



August 27, 2025

The Honorable Paul Atkins
 Chairman
 U.S. Securities and Exchange Commission
 100 F Street, NE
 Washington, DC 20549

Dear Chairman Atkins,

We, the undersigned state financial officers, urge the Securities and Exchange Commission (“SEC” or the “Commission”) to make changes to the qualifications for foreign private issuer (“FPI”) status by prohibiting any issuer based in a country designated by the United States government as a foreign adversary (“Designated Foreign Adversary” or “DFA”),¹ including the People’s Republic of China (“PRC” or “China”),² from being granted FPI status. This change is needed now because the most common FPI filers³ are no longer incorporated and headquartered in Canada and the United Kingdom, but rather are incorporated in the Cayman Islands with their

¹ See <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791/subpart-A/section-791.4> (Secretary of Commerce listing as “foreign adversaries” China, Cuba, Iran, North Korea, Russia, and Venezuela’s Madura regime).

² See <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791/subpart-A/section-791.4>; see also <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2025-Unclassified-Report.pdf> (2025 Annual Threat Assessment of the U.S. Intelligence Community listing China “as the actor most capable of threatening U.S. interests globally”).

³ The SEC’s FPI statistics cited in this memo are based on the SEC’s analysis of “20-F” filers, as that is the “subpopulation of FPIs” that “is the subject of the considerations regarding the current FPI definition[.]” See Concept Release on Foreign Private Issuer Eligibility, 90 FR 24232, 24237 (published June 9, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf>. The SEC’s analysis largely excludes “40-F” filers, which are certain “Canadian issuers that are eligible for and elect to take advantage of the Multijurisdictional Disclosure System (“MJDS”),” *id.* at 24233 n.8, because the SEC has determined those issuers’ disclosures are “fully adequate for the protection of U.S. investors,” and the SEC has continuously evaluated those regulations, *id.* at 24237.

headquarters in China.⁴ FPI status was formed with the understanding that issuers qualifying for FPI status would still be subject to “meaningful disclosure and other regulatory requirements in their home country jurisdictions.”⁵ But this shift in the types of filers using FPI status raises concerns that U.S. investors are not being protected. There are significant risks for U.S. investors in China-based companies, including Chinese companies’ roles in furthering the Chinese Communist Party’s (“CCP”) “military-civil fusion” strategy⁶ and the risks that China-based issuers will violate the disclosure, auditing, or other antifraud provisions of the Securities Exchange Act (or “Exchange Act”) due to the Chinese government’s actions to prevent transparency.⁷ In fact, the CCP’s actions, combined with the fact that the first-ever inspection of audit firms in China by the Public Company Accounting Oversight Board (“PCAOB”) revealed substantial and widespread deficiencies, necessitate a close examination by the SEC of whether companies based in China, or in any DFA country acting similarly, should be listed on U.S. exchanges at all. *See Appendix A* (letter from 23 state treasurers noting these concerns).⁸

Not only should the SEC remove FPI status from issuers based in DFA countries and consider delisting certain DFA-based issuers altogether, but the SEC should also require such issuers that remain on U.S. exchanges to disclose all material risks related directly to the DFA designation of the country in which the issuer is based. The SEC should take these actions to protect U.S. investors from inherent risks associated with issuers based in countries that the U.S. Government has determined “have engaged in long-term pattern[s] or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.”⁹ As the chief financial officials of their respective states, state treasurers have the responsibility to safeguard public funds and the hard-earned money of state workers and retirees.

I. The number of China-based issuers using FPI status has significantly increased

As of 2023, the most common jurisdiction of incorporation for FPIs was the Cayman Islands, while the most common jurisdiction for those issuers’ headquarters was China¹⁰—a Designated Foreign Adversary of the United States. This represents a substantial departure from 20 years ago, when “the most common jurisdictions for both incorporation and headquarters were Canada and the United Kingdom.”¹¹ This shift is significant and raises serious concerns that U.S. investors are not being protected as originally intended. The FPI regulatory regime was established

⁴ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24237–38.

⁵ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24234.

⁶ See <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

⁷ See, e.g., <https://www.wsj.com/articles/audits-of-chinese-companies-are-highly-deficient-u-s-regulator-says-2da99766>.

⁸ Also available at <https://sfof.com/wp-content/uploads/2025/05/Delisting-Letter.pdf>.

⁹ See <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791/subpart-A/section-791.4>.

¹⁰ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24237.

¹¹ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24237–38.

with the expectation that FPIs would generally “be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions, and that FPIs’ securities would be traded in foreign markets.”¹² In regulating FPI status, the SEC has sought to tailor the FPI accommodations “to preserve appropriate investor protections” while also addressing the “burdens … arising from duplicative or conflicting domestic and foreign disclosure requirements.”¹³ FPI status was meant to reduce duplicative and conflicting regulatory standards for issuers, not to allow issuers to skirt those standards altogether.

However, as the Commission’s recent research shows, the evolving profile of issuers using FPI accommodations raises serious concerns about whether reduced disclosure requirements remain appropriate in certain cases. While the total number of FPI filers in 2023 was similar to that in 2003,¹⁴ composition has changed dramatically. The number of issuers incorporated or headquartered in Canada and the United Kingdom decreased between 40 and 66 percent,¹⁵ while China-based companies (those headquartered or incorporated in China) grew from just 5 percent in 2003 to 28 percent in 2023—representing a more than 500 percent increase in the proportion of FPIs.¹⁶ These China-based companies also account for a substantial increase in the percentage of companies with differing jurisdictions for incorporation and headquarters—only 7 percent in 2003 but 48 percent in 2023.¹⁷ In 2023, nearly all issuers headquartered in China were incorporated in another jurisdiction, most commonly the Cayman Islands or the British Virgin Islands.¹⁸ The SEC has also noted that a majority of FPIs today trade almost exclusively in U.S. markets (meaning they are not subject to any other country’s disclosure and regulatory requirements as originally intended for FPIs),¹⁹ and these “U.S. Exclusive FPIs have a higher propensity of being incorporated in the Cayman Islands and headquartered in China.”²⁰

II. The SEC should remove FPI status from issuers based in China and other DFAs due to inherent risks to U.S. investors, and should consider delisting altogether issuers based in DFAs that hinder compliance with U.S. disclosure laws

U.S. investors must be made aware that Chinese companies are using American capital to further the CCP’s goal of “enabl[ing] the PRC to develop the most technologically advanced military in the world.”²¹ U.S. officials have warned of the threats presented by China’s “military-

¹² <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24234.

¹³ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24234.

¹⁴ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24240.

¹⁵ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24240.

¹⁶ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24240.

¹⁷ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24240.

¹⁸ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24240.

¹⁹ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24241.

²⁰ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24243.

²¹ <https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf>; see <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

“civil fusion” strategy,²² i.e., China’s effort to eliminate “barriers between China’s civilian research and commercial sectors, and its military and defense industrial sectors.”²³ “Through its national military-civil fusion strategy, the PRC increases the size of its military-industrial complex by compelling civilian Chinese companies and research institutions to support its military and intelligence activities.”²⁴ President Trump recently reaffirmed these concerns in his “America First Investment Policy.”²⁵ While affirming the United States’ commitment to welcoming foreign investment and strengthening U.S. capital markets, he noted that “the PRC is … increasingly exploiting United States capital to develop and modernize its military, intelligence, and other security apparatuses,” including by raising capital through selling to American investors on public exchanges.²⁶

In addition, the Chinese government is acting exhaustively to obscure accurate information about Chinese companies, making those companies more likely to violate the disclosure, auditing, or other antifraud provisions of the Securities Exchange Act than U.S.-based companies to which stricter disclosure requirements apply. For example:

- In 2023, after the PCAOB was finally given access to inspect audits of China-based, U.S.-listed companies, the PCAOB found “unacceptable” levels of deficiencies in seven of eight of its initial audits.²⁷ The same year, the PCAOB announced sanctions against multiple China-based firms due to audit deficiencies.²⁸ Even more concerning is that these audits only happened after years of China continuously blocking these types of inspections.²⁹ In 2013, the PCAOB announced a Memorandum of Understanding (“MOU”) with the China Securities Regulatory Commission (“CSRC”) that “establishe[d] a cooperative framework” wherein the parties would be able to produce and exchange relevant audit documents.³⁰ However, the PCAOB noted that after signing the MOU, “Chinese cooperation ha[d] not been sufficient for the PCAOB to obtain timely access to relevant documents and testimony[.]”³¹ China’s

²² See, e.g., <https://www.defense.gov/News/Releases/Release/Article/4023145/dod-releases-list-of-chinese-military-companies-in-accordance-with-section-1260/>; <https://www.newsweek.com/pentagon-reveals-china-military-companies-2011550>.

²³ <https://www.state.gov/wp-content/uploads/2020/05/What-is-MCF-One-Pager.pdf>.

²⁴ <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

²⁵ <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

²⁶ <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

²⁷ <https://www.wsj.com/articles/audits-of-chinese-companies-are-highly-deficient-u-s-regulator-says-2da99766>.

²⁸ <https://pcaobus.org/news-events/news-releases/news-release-detail/fact-sheet-pcaob-imposes-historic-sanctions-on-china-based-audit-firms>.

²⁹ See <https://www.wsj.com/articles/audits-of-chinese-companies-are-highly-deficient-u-s-regulator-says-2da99766> (“The [PCAOB] last fall completed its first set of inspections of China-based audit firms after years of Chinese regulators refusing to allow such reviews on national-security concerns.”).

³⁰ https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-enters-into-enforcement-cooperation-agreement-with-chinese-regulators_430.

³¹ https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-enters-into-enforcement-cooperation-agreement-with-chinese-regulators_430; <https://tax.thomsonreuters.com/news/u-s-and-china-sign-historic-agreement-on-audit-firm-supervision/>.

obstructionism ultimately led Congress to enact the Holding Foreign Companies Accountable Act in 2020,³² yet China still prevented the PCAOB from having access to auditors until the SEC later threatened issuers with delisting.³³

- China-based companies are using VIE structures to evade the Chinese legal prohibition against foreign ownership of China-based companies,³⁴ causing risks to U.S. investors. The VIE structure involves a shell company incorporating outside of China (typically in the Cayman Islands),³⁵ entering into contracts with the Chinese company, which allows the shell company to receive profits, and then selling shares of equity in the shell company to American investors³⁶—meaning these investors do not own any equity in the operating company. Under Chinese law, a contract designed to disguise illegal goals under a legitimate form is invalid,³⁷ but the CCP has deliberately refused to confirm the illegality of VIEs,³⁸ creating great risks for investors if the CCP does so in the future.³⁹ Additionally, the opaqueness within the VIE structure hinders the SEC’s ability to protect investors by identifying fraud and accounting deficiencies.⁴⁰
- The CCP punishes firms for engaging in due diligence on Chinese companies,⁴¹ which suggests that the CCP may be pushing China-based companies to inflate financial numbers in order to stem the tide of net capital outflows. Net outflows reached a record \$182 billion in 2024, with foreigners and Chinese investors shifting their money elsewhere.⁴² Further, business executives who have interacted with Chinese authorities reported last year that the CCP is trying to “limit the information collected by foreign companies such as auditors, management consultants and law firms that could influence how the outside world views China.”⁴³

³² See <https://www.jgacpa.com/the-pcaob-and-china-whats-happened-since-the-hfcaa-became-law>; <https://www.globalcompliancecenter.com/2021/03/14/north-america-holding-foreign-companies-accountable-act-how-will-it-be-implemented-and-what-can-companies-do-02032021-2/>; see also <https://www.sec.gov/newsroom/speeches-statements/statement-hfcaa-040623>.

³³ See <https://www.jgacpa.com/the-pcaob-and-china-whats-happened-since-the-hfcaa-became-law>.

³⁴ See, e.g., <https://www.state.gov/reports/2023-investment-climate-statements/china/>.

³⁵ https://globalcapitalallocation.s3.us-east-2.amazonaws.com/CCDMS_Draft.pdf.

³⁶ <https://www.sec.gov/newsroom/speeches-statements/gensler-2021-07-30>; https://globalcapitalallocation.s3.us-east-2.amazonaws.com/CCDMS_Draft.pdf at 4.

³⁷ Contract Law of the People’s Republic of China, Chapter III, Article 52, Section 3, http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383564.htm.

³⁸ <https://www.tandfonline.com/doi/full/10.1080/10192557.2021.1995229>.

³⁹ <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/investor-bulletin-us-listed-companies-operating-chinese-businesses-through-vie-structure>.

⁴⁰ See <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/> (expressing concern about the “auditability, corporate oversight,” and potential “criminal or civil fraudulent behavior” of US-listed foreign adversary companies connected with VIEs).

⁴¹ <https://harris-sliwoski.com/chinalawblog/due-diligence-in-china-just-got-a-lot-harder-now-what/>; <https://www.nytimes.com/2023/03/24/business/china-business-company-raid.html>; https://www.wsj.com/articles/chinese-authorities-question-bain-staff-in-shanghai-e0bbf2fb?mod=article_inline.

⁴² <https://www.atlanticcouncil.org/blogs/econographics/sinographs/beijing-fails-to-reassure-skeptical-investors-and-responds-with-more-regulation/>.

⁴³ <https://www.wsj.com/world/china/china-raises-fines-on-mintz-due-diligence-firm-c7486aeb>.

- The CCP has a pattern (that has intensified recently) of engaging in stock and bond market manipulation. For example, in late 2023, the Beijing Stock Exchange reportedly prevented major shareholders from selling stock, in order to bump up prices of stocks on the exchange.⁴⁴
- The CCP exerts control over Chinese companies by requiring large companies to embed CCP cells within their operations⁴⁵ and requiring all China-based companies to comply with Article 7 of China's National Intelligence Law of 2017, which states that “any organization … shall support, assist, and cooperate with state intelligence work according to law.”⁴⁶ There is also a recent trend of the CCP establishing People's Armed Forces Department militia units in corporations, embedding the Chinese military within those companies and increasing the CCP's ability to exert corporate control.⁴⁷

Allowing China-based companies to have reduced disclosure and compliance requirements makes all these concerns even greater. The cost of ignoring these risks and continuing to allow China-based companies the benefit of FPI status is too great.

Moreover, in addition to amending the definition of “foreign private issuer” in Rule 405 of the Securities Act⁴⁸ and Rule 3b-4 of the Exchange Act,⁴⁹ the SEC—either under its current authority or by adoption of a new rule governing DFA-based issuers—should consider delisting issuers based in a DFA country whenever that country demonstrates a blatant disregard for U.S. disclosure laws, and should terminate cooperation agreements between the SEC/PCAOB and the securities regulator of the offending country when that country has persistently flouted the terms of the relevant agreement. This includes the 2013 MOU between the PCAOB and CSRC, and the 2022 agreement with the CSRC granting the PCAOB ostensible access to China-based companies’ audits to the extent the SEC determines that access is not truly complete due to the CCP’s many actions to stifle transparency.⁵⁰

⁴⁴ <https://www.reuters.com/world/china/beijing-stock-exchange-tells-major-shareholders-refrain-selling-sources-2023-11-27/>.

⁴⁵ <https://www.cnbc.com/2023/07/12/communist-cells-influence-companies-in-china-fbi-director.html>; <https://www.pamirlaw.com/articles/preparing-for-new-requirements-for-communist-party-of-china-cells-inside-your-private-company/>.

⁴⁶ <https://thediplomat.com/2019/02/the-real-danger-of-chinas-national-intelligence-law/>.

⁴⁷ <https://jamestown.org/program/chinas-peoples-armed-forces-departments-developments-under-xi-jinping/>.

⁴⁸ <https://www.law.cornell.edu/cfr/text/17/230.405>.

⁴⁹ <https://www.law.cornell.edu/cfr/text/17/240.3b-4>.

⁵⁰ See <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-signs-agreement-with-chinese-authorities-taking-first-step-toward-complete-access-for-pcaob-to-select-inspect-and-investigate-in-china> (quoting PCAOB Chair Erica Williams, “*On paper*, the agreement signed today grants the PCAOB complete access to the audit work papers, audit personnel, and other information we need to inspect and investigate any firm we choose … . But the real test will be whether the words agreed to *on paper* translate into complete access in practice.”) (emphases added).

Chinese companies’ continued disregard for U.S. disclosure laws has already prompted lawmakers and government officials to call for investigations into whether China-based companies should be delisted entirely.⁵¹ The SEC currently has the authority to delist companies that fail to comply with the Securities Exchange Act⁵² or that rely on auditors in countries where the PCAOB cannot effectively conduct inspections.⁵³ As 23 state financial officers, including many of the undersigned, noted in their May 20, 2025, letter to you, China’s actions create an environment ripe for fraud and abuse, increasing the likelihood that China-based, U.S.-listed companies will violate the core provisions of the Exchange Act.⁵⁴ These practices necessitate a close examination of whether China-based companies—or any companies based in DFA countries taking similar actions to inhibit transparency—should be listed on U.S. exchanges at all.

The risks inherent in the current FPI landscape—where a disproportionate number of China-based issuers are listed on U.S. exchanges, and those issuers operate in an environment designed by the CCP to stifle transparency—highlight the dangers of providing accommodations by virtue of FPI status to any issuers based in DFA countries. These countries “have engaged in [] long-term pattern[s] or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.”⁵⁵ Providing DFA-based companies with “accommodations that provide full or partial relief from requirements for domestic issuers”⁵⁶ should be a non-starter, and the SEC should engage in a review of whether companies based in DFA countries should even be permitted to list on U.S. exchanges.

III. The SEC should require DFA-based issuers to make additional disclosures of material risks directly related to the DFA designation of the country in which the issuer is based

Not only should the SEC deny FPI status to issuers based in DFA countries and consider delisting certain DFA-based issuers altogether, it should take an additional step to protect U.S. investors by requiring any DFA-based issuers that remain on U.S. exchanges to disclose any

⁵¹ See, e.g., <https://nypost.com/2025/04/12/business/the-heat-is-on-for-newly-confirmed-sec-chairman-paul-atkins-to-crackdown-on-chinese-companies/> (noting lawmakers’ concerns about “wanton and blatant violations of US disclosure laws that have gone unchecked for years” and the failure of Chinese companies “to properly account for Chinese Communist Party influence”); see also Appendix A, <https://sfof.com/wp-content/uploads/2025/05/>

[Delisting-Letter.pdf](#) (state financial officers urging the SEC to investigate de-listing China-based issuers).

⁵² 15 U.S. Code § 78l(j).

⁵³ 15 U.S. Code § 7214. The SEC is required to prohibit securities of the covered issuer from all national exchanges and from being traded through any other method within the SEC’s authority to regulate, including “over-the-counter” trading.

⁵⁴ See Appendix A, <https://sfof.com/wp-content/uploads/2025/05/Delisting-Letter.pdf>.

⁵⁵ See <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791/subpart-A/section-791.4>.

⁵⁶ <https://www.govinfo.gov/content/pkg/FR-2025-06-09/pdf/2025-10428.pdf> at 24233.

material risks that are directly related to the DFA status of the country where the issuer is domiciled or incorporated. For example, there are multiple material risks to investors that are specifically related to China's status as a DFA, including the following:

- There is a significant risk that China will invade Taiwan in the near future, leading to U.S. investment restrictions;⁵⁷
- There is a significant risk that the U.S. government will impose further restrictions on investing and trade with China, even without an invasion. The U.S. has already restricted investments in Chinese companies tied to defense, surveillance, and certain telecommunications sectors.⁵⁸ Moreover, the Trump administration has stated that it “will consider new or expanded restrictions on U.S. outbound investment to China in sensitive technologies, including semiconductors, artificial intelligence, quantum, biotechnology, aerospace, and more, to stop American funds from supporting China’s Military-Civil Fusion (MCF) strategy;”⁵⁹
- Trade wars between the U.S. and China have been ongoing since 2018 and have recently intensified, creating ongoing uncertainty to investors;⁶⁰
- Foreign investment in China is rapidly declining, which has been partly attributed to political tensions, and has produced net outflows from Chinese markets;⁶¹ and
- Prominent pension funds—including the Federal Thrift Savings Plan, Swedish pension funds, and multiple U.S. state systems—are divesting from, moving away from, or avoiding China-based investments, citing national security concerns and tensions with China.⁶²

⁵⁷ See <https://www.defense.gov/News/News-Stories/Article/Article/2807578/while-chinas-intimidation-of-taiwan-continues-us-remains-committed-to-taiwanese/>; <https://www.state.gov/g7-foreign-ministers-statement-on-chinas-large-scale-military-drills-around-taiwan/>.

⁵⁸ See <https://www.federalregister.gov/documents/2020/11/17/2020-25459/addressing-the-threat-from-securities-investments-that-finance-communist-chinese-military-companies> (Executive Order 13959); <https://www.federalregister.gov/documents/2021/01/19/2021-01228/amending-executive-order-13959addressing-the-threat-from-securities-investments-that-finance> (Executive Order 13974 amending Executive Order 13959 in part); <https://www.federalregister.gov/documents/2021/06/07/2021-12019/addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples> (superseding sections of Executive Orders 13959 and 13974).

⁵⁹ <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-encourages-foreign-investment-while-protecting-national-security/>.

⁶⁰ <https://www.bloomberg.com/explainers/us-china-trade-war>; <https://www.bbc.com/news/business-45899310>; <https://www.cfr.org/backgrounder/contentious-us-china-trade-relationship>.

⁶¹ <https://www.voanews.com/a/foreign-investment-in-china-falls-for-past-year-as-economy-struggles/7682513.html>; <https://www.bloomberg.com/news/articles/2025-02-14/china-has-record-foreign-investment-outflow-as-168-billion-exit>.

⁶² See <https://www.ft.com/content/6e5d00ec-de0d-4c57-82ea-4b2846ef8004>; <https://www.bloomberg.com/news/articles/2023-11-15/us-federal-pension-fund-to-exclude-hong-kong-investments>; <https://x.com/jojeols/status/1836230332942815307?s=46&t=YkvkJVNGBoF08O13ZLMhlw>; <https://www.politico.com/news/2024/07/26/states-china-pensions-00171437>.

In conclusion, the SEC should change the parameters of FPI status so that issuers based in any DFA country, including the PRC, are ineligible to qualify as FPIs. To the extent DFA countries—like China—are interfering with companies in their jurisdiction to inhibit transparency and compliance with the Securities Exchange Act and proper audit inspections, the SEC should also investigate whether those DFA-based issuers should be delisted entirely from U.S. exchanges. Finally, the SEC should require any issuer based in a DFA country that remains on a U.S. exchange to provide additional disclosures that make U.S. investors aware of all material risks that are directly related to the DFA status of the country where the issuer is domiciled or incorporated. The risks of investing in DFA-based companies are substantial, and these changes are crucial for the protection of U.S. investors.

Sincerely,



Arizona Treasurer Kimberly Yee



Indiana Comptroller Elise Nieshalla



Indiana Treasurer Dan Elliott



Kansas Treasurer Steven Johnson



Kentucky Auditor Allison Ball



Kentucky Treasurer Mark Metcalf



Louisiana Treasurer John Fleming



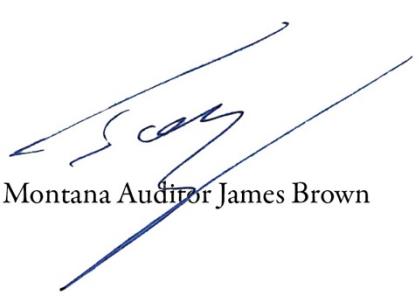
Mississippi Treasurer David McRae



Missouri Auditor Scott Fitzpatrick



Missouri Treasurer Vivek Malek




Montana Auditor James Brown



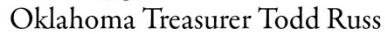
Nebraska Treasurer Tom Briese




North Dakota Treasurer Thomas Beadle



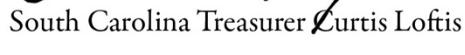
Ohio Treasurer Robert Sprague

Oklahoma Treasurer Todd Russ




Pennsylvania Treasurer Stacy Garrity

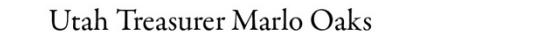
South Carolina Treasurer Curtis Loftis




South Dakota Treasurer Josh Haeder




Utah Auditor Tina Cannon

Utah Treasurer Marlo Oaks



West Virginia Treasurer Larry Pack



Wisconsin Treasurer John Leiber



Wyoming Auditor Kristi Racines



Wyoming Treasurer Curt Meier

APPENDIX A



May 19, 2025

The Honorable Paul Atkins
 Chairman
 U.S. Securities and Exchange Commission
 100 F Street, NE
 Washington, DC 20549

Dear Chairman Atkins,

We, the undersigned state financial officers, urge the Securities and Exchange Commission (“SEC” or the “Commission”) to investigate delisting China-based issuers from U.S. exchanges to protect American investors. The Chinese government’s actions create an environment of opaqueness that is antithetical to the reporting requirements and fraud prohibitions of the Securities Exchange Act (or the “Exchange Act”) and to the intent of the Holding Foreign Companies Accountable Act of 2020 (HFCAA). President Trump recognized this inconsistency when he issued the “America First Investment Policy” in February 2025 (“Policy Memorandum”), which denounces the Chinese government for “exploit[ing] United States capital . . . [and] investors” and calls on the Public Company Accounting Oversight Board (PCAOB)¹, in coordination with the Secretary of the Treasury, to assess whether companies subject to HFCAA meet appropriate auditing standards.² The Policy Memorandum also highlighted executive orders from 2020 and 2021, which already effectively delisted stocks of Chinese defense, surveillance, and certain telecommunications companies from U.S. exchanges on national security grounds.³

¹ The Commission oversees the PCAOB’s regulatory activities. See <https://pcaobus.org/information-regarding-the-pcaobs-use-of-personal-data#:~:text=The%20PCAOB%20is%20not%20an,set%20forth%20under%20the%20Act>.

² See <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/> (requiring the “Secretary of the Treasury [to] engage as appropriate with” the SEC and PCAOB to make this ultimate determination).

³ These orders prohibited investment by US persons in the identified categories of Chinese companies. See <https://www.federalregister.gov/documents/2020/11/17/2020-25459/addressing-the-threat-from-securities-investments-that-finance-communist-chinese-military-companies;> <https://www.federalregister.gov/documents/2021/01/19/2021-01228/amending-executive-order-13959addressing->

The SEC has the authority to delist companies that fail to comply with the Securities Exchange Act or that rely on auditors in countries where the PCAOB cannot effectively conduct inspections. China's actions create an environment ripe for fraud and abuse increasing the likelihood that China-based, U.S.-listed companies will violate the disclosure, auditing, or antifraud provisions of the Securities Exchange Act.⁴ While China has ostensibly granted the PCAOB access to Chinese audit firms, it is questionable whether these inspections are sufficient when the government is acting so exhaustively to obscure accurate information about Chinese companies.⁵ The Chinese Communist Party (CCP) has cracked down on firms conducting due diligence on Chinese companies, manipulated Chinese stock and bond markets, embedded CCP cells within all Chinese companies, and permitted widespread use of opaque variable interest entity (VIE) structures to circumvent U.S. regulatory scrutiny. These practices, combined with the PCAOB's discovery of significant and pervasive deficiencies in its first-ever inspections of Chinese audit firms, necessitate a close examination of whether China-based companies should be listed on U.S. exchanges.

I. Legal Standards

Under Section 12(j) of the Exchange Act, the SEC can delist companies (through denial, suspension, or revocation of registration), after notice and opportunity for hearing, that have failed to comply with any provision of the Securities Exchange Act or its associated rules and regulations.⁶ This includes, as possibly applicable here due to the Chinese government's actions, companies that do not rectify potentially illegal activity that would have a direct and material effect on the determination of financial statement amounts,⁷ that employ manipulative and deceptive devices in the offer or sale of securities,⁸ that lack proper disclosure controls and procedures or internal controls over financial reporting,⁹ or that cause the falsification of accounting records.¹⁰

In addition, the HFCAA requires the SEC to delist any issuer that for two consecutive years fails to submit documentation verifying it is not owned or controlled by a foreign governmental entity, if the issuer has retained a registered public accounting firm for preparation of its audit report with a branch or office (i) in that foreign jurisdiction, and (ii) that the PCAOB is unable “to inspect or investigate completely because of a position taken by an authority in a foreign

[the-threat-from-securities-investments-that-finance](#) (amending Executive Order 13959 in part);
<https://www.federalregister.gov/documents/2021/06/07/2021-12019/addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples> (superseding sections of Executive Orders 13959 and 13974).

⁴ See <https://nypost.com/2025/04/12/business/the-heat-is-on-for-newly-confirmed-sec-chairman-paul-atkins-to-crackdown-on-chinese-companies/> (noting lawmakers' concerns about “wanton and blatant violations of US disclosure laws that have gone unchecked for years” and the failure of Chinese companies “to properly account for Chinese Communist Party influence”).

⁵ <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-signs-agreement-with-chinese-authorities-taking-first-step-toward-complete-access-for-pcaob-to-select-inspect-and-investigate-in-china> (quoting PCAOB Chair Erica Williams, “*On paper*, the agreement signed today grants the PCAOB complete access to the audit work papers, audit personnel, and other information we need to inspect and investigate any firm we choose But the real test will be whether the words agreed to *on paper* translate into complete access in practice.) (emphases added).

⁶ 15 U.S. Code § 78l(j).

⁷ See 15 U.S. Code § 78j-1(b)(3).

⁸ See 15 U.S. Code § 78j.

⁹ See 17 CFR § 240.13a-15.

¹⁰ See 17 CFR § 240.13b2-1.

jurisdiction,” as determined by the PCAOB.¹¹ Although the PCAOB stated (notwithstanding the widespread audit failures discussed below) that it was given full access to inspect audit firms in China in 2023 and 2024, the SEC should investigate whether this purported access remains (or was ever) truly complete given the actions of the CCP to inhibit transparency and the free flow of information.

II. Audit Inspections for U.S.-Listed, Chinese Companies Have Revealed “Unacceptable” Levels of Deficiencies

After being prevented for years by the Chinese government from conducting audit inspections,¹² the PCAOB’s initial investigations in 2023 of major accounting firms in China revealed rampant errors and “unacceptable” levels of deficiencies in *seven out of eight* audits.¹³ The PCAOB imposed civil penalties totaling \$7 million on PwC China (which, as of early 2024, was the auditor for about 400 Chinese companies)¹⁴ and PwC Hong Kong—some of the highest the PCAOB has ever imposed—and \$940,000 on Shandong Haoxin and four of its auditors for deficiencies that included falsifying an audit report.¹⁵ The PCAOB also revoked the registration of China-based JTC Fair Song CPA Firm in 2024 for repeated violations of PCAOB rules and for failing to cooperate with an investigation into those violations.¹⁶ These widespread failures demonstrate that auditing within the Chinese market is woefully insufficient and likely to facilitate violations of the Securities Exchange Act that may justify delisting.

III. The CCP Has Cracked Down on Due-Diligence Firms

Even worse, the Chinese government punishes firms for engaging in due diligence on Chinese companies,¹⁷ making it even more difficult to verify financial reports from these companies. In 2023, China took action against several due-diligence firms, including shutting down the Beijing office of New-York based Mintz Group, detaining all of its Chinese employees,¹⁸ and subsequently fining it \$2.2 million for conducting “foreign-related statistical investigations” without approval from the CCP.¹⁹ China also has frozen assets of an offshore firm that specializes in identifying the risk of Chinese companies being penalized for forced labor violations, and

¹¹ 15 U.S. Code § 7214. The SEC is required to prohibit securities of the covered issuer from all national exchanges and from being traded through any other method within the SEC’s authority to regulate, including “over-the-counter” trading.

¹² The PCAOB was only given access to auditors after the SEC threatened issuers with delisting. *See* <https://www.jgacpa.com/the-pcaob-and-china-whats-happened-since-the-hfcaa-became-law>.

¹³ <https://www.wsj.com/articles/audits-of-chinese-companies-are-highly-deficient-u-s-regulator-says-2da99766>.

¹⁴ <https://www.cnn.com/2024/09/13/business/china-fines-pwc-evergrande-collapse/index.html>.

¹⁵ <https://pcaobus.org/news-events/news-releases/news-release-detail/fact-sheet-pcaob-imposes-historic-sanctions-on-china-based-audit-firms>.

¹⁶ <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-revokes-registration-of-chinese-firm-for-repeatedly-violating-pcaob-rules-and-failing-to-cooperate-with-board-investigation>.

¹⁷ <https://harris-sliwoski.com/chinalawblog/due-diligence-in-china-just-got-a-lot-harder-now-what/>;

<https://www.nytimes.com/2023/03/24/business/china-business-company-raid.html>;

https://www.wsj.com/articles/chinese-authorities-question-bain-staff-in-shanghai-e0bbf2fb?mod=article_inline.

¹⁸ <https://harris-sliwoski.com/chinalawblog/due-diligence-in-china-just-got-a-lot-harder-now-what/>;

<https://www.nytimes.com/2023/03/24/business/china-business-company-raid.html>;

https://www.wsj.com/articles/chinese-authorities-question-bain-staff-in-shanghai-e0bbf2fb?mod=article_inline.

¹⁹ <https://www.cnn.com/2023/08/22/economy/china-mintz-consulting-fine-intl-hnk/index.html>;

<https://www.wsj.com/world/china-raises-fines-on-mintz-due-diligence-firm-c7486aeb>.

prohibited Chinese companies from interacting with the firm.²⁰ The crackdowns have led other research firms to reduce their presence in China or exit completely.²¹

The CCP's crackdown on due diligence firms suggests that the CCP may be pushing China-based companies to inflate financial numbers in order to stem the tide of foreign outflows, as net capital outflows from China reached a record \$182 billion in 2024, with foreigners and Chinese investors shifting their money elsewhere.²² Indeed, business executives who have interacted with Chinese authorities reported last year that the CCP is trying to "limit the information collected by foreign companies such as auditors, management consultants and law firms that could influence how the outside world views China."²³ These limitations are likely to lead to violations of the Exchange Act's disclosure requirements and/or the inability of the PCAOB to completely inspect company audits.

IV. The CCP Manipulates Chinese Stock and Bond Markets, Further Distorting the Financial Picture of China-Based Companies

The CCP has frequently interfered with Chinese stock markets, and those efforts have intensified recently. In 2015, when stocks slid, Chinese authorities took actions to bar shareholders from selling, suspended trading on many stocks, banned short selling, and instructed state-owned enterprises to buy stocks to prop up the market.²⁴ The CCP has apparently returned to its pattern of stock market manipulation, as the Beijing Stock Exchange in late 2023 reportedly prevented major shareholders from selling stock, in order to bump up prices of stocks on the exchange.²⁵ The CCP also has recently concealed market trading data from investors and reportedly has privately ordered "some domestic financial institutions not to be net sellers of stocks on certain days."²⁶ Bonds face similar issues—China's state-owned credit rating agencies provide glowing ratings of nearly all China-based bonds.²⁷

These fundamental distortions of Chinese markets on which the stocks of China-based companies trade make it difficult, if not impossible, to assess the true financial state of affairs of China-based companies (or their VIE shell companies) also listed on U.S. exchanges. Companies that report valuations inflated by the Chinese government's interference in markets may be violating, at minimum, the Exchange Act's antifraud provisions.

V. The CCP Exerts Control over China-Based Companies

²⁰ <https://harris-sliwoski.com/chinalawblog/due-diligence-in-china-just-got-a-lot-harder-now-what/>.

²¹ <https://www.ft.com/content/dff10673-f3e3-4117-8a71-cb57a9cc4ccb>.

²² <https://www.atlanticcouncil.org/blogs/econographics/sinographs/beijing-fails-to-reassure-skeptical-investors-and-responds-with-more-regulation/>.

²³ <https://www.wsj.com/world/china/china-raises-fines-on-mintz-due-diligence-firm-c7486aeb>.

²⁴ <https://www.frbsf.org/research-and-insights/blog/sf-fed-blog/2017/06/23/china-msci-emerging-market-stock-index/>.

²⁵ <https://www.reuters.com/world/china/beijing-stock-exchange-tells-major-shareholders-refrain-selling-sources-2023-11-27/>.

²⁶ <https://www.ft.com/content/6e7a4129-d365-4905-8d9b-cc3f5ada5187>.

²⁷ <https://www.reuters.com/business/autos-transportation/eu-report-details-widespread-chinese-interference-economy-2024-07-03/>.

Under Chinese law, all Chinese companies must have CCP cells embedded in their company, raising further concerns about CCP interference.²⁸ In addition, all China-based companies are subject to Article 7 of China’s National Intelligence Law of 2017, which states that “any organization . . . shall support, assist, and cooperate with state intelligence work according to law.”²⁹ There is also a recent trend of the CCP establishing People’s Armed Forces Department militia units in corporations, embedding the Chinese military within those companies and increasing the CCP’s ability to exert corporate control.³⁰ China-based companies may be violating the Exchange Act’s antifraud provisions by failing to disclose the CCP’s active manipulation of companies by embedding its political, intelligence, and military agents;³¹ and the presence of the CCP within these companies calls into question the adequacy of companies’ financial reporting and auditing standards.

VI. The CCP Keeps Nearly All U.S.-Listed, China-Based Investments in a State of Legal Uncertainty through the VIE Structure

Over 90% of the total market capitalization of China-based firms on the U.S. market is in VIEs,³² a high-risk shell-company structure. To evade the Chinese legal prohibition against foreign ownership of China-based companies,³³ Chinese companies have created VIE structures, in which a shell company incorporates outside of China (typically in the Cayman Islands),³⁴ enters into contracts with the Chinese company, allowing the shell company to receive profits, and then sells shares of equity in the shell company to American investors³⁵—meaning these investors do not own any equity in the operating company. Under Chinese law, a contract designed to disguise illegal goals under a legitimate form is invalid,³⁶ but the CCP has deliberately refused to confirm the illegality of VIEs, allowing it to “reap the economic benefits of foreign investment without bearing the downsides of sacrificing sovereignty in return.”³⁷ The ambiguity and ability of the Chinese government to dissolve VIEs at will also “helps to ensure that managerial behavior [of VIE’s] conforms to government priorities.”³⁸

This arrangement harms American investors in two primary ways. First, the VIE structure itself “entail[s] massive . . . risks”³⁹ because if either the China-based company breaches its contract with the U.S.-listed shell company, or the Chinese government determines that the underlying contractual arrangements violate Chinese law (which it could do “**at any time and**

²⁸ <https://www.cnbc.com/2023/07/12/communist-cells-influence-companies-in-china-fbi-director.html>; <https://www.pamirlaw.com/articles/preparing-for-new-requirements-for-communist-party-of-china-cells-inside-your-private-company/>.

²⁹ <https://thediplomat.com/2019/02/the-real-danger-of-chinas-national-intelligence-law/>.

³⁰ <https://jamestown.org/program/chinas-peoples-armed-forces-departments-developments-under-xi-jinping>.

³¹ See <https://nypost.com/2025/04/12/business/the-heat-is-on-for-newly-confirmed-sec-chairman-paul-atkins-to-crackdown-on-chinese-companies/> (noting lawmakers’ concerns about the failure of Chinese companies “to properly account for Chinese Communist Party influence”).

³² <https://www.uscc.gov/sites/default/files/2025-03/Chinese%20Companies%20Listed%20on%20US%20Stock%20Exchanges%2003%202025.pdf>, at 5.

³³ See, e.g., <https://www.state.gov/reports/2023-investment-climate-statements/china/>.

³⁴ See, e.g., https://globalcapitalallocation.s3.us-east-2.amazonaws.com/CCDMS_Draft.pdf.

³⁵ <https://www.sec.gov/newsroom/speeches-statements/gensler-2021-07-30>.

³⁶ Contract Law of the People’s Republic of China, Chapter III, Article 52, Section 3, http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383564.htm.

³⁷ <https://www.tandfonline.com/doi/full/10.1080/10192557.2021.1995229>

³⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3119912, at 9–10.

³⁹ <https://www.econstor.eu/bitstream/10419/264203/1/1800375948.pdf>.

without notice”), “U.S. investors may suffer significant losses with little or no recourse available.”⁴⁰ Second, the opaqueness within the VIE structure hinders the SEC’s ability to protect investors by identifying fraud and accounting deficiencies. The America First Investment Policy expressed concern about the “auditability, corporate oversight,” and potential “criminal or civil fraudulent behavior” of US-listed foreign adversary companies connected with VIEs.⁴¹ Indeed, after Chinese company Luckin Coffee notoriously faked over \$300 million in reported sales,⁴² a Wharton School analysis noted that Luckin’s fraud may have been aided by the VIE structure, which “increases the opaqueness of financial reporting.”⁴³

As state financial officers, part of our responsibility is to ensure that the American people’s finances – and our American financial system – are protected from foreign actors who mean to do us harm. That is why we believe the SEC should investigate the extent to which it is prevented from properly confirming Chinese companies’ compliance with the provisions of the Securities Exchange Act governing, for example, disclosure controls and procedures, internal controls over financial reporting, falsification of accounting records, or manipulative and deceptive practices while the CCP is actively working to stifle transparency and the free flow of information. The SEC should also engage with the PCAOB to assess the extent to which the PCAOB is currently able to investigate completely the auditing of China-based, U.S.-listed companies as required under the HFCAA.

Sincerely,



Alaska Commissioner of Revenue Adam Crum



Arizona Treasurer Kimberly Yee



Arkansas Treasurer John Thurston



Idaho Treasurer Julie Ellsworth



Indiana Comptroller Elise Nieshalla



Indiana Treasurer Dan Elliott

⁴⁰ <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/investor-bulletin-us-listed-companies-operating-chinese-businesses-through-vie-structure> (emphases in original).

⁴¹ <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

⁴² <https://www.wsj.com/articles/cafes-for-closers-how-a-short-sellers-warning-helped-take-down-luckin-coffee-11593423002>

⁴³ https://ai-analytics.wharton.upenn.edu/wp-content/uploads/2022/02/Luckin_Case_Study.pdf, at 5-6.



Iowa Treasurer Roby Smith



Kansas Treasurer Steven Johnson



Kentucky Auditor Allison Ball



Kentucky Treasurer Mark Metcalf



Louisiana Treasurer John Fleming



Mississippi Treasurer David McRae



Missouri Treasurer Vivek Malek



Nebraska Auditor Mike Foley



North Dakota Treasurer Thomas Beadle



Ohio Treasurer Robert Sprague



Oklahoma Treasurer Todd Russ



Pennsylvania Treasurer Stacy Garrity



South Carolina Treasurer Curtis Loftis



South Dakota Treasurer Josh Haeder



Utah Treasurer Marlo Oaks



West Virginia Treasurer Larry Pack



Wyoming Treasurer Curt Meier