

PCAOB Resets the Clock on Delisting for China-Based Companies Listed in the U.S.

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On December 15, 2022, the Public Company Accounting Oversight Board (the **PCAOB** or the **Board**) announced that it was able to secure complete access to inspect and investigate PCAOB-registered public accounting firms headquartered in mainland China and Hong Kong for the first time and issued its 2022 HFCAA Determination Report (collectively, the **2022 Determinations**)^[1] under the Holding Foreign Companies Accountable Act of 2020 (the **HFCAA** or the **Act**). As we described in our earlier [Winston alert](#) issued in November 2022, the PCAOB had issued its 2021 HFCAA Determination Report under the HFCAA, concluding that the PCAOB was unable to inspect or investigate completely registered public accounting firms headquartered in mainland China and Hong Kong because of a position taken by authorities in mainland China and Hong Kong, respectively (the **2021 Determinations**).^[2] The 2022 Determinations vacate the 2021 HFCAA Determination Report and, as a result, the three-year non-compliance period for Chinese companies subject to the HFCAA is reset.

Following the Statement of Protocol (the **SOP**) entered into in August 2022, the PCAOB sent 32 staff members to Hong Kong to conduct on-site inspections and investigations of two Chinese and Hong Kong auditors of China-based companies listed in the U.S. – KPMG Huazhen LLP in mainland China and PricewaterhouseCoopers in Hong Kong. PCAOB staff remained in Hong Kong for nine weeks and inspected a total of eight engagements of these two firms.^[3]

The 2022 Determinations determine that the 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 the Board considers relevant to an inspection or investigation, and (3) is able to conduct inspections and investigations in a manner consistent with the provisions of the Act and the rules of the Board,” and conclude that “in the absence of any evidence that authorities in the PRC currently are taking any positions to impair the Board’s ability to execute its statutory mandate with respect to inspections or investigations, the HFCAA dictates that the Board vacate the 2021 Determinations.”

Gary Gensler, Chair of the U.S. Securities and Exchange Commission (**SEC**) issued a statement^[4] on the same day, confirming that Chinese authorities had complied with the “four key pillars” laid out in the SOP. He further directed SEC staff and the PCAOB to remain vigilant with respect to critical issues regarding (1) ongoing access for inspections and investigations in 2023 and beyond, (2) audit quality with respect to numerous deficiencies at audit firms in China and Hong Kong identified by PCAOB inspectors, as has been the case in other jurisdictions in the first

year of PCAOB inspections, and (3) disclosures by China-based issuers, including specific and prominent disclosures that are required about the heightened operational and legal risks of operating in China.

While the PCAOB's 2022 Determinations reset the three-year clock for compliance by China-based issuers and temporarily removes the risk of forced delisting from U.S. stock markets for such issuers, the PCAOB and the SEC have nonetheless made it clear that if Chinese authorities do not fully perform their obligations under the SOP in the future, or if they otherwise take positions that render the PCAOB unable to inspect and investigate completely registered public accounting firms headquartered in mainland China and Hong Kong, the PCAOB does not have to wait another year to reassess its determinations and will act immediately to consider the need to issue new determinations consistent with the HFCAA.

For more information about the SOP and the HFCAA, please refer to our related [Winston alert](#) issued in November 2022.

[1] HFCAA Determination Report dated December 15, 2022: <https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/international/documents/2022-hfcaa-determination-report.pdf>

[2] HFCAA Determination Report dated December 16, 2021: <https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/international/documents/104-hfcaa-2021-001.pdf>

[3] PCAOB's announcement dated December 15, 2022: <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-secures-complete-access-to-inspect-investigate-chinese-firms-for-first-time-in-history>

[4] Statement by SEC Chair Gary Gensler: <https://www.sec.gov/news/statement/gensler-determination-statement-20221215>

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Author

[Sey-Hyo Lee](#)

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Sey-Hyo Lee

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