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Shareholder Bill of Rights Act of 2009 (Introduced in Senate)

S 1074 IS

111th CONGRESS

1st Session

S. 1074

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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Shareholder Bill of Rights Act of 2009'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) among the central causes of the financial and economic crises that the United States faces today has been a widespread failure of corporate governance;
- (2) within too many of the Nation's most important businesses and financial institutions, both executive management and boards of directors have failed in their most basic duties, including to enact compensation policies that are linked to the long-term profitability of their institutions, to appropriately analyze and oversee enterprise risk, and most importantly, to prioritize the long-term health of their firms and their shareholders;
- (3) such failure has led to the loss of trillions of dollars in shareholder value, losses that have been borne by millions of Americans who are shareholders through their pension plans, 401(k) plans, and direct investments;
- (4) a key contributing factor to such failure was the lack of accountability of boards to their ultimate owners, the shareholders;
- (5) policies that serve to limit the ability of shareholders to nominate and elect board members have served to minimize the accountability of boards and management to shareholders;
- (6) it has always been the intent of Congress that the Securities and Exchange Commission should have full authority to determine the use of the issuer proxy with regards to the nomination and election of directors by shareholders; and
- (7) providing a greater voice to shareholders while not impinging on management prerogatives is in the best interests of shareholders, public corporations, and the economy as a whole.

[+] FEEDBACK

SEC. 3. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

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

SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

(a) Separate Resolution Required- Any proxy or consent or authorization for an annual or other meeting for which the proxy solicitation rules of the Commission require compensation disclosure of the shareholders occurring after the end of the 1-year period beginning on the date of enactment of this subsection, shall include a separate resolution subject to shareholder vote to approve the compensation of executives as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(b) Rule of Construction- The shareholder vote referred to in subsection (a) shall not be binding on the board of directors and shall not be construed--

(1) as overruling a decision by such board;

(2) to create or imply any change to the current fiduciary duties of such board;

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

(4) to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

(c) Shareholder Approval of Golden Parachute Compensation-

(1) DISCLOSURE- In any proxy solicitation material for an annual or other meeting of the shareholders occurring after the end of the 1-year period beginning on the date of enactment of this subsection, that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all of the assets of an issuer, the person making such solicitation shall disclose in the proxy solicitation material, in a clear and simple form in accordance with regulations of the Commission, any agreements or understandings that such person has with any principal executive officers 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 are based on or are otherwise related to the acquisition, merger, consolidation, sale, or other disposition, and that have not been subject to a shareholder vote under subsection (a).

(2) SHAREHOLDER APPROVAL-

(A) IN GENERAL- The proxy solicitation material containing the disclosure required by paragraph (1) shall require a separate shareholder vote to approve such agreements or understandings.

(B) RULE OF CONSTRUCTION- A vote by the shareholders referred to in subparagraph (A) shall not be binding on the board of directors and shall not be construed--

(i) as overruling a decision by such board;

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

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

(iv) to restrict or limit the ability of shareholders to make proposals for inclusion in such proxy materials related to executive compensation.

(b) Deadline for Rulemaking- Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission (in this Act referred to as the 'Commission') shall issue final rules to carry out section 14A of the Securities Exchange Act of 1934, as added by this section.

SEC. 4. SHAREHOLDER INPUT IN BOARD ELECTIONS.

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

(d) Confirmation of Commission Authority on Shareholder Access to Proxies for Board Nominations-

(1) COMMISSION RULES- The Commission shall establish rules relating to the use by shareholders of proxy solicitation materials supplied by the issuer for the purpose of nominating individuals to membership on the board of directors of an issuer.

(2) SHAREHOLDER REQUIREMENTS- The rules of the Commission under this paragraph relating to the use by shareholders of proxy solicitation materials supplied by the issuer for the purpose of nominating individuals to membership on the board of directors of an issuer may not provide for such use, unless the shareholder, or a group of shareholders acting by agreement, has beneficially owned, directly or indirectly, an aggregate of not less than one percent of the voting securities of the issuer for at least the 2-year period preceding the date of the next scheduled annual meeting of the issuer.

SEC. 5. CORPORATE GOVERNANCE STANDARDS.

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

`(e) Corporate Governance Standards-

`(1) LISTING STANDARDS-

`(A) IN GENERAL- Not later than 1 year after the date of enactment of this subsection, 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 any of the requirements of paragraphs (2) through (5), notwithstanding any other provision of law.

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

`(C) AUTHORITY TO EXEMPT- The Commission may, by rule or order, exempt certain issuers from any or all of the requirements of this subsection and the rules issued under this subsection, based on the size of the issuer, market capitalization, public float, number of shareholders of record, or other criteria, as the Commission deems necessary or appropriate.

`(2) DIRECTOR INDEPENDENCE- Each issuer shall provide in governing documents or in a public statement of corporate policy that, consistent with the status of the issuer as a company having a class of equity securities that are registered under subsection (b) or (g) of section 12, the chairperson of the board of directors of the issuer--

`(A) shall be independent, as determined in accordance with the rules of the exchange on which the securities of such issuer are listed, and otherwise by rule of the Commission; and

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

`(3) ANNUAL ELECTIONS REQUIRED- Each issuer shall provide in its governing documents that each member of the board of directors of the issuer shall be subject to annual election by the shareholders. Nothing in this subsection may be construed to establish a maximum period of service, or otherwise limit the terms of service, on the board of directors of an issuer.

`(4) COMMISSION RULES ON ELECTIONS- In board elections--

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

`(B) if such election is contested, where the number of nominees exceeds the number of directors to be elected, directors shall be elected by the vote of a plurality of the shares represented at an any meeting and entitled to vote; and

`(C) if a member of the board of directors of an issuer is not elected to a new term in an uncontested election--

`(i) such director shall tender his or her resignation to the board of directors; and

`(ii) the board of directors shall--

`(I) accept such resignation;

`(II) determine a date on which such resignation will take effect, within a reasonable period of time, as established by the Commission; and

`(III) make that date public within a reasonable period of time.

`(5) RISK COMMITTEE-

`(A) IN GENERAL- Each issuer shall, 1 year after the date of issuance of final rules under subparagraph (B), establish a risk committee, comprised entirely of independent directors, which shall be responsible for the establishment and evaluation of the risk management practices of the issuer.

`(B) COMMISSION RULEMAKING- The Commission shall issue final rules regarding the establishment of risk committees under this paragraph, not later than 1 year after the date of enactment of this subsection.'

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