



1666 K Street NW
Washington, DC 20006

Office: 202-207-9100
Fax: 202-862-8430

www.pcaobus.org

HFCAA DETERMINATION REPORT

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

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

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

**PCAOB Release No. 104-HFCAA-2022-001
December 15, 2022**

Pursuant to 15 U.S.C. § 7214(i)(2)(A) and PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act*, the Public Company Accounting Oversight Board (“PCAOB” or “Board”) issues this report, after conducting the reassessment required by Rule 6100(h), to notify the U.S. Securities and Exchange Commission (“Commission”) of the Board’s decisions:

- To vacate the Board’s December 16, 2021, determination that the Board was unable to inspect or investigate completely registered public accounting firms headquartered in mainland China of the People’s Republic of China (“PRC”)¹ because of a position taken by one or more authorities in mainland China (“the Mainland China Determination”); and
- To vacate the Board’s December 16, 2021, determination that the Board was unable to inspect or investigate completely registered public accounting firms headquartered in Hong Kong, a Special Administrative Region and dependency of the PRC, because of a position taken by one or more authorities in Hong Kong (“the Hong Kong Determination,” and, together with the Mainland China Determination, “the 2021 Determinations”).

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

Pursuant to the Holding Foreign Companies Accountable Act (“HFCAA”), which the PCAOB implemented through its Rule 6100, the PCAOB must make an HFCAA determination if it concludes that (1) it has been unable to inspect or investigate completely PCAOB-registered public accounting firms in a foreign jurisdiction; and (2) its inability to inspect or investigate was based on a position taken by a foreign authority in that jurisdiction. Last year, the PCAOB concluded that the requirements for an HFCAA determination had been met. Accordingly, the PCAOB made the 2021 Determinations as required under the HFCAA.

As discussed below, after conducting extensive and thorough inspections and investigations of mainland China and Hong Kong firms in 2022 under a new comprehensive agreement with the PRC and consistent with the PCAOB’s usual practice, the current facts and circumstances indicate that (1) in 2022, the PCAOB has been able to conduct inspections and investigations completely; and (2) the PRC has not taken a position to restrict PCAOB access or otherwise impair the Board’s ability to conduct its planned inspections and investigations in 2022. As a result, based on these facts and circumstances, the Board is vacating the 2021 Determinations as required by the HFCAA, which has been implemented by PCAOB Rule 6100.

The Board believes that continued cooperation by its counterparts in the PRC – maintained in the same manner and to the same extent as in 2022 – will promote enhanced audit quality and increase investor protection consistent with the Board’s mandate under the Sarbanes-Oxley Act of 2002, as amended (“the Act”).

And while the Board concludes that it is required, based on the terms of the HFCAA as applied to these facts and circumstances, to vacate the 2021 Determinations, the Board also recognizes that authorities in the PRC might take positions at any time that would prevent the PCAOB from continuing to inspect or investigate completely. Should the Board encounter any impediment to conducting an inspection or investigation of auditors in mainland China or Hong Kong as a result of a position taken by an authority in either jurisdiction, the Board will act immediately to consider the need to issue new determinations consistent with the HFCAA and Rule 6100.

I. EXECUTIVE SUMMARY

A. Background

To restore investor confidence after several high-profile corporate fraud and accounting scandals in the early 2000s, Congress established the PCAOB to carry out a critical mission: to protect investors by overseeing the audits of public companies that avail themselves of U.S. capital markets (“issuers”) and to further the public interest in the preparation of informative, accurate, and independent audit reports. To advance that mission, Congress directed the PCAOB to (1) inspect PCAOB-registered public accounting firms that regularly provide audit

reports for issuers and (2) investigate potential violations of certain laws, rules, and professional standards by those firms and their associated persons.²

PCAOB oversight spans the globe because of the extensive presence of non-U.S. domiciled issuers, including foreign private issuers, in U.S. capital markets. The Act specifies that non-U.S. registered firms that prepare or furnish audit reports with respect to issuers are subject to the Act and the Board's rules in the same manner and to the same extent as U.S. registered firms.³

In 2020, to address obstacles faced by the PCAOB in certain jurisdictions, Congress enacted the HFCAA, in part, to protect U.S. capital markets in the event that the PCAOB determines it is unable to inspect or investigate completely registered firms in a foreign jurisdiction as a result of positions taken by authorities in that jurisdiction.⁴ The HFCAA seeks to ensure that investors in U.S. capital markets benefit from the same level of Board oversight required by the Act no matter where a PCAOB-registered firm and its associated persons are located. To implement the HFCAA's directive, the Board adopted Rule 6100, which establishes a framework for assessing whether a determination is warranted.⁵

Subsequently, the Board assessed whether any determinations were required consistent with the HFCAA, and on December 16, 2021, made the 2021 Determinations and issued a report detailing the Board's analysis of how and why positions taken by authorities in mainland China and Hong Kong prevented the PCAOB from inspecting and investigating

² See 15 U.S.C. §§ 7214 to 7215.

³ See 15 U.S.C. § 7216(a)(1).

⁴ See 15 U.S.C. § 7214(i)(2)(A) (requiring that the Commission identify certain issuers that "retain[] a registered public accounting firm that has a branch or office that . . . is located in a foreign jurisdiction . . . and . . . the Board is unable to inspect or investigate completely because of a position taken by an authority in [that] foreign jurisdiction . . . , as determined by the Board").

⁵ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Release No. 2021-004 (Sept. 22, 2021) ("Release"), available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4. The Commission approved PCAOB Rule 6100. See *Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, SEC Release No. 34-93527 (Nov. 4, 2021).

completely firms headquartered in mainland China and Hong Kong (the “2021 Determination Report”).⁶

In order to gain the access required for its oversight activities, the PCAOB continued to pursue a comprehensive bilateral agreement with the China Securities Regulatory Commission (“CSRC”) and the Ministry of Finance of the PRC (“MOF,” and, together with CSRC, “PRC Authorities”)⁷ after issuance of the 2021 Determinations. During the 2021-2022 negotiations, the PCAOB communicated to the PRC Authorities that reaching an agreement was necessary but not sufficient for the PCAOB to vacate its 2021 Determinations, and that, consistent with the HFCAA, the PCAOB must conduct inspections and investigations (including taking testimony) in 2022 to verify that the PRC Authorities could and would provide complete access in connection with PCAOB inspections and investigations.

As detailed below, on August 26, 2022, the CSRC and the MOF executed a Statement of Protocol with the PCAOB, including detailed provisions for each stage and requirement of PCAOB inspections and investigations (the “Agreement”), to facilitate the cooperation between the PCAOB and the PRC Authorities needed for the PCAOB to conduct its mandated oversight of firms headquartered in mainland China and Hong Kong. Thereafter, beginning in September 2022, PCAOB staff arrived in Hong Kong to conduct nine weeks of inspection field work and investigative testimony in a manner fully consistent with the PCAOB’s methodology and approach to inspections and investigations in the U.S. and globally.

B. Development of a PCAOB Inspections and Investigations Plan to Verify Compliance with the Agreement and the Ability to Inspect and Investigate Completely

While the PCAOB and the PRC Authorities were negotiating a comprehensive bilateral agreement, PCAOB staff in early 2022 designed a plan of inspections and investigations for 2022 (the “Inspections and Investigations Plan”) that was consistent with the PCAOB’s statutory

⁶ See *HFCAA Determination Report*, PCAOB Release No. 104-HFCAA-2021-001 (Dec. 16, 2021), available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/international/documents/104-hfcaa-2021-001.pdf?sfvrsn=acc3b380_4.

⁷ The CSRC is a ministerial-level PRC authority responsible for regulating the securities market and cross-border supervision and enforcement cooperation relevant to securities markets. The MOF is the PRC ministry with jurisdiction over the financial audits of entities and business operations located in mainland China, including the documentation of those audits under the PRC’s Certified Public Accountant Act. Hong Kong also has an audit regulator, the Accounting and Financial Reporting Council, and a securities regulator, the Securities and Futures Commission, but the Board’s 2021 Determinations were not based on positions taken by those regulators.

mandate and was designed to confirm that the PCAOB would have unimpaired access to information required by the Act, including the HFCAA.

With respect to inspections, staff began in early 2022 to consider firms and audit engagements for potential selection for inspections in mainland China and Hong Kong. Under Section 104(d)(1) of the Act, the Board selects audit engagements as part of an inspection and applies a consistent approach across firms and across jurisdictions to select a mix of engagements, and it does so without interference from firms or other regulators. Consistent with this approach, the PCAOB staff made its selections for inspections in early 2022 unilaterally, without input from or influence by PRC Authorities and following the same methodology used for all PCAOB inspections, including consideration of the risk factors posed by particular firms or issuers and with a focus on audit areas believed to be of greater complexity or significance, or that posed a heightened risk of material misstatement to the issuer's financial statements. In addition, the staff considered the types of audit engagements to which PRC Authorities had previously denied access and also made selections from that population of engagements, including state-owned enterprises, issuers in sensitive industries, and issuers with large market capitalization. PRC Authorities and the respective firms learned of the selections on August 26, 2022, after the execution of the comprehensive Agreement between the PRC Authorities and the PCAOB.

While negotiations were ongoing, the PCAOB also commenced investigations involving several firms headquartered in mainland China and Hong Kong, requested documents from the respective firms, and sought PRC Authorities' assistance with access to relevant documents and information. PCAOB staff communicated to PRC Authorities that document productions would need to occur even before a bilateral agreement was reached in order to provide enforcement staff sufficient time to review relevant information and schedule testimony to occur in the fall of 2022. Relying on a 2013 enforcement-related memorandum of understanding between the PCAOB and the PRC Authorities (the "2013 Enforcement MOU"), the PRC Authorities complied with the PCAOB's requests for assistance and began producing documents in April 2022, roughly four months prior to entering into the Agreement.

Consistent with the PCAOB's methodology, and cognizant of Rule 6100(h)'s requirement that the Board reassess the 2021 Determinations before the end of 2022, the Inspections and Investigations Plan included (1) the inspection of a total of seven audit engagements at KPMG Huazhen LLP (China) and PricewaterhouseCoopers (Hong Kong); and (2) taking testimony in connection with two investigations of mainland China firms and associated persons. The number of audit firms and engagements selected for inspection is consistent with the PCAOB's methodology and with the number of engagements usually selected in non-U.S. jurisdictions with similar firms. The PCAOB subsequently added another audit engagement for inspection to the Inspections and Investigations Plan based on new information staff learned on the first day of inspections field work, bringing to eight the total number of engagements to be inspected.

C. Comprehensive Agreement between the PCAOB and the PRC Authorities

As noted above, on August 26, 2022, the CSRC and the MOF entered into the Agreement to facilitate cross-border cooperation with the PCAOB. The scope of the Agreement includes the cooperation needed from the PRC Authorities with respect to PCAOB inspections and investigations of audit firms headquartered in mainland China, as well as audit firms headquartered in Hong Kong to the extent the PCAOB's oversight activities require access to individuals located in, or audit documents required to be maintained in, mainland China.⁸

Given the history of unsuccessful attempts to conduct investigations and a pilot inspection under earlier cooperative agreements,⁹ the terms of the Agreement are comprehensive, explicit, and detailed. Under the Agreement:

- The PCAOB has sole discretion to select the firms and audit engagements to be inspected and the potential violations to be investigated – without consultation with, or input from, PRC Authorities;
- There are specific procedures for PCAOB inspectors and investigators to view complete audit documentation¹⁰ with all information included and for the PCAOB to retain information in its sole discretion and as needed; and
- The PCAOB is given direct access to interview and take testimony from all relevant audit personnel.

The Agreement also expressly acknowledges that if PRC Authorities fail to facilitate, or otherwise interfere with, the full access required for PCAOB oversight, and if the Board thus is

⁸ If a PCAOB inspection or investigation of an auditor in Hong Kong does not involve reviewing audit documentation required to be maintained in mainland China or interviewing or taking testimony from auditors residing in mainland China, then under the terms of the Agreement, the PCAOB may conduct such an inspection or investigation without seeking the assistance of the CSRC or the MOF.

⁹ See 2021 Determination Report at 7-13.

¹⁰ "Audit documentation," as used herein, may include documents beyond those encompassed by the term "audit documentation" in PCAOB Auditing Standard 1215, *Audit Documentation*, paragraph .02. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor.

unable to inspect or investigate completely, the Board can take any actions called for under the Act, including making any appropriate determinations under the HFCAA.

By executing the Agreement, PRC authorities reversed prior positions they had taken that impaired the Board's ability to execute its statutory mandate with respect to inspections and investigations and led the Board to issue the 2021 Determinations. But, as conveyed to the PRC Authorities during negotiations, reaching a bilateral agreement was not sufficient; PRC Authorities also had to demonstrate that they reversed their prior positions in practice by providing the PCAOB with complete access to inspect and investigate, consistent with the requirements of the Act.

D. Verifying Compliance with the Agreement and that PRC Authorities' Positions Provided the Access Required by the Act

Upon entering into the Agreement with PRC Authorities in August 2022, the PCAOB continued to execute the Inspections and Investigations Plan. From September to November, the PCAOB sent 32 staff to Hong Kong to conduct on-site inspections and take testimony related to ongoing investigations. Many of the PCAOB staff who traveled to Hong Kong remained in Hong Kong for the entirety of the nine weeks required to execute the Inspections and Investigations Plan.

PCAOB staff carefully crafted the Inspections and Investigations Plan to allow the PCAOB to immediately and continuously assess compliance with the Agreement, which effectuated the requirements of the Act, including the HFCAA. As discussed further below, PCAOB staff created benchmarks, including for document transfers in both inspections, that would allow the PCAOB to assess whether the PRC Authorities were complying with the terms of the Agreement requiring such transfer. As importantly, even before finalization of the Agreement, the PCAOB staff informed the PRC Authorities that production of certain documents for investigations would be required starting in April, before the Agreement was fully negotiated or executed, to provide the PCAOB sufficient time to prepare for and take testimony in 2022.

E. The PCAOB's Ability to Inspect and Investigate Completely in 2022

As described in greater detail below, the PCAOB staff conducted rigorous inspections and investigations to be able to assess whether the PCAOB could inspect and investigate completely. Over a course of approximately eight months, from April to November 2022, the PRC Authorities facilitated PCAOB access to all requested audit documentation and related information and to all requested firm personnel for inspection-related interviews and investigative testimony, and they did so in compliance with tighter deadlines than those required under the Agreement (including facilitating production of information and documents prior to entering into the Agreement and agreeing to facilitate field work and testimony in Hong Kong during national holidays and on weekends). The PRC Authorities also provided necessary

cooperation and logistical support that enabled the PCAOB to complete inspections field work and conduct investigations, including taking testimony, in the fall of 2022 as planned.

To date, the Agreement's prescriptive framework has worked as intended. In 2022, the PCAOB was able to complete field work on two audit firm inspections, obtain all requested documents and other information in both inspections and multiple investigations, and take testimony of all witnesses sought by the PCAOB in two investigations. Consistent with the Agreement, the PRC Authorities did not withhold or redact any information. Notwithstanding the rigorous execution of the Inspections and Investigations Plan, the PCAOB has not observed any instances of non-compliance by the PRC Authorities with the terms of the Agreement. In short, after execution of the Agreement, the PRC Authorities took no positions in practice that prevented the PCAOB from inspecting and investigating completely firms headquartered in mainland China and Hong Kong.

F. The PCAOB's Advancement of Investor Protection and the Public Interest

The PCAOB's inspections and investigations mandate is a key driver of advancing audit quality, which in turn advances the PCAOB's investor protection mission. Now for the first time, the PCAOB has been able to conduct its statutorily mandated oversight activities of firms in mainland China and Hong Kong.

Specifically, as a result of the PCAOB's inspections, PCAOB staff have preliminarily identified potential deficiencies at the firms subject to inspection that are consistent with the types and number of findings the PCAOB has encountered in the context of other first-time inspections around the world. Identifying deficiencies is the necessary first step toward ensuring that deficiencies do not recur, and reporting such deficiencies, consistent with the Act, allows the PCAOB to protect investors by providing them with information to inform their decisions. Continued PCAOB access for inspections and investigations will result in the enhancement of audit quality and investor protection with respect to issuers audited by firms headquartered in mainland China and Hong Kong.

Similarly, the ability to investigate completely, including the ability to bring enforcement actions against wrongdoers when warranted, also drives audit quality. Enforcement actions improve audit quality, in part, by deterring negligent and reckless conduct and intentional wrongdoing, and, when appropriate, by prohibiting bad actors from participating in audits subject to the PCAOB's jurisdiction.

G. Ongoing Access

In addition to complying with the requirements of the Agreement, the PRC Authorities have agreed to facilitate the PCAOB's schedule for inspections in 2023 and 2024, as well as any investigations that will commence or continue in 2023 and beyond.

H. Conclusion

Based on the PCAOB's having complete access, as facilitated by the PRC Authorities' performance in accordance with the requirements of the Agreement, the Board has concluded that, consistent with the HFCAA, the Board is able to inspect and investigate completely firms headquartered in mainland China and Hong Kong. The Board (1) is able to select engagements, audit areas, and potential violations to be reviewed or investigated, (2) has timely access to, and the ability to retain and use, any document or information that the Board considers relevant to an inspection or investigation, and (3) is able to conduct inspections and investigations in a manner consistent with the provisions of the Act and the rules of the Board, as interpreted and applied by the Board. Consequently, in the absence of any evidence that authorities in the PRC currently are taking any positions to impair the Board's ability to execute its statutory mandate with respect to inspections or investigations, the HFCAA dictates that the Board vacate the 2021 Determinations.

As required by the HFCAA, if in the future the PCAOB determines it no longer can inspect or investigate completely because of a position taken by an authority in the PRC, the PCAOB will act expeditiously to consider whether the Board should issue a new determination.

II. THE AGREEMENT AND ITS IMPLEMENTATION

A. The Agreement Reflects the PCAOB's Need for Complete Access and Addresses Impediments Experienced Previously, Including Those Resulting from the PRC's Legal and Regulatory Framework

As the Board documented in the 2021 Determination Report,¹¹ the PRC Authorities require a cooperative agreement with the PCAOB prior to facilitating PCAOB access to audit documentation and other information from registered firms headquartered (1) in mainland China or (2) in Hong Kong to the extent such information is legally required to be maintained in mainland China. Moreover, before these registered firms may provide such information to the PCAOB even after a cooperative agreement is in place, whether as part of an inspection or investigation, PRC Authorities first must review and approve the information for sharing.

As described below and in the following sections, PRC Authorities executed the Agreement, the terms of which, if fully implemented, would enable the PCAOB to have unfettered access to audit documentation and other information from mainland China and Hong Kong firms and their associated persons.

The scope of the Agreement covers situations where the cross-border cooperation of the PRC Authorities is needed by the PCAOB to obtain information for the inspection or

¹¹ See 2021 Determination Report at 5-7.

investigation of audit firms headquartered in mainland China or Hong Kong and their associated persons. It further reflects the PCAOB's need to secure the same access to information in mainland China and Hong Kong as the Board has in other non-U.S. jurisdictions pursuant to bilateral agreements and cooperative arrangements with other regulators.

Specific provisions in the Agreement explicitly address the requirement that the Board be able to inspect and investigate completely and the need to remove the impediments to access documented by the Board in the 2021 Determination Report, while also imposing deadlines where appropriate.¹² These provisions include:

- The PRC Authorities' commitment to facilitate the access required by the PCAOB to firms and associated persons in mainland China and Hong Kong, including with respect to the PCAOB's mandated cycle of inspections;
- Sole, unfettered discretion for the PCAOB to select the firms, audit engagements, and audit areas to be inspected, and the potential violations to be investigated – without consultation with, or input from, the PRC Authorities;
- Procedures for PCAOB inspectors and investigators to view complete audit documentation with all information included, without any redactions or exclusions, and for the PCAOB to retain any such information as needed in its sole discretion;¹³
- Direct PCAOB access to interview all relevant audit firm personnel and associated persons of audit firms;
- A process enabling the PCAOB, in a manner consistent with PCAOB rules, to take and transcribe testimony of any witness deemed necessary by the PCAOB as part of an investigation and in a manner that allows transcripts of such testimony to be used in a PCAOB disciplinary proceeding;¹⁴

¹² The protocols for inspections and investigations included in the Agreement reflect the requirements of the Act, PCAOB rules, and the PCAOB's standard procedures for conducting inspections and investigations, and they include specific deadlines for the assistance to be provided by PRC Authorities under the Agreement.

¹³ In addition, to address past impairments, the Agreement expressly allows the PCAOB to onward share with the Commission information received under the Agreement without needing to provide notice to, or seek consent from, the PRC Authorities.

¹⁴ With respect to taking testimony of witnesses located in Hong Kong, under the terms of the Agreement, the PCAOB need not notify or request assistance from PRC Authorities.

- Parameters for assistance that include deadlines for responses from the PRC Authorities at each stage of PCAOB inspections and investigations, a mechanism for the PCAOB to communicate directly with registered firms, and commitments by the PRC Authorities to help secure necessary consents from other authorities in the PRC when needed;
- Explicit acknowledgement that the involvement of the PRC Authorities is not required for PCAOB inspections and investigations of firms and associated persons located in Hong Kong to the extent they do not involve reviewing audit documentation required to be maintained in mainland China or interviewing or taking testimony from witnesses located in mainland China; and
- Consultation provisions incorporating specific deliverables and deadlines to address any failure to perform under the Agreement and to hold each side to a standard of meaningful engagement to remove impediments.

In executing the Agreement, PRC Authorities reversed the positions they had previously taken that impaired PCAOB inspections and investigations of audit firms headquartered in mainland China and Hong Kong and led the Board to issue the 2021 Determinations. And in approving the Agreement in August 2022, the Board likewise concluded that the prescriptive terms of the Agreement address the impediments to inspections and investigations previously experienced by the PCAOB as a result of those positions, such that compliance by PRC Authorities with the Agreement would enable the PCAOB to inspect and investigate completely.¹⁵

B. Implementation of the Agreement in Executing the Inspections and Investigations Plan for 2022

Inspections Planning and Execution

As noted above, in early 2022, while negotiations between the PRC Authorities and the PCAOB were ongoing, PCAOB staff began to consider firms and audit engagements for potential selection for inspections in mainland China and Hong Kong in 2022, should a bilateral agreement be reached. PCAOB staff made its selections for inspections unilaterally, without input or influence by PRC Authorities. Selections were based on the methodology used in all PCAOB inspections, including consideration of risk factors posed by particular firms or issuers and with a focus on audit areas believed to be of greater complexity or significance, or that pose a heightened risk of material misstatement to the issuer's financial statements. In

¹⁵ As noted above, the PCAOB communicated to the PRC Authorities in connection with execution of the Agreement that PRC Authorities also had to demonstrate that they reversed their prior positions in practice by providing the PCAOB with complete access to inspect and investigate, consistent with the requirement of the Act.

addition, in order to measure compliance with the level of access required under the Act, including the HFCAA, staff identified the types of audit engagements to which PRC Authorities had previously denied access and made selections from that population of audit engagements, including issuer engagements that authorities in the PRC have historically categorized as sensitive, such as large state-owned enterprises.

Upon the execution of the Agreement, and consistent with normal practice but on tighter deadlines, the PCAOB notified two firms, KPMG Huazhen LLP in mainland China (“KPMG China”) and PricewaterhouseCoopers in Hong Kong (“PwC Hong Kong”), that they had been selected for inspection. On the same day, the PCAOB also communicated to those firms the PCAOB’s issuer audit engagement selections (three selections at one firm, two selections at the other), the inspection focus areas for those engagement reviews, and the timeline for the inspections, all without input or interference from the CSRC or the MOF. Specifically, on August 26, 2022, after the execution of the Agreement, PCAOB staff sent formal inspection notification letters to KPMG China and PwC Hong Kong notifying the firms that the PCAOB had selected them for inspection in 2022 and would begin field work on September 19, 2022. Also on August 26, 2022, PCAOB staff sent to each selected firm instructions for making available for inspection field work all required information and disclosing the initial issuer audit engagements selected by PCAOB staff for review, including the fact that an additional selection of a referred work or substantial role engagement (i.e., one for which the firm was not the principal, signing auditor) would be disclosed separately to each firm at a later date, after the firms provided more detail regarding such engagements.

Prior to the execution of the Agreement, only a very limited number of the PCAOB staff had knowledge of the audit firms and engagements selected for inspection. No one outside this select group of PCAOB staff had advance knowledge of or input into the PCAOB’s inspections selections. As noted above, the PRC Authorities and the respective firms learned of the selections on August 26, 2022, after the execution of the Agreement by the PRC Authorities and the PCAOB.

The PCAOB also communicated to the PRC Authorities a schedule for completing inspection field work in the fall of 2022. This schedule was designed to enable the PCAOB to determine in 2022 whether the PCAOB had complete access to information and whether prior obstacles to information access were successfully eliminated. The schedule also included specific and strict deadlines for access to audit documentation and other information for review by the inspection teams as well as for the transfer in a timely manner of any audit documentation or other information required by the PCAOB to support documentation of its inspection findings.

From September to November 2022, more than twenty PCAOB inspectors conducted inspection field work in connection with the two inspections consistent with the inspection schedule established by the PCAOB before execution of the Agreement. Their work included

the review of thousands of pages of audit documentation, including continuing work through a major Chinese holiday.

With respect to the inspection of one firm, the PCAOB also selected an additional audit engagement for review, based on the disclosure by the firm to the PCAOB on the first day of field work of new information relevant to the PCAOB's selection process. The CSRC and the MOF helped to facilitate this additional engagement review, including by expediting the review of relevant audit documentation and providing the PCAOB with access on the dates specified by the PCAOB.

In connection with both inspections and all engagement selections, the PRC Authorities provided timely access to the full set of audit documentation requested from the firms, including with respect to the additional engagement selection made during field work, such that the PCAOB was able to complete on schedule its inspection field work, including review of a total of eight audit engagements. The PCAOB requested a significant number of documents to support its potential inspection findings, and the CSRC transferred all such documents to the PCAOB on a timely basis. As a result, PCAOB staff have received information necessary to evaluate the firms as required by the Act, and the staff preliminarily have identified potential deficiencies at the firms subject to inspection, consistent with the types and number of findings the PCAOB has encountered in the context of other first-time inspections in the U.S. and around the world. PCAOB staff provided comment forms to the firms in December, as appropriate, and will issue inspection reports for these two inspections in due course.

The information access restrictions imposed by the PRC Authorities that gave rise to the 2021 Determinations were explicitly addressed by the terms of the Agreement and by the PRC Authorities' compliance in 2022 with all relevant terms of the Agreement. The PRC Authorities did not withhold or preclude the staff from accessing information as part of the 2022 inspections, despite the PCAOB having chosen to review some of the same types of audit engagements with respect to which the PRC Authorities had previously withheld information from the PCAOB due to its purported sensitivity. All information and access to personnel requested as part of the 2022 inspections was provided to the PCAOB on time and consistent with the PCAOB's inspection mandate under the Act.

Investigations Planning and Execution

In March, prior to entering into the Agreement, the PCAOB initiated two investigations of mainland China firms and one investigation of a Hong Kong firm, enabling the PCAOB to take testimony in the fall of 2022, should an agreement be reached with PRC Authorities.¹⁶ PCAOB

¹⁶ With respect to firms in Hong Kong, the CSRC asserts jurisdiction only over audit documentation that must be maintained in mainland China under applicable PRC laws and regulations. Under the terms of the Agreement, if a PCAOB investigation of an auditor in Hong Kong does not involve reviewing audit

staff immediately began to issue document requests in all three matters. PCAOB staff informed the PRC Authorities that to be able to conduct testimony in the fall of 2022, the PCAOB would require document production even prior to entering into any potential agreement. PRC Authorities began facilitating the document productions before the execution of the Agreement to enable PCAOB staff to take testimony of mainland China witnesses in 2022. PCAOB staff selected the potential violations to be investigated consistent with its regular practices, without any input from or advance notice to PRC Authorities, and PCAOB staff pursued all such investigations.

After the execution of the Agreement, having received document productions beginning in April 2022, PCAOB staff proceeded to conduct testimony related to the pending investigations where the PCAOB determined taking testimony was appropriate, and testimonies were facilitated by the PRC Authorities.

Specifically, on August 22, 2022, PCAOB staff provided to the CSRC a list of witnesses whose testimony PCAOB staff intended to take in October and November 2022. The CSRC arranged to have the witnesses appear for testimony pursuant to the PCAOB's proposed timeline. The PRC Authorities also agreed to facilitate the PCAOB staff's schedule even though it required CSRC and MOF staff to attend testimony on weekends. PCAOB staff completed its scheduled testimony on November 11, 2022, as planned.

III. LEGAL ANALYSIS OF THE THREE FACTORS SET FORTH IN PCAOB RULE 6100

When reassessing an existing determination under Rule 6100(h), which the Board must do at least annually but can undertake at any time, the Board must evaluate the following three factors set forth in Rule 6100(b) to assess whether positions taken by foreign authorities impair the Board's ability to execute its statutory mandate with respect to inspections or investigations:

- (1) the Board's ability to select engagements, audit areas, and potential violations to be reviewed or investigated;
- (2) the Board's timely access to, and the ability to retain and use, any document or information (including through conducting interviews and testimony) in the possession, custody, or control of the firm(s) or any associated persons thereof that the Board considers relevant to an inspection or investigation; and

documentation required to be maintained in mainland China, or taking testimony of or interviewing auditors residing in mainland China, the PCAOB may conduct such investigation without seeking the assistance of the CSRC or the MOF.

- (3) the Board’s ability to conduct inspections and investigations in a manner consistent with the provisions of the Act and the rules of the Board, as interpreted and applied by the Board.¹⁷

Impairment in any one respect, as to either inspections or investigations, is sufficient to support a determination.¹⁸

A. The PRC Authorities Took No Positions in the Agreement or in Connection with its Implementation that Impaired the PCAOB's Ability to Inspect Completely

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

Section 104(d)(1) of the Act requires the Board to select audit engagements as part of an inspection. The PCAOB applies a consistent approach across firms and across jurisdictions to select a mix of engagements and does so without interference from firms or other regulators.

As noted above, the Agreement includes explicit provisions providing that the PCAOB may in its sole discretion decide in what year the PCAOB will inspect a particular firm and select which audit engagements, and which audit areas, to review as part of an inspection. More specifically, the Agreement requires that the PRC Authorities facilitate PCAOB access to audit documentation for any issuer audit engagement selected by the PCAOB for review as part of an inspection, including by working to secure any consent and cooperation from other authorities in the PRC as may be needed. These provisions are designed to avoid the extensive negotiations that were required in 2016 to settle on which audit firms and engagements would be inspected as part of pilot inspections and to address a long-standing conflict based on PRC Authorities’ position that some issuer audit engagements, such as those for issuers that authorities in the PRC considered sensitive (e.g., those in certain industries or with substantial state ownership), should not be inspected by the PCAOB. The Agreement also includes provisions designed to prohibit interference by the PRC Authorities with PCAOB engagement selection through indirect means, including, for example, attempts by the PRC Authorities effectively to nullify a PCAOB selection by denying the PCAOB access to the information necessary to review the engagement.

In 2022, the PRC Authorities did not object to or otherwise interfere with or impair the PCAOB’s engagement or audit area selections for inspections, despite (1) the selection by the PCAOB of audit engagements historically considered sensitive by authorities in the PRC, including audits of large and state-owned enterprises and issuers in sensitive industries, and (2) the addition during field work of another such engagement selection. The PRC Authorities

¹⁷ See PCAOB Rule 6100(b)(1)-(3), (h).

¹⁸ See Release at 29. See also PCAOB Rule 6100(c)(1)-(3).

facilitated the PCAOB's full access to the audit documentation for each of the engagements selected for review with no withholding or redactions. All requested information was provided to the PCAOB timely and without exception.

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

The Agreement establishes the necessary cooperative arrangements to provide the PCAOB with complete and timely access to the audit documentation and other information needed to conduct PCAOB inspections of registered firms headquartered in mainland China and Hong Kong. Under the Agreement, the PRC Authorities may not withhold or redact information for any reason, including concerns expressed in earlier years by authorities in the PRC that audit work papers may contain sensitive information or state secrets.

After execution of the Agreement in late August 2022, the PRC Authorities provided PCAOB inspectors with access to all audit documentation and other information requested as part of the inspections undertaken in the fall of 2022 without withholding or redacting any information, and they facilitated all of the interviews requested by the PCAOB during inspections field work from September through November 2022. In addition, the PRC Authorities transferred to the PCAOB, on a timely basis, all documents requested by the PCAOB to support its potential inspection findings, without withholding or redacting any information.

To verify compliance with the Agreement, the PCAOB requested that the transfer of documents take place on two occasions, with one batch transferred at the mid-point of inspection field work and a second batch transferred at the end of field work. The PRC Authorities met both deadlines and transferred to the PCAOB all documents, which were substantial in volume, as requested by the PCAOB to support the inspection work performed over the selected audit engagements. In addition, the PRC Authorities facilitated related inspection activities by the PCAOB, including all necessary interviews of firm personnel. As a result, the Board had access in a timely manner to any document or information relevant to the 2022 inspections, as well as the ability to retain and use such documents and information.

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

The Agreement addresses PCAOB access in connection with each aspect of the inspections process mandated by Section 104 of the Act and codified in PCAOB rules. Consistent with the Agreement, the PRC Authorities facilitated the PCAOB's full access to documentation, other information, and firm personnel related to the PCAOB's review of each firm's system of quality control and each of the engagements the PCAOB selected for review as part of the two inspections the PCAOB conducted in 2022. PCAOB staff was able to provide comment forms to

the firms in December and anticipates issuing inspection reports related to these two inspections in due course. In addition, the Agreement provides for regular inspection cycles after 2022. The PRC Authorities have committed to facilitate the inspections in 2023 and 2024 of the remaining mainland China registered firms and Hong Kong registered firms required to be inspected, and to do so in compliance with all requirements of the Agreement.

By facilitating the PCAOB's regular inspections of registered firms under the Agreement, the PRC Authorities' positions were consistent with the level of cooperation and assistance that the Board requires to discharge numerous other aspects of its inspection-related duties under the Act and Board rules. This includes identifying potentially violative acts, reporting such acts to the Commission and other regulators, reporting inspection findings to the public, and determining whether a firm has addressed any findings related to its quality control system to the satisfaction of the Board.

B. The PRC Authorities Took No Positions in the Agreement or in Connection with its Implementation that Impaired the PCAOB's Ability to Investigate Completely

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

The Act authorizes the Board to select for investigation potential violations of PCAOB standards and rules and applicable federal securities laws. The Act and PCAOB rules further authorize the Board to require the production of audit work papers, other documents or information, and testimony from a registered firm and its associated persons. The PCAOB prioritizes investigations that address those issues that are most likely to maximize investor protection, enforce accountability, and deter improper conduct.

Under the Agreement, the PCAOB may, in its sole discretion, select for investigation potential violations by any registered firms or their associated persons, consistent with its statutory mandate. Additional provisions in the Agreement require the CSRC and the MOF to facilitate PCAOB access to all relevant information and are thus designed to avert the situation identified in the 2021 Determination Report wherein PCAOB investigation selections were effectively nullified by authorities in the PRC because access to information was denied, not provided timely, or because testimony was effectively prohibited.

In 2022, the Board has been able to investigate potential violations by multiple registered firms and their associated persons, including firms headquartered in both mainland China and Hong Kong, without objection by or interference from the PRC Authorities. The PCAOB also has been able to conduct testimony of a number of witnesses in connection with two investigations after the CSRC and the MOF began producing documents related to these investigations in April 2022, months before the Agreement was executed. Thus, the PRC

Authorities took no actions to nullify the PCAOB's selections of potential violations for investigation.

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

As documented in the 2021 Determination Report, the 2013 Enforcement MOU that preceded the Agreement (1) was not a sufficient set of arrangements to ensure the Board's timely access to relevant documents in PCAOB investigations related to registered firms headquartered in mainland China, (2) did not cover the access needed for PCAOB investigations related to Hong Kong firms, and (3) did not include protocols for taking investigative testimony. By contrast, the Agreement expressly addresses all of these impediments.

As noted above, even before execution of the Agreement, the PCAOB opened two investigations of firms in mainland China and one investigation of a firm in Hong Kong, and the CSRC and the MOF facilitated the production of documents to the PCAOB in connection with these matters beginning in April 2022. Facilitating these productions on a timely basis and before execution of the Agreement enabled the PCAOB to analyze the material produced in order to prepare to take testimony from mainland China witnesses in 2022. In addition, consistent with the Agreement, the CSRC and the MOF have, since August 2022, facilitated the production of additional documents, written interrogatory responses, and other information in connection with these and additional investigations initiated after the Agreement was signed.

In October and November 2022, for the first time, the PRC Authorities facilitated the PCAOB's taking of testimony from multiple individual witnesses associated with audit engagements under PCAOB investigation at mainland China firms. The PCAOB conducted testimony of all witnesses it selected without interference or objection by the PRC Authorities. Indeed, the CSRC and the MOF provided assistance above and beyond that required by the Agreement, including by facilitating the resolution of several logistical matters, such as by agreeing to have CSRC and MOF staff attend testimony on certain holidays and weekends to ensure that all of the testimony sought by the PCAOB could be completed on a timely basis.

Consistent with the Agreement, the CSRC and the MOF in 2022 transferred to the PCAOB all audit documentation and other information requested by the PCAOB pursuant to the Agreement (and in some cases in advance of execution of the Agreement) without exception. PCAOB staff was able to retain and utilize relevant documents, including when conducting testimony of all witnesses whose testimony was taken in October and November 2022, with no objections or interference by PRC Authorities.

In light of the productions of documents, provision of written interrogatory responses, and facilitation of testimony as described above, PCAOB staff have had access in 2022 to all information it deems relevant to its investigations in 2022.

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

The Agreement addresses PCAOB access in connection with each aspect of the investigations process mandated by the Act and codified in PCAOB rules. Pursuant to the Agreement, the PRC Authorities agreed to specific processes for the production to the PCAOB of all audit documentation and other information requested or demanded by the PCAOB for purposes of investigations of mainland China firms and, to the extent the firms must keep the requested audit documentation in mainland China, for investigations of Hong Kong firms.

Additionally, for the first time, the cooperative arrangements with the PRC Authorities addressed one of the key impairments described in the 2021 Determination Report: access to testimony. Specifically, the Agreement includes an express provision that permits the PCAOB to conduct testimony of witnesses located in mainland China in connection with PCAOB investigations, whether of a firm or associated person located in mainland China or Hong Kong. The Agreement expressly permits the PCAOB to pose questions, including follow-up questions, directly to witnesses, governs the creation of an English language transcript of the testimony in compliance with PCAOB Rules, and provides that the PCAOB may use the evidence it obtains during testimony throughout an investigation and in connection with a disciplinary proceeding.

As discussed above, the PRC Authorities' execution of and performance under the Agreement in 2022 has facilitated the Board's ability to obtain the necessary audit documentation and testimony for its investigations in a manner consistent with the Act and the rules of the Board. With regard to the two investigations of mainland China firms commenced in early 2022, PCAOB staff have obtained substantial document productions and conducted testimony of multiple witnesses, enabling the staff now to follow its normal process to consider next steps in the investigation, including whether to recommend that the Board institute disciplinary proceedings against any firms or associated persons. Consequently, to date, the PRC Authorities have not impaired the Board's ability to conduct investigations consistent with PCAOB rules or to bring disciplinary charges against registered firms headquartered in mainland China and Hong Kong and their associated persons.

C. Continued PCAOB Oversight and Commitment to Future Cooperation by the PRC Authorities

As noted above, the PRC Authorities have committed to facilitate PCAOB inspections in 2023 and 2024, which would enable the PCAOB to inspect for the first time all registered firms in mainland China and Hong Kong that would be due or overdue for inspection by the end of 2024. In addition, the PCAOB has opened further investigations in the course of 2022, in

addition to those where testimony has already been taken. The CSRC and the MOF have begun to facilitate the production of documents in connection with these additional matters and have committed to continuing to do so, and to facilitate future testimony of relevant individuals, as current or future investigations continue into 2023 and beyond.

The Board believes that these continuing PCAOB oversight activities will help to promote enhanced audit quality in mainland China and Hong Kong and increase investor protection, consistent with the Board's mandate under the Act.

However, the Board recognizes that authorities in the PRC might take positions at any time that would prevent the PCAOB from inspecting or investigating completely. While such concerns about potential future conduct do not support a present determination that the Board cannot inspect and investigate completely, should the Board again encounter impediments to inspections or investigations in mainland China or Hong Kong as a result of positions taken by an authority in either jurisdiction, including by the CSRC or the MOF, the Board will expeditiously consider whether it must immediately issue a determination consistent with the HFCAA. Indeed, Rule 6100(a)(3) directs the Board to take such action at any time "as and when appropriate."

IV. REASSESSMENT OF 2021 DETERMINATIONS

For the foregoing reasons, the Board concludes that its ability to execute its statutory mandate as to inspections and investigations of registered firms headquartered in mainland China and Hong Kong currently is not impaired regarding any of the three factors in Rule 6100(b) and that the Board currently can inspect and investigate completely registered public accounting firms headquartered in mainland China and Hong Kong consistent with the HFCAA.

Accordingly, in the absence of evidence that authorities in the PRC are taking positions that impair the Board's ability to execute its statutory mandate with respect to inspections or investigations, the HFCAA and Rule 6100 require the Board to vacate the 2021 Determinations. Consistent with Rule 6100(h), the Board therefore vacates the 2021 Determinations, and they shall no longer be in effect as of the date of this report.¹⁹ However, if the PRC Authorities do not fully perform their obligations under the Agreement in the future, or if authorities in the PRC otherwise take positions that render the Board unable to inspect or investigate completely registered public accounting firms headquartered in mainland China and Hong Kong, the Board will make determinations under the HFCAA and Rule 6100 as and when appropriate, as required by Rule 6100(a)(3).

¹⁹ See PCAOB Rule 6100(g).