

Statement of Protocol – Questions & Answers



On August 26, 2022, the Public Company Accounting Oversight Board (PCAOB) signed a Statement of Protocol (SOP) Agreement with the China Securities Regulatory Commission (CSRC) and China's Ministry of Finance. The SOP, together with two protocol agreements governing inspections and investigations (together, the "SOP Agreement"), establishes a specific, accountable framework to make possible complete inspections and investigations by the PCAOB of audit firms based in China and Hong Kong, as required under U.S. law.

Q: Why do these inspections and investigations matter?

- If foreign issuers want to access public U.S. capital markets, they need to comply with our laws and requirements, including those relating to accounting, auditing, and audit inspections and investigations. Investors should be able to trust the numbers, regardless of whether an issuer is foreign or domestic.

Q: Was the Agreement necessary?

- The PCAOB and Chinese authorities jointly agreed on the need for an agreement. In addition, the PCAOB and the SEC were not willing to have PCAOB inspectors travel to China or Hong Kong unless there was an agreement on a framework allowing the PCAOB to inspect and investigate audit firms completely.

Q: Does having an Agreement satisfy the HFCAA?

- No. Compliance with the agreement is ultimately what matters. If PCAOB continues to be prohibited from conducting complete inspections and investigations of PCAOB-registered public accounting firms in China and Hong Kong, roughly 200 China-based companies will face trading prohibitions and likely delisting in the U.S.

Q: Does the PCAOB have other agreements or SOPs, and, if so, how is this different?

- The PCAOB has more than 20 cooperative arrangements, *i.e.*, Statements of Protocol, with jurisdictions around the world. This SOP Agreement is the most detailed, prescriptive arrangement the PCAOB has reached with any country.

Q: Who can select the audit firms and engagements subject to inspection and investigation?

- The PCAOB has sole discretion to make its selection for inspection. The PCAOB can also select for investigation any potential violations of PCAOB standards, rules, and related federal securities laws by audit firms and their associated persons.

Q: How does the Agreement treat redactions of information?

- Redactions are not permitted.

Q: *What materials can the PCAOB see?*

- PCAOB inspectors and investigators can see *all* audit documentation without redaction. The SOP Agreement does allow for *in camera* or “view only” review—as the PCAOB has done in other jurisdictions—of “Restricted Data,” including personally identifiable information. Importantly, under the agreement, the PCAOB can retain any audit information it reviews, including Restricted Data, as needed to support the findings of its inspections and investigations.

Q: *How does the Agreement treat information if the Chinese authorities deem it sensitive?*

- The Agreement does not allow withholding or redaction of information contained in audit documentation for any reason.

Q: *How does the Agreement treat PCAOB enforcement testimony?*

- The Agreement allows the PCAOB to take testimony of audit firm personnel in China for investigative purposes. PCAOB investigators will be able to question witnesses directly and use its own stenographers to create an official, English-language transcript.

Q: *How does the Agreement treat PCAOB sharing documents with the SEC?*

- Under the agreement, the PCAOB can transfer information to the SEC in the normal course. The SEC can use that information for all statutory obligations and routine uses.

Q: *How would you handle a situation where only some China-based auditors comply with the HFCAA’s requirements while others do not?*

- The PCAOB’s determination under the HFCAA is a jurisdiction-wide determination, not firm-specific.
- The PCAOB must be able to access audit documentation from all of its registered public accounting firms and select any audit engagement—not just some of the firms or some of the engagements—to be able to conduct complete inspections and investigations in China and Hong Kong.

Q: *What happens next regarding PCAOB inspections?*

- The PCAOB will notify the audit firms of its plans to inspect, including the specific engagements. PCAOB inspectors will be in Hong Kong by mid-September to start their inspection work.

Q: *What happens next regarding PCAOB investigations?*

- The PCAOB has issued document requests to audit firms in China, and the testimony notifications have been sent to witnesses. These audit firms must provide the requested documents to the PCAOB, through the CSRC, on a timely basis such that PCAOB inspectors may conduct inspections of audit documentation and investigators will be able to conduct the interview of witnesses and collect testimony in Hong Kong.