

Market Trends 2022/23: Disclosure on the Holding Foreign Companies Accountable Act

A Practical Guidance® Practice Note by
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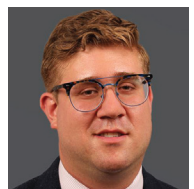
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This practice note discusses the Holding Foreign Companies Accountable Act (the HFCAA), which affects the securities of certain foreign companies listed on U.S. markets and requires them to submit documentation and disclosures to the SEC and the PCAOB. The HFCAA aims to address the regulatory challenge posed by Chinese law that prevents the PCAOB from inspecting or investigating audit firms in China and Hong Kong, where many U.S.-listed companies are based or operate. The HFCAA imposes additional disclosure requirements for covered issuers, such as their ownership and control by foreign governments, and provides an enforcement mechanism for the SEC to prohibit the trading of their securities if their auditors are not inspected by the PCAOB for two or three consecutive years. The SEC and the PCAOB have issued rules and reports to implement the HFCAA and have identified more than 150 companies as covered issuers. The practice note also provides sample HFCAA-related disclosures included in public filings and concludes with recommendations on how to enhance these disclosures.

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Anna Pinedo is a partner in Mayer Brown's New York office and co-leader of the Global Capital Markets practice. She concentrates her practice on securities and derivatives. Anna represents issuers, investment banks/financial intermediaries and investors in financing transactions, including public offerings and private placements of equity and debt securities, as well as structured notes and other hybrid and structured products.

She works closely with financial institutions to create and structure innovative financing techniques, including new securities distribution methodologies and financial products. She has particular financing experience in certain industries, including technology, telecommunications, healthcare, financial institutions, REITs and consumer and specialty finance. Anna has worked closely with foreign private issuers in their securities offerings in the United States and in the Euro markets. She also works with financial institutions in connection with international offerings of equity and debt securities, equity- and credit-linked notes, and hybrid and structured products, as well as medium term note and other continuous offering programs.

In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.

Anna regularly speaks at conferences and participates in panel discussions addressing securities law issues, as well as the securities issues arising in connection with derivatives and other financial products. She is co-author of the leading capital markets treatise, *Corporate Finance and the Securities Laws*, published by Wolters Kluwer (sixth ed., updated 2020, 2022); co-author of *A Deep Dive Into Capital Raising Transactions*, published by the International Financial Law Review (IFLR) (2020); co-author of *JOBS Act Quick Start* (IFLR), 2013; updated 2014, 2016); contributor to *OTC Derivatives Regulation Under Dodd-Frank: A Guide to Registration, Reporting, Business Conduct, and Clearing* (Thomson Reuters, first ed. 2014, second ed. 2015, third ed. 2016, fourth ed. 2017, 2020-2021 ed.); co-author of *Considerations for Foreign Banks Financing in the US* (IFLR, 2012; updated 2014, 2016); co-author of *Liability Management: An Overview* (IFLR, 2011, updated 2015); co-author of *Structuring Liability Management Transactions* (International Financial Law Review, 2018); co-author of *Covered Bonds Handbook*, published by Practising Law Institute (PLI) (2010, updated 2012-2014); co-author of the treatise *Exempt and Hybrid Securities Offerings*, published by PLI (2009, second ed. 2011, updated 2014, third ed. 2017, fourth ed. 2022); and co-author of *BNA Tax and Accounting Portfolio: SEC Reporting Issues for Foreign Private Issuers* (BNA Accounting Policy and Practice Series, 2009, second ed. 2012, third ed. 2016, fourth ed. 2020). Anna is also a contributing author to *Broker-Dealer Regulation* (2011, second ed. 2012, updated 2020), published by PLI. She co-authored "The Approaches to Bank Resolution," a chapter in *Bank Resolution: The European Regime* (Oxford University Press, 2016). Anna contributed to *The Future of Bank Funding and Capital: Solutions for Issuers, Opportunities for Investors* (IFR Market Intelligence, 2009). Additionally, Anna co-authored "The Ties that Bind: The Prime-Brokerage Regulation," a chapter in *Global Financial Crisis* (Globe Law and Business, 2009); "The Law: Legal and Regulatory Framework," a chapter in *PIPEs: A Guide to Private Investments in Public Equity* (Bloomberg, 2006); and "The Impact Security: Reimagining the Nonprofit Capital Market," a chapter in *What Matters: Investing in Results to Build Strong, Vibrant Communities* (Federal Reserve Bank of San Francisco and Nonprofit Finance Fund, 2017). Anna is a contributor to PLI's "BD/IA: Regulation in Focus" blog.

Anna is a member of the American Bar Association's (ABA) Committee on the Federal Regulation of Securities, a member of the subcommittee on Disclosure and Continuous Reporting, chair of the subcommittee on Securities Registration, chair of the subcommittee on Annual Review, and a member of the task force on the future of securities regulation.

She has participated in the drafting committee for the ABA's comment letters on such topics as securities offering reform, revisions to the definition of accelerated filer and smaller reporting company, amendments to the accredited investor definition; amendments to the exempt offering framework; and various JOBS Act-related and disclosure effectiveness related matters. Anna also is a member of the ABA Committee on the Regulation of Futures and Derivatives Instruments. Anna is a chair of the Structured Products Association Legal, Regulatory and Compliance Executive Committee. She is a member of the Mortgage Bankers Association's Mortgage REIT Council and a member of the MBA's Secondary & Capital Markets Committee.

Anna is an adjunct professor at the George Washington University School of Law and member of the George Washington University Center for Law, Economics & Finance Advisory Board. She is a member of the Visiting Committee of the Law School of the University of Chicago. Anna was a member of the University of Chicago Legal Forum during her time at the University of Chicago Law School.

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Gonzalo D.V. Go III is an associate in Mayer Brown's Corporate & Securities practice. G represents companies, investment banks and sponsors in public and private offerings of equity and debt securities, including initial public offerings, business combinations with special purpose acquisition companies (SPACs), shelf registration statements, follow-on offerings, medium-term note programs, issuances exempt from registration, investment-grade debt offerings and securitizations. He advises public companies on stock exchange listing applications, maintenance and transfers; securities law reporting and regulatory compliance requirements; and general corporate governance matters.

The International Financial Law Review (IFLR) Americas named G as Rising Star for 2023. The "VAALCO - TransGlobe merger" he assisted in was shortlisted by IFLR Americas as 2023 M&A Deal of the Year. The 2023 IFLR1000 guide ranked G as "Rising Star" in the United States and New York for "Capital Markets: Debt" and "Capital Markets: Equity."

G earned his LL.M. from Columbia Law School, where he served as a student senator and graduated as the class speaker, a Harlan Fiske Stone scholar and a recipient of the Parker School Recognition of Achievement in International and Comparative Law. He earned his JD, with honors, from the Ateneo Law School and his BS in Accountancy, with honors, from De La Salle University.

G's prior professional experiences include being (i) a capital markets associate in another global law firm in New York, (ii) an associate general counsel of Jollibee Foods Corporation, a multinational fast-food chain headquartered in the Philippines, where he gained extensive experience in managing legal risks in various business activities, such as business development and expansion, customer relations, operations, real estate, franchising, marketing, human resources, purchasing, finance, corporate communications, tax and government relations, (iii) a faculty member of the Ateneo Law School and (iv) a tax associate at SyCip Salazar Hernandez & Gatmaitan, a top tier law firm in the Philippines. G is also a lawyer and a certified public accountant in the Philippines.

In the American Bar Association's (ABA) Business Law Section, G serves as chair of the 2SLGBTQIA+ Subcommittee of the Diversity & Inclusion Committee (2022-present), vice chair of the Annual Review of Federal Securities Regulation Subcommittee of the Federal

Regulation of Securities Committee (2022-present) and a Business Law Fellow (2022-2024). He has participated in the drafting committee for the ABA's comment letter on the SEC's proposed rules on SPACs. G was named a 2023 ABA On the Rise - Top 40 Young Lawyer. G is a member of the firm's New York Pro Bono Committee.

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