118TH CONGRESS
2D SESSION

S. 4589

To prohibit index funds and registered investment companies from investing in Chinese companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2024

Mr. SCOTT of Florida introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To prohibit index funds and registered investment companies from investing in Chinese companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safeguarding U.S. Financial Leadership Against Communist China Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) A 2024 report by the Select Committee on the Chinese Communist Party of the House of Representatives found that index providers and asset

managers, on an industry-wide basis, have facilitated the investment of more than $6,500,000,000 in companies that are based in the People's Republic of China and that the Federal Government has red-flagged or blacklisted for advancing the military capabilities, or supporting the human rights abuses, of the People's Republic of China.

(2) A 2023 report by the Coalition for a Prosperous America documented the astounding level by which financial institutions and investment firms that are based in the United States fund companies in the People's Republic of China, including such companies that have been sanctioned by the Federal Government and prohibited from doing business in the United States.

(3) A 2021 report by the U.S.–China Economic and Security Review Commission stated that the Government of the People's Republic of China permits the participation of foreign firms and investors in the Chinese market only when that participation suits the national interest of the People's Republic of China, and, as a result, a nominal financial opening in the People's Republic of China is, in reality, a carefully managed process designed to reinforce state control over capital markets and channel for-

eign funding toward fulfilling the national development objectives of that Government.

(4) Every dollar invested and spent in the People's Republic of China funds the atrocities of the Government of the People's Republic of China, such as the genocide of the Uyghurs, and the campaign of that Government to destroy the United States.

(5) To protect the freedom to invest, and the integrity of the capital markets of the United States, Congress must ensure that those capital markets are not being polluted and distorted by nefarious, non-market economy actors, such as the Government of the People's Republic of China.

(6) Congress must address—

(A) the threats that the Government of the People's Republic of China poses to investors in the United States; and

(B) the consequences of massive investment by the United States in the military-civil fusion apparatus of a regime that wishes to destroy the way of life in the United States.

SEC. 3. PROHIBITION.

(a) DEFINITIONS.—In this section:

(1) CHINESE COMPANY.—The term ''Chinese company'' means a company—

(A) that is incorporated in, or otherwise organized under the laws of, the People's Republic of China;

(B) the majority of the assets or employees of which are located in the People's Republic of China;

(C) that is majority-owned by, controlled by, or subject to the jurisdiction or direction of the Government of the People's Republic of China;

(D) the majority of the value of which depends on the revenues, profits, market capitalization, assets, or value of a security (including options to purchase or sell) of a company described in subparagraph (A), (B), or (C); or

(E) with respect to which a company described in subparagraph (A), (B), or (C) has control (as defined in section 230.405 of title 17, Code of Federal Regulations, or any successor regulation).

(2) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(3) HEDGE FUND.—The term "hedge fund" means an issuer that would be an investment company but for paragraph (1) or (7) of section 3(c) of

the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)).

(4) INDEX FUND.—The term ''index fund'' means an investment company or hedge fund that is designed to track an index of securities or a portion of such an index.

(5) INVESTMENT COMPANY.—The term ''investment company'' has the meaning given the term in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3).

(6) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(b) PROHIBITION ON INVESTMENT.—

(1) GENERAL PROHIBITION.—

(A) IN GENERAL.—Neither an index fund nor a registered investment company may invest in a Chinese company.

(B) DIVESTMENT PERIOD SAFE HARBOR.—With respect to an index fund or registered investment company with an investment in a Chinese company on the date of enactment of this Act, subparagraph (A) shall not apply to that investment during the 1-year period beginning on that date of enactment.

(2) DIVESTMENT PLAN.—Not later than 180 days after the date of enactment of this Act, each index fund and registered investment company with an investment in a Chinese company shall develop, and share with the shareholders of and investors in the applicable entity, a written plan on how the entity will divest from each such investment to come into compliance with this subsection.

(c) CIVIL PENALTY.—

(1) IN GENERAL.—Any person that violates this section shall be subject to a civil penalty of the following amount:

(A) With respect to a violation of subsection (b)(1), an amount not to exceed the greater of—

(i) $500,000; or

(ii) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(B) With respect to a violation of subsection (b)(2), $500,000 for each day the person is in violation of subsection (b)(2).

(2) AMOUNT OF A TRANSACTION DEFINED.—For purposes of paragraph (1)(A)(ii), the term "amount of a transaction" means—

(A) with respect to a purchase that is the basis of the applicable violation, the purchase price; and

(B) with respect to the holding of an investment that is the basis of the applicable violation, the fair market value of the investment at the time of the violation.

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