

Administration of Donald J. Trump, 2020

Memorandum on Protecting United States Investors From Significant Risks From Chinese Companies

June 4, 2020

Memorandum for the Secretary of the Treasury, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs

Subject: Protecting United States Investors from Significant Risks from Chinese Companies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the integrity of United States financial markets, it is hereby ordered as follows:

Section 1. Purpose. United States capital markets have long been the driving engine of the global economy. The combination of robust disclosure requirements, clear and effective regulation, fair enforcement, and a free market system have made the United States the premier jurisdiction in the world for raising capital. Investors trust the financial information provided by United States public companies and know that fraudulent activities will promptly be addressed by United States financial regulators. As a result, companies from around the world want to list on United States stock exchanges and raise money in the United States.

Chinese companies are no exception. For decades, Chinese companies have availed themselves of the benefits of United States financial markets, and capital raised in the United States has helped fuel China's rapid economic growth. While China reaps advantages from American markets, however, the Chinese government has consistently prevented Chinese companies and companies with significant operations in China from abiding by the investor protections that apply to all companies listing on United States stock exchanges. It is both wrong and dangerous for China to benefit from our capital markets without complying with critical protections that investors in those markets rightfully expect and deserve. China's actions to thwart our transparency laws raise significant risks for investors. The time has come to take firm action in an orderly fashion to put an end to the practice that has tacitly permitted companies with significant Chinese operations to flout protections United States law requires for investors in United States markets.

For example, the Chinese government refuses to allow audit firms registered with the Public Company Accounting Oversight Board (PCAOB) to provide audit working papers to the PCAOB so that it can fulfill its statutory obligation to inspect audit work and enforce audit standards. Recently, the Chinese government enacted a statute that expressly prevents audit firms from providing this information without the prior consent of Chinese financial regulators. 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.

The Securities and Exchange Commission (SEC) and PCAOB have pressed China for years to allow companies to provide greater transparency in financial information, to no avail. Concerns about China's efforts to thwart transparency requirements suggest significant risks even for investors in Chinese companies listed on United States stock exchanges. Such companies may not provide appropriate and safe investments for investors, including pension funds, which owe fiduciary duties to their beneficiaries.

For these reasons, we must take firm, orderly action to end the Chinese practice of flouting American transparency requirements without negatively affecting American investors and

financial markets. We must ensure that laws providing protections for investors in American financial markets are fully enforced for companies listed on United States stock exchanges.

Sec. 2. President's Working Group on Financial Markets. Executive Order 12631 of March 18, 1988 (Working Group on Financial Markets), established the President's Working Group on Financial Markets (PWG), which is chaired by the Secretary of the Treasury, or his designee, and includes the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the SEC, and the Chairman of the Commodity Futures Trading Commission, or their designees. The Secretary of the Treasury shall convene the PWG to discuss the risks to investors described in section 1 of this memorandum and other risks to American investors and financial markets posed by the Chinese government's failure to uphold its international commitments to transparency and accountability and its refusal to permit companies to comply with United States law.

Sec. 3. Report. Within 60 days of the date of this memorandum, the PWG shall submit to the President, through the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy, a report that includes:

- (a) Recommendations for actions the executive branch may take to protect investors in United States financial markets from the failure of the Chinese government to allow PCAOB-registered audit firms to comply with United States securities laws and investor protections;
- (b) Recommendations for actions the SEC or PCAOB should take, including inspection or enforcement actions, with respect to PCAOB-registered audit firms that fail to provide requested audit working papers or otherwise fail to comply with United States securities laws; and
- (c) Recommendations for additional actions the SEC or any other Federal agency or department should take as a means to protect investors in Chinese companies, or companies from other countries that do not comply with United States securities laws and investor protections, including initiating a notice of proposed rulemaking that would set new listing rules or governance safeguards. Any such actions should take into account the impact on investors and ensure the continued fair and orderly operation of United States financial markets.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- (d) The Secretary of the Treasury is authorized and directed to publish this memorandum in the *Federal Register*.

DONALD J. TRUMP

[Filed with the Office of the Federal Register, 8:45 p.m., June 8, 2020]

NOTE: This memorandum was published in the *Federal Register* on June 9.

Categories: Communications to Federal Agencies : Chinese companies, U.S. investor risk protections from, memorandum.

Subjects: Business and industry : U.S. investors, protection efforts; China : Relations with U.S.; Financial Markets, President's Working Group on.

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