109TH CONGRESS
1ST SESSION

H. R. 4291

To amend the Securities Exchange Act of 1934 to require additional disclosure to shareholders of executive compensation.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 2005

Mr. FRANK of Massachusetts (for himself, Mr. GEORGE MILLER of California, Mr. OBEY, Mr. RANGEL, Mr. SABO, and Ms. VELÁZQUEZ) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Securities Exchange Act of 1934 to require additional disclosure to shareholders of executive compensation.

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 "Protection Against Executive Compensation Abuse Act".

1 **SEC. 2. ADDITIONAL EXECUTIVE COMPENSATION DISCLO-**
2 **SURES.**

3 (a) AMENDMENT.—Section 16 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78n) is amended by adding
5 at the end the following new subsection:

6 "(i) ADDITIONAL EXECUTIVE COMPENSATION DIS-
7 CLOSURES.—

8 "(1) COMPENSATION PLAN.—

9 "(A) ANNUAL STATEMENTS AND PROXY
10 MATERIALS.—Each issuer required to file an
11 annual report under section 13(a) shall include
12 in such annual report, and in any proxy solici-
13 tation materials accompanying a proxy solicita-
14 tion on behalf of the management of the issuer
15 in connection with an annual or other meeting
16 of the holders of the securities of the issuer, a
17 comprehensive statement of such issuer's com-
18 pensation plan for the principal executive offi-
19 cers of the issuer. Such compensation plan shall
20 include—

21 "(i) any type of compensation (wheth-
22 er present, deferred, or contingent) paid or
23 to be paid to such principal executive offi-
24 cers, including—

"(I) an estimate of the present value of any accrued pension of such officers;

"(II) the estimated market value of any other benefits received by such officers; and

"(III) any agreements or understandings concerning any type of compensation;

"(ii) the short- and long-term performance measures that the issuer uses for determining the compensation of such principal executive officers and whether such measures were met by such officers during the preceding year; and

"(iii) the policy of the issuer adopted pursuant to the rules promulgated under paragraph (3).

"(B) SHAREHOLDER APPROVAL.—The proxy solicitation materials containing the statement required by subparagraph (A) shall require a separate shareholder vote to approve such compensation plan.

"(2) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—In any proxy solicita-

1 tion material that concerns an acquisition, merger,
2 consolidation, or proposed sale or other disposition
3 of substantially all the assets of an issuer—
4 "(A) the person making such solicitation
5 shall disclose in the proxy solicitation material,
6 in a clear and simple form in accordance with
7 regulations of the Commission, any agreements
8 or understandings that such person has with
9 any principal executive officers of such issuer
10 (or of the acquiring issuer, if such issuer is not
11 the acquiring issuer) concerning any type of
12 compensation (whether present, deferred, or
13 contingent) that are based on or otherwise re-
14 late to the acquisition, merger, consolidation,
15 sale, or other disposition; and
16 "(B) such proxy solicitation material shall
17 require a separate shareholder vote to approve
18 such agreements or understandings.
19 "(3) RETURN OF CERTAIN COMPENSATION.—
20 The Commission shall prescribe rules requiring each
21 issuer to adopt a policy requiring the reimbursement
22 by any principle executive officer to the issuer of any
23 compensation received by such officer that is—
24 "(A) not provided for in the compensation
25 plan required by paragraph (1);

"(B) based on performance by the officer that does not meet the job performance measures identified in such statement;

"(C) incentive compensation or bonuses received by such officer within 18 months before any negative material restatement by the issuer; or

"(D) related to fraud or misrepresentation on the part of such officer.

"(4) PRINCIPAL EXECUTIVE OFFICER.—For purposes of this subsection, the term 'principal executive officer' means—

"(A) all individuals serving as the chief executive officer of an issuer, or acting in a similar capacity, during the most recent fiscal year, regardless of compensation level; and

"(B) for an issuer with total assets of—

"(i) more than $250,000,000 but less than $500,000,000, the 2 most highly compensated executive officers, other than an individual identified under subparagraph (A), that were serving as executive officers of an issuer at the end of the most recent fiscal year; or

"(ii) more than $500,000,000, the 4 most highly compensated executive officers, other than an individual identified under subparagraph (A), that were serving as executive officers of an issuer at the end of the most recent fiscal year.".

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

SEC. 3. CLEAR AND SIMPLE INTERNET DISCLOSURE.

Section 16(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)(4)) is amended—

(1) in subparagraph (B), by inserting ", in a clear, simple, and readily accessible format," after "each such statement"; and

(2) in subparagraph (C), by inserting ", in a clear, simple, and readily accessible format," after "that statement".

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