Summary of Major Provisions
Shareholder Empowerment Act

MAJORITY VOTING FOR DIRECTORS

Under the plurality voting standard that is the default in most state corporate statutes, the candidate receiving the most votes is elected. In uncontested elections, shareholders can protest the candidate by withholding their vote, but there is no mechanism for opposing a candidate because even one vote would be sufficient for election. This provision would require a candidate running in an uncontested election to receive votes from a majority of shareholders, and would require a candidate running unopposed for reelection to resign if he or she failed to obtain majority shareholder approval.

Included in the original Schumer bill and the Senate regulatory reform legislation.

PROXY ACCESS.

Currently, companies have the ability to keep director nominations by shareholders off of proxy ballots. This means that shareholders who want to nominate a candidate must incur the cost of mailing election materials to all shareholders. This provision uses the exact same language as was included in the Waters-Peters Amendment to the Wall Street Reform and Consumer Protection Act.

Included in the original Schumer bill and the Senate regulatory reform legislation, and also included in H.R. 4173. In May 2009 the SEC proposed a new rule that would grant shareholders proxy access. The final rule should be issued soon.

UNINSTRUCTED BROKER VOTES IN UNCONTESTED DIRECTOR ELECTIONS.

This provision would end the practice of allowing brokers to vote the shares they hold under management in uncontested elections if the owner of that share does not provide voting instructions within ten days of a company meeting. It is estimated that around three quarters of corporate shares are managed by brokers, and most of these votes are cast for management candidates. This provision, in conjunction with the majority voting requirement for uncontested elections, will give shareholders a tool to contest management candidates.

Not included in Schumer bill, but was included as part of the Manager's Amendment to the Senate regulatory reform bill. The SEC voted on July 1, 2009 to approve a change to New York Stock Exchange rules that would eliminate broker discretionary voting for all elections of directors, whether contested or not.

INDEPENDENT CHAIRMAN OF THE BOARD OF DIRECTORS

This provision would require companies to split the Chairman and CEO roles. According to a recent policy paper published by the California Public Employees' Retirement System (CalPERS) endorsing independent chairmanships, independent chairmen more closely align corporate boards with shareowners, curb conflicts of interest, better manage the relationship between the board and CEO, and lead to the development of an independent board.

Included in the Schumer bill, but not in the Senate regulatory reform legislation. Instead, the Senate bill contains a provision requiring disclosure to shareholders if the Chairman and CEO roles are not split and would also require half of the Board of Directors to be independent.

SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

This provision would give shareholders an annual vote on the compensation packages of senior executives. During the 110^{th} Congress, the House voted in favor of "say on pay" legislation sponsored by Chairman Frank by a vote of 269-134. The Obama Administration has endorsed the concept, and the Treasury Department is expected to issue rules requiring financial firms that have received federal assistance to give shareholders a vote on executive compensation plans.

Included in the Schumer bill and the Senate regulatory reform legislation, and also included in H.R. 4173.

INDEPENDENT COMPENSATION ADVISERS.

This provision requires corporate boards that retain independent compensation advisers that report solely to the board of directors or the compensation committee. Firms that provide compensation advice in addition to other types of consulting services may have a financial incentive to approve compensation packages that make management happy, but that do not represent the best value for shareholders.

Was not included in the Schumer bill, but was part of the Senate regulatory reform legislation and in H.R. 4173.

CLAWBACKS OF UNEARNED PAY.

This provision requires that companies recover or cancel payments that were awarded to executives on the basis of fraud or faulty earnings statements. This is a common sense reform that ensures poor management is not rewarded.

Was not included in the Schumer bill, but was part of the Senate regulatory reform legislation.

NO SEVERANCE AGREEMENTS FOR POOR PERFORMANCE.

This provision eliminates golden parachutes or other generous severance packages for executives that are terminated for poor performance. These agreements can otherwise provide executives at poorly performing companies with immediate access to stock options, continued health care coverage, and other perks that are not in shareholders' interests.

Not included in the Schumer bill. The Administration's principles on executive compensation state that golden parachutes should be examined to ensure they align with shareholder interests.

IMPROVED DISCLOSURE OF PERFORMANCE TARGETS.

During the current financial crisis, we have seen numerous examples of executives compensation packages that seem to be designed around the "heads I win, tails I still win" model, where executives have been awarded lavish bonuses despite poor corporate performance. This provision would improve shareholder access to the specific performance targets that are used to determine eligibility for bonuses and other incentive compensation.

Included in the Senate regulatory reform legislation and H.R. 4173. The SEC has approved a set of rule revisions requiring improved disclosure regarding compensation and corporate governance matters.