

111TH CONGRESS  
1ST SESSION

# H. R. 3269

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2009

Mr. FRANK of Massachusetts (for himself, Mr. PETERS, Ms. KILROY, Mr. WATT, Mr. CAPUANO, Mr. AL GREEN of Texas, Mr. SHERMAN, Mr. CARSON of Indiana, Mr. GUTIERREZ, Mr. ELLISON, and Mr. HINOJOSA) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.

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.**

4 This Act may be cited as the “Corporate and Finan-  
5 cial Institution Compensation Fairness Act of 2009”.

1 **SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
2 **TION DISCLOSURES.**

3 Section 14 of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78n) is amended by adding at the end the fol-  
5 lowing new subsection:

6 “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECU-  
7 TIVE COMPENSATION.—

8 “(1) ANNUAL VOTE.—Any proxy or consent or  
9 authorization for an annual meeting of the share-  
10 holders (or a special meeting in lieu of the annual  
11 meeting) occurring on or after the date that is 6  
12 months after the date on which final rules are issued  
13 under paragraph (3), shall provide for a separate  
14 shareholder vote to approve the compensation of ex-  
15 ecutives as disclosed pursuant to the Commission’s  
16 compensation disclosure rules (which disclosure shall  
17 include the compensation committee report, the com-  
18 pensation discussion and analysis, the compensation  
19 tables, and any related materials). The shareholder  
20 vote shall not be binding on the corporation or the  
21 board of directors and shall not be construed as  
22 overruling a decision by such board, nor to create or  
23 imply any additional fiduciary duty by such board,  
24 nor shall such vote be construed to restrict or limit  
25 the ability of shareholders to make proposals for in-

1 elusion in such proxy materials related to executive  
2 compensation.

3 “(2) SHAREHOLDER APPROVAL OF GOLDEN  
4 PARACHUTE COMPENSATION.—

5 “(A) DISCLOSURE.—In any proxy or con-  
6 sent solicitation material for an annual meeting  
7 of the shareholders (or a special meeting in lieu  
8 of the annual meeting) occurring on or after  
9 the date that is 6 months after the date on  
10 which final rules are issued under paragraph  
11 (3), that concerns an acquisition, merger, con-  
12 solidation, or proposed sale or other disposition  
13 of all or substantially all the assets of an issuer,  
14 the person making such solicitation shall dis-  
15 close in the proxy or consent solicitation mate-  
16 rial, in a clear and simple tabular form in ac-  
17 cordance with regulations to be promulgated by  
18 the Commission, any agreements or under-  
19 standings that such person has with any prin-  
20 cipal executive officers of such issuer (or of the  
21 acquiring issuer, if such issuer is not the ac-  
22 quiring issuer) concerning any type of com-  
23 pensation (whether present, deferred, or contin-  
24 gent) that is based on or otherwise relates to  
25 the acquisition, merger, consolidation, sale, or

1 other disposition of all or substantially all of  
2 the assets of the issuer that have not been sub-  
3 ject to a shareholder vote under paragraph (1),  
4 and the aggregate total of all such compensa-  
5 tion that may (and the conditions upon which  
6 it may) be paid or become payable to or on be-  
7 half of such executive officer.

8 “(B) SHAREHOLDER APPROVAL.—Any  
9 proxy or consent or authorization relating to  
10 the proxy or consent solicitation material con-  
11 taining the disclosure required by subparagraph  
12 (A) shall provide for a separate shareholder  
13 vote to approve such agreements or under-  
14 standings and compensation as disclosed. A  
15 vote by the shareholders shall not be binding on  
16 the corporation or the board of directors of the  
17 issuer or the person making the solicitation and  
18 shall not be construed as overruling a decision  
19 by such board, nor to create or imply any addi-  
20 tional fiduciary duty by such board, nor shall  
21 such vote be construed to restrict or limit the  
22 ability of shareholders to make proposals for in-  
23 clusion in such proxy materials related to execu-  
24 tive compensation.

1           “(3) RULEMAKING.—Not later than 6 months  
 2           after the date of the enactment of the Corporate and  
 3           Financial Institution Compensation Fairness Act of  
 4           2009, the Commission shall issue rules and regula-  
 5           tions to implement this subsection.”.

6   **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

7           (a) STANDARDS RELATING TO COMPENSATION COM-  
 8           MITTEES.—The Securities Exchange Act of 1934 (15  
 9           U.S.C. 78f) is amended by inserting after section 10A the  
 10          following new section:

11   **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-**  
 12          **MITTEES.**

13          “(a) COMMISSION RULES.—

14               “(1) IN GENERAL.—Effective not later than  
 15               270 days after the date of enactment of the Cor-  
 16               porate and Financial Institution Compensation Fair-  
 17               ness Act of 2009, the Commission shall, by rule, di-  
 18               rect the national securities exchanges and national  
 19               securities associations to prohibit the listing of any  
 20               security of an issuer that is not in compliance with  
 21               the requirements of any portion of subsections (b)  
 22               through (f).

23               “(2) OPPORTUNITY TO CURE DEFECTS.—The  
 24               rules of the Commission under paragraph (1) shall  
 25               provide for appropriate procedures for an issuer to

1 have an opportunity to cure any defects that would  
2 be the basis for a prohibition under paragraph (1)  
3 before the imposition of such prohibition.

4 “(3) EXEMPTION AUTHORITY.—The Commis-  
5 sion may exempt certain categories of issuers from  
6 the requirements of subsections (b) through (f),  
7 where appropriate in view of the purpose of this sec-  
8 tion. In determining appropriate exemptions, the  
9 Commission shall take into account, among other  
10 considerations, the potential impact on smaller re-  
11 porting issuers.

12 “(b) INDEPENDENCE OF COMPENSATION COMMIT-  
13 TEES.—

14 “(1) IN GENERAL.—Each member of the com-  
15 pensation committee of the board of directors of the  
16 issuer shall be a member of the board of directors  
17 of the issuer, and shall otherwise be independent.

18 “(2) CRITERIA.—In order to be considered to  
19 be independent for purposes of this subsection, a  
20 member of a compensation committee of an issuer  
21 may not, other than in his or her capacity as a  
22 member of the compensation committee, the board  
23 of directors, or any other board committee—

24 “(A) accept any consulting, advisory, or  
25 other compensatory fee from the issuer; or

1           “(B) be an affiliated person of the issuer  
2           or any subsidiary thereof.

3           “(C) EXEMPTIVE AUTHORITY.—The Com-  
4           mission may exempt from the requirements of  
5           paragraph (2) a particular relationship with re-  
6           spect to compensation committee members,  
7           where appropriate in view of the purpose of this  
8           section.

9           “(3) DEFINITION.—As used in this section, the  
10          term ‘compensation committee’ means—

11           “(A) a committee (or equivalent body) es-  
12           tablished by and amongst the board of directors  
13           of an issuer for the purpose of determining and  
14           approving the compensation arrangements for  
15           the executive officers of the issuer; and

16           “(B) if no such committee exists with re-  
17           spect to an issuer, the independent members of  
18           the entire board of directors.

19          “(c) INDEPENDENCE STANDARDS FOR COMPENSA-  
20          TION CONSULTANTS AND OTHER COMMITTEE ADVI-  
21          SORS.—Any compensation consultant, legal counsel, or  
22          other adviser to the compensation committee of any issuer  
23          shall meet standards for independence established by the  
24          Commission by regulation.

1       “(d) COMPENSATION COMMITTEE AUTHORITY RE-  
2     LATING TO COMPENSATION CONSULTANTS.—

3               “(1) IN GENERAL.—The compensation com-  
4     mittee of each issuer, in its capacity as a committee  
5     of the board of directors, shall have the authority,  
6     in its sole discretion, to retain and obtain the advice  
7     of a compensation consultant meeting the standards  
8     for independence promulgated pursuant to sub-  
9     section (c), and the compensation committee shall be  
10    directly responsible for the appointment, compensa-  
11    tion, and oversight of the work of such independent  
12    compensation consultant. This provision shall not be  
13    construed to require the compensation committee to  
14    implement or act consistently with the advice or rec-  
15    ommendations of the compensation consultant, and  
16    shall not otherwise affect the compensation commit-  
17    tee’s ability or obligation to exercise its own judg-  
18    ment in fulfillment of its duties.

19              “(2) DISCLOSURE.—In any proxy or consent  
20    solicitation material for an annual meeting of the  
21    shareholders (or a special meeting in lieu of the an-  
22    nual meeting) occurring on or after the date that is  
23    1 year after the date of enactment of the Corporate  
24    and Financial Institution Compensation Fairness  
25    Act of 2009, each issuer shall disclose in the proxy



1 or consent material, in accordance with regulations  
2 to be promulgated by the Commission—

3 “(A) whether the compensation committee  
4 of the issuer retained and obtained the advice  
5 of a compensation consultant meeting the  
6 standards for independence promulgated pursu-  
7 ant to subsection (c); and

8 “(B) if the compensation committee of the  
9 issuer has not retained and obtained the advice  
10 of a compensation consultant meeting the  
11 standards for independence promulgated pursu-  
12 ant to subsection (c), an explanation of the  
13 basis for the compensation committee’s deter-  
14 mination that the retention of such an inde-  
15 pendent consultant was not in the interests of  
16 shareholders.

17 “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-  
18 SEL AND OTHER ADVISORS.—The compensation com-  
19 mittee of each issuer, in its capacity as a committee of  
20 the board of directors, shall have the authority, in its sole  
21 discretion, to retain and obtain the advice of independent  
22 counsel and other advisers meeting the standards for inde-  
23 pendence promulgated pursuant to subsection (c), and the  
24 compensation committee shall be directly responsible for  
25 the appointment, compensation, and oversight of the work

1 of such independent counsel and other advisers. This pro-  
2 vision shall not be construed to require the compensation  
3 committee to implement or act consistently with the advice  
4 or recommendations of such independent counsel and  
5 other advisers, and shall not otherwise affect the com-  
6 pensation committee's ability or obligation to exercise its  
7 own judgment in fulfillment of its duties.

8 “(f) FUNDING.—Each issuer shall provide for appro-  
9 priate funding, as determined by the compensation com-  
10 mittee, in its capacity as a committee of the board of direc-  
11 tors, for payment of compensation—

12 “(1) to any compensation consultant to the  
13 compensation committee that meets the standards  
14 for independence promulgated pursuant to sub-  
15 section (c), and

16 “(2) to any independent counsel or other ad-  
17 viser to the compensation committee.”.

18 (b) STUDY AND REVIEW REQUIRED.—

19 (1) IN GENERAL.—The Securities and Ex-  
20 change Commission shall conduct a study and review  
21 of the use of compensation consultants meeting the  
22 standards for independence promulgated pursuant to  
23 section 10B(c) of the Securities Exchange Act of  
24 1934 (as added by subsection (a)), and the effects  
25 of such use.

1           (2) REPORT TO CONGRESS.—Not later than 2  
 2       years after the date of enactment of this Act, the  
 3       Commission shall submit a report to the Congress  
 4       on the results of the study and review required by  
 5       this paragraph.

6 **SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORT-**  
 7 **ING TO REDUCE PERVERSE INCENTIVES.**

8       (a) ENHANCED DISCLOSURE AND REPORTING OF  
 9       COMPENSATION ARRANGEMENTS.—Not later than 270  
 10      days after the date of enactment of this Act, the appro-  
 11      priate Federal regulators jointly shall prescribe regula-  
 12      tions to require each covered financial institution to dis-  
 13      close to the appropriate Federal regulator the structures  
 14      of the incentive-based compensation arrangements for offi-  
 15      cers and employees of such institution sufficient to deter-  
 16      mine whether the compensation structure—

17           (1) is aligned with sound risk management;

18           (2) is structured to account for the time hori-  
 19      zon of risks; and

20           (3) meets such other criteria as the appropriate  
 21      Federal regulators jointly may determine to be ap-  
 22      propriate to reduce unreasonable incentives for offi-  
 23      cers and employees to take undue risks that—

24           (A) could threaten the safety and sound-  
 25      ness of covered financial institutions; or

1 (B) could have serious adverse effects on  
2 economic conditions or financial stability.

3 (b) PROHIBITION ON CERTAIN COMPENSATION  
4 STRUCTURES.—Not later than 270 days after the date of  
5 enactment of this Act, and taking into account the factors  
6 described in paragraphs (1), (2), and (3) of subsection (a),  
7 the appropriate Federal regulators shall jointly prescribe  
8 regulations that prohibit any compensation structure or  
9 incentive-based payment arrangement, or any feature of  
10 any such compensation structure or arrangement, that the  
11 regulators determine encourages inappropriate risks by fi-  
12 nancial institutions or officers or employees of covered fi-  
13 nancial institutions that—

14 (1) could threaten the safety and soundness of  
15 covered financial institutions; or

16 (2) could have serious adverse effects on eco-  
17 nomic conditions or financial stability.

18 (c) ENFORCEMENT.—The provisions of this section  
19 shall be enforced under section 505 of the Gramm-Leach-  
20 Bliley Act and, for purposes of such section, a violation  
21 of this section shall be treated as a violation of subtitle  
22 A of title V of such Act.

23 (d) DEFINITIONS.—As used in this section—

24 (1) the term “appropriate Federal regulator”  
25 means—

1 (A) the Board of Governors of the Federal  
2 Reserve System;

3 (B) the Office of the Comptroller of the  
4 Currency;

5 (C) the Board of Directors of the Federal  
6 Deposit Insurance Corporation;

7 (D) the Director of the Office of Thrift  
8 Supervision;

9 (E) the National Credit Union Administra-  
10 tion Board; and

11 (F) the Securities and Exchange Commis-  
12 sion; and

13 (2) the term “covered financial institution”  
14 means—

15 (A) a depository institution or depository  
16 institution holding company, as such terms are  
17 defined in section 3 of the Federal Deposit In-  
18 surance Act (12 U.S.C. 1813);

19 (B) a broker-dealer registered under sec-  
20 tion 15 of the Securities Exchange Act of 1934  
21 (15 U.S.C. 78o);

22 (C) a credit union, as described in section  
23 19(b)(1)(A)(iv) of the Federal Reserve Act;

24 (D) an investment advisor, as such term is  
25 defined in section 202(a)(11) of the Investment

1           Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));  
2           and  
3           (E) any other financial institution that the  
4           appropriate Federal regulators, jointly, by rule,  
5           determine should be treated as a covered finan-  
6           cial institution for purposes of this section.

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