

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3269) TO AMEND THE
SECURITIES EXCHANGE ACT OF 1934 TO PROVIDE SHAREHOLDERS
WITH AN ADVISORY VOTE ON EXECUTIVE COMPENSATION AND TO PRE-
VENT PERVERSE INCENTIVES IN THE COMPENSATION PRACTICES OF
FINANCIAL INSTITUTIONS

JULY 30, 2009.—Referred to the House Calendar and ordered to be printed

Mr. MCGOVERN, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 697]

The Committee on Rules, having had under consideration House
Resolution 697, by a non-record vote, report the same to the House
with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3269, the “Cor-
porate and Financial Institution Compensation Fairness Act of
2009,” under a structured rule providing one hour of general debate
in the House equally divided and controlled by the chairman and
ranking minority member of the Committee on Financial Services.
The resolution waives all points of order against consideration of
the bill except for clauses 9 and 10 of rule XXI. The amendment
in the nature of a substitute recommended by the Committee on Fi-
nancial Services now printed in the bill shall be considered as
adopted. The resolution waives all points of order against provi-
sions of the bill, as amended. This waiver does not affect the point
of order available under clause 9 of rule XXI (regarding earmark
disclosure). The resolution provides that the bill, as amended, shall
be considered as read.

The resolution makes in order the amendment printed in this re-
port if offered by Rep. Frank or his designee, which shall be consid-
ered as read, shall be separately debatable for 10 minutes equally
divided and controlled by the proponent and an opponent, and shall
not be subject to a demand for division of the question. The resolu-
tion also makes in order the amendment in the nature of a sub-
stitute printed in this report, if offered by Representative Garrett
or his designee, which shall be separately debatable for 30 minutes
equally divided and controlled by the proponent and an opponent.

The resolution waives all points of order against the amendments printed in this report except for clauses 9 and 10 of rule XXI. The resolution provides one motion to recommit with or without instructions. The rule also provides that during consideration of an amendment printed in the report of the Committee on Rules accompanying this resolution, the Chair may postpone the question of adoption as though under clause 8 of rule XX. Finally the rule provides that in the engrossment of the bill, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except those arising under clause 9 or 10 of rule XXI) includes a waiver of clause 4(a) of rule XIII (regarding availability of committee report). Although the resolution waives all points of order against the bill, as amended, the Committee is not aware of any points of order. The waiver of all points of order is prophylactic.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 242

Date: July 30, 2009.

Measure: H.R. 3269.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Lance (NJ) and Price, Tom (GA), #3, which would strike section 4 of the bill and leave in place a GAO study into the effects of executive compensation on system risk.

Results: Defeated 3–7.

Vote by Members: McGovern—Nay; Hastings—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea.

Rules Committee record vote No. 243

Date: July 30, 2009.

Measure: H.R. 3269.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Sessions (TX), #4, which would clarify that this bill creates no new private right of action, nor would its passage make a compensation committee's decisions (including any action deemed non-compliant from this non-binding vote) subject to any existing private right of action, and an amendment by Rep. Sessions (TX), #5, which would create SEC disclosure requirements for any group wanting to influence the shareholder's vote, which would include the disclosure of, (1) who they are, (2) what activities they are engaged in, and (3) how much is being spent on these activities.

Results: Defeated 3–7.

Vote by Members: McGovern—Nay; Hastings—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea.

Rules Committee record vote No. 244

Date: July 30, 2009.

Measure: H.R. 3269.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Hensarling, #7, which would apply section 4 of the legislation only to TARP recipients and it would only be in effect while the federal assistance is outstanding.

Results: Defeated 3–7.

Vote by Members: McGovern—Nay; Hastings—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea.

SUMMARY OF AMENDMENTS TO BE MADE IN ORDER

1. Frank (MA)—Would strike language prohibiting clawbacks of executive compensation approved by shareholders and insert language prohibiting rules of financial regulators from requiring recovery of incentive-based pay under arrangements in effect on the date of enactment. (10 minutes)

2. Garrett (NJ): Amendment in the nature of a substitute—Would replace annual shareholder “say on pay” vote with a triennial vote on compensation for public companies, allow shareholders to opt out of “say on pay” provision, allow state law to preempt the bill regarding independent compensation committees, and strike Section 4 of the bill. (30 minutes)

TEXT OF AMENDMENTS TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK OF MASSACHUSETTS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 8, strike “(a) AMENDMENT.—”.

Page 7, strike lines 1 through 14.

Page 17, after line 4, insert the following:

(f) LIMITATION.—No regulation promulgated pursuant to this section shall 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.

Page 17, line 5, strike “(f)” and insert “(g)”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GARRETT OF NEW JERSEY, OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Strike all after the enacting clause and insert the following:

SEC. 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.

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—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) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.—

“(1) IN GENERAL.—A proxy or consent or authorization for an annual meeting of the shareholders to elect directors (or a special meeting in lieu of such meeting) 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 advisory vote, at least once every 3 years, to approve the issuer’s executive compensation policies and practices as set forth pursuant to the Commission’s disclosure rules. The shareholder vote shall be advisory in nature and shall not be binding on the issuer or its 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 proxy materials related to executive compensation for meetings of shareholders at which such an advisory vote on executive compensation is not to be conducted.

“(2) OPT OUT.—If not less than $\frac{2}{3}$ of votes cast at a meeting of shareholders on a proposal to opt out of the triennial shareholder advisory vote on executive compensation required under paragraph (1) are cast in favor of such a proposal, then such shareholder advisory vote required under such paragraph shall not be required to take place for a period of 5 years following the vote approving such proposal.

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

“(A) DISCLOSURE.—In any proxy or consent solicitation material 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 tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the named executive officers (as such term is defined in the rules promulgated by the Commission) 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 dispositions 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 named 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. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board.”

“(4) RULEMAKING.—Not later than 1 year after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue rules and regulations to implement this subsection.”

(b) STUDY AND REPORT.—The Securities and Exchange Commission shall conduct a study and review of the results of shareholder advisory votes on executive compensation held pursuant to this section and the effects of such votes. Not later than 5 years after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report to the Congress on the results of the study and review required by this subsection.

SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78f) 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 270 days 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 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.

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

“(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

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

of the board of directors of the issuer, and shall otherwise be independent.

“(2) CRITERIA.—The Commission shall, by rule, establish the criteria for determining whether a director is independent for purposes of this subsection. Such rules shall require that 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—

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

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

“(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.—The charter of the compensation committee of the board of directors of an issuer shall set forth that any outside compensation consultant formally engaged or retained by the compensation committee shall meet standards for independence to be promulgated by the Commission.

“(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).

“(e) **AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.**—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 independent counsel and other advisers 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 counsel and other advisers. This provision 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 compensation committee’s ability or obligation to exercise its own judgment in fulfillment of its duties.

“(f) **FUNDING.**—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

“(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c); and

“(2) to any independent counsel or other adviser to the compensation committee.”.

(b) **STUDY AND REVIEW REQUIRED.**—

(1) **IN GENERAL.**—The Securities Exchange 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 Security Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

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