

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 249 and 274

[Release No. 34-91364; IC-34227; File No. S7-03-21]

RIN 3235-AM84

Holding Foreign Companies Accountable Act Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: We are adopting interim final amendments to Forms 20-F, 40-F, 10-K, and N-CSR to implement the disclosure and submission requirements of the Holding Foreign Companies Accountable Act (“HFCA Act”). The interim final amendments will apply to registrants that the Securities and Exchange Commission (“Commission”) 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 and that the Public Company Accounting Oversight Board (“PCAOB”) is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction. Consistent with the HFCA Act, the amendments require the submission of documentation to the Commission establishing that such a registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and also require disclosure in a foreign issuer’s annual report regarding the audit arrangements of, and governmental influence on, such registrants.

DATES: *Effective:* The interim final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. As discussed in Section II, a registrant will not be required to comply with the amendments until it has been identified by the Commission as having a non-inspection year pursuant to a process to be subsequently established by the

Commission with appropriate notice. Once identified, a registrant will be required to comply with the amendments in its annual report for each fiscal year in which it is so identified.

Comments: Comments should be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/submitcomments.htm>).

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-03-21. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/interim-final-temp.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such

materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by e-mail.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Senior Special Counsel, at (202) 551-3430, in the Office of Rulemaking, Division of Corporation Finance; or Blair Burnett, Senior Counsel, at (202) 551-6792, in the Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting interim final amendments to the following forms.

Commission Reference		CFR Citation (17 CFR)
Securities Exchange Act of 1934 (Exchange Act) ¹	Form 20-F	§ 249.220f
	Form 40-F	§ 249.240f
	Form 10-K	§ 249.310
Exchange Act and Investment Company Act of 1940 (Investment Company Act) ²	Form N-CSR	§§ 249.331 and 274.128

I. Background

We are adopting interim final amendments to Form 10-K, Form 20-F, Form 40-F, and Form N-CSR to implement the disclosure and submission requirements of the HFCA Act,³ which became law on December 18, 2020. Among other things, Section 2 of the HFCA Act

¹ 15 U.S.C. 78a *et seq.*

² 15 U.S.C. 80a-1 *et seq.*

³ Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

amended Section 104 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”)⁴ to require the Commission to identify each “covered issuer”⁵ that has retained a registered public accounting firm⁶ to issue an audit report⁷ where that registered public accounting firm has a branch or office⁸ that:

- Is located in a foreign jurisdiction; and
- The PCAOB has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction.

Registrants so identified (“Commission-Identified Issuers”) are required to submit documentation to the Commission that establishes that they are not owned or controlled by a governmental entity in that foreign jurisdiction. In addition, if the registrant is determined to be a Commission-Identified Issuer for three consecutive years, Section 2 of the HFCA Act directs the Commission to prohibit trading of the registrant’s securities.⁹ Section 3 of the HFCA Act

⁴ 15 U.S.C. 7214 (as amended by Pub. L. No. 116-222).

⁵ Sarbanes-Oxley Act Section 104(i)(1)(A) defines “covered issuer” as an issuer that is required to file reports under Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act. Issuers filing reports under the Exchange Act are referred to in Commission forms as “registrants.” In this release we use the term “issuers” when referring to the HFCA Act, but refer to “registrants” when discussing the forms and form requirements.

⁶ We use the terms “registered public accounting firm” and “auditor” interchangeably to mean public accounting firms that, among other things, prepare accountant’s reports on U.S. public companies and are required to register with the PCAOB. The term “accountant’s report” is defined in 17 CFR 210.1-02(a)(1) (Rule 1-02(a)(1) of Regulation S-X) in regard to financial statements as a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which the accountant has made and sets forth that accountant’s opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed.

⁷ The HFCA Act uses the term “audit report.” As noted above, for the purposes of this release and the interim final amendments the term “audit report” has the same meaning as “accountants’ report” in Rule 1-02(a)(1) of Regulation S-X.

⁸ Where a branch or office of an international firm network is a separate legal entity from the U.S.-based or international firm network and that branch or office signs the audit report in its own name, the Commission will look to the PCAOB determination for that branch or office and not apply that determination to the U.S.-based or other branches or offices of that firm network that are not based in the PCAOB-identified foreign jurisdiction.

⁹ See Sarbanes-Oxley Act Section 104(i)(3). Pursuant to Section 104(i)(3) of the Sarbanes-Oxley Act, as added by Section 2 of the HFCA Act, if an issuer is a Commission-Identified Issuer for three consecutive years, the

provides that Commission-Identified Issuers that are foreign issuers (“Commission-Identified Foreign Issuers”), as defined in 17 CFR 240.3b-4 (“Exchange Act Rule 3b-4”),¹⁰ are subject to additional specified disclosure requirements, as discussed in more detail below.

II. Discussion of Amendments

The scope of the interim final amendments is limited to (1) the statutory mandate to issue rules that establish the manner and form in which a Commission-Identified Issuer must make the submissions required under Section 104(i)(2)(B) of the Sarbanes-Oxley Act, and (2) the disclosure obligations set forth in Section 3 of the HFCA Act that we have added to the relevant Commission forms. The new disclosure and submission requirements established by the HFCA Act are triggered by the identification of affected registered public accounting firms by the PCAOB and affected registrants by the Commission.

Under Section 104(i)(2) of the Sarbanes-Oxley Act, as added by the HFCA Act, the PCAOB is responsible for determining that it is unable to inspect or investigate completely a registered public accounting firm because of a position taken by an authority in a foreign jurisdiction. We understand that the PCAOB is considering its obligations under the HFCA Act, including the process for making these determinations. We believe it is important that the PCAOB act quickly to identify the best manner in which to make these determinations. Any PCAOB rulemaking in response to the HFCA Act will be subject to Commission review and

Commission must prohibit the securities of the issuer from being traded on a national securities exchange or through any other method that is within the jurisdiction of the Commission to regulate, including through “over-the-counter” trading. The implementation of Section 104(i)(3) of the Sarbanes-Oxley Act and the required trading prohibition is not subject to the 90-day rulemaking deadline that applies to the submission requirement in Section 104(i)(2) and will be addressed separately. The Commission staff, in deciding what to recommend to the Commission, is actively considering ways to implement the trading prohibition, and the Commission anticipates seeking comment from the public.

¹⁰ Under Exchange Act Rule 3b-4, the term “foreign issuer” means any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

approval prior to taking effect. Once the PCAOB process has been established, the Commission will use the PCAOB's determination about which firms it is unable to inspect or investigate completely, along with information in a registrant's annual reports, to compile a list of registrants that are Commission-Identified Issuers.

Disclosure Requirement

Section 3 of the HFCA Act requires a Commission-Identified Foreign Issuer to provide certain additional disclosure in its annual report for the year that the Commission so identifies the issuer. The HFCA Act requires this disclosure in the issuer's Form 10-K, Form 20-F, or a form that is the equivalent of, or substantially similar to, these forms.¹¹ Specifically, a Commission-Identified Issuer is required to disclose:

- That, during the period covered by the form, the registered public accounting firm has prepared an audit report for the issuer;¹²
- The percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;
- Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;

¹¹ Section 3 of the HFCA Act specifically identifies Form 10-K and Form 20-F. The disclosures required by Section 3 of the HFCA Act are also required in transition reports filed on Forms 10-K and in transition reports on Form 20-F that include audited financial statements. The disclosures should address the transition period as if it were a fiscal year.

¹² The registered public accounting firm referenced in the statute means a firm that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, as described in Section 104(i)(2)(A) of the Sarbanes-Oxley Act. The interim final amendments contain minor revisions to the statutory language to clarify this and other points. Specifically, the amendments require a Commission-Identified Foreign Issuer to disclose that, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant.

- The name of each official of the Chinese Communist Party (“CCP”) who is a member of the board of directors of the issuer or the operating entity with respect to the issuer; and
- Whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the CCP, including the text of any such charter.

While Section 3 of the HFCA Act does not mandate specific rule or form changes, we believe that amending our forms to include the new disclosure requirements will help registrants comply with the HFCA Act. The Commission is therefore amending Form 10-K, Form 20-F, Form 40-F,¹³ and Form N-CSR¹⁴ to reflect the disclosure requirements in Section 3 of the HFCA Act.

Specifically, we are amending Form 10-K to add Part II, Item 9C, Form 20-F to add Part II, Item 16I, Form 40-F to add paragraph B.18, and Form N-CSR to add paragraphs (i) and (j) of Item 4. The added items entitled “Disclosure Regarding Foreign Jurisdictions that Prevent Inspections” in Form 10-K, Form 20-F, and Form 40-F are located with other accounting, financial, and corporate governance disclosure requirements but are not required to be included in a registrant’s proxy or information statement.¹⁵ The amendments to Form N-CSR are located in an existing item entitled “Principal Accountant Fees and Services.”

¹³ In reviewing the Commission’s forms, we determined that Form 40-F is an equivalent or substantially similar form filed by foreign issuers. The Form 40-F is a form that may be used by Canadian issuers that seek to offer their securities in the U.S. and is used by those issuers for annual reports filed under Section 13(a) or Section 15(d) of the Exchange Act. As such, even though the form is not expressly named in the HFCA Act, its use by issuers for annual reports filed under Section 13(a) and Section 15(d) establishes the form as equivalent or substantially similar to the Form 10-K and Form 20-F.

¹⁴ Form N-CSR is an annual reporting form used by the registered investment companies that will be affected by the HFCA Act to file their audited financial statements with the Commission. Although Form N-CSR is not specifically identified in the HFCA Act, its use by these registered investment companies for annual reports filed under Section 13(a) and Section 15(d) establishes the form as equivalent or substantially similar to the Form 10-K and Form 20-F.

¹⁵ See 17 CFR 240.14a-101 and 17 CFR 14c-101.

The registrant will be required to provide the disclosure for each year in which the registrant is a Commission-Identified Issuer. Because the period covered by the forms looks back at the prior year, a Commission-Identified Foreign Issuer that was identified in the prior year will be required to provide the HFCA Act Section 3 disclosure in its annual report for the year in which it was identified, even if the registrant's subsequent filing includes an audit report issued by a registered public accounting firm that the PCAOB is able to inspect or investigate completely.

In addition, we have added an instruction in each of Form 20-F and Form 40-F to specify that the disclosure applies to annual reports, and not to registration statements.¹⁶

Submission Requirement

As discussed above, in addition to the Section 3 disclosure requirement, Section 2 of the HFCA Act amended Sarbanes-Oxley Act Section 104 to, in part, require any Commission-Identified Issuer to submit to the Commission documentation establishing that the issuer is not owned or controlled by a governmental entity in the foreign jurisdiction of the registered public accounting firm that the PCAOB is unable to inspect or investigate completely, and mandates that the Commission adopt rules establishing the manner and form in which such submissions will be made no later than 90 days after enactment.

Because the submission requirement is triggered by the preparation of an audit report on a registrant's financial statements, the Commission is amending Form 10-K, Form 20-F, Form 40-F, and Form N-CSR to implement this provision.¹⁷ In contrast to the disclosure requirement

¹⁶ While Form 20-F and Form 40-F may be used as an initial registration form, we believe that in the context of Section 3 of the HFCA Act, which linked the Form 20-F requirement to the Form 10-K requirement, the disclosure was intended to be required when the form is used as an annual report.

¹⁷ See *supra* notes 11, 13, 14, and 16 and accompanying discussion.

in Section 3 of the HFCA Act that applies only to Commission-Identified Foreign Issuers, the submission requirement in Section 2 of the HFCA Act applies to all Commission-Identified Issuers. The amendments require a registrant that is a Commission-Identified Issuer that is not owned or controlled by a governmental entity in the described foreign jurisdiction to electronically submit documentation¹⁸ to the Commission on a supplemental basis that establishes that the registrant is not so owned or controlled. Under the interim final amendments, such submissions will be made through the Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system¹⁹ on or before the due date of the relevant annual report form.

While the interim final amendments prescribe the timing and means by which such submissions shall be made, neither they nor the HFCA Act specify the particular types of documentation that can or should be submitted for this purpose. Moreover, we recognize that available documentation could vary depending upon the organizational structure and other factors specific to the registrant. Thus, as an initial matter, registrants will have flexibility under the interim final amendments to determine how best to satisfy this requirement. At the same time, we are requesting comment as to whether the Commission should require specific types of documentation or whether additional guidance would be necessary or useful to registrants as they seek to comply with the submission requirement.

For purposes of these requirements, we preliminarily believe that the use of the terms “owned or controlled” in Section 2 of the HFCA Act, and “owned” and “controlling financial interest” in Section 3 of the HFCA Act (which are not otherwise defined in the statute), are

¹⁸ For purposes of these requirements, use of the term “supplemental” does not have the meaning of “supplemental information” in 17 CFR 240.12b-4.

¹⁹ Prior to the due date of any such required submission, the Commission will amend the EDGAR Filer Manual to provide technical instructions regarding how such submissions can be uploaded onto the EDGAR system.

intended to reference a person's or governmental entity's ability to "control" the registrant as that term is used in the Exchange Act and the Exchange Act rules.²⁰ A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation under the interim final amendments. However, we note that Commission-Identified Foreign Issuers are required to make certain disclosures about their foreign affiliations and ownership by governmental entities pursuant to the disclosure requirements of Section 3 of the HFCA Act.²¹

Timing Considerations

Section 104(i)(1)(B) of the Sarbanes-Oxley Act²² provides that a non-inspection year is any year, after the date of enactment of the HFCA Act, during which: (1) The Commission identifies an issuer as having retained a registered public accounting firm for the audit report on its financial statements; (2) That registered public accounting firm has a branch or office that is located in a foreign jurisdiction; and (3) The PCAOB is unable to inspect or investigate completely the registered public accounting firm because of a position taken by an authority in that foreign jurisdiction. Section 3 of the HFCA Act requires certain disclosures by a Commission-Identified Foreign Issuer to appear in an annual report that covers a "non-inspection year." Similarly, Section 104(i)(2)(B) of the Sarbanes-Oxley Act²³ requires the submission to the Commission of documentation relating to government control of Commission-Identified Issuers.

²⁰ See Exchange Act Section 13(d), 17 CFR 210.1-02(g), and 17 CFR 240.12b-2. However, we are requesting comment on this point below.

²¹ We believe that providing this clarification will be helpful to registrants and that it is a reasonable reading of Section 2 and Section 3 of the HFCA Act, as without such clarification a registrant that is owned or controlled by a governmental entity in the foreign jurisdiction would be unable to comply with Section 2 of the HFCA Act (Section 104(i)(1)(B) of the Sarbanes-Oxley Act), but would be expected to continue reporting and providing disclosure as contemplated by the disclosure requirements in Section 3 of the HFCA Act.

²² Section 104(i)(1)(B) of the Sarbanes-Oxley Act was added by Section 2 of the HFCA Act.

²³ Section 104(i)(2)(B) of the Sarbanes-Oxley Act was added by Section 2 of the HFCA Act.

An annual report requires audited consolidated financial statements for that year and certain prior periods under 17 CFR 210.3-01 through 3-20 (Article 3 of Regulation S-X) and corresponding provisions of Form 20-F and Form 40-F.²⁴ Audited financial statements include an audit report that must be provided with the financial statements included in a registrant’s annual report.²⁵ Therefore, any year in which the Commission has identified a registrant as having retained a registered public accounting firm meeting the criteria described above for the audit report on its financial statements in its most recent annual report made under the Exchange Act will be deemed a non-inspection year. The submission requirement under Section 104(i)(2)(B) of the Sarbanes-Oxley Act and the disclosure requirements under Section 3 of the HFCA Act, if applicable, would then be required for the annual report covering such non-inspection year.²⁶ For example, if a registrant is identified based on its Form 10-K filing made in 2022 for the fiscal year ended December 31, 2021 as being a Commission-Identified Issuer, then 2022 would be deemed a non-inspection year. Such registrant would be required to comply with the submission and, if applicable, the disclosure requirements in its Form 10-K filing covering the fiscal year ended December 31, 2022, which is required to be filed in 2023.

²⁴ See, e.g., Article 3 of Regulation S-X; see also 17 CFR 210.6-01 through 6-11 (Article 6 of Regulation S-X) (for similar requirements as applied to registered investment companies).

²⁵ Because the disclosure and submission requirements in the HFCA Act are triggered by the filing of an audit report on the “financial statements of the covered issuer” that is prepared by an audit firm “retained by the covered issuer,” we believe it would be consistent with the language and structure of the statute to base the non-inspection year determination on registrant’s annual report filings. Although there may be instances in which a registrant is required to include audited financial statements in connection with other filings under the Exchange Act, such as Form 8-K (17 CFR 249.308) filings by former shell companies (see Item 2.01(f) of Form 8-K), these filings are typically more analogous to an initial registration statement and not an ongoing reporting requirement as contemplated by the reference to Exchange Act Sections 13 and 15(d) in Section 2 of the HFCA Act.

²⁶ Sarbanes-Oxley Act Section 104(i)(1)(B) (as added by Section 2 of the HFCA Act) defines a “non-inspection year” as a year “during which” the Commission identifies a registrant as having filed an Exchange Act report that contains an audit report issued by an audit firm that the PCAOB is unable to inspect or investigate completely. By contrast, the disclosures required by Section 3 of the HFCA Act are required in “each form filed by that issuer that covers such non-inspection year.”

The HFCA Act was enacted on December 18, 2020 and provides for identification of the issuers required to file reports under Section 13 or 15(d) of the Exchange Act during a year that begins “after the date of enactment” of the HFCA Act. Given this statutory language, a registrant will not be subject to a non-inspection year determination for any fiscal year ending on or prior to December 31, 2020, and accordingly, a registrant will not have to provide either the HFCA Act’s Section 3 disclosure or the Section 2 submission for those years.

For fiscal years beginning after December 31, 2020, and once the PCAOB has made its determinations pursuant to the HFCA Act, the Commission will identify registrants pursuant to the HFCA Act based on the PCAOB’s determination and on registrants’ annual reports. The Commission will issue appropriate notice once it has established the process by which it will begin to identify registrants pursuant to the HFCA Act, and is requesting public comment herein regarding the appropriate mechanics for determining Commission-Identified Issuers. A registrant will not be required to comply with the disclosure requirement or the submission requirement until the Commission identifies it as having a non-inspection year. Once identified, a registrant will be required to provide the HFCA Act disclosure in its annual report for each non-inspection year, *i.e.*, the report covering the fiscal year in which the registrant was included in the list of Commission-Identified Issuers.

Request for Comment

We request and encourage any interested person to submit comments on any aspect of the interim final amendments, other matters that might have an impact on the amendments, and any suggestions for further revisions. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation. In particular, we seek comment on the following:

Determination of Commission-Identified Issuers

1. The Commission is required to identify registrants subject to the HFCA Act disclosure and submission requirements based on the PCAOB's determination relating to the registered public accounting firm that is retained by the registrant and that prepares the registrant's audit report. We are currently considering what process to use for identifying registrants (including the process and feasibility of communicating to those registrants regarding their status) as Commission-Identified Issuers. We request comment related to this process on the following:

a. The HFCA Act requires the Commission to identify covered issuers that "retain" a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction. The HFCA Act does not define the term "retain." While multiple public accounting firms may work on the audit of a registrant, for purposes of interpreting and applying the HFCA Act's provisions, we understand the retained firm to be the firm that signs an accountant's report on the registrant's consolidated financial statements that is included in a registrant's Exchange Act report. We believe this is consistent with the understanding of the term "retain" by the auditing profession. Is our understanding of the term "retained" appropriate in this context?

b. We are considering making the determination of Commission-Identified Issuers on an annual basis, not earlier than a date after the annual report forms for registrants with December 31 fiscal year ends are due to be filed, given that the majority of registrants have a calendar year end. The identification would be based on the audit report contained in a registrant's annual report filed with the Commission for the most recently completed fiscal year

preceding the date of the Commission determination. Should we establish a single determination date each year? If so, should we make the determination on or around May 15? Would some other date, earlier or later in the year be more helpful to registrants affected by the determination? Alternatively, should we base the determination on when the PCAOB makes its determination public? Should we make the determination more often, such as monthly, quarterly, or semi-annually? Should we instead make individual determinations on issuer-specific dates, such as the measurement date for determining accelerated filer status²⁷ or a date linked to the fiscal year end of the registrant?

c. Should we publish a list of Commission-Identified Issuers on our website? Should Commission-Identified Issuers be identified on EDGAR so investors may more easily identify which registrants are on the list? If we publish a list of Commission-Identified Issuers, how should the Commission address any potential errors in identification relating to a registrant's status? Should the Commission provide guidance or prescribe rules relating to disclosure or procedures for identification of errors relating to a registrant's status?

d. To facilitate satisfaction of HFCA Act requirements, should we introduce a structured data tagging requirement pertaining to the auditor name and jurisdiction on the audit report signed by the registered public accounting firm in the registrant's Form 10-K, Form 20-F, and Form 40-F? Such tagging would provide machine-readable data directly from the registrant identifying the audit firm retained by it, and may therefore facilitate the Commission's determination of the registrants it should designate as Commission-Identified Issuers. If we introduced such a requirement, should the information be required to be tagged in Inline XBRL? Should we instead consider a tagging requirement to facilitate the determination of Commission-

²⁷ See 17 CFR 240.12b-2.

Identified Issuers that would not specify a particular structured data language to be used? Would the use of tagging also facilitate the ability of investors and other interested parties to identify registrants at risk of trading prohibitions resulting from three consecutive non-inspection years? What would be the costs associated with introducing a structured data tagging requirement pertaining to the auditor name and jurisdiction? Should we introduce this structured data tagging requirement for Form N-CSR? Is there any circumstance when that tagged information in the Form N-CSR would differ from the information the Commission already collects on Form N-CEN (17 CFR 249.330) in a structured data format regarding a fund's auditor?

HFCA Act Disclosure Requirement

2. We are adopting interim final amendments to reflect the disclosure requirements in Section 3 of the HFCA Act. With respect to such disclosure requirements, we further request comment on the following:

a. The interim final amendments require a registrant to disclose that, during the period covered by the form, a registered public accounting firm that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction has prepared an audit report for the registrant. Should a registrant that changes from using a non-inspected registered public accounting firm to an inspected firm be required to affirmatively state that it no longer retains the identified registered public accounting firm to audit its financial statements?

b. The interim final amendments require that the registrant disclose the name of each official of the CCP who is a member of the board of directors of the registrant or the operating entity with respect to the registrant. Should we define what it means to be an official of the CCP or would further guidance on this requirement be helpful? For example, would clarification of

the phrase “operating entity with respect to the registrant” be helpful or is the term generally understood?

c. Do the interim final amendments cover all of the forms in which disclosure is required by the HFCA Act? Should the amendments cover any additional forms? If so, which forms and what is the basis for requiring the disclosure in those forms? For example, should we consider requiring the disclosure in initial registration statements, such as 17 CFR 249.210 (Form 10)? Requiring this disclosure in initial registration statements would provide potential investors in these new registrants with disclosure related to the risk that these registrants have retained a registered public accounting firm that may subject the registrant to the HFCA Act trading prohibition. Alternatively, or in addition, should we amend Form 8-K to require disclosure by a registrant of the Commission’s determination that the registrant is a Commission-Identified Issuer? Requiring this disclosure in a Form 8-K would provide additional notice of the Commission’s determination, prior to the filing of the annual report covering that non-inspection year. What would be the costs of expanding registrants’ disclosure obligations in these ways?

d. Are the new disclosure requirements in Item 9C. of Form 10-K, Item 16I. of Form 20-F, paragraph B.18 of Form 40-F, and paragraphs (i) and (j) of Item 4 of Form N-CSR sufficiently clear? Is there any additional guidance or clarity that the Commission can provide to assist registrants in preparing and providing the disclosure?

e. Should we consider moving the disclosure requirement in Part II, Item 9C. of Form 10-K to Regulation S-K? Would the disclosure be more appropriate in a different part of the Form 10-K, such as in Part III where the information could be incorporated from the proxy statement? Similarly, would the disclosure be more appropriate in a different part of the Form 20-F or Form 40-F?

f. For registered investment companies, should we locate the requirements implementing the HFCA Act in another form? For example, should the Commission locate these requirements in Form N-CEN to cover unit investment trusts, which do not file audited financial statements on Exchange Act reporting forms? Would the requirements be more appropriate in a different part of the Form N-CSR?

HFCA Act Submission Requirement

3. We are adopting interim final amendments to implement the submission requirements in Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) that track the statutory language. With respect to such submission requirements, we further request comment on the following:

a. The submission requirement for documentation relating to governmental ownership or control is included in certain annual report forms (*i.e.*, Form 10-K, Form 20-F, Form 40-F, and Form N-CSR), and registrants that are Commission-Identified Issuers will need to submit their documentation to the Commission on or before the due date for the relevant annual report. Should the submission be made in conjunction with the registrant's annual report? Should there be a different due date for the submission? Should we locate the submission requirement in a different form or rule, such as Form 8-K or Form 6-K (17 CFR 249.306)?

b. The interim final amendments provide that the submission be made electronically to the Commission on a supplemental basis. Should the documentation submitted to the Commission be made publicly available, should it be retained non-publicly (subject to applicable law), and/or should the registrant be allowed to request confidential treatment for some or all of the submission? Alternatively, should the submission be publicly filed as an exhibit to the form or filed with the Commission in some other way to make it more accessible?

c. Should the Commission require specific types of documentation for satisfying the HFCA Act Section 2 submission requirement? If so, what specific documentation should be required? Alternatively, is it appropriate to retain flexibility for registrants to determine what documentation to provide in order to meet this requirement? If so, is additional guidance necessary for registrants to determine what documentation is sufficient to establish that they are not owned or controlled by a governmental entity in the foreign jurisdiction? Should we provide a non-exclusive list of documents that could be submitted to satisfy the submission requirement, such as a legal opinion or a statement or certification from an officer or director of the company that it is not controlled by a governmental entity?

d. Commission-Identified Issuers that are owned or controlled by a foreign governmental entity are not required to submit documentation to the Commission. Should we require these Commission-Identified Issuers to affirmatively state that they are owned or controlled by a foreign governmental entity?

4. Should we define particular terms or provide guidance regarding the use of those particular terms in our form amendments? For example, should we provide additional definitions or guidance on what is considered a “governmental entity”? Is guidance necessary to help registrants comply with Section 2 and Section 3 of the HFCA Act? For example, we have provided guidance that the terms “owned or controlled,” “owned,” and “controlling financial interest” should be read with reference to how the term “control” is used in the Exchange Act and the existing definition in the Exchange Act rules. Would additional guidance as to what it means to be “owned or controlled,” “owned,” or having a “controlling financial interest” be helpful or is the guidance sufficient? Should we make any further amendments to our rules to address these points? For example, should we specify the basis of accounting that must be used

in making a “controlling financial interest” determination? As another example, for registered investment companies, should the terms “owned or controlled,” “owned,” and “controlling financial interest” be read with reference to how the term control is used in the Investment Company Act and Investment Company Act rules?

5. The interim final amendments do not require the HFCA Act Section 3 disclosure until an issuer has been identified by the Commission and in no event would disclosure be required for fiscal years ending on or before December 31, 2020. Should we provide additional guidance on the required timing and disclosure? What additional guidance would be useful?

6. If a registrant is determined to be a Commission-Identified Issuer for three consecutive years, Section 2 of the HFCA directs the Commission to prohibit the securities of the registrant from being traded in the U.S. market. As mentioned earlier, implementation of such trading prohibitions will be addressed separately. Are there any considerations we should take into account while determining how to best implement the trading prohibition requirements of the HFCA Act?

With respect to any comments, we note that they are of greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Procedural and Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,²⁸ the Office of Information and Regulatory Affairs has designated these rules as not a “major rule,” as defined by 5 U.S.C. 804(2).

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the Federal Register and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”²⁹

Section 2 of the HFCA Act requires Commission rulemaking within 90 days of the date of enactment in order to “establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).” Furthermore, Section 3 of the HFCA Act requires certain disclosure from issuers, and the amendments to Form 10-K, Form 20-F, Form 40-F, and Form N-CSR clarify issuers’ obligations under the HFCA Act. Because the amendments conform the specified forms to the requirements of a newly enacted statute and in light of the 90-day rulemaking directive in Section 2 of the HFCA Act, the Commission finds that notice and public comment are impracticable and unnecessary.³⁰ While the amendments being adopted in this release conform the specified forms to the HFCA Act’s requirements, we also are soliciting comment on various related topics that the Commission may seek to address in subsequent releases, depending on the public feedback received and other considerations.

IV. Economic Analysis

A. Introduction and Broad Economic Considerations

²⁸ 5 U.S.C. 801 *et seq.*

²⁹ 5 U.S.C. 553(b)(3)(B).

³⁰ The amendment also does not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

As discussed above, we are amending Form 10-K, Form 20-F, Form 40-F, and Form N-CSR to implement the disclosure and submission requirements of the HFCA Act. We are mindful of the costs imposed by, and the benefits obtained from, our rules. In this section, we analyze potential economic effects stemming from the amendments.³¹ We analyze these effects against a baseline that consists of the current regulatory framework and current market practices.

As a threshold matter, we note that the amendments discussed in this economic analysis implement discrete components of the HFCA Act. Other aspects of the statute, such as the identification of issuers with non-inspection years and implementation of the trading prohibitions in Section 2 of the HFCA Act, will be addressed separately at a later date. Accordingly, the focus of this economic analysis is on the effects arising from the disclosure and submission requirements in the HFCA Act. Where possible, we have attempted to quantify the expected economic effects of the amendments. In some cases, however, we are unable to quantify these economic effects. Some of the potential economic effects are inherently difficult to quantify. In some instances, we lack the information or data necessary to provide reasonable estimates for the

³¹ Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Exchange Act Section 23(a)(2) requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Additionally, Section 2(c) of the Investment Company Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is consistent with the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Although we are adopting amendments to Form N-CSR to implement the HFCA Act as applied to registered investment companies, based on recent Form N-CEN filings, no registered investment company reported having retained a registered public accounting firm located in a foreign jurisdiction for the preparation of the company's financial statements. Based on this data, and Commission staff experience, we estimate that no registered investment companies will be subject to the requirements of the interim final amendments upon the rule's adoption. Accordingly, we do not expect any economic effects associated with the amendment to Form N-CSR.

economic effects of the amendments. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms.

The new disclosure requirements will increase transparency about the reliability of affected issuers' financial statements as well as the characteristics of their ownership and control structures. High-quality disclosures, including high-quality financial statements, are a cornerstone of well-functioning capital markets.³² Such disclosures reduce information asymmetries between investors and issuers, with positive effects on price efficiency and capital allocation.³³ Broadly speaking, academic research shows that increasing the quality of financial reporting improves price efficiency and reduces an issuer's cost of capital.³⁴

Financial reporting quality is in part determined by audit quality. According to academic studies, PCAOB oversight has led to improvements in audit quality and to increased investor confidence in the quality of the audited financial statements.³⁵ However, when the PCAOB is

³² See, e.g., Christian Leuz & Peter Wysocki, *The Economics of Disclosure and Financial Reporting Regulation*, 54 J. ACCT. RESEARCH 525 (2016); and Anne Beyer, Daniel Cohen, Thomas Lys & Beverly Walther, *The financial reporting environment: Review of the recent literature*, 50 J. ACCT. ECON 296 (2010).

³³ See, e.g., Douglas W. Diamond & Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital*, 46 J. FIN. 1325 (1991).

³⁴ See, e.g., Stephen Brown & Stephen A. Hillegeist, *How Disclosure Quality Affects the Level of Information Asymmetry*, 12 REV. ACCOUNT. STUD. 443 (2007) (showing how better disclosure quality reduces information asymmetry); Nilabhra Bhattacharya, Hemang Desai, & Kumar Venkataraman, *Does Earnings Quality Affect Information Asymmetry? Evidence from Trading Costs*, 30 CONT. ACCOUNT. RES. 482 (2013) (showing that earnings quality reduces information asymmetry); Partha Sengupta, *Corporate Disclosure Quality and the Cost of Debt*, 73 ACCOUNT. REV. 459 (1998) (showing that high disclosure quality reduces the cost of debt); Christine Botosan, *Disclosure Level and the Cost of Equity Capital*, 72 ACC. REV. 323 (1997) (finding that disclosure quality reduces the cost of equity for firms with low analyst coverage); Mark E. Evans, *Commitment and Cost of Equity Capital: An Examination of Timely Balance Sheet Disclosure in Earnings Announcements*, 33 CONT. ACCOUNT. RES. 1136 (2016) (finding that "firms which consistently disclose balance sheet detail in relatively timely earnings announcements have lower costs of capital compared to other firms"); For a survey of financial reporting research, see Anne Beyer, Daniel A. Cohen, Thomas Z. Lys, & Beverly R. Walther, *The Financial Reporting Environment: Review of the Recent Literature*, 50 J. ACCOUNT. ECON. 296 (2010).

³⁵ See, e.g., Daniel Aobdia, *The Impact of the PCAOB Individual Engagement Inspection Process—Preliminary Evidence*, 93 ACCOUNT. REV. 53 (2018) (concluding that "both audit firms and clients care about the PCAOB individual engagement inspection process and, in several instances, gravitate toward the level set by the Part I Finding bar"); Mark L. DeFond & Clive S. Lennox, *Do PCAOB Inspections Improve the Quality of Internal Control Audits?*, 55 J. ACCOUNT. RES. 591 (2017) (finding evidence consistent with "PCAOB inspections

unable to inspect some auditors there is a lack of transparency with respect to the audit quality provided by such firms. As a result, there is uncertainty regarding the reliability of the financial information of issuers audited by firms that are not inspected, which can potentially lead to suboptimal investment decisions by investors.

In addition, academic literature provides evidence of varying types of impact of ownership and control structures on firm value.³⁶ Government ownership, in particular, can be related to both risks and benefits for investors. Evidence in the literature highlights inefficiencies and expropriation risks as a result of government ownership or control, whereas other studies provide evidence of easier access to financing.³⁷ Effects from government ownership or control on firm value may be further amplified when the regulatory environment in the foreign jurisdiction is weak, and when there is heightened political risk.³⁸

improving the quality of internal control audits by prompting auditors to remediate deficiencies in their audits of internal controls”); Brandon Gipper, Christian Leuz, & Mark Maffett, *Public Oversight and Reporting Credibility: Evidence from the PCAOB Audit Inspection Regime*, 33 REV. FINANC. STUD. 4532 (concluding that “consistent with an increase in reporting credibility after the introduction of public audit oversight, we find that capital market responses to earnings surprises increase significantly”).

³⁶ See, e.g., Andrei Shleifer & Robert Vishny, *A survey of corporate governance*, 52 J. FIN. 737 (1997) (discussing both the theory and empirical evidence on the effect of large shareholders on firm value).

³⁷ See, e.g., Ginka Borisova, Veljko Fotak, Kateryna Holland & William Megginson, *Government ownership and the cost of debt: Evidence from government investments in publicly traded firms*, 118 J. FIN. ECON. 168 (2015) (showing that during times of firm-specific or economy-wide distress, the dominant effect of state equity ownership is a reduction in the cost of debt, consistent with an implicit debt guarantee of government ownership); Gongmen Chen, Michael Firth & Liping Xu, *Does the type of ownership control matter? Evidence from China’s listed companies*, 33 J. BANK. FINANCE 171 (2009) (finding evidence that the type of government ownership affects value and performance).

³⁸ See, e.g., Laura Liu, Haibing Shu & John Wei, *The impacts of political uncertainty on asset prices: Evidence from the Bo scandal in China*, 125 J. FIN. ECON. 286 (2017) (concluding that political uncertainty is a priced risk as evidenced by stock price reactions following the 2012 Bo Xilai political scandal in China; the study shows amplified effects on prices for state-owned enterprises and politically connected companies); Bryan Kelly, Lubos Pastor & Pietro Veronesi, *The price of political uncertainty: Theory and evidence from the option market*, 71 J. FIN. 2417 (2016) (finding that options whose lives span political events tend to be more expensive, and that such protection is more valuable in a weaker economy and amid higher political uncertainty).

The required disclosures and submissions will reduce uncertainty about characteristics that may affect firm value and risk and therefore could facilitate investors' capital allocation decisions. Some of the information required to be disclosed under the amendments may be otherwise available to investors through other sources or overlap with existing mandated disclosures.³⁹ In such cases, we expect the required disclosures could nevertheless reduce search costs for investors and potentially enhance investor protection. In addition, the submission requirement will provide some reassurance to investors that Commission-Identified Issuers that do not disclose any ownership or control by governmental entities (in foreign jurisdictions that prevent PCAOB inspections) are not, in fact, owned or controlled by such entities.

The amendments will impose compliance costs on issuers that may vary based on characteristics of their audit arrangements and ownership structure. Although these compliance costs, in themselves, may not be significant for most firms, the costs may nonetheless cause certain issuers to accelerate their response to other aspects of the HFCA Act, such as switching audit firms or exiting the U.S. markets altogether. We do not assess the magnitude of the effects arising from implementation of other aspects of the HFCA Act, including the trading prohibition, at this time, as they will depend on the approach taken by the PCAOB and the Commission to implement those parts of the statute.⁴⁰ We note, however, that those effects are likely to be much more significant than the comparatively limited benefits and costs associated with the current amendments. For similar reasons, our analysis does not encompass the effects to audit firms of being identified by the PCAOB as being a firm that it is unable to inspect or investigate completely.

³⁹ See *infra* section IV.B.1.

⁴⁰ See, e.g., Section 104(i)(3) of the Sarbanes-Oxley Act as added by Section 2 of the HFCA Act.

B. Baseline

1. Regulatory Baseline

The disclosures and submissions required by the amendments will potentially provide the Commission, as well as market participants, with more readily accessible and comparable information regarding a number of Commission-Identified Issuers' characteristics, namely: (1) the extent of ownership or control by a governmental entity in a jurisdiction where the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction, (2) the use of a registered public accounting firm in preparation of an audit report that the PCAOB is unable to fully inspect, (3) the presence and identity of any official of the CCP who is a member of the board of directors, and (4) the presence and specific text of any charter of the CCP contained in the registrant's articles of incorporation (or equivalent organizing document). We therefore analyze the extent to which such requirements will change existing regulatory requirements or the current practices of potentially affected registrants.

Compliance with the HFCA Act will require disclosures and submissions pertaining to the ownership or control of a registrant by a governmental entity in the foreign jurisdiction of the registered public accounting firm that the PCAOB is unable to inspect or investigate completely. In practice, many registrants already include disclosures similar to the information required by the HFCA Act in the portions of their respective periodic reports pertaining to registrant-specific risks.⁴¹ Others provide detailed diagrams to illustrate their ownership structure within their descriptions of business or otherwise seek to inform readers of their variable interest entity

⁴¹ For example, some registrants may provide these disclosures in response to Item 105 of Regulation S-K [17 CFR 229.105] (requiring a registrant to disclose a discussion of the material factors that make an investment in the registrant or offering speculative or risky).

(“VIE”) arrangements within the financial statements included in periodic disclosures.⁴² The levels of detail and specificity associated with these disclosures vary, however, and the information often is not easily comparable across filings given that similar disclosures may not occur within the same item or section of the report.⁴³

One notable exception to this variation in disclosures, however, is the disclosure by registrants of the PCAOB’s inability to conduct inspections of their respective independent audit firms. We observe a highly similar type and pattern of disclosure regarding the PCAOB’s inability to inspect those firms included in the majority of the potential Commission-Identified Issuers’ Item 3 (for Form 20-F filers) and Item 1A (for Form 10-K filers) discussion of risk factors.⁴⁴ Such disclosures are readily accessible using the keyword search functionality on the Commission’s EDGAR website.⁴⁵ In addition, similar identification of registrants whose independent auditors were not fully inspected by the PCAOB due to limitations and restrictions imposed by authorities in foreign jurisdictions has historically been available via the PCAOB’s

⁴² See FASB Interpretation No. 46, Consolidation of Variable Interest Entities.

⁴³ See, e.g., Justin Hopkins, Mark H. Lang & Jianxin (Donny) Zhao, *The Rise of US-Listed VIEs from China: Balancing State Control and Access to Foreign Capital*, Darden Business School Working Paper No. 3119912, Kenan Institute of Private Enterprise Research Paper No. 19-17 (2018), available at <http://dx.doi.org/10.2139/ssrn.3119912> (finding that in 42 percent of reviewed year 2013 Forms 10-K, Chinese firms disclose VIE structure, where “some firms simply mention the VIE structure in passing, while others explicitly disclosing the legal risks of the VIE, documenting which specific subsidiaries utilize the VIE and providing pro forma balance sheets and income statements for these subsidiaries, as well as summarizing the specific contracts including the parties and terms”); See also, Paul Gillis & Michelle R. Lowry, *Son of Enron: Investors Weigh the Risks of Chinese variable Interest Entities*, 26 J. APPL. CORP. FIN. 61 (2014).

⁴⁴ Staff conducted a review of annual report disclosures using a combination of Intelligize searches and a manual review of select filings of Forms 10-K and 20-F. Highly similar language describing the potential risks associated with the PCAOB’s inability to conduct inspections appeared across at least 65% of annual reports filed within the same year, including reviewed periods that predate the initial introduction of the HFCA Act legislation in 2019. As no single audit firm currently serves more than, at maximum, 20% of potential Commission-Identified Issuers, the inclusion of standard disclosures across registrants does not appear to be attributable to the practices of any individual audit firm. See *infra* note 53 for a description of the sample identification methodology.

⁴⁵ Available at <https://www.sec.gov/edgar/search/>.

dedicated “Public Companies that are Audit Clients of PCAOB-Registered Firms from Non-U.S. Jurisdictions where the PCAOB is Denied Access to Conduct Inspections” webpage.⁴⁶

Under the amendments, Commission-Identified Foreign Issuers will also be required to disclose the presence and identity of any official of the CCP who is a member of its board of directors in addition to the percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized and whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer. At present, some of this information may be elicited by Form 10-K disclosure requirements⁴⁷ or Form 20-F disclosure requirements.⁴⁸ Because Form 10-K, Part III disclosures may be incorporated by reference from the registrant’s definitive proxy statement if filed within 120 days of the related Form 10-K fiscal year end, or alternatively filed as a Form 10-K amendment by the same 120 day deadline, such disclosures are not currently uniformly present in the annual report filings of the potentially affected issuers. Moreover, there are currently no requirements that such disclosures must include the political party affiliation of those responsible for registrants’ management and oversight, including but not limited to members of the board. Nor is there a

⁴⁶ Available at <https://pcaobus.org/oversight/international/denied-access-to-inspections>.

⁴⁷ See 17 CFR 229.401 (Item 401 of Regulation S-K), 17 CFR 229.403 (Item 403 of Regulation S-K), and 17 CFR 229.404 (Item 404 of Regulation S-K), required under Items 10, 12 and 13 of Form 10-K. Item 401 of Regulation S-K requires disclosure relating to the identification of directors and a brief description of their business experience; Item 403 of Regulation S-K requires disclosure with respect to any person or group that beneficially owns more than five percent of any class of the registrant’s voting securities, as well as ownership information of executive officers and directors of the registrant; and Item 404 of Regulation S-K requires disclosure of transactions between the registrant and related persons, such as officers, directors and significant shareholders.

⁴⁸ See Items 6 and 7 of Form 20-F. Item 6 of Form 20-F requires disclosure relating to the identification and share ownership of directors and senior management; Item 7 of Form 20-F requires disclosure with respect to beneficial owners of more than five percent of any class of the registrant’s voting securities, disclosure with respect to related party transactions, as well as disclosure of whether the company is directly or indirectly owned or controlled by another corporation or foreign government and the nature of that control.

requirement to systematically disclose the identity and ownership stake of any person or group of persons – including government entities – who directly or indirectly acquire or have beneficial ownership of less than five percent of a class of a Commission-Identified Issuer’s securities.

Finally, under the amendments, Commission-Identified Foreign Issuers will be required to state whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the CCP, including the text of any such charter. While periodic reporting requirements currently instruct registrants to include a complete copy of the articles of incorporation and bylaws as an exhibit to the annual report,⁴⁹ there are no requirements to identify the political or textual origins of any portion of a registrant’s articles of incorporation. In practice, given that a registrant may simply indicate in its annual report exhibit index that such articles are incorporated by reference,⁵⁰ few filers include the full text of such articles, bylaws, or charters in annual report filings after initially doing so at the time of IPO registration. Similarly, amended or revised versions of the registrant’s articles of incorporation and bylaws are generally not included in the annual report filing, but are incorporated by reference as well. In these cases, locating the submission to which the registrant’s complete and most recent version of its articles of incorporation are attached in their entirety requires a search and review of the registrant’s current reports (on Forms 8-K or 6-K).⁵¹ Therefore, under current regulatory requirements and in

⁴⁹ See Item 19, Instruction 1 of Form 20-F and 17 CFR 229.601(b)(3)(i).

⁵⁰ See 17 CFR 240.12b-23(c).

⁵¹ The requirement to submit a Form 6-K in such cases by registrants that use Form 20-F to file annual reports depends upon the current reporting requirements of the relevant foreign jurisdiction. Because potential Commission-Identified Issuers domiciled, incorporated, or organized in China are required by Chapter 5 Article 27 of the Regulations of the People’s Republic of China on Administration of Company Registration to file a complete copy of the revised articles within 30 days of such changes, a similar requirement to promptly furnish a Form 6-K including the complete revised articles of incorporation also applies. This document may then be incorporated by reference in the registrant’s subsequent annual reports. Analogous requirements for registrants using domestic forms are outlined in Form 8-K, Item 5.03.

practice, the majority of annual reports filed by potential Commission-Identified Foreign Issuers do not include, neither in part nor in complete form, the registrant's articles of incorporation, from which the reader might assess the presence or absence of text from the charter of the CCP.

2. Affected Parties⁵²

a. Registrants

Registrants subject to periodic reporting requirements under the Exchange Act will not be affected by the amendments unless and until they are Commission-Identified Issuers.

Commission identification of such issuers is in turn contingent upon initial identification of affected registered public accounting firms that are retained by registrants with periodic disclosure obligations. Based upon a review of such registrants in calendar year 2020, we identified 273 registrants for whom future identification as a Commission-Identified Issuer could be possible on the basis of current facts and circumstances.⁵³ Of these potential Commission-Identified Issuers candidates, 18.2 percent filed annual disclosures using Form 10-K while 78.2 percent are Form 20-F filers. No filings submitted by potential candidates were made using Forms 40-F or N-CSR. Among filers, approximately 22 percent were incorporated in the United States while 78 percent were incorporated in foreign jurisdictions, including 4.8 percent who self-disclosed to be state-owned enterprises. These registrants' securities are either listed on a

⁵² As noted above, the amendments may accelerate responses to other aspects of the HFCA Act, such as switching audit firms or exiting the U.S. markets altogether. These responses could impact parties beyond those identified below (*e.g.*, audit firms). For purposes of this economic analysis, we focus on those parties affected by the discrete aspects of the HFCA Act being implemented in this rulemaking.

⁵³ Analysis is based on staff review of data obtained from the PCAOB (*see supra* note 46), Audit Analytics, manual review of all annual reports filed by foreign issuers using Forms 20-F, 40-F, or an amendment thereto in calendar year 2020, and review of securities registered in calendar year 2020 by foreign issuers. This analysis may potentially be viewed as an upper bound on the future number of registrants that may be affected by the HFCA requirements as clients of those firms previously identified by the PCAOB.

national exchange (88.7 percent), OTC-listed (9.9 percent), or report no U.S. listing (1.5 percent).⁵⁴

b. Investors

The amendments may impact both current investors in affected registrants as well as potential investors that may consider investing in these registrants in the future. As mentioned above, at least some of the information elicited by the required disclosures is likely to already be available to investors through various existing channels but at varying costs. As such, we expect that the required disclosures are likely to affect mostly retail investors who directly invest or consider investing in affected registrants since it may be more costly for these investors to obtain such information absent the required disclosures. Institutional or other sophisticated investors may also be impacted by the amendments; however, we expect that such impact might be limited given their resources to obtain the required information from other sources, when such sources are available.

C. Economic Effects

1. Benefits and Costs of HFCA Act Disclosure Requirements

For Commission-Identified Foreign Issuers, the amendments will require specific disclosures to be made in these registrants' annual reports.⁵⁵ In general, as discussed above, the

⁵⁴ Using a more conservative approach that looked only to registrants with at least one annual report filed after the introduction of the HFCA Act, we further estimated that in calendar year 2020, 194 registrants submitted an annual report (Form 10-K, 20-F, or an amendment) whose auditor was previously identified by the PCAOB (*see supra* note 46) as a registered firm from a non-U.S. jurisdiction where necessary access to conduct oversight was denied due to a position taken by local authorities. Based on our historical analysis of these registrants, 18 percent submitted annual reports using a domestic form while 82 percent and 0 percent submitted their annual reports via foreign filings Form 20-F and Form 40-F respectively. Based on the same population of registrants, we estimate that approximately three percent of potentially affected registrants disclosed their securities as listed on two or more foreign exchanges, approximately nine percent listed on only one foreign exchange, while approximately 79 percent only disclosed listing on a U.S. national exchange. Of these registrants, 13 (six percent) self-identified in their 2020 disclosures as state-owned enterprises.

⁵⁵ *See supra* Section II. Disclosure Requirements for a detailed description of the disclosure requirements mandated by Section 3 of the HFCA Act.

required disclosures elicit information that the academic literature shows is value-relevant to investors. As such, we expect the required disclosures to be beneficial to investors since they are likely to reduce search costs when the information in the required disclosure is otherwise available through other sources or existing disclosures, and also potentially provide investors with information about aspects of these registrants' governance characteristics that otherwise might not be available or relatively costly to obtain. We do not expect significant compliance costs for Commission-Identified Foreign Issuers given that these registrants likely already possess the information required by the amendment; however, registrants may incur additional compliance costs if the required information is not readily accessible to them or needs to be formatted for the required disclosure.

a. Investors

The amendments will require disclosure that a registered public accounting firm that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction has issued an audit report for the registrant. The disclosure will provide transparency about the inspection status of the engaged audit firm. As discussed above, the academic literature provides evidence that the PCAOB's oversight has led to improvements in audit quality and financial reporting quality, for both domestic and foreign issuers. The inability of the PCAOB to inspect the auditors of these registrants could generate uncertainty regarding their financial reporting quality. Thus, to the extent this information is new to investors,⁵⁶ we expect the specific required disclosure to potentially facilitate investors' capital allocation decisions. We further expect that the presentation of such information in a

⁵⁶ See *supra* Section IV.B.1 for a description of current practice and regulatory requirements regarding disclosure of the registrant's auditor inspection status.

standardized form in the annual report is likely to be helpful to investors by reducing their search costs.

The amendments will require disclosure of the percentage of the shares of the registrant owned by a government in the foreign jurisdiction. As discussed above, government ownership is information that is likely to facilitate investors' capital allocation decisions. For example, disclosure of government ownership may allow investors to better assess potential political risks/effects related to government ownership in the foreign jurisdiction that may influence the value of their investment. These benefits would be limited to the extent that affected registrants already provide disclosure relevant to assessing such risks.

In addition to the disclosure of ownership through equity holdings, the amendments will require affected registrants to disclose whether a governmental entity has a controlling financial interest in the registrant. We expect such disclosure may benefit investors as it could provide information about other mechanisms, besides direct equity ownership, such as control through a pyramidal ownership structure that might allow a governmental entity to influence registrants' operational and other decisions, thus providing additional insight into potential risks to investors that might arise from such control/ownership structures.⁵⁷

The amendments also require disclosure of board members' affiliations with the CCP and whether the articles of incorporation of the registrant (or equivalent organizing document) includes any charter of the CCP, including the text of any such charter. These disclosures will enhance existing information on the composition of the board and could increase insight into its quality and the related consequences for firm value. One study shows that the degree of a

⁵⁷ See, e.g., Jesse Fried & Ehud Kamar, *Alibaba: A Case Study of Synthetic Control*, ECGI Working Paper Series in Law, Paper No 533/2020 (2020) (concluding that control of a firm can be exerted not only through equity, but rather a mixture of employment, contractual, and commercial arrangements).

board's political affiliation in China is related to firm value, and this varies based on facts and circumstances.⁵⁸ For example, political affiliation of members of the board may imply that the incentives of such board members do not align with shareholders' interests, which in turn may affect registrants' decisions with potentially negative consequence for the registrants' value. Under different circumstances, politically connected board members may facilitate the execution of financing transactions for the registrant. To the extent that these disclosures may benefit investors by facilitating their efforts to evaluate characteristics of registrants that may have an impact on the value of their investments, these specific disclosures may facilitate investors' capital allocation decisions and potentially increase investor protection.

b. Registrants

The required disclosures are likely to impose some compliance costs on Commission-Identified Foreign Issuers. We do not expect these compliance costs to be significant since these registrants likely already possess the information required by the amendments. However, to the extent that such information is not readily accessible or needs to be formatted to comply with the required disclosure, we expect potential additional costs to these registrants.⁵⁹

The required disclosures may impact the cost of capital for some affected registrants. As discussed above, empirical evidence suggests that the information elicited by the required disclosures is, in general, related to potential risks and more broadly to firm value.⁶⁰ We discuss

⁵⁸ See Lihong Wang, *Protection or expropriation: Politically connected independent directors in China*, 55 J. BANK. FIN. 92 (2015) (using a sample of Chinese listed firms over the 2003-2012 period, the study finds that the presence of politically connected independent directors is related to increased firm value for private firms, but related to lower firm value for state-owned enterprises ("SOEs"). The study also finds increased related-party transactions for Chinese listed firms with politically connected independent directors).

⁵⁹ For the purpose of the Paperwork Reduction Act, we estimate that affected registrants will incur on average one burden hour to prepare and review the information needed for the HFCA Act Section 3 disclosure requirements; see *infra* Section V.C.

⁶⁰ See *supra* section IV.A.

the potential impact of the required disclosures on affected registrants' cost of capital further below, but note that the magnitude of any such impact is likely to be moderated depending on the extent information is otherwise available to investors.

The required disclosure regarding the use of a non-inspected firm to audit the registrant's annual report, which will now be required in a standardized manner, may lead investors to re-evaluate potential risks related to financial reporting quality due to the inability of the PCAOB to inspect the auditors of these registrants. Academic literature shows that PCAOB oversight is broadly related to improvements of audit quality, and also investor perceptions of such audit quality.⁶¹ As described above, many registrants already disclose, and also provide a discussion of, the risks or decreased benefits associated with using a non-inspected auditor.⁶² Given the extent to which information specifically required in the new disclosures overlaps with disclosures already observed in practice, in addition to the information being available from other sources such as the PCAOB, we expect the impact of these specific required disclosures on affected registrants' cost of capital to be small.

Section 3 of the HFCA Act also requires registrants to disclose information in a standardized manner in annual reports about their ownership and control structures, including the magnitude of direct equity ownership by a government in non-cooperating foreign jurisdictions and the degree of control a government in the non-cooperating jurisdiction may exert on the registrant through channels other than ownership. As described above, government ownership and control is likely to have an impact on the registrant's decision-making processes, and such impact is likely to vary under facts and circumstances.⁶³ The required disclosures may affect

⁶¹ *See supra* section IV.A.

⁶² *See supra* section IV.B.1.

⁶³ *See supra* section IV.A.

registrants' cost of capital insofar as the information disclosed triggers a re-assessment of the affected registrant's exposure to governmental ownership or control.

The amendments also will require registrants to disclose information about potential additional links to the CCP. Such disclosure is likely to be informative of the registrant's governance, and may also lead investors to re-assess potential political risks that may not have been previously known through existing registrants' disclosures. For example, such links between the registrant and the CCP may indicate increased political influence on registrants' decision-making processes and consequent impacts on registrants' value. While some, but not all, of the information in the required disclosures may already be publicly available through disclosures in forms other than in annual reports, the content of such disclosures may not be standardized across registrants. We expect these specific disclosures may potentially impact registrants' cost of capital, particularly for registrants about which such information is not otherwise known by the market.

2. Benefits and Costs of HFCA Act Submission Requirement

The amendments implementing the submission requirement of Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) provide that a Commission-Identified Issuer that is not owned or controlled by a foreign governmental entity in a foreign jurisdiction that prevents PCAOB inspections must submit documentation to the Commission that establishes that the registrant is not so owned or controlled. As discussed above, the amendments specify that if an affected registrant is owned or controlled by a foreign governmental entity, it will not be required to submit such documentation. We estimate in the baseline that a large majority of current registrants that are potential future Commission-Identified Issuers are also foreign issuers that will be subject to the disclosures required by

Section 3 of the HFCA Act. Therefore, we expect the submission requirement to serve as a complement to these required disclosures.

a. Investors

We anticipate that requiring Commission-Identified Issuers to provide documentation to support a lack of foreign control will provide further reassurance to investors that the registrants' disclosures in this regard are materially accurate and complete. In particular, because the submission requirement generally would apply to those Commission-Identified Issuers who otherwise do not disclose that they are owned or controlled by a foreign governmental entity, this requirement will provide some reassurance to investors that such control does not exist. We believe that greater certainty about which Commission-Identified Issuers lack governmental ownership and control may improve investors' assessments of the risks of investing in Commission-Identified Issuers' securities. If the submitted documentation is made publicly available, we expect the reassurance benefit to be larger than if the submission is retained non-publicly by the Commission. Because affected registrants will have flexibility to determine the specific types of documentation to submit to the Commission, if the submitted documentation is made publicly available, we expect the magnitude of the reassurance benefit to depend on the nature of information issuers submit. We generally expect this reassurance benefit to be limited given the HFCA Act's required Section 3 disclosure and other information about ownership and control required by existing Commission rules.⁶⁴

Because we expect the submission requirement to impose (on average) only minor compliance costs on affected registrants and no other significant costs, we also do not generally

⁶⁴ See *supra* section IV.B.1 for a description of current regulatory requirements regarding disclosure of ownership and control more generally.

expect any significant negative effects on investors from this requirement, such as a reduction in the prices of affected registrants' securities they currently own.

b. Registrants

Commission-Identified Issuers who lack ownership or control by a governmental entity in the foreign jurisdiction of the registered public accounting firm that the PCAOB is unable to inspect or investigate completely will incur some direct compliance costs related to producing the documentation they will be required to submit to the Commission. The magnitude of these compliance costs will depend on how easily the affected registrants can produce documentation to satisfy the submission requirement. The amendments do not specify particular types of documentation that can or must be submitted to satisfy this requirement. Affected registrants will thus have flexibility to determine how best to establish that they are not owned or controlled by a foreign governmental entity. This should help limit compliance costs, as registrants will be able to produce documentation that is suited to their particular circumstances. At the same time, at least as an initial matter, uncertainty about the scope of the requirement could lead some registrants to seek additional advice from attorneys and other advisers, which could marginally increase compliance costs. Overall, because we expect that affected registrants will have information readily available about their ownership structures and controlling parties, we expect the direct compliance costs associated with this requirement will be minor.⁶⁵

3. Impact on Efficiency, Competition, and Capital Formation

As discussed above, the required disclosures may provide new or more easily accessible information about whether registrants have retained non-inspected registered auditors and

⁶⁵ For the purpose of the Paperwork Reduction Act, we estimate that affected registrants will incur on average one burden hour to prepare and review the information needed for the HFCA Act Section 2 submission requirements; *see infra* Section V.C.

whether such registrants are owned or controlled by governmental entities of the foreign jurisdictions that prevent PCAOB inspections. To the extent this disclosed information is new or reduces search costs, we expect it could potentially reduce information asymmetries in securities markets, thereby improving price efficiency and helping investors achieve more efficient portfolio allocations. Overall, we believe that any efficiency gains will be modest since the potential increase in informational content and reduction in search costs to investors is likely to be limited given existing disclosures.

To the extent the amendments will reduce information asymmetries, affected registrants may experience a change in cost of capital (either a reduction or an increase is possible, depending on circumstances), which may in turn affect capital formation. However, similar to any effects on efficiency, we expect such capital formation effects to be small in aggregate. Likewise, we do not expect the amendments to significantly impact overall competition, based on the expected low compliance costs for registrants and the expected limited incremental impact on investors' information environment. However, we do not rule out that there could be instances where the required disclosures provide new information about some registrants that could potentially impact (either positively or negatively) their individual competitive situation due to investors' reassessment of such registrants' risk and prospects.

V. Paperwork Reduction Act

A. Background

Certain provisions of Form 10-K and Form 20-F that will be affected by the interim final amendments contain "collection of information" requirements within the meaning of the

Paperwork Reduction Act of 1995 (“PRA”).⁶⁶ The Commission is submitting the interim final amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.⁶⁷ The titles for the collections of information are:

“Form 10-K” (OMB Control No. 3235-0063); and

“Form 20-F” (OMB Control No. 3235-0288).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The affected forms were adopted under the Exchange Act and set forth the disclosure requirements for annual reports filed by registrants to help investors make informed investment decisions. The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information.

B. Summary of the Amendments

As described in more detail above, we are adopting interim final amendments to implement the disclosure and submission requirements of the HFCA Act. The amendments will require certain disclosure from foreign issuers relating to foreign jurisdictions that prevent PCAOB inspections and require all registrants to submit documentation to the Commission

⁶⁶ 44 U.S.C. 3501 *et seq.* As noted in Section IV above, based on recent Form 40-F filings, no Form 40-F registrants reported having retained a registered public accounting firm located in a foreign jurisdiction, and therefore we estimate that no Form 40-F registrants will be subject to the requirements of the interim final amendments upon their adoption. Accordingly, we are not making any revisions to the PRA burden estimates for Form 40-F at this time. Additionally, as noted above, based on recent Form N-CEN filings, no registered investment company reported having retained a registered public accounting firm located in a foreign jurisdiction, and therefore we estimate that no registered investment companies will be subject to the requirements of the interim final amendments upon their adoption. Accordingly, we are not making any revisions to the PRA burden estimates for Form N-CSR at this time. *See supra* note 33.

⁶⁷ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

establishing that such a covered issuer is not owned or controlled by a governmental entity in that foreign jurisdiction.

C. Burden and Cost Estimates Related to the Amendment

We anticipate that new disclosure and submission requirements will increase the burdens and costs for these registrants. We derived our burden hour and cost estimates by estimating the average amount of time it would take a registrant to prepare and review the required disclosure and submission, as well as the average hourly rate for outside professionals who assist with such preparation. In addition, our burden estimates are based on several assumptions.

For the HFCA Act Section 3 disclosure requirements we estimated the number of affected registrants by determining the number of foreign issuer registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist. For the Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) submission requirements we estimated the number of affected registrants by determining the number of registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist. Based on these estimates, for purposes of the PRA, we estimate that there will be:

- No affected Form 10-K filers for the HFCA Act Section 3 disclosure requirements and 55 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement; and

- Two hundred twenty affected Form 20-F filers for the HFCA Act Section 3 disclosure requirements and 206 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement.⁶⁸

Commission-Identified Issuers will generally have information readily available about their audit arrangements, ownership structures, and controlling parties. Therefore we estimate that the average incremental burden for an affected registrant to prepare the submission would be 1 hour and for an affected registrant that is a foreign issuer to prepare the disclosure would be 1 hour. These estimates represent the average burdens for all affected registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. We believe that some registrants will experience costs in excess of this average and some registrants may experience less than the average costs.

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the interim final amendments.⁶⁹ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review the required information. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of

⁶⁸ See *supra* Section IV.B.2.A. Based on the data and analysis described in Section IV above, for purposes of the PRA we estimate that approximately 275 registrants may be affected by the rules, of which we estimate 20 percent are U.S. registrants that file on Form 10-K (55 registrants) and 80 percent are foreign issuers that file on Form 20-F (220 registrants). For purposes of the HFCA Act Section 3 disclosure requirement, we estimate that only foreign filers filing on Form 20-F will be required to provide the disclosure (220 registrants). For purposes of the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement, we estimate that approximately five percent of the affected registrants are state-owned entities and will not be required to prepare the submission. As a result, we estimate that U.S. registrants that file on Form 10-K (55 registrants) and foreign issuers that file on Form 20-F but are not state-owned entities (206) will be required to provide the submission.

⁶⁹ The table's estimated number of responses aggregates the responses for both the disclosure requirement and the submission requirement. Some registrants will be counted twice, once for each response. For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

the burden carried by the registrant internally is reflected in hours. For purposes of the PRA, we estimate that 75 percent of the burden of preparation of Form 10-K and Form 20-F is carried by the registrant internally and that 25 percent of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.⁷⁰

Table 1. Incremental Paperwork Burden under the Interim Final Amendments.

	Estimated number of affected responses (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
Form 10-K (submission)	55	1	55	41	14	\$5,600
Form 20-F (submission)	206	1	206	155	52	\$20,800
Form 20-F (disclosure)	220	1	220	165	55	\$22,000

Request for Comment

We request comments in order to evaluate: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated

⁷⁰ We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs will be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

collection techniques or other forms of information technology.⁷¹ Specifically, we request comment on the estimated number or percentage of affected registrants.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, with reference to File No. S7-03-21. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-03-21 and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to the OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

VI. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 2 and 3 of the HFCA Act, Section 104 of the Sarbanes-Oxley Act, Sections 3, 12, 13, 15(d), and 23(a) of the Exchange Act, and Sections 8(b), 24(a), 30(a), and 38(a) of the Investment Company Act.

List of Subjects in

17 CFR Part 249

⁷¹ We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 274

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF RULE AMENDMENTS

In accordance with the foregoing, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 249 and sectional authority citation for §249.220f are revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112-106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. No. 116-222, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107-204, 116 Stat. 745, and secs. 2 and 3, Pub. L. No. 116-222, 134 Stat. 1063.

* * * * *

2. Amend Form 20-F (referenced in § 249.220f) by adding new Item 16I. to read as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 20-F

* * * * *

PART II

* * * * *

Item 16I. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

(a) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 20-F, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 20-F, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken

by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must disclose:

(1) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;

(2) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;

(3) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;

(4) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and

(5) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

Instruction to Item 16I:

Item 16I only applies to annual reports, and not to registration statements on Form 20-F.

* * * * *

3. Amend Form 40-F (referenced in § 249.240f) by adding new paragraph B.18. to read as follows:

Note: The text of Form 40-F does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 40-F

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Information to be Filed on this Form

(18) Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

(a) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 40-F, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 40-F, a registered public accounting firm that has a branch or

office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must disclose:

(i) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;

(ii) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;

(iii) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;

(iv) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and

(v) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

Note to paragraph (18) of General Instruction B:

Instruction (B)(18) only applies to annual reports, and not to registration statements on Form 40-F.

* * * * *

4. Amend Form 10-K (referenced in §249.310) by adding new Item 9C. to Part II to read as follows:

Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

* * * * *

Part II

* * * * *

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

(a) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 10-K, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 10-K, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must disclose:

(1) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;

(2) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;

(3) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;

(4) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and

(5) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

5. Amend Form N-CSR (referenced in §§249.331 and 274.128) by adding new paragraphs (i) and (j) to Item 4 to read as follows:

Note: The text of Form N-CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM N-CSR

* * * * *

Item 4. Principal Accountant Fees and Services

* * * * *

(i) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)), as having retained, for the preparation of the audit report on its financial statements included in the Form N-CSR, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(j) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)), as having retained, for the preparation of the audit report on its financial statements included in the Form N-CSR, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must disclose:

(1) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;

(2) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;

(3) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;

(4) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and

(5) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

* * * * *

By the Commission.

Dated: March 18, 2021.

Vanessa A. Countryman,

Secretary.