

Murray
Schatz
Schumer

Stabenow
Udall
Van Hollen

Warren
Wyden

NOT VOTING—8

Alexander
Brown
Burr

Markey
Murkowski
Rounds

Sanders
Whitehouse

The PRESIDING OFFICER. On this vote, the yeas are 72, the nays 20.

The motion is agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT

Mr. KENNEDY. Mr. President, I would like to talk for a few minutes about China.

China, as you know, is a wonderful country. It has about 1.4, 1.5 billion people. A lot of times, you see reported that there are only 1.2 billion, but they are a lot bigger than that. America only has about 320, 330 million folks. By land size, it is about the same size as the United States. A lot of people think they are the biggest country by land in the world, but actually Russia is. Canada is No. 2, and China is probably No. 3 by land size, but we are both close.

I love visiting China. The few times I have been there, the people of China were just wonderful people—very interesting, very smart, very hard-working, very aspirational. I say this because when I talk today about China, I want you and my colleagues in the Senate to understand that I am not talking about the people of China. The people of China are good people; the Chinese Communist Party, not so much.

I really regret having to say this. I would not turn my back on the Chinese Communist Party if they were 2 days dead. I don't want to have a Cold War with China. I would rather see us work together for the common good of the planet Earth, and we have tried, but that hasn't worked out real well.

We admitted China to the World Trade Organization on December 11, 2001. It wasn't just our decision, but you know better than I do that China wouldn't have been admitted to the WTO without our support. So we agreed—December 11, 2001. China started cheating December 12. They steal our intellectual property—not just ours but everyone else's in the world. They steal the world's intellectual property. They substantially subsidize their state-owned companies, so other companies throughout the world that don't get state subsidies can't compete with them. For years, they manipulated their currency. They are trying to control the sea lanes of the world. They started in the South China Sea. They are seizing islands that don't belong to them. The next step is, they will try to militarize space. They have used their economic power as a weapon.

Our friends and allies in Australia have asked some very reasonable questions about the origins of the

coronavirus and the COVID-19. China has responded by saying: We refuse to buy any more of your products. Those are just the facts.

Now, the managerial elites told us—by that, I mean a lot of the entrenched politicians, the deep thinkers of the world, the academics, many members of the media, the bureaucrats, a lot of the corporate phonies, the ones who think they are smarter, more virtuous than the rest of us in America. They told us: Oh, you are wrong about China. Be patient with China. Be patient with them. Free enterprise will change China.

China has changed free enterprise, and China is on a glidepath to dominance. And do you know what the Congress has done about it? Nothing. Zero. Zilch. Nada.

Let me say it again. I love the people of China. I am talking about the Chinese Communist Party. And I do not—I do not want to get into a new Cold War. All I want and I think all the rest of us want is for China to play by the rules.

Let me give an example. Every company in the world that goes public would like to list on U.S. stock exchanges—the over-the-counter market, the S&P, the New York Stock Exchange. We are very efficient. We are excruciatingly transparent. We like investors throughout the world to know what they are buying. We require companies to disclose. And I think our SEC does an extraordinarily able job. I think Chairman Jay Clayton has just been a rock star.

We have a rule that if you list on our exchanges, you have to file periodic reports. Once again, we want investors to understand what they are investing in. And those reports have to be accurate, or you get in a lot of trouble. One of the things, for example, in one of these reports that companies have to file is an annual audit, but we take it a step further in the United States. There is a Board within the SEC called the Public Company Accounting Oversight Board, PCAOB. Really, all that Board does—I say “all”; it is important—that Board inspects the audits that the companies file, not because they think the companies are cheating, although some do. But it is like when we play poker with friends. I play poker with friends. They are my friends, but I cut the cards every single time. And that is what our SEC does through this Board. They say: We are going to double check your audits. Everybody has to comply with that rule—American companies, British companies, Malaysian companies, Turkmenistan companies—except one: Chinese companies. They just say: No. They just say: No, we are not going to do it. And you know what we do about it? Nothing. Zero. Zilch. Nada.

This is not a 2- or 3-month phenomenon. This has gone on for years and years and years, and all of us in the executive branch and, yes, in Congress, we huff and we puff and we strut around and we hold hearings and we

issue press releases, and then we do nothing. And where I come from, what you allow is what will continue.

I have a bill. It is very simple. It says to all the companies out there in the world, including but not limited to China: If you want to list on an American exchange, you have to submit an audit. SEC has the right to look at that audit and audit the audit, and if you refuse not once, not twice, but three times—if over a 3-year period, each of those 3 years, the company says “You cannot audit my audit,” then they can no longer be listed on the American exchanges. It is very, very simple.

Once again, I tried to be very fair in this bill, as did my coauthor, Senator CHRIS VAN HOLLEN. We spent a lot of time on this. We don't want to be unfair to Chinese companies. We are not changing the rules; they have just been ignoring the rules. We are saying: Look, we are not going to give you just one chance; we are going to give you three chances.

If a Chinese company or any other company ignores the SEC request, what they can do to all the other companies in the world—that is, audit their audits—if you ignore the SEC for 3 years, then you have to take your business somewhere else.

Do you know whom that is going to help the most? The investors of America and the investors of the world.

Most of the companies that are public companies I believe tell the truth, but some of them don't, and this is hard-earned money that people are investing.

The name of our bill—Senator CHRIS VAN HOLLEN is the coauthor—is the Holding Foreign Companies Accountable Act, and, as I just explained, it is very simple.

Mr. President, as in legislative session, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be discharged from further consideration of S. 945 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (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.

There being no objection, the committee was discharged, and the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Kennedy substitute amendment at the desk be considered and agreed to; the bill, as amended, be considered read a third time and passed; and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1589) was agreed to as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Holding Foreign Companies Accountable Act”.

SEC. 2. DISCLOSURE REQUIREMENT.

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

“(i) DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.—

“(1) DEFINITIONS.—In this subsection—

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

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

“(i) during which the Commission identifies the covered issuer under paragraph (2)(A) with respect to every report described in subparagraph (A) filed by the covered issuer during that year; and

“(ii) that begins after the date of enactment of this subsection.

“(2) DISCLOSURE TO COMMISSION.—The Commission shall—

“(A) identify each covered issuer that, with respect to the preparation of the audit report on the financial statement of the covered issuer that is included in a report described in paragraph (1)(A) filed by the covered issuer, retains a registered public accounting firm that has a branch or office that—

“(i) is located in a foreign jurisdiction; and

“(ii) the Board is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction described in clause (i), as determined by the Board; and

“(B) require each covered issuer identified under subparagraph (A) to, in accordance with the rules issued by the Commission under paragraph (4), submit to the Commission documentation that establishes that the covered issuer is not owned or controlled by a governmental entity in the foreign jurisdiction described in subparagraph (A)(i).

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

“(A) IN GENERAL.—If the Commission determines that a covered issuer has 3 consecutive non-inspection years, the Commission shall prohibit the securities of the covered issuer from being traded—

“(i) on a national securities exchange; or

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

“(B) REMOVAL OF INITIAL PROHIBITION.—If, after the Commission imposes a prohibition on a covered issuer under subparagraph (A), the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.

“(C) RECURRENCE OF NON-INSPECTION YEARS.—If, after the Commission ends a prohibition under subparagraph (B) or (D) with respect to a covered issuer, the Commission determines that the covered issuer has a non-inspection year, the Commission shall prohibit the securities of the covered issuer from being traded—

“(i) on a national securities exchange; or

“(ii) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of

trading that is commonly referred to as the ‘over-the-counter’ trading of securities.

“(D) REMOVAL OF SUBSEQUENT PROHIBITION.—If, after the end of the 5-year period beginning on the date on which the Commission imposes a prohibition on a covered issuer under subparagraph (C), the covered issuer certifies to the Commission that the covered issuer will retain a registered public accounting firm that the Board is able to inspect under this section, the Commission shall end that prohibition.

“(4) RULES.—Not later than 90 days after the date of enactment of this subsection, the Commission shall issue rules that establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).”

SEC. 3. ADDITIONAL DISCLOSURE.

(a) DEFINITIONS.—In this section—

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

(2) the term “Commission” means the Securities and Exchange Commission;

(3) the term “covered form”—

(A) means—

(i) the form described in section 249.310 of title 17, Code of Federal Regulations, or any successor regulation; and

(ii) the form described in section 249.220f of title 17, Code of Federal Regulations, or any successor regulation; and

(B) includes a form that—

(i) is the equivalent of, or substantially similar to, the form described in clause (i) or (ii) of subparagraph (A); and

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

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

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

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

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

(2) the percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;

(3) whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;

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

(A) the issuer; or

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

(5) whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

The bill (S. 945), as amended, was ordered to be engrossed for a third read-

ing, was read the third time, and passed.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

EXECUTIVE CALENDAR—Continued

Mr. SASSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KENNEDY). Without objection, it is so ordered.

CHINA

Mr. SASSE. Mr. President, I had not planned to make a floor speech right now, but I wanted to commend you on both your legislation and on an important point that I think you enumerated both for this body and for the Americans watching.

First of all, good piece of legislation. I supported it. I wanted it to move out of the Banking Committee and get to the floor. It is important legislation. Congratulations, and thanks for your leadership.

Second of all, as you began your speech, you distinguished between the Chinese people and the Chinese Communist Party. I think many of us are worried that the No. 1 long-term national security threat this country faces is the technology race with the Chinese Communist Party and the way that they use fake private sector companies to steal from U.S. public and private sector entities.

When we talk about the problems—those of us who would consider ourselves China hawks—we regularly end up using a shorthand, “China,” when we have all spent a lot of time in the SCIF and in private, and we know we mean the Chinese Communist Party, but we don’t always adequately qualify that for people who may be entering the debate or new to the debate or looking to politicize the debate.

So I think it was very important, the points that you made that our enemy here is not the 1.4 billion Chinese people; our opponent here is the Chinese Communist Party, which is only about 90 million people—6 or 7 percent of the population—and even a lot of those people don’t actually believe Communist propaganda and nonsense about the fact that so many of their people and people beyond their borders are not perceived by the Chinese Communist Party as actually having dignity. Some people just join the party because they need to for local reasons—to get ahead or to maintain their property or their entities.

So the Chinese Communist Party is a tiny subset of what is happening in China, and our battle, our fight, our problems are not with the Chinese people; they are with the Chinese Communist Party.

One of the ways I learned this lesson was by having used a shorthand for