

United States Senate
WASHINGTON, DC 20510-0908

COMMITTEES:
APPROPRIATIONS
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS AND ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

November 16, 2020

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chairman Clayton:

I write to urge you to expeditiously implement the recommendations contained within the President's Working Group on Financial Markets (PWG) Report on Protecting United States Investors from Significant Risks from Chinese Companies released on August 6, 2020. Specifically, the Securities and Exchange Commission (SEC) should make unfettered Public Company Accounting Oversight Board (PCAOB) access to the audits of firms listed on U.S. securities exchanges a condition for both initial and continued listing.

As I detailed in a July 21, 2020 letter to you and the other members of the PWG, American stock exchanges list Chinese firms, including 13 state-owned enterprises, which are widely shielded by their government from the full oversight of American financial regulators.¹ According to the U.S.-China Economic and Security Review Commission, as of October 2020, these firms represent a total of \$2.2 trillion in market capitalization.² This untenable situation presents a heightened risk of fraud to everyday retail investors. It also creates a two-tiered system within our financial markets, with one set of rules for firms from across the world and another set of more lenient rules for Chinese companies. According to the PCAOB, "since signing the MOU in 2013, Chinese cooperation has not been sufficient for the PCAOB to obtain timely access to relevant documents and testimony necessary to carry out our mission consistent with the core principles identified above, nor have consultations undertaken through the MOU resulted in improvements."³

Fortunately, there are solutions to this problem that are available to the SEC. As detailed in the PWG Report, Sections 23(a) and 6(b)(5) of the Exchange Act provide the SEC with authority to amend the listing standards of U.S. securities exchanges when it is "necessary or appropriate" to "insure the fair administration" of stock exchanges.⁴ I urge the SEC to take requisite actions under this authority to protect American investors and the integrity of U.S. capital markets by requiring PCAOB audit oversight as a condition for initial and continued listing on American securities exchanges.

¹ <https://www.rubio.senate.gov/public/index.cfm/2020/7/rubio-urges-president-s-working-group-on-financial-markets-to-address-china-s-exploitation-of-u-s-financial-system>

² <https://www.uscc.gov/research/chinese-companies-listed-major-us-stock-exchanges>

³ <https://pcaobus.org/International/Pages/China-Related-Access-Challenges.aspx>

⁴ <https://home.treasury.gov/system/files/136/PWG-Report-on-Protecting-United-States-Investors-from-Significant-Risks-from-Chinese-Companies.pdf>

Thank you for your work to ensure that the rule of law is applied evenly to all participants in American capital markets. I look forward to working with you to ensure that this important concern is fully addressed.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Rubio', with a stylized flourish at the end.

Marco Rubio
U.S. Senator