

June 22, 2023

The Honorable Gary Gensler
Chair
Securities & Exchange Commission
100 F Street NE
Washington, D.C. 20522

Dear Chair Gensler:

I write to express my concern with the continued exposure to American investors and fiduciaries posed by publicly traded companies based in the People's Republic of China (PRC). I believe this highlights the need for the Securities and Exchange Commission (SEC) to explore additional options to protect American economic and national security interests. Despite their presence on exchanges in the United States, these corporations are marked by chronic, often intentional, lack of transparency; poor corporate governance or fraudulent behaviors; and the constant threat of arbitrary or spurious enforcement actions by PRC regulators. In addition, Chinese corporations are not incentivized to properly disclose their business practices because the enforcement options available to U.S. regulators pale in comparison to the punitive threat from state regulators in the PRC. Examples in recent years of companies fitting these descriptions include iQiyi, Luckin Coffee, TAL Education Group, HNA Group, and Evergrande Group.

According to the U.S.-China Economic and Security Review Commission, as of January 2023, 252 Chinese companies are listed on the three major U.S. exchanges with a combined market capitalization of \$1.03 trillion. Of these, 161 companies (accounting for 89% of the total market capitalization of Chinese firms listed in the U.S.) utilize a variable interest entity (VIE) structure to access the U.S. financial marketplace. Since your wholly appropriate statement¹ and the Commission's subsequent investor bulletin on September 30, 2021, the China Securities Regulatory Commission (CSRC) has expanded anti-market regulations surrounding VIEs, increasing the risk to American investors. As this concern is not going away, additional actions should be explored.

Generally, I am concerned that U.S. investors, especially passive investors in indexes and exchange-traded funds (ETFs), are still unaware of the risks posed to their investments by the mere presence of Chinese companies in their funds. In addition to the risks outlined above, the potential of Chinese military and political aggression, including against Taiwan, adds an

¹ <https://www.sec.gov/news/public-statement/gensler-2021-07-30>

additional layer of risk to not only active and passive investors in Chinese companies listed on U.S. exchanges, but to publicly-traded U.S. firms with operations, supply chains, and business arrangements in both mainland China and Hong Kong. While any PRC-driven conflict in East Asia will have significant effects on capital markets around the globe, the impact will be compounded for investors in Chinese firms and shareholders of U.S. firms operating in China.

All of these concerns are exacerbated by the PRC's decision, in spite of the supposed agreement that the Public Company Accounting Oversight Board (PCAOB) reached with its Chinese counterparts last year, to pressure Chinese firms to move away from independent, well-regulated auditors and towards Chinese-based auditors more susceptible to state influence and coercion. Regulatory actions short of delisting will be impossible by the SEC without access to the books of Chinese companies. Last year's agreement and investigation into independent auditors was not a regulatory action, but a band-aid.

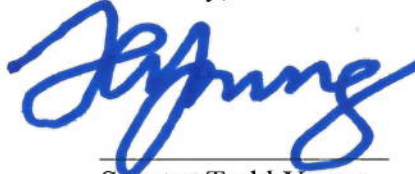
In light of these concerns, I believe that additional informational and regulatory actions by the SEC need to be on the table to protect American markets, shareholders, and our economic and national security. Accordingly, I request your response to the following questions:

1. Are current disclosure standards for Variable Interest Entities (VIEs) sufficient to protect U.S. investors? What further substantive regulations are needed to provide effective oversight of VIEs?
2. Given the willingness of the Chinese government to compel or encourage Chinese firms to engage in extensive economic and financial deception, what steps are you taking to ensure that access remains sufficient for the Commission to meet the enforcement requirements of the *Holding Foreign Companies Accountable Act* (P.L. 116-222), as amended?
3. What, if any, steps would you consider taking with regards to Regulation S safe harbor exemptions for securities offerings or sales in the PRC or offerings or sales elsewhere of PRC-listed firms?
 - a. What would you assess to be the financial effects of revoking Regulation S with regards to Chinese securities?
 - b. Would revocation permit additional enforcement or regulatory actions by the Commission to reduce risk to U.S. investors?
 - c. What, if any, risk to U.S. investors do you determine would follow if Regulation S were to be revoked in part or in whole?
4. What informational actions will you commit to taking to ensure the Commission is adequately educating asset managers, financial planners and advisors, and index makers to the threat posed by PRC regulators to Chinese firms, the risks of PRC political actions that may jeopardize the stability of Chinese financial markets, and the accompanying risk to index funds, ETFs, and passive investors?
 - a. Is the Commission considering any new actions or regulations mandating broader disclosure requirements for indexes?

- b. What additional actions, to include requiring registration of all PRC equity transactions and holdings in U.S. capital markets, is the Commission exploring? If you believe the Commission should not require registration, why not?
5. Given the inherent risk, why should Chinese companies that utilize a VIE structure be permitted to be listed on indexes, especially indexes utilized by passive investors and retirement and pension funds? Should a fundamental shift in the legality of VIEs in China occur, is it not true that the United States would have no one else to blame but ourselves for any accompanying financial losses?
6. In light of E.O. 14032, dated June 3, 2021, what actions is the Commission taking to actively and regularly assess the role of Chinese firms listed on U.S. exchanges in the Chinese Military-Industrial Complex and any potential role in the PRC's Military-Civil Fusion strategy? Can you describe the relationship between the Commission, the Department of the Treasury, and the Department of Defense in continually monitoring Chinese firms to ensure they are not actively contributing to the material or financial benefit of the People's Liberation Army?
7. Do you believe the Commission should be able to restrict the ability of U.S. investors to invest in PRC-based companies on the Entity List kept by the Bureau of Industry and Security at the Department of Commerce? If not, why?
 - a. What steps can the Commission take to ensure investors are aware that investments in Listed companies, subsidiaries thereof, or successor companies may be supporting the economic and national security objectives of the Chinese Communist Party?
8. Do you believe the Commission should explore a mandatory risk assessment for corporate directors and governors to provide to shareholders on an annual basis that details the risk to shareholders of any Chinese regulatory or political action that may jeopardize operations, investments, financing, or supply chains in China?
 - a. If not, why?
 - b. If so, what methodologies do you believe the Commission should require U.S. publicly traded firms to pursue?

Thank you for your prompt response and attention to these matters, and I look forward to further engagement on these pressing issues.

Sincerely,



Senator Todd Young
United States Senator