

116TH CONGRESS
1ST SESSION

S. 1731

To amend the Sarbanes-Oxley Act of 2002 to require the Public Company Accounting Oversight Board to maintain a list of certain foreign issuers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2019

Mr. RUBIO (for himself, Mr. MENENDEZ, Mr. COTTON, and Mrs. GILLIBRAND) 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 the Public Company Accounting Oversight Board to maintain a list of certain foreign issuers, 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 “Ensuring Quality In-
5 formation and Transparency for Abroad-Based Listings
6 on our Exchanges Act” or the “EQUITABLE Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act—

1 (1) the term “applicable foreign issuer” means
2 a foreign issuer—

3 (A) that is required to file a covered form;
4 and

5 (B) for which, during the period covered
6 by the filing described in subparagraph (A), a
7 covered foreign public accounting firm has pre-
8 pared an audit report for the issuer;

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

12 (3) the term “Board” means the Public Com-
13 pany Accounting Oversight Board;

14 (4) the term “Commission” means the Securi-
15 ties and Exchange Commission;

16 (5) the term “covered foreign public accounting
17 firm” means a foreign public accounting firm that
18 the Board is unable to inspect or investigate under
19 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et
20 seq.) because of a position taken by an authority
21 outside of the United States;

22 (6) the term “covered form”—
23 (A) means—

1 (i) the form described in section
 2 249.310 of title 17, Code of Federal Regu-
 3 lations, or any successor regulation; and

4 (ii) the form described in section
 5 249.220f of title 17, Code of Federal Reg-
 6 ulations, or any successor regulation; and

7 (B) includes a form that—

8 (i) is the equivalent of, or substan-
 9 tially similar to, the form described in
 10 clause (i) or (ii) of subparagraph (A); and

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

15 (7) the term “covered jurisdiction” means the
 16 foreign jurisdiction in which the position described
 17 in paragraph (5) is taken with respect to a covered
 18 foreign public accounting firm that prepares an
 19 audit report for an applicable foreign issuer;

20 (8) the term “exchange” has the meaning given
 21 the term in section 3(a) of the Securities Exchange
 22 Act of 1934 (15 U.S.C. 78a(a));

23 (9) the term “foreign issuer” has the meaning
 24 given the term in section 240.3b–4 of title 17, Code
 25 of Federal Regulations, or any successor regulation;

1 (10) the term “foreign public accounting firm”
 2 has the meaning given the term in section 106(g) of
 3 the Sarbanes-Oxley Act of 2002 (15 U.S.C.
 4 7216(g));

5 (11) the term “national securities exchange”
 6 means an exchange that is registered with the Com-
 7 mission under section 6 of the Securities Exchange
 8 Act of 1934 (15 U.S.C. 78f); and

9 (12) the term “public accounting firm” has the
 10 meaning given the term in section 2(a) of the Sar-
 11 banes-Oxley Act of 2002 (15 U.S.C. 7201(a)).

12 **SEC. 3. DISCLOSURE.**

13 (a) LIST OF CERTAIN FOREIGN ISSUERS AND COV-
 14 ERED FOREIGN PUBLIC ACCOUNTING FIRMS.—

15 (1) IN GENERAL.—The Commission shall main-
 16 tain a publicly available list of—

17 (A) each foreign issuer, an audit report of
 18 which—

19 (i) is prepared by a foreign public ac-
 20 counting firm; and

21 (ii) the Board is not able to inspect or
 22 investigate because of a position taken by
 23 an authority that is outside of the United
 24 States;

1 (B) each covered foreign public accounting
 2 firm that has prepared an audit report identi-
 3 fied under subparagraph (A); and

4 (C) the jurisdiction in which each covered
 5 foreign public accounting firm identified under
 6 subparagraph (B) is organized or operating.

7 (2) ROLE OF THE BOARD.—Not less frequently
 8 than annually, the Board shall provide to the Com-
 9 mission the information that is required for the
 10 Commission to carry out paragraph (1).

11 (b) ANNUAL REPORT DISCLOSURE.—

12 (1) DISCLOSURE.—Each applicable foreign
 13 issuer shall disclose in each covered form filed by the
 14 applicable foreign issuer—

15 (A) that, during the period covered by cov-
 16 ered form, a covered foreign public accounting
 17 firm has prepared an audit report for the
 18 issuer;

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

23 (C) whether governmental entities in a cov-
 24 ered jurisdiction with respect to any covered
 25 foreign public accounting firm that has pre-

pared an audit report for the issuer during the period covered by the form have a controlling financial interest with respect to the issuer; and

(D) the name of any official of the Chinese Communist Party who is a member of the board of directors of the issuer or the operating entity with respect to the issuer.

(2) UPDATE OF RULES.—Not later than 270 days after the date of enactment of this Act, and after providing the opportunity for public notice and comment, the Commission shall make any amendments to the rules of the Commission that are required as a result of the requirements of this subsection.

(3) EFFECTIVE DATE.—This subsection shall take effect on the date on which the Commission completes the amendments required under paragraph (2).

(c) DISCLOSURE BY BROKERS AND DEALERS.—Section 15(n) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(n)) is amended—

(1) in paragraph (1), by striking “Commission may issue” and all that follows through the period at the end and inserting the following: “Commission—

“(A) shall issue rules that require a broker and a dealer to disclose, with respect to any advice, analysis, or report of the broker or dealer to a retail investor regarding the securities of a foreign issuer, whether a covered foreign public accounting firm has prepared an audit report for the foreign issuer; and

“(B) in addition to the rules required under subparagraph (A), may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.”; and

(2) by adding at the end the following:

“(4) DEFINITIONS.—In this subsection, the terms ‘audit report’, ‘covered foreign public accounting firm’, and ‘foreign issuer’ have the meanings given the terms in section 2 of the EQUITABLE Act.”.

**SEC. 4. PROHIBITION AGAINST THE LISTING OF CERTAIN
FIRMS ON NATIONAL SECURITIES EX-
CHANGES.**

(a) IN GENERAL.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following:

1 “(11)(A) The rules of the exchange prohibit the
 2 initial listing, after the date of enactment of this
 3 paragraph, of any security of an issuer for which a
 4 covered foreign public accounting firm has prepared
 5 an audit report.

6 “(B) Nothing in subparagraph (A) may be con-
 7 strued to prevent an exchange from listing a security
 8 on the exchange on or after the date of enactment
 9 of this paragraph if that security was listed on the
 10 exchange or a national securities exchange before
 11 the date of enactment of this paragraph.

12 “(C) In this paragraph, the terms ‘audit report’
 13 and ‘covered foreign public accounting firm’ have the
 14 meanings given the terms in section 2 of the EQUI-
 15 TABLE Act.

16 “(12)(A) The rules of the exchange prohibit the
 17 listing of any security of a foreign issuer that, begin-
 18 ning in 2025, has been identified under section
 19 3(a)(1)(A) of the EQUITABLE Act in 3 consecutive
 20 years.

21 “(B) Nothing in subparagraph (A) may be con-
 22 strued to prevent an exchange from listing a security
 23 of a foreign issuer described in that subparagraph
 24 beginning on the date on which the issuer submits
 25 to the Commission an audit report for the issuer

1 that is prepared by a registered public accounting
 2 firm that the Public Company Accounting Oversight
 3 Board has inspected, or is able to inspect, under sec-
 4 tion 104 of the Sarbanes-Oxley Act of 2002 (15
 5 U.S.C. 7214).

6 “(C) In this paragraph—

7 “(i) the terms ‘audit report’ and ‘reg-
 8 istered public accounting firm’ have the mean-
 9 ings given the terms in section 2(a) of the Sar-
 10 banes-Oxley Act of 2002 (15 U.S.C. 7201(a));
 11 and

12 “(ii) the terms ‘covered foreign public ac-
 13 counting firm’ and ‘foreign issuer’ have the
 14 meanings given the terms in section 2 of the
 15 EQUITABLE Act.”.

16 (b) RULES.—

17 (1) PROPOSALS.—Not later than 90 days after
 18 the date of enactment of this Act, each national se-
 19 curities exchange shall, in accordance with section
 20 19(b) of the Securities Exchange Act of 1934 (15
 21 U.S.C. 78s(b)) and any rules prescribed by the Com-
 22 mission under that section, file with the Commission
 23 any proposed change to the rules of the exchange
 24 that is required as a result of the amendments made
 25 by this section.

1 (2) ADOPTION.—Not later than 1 year after the
2 date of enactment of this Act, each national securi-
3 ties exchange shall have each proposed change de-
4 scribed in paragraph (1) approved by the Commis-
5 sion.

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