

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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 the Sarbanes-Oxley Act of 2002.

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

S. 4049

To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, 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 intended to be proposed by Mr. KENNEDY (for himself, Mr. VAN HOLLEN, Mr. RUBIO, Mr. COTTON, Mr. MENENDEZ, Mr. CRAMER, and Mr. SCOTT of Florida)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . DISCLOSURE REQUIREMENTS FOR CERTAIN**
3 **PUBLICLY TRADED COMPANIES.**

4 (a) IN GENERAL.—Section 104 of the Sarbanes-
5 Oxley Act of 2002 (15 U.S.C. 7214) is amended by adding
6 at the end the following:

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 (b) ADDITIONAL DISCLOSURE.—

21 (1) DEFINITIONS.—In this subsection—

22 (A) the term “audit report” has the mean-
23 ing given the term in section 2(a) of the Sar-
24 banes-Oxley Act of 2002 (15 U.S.C. 7201(a));

1 (B) the term “Commission” means the Se-
2 curities and Exchange Commission;

3 (C) the term “covered form”—

4 (i) means—

5 (I) the form described in section
6 249.310 of title 17, Code of Federal
7 Regulations, or any successor regula-
8 tion; and

9 (II) the form described in section
10 249.220f of title 17, Code of Federal
11 Regulations, or any successor regula-
12 tion; and

13 (ii) includes a form that—

14 (I) is the equivalent of, or sub-
15 stantially similar to, the form de-
16 scribed in subclause (I) or (II) of
17 clause (i); and

18 (II) a foreign issuer files with the
19 Commission under the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78a et
21 seq.) or rules issued under that Act;

22 (D) the terms “covered issuer” and “non-
23 inspection year” have the meanings given the
24 terms in subsection (i)(1) of section 104 of the

1 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214),
2 as added by subsection (a) of this section; and

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

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

16 (A) that, during the period covered by the
17 covered form, such a registered public account-
18 ing firm has prepared an audit report for the
19 issuer;

20 (B) the percentage of the shares of the
21 issuer owned by governmental entities in the
22 foreign jurisdiction in which the issuer is incor-
23 porated or otherwise organized;

24 (C) whether governmental entities in the
25 applicable foreign jurisdiction with respect to

1 that registered public accounting firm have a
2 controlling financial interest with respect to the
3 issuer;

4 (D) the name of each official of the Chi-
5 nese Communist Party who is a member of the
6 board of directors of—

7 (i) the issuer; or

8 (ii) the operating entity with respect
9 to the issuer; and

10 (E) whether the articles of incorporation of
11 the issuer (or equivalent organizing document)
12 contains any charter of the Chinese Communist
13 Party, including the text of any such charter.