

May 5, 2021

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Submitted electronically to: rule-comments@sec.gov

Re: File Number S7-03-21; Comments on Holding Foreign Companies Accountable Act Disclosure Interim Final Rule

We¹ appreciate the opportunity to provide feedback on the Securities and Exchange Commission's (Commission's) interim final rule on Holding Foreign Companies Accountable Act Disclosure.² The interim final amendments will apply to registrants that the Commission has identified 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 (Commission-Identified Issuers). The amendments are relevant to US-registered investment companies both as issuers and investors,³ and to all regulated funds as investors. We raise two recommendations for the Commission's consideration as it finalizes the interim final amendments and considers further action in implementing the Holding Foreign Companies Accountable Act (HFCA Act).

Commission-Identified Issuer List Should be Published on the Commission's Website

The Commission seeks feedback regarding whether it should publish a list of Commission-Identified Issuers on its website. We support the publication by the Commission of such a list and further urge that, in order for the list to be most useful and informative, the list should indicate the year(s) an issuer has been identified and the determination date. This information would make clear

¹ The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of \$29.1 trillion in the United States, serving more than 100 million US shareholders, and \$9.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Brussels, Hong Kong, and Washington, DC.

² Release No. 34-91364; IC-34227; File No. S7-03-21 (Release) is available at <https://www.federalregister.gov/documents/2021/04/05/2021-06292/holding-foreign-companies-accountable-act-disclosure>.

³ In footnote 31 of the Release, the Commission states that, although it is 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 to audit the company's financial statements. The Commission therefore estimates that no registered investment companies will be subject to the requirements of the interim final amendments upon the rule's adoption.

how many consecutive years an issuer has been identified and, importantly, whether it is in danger of being identified for a third consecutive year, after which the trading prohibition goes into effect.⁴

Trading Prohibition Must be Implemented in a Transparent and Well-Telegraphed Manner

Section 2 of the HFCA Act directs the Commission to prohibit trading of a registrant's securities 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) if the registrant is determined to be a Commission-Identified Issuer for three consecutive years.⁵ We understand that the Commission will address the trading prohibition separately and anticipates seeking comment from the public at a later date. We expect to provide feedback to such consultation.

Because the Commission staff may already be actively considering ways to implement the trading prohibition, we thought it appropriate to underscore now the importance of the Commission establishing a process for the delisting of Commission-Identified Issuers that is transparent and well-communicated to minimize disruption to investors of such entities, including regulated funds and their shareholders. A transparent process that provides clear information and adequate notice regarding the delisting of a Commission-Identified Issuer is necessary to provide market participants, including regulated funds, with the information they need to make adjustments to their allocations or investments resulting from an impending delisting in a timely manner.

The intention of the trading prohibition is to eliminate the opportunity for registrants that are Commission-Identified Issuers for three consecutive years to have access to the US capital markets; the purpose is not to penalize regulated funds and other investors that invest in such companies, whether due to their inclusion in indices or otherwise. Market participants, such as investment advisers to registered investment companies and other institutional investors, as well as index providers, must act deliberately and carefully in performing their duties and functions. It is therefore critical that the delisting process be designed in a way that recognizes the broader needs of market participants by providing ample transparency and notice. We therefore request that the Commission staff keep this in mind as it begins to consider options for the implementation of the trading prohibition, and look forward to providing additional input at such time as the Commission issues a further consultation on this matter.

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We appreciate your consideration of our comments. If you have any questions, please do not hesitate to contact the undersigned at 202-326-5876 or jennifer.choi@ici.org, or Eva Mykolenko, Associate Chief Counsel – Securities Regulation, at 202-657-7926 or emykolenko@ici.org.

Respectfully submitted,

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⁴ The PCAOB currently publishes a list of public companies that have registered audit firms in foreign jurisdictions that it cannot inspect, available at <https://pcaobus.org/oversight/international/denied-access-to-inspections>.

⁵ Implementation of the trading prohibition is not subject to the 90-day rulemaking deadline that applies to the submission requirement.