

Via Email

July 8, 2020

The Honorable Jay Clayton  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

*Re: July 9 Roundtable on Emerging Markets*

Dear Mr. Chairman:

I am writing in response to the May 4 “Statement Announcing SEC Staff Roundtable on Emerging Markets” soliciting “views on the risks of investing in emerging markets, including China.”<sup>1</sup>

The Council of Institutional Investors (CII) is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true “Main Street” investors through their pension funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$35 trillion in assets under management.<sup>2</sup>

As the leading voice for effective corporate governance and strong shareholder rights, CII believes that accurate and reliable audited financial statements are critical to investors in making informed decisions, and vital to the overall well-being of our capital markets.<sup>3</sup> Consistent with our membership approved policies, we have long been troubled by the lack of cooperation of China’s regulators with United States (U.S.) Securities and Exchange Commission (SEC or Commission) and Public Company Accounting Oversight Board (PCAOB or Board) requirements, including efforts to promote high quality audits of financial reports of Chinese companies that are listed on U.S. exchanges.<sup>4</sup> In recent years those concerns have grown as the

---

<sup>1</sup> Public Statement, Chairman Jay Clayton, Statement Announcing SEC Staff Roundtable on Emerging Markets (May 4, 2020), <https://www.sec.gov/news/public-statement/statement-clayton-roundtable-emerging-markets>.

<sup>2</sup> For more information about the Council of Institutional Investors (“CII”), including its board and members, please visit CII’s website at <http://www.cii.org>.

<sup>3</sup> CII, Policies on Other Issues, Independence of Accounting and Auditing Standard Setters (updated Mar. 1, 2017), [http://www.cii.org/policies\\_other\\_issues#indep\\_acct\\_audit\\_standards](http://www.cii.org/policies_other_issues#indep_acct_audit_standards).

<sup>4</sup> See, e.g., Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Office of the Secretary, PCAOB 6 (Sept. 6, 2018),

number of Chinese companies listed on U.S. exchanges has increased significantly,<sup>5</sup> and with many of those companies adopting variable interest entity and dual class stock structures,<sup>6</sup> both of which include risks not fully understood by many market participants.<sup>7</sup>

Since April, our concern has increased as the result of several significant events, including (1) on April 2 U.S.-listed Chinese coffeehouse chain Luckin Coffee Inc., whose PCAOB registered auditor has never been subject to a Board inspection,<sup>8</sup> disclosing that it had fabricated as much as \$310 million in sales from the second quarter of 2019;<sup>9</sup> and (2) on April 21 the SEC/PCAOB public statement, “Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited,” warning investors that disclosures by SEC-

---

[https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2018/September%206,%202018%20PCAOB%20Strategic%20Plan.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2018/September%206,%202018%20PCAOB%20Strategic%20Plan.pdf) (“We are particularly concerned about PCAOB-registered firms located in China for at least four reasons: (1) since 2010 the PCAOB has actively sought without success inspections of China-based audit firms and the mainland affiliates of the Big Four accountancies - Deloitte, KPMG, PricewaterhouseCoopers and EY; (2) many of the China-based audit firms do significant work on audits of major U.S. companies doing business in China; (3) the recent surge in the number of Chinese companies listed on U.S. stock exchanges; and (4) most of the Chinese companies listed on U.S. stock exchanges in recent years have a variable interest entity structure that is highly complex and might include risks that some investors and auditors may not fully understand or appreciate.”).

<sup>5</sup> See, e.g., Press Releases, Senate passes Kennedy and Van Hollen’s bill to kick deceitful Chinese companies off U.S. exchanges (May 20, 2020), <https://www.kennedy.senate.gov/public/2020/5/senate-passes-kennedy-and-van-hollen-s-bill-to-kick-deceitful-chinese-companies-off-u-s-exchanges> (“In the last 10 years, the number of Chinese companies listed on U.S. stock exchanges has increased significantly, as those firms take advantage of the capital available in America.”).

<sup>6</sup> See, e.g., CII, Dual-Class Snapshot: Statistics (as of June 16, 2020) (on file with CII) (In 2019, 9.9% of initial public offerings (IPOs) were foreign private issuers (FPIs) from China (21 out of 212), of these 21 Chinese FPIs, 14 (66.67%) have a dual class structure and 17 (77.2%) have a Variable Interest Entity (VIE) structure, and thus far 16.7% of IPOs in 2020 have been Chinese FPIs (9 out of 54), of these 9 Chinese FPIs, 3 (33.3%) have a dual class structure and 6 (66.7%) have a VIE structure.).

<sup>7</sup> See Letter from Ash Williams, Chair, CII, et al. to John Zecca, Senior Vice President, General Counsel, North America and Chief Regulatory Officer, NASDAQ Stock Market 3-4 (Oct. 24, 2018), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2018/20181024%20NASDAQ%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2018/20181024%20NASDAQ%20Petition%20on%20Multiclass%20Sunsets%20FINAL.pdf) (“over time and on average, the valuation of these [dual class stock structure] firms tends to decline, as the “wedge” between ownership and control widens, the agency costs of insider control and lack of shareholder accountability increase, founder’s entrepreneurial skills and insights that initially propelled a company become dated, and opportunities and risks change in ways not foreseeable by investors at IPO); CII Research Analyst Brandon Whitehill, Buyer Beware: Chinese Companies and the VIE Structure 2 (Dec. 2017), [https://www.cii.org/files/publications/misc/12\\_07\\_17%20Chinese%20Companies%20and%20the%20VIE%20Structure.pdf](https://www.cii.org/files/publications/misc/12_07_17%20Chinese%20Companies%20and%20the%20VIE%20Structure.pdf) (“VIEs are fraught with complexity and risk for investors, including vulnerability to Chinese government pressures and management conflicts of interest”).

<sup>8</sup> See PCAOB, Registration, Annual and Special Reporting, Firm Summary, Ernst & Young Hua Ming LLP (1408) (last visited June 17, 2020), <https://pcaobus.org/firms/1408> (Registration date: 07/08/2004); see also Jim Yang et al., *Coffee’s for Closers: How a Short Seller’s Warning Helped Take Down Luckin Coffee*, Wall St. J., June 29, 2020 (on file with CII) (“the auditor [Ernst & Young Hua Ming LLP] reviewed the company’s interim financial statements that were included in a January 2020 prospectus for a share sale and issued a private ‘comfort letter’ that indicated it didn’t have any issues with the numbers”).

<sup>9</sup> See Quentin Webb & Joanne Chiu, *Ernst & Young Says It First Found Accounting Issues at Luckin*, Wall St. J., Apr. 3, 2020, available at <https://www.chinabeve.com/2020/04/ernst-young-says-it-first-found.html>; Jeanny Yu et al., *Luckin Coffee Scandal Deals New Blow to Corporate China*, Bloomberg (Apr. 3, 2020), available at <https://www.msn.com/en-in/money/news/luckin-coffee-scandal-deals-new-blow-to-corporate-china/ar-BB129nkW>; Bob Pisani, *Trader Talk, Luckin Coffee is a painful reminder of ‘the extreme fraud risk’ of some China-based companies*, CNBC (Apr. 3, 2020, 7:12 AM EDT), <https://www.cnbc.com/2020/04/03/luckin-coffee-debacle-is-a-painful-reminder-of-fraud-risk.html>.

registered companies from China may be incomplete and misleading<sup>10</sup> and referencing a March 1 revision to the Peoples Republic of China Securities Law providing that “without the approval of its securities regulator and various components of the Chinese government, no entity or individual in China may provide documents and information relating to securities business activities of overseas regulators.”<sup>11</sup>

To be clear, we are focused foremost on the quality and integrity of U.S. capital markets. Our members have a variety of investment strategies for emerging and frontier markets, and understand risk has to be calibrated to rewards. But we expect that U.S. capital markets should adhere to their articulated standards.<sup>12</sup> This is not happening where U.S.-listed companies are audited by firms that are not inspected by PCAOB.<sup>13</sup>

### Potential Remedial Actions

CII’s preference is for PCAOB to inspect the audit work and practices of PCAOB-registered firms in China. However, after more than a decade of negotiations on this issue, it appears that China continues to refuse to permit such inspections.<sup>14</sup> Moreover, as indicated, China recently amended its securities laws to explicitly impose a hurdle for those firms to share information

---

<sup>10</sup> See SEC Chairman Jay Clayton et al., Public Statement, Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies are Limited (Apr. 21, 2020), <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting> (“in . . . China, there is substantially greater risk that disclosures will be incomplete or misleading and, in the event of investor harm, substantially less access to recourse, in comparison to U.S. domestic companies”).

<sup>11</sup> *Id.* at n.20; see Presidential Memorandum, Memorandum on Protecting United States Investors from Significant Risks for Chinese Companies, Foreign Policy (June 4, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-protecting-united-states-investors-significant-risks-chinese-companies/> (“Recently, the Chinese government enacted a statute that expressly prevents audit firms from providing this information without the prior consent of Chinese financial regulators [and] [p]reventing the PCAOB from complying with its statutory mandate means that investors cannot have confidence in the financial reports of audited companies and creates significant risks to investors in the securities listed on United States stock exchanges.”); see also Morgan Stanley, Execution Services Sales, Trading Unicorns Part 2: China ADRs & HK Secondary Listing Key Debates 10 (June 10, 2020) (on file with CII) (commenting on the lack of “visibility to inspect audits of overseas listed Chinese companies as their audit papers are not allowed to be shared with overseas regulators without regulatory approval”).

<sup>12</sup> See, e.g., Michael D. Mann & Arthur Levitt Jr., Opinion|Commentary, *The SEC’s China Evasion*, Wall St. J., May 6, 2020 (“leaving it to investors to protect themselves, fails to carry out the SEC’s statutory mandate[,] [i]t can only diminish U.S. Markets [and] [i]t sells short the recourse the SEC has in this situation: Failure to comply with its rules, or to cooperate with its investigations, can be the basis for stopping a listing, suspending trading or barring a person or company from participating in the U.S. markets”).

<sup>13</sup> See, e.g., Presidential Memorandum, Memorandum on Protecting United States Investors from Significant Risks for Chinese Companies, Foreign Policy (“Preventing the PCAOB from complying with its statutory mandate means that investors cannot have confidence in the financial reports of audited companies and creates significant risks to investors in the securities listed on United States stock exchanges”).

<sup>14</sup> See 2007 PCAOB Ann. Rep. 18 (2008), <https://pcaobus.org/About/Administration/Documents/Annual%20Reports/2007.pdf> (“in 2007, the PCAOB had bilateral contact or discussions regarding auditor oversight with many countries around the world, including . . . China”); /; see also Bethany Allen-Ebrahimian et al., China, public markets and secrecy, Axios (June 20, 2020), <https://www.axios.com/china-public-markets-threat-76888ca3-45da-4d12-a93e-37e0b3a4a120.html> (“In May 2013, the . . . PCAOB[] signed a memorandum of understanding with the China Securities Regulatory Commission and the Ministry of Finance . . . to help facilitate these third-party audit requests . . . **But Chinese companies** have violated the agreement, according to the PCAOB as well as current and former U.S. officials.”).

with PCAOB, Commission, and other overseas regulators. As a result, we generally agree with the recent commentary in *Barron's* that it appears that an agreement with China on PCAOB inspections may never be achievable “through conventional negotiations.”<sup>15</sup>

We also agree the “status quo has become unacceptable.”<sup>16</sup> And we welcome the pending recommendations of the President’s Working Group on Financial Markets.<sup>17</sup> In the meantime, we offer our views on two potential remedial actions that have already been proposed and that with some qualifications we would generally support.

### Nasdaq Proposals<sup>18</sup>

In June, The Nasdaq Stock Market LLP (Nasdaq) issued three related proposals<sup>19</sup> intended to tighten listing standards for Chinese companies and other companies from “Restrictive Markets” that have laws limiting access to information.<sup>20</sup> One proposal would require companies to have management or advisors that understand regulatory and listing requirements, including controls over financial reporting.<sup>21</sup>

---

<sup>15</sup> Roger Silvers, Commentary, *China Doesn't Want to Cooperate with U.S. Regulators, Congress Is Raising the Stakes*, *Barron's*, June 12, 2020, <https://www.barrons.com/articles/china-doesnt-want-to-cooperate-with-u-s-regulators-congress-is-raising-the-stakes-51591986801>.

<sup>16</sup> Capital Markets and Emergency Lending in the COVID-19 Era: Before H. Comm. on Fin. Servs. Inv't Prot., Entrepreneurship, & Capital Mkts. Subcomm., 116<sup>th</sup> Cong. (June 25, 2020) (testimony of Jay Clayton, Chairman, U.S. Securities and Exchange Commission at 9), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-claytonj-20200625.pdf>.

<sup>17</sup> Presidential Memorandum, Memorandum on Protecting United States Investors from Significant Risks for Chinese Companies, Foreign Policy (“Within 60 days of the date of this memorandum, the PWG shall submit to the President . . . a report that includes: . . . Recommendations for actions . . .”).

<sup>18</sup> Notice of Filing of Proposed Rule Change To Adopt a New Requirement Related to the Qualification of Management for Companies From Restrictive Markets, Exchange Act Release No. 89,028, 85 Fed. Reg. 35,967 (proposed June 8, 2020), <https://www.federalregister.gov/documents/2020/06/12/2020-12686/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>; Notice of Filing of Proposed Rule Change To Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets, Exchange Act Release No. 89,027, 85 Fed. Reg. 35,962 (proposed June 8, 2020), <https://www.federalregister.gov/documents/2020/06/12/2020-12685/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>; Notice of Filing of Proposed Rule Change To Amend IM–5101–1 (Use of Discretionary Authority) To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company’s Auditor or When a Company’s Business Is Principally Administered in a Jurisdiction That Is a Restrictive Market, Exchange Act Release No. 88,987, 85 Fed. Reg. 35,134 (proposed June 2, 2020), <https://www.federalregister.gov/documents/2020/06/08/2020-12271/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-proposed-rule-change>.

<sup>19</sup> *Id.*

<sup>20</sup> 85 Fed. Reg. at 35,967 (defined as when “a company’s business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction”).

<sup>21</sup> *See id.* (“Accordingly, Nasdaq proposes to adopt a new listing standard in Rule 5210(c) to require that listing applicants from Restrictive Market countries have, and certify to Nasdaq that they will continue to have, a member of senior management or a director with relevant past employment experience at a U.S.-listed public company or other experience, training or background which results in the individual’s general familiarity with the regulatory and reporting requirements applicable to a U.S.-listed public company under Nasdaq rules and federal securities laws.”).

A second proposal would require a minimum offering size or public float.<sup>22</sup> A third proposal, which we view as addressing the essential element of an effective potential remedial action, would apply additional listing criteria when an auditor of an applicant or Nasdaq-listed company has not been or cannot be inspected by PCAOB.<sup>23</sup>

In our view, the third proposal as drafted is flawed because it provides for far too much discretion for Nasdaq to approve the initial or continued listing of registrants from China or other restricted markets even when the company has a principal auditor that is located in a jurisdiction that prohibits PCAOB's ability to inspect the auditor.<sup>24</sup> As JP Gan, a Chinese venture investor and founding partner of Shanghai-based INCE Capital recently stated:

“The basic principle of capital markets is trust. The default assumption is everyone is good because the bad apples have been screened out, *or it won't be listed . . .*”<sup>25</sup>

We believe the flaw in the third proposal can be repaired by revising the proposal to narrow the level of discretion along the lines of the following:

- The proposed IM-5101-1(b)(1) and IM-5101-1(c) would be replaced by new rules that would require that listing applicants and listed companies from a Restrictive Market, including companies listed prior to the effectiveness of the new rules, be prohibited from having an auditor or an accounting firm engaged to assist with their company audit that is located in a jurisdiction that limits the PCAOB's ability to inspect the auditor (New Auditor Inspection Rules).
- . . . [A] Nasdaq staff determination to deny the initial or continued listing of a company for lack of compliance with the New Auditor Inspection Rules would result in the issuance “of a denial or delisting letter to the company that will inform the company of the factual basis for Nasdaq's determination and its right for review of the decision pursuant to the Rule 5800 Series.”<sup>26</sup>

---

<sup>22</sup> See 85 Fed. Reg. at 35,962 (“Nasdaq is proposing to adopt new Rules 5210(l)(i) and (ii) that would require a minimum offering size or public float for Restrictive Market Companies listing on Nasdaq in connection with an IPO or a business combination (as described in Rule 5110(a) or IM-5101-2”).

<sup>23</sup> See 85 Fed. Reg. at 35,135 (“Nasdaq proposes to amend IM-5101-1 to add a new subparagraph (b) that sets forth factors Nasdaq may consider in applying additional and more stringent criteria to an applicant or listed company based on the qualifications of the company's auditor.”).

<sup>24</sup> *Id.* (“Nasdaq may be satisfied that an auditor that is not subject to PCAOB inspection has mitigated the risk that it may have significant undetected deficiencies in its system of quality controls by being a part of a global network where the auditors draw on globally common technologies, tools, methodologies, training and quality assurance monitoring.”).

<sup>25</sup> Jim Yang et al., *Coffee's for Closers: How a Short Seller's Warning Helped Take Down Luckin Coffee*.

<sup>26</sup> Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to Secretary, Securities and Exchange Commission 6-7 (June 18, 2020) (footnotes omitted), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2020/June%2018,%202020%20Nasdaq%20letter%20\(final!\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2020/June%2018,%202020%20Nasdaq%20letter%20(final!).pdf)[https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2020/June%2018,%202020%20Nasdaq%20letter%20\(final!\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2020/June%2018,%202020%20Nasdaq%20letter%20(final!).pdf).



Subject to the adoption of the aforementioned revisions, we would agree with Secretary of State Michael R. Pompeo that Nasdaq's action could "serve as a model for other exchanges in the United States, and around the world."<sup>27</sup>

#### Holding Foreign Companies Accountable Act (Accountable Act or S. 945)<sup>28</sup>

In May, the U.S. Senate passed S. 945 by "unanimous consent."<sup>29</sup> The bipartisan bill would prohibit foreign companies from listing and trading their securities on any U.S. securities exchange or through any other method regulated by the SEC, including "over-the-counter" trading, if PCAOB is unable to inspect the issuer's public accounting firm for three consecutive years.<sup>30</sup>

The provisions of S. 945 would also provide that the Commission end the trading prohibition once the company certifies that it has retained a public accounting firm that PCAOB is able to inspect.<sup>31</sup> The provisions would also require an issuer to disclose whether it (the issuer) is state-owned or government-controlled.<sup>32</sup>

A companion bill, H.R. 7000, was introduced in the U.S. House of Representatives but has not yet been subject to a vote.

---

<sup>27</sup> Press Statement, Michael R. Pompeo, Secretary of State, New Nasdaq Restrictions Affecting Listing of Chinese Companies (June 4, 2020), <https://www.state.gov/new-nasdaq-restrictions-affecting-listing-of-chinese-companies/>; cf. Soyoung Ho, Auditing, President Trump Criticizes Chinese Firms' Refusal to Follow Audit Rules, Seeks Solutions, Thomson Reuters Tax & Acct. (June 8, 2020), <https://tax.thomsonreuters.com/news/president-trump-criticizes-chinese-firms-refusal-to-follow-audit-rules-seeks-solutions/#:~:text=Auditing-.President%20Trump%20Criticizes%20Chinese%20Firms'%20Refusal,Follow%20Audit%20Rules%2C%20Seeks%20Solutions&text=President%20Donald%20Trump%20is%20ratcheting,trade%20in%20U.S.%20stock%20markets> (quoting Shaswat K. Das, a counsel at King & Spalding LLP who previously worked at the PCAOB as its primary negotiator with the Chinese regulators on cross-border audit oversight from 2011-2015: "NASDAQ's recently proposed rule provides a good template that should be closely considered").

<sup>28</sup> S. 945, 116<sup>th</sup> Cong. (engrossed in S. May 20, 2020), <https://www.congress.gov/bill/116th-congress/senate-bill/945/text>.

<sup>29</sup> S. 945, 116<sup>th</sup> Cong. (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/945/actions>.

<sup>30</sup> § 2(i)(3)(A) ("If the Commission determines that a covered issuer has 3 consecutive non-inspection years, the Commission shall prohibit the securities of the covered issuer from being traded—(i) on a national securities exchange; or (ii) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of trading that is commonly referred to as the 'over-the-counter' trading of securities.").

<sup>31</sup> § 2(i)(3)(B) ("If, after the Commission imposes a prohibition on a covered issuer under subparagraph (A), the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.").

<sup>32</sup> § 3(b) ("Each covered issuer that is a foreign issuer . . . shall disclose . . . (2) the percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized; (3) whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer; (4) the name of each official of the Chinese Communist Party who is a member of the board of directors of (A) the issuer; or (B) the operating entity with respect to the issuer; and (5) whether the articles of the issuer . . . contains any charter of the Chinese Communist Party, including the text of any such charter.").

CII first took a public position on S. 945 in connection with a June 2019 hearing of the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the Committee on Financial Services in which a draft companion bill was discussed.<sup>33</sup> At that time, we stated:

We acknowledge that there are a number of possible alternative actions the SEC, the PCAOB, the stock exchanges, or Congress could potentially take to address, at least in part, the investor protection and general oversight issues that exist for U.S. Chinese listed companies. In our view, the provisions of the Accountab[le] Act are not an unreasonable response, particularly in light of the apparent increasing size, scope, and significance of those issues.<sup>34</sup>

Since Senate passage of S. 945, some critics have indicated that its provisions are overly broad, particularly with respect to its application to U.S. multinational public companies with operations in China.<sup>35</sup> We note that recent Congressional testimony appears to confirm SEC would have the authority to ensure that U.S. multinational corporations doing business in China in which auditors are not subject to PCAOB inspection would generally fall outside the scope of the Accountable Act.<sup>36</sup> We support that view and believe it is generally consistent with the intent and the language<sup>37</sup> of S. 945. More broadly, we agree that the Accountable Act is a “sensible way to approach a problem that’s been around for a while . . . .”<sup>38</sup>

\*\*\*\*

---

<sup>33</sup> Putting Investors First: Examining Proposals to Strengthen Enforcement Against Securities Law Violators, H. Comm. on Fin. Servs. Inv’t Prot., Entrepreneurship, & Capital Mkts. Subcomm. (June 19, 2019), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403833>.

<sup>34</sup> Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors to The Honorable Carolyn B. Maloney, Chair, H. Comm. on Fin. Servs. Inv’t Prot., Entrepreneurship, & Capital Mkts. Subcomm. et al. 6 (June 18, 2019) (footnotes omitted), [https://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2019/June%2018%202019%20Letter%20to%20Subcommittee%20on%20Investor%20Protection%20Entrepreneurship%20and%20Capital%20Markets%20\(finalF\).pdf](https://www.cii.org/files/issues_and_advocacy/correspondence/2019/June%2018%202019%20Letter%20to%20Subcommittee%20on%20Investor%20Protection%20Entrepreneurship%20and%20Capital%20Markets%20(finalF).pdf).

<sup>35</sup> See, e.g., Brownstein Hyatt Farber Scheck, Client Alert, Foreign Companies May Lose Access to U.S. Capital Markets Under Just-Passed Senate Legislation (May 21, 2020), <https://www.bhfs.com/insights/alerts-articles/2020/foreign-companies-may-lose-access-to-u-s-capital-markets-under-just-passed-senate-legislation> (“the bill seems to apply broadly, beyond those foreign companies already identified by the PCAOB, to any U.S. public companies whose affiliates are in China, Belgium or France”).

<sup>36</sup> See Capital Markets and Emergency Lending in the COVID-19 Era, Before the H. Subcomm. on Inv. Prot. Entrepreneurship, & Capital Mkts., Bloomberg transcript (June 5, 2020) (on file with CII) (“HUIZENGA: . . . would it make sense to make clear that the SEC has full rule-making authority under the bill to ensure that multinational corporations doing a small amount of business in an un-inspectable jurisdiction are not intentionally caught up in the bill? . . . CLAYTON: -- to implement this bill. I think as the, we said as the bill stands, we believe we have the authority to do it. . . . But as it stands, we believe we could implement it. But if you have further nuances, further direction, we (INAUDIBLE) of course, will welcome it. HUIZENGA: I just really wanted to find out whether you felt that you had the proper tools to be able to move forward on that, so I’m glad to hear that.”).

<sup>37</sup> See § 2(i)(3)(B) (“If . . . the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.”).

<sup>38</sup> Benjamin Bain & David Westin, Markets, SEC Chief Backs Bill to Delist China Firms Barring Audit Reviews, Bloomberg (June 2, 2020, 11:50 AM EDT) (on file with CII) (quoting Securities and Exchange Commission Chairman Jay Clayton); cf. Roger Silvers, Commentary, *China Doesn’t Want to Cooperate with U.S. Regulators, Congress Is Raising the Stakes* (“this legislation is perhaps the best opportunity for U.S. regulators to get China to alter its stance on cooperation in securities regulation”).

Page 8 of 8  
July 8, 2020

We appreciate your consideration of our comments. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive style with a large, stylized "J" and "M".

Jeffrey P. Mahoney  
General Counsel