V. The Tax Cuts and Job Act and its Effects on the Stock Market

A. Introduction

The Tax Cuts and Jobs Act (the Act), signed into law by President Donald Trump on December 22, 2017, decreased the corporate and individual tax rate, altered credits and deductions for businesses and individuals, and created a territorial system for corporations that have overseas earnings.[1] On its face, a decrease in the corporate tax rate usually leads to an increase in corporate earnings, which correlates to an increase in stock price.[2] Therefore, after the Act's implementation, one could most likely assume an overall spike in the stock market, which did occur.[3] Was there actual causation or mere correlation? Were there other factors that could have affected the stock price? And if there was causation, when did the markets actually react?

This paper serves as a detailed look into the Act and its direct and indirect effects on the stock market. I introduce the Act in Section B and outline some of the more relevant provisions that will have an immediate impact on both the economy and the stock market. Section C will discuss the actions corporations take their increased earnings, and reflects on what kinds of corporations will benefit the most from the Act. Section D looks at how the Act affected consumers and how this can in turn influence the economy and the stock market. Next, Section E considers the Act's effects on the stock market. Section F discusses the Act's effects on the economy and if they reflect causation or mere correlation. Section Closes with a look at the Act's long-term effects on both the economy and the stock market.

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[1] Pub. L. No. 115-97, 131 Stat. 2054 (2017). *See* Ernst & Young LLP, Considering the Impact of the Tax Cuts and Jobs Act on Valuations, at 1 (Dec. 22, 2017), https://www.ey.com/Publication/vwLUAssets/ey-considering-the-impact-of-the-tax-cuts-and-jobs-act-on-valuations/$FILE/ey-considering-the-impact-of-the-tax-cuts-and-jobs-act-on-valuations.pdf [https://perma.cc/Q3XC-8TNG].

[2] *See* Benjamin R. Page, *So Far, the TCJA Seems to Be a Modest Plus for the Economy, But Evidence Remains Limited*, TAX POL'Y CTR. (Mar. 26, 2018), https://www.taxpolicycenter.org/taxvox/so-far-tcja-seems-be-modest-plus-economy-evidence-remains-limited [https://perma.cc/GMU6-UZA8].

[3] *See* S&P 500, YAHOO! FIN., https://finance.yahoo.com/quote/%5EGSPC?p=^GSPC [https://perma.cc/6Y47-UD2Y] (last visited Oct. 4, 2018).

B. The Tax Cuts and Jobs Act

1. Enforcement and Regulation

The Act comes with a number of challenges for enforcement agencies such as the Internal Revenue Service (IRS) and US Department of the Treasury (Treasury). First, because Congress and the President enacted the Act so quickly, many of its provisions did not go through a careful review process.[4] Therefore, the statute contains multiple mistakes, omissions, and contradictory language.[5] "One important consequence of last year's truncated legislative schedule is that the final legislation contains myriad glitches, gaps, errors, and ambiguities . . . ."[6] What made implementation of the Act even more difficult was that its provisions became effective less than two weeks after it was signed.[7] Therefore, both the Treasury and the IRS had very little time to prepare and react to the Act, and were left to fill in many of the gaps that the Act created.[8] Their most useful tool so far has been consulting with the congressional staff to understand their intent when crafting the bill.[9]

While there are a number of challenges, one of the more prominent includes "[d]etermining how foreign subsidiaries and other controlled foreign corporations should calculate their earnings and profits for the purpose of the repatriation tax."[10] Once the IRS and Treasury interpret these provisions, the agencies must enforce them through the implementation of rules and regulations.[11] The IRS has

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[4] Howard Gleckman, *How Will Treasury Fill In the Blanks of the Tax Cuts and Jobs Act?*, FORBES (Apr. 17, 2018), https://www.forbes.com/sites/beltway/2018/04/17/how-will-treasury-fill-in-the-blanks-of-the-tax-cuts-and-jobs-act/#5c8f7732998d [https://perma.cc/8W7B-6LMG] ("It was enacted quickly and many provisions did not go through the normal careful review process").

[5] *See id.* ("As a result, the statute is filled with mistakes and inconsistencies").

[6] Timothy J. McCormally, *Tax Reform and the IRS: Five Takeaways for Tax Practitioners,* TAX ADVISOR (June 1, 2018), https://www.thetaxadviser.com/issues/2018/jun/tax-reform-irs-five-takeaways-tax-practitioners.html [https://perma.cc/EYM6-AM4T].

[7] *See* Gleckman, *supra* note 4.

[8] *See id*. ("Treasury and the IRS must fill in blanks left by Congress but without creating rules than are not supported by the statute.").

[9] *Id*. ("Barbara and Dana said that Treasury and IRS will continue to consult informally with congressional staff through the reg-writing process.")

[10] McCormally, *supra* note 6.

[11] Gleckman, *supra* note 4 ("[I]n the case of the TCJA, it [Treasury] must interpret an extremely complex law that is sometimes internally inconsistent and resistant to easy interpretation.").

claimed that it will need an additional $495 million for the next two years in order to deal with the problems that have arisen out of the Act.[12] This comes at a time when the IRS is adjusting to funding cuts of nearly twenty percent from the last year.[13] This lack of funding has led to fewer audits, which has the potential to depress government revenue.[14] Congress has also recently discussed altering the structure of the IRS in order to increase efficiency.[15] With all of these challenges ahead, it appears that the kinks will likely take a while to work out. This time lag has proven troublesome for corporations as they attempt to move forward with their own initiatives, while both maximizing profits and conforming to the provisions of the Act.[16]

2. Corporate Tax and Repatriation

Arguably the most obvious and apparent benefit to corporations from the Act is the decrease in corporate tax rate, which was lowered from thirty-five percent to twenty-one percent.[17] However, it is important to note that while corporations did see an increase in profits, they did not experience the entire fourteen percent reduction in the tax rate.[18] For example, Johnson & Johnson had an effective tax rate of only seventeen percent before implementation of the Act.[19] Such a disparity often occurs when corporations opt to keep income overseas in countries with lower tax rates.[20] But in terms of its effects on the stock market, investment bankers were already aware of this factor and adjusted their models accordingly.[21] Thus one of the goals of the bill was to push such corporations to move this overseas money

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[12] McCormally, *supra* note 6.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] Gleckman, *supra* note 4 (arguing that if the IRS does not know how to interpret the law, corporations face an even greater obstacle).
[17] Adam Michel, *Analysis of the 2017 Tax Cuts and Jobs Act*, HERITAGE FOUND. (Dec. 19, 2017), https://www.heritage.org/taxes/report/analysis-the-2017-tax-cuts-and-jobs-act [https://perma.cc/CHS5-XX6S].
[18] Meg Luo, *How Tax Reform Affects Stock Value,* U.S. NEWS & WORLD REP. (Apr. 3, 2018, 9:25 AM).
[19] *Id*.
[20] *Id.*
[21] Ernst & Young LLP, *supra* note 1, at 3 (listing overseas money as a potential factor that must be taken into account when valuating a company).

back into the United States.[22] Before the Act, corporations were hesitant to bring the overseas money back to the US, as tax laws forced them to pay a repatriation tax.[23] However, the Act imposed a one-time tax on overseas holdings, regardless of whether the funds are repatriated.[24] With the tax incentive eliminated, foreign funds flooded back into the United States.[25]

C. Corporate Profits

Corporations have several in deciding what to do with the increased profit and repatriated money. These options include reinvestment back into the business, payment of dividends, and engagement in share buyback programs.[26] Share buyback programs appear to be the most popular decision among corporations.[27] While it is often difficult to determine, these buyback programs can have a positive effect on the stock market in the short run.[28] When a corporation purchases its own shares from the market, it decreases the number of shares outstanding, leading to an increase in stock price.[29] Long-term growth tends to be more difficult to determine, as corporations could have used the money to reinvest and grow the business, rather than temporarily increase the stock price.[30] There is also evidence that corporations are

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[22] *See The New Tax Law's Impact on Stocks, Bonds, and the Economy,* VANGUARD (Apr. 11, 2018), https://institutional.vanguard.com/VGApp/iip/site/institutional/researchcommentary/article/InvComTaxLawImpact [https://perma.cc/4RV9-L7VH].

[23] Michael Smolyansky et al., *U.S. Corporations' Repatriation of Offshore Profits,* BOARD GOVERNORS FED. RES. SYS.: FEDS NOTES (Sept. 4, 2018), https://www.federalreserve.gov/econres/notes/feds-notes/us-corporations-repatriation-of-offshore-profits-20180904.htm [https://perma.cc/P46P-R7UE] (illustrating the drastic increase in repatriated money after the Act was implemented).

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] Steve Denning, *Why It's Raining Share Buybacks on Wall Street,* FORBES (Mar. 25, 2018, 1:35 PM), https://www.forbes.com/sites/stevedenning/2018/03/25/why-its-raining-share-buybacks-on-wall-street/#7d26bf923346 [https://perma.cc/W7X3-CX4W].

[29] *Id.*

[30] *Id.* ("Of course, by diverting important resources to boost the stock price, the tactic ran the risk of further hindering the firm's capacity to innovate and generate fresh value for customers in future.").

using this money to reinvest back into the business.[31] Business investment grew by 6.1% in the first quarter of 2018.[32] While this would usually lead to an increase in the value of the stock, depending on the success of the reinvestment, it is too early to identify those effects.[33] Corporations have also used this money to pay dividends.[34] But while there is a clear increase in dividend payments since last year, it is only marginal at best.[35]

Small-cap corporations should see the greatest benefit from the tax cut.[36] Because smaller corporations tend to be more domestically-focused than large cap corporations, they were feeling the full effect of the previous thirty-five tax rate.[37] Therefore, unlike Johnson & Johnson in the example above,[38] small-cap corporations saw a much more significant decrease in their effective tax rates.[39] Banks too seem to be a strong beneficiary of the Act because they pay a high effective tax rate.[40] Therefore, the decrease in the corporate tax rate benefitted them generously. The Act also affected consumer sentiment around the economy as a whole.[41] People tend to invest more in a stronger economy, and banks therefore saw a boost in revenue.[42] Last, while tech companies have an extremely low effective tax rate, they are known for being global competitors with consider-

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[31] *See* Smolyansky et al., *supra* note 23.
[32] Howard Gleckman, *Has the TJCA Supercharged the Economy? The Data Don't Show It,* TAX POL'Y CTR. (May 2, 2018) https://www.taxpolicy center.org/taxvox/has-tcja-supercharged-economy-data-dont-show-it [https://perma.cc/B7VD-9AQL].
[33] Smolyanksy et al., *supra* note 23 (referring to business investment, "[i]t is likely too early to detect given that the effects may take time to materialize").
[34] *See id*.
[35] *See id*.
[36] Joe Ciolli, *Here Are the Areas of the Stock Market That'll Get the Biggest Boost from Trump's Tax Overhaul,* BUS. INSIDER (Dec. 23, 2017, 3:50 PM), https://www.businessinsider.com/trump-gop-tax-bill-stock-market-areas-set-to-benefit-most-2017-12 [https://perma.cc/YX96-KFLW].
[37] *Id*. (depicting that small cap stocks having the highest effective tax rates and therefore will see the biggest tax decrease after the act is implemented).
[38] *See* Luo, *supra* note 18.
[39] Joe Ciolli, *supra* note 36.
[40] *Id.*
[41] Page, *supra* note 2 ("Consumer confidence is high and the tax cuts have increased disposable income.").
[42] *See* Ciolli, *supra* note 36 (insinuating that consumers invest more when "[o]ptimism around US growth is also something that trickles down to banks, which serve as major lenders").

able amounts of offshore money.[43] Therefore, while they will not see much of a decrease in their effective tax rate, the repatriation portion of the Act will generally boost tech stock prices.[44]

D. Effect on Consumers

The Act affects individuals directly through a decrease in the individual tax rate, and indirectly through a decrease in the corporate tax rate.[45] A decrease in the individual tax rate generally leads to an increase in disposable income, money left over for consumers after paying essential living expenses such as taxes and bills.[46] But while consumer confidence is high,[47] the market has not seen consumers using this disposable income in the retail sector.[48] In the first quarter of 2018, consumer spending grew 1.1%, down from 4% the previous quarter.[49] Individuals also have the capacity to invest this money, leading to an increase in stock prices.[50] But according to Roger Aliaga-Díaz, a senior economist with Vanguard Investment Strategy Group, the effects on the stock market are "more indirect and immeasurable."[51] With an increase in corporate income, many corporations are opting to pay its employees higher wages.[52] But in terms of hiring, employment statistics have not reflected a major change.[53] The

[43] *Id*.
[44] *See id*. (referring to tech companies, Ciolli states "the repatriation tax holiday in the GOP's plan is expected to be the big driver of gains here").
[45] Kimberly Clausing, *How Will the Tax Cuts and Jobs Act Impact American Workers?*, ECONOFACT (May 29, 2018), https://econofact.org/how-will-the-tax-cuts-and-jobs-act-impact-american-workers [https://perma.cc/S3TM-NNME].
[46] Page, *supra* note 2.
[47] *See id*.
[48] *See id*.
[49] Gleckman, *supra* note 32 ("Consumer spending grew in the first quarter, but at an annual rate of only 1.1 percent. That's far more slowly than in the fourth quarter of 2017, when it rose by an annual rate of 4% . . . .").
[50] *The New Tax Law's Impact on Stocks, Bonds, and the Economy*, *supra* note 22.
[51] *Id*. (stating that the effects on individuals are "indirect and immeasurable").
[52] *See id.*
[53] Gleckman, *supra* note 32.

unemployment rate remained at 4.1% from December 2017 to March 2018 and decreased to 3.9% in August 2018.[54]

E. Timing of Its Effect

Timing of the Act's effect on the stock market also proves to be troublesome.[55] Stock prices are constantly changing in order to reflect future expectations.[56] Therefore, we must look at when this information reached the general public. There are a number of moments that the Act could have affected the market. First, several polls projected that Trump would lose the 2016 Presidential election by a significant margin.[57] Therefore, the effect could have been after his unexpected victory.[58] After Trump's surprise victory, the stock market reacted quickly under the assumption that he would implement his corporate friendly policies.[59] The S&P increased by 1.41% the next day, 2.26% over the next week, and 4.39% over the next month.[60] The DOW increased by 1.49% the next day, 3.31% the next week, and 4.82% over the course of the next month.[61] The effect could have

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[54] Labor Force Statistics from the Current Population Survey, BUREAU LAB. STATS., https://data.bls.gov/timeseries/LNS14000000 [https://perma.cc/924T-WJ9M] (last visited Oct. 27, 2018).

[55] *The New Tax Law's Impact on Stocks, Bonds, and the Economy*, *supra* note 23 ("Market prices are constantly updating to reflect future expectations, and the run-up in equity prices following the 2016 presidential election was in part a result of investors' expectations for lower future corporate tax rates," Mr. Aliaga-Díaz said. "So a lot of the new tax law's benefit to equity markets was already priced in.").

[56] *Id.*

[57] *See Election 2016 Presidential Polls,* REAL CLEAR POL. (last visited Oct. 27, 2018), https://www.realclearpolitics.com/epolls/latest_polls/president [https://perma.cc/GM2J-ABF2].

[58] *The New Tax Law's Impact on Stocks, Bonds, and the Economy*, *supra* note 22.

[59] Andy Kiersz, *Here's Why Stocks Have Been on a Tear Since Trump's Election,* BUS. INSIDER (Dec. 12, 2016, 6:52 AM), https://www.businessinsider.com/stock-markets-after-trump-election-2016-12 [https://perma.cc/Y8CQ-J2ZU].

[60] *See S&P 500*, YAHOO! FINANCE (last visited Oct. 27, 2018), https://finance.yahoo.com/quote/%5EGSPC?p=^GSPC [https://perma.cc/4K4N-BMUJ] (showing the changes in the S&P 500 over the course of the Act's passing).

[61] *See Dow Jones Industrial Average*, YAHOO! FIN. (last visited Oct. 27, 2018), https://finance.yahoo.com/quote/%5EDJI?p=^DJI [https://perma.cc/

come when the bill was first introduced, or later when it became likely that it was going to pass.[62] "[I]nvestor euphoria about the tax cuts as well as strong corporate earnings reports helped drive the market boom that ran from early November (as the push for a tax bill began in earnest) through January."[63] Regardless of when it occurred, it does appear that markets adjusted at some point to the introduction of the bill.[64] And the greatest growth came a month after the passing of the Act.[65] But it is difficult to conclude whether these spikes in the stock market reflected causation or mere correlation.

"It is impossible to know what drives short-term markets."[66] Several factors have the ability to affect the stock market, including economic strength, trends, political policy, and monetary policy.[67] In terms of recent political policy, President Trump's trade policy has led to volatile movements within the stock market.[68] With a lack of consistency surrounding President Trump's trade policy, the markets have seen large swings.[69] For example, after some comments by President Trump regarding trade, the DOW fell 300 points.[70] Therefore, it is difficult to attribute the recent gains in the stock market to any single factor. As for monetary policy, the Federal Reserve has made a number of changes to the interest rate.[71] Since Congress passed the Act in December of 2017, the Federal Reserve increased the Federal Funds

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5EPY-56U9] (showing the changes in the DOW over the course of the Act's passing).

[62] Gleckman, *supra* note 32 (referencing various points where economic and financial data may have been affected by the Act).

[63] *Id*.

[64] *See* S&P 500, YAHOO! FIN. (last visited Oct. 27, 2018), https://finance.yahoo.com/quote/%5EGSPC?p=^GSPC [https://perma.cc/SM6X-2LNW] (illustrating the inflections in the S&P 500 over the course of the Act's passing).

[65] *See id*. (showing the greatest growth right after the act was passed).

[66] Gleckman, *supra* note 32

[67] *Id*.

[68] Jeff Cox, *Market Whiplash over Trump Trade Policy: 'They're Making This Up as They Go Along',* CNBC (June 26, 2018, 12:40 PM), https://www.cnbc.com/2018/06/26/stock-market-is-getting-whiplash-over-trump-trade-policy.html [https://perma.cc/HH6K-QQTU].

[69] *See id*.

[70] *Id*.

[71] *See Federal Funds Rate – 62 Year Chart*, MACROTRENDS (Oct. 11, 2018), https://www.macrotrends.net/2015/fed-funds-rate-historical-chart [https://perma.cc/X9X9-RSEV].

Rate twice.[72] This increase can have negative effects on the stock market as the cost of capital increases for businesses. The Act itself also has the ability to lead to higher interest rates.[73] In order to fund the government deficit, the government will need to issue more debt.[74] Increased federal borrowing will increase the cost of capital, which will take away some of the positive effects on businesses.[75] Put simply, it will cost businesses more money to borrow, which will have a negative effect on their bottom lines. Therefore, while it is likely that the stock market received a positive boost from the Act, with all of the factors considered, it is impossible to determine the extent of its effect.

F. The Act and the Economy

Consumer confidence plays a large role in consumer investing because people are more willing to invest when they know the economy will be strong in the future.[76] The results of the Act's effects on the economy appear to be a "modest positive."[77] Gross Domestic Product (GDP), the total value of all goods and services produced within a country, is a strong indicator of a country's economic growth. President Trump predicted growth of approximately 3–5%, but in the first quarter of 2018, the GDP grew by 2.3%, down from 2.9% the previous quarter.[78] In the second quarter of 2018, GDP grew by 4.1%.[79] In terms of long-term growth, analysts predict that the impact on GDP will be small at best.[80]

Similar to the difficulties with drawing causation conclusions around the Act's effect on the stock market, it is extremely difficult to

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[72] *See id*.
[73] William G. Gale et al., *Effects of the Tax Cuts and Jobs Act: A Preliminary Analysis,* URBAN INST. & BROOKINGS INSTITUTION: TAX POL'Y CTR., at 11 (June 13, 2018), https://www.brookings.edu/wp-content/uploads/2018/06/ES_20180608_tcja_summary_paper_final.pdf [https://perma.cc/C5HL-5BZW].
[74] *See id*. at 10.
[75] *See id*. at 11.
[76] *See* Douglas A. Kysar, *Preferences for Processes: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 HARV. L. REV. 525, 634 (2004) (describing the tendency to link consumer confidence to spending).
[77] Page, *supra* note 2.
[78] Gleckman, *supra* note 32.
[79] *Quarterly Growth of the Real GDP in the United States from 2011 to 2018,* STAT. PORTAL https://www.statista.com/statistics/188185/percent-chance-from-preceding-period-in-real-gdp-in-the-us [https://perma.cc/K2JS-5N57].
[80] Gale et al., *supra* note 73, at 11.

determine the Act's effect on the overall economy. First, the effects of changes to government policy tend to have a small effect on economic development.[81] Therefore, even after looking at the economic data presented, it is difficult to attribute economic effects to the Act itself.[82] In order to get an estimate of the effects of the Act on the economy, we would need to look at the economy if the law never passed, an impossible task. Therefore, in order to get the most accurate view of the Act's effects on the economy, we will need to review the data years from now.[83] This is because there is a delay when looking at economic statistics.[84] And even when economic statistics become available, economic development, technological advancement, and policy change, as discussed above, muddle the data.[85]

G. Conclusion: Long Term Effects

Even if it can be proven that this recent growth has been due to President Trump's policy, it is almost impossible to determine its effects on long-term growth.[86] Further, many of the Act's income friendly features disappear after 2025, and it is difficult to determine when and how markets will react to the inevitable changes.[87] The Act also increases the government deficit, as a decrease in the individual and corporate tax rate leads to a reduction in money for the government.[88] This will force the government to either decrease spending or increase taxes, both of which could lead to potential problems in the

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[81] Page, *supra* note 2 ("[I]t is important to remember that the effects of changes to government policy are typically small relative to underlying economic developments, making it difficult to tease out those effects from noisy economic data.").
[82] *See id*.
[83] *See id*.
[84] Gleckman, *supra* note 32.
[85] Page, *supra* note 2.
[86] Richard Phillips, *The Immediate Economic Impact of the Tax Cuts and Jobs Act Could Be Even Less than Expected,* INST. TAXATION & ECON. POL'Y (July 11, 2018), https://itep.org/the-immediate-economic-impact-of-the-tax-cuts-and-jobs-act-could-be-even-less-than-expected [https://perma.cc/AC3H-SFYT] ("Barely six months have gone by since the passage of the TCJA, so it is too soon to tell definitively how the tax cuts will affect the economy.").
[87] Amir El-Sibaie, *A Look Ahead at Expiring Tax Provisions,* TAX FOUND. (Jan. 18, 2018), https://taxfoundation.org/look-ahead-expiring-tax-provisions/ [https://perma.cc/Y5EN-HY5T].
[88] Clausing, *supra* note 45.

macroeconomic climate.[89] Any problems in the macroeconomic climate could have major implications on the stock market. Some argue that the government has always run a deficit and that it is not detrimental to the health of the economy.[90] But with the deficit nearing 100% of GDP in the next decade, it could have more severe effects.[91] It is also possible that another financial crisis is on the horizon.[92] With a bull market over the past ten years, many argue that the United States economy cannot maintain this level of growth.[93] Many believe that if a financial crisis were to strike, the Act would put the United States in a difficult position.[94] The government would normally use fiscal policy to counteract the effects of a recession, but because taxes are already so low, the government might have a difficult time spurring economic growth through increased spending.[95] This, in turn, would have disastrous effects on the stock market.

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[89] *See id*.

[90] John T. Harvey, *Why You Should Love Government Deficits,* FORBES (July 18, 2012, 10:46 PM), https://www.forbes.com/sites/johntharvey/2012/07/18/why-you-should-love-government-deficits/#4925c376570a [https://perma.cc/3RBV-6CQA] (arguing that deficits are not detrimental to the state of the economy).

[91] Clausing, *supra* note 45 ("The Congressional Budget Office predicts debt to GDP ratios will approach 100 percent within the next decade.").

[92] Susannah Snider, *When's the Next Financial Crisis Coming—and How Do You Prepare?,* U.S. NEWS & WORLD REP. (Sept. 11, 2018, 4:16 PM), https://money.usnews.com/money/personal-finance/banking-and-credit/articles/2018-09-11/whens-the-next-financial-crisis-coming-and-how-do-you-prepare.

[93] Tae Kim, *3,453 Days Later, the US Bull Market Becomes the Longest on Record,* CNBC (Aug. 22, 2018, 6:55 AM), https://www.cnbc.com/2018/08/22/longest-bull-market-since-world-war-ii-likely-to-go-on-because-us-is-best-game-in-town.html [https://perma.cc/YP8Q-R9JV].

[94] *See id*.

[95] Phillips, *supra* note 86 (observing that because the government is already implementing fiscal policy that is often used during recessions, counteracting the effects of a recession may prove difficult).

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