

116TH CONGRESS
2D SESSION

S. 4872

To prohibit the trading of the securities of certain Communist Chinese military companies on a national securities exchange, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit the trading of the securities of certain Communist Chinese military companies on a national securities exchange, 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 “American Financial
5 Markets Integrity and Security Act”.

6 **SEC. 2. PROHIBITIONS RELATING TO CERTAIN COMMUNIST**
7 **CHINESE MILITARY COMPANIES.**

8 (a) DEFINITIONS.—In this section:

9 (1) COMMISSION.—The term “Commission”
10 means the Securities and Exchange Commission.

1 (2) CONTROL.—The term “control” has the
2 meaning given the term in section 2(a) of the Invest-
3 ment Company Act of 1940 (15 U.S.C. 80a–2(a)).

4 (3) COVERED ENTITY.—

5 (A) IN GENERAL.—The term “covered en-
6 tity”—

7 (i) means an entity on—

8 (I) the list of Communist Chinese
9 military companies required by section
10 1237(b) of the Strom Thurmond Na-
11 tional Defense Authorization Act for
12 Fiscal Year 1999 (Public Law 105–
13 261; 50 U.S.C. 1701 note); or

14 (II) the entity list maintained by
15 the Bureau of Industry and Security
16 of the Department of Commerce and
17 set forth in Supplement No. 4 to part
18 744 of the title 15, Code of Federal
19 Regulations; and

20 (ii) includes a parent, subsidiary, or
21 affiliate of, or an entity controlled by, an
22 entity described in clause (i).

23 (B) GRACE PERIOD.—For the purposes of
24 this Act, and the amendments made by this
25 Act, an entity shall be considered to be a cov-

1 ered entity beginning on the date that is 1 year
2 after the date on which the entity first qualifies
3 under the applicable provision of subparagraph
4 (A).

5 (4) EXCHANGE; SECURITY.—The terms “ex-
6 change” and “security” have the meanings given
7 those terms in section 3(a) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78c(a)).

9 (5) INSURANCE COMPANY.—The term “insur-
10 ance company” has the meaning given the term in
11 section 2(a) of the Investment Company Act of 1940
12 (15 U.S.C. 80a–2(a)).

13 (b) PROHIBITIONS.—

14 (1) LISTING ON EXCHANGE.—Beginning on the
15 date that is 1 year after the date of enactment of
16 this Act, the Commission shall prohibit a covered en-
17 tity from offering to sell or selling securities issued
18 by the covered entity, including pursuant to an ex-
19 emption to section 5 of the Securities Act of 1933
20 (15 U.S.C. 77e).

21 (2) INVESTMENTS; LIMITATION ON ACTIONS.—

22 (A) IN GENERAL.—The Investment Com-
23 pany Act of 1940 (15 U.S.C. 80a–1 et seq.) is
24 amended—

1 (i) in section 12(d) (15 U.S.C. 80a–
2 12(d)), by adding at the end the following:

3 “(6)(A) It shall be unlawful for any investment
4 company, or any person that would be an investment
5 company but for the application of paragraph (1) or
6 (7) of section 3(e), to invest in a covered entity.

7 “(B) In this paragraph, the term ‘covered enti-
8 ty’ has the meaning given the term in section 2(a)
9 of the American Financial Markets Integrity and Se-
10 curity Act.”; and

11 (ii) in section 13(c)(1)—

12 (I) in subparagraph (A), by strik-
13 ing “or” at the end;

14 (II) in subparagraph (B), by
15 striking the period at the end and in-
16 sserting “or”; and

17 (III) by adding at the end the
18 following:

19 “(C) are covered entities, as that term is
20 defined in section 12(d)(6)(B).”.

21 (B) EFFECTIVE DATE.—The amendments
22 made by subparagraph (A) shall take effect on
23 the date that is 1 year after the date of enact-
24 ment of this Act.

25 (3) FEDERAL FUNDS.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), on and after the date that is
3 180 days after the date of enactment of this
4 Act, no Federal funds may be used to enter
5 into, extend, or renew a contract or purchasing
6 agreement with a covered entity.

7 (B) WAIVER.—The head of a Federal
8 agency may issue a national security waiver to
9 the prohibition in subparagraph (A) for a pe-
10 riod of not more than 2 years with respect to
11 a covered entity if the agency head submits to
12 Congress a notification that includes—

13 (i) a written justification for the waiv-
14 er; and

15 (ii) a plan for a phase-out of the
16 goods or services provided by the covered
17 entity.

18 (4) INVESTMENTS BY INSURANCE COMPA-
19 NIES.—

20 (A) IN GENERAL.—On and after the date
21 of enactment of this Act, an insurance company
22 shall not invest in a covered entity.

23 (B) CERTIFICATION OF COMPLIANCE.—

24 (i) IN GENERAL.—Each insurance
25 company shall, on an annual basis, submit

1 to the Secretary of the Treasury a certifi-
2 cation of compliance with subparagraph
3 (A).

4 (ii) RESPONSIBILITIES OF THE SEC-
5 RETARY.—The Secretary of the Treasury
6 shall create a form for the submission re-
7 quired under clause (i) in such a manner
8 that minimizes the reporting burden on an
9 insurance company making the submission.

10 (C) SHARING INFORMATION.—The Sec-
11 retary of the Treasury, acting through the Fed-
12 eral Insurance Office, shall share the informa-
13 tion received under subparagraph (B) and co-
14 ordinate verification of compliance with State
15 insurance offices.

16 (c) QUALIFIED TRUSTS, ETC.—

17 (1) IN GENERAL.—Subsection (a) of section
18 401 of the Internal Revenue Code of 1986 is amend-
19 ed by inserting after paragraph (38) the following
20 new paragraph:

21 “(39) PROHIBITED INVESTMENTS.—A trust
22 which is part of a plan shall not be treated as a
23 qualified trust under this subsection unless the plan
24 provides that no part of the plan’s assets will be in-
25 vested in any covered entity (as defined in section

1 12(d)(6)(B) of the Investment Company Act of
2 1940.”.

3 (2) IRAS.—Paragraph (3) of section 408(a) of
4 such Code is amended by striking “contracts” and
5 inserting “contracts or in any covered entity (as de-
6 fined in section 12(d)(6)(B) of the Investment Com-
7 pany Act of 1940”.

8 (3) FIDUCIARY DUTY.—Section 404 of the Em-
9 ployee Retirement Income Security Act of 1974 (29
10 U.S.C. 1104) is amended by adding at the end the
11 following new subsection:

12 “(f) PROHIBITED INVESTMENTS.—No fiduciary shall
13 cause any assets of a plan to be invested in any covered
14 entity (as defined in section 12(d)(6)(B) of the Investment
15 Company Act of 1940 (15 U.S.C. 80a–12(d)(6)(B))).”.

16 (4) EFFECTIVE DATE.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), the amendments made by
19 this subsection shall apply to plan years begin-
20 ning after the date which is 180 days after the
21 date of the enactment of this Act.

22 (B) PLAN AMENDMENTS.—If subpara-
23 graph (C) applies to any retirement plan or
24 contract amendment—

1 (i) such plan or contract shall not fail
2 to be treated as being operated in accord-
3 ance with the terms of the plan during the
4 period described in subparagraph (C)(ii)
5 solely because the plan operates in accord-
6 ance with the amendments made by this
7 subsection, and

8 (ii) except as provided by the Sec-
9 retary of the Treasury (or the Secretary's
10 delegate), such plan or contract shall not
11 fail to meet the requirements of the Inter-
12 nal Revenue Code of 1986 or the Employee
13 Retirement Income Security Act of 1974
14 by reason of such amendment.

15 (C) AMENDMENTS TO WHICH PARAGRAPH
16 APPLIES.—

17 (i) IN GENERAL.—This subparagraph
18 shall apply to any amendment to any plan
19 or annuity contract which—

20 (I) is made pursuant to the pro-
21 visions of this section, and

22 (II) is made on or before the last
23 day of the first plan year beginning
24 on or after the date which is 2 years
25 after the date of the enactment of this

1 Act (4 years after such date of enact-
2 ment, in the case of a governmental
3 plan).

4 (ii) CONDITIONS.—This subparagraph
5 shall not apply to any amendment unless—

6 (I) during the period beginning
7 on the date which is 180 days after
8 the date of the enactment of this Act,
9 and ending on the date described in
10 subclause (I)(bb) (or, if earlier, the
11 date the plan or contract amendment
12 is adopted), the plan or contract is op-
13 erated as if such plan or contract
14 amendment were in effect, and

15 (II) such plan or contract amend-
16 ment applies retroactively for such pe-
17 riod.

18 (D) SUBSEQUENT AMENDMENTS.—Rules
19 similar to the rules of subparagraphs (B) and
20 (C) shall apply in the case of any amendment
21 to any plan or annuity contract made pursuant
22 to any update of the list of Communist Chinese
23 military companies required by section 1237(b)
24 of the Strom Thurmond National Defense Au-
25 thorization Act for Fiscal Year 1999 (Public

1 Law 105–261; 50 U.S.C. 1701 note) which is
2 made after the effective date of the amend-
3 ments made by this subsection.

4 **SEC. 3. MODIFICATION OF REQUIREMENTS FOR LIST OF**
5 **COMMUNIST CHINESE MILITARY COMPANIES.**

6 Section 1237(b) of the Strom Thurmond National
7 Defense Authorization Act for Fiscal Year 1999 (Public
8 Law 105–261; 50 U.S.C. 1701 note) is amended—

9 (1) by striking paragraph (2) and inserting the
10 following:

11 “(2) REVISIONS TO THE LIST.—

12 “(A) ADDITIONS.—The Secretary of De-
13 fense, the Secretary of Commerce, or the Direc-
14 tor of National Intelligence may add a person
15 to the list required by paragraph (1) at any
16 time.

17 “(B) REMOVALS.—A person may be re-
18 moved from the list required by paragraph (1)
19 if the Secretary of Defense, the Secretary of
20 Commerce, and the Director of National Intel-
21 ligence agree to remove the person from the
22 list.

23 “(C) SUBMISSION OF UPDATES TO CON-
24 GRESS.—Not later than February 1 of each
25 year, the Secretary of Defense shall submit a

1 version of the list required in paragraph (1),
 2 updated to include any additions or removals
 3 under this paragraph, to the committees and of-
 4 ficers specified in paragraph (1).”;

5 (2) by striking paragraph (3) and inserting the
 6 following:

7 “(3) CONSULTATION.—In carrying out para-
 8 graphs (1) and (2), the Secretary of Defense, the
 9 Secretary of Commerce, and the Director of Na-
 10 tional Intelligence shall consult with each other, the
 11 Attorney General, and the Director of the Federal
 12 Bureau of Investigation.”; and

13 (3) in paragraph (4), by striking “making the
 14 determination required by paragraph (1) and of car-
 15 rying out paragraph (2)” and inserting “this sec-
 16 tion”.

17 **SEC. 4. ANALYSIS OF FINANCIAL AMBITIONS OF THE GOV-**
 18 **ERNMENT OF THE PEOPLE’S REPUBLIC OF**
 19 **CHINA.**

20 (a) ANALYSIS REQUIRED.—The Director of the Of-
 21 fice of Commercial and Economic Analysis of the Air
 22 Force shall conduct an analysis of—

23 (1) the strategic importance to the Government
 24 of the People’s Republic of China of inflows of

1 United States dollars through capital markets to the
2 People’s Republic of China;

3 (2) the methods by which that Government
4 seeks to manage such inflows;

5 (3) how the inclusion of the securities of Chi-
6 nese entities in stock or bond indexes affects such
7 inflows and serves the financial ambitions of that
8 Government; and

9 (4) how the listing of the securities of Chinese
10 entities on exchanges in the United States assists
11 in—

12 (A) meeting the strategic goals of that
13 Government, including defense, surveillance,
14 and intelligence goals; and

15 (B) the fusion of the civilian and military
16 components of that Government.

17 (b) SUBMISSION TO CONGRESS.—The Director of the
18 Office of Commercial and Economic Analysis of the Air
19 Force shall submit to Congress a report—

20 (1) setting forth the results of the analysis con-
21 ducted under subsection (a); and

22 (2) based on that analysis, making rec-
23 ommendations for best practices to mitigate any na-
24 tional security and economic risks to the United

- 1 States relating to the financial ambitions of the Gov-
- 2 ernment of the People's Republic of China.

