

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. KENNEDY (for himself and Mr.
RUBIO)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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:

1 “(i) DISCLOSURE REGARDING FOREIGN JURISDIC-
2 TIONS THAT PREVENT INSPECTIONS.—

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

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

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

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

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

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

19 “(A) identify each covered issuer that, with
20 respect to the preparation of the audit report
21 on the financial statement of the covered issuer
22 that is included in a report described in para-
23 graph (1)(A) filed by the covered issuer, retains
24 a registered public accounting firm that has a
25 branch or office that—

1 “(i) is located in a foreign jurisdic-
2 tion; and

3 “(ii) the Board is unable to inspect or
4 investigate completely because of a position
5 taken by an authority in the foreign juris-
6 diction described in clause (i), as deter-
7 mined by the Board; 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—

23 “(i) on a national securities exchange;
24 or

1 “(ii) through any other method that is
2 within the jurisdiction of the Commission
3 to regulate, including through the method
4 of trading that is commonly referred to as
5 the ‘over-the-counter’ trading of securities.

6 “(B) REMOVAL OF INITIAL PROHIBI-
7 TION.—If, after the Commission imposes a pro-
8 hibition on a covered issuer under subpara-
9 graph (A), the covered issuer certifies to the
10 Commission that the covered issuer has re-
11 tained a registered public accounting firm that
12 the Board has inspected under this section to
13 the satisfaction of the Commission, the Com-
14 mission shall end that prohibition.

15 “(C) RECURRENCE OF NON-INSPECTION
16 YEARS.—If, after the Commission ends a prohi-
17 bition under subparagraph (B) or (D) with re-
18 spect to a covered issuer, the Commission deter-
19 mines that the covered issuer has a non-inspec-
20 tion year, the Commission shall prohibit the se-
21 curities of the covered issuer from being trad-
22 ed—

23 “(i) on a national securities exchange;
24 or

1 “(ii) through any other method that is
2 within the jurisdiction of the Commission
3 to regulate, including through the method
4 of trading that is commonly referred to as
5 the ‘over-the-counter’ trading of securities.

6 “(D) REMOVAL OF SUBSEQUENT PROHIBI-
7 TION.—If, after the end of the 5-year period be-
8 ginning on the date on which the Commission
9 imposes a prohibition on a covered issuer under
10 subparagraph (C), the covered issuer certifies to
11 the Commission that the covered issuer will re-
12 tain a registered public accounting firm that
13 the Board is able to inspect under this section,
14 the Commission shall end that prohibition.

15 “(4) RULES.—Not later than 90 days after the
16 date of enactment of this subsection, the Commis-
17 sion shall issue rules that establish the manner and
18 form in which a covered issuer shall make a submis-
19 sion required under paragraph (2)(B).”.

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

21 (a) DEFINITIONS.—In this section—

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

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

3 (3) the term “covered form”—

4 (A) means—

5 (i) the form described in section
6 249.310 of title 17, Code of Federal Regu-
7 lations, or any successor regulation; and

8 (ii) the form described in section
9 249.220f of title 17, Code of Federal Reg-
10 ulations, or any successor regulation; and

11 (B) includes a form that—

12 (i) is the equivalent of, or substan-
13 tially similar to, the form described in
14 clause (i) or (ii) of subparagraph (A); and

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

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

1 (5) the term “foreign issuer” has the meaning
2 given the term in section 240.3b–4 of title 17, Code
3 of Federal Regulations, or any successor regulation.

4 (b) REQUIREMENT.—Each covered issuer that is a
5 foreign issuer and for which, during a non-inspection year
6 with respect to the covered issuer, a registered public ac-
7 counting firm described in subsection (i)(2)(A) of section
8 104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214),
9 as added by section 2 of this Act, has prepared an audit
10 report shall disclose in each covered form filed by that
11 issuer that covers such a non-inspection year—

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

15 (2) the percentage of the shares of the issuer
16 owned by governmental entities in the foreign juris-
17 diction in which the issuer is incorporated or other-
18 wise organized;

19 (3) whether governmental entities in the appli-
20 cable foreign jurisdiction with respect to that reg-
21 istered public accounting firm have a controlling fi-
22 nancial interest with respect to the issuer;

23 (4) the name of each official of the Chinese
24 Communist Party who is a member of the board of
25 directors of—

- 1 (A) the issuer; or
- 2 (B) the operating entity with respect to the
- 3 issuer; and
- 4 (5) whether the articles of incorporation of the
- 5 issuer (or equivalent organizing document) contains
- 6 any charter of the Chinese Communist Party, in-
- 7 cluding the text of any such charter.