



## SEC Division of Corporation Finance Issues Sample Comments to Enhance China-Specific Disclosures

JULY 24, 2023, 2:00 AM

On July 17, 2023, the Securities and Exchange Commission (SEC) Division of Corporation Finance (the Division) released [sample comments](#) regarding disclosures by companies based in or with a majority of their operations in China, referred to as “China-based Companies.” The Division notes that it has been monitoring disclosures by China-based Companies, including under the Holding Foreign Companies Accountable Act (the HFCAA), and has been issuing comments to such companies to enhance their compliance with their disclosure obligations. The Division is focused on three areas of disclosure related to China-specific matters.

### **Disclosure Obligations under the HFCAA**

The Division reminds companies of their disclosure obligations under the HFCAA and notes that the Division will continue to review companies’ filings for compliance. Under the HFCAA, public companies identified as Commission-Identified Issuers (CIIs) due to an inability of the PCAOB to inspect their auditors for at least two consecutive years must comply with certain submission and disclosure requirements. For example, CIIs that are foreign issuers are required to disclose the percentage of shares owned by foreign-government entities, the identification of all Chinese Communist Party (CCP) officials who are on the board of the CII or the operating entity for the CII, and whether the CII’s articles of incorporation contain any “charter” of the CCP.

### **Disclosure About Material Risks Related to the PRC’s Role in Company Operations**

The Division notes that it is seeking more-specific and -prominent disclosures about any material impact that the intervention or control by the government of the People’s Republic of China (the PRC) may have on companies’ businesses or the value of their securities. The Division reminds companies that the term “control” is defined broadly under the U.S. federal securities laws and that there are many ways that a government or person can exercise control over a company other than by appointing members of the board or having formal powers under the company’s organizational documents.

### **Disclosure Related to the UFLPA**

The Uyghur Forced Labor Prevention Act (UFLPA), which became effective on December 23, 2021, among other matters, prohibits the import of goods from the Xinjiang Uyghur Autonomous Region of the PRC (the Xinjiang UAR). The Division reminds companies that in light of the UFLPA, companies should evaluate their disclosures with a view

toward providing tailored disclosures about material impacts that the UFLPA may have on their business, such as material compliance risks or material supply chain disruptions that the companies may face if conducting operations in, or relying on counterparties conducting operations in, the Xinjiang UAR.

Consistent with these areas of the Division's focus, the sample comment letter includes examples of comments that the Division may issue to China-based Companies. While they are not an exhaustive list of issues that China-based Companies should consider, they signal the matters that the SEC staff will be focusing on in connection with their review of disclosures by China-based Companies. These companies should consider the sample comments and additional developments in this area as they prepare their disclosure documents. A copy of the sample comment letter is attached as Appendix A.

*Capital Markets & Securities Law Watch* will continue to monitor updates in this area as they become available.

Summer Associate Drew Pierce contributed to the preparation of this blog post.

## **Appendix A**

July 2023

Name  
ABC Corporation  
Address

Dear Issuer:

We have reviewed your filing and have the following comments. Please revise or update your disclosure in response to our comments.

### **Item 9C of Form 10-K – Commission-Identified Issuers**

1. We note your statement that you reviewed public filings in connection with your required submission under paragraph (a) of Item 9C of Form 10-K. Please supplementally describe any additional materials that were reviewed and tell us whether you relied upon any legal opinions or third-party certifications, such as affidavits, as the basis for your submission. In your response, please provide a similarly detailed discussion of the materials reviewed and legal opinions or third-party certifications relied upon in connection with the required disclosures under paragraphs (b)(2) and (3) of Item 9C of Form 10-K.
2. In order to clarify the scope of your review, please supplementally describe the steps you have taken to confirm that none of the members of your board or the boards of your consolidated foreign-operating entities are officials of the Chinese Communist Party. For instance, please tell us how the board members' current or prior memberships on, or affiliations with, committees of the Chinese Communist Party factored into your determination. In addition, please tell us whether you have relied upon third-party certifications, such as affidavits, as the basis for your disclosure.
3. With respect to your disclosure pursuant to paragraph (b)(5) of Item 9C of Form 10-K, we note that you have included language that such disclosure is "to our best knowledge." Please supplementally confirm without qualification, if true, that your and your consolidated foreign-operating entities' articles of incorporation do not contain wording from any charter of the Chinese Communist Party.

### **Risk of Intervention or Control by the PRC Government (Risk Factors)**

4. Given the significant oversight and discretion of the government of the People's Republic of China (PRC) over the operations of your business, please describe any material impact that intervention or control by the PRC government has or may have on your business or on the value of your securities. We remind you that, pursuant to federal securities rules, the term "control" (including the terms "controlling," "controlled by," and "under common control with") means "the possession, direct or indirect, of the power to direct or cause the

direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.”<sup>[2]</sup>

## Uyghur Forced Labor Prevention Act (Management’s Discussion and Analysis of Financial Condition and Results of Operations)

5. We note that you appear to conduct a portion of your operations in, or appear to rely on counterparties that conduct operations in, the Xinjiang Uyghur Autonomous Region. To the extent material, please describe how your business segments, products, lines of service, projects, or operations are impacted by the Uyghur Forced Labor Prevention Act (UFLPA), that, among other matters, prohibits the import of goods from the Xinjiang Uyghur Autonomous Region.

We remind you that the company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action, or absence of action by the staff.

Sincerely,

Division of Corporation Finance

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<sup>[1]</sup> Similar disclosure is required by Item 16 of Form 20-F for foreign private issuers.

<sup>[2]</sup> Rule 405 under the Securities Act of 1933, as amended, and Rule 12b-2 under the Securities Exchange Act of 1934, as amended.

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