

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.

§ 7214. Inspections of registered public accounting firms**(a) In general****(1) Inspections generally**

The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(2) Inspections of audit reports for brokers and dealers

(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 7217(b) of this title before the rules become effective, including an opportunity for public notice and comment.

(D) Notwithstanding anything to the contrary in section 7212 of this title, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).

(b) Inspection frequency**(1) In general**

Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) Adjustments to schedules

The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the

Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) Procedures

The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) Conduct of inspections

In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) Record retention

The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 7213 of this title or the rules issued thereunder.

(f) Procedures for review

The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) Report

A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 7215(b)(5)(A) of this title, and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) Interim Commission review

(1) Reviewable matters

A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) Treatment of review

Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 78y of this title, or deemed to be “final agency action” for purposes of section 704 of title 5.

(3) Timing

Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

(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 78m or 78o(d) of this title; 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 December 18, 2020.

(2) Disclosure to Commission

The Commission shall—

(A) identify each covered issuer that, with respect to the preparation of the audit re-

port 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 a foreign jurisdiction, 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 2 years of non-inspections

(A) In general

If the Commission determines that a covered issuer has 2 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 December 18, 2020, 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).

(Pub. L. 107–204, title I, §104, July 30, 2002, 116 Stat. 757; Pub. L. 111–203, title IX, §982(e)(1), July 21, 2010, 124 Stat. 1929; Pub. L. 116–222, §2, Dec. 18, 2020, 134 Stat. 1063; Pub. L. 117–328, div. AA, title III, §301, Dec. 29, 2022, 136 Stat. 5536.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (b), and (c), 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.

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).

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§ 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 subsecs. (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.