

111TH CONGRESS  
1ST SESSION

# S. 1074

To provide shareholders with enhanced authority over the nomination,  
election, and compensation of public company executives.

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IN THE SENATE OF THE UNITED STATES

MAY 19, 2009

Mr. SCHUMER (for himself and Ms. CANTWELL) introduced the following bill;  
which was read twice and referred to the Committee on Banking, Housing,  
and Urban Affairs

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## A BILL

To provide shareholders with enhanced authority over the  
nomination, election, and compensation of public com-  
pany executives.

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 “Shareholder Bill of  
5 Rights Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) among the central causes of the financial  
9 and economic crises that the United States faces

1 today has been a widespread failure of corporate  
2 governance;

3 (2) within too many of the Nation's most im-  
4 portant businesses and financial institutions, both  
5 executive management and boards of directors have  
6 failed in their most basic duties, including to enact  
7 compensation policies that are linked to the long-  
8 term profitability of their institutions, to appro-  
9 priately analyze and oversee enterprise risk, and  
10 most importantly, to prioritize the long-term health  
11 of their firms and their shareholders;

12 (3) such failure has led to the loss of trillions  
13 of dollars in shareholder value, losses that have been  
14 borne by millions of Americans who are shareholders  
15 through their pension plans, 401(k) plans, and di-  
16 rect investments;

17 (4) a key contributing factor to such failure was  
18 the lack of accountability of boards to their ultimate  
19 owners, the shareholders;

20 (5) policies that serve to limit the ability of  
21 shareholders to nominate and elect board members  
22 have served to minimize the accountability of boards  
23 and management to shareholders;

24 (6) it has always been the intent of Congress  
25 that the Securities and Exchange Commission

1 should have full authority to determine the use of  
 2 the issuer proxy with regards to the nomination and  
 3 election of directors by shareholders; and

4 (7) providing a greater voice to shareholders  
 5 while not impinging on management prerogatives is  
 6 in the best interests of shareholders, public corpora-  
 7 tions, and the economy as a whole.

8 **SEC. 3. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
 9 **TION DISCLOSURES.**

10 (a) AMENDMENT.—The Securities Exchange Act of  
 11 1934 (15 U.S.C. 78a et seq.) is amended by inserting after  
 12 section 14 the following new section:

13 **“SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECU-**  
 14 **TIVE COMPENSATION.**

15 “(a) SEPARATE RESOLUTION REQUIRED.—Any  
 16 proxy or consent or authorization for an annual or other  
 17 meeting for which the proxy solicitation rules of the Com-  
 18 mission require compensation disclosure of the share-  
 19 holders occurring after the end of the 1-year period begin-  
 20 ning on the date of enactment of this subsection, shall in-  
 21 clude a separate resolution subject to shareholder vote to  
 22 approve the compensation of executives as disclosed pursu-  
 23 ant to the compensation disclosure rules of the Commis-  
 24 sion (which disclosure shall include the compensation dis-

1 cussion and analysis, the compensation tables, and any re-  
2 lated material).

3 “(b) RULE OF CONSTRUCTION.—The shareholder  
4 vote referred to in subsection (a) shall not be binding on  
5 the board of directors and shall not be construed—

6 “(1) as overruling a decision by such board;

7 “(2) to create or imply any change to the cur-  
8 rent fiduciary duties of such board;

9 “(3) to create or imply any additional fiduciary  
10 duty by such board; or

11 “(4) to restrict or limit the ability of share-  
12 holders to make proposals for inclusion in such  
13 proxy materials related to executive compensation.

14 “(c) SHAREHOLDER APPROVAL OF GOLDEN PARA-  
15 CHUTE COMPENSATION.—

16 “(1) DISCLOSURE.—In any proxy solicitation  
17 material for an annual or other meeting of the  
18 shareholders occurring after the end of the 1-year  
19 period beginning on the date of enactment of this  
20 subsection, that concerns an acquisition, merger,  
21 consolidation, or proposed sale or other disposition  
22 of substantially all of the assets of an issuer, the  
23 person making such solicitation shall disclose in the  
24 proxy solicitation material, in a clear and simple  
25 form in accordance with regulations of the Commis-

1 sion, any agreements or understandings that such  
2 person has with any principal executive officers of  
3 such issuer (or of the acquiring issuer, if such issuer  
4 is not the acquiring issuer) concerning any type of  
5 compensation (whether present, deferred, or contin-  
6 gent) that are based on or are otherwise related to  
7 the acquisition, merger, consolidation, sale, or other  
8 disposition, and that have not been subject to a  
9 shareholder vote under subsection (a).

10 “(2) SHAREHOLDER APPROVAL.—

11 “(A) IN GENERAL.—The proxy solicitation  
12 material containing the disclosure required by  
13 paragraph (1) shall require a separate share-  
14 holder vote to approve such agreements or un-  
15 derstandings.

16 “(B) RULE OF CONSTRUCTION.—A vote by  
17 the shareholders referred to in subparagraph  
18 (A) shall not be binding on the board of direc-  
19 tors and shall not be construed—

20 “(i) as overruling a decision by such  
21 board;

22 “(ii) to create or imply any change to  
23 the current fiduciary duties of such board;

24 “(iii) to create or imply any additional  
25 fiduciary duty by such board; or

1                   “(iv) to restrict or limit the ability of  
 2                   shareholders to make proposals for inclu-  
 3                   sion in such proxy materials related to ex-  
 4                   ecutive compensation.”.

5           (b) DEADLINE FOR RULEMAKING.—Not later than 1  
 6 year after the date of the enactment of this Act, the Secu-  
 7 rities and Exchange Commission (in this Act referred to  
 8 as the “Commission”) shall issue final rules to carry out  
 9 section 14A of the Securities Exchange Act of 1934, as  
 10 added by this section.

11 **SEC. 4. SHAREHOLDER INPUT IN BOARD ELECTIONS.**

12           Section 14A of the Securities Exchange Act of 1934,  
 13 as added by this Act, is amended by adding at the end  
 14 the following:

15           “(d) CONFIRMATION OF COMMISSION AUTHORITY ON  
 16 SHAREHOLDER ACCESS TO PROXIES FOR BOARD NOMI-  
 17 NATIONS.—

18                   “(1) COMMISSION RULES.—The Commission  
 19                   shall establish rules relating to the use by share-  
 20                   holders of proxy solicitation materials supplied by  
 21                   the issuer for the purpose of nominating individuals  
 22                   to membership on the board of directors of an  
 23                   issuer.

24                   “(2) SHAREHOLDER REQUIREMENTS.—The  
 25                   rules of the Commission under this paragraph relat-

1       ing to the use by shareholders of proxy solicitation  
2       materials supplied by the issuer for the purpose of  
3       nominating individuals to membership on the board  
4       of directors of an issuer may not provide for such  
5       use, unless the shareholder, or a group of share-  
6       holders acting by agreement, has beneficially owned,  
7       directly or indirectly, an aggregate of not less than  
8       one percent of the voting securities of the issuer for  
9       at least the 2-year period preceding the date of the  
10      next scheduled annual meeting of the issuer.”.

11 **SEC. 5. CORPORATE GOVERNANCE STANDARDS.**

12       Section 14A of the Securities Exchange Act of 1934,  
13 as added by this Act, is amended by adding at the end  
14 the following:

15       “(e) CORPORATE GOVERNANCE STANDARDS.—

16               “(1) LISTING STANDARDS.—

17                       “(A) IN GENERAL.—Not later than 1 year  
18 after the date of enactment of this subsection,  
19 the Commission shall, by rule, direct the na-  
20 tional securities exchanges and national securi-  
21 ties associations to prohibit the listing of any  
22 security of an issuer that is not in compliance  
23 with any of the requirements of paragraphs (2)  
24 through (5), notwithstanding any other provi-  
25 sion of law.

1           “(B) OPPORTUNITY TO COMPLY AND  
2 CURE.—The rules under this paragraph shall  
3 provide for appropriate procedures for an issuer  
4 to have an opportunity to come into compliance  
5 with the requirements of this subsection and to  
6 cure any defects that would be the basis for a  
7 prohibition under subparagraph (A), before the  
8 imposition of such prohibition.

9           “(C) AUTHORITY TO EXEMPT.—The Com-  
10 mission may, by rule or order, exempt certain  
11 issuers from any or all of the requirements of  
12 this subsection and the rules issued under this  
13 subsection, based on the size of the issuer, mar-  
14 ket capitalization, public float, number of share-  
15 holders of record, or other criteria, as the Com-  
16 mission deems necessary or appropriate.

17           “(2) DIRECTOR INDEPENDENCE.—Each issuer  
18 shall provide in governing documents or in a public  
19 statement of corporate policy that, consistent with  
20 the status of the issuer as a company having a class  
21 of equity securities that are registered under sub-  
22 section (b) or (g) of section 12, the chairperson of  
23 the board of directors of the issuer—

24           “(A) shall be independent, as determined  
25 in accordance with the rules of the exchange on

1           which the securities of such issuer are listed,  
2           and otherwise by rule of the Commission; and

3           “(B) shall not have previously served as an  
4           executive officer of the issuer.

5           “(3) ANNUAL ELECTIONS REQUIRED.—Each  
6           issuer shall provide in its governing documents that  
7           each member of the board of directors of the issuer  
8           shall be subject to annual election by the share-  
9           holders. Nothing in this subsection may be construed  
10          to establish a maximum period of service, or other-  
11          wise limit the terms of service, on the board of direc-  
12          tors of an issuer.

13          “(4) COMMISSION RULES ON ELECTIONS.—In  
14          board elections—

15                 “(A) directors in uncontested elections  
16                 shall be elected by a majority of votes cast as  
17                 to each nominee;

18                 “(B) if such election is contested, where  
19                 the number of nominees exceeds the number of  
20                 directors to be elected, directors shall be elected  
21                 by the vote of a plurality of the shares rep-  
22                 resented at an any meeting and entitled to vote;  
23                 and

1           “(C) if a member of the board of directors  
2 of an issuer is not elected to a new term in an  
3 uncontested election—

4           “(i) such director shall tender his or  
5 her resignation to the board of directors;  
6 and

7           “(ii) the board of directors shall—

8           “(I) accept such resignation;

9           “(II) determine a date on which  
10 such resignation will take effect, with-  
11 in a reasonable period of time, as es-  
12 tablished by the Commission; and

13           “(III) make that date public  
14 within a reasonable period of time.

15           “(5) RISK COMMITTEE.—

16           “(A) IN GENERAL.—Each issuer shall, 1  
17 year after the date of issuance of final rules  
18 under subparagraph (B), establish a risk com-  
19 mittee, comprised entirely of independent direc-  
20 tors, which shall be responsible for the estab-  
21 lishment and evaluation of the risk management  
22 practices of the issuer.

23           “(B) COMMISSION RULEMAKING.—The  
24 Commission shall issue final rules regarding the  
25 establishment of risk committees under this

1 paragraph, not later than 1 year after the date  
2 of enactment of this subsection.”.

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