

111TH CONGRESS  
1ST SESSION

# H. R. 3272

To amend the Securities Exchange Act of 1934 to add requirements for board of directors committees regarding risk management and compensation policies, to require non-binding shareholder votes on executive compensation, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2009

Mr. ELLISON introduced the following bill; which was referred to the  
Committee on Financial Services

---

## A BILL

To amend the Securities Exchange Act of 1934 to add requirements for board of directors committees regarding risk management and compensation policies, to require non-binding shareholder votes on executive compensation, and for other purposes.

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 “Corporate Governance  
5        Reform Act of 2009”.

1 **SEC. 2. INDEPENDENCE OF CHAIRMAN OF THE BOARD.**

2 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
3 et seq.) is amended by inserting after section 10A the fol-  
4 lowing new section:

5 **“SEC. 10B. INDEPENDENCE OF CHAIRMAN OF THE BOARD.**

6 “(a) INDEPENDENCE REQUIREMENT.—The chair-  
7 man of the board of directors of an issuer shall be inde-  
8 pendent.

9 “(b) PROHIBITION ON SERVICE AS EXECUTIVE OFFI-  
10 CER.—An individual may not serve as an executive officer  
11 of an issuer while serving as the chairman of the board  
12 of directors of such issuer.”.

13 **SEC. 3. RISK MANAGEMENT COMMITTEE.**

14 (a) IN GENERAL.—The Securities Exchange Act of  
15 1934 (15 U.S.C. 78a et seq.), as amended, is further  
16 amended by inserting after section 10B the following new  
17 section:

18 **“SEC. 10C. RISK MANAGEMENT.**

19 “(a) RISK MANAGEMENT COMMITTEE.—

20 “(1) INDEPENDENCE REQUIRED.—Each mem-  
21 ber of the risk management committee of an issuer  
22 shall be independent.

23 “(2) DUTIES.—The risk management com-  
24 mittee of an issuer shall periodically review the risk  
25 management policies of the issuer.

1       “(b) CHIEF RISK OFFICER.—Each issuer shall have  
2 a chief risk officer who shall—

3               “(1) establish, evaluate, and enforce the risk  
4 management policies and procedures of the issuer;  
5 and

6               “(2) report directly to the risk management  
7 committee.”.

8       (b) DEFINITION.—Section 3(a) of the Securities Ex-  
9 change Act (15 U.S.C. 78c(a)) is amended by adding at  
10 the end the following:

11               “(65) RISK MANAGEMENT COMMITTEE.—The  
12 term ‘risk management committee’ means—

13                       “(A) a committee (or equivalent body) es-  
14 tablished by and amongst the board of directors  
15 of an issuer for the purpose of overseeing the  
16 risk management policies and procedures of the  
17 issuer; and

18                       “(B) if no such committee exists with re-  
19 spect to an issuer, the entire board of directors  
20 of the issuer.”.

21 **SEC. 4. COMPENSATION COMMITTEE.**

22       (a) IN GENERAL.—The Securities Exchange Act of  
23 1934 (15 U.S.C. 78a et seq.), as amended, is further  
24 amended by inserting after section 10C the following new  
25 section:

1 **“SEC. 10D. COMPENSATION COMMITTEE.**

2 “(a) INDEPENDENCE REQUIRED.—Each member of  
3 the compensation committee of an issuer shall be inde-  
4 pendent.

5 “(b) DUTIES.—The compensation committee of an  
6 issuer shall periodically review all compensation practices  
7 and structures of the issuer.”.

8 (b) DEFINITION.—Section 3(a) of the Securities Ex-  
9 change Act (15 U.S.C. 78c(a)), as amended, is further  
10 amended by adding at the end the following:

11 “(66) COMPENSATION COMMITTEE.—The term  
12 ‘compensation committee’ means—

13 “(A) a committee (or equivalent body) es-  
14 tablished by and amongst the board of directors  
15 of an issuer for the purpose of overseeing and  
16 reviewing the compensation provided by the  
17 issuer to the executives and employees of the  
18 issuer; and

19 “(B) if no such committee exists with re-  
20 spect to an issuer, the entire board of directors  
21 of the issuer.”.

22 **SEC. 5. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
23 **TION.**

24 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
25 et seq.) is amended by inserting after section 14 the fol-  
26 lowing new section:

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

3 “(a) SEPARATE RESOLUTION REQUIRED.—Any  
4 proxy or consent or authorization for an annual or other  
5 meeting for which the proxy solicitation rules of the Com-  
6 mission require compensation disclosure of the share-  
7 holders occurring after the end of the 1-year period begin-  
8 ning on the date of enactment of this subsection, shall in-  
9 clude a separate resolution subject to shareholder vote to  
10 approve the compensation of executives as disclosed pursu-  
11 ant to the compensation disclosure rules of the Commis-  
12 sion (which disclosure shall include the compensation dis-  
13 cussion and analysis, the compensation tables, and any re-  
14 lated material).

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

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

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

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

23 “(4) to restrict or limit the ability of share-  
24 holders to make proposals for inclusion in such  
25 proxy materials related to executive compensation.”.

1 **SEC. 6. STUDY ON DIRECTOR CERTIFICATION.**

2 (a) **STUDY REQUIRED.**—The Securities and Ex-  
3 change Commission shall carry out a study on the feasi-  
4 bility of requiring, and the logistics of implementing, a cer-  
5 tification process under which an individual seeking to be-  
6 come a member of the board of directors of an issuer  
7 would have to first be certified by the Securities and Ex-  
8 change Commission as having the experience and expertise  
9 necessary to carry out the functions of a member of the  
10 board of directors of such issuer.

11 (b) **REPORT.**—Not later than the end of the 1-year  
12 period beginning on the date of the enactment of this Act,  
13 the Securities and Exchange Commission shall submit a  
14 report to the Committee on Financial Services of the  
15 House of Representatives and the Committee on Banking,  
16 Housing, and Urban Affairs of the Senate containing the  
17 conclusions of the study required under subsection (a).

18 **SEC. 7. REGULATIONS AND PROHIBITION ON LISTING FOR**  
19 **NON-COMPLIANCE.**

20 Not later than the end of the 6-month period begin-  
21 ning on the date of the enactment of this Act, the Securi-  
22 ties and Exchange Commission shall—

23 (1) issue regulations to carry out the amend-  
24 ments made by this Act; and

25 (2) by rule, direct the national securities ex-  
26 changes and national securities associations to pro-

1       hibit the listing of any security of an issuer that is  
2       not in compliance with the requirements of any por-  
3       tion of sections 10B, 10C, or 10D of the Securities  
4       Exchange Act of 1934.

5 **SEC. 8. EFFECTIVE DATE.**

6       The amendments made by this Act shall take effect  
7 with respect to issuers after the end of the 1-year period  
8 beginning on the date of the enactment of this Act.

○