

The Holding Foreign Companies Accountable Act (HFCAA) – Update

Implementation Plan

Effective from February 2023 – FAQ

v1.0



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FAQ

1. What is the Holding Foreign Companies Accountable Act (HFCAA)?

The [Holding Foreign Companies Accountable Act \(HFCAA\)](#), which was adopted by the US Securities and Exchange Commission (SEC) from December 2021, stipulates the disclosure requirements that are applicable to foreign companies listed on the US stock exchanges.

Amongst other things, the HFCAA requires the SEC to identify and publish a list of non-compliant public companies that the Public Company Accounting Oversight Board (PCAOB) has determined that it is unable to inspect or investigate as required under the Sarbanes-Oxley Act, because of a position taken by an authority in the foreign jurisdiction.

Failure to comply with the disclosure requirements for three consecutive years, commencing from the 2021 annual filings, would result in a trading prohibition of the non-compliant issuer from the US stock exchanges. From March 2022, the SEC commenced publishing the names on non-compliant issuers based on their 2021 annual report. From December 2022, **the three consecutive years timeframe was reduced to two consecutive years. This FAQ details the treatment of the HFCAA within FTSE Russell indices under the new two consecutive years timeframe.**

At the end of 2022, the PCAOB [announced](#) that it had gained full access to inspect and investigate the audit firms of issuers headquartered in China and Hong Kong. Consequently, the SEC will not provisionally or conclusively identify an issuer as a Commission-Identified Issuer if it files an annual report with an audit report issued by a registered public accounting firm headquartered in either China or Hong Kong on or after 15 December 2022, or until such time as the PCAOB issues a new determination.

2. What is the current status of the HFCAA?

On 15 December 2022, the HFCAA timeframe for a potential trading prohibition for non-compliant issuers was shortened **from three consecutive years to two consecutive years** as part of the fiscal year 2023 omnibus spending legislation. For background information on FTSE Russell's treatment of equities under the previous three consecutive years HFCAA timeframe, please refer to the previous [HFCAA FAQ v1](#), which is now superseded by this FAQ.

3. What will happen to foreign companies that are listed on the US stock exchanges that the SEC deems to be in non-compliance with the HFCAA?

Commencing from January 2023, failure to comply with the disclosure requirements for two consecutive years (based on annual filings) will result in the delisting of the non-compliant company from the US stock exchanges.

Once the SEC identifies a non-compliant issuer, referred to as a 'Commission-Identified Issuer', the issuer is placed on a 'Provisional list of issuers identified under the HFCAA'. The issuer has 15 business days to appeal the decision.

After this period, confirmed non-compliant issuers are placed on a 'Conclusive list of issuers under the HFCAA' list ('Conclusive' list). Once placed on the 'Conclusive' list for two consecutive years, the delisting of the issuer will be effective on the fourth business day after the order is published.

As of 15 December 2022, the SEC announced that it will not provisionally or conclusively identify an issuer as a Commission-Identified Issuer if it files an annual report with an audit report issued by a registered public accounting firm headquartered in either China or Hong Kong on or after 15 December 2022, or until such time as the PCAOB issues a new determination.

The SEC continues to [publish](#) the 'Conclusive list of issuers identified under the HFCAA based on their 2021 annual report filings; however all these issuers are now in compliance with the HFCAA.

4. [In the event that a foreign company fails to comply with the HFCAA for two consecutive years, what is the earliest timeframe for it to be mandatorily delisted from a US Stock Exchange?](#)

Based on the HFCAA two consecutive years non-compliance disclosure requirement, the earliest a mandatory delisting of an identified issuer from a US Stock Exchange will occur will be during quarter one in 2024.

5. [Are there any FTSE Russell index constituents on the 'Conclusive' list since the reduction in the timeframe from three consecutive years to two consecutive years?](#)

As of 31 January 2023, there are no index constituents of the FTSE Russell equity indices that are identified on the 'Conclusive' list since the reduction in the timeframe from three consecutive years to two consecutive years.

6. [What will be the index treatment for an index constituent that is identified on the HFCAA 'Conclusive' list?](#)

Once an index constituent is identified on the HFCAA 'Conclusive' list, FTSE Russell will evaluate whether the issuer has a listing on the following stock exchanges, which are defined as 'local listing' in this FAQ:

- The Stock Exchange of Hong Kong (HKEX) – designated as China P Chip
- The Singapore Exchange (SGX) – designated as China S Chip
- Shanghai Stock Exchange (SSEC) – designated as China A Share
 - eligible for FTSE GEIS if available via Stock Connect
- Shenzhen Stock Exchange (SZSE) – designated as China A Share
 - eligible for FTSE GEIS if available via Stock Connect

If the identified issuer has a local listing, then subject to four weeks' notice being provided, the index constituent will be switched from the US listing to the local listing at the next quarterly review. The local listing will not be required to pass the index eligibility liquidity screen.

The transition of the China N Share to the local listing that satisfies the above mentioned condition will follow the implemented process applied to Alibaba Group Holding when Alibaba was switched from the N Share to the P Chip effective in conjunction with the FTSE GEIS March 2021 semi-annual review [notification](#).

7. What will be the index treatment for an index constituent that is identified on the HFCAA ‘Conclusive’ list and which is subject to a nationality change at an index review?

In the event that a FTSE Russell index constituent, which is on the HFCAA list, is subject to a nationality change at a scheduled index review, the change will proceed if the index constituent’s nationality is changing to a local listing or there is a local listing, otherwise it will retain its existing nationality. Where there is a local listing, the index constituent will be switched from the US listing (non-China N Share) to the local listing at the next quarterly review (regardless of whether or not the index constituent has been on the HFCAA ‘Conclusive’ list for one year). The local listing will not be required to pass the index eligibility liquidity screen.

8. What will be the index treatment for an index constituent that is identified on the HFCAA ‘Conclusive’ list, that does not have a local listing, but a local exchange has publicly confirmed a pending listing date?

If an index constituent is identified on the HFCAA ‘Conclusive’ list, does not presently have a local listing but a local stock exchange has publicly confirmed a local listing date in advanced of the second year of non-compliance being reported, the index constituent will be retained in the FTSE Russell indices. Upon the commencement of the local listing and subject to a minimum of four weeks’ notice being provided, the US listing will be switched to the local listing in conjunction with the subsequent quarterly review. The local listing will not be required to pass the index eligibility liquidity screen.

To avoid deletion from the FTSE Russell indices, the local listing must commence trading at least four weeks before the second year of non-compliance. For the avoidance of doubt, if the SEC is scheduled to report the second year of non-compliance by 1 March 2024, the local listing must have commenced trading by 1 February 2024. Consequently, the US listing will be switched to the local listing in advance of the SEC expected reporting date, with a minimum of T+5 notification.

9. What will be the index treatment for an index constituent that is identified on the HFCAA ‘Conclusive’ list, does not have a local listing, and the local exchange has not publicly confirmed a local listing date?

If an index constituent is identified on the HFCAA ‘Conclusive’ list, does not have a local listing and a local stock exchange has not publicly confirmed a local listing date, the index constituent will be retained in the FTSE Russell equity indices for a further three-month grace period. If at the end of those three months, there is still no public announcement confirming a listing date for a local line, then subject to a minimum of four weeks’ advanced notification being provided, the HFCAA identified index constituent will be deleted at the next quarterly review.

For illustration purposes: if the SEC reports non-compliance for an index constituent in March 2023, the identified index constituent will be provided with a three-month grace period up to June 2023. If a local stock exchange does not publicly announce a local listing date by June 2023, the index constituent will be scheduled to be deleted from FTSE Russell indices in conjunction with the September 2023 index review unless a local stock exchange confirms a local listing date prior to the lock-down period for the September 2023 review, in which case the index constituent will be switched to the local listing at the September 2023 review.

Please note: if the SEC is scheduled to report the second year of non-compliance by March 2024, the local listing must commence trading at least four weeks in advance of the identified issuers second year non-compliance deadline to be retained as an index constituent with the US listing to be switched to the local listing in advance of the SEC expected reporting date with a minimum of T+5 notification.

At present FTSE Russell is unable to confirm which companies are in the process of applying for a local listing as the stock exchanges listed in Question 6 do not publicly disclose this information.

10. Will corporate events continue to be implemented for index constituents identified on the HFCAA 'Conclusive' list that have not publicly confirmed a local listing date?

During the period between when an index constituent without a local listing is identified on the HFCAA 'Conclusive' list and its expected index deletion date, any voluntary corporate events resulting in an increase of the index shares of the index constituent will not be reflected in FTSE Russell indices.

For illustration purposes: if the HFCAA reports non-compliance for an index constituent (with no local listing) in March 2023, the identified index constituent will be provided with a three-month grace period up to June 2023. If by June 2023, there is still no confirmed date for a local listing, the index constituent will be deleted at the September 2023 review. Therefore, between March 2023 and September 2023, no voluntary corporate actions resulting in an increase of index shares of the index constituent will be implemented in FTSE Russell indices.

The voluntary corporate events that will not be reflected:

- intra-review equity or secondary offerings;
- increase in quarterly shares in issue and free float changes;
- rights issue; and
- shares in issue increase for an index constituent when it acquires a non-constituent.

Additionally, any size segment changes between Large, Mid, Small and Micro Cap within the FTSE GEIS will be postponed for an index constituent (without a local listing) that is identified on the HFCAA 'Conclusive' list until that index constituent switches to a local listing. Once the switch to the local line is implemented, the size segment will be evaluated at the next FTSE GEIS semi-annual review in March or September.

Industry Classification Benchmark (ICB) changes for HFCAA identified issuers and weight adjustment factors within alternatively weighted indices will continue to be reflected in FTSE Russell indices.

11. Will any other measures be implemented to expediate the switch of China N Shares designated index constituent to a local listing?

For China N Share designated index constituents **only**, FTSE Russell will switch to the local listing if the local listing passes the semi-annual liquidity screen for **one testing period** effective in conjunction with the September 2022 semi-annual review.

Please note: in conjunction with Rule 2.1.1 of the FTSE Global Equity Index Series - [Guide to Calculation Methods for GEIS Liquidity](#), all other Depositary Receipt index constituents will remain in the index until such time they either fail the liquidity test or the underlying shares pass the liquidity test for two future consecutive testing periods.

12. Will China N Shares continue to be evaluated for fast entry for FTSE Russell equity indices?

FTSE Russell will continue to evaluate China N Shares for fast entry for FTSE Russell indices.

13. When will an index constituent that has been deleted from FTSE Russell indices due to it being identified on the HFCAA ‘Conclusive’ list be re-evaluated for index eligibility?

In the event the local listing commences trading after the US listing has been deleted from FTSE Russell indices because of non-compliance with the HFCAA, for the purposes of index eligibility, the local listing will be treated as a new issue.

In the event the US listing has been deleted from FTSE Russell indices because of non-compliance with the HFCAA, however the US listing meets the HFCAA disclosure requirements and is not delisted from US stock exchanges, for the purposes of index eligibility, it will be treated as a new issue after a period of 12 months from when the issuer meets the HFCAA disclosure requirements.

14. What will be the index treatment of non-constituent issuers identified on the HFCAA ‘Conclusive’ list?

Effective immediately, a non-constituent issuer that is identified on the SEC ‘Conclusive’ list on or after 15 December 2022 and until such a time as the PCAOB issues a new determination will not be eligible for FTSE Russell indices until after a period of 12 months from when the security has been removed from the HFCAA ‘Conclusive’ list.

For more information about our Indices, please visit ftserussell.com.

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