

116TH CONGRESS  
1ST SESSION

# H. R. 3848

To require the Securities and Exchange Commission to issue rules requiring private funds to publicly disclose certain information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2019

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

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## A BILL

To require the Securities and Exchange Commission to issue rules requiring private funds to publicly disclose certain information, and for other purposes.

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

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

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

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

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

#### TITLE I—CORPORATE RESPONSIBILITY

- Sec. 101. Joint and several liability for controlling private funds.
- Sec. 102. Joint and several liability for holders of economic interests in controlling private funds.
- Sec. 103. Indemnification void as against public policy.

#### TITLE II—ANTI-LOOTING

- Sec. 201. Limitations on post-acquisition dividends, distributions, redemptions, and buybacks.
- Sec. 202. Prevention of fraudulent transfers.
- Sec. 203. Surtax on certain amounts received by investment firms from controlled target firms.
- Sec. 204. Limitation on deduction for business interest of certain businesses owned by private funds.

#### TITLE III—PROTECTING WORKERS WHEN COMPANIES GO BANKRUPT

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

#### TITLE IV—CLOSING THE CARRIED INTEREST LOOPHOLE

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

#### TITLE V—INVESTOR PROTECTION AND MARKET TRANSPARENCY

- Sec. 501. Disclosure of fees and returns.
- Sec. 502. Fiduciary obligations.
- Sec. 503. Disclosures relating to the marketing of private equity funds.

#### TITLE VI—RESTRICTIONS ON SECURITIZING RISKY CORPORATE DEBT

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

#### TITLE VII—MISCELLANEOUS

Sec. 701. Anti-evasion.

Sec. 702. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

6 (2) Millions of people in communities across the  
7 United States rely on companies that are owned by  
8 private equity funds, including almost 5,800,000 individuals  
9 who work for companies owned by those  
10 funds. For millions of additional individuals, a private  
11 investment fund acts as a landlord, a lender, or  
12 an owner of a local grocery store, newspaper, or hospital.  
13 Many pension funds are also investors in private  
14 investment funds.

15 (3) Private investment funds have taken controlling  
16 stakes in companies in a wide variety of industries,  
17 including the financial services, real estate, media, and  
18 healthcare industries, but some of the largest impacts  
19 from private investment funds have been in the retail sector.  
20 In the 2 years preceding the date of enactment of this Act,  
21 cases have been commenced under title 11, United States Code,  
22 with respect to dozens of retailers in the United States,  
23 including Sears, Toys “R” Us, Shopko, Payless  
24

1 ShoeSource, Charlotte Russe, Bon-Ton, Nine West,  
2 David's Bridal, Claire's, and Southeastern Grocers,  
3 which was the parent company for BI-LO and  
4 Winn-Dixie.

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

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

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

1 stake in the outcome of their investments, enjoying  
2 returns if those investments are successful but ab-  
3 sorbing losses if those investments fail.

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

12 (8) The performance of private investment  
13 funds is cloaked in secrecy. Those funds have full  
14 control over the information that the funds disclose  
15 to investors, which allows the funds to manufacture  
16 their own performance metrics and makes it difficult  
17 for an investor to compare the returns to other in-  
18 vestment options. Funds also increasingly require in-  
19 vestors to waive the fiduciary obligations applicable  
20 to the funds. Investors should have the information  
21 and bargaining power to take control over their own  
22 investments.

23 (9) An increasing amount of risky debt is being  
24 introduced into the market and the quality of that  
25 debt is deteriorating, raising concerns with regu-

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

6 (10) The Federal Government should—

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

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

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

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

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

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

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

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

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

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

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

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

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

3           (A) a cash or share dividend;

4           (B) a share repurchase;

5           (C) a share redemption;

6           (D) a share buyback;

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

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

12          (3) CHANGE IN CONTROL.—The term “change  
13       in control” means a change of economic interest  
14       with respect to—

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

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



1           (4) CHANGE IN CONTROL TRANSACTION.—The  
2 term “change in control transaction” means a trans-  
3 action that effects a change in control.

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

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

8                   (A) means—

9                           (i) a person—

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

16                                   (II) that operates the business or  
17 substantially all of the property of a  
18 target firm under a lease or operating  
19 agreement;

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

1 power to vote, including through coordina-  
2 tion with other persons, 20 percent or  
3 more of the outstanding voting interests of  
4 a target firm; and

5 (iii) a person that otherwise has the  
6 ability to direct the actions of a target  
7 firm; and

8 (B) does not include a person that—

9 (i) holds the voting interests of a cor-  
10 poration solely—

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

14 (II) to secure a debt, if the per-  
15 son has not exercised the power to  
16 vote; or

17 (ii)(I) is a limited partner with respect  
18 to a person described in subparagraph (A)  
19 that is a partnership; and

20 (II) does not participate in the direc-  
21 tion of the management or policy of a cor-  
22 poration.

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

25 (A) a joint-stock company;

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

7 (C) a trust; and

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

11 (8) HOLDER OF AN ECONOMIC INTEREST.—The  
12 term “holder of an economic interest”—

13 (A) means a person that directly or indi-  
14 rectly has an economic interest in a corporation  
15 or a right to participate in the governance of a  
16 corporation, without regard to the form or  
17 source of that interest or right;

18 (B) if the economic interest described in  
19 subparagraph (A) is a security, does not in-  
20 clude—

21 (i) an individual who is engaged in  
22 business as an underwriter of securities  
23 and who acquires that security through the  
24 good faith participation of the individual in  
25 a firm commitment underwriting registered

1 under the Securities Act of 1933 (15  
2 U.S.C. 77b) until the date that is 40 days  
3 after the date on which that acquisition oc-  
4 curs; or

5 (ii) a member of a national securities  
6 exchange solely because that member is the  
7 record holder of that security and, under  
8 the rules of that exchange—

9 (I) may direct the vote of that se-  
10 curity, without instruction, on—

11 (aa) other than contested  
12 matters; or

13 (bb) matters that may sub-  
14 stantially affect the rights or  
15 privileges of the holders of the  
16 security to be voted; and

17 (II) is otherwise precluded from  
18 voting without instruction; and

19 (C) does not include—

20 (i) a person that holds an economic  
21 interest solely to secure a debt if that per-  
22 son does not exercise any voting other gov-  
23 ernance rights with respect to the interest;  
24 or

1 (ii) a person that is not an insider  
2 with respect to a control person.

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

4 (A) director of a corporation;

5 (B) officer of a corporation;

6 (C) managing agent of a corporation;

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

9 (E) affiliate of a corporation;

10 (F) consultant or contractor retained by a  
11 corporation;

12 (G) affiliate, relative, or agent of a person  
13 described in any of subparagraphs (A) through  
14 (E); and

15 (H) affiliate, relative, or agent of a person  
16 described in subparagraph (G).

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

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

24 (12) NATIONAL SECURITIES EXCHANGE.—The  
25 term “national securities exchange” means an ex-

1 change that is registered as a national securities ex-  
2 change under section 6 of the Securities Exchange  
3 Act of 1934 (15 U.S.C. 78f).

4 (13) PRIVATE FUND.—Except as otherwise ex-  
5 pressly provided, the term “private fund”—

6 (A) means a company or partnership  
7 that—

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

13 (ii) directly or through an affiliate,  
14 acts as a control person; and

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

19 (B) does not include an institution selected  
20 under section 107 of the Community Develop-  
21 ment Banking and Financial Institutions Act of  
22 1994 (12 U.S.C. 4706).

23 (14) RELATIVE.—The term “relative” has the  
24 meaning given the term in section 101 of title 11,  
25 United States Code.

1           (15) TARGET FIRM.—The term “target firm”  
2 means a corporation that is acquired in a change in  
3 control transaction.

## 4                   **TITLE I—CORPORATE** 5                   **RESPONSIBILITY**

### 6 **SEC. 101. JOINT AND SEVERAL LIABILITY FOR CONTROL-** 7                   **LING PRIVATE FUNDS.**

8           (a) IN GENERAL.—Notwithstanding any other provi-  
9 sion of law, or the terms of any contract or agreement,  
10 a private fund shall be jointly and severally liable for all  
11 liabilities of each target firm with respect to the private  
12 fund, and any affiliate of such a target firm, including—

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

16                   (2) any Federal or State civil monetary penalty,  
17                   or obligation under a settlement or consent order  
18                   with a Federal or State governmental agency or in-  
19                   strumentality, including a consumer restitution obli-  
20                   gation, for which the target firm, or an affiliate of  
21                   the target firm, is liable;

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

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

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

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

18 **SEC. 102. JOINT AND SEVERAL LIABILITY FOR HOLDERS OF**  
19 **ECONOMIC INTERESTS IN CONTROLLING PRI-**  
20 **VATE FUNDS.**

21       (a) **IN GENERAL.**—Notwithstanding any other provi-  
22 sion of law, or the terms of any contract or agreement,  
23 a holder of an economic interest in a private fund shall  
24 be jointly and severally liable for all liabilities of each tar-



1 get firm with respect to the private fund, and any affiliate  
2 of such a target firm, including—

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

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

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

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

21 (5) any claim for unfunded benefit liabilities  
22 owed to the Pension Benefit Guaranty Corporation  
23 under subtitle D of title IV of the Employee Retirement  
24 Income Security Act of 1974 (29 U.S.C. 1361  
25 et seq.) with respect to the termination of a pension

1 plan sponsored by the target firm or an affiliate of  
2 the target firm.

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

8 **SEC. 103. INDEMNIFICATION VOID AS AGAINST PUBLIC**  
9 **POLICY.**

10 It shall be void as against public policy for a target  
11 firm, or an affiliate of a target firm, to indemnify a private  
12 fund that is a control person with respect to the target  
13 firm, or any affiliate of the target firm, with respect to  
14 the liabilities of the fund or the affiliate, as applicable,  
15 under sections 101 and 102.

16 **TITLE II—ANTI-LOOTING**

17 **SEC. 201. LIMITATIONS ON POST-ACQUISITION DIVIDENDS,**  
18 **DISTRIBUTIONS, REDEMPTIONS, AND**  
19 **BUYBACKS.**

20 (a) **IN GENERAL.**—No target firm may, during the  
21 2-year period beginning on the closing date of a change  
22 in control transaction that results in control of the target  
23 firm by a private fund—

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

1           (2) incur an obligation that commits the target  
2           firm to making a capital distribution or a similar re-  
3           duction of the equity capital of the target firm after  
4           the end of that 2-year period.

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

8           (c) JOINT AND SEVERAL LIABILITY FOR AIDERS AND  
9           ABETTORS.—Any control person that is a private fund,  
10          any holder of an economic interest in a control person that  
11          is a private fund, or any affiliate of a target firm that  
12          aids, abets, facilitates, supports, or instructs any violation  
13          of subsection (a) shall be jointly and severally liable under  
14          this subsection for any transfer made or obligation in-  
15          curred, including for reasonable attorney’s fees and costs  
16          awarded to a plaintiff under subsection (d)(2).

17          (d) CAUSE OF ACTION.—

18               (1) IN GENERAL.—Any employee or creditor, or  
19               representative of an employee or creditor, of a target  
20               firm that is a debtor under title 11, United States  
21               Code, or of an affiliate of a target firm that is such  
22               a debtor, may bring an action in an appropriate dis-  
23               trict court of the United States against the direct or  
24               indirect transferee or obligee or beneficiary of the  
25               transfer or obligation to void the transfer or obliga-

1       tion and recover any transferred property for the  
2       target firm.

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

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

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

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

19           “(f)(1) In this subsection—

20                   “(A) the terms ‘change in control transaction’,  
21           ‘control person’, and ‘target firm’ have the meanings  
22           given those terms in section 3 of the Stop Wall  
23           Street Looting Act; and

24                   “(B) the term ‘protected period’ means the  
25           shorter of—

1           “(i) the 8-year period beginning on the  
2           date on which a change in control transaction  
3           closed; or

4           “(ii) the period beginning on the date on  
5           which a change in control transaction closed  
6           and ending on the earliest subsequent date on  
7           which a public offering of a controlling share of  
8           the common equity securities of the target firm  
9           occurs.

10          “(2) For purposes of this section, the debtor is pre-  
11          sumed to have made a transfer or incurred an obligation  
12          described in subparagraphs (A) and (B) of subsection  
13          (a)(1) if—

14                 “(A) the transfer is made to or obligation is in-  
15                 curred by a target firm or an affiliate in connection  
16                 with a change in control transaction; or

17                 “(B) the transfer is made to a target firm or  
18                 an affiliate by, or obligation is incurred by a target  
19                 firm or an affiliate from, a control person, an affil-  
20                 iate, or an insider during a protected period.

21          “(3) For the purposes of this section, a court shall,  
22          in analyzing related transactions, link together as a single  
23          transaction any interrelated yet formally distinct steps in  
24          an integrated transaction (commonly known as the ‘step  
25          transaction doctrine’).”.

1 (c) STATUTE OF LIMITATIONS.—Section 3306(b) of  
2 title 28, United States Code, is amended—

3 (1) in paragraph (2), by striking “or” at the  
4 end;

5 (2) in paragraph (3), by striking the period at  
6 the end and inserting “; or”; and

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

8 “(4) within 8 years after the transfer was made  
9 or the obligation was incurred, if the transfer was  
10 made or the obligation was incurred—

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

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

16 **SEC. 203. SURTAX ON CERTAIN AMOUNTS RECEIVED BY IN-**  
17 **VESTMENT FIRMS FROM CONTROLLED TAR-**  
18 **GET FIRMS.**

19 (a) IMPOSITION OF TAX.—Subchapter A of chapter  
20 1 of the Internal Revenue Code of 1986 is amended by  
21 adding at the end the following new part:

22 **“PART VIII—SURTAX ON CERTAIN AMOUNTS**  
23 **RECEIVED BY INVESTMENT FIRMS**

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

1 **“SEC. 59B. SURTAX ON CERTAIN AMOUNTS RECEIVED BY**  
2 **INVESTMENT FIRMS FROM CONTROLLED**  
3 **TARGET FIRMS.**

4 “(a) IMPOSITION OF TAX.—

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

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

17 “(b) APPLICABLE PAYMENT.—For purposes of this  
18 section—

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

1 curred to the taxpayer including it in gross income  
2 and to which subsection (a) applies.

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

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

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

12 “(c) DEFINITIONS RELATING TO ENTITIES.—For  
13 purposes of this section—

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

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

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

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

24 “(A) which is engaged in an applicable  
25 trade or business some or all of the activities of



1           which are conducted in connection with the ap-  
2           plicable entity, and

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

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

12                   “(A) raising or returning capital, and

13                   “(B) either—

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

17                           “(ii) developing specified assets.

18           “(4) SPECIFIED ASSET.—The term ‘specified  
19           asset’ means—

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

1                   “(B) real estate held for rental or invest-  
2                   ment.

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

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

15                  “(2) CONTROL.—

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

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

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

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

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

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

20       (c) CONFORMING AMENDMENTS.—

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

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

1           (2) Section 871(b)(1) of such Code is amended  
2           by inserting “and shall be taxable as provided in sec-  
3           tion 59B on applicable payments included in gross  
4           income which are effectively connected with the con-  
5           duct of a trade or business within the United  
6           States” after “United States”.

7           (3) Section 882(a)(1) of such Code is amended  
8           by inserting “and shall be taxable as provided in sec-  
9           tion 59B on applicable payments included in gross  
10          income which are effectively connected with the con-  
11          duct of a trade or business within the United  
12          States” after “United States”.

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

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

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

23          (6) Subparagraph (A) of section 6655(g)(1) of  
24          such Code is amended by striking “plus” at the end  
25          of clause (ii), by redesignating clause (iii) as clause

1 (iv), and by inserting after clause (ii) the following  
2 new clause:

3 “(iii) the tax imposed by section 59B,  
4 plus”.

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

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

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

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

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

1           “(i) if the ratio of debt to equity of  
2           the taxpayer as of the close of the taxable  
3           year (or on any other day during the tax-  
4           able year as the Secretary may prescribe in  
5           regulations) exceeds 1, then paragraph (1)  
6           shall be applied by substituting ‘\_\_\_\_\_’  
7           percent’ for ‘30 percent’, and

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

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

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

22           “(B) RATIO OF DEBT TO EQUITY.—For  
23           purposes of this paragraph, the term ‘ratio of  
24           debt to equity’ means, with respect to any tax-  
25           payer, the ratio which the total indebtedness of

1 the taxpayer bears to the sum of the taxpayer's  
2 money and all other assets reduced (but not  
3 below zero) by such total indebtedness. For  
4 purposes of the preceding sentence—

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

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

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

20 “(C) COORDINATION WITH DEPRECIATION  
21 RULES.—If the alternative depreciation system  
22 under section 168(g) applies to property by rea-  
23 son of an election under paragraph (7)(B)  
24 which is revoked under subparagraph  
25 (A)(ii)(II), then the depreciation deduction

1 under section 167(a) with respect to such prop-  
2 erty for the taxable year of revocation and all  
3 succeeding taxable years shall be determined  
4 under section 168 in the same manner as if  
5 such revocation were a change in use of the  
6 property under section 168(i)(5) and the regu-  
7 lations thereunder.

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

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

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

18 (b) EFFECTIVE DATES.—

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

22 (2) REVOCATION OF ELECTIONS.—Subpara-  
23 graphs (A)(ii)(II) and (C) of section 163(j)(10) of  
24 the Internal Revenue Code of 1986, as added by this  
25 section, shall apply to taxable years beginning on or



1 after the date of enactment of this Act, with respect  
2 to elections under section 163(j)(7)(B) of such Code  
3 made before, on, or after such date.

4 **TITLE III—PROTECTING WORK-**  
5 **ERS WHEN COMPANIES GO**  
6 **BANKRUPT**

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

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

10 (1) in paragraph (4)—

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

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

16 (C) in subparagraph (A), as so designated,  
17 in the matter preceding clause (i), as so reded-  
18 igned—

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

21 (ii) by striking “within 180 days”;

22 and

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

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

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

6 (2) in paragraph (5)—

7 (A) in subparagraph (A)—

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

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

12 (B) by striking subparagraph (B) and in-  
13 serting the following:

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

17 **SEC. 302. PRIORITY FOR SEVERANCE PAY AND CONTRIBU-**  
18 **TIONS TO EMPLOYEE BENEFIT PLANS.**

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

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

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

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

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

11           “(11) any contribution due on or after the date  
12 of the filing of the petition under an employee ben-  
13 efit plan.”.

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

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

24           (b) ADMINISTRATION AND ENFORCEMENT OF WORK-  
25 ER ADJUSTMENT AND RETRAINING NOTIFICATION RE-

1 REQUIREMENTS.—Section 5(a)(1) of the Worker Adjustment  
2 and Retraining Notification Act (29 U.S.C. 2104(a)(1))  
3 is amended, in the matter following subparagraph (B)—

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

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

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

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

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

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

19                   (A) by inserting “, a senior executive offi-  
20 cer of the debtor, or any of the 20 next most  
21 highly compensated employees of the debtor, de-  
22 partment or division managers of the debtor, or  
23 consultants providing services to the debtor (re-  
24 gardless of whether the executive officer, em-

1           ployee, manager, or consultant is an insider)”  
2           after “insider of the debtor”;

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

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

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

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

23                 “(3) any other transfer or obligation to or for  
24                 the benefit of an insider of the debtor, a senior execu-  
25                 tive officer of the debtor, or any of the 20 next

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

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

14 “(i) the survival of the business of the  
15 debtor; or

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

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

24 “(C) the cost of the transfer or obliga-  
25 tion—

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

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

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

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

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

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

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

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

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

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

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



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

11               (2) in paragraph (5)—

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

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

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

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

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

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

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

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

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

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

11           “(2) If one or more employees of the debtor have not  
12 received wages, accrued vacation, severance, or any other  
13 compensation owed under a plan, program, policy, or prac-  
14 tice of the debtor, or pursuant to the terms of a collective  
15 bargaining agreement, for services rendered on or after  
16 the date of the commencement of the case, or the debtor  
17 has not made a contribution due under an employee ben-  
18 efit plan on or after the date of the commencement of the  
19 case, such unpaid obligations shall be—

20           “(A) deemed—

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

24           “(ii) benefiting the holder of the allowed  
25 secured claim; and

1           “(B) recovered by the trustee for payment to  
2           the employees or the employee benefit plan, as appli-  
3           cable, even if the trustee, or a predecessor or suc-  
4           cessor in interest, has otherwise waived the provi-  
5           sions of this subsection under an agreement with the  
6           holder of the allowed secured claim or a successor or  
7           predecessor in interest of the holder of the allowed  
8           secured claim.”.

9   **SEC. 308. VOIDABILITY OF PREFERENTIAL COMPENSATION**  
10                           **TRANSFERS.**

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

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

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

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

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

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

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

14 **SEC. 309. PROTECTION FOR EMPLOYEES IN A SALE OF AS-**  
15 **SETS.**

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

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

1           “(A) preserve the jobs of the workforce of the  
2 debtor; and

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

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

10           “(A) preserves the jobs of the workforce of the  
11 debtor; and

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

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

18           “(A) the preservation of the jobs of the work-  
19 force of the debtor; and

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

22           “(2) The court shall expressly include in an order ap-  
23 proving a purchase or lease of property of the estate under  
24 this section, or under a plan under chapter 11, any rep-

1 representation made by a purchaser or lessee of the property  
2 under paragraph (1).

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

6 “(A) the court shall have jurisdiction over the  
7 purchaser or lessee of the property in order to en-  
8 force the terms of the order approving the purchase  
9 or lease;

10 “(B) the purchaser or lessee shall promptly dis-  
11 close to the court any material noncompliance with  
12 the terms of the order described in subparagraph  
13 (A) and explain the basis for such noncompliance;  
14 and

15 “(C) with respect to material noncompliance de-  
16 scribed in subparagraph (B), the court may impose  
17 any appropriate remedy, including injunctive relief,  
18 to address the noncompliance.”.

19 (b) PLANS UNDER CHAPTER 11.—

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

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

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

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

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

12           “(26A) The term ‘gift card’ means a paper or  
13 electronic promise, plastic card, or other payment  
14 code or device that is—

15           “(A) redeemable at—

16                   “(i) a single merchant; or

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

19           “(B) issued in a specified amount, regard-  
20 less of whether that amount may be increased  
21 in value or reloaded at the request of the hold-  
22 er;

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

1           “(D) honored by the single merchant or af-  
2           filiated group of merchants described in sub-  
3           paragraph (A) upon presentation for goods or  
4           services.”.

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

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

13                 “(A) the purchase, lease, or rental of prop-  
14                 erty;

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

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

21 **SEC. 311. COMMERCIAL REAL ESTATE.**

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

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



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

3           **TITLE IV—CLOSING THE**  
4           **CARRIED INTEREST LOOPHOLE**

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

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

12           **SEC. 402. PARTNERSHIP INTERESTS TRANSFERRED IN**  
13                           **CONNECTION WITH PERFORMANCE OF SERV-**  
14                           **ICES.**

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

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

22                           “(A) IN GENERAL.—In the case of any  
23           transfer of an interest in a partnership in con-  
24           nection with the provision of services to (or for  
25           the benefit of) such partnership—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15          “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

16                 “(1) GAIN.—

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

20                                 “(i) treated as ordinary income, and

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

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

24                         In the case of a disposition of an investment

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           “(3) INVESTMENT PARTNERSHIP.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4 “(5) RELATED PERSONS.—

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

9 “(B) CONTRIBUTION OF PARTNER SERV-  
10 ICES.—Any service described in paragraph (2)  
11 which is provided by a partner of a partnership  
12 shall be treated as also provided by such part-  
13 nership.

14 “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-  
15 ESTS.—

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

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

1           ners who do not provide any services described  
2           in subsection (c)(2) and who are not related to  
3           the partner holding the qualified capital inter-  
4           est, and

5                   “(B) the allocations made to such other in-  
6                   terests are significant compared to the alloca-  
7                   tions made to such qualified capital interest.

8                   “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO  
9           ALLOCATION REQUIREMENTS.—To the extent pro-  
10          vided by the Secretary in regulations or other guid-  
11          ance—

12                   “(A) ALLOCATIONS TO PORTION OF QUALI-  
13                   FIED CAPITAL INTEREST.—Paragraph (1) may  
14                   be applied separately with respect to a portion  
15                   of a qualified capital interest.

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

24                   “(C) ALLOCATIONS TO SERVICE PRO-  
25                   VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(iii) the excess (if any) of—

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

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

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

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

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

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

7           “(8) TREATMENT OF CERTAIN LOANS.—

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

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

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

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

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



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

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

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

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

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

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

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

1 “(I) specified family members,

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

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

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

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

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

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

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

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

5                   “(1) IN GENERAL.—If—

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

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

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

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

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

24                   “(A) DISQUALIFIED INTEREST.—

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

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

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

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

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

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

17                   “(I) a partnership interest,

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

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

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

25                   “(i) a domestic C corporation, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) IN GENERAL.—Subsection (b) of section  
11 6662 is amended by inserting after paragraph (8)  
12 the following new paragraph:

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

17 (2) AMOUNT OF PENALTY.—

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

21 “(l) INCREASE IN PENALTY IN CASE OF PROPERTY  
22 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
23 ICES.—In the case of any portion of an underpayment to  
24 which this section applies by reason of subsection (b)(9),

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

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

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

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

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

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

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

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

23 “(i) the relevant facts affecting the  
24 tax treatment of the item are adequately  
25 disclosed,

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

3                   “(iii) the taxpayer reasonably believed  
4                   that such treatment was more likely than  
5                   not the proper treatment.

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

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

13                   (1) INTERNAL REVENUE CODE.—

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

20                   “(18) notwithstanding the preceding provisions  
21                   of this subsection, in the case of any individual en-  
22                   gaged in the trade or business of providing services  
23                   described in section 710(c)(2) with respect to any  
24                   entity, investment services partnership income or  
25                   loss (as defined in subsection (m)) of such individual

1 with respect to such entity shall be taken into ac-  
2 count in determining the net earnings from self-em-  
3 ployment of such individual.”.

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

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

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

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

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

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

23 “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-  
24 TERESTS.—A rule similar to the rule of section



1       710(d) shall apply for purposes of applying para-  
2       graph (1)(B).”.

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

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

18       (f) SEPARATE ACCOUNTING BY PARTNER.—Section  
19       702(a) is amended by striking “and” at the end of para-  
20       graph (7), by striking the period at the end of paragraph  
21       (8) and inserting “, and”, and by inserting after para-  
22       graph (8) the following:

23           “(9) any amount treated as ordinary income or  
24       loss under subsection (a), (b), or (e) of section  
25       710.”.

1 (g) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

18 (h) EFFECTIVE DATE.—

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

23 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
24 CLUDE EFFECTIVE DATE.—In applying section

1       710(a) of the Internal Revenue Code of 1986 (as  
2       added by this section) in the case of any partnership  
3       taxable year which includes the date of enactment of  
4       this Act, the amount of the net capital gain referred  
5       to in such section shall be treated as being the lesser  
6       of the net capital gain for the entire partnership tax-  
7       able year or the net capital gain determined by only  
8       taking into account items attributable to the portion  
9       of the partnership taxable year which is after such  
10      date.

11           (3) DISPOSITIONS OF PARTNERSHIP INTER-  
12      ESTS.—

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

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

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

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

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

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

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

9 “(a) DEFINITIONS.—In this section, the terms ‘pri-  
10 vate fund’ and ‘target firm’ have the meanings given the  
11 terms in section 3 of the Stop Wall Street Looting Act.

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

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

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

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

23 “(4) A list of each entity with respect to which  
24 the fund owns a percentage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(A) citizens of the United States;

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

17 “(C) brokers or dealers;

18 “(D) insurance companies;

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

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

24 “(G) nonprofit organizations;

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

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

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

8           “(K) banking or thrift institutions;

9           “(L) sovereign wealth funds; and

10          “(M) other investors.

11          “(19) The total dollar amount of aggregate fees  
12 and expenses collected by the fund, the manager of  
13 the fund, or related parties from target firms with  
14 respect to the fund, which shall—

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

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

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

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

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



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

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

8                   “(A) concentration risk;

9                   “(B) foreign exchange risk; and

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

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

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

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

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

24           “(d) PUBLIC AVAILABILITY.—Notwithstanding any  
25 provision of section 204 of the Investment Advisers Act

1 of 1940 (15 U.S.C. 80b–4), the information disclosed  
2 under the rules issued under subsection (b) shall be made  
3 available to the public.”.

4 **SEC. 502. FIDUCIARY OBLIGATIONS.**

5 (a) FIDUCIARY DUTIES UNDER ERISA.—Section  
6 401(b)(1) of the Employee Retirement Income Security  
7 Act of 1974 (29 U.S.C. 1101(b)(1)) is amended—

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

11 (2) by inserting “or such private fund, as appli-  
12 cable” before the period at the end.

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

16 (1) in paragraph (1), by striking “and” at the  
17 end;

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

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

21 “(3) promulgate rules that prohibit an invest-  
22 ment adviser from requiring any person to which the  
23 investment adviser provides investment advice, in-  
24 cluding a pension plan (as defined in section 3 of the  
25 Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1002)) that is subject to title I of the  
2 Employee Retirement Income Security Act of 1974  
3 (29 U.S.C. 1001 et seq.), to, as a condition of the  
4 investment adviser providing that advice, sign a con-  
5 tract or other agreement in which that person waives  
6 a fiduciary duty owed by that person to another per-  
7 son.”.

8 (c) APPLICABILITY OF BENEFITS.—The general  
9 partner of a private fund may not provide any term or  
10 benefit to any limited partner of the fund unless the gen-  
11 eral partner provides that term or benefit to all limited  
12 partners of the fund.

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

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

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

25 (A) have active investments; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **TITLE VI—RESTRICTIONS ON**  
7 **SECURITIZING RISKY COR-**  
8 **PORATE DEBT**

9 **SEC. 601. RISK RETENTION REQUIREMENTS FOR**  
10 **SECURITIZATION OF CORPORATE DEBT.**

11 Section 15G of the Securities Exchange Act of 1934  
12 (15 U.S.C. 78o–11) is amended—

13 (1) in subsection (a)(3)—

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

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

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

19 “(C) a manager of a collateralized debt ob-  
20 ligation; and”;

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

23 (3) by inserting after subsection (h) the fol-  
24 lowing:

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

3           “(1) any provision of this section that requires  
4 that securitizer to retain a portion of the credit risk  
5 for an asset that such securitizer does not hold, or  
6 has never held, shall be construed as requiring that  
7 securitizer to obtain that portion of the credit risk  
8 for that asset; and

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

## 12       **TITLE VII—MISCELLANEOUS**

### 13       **SEC. 701. ANTI-EVASION.**

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

### 18       **SEC. 702. SEVERABILITY.**

19       If any provision of this Act or the application of such  
20 a provision to any person or circumstance is held to be  
21 invalid or unconstitutional, the remainder of this Act and  
22 the application of the provisions of this Act to any person  
23 or circumstance shall remain and shall not be affected by  
24 that holding.

○