The Appropriate Legal Process for the Potential Delisting of Chinese Companies

May 2, 2025

This statement by the Committee on Capital Markets Regulation (the "Committee") evaluates the legal basis for a mandatory delisting of Chinese companies listed on U.S. exchanges. The Committee does not take a position as to whether the delisting of Chinese companies is appropriate at this time. We recommend that any delisting of Chinese companies should be based on a clear violation of the Holding Foreign Companies Accountable Act ("HFCAA") by Chinese regulators and review the relevant background, including costs and legal authority for delisting.

Background

U.S. policymakers have recently raised the possibility of a mandatory delisting of Chinese companies from U.S. exchanges.[1] The legal authority for such a delisting is the HFCAA, which Congress passed in 2020 and requires that the Securities and Exchange Commission ("SEC") prohibit the trading of a foreign company's securities in U.S. markets if a foreign government prevents the U.S. audit regulator (the Public Company Accounting Oversight Board ("PCAOB")) from inspecting the company's auditor for two consecutive years.[2] PCAOB inspection of the auditors of U.S.-listed companies is necessary to ensure that U.S.-listed companies are subject to effective audits and their financial disclosures are accurate.

The HFCAA was passed in response to Chinese regulators preventing the PCAOB from inspecting the auditors of U.S.-listed Chinese companies.[3] The HFCAA requires delisting on an auditor-by-auditor basis, so if any foreign government prevents the PCAOB from inspecting a specific auditor for two consecutive years, then all U.S.-listed companies that are audited by that accounting firm must be delisted.[4] In 2021, the PCAOB adopted a rule implementing the HFCAA that provides that the PCAOB can also make a jurisdiction-wide determination that it is "unable to inspect or investigate completely registered public accounting firms headquartered in a foreign jurisdiction."[5] Such a determination would require the delisting of all U.S.-listed companies audited by an auditor in mainland China or Hong Kong, for example. To make a jurisdiction-wide determination, the PCAOB rule does not establish a minimum number of audits or auditors for which foreign

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[1] *See, e.g.*, Yiqin Shen & Lydia Beyoud, *Chinese Stocks Trading in the US Face an Old Foe: Delisting*, BLOOMBERG (Apr. 15, 2025), https://www.bloomberg.com/news/articles/2025-04-15/chinese-stocks-trading-in-the-us-face-an-old-foe-delisting; *Paul Atkins Confirmed as SEC Chair Amid Rising Pressure to Act on Chinese Companies*, ANDERSON P.C. (Apr. 16, 2025), https://anderpc.com/insights/paul-atkins-confirmed-as-sec-chair-amid-rising-pressure-to-act-on-chinese-companies.

[2] Codified at 15 U.S.C. § 7214(i) (requiring the SEC to identify public companies that "retain[] a registered public accounting firm that has a branch or office that — (i) is located in a foreign jurisdiction; and (ii) the [PCAOB] is unable to inspect or investigate completely because of a position taken by an authority in a foreign jurisdiction, as determined by the [PCAOB]"). *See also* PCAOB Rule 6100(b) (In determining if it is able to investigate or inspect an audit firm completely, the PCAOB will consider whether it has "timely access to, and the ability to retain and use, any document or information . . . in the possession, custody, or control of the firm(s) or any associated persons thereof that the [PCAOB] considers relevant.").

[3] While delisting of some U.S.-listed Chinese companies may be required on national security grounds, as occurred during the Biden Administration, our focus is not on such companies. *See* Chong Koh Ping & Alexander Osipovich, *NYSE to Delist Chinese Telecom Carriers After Rejecting Appeals* WALL STREET JOURNAL (May 7, 2021), https://www.wsj.com/finance/stocks/nyse-to-delist-chinese-telecoms-carriers-after-rejecting-appeals-11620394719.

[4] *Id*.

[5] PCAOB Rule 6100(a)(1).

regulators must prevent access. Thus, in principle, the PCAOB could make a jurisdiction-wide determination based on a foreign regulator preventing inspection access to a single auditor for the audit of a single U.S.-listed company due to a foreign regulator policy that applies generally to all auditors in that jurisdiction.[6]

In 2022, the China Securities Regulatory Commission ("CSRC") agreed to allow the PCAOB to inspect the Chinese auditors of U.S.-listed Chinese companies.[7] Since the 2022 agreement, the PCAOB has conducted inspections of the China-based accounting firms that together audit 99 percent of the total market capitalization of U.S.-listed Chinese companies.[8] The PCAOB has stated that the rate of deficiencies among the audits of such companies is high, but not abnormal for jurisdictions undergoing initial inspections.[9]

However, the HFCAA requires that the PCAOB have the ability to "investigate completely" the auditors of U.S.-listed Chinese companies, including the ability to access relevant records, and as of now there is limited transparency as to the extent of access that has been provided. For example, the most recent report of the U.S.-China Economic and Security Review Commission – the legislative commission that monitors the trade and economic relationship between the U.S. and China – indicates that while Chinese regulators have taken some steps to expand the PCAOB's access to auditors' records as required under the 2022 agreement, "concerns remain around continued cooperation by Chinese regulators."[10] The report also found that recent actions by Chinese authorities have "curtailed transparency and investors' access to routine business data."[11] Indeed, lawmakers have recently called on SEC Chair Atkins to investigate these concerns further.[12]

In recent years, Chinese companies have begun to voluntarily reduce their reliance on U.S. capital markets. For example, at least 13 Chinese companies have voluntarily delisted from U.S. exchanges, and the total market capitalization of U.S.-listed Chinese companies has declined from $2.1 trillion to $1.09 trillion as of March 2025.[13] The value of new equity offerings by Chinese

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[6] "[I]f a foreign authority articulates or maintains a position that applies generally to PCAOB inspections or investigations in a foreign jurisdiction, that position could provide the basis for a jurisdiction-wide determination." PCAOB, *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Release No. 2021-004 18 (Sept. 22, 2021), https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4.

[7] SEC, *Fact Sheet, Statement of Protocol – Questions and Answers* (Aug. 26, 2022), https://www.sec.gov/files/china-sop-qa_0.pdf ("The Agreement does not allow withholding or redaction of information contained in audit documentation for any reason.").

[8] US-CHINA ECONOMIC & SECURITY REVIEW COMMISSION, *Chinese Companies Listed on Major U.S. Stock Exchanges* 3 (Mar. 7, 2025), https://www.uscc.gov/sites/default/files/2025-03/Chinese_Companies_Listed_on_US_Stock_Exchanges_03_2025.pdf.

[9] Public Company Accounting Oversight Board, *PCAOB Releases 2022 Inspection Reports for Mainland China, Hong Kong Audit Firms* (May 10, 2023), https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-releases-2022-inspection-reports-for-mainland-china-hong-kong-audit-firms; Mark Maurer, *Audits of Chinese Companies Are Highly Deficient, U.S. Regulator Says*, WALL STREET JOURNAL (2023), https://www.wsj.com/articles/audits-of-chinese-companies-are-highly-deficient-u-s-regulator-says-2da99766.

[10] U.S.-CHINA ECONOMIC & SECURITY REVIEW COMMISSION, *supra* note 8 at 6.

[11] *Id*.

[12] Letter from Rick Scott, United States Senate to Paul Atkins, Nominee for Chairman, U.S. Securities and Exchange Commission (Apr. 2, 2025), https://www.rickscott.senate.gov/services/files/9F346F3F-CE9C-41EC-9A37-E3C82DC7B7B0.

[13] U.S.-CHINA ECONOMIC & SECURITY REVIEW COMMISSION, *supra* note 8 at Figure 2.

companies on U.S. exchanges has also declined: In 2024 Chinese companies raised only $2 billion in initial public offerings on U.S. exchanges, compared to $14 billion in 2021.[14]

However, 286 Chinese companies are still listed on U.S. exchanges[15] and the mandatory delisting of these companies would be costly for U.S. capital markets and investors. Most obviously, it would reduce the competitiveness of U.S. capital markets, as other international financial centers, including Hong Kong and London, would now be the primary listing venues for Chinese companies seeking to raise capital outside of mainland China. Moreover, past Committee research has shown that U.S.-listed Chinese companies provide U.S. investors with opportunities to achieve higher returns and enhanced portfolio diversification that would be curtailed from a mass delisting.[16] U.S. investors that seek to maintain their exposure to Chinese companies after a delisting would be required to do so through offshore trading venues, where liquidity is lower and trading costs are higher.[17] A mass delisting could also trigger sales that reduce the value of U.S. investors' holdings of U.S.-listed Chinese equities – estimated at approximately $620 billion[18] – and provoke retaliatory sales of U.S. securities by Chinese investors, who currently hold $370 billion in U.S. equities and $1.3 trillion in U.S. bonds.[19]

Conclusion

Despite the potential costs associated with the mandatory delisting of U.S.-listed Chinese companies, if Chinese regulators have prevented the PCAOB from inspecting the auditors of U.S.-listed Chinese companies for two consecutive years, then the HFCAA requires the delisting of U.S.-listed Chinese companies. As a first step, the PCAOB should provide greater transparency regarding the inspection access provided by Chinese regulators under the 2022 agreement. It is critical that U.S. policymakers follow a transparent and legal process before reaching any final determinations about the delisting of Chinese companies from U.S. exchanges.

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[14] *Id*. at Figure 1.
[15] *Id*. at 1.
[16] COMMITTEE ON CAPITAL MARKETS REGULATION, *U.S. Listings by Chinese Companies: Assessing the Benefits to U.S. Investors and Chinese Companies* (2023), https://capmktsreg.org/wp-content/uploads/2023/01/CCMR-Assessing-the-Benefits-of-US-Listings-by-Chinese-Companies.pdf.
[17] *Id*.
[18] Zhang Shidong, *'Extreme' US-China decoupling could cost US$2.5 trillion in equity, bond sell-off: Goldman* SCMP (Apr. 14, 2025), https://www.scmp.com/business/china-business/article/3306443/us-china-decoupling-could-cost-us25-trillion-extreme-goldman-warns.
[19] Hannah Erin Lang, *If Trump Delisted Chinese Stocks, Here's How It Would Work* WALL STREET JOURNAL (Apr. 18, 2025), https://www.wsj.com/finance/stocks/if-trump-delisted-chinese-stocks-heres-how-it-would-work-f9bcc602.