

1 **TITLE IX—ADDITIONAL IMPROVEMENTS TO**
2 **FINANCIAL MARKETS REGULATION**

3 **SEC. 901. SHORT TITLE.**

4 This title may be cited as the “Investor Protection Act of 2009”.

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6 **Subtitle D—Executive Compensation**

7 **SEC. 941. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION**

8 **DISCLOSURES.**

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

12 “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.—

13 “(1) ANNUAL VOTE.—Any proxy or consent or authorization for an annual
14 meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring
15 on or after December 15, 2009, shall provide for a separate shareholder vote to approve
16 the compensation of executives as disclosed pursuant to the Commission’s compensation
17 disclosure rules (which disclosure shall include the compensation committee report, the
18 compensation discussion and analysis, the compensation tables, and any related
19 materials). The shareholder vote shall not be binding on the corporation or the board of
20 directors and shall not be construed as overruling a decision by such board, nor to create
21 or imply any additional fiduciary duty by such board, nor shall such vote be construed to
22 restrict or limit the ability of shareholders to make proposals for inclusion in such proxy

1 materials related to executive compensation.

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

3 “(A) DISCLOSURE.—In any proxy or consent solicitation material for a
4 meeting of the shareholders (or a special meeting in lieu of the annual meeting)
5 occurring on or after December 15, 2009, that concerns an acquisition, merger,
6 consolidation, or proposed sale or other disposition of all or substantially all the
7 assets of an issuer, the person making such solicitation shall disclose in the proxy
8 or consent solicitation material, in a clear and simple tabular form in accordance
9 with regulations to be promulgated by the Commission, any agreements or
10 understandings that such person has with the executive officers of such issuer (or
11 of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any
12 type of compensation (whether present, deferred, or contingent) that is based on
13 or otherwise relates to the acquisition, merger, consolidation, sale, or other
14 disposition of all or substantially all of the assets of the issuer, and the aggregate
15 total of all such compensation that may (and the conditions upon which it may) be
16 paid or become payable to or on behalf of such executive officer.

17 “(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization
18 relating to the proxy or consent solicitation material containing the disclosure
19 required by subparagraph (A) shall provide for a separate shareholder vote to
20 approve such agreements or understandings and compensation as disclosed. A
21 vote by the shareholders shall not be binding on the corporation or the board of
22 directors of the issuer or the person making the solicitation and shall not be
23 construed as overruling a decision by such board, nor to create or imply any

1 additional fiduciary duty by such board, nor shall such vote be construed to
2 restrict or limit the ability of shareholders to make proposals for inclusion in such
3 proxy materials related to executive compensation.”.

4 (b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of
5 this Act, the Securities and Exchange Commission shall issue any rules and regulations required
6 by the amendments made by subsection (a).

7 **SEC. 942. COMPENSATION COMMITTEE INDEPENDENCE.**

8 The Securities Exchange Act of 1934 is amended by inserting after section 10A (15
9 U.S.C. 78k-1) the following new section:

10 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.**

11 “(a) COMMISSION RULES.—

12 “(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of
13 the Investor Protection Act of 2009, the Commission shall, by rule, direct the national
14 securities exchanges and national securities associations to prohibit the listing of any
15 security of an issuer that is not in compliance with the requirements of any portion of
16 subsections (b) through (f).

17 “(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under
18 paragraph (1) shall provide for appropriate procedures for an issuer to have an
19 opportunity to cure any defects that would be the basis for a prohibition under paragraph
20 (1), before the imposition of such prohibition.

21 “(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories
22 of issuers from the requirements of subsections (b) through (f), where appropriate. In
23 determining appropriate exemptions, the Commission shall take into account the potential

1 impact on smaller reporting issuers.

2 “(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

3 “(1) IN GENERAL.—Each member of the compensation committee of the board of
4 directors of the issuer shall be a member of the board of directors of the issuer, and shall
5 otherwise be independent.

6 “(2) CRITERIA.—In order to be considered to be independent for purposes of this
7 subsection, a member of a compensation committee of an issuer may not, other than in
8 his or her capacity as a member of the compensation committee, the board of directors, or
9 any other board committee—

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

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

13 “(3) EXEMPTION AUTHORITY.—The Commission may exempt from the
14 requirements of paragraph (2) a particular relationship with respect to compensation
15 committee members, where appropriate.

16 “(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER
17 COMPENSATION COMMITTEE ADVISERS.—Any compensation consultant, legal counsel, or other
18 adviser to the compensation committee of any issuer shall meet standards for independence to be
19 promulgated by the Commission.

20 “(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION
21 CONSULTANTS.—

22 “(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as
23 a committee of the board of directors, shall have the authority, in its sole discretion, to

1 retain and obtain the advice of a compensation consultant meeting the standards for
2 independence promulgated pursuant to subsection (c), and the compensation committee
3 shall be directly responsible for the appointment, compensation, and oversight of the
4 work of such independent compensation consultant. This provision shall not be
5 construed to require the compensation committee to implement or act consistently with
6 the advice or recommendations of the compensation consultant, and shall not otherwise
7 affect the compensation committee’s ability or obligation to exercise its own judgment in
8 fulfillment of its duties.

9 “(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual
10 meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring
11 on or after the date that is 1 year after the date of enactment of the Investor Protection Act
12 of 2009, each issuer shall disclose in the proxy or consent material, in accordance with
13 regulations to be promulgated by the Commission—

14 “(A) whether the compensation committee of the issuer retained and
15 obtained the advice of a compensation consultant meeting the standards for
16 independence promulgated pursuant to subsection (c); and

17 “(B) if the compensation committee of the issuer has not retained and
18 obtained the advice of a compensation consultant meeting the standards for
19 independence promulgated pursuant to subsection (c), an explanation of the basis
20 for the compensation committee’s determination not to retain such an independent
21 consultant.

22 “(3) STUDY AND REVIEW REQUIRED.—

23 “(A) IN GENERAL.—The Commission shall conduct a study and review of

1 the use of compensation consultants meeting the standards for independence
2 promulgated pursuant to subsection (c), and the effects of such use.

3 “(B) REPORT TO CONGRESS.—Not later than 2 years after the date of
4 enactment of the Investor Protection Act of 2009, the Commission shall submit a
5 report to the Congress on the results of the study and review required by this
6 paragraph.

7 “(e) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—The
8 compensation committee of each issuer, in its capacity as a committee of the board of directors,
9 shall have the authority, in its sole discretion, to retain and obtain the advice of independent legal
10 counsel and other advisers meeting the standards for independence promulgated pursuant to
11 subsection (c), and the compensation committee shall be directly responsible for the
12 appointment, compensation, and oversight of the work of such independent legal counsel and
13 other advisers. This provision shall not be construed to require the compensation committee to
14 implement or act consistently with the advice or recommendations of such independent legal
15 counsel and other advisers, and shall not otherwise affect the compensation committee’s ability
16 or obligation to exercise its own judgment in fulfillment of its duties.

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

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

22 “(2) to any independent legal counsel or other adviser to the compensation
23 committee that meets the standards for independence promulgated pursuant to subsection

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(c).”