

Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2022—Subsec. (i)(2)(A)(ii). Pub. L. 117-328, §301(1), substituted “a foreign jurisdiction” for “the foreign jurisdiction described in clause (i)”.

Subsec. (i)(3). Pub. L. 117-328, §301(2)(A), substituted “2” for “3” in heading.

Subsec. (i)(3)(A). Pub. L. 117-328, §301(2)(B), substituted “2” for “3”.

2020—Subsec. (i). Pub. L. 116-222 added subsec. (i).

2010—Subsec. (a). Pub. L. 111-203 designated existing provisions as par. (1), inserted heading, and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§ 7214a. Additional disclosure

(a) Definitions

In this section—

(1) the term “audit report” has the meaning given the term in section 7201(a) of this title;

(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 7214 of this title, 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 7214 of this title, 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.

(Pub. L. 116-222, §3, Dec. 18, 2020, 134 Stat. 1064.)

Editorial Notes

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(3)(B)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

Section 2 of this Act, referred to in subsections (a)(4) and (b), means section 2 of Pub. L. 116-222.

§ 7215. Investigations and disciplinary proceedings

(a) In general

The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) Investigations

(1) Authority

In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) Testimony and document production

In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and

records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) Noncooperation with investigations

(A) In general

If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

- (i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;
- (ii) suspend or revoke the registration of the public accounting firm; and
- (iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) Procedure

Any action taken by the Board under this paragraph shall be subject to the terms of section 7217(c) of this title.

(4) Coordination and referral of investigations

(A) Coordination

The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) Referral

The Board may refer an investigation under this section—

- (i) to the Commission;
- (ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;
- (iii) to any other Federal functional regulator (as defined in section 6809 of this title), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and
- (iv) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) Use of documents

(A) Confidentiality

Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a),¹ or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) Availability to Government agencies

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

- (i) be made available to the Commission; and
- (ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 6809 of this title), other than the Commission, and the Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation;

(IV) any appropriate State regulatory authority; and

(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,

each of which shall maintain such information as confidential and privileged.

(C) Availability to foreign oversight authorities

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to in-

¹ See References in Text note below.

spect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

(ii) the foreign auditor oversight authority provides—

(I) such assurances of confidentiality as the Board may request;

(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(iii) the Board determines that it is appropriate to share such information.

(6) Immunity

Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) Disciplinary procedures

(1) Notification; recordkeeping

The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) Public hearings

Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) Supporting statement

A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) Sanctions

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the

Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this subchapter;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than \$100,000 for a natural person or \$2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than \$750,000 for a natural person or \$15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) Intentional or other knowing conduct

The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) Failure to supervise

(A) In general

The Board may impose sanctions under this section on a registered accounting firm or upon any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) Rule of construction

No current or former supervisory person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any associated person for purposes of subparagraph (A), if—

- (i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and
- (ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) Effect of suspension**(A) Association with a public accounting firm**

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) Association with an issuer, broker, or dealer

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) Reporting of sanctions**(1) Recipients**

If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

- (A) the Commission;
- (B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and
- (C) the public (once any stay on the imposition of such sanction has been lifted).

(2) Contents

The information reported under paragraph (1) shall include—

- (A) the name of the sanctioned person;
- (B) a description of the sanction and the basis for its imposition; and
- (C) such other information as the Board deems appropriate.

(e) Stay of sanctions**(1) In general**

Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) Expedited procedures

The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

(Pub. L. 107-204, title I, §105, July 30, 2002, 116 Stat. 759; Pub. L. 110-289, div. A, title I, §1161(h), July 30, 2008, 122 Stat. 2781; Pub. L. 111-203, title IX, §§929F(h), 981(b), (c), 982(f), (i), (j), July 21, 2010, 124 Stat. 1855, 1926, 1927, 1929-1931.)

Editorial Notes**REFERENCES IN TEXT**

This Act, referred to in subsecs. (b)(1), (5)(B)(ii), (C)(i), (6) and (c)(3)(B), (4), (6)(A), is Pub. L. 107-204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Freedom of Information Act, referred to in subsec. (b)(5)(A), is section 552 of Title 5, Government Organization and Employees. Section 552a of Title 5 is commonly known as the “Privacy Act”.

AMENDMENTS

2010—Subsec. (b)(4)(B)(ii) to (iv). Pub. L. 111-203, §982(i), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (b)(5)(A). Pub. L. 111-203, §981(c), substituted “subparagraphs (B) and (C)” for “subparagraph (B)”.

Subsec. (b)(5)(B)(ii)(V). Pub. L. 111-203, §982(j), added subcl. (V).

Subsec. (b)(5)(C). Pub. L. 111-203, §981(b), added subpar. (C).

Subsec. (c)(6)(A). Pub. L. 111-203, §929F(h)(1), substituted “any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person” for “the supervisory personnel” in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 111-203, §929F(h)(2), in introductory provisions, substituted “No current or former supervisory person” for “No associated person” and “any associated person” for “any other person”.

Subsec. (c)(7)(B). Pub. L. 111-203, §982(f), in heading, inserted “, broker, or dealer” after “issuer” and, in text, substituted “a registered public accounting firm under this subsection” for “an issuer under this subsection” and “any issuer, broker, or dealer” for “any issuer” in two places.

2008—Subsec. (b)(5)(B)(ii)(II). Pub. L. 110-289 inserted “and the Director of the Federal Housing Finance Agency,” after “Commission.”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section

4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§ 7216. Foreign public accounting firms

(a) Applicability to certain foreign firms

(1) In general

Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, broker, or dealer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 7212 of this title shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) Board authority

The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, brokers, or dealers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this subchapter.

(b) Production of documents

(1) Production by foreign firms

If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon request of the Commission or the Board; and

(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

(2) Other production

Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the reg-

istered public accounting firm on the work of that foreign public accounting firm.

(c) Exemption authority

The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) Service of requests or process

(1) In general

Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

(2) Specific audit work

Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

(e) Sanctions

A willful refusal to comply, in whole or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

(f) Other means of satisfying production obligations

Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.

(g) Definition

In this section, the term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

(Pub. L. 107-204, title I, §106, July 30, 2002, 116 Stat. 764; Pub. L. 111-203, title IX, §§929J, 982(g), July 21, 2010, 124 Stat. 1859, 1930.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c), and (e), is Pub. L. 107-204, July 30, 2002, 116 Stat. 745, known as the