AN ACT

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Corporate and Financial Institution Compensation Fairness Act of 2009”.

SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(i) Annual Shareholder Approval of Executive Compensation.—

“(1) Annual vote.—Any proxy or consent or authorization (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) where proxies are solicited in respect of any security registered under section 12 occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder vote to approve the compensation of executives as disclosed pursuant to the Commission’s compensation disclosure rules for named executive officers (which disclosure shall include the compensation committee report, the compensation discussion and analysis, the compensation tables, and any related materials, to
the extent required by such rules). The shareholder vote shall not be binding on the issuer or the board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

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

“(A) DISCLOSURE.—In any proxy or consent solicitation material (the solicitation of which is subject to the rules of the Commission pursuant to subsection (a)) for a meeting of the shareholders occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple form in accordance with regulations to be promulgated
by the Commission, any agreements or understandings that such person has with any named executive officers of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of the issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such executive officer.

“(B) Shareholder Approval.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed, unless such agreements or understandings have been subject to a shareholder vote under paragraph (1). A vote by the shareholders shall not be binding on the issuer or the board of directors of the issuer or the person making the solicita-
tion and shall not be construed as overruling a
decision by any such person or issuer, nor to
create or imply any additional fiduciary duty by
any such person or issuer.

“(3) DISCLOSURE OF VOTES.—Every institu-
tional investment manager subject to section 13(f)
shall report at least annually how it voted on any
shareholder vote pursuant to paragraphs (1) or (2)
of this section, unless such vote is otherwise required
to be reported publicly by rule or regulation of the
Commission.

“(4) RULEMAKING.—Not later than 6 months
after the date of the enactment of the Corporate and
Financial Institution Compensation Fairness Act of
2009, the Commission shall issue final rules to im-
plement this subsection.

“(5) EXEMPTION AUTHORITY.—The Commis-
sion may exempt certain categories of issuers from
the requirements of this subsection, where appro-
priate in view of the purpose of this subsection. In
determining appropriate exemptions, the Commis-
sion shall take into account, among other consider-
ations, the potential impact on smaller reporting
issuers.”.
SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

“(a) COMMISSION RULES.—

“(1) IN GENERAL.—Effective not later than 9 months after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

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

“(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f),
where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

“(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

“(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be independent.

“(2) CRITERIA.—In order to be considered to be independent for purposes of this subsection, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee accept any consulting, advisory, or other compensatory fee from the issuer.

“(3) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

“(4) DEFINITION.—As used in this section, the term ‘compensation committee’ means—
“(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

“(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

“(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—Any compensation consultant or other similar adviser to the compensation committee of any issuer shall meet standards for independence established by the Commission by regulation.

“(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

“(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent
compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee’s ability or obligation to exercise its own judgment in fulfillment of its duties.

“(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

“(3) REGULATIONS.—In promulgating regulations under this subsection or any other provision of law with respect to compensation consultants, the Commission shall ensure that such regulations are competitively neutral among categories of consult-
ants and preserve the ability of compensation com-
mittees to retain the services of members of any
such category.

“(e) Authority To Engage Independent COUN-
sel and Other Advisors.—The compensation com-
mittee of each issuer, in its capacity as a committee of
the board of directors, shall have the authority, in its sole
discretion, to retain and obtain the advice of independent
counsel and other advisers meeting the standards for inde-
pendence promulgated pursuant to subsection (c), and the
compensation committee shall be directly responsible for
the appointment, compensation, and oversight of the work
of such independent counsel and other advisers. This pro-
vision shall not be construed to require the compensation
committee to implement or act consistently with the advice
or recommendations of such independent counsel and
other advisers, and shall not otherwise affect the com-
pensation committee’s ability or obligation to exercise its
own judgment in fulfillment of its duties.

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

“(1) to any compensation consultant to the
compensation committee that meets the standards
for independence promulgated pursuant to sub-
section (e), and

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

(b) STUDY AND REVIEW REQUIRED.—

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

(2) REPORT TO CONGRESS.—Not later than 2
years after the rules required by the amendment
made by this section take effect, the Commission
shall submit a report to the Congress on the results
of the study and review required by this paragraph.

SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORT-

ING TO REDUCE PERVERSE INCENTIVES.

(a) ENHANCED DISCLOSURE AND REPORTING OF
COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months
after the date of enactment of this Act, the appro-
priate Federal regulators jointly shall prescribe regu-
lations to require each covered financial institution
to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) is aligned with sound risk management;

(B) is structured to account for the time horizon of risks; and

(C) meets such other criteria as the appropriate Federal regulators jointly may determine to be appropriate to reduce unreasonable incentives offered by such institutions for employees to take undue risks that—

(i) could threaten the safety and soundness of covered financial institutions;

or

(ii) could have serious adverse effects on economic conditions or financial stability.

(2) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this subsection shall be construed to require a covered financial institution that
does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) Prohibition on Certain Compensation Arrangements.—Not later than 9 months after the date of enactment of this Act, and taking into account the factors described in subparagraphs (A), (B), and (C) of subsection (a)(1), the appropriate Federal regulators shall jointly prescribe regulations that prohibit any incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions that—(1) could threaten the safety and soundness of covered financial institutions; or
(2) could have serious adverse effects on economic conditions or financial stability.

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

(d) Definitions.—As used in this section—
(1) the term “appropriate Federal regulator” means—
(A) the Board of Governors of the Federal Reserve System;

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

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

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

(E) the National Credit Union Administration Board;

(F) the Securities and Exchange Commission; and

(G) the Federal Housing Finance Agency;

and

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

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;
(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(e) Exemption for Certain Financial Institutions.—The requirements of this section shall not apply to covered financial institutions with assets of less than $1,000,000,000.

(f) Limitation.—No regulation promulgated pursuant to this section shall be allowed to require the recovery of incentive-based compensation under compensation arrangements in effect on the date of enactment of this Act, provided such compensation agreements are for a period of no more than 24 months. Nothing in this Act shall prevent or limit the recovery of incentive-based compensation under any other applicable law.

(g) GAO Study.—

(1) Study required.—
(A) IN GENERAL.—The Comptroller General of the United States shall carry out a study to determine whether there is a correlation between compensation structures and excessive risk taking.

(B) FACTORS TO CONSIDER.—In carrying out the study required under subparagraph (A), the Comptroller General shall—

(i) consider compensation structures used by companies from 2000 to 2008; and

(ii) compare companies that failed, or nearly failed but for government assistance, to companies that remained viable throughout the housing and credit market crisis of 2007 and 2008, including the compensation practices of all such companies.

(C) DETERMINING COMPANIES THAT FAILED OR NEARLY FAILED.—In determining whether a company failed, or nearly failed but for government assistance, for purposes of subparagraph (B)(ii), the Comptroller General shall focus on—

(i) companies that received exceptional assistance under the Troubled Asset
Relief Program under title I of the Emergency Economic Stabilization Act of 2009 (12 U.S.C. 5211 et seq.) or other forms of significant government assistance, including under the Automotive Industry Financing Program, the Targeted Investment Program, the Asset Guarantee Program, and the Systemically Significant Failing Institutions Program;

(ii) the Federal National Mortgage Association;

(iii) the Federal Home Loan Mortgage Corporation; and

(iv) companies that participated in the Security and Exchange Commission’s Consolidated Supervised Entities Program as of January 2008.

(2) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Comptroller General shall issue a re-
port to the Congress containing the results of the study required under paragraph (1).

Passed the House of Representatives July 31, 2009.

Attest:

Clerk.
AN ACT

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H. R. 3269
111TH CONGRESS
1ST SESSION