

**MEMO# 34590**

December 15, 2022

# **PCAOB Reports That It Has Secured Complete Access to Inspect and Investigate Chinese Firms**

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TO: ICI Members

ICI Global Members SUBJECTS: Audit and Attest

Compliance

Disclosure

International/Global RE: PCAOB Reports That It Has Secured Complete Access to Inspect and Investigate Chinese Firms

As we previously informed you,[\[1\]](#) on August 26, 2022, the Public Company Accounting Oversight Board (PCAOB) announced that it signed a Statement of Protocol with the China Securities Regulatory Commission and the Ministry of Finance of the People's Republic of China regarding the PCAOB's ability to completely inspect and investigate registered public accounting firms headquartered in mainland China and Hong Kong, consistent with US law.[\[2\]](#) This agreement was a positive step toward avoiding the imposition of a trading prohibition on China and Hong Kong based firms that use a registered public accounting firm in mainland China and Hong Kong.

Following this announcement, beginning in September, the PCAOB began thoroughly testing compliance with every aspect of the agreement necessary to determine complete access. This included sending more than 30 PCAOB staff to conduct on-site inspections and investigations in Hong Kong over a nine-week period from September to November.

The PCAOB was able to undertake successful inspections, and as a result of these successful inspections, on December 15, the Board of the PCAOB voted to vacate previous determinations stating that it was unable to secure complete access to inspect and investigate audit firms in the People's Republic of China (PRC).

The PCAOB has further stated that it is continuing to demand complete access in mainland China and Hong Kong moving forward and is already making plans to resume regular inspections in early 2023 and beyond, as well as to continue pursuing ongoing investigations and initiate new investigations as needed.

It further clarified that the Board does not have to wait another year to reassess its determinations and, should the PRC authorities obstruct the PCAOB's access to inspect or investigate completely in any way and at any point, the Board will act immediately to consider the need to issue new determinations consistent with the HFCAA.

In concert with the PCAOB's statement, Securities and Exchange Commission Chair, Gary Gensler, also issued a statement regarding the determination,<sup>[3]</sup> highlighting the following points:

- Chinese authorities will need to ensure that the PCAOB continues to have full access for inspections and investigations in 2023 and beyond as a determination will be made each year.
- The PCAOB determination addresses only the PCAOB's ability to access audit firms for inspections and investigations, not the quality of the audits; numerous deficiencies were identified, and the PCAOB intends to release inspection reports in the first half of next year detailing findings from their inspections of these audit firms.
- Chinese-based companies that access U.S. capital markets must provide specific and prominent disclosures about the heightened operational and legal risks that they face.

Chair Gensler also noted that, separate from the disclosures specified under the HFCAA, the SEC continues to emphasize to Chinese-based issuers their obligations to provide other material disclosures to U.S. investors and that Chinese government or party involvement in issuers' governance and operations may be material to investors and thus would need to be disclosed.

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#### Notes

<sup>[1]</sup> See ICI Memorandum 34271, issued August 26, 2022, available at <https://www.ici.org/memo34271>.

<sup>[2]</sup> The PCAOB's statement, which provides further details, is available at <https://pcaobus.org/news-events/news-releases/news-release-detail/fact-sheet-china-agreement>.

<sup>[3]</sup> Chair Gensler's statement is available at [https://www.sec.gov/news/statement/gensler-determination-statement-20221215?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/news/statement/gensler-determination-statement-20221215?utm_medium=email&utm_source=govdelivery).