

17 May 2020

Hon. Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Hon. William D. Duhnke III
Chairman
Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006-2803

Dear Chairmen Clayton and Duhnke:

We write in the wake of President Trump’s momentous decision to block the investment of the retirement savings of federal government employees and military personnel in Communist Chinese companies. According to his subordinates tasked with implementing that decision – National Economic Council Director Lawrence Kudlow, National Security Advisor Robert O’Brien and Labor Secretary Eugene Scalia – such an investment would have entailed undisclosed and unacceptable risks. These include the prospect that they may be subjected to sanctions in connection with the COVID-19 virus and the threat posed by some of the companies in question to our national security and/or humanitarian values.

We welcome the President’s decision and strongly second the concerns he has rightly expressed about the lack of transparency, PCAOB covered audits and material risk disclosure by Chinese companies in our capital markets. The Chinese Communist Party’s claims that corporate financials and other such data are “state secrets” only raise further questions about the advisability of giving its corporations a pass on conforming to the same statutory and regulatory standards that registered American companies are required to meet. *Put simply, Chinese companies are today receiving preferential treatment over their American corporate counterparts on your watch.*

As you know, Messrs. Kudlow and O’Brien expressed concerns on this very point in their letter to Secretary Scalia:

According to the Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB), Chinese authorities have impeded the PCAOB’s ability to oversee PCAOB-registered audit firms in mainland China and Hong Kong who serve mainland Chinese companies. This has prevented the PCAOB from conducting inspections of those firms’ audits of Chinese companies in violation of U.S. law. Recently, a Chinese law came into effect that prevents the PCAOB from directly conducting its oversight function inside Chinese territory. This is part of the significant legal and practical obstacles to the SEC and PCAOB obtaining information needed for investigations or enforcement actions.

The Chinese Government's intentional thwarting of U.S. investor protections should raise serious concerns about the reliability of financial information from Chinese companies and demonstrate *the significant risks to investors*, especially retail investors such as Thrift Savings Plan beneficiaries, of investing in the companies listed on the Chinese exchanges that would be represented in the new index. (Emphasis added.)

In his letter to the chairman of the Federal Retirement Thrift Investment Board, Secretary Scalia wrote:

In their letter, Messrs. Kudlow and O'Brien document *risks to investors resulting from inadequate investor disclosures and protections under Chinese law*, drawing in part on a recent series of joint statements by the chairs of the Securities and Exchange Commission (SEC) and Public Company Accounting Oversight Board (PCAOB). (Emphasis added.)

These letters, and the presidential decision they implement, underscore the serious shortfalls in the SEC and PCAOB's enforcement of U.S. statutes and regulations governing Chinese companies registered in our capital markets. We second concerns expressed by two former senior SEC officials in a *Wall Street Journal* op.ed. published on May 7 entitled, "The SEC's China Evasion: The Commission's 'Buyer Beware' Announcement Looks Tough, But Actually is Irresponsible."

As you know, in that article, former SEC Chairman Arthur Levitt and former Director of the SEC's Office of International Affairs Michael Mann, noted that:

In an unprecedented public statement, the chairmen of the SEC and the Public Company Accounting Oversight Board (PCAOB), along with SEC senior staff, warned investors that disclosures by SEC-registered companies from emerging markets may be incomplete and misleading. The commission's cross-border regulation, oversight and enforcement—especially for activity from China—can't be relied upon, the regulators said.

...Announcing that public companies operating in emerging markets are unsafe, and leaving it to investors to protect themselves, fails to carry out the SEC's statutory mandate. It can only diminish U.S. markets.

It also sells short the recourse the SEC has in this situation: Failure to comply with its rules, or to cooperate with its investigations, can be the basis for stopping a listing, suspending trading or barring a person or company from participating in U.S. markets. The SEC could also work with the PCAOB to write more-stringent requirements for foreign audits and auditors.

As Messrs. Levitt and Mann make clear, the SEC and PCAOB have recourse in the face of Chinese Communist Party's resistance to conforming to our laws and regulations: restricting its corporations' access to our markets up to and including de-registration. In your joint statement to which Secretary Scalia refers, you make clear why it behooves both of your institutions to enforce our laws, regulations and accounting standards:

It is important that investors, funds, financial professionals and index providers consider carefully the issues, risks and uncertainties associated with investing in emerging markets, including China, the world's largest emerging market and second largest economy. In particular, protections similar to certain key elements of the U.S. regulatory regime may not exist in these markets and, as both a legal and practical matter, applicable regulations are more limited from an investor protection perspective.

It is imperative that companies based in or with significant operations in these emerging markets, as well as their audit committees (if applicable) and auditors, each fulfill their responsibilities to (1) prepare and provide high-quality, reliable financial information and other disclosures, including through considerations of the circumstances and environment in which these companies operate and (2) provide accurate and complete risk disclosure, including with regard to the limited rights and remedies of U.S. authorities and investors. (Emphasis added.)

It is unconscionable that Chinese entities that have already raised over a trillion dollars from U.S. investors have their securities (stocks, bonds, etc.) registered with the Securities and Exchange Commission, but have been given a “pass” from compliance with the statutes, regulations and accounting standards required of SEC-registered American corporations.

We believe that the PCAOB must immediately give the required notice to cancel the bilateral Memorandum of Understanding signed on May 7, 2013 by the PCAOB and the China Security Regulatory Commission. This MOU is cancellable at any time for any reason with 30-days notice. For its part, the SEC must require any foreign registrant to comply fully with the Commission's registration requirements so as to “level the playing field” for U.S. registrants.

To do otherwise risks real reputational harm to our capital markets, which have long been and must remain the gold-standard for the financial world.

The country needs strong leadership on this issue *now*. We believe President Trump has defined the requirements for Chinese companies to enjoy the benefits of having access to our capital markets. It is up to you both to enforce these requirements and *genuinely* protect American investors, as well as our national security and fundamental values, by ensuring that the risks associated with investing in Chinese Communist Party-tied securities registered with the SEC and listed on U.S. capital markets are as transparent and disclosed as are those of the registered securities of American corporations.

Sincerely,

Brian Kennedy, Chairman, the Committee on the Present Danger: China (CPDC)

Frank J. Gaffney, Vice Chairman, CPDC, former Assistant Secretary of Defense (Acting)

Vice Admiral John Poindexter, former National Security Advisor to the President

Hon. Stephen K. Bannon, former White House Chief Strategist

Hon. Frank Wolf, former Member of Congress

Hon. Diane Black, former Member of Congress

Hon. Dave Brat, former Member of Congress

Lt. Col. Allen West, U.S. Army (Ret.), former Member of Congress

Hon. Kenneth, deGraffenreid, former Special Assistant to the President

Hon. Tidal McCoy, former Secretary of the Air Force (Acting)

Hon. Robert Joseph, former Under Secretary of State

Hon. Henry Cooper, former Director, Strategic Defense Initiative

Hon. Ed Timperlake, former Assistant Secretary of Veterans Affairs; Managing Editor
Defense.info

Lt. Gen. William “Jerry” Boykin, U.S. Army (Ret.), former Deputy Under Secretary of Defense;
Executive Vice President, Family Research Council

Lt. Gen. Thomas McInerney, U.S. Air Force (Ret.); former Assistant Air Force Chief of Staff;
Chairman, Yottastor, LLC

Lt. Gen. Stephen Kwast, U.S. Air Force (Ret.); former Commander, Air Education and Training
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Pastor Kevin Jessip, Chairman, Save the Persecuted Christians

Dr. Bob Fu, PhD., Founder and President, China Aid

Faith McDonnell, Director, International Religious Liberty Program, Institute on Religion and Democracy

Col. John Mills, U.S. Army (Ret.), former Director, Cybersecurity Policy, Strategy, and International Affairs, Department of Defense

Dr. Peter Pry, PhD., former Staff Director, Congressional Electromagnetic Pulse Commission; Executive Director, National and Homeland Security Task Force

Charles “Sam” Faddis, CIA Operations Officer (Ret.)

Steven Mosher, President, Population Research Institute

Chet Nagle, Founding member, Committee on the Present Danger: China

Dr. Suzanne Scholte, PhD., President, Defense Forum Foundation

Reggie Littlejohn, Esq., Founder and President, Women’s Rights Without Frontiers

Paul Berkowitz, former Professional Staff, House Foreign Affairs Committee

Greg Tweddell, Senior Pastor, Ignition633 Ministries

Dr. Oluwasayo Ajiboye, PhD., President, Mission Africa International

Guillermo Aragon, Chief Financial Officer, Martin Imaging, Inc.

Christina Murphy Lusk, Campaign for the American Future

Haley Martin, President, The Martin Foundation

Sherri Martin, Executive Vice President, The Martin Organization, Inc.

Dede Laugesen, Executive Secretary, CPDC

Mike Carter, Executive Producer, Economic War Room

Russell Lake, Executive Producer, Economic War Room

Sarah Perry, Director of Partnerships and Coalitions Coordinator, Family Research Council

cc: Hon. Donald Trump, President of the United States
Hon. Mike Pence, Vice President of the United States
Hon. Mike Pompeo, Secretary of State
Hon. Steven Mnuchin, Secretary of the Treasury
Hon. Eugene Scalia, Secretary of Labor
Hon. Mark Meadows, White House Chief of Staff
Hon. Robert O'Brien, National Security Advisor to the President
Hon. Lawrence Kudlow, Director, National Economic Council