

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 55 No. 5 March 9, 2022

DE-LISTING OF FOREIGN COMPANIES — LEGISLATIVE AND SEC DEVELOPMENTS

Unless the current rules change, implementation of the HFCA Act may force a large number of public companies to exit our markets in the next few years. In this article the author discusses the Act, the SEC and PCAOB implementing rules, and the mandatory trading prohibition that follows from them. She then notes various options for exiting the U.S. markets by going private and the process for de-listing and de-registering shares. She concludes by suggesting that issuers who anticipate becoming subject to the trading prohibition should start discussions now about the optimal way to respond to the HFCA Act the rules adopted by the SEC and the PCAOB.

By Christina M. Thomas *

THE HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT

On December 18, 2020, President Donald J. Trump signed the Holding Foreign Companies Accountable Act (the “HFCA Act”) into law, which mandates new disclosure requirements for certain foreign issuers and prohibits the trading of certain foreign issuer securities in the United States.¹ The HFCA Act received bipartisan support in Congress following years of escalating tensions between the U.S. and China.

The HFCA Act aims to address restrictions China has placed on the ability of the Public Company Accounting Oversight Board (the “PCAOB”) to inspect or

investigate PCAOB-registered public accounting firms in connection with their audits of Chinese issuers listed on U.S. securities exchanges. The Sarbanes-Oxley Act of 2002 created the PCAOB “to oversee the audit of public companies that are subject to the securities laws and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, held by and for, public investors.”² Specifically, the PCAOB is responsible for registering public accounting firms, establishing standards applicable to the preparation of audit reports for companies, conducting inspections and investigations of public accounting firms to ensure they are complying with

¹ Pub. L. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

² 15 U.S.C. § 7211.

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