

116TH CONGRESS
1ST SESSION

S. 945

To amend the Sarbanes-Oxley Act of 2002 to require certain issuers to disclose to the Securities and Exchange Commission information regarding foreign jurisdictions that prevent the Public Company Accounting Oversight Board from performing inspections under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 28, 2019

Mr. KENNEDY (for himself and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Sarbanes-Oxley Act of 2002 to require certain issuers to disclose to the Securities and Exchange Commission information regarding foreign jurisdictions that prevent the Public Company Accounting Oversight Board from performing inspections under that Act, 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 “Holding Foreign Com-
5 panies Accountable Act”.

1 **SEC. 2. DISCLOSURE REQUIREMENT.**

2 Section 104 of the Sarbanes-Oxley Act of 2002 (15
3 U.S.C. 7214) is amended by adding at the end the fol-
4 lowing:

5 “(i) DISCLOSURE REGARDING FOREIGN JURISDIC-
6 TIONS THAT PREVENT INSPECTIONS.—

7 “(1) DEFINITIONS.—In this subsection—

8 “(A) the term ‘covered issuer’ means an
9 issuer that is required to file reports under sec-
10 tion 13 or 15(d) of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78m; 78o(d)); and

12 “(B) the term ‘non-inspection year’ means,
13 with respect to a covered issuer, a year—

14 “(i) during which the Commission
15 identifies the covered issuer under para-
16 graph (2)(A) with respect to every report
17 described in subparagraph (A) filed by the
18 covered issuer during that year; and

19 “(ii) that begins after the date of the
20 enactment of this subsection.

21 “(2) DISCLOSURE TO COMMISSION.—The Com-
22 mission shall—

23 “(A) identify each covered issuer that, with
24 respect to the preparation of the audit report
25 on the financial statement of the covered issuer
26 that is included in a report described in para-

1 graph (1)(A) filed by the covered issuer, retains
2 a registered public accounting firm that has a
3 branch or office that—

4 “(i) is located in a foreign jurisdic-
5 tion; and

6 “(ii) the Board is unable to inspect
7 under this section; and

8 “(B) require each covered issuer identified
9 under subparagraph (A) to, in accordance with
10 the rules issued by the Commission under para-
11 graph (4), submit to the Commission docu-
12 mentation that establishes that the covered
13 issuer is not owned or controlled by a govern-
14 mental entity in the foreign jurisdiction de-
15 scribed in subparagraph (A)(i).

16 “(3) TRADING PROHIBITION AFTER 3 YEARS OF
17 NON-INSPECTIONS.—

18 “(A) IN GENERAL.—If the Commission de-
19 termines that a covered issuer has 3 consecutive
20 non-inspection years, the Commission shall pro-
21 hibit the securities of the covered issuer from
22 being traded on a national securities exchange.

23 “(B) REMOVAL OF INITIAL PROHIBI-
24 TION.—If, after the Commission imposes a pro-
25 hibition on a covered issuer under subpara-

1 graph (A), the covered issuer certifies to the
2 Commission that the covered issuer has re-
3 tained a registered public accounting firm that
4 the Board has inspected under this section to
5 the satisfaction of the Commission, the Com-
6 mission shall end that prohibition.

7 “(C) RECURRENCE OF NON-INSPECTION
8 YEARS.—If, after the Commission ends a prohi-
9 bition under subparagraph (B) or (D) with re-
10 spect to a covered issuer, the Commission deter-
11 mines that the covered issuer has a non-inspec-
12 tion year, the Commission shall prohibit the se-
13 curities of the covered issuer from being traded
14 on a national securities exchange.

15 “(D) REMOVAL OF SUBSEQUENT PROHIBI-
16 TION.—If, after the end of the 5-year period be-
17 ginning on the date on which the Commission
18 imposes a prohibition on a covered issuer under
19 subparagraph (C), the covered issuer certifies to
20 the Commission that the covered issuer will re-
21 tain a registered public accounting firm that
22 the Board is able to inspect under this section,
23 the Commission shall end that prohibition.

24 “(4) RULES.—Not later than 90 days after the
25 date of enactment of this subsection, the Commis-

1 sion shall issue rules that establish the manner and
2 form in which a covered issuer shall make a dislo-
3 sure and a submission required under clauses (i) and
4 (ii) of paragraph (2)(B), respectively.”.

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