



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](https://www.federalregister.gov/documents/2021/06/07/2021-12019/addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples) (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/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.cnn.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 Companies Listed on US Stock Exchanges 03 2025.pdf](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>

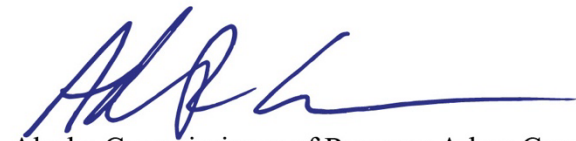
³⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3119912, at 9–10.

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

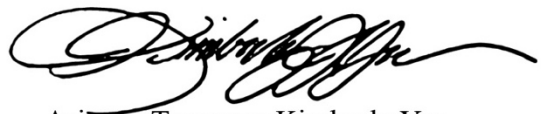
*without notice”), “U.S. investors may suffer significant losses with little or no recourse available.”*⁴⁰ Second, the opaqueness within the VIE structure hinders the SEC’s ability to protect investors by identifying fraud and accounting deficiencies. The America First Investment Policy expressed concern 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/coffees-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.



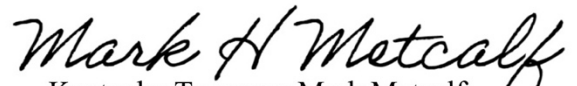
Iowa Treasurer Roby Smith



Kansas Treasurer Steven Johnson



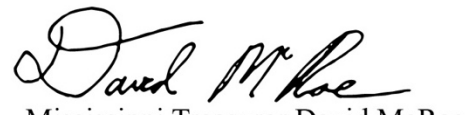
Kentucky Auditor Allison Ball



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



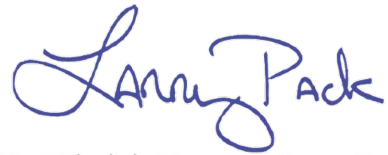
South Carolina Treasurer Curtis Loftis



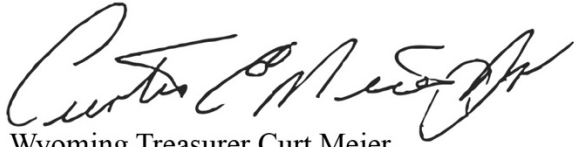
South Dakota Treasurer Josh Haeder



Utah Treasurer Marlo Oaks



West Virginia Treasurer Larry Pack



Wyoming Treasurer Curt Meier