

July 22, 2021

Gary Gensler
Chairman
U.S. Securities and Exchange Commission (SEC)
100 F Street NE
Washington, DC 20549

Re: Implementation of the *Holding Foreign Companies Accountable Act* (P.L. 116-222)

Dear Chairman Gensler:

We are troubled by reports that the SEC has not sufficiently acted to implement the *Holding Foreign Companies Accountable Act* (P.L. 116-222), bipartisan legislation sponsored by Senators John Kennedy (R-LA) and Chris Van Hollen (D-MD) that unanimously passed Congress and was enacted into law on December 18, 2020.

This landmark law will ensure that Chinese and other foreign companies traded on U.S. exchanges are subject to the same independent audit requirements that apply to American companies. Importantly, the law protects U.S. investors by prohibiting securities of a company from being listed on any of the U.S. securities exchanges if the company has failed to comply with the Public Company Accounting and Oversight Board's (PCAOB) audits for three consecutive years. It also requires public companies to disclose whether they are owned or controlled by a foreign government, including the Chinese government and Communist Party.

We appreciate that the SEC has begun the formal process to implement the *Holding Foreign Companies Accountable Act* and issued an Interim Final Rule (Release No. 34-91364; IC-34227; File No. S7-03-21). However, recent reports state Congress has "discovered the agency might not begin enforcement until 2025 at the earliest."¹

Since the PCAOB entered into a Memorandum of Understanding (MOU) with Chinese regulators in 2013, Beijing has consistently challenged efforts to inspect audits of U.S.-listed companies based in China.² There is no justification to continue allowing Chinese companies to

¹ <https://www.ft.com/content/4212970d-b679-4f3a-a825-0ef53bf56358> "Pressure is building on the US Securities and Exchange Commission to finalise regulations to de-list Chinese companies that fail to comply with American auditing rules, after lawmakers discovered the agency might not begin enforcement until 2025 at the earliest."

² <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-enters-into-enforcement-cooperation-agreement-with-chinese-regulators> 430

run afoul of U.S. law, an issue that Congress sought to address by passing the *Holding Foreign Companies Accountable Act*.

When Congress unanimously passed the *Holding Foreign Companies Accountable Act*, lawmakers intended for the SEC to begin implementing the law without delay. A June 2021 letter signed by Senators John Kennedy (R-LA) and Marco Rubio (R-FL) make clear that Congressional intent is that the SEC “continue the critical work of implementing the Holding Foreign Companies Accountable Act without delay.”³

Congress is also poised to strengthen the SEC’s ability to remove non-compliant Chinese companies from U.S. exchanges. On June 22, 2021, the Senate passed unanimously the *Accelerating Holding Foreign Companies Accountable Act*, which would require foreign companies to comply with PCAOB audits within two consecutive years instead of three.

As the SEC continues to implement the *Holding Foreign Companies Accountable Act*, we urge the Commission to immediately take action to remove non-compliant Chinese companies from U.S. exchanges. Accordingly, the SEC should ensure that annual reports filed in 2021, which include financial statements for fiscal year 2020, would be the first eligible non-inspection year for an issuer. Delaying this determination into 2022 would be contrary to Congressional intent and only increase the exposure of American investors to fraudulent Chinese companies.

The SEC must address the CCP’s exploitation of U.S. capital markets at the expense of American workers and industry, as well as our economic and national security. If Chinese companies want access to our markets, they must comply with U.S. laws and regulations for financial transparency and accountability. Accordingly, we urge the SEC to implement the *Holding Foreign Companies Accountable Act* without further delay.

Sincerely,



Zach Mottl, Chairman
Coalition for a Prosperous America



Michael Stumo, CEO
Coalition for a Prosperous America

³ <https://www.kennedy.senate.gov/public/2021/6/kennedy-rubio-urge-sec-to-ensure-pcaob-continues-to-hold-foreign-companies-accountable>