

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3269, AS REPORTED  
OFFERED BY MR. GARRETT OF NEW JERSEY**

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 to elect directors (or a special meeting in  
15 lieu of such meeting) occurring on or after the date  
16 that is 6 months after the date on which final rules  
17 are issued under paragraph (4), shall provide for a  
18 separate shareholder advisory vote, at least once

1 every 3 years, to approve the issuer'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 a meeting of the  
3           shareholders occurring on or after the date that  
4           is 6 months after the date on which final rules  
5           are issued under paragraph (4), at which share-  
6           holders are asked to approve an acquisition,  
7           merger, consolidation, or proposed sale or other  
8           disposition of all or substantially all the assets  
9           of an issuer, the person making such solicita-  
10          tion shall disclose in the proxy or consent solici-  
11          tation material, in a clear and simple tabular  
12          form in accordance with regulations to be pro-  
13          mulgated by the Commission, any agreements  
14          or understandings that such person has with  
15          the named executive officers (as such term is  
16          defined in the rules promulgated by the Com-  
17          mission) of such issuer (or of the acquiring  
18          issuer, if such issuer is not the acquiring issuer)  
19          concerning any type of compensation (whether  
20          present, deferred, or contingent) that is based  
21          on or otherwise relates to the acquisition, merg-  
22          er, consolidation, sale, or other dispositions of  
23          all or substantially all of the assets of the  
24          issuer, and the aggregate total of all such com-  
25          pensation that may (and the conditions upon

1           which it may) be paid or become payable to or  
2           on behalf of such named executive officer.

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

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

21          (b) STUDY AND REPORT.—The Securities and Ex-  
22          change Commission shall conduct a study and review of  
23          the results of shareholder advisory votes on executive com-  
24          pensation held pursuant to this section and the effects of  
25          such votes. Not later than 5 years after the date of enact-

1 ment of this Act, the Securities and Exchange Commission  
2 shall submit a report to the Congress on the results of  
3 the study and review required by this subsection.

4 **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

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

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

11 “(a) COMMISSION RULES.—

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

21 “(2) OPPORTUNITY TO CURE DEFECTS.—The  
22 rules of the Commission under paragraph (1) shall  
23 provide for appropriate procedures for an issuer to  
24 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) EXEMPTION 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.

