MARCO RUBIO
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COMMITTEES:
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SMALL BUSINESS AND ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510

February 25, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, D.C. 20530

Dear Attorney General Barr:

The "Phase One" trade agreement, recently signed by the United States and China, allows American financial companies to increase their involvement in China's capital markets in new and hazardous ways. For example, the deal allows American firms to purchase Chinese non-performing loans directly from Chinese banks. A majority of these loans are the liabilities of state-owned enterprises.

As a result of this policy change, American financial institutions — and by extension the individuals whose savings they manage — will more directly fund companies that are directed by the Chinese government and Chinese Communist Party, many of which are used for an array of malign industrial, military, and human rights-related activities. As this agreement is implemented, it will be important that the United States Government ensure American actors are not unduly exposed to the risks associated with these state-owned and directed firms.

China's economy and financial system are plagued by corruption and illegal activity. According to the GAN Business Anti-Corruption Portal's China Corruption Report, "Companies are likely to experience bribery, political interference or facilitation payments when acquiring public services and dealing with the judicial system."

The direct purchase of non-performing loans by U.S. financial firms will present a new institutional arrangement for American investors in China, and with it new risks for corruption. By purchasing the liabilities of state-owned enterprises, U.S. firms will become the creditors of institutions that are highly sensitive in Chinese politics. State-owned enterprises are at the heart of the Chinese economy. They are significant sources of spending for the rest of its business sector and employ millions of workers. As China becomes more reliant on state-owned enterprises as its economic growth slows, the solvency of these companies will become even more systemically important.

The burdens state-owned enterprises, policy banks, and commercial banks must bear in China's planned economy are great. Decisions between making good on outstanding liabilities and sacrificing political goals will be very difficult, and so ripe for corruption.

As such, I urge you to vigilantly identify and enforce the Foreign Corrupt Practices Act (FCPA) cases involving the sale of distressed debt by Chinese financial and nonfinancial companies to American firms, in keeping with the goals of the Department of Justice China Initiative. This supervision will serve to safeguard American investors from the financial and legal hazards associated with these new, high-risk institutional relationships.

Thank you for your attention to this matter. I look forward to your response detailing the steps that the Department of Justice China Initiative plans to take in this regard.

Sincerely,

Marco Rubio
U.S. Senator

CC:

Securities and Exchange Commission Chairman Jay Clayton
Assistant Attorney General John Demers
U.S. Attorney Andrew E. Lelling
U.S. Attorney Jay E. Town
U.S. Attorney Alex G. Tse
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