

Questions related to the Holding Foreign Companies Accountable Act

1. What is the Holding Foreign Companies Accountable Act (HFCAA)?

The [HFCAA](#) became law on December 18, 2020. It requires the SEC to identify public companies that have retained a registered public accounting firm to issue an audit report where the firm has a branch or office that: (1) is located in a foreign jurisdiction; and (2) the PCAOB has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. Under the HFCAA, if a company is identified by the Commission for three consecutive years, then the Commission must prohibit the securities of the issuer from being traded, including on a national securities exchange.

The [SEC](#) and the [PCAOB](#) adopted final rules to implement the HFCAA in 2021. Under the final rules and the current HFCAA regime, the PCAOB must make a determination on whether it can inspect firms in specific foreign jurisdictions and publish a report including the names of affected firms and the basis for its decisions, which will be subject to annual reassessment". On December 16, 2021, the PCAOB [determined](#) that Mainland China and Hong Kong are foreign jurisdictions that take a position such that PCAOB is unable to inspect or investigate completely registered accounting firms located there (the "Report"). The PCAOB also included an appendix in the Report, which lists the registered public accounting firms to which the determination applies.

Under the SEC's rules, the SEC will identify and publicly disclose companies who filed an annual report with a firm identified in the Report ("Commission-Identified Issuers") and issue a stop order, which prohibits trading, when a company has been a Commission-Identified Issuer for three consecutive years. The SEC publishes its list of Commission-Identified Issuers is available at <https://www.sec.gov/hfcaa>.

2. When will a Commission-Identified Issuer first expect to be impacted by the implementation of the HFCAA?

A company can be placed on the SEC's public list for the first time in connection with its annual report for the fiscal year ended on or after December 31, 2021. These reports generally will be filed between March and June 2022. Based on the current HFCAA regime, the company will be placed on the list for the third time and become ineligible for trading after filing its annual report for the fiscal year ended December 31, 2023, between March and June 2024 for most companies.

3. What will happen to a Commission-Identified Issuer's securities after it appears on the list for the third time?

The Commission staff will promptly add issuers it identifies to a provisional list after they file their annual report. An issuer that is provisionally identified will have 15 business days to contact Commission staff if they believe they have been incorrectly identified. Thereafter, the issuer will be placed on a conclusive list of issuers identified under the HFCAA. When a company is added to the conclusive list for the third time as a Commission-Identified Issuer, the SEC will

publish a stop order, which will go effective on the fourth business day after the order is published. The stop order prohibits any trading of the company's securities within the United States. As such, Nasdaq will immediately halt trading and move to delist all of the company's listed securities on the basis of the effectiveness of the stop order and the company's inability to trade in the U.S.

Specifically, Nasdaq Listing Rule 5101 allows Nasdaq to suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for listing on Nasdaq. A prohibition on trading by the Commission under the HFCAA would be an event that would prevent trading on Nasdaq, and therefore would warrant delisting under this rule.

Following a Commission prohibition, Nasdaq will request information from the company about the Commission's determination and the company's ability to trade in the United States, and immediately halt trading pursuant to Rule 4120(a)(5)(B) until the company provide information satisfactory to Nasdaq demonstrating that it is eligible to trade (such as an updated determination from the Commission). Furthermore, Nasdaq Listing Qualifications' staff will issue a delisting determination to the company under Nasdaq Rule 5810(c)(1). While the company may appeal that determination to a Hearings Panel pursuant to Nasdaq Rule 5815, the company's securities would remain halted during any such appeal and Nasdaq will not resume trading during the Commission's stop order even if the panel allows the continued listing of the company's securities.

4. If a Commission-Identified Issuer's securities are prohibited from being traded, can a U.S. investor still trade its securities on overseas markets?

Yes, unless the Commission provides otherwise, a U.S. investor can still trade a Commission-Identified Issuer subject to a stop order in overseas markets.

5. What happens to listed options where the underlying security is halted pursuant to a stop order issued under the HFCAA regime?

If the Commission issues a stop order for a security underlying listed options, most exchanges will withdraw from listing and trading the options. However, once only one exchange remains listing the options, under the applicable rules that exchange cannot withdraw and would facilitate closing transactions in the options. Such closing transactions would be the only permissible transactions.

Upon expiration of the option, the Options Clearing Corporation (OCC) will provide for cash settlement of any open options, based on the price on a foreign market, if any, or a value determined by OCC.