

116<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# **S. 945**

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## **AN ACT**

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”.

6 **SEC. 2. DISCLOSURE REQUIREMENT.**

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

10        “(i) DISCLOSURE REGARDING FOREIGN JURISDIC-  
11 TIONS THAT PREVENT INSPECTIONS.—

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

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

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

19                            “(i) during which the Commission  
20 identifies the covered issuer under para-  
21 graph (2)(A) with respect to every report  
22 described in subparagraph (A) filed by the  
23 covered issuer during that year; and

24                            “(ii) that begins after the date of en-  
25 actment of this subsection.

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

3                   “(A) identify each covered issuer that, with  
4                   respect to the preparation of the audit report  
5                   on the financial statement of the covered issuer  
6                   that is included in a report described in para-  
7                   graph (1)(A) filed by the covered issuer, retains  
8                   a registered public accounting firm that has a  
9                   branch or office that—

10                           “(i) is located in a foreign jurisdic-  
11                           tion; and

12                           “(ii) the Board is unable to inspect or  
13                           investigate completely because of a position  
14                           taken by an authority in the foreign jurisdic-  
15                           tion described in clause (i), as deter-  
16                           mined by the Board; and

17                   “(B) require each covered issuer identified  
18                   under subparagraph (A) to, in accordance with  
19                   the rules issued by the Commission under para-  
20                   graph (4), submit to the Commission docu-  
21                   mentation that establishes that the covered  
22                   issuer is not owned or controlled by a govern-  
23                   mental entity in the foreign jurisdiction de-  
24                   scribed in subparagraph (A)(i).

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

3           “(A) IN GENERAL.—If the Commission de-  
4 termines that a covered issuer has 3 consecutive  
5 non-inspection years, the Commission shall pro-  
6 hibit the securities of the covered issuer from  
7 being traded—

8                   “(i) on a national securities exchange;

9                   or

10                   “(ii) through any other method that is  
11 within the jurisdiction of the Commission  
12 to regulate, including through the method  
13 of trading that is commonly referred to as  
14 the ‘over-the-counter’ trading of securities.

15           “(B) REMOVAL OF INITIAL PROHIBI-  
16 TION.—If, after the Commission imposes a pro-  
17 hibition on a covered issuer under subpara-  
18 graph (A), the covered issuer certifies to the  
19 Commission that the covered issuer has re-  
20 tained a registered public accounting firm that  
21 the Board has inspected under this section to  
22 the satisfaction of the Commission, the Com-  
23 mission shall end that prohibition.

24           “(C) RECURRENCE OF NON-INSPECTION  
25 YEARS.—If, after the Commission ends a prohi-

1           bition under subparagraph (B) or (D) with re-  
2           spect to a covered issuer, the Commission deter-  
3           mines that the covered issuer has a non-inspec-  
4           tion year, the Commission shall prohibit the se-  
5           curities of the covered issuer from being trad-  
6           ed—

7                   “(i) on a national securities exchange;

8                   or

9                   “(ii) through any other method that is  
10                  within the jurisdiction of the Commission  
11                  to regulate, including through the method  
12                  of trading that is commonly referred to as  
13                  the ‘over-the-counter’ trading of securities.

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

23               “(4) RULES.—Not later than 90 days after the  
24               date of enactment of this subsection, the Commis-  
25               sion shall issue rules that establish the manner and

1 form in which a covered issuer shall make a submis-  
2 sion required under paragraph (2)(B).”.

3 **SEC. 3. ADDITIONAL DISCLOSURE.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “audit report” has the meaning  
6 given the term in section 2(a) of the Sarbanes-Oxley  
7 Act of 2002 (15 U.S.C. 7201(a));

8 (2) the term “Commission” means the Securi-  
9 ties and Exchange Commission;

10 (3) the term “covered form”—

11 (A) means—

12 (i) the form described in section  
13 249.310 of title 17, Code of Federal Regu-  
14 lations, or any successor regulation; and

15 (ii) the form described in section  
16 249.220f of title 17, Code of Federal Reg-  
17 ulations, or any successor regulation; and

18 (B) includes a form that—

19 (i) is the equivalent of, or substan-  
20 tially similar to, the form described in  
21 clause (i) or (ii) of subparagraph (A); and

22 (ii) a foreign issuer files with the  
23 Commission under the Securities Exchange  
24 Act of 1934 (15 U.S.C. 78a et seq.) or  
25 rules issued under that Act;

1           (4) the terms “covered issuer” and “non-inspec-  
2           tion year” have the meanings given the terms in  
3           subsection (i)(1) of section 104 of the Sarbanes-  
4           Oxley Act of 2002 (15 U.S.C. 7214), as added by  
5           section 2 of this Act; and

6           (5) the term “foreign issuer” has the meaning  
7           given the term in section 240.3b-4 of title 17, Code  
8           of Federal Regulations, or any successor regulation.

9           (b) REQUIREMENT.—Each covered issuer that is a  
10          foreign issuer and for which, during a non-inspection year  
11          with respect to the covered issuer, a registered public ac-  
12          counting firm described in subsection (i)(2)(A) of section  
13          104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214),  
14          as added by section 2 of this Act, has prepared an audit  
15          report shall disclose in each covered form filed by that  
16          issuer that covers such a non-inspection year—

17               (1) that, during the period covered by the cov-  
18               ered form, such a registered public accounting firm  
19               has prepared an audit report for the issuer;

20               (2) the percentage of the shares of the issuer  
21               owned by governmental entities in the foreign juris-  
22               diction in which the issuer is incorporated or other-  
23               wise organized;

24               (3) whether governmental entities in the appli-  
25               cable foreign jurisdiction with respect to that reg-

1       istered public accounting firm have a controlling fi-  
2       nancial interest with respect to the issuer;

3               (4) the name of each official of the Chinese  
4       Communist Party who is a member of the board of  
5       directors of—

6                       (A) the issuer; or

7                       (B) the operating entity with respect to the  
8       issuer; and

9               (5) whether the articles of incorporation of the  
10      issuer (or equivalent organizing document) contains  
11      any charter of the Chinese Communist Party, in-  
12      cluding the text of any such charter.

Passed the Senate May 20, 2020.

Attest:

*Secretary.*



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