

Market Trends 2024/25: Disclosure on the Holding Foreign Companies Accountable Act

A Practical Guidance® Practice Note by
Liz Walsh, Evan Eldridge, and Moriah Son, Mayer Brown LLP



Liz Walsh
Mayer Brown LLP



Evan Eldridge
Mayer Brown LLP



Moriah Son
Mayer Brown LLP

PCAOB's efforts to secure access to inspect and investigate audit firms in China and Hong Kong, including the signing of a Statement of Protocol with Chinese authorities in August 2022. This note also outlines the HFCAA-related disclosures required in public filings, such as the percentage of shares owned by government entities and the presence of Chinese Communist Party officials on the board of directors. Additionally, it discusses the enforcement mechanisms provided by the HFCAA, including the prohibition of trading on SEC-regulated markets if PCAOB inspections are prevented for two consecutive years. This practice note concludes with recommendations on enhancing HFCAA-related disclosures in public filings.

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This practice note discusses the impact of the Holding Foreign Companies Accountable Act (the HFCAA) on securities of foreign companies listed on U.S. exchanges and over-the-counter markets. It provides background on the HFCAA, enacted on December 18, 2020, which reinforces U.S. regulatory authority over SEC-reporting companies relying on auditors in non-U.S. jurisdictions where local authorities restrict Public Company Accounting Oversight Board (PCAOB) inspections. This note highlights the specific regulatory challenges posed by Chinese law, which prohibits auditing firms in China and Hong Kong from providing U.S. authorities access to audit records. It also details the

Liz Walsh, Counsel, Mayer Brown LLP

Liz Walsh is counsel in Mayer Brown's Washington DC office and a member of the Public Companies & Corporate Governance and Capital Markets practices. She advises public companies on their obligations under the federal securities laws and on related corporate governance requirements. Liz also provides advice to public companies regarding compliance with SEC executive compensation disclosure requirements and Section 13 and Section 16 reporting. In addition, she advises on corporate governance matters, including advice regarding director independence, board committee structure and charters, codes of conduct, corporate governance guidelines, controls and procedures, CEO and CFO certifications, and NYSE and Nasdaq requirements.

Liz spent over 11 years at the US Securities and Exchange Commission in the Division of Corporation Finance. She most recently served as Acting Director of the Office of Small Business Policy and previously served as Special Counsel to the Deputy Director of the Division. At the SEC's Office of Small Business Policy, Liz counseled on the administration of the federal securities laws and regulations that particularly affect small businesses, including the smaller reporting company requirements, as well as the capital-raising exemptions from Securities Act registration. She also assisted with the Division's substantial revisions to the exempt offering framework, including the adoption of changes to the accredited investor definition and rule amendments intended to harmonize and simplify the offering exemptions in 2020.

Liz was the co-recipient of several awards during her time at the SEC, including the 2020 Byron D. Woodside Award, the 2020 Chairman's Award for Excellence, and the 2019 Isaac C. Hunt Award for Diversity and Inclusion.

Evan Eldridge, Associate, Mayer Brown LLP

Evan J. Eldridge represents issuers, investment banks and other financial institutions in a wide range of public and private offerings of debt and equity securities, including investment grade debt offerings, shelf registration statements, follow-on offerings, medium-term note programs, at-the-market offerings, initial public offerings, issuances exempt from registration and deSPAC transactions. Evan also advises public companies on securities law reporting and regulatory compliance obligations, stock exchange listing requirements and general corporate governance matters.

Evan earned his JD from Brooklyn Law School, where he was an Executive Articles Editor of the Brooklyn Journal of International Law. Before attending law school, Evan served as a Transportation Officer in the United States Army. Evan earned his BA from the Pennsylvania State University.

Moriah Son, Associate, Mayer Brown LLP

Moriah Son is an associate in Mayer Brown's New York office and a member of the Corporate & Securities practice.

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