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PCAOB Announces Complete Access to Inspect and Investigate Chinese Public Accounting Firms

On Dec. 15, 2022, the Public Company Accounting Oversight Board (PCAOB) **announced** that it was able to secure complete access to inspect and investigate audit firms in the People’s Republic of China (PRC) for the first time in history, and released the **2022 HFCAA Determination Report** (the “Report”). PCAOB’s announcement marks a step forward in potentially resolving regulatory differences between the United States and China, and effectively resets the three-year compliance clock to prevent the possible and immediate delisting of over 200 China-based public companies from the U.S. stock exchanges pursuant to the Holding Foreign Companies Accountable Act (HFCAA).

The Report states that PCAOB “(1) is able to select engagements, audit areas, and potential violations to be reviewed or investigated, (2) has timely access to, and the ability to retain and use, any document or information that [PCAOB] considers relevant to an inspection or investigation, and (3) is able to conduct inspections and investigations in a manner consistent with the provisions of [HFCAA] and the rules of [PCAOB], as interpreted and applied by [PCAOB],” and concludes that “consistent with the HFCAA, [PCAOB] is able to inspect and investigate completely firms headquartered in mainland China and Hong Kong.” PCAOB’s 2021 Determination, which concluded that PCAOB was unable to inspect or investigate completely registered public accounting firms headquartered in mainland China and Hong Kong, was vacated.

U.S. Securities and Exchange Commission (SEC) Chair Gary Gensler issued a [statement](#) on the same day, confirming that Chinese authorities complied with “the four key pillars laid out in the Statement of Protocol,” an agreement PCAOB entered into with the China Securities Regulatory Commission (CSRC) and PRC’s Ministry of Finance in August 2022. Chair Gensler further cautioned that “ongoing compliance” is required under HFCAA, and PCAOB needs to have “full access for inspections and investigations” for 2023 and beyond, and directed SEC staff to seek “enhanced disclosures” from China-based issuers in addition to requirements under HFCAA.

In response to a reporter’s question, a CSRC official [stated](#) that “CSRC welcomes the PCAOB’s decision to vacate its previous determinations based on professional and regulatory considerations. We look forward to building on previous experience and carrying out audit oversight cooperation with our U.S. counterparts in the years to come with enhanced mutual respect and trust, thus establishing long-term and sustainable cooperation arrangements that will enhance the stability and predictability of international regulatory environment and better protect global investors.”

PCAOB’s 2022 Determination may have preserved, at least for the moment, access to the U.S. capital market for China-based issuers, but the SEC has made it clear that it would prohibit trading in the securities of such issuers if HFCAA is not complied with on an ongoing basis, and emphasized the importance of the quality of audits and sufficient disclosures. Both potential issuers and investors should be aware of the enhanced disclosure requirements under HFCAA and SEC rules and regulations.

For more information about the Statement of Protocol and the HFCAA, please refer to our related [GT Alert](#) issued in August 2022.

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