

118TH CONGRESS
1ST SESSION

H. R. 499

To amend the Securities Exchange Act of 1934 to require certain additional annual disclosures by public companies and exchange-traded funds investing in companies with ties to the People’s Republic of China, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2023

Mr. FALLON (for himself, Mr. ELLZEY, Mr. JACKSON of Texas, and Mr. AMODEI) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to require certain additional annual disclosures by public companies and exchange-traded funds investing in companies with ties to the People’s Republic of China, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing American
5 Families and Enterprises from People’s Republic of China
6 Investments Act” or the “SAFE from PRC Investments
7 Act”.

1 **SEC. 2. ADDITIONAL DISCLOSURES TO PROTECT AMERICAN**
2 **INVESTORS AND BUSINESSES.**

3 Section 13 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78m) is amended by adding at the end the
5 following:

6 “(s) ADDITIONAL DISCLOSURES TO PROTECT AMER-
7 ICAN INVESTORS AND BUSINESSES.—

8 “(1) IN GENERAL.—Each covered issuer that is
9 required to file an annual report under section 13(a)
10 or 15(d) shall disclose in that report the following:

11 “(A) Whether a senior official of the
12 national- or provincial-level governments of the
13 People’s Republic of China (‘PRC’) sits on the
14 board of directors of the issuer or any sub-
15 sidiary of the issuer.

16 “(B) Whether executive-level employees,
17 senior directors, and board members of the
18 issuer are members of the Communist Party of
19 China.

20 “(C) Whether executive-level employees,
21 senior directors, and board members of the
22 issuer have immediate family members that are
23 senior officials of the Communist Party of
24 China or the Government of the People’s Re-
25 public of China.

1 “(D) Whether the issuer has a party
2 branch or committee as part of the issuer’s cor-
3 porate structure.

4 “(E) With respect to the operations of the
5 issuer located in the PRC—

6 “(i) the amount of cash held;

7 “(ii) any limits imposed by the Com-
8 munist Party of China or the Government
9 of the People’s Republic of China on the
10 ability to take such cash out of the coun-
11 try; and

12 “(iii) disclosure of investments, assets
13 and liabilities, technology licensed or trans-
14 ferred, and financing or debt obligations
15 involving PRC operations or from a PRC
16 entity.

17 “(F) The number of times executive-level
18 employees of the issuer interact with senior offi-
19 cials of the Communist Party of China and the
20 costs of those meetings and any transfer of
21 goods, money, or services between issuer’s em-
22 ployees.

23 “(G) The amount the issuer has expended
24 on operations in the People’s Republic of China,
25 both in total and for the prior fiscal year.

1 “(H) The amount the issuer has expended
2 on operations in the United States, both in
3 total and for the prior fiscal year.

4 “(I) The amount (both in total and for the
5 prior fiscal year) that the issuer has spent on
6 lobbying in the United States, including—

7 “(i) whether the issuer or any sub-
8 sidiary of the issuer has reported any sums
9 under the Foreign Agents Registration Act
10 of 1938; and

11 “(ii) whether the issuer or any sub-
12 sidiary of the issuer has reported any sums
13 under the Lobbying Disclosure Act of
14 1995.

15 “(J) Whether the Public Company Ac-
16 counting Oversight Board is unable to inspect
17 or investigate a registered public accounting
18 firm retained by the issuer to prepare an audit
19 report on the financial statement of the issuer.

20 “(K) The amount of taxes and other fees
21 the issuer paid to the Government of the Peo-
22 ple’s Republic of China on an annual basis.

23 “(L) With respect to customer data—

24 “(i) who has access to such data;

1 “(ii) disclosure of instances when in-
2 formation is requested, arrangements that
3 may allow passive or continuous access, ef-
4 forts to protect such data, instances of
5 cyber-attack, corporate or personnel dis-
6 putes that involve potential breaches, and
7 notification of other breaches; and

8 “(iii) whether such data is stored in
9 the United States and, if not, the country
10 or territory in which such data is stored.

11 “(M) For each subsidiary of the issuer lo-
12 cated in the PRC, the information described
13 under subparagraphs (A) through (L) with re-
14 spect to such subsidiary.

15 “(N) If the issuer or any subsidiary of the
16 issuer located in the PRC produces goods or
17 services that are part of a military-civil fusion
18 strategy, whether the issuer has consulted with
19 the People’s Liberation Army or the Ministry of
20 State Security with regard to industrial policy.

21 “(2) DEFINITIONS.—In this subsection:

22 “(A) COMMUNIST PARTY OF CHINA.—The
23 term ‘Communist Party of China’ means the
24 ruling party of the People’s Republic of China,
25 including—

1 “(i) party bodies at the national and
2 sub-national level; and

3 “(ii) any agency or instrumentality of
4 the Communist Party of China.

5 “(B) COVERED ISSUER.—The term ‘cov-
6 ered issuer’ means an issuer—

7 “(i) that is—

8 “(I) headquartered in the PRC
9 (including the Hong Kong and Macau
10 Special Administrative Regions);

11 “(II) a branch or subsidiary of
12 an issuer headquartered in the PRC;
13 or

14 “(III) a variable interest entity
15 or other type of firm structured
16 through a series of contracts or over-
17 lapping personnel—

18 “(aa) that are tied to core
19 operations in the PRC; or

20 “(bb) controlled and owned
21 by an issuer headquartered in the
22 PRC; or

23 “(ii) that—

24 “(I) is domiciled in a tax haven
25 jurisdiction or self-governing terri-

1 tories, including the Cayman Islands,
2 British Virgin Islands, Bermuda, the
3 Netherlands, Switzerland, Luxem-
4 bourg, Singapore, the United Arab
5 Emirates, the Bahamas, Cyprus, or
6 Mauritius; and

7 “(II) has the majority of the
8 issuer’s business operations taking
9 place or the majority of the issuer’s
10 revenue generated in mainland China.

11 “(C) GOVERNMENT OF THE PEOPLE’S RE-
12 PUBLIC OF CHINA.—The term ‘Government of
13 the People’s Republic of China’ means any of
14 the following:

15 “(i) Any national or sub-national gov-
16 ernmental unit of the People’s Republic of
17 China.

18 “(ii) Any national or sub-national leg-
19 islature of the People’s Republic of China.

20 “(iii) Any national or sub-national
21 People’s Political Consultative Conference
22 of the People’s Republic of China.

23 “(iv) Any national or sub-national ju-
24 dicial or prosecutorial body of the People’s
25 Republic of China.

1 “(v) Any national or sub-national su-
2 pervision commission of the People’s Re-
3 public of China.

4 “(vi) Any agency or instrumentality of
5 the People’s Republic of China.

6 “(D) IMMEDIATE FAMILY MEMBER.—The
7 term ‘immediate family member’ shall include a
8 spouse, domestic partner, mother, father, aunt,
9 uncle, sibling, or child.

10 “(E) MILITARY-CIVIL FUSION STRAT-
11 EGY.—The term ‘military-civil fusion strategy’
12 means the strategy of the Communist Party of
13 China aiming to mobilize non-military resources
14 and expertise for military application, includ-
15 ing—

16 “(i) the development of technology,
17 improvements in logistics, and other uses
18 by the People’s Liberation Army; and

19 “(ii) firms which develop and acquire
20 advanced dual-use technology for military
21 purposes.

22 “(F) PRC.—The term ‘PRC’ means the
23 People’s Republic of China.

24 “(G) SENIOR OFFICIAL.—The term ‘senior
25 official’, when used in connection with the Gov-

1 ernment of the People’s Republic of China or
2 the Communist Party of China, means—

3 “(i) an official with the rank of a dep-
4 uty at the provincial or ministerial level
5 (shengbu ji fu zhi) or higher; or

6 “(ii) a chief at the bureau level (tingju
7 ji zheng zhi) or higher.

8 “(H) VARIABLE INTEREST ENTITY.—The
9 term ‘variable interest entity’ means an entity
10 where an investor has a controlling interest that
11 is not based on holding the majority of voting
12 rights.”.

13 **SEC. 3. DISCLOSURES BY EXCHANGE TRADED FUNDS IN-**
14 **VESTING IN CHINESE COMPANIES.**

15 Section 13 of the Securities Exchange Act of 1934
16 (15 U.S.C. 78m), as amended by section 2, is further
17 amended by adding at the end the following:

18 “(t) DISCLOSURES BY EXCHANGE TRADED FUNDS
19 INVESTING IN CHINESE COMPANIES.—

20 “(1) IN GENERAL.—Each exchange traded fund
21 required to file an annual report under section 13(a)
22 or 15(d) shall, if the fund invested in the securities
23 of any PRC company during the reporting period,
24 include in such report the following, with respect to
25 each such PRC company:

1 “(A) Who owns the company, including
2 whether the company is owned by the Govern-
3 ment of the People’s Republic of China or a
4 PRC state-controlled entity.

5 “(B) Whether the company operates a
6 Communist Party of China branch or com-
7 mittee within the company’s corporate struc-
8 ture.

9 “(C) Whether the company has any con-
10 tractual agreements with the Government of the
11 People’s Republic of China or the Communist
12 Party of China or any agency or instrumen-
13 tality of either.

14 “(D) Whether the company has partici-
15 pated in the PRC’s industrial policies or has
16 military or public security contracts.

17 “(E) Whether any funding, direction, or
18 other forms of control over the company are ex-
19 ercised by the Government of the People’s Re-
20 public of China or the Communist Party of
21 China.

22 “(F) Whether executive-level employees
23 and board members of the company have imme-
24 diate family members who are senior officials of
25 the Communist Party of China or the Govern-

1 ment of the People’s Republic of China or are
2 themselves senior officials of the Communist
3 Party of China or the Government of the Peo-
4 ple’s Republic of China.

5 “(G) Whether the company is part of (in-
6 cluding by reason of being a branch or sub-
7 sidiary) or tied to (through a series of contracts
8 or parallel corporate incorporations) firms or
9 individuals sanctioned, restricted, or identified
10 as tied to the People’s Liberation Army by the
11 United States Government, including under—

12 “(i) the Military End User List main-
13 tained by the Bureau of Industry and Se-
14 curity of the Department of Commerce;

15 “(ii) the Non-SDN Chinese Military-
16 Industrial Complex Companies List;

17 “(iii) the Unverified List maintained
18 by the Secretary of Commerce;

19 “(iv) the List maintained by the Fed-
20 eral Communications Commission of equip-
21 ment and services covered by section 2 of
22 the Secure and Trusted Communications
23 Networks Act of 2019 (47 U.S.C. 1601);

1 “(v) the Uyghur Forced Labor Pre-
2 vention Act Entity List maintained by the
3 Department of Homeland Security;

4 “(vi) the list of covered issuers subject
5 to a prohibition under section 104 of the
6 Sarbanes-Oxley Act of 2002 (15 U.S.C.
7 7214) maintained by the Securities and
8 Exchange Commission; and

9 “(vii) the Withhold Release Orders
10 and Findings List maintained by the Com-
11 missioner of U.S. Customs and Border
12 Protection.

13 “(H) The types of products and services
14 offered by the company.

15 “(I) Whether the company has a contract
16 with the United States Department of Defense.

17 “(J) Whether the company produces a
18 product or service that is used in the produc-
19 tion of aircraft, spacecraft, semiconductor chips
20 and equipment, batteries or battery compo-
21 nents, facial recognition technology, artificial
22 intelligence, telecommunications technology, en-
23 ergy production equipment, advanced medical
24 devices, or pharmaceuticals or any such prod-

1 ucts related to the national technology and in-
2 dustrial base in the United States.

3 “(K) Whether the company produces goods
4 that would violate U.S. environmental law or
5 U.S. civil liberties law if the goods were pro-
6 duced or used in the United States.

7 “(L) Any business activities conducted by
8 the company—

9 “(i) with a privately held firm involved
10 in China’s industrial, technology, and mili-
11 tary modernization efforts based in the
12 People’s Republic of China; or

13 “(ii) with a Chinese state-controlled
14 entity.

15 “(M) Whether the company has ever had
16 an audit of the same type and quality as typi-
17 cally used by an issuer of publicly traded securi-
18 ties.

19 “(2) DEFINITIONS.—In this subsection:

20 “(A) EXCHANGE TRADED FUND.—The
21 term ‘exchange traded fund’ has the meaning
22 given that term under section 270.6c–11 of title
23 17, Code of Federal Regulations.

24 “(B) OTHER DEFINITIONS.—The terms
25 ‘Communist Party of China’, ‘Government of

1 the People’s Republic of China’, ‘immediate
2 family member’, and ‘PRC’ have the meaning
3 given those terms, respectively, under sub-
4 section (s)(2).”.

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