

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3269
OFFERED BY MR. GARRETT**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

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

**4 SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-
5 TION.**

6 (a) AMENDMENT TO THE SECURITIES EXCHANGE
7 ACT OF 1934.—Section 14 of the Securities Exchange Act
8 of 1934 (15 U.S.C. 78n) is amended by adding at the end
9 the following new subsection:

10 “(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON
11 EXECUTIVE COMPENSATION.—

12 “(1) IN GENERAL.—A proxy or consent or au-
13 thorization for an annual meeting of the share-
14 holders (or a special meeting in lieu of the annual
15 meeting) occurring on or after the date that is 6
16 months after the date on which final rules are issued
17 under paragraph (4), shall provide for a separate
18 shareholder advisory vote, at least once every three

1 years, to approve the registrant's executive com-
2 pensation policies and practices as set forth pursu-
3 ant to the Commission's disclosure rules. The share-
4 holder vote shall be advisory in nature and shall not
5 be binding on the issuer or its board of directors and
6 shall not be construed as overruling a decision by
7 such board, nor to create or imply any additional fi-
8 duciary duty by such board, nor shall such vote be
9 construed to restrict or limit the ability of share-
10 holders to make proposals for inclusion in proxy ma-
11 terials related to executive compensation for meet-
12 ings of shareholders at which such an advisory vote
13 on executive compensation is not to be conducted.

14 “(2) OPT OUT.—If not less than $\frac{2}{3}$ of votes
15 cast at a meeting of shareholders on a proposal to
16 opt out of the triennial shareholder advisory vote on
17 executive compensation required under paragraph
18 (1) are cast in favor of such a proposal, then such
19 shareholder advisory vote required under such para-
20 graph shall not be required to take place for a pe-
21 riod of 5 years following the vote approving such
22 proposal.

23 “(3) SHAREHOLDER APPROVAL OF GOLDEN
24 PARACHUTE COMPENSATION.—

1 “(A) DISCLOSURE.—In any proxy or con-
2 sent solicitation material for an annual meeting
3 of the shareholders (or a special meeting in lieu
4 of the annual meeting) occurring on or after
5 the date that is 6 months after the date on
6 which final rules are issued under paragraph
7 (4), that concerns an acquisition, merger, con-
8 solidations, or proposed sale or other disposition
9 of all or substantially all the assets of an issuer,
10 the person making such solicitation shall dis-
11 close in the proxy or consent solicitation mate-
12 rial, in a clear and simple tabular form in ac-
13 cordance with regulations to be promulgated by
14 the Commission, any agreements or under-
15 standings that such person has with the named
16 executive officers (as such term is defined in
17 the rules promulgated by the Commission) of
18 such issuer (or of the acquiring issuer, if such
19 issuer is not the acquiring issuer) concerning
20 any type of compensation (whether present, de-
21 ferred, or contingent) that is based on or other-
22 wise relates to the acquisition, merger, consoli-
23 dation, sale, or other dispositions of all or sub-
24 stantially all of the assets of the issuer, and the
25 aggregate total of all such compensation that

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

4 “(B) SHAREHOLDER APPROVAL.—Any
5 proxy or consent or authorization relating to
6 the proxy or consent solicitation 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.”

17 “(4) RULEMAKING.—Not later than 1 year
18 after the date of the enactment of the Corporate and
19 Financial Institution Compensation Fairness Act of
20 2009, the Commission shall issue rules and regula-
21 tions to implement this subsection.”.

22 (b) STUDY AND REPORT.—The Securities and Ex-
23 change Commission shall conduct a study and review of
24 the results of shareholder advisory votes on executive com-
25 pensation held pursuant to this section and the effects of

1 such votes. Not later than 5 years after the date of enact-
2 ment of this Act, the Securities and Exchange Commission
3 shall submit a report to the Congress on the results of
4 the study and review required by this subsection.

5 **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

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

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

12 “(a) COMMISSION RULES.—

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

22 “(2) OPPORTUNITY TO CURE DEFECTS.—The
23 rules of the Commission under paragraph (1) shall
24 provide for appropriate procedures for an issuer to
25 have an opportunity to cure any defects that would

1 be the basis for a prohibition under paragraph (1)
2 before the imposition of such prohibition.

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

11 “(4) NO FEDERAL PREEMPTION.—If the law of
12 the State under which an issuer is incorporated pro-
13 vides for a procedure for the board of directors to
14 establish an independent compensation committee,
15 then such State law shall be controlling and nothing
16 in this section shall preempt such State law.

17 “(b) INDEPENDENCE OF COMPENSATION COMMIT-
18 TEES.—

19 “(1) IN GENERAL.—Each member of the com-
20 pensation committee of the board of directors of the
21 issuer shall be a member of the board of directors
22 of the issuer, and shall otherwise be independent.

23 “(2) CRITERIA.—The Commission shall, by
24 rule, establish the criteria for determining whether a
25 director is independent for purposes of this sub-

1 section. Such rules shall require that a member of
2 a compensation committee of an issuer may not,
3 other than in his or her capacity as a member of the
4 compensation committee, the board of directors, or
5 any other board committee—

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

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

10 “(3) EXEMPTIVE AUTHORITY.—The Commis-
11 sion may exempt from the requirements of para-
12 graph (2) a particular relationship with respect to
13 compensation committee members, where appro-
14 priate in view of the purpose of this section.

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

17 “(A) a committee (or equivalent body) es-
18 tablished by and amongst the board of directors
19 of an issuer for the purpose of determining and
20 approving the compensation arrangements for
21 the executive officers of the issuer; and

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

1 “(c) INDEPENDENCE STANDARDS FOR COMPENSA-
2 TION CONSULTANTS AND OTHER COMMITTEE ADVI-
3 SORS.—The charter of the compensation committee of the
4 board of directors of an issuer shall set forth that any
5 outside compensation consultant formally engaged or re-
6 tained by the compensation committee shall meet stand-
7 ards for independence to be promulgated by the Commis-
8 sion.

9 “(d) COMPENSATION COMMITTEE AUTHORITY RE-
10 LATING TO COMPENSATION CONSULTANTS.—

11 “(1) IN GENERAL.—The compensation com-
12 mittee of each issuer, in its capacity as a committee
13 of the board of directors, shall have the authority,
14 in its sole discretion, to retain and obtain the advice
15 of a compensation consultant meeting the standards
16 for independence promulgated pursuant to sub-
17 section (c), and the compensation committee shall be
18 directly responsible for the appointment, compensa-
19 tion, and oversight of the work of such independent
20 compensation consultant. This provision shall not be
21 construed to require the compensation committee to
22 implement or act consistently with the advice or rec-
23 ommendations of the compensation consultant, and
24 shall not otherwise affect the compensation commit-

1 tee's ability or obligation to exercise its own judg-
2 ment in fulfillment of its duties.

3 “(2) DISCLOSURE.—In any proxy or consent
4 solicitation material for an annual meeting of the
5 shareholders (or a special meeting in lieu of the an-
6 nual meeting) occurring on or after the date that is
7 1 year after the date of enactment of the Corporate
8 and Financial Institution Compensation Fairness
9 Act of 2009, each issuer shall disclose in the proxy
10 or consent material, in accordance with regulations
11 to be promulgated by the Commission whether the
12 compensation committee of the issuer retained and
13 obtained the advice of a compensation consultant
14 meeting the standards for independence promulgated
15 pursuant to subsection (c).

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

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

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

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

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

17 (b) STUDY AND REVIEW REQUIRED.—

18 (1) IN GENERAL.—The Securities Exchange
19 Commission shall conduct a study and review of the
20 use of compensation consultants meeting the stand-
21 ards for independence promulgated pursuant to sec-
22 tion 10B(e) of the Security Exchange Act of 1934
23 (as added by subsection (a)), and the effects of such
24 use.

1 (2) REPORT TO CONGRESS.—Not later than 3
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.

