Opening Statement – Kevin O'Leary

Chairmen Scott and Moolenaar, Ranking Members Gillibrand and Krishnamoorthi, members of the Senate Special Committee on Aging and the House Select Committee on the Chinese Communist Party, thank you for inviting me to participate in today's important hearing. I want to use my opening statement to shine a light on an issue that impacts millions of American investors, many of whom have invested their retirement funds in the equity markets. The threats posed by the Chinese Communist Party I will discuss today, impact anyone like me who has tried to do business in China, everyone that invests in the stock market, anyone that invests in passive investment vehicles like international index funds or mutual funds, any retail investor that invests in Chinese companies, anyone who invests intentionally in emerging markets like China, and everyone with a 401k plan or pensions invested in international index funds. Of course, millions of American seniors fall into one or more of these categories.

I've been a businessman, a private equity and venture capitalist, my entire adult life. I started a software company in 1986 and at one point owned such popular IPs as the Oregon Trail, Carmen Sandiego and Reader Rabbit before I sold the company for $4.2 billion in 1999. I now maintain a portfolio of investments in a number of businesses in multiple sectors of the economy held though Private Equity and Venture Funds. I like to think I know what a good deal is. I certainly know what a bad deal is, and investing in China under the current reciprocal imbalances is a very bad deal.

I have nothing against the Chinese people. Their contributions to science and art over the millennia are well documented. They are wonderful people and incredibly talented. Many of my team members in my operating company are of Chinese or Asian descent. It's their Government I take issue with. In my opinion, since joining the WTO in 2000 the Chinese Government has never played by its rules. The Chinese Communist Party has the ability and the desire to exercise total control over its people and their companies – and anyone else who wants to do business with or operate inside its territory. This has led the CCP to passing various laws in the realm of cybersecurity, espionage, intelligence, and beyond, and other mechanisms to control its corporations, industries, and business partnerships, all to the detriment of US investors.

This is not a new phenomenon – it has been part of the long-game China has been playing for decades. We just are slow to wake up to these harsh realities and even slower to change our behavior. But the time for change is now – before it is too late and billions of dollars of wealth our current seniors and future retirees are counting on are wiped out.

Let me just elaborate briefly on a few reasons why the time for us to address this matter is TODAY.

A new buzzword started going around at the start of the year – "Golden Share." Well, not only is it a buzzword, but it is also a problem and exemplary of all the risks to investing in Chinese securities. In its desire to reduce state-run companies, the Chinese government divested itself from them, sort of – but retained these golden shares, or "special management shares" as it is officially called, as a means of continuing to control these entities while it officially divests themselves from the company. In return for taking a 1% share in the company, or all their subsidies, the government is granted a seat on the board, voting power and influence over all business decisions. Whether divested for financial reasons or optics, there is nothing good that comes from investing in a company with special management shares reserved for the Chinese Communist Party. As America's former Secretary of State rightly noted, "in China, there's really no distinction between private companies and the state."[1]

We see the use of Golden Shares as China uses that to control new media companies and tech companies. As of 2023, 37% of companies listed in Shanghai and Shenzhen had amended their charters to formalize the role of party committees inside the companies. This is in addition to China's 2017 National Intelligence Law which requires all firms in China to accede to government demands to provide information and data as authorities deem necessary to protect China's national security.

If China maintaining control of companies wasn't bad enough for investors, China prevents foreigners from owning Chinese companies. Instead, they've cleverly exploited the U.S. financial system's creation of Variable Interest Entities (VIEs) to approximate the owning of corporate shares. If you own stock in a company like Tencent, Alibaba, or the ICBC you don't actually own stock in a company. You own a share of a contract of something in the Cayman Islands that is trying to approximate stock ownership. Investors are buying in the VIE investment structure that relies on a contractual arrangement with the parent company to allow a foreign investor to control, but not directly own, the operating company. I estimate that 90% of Americans who hold these companies in their portfolios have no idea that this situation exists.

Congress has passed a law to try to solve this problem, yet, the problem persists.

The U.S. has given China preferential treatment for over a decade through its own special MOU that governs accounting standards and oversight. This sweetheart deal with the Public Accounting oversight Board (PCAOB) has allowed China to continue to game the U.S. financial system via their special treatment that is not afforded other countries – even our allies. Despite efforts to update these accounting agreements, it is no fairer to do business with China; there is no reliable rule of law, no reciprocity for Western businesses to be treated in China how the West treats Chinese businesses, no consequences for IP theft, or market access. This is a completely unbalanced and non-reciprocal situation. Why do we allow this? How can this be in any way viewed as fair to American investors?

What's worse, is these investment schemes all benefit China's core industries – their "Made in China 2025" benchmarks that channel investment into priority sectors that underpin their national military-civil fusion strategy. So, by investing in China, Americans are propping up their military, surveillance state, industrial capacity that operates off of unchecked environmental spoilage, slave labor, forced organ harvesting, and gross human rights violations. Not to mention that these companies are the very ones that then destroy U.S. jobs and industries through their corporate espionage, IP theft, dumping, trade crimes, and more. None of these are good things to be invested in, and even more so, if the investment itself isn't sold, there is every reason to change course and protect your assets.

At the end of the day, the American investor owns nothing and there is nothing stopping China from voiding out this agreement.

Every American has exposure to China in their 401k's and retirement accounts. If you invest in an Emerging Market Index Fund, about 25% of your fund is invested in China. If you invest in a Total International Index Fund, about 10% of your fund is invested in China. If China goes to war with Taiwan, those investments could go to zero. A retail investor that buys shares of Ali Babb because they think it'll be the next Amazon, does not actually own the stock. Should we allow a retail investor to buy fake shares of a real company? Should a retiree potentially lose 10% of their international equity portfolio, when it is 100% preventable?

I'm glad this hearing is happening today and there is bicameral and bipartisan interest in solving the problem. We can fix the problem. There should be complete parity with the US and China, but we need to act NOW to protect US investors and the federal government. I believe Congress should act to:

- Delist CCP-affiliated companies until there is parity of treatment for Western businesses in China. If we can't own stocks in their country, they should not be allowed to own stocks in the US. Unless businesses can operate in China with the same freedoms that Chinese businesses have, we should not let their businesses operate in the U.S.
- We should exit China's marketplace until the CCP makes significant reforms.
- We should demand that all Chinese companies engaged in US markets comply with US accounting standards.

For decades across multiple administrations, we have discussed leveling the playing field with China, instead the situation has only gotten worse. Make no mistake, I want to do business in China as so do millions of other investors and companies, but we want a reciprocal ecosystem that is transparent and where all parties play by the rules mutually agreed upon. I want access to the Chinese legal system so trade and IP grievances can be litigated and resolved. The Chinese enjoy these rights in the US. Why do we not have them in China? Lately there has been a lot of rhetoric during negotiations on who holds the "cards". The US is still the world's largest market supported by the world's largest economy under the rule of democratic law. That's why so much of the world's capital is invested here. That's a lot of leverage, lets fix this Chinese problem while we still hold the cards.

I look forward to a robust conversation today and answering any questions you may have.

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[1] https://www.cbsnews.com/news/antony-blinken-face-the-nation-transcript-02-19-2023/