

United States Senate

WASHINGTON, DC 20510

July 28, 2021

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

Dear Chair Gensler:

With the recent crackdown by the Chinese Communist Party (CCP) on Chinese companies listed on U.S. securities exchanges, we write as concerned U.S. Senators on behalf of American investors to demand immediate and robust action by the Securities and Exchange Commission (SEC). This should begin with the expeditious implementation and enforcement of the Holding Foreign Companies Accountable Act (P.L. 116-222) and thorough investigations of U.S. listed Chinese companies' concerning lack of transparency.

As an illustration of our concern, the Chinese ride-hailing company, Didi Global Inc. recently held its initial public offering (IPO) on the New York Stock Exchange (NYSE). Prior to the offering, Didi officials and executives downplayed the risks of imminent Chinese regulation in its IPO prospectus filed at the SEC despite news reports that the CCP warned Didi officials to delay the IPO. During the listing, Didi officials even purposefully kept a low profile, seeking to avoid more scrutiny from Beijing. The IPO successfully raised \$4.4 billion, largely from U.S. based investors.

Immediately following the IPO, the CCP's cyber arm, the Cyberspace Administration of China (CAC), opened an investigation into Didi claiming that the company violated Chinese privacy and national security laws. The CAC ordered the removal of the company's app from all Chinese app stores and for Didi to stop registering new users. Resulting from this CAC crackdown, Didi's stock price plummeted only two days after its IPO. The timing of the CAC investigation conveniently occurred after the company was able to snatch billions of dollars from American investors. In fact, recent news reports suggest that the CCP will penalize Didi almost \$3 billion, which means that these American dollars could be going directly into CCP coffers. Now, the CAC has vowed stricter oversight of data security and overseas listings. All signs point to continued crackdowns as the CAC has opened investigations into two more U.S. listed Chinese technology companies: Full Truck Alliance and Boss Zhipin. This highlights the tension between Chinese companies and their investors who desperately want access to U.S. capital markets, and the CCP that is nervous about their own tech firms' power and increased oversight by U.S. regulators.

The Didi IPO also highlights the troubling trend of Chinese companies taking advantage of our capital markets while ignoring the transparency that is required under U.S. law to access U.S. markets. According to the U.S.-China Economic and Security Review Commission, as of October 2020 there were 217 Chinese companies listed on U.S. exchanges, including 13 companies that are claimed by the CCP as Chinese state-owned enterprises. We have serious doubts that these companies are in compliance with U.S. transparency requirements. Also of concern, many Chinese companies, including

Didi, utilize Variable Interest Entities (VIE) which are essentially shell companies set up in the Cayman Islands to satisfy both countries' regulators. These companies can tell the CCP that it is still wholly held by Chinese nationals, while they allow Western shareholders access.

Equally concerning is that many of the largest U.S. underwriters have enthusiastically collected billions in fees and profits from these Chinese firms being listed on U.S. exchanges. Asset managers and index providers similarly profit by including Chinese firms in investment offerings and prominent indexes, including those used by the federal government's Thrift Savings Plan. These American financial institutions do this, while seemingly looking the other way on transparency, the risks of CCP influence, and CCP human rights violations, all to the detriment of the American retail investor and other U.S. interests.

All of this requires the SEC to get much more serious and focused on U.S. listed Chinese companies, starting with the full enforcement of the Holding Foreign Companies Accountable Act that became law last year after passing both chambers of Congress *unanimously*. This law will delist Chinese companies that do not comply with Public Company Accounting Oversight Board inspections within three years. The SEC should recognize the urgency of implementing this law and begin counting compliance years now. Congress has already recognized this urgency and is currently considering accelerating this law's compliance shot clock.

The serious and focused posture toward Chinese companies should not stop there. We recommend the following actions for the SEC to undertake:

- The SEC should launch investigations into Chinese companies, like Didi, and their underwriters to combat potential fraud and reporting oversights.
- The SEC should investigate the potential risks of VIE structures used by Chinese companies to U.S. investors.
- The SEC should consider efforts to coordinate strengthened compliance standards among U.S., European, and Japanese stock exchanges to prevent prospective or delisted Chinese companies from trying their luck in the other prominent markets.
- The SEC should investigate index providers doing business in the United States that continue to add Chinese companies to their products despite less and less transparency about these very companies.

We are expecting swift action in all of these areas from the SEC to protect U.S. investors, as well as appropriate reporting to Congress.

Sincerely,



Dan Sullivan
U.S. Senator



John Kennedy
U.S. Senator



Bill Hagerty
U.S. Senator



Kevin Cramer
U.S. Senator



Rick Scott
U.S. Senator



Marsha Blackburn
U.S. Senator



Tom Cotton
U.S. Senator