

## ***ALERT UPDATE***

### ***U.S. House Unanimously Passes S.945***

In June, Murphy & McGonigle circulated a Client Alert regarding S.945, a bipartisan bill addressing the audit integrity of foreign issuers trading on United States markets. On December 2, the House of Representatives unanimously passed S.945. President Trump is expected to sign the bill.

The bill, which amends the Sarbanes-Oxley Act of 2002 (“SOX”), is directed at foreign, specifically Chinese, companies trading on United States securities markets whose financial audits have not been subject to required reviews by the Public Company Accounting Oversight Board (“Board”). A provision of the bill also requires foreign companies to disclose whether a foreign governmental entity owns shares in, or has a controlling financial interest in, the issuer.

The bill targets foreign issuers where the government does not permit the PCAOB to inspect an issuer’s audit reports by a registered public account firm (“RPAF”). In such cases, if the Board has been unable to inspect an issuer’s audit reports for three consecutive years, the Securities and Exchange Commission (“SEC”) is required to prohibit an issuer from becoming listed on U.S. exchanges, and – in the case of those issuers already listed – to prohibit trading of such an issuer’s securities.

The scope of the trading prohibition is comprehensive: it applies to trading on national securities exchanges and “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.” The prohibition covers trading on Alternative Trading Systems and traditional over-the-counter markets. The trading prohibition is of indefinite duration, but the SEC can terminate it if the issuer submits a certification to the SEC that it has retained a RPAF that the Board has inspected. If the issuer has a subsequent non-inspection year, the SEC must prohibit trading which can then be terminated after five years if the issuer provides the required certification.

As noted by Representative William Lacy Clay, however, the bill is not intended to apply to companies that have only a small part



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of their financial statements audited by RPAFs. Rather, the bill would require the SEC to determine which companies would be subject to the new requirements. As stated by Congressman Clay:

**“It is the intent of this legislation to provide the Securities and Exchange Commission with the discretion necessary to determine how much of a company's total audit must be performed by a firm beyond the reach of PCAOB inspections before trading in the company's securities is prohibited by the Commission. Consistent with our work with the Securities and Exchange Commission on this legislation, it is our expectation that the Commission will not prohibit trading in the securities of companies under this act, as long as not more than one-third of a company's total audit is performed by a firm beyond the reach of the PCAOB inspections. This legislation provides the Commission with the authority to determine how an audit would be measured, whether that be total revenue, assets, or another metric.”**

Here is a [link](#) to our original Client Alert, published June 4, 2020.

				
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