

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-

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

“(i) is located in a foreign jurisdiction;
and

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

“(B) require each covered issuer identified
under subparagraph (A) to, in accordance with
the rules issued by the Commission under paragraph (4), submit to the Commission documentation that establishes that the covered issuer is not owned or controlled by a governmental entity in the foreign jurisdiction described in subparagraph (A)(i).

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

“(A) IN GENERAL.—If the Commission determines that a covered issuer has 3 consecutive non-inspection years, the Commission shall prohibit the securities of the covered issuer from being traded on a national securities exchange.

“(B) REMOVAL OF INITIAL PROHIBITION.—If, after the Commission imposes a prohibition on a covered issuer under subpara-

graph (A), the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.

“(C) RECURRENCE OF NON-INSPECTION YEARS.—If, after the Commission ends a prohibition under subparagraph (B) or (D) with respect to a covered issuer, the Commission determines that the covered issuer has a non-inspection year, the Commission shall prohibit the securities of the covered issuer from being traded on a national securities exchange.

“(D) REMOVAL OF SUBSEQUENT PROHIBITION.—If, after the end of the 5-year period beginning on the date on which the Commission imposes a prohibition on a covered issuer under subparagraph (C), the covered issuer certifies to the Commission that the covered issuer will retain a registered public accounting firm that the Board is able to inspect under this section, the Commission shall end that prohibition.

“(4) RULES.—Not later than 90 days after the 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 disclo-
3 sure and a submission required under clauses (i) and
4 (ii) of paragraph (2)(B), respectively.”.

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