COALITION for a PROSPEROUS AMERICA

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Erica Y. Williams
Chair
Public Company Accounting Oversight Board
1666 K Street NW, Suite 300
Washington, DC 20006

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

Dear Chair Williams and Chairman Gensler:

In light of recent news regarding the implementation of P.L. 116-222, also known as the *Holding Foreign Companies Accountable Act* (HFCAA), we write to you today to outline serious concerns that all retail and institutional investors are still at risk as a result of Chinese companies failing to comply with U.S. law.

The Public Company Accounting Oversight Board (PCAOB) voted on December 15, 2022, to vacate its determination from 2021 that People's Republic of China (PRC) authorities prevented the PCAOB from inspecting and investigating firms headquartered in mainland China and Hong Kong completely. At the time, investors were told it was for good cause because there are now standards in place that are being complied with by Chinese officials, auditors, regulators, and covered issuers. These standards were supposed to protect investors and mitigate the harm left unchecked for decades when uninspected and noncompliant covered issuers had unfettered access to U.S. capital markets. However, the PCAOB's vote is unfounded, and it is shrouded in dubious inspections and hasty audits that fail to adequately protect American retail investors and pensioners.

Under the HFCAA, Chinese and other foreign companies traded on U.S. exchanges must be delisted if, in three consecutive years, they do not allow the PCAOB to oversee their audits in the same way American and other foreign companies are required to do so. It also requires public companies to disclose whether they are owned or controlled by a foreign government, including the Chinese Communist Party (CCP).

As stated by the PCAOB Fact Sheet, "Such a trading prohibition would be carried out by the Securities and Exchange Commission (SEC) and would apply to companies the SEC identifies as having used registered public accounting firms in mainland China and Hong Kong for three consecutive years."

The PCAOB should not yet have voted to overturn their prior determination that the PRC did not allow inspections of its public accounting firms and therefore undermined the intent of Congress and the law it is supposed to be implementing. The purpose of the law was not to give the PCAOB "leverage" to negotiate with the Chinese Securities Regulatory Commission (CSRC), but rather to protect the American people and investors in the United States. The law was not meant to be a bargaining chip to come to an agreement that appears to fail to satisfy requirements under U.S. law to provide auditors to completely investigate the audits of Chinese companies. Concerningly, PCAOB's agreement with the CCP allows U.S. investigators to only look at a small subset of audit firms and an even smaller sampling of transactions and audits within. The law was meant to insure compliance with U.S. accounting standards for the covered issuers and make sure that audits were in place—via reputable public accounting firms—to provide protections for investors and assurances of mitigated risks in the foreign financial markets and international jurisdictions. China never complied with U.S. standards since the passage of the Sarbanes-Oxley Act, and this law was intended to bring Chinese (mainland and Hong Kong based) public issuers into compliance.

But rather than achieving this mission of compliance, it seems that PCAOB went down a path of giving the CSRC a new deal, with the Statement of Protocol agreed upon August 26, 2022. Of course, the deal was contingent on access to audits and related work papers to ensure proper inspections and therefore clear public auditors for the purposes of approving and maintaining the listings of Chinese covered issuers on U.S. public exchanges.

We therefore request responses to the following questions to understand how the determination by the PCAOB Board was made and the implementation of the Statement of Protocol that furthers the full implementation of the HFCAA:

1. The PCAOB Board determination was made based on access over a 9-week period in which the 30 staff were allowed access to Hong Kong only. **Why was the PCAOB not allowed access to mainland China? How can the PCAOB make a determination about the audit quality for a jurisdiction in which they cannot actually inspect the audit work papers or other elements of the audit process by international or mainland China audit firms?** We understand that papers were transferred to Hong Kong for review by U.S. authorities but are unclear as to how the integrity of the work papers, their completeness, authenticity, and more are guaranteed and maintained.

2. The PCAOB selected eight engagements for the purposes of this audit inspection**. How many total engagements are in existence? Furthermore, how many audits or partial audits exist for the total set of covered issuers in question for mainland China and Hong Kong?** It is nearly impossible to ascertain whether these eight engagements are enough evidence for the PCAOB to reverse its previous determination if the eight engagements—both in type and in quantity—are not placed in proper context. These eight engagements are somehow supposed to be representatives of audits, transaction types, and engagements of hundreds of covered issuers in question. Eight engagements seems an insufficient sample size when discussing a historically non-compliant jurisdiction that denied audit inspections involving hundreds of covered issuers.

3. The two audit companies selected are both not mainland China firms. **Why is that, and how will the PCAOB seek to achieve access to non-international audit firms? How many firms are involved in the full or partial audits of the covered issuers in operation based in mainland China and Hong Kong?** It seems there is a limited and selective nature of sets and subsets of audit companies and audits within (and specific

transactions) that have been chosen which limits a full inspection of the jurisdictions in question. Furthermore, KPMG's global network was recently sanctioned and fined by the PCAOB for various activities. While these violations occurred within other global jurisdictions, there remains concern about the reliability of KPMG's practices.

4. The Fact Sheet indicates that there were three investigations initiated in March of 2022, separate from the most recent inspections. **What is the timeline for sharing more information regarding those and the covered issuers involved with investors, and how do they inform the decision of the PCAOB Board to reverse their findings on China and Hong Kong compliance?** Furthermore, the Fact Sheet denotes "deficiencies" found in the eight engagements assessed for the purposes of implementing the new Statement of Protocol. While there will be more information shared about these in the forthcoming full reports, it is also stated that there will be a one-year period given for firms to make corrections. **Will investors be made aware of these audit deficiencies and the covered issuers in question sooner than the one-year correction period?**

Without answers to these questions, it seems the parameters, accomplished work, results, and decisions made—all in furtherance of implementing the HFCAA—have failed to fulfill the intent of the law and to protect investors based upon the information publicly disclosed to date. Without answers to these questions and further clarifications, it seems the PCAOB Board has hastily overturned its prior determination of non-inspection ability in Hong Kong and China and is shielding Chinese covered issuers, giving them continued unfettered access to U.S. public exchanges.

By avoiding having the SEC forcibly delist non-compliant Chinese covered issuers, investors remain unprotected and exposed to heightened risk by all Chinese companies that are non-compliant—not to mention rife with human rights violations and national security risks. While some Chinese companies voluntarily initiated delisting earlier this year, over 250 of them remain on U.S. exchanges and available to U.S. investors without any proper due-diligence or investor warnings. Furthermore, investors remain exposed to Chinese companies via passive investment in ETFs and other investment products where even less regulatory requirements exist to protect investors from CCP-linked companies. These over 4,000 A-share companies are tracked by indexes and available to retail investors without warning. American investors deserve due diligence on all Chinese investment products is sorely needed. Americans want to know that their investments are safe and worthwhile.

We look forward to future engagements with both of your agencies and receiving answers to these pressing questions presented on behalf of concerned American investors and businesspeople.

Sincerely,

Zach Mottl, Chairman	Michael Stumo, CEO
Coalition for a Prosperous America	Coalition for a Prosperous America

Cc: The Honorable John Kennedy, U.S. Senator
The Honorable Chris Van Hollen, U.S. Senator
The Honorable Caroline A. Crenshaw, Commissioner of the SEC
The Honorable Jaime Lizárraga, Commissioner of the SEC
The Honorable Hester M. Peirce, Commissioner of the SEC
The Honorable Mark T. Uyeda, Commissioner of the SEC