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## HFCAA DETERMINATION REPORT

### PURSUANT TO 15 U.S.C. § 7214(i)(2)(A) AND PCAOB RULE 6100

**Registered Public Accounting Firms Headquartered in  
Mainland China of the People’s Republic of China**

**Registered Public Accounting Firms Headquartered in the  
Hong Kong Special Administrative Region of the People’s Republic of China**

**PCAOB Release No. 104-HFCAA-2021-001**

**December 16, 2021**

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Pursuant to 15 U.S.C. § 7214(i)(2)(A) and PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act*, the Public Company Accounting Oversight Board (“PCAOB” or “Board”) issues this report to notify the U.S. Securities and Exchange Commission (“Commission”) of the following determinations made by the Board pursuant to Rule 6100(a)(1):

- A determination that the Board is unable to inspect or investigate completely registered public accounting firms headquartered in mainland China of the People’s Republic of China (“PRC”)<sup>1</sup> because of a position taken by one or more authorities in mainland China (“the Mainland China Determination”); and
- A determination that the Board is unable to inspect or investigate completely registered public accounting firms headquartered in Hong Kong, a Special Administrative Region and dependency of the PRC, because of a position taken by one or more authorities in Hong Kong (“the Hong Kong Determination”).<sup>2</sup>

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<sup>1</sup> The PRC includes the Special Administrative Regions of Hong Kong and Macau. “Mainland China,” as used herein, does not include Hong Kong and Macau. There are no public accounting firms headquartered in Macau currently registered with the Board.

<sup>2</sup> See *infra* footnotes 11 and 23.

**Appendix A** and **Appendix B** identify the registered public accounting firms that are subject to the Mainland China Determination and the Hong Kong Determination, respectively, by each firm's registered name and identification number with the Board.

## I. EXECUTIVE SUMMARY

To restore investor confidence after several high-profile corporate fraud and accounting scandals in the early 2000s, Congress established the PCAOB to carry out a critical mission: overseeing the audits of public companies that avail themselves of U.S. capital markets ("issuers") to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. To advance that mission, Congress directed the PCAOB to (1) inspect PCAOB-registered public accounting firms that regularly provide audit reports for issuers and (2) investigate potential violations of certain laws, rules, and professional standards by those firms and their associated persons. For over fifteen years, inspections and investigations have been key facets of the PCAOB's operations and oversight.

That oversight spans the globe because of the extensive presence of foreign companies in U.S. capital markets. The Sarbanes-Oxley Act of 2002 ("the Act") specifies that non-U.S. registered firms that prepare or issue audit reports with respect to issuers are subject to the Act and the Board's rules in the same manner and to the same extent as U.S. registered firms.<sup>3</sup> By putting U.S. and non-U.S. registered firms on equal footing, Congress established a level playing field worldwide with respect to PCAOB oversight.

But that playing field currently is not level. Although the PCAOB has conducted oversight activities in over 50 jurisdictions and currently has over 850 non-U.S. registered firms, authorities in a limited number of jurisdictions have denied the PCAOB the access it needs (and receives elsewhere) to conduct inspections and investigations. Limitations on the PCAOB's oversight of firms that not only have registered voluntarily with the PCAOB, but also have chosen to audit issuers, deprive investors and the public of the benefits of the PCAOB's work.

In response, Congress enacted the Holding Foreign Companies Accountable Act ("HFCAA"), which directs the Board to determine whether it is unable to inspect or investigate completely registered firms located in a foreign jurisdiction because of a position taken by an authority in that jurisdiction.<sup>4</sup> To implement that directive, the Board adopted Rule 6100, which establishes a framework for assessing whether a determination is warranted.

As set forth in this report, the Board has employed Rule 6100's framework and concluded that PRC authorities have taken positions that render the Board unable to inspect or investigate completely registered firms headquartered in mainland China and Hong Kong. PRC authorities assert that they must review audit work papers and related information before the

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<sup>3</sup> See 15 U.S.C. § 7216(a)(1).

<sup>4</sup> See 15 U.S.C. § 7214(i)(2)(A).

PCAOB may access them during an inspection or investigation and that such access can be provided only under a cooperative agreement. Facing similar legal requirements in other jurisdictions, the PCAOB, over the course of more than a decade, has entered into bilateral agreements with more than 20 foreign authorities and has utilized cooperative arrangements to fulfill its inspection and investigation mandates without compromising U.S. statutory requirements. Yet to date, PRC authorities persistently have taken positions that prevent the finalization of or performance under cooperative agreements. As a result, the Board currently is unable to inspect and investigate completely firms headquartered in mainland China or Hong Kong.

**Inspections.** The Act requires the PCAOB to conduct inspections at regular intervals—triennially for firms that provide audit reports for 100 or fewer issuers—to assess those firms’ compliance with certain laws, rules, and professional standards. That assessment includes evaluating the sufficiency of the firm’s quality control system and, if deficiencies are found, later determining whether they have been satisfactorily addressed. The PCAOB also must select audit engagements for review, and then selects particular audit areas within those engagements to review, which it does using an approach aimed at identifying audit work of greater risk to investors. To complete their tasks, PCAOB inspectors must be able to obtain relevant documents and information from the firm and to interact directly with firm personnel in a timely manner. At the end of an inspection, the PCAOB is required to make its findings available to the public, the Commission, and state regulators in accordance with the Act, and any potential violations identified by the Board may give rise to a PCAOB disciplinary investigation.<sup>5</sup>

Positions taken by PRC authorities impair the Board’s ability to execute its inspection mandate with respect to mainland China and Hong Kong firms, and as a result, seven mainland China and eight Hong Kong firms currently are overdue for inspection. As discussed below:

- There has never been a cooperative agreement with PRC authorities to facilitate regular PCAOB inspections of mainland China or Hong Kong firms.
- In negotiations, the relevant PRC authorities have not agreed to allow the PCAOB full access to relevant information for all audits selected for inspection.
- The PCAOB has never completed an inspection of a mainland China firm. The PCAOB started a pilot inspection of a mainland China firm in 2016, but could not complete it because PRC authorities withheld or redacted necessary information.

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<sup>5</sup> For more information about the PCAOB’s inspection mandate, see PCAOB Release No. 2021-004, *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act* (Sept. 22, 2021) (“Release”), at 4-6, [https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8\\_4](https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4).

- The PCAOB has not completed an inspection of a Hong Kong firm since 2010.

**Investigations.** The Act authorizes the PCAOB to investigate potential violations of certain laws, rules, and professional standards, and the PCAOB does so strategically by prioritizing investigations that are most likely to maximize investor protection, enhance accountability, and deter improper conduct. To conduct investigations, PCAOB investigators must be able to timely obtain relevant documents and information from firms and take testimony from witnesses. Investigations lay the groundwork for the Board's other important enforcement activities, including conducting disciplinary proceedings, imposing disciplinary sanctions when appropriate, and reporting those sanctions to the public.<sup>6</sup>

As with inspections, positions taken by PRC authorities impair the Board's ability to execute its investigation mandate with respect to mainland China and Hong Kong firms:

- A cooperative agreement was executed to facilitate investigation-related document productions, but PRC authorities have not performed under that agreement: Since 2015, they have not provided any documents in response to PCAOB requests.
- After the PCAOB invoked a consultation provision in the cooperative agreement to address PRC authorities' non-performance, PRC authorities did not meaningfully engage with the PCAOB.
- PRC authorities rejected use of the cooperative agreement for, and have never provided any documents in response to, investigation-related requests regarding Hong Kong firms that audit operations in mainland China.
- There has never been a cooperative agreement with PRC authorities to facilitate taking testimony during investigations of mainland China or Hong Kong firms.

In sum, without cooperative agreements that facilitate PCAOB inspections and investigations of mainland China and Hong Kong firms, and without PRC authorities' full performance under such agreements, the PCAOB cannot inspect or investigate such firms completely.

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<sup>6</sup> For more information about the PCAOB's investigation mandate, see Release at 6-8.

## II. ASSESSMENT OF THE THREE FACTORS IN PCAOB RULE 6100

Under Rule 6100(b), the Board evaluates three factors to assess whether positions taken by foreign authorities impair the Board's ability to execute its statutory mandate with respect to inspections or investigations:

- (1) the Board's ability to select engagements, audit areas, and potential violations to be reviewed or investigated;
- (2) the Board's timely access to, and the ability to retain and use, any document or information (including through conducting interviews and testimony) in the possession, custody, or control of the firm(s) or any associated persons thereof that the Board considers relevant to an inspection or investigation; and
- (3) the Board's ability to conduct inspections and investigations in a manner consistent with the provisions of the Act and the rules of the Board, as interpreted and applied by the Board.<sup>7</sup>

Impairment in any one respect, as to either inspections or investigations, is sufficient to support a determination.<sup>8</sup> When making its assessment, the Board may consider any documents or information it deems relevant, including the materials expressly identified in Rule 6100(c).<sup>9</sup>

### A. The PRC's Legal and Regulatory Framework

To obtain access to audit documents<sup>10</sup> and other information (1) from registered firms headquartered in mainland China or (2) from registered firms headquartered in Hong Kong regarding audits of mainland China operations, the PCAOB must have a cooperative agreement with the China Securities Regulatory Commission ("CSRC") and the Ministry of Finance of the People's Republic of China ("MOF").<sup>11</sup> Moreover, before such documents are shared with the PCAOB, PRC authorities first must review and approve them for sharing.

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<sup>7</sup> See PCAOB Rule 6100(b)(1)-(3).

<sup>8</sup> See Release at 29.

<sup>9</sup> See PCAOB Rule 6100(c)(1)-(3).

<sup>10</sup> "Audit documents," as used herein, may include documents beyond those encompassed by the term "audit documentation" in PCAOB Auditing Standard 1215, *Audit Documentation*, paragraph .02.

<sup>11</sup> The CSRC is a ministerial-level PRC authority responsible for regulating the securities market and cross-border supervision and enforcement cooperation relevant to securities markets. The MOF is the PRC ministry with jurisdiction over the financial audits of entities and business operations located in mainland China, including the documentation of those audits under the PRC's Certified Public Accountant Act. Hong Kong also has an audit regulator, the Financial Reporting Council, and a securities

Since 2007, the CSRC and the MOF have asserted that both a cooperative agreement and PRC authorities' consent are required before the PCAOB can access audit documents from firms based in mainland China. With respect to Hong Kong firms, the CSRC and the MOF initially asserted that such consent alone would suffice to permit the PCAOB to obtain audit documents regarding those firms' clients with mainland China operations, before refining that position in 2015 to also require a cooperative agreement.

PRC authorities have promulgated laws and regulations consistent with the CSRC's and the MOF's assertions over time about the need for the PCAOB to obtain audit documents and other information through PRC authorities. Those pronouncements include Regulation 29 adopted in 2009,<sup>12</sup> the MOF Rule adopted in 2015,<sup>13</sup> and Article 177 of the PRC Securities Law, which became effective in 2020.<sup>14</sup> While these provisions do not categorically preclude the PCAOB from obtaining access to the audit documents and information necessary for its

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regulator, the Securities and Futures Commission, but the Board's determinations are not based on positions taken by those regulators.

<sup>12</sup> Regulation 29, which was adopted by the CSRC, the Administration for the Protection of State Secrets, and the State Archives Administration, precludes mainland China companies that list securities outside of mainland China, as well as their auditors, from providing or transferring audit documents and other corporate records to foreign regulators unless such documents are first reviewed and approved for transfer by PRC authorities. *See Regulation on Strengthening Confidentiality and Archives Administration Relating to Overseas Issuance and Listing of Securities* (Circular [2009] No. 29) (Oct. 20, 2009). PRC authorities have taken the position that Regulation 29 applies to audit firms headquartered in mainland China and Hong Kong, and it covers all audit documents for their audits of mainland China companies with a listing outside of mainland China. Regulation 29 did not create new obligations but instead clarified how PRC authorities expect regulated entities to meet their obligations under existing laws, including the PRC's Protection of State Secrets Law and Archives Law.

<sup>13</sup> The MOF Rule reminds audit firms of their obligations under Regulation 29 and states that a foreign regulator can access audit documents related to mainland China operations only in accordance with cooperative agreements with the CSRC and the MOF. *See Article 12, Interim Provisions on Auditing Operations Conducted by Accounting Firms Concerning the Overseas Listing of Domestic Chinese Companies* ([2015] No. 9) (effective July 1, 2015).

<sup>14</sup> Article 177 prohibits entities and individuals from providing to non-mainland China regulators documents or materials related to securities business activities in mainland China without the approval of the CSRC and the relevant department of the State Council, the PRC's central executive body. *See Article 177, Revised Securities Law of the PRC* (effective Mar. 1, 2020). Article 177 also codifies an earlier PRC position that foreign securities regulatory agencies cannot directly conduct investigations and evidence-collection activities within mainland China. PRC authorities have taken a similar position with respect to inspections: "We are afraid that under the current Chinese laws and regulations, PCAOB is not allowed to perform any form of independent or joint on-site inspection in the Chinese territory." Letter from the CSRC to the PCAOB, at 1 (Jan. 22, 2009), available at <https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-027-rule-amendments-concerning-the-timing-of-certain-inspections-of-non-us-firms-and-other-issues-relating-to-inspections-of-non-us-firms/comment-letters> (Comment Letter No. 24).

oversight, they require that any such access be obtained under cooperative agreements with the CSRC and the MOF, making such agreements essential to the PCAOB's inspections and investigations of mainland China and Hong Kong firms.

As described in the following sections, however, PRC authorities have not agreed to cooperative agreements that would enable the PCAOB to complete its mandated oversight activities or, with respect to requests for documents from mainland China firms in connection with PCAOB investigations, have failed to perform under such an agreement.

## **B. Positions Taken by PRC Authorities Impair the Board's Ability to Inspect Completely**

Despite PCAOB engagement for more than a decade with the CSRC and the MOF, PRC authorities have not agreed to facilitate a regular program of PCAOB inspections mandated by Section 104 of the Act.

Since beginning negotiations with the CSRC and the MOF in 2007, the PCAOB has sought the same access to information as it has in other foreign jurisdictions via bilateral agreements and cooperative arrangements with foreign regulators. In July 2010, to advance prior negotiations, the PCAOB sent a draft Statement of Protocol to the CSRC, consistent with the PCAOB's approach to oversight and cross-border regulatory cooperation.

By early 2012, however, the CSRC and the MOF had stopped negotiating a cooperative agreement for a regular cycle of PCAOB inspections and insisted that the PCAOB first observe a select portion of a CSRC inspection, limited to the CSRC's review of one mainland China firm's quality control system. After that "confidence-building" exercise, the PCAOB provided to the CSRC and the MOF a draft inspections protocol agreement in January 2014.

In December 2014, the CSRC and the MOF responded that, instead of negotiating a comprehensive agreement for inspections cooperation, the next step must be a second "confidence-building" exercise: a pilot inspection of one mainland China firm (the "Pilot Inspection"). In 2016, the PCAOB, the CSRC, and the MOF entered into a standalone agreement that addressed only the Pilot Inspection.

As part of the same negotiations, the CSRC and the MOF also agreed to facilitate a pilot inspection of a registered firm headquartered in Hong Kong. But the CSRC and the MOF failed to negotiate protocols with the PCAOB and did not secure the requisite PRC State Council approval to conclude an agreement with the PCAOB and facilitate a Hong Kong pilot inspection. The CSRC and the MOF subsequently took the position that the Pilot Inspection of the mainland China firm had to be completed before they could execute an agreement for a pilot inspection of a Hong Kong firm.

The PCAOB ultimately could not complete its Pilot Inspection of a mainland China firm. During the Pilot Inspection, the PCAOB used its risk-based selection method to select for review

a mainland China firm’s archived audit files for certain issuer audits. Prior to the inspection, the CSRC, the MOF, and several other PRC authorities reviewed the audit work papers for the selected engagements and determined which ones would be withheld from the PCAOB or redacted. Although audit work papers include the information an auditor determines is needed to document its conclusions and compliance with auditing standards and requirements,<sup>15</sup> PRC authorities withheld and redacted, based on concerns that the documents contained sensitive information or state secrets, certain work papers that the PCAOB’s inspection team needed to conclude its inspection.

PCAOB staff explained to the CSRC on several occasions the relevance of specific withheld documents and redacted information needed to conclude the Pilot Inspection. Despite these efforts and explanations, the CSRC responded that it and the other PRC authorities would not reconsider their decisions. As a result, PCAOB staff were unable to examine relevant documents and information, and thus could not complete the Pilot Inspection.

Furthermore, apart from the redactions and withholdings encountered during the Pilot Inspection, PRC authorities have consistently sought to limit the PCAOB’s ability to select audit engagements for inspection, particularly with respect to audits of issuers that are state-owned enterprises or large technology-related companies that PRC authorities have described to the PCAOB as sensitive.<sup>16</sup> PCAOB staff have repeatedly requested that the CSRC and the MOF identify solutions to this long-standing obstacle.

Hence, through more than a decade of negotiations and participation in “confidence-building” and “pilot” efforts, the PCAOB has sought resolution of the key challenges noted above—namely, the absence of a cooperative agreement for a regular cycle of inspections, restricted access to required information, and limitations as to engagement selection. In 2019-2021, the CSRC offered proposals addressing certain aspects of cooperation on inspections, but the obstacles that arose in prior negotiations and in the Pilot Inspection remain unresolved. For example, the CSRC proposals continue to permit withholding or redacting information and fail to create a mechanism whereby withheld documents and redacted information can be

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<sup>15</sup> See generally PCAOB Auditing Standard 1215, *Audit Documentation*, paragraph .02 (“Audit documentation is the written record of the basis for the auditor’s conclusions that provides the support for the auditor’s representations, whether those representations are contained in the auditor’s report or otherwise. Audit documentation . . . is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor’s significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor.”).

<sup>16</sup> While the CSRC and the MOF did agree to engagement selections for the Pilot Inspection, the PCAOB was unable to complete the Pilot Inspection because of withheld and redacted documents.



provided to the PCAOB in recognition of the PCAOB's need to review them to complete its inspection.

The failure to resolve the issues noted above has prevented the parties from reaching a cooperative agreement regarding inspections of mainland China and Hong Kong firms, and has impaired the Board's ability to execute its statutory inspection mandate with respect to all three factors in Rule 6100(b), as explained below.

***Factor 1: The Board's ability to select engagements and audit areas to be reviewed.***

Section 104(d)(1) of the Act requires the Board to select audit engagements as part of an inspection. The PCAOB applies a consistent approach across firms and across jurisdictions to select a mix of engagements, and once an engagement is selected, the PCAOB selects audit areas for review based on considerations such as complexity, significance, risk of material misstatement to the issuer's financial statements, and areas with recurring deficiencies.

At the most fundamental level, the failure of PRC authorities to agree to an arrangement to facilitate a regular program of inspections with respect to mainland China and Hong Kong firms has prevented the PCAOB from selecting engagements for review. Moreover, as the PCAOB has consistently articulated in negotiations across foreign jurisdictions globally, limitations on engagement selections are inconsistent with the Board's obligations under the Act. Yet in negotiations about inspections of firms headquartered in mainland China and Hong Kong, PRC authorities have sought to impose such limitations. While discussions on this issue are ongoing, the PCAOB and PRC authorities have not finalized arrangements for engagement selections consistent with the PCAOB's mandate.

The PCAOB's experience in the Pilot Inspection further illustrates how PRC authorities' positions impair the Board's ability to select engagements and audit areas to be reviewed during an inspection. By imposing withholdings and redactions, PRC authorities prevented the Board from completing the Pilot Inspection, and therefore nullified the Board's selection of an engagement for review under Section 104 of the Act and the Board's selection of particular audit areas for inspection.<sup>17</sup>

For these reasons, the positions taken by PRC authorities render the Board unable to select engagements and audit areas to be reviewed.

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<sup>17</sup> Rule 6100(d) expressly provides that a determination need not depend on the Board's commencement of, but inability to complete, an inspection, but, as explained in this report, the Board commenced, but was unable to complete, the Pilot Inspection.

***Factor 2: The Board's timely access to, and the ability to retain and use, any document or information (including through conducting interviews) in the possession, custody, or control of the firm(s) or any associated persons thereof that the Board considers relevant to an inspection.***

The absence of a cooperative agreement with the CSRC and the MOF deprives the PCAOB of complete and timely access to the audit documents and information necessary to conduct inspections of registered firms headquartered in mainland China and Hong Kong. Moreover, during the Pilot Inspection, PRC authorities withheld and redacted, based on concerns that the documents contained sensitive information or state secrets, certain work papers that the PCAOB needed to complete its inspection. Despite extensive efforts by the PCAOB to access the required material, the PRC authorities refused to reconsider the withheld documents or the redacted information. The PRC Authorities have not proposed how this obstacle can be resolved as part of an agreement for a regular schedule of inspections. As a result, the Board lacks timely access to, and the ability to retain and use, any document or information relevant to an inspection.

***Factor 3: The Board's ability to conduct inspections in a manner consistent with the provisions of the Act and the rules of the Board, as interpreted and applied by the Board.***

PRC authorities' positions, including the failure to enter into a cooperative agreement governing inspections generally, render the PCAOB unable to conduct a regular program of inspections of firms headquartered in mainland China and Hong Kong as mandated by the Act.<sup>18</sup> With respect to the PCAOB's triennial inspection mandate, seven mainland China registered firms and eight Hong Kong registered firms currently are overdue for inspection. Another three registered firms in mainland China and eighteen in Hong Kong previously were due for inspection but, because they have not issued any audit reports for issuers for several years, they no longer require inspection. Indeed, the PCAOB has never completed an inspection of a mainland China firm and has not performed any inspection activities at a Hong Kong firm since 2010.<sup>19</sup>

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<sup>18</sup> See Section 104(b)(1) of the Act (PCAOB inspections must be conducted annually with respect to each registered firm that regularly provides audit reports for more than 100 issuers, and at least triennially with respect to each registered firm that regularly provides audit reports for 100 or fewer issuers). Currently, all registered firms headquartered in mainland China or Hong Kong that regularly provide audit reports for issuers are subject to the triennial inspection frequency.

<sup>19</sup> Prior to 2011, the PCAOB was able to complete inspections of nine Hong Kong firms. However, since then, the PCAOB has been unable to inspect firms in Hong Kong because the CSRC and the MOF have taken the position that Hong Kong firms cannot allow the PCAOB to access audit documentation regarding clients with mainland China operations without PRC authorities' approval provided under a cooperative agreement with the CSRC and the MOF, and no such agreement has been reached.

By preventing the PCAOB from conducting regular inspections of registered firms, PRC authorities' positions also prevent the Board from discharging numerous other aspects of its inspection-related duties, including identifying potentially violative acts, reporting such acts to the Commission and other regulators, determining whether a firm has addressed findings related to its quality control system, and reporting inspection findings to the public. Consequently, the Board cannot conduct inspections in a manner consistent with the provisions of the Act and the rules of the Board.

### **C. Positions Taken by PRC Authorities Impair the Board's Ability to Investigate Completely**

After years of effort to access audit documents and information for Board investigations, negotiations between the PCAOB and the CSRC and the MOF yielded an Enforcement Memorandum of Understanding ("the Enforcement MOU") in May 2013. The Enforcement MOU established a mechanism for the parties to request and receive from each other assistance in obtaining documents and information in furtherance of their respective statutory investigative responsibilities. However, the PCAOB has received limited, and ultimately insufficient, assistance from the CSRC and the MOF under the Enforcement MOU.

Shortly after the execution of the Enforcement MOU, the PCAOB began making requests to the CSRC and the MOF for assistance in obtaining documents in its investigations. Although the CSRC produced documents to the PCAOB in a timely manner in response to two requests made in 2013 regarding mainland China firms, the CSRC produced documents for a third request made in 2013 only after a two-year delay, and then failed to produce documents altogether in response to two subsequent requests.

Moreover, the CSRC and the MOF have never produced any documents in response to investigation-related requests by the PCAOB relating to Hong Kong firms. In response to two such requests in 2013, the CSRC and the MOF asserted that the Enforcement MOU does not apply to Hong Kong firms. In both instances, the PCAOB sought work papers for a Hong Kong firm's audit of mainland China operations, which could be obtained only with the consent of the CSRC and the MOF. Although the Enforcement MOU does not exclude work performed by Hong Kong firms, the CSRC and the MOF have refused the PCAOB's requests for audit documents from Hong Kong firms under the Enforcement MOU. At this time, no arrangements are in place to facilitate PRC authorities' cooperation with respect to the PCAOB's investigation-related requests related to Hong Kong firms.

Furthermore, the CSRC and the MOF have never authorized the PCAOB to take testimony from mainland China or Hong Kong firms or their associated persons. Although the PCAOB sought to include a provision in the Enforcement MOU regarding assistance in obtaining testimony, the CSRC and the MOF insisted on excluding such a provision due to their asserted lack of authority to compel testimony. When the PCAOB a year later sought testimony outside the auspices of the Enforcement MOU, however, the CSRC and the MOF took the position that

testimony could be taken only with their direct involvement, and only after protocols were negotiated. Despite repeated attempts to negotiate testimony protocols since 2013, no agreement has been reached.

Faced with the issues detailed above, the PCAOB sought to address its concerns regarding the Enforcement MOU. The Enforcement MOU allows any party to require consultations among all parties regarding “matters of common concern with a view to improving its operation and resolving any issues that may arise,” particularly “in the event of . . . a demonstrated change in the willingness or ability of an Authority to comply with the provisions of this MOU.”<sup>20</sup> The PCAOB formally invoked that provision in a June 2016 letter, raising two principal issues: (1) the timeliness of the CSRC and the MOF’s performance under the Enforcement MOU and (2) the continued delay in negotiating a testimony protocol. The letter explained that the PRC authorities’ actions and inaction after the execution of the Enforcement MOU in 2013 were preventing the PCAOB from being able to rely on the agreement to conduct or complete investigations.

In a good-faith effort, PCAOB staff traveled to Beijing three times between November 2016 and December 2017 to meet with CSRC and MOF staff to, among other things, resolve the specific issues raised by the PCAOB under the consultation clause. Those meetings, however, did not result in the CSRC providing any additional documents in response to the PCAOB’s pending requests under the Enforcement MOU. Nor did the meetings produce an agreement on testimony protocols.

The Enforcement MOU therefore has not been an effective instrument for the cross-border cooperation required to perform PCAOB investigations of registered firms headquartered in mainland China and Hong Kong. Accordingly, the positions taken by PRC authorities impair the Board’s ability to execute its statutory investigation mandate with respect to all three factors in Rule 6100(b), as explained below.

***Factor 1: The Board’s ability to select potential violations to be investigated.***

The Act authorizes the Board to select for investigation potential violations of PCAOB standards and rules and related federal securities laws. In making such selections, the PCAOB prioritizes those investigations that are most likely to maximize investor protection, enforce accountability, and deter improper conduct. The failure of PRC authorities to perform under the Enforcement MOU in response to the PCAOB’s requests for documents has nullified the Board’s selection of potential violations to be investigated as to registered firms and their associated persons in both mainland China and Hong Kong.

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<sup>20</sup> See May 2013 Memorandum of Understanding on Enforcement Cooperation between the Public Company Accounting Oversight Board of the United States and the China Securities and Regulatory Commission and the Ministry of Finance of China, Art. X(a) and (a)(ii).

***Factor 2: The Board's timely access to, and the ability to retain and use, any document or information (including through conducting interviews and testimony) in the possession, custody, or control of the firm(s) or any associated persons thereof that the Board considers relevant to an investigation.***

The failure of the CSRC and the MOF to perform under the Enforcement MOU has obstructed the Board's timely access to relevant documents in PCAOB investigations of registered firms and their associated persons headquartered in mainland China. Additionally, the CSRC and the MOF have never produced any documents in response to investigation-related requests by the PCAOB relating to Hong Kong firms and their associated persons, have construed the Enforcement MOU not to apply to investigations of Hong Kong firms, and have not agreed to a cooperative arrangement that would cover Hong Kong firms. And even in the few cases where PRC authorities have provided documents to the PCAOB under the Enforcement MOU, they did not meaningfully engage (despite repeated attempts by the PCAOB) to negotiate protocols for access to information via testimony.

Faced with these obstacles, the PCAOB invoked the Enforcement MOU's consultation provision in 2016, but the CSRC and the MOF did not engage in meaningful discussions. These obstacles to obtaining documents and testimony persist. Consequently, the Board has been unable to investigate completely certain firms that were subject to an investigation.<sup>21</sup>

***Factor 3: The Board's ability to conduct investigations in a manner consistent with the provisions of the Act and the rules of the Board, as interpreted and applied by the Board.***

PRC authorities' positions, including non-performance under the Enforcement MOU, not only deprive the Board of its ability to obtain the audit documents and testimony that it needs during investigations, but also impair the Board's ability to bring disciplinary charges against registered firms headquartered in mainland China and Hong Kong and their associated persons. That, in turn, has a cascading effect on still other fundamental aspects of the PCAOB's investigation mandate: Absent the ability to conduct investigations and bring disciplinary charges, the Board is unable to impose sanctions, report those sanctions to the public, and make referrals to other disciplinary authorities. Therefore, the Board has not been able to conduct investigations in a manner consistent with the provisions of the Act and the rules of the Board.

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<sup>21</sup> See generally *Crowe Horwath (HK) CPA Ltd.*, PCAOB Rel. No. 105-2017-031 (July 25, 2017) (Hong Kong firm refused to produce documents during an investigation and informed PCAOB staff that the MOF directed it not to do so); *PKF [Hong Kong]*, PCAOB Rel. No. 105-2016-001 (Jan. 12, 2016) (Hong Kong firm refused to appear for testimony during an investigation based, in part, on the assertion that testimony could not proceed without the CSRC's or the MOF's approval). Although a determination need not depend on the Board's commencement of, but inability to complete, an investigation (see PCAOB Rule 6100(d)), the Board was unable to complete these and other investigations.

### III. DETERMINATIONS

For the foregoing reasons, the Board concludes that its ability to execute its statutory mandates as to inspections and investigations is impaired with respect to all three factors in Rule 6100(b). Accordingly, under Rule 6100, the Board concludes that the position<sup>22</sup> taken by PRC authorities impairs the Board's ability to execute its statutory mandates with respect to inspections and investigations of registered firms headquartered in mainland China and Hong Kong. The Board is unable to inspect or investigate completely registered public accounting firms headquartered in mainland China and Hong Kong because of a position taken by authorities in those jurisdictions.<sup>23</sup>

Because the PRC authorities' position applies generally to registered firms headquartered in mainland China and Hong Kong, the Board concludes that jurisdiction-wide determinations under Rule 6100(a)(1) are warranted as to such firms. As described in this report, the obstacles to completing Board inspections and investigations reflect broadly

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<sup>22</sup> Reference to the PRC authorities' "position" encompasses all of the various positions discussed herein taken by authorities in the PRC that, when aggregated together, collectively constitute the position of authorities in the PRC. See Release at 23.

<sup>23</sup> The Hong Kong Determination is based on positions taken by PRC authorities. Hong Kong is a Special Administrative Region and dependency of the PRC, which exercises sovereignty over it, and Hong Kong is directly under the authority of the Central People's Government of the PRC, which is responsible for foreign affairs relating to it. See, e.g., Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of China on the Question of Hong Kong, Dec. 19, 1984, ¶¶ 1, 3(1), 3(2), 1399 U.N.T.S. 33; *id.*, Annex I, Art. I; Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("Basic Law"), Arts. 1, 12, 13.

When registered Hong Kong firms perform audit work in mainland China or on mainland China operations, they are subject to Regulation 29 and the MOF Rule (among other restrictions) and cannot provide related audit documents to the PCAOB without PRC authorities' consent. That position derives in part from PRC authorities' concerns about purported state secrets and sensitive matters of national interest, and if Hong Kong firms provide such material to the PCAOB without PRC authorities' prior approval, they could subject their personnel to possible criminal prosecution by mainland China authorities under national law applicable in Hong Kong. See Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("National Security Law"), Art. 29 (criminalizing the provision of "state secrets" to a foreign organization outside the PRC); *id.*, Arts. 55, 56 (providing that in a criminal case under the National Security Law involving "external elements," mainland China authorities could exercise jurisdiction, initiate an investigation into the case, designate a mainland China body to prosecute it, and designate a mainland China court to adjudicate it); see also Basic Law, Art. 18 (national laws apply in Hong Kong if they are listed in Annex III to the Basic Law); Basic Law, Instrument 5, Decision of the Standing Committee of the National People's Congress on the Addition to the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (June 30, 2020) (adding the National Security Law to Annex III to the Basic Law).

applicable positions taken by PRC authorities.<sup>24</sup> These impairments have jurisdiction-wide impacts on the Board’s execution of its statutory mandates.

**Appendix A** and **Appendix B** identify the firms that are subject to the Mainland China Determination and the Hong Kong Determination, respectively. The Mainland China Determination applies to all registered firms that are headquartered in mainland China, and the Hong Kong Determination applies to all registered firms that are headquartered in Hong Kong, as reported in those firms’ most recent annual reports on Form 2 or registration applications on Form 1 filed with the Board. There is no indication for any firm listed in **Appendix A** or **Appendix B** that the headquarters address reported to the Board is not the firm’s principal place of business.<sup>25</sup> The Mainland China Determination and the Hong Kong Determination are effective as of the date of this report.<sup>26</sup>

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<sup>24</sup> See Release at 18 (“if a foreign authority articulates or maintains a position that applies generally to PCAOB inspections or investigations in a foreign jurisdiction, that position could provide the basis for a jurisdiction-wide determination”); *see also, e.g., id.* at 21 (explaining that “non-performance” under a bilateral agreement that is intended to resolve conflicts arising from gatekeeper laws “would have jurisdiction-wide impact” and “thus could give rise to a jurisdiction-wide determination”); *id.* (explaining that when a foreign authority applies or interprets its law in a manner that denies the Board access to critical parts of the audit work papers for certain types of entities, the foreign authority’s position—if it applies generally to firms within the jurisdiction—impairs the Board’s ability to conduct inspections and investigations on a jurisdiction-wide basis, regardless of which particular firms in the jurisdiction have those entities as clients at the time of the Board’s determination).

<sup>25</sup> See generally Release at 19.

<sup>26</sup> See PCAOB Rule 6100(f).

**APPENDIX A: REGISTERED PUBLIC ACCOUNTING FIRMS  
SUBJECT TO THE MAINLAND CHINA DETERMINATION**

**Note:** Pursuant to PCAOB Rule 6100(e)(4), each firm listed below is required to notify the PCAOB Secretary within 5 days of any change to the firm’s information in this appendix, including within five days of the date of this report if the information in this appendix is no longer accurate. Such notice shall be transmitted by electronic mail to the PCAOB Secretary at the following address: [Secretary@pcaobus.org](mailto:Secretary@pcaobus.org).

<b>FIRM NAME</b>	<b>PCAOB IDENTIFICATION NUMBER</b>	<b>HEADQUARTERS LOCATION</b>
AGN China Regal CPAs Co., Ltd.	2818	Mainland China
Baker Tilly China Certified Public Accountants	3064	Mainland China
BDO China Shu Lun Pan Certified Public Accountants LLP	1818	Mainland China
BDO China Zhonglian Mindu Shu Lun Pan CPAs Co., Ltd.	5163	Mainland China
Beijing AnShun International CPAs Co., Ltd.	3169	Mainland China
Beijing Ever Trust CPAs Co., Ltd.	2724	Mainland China
Beijing Huaweixin Certified Public Accountants Co. Ltd	3162	Mainland China
Beijing Senheguang Certified Public Accountants Co.,Ltd	3104	Mainland China
Beijing Topson Certified Public Accountants Co., Ltd.	2316	Mainland China
Beijing Zhongxingyu Certified Public Accountants	2285	Mainland China
Beijing Zhongxuanyu CPA Co.,Ltd.	3672	Mainland China
Da Hua CPAs (Special General Partnership)	2516	Mainland China
Deloitte Touche Tohmatsu Certified Public Accountants LLP	1113	Mainland China
Ernst & Young Hua Ming LLP	1408	Mainland China
Fortune Certified Public Accountants Ltd.	3529	Mainland China
Gan-Su Hong-Xin Accountants Firm Ltd.	2746	Mainland China
Grant Thornton	1487	Mainland China
Guangzhou Good Faith CPA LTD	2729	Mainland China
JTC Fair Song CPA Firm	2747	Mainland China
KPMG Huazhen LLP	1186	Mainland China
LehmanBrown Lu Hua CPA Firm	2522	Mainland China
Pan-China Certified Public Accountants LLP	3694	Mainland China
PricewaterhouseCoopers Zhong Tian LLP	1424	Mainland China



December 16, 2021

**APPENDIX A (CONTINUED)**

<b>FIRM NAME</b>	<b>PCAOB IDENTIFICATION NUMBER</b>	<b>HEADQUARTERS LOCATION</b>
<b>Shandong Haoxin Certified Public Accountants Co., Ltd</b>	5035	Mainland China
<b>Shanghai J&amp;J Certified Public Accountants Firm</b>	1964	Mainland China
<b>Shanghai Linfang Certified Public Accountants Co., Ltd.</b>	2871	Mainland China
<b>Shanghai LVR Financial Consulting Co., Ltd.</b>	3241	Mainland China
<b>Shanghai Mazars Certified Public Accountants</b>	3305	Mainland China
<b>Shanghai Perfect C.P.A Partnership</b>	3027	Mainland China
<b>Shanghai RISMO C.P.A. LTD</b>	3767	Mainland China
<b>Shenzhen Kung Ming Certified Public Accountants Co. Ltd.</b>	2550	Mainland China
<b>Zhong Cai Accountants Company</b>	2009	Mainland China
<b>Zhonghua Certified Public Accountants LLP</b>	1921	Mainland China
<b>Zhonglei Certified Public Accountants Co.,Ltd</b>	3300	Mainland China
<b>Zhongshenzhonghuan Certified Public Accountants LLP</b>	2300	Mainland China

**APPENDIX B: REGISTERED PUBLIC ACCOUNTING FIRMS  
SUBJECT TO THE HONG KONG DETERMINATION**

**Note:** Pursuant to PCAOB Rule 6100(e)(4), each firm listed below is required to notify the PCAOB Secretary within 5 days of any change to the firm’s information in this appendix, including within five days of the date of this report if the information in this appendix is no longer accurate. Such notice shall be transmitted by electronic mail to the PCAOB Secretary at the following address: [Secretary@pcaobus.org](mailto:Secretary@pcaobus.org).

<b>FIRM NAME</b>	<b>PCAOB IDENTIFICATION NUMBER</b>	<b>HEADQUARTERS LOCATION</b>
Aoba CPA Limited	2702	Hong Kong
BDO Limited	1274	Hong Kong
Centurion ZD CPA & Co.	2769	Hong Kong
Deloitte Touche Tohmatsu	1104	Hong Kong
Ernst & Young	1409	Hong Kong
Gary Cheng CPA Limited	5068	Hong Kong
HKCM CPA & Co	3299	Hong Kong
Ho, Sneddon, Chow C.P.A. Limited	1915	Hong Kong
Jonten Hopkins CPA Limited	2558	Hong Kong
K.P. Cheng & Co.	1858	Hong Kong
KLC Kennic Lui & Co. Limited	3586	Hong Kong
KPMG	1181	Hong Kong
Kreston CAC CPA Limited	2984	Hong Kong
Lo and Kwong C.P.A. & Co	3329	Hong Kong
Mazars CPA Limited	3014	Hong Kong
Moore Stephens CPA Limited	844	Hong Kong
Morison Heng	3264	Hong Kong
Morrison CPA Limited	3393	Hong Kong
Parker Randall CF (H.K.) CPA Ltd	2879	Hong Kong
PricewaterhouseCoopers	1389	Hong Kong
RSM Hong Kong	2621	Hong Kong
Russell Bedford James Ngai CPA Limited	2692	Hong Kong
SWC & Partners	1998	Hong Kong
Tai Kong CPA Limited	2949	Hong Kong
Union Power HK CPA Limited	3004	Hong Kong
Vocation HK CPA Limited	2085	Hong Kong
Wong Lam Leung & Kwok C.P.A. Limited	2531	Hong Kong
Zhen Hui Certified Public Accountants	957	Hong Kong