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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

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.

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on _____

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 (a) AMENDMENT.—Section 14 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78n) is amended by adding
5 at the end the following 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 December 15, 2009,
12 shall provide for a separate shareholder vote to ap-
13 prove the compensation of executives as disclosed
14 pursuant to the Commission’s compensation disclo-
15 sure rules (which disclosure shall include the com-
16 pensation committee report, the compensation dis-
17 cussion and analysis, the compensation tables, and
18 any related materials). The shareholder vote shall
19 not be binding on the corporation or the board of di-
20 rectors and shall not be construed as overruling a
21 decision by such board, nor to create or imply any
22 additional fiduciary duty by such board, nor shall
23 such vote be construed to restrict or limit the ability
24 of shareholders to make proposals for inclusion in
25 such proxy materials related to executive compensa-
26 tion.

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

3 “(A) DISCLOSURE.—In any proxy or con-
4 sent solicitation material for an annual meeting
5 of the shareholders (or a special meeting in lieu
6 of the annual meeting) occurring on or after
7 December 15, 2009, that concerns an acquisi-
8 tion, merger, consolidation, or proposed sale or
9 other disposition of all or substantially all the
10 assets of an issuer, the person making such so-
11 licitation shall disclose in the proxy or consent
12 solicitation material, in a clear and simple tab-
13 ular form in accordance with regulations to be
14 promulgated by the Commission, any agree-
15 ments or understandings that such person has
16 with any principal executive officers of such
17 issuer (or of the acquiring issuer, if such issuer
18 is not the acquiring issuer) concerning any type
19 of compensation (whether present, deferred, or
20 contingent) that is based on or otherwise relates
21 to the acquisition, merger, consolidation, sale,
22 or other disposition of all or substantially all of
23 the assets of the issuer that have not been sub-
24 ject to a shareholder vote under paragraph (1),
25 and the aggregate total of all such compensa-

1 tion that may (and the conditions upon which
2 it may) be paid or become payable to or on be-
3 half of such executive officer.

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

21 (b) DEADLINE FOR RULEMAKING.—Not later than 1
22 year after the date of the enactment of this Act, the Secu-
23 rities and Exchange Commission shall issue any final rules
24 and regulations required by the amendments made by sub-
25 section (a).

1 **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

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

6 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-
7 MITTEES.**

8 “(a) COMMISSION RULES.—

9 “(1) IN GENERAL.—Effective not later than
10 270 days after the date of enactment of the Cor-
11 porate and Financial Institution Compensation Fair-
12 ness Act of 2009, the Commission shall, by rule, di-
13 rect the national securities exchanges and national
14 securities associations to prohibit the listing of any
15 security of an issuer that is not in compliance with
16 the requirements of any portion of subsections (b)
17 through (f).

18 “(2) OPPORTUNITY TO CURE DEFECTS.—The
19 rules of the Commission under paragraph (1) shall
20 provide for appropriate procedures for an issuer to
21 have an opportunity to cure any defects that would
22 be the basis for a prohibition under paragraph (1)
23 before the imposition of such prohibition.

24 “(3) EXEMPTION AUTHORITY.—The Commis-
25 sion may exempt certain categories of issuers from
26 the requirements of subsections (b) through (f),

1 where appropriate in view of the purpose of this sec-
2 tion. In determining appropriate exemptions, the
3 Commission shall take into account, among other
4 considerations, the potential impact on smaller re-
5 porting issuers.

6 “(b) INDEPENDENCE OF COMPENSATION COMMIT-
7 TEES.—

8 “(1) IN GENERAL.—Each member of the com-
9 pensation committee of the board of directors of the
10 issuer shall be a member of the board of directors
11 of the issuer, and shall otherwise be independent.

12 “(2) CRITERIA.—In order to be considered to
13 be independent for purposes of this subsection, a
14 member of a compensation committee of an issuer
15 may not, other than in his or her capacity as a
16 member of the compensation committee, the board
17 of directors, or any other board committee—

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

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

22 “(C) EXEMPTIVE AUTHORITY.—The Com-
23 mission may exempt from the requirements of
24 paragraph (2) a particular relationship with re-
25 spect to compensation committee members,

1 where appropriate in view of the purpose of this
2 section.

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

5 “(A) a committee (or equivalent body) es-
6 tablished by and amongst the board of directors
7 of an issuer for the purpose of determining and
8 approving the compensation arrangements for
9 the executive officers of the issuer; and

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

13 “(c) INDEPENDENCE STANDARDS FOR COMPENSA-
14 TION CONSULTANTS AND OTHER COMMITTEE ADVI-
15 SORS.—Any compensation consultant, legal counsel, or
16 other adviser to the compensation committee of any issuer
17 shall meet standards for independence established by the
18 Commission by regulation.

19 “(d) COMPENSATION COMMITTEE AUTHORITY RE-
20 LATING TO COMPENSATION CONSULTANTS.—

21 “(1) IN GENERAL.—The compensation com-
22 mittee of each issuer, in its capacity as a committee
23 of the board of directors, shall have the authority,
24 in its sole discretion, to retain and obtain the advice
25 of a compensation consultant meeting the standards

1 for independence promulgated pursuant to sub-
2 section (c), and the compensation committee shall be
3 directly responsible for the appointment, compensa-
4 tion, and oversight of the work of such independent
5 compensation consultant. This provision shall not be
6 construed to require the compensation committee to
7 implement or act consistently with the advice or rec-
8 ommendations of the compensation consultant, and
9 shall not otherwise affect the compensation commit-
10 tee's ability or obligation to exercise its own judg-
11 ment in fulfillment of its duties.

12 “(2) DISCLOSURE.—In any proxy or consent
13 solicitation material for an annual meeting of the
14 shareholders (or a special meeting in lieu of the an-
15 nual meeting) occurring on or after the date that is
16 1 year after the date of enactment of the Corporate
17 and Financial Institution Compensation Fairness
18 Act of 2009, each issuer shall disclose in the proxy
19 or consent material, in accordance with regulations
20 to be promulgated by the Commission—

21 “(A) whether the compensation committee
22 of the issuer retained and obtained the advice
23 of a compensation consultant meeting the
24 standards for independence promulgated pursu-
25 ant to subsection (c); and

1 “(B) if the compensation committee of the
2 issuer has not retained and obtained the advice
3 of a compensation consultant meeting the
4 standards for independence promulgated pursu-
5 ant to subsection (c), an explanation of the
6 basis for the compensation committee’s deter-
7 mination that the retention of such an inde-
8 pendent consultant was not in the interests of
9 shareholders.

10 “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-
11 SEL AND OTHER ADVISORS.—The compensation com-
12 mittee of each issuer, in its capacity as a committee of
13 the board of directors, shall have the authority, in its sole
14 discretion, to retain and obtain the advice of independent
15 counsel and other advisers meeting the standards for inde-
16 pendence promulgated pursuant to subsection (c), and the
17 compensation committee shall be directly responsible for
18 the appointment, compensation, and oversight of the work
19 of such independent counsel and other advisers. This pro-
20 vision shall not be construed to require the compensation
21 committee to implement or act consistently with the advice
22 or recommendations of such independent counsel and
23 other advisers, and shall not otherwise affect the com-
24 pensation committee’s ability or obligation to exercise its
25 own judgment in fulfillment of its duties.

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

5 “(1) to any compensation consultant to the
6 compensation committee that meets the standards
7 for independence promulgated pursuant to sub-
8 section (c), and

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

11 (b) STUDY AND REVIEW REQUIRED.—

12 (1) IN GENERAL.—The Securities Exchange
13 Commission shall conduct a study and review of the
14 use of compensation consultants meeting the stand-
15 ards for independence promulgated pursuant to sec-
16 tion 10B(c) of the Security Exchange Act of 1934
17 (as added by subsection (a)), and the effects of such
18 use.

19 (2) REPORT TO CONGRESS.—Not later than 2
20 years after the date of enactment of this Act, the
21 Commission shall submit a report to the Congress
22 on the results of the study and review required by
23 this paragraph.

1 **SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORT-**
2 **ING TO REDUCE PERVERSE INCENTIVES.**

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

12 (1) properly measures and rewards perform-
13 ance;

14 (2) is structured to account for the time hori-
15 zon of risks;

16 (3) is aligned with sound risk management; and

17 (4) meets such other criteria as the agencies
18 may determine to be appropriate to reduce unrea-
19 sonable incentives for officers and employees to take
20 undue risks that could have serious adverse effects.

21 (b) PROHIBITION ON CERTAIN COMPENSATION
22 STRUCTURES.—Not later than 270 days after the date of
23 enactment of this Act, and taking into account the factors
24 described in paragraphs (1), (2), (3), and (4) of subsection
25 (a), the appropriate Federal regulators shall jointly pre-
26 scribe regulations that prohibit any compensation struc-

1 ture or incentive-based payment arrangement, or any fea-
2 ture of any such compensation structure or arrangement,
3 that the regulators determine encourages inappropriate
4 risks by financial institutions or officers or employees of
5 covered financial institutions that—

6 (1) could have serious adverse effects on eco-
7 nomic conditions or financial stability; or

8 (2) could threaten the safety and soundness of
9 the covered financial institution.

10 (c) ENFORCEMENT.—The provisions of this section
11 shall be enforced under section 505 of the Gramm-Leach-
12 Bliley Act and, for purposes of such section, a violation
13 of this section shall be treated as a violation of subtitle
14 A of title V of such Act.

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

16 (1) the term “appropriate Federal regulator”
17 means—

18 (A) the Board of Governors of the Federal
19 Reserve System;

20 (B) the Office of the Comptroller of the
21 Currency;

22 (C) the Board of Directors of the Federal
23 Deposit Insurance Corporation;

24 (D) the Director of the Office of Thrift
25 Supervision;

1 (E) the National Credit Union Administra-
2 tion Board; and

3 (F) the Securities and Exchange Commis-
4 sion; and

5 (2) the term “covered financial institution”
6 means—

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

11 (B) a broker-dealer registered under sec-
12 tion 15 of the Securities Exchange Act of 1934
13 (15 U.S.C. 78o);

14 (C) a credit union, as described in section
15 19(b)(1)(A)(iv) of the Federal Reserve Act;

16 (D) an investment advisor, as such term is
17 defined in section 202(a)(11) of the Investment
18 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));
19 and

20 (E) any other financial institution that the
21 appropriate Federal regulators, jointly, by rule,
22 determine should be treated as a covered finan-
23 cial institution for purposes of this section.