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State Department Asks University Boards to Divest Holdings in the People's Republic of China (PRC) and Prevent “Foreign Influence” on University Programs

On Tuesday, August 18, 2020, the Under Secretary of State for Economic Growth, Energy and the Environment, Keith Krach, released a letter to the “Governing Boards of American Institutions of Higher Education and Affiliates” urging that they voluntarily divest from companies in the People’s Republic of China (PRC), publicly release information about their PRC investment holdings, and take other steps to reduce affiliations with the PRC. This letter – unusual in its approach and message – warns about threats to U.S. economic and national security from the PRC government’s efforts to steal U.S. intellectual property and basic research and to exploit and manipulate U.S. academic institutions and faculty. These threats, often described as threats from “foreign influence in research,” are not new. But the actions recommended in the letter to address them include new strategies, some of which are cast as an ethical demand on, and as a requirement attendant to the fiduciary duties of, university trustees.

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The letter arises from a steady and expanding campaign across U.S. government agencies and law enforcement over the last two years to address concerns about foreign influence – primarily PRC influence – on American universities, research institutions, and academic medical centers. The letter highlights human rights abuses and political repression of minorities (including Uighurs) inside the PRC that may be supported (though unknowingly and unintentionally) through investment in PRC-based companies. Contained within in the letter are five key recommendations. University boards of directors are advised in the letter to:

1. Examine “Confucius Institute” activities or partnerships “to ensure that academic freedom, institutional autonomy, transparency and clean financial practices are being upheld.”
2. Review relationships with contractors and partners who operate in the Xinjiang Uyghur Autonomous Region to assure partnerships are “only with those whose supply chains are free from human rights violations.”
3. Divest from companies that are either on the export control Entity List, which was recently expanded, or that “contribute to human rights violations.”¹
4. Consider disclosing immediately and publicly “all” PRC companies in which endowment funds are invested, “especially” companies that are “in emerging markets index funds.” Consistent with recent statements from the Department of the Treasury, the letter predicts that many PRC companies may be delisted from U.S. exchanges by the end of next year.
5. Develop steps to screen employees for conflicts of interest and foreign funding sources. Of note, the letter does not reference the existing systems in place to screen and report on these issues, such as the rules for financial conflict of interest and other support reporting for grantees who received funding from the National Institutes of Health.

¹ The Entity List, administered by the Department of Commerce Bureau of Industry and Security, is the listing of foreign companies (and their affiliates) for which a specific license is required for the export, re-export and/or transfer (in-country) of specified items subject to the U.S. Export Administration Regulations. Conducting business with these entities is not prohibited under U.S. law. See Supplement No. 4 to Part 744 of the Export Administration Regulations (15 C.F.R. Part 744, Supp. No. 4), available at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

Although likely to garner attention because of their novel nature, the recommendations lack detail, and the complexity and difficulty attached to implementing them are not acknowledged. In at least one area, as noted above, they do not mention that receipt of federal research funding already carries with it various disclosure obligations on investigators to disclose personal foreign income and foreign ties, which then must be disclosed by their institutions to U.S. government funding agencies.

However, universities, academic medical centers and others should consider the letter carefully because of the broader context in which it arises, including ongoing attention from both the legislative and executive branches. The recommendations in the letter, when put into context, reflect that relationships with PRC-based or funded entities will continue to be a focus of federal agency attention. The letter may increase pressure on universities, academic medical centers and others to uncover and eliminate perceived risks and threats posed by affiliations with PRC-based entities.