

AMENDMENT TO THE RULES COMMITTEE PRINT

116-57

OFFERED BY MR. SHERMAN OF CALIFORNIA

In subtitle E of title XVII, add at the end the following:

1 **SEC. __. DISCLOSURE REQUIREMENT.**

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

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

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

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

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

12 “(i) is located in a foreign jurisdic-
13 tion;

14 “(ii) performs more than one-third of
15 the audit services for the audit report of
16 the covered issuer; and

17 “(iii) the Board is unable to inspect
18 or investigate completely because of a posi-
19 tion taken by an authority in the foreign
20 jurisdiction described in clause (i), as de-
21 termined by the Board; and

22 “(B) require each covered issuer identified
23 under subparagraph (A) to, in accordance with
24 rules issued by the Commission, submit to the
25 Commission documentation to determine wheth-

1 er the covered issuer is owned or controlled by
2 a governmental entity in the foreign jurisdiction
3 described in subparagraph (A)(i).

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

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

11 “(i) on a national securities exchange;

12 or

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

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

1 the satisfaction of the Commission, the Com-
2 mission shall end that prohibition.

3 “(C) RECURRENCE OF NON-INSPECTION
4 YEARS.—If, after the Commission ends a prohi-
5 bition under subparagraph (B) or (D) with re-
6 spect to a covered issuer, the Commission deter-
7 mines that the covered issuer has a non-inspec-
8 tion year, the Commission shall prohibit the se-
9 curities of the covered issuer from being trad-
10 ed—

11 “(i) on a national securities exchange;

12 or

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

18 “(D) REMOVAL OF SUBSEQUENT PROHIBI-
19 TION.—If, after the end of the 5-year period be-
20 ginning on the date on which the Commission
21 imposes a prohibition on a covered issuer under
22 subparagraph (C), the covered issuer certifies to
23 the Commission that the covered issuer will re-
24 tain a registered public accounting firm that

1 the Board is able to inspect and investigate, the
2 Commission shall end that prohibition.”.

3 (b) ADDITIONAL DISCLOSURE.—

4 (1) DEFINITIONS.—In this section—

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

8 (B) the term “Commission” means the Se-
9 curities and Exchange Commission;

10 (C) the term “covered form”—

11 (i) means—

12 (I) the form described in section
13 249.310 of title 17, Code of Federal
14 Regulations, or any successor regula-
15 tion; and

16 (II) the form described in section
17 249.220f of title 17, Code of Federal
18 Regulations, or any successor regula-
19 tion; and

20 (ii) includes a form that—

21 (I) is the equivalent of, or sub-
22 stantially similar to, the form de-
23 scribed in subclause (I) or (II) of
24 clause (i); and

1 (II) a foreign issuer files with the
2 Commission under the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78a et
4 seq.) or rules issued under that Act;

5 (D) the terms “covered issuer” and “non-
6 inspection year” have the meanings given the
7 terms in subsection (i)(1) of section 104 of the
8 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214),
9 as added by subsection (a) of this section; and

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

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

23 (A) that, during the period covered by the
24 covered form, such a registered public account-

1 ing firm has prepared an audit report for the
2 issuer;

3 (B) the percentage of the shares of the
4 issuer owned by governmental entities in the
5 foreign jurisdiction in which the issuer is incor-
6 porated or otherwise organized;

7 (C) whether governmental entities in the
8 applicable foreign jurisdiction with respect to
9 that registered public accounting firm have a
10 controlling financial interest with respect to the
11 issuer;

12 (D) the name of each official of the Chi-
13 nese Communist Party who is a member of the
14 board of directors of—

15 (i) the issuer; or

16 (ii) the operating entity with respect
17 to the issuer; and

18 (E) whether the articles of incorporation of
19 the issuer (or equivalent organizing document)
20 contains any charter of the Chinese Communist
21 Party, including the text of any such charter.

22 (c) RULEMAKING.—Not later than 90 days after the
23 date of enactment of this Act, the Commission shall issue
24 rules to implement this section, and the amendments made

1 by this section, consistent with the Commission's mandate,
2 including—
3 (1) the protection of investors; and
4 (2) maintaining fair, orderly, and efficient mar-
5 kets.

