May 5, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Holding Foreign Companies Accountable Act Disclosure – Interim Final Rule (Release No. 34-91364; IC-34227; File No. S7-03-21)

Dear Ms. Countryman:

The American Securities Association (ASA)[1] appreciates this opportunity to comment on the interim final rule (Rule) issued by the Securities and Exchange Commission (SEC or Commission) to implement certain provisions of the Holding Foreign Companies Accountable Act (HFCA Act).

Congress unanimously passed the HFCA Act following a decade of fraud perpetrated by the Chinese Communist Party (CCP) that has harmed millions of America's mom-and-pop investors, retirement savers, and working families. The continued refusal of the Chinese government to allow audit inspections of Chinese-based companies is finally being dealt with.

The ASA commends the SEC for acting swiftly on this economic and national security priority, and to implement disclosure requirements for foreign companies based in jurisdictions where the Public Company Account Oversight Board (PCAOB) determines it is unable to fully inspect financial auditors. We look forward to working with the SEC to ensure the law is fully implemented to prevent future high-profile accounting scandals and questionable governance issues by U.S. exchange-listed Chinese companies that directly harm American investors.[2]

The ASA largely supports the Rule as adopted because it will inform investors about the level of ownership and control the Chinese government has in listed companies.[3] Just as important, it will

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[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

[2] https://www.sec.gov/news/press-release/2020-319
https://www.marketwatch.com/story/tal-education-shares-slide-9-premarket-after-company-uncovers-fraudulent-sales-accounting-employee-arrested-2020-04-08
https://www.institutionalinvestor.com/article/b1mlyjys554sgd/They-d-Find-Fraud-Fraud-Fraud

[3] https://www.asiatimesfinancial.com/ccp-announces-plan-to-take-control-of-chinas-private-sector "President issues 'important instructions' to all regions to boost party control over private enterprise and rejuvenate the nation; all firms will need employees from the party to boost law abidance and moral standard".

reveal the name of each Communist Party official that sits on a company's board. Given the current focus on governance of public companies, it seems logical for investors to also know about every Chinese Communist Party official who is exerting control over the operations and finances of the Chinese companies listed on both the NASDAQ and the NYSE.

Recommendations.

As the Commission moves towards full implementation of the Rule, the ASA makes the following recommendations: (I) the PCAOB and SEC should include fiscal year 2020 audits in their determination of "non-inspection years" for issuers; (II) the Commission should publish a list of Commission-Identified Issuers on its website and issue alerts for investors regarding the risk of investing in U.S.-listed Chinese companies; and (III) margin trading of Commission-Identified Issuers should be prohibited.

I. The PCAOB and SEC should include fiscal year 2020 financial statements in their determination of "non-inspection years" for issuers.

As the Rule notes, the HFCA provides that "non-inspection years," i.e. a year in which the PCAOB is unable to fully inspect an auditor, could be any year after the date of the enactment of the HFCA. It appears the current SEC interpretation of the statutory text would mean that the first possible non-inspection year for an issuer would be 2022, not 2021.

We believe this is an incorrect reading of both the text and Congressional intent, and that the SEC should make clear that annual reports filed in 2021 which include financial statements for the fiscal year ended December 31, 2020 would be the first eligible non-inspection year for an issuer. Delaying this determination into 2022 would be contrary to Congressional intent and unnecessarily prolong American investors exposure to fraudulent Chinese companies.[4]

II. The SEC should publish a list of Commission-Identified Issuers on its website and issue alerts for investors regarding the unique risk associated with U.S.-listed Chinese companies.

The Commission seeks comment on whether it should make a list of Commission-Identified Issuers publicly available. We believe the Commission must make this list available and easily accessible on its website. It should also go further and issue public statements (such as a "risk alert") to investors regarding the risks associated with opaque Chinese businesses and the

[4] https://markets.businessinsider.com/news/stocks/david-einhorn-investor-letter-archegos-gsxtechedu-stock-trading-real-story-2021-4-1030314247?op=1 GSX Techedu is yet another Chinese company listed on an registered exchange that short-seller Carson Block said was a "near-total fraud," while Andrew Left of Citron said it's "the most blatant Chinese stock fraud since 2011." This continues to happen while Wall Street banks, asset managers, and exchanges turn a blind eye to the harm it causes to investors and the integrity of our markets. How many more times must this happen before the SEC stops the CCP's fraud on our markets?

implicit and/or explicit control over these companies by members of the Chinese Communist Party.

American investors are blind as to whether Chinese companies are growing, profitable, or losing money because the Chinese Communist Party asserts a national security privilege to prevent routine financial audits from taking place.[5] This intentionally keeps investors in the dark and subjects them to a risk of fraud that is very real. While the HFCA Act made great progress towards addressing this problem, there is a risk that Main Street investors are not fully aware of the disclosures provided in the Rule, or do not know whether certain companies they are invested in are Commission-Identified Issuers.

III. Margin Trading of Commission-Identified Issuers should be prohibited.

Given the inherit risks of investing in Chinese companies, we believe the SEC should, in conjunction with full implementation of the HFCA Act, take steps to prohibit the trading of Commission-Identified Issuers on margin. The recent attention surrounding retail trading activity on mobile applications only heightens the risk that Main Street investors will be the targets of the fraud the Chinese Communist Party is running on America's capital markets.

Since it is highly likely that many Commission-Identified Issuers will ultimately be delisted in the United States, the SEC should prohibit the trading of these stocks on margin to avoid creating unnecessary risks that will disrupt markets and needlessly harm for small investors who cannot afford losses. We believe this is a reasonable and common-sense regulatory response to the underlying issue and fully within the SEC's mandate to protect investors.

Communist China Continues to Exploit the Passive Index Loophole.

Since modern day China is run as a "Party-State" and funds that flow to Chinese industry cannot be separated from those going to the Chinese Communist Party, one can only assume that this money goes to underwrite everything the Chinese Communist Party touches.[6] This includes factories that use forced labor,[7] re-education camps for the Uyghurs,[8] building coal plants that destroy the environment,[9] the rise of the Chinese military,[10] and a cyber-army that relentlessly attacks the U.S. and other nations of the free world.[11]

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[5] https://www.wsj.com/articles/sec-revives-fight-over-inability-to-inspect-chinese-auditors-of-alibaba-baidu-1544229843
[6] https://www.bbc.com/news/world-asia-china-51697800; https://www.reuters.com/article/us-hikvision-usa-uighur/u-s-mightblacklist-chinas-hikvision-over-uighur-crackdown-source-idUSKCN1SS28U.
[7] https://thehill.com/blogs/congress-blog/homeland-security/522443-countering-chinas-forced-labor-practices;
[8] https://www.bbc.com/news/world-asia-china-51697800; https://www.reuters.com/article/us-hikvision-usa-uighur/u-s-might-blacklist-chinas-hikvision-over-uighur-crackdown-source-idUSKCN1SS28U.
[9] *China's Engine of Environmental Collapse,* Richard Smith, Pluto Press, 2020.
[10] https://www.cnn.com/2020/10/29/asia/us-election-us-military-indo-pacific-intl-hnk-ml/index.html
[11] https://www.cnbc.com/2020/07/07/fbi-chief-slams-chinese-cyberattacks-against-us-hudson-institute.html; https://www.justice.gov/opa/pr/chinese-military-personnel-charged-computer-fraud-economic-espionage-and-wire-fraud-hacking.

Interestingly, despite Wall Street's public support for environmental and social issues, it has neither stopped doing business with, nor begun to divest its portfolios of any security subject to Communist China's repressive authoritarian regime.[12] Until something changes, Wall Street will continue to push Chinese companies into our U.S. markets,[13] and those companies will continue to pose a major risk to American retirees and savers.[14]

Wall Street is taking advantage of a regulatory loophole that allows passive index funds and index providers to direct American investor dollars into mainland Communist Chinese companies included in international or emerging market indices. As the SEC is aware, inclusion in an index allows Wall Street to steer billions of dollars into opaque Communist Party-Controlled Chinese businesses.[15] Yet, investors may have no idea that the index fund they are buying includes direct exposure to Communist Party-controlled entities and/or Chinese companies with non-existent internal controls and unverified financials.[16]

The ASA has previously called on the SEC to close the passive index loophole by prohibiting the inclusion of any Chinese company in an index fund. Hard earned American investor dollars cannot continue to flow into the Blackbox that is Communist China. We believe now is the time for the Commission to protect American investors from mainland Chinese companies that are included in passive index funds and apply **EVERY** SEC rule to each company included in an index.

The Biden Administration has adopted a "Buy American" policy and it seems logical for the SEC to adopt the administration's whole-of-government approach by promoting American investment in American companies. Failing to close the passive index loophole will continue to provide Chinese companies with an *unfair and unequal playing field* over American companies[17] and play right into the hands of the Chinese Communist Party.[18]

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[12] https://www.wsj.com/articles/china-has-one-powerful-friend-left-in-the-u-s-wall-street-11606924454; https://www.bloomberg.com/news/articles/2020-12-03/wall-street-keeps-pushing-into-china-as-washington-balks
[13] https://www.theepochtimes.com/chinese-companies-hold-record-ipos-in-us-despite-tensions_3798475.html "China-based companies have raised around $4.4 billion through March 31, 2021 in 20 separate IPO transactions, according to data from Deloitte & Touch."
[14] https://www.fool.com/investing/2020/12/12/is-investing-in-chinese-stocks-worth-the-risk-righ/.
[15] https://oxfordbusinessgroup.com/overview/indexed-growth-inclusion-global-indices-often-results-greater-flow-funds-capital-markets-it-just-one
[16] https://pcaobus.org/oversight/international/denied-access-to-inspections; The PCAOB noted that it is unable to inspect the auditors of over 200 companies listed on exchanges in the United States or to determine who really controls them.
[17] https://www.theepochtimes.com/chinese-companies-hold-record-ipos-in-us-despite-tensions_3798475.html In Q1 2021, there were only six U.S. IPOs raising $370 million for China-based companies v. 20 from raising $4.4. billion. Chinese companies should not have a regulatory cost advantage over American companies competing for the same capital in U.S. markets.
[18] *Political Warfare "Strategies for Combating China's Plan to "Win without Fighting",* Kerry K. Gershaneck, Marine Corp University Press, 2020. https://www.usmcu.edu/Portals/218/Political%20Warfare_web.pdf?ver=bUhYJSVrMH17edldgyg28w%3d%3d

Conclusion.

Twenty years ago, the consensus theory was that as China grew wealthier, it would become a responsible international stakeholder. Unfortunately, that theory never materialized. Today, Communist China seeks to become the world's dominant superpower. To realize that goal, the Chinese Communist Party needs access to Western capital. Many on Wall Street still push the consensus theory narrative to justify the profits they reap from facilitating that access. They will continue to put their own financial interests over the economic and national security interests of the United States until it is no longer legal or profitable to do so.[19]

The Biden Administration warned that "China's leaders seek unfair advantages, behave aggressively and coercively, and undermine the rules and values at the heart of an open and stable international system."[20] Loopholes and exemptions have allowed the savings of American investors to fund Chinese companies that are outright frauds, arms of the Chinese Communist Party, or engaging in activities that are hostile to American interests for far too long.[21] The SEC has explicit regulatory authority over regulated Wall Street entities facilitating Communist China's fraud on America's capital markets, and a *unanimous* Congress has told the Commission to use it.

We appreciate the Commission's action to implement the Rule and attention to this critical and bipartisan investor protection issue. The ASA and its member organizations stand ready to assist the SEC to end the Chinese Communist Party's exploitation of America's capital markets and protect those working families, retirees, and savers who invest our markets.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association

Cc:
William Duhnke III, Chairman, Public Company Accounting Oversight Board

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[19] https://www.uscc.gov/research/chinese-companies-listed-major-us-stock-exchanges. "As of October 2, 2020, there were 217 Chinese companies listed on these U.S. exchanges with a total market capitalization of $2.2 trillion. There are 13 national-level Chinese state-owned enterprises (SOEs) listed on the three major U.S. exchanges."

[20] *Interim National Security Strategic Guidance*, pg 20. https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf

[21] https://healthymarkets.org/archives/2101; https://www.americansecurities.org/post/why-are-american-investors-funding-chinese-fraud.