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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “American Financial Markets Integrity and Security Act”.

SEC. 2. PROHIBITIONS RELATING TO CERTAIN COMMUNIST CHINESE MILITARY COMPANIES.

(a) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.
(2) CONTROL.—The term “control” has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).

(3) COVERED ENTITY.—

(A) IN GENERAL.—The term “covered entity”—

(i) means an entity on—

(I) the list of Communist Chinese military companies required by section 1237(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1701 note); or

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

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

(B) GRACE PERIOD.—For the purposes of this Act, and the amendments made by this Act, an entity shall be considered to be a cov-
ered entity beginning on the date that is 1 year after the date on which the entity first qualifies under the applicable provision of subparagraph (A).

(4) Exchange; security.—The terms “exchange” and “security” have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(5) Insurance company.—The term “insurance company” has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).

(b) Prohibitions.—

(1) Listing on exchange.—Beginning on the date that is 1 year after the date of enactment of this Act, the Commission shall prohibit a covered entity from offering to sell or selling securities issued by the covered entity, including pursuant to an exemption to section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(2) Investments; limitation on actions.—

(A) In general.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—
(i) in section 12(d) (15 U.S.C. 80a–12(d)), by adding at the end the following:

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

“(B) In this paragraph, the term ‘covered entity’ has the meaning given the term in section 2(a) of the American Financial Markets Integrity and Security Act.”; and

(ii) in section 13(c)(1)—

(I) in subparagraph (A), by striking “or” at the end;

(II) in subparagraph (B), by striking the period at the end and inserting “or”; and

(III) by adding at the end the following:

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

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date that is 1 year after the date of enactment of this Act.

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

(B) WAIVER.—The head of a Federal agency may issue a national security waiver to the prohibition in subparagraph (A) for a period of not more than 2 years with respect to a covered entity if the agency head submits to Congress a notification that includes—

(i) a written justification for the waiver; and

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

(4) INVESTMENTS BY INSURANCE COMPANIES.—

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

(B) CERTIFICATION OF COMPLIANCE.—

(i) IN GENERAL.—Each insurance company shall, on an annual basis, submit
to the Secretary of the Treasury a certifi-
cation of compliance with subparagraph
(A).

(ii) Responsibilities of the Sec-
detary.—The Secretary of the Treasury
shall create a form for the submission re-
quired under clause (i) in such a manner
that minimizes the reporting burden on an
insurance company making the submission.

(C) Sharing Information.—The Sec-
cretary of the Treasury, acting through the Fed-
eral Insurance Office, shall share the informa-
tion received under subparagraph (B) and co-
ordinate verification of compliance with State
insurance offices.

(e) Qualified Trusts, etc.—

(1) In General.—Subsection (a) of section
401 of the Internal Revenue Code of 1986 is amend-
ed by inserting after paragraph (38) the following
new paragraph:

“(39) Prohibited Investments.—A trust
which is part of a plan shall not be treated as a
qualified trust under this subsection unless the plan
provides that no part of the plan’s assets will be in-
vested in any covered entity (as defined in section
12(d)(6)(B) of the Investment Company Act of 1940.”.

(2) IRAs.—Paragraph (3) of section 408(a) of such Code is amended by striking “contracts” and inserting “contracts or in any covered entity (as defined in section 12(d)(6)(B) of the Investment Company Act of 1940”.

(3) Fiduciary Duty.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

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

(4) Effective Date.—

(A) In General.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to plan years beginning after the date which is 180 days after the date of the enactment of this Act.

(B) Plan Amendments.—If subparagraph (C) applies to any retirement plan or contract amendment—
(i) such plan or contract shall not fail
to be treated as being operated in accord-
ance with the terms of the plan during the
period described in subparagraph (C)(ii)
solely because the plan operates in accord-
ance with the amendments made by this
subsection, and

(ii) except as provided by the Sec-
retary of the Treasury (or the Secretary’s
delegate), such plan or contract shall not
fail to meet the requirements of the Intern-
nal Revenue Code of 1986 or the Employee
Retirement Income Security Act of 1974
by reason of such amendment.

(C) Amendments to which paragraph
applies.—

(i) In general.—This subparagraph
shall apply to any amendment to any plan
or annuity contract which—

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

(II) is made on or before the last
day of the first plan year beginning
on or after the date which is 2 years
after the date of the enactment of this
Act (4 years after such date of enactment, in the case of a governmental plan).

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

(I) during the period beginning on the date which is 180 days after the date of the enactment of this Act, and ending on the date described in subclause (I)(bb) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

(II) such plan or contract amendment applies retroactively for such period.

(D) SUBSEQUENT AMENDMENTS.—Rules similar to the rules of subparagraphs (B) and (C) shall apply in the case of any amendment to any plan or annuity contract made pursuant to any update of the list of Communist Chinese military companies required by section 1237(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public
Law 105–261; 50 U.S.C. 1701 note) which is made after the effective date of the amendments made by this subsection.

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

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

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

“(2) Revisions to the list.—

“(A) Additions.—The Secretary of Defense, the Secretary of Commerce, or the Director of National Intelligence may add a person to the list required by paragraph (1) at any time.

“(B) Removals.—A person may be removed from the list required by paragraph (1) if the Secretary of Defense, the Secretary of Commerce, and the Director of National Intelligence agree to remove the person from the list.

“(C) Submission of updates to Congress.—Not later than February 1 of each year, the Secretary of Defense shall submit a
version of the list required in paragraph (1),
updated to include any additions or removals
under this paragraph, to the committees and of-
ficers specified in paragraph (1).”;
(2) by striking paragraph (3) and inserting the
following:
“(3) CONSULTATION.—In carrying out para-
graphs (1) and (2), the Secretary of Defense, the
Secretary of Commerce, and the Director of Na-
tional Intelligence shall consult with each other, the
Attorney General, and the Director of the Federal
Bureau of Investigation.”; and
(3) in paragraph (4), by striking “making the
determination required by paragraph (1) and of car-
rying out paragraph (2)” and inserting “this sec-
tion”.

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

(a) ANALYSIS REQUIRED.—The Director of the Of-
lice of Commercial and Economic Analysis of the Air
Force shall conduct an analysis of—
(1) the strategic importance to the Government
of the People’s Republic of China of inflows of
United States dollars through capital markets to the
People's Republic of China;
(2) the methods by which that Government
seeks to manage such inflows;
(3) how the inclusion of the securities of Chi-
inese entities in stock or bond indexes affects such
inflows and serves the financial ambitions of that
Government; and
(4) how the listing of the securities of Chinese
tentities on exchanges in the United States assists
in—
(A) meeting the strategic goals of that
Government, including defense, surveillance,
and intelligence goals; and
(B) the fusion of the civilian and military
components of that Government.
(b) SUBMISSION TO CONGRESS.—The Director of the
Office of Commercial and Economic Analysis of the Air
Force shall submit to Congress a report—
(1) setting forth the results of the analysis con-
ducted under subsection (a); and
(2) based on that analysis, making rec-
ommendations for best practices to mitigate any na-
tional security and economic risks to the United