



### **Protect the U.S. markets and it will help the Chinese Issuer**

On March 24, 2021, the SEC has adopted interim final amendments to implement the Holding Foreign Companies Accountable Act (HFCA Act) in order to enforce the disclosure requirements mandated by congress. Currently, the SEC is seeking comments from public for the completion of identification process, which indicates the final step before the implementation of the Act.

According to the current regulations, domestic accounting firms hired by US-listed companies must register with Public Company Accounting Oversight Board (PCAOB). PCAOB is a self-regulatory organization in the accounting industry, and it is composed of accountants from different PCAOB member firms. Also, these accountants must conduct annual inspections for other members while PCAOB itself is directly supervised by the SEC. PCAOB has been reviewing overseas accounting firms since 2005, and the inspection process can be divided into reviewing selected firms' audit working and reviewing firms' quality control systems. Due to the restrictions of cross-board supervision, it is difficult for PCAOB to review the audit work done by foreign accounting firms selected by certain US-listed companies.

As of December 31, 2019, PCAOB had inspected accounting firms in more than 50 countries; nevertheless, there were still accounting firms in four regions beyond the jurisdiction of PCAOB, including Mainland China, Hong Kong, France, and Belgium. Therefore, the HFCA Act was proposed in 2019 by Sen. John Kennedy (R-La.) to enhance the coverage of PCAOB. The early version of the act requires the foreign issuers to clarify the fact that whether or not they are owned or controlled by foreign government. In addition, if PCAOB is unable to inspect an issuer's accounting firm for three consecutive years, the issuer will be prohibited from trading its shares on the U.S. exchanges.

Although the HFCA Act claims that it applies to all foreign companies listed in the United States, among foreign companies listed in the United States that do not accept the inspection from PCAOB, companies in mainland China and Hong Kong account for nearly 90%, and certain provisions in the act clearly target Chinese companies as it emphasizes the disclosure requirement of Chinese Communist Party members. Chinese media pointed out that the act will deter Chinese companies from going public in the United States; on the other hand, they believe that this will also accelerate the delisting process of Chinese companies in the United States; as a result, the act will spur them to move to Hong Kong for the secondary listing. In an interview with the media, B. Chen Zhu, a partner of Morrison & Foerster LLP, mentioned that some Chinese companies that have been listed in the United States may consider privatization or move to a friendlier jurisdiction such as Hong Kong and Shanghai to seek for opportunities of relisting. Reuters believes that the SEC passed such act at this time is to sustain the continuation of the Trump-era policy with the aim of removing Chinese companies from the US exchange that have failed to meet US audit standards for three consecutive years. Meanwhile, China's

Foreign Ministry criticized the HFCA Act and said it is a political suppression of Chinese companies as well as a discriminatory policy against Chinese companies.

I believe the approval of this amendment is exactly what is needed to assure the continued integrity of the U.S. markets.

The reason foreign companies want to list in the U.S. is that our markets are policed and strict regulations are in place to assure investor confidence.

By requiring foreign companies, especially Chinese companies, to use only accounting firms that have been properly inspected by the PCAOB will give investors all over the world confidence in their accounting statements in any public filings. It assures investors that the statements are fair and accurate.

This type of amendment benefits not only investors but the Chinese companies themselves. It means that a larger number of investors would invest and trade these companies.

The provision requiring the disclosure of any government ownership is also a necessary disclosure.

If any foreign government could influence a company's actions and decisions investors must know.

This type of disclosure helps the investment community understand the issuer better and make a fully informed investment decision. This helps the issuers attract long term investors and not just investors looking for an immediate short term trading profit.

Finally, if all U.S. issuers are subject to hiring a PCAOB qualified accounting firm it makes all the sense in the world that foreign issuers wanting to trade on our markets have the same requirement.

Protect the integrity of the U.S. markets and any issuer trading on that market will be greatly benefited, including Chinese issuers.

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