

# United States Senate

WASHINGTON, DC 20510

June 12, 2019

The Honorable Robert E. Lighthizer  
United States Trade Representative  
Office of the United States Trade Representative  
600 17th St NW  
Washington, DC 20508

Dear Ambassador Lighthizer:

As you continue your work on a fair trade deal with the Chinese government, we urge you to include conditions in the deal that would require Chinese companies listed in the United States to comply with U.S. auditing and reporting requirements. The current failure of China to comply with our laws and play by the same rules as everyone else puts American investors and the credibility of our markets at risk.<sup>1</sup> Because of this negligence, we introduced the Holding Foreign Companies Accountable Act, which we believe should be a guidepost for your negotiations with the Chinese government on this issue.

In 2005, the Public Accounting Oversight Board (PCAOB), began inspecting foreign auditors “in order to assess those firms’ compliance with the Sarbanes-Oxley Act, the rules of the Board, the rules of the Securities and Exchange Commission (SEC), and professional standards in connection with their performance of audits, issuance of audit reports, and related matters involving U.S. public companies, other issuers, brokers and dealers.”<sup>2</sup> The PCAOB is able to inspect these firms because it entered into cooperative agreements with foreign regulators around the world.

Achieving these agreements, has not been easy, but our regulators have been able to come to an agreement with virtually every other country except for China. To put this into perspective, in 2013, the PCAOB was unable to conduct inspections of foreign auditors in 15 countries. In just six years, they have been able to come to an agreement with every country except for China and Belgium, and it is our understanding that Belgium has made meaningful progress with the PCAOB.

The fact that China stands alone in its non-compliance with PCAOB standards is yet another example of how it fails to play by the same rules as other countries. This point was underscored in December when the Chairmen of the PCAOB and the SEC said in a joint statement that “for certain China-based companies listed on U.S. stock exchanges, the SEC and PCAOB have not had access to the books and records and audit work papers to an extent consistent with other jurisdictions both in scope and timing.”<sup>3</sup>

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<sup>1</sup> Duhnke, William and Jay Clayton, *Joint Statement on the Vital Role of Audit Quality and Regulatory Access to Audit and Other Information Internationally—Discussion of Current Information Access Challenges with Respect to U.S.-listed Companies with Significant Operations in China*, December 7, 2018. available at <https://pcaobus.org/News/Speech/Pages/statement-vital-role-audit-quality-regulatory-access-audit-information-internationally.aspx>

<sup>2</sup> Non-U.S. Firm Inspections, Public Company Accounting Oversight Board (PCAOB). available at <https://pcaobus.org/International/Inspections/Pages/default.aspx>.

<sup>3</sup> Duhnke and Clayton, Joint Statement.

Hon. Robert E. Lighthizer

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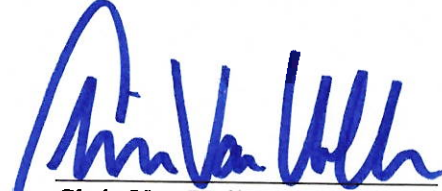
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China's failure to comply with our disclosure laws has already impacted investor confidence and the integrity of our financial markets. As you may be aware, in 2009, the U.S. markets saw a boom of Chinese companies registering on the U.S. exchanges. By circumventing our laws, many of these fraudulent companies merged with American shell companies and got access to U.S. investors without an initial inspection by the SEC. Because of this, many of these Chinese-based companies crashed in 2011. This crash, commonly referred to as the "reverse merger fraud crisis," led to the loss of billions of dollars in market capitalization.<sup>4</sup> According to a 2013 McKinsey and Company report, the losses were over \$40 billion in market value.<sup>5</sup>

The SEC, PCAOB, and the U.S. exchanges responded to the reverse merger crisis in a number of ways. For example, the SEC filed numerous enforcement cases against Chinese companies and their attorneys, auditors, and "gatekeepers." Additionally, the New York Stock Exchange and NASDAQ delisted over 50 Chinese companies between 2011 and 2012.<sup>6</sup>

Despite these actions, we still do not have complete information regarding Chinese companies listed in the U.S. In order to remedy the fact that China will not comply with our regulators, we introduced the Holding Foreign Companies Accountable Act. Our bill would amend Sarbanes-Oxley to impose stronger requirements on SEC registered companies based in foreign countries. The bill expressly requires foreign companies that are registered with the SEC to allow the PCAOB to review their books. While the bill does not specifically name any country, it would solve this ongoing issue the PCAOB and the SEC have with China.

We ask that you include the substance of this bill in your trade negotiations with the Chinese government, in order to protect the everyday American investor. Thank you for your attention to this matter.



Chris Van Hollen  
United States Senator

Sincerely,



John Kennedy  
United States Senator

<sup>4</sup> Fergusson, Lewis, Board Member PCAOB, "Investor Protection through Audit Oversight." California State University 11th Annual SEC Financial Reporting Conference, September 21, 2012, Irvine, California. *available at* [https://pcaobus.org/News/Speech/Pages/09212012\\_FergusonCalState.aspx](https://pcaobus.org/News/Speech/Pages/09212012_FergusonCalState.aspx)

<sup>5</sup> *How they fell: The collapse of Chinese cross-border listings*, McKinsey & Company, December 2013. Available at <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-they-fell-the-collapse-of-chinese-cross-border-listings>

<sup>6</sup> McKenna, Francine, "After China fraud boom, Nasdaq steps up scrutiny of shady listings," MarketWatch, June 20 2016. *available at* <https://www.marketwatch.com/story/after-china-fraud-boom-nasdaq-steps-up-scrutiny-of-shady-listings-2016-06-20>