

**MEMO# 33512**

April 30, 2021

## **Draft Letter on SEC Amendments Implementing the Holding Foreign Companies Accountable Act; Feedback Requested by COB Tuesday, May 4**

[33512]

April 30, 2021

TO: Accounting/Treasurers Committee

ICI Global Investing Subcommittee

ICI Global Regulated Funds Committee

SEC Rules Committee RE: Draft Letter on SEC Amendments Implementing the Holding Foreign Companies Accountable Act; Feedback Requested by COB Tuesday, May 4

On March 18, 2021, the US Securities and Exchange Commission (SEC or Commission) adopted interim final form amendments<sup>[1]</sup> to implement the disclosure and submission requirements of the Holding Foreign Companies Accountable Act (HFCA Act), which go into effect on May 5, 2021.<sup>[2]</sup> The SEC is seeking comments by May 5, 2021, and we have prepared the attached draft comment letter. Feedback on the draft letter is requested by COB Tuesday, May 4.

The amendments will apply to registrants, including investment companies, that the SEC identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction that the Public Company Accounting Oversight Board (PCAOB) cannot inspect (Commission-Identified Issuer). The HFCA Act requires the submission of documentation to the SEC establishing that such registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and disclosure in the registrant's annual report regarding audit arrangements and governmental influence. A memorandum with further information about the interim final rule was provided to members on March 26.<sup>[3]</sup>

Our draft comment letter raises two recommendations for the Commission's consideration as it finalizes the interim final rule and considers further action in implementing the HFCA Act.

- We express support for the publication by the Commission of a list of Commission-Identified Issuers on its website and further request that, in order for such list to be

maximally useful and informative, such list should indicate the year(s) for which an issuer has been identified and the determination date.

- We request that the Commission establish a process for the delisting of Commission-Identified Issuers that is transparent and well-telegraphed so that the impact on investors in such entities, including US-registered investment companies and their shareholders, which will need to make adjustments to their investments and allocations, is minimally disruptive.<sup>[4]</sup>

Eva M. Mykolenko  
Associate Chief Counsel - Securities Regulation

#### endnotes

[1] Holding Foreign Companies Accountable Act Disclosure, Release No. 34-91364, IC-34227 (March 18, 2021) available at <https://sec.gov/rules/interim/2021/34-91364.pdf> (Release).

[2] The HFCA Act, which became law on December 18, 2020, directs the SEC within 90 days to adopt rules establishing the manner in which issuers are to submit documentation establishing that they are not owned or controlled by a governmental entity in a jurisdiction where the PCAOB cannot inspect auditors.

[3] See ICI Memorandum 33399, dated March 26, 2021, available at <https://www.ici.org/memo33399>.

[4] This request for comment does not specifically address the implementation of the trading prohibition, on which the Commission intends to consult at a later date. We intend to provide further feedback at that stage, but thought it beneficial to make our high-level point at this time.