

**Statement for the Record**

**ON: “Taking Stock of China, Inc.: Examining Risks to Investors and the U.S. Posed by Foreign Issuers in U.S. Markets”**

**TO: U.S. House of Representatives Committee on Financial Services**

**BY:**

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**U.S. Chamber of Commerce**

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## **Importance of Transparency to U.S. Capital Markets**

The U.S. Chamber of Commerce is committed to maintaining the U.S. capital markets' reputation as the deepest, most competitive, and most transparent in the world. Investors that deploy their capital in the U.S. equity markets know they can rely on the financial statements and disclosures demanded by our regulatory system to make informed investment decisions.

Investors' experience with the U.S. capital markets demonstrates how strong institutions, the rule of law, and transparency can transform economies and help create opportunities and sustainable wealth for households. This contrasts with the market systems of other countries – including China – that lack these characteristics. Given the ever-increasing competition for global capital, the U.S. must not deviate from the open and transparent system that has long made it the most attractive market for investors. For instance, the United States has actively engaged with international bodies, such as the Financial Stability Board (FSB) and International Organization of Securities Commissions (IOSCO) to promote capital markets systems based upon transparency and the rule of law – an approach that has not been embraced by all major markets.

In the past, when the regulatory system has needed to be enhanced, Congress has established new laws and tools for regulators to restore confidence in the reliability of financial disclosures and other disclosures. The enactment of the 2002 Sarbanes-Oxley Act mandated minimum standards for public company internal financial controls and created the Public Company Accounting Oversight Board (“PCAOB”) to inspect the accounting firms that audit public companies. Enactment of the Sarbanes-Oxley Act was a national response to the high-profile accounting scandals of the 21<sup>st</sup> Century that shook investor confidence in our capital markets.

The Chamber has long believed that strong internal controls are essential for a business to grow from small to large, and that external audits are critical for both investor protection and capital formation. Since 2002, U.S. public companies and auditors have had to comply with provisions of the Sarbanes-Oxley Act, which is now recognized as a core characteristic of U.S. capital markets; so much so that Sarbanes-Oxley has since become a model for reforms in other countries around the world.

The independent PCAOB plays a crucial function in protecting investors in the U.S. marketplace, and the participation of U.S.-listed firms has helped to mitigate risk for investors. Relatedly, companies that have refused to allow the PCAOB to inspect the audit work related to U.S.-listed firms have generated a string of high-profile accounting scandals and have created enormous risks for U.S.-based investors.

As a result, Congress enacted reasonable and necessary legislation, the Holding Foreign Companies Accountable Act (HFCAA), on an overwhelmingly bipartisan basis. The HFCAA is an important initiative to protect investors and maintain confidence in the U.S. capital markets. We applaud Congress for taking this action and for establishing a pragmatic timeline for delisting companies who do not comply with PCAOB inspections. We also appreciate recent actions by the Securities and Exchange Commission (SEC) to pause new offerings from Chinese

companies in the U.S. until these companies provide sufficient disclosures as to their risk and corporate structure.

We encourage companies who wish to trade in U.S. capital markets to abide by U.S. law; Congress must maintain its position that companies which refuse to abide by U.S. law should not be listed on U.S. equity exchanges. Further, the SEC should continue to alert and educate investors as to the unique risks posed by U.S.-listed Chinese companies and to update Congress regarding implementation of the HFCAA and any de-listings of Chinese or other foreign-based issuers.

In addition, the integrity, capability, and credibility of the PCAOB are integral to audit quality and investor confidence in financial disclosures and the U.S. capital markets. For this very purpose, the SEC and Congress must avoid weakening or politicizing the PCAOB's mission. It is critical that the PCAOB have both the capability and credibility in the eyes of the public to help address the China audit issue and maintain investor confidence in our markets and in the financial statements provided by listed companies. The Chamber is alarmed by recent developments that have undermined SEC oversight of the PCAOB and impaired the PCAOB's ability to carry out its mission. We are also concerned by attempts to politicize the PCAOB and involve the board in hot-button social and political issues that are currently being debated in Congress.

We echo the concerns raised by SEC Commissioners Elad Roisman and Hester Peirce who stated that in removing all five PCAOB board members, the Commission "proceeded in an unprecedented manner that is unmoored from any practical standard that could be meaningfully applied in the future... These actions set a troubling precedent for the Commission's ongoing oversight of the PCAOB and for the appointment process, including with respect to attracting well-qualified people who want to serve. A future in which PCAOB members are replaced with every change in administration would run counter to the Sarbanes Oxley Act's establishment of staggered terms for Board members, inject instability at the PCAOB, and undermine the PCAOB's important mission by suggesting that it is subject to the vicissitudes of politics."<sup>1</sup>

Congress and the SEC should reject these efforts and instead ensure entities such as the PCAOB and FASB are focused on carrying out their mission and are not influenced by partisan politics. The HFCAA is a great opportunity for the United States to show China and the world that the regulation of our capital markets is always guided by the rule of law and what is in the best interests of investors. Subjecting the PCAOB or other regulatory bodies to the daily whims of politics and the demands of a vocal minority of activists undermines these efforts and will cause damage to investor confidence in our markets.

Finally, while the Chamber strongly condemns human rights abuses, including the persecution and detention of the Uyghur ethnic minority in China, we have concerns about using U.S. securities laws to achieve these ends. We urge Congress and the Administration to deploy targeted foreign policy tools and to work with the business community to combat human rights abuses. For this reason, the Chamber believes that H.R. 2072, the Uyghur Forced Labor

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<sup>1</sup> Statement on the Commission's Actions Regarding the PCAOB (June 4, 2021)

Disclosure Act, would, as currently conceived, prove ineffective and may hinder efforts to prevent human rights abuses.

Past attempts to utilize domestic U.S. securities law to combat human rights abuses provide a cautionary tale. For example, a well-intentioned effort to resolve abuses related to the mining of conflict minerals in the Democratic Republic of Congo (DRC) in many cases worsened the situation on the ground in that country.<sup>2,3</sup> In that instance, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act required public companies to disclose: whether any of their products used a defined list of minerals; whether the minerals were mined in the DRC; and if the products were conflict mineral-free. The absence of a qualified inspection and audit systems made it nearly impossible for companies to ensure accurate disclosures. This, in turn, caused many companies to implement a de facto embargo against material sourced in the region, which then hurt legitimate miners. At the same time, the original targets of the provision simply shifted their activities to avoid being impacted. In addition to the measure's unintended consequences, aspects of the conflict minerals disclosure were ultimately struck down by the courts. The Chamber looks forward to working with Congress and the administration to ensure that workable, appropriate actions and initiatives are implemented to aid the Uyghurs.

We thank you for holding this hearing. We look forward to continuing our discussion on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long, sweeping horizontal stroke.

Tom Quaadman

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<sup>2</sup> David Aronson, How Congress Devastated Congo, The New York Times (Aug. 7, 2011), <http://www.nytimes.com/2011/08/08/opinion/how-congress-devastated-congo.html>

<sup>3</sup> Sudarsan Raghavan, How a well-intentioned U.S. law left Congolese miners jobless, Washington Post (Nov. 30, 2014), [https://www.washingtonpost.com/world/africa/how-a-well-intentioned-us-law-left-congolese-miners-jobless/2014/11/30/14b5924e-69d3-11e4-9fb4-a622dae742a2\\_story.html](https://www.washingtonpost.com/world/africa/how-a-well-intentioned-us-law-left-congolese-miners-jobless/2014/11/30/14b5924e-69d3-11e4-9fb4-a622dae742a2_story.html)