



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

**Re: Holding Foreign Companies Accountable Act Disclosure – Interim Final Rule
(File No. S7-03-21; Release no. 34-91364); 86 FR 17528**

Dear Ms. Countryman:

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness (CCMC) appreciates this opportunity to provide comment on the Securities and Exchange Commission’s (SEC or Commission) interim final rule to implement certain provisions of the Holding Foreign Companies Accountable Act (HFCA). The CCMC appreciates the SEC’s quick action to implement this important law.

The HFCA was signed into law in December 2020 and prohibits a foreign-based company from being listed in the United States if the Public Company Accounting Oversight Board (PCAOB) is unable to inspect the company’s financial statement audit for three consecutive years. The law also mandates that such issuers disclose, amongst other things, whether they are “owned or controlled by a governmental entity” in a foreign jurisdiction and, in the case of Chinese companies, the name of each Chinese Communist Party (CCP) official that is a member of their board of directors.

The CCMC has long supported strong internal controls and financial reporting standards for companies listed in the United States. Investors must have confidence in the accuracy and reliability of financial statements provided by public companies. Measures taken by Congress and the SEC over the last two decades have generally improved audit quality and maintained the transparency of the U.S. capital markets.

The SEC and PCAOB have issued several joint statements over the last two years highlighting the risks to American investors over the PCAOB’s inability to inspect auditors in foreign jurisdictions. An April 2020 joint statement noted that “investors and financial professionals

should consider the potential risks related to the PCAOB's lack of access to the work of PCAOB-registered accounting firms in China.”¹

Prior to passage of the HFCA, the SEC and PCAOB engaged in several discussions with audit firms relating to audit quality in the emerging markets, including China, as well as certain of the challenges faced in auditing public company operations in these markets. However, these conversations did not result in the PCAOB gaining adequate access to inspect the auditors of China-based companies.

Any company that refuses to abide by U.S. standards should be prohibited from listing on a U.S. stock exchange in order to protect investors and prevent abuse of our regulatory system. The CCMC strongly agrees with the objective of the HFCA and has previously provided comments to the SEC regarding the lack of transparency into Chinese companies.²

As the SEC moves toward implementing a permanent rule, the CCMC offers the following recommendations to improve the effectiveness of the HFCA:

The dates used to determine whether an issue is a “Commission-Identified Issuer” should be prospective and based upon a company’s fiscal year end.

The SEC is seeking comment as to whether a single date should be used to determine “Commission-Identified Issuers” i.e. an issuer based in a foreign jurisdiction and which the PCAOB determines it is unable to completely inspect the issuer’s auditor. The CCMC encourages the SEC to avoid adopting a single yearly date (e.g. May 15th) to make this determination. Doing so would treat companies differently based upon their fiscal year-end dates and potentially result in outdated information being used to determine Commission-Identified Issuers.

We believe a better approach would be to make determinations based upon a date (e.g. 30 or 45 days) after the filing deadline for an issuer’s annual report. This would ensure issuers are not treated differently based upon an arbitrary date and would give companies sufficient time to come into compliance with financial reporting standards if they wish to remain listed in the United States. It would also ensure that the HFCA is applied prospectively and not consider fiscal years prior to the law being passed.

The SEC should publish a list of Commission-Identified Issuers prominently on its website and notify issuers prior to their name being listed.

We support the SEC publishing a list of Commission-Identified Issuers on its website so that investors are properly informed of companies that fail to meet financial reporting standards. More transparency around this issue is ultimately good for investors and will sustain confidence

¹ Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited (April 21, 2020) Available at <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting>

² Letter from Tom Quaadman regarding the July 9, 2020 roundtable on emerging markets risks, available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/07/200708_Comments_CCMC-Emerging-Markets-Roundtable.pdf

in our capital markets. We believe the SEC should also notify issuers prior to the publishing of such a list given the likely market impact of being a Commission-Identified Issuer and to ensure the accuracy of being included in such a listing.

We thank the Commission for its work in implementing the HFCA and look forward to working with all commissioners and staff regarding these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long, sweeping horizontal stroke extending to the right.

Tom Quadman