



The University of Chicago Booth School of Business

---

*Roman L. Weil*  
*V. Duane Rath Professor Emeritus of Accounting*

5807 S. Woodlawn Avenue  
Chicago IL 60637  
312.493.7156  
Fax: 206.202.2114  
[Roman.Weil@ChicagoBooth.edu](mailto:Roman.Weil@ChicagoBooth.edu)

**19-May-2021**

Office of the Secretary  
PCAOB  
1666 K Street, NW  
Washington, DC 20006-2803

PCAOB Rulemaking Docket Matter No. 048

**Comments on Proposed Rule Governing Board Determinations Under  
The Holding Foreign Companies Accountable Act**

**PCAOB Rulemaking Docket Matter No. 048**

**Roman L. Weil, PhD, CPA<sup>1</sup>**

You will better understand my answers to your questions if you know that I think HFCAA, enforced as written, likely will do US investors more harm than good. Given the recalcitrance of Chinese accounting and other financial market authorities, we will see the gradual delisting from US markets of Chinese companies, make investing in these companies more onerous for US investors, not necessarily safer. My contrarian view would be for the SEC to figure out a way for those poorly audited companies to continue to be available to US investors but with large warning signs about the risks involved. No one at the SEC, or in the US Congress for that matter, will likely follow my advice in this regard.

Given the law, the HFCAA, you have to implement it. Even if you disagree with its purpose, as I do, you have to put politics aside and do what it says. My answers to your questions proceed from this beginning. I don't like HFCAA. PCAOB has limited resources and a large remit. I want PCAOB to use its limited resources to carry out its duties cost-effectively. My judgment, based on first principles without empirical evidence, I state in my penultimate answer (question [u]): jurisdiction-wide determinations will be the cost-effective way to implement HFCAA, not "particular registered firm" determinations.

In the following, I do not repeat your question unless I think it necessary for you [I have in mind the Staff likely reading this] to put the answer in context.

- a. Is it appropriate to limit jurisdiction-wide determinations to registered firms head-quartered in the jurisdiction? If not, what should be the scope of jurisdiction-wide determinations under the proposed rule?

No. Substance over form. The idea is to get to the files and work papers of any audit of an entity of a registrant. Don't let corporate structure or governance of the audit firm interfere with efficient administration of resource-strapped PCAOB. If you think that the regulations of the jurisdiction will impede access to the data you need to do your work, then don't worry about where the firm has its headquarters.

- b. If you follow the advice in [a.] above, this is moot. If you don't, I have nothing useful to say on this question.

---

<sup>1</sup> V. Duane Rath Professor of Accounting Emeritus; Chicago Booth School Business; University of Chicago; 5807 S. Woodlawn Ave; Chicago IL 60637; roman.weil@chicagobooth.edu

- c. Is the proposed rule's framework of jurisdiction-wide and individualized determinations an appropriate approach to Board determinations under the HFCAA? Does the proposed rule make sufficiently clear the distinction between the jurisdiction-wide determinations contemplated by subparagraph (a)(1) and the individualized determinations contemplated by subparagraph (a)(2)? If not, what additional guidance or clarity would be useful?

I think it clear, but I've insufficient imagination to think of a tough case, at the borderline, where the guidance would be insufficient. You might give some examples where Staff thinks deciding is hard.

- d. Don't focus on where the firm is located. Look at whether the firm has files or work papers that need examining and if the jurisdiction has rules/regulations making such examinations difficult/impossible. Don't worry about the formality of locale of home office.
- e. If you attend to form over substance, this issue goes away, no?
- f. Is this approach to the timing of Board determinations appropriate? Should the Board take a different approach to the timing of its determinations? Should the Board consider changes in facts and circumstances more or less frequently than annually (e.g., semi-annually or biennially)?

Consider what the US Supreme Court does. If four (of nine) Justices think a case important, then a case gets on the docket. Let PCAOB Staff consider a process whereby someone out there appeals for a hearing more quickly than a year and, say, two Board Members think the appeal has sufficient merit for a fast hearing, then have a procedure to allow a faster hearing.

- g. This would be easier to respond to if the Staff has given us some examples. Such as .... I can't think of any, but that's my lack of imagination. If you can't give us any, then I'm more confident that there aren't any. The fact that I can't think of any proves little.
- h. I can think of none.
- i. Is there any additional guidance or clarity that the Board should provide with respect to the basis for a Board determination?

Perhaps. The Board could make clear that the burden of proof falls to the auditor to provide documentation sufficient to satisfy the Board's two decades of examples, not on the Board to prove that the auditor has failed. PCAOB might say that if it judges "We haven't enough to do our sort of inspection," then that decision is not challengeable by regulators in the auditor's home base.

- j. Should the Board's reports to the Commission contain any other information in addition to the information specified in subparagraph (e)(1) of the proposed rule?

PCAOB has no obligation to provide more, but should feel free to provide more with a description that this "more" is not required but is given for the reasons that are explained along with the "more".

- k. I have nothing useful to say.
- l. Apart from posting the Board's reports to the Commission on the Board's website, should the Board also indicate on a registered firm's profile in the Board's Registration, Annual, and Special Reporting System that the firm is subject to a Board determination under the HFCAA?

Unless I misunderstand, all auditors who audit registrants or parts of registrants will be subject to Board's determination under HFCAA. If I am correct, you might indicate at the head of the listings that all firms "shown below" are subject to Board determination except the ones marked with \*\*. Or something else to indicate the exceptions. I've assumed in this answer that the exceptions are few.

- m. I have insufficient experience to think of other cases needing redacting.
- n. I think the Board should not obligate itself to notify auditors to Board postings. Auditors unaware of the Board's existence and actions can suffer the consequences of being asleep at the switch.
- o. Likely, users will find the Denied Access List helpful because of the three-year lag between PCAOB's flagging derelict audits and de-listing. There needs to be, however, a user-friendly tutorial referred to in both places explaining the difference between the Denied Access on the one hand and a(1) or a(2) determinations on the other. The user needs to know about both forms of disapprobation and how they differ.
- p. Is it appropriate to have Board determinations become effective on the date the Board issues its report to the Commission? If not, when should Board determinations take effect?

Given the three-lag until de-listing, I can't think why we need further delays.

- q. The audit firm should be allowed to know that PCAOB is reviewing its case and be allowed to provide information. Given the three-year lag period before delisting, there is adequate time for appeal of any decision. Do not slow down the process further.
- r. Annually is adequate, particularly if you adopt the appeals procedure I mentioned in [f].

- s. If the Board modifies or vacates a determination, I think it should explain what it did and why, but it should have no obligation to do so. It needs to have sufficient self-confidence to admit it made a mistake.
- t. The Board has data, see its Exhibit 1, on the number of registrants in various jurisdictions. It could publish a schedule that says something like if we have a jurisdiction-wide determination for a place with, say, more than twenty companies, then we'll look again in, say, five years. And so on. The more the companies, the more frequent the re-look.
- u. Does the Board's analysis of the potential economic impacts of the proposed rule adequately address the benefits and costs of the proposed rule?

As I said in my introduction, the benefits and costs at issue arise from the HFCAA itself. Given that PCAOB cannot change HFCAA nor the SEC's implementation of it, PCAOB should focus on efficient determinations. Jurisdiction-wide determinations appear efficient. The more PCAOB can avoid "particular registered firm" determinations, the more cost effective will be its operations.

- v. Absent specific examples, I cannot say.