BDO BULLETIN

ISSUERS SHOULD CONSIDER SEC STAFF SAMPLE LETTER ON CHINA-SPECIFIC DISCLOSURES

JULY 2023

SUMMARY

Issuers with significant operations in the People's Republic of China (PRC) should consider a sample comment letter released by the SEC staff regarding disclosure of material impacts and risks to their businesses in their upcoming filings.

In recent years, the SEC has been particularly focused on disclosures related to the legal, operational, and other risks associated with issuers based in, or with a majority of operations in, the PRC (referred to as "China-based issuers"). The SEC staff has issued sample letters, SEC staff statements, and Disclosure Guidance from the Division of Corporation Finance. As part of the SEC's ongoing monitoring of China-based issuers under the Holding Foreign Companies Accountable Act (HFCAA), the SEC staff indicated issuers are required to provide more prominent and specific disclosures that are tailored to their individual facts and circumstances. The SEC staff elaborates on these disclosure matters (summarized in the table below) in its latest sample letter.

TOPIC	DISCLOSURE MATTERS
HFCAA Disclosure Obligations	▶ Item 9C of Form 10-K and Item 16I of Form 20-F require certain disclosures from "Commission-Identified Issuers."[1] ▶ The SEC staff's comments focus on whether the issuers have included all required elements of disclosure under these items and seek additional information about the basis for the disclosures, including any materials, legal opinions, or third-party certifications relied upon in connection with disclosures about: • The issuer's ownership by government entities in the foreign jurisdiction • The identification of Chinese Communist Party officials on the board of directors • Whether the articles of incorporation contain wording from a charter of the Chinese Communist Party

[1] A Commission-Identified Issuer is an issuer that has retained an auditor in a foreign jurisdiction that the PCAOB is not able to fully inspect or investigate due to positions taken by the regulatory authority in that foreign jurisdiction. Until recently, China was one of these jurisdictions.

Material risks related to the PRC government	▶ Issuers should evaluate and disclose any material risks or impacts to their businesses due to the PRC government’s role in the operations of their businesses, including any intervention or control by the PRC.
Uyghur Forced Labor Prevention Act (UFLPA)	▶ The UFLPA prohibits the import of goods from the PRC’s Xinjiang Uyghur Autonomous Region. ▶ Issuers are required to evaluate and disclose the material impacts of the UFLPA (for example, material compliance risks, supply chain disruptions, or reliance on parties that conduct their business in the region) within Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Link to **Sample letter regarding China-specific disclosures**