(C) COORDINATION WITH OTHER PROVISIONS.—Subparagraph (A) shall not apply to any item described in paragraph (1)(E) (or so much of paragraph (1)(F) as relates to paragraph (1)(E)).

"(D) SPECIAL RULES FOR CERTAIN PARTNERSHIPS.—

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

"(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

"(II) Fifty percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

"(III) Such partnership meets the requirements of paragraphs (2), (3), and (4) of section 856(c).

"(ii) CERTAIN PARTNERSHIPS OWNING OTHER PUBLICLY TRADED PARTNERSHIPS.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

"(I) Substantially all of the assets of such partnership consist of interests in one or more publicly traded partnerships (determined without regard to subsection (b)(2)).

"(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).

"(E) TRANSITIONAL RULE.—Subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after the date of enactment of this paragraph.''.

(d) IMPOSITION OF PENALTY ON UNDERPAYMENTS.—

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

''(11) The application of section 710(e) or the regulations or other guidance prescribed under section 710(g) to prevent the avoidance of the purposes of section 710.''.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—Section 6662 is amended by adding at the end the following new subsection:

''(n) INCREASE IN PENALTY IN CASE OF PROPERTY TRANSFERRED FOR INVESTMENT MANAGEMENT SERVICES.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(11), subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent'.''.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(e)(2) is amended by striking ''or (i)'' and inserting '', (i), or (n)''.

(3) SPECIAL RULES FOR APPLICATION OF REASONABLE CAUSE EXCEPTION.—Subsection (c) of section 6664 is amended—

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

(B) by striking "paragraph (3)" in paragraph (5)(A), as so redesignated, and inserting "paragraph (4)"; and

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

"(3) SPECIAL RULE FOR UNDERPAYMENTS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any portion of an underpayment to which section 6662 applies by reason of subsection (b)(11) unless—

"(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

"(ii) there is or was substantial authority for such treatment, and

"(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

"(B) RULES RELATING TO REASONABLE BELIEF.—Rules similar to the rules of subsection (d)(4) shall apply for purposes of subparagraph (A)(iii).".

(e) INCOME AND LOSS FROM INVESTMENT SERVICES PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DETERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

(1) INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Section 1402(a) is amended by striking "and" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; and", and by inserting after paragraph (17) the following new paragraph:

"(18) notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(2) with respect to any entity, investment services partnership income or loss (as defined in subsection (m)) of such individual with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.".

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

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

''(1) IN GENERAL.—The term 'investment services partnership income or loss' means, with respect to any investment services partnership interest (as defined in section 710(c)) or disqualified interest (as defined in section 710(e)), the net of—

''(A) the amounts treated as ordinary income or ordinary loss under subsections (b) and (e) of section 710 with respect to such interest,

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

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

''(2) EXCEPTION FOR QUALIFIED CAPITAL INTERESTS.—A rule similar to the rule of section 710(d) shall apply for purposes of applying paragraph (1)(B).''.

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

"and" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting "; and", and by inserting after paragraph (16) the following new paragraph:

"(17) Notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(2) of the Internal Revenue Code of 1986 with respect to any entity, investment services partnership income or loss (as defined in section 1402(m) of such Code) shall be taken into account in determining the net earnings from self-employment of such individual.".

(f) SEPARATE ACCOUNTING BY PARTNER.—Section 702(a) is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", and", and by inserting after paragraph (8) the following:

"(9) any amount treated as ordinary income or loss under subsection (a), (b), or (e) of section 710.".

(g) CONFORMING AMENDMENTS.—

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

tions of partnership property),'' after ''to the extent otherwise provided by''.

(2) Section 741 is amended by inserting ''or section 710 (relating to special rules for partners providing investment management services to partnerships)'' before the period at the end.

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

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

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

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

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after the date of enactment of this Act.

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

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

(3) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

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

(B) INDIRECT DISPOSITIONS.—The amendments made by subsection (b) shall apply to transactions after the date of enactment of this Act.

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

TITLE V—INVESTOR PROTECTION AND MARKET TRANSPARENCY

SEC. 501. DISCLOSURE OF FEES AND RETURNS.

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

"SEC. 69. DISCLOSURE OF FEES AND RETURNS.

"(a) DEFINITIONS.—In this section—

"(1) the terms 'controlling private fund', 'private fund', and 'target firm' have the meanings given the terms in section 3 of the Stop Wall Street Looting Act; and

"(2) the term 'expenditure for political activities'—

"(A) means—

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

"(ii) a disbursement for an electioneering communication, as that term is defined in section 304(f)(3) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104(f)(3)) or any other public communication, 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 "(iii) the establishment and administration of contributions to a separate segregated private fund to be utilized for political purposes by a controlling private fund.

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

"(1) The name, address, and vintage year of the fund.

"(2) The name of each general partner of the fund.

"(3) The name of each limited partner of the fund.

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

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

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

"(7) The percentage of fund equity contributed by the general partners of the fund and the percentage of fund equity contributed by the limited partners of the fund.

"(8) Information on the debt owed by the fund, including—

"(A) the dollar amount of total debt;

"(B) the percentage of debt for which the creditor is a financial institution in the United States;

"(C) the percentage of debt for which the creditor is a financial institution outside of the United States;

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

"(E) the percentage of debt for which the creditor is an entity that is located outside of the United States and is not a financial institution.

"(9) The gross performance of the fund during the year covered by the report.

"(10) For the year covered by the report, the difference obtained by subtracting the financial gains of the fund by the fees that the general partners of the fund charged to the limited partners of the fund (commonly referred to as the ‘performance net of fees’).

“(11) For the year covered by the report, an annual financial statement, which shall include income statements, a balance sheet, and cash flow statements.

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

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

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

“(15) The total amount of debt held by each target firm with respect to the fund that, as of the date on which the report is submitted, are categorized as liabilities, long-term liabilities, and payment in kind or zero coupon debt.

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

"(17) The total number of the target firms with respect to the fund with respect to which a case was commenced under title 11, United States Code, during the period covered by the report, including the name of any such target firm.

"(18) The percentage of the equity of the fund that is owned by—

"(A) citizens of the United States;

"(B) individuals who are not citizens of the United States;

"(C) brokers or dealers;

"(D) insurance companies;

"(E) investment companies that are registered with the Commission under this Act;

"(F) private funds and other investment companies not required to be registered with the Commission;

"(G) nonprofit organizations;

"(H) pension plans maintained by State or local governments (or an agency or instrumentality of either);

"(I) pension plans maintained by nongovernmental employers;

"(J) State or municipal government entities;

"(K) banking or thrift institutions;

"(L) sovereign wealth funds; and

"(M) other investors.

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

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

"(B) include a description of the purpose of the fees.

"(20) The total dollar amount of aggregate fees and expenses collected by the fund, the manager of the fund, or related parties from the limited partners of the fund, which shall—

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

"(B) include a description of the purpose of the fees.

"(21) The total carried interest claimed by the fund, the manager of the fund, or related parties and the total dollar amount of carried interest distributed to the limited partners of the fund.

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

''(A) concentration risk;

''(B) foreign exchange risk; and

''(C) extra-financial risk, including environmental, social, and corporate governance risk.

''(23) Disclosures that satisfy the Recommendations of the Task Force on Climate-related Financial Disclosures of the Financial Stability Board, as reported in June 2017.

''(24) A description of the human capital management practices of the fund, including—

''(A) fund workforce demographic information, including the number of full-time employees, the number of part-time employees, the number of contingent workers (including temporary and contract workers), and any policies or practices of the firm relating to subcontracting, outsourcing, and insourcing;

''(B) fund workforce composition, including data on the diversity of that workforce, including the racial and gender composition of that workforce, and any policies and audits relating to the diversity of that workforce;

"(C) any incident of alleged workplace harassment during the 5 years preceding the year in which the report is submitted; and

"(D) any health or safety incident during the 5 years preceding the year in which the report is submitted.

"(25) A description of any expenditure for political activities made during the year preceding the year in which the report is submitted, including—

"(A) the date on which each such expenditure for political activities was made;

"(B) the amount of each such expenditure for political activities;

"(C) if such an expenditure for political activities was made in support of, or in opposition to, a candidate, the name of the candidate, the office sought by the candidate, and the political party affiliation of the candidate;

"(D) a summary of—

"(i) each such expenditure for political activities that is in amount that is not less than $10,000; and

"(ii) each expenditure for political activities with respect to a particular election if the total amount of expenditures for political activities by the firm with respect to that election is in an amount that is not less than $10,000;

"(E) a description of the specific nature of any expenditure for political activities that the firm intends to make for the year in which the report is submitted, to the extent that the specific nature is known to the firm; and

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

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

"(A) the fund; and

"(B) any entity with respect to which the fund is a beneficial owner, as that term is defined in section 5336(a) of title 31, United States Code.

"(27) Any other information that the Commission determines is necessary and appropriate for the protection of investors.

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

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

"(2) revise the rules as necessary to ensure that the disclosures required under the rules reflect contemporary (as of the date on which the rules are revised) trends and characteristics with respect to private investment markets.

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

SEC. 502. FIDUCIARY OBLIGATIONS.

(a) FIDUCIARY DUTIES UNDER ERISA.—

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

(A) by inserting "or a private fund (as defined in section 3 of the Stop Wall Street Looting Act)" before ", the assets"; and

(B) by inserting "or such private fund, as applicable" before the period at the end.

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

of the Stop Wall Street Looting Act), includes the manager of such private fund'' before the period at the end.

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

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) promulgate rules that prohibit an investment adviser from requiring any person to which the investment adviser provides investment advice, including a pension plan (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) that is subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), to, as a condition of the investment adviser providing that advice, sign a contract or other agreement in which that person waives a fiduciary duty owed by that person to another person.''.

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

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

Any investment adviser to a private fund shall disclose to potential investors with respect to the other private funds, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)), managed by that investment adviser (referred to in this section as ''managed firms'') the following information:

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

(A) have active investments; and

(B) have liquidated the assets of the firms.

(2) For each managed firm listed under paragraph (1), the following information:

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

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

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

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

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

(D) The number of employees at each target firm identified under subparagraph (C), as of the date on which the listed firm became a control person with respect to the target firm, and the date on which the listed firm ceased to be a control person with respect to the target firm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE VI—RESTRICTIONS ON SECURITIZING RISKY CORPORATE DEBT

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

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

(1) in subsection (a)(3)—

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

(B) in subparagraph (B), by striking ''and'' at the end and inserting ''or''; and

(C) by adding at the end the following:

"(C) a manager of a collateralized debt obligation; and";

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

(3) by inserting after subsection (h) the following:

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

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

"(A) obtain that portion of the credit risk for that asset; and

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

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

TITLE VII—MISCELLANEOUS

SEC. 701. ANTI-EVASION.

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

SEC. 702. SEVERABILITY.

If any provision of this Act (or an amendment made by this Act), or the application of such a provision or amendment, to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Act (and the amendments made by this Act) and the application of the provisions of this Act (and the amendments made by this Act) to any person or circumstance shall remain and shall not be affected by that holding.