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Are U.S.-Listed Chinese Firms a Minefield? A Board Perspective

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I. Introduction

In the midst of the ongoing Sino-U.S. tensions, a remarkable flashpoint was the massive corporate scandal of Luckin Coffee (Luckin). Luckin, Cayman Islands incorporated, NASDAQ-listed Chinese company, operated the largest coffee chain in China measured by stores and was touted as an upstart rival to upend Starbucks' dominance in the Chinese market.¹ Founded in 2017, Luckin went public in May 2019, making it one of the fastest companies in the world to go from founding to initial public offering (IPO).² Into the eleventh month of its run as a publicly traded company, however, Luckin shocked the market in April 2020 with the disclosure that it had fabricated much of its reported sales.³ It came under investigation of regulatory authorities both in China and the United States,⁴ eventually leading to its delisting from NASDAQ in July 2020.⁵ Its market capitalization plunged over 53 percent from an all-time high of \$12 billion in

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1. Jing Yang, *China Moves to Punish Luckin for Fabricating Sales*, WALL ST. J. (July 31, 2020, 7:59 AM), <https://www.wsj.com/articles/china-moves-to-punish-luckin-coffee-for-fabricating-sales-11596196761> [<https://perma.cc/8QKM-7932>].

2. *Id.*

3. Quentin Webb & Joanne Chiu, *Ernst & Young Says It First Found Accounting Issues at Luckin*, WALL ST. J. (Apr. 3, 2020, 11:23 AM), <https://www.wsj.com/articles/ernst-young-says-it-first-found-accounting-issues-at-luckin-11585927403> [<https://perma.cc/XNP2-7WAH>].

4. Jing Yang, *Luckin Coffee Under Investigation by China's Top Commerce Regulator*, WALL ST. J. (Apr. 27, 2020, 8:02 AM), <https://www.wsj.com/articles/luckin-coffee-under-investigation-by-chinas-top-commerce-regulator-11587967299> [<https://perma.cc/H4EC-LMFJ>]; Dave Michaels, *SEC Investigates China's Luckin Coffee over Accounting Scandal*, WALL ST. J. (Apr. 29, 2020, 5:30 AM), <https://www.wsj.com/articles/sec-investigates-starbucks-china-rival-luckin-over-accounting-scandal-11588152604> [<https://perma.cc/9M78-57WZ>].

5. Jing Yang, *Luckin Coffee Drops NASDAQ Appeal; Shares to Be Delisted*, WALL ST. J. (June 26, 2020, 8:36 PM), <https://www.wsj.com/articles/luckin-coffee-drops-NASDAQ-appeal-shares-to-be-delisted-11593188282> [<http://archive.md/20200803015642/https://www.wsj.com/articles/luckin-coffee-drops-NASDAQ-appeal-shares-to-be-delisted-11593188282>].

January 2020 to \$350 million in June 2020,⁶ saddling institutional and individual investors both in Asia and the West with heavy losses.

In the wake of Luckin's scandal, the U.S.-listed Chinese companies as a group have been seen as posing particularly significant risks to investors in the U.S. stock markets. The U.S. Securities and Exchange Commission (SEC) warned, with an unambiguous reference to China, that "there is substantially greater risk that disclosures will be incomplete or misleading and, in the event of investor harm, substantially less access to recourse, in comparison to U.S. domestic companies."⁷ A bill passed unanimously the U.S. Senate in May 2020 to, in effect, give U.S.-listed Chinese companies three years to comply with the U.S. audit requirements or to give up their U.S. listings.⁸ The House was said to be likely to approve the Senate bill,⁹ and the Trump administration has reportedly drawn up a plan to follow on the bipartisan legislation.¹⁰ Calls have even been made to bar new listings from China altogether.¹¹

Are the U.S.-listed Chinese firms, as a group, truly a corporate governance minefield to be avoided at all costs? Did the Luckin scandal reveal the commonly shared, deep-rooted governance deficiencies of the New York Stock Exchange (NYSE) and NASDAQ-listed Chinese firms or was Luckin an outlier? Much of the focus on the current debate has been, perhaps deservedly, on the decade-old issue of access to the audit papers located in China, an issue known for its political intricacy and complexity.¹² The current Sino-U.S. confrontation has made the issue, albeit important,

6. *Id.*

7. Public Statement, SEC Chairman Jay Clayton et al., SEC, Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies Are Limited (April 21, 2020), <https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting> [<https://perma.cc/4UM6-DM2V>].

8. Dave Michaels, *Chinese Companies Could Be Forced to Give Up U.S. Listings Under Senate Bill*, WALL ST. J. (May 20, 2020, 7:48 PM), <https://www.wsj.com/articles/chinese-companies-could-be-forced-to-give-up-u-s-listings-under-senate-bill-11590015423> [<http://archive.md/20200521181923/https://www.wsj.com/articles/chinese-companies-could-be-forced-to-give-up-u-s-listings-under-senate-bill-11590015423>].

9. Dave Michaels & Akane Otani, *U.S. Moves to Audit Chinese Firms. Market Frets Over What Comes Next*, WALL ST. J. (May 26, 2020, 5:30 AM), <https://www.wsj.com/articles/u-s-moves-to-audit-chinese-firms-market-frets-over-what-comes-next-11590485401> [<https://perma.cc/APR2-R9TG>].

10. Dave Michaels, *White House Seeks Crackdown on U.S.-Listed Chinese Firms*, WALL ST. J. (Aug. 6, 2020, 8:06 PM), <https://www.wsj.com/articles/trump-administration-seeks-crackdown-on-chinese-companies-with-shares-traded-in-u-s-11596748284> [<https://perma.cc/HG5D-7SV5>].

11. Jesse Fried, *Delisting Chinese Companies Plays Straight into Their Hands*, FIN. TIMES (June 1, 2020), <https://www.ft.com/content/7bb80406-a0c6-11ea-ba68-3d5500196c30> [<https://perma.cc/M3H7-8BWR>].

12. *Id.*; See Rohan Maitra, *Scaling Two Great Walls: Resolving the Impasse Between China's State Secrets Law and International Disclosure Requirements*, 36 NW. J. INT'L L. & BUS. 587, 591 (2016); See also, Qingxiu Bu, *The Chinese Reverse Merger Companies (RMCs) Reassessed: Promising but Challenging?*, 12 J. INT'L BUS. & L. 17, 17 (2013).

all the less likely to be resolved in the near future. It is useful, therefore, to direct our attention to an alternative and potentially productive venue: the corporate board. A wealth of literature has shown that independent boards and board committees help to ensure the integrity of the corporate financial reporting processes.¹³ Board independence has also been a focal point of the corporate governance reforms sweeping across the globe in the past two decades.¹⁴ The board perspective, which has remained under-studied in respect of the U.S.-listed Chinese firms, promises to offer another lens through which the current issues can be further debated.¹⁵

Drawing upon two unique, comprehensive datasets we have created specifically for this research, this research sheds fresh empirical light on some previously little-known characteristics and patterns of the U.S.-listed Chinese listed companies and, in particular, their boards and board committees. We show empirically that Luckin's board and board committees were among the least independent in the group of NASDAQ-listed Chinese firms. We therefore caution against judging the whole group of U.S.-listed Chinese companies on the basis of what appears to be an outlier firm. Our research also empirically demonstrates that the Chinese companies listed on the NYSE and NASDAQ, on average, have fewer independent boards and board committees than S&P 500 and Russell 3000 firms do.¹⁶ Care should be taken in interpreting this finding. Overall, our research does not offer much support to the views categorically labelling the whole cohort of the U.S.-listed Chinese firms as a minefield insofar as board-level governance is concerned.

The rest of the article is structured as follows: Part II provides a detailed empirical account of the universe of U.S.-listed Chinese firms, drawing upon a unique dataset of their firm characteristics. Part III depicts the role of the board and board committees in corporate governance in general and highlights the issue of independence in particular. Part IV proceeds to elaborate on the board and board committee rules applicable to the U.S.-listed Chinese firms. Drawing upon a proprietary, hand-collected dataset on the boards and board committees of the NYSE- and NASDAQ-listed Chinese firms, Part V addresses the two key empirical questions set out above. Part VI offers conclusions.

II. U.S.-Listed Chinese Firms: An Empirical Survey

Since the early 1990s, Chinese firms have successfully listed on prime overseas stock exchanges globally, inter alia, in Hong Kong, New York,

13. See Renée B. Adams et al., *The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey*, 48 J. ECON. LITERATURE 58, 96 (2010). See also discussion *infra* Section III.

14. See *id.* at 81.

15. See *id.* at 96.

16. See generally Appendix 1.

Singapore, and London.¹⁷ Listing overseas gives the Chinese firms the much-desired access to international capital, as well as greater name recognition.¹⁸ Listing abroad can also bring about potential benefits of “bonding,” by signaling the firm’s commitment to more robust corporate governance standards.¹⁹ Overseas listings have also been driven, at least historically, by the policy considerations of the Chinese government to develop its domestic securities markets.²⁰

Compared to other top destinations, the United States offers unique attractiveness to Chinese firms seeking to list abroad.²¹ Until recently, a well-known advantage of the U.S.-listing for founders of technology firms was the United States’ flexibility with the dual-class share structure.²² Alibaba, for instance, chose the NYSE for its 2014 IPO after having initially sought a HKEX listing.²³ This was seen by HKEX chief executive as an “undesired, unintended, twisted consequence” of its then prevailing listing rules, which prohibited weighted voting rights.²⁴ Other practical considerations range from the perceived less burdensome regulatory

17. Dafeng Xu, *Financial Statism as an Alternative Interventionist Approach in Developing International Financial Centres (IFCs): The Case of Shanghai Since the 1990s*, (Dec. 2014) (unpublished Ph.D. thesis, University College London) (on file with the University College London Library).

18. See Mingyi Hung et al., *Political Considerations in the Decision of Chinese SOEs to List in Hong Kong*, 53 J. ACCT. & ECON. 435, 436, 446 (2012). Overseas listings can also bring private political benefits to managers of the politically connected Chinese firms listed abroad. *Id.*

19. See Qian Sun et al., *Bonding Premium as a General Phenomenon*, SOC. SCI. RSCH. NETWORK (Mar. 15, 2006), <https://ssrn.com/abstract=890962>; cf. Donald C. Clarke, *The Bonding Effect in Cross-Listed Chinese Companies: Is it Real?*, SOC. SCI. RSCH. NETWORK (Dec. 31, 2015), (Geo. Wash. L. Sch. Pub. L. Rsch. Paper No. 2015-55), <https://ssrn.com/abstract=2710717>. There is evidence of bonding premiums for Chinese firms to list overseas. *Id.*

20. Fanpeng Meng, *A History of Chinese Companies Listing in Hong Kong and Its Implications for the Future*, 11 J. CORP. L. STUD. 243, 265–66 (2011); Qian Sun et al., *Overseas Listing as a Policy Tool: Evidence from China’s H-shares*, 37 J. BANKING & FIN. 1460, 1461 (2013).

21. Andrew Beattie, *Alibaba IPO: Why List in the U.S.?*, INVESTOPEDIA, (Feb. 4, 2020), <https://www.investopedia.com/articles/investing/112614/alibaba-ipo-why-list-us.asp> [<https://perma.cc/PZ2M-DDZU>].

22. Emma Dunkley, *HKEX Admits Alibaba Forced It to Rethink Dual-Class Shares*, FIN. TIMES (Jan. 16, 2018), <https://www.ft.com/content/6f0e9914-fa96-11e7-a492-2c9be7f3120a> [<https://perma.cc/SQR6-NQ9T>].

23. *Id.*

24. *Id.*; see also Longjie Lu, *The Regulation of the Dual-Class Share Structure in China: A Comparative Perspective*, 15 CAP. MKTS. L. J. 224 (Apr. 25, 2020) (discussing recent reforms in Hong Kong, Singapore, and Mainland China permitting the listing of dual class shares).

environment in the United States,²⁵ unique reputational capital,²⁶ and easier access to immigration for founders and their families.²⁷

Despite all the recent fanfare about the U.S.-listed Chinese companies, surprisingly little is known empirically about the cohort. In order to offer a comprehensive, empirical picture of them, a unique dataset of Chinese firms listed on the NYSE and NASDAQ, the two major U.S. stock exchanges, as of 2019 has been constructed for the research (Firm Dataset).²⁸ The source of the data is WIND, a leading provider of financial data of Chinese companies.²⁹ WIND contains a dedicated section on U.S.-listed Chinese firms or *zhonggai gu* (translated as China-concept stocks).³⁰ To be sure, the notion of “U.S.-listed Chinese firms” does not have a commonly accepted legal definition.³¹ WIND takes into consideration a number of factors in designating a company as a U.S.-listed Chinese company: that the company’s disclosed main business operation is domiciled in Mainland China or its revenue derives mainly from Mainland China; that the company’s disclosed majority/controlling shareholder is Chinese; and additional information gleaned from the company’s official website, such as whether the company has a Chinese name, whether the website’s default language is set to be simplified Chinese, and whether the company is headquartered in Mainland China.³²

224 sample firms were recorded in our Firm Dataset,³³ among which seventy-five firms were listed on the NYSE and 149 on NASDAQ. Figure 1

25. Ryan McMorrow, *Chinese Companies Push on with US Listings Even as Appetite Wanes*, FIN. TIMES (Dec. 24, 2019), <https://www.ft.com/content/9b3076dc-22d2-11ea-b8a1-584213ee7b2b> [<https://perma.cc/9Z59-C7YM>].

26. Jane Li, *Why Chinese Companies Are Flocking to the US for a Listing*, S. CHINA MORNING PRESS (Oct. 19 2017, 1:00 AM), <https://www.scmp.com/business/china-business/article/2115971/ant-financial-backed-online-lender-qudian-surges-nyse-debut> [<https://perma.cc/GU5S-37KE>].

27. *Id.*

28. For comparison, see *Chinese Companies Listed on Major U.S. Stock Exchanges*, U.S.-CHINA ECON. & SEC. REV. COMM’N (Feb. 25, 2019), <https://www.uscc.gov/sites/default/files/Chinese%20Companies%20on%20U.S.%20Stock%20Exchanges.pdf> [<https://perma.cc/GL7U-X9FB>]. It is worth noting that there are Chinese firms listed in other U.S. stock exchanges, including the American Stock Exchange (AMEX).

29. See WIND, *About Us*, <https://www.wind.com.cn/en/about.html> [<https://perma.cc/GW3G-XN46>] (last visited Jan. 11, 2021).

30. See *Data Service*, WIND, <https://www.wind.com.cn/en/data.html> [<https://perma.cc/37XC-3JNN>] (last visited Jan. 11, 2021).

31. See *Chinese Companies Listed on Major U.S. Stock Exchanges*, *supra* note 28, at 1. For instance, the U.S.-China Economic and Security Review Commission defines it as “U.S.-listed companies based in China.” *Id.*

32. See WIND’s *Q&A*, WIND, <http://wx.wind.com.cn/WindCollegeNewStatic/Post/#/t-1457055> (last visited Aug. 26, 2020) (on file with authors).

33. The census date of our data collection is June 1, 2020. There may be Chinese companies delisted from the NYSE or NASDAQ between January 1, 2020 and June 1, 2020, which were not tracked in WIND. Therefore, Chinese companies delisted from the NYSE or NASDAQ between January 1, 2020 and June 1, 2020, as well as those went public after December 31, 2019 are excluded from our Dataset. See Appendix 1.

shows the years in which the sample firms became NYSE- or NASDAQ-listed. They are clustered and concentrated in the past decade; 72.32 percent of 224 firms had their IPOs between 2010 and 2019. More firms chose to list at NASDAQ than at NYSE in the past decade; among the 162 sample firms that went public in the past decade, 111 (68.52 percent) of them are NASDAQ-listed. Figure 2 illustrates the distribution of the industries in which the sample firms operated. According to the WIND's Industry Classification Standard, the sample firms are categorized into eleven industries. 27.68 percent of the sample firms are high-tech Chinese firms specialized in the Information Technology sector, followed by the sector of Consumer Discretionary in which 26.34 percent of the sample firms fall. It is also notable that, among the sixty-two Information Technology firms, forty-seven (75.81 percent) of them are listed on NASDAQ. This is in keeping with NASDAQ's unparalleled reputation as the go-to venue for tech and innovation firms.

Figure 1: Listing Years of the U.S.-Listed Chinese Firms

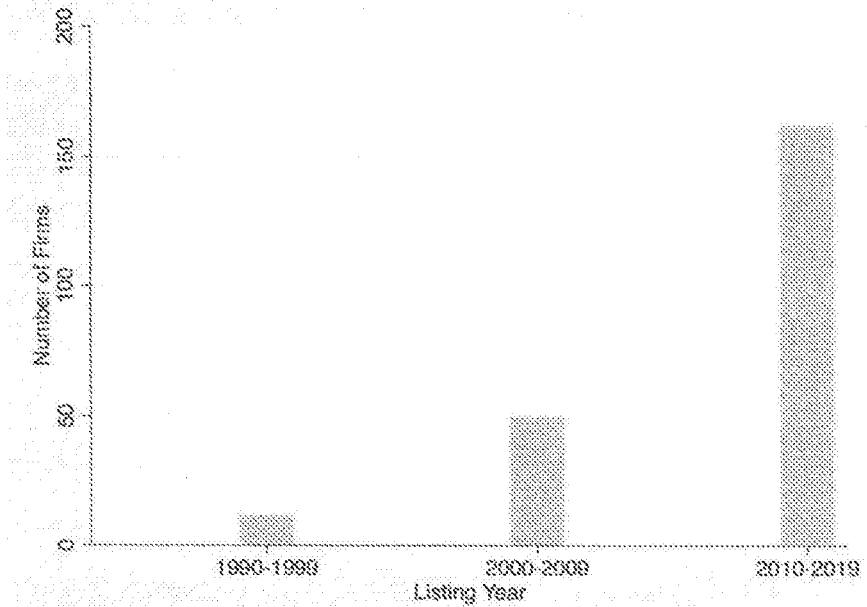
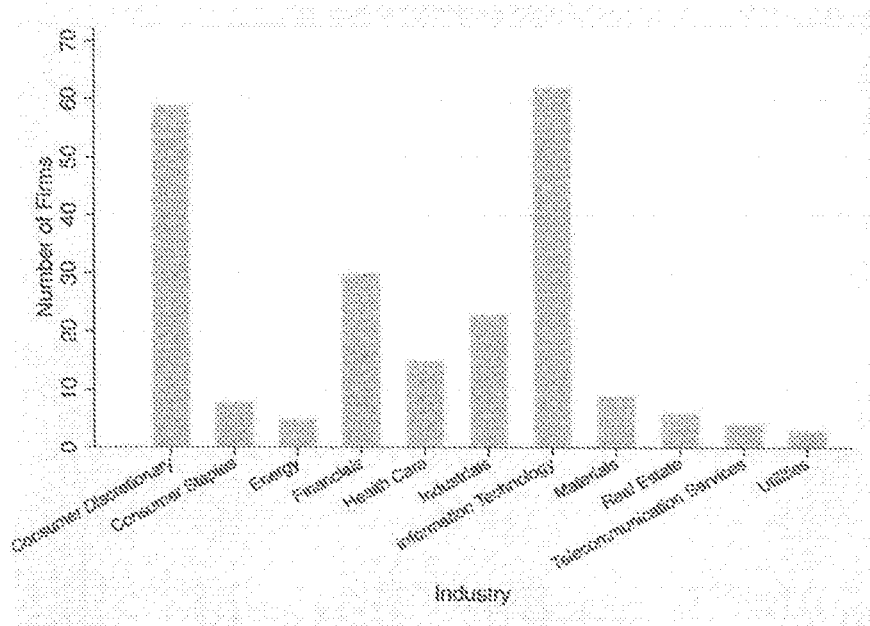


Figure 2: Industry Distribution of the U.S.-Listed Chinese Firms

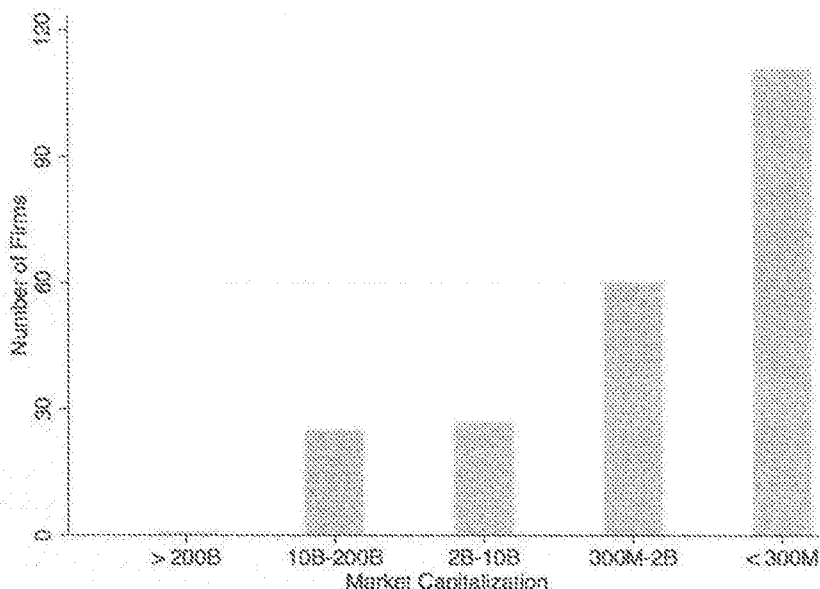


The market capitalization of 224 sample firms was \$1.821 trillion in total, as of December 31, 2019, with an average market capitalization of \$8.13 billion (median \$0.32 billion). Figure 3 demonstrates the market capitalization segments of the sample firms. Only one firm (the Alibaba Group) had a market capitalization over \$200 billion, which qualifies it as a mega-cap firm. Twenty-five (11.16 percent) sample firms were with a market capitalization between \$10 billion and \$200 billion, placing them among the large-cap category. Twenty-seven (12.05 percent) sample firms recorded a market capitalization between \$2 billion and \$10 billion, falling into the mid-cap class. Furthermore, the market capitalization of sixty (26.79 percent) sample firms fell between \$300 million and \$2 billion, making them small-cap firms. The remaining 111 (49.55 percent) sample firms had a market capitalization lower than \$300 million and can be categorized as micro-cap firms. The seventy-five companies listed at the NYSE held a total market capitalization of \$1.470 trillion with an average market capitalization of \$19.60 billion (median \$1.09 billion). By contrast, the total market capitalization of 149 NASDAQ-listed firms were \$351.50 billion, with a mean of \$2.36 billion (median \$0.11 billion). Obviously, larger firms are concentrated in NYSE rather than in NASDAQ, at least partly due to the varied listing requirements of the two exchanges.³⁴ This

34. See NYSE LISTED CO. MANUAL § 103.01B(D) (2011), <https://nyse.wolterskluwer.com/limited-company-manual> [<https://perma.cc/7HBB-R2NM>] (click Section 1 The Listing Process; then click 103.00; then click 103.01) [hereinafter NYSE Manual]; See also NASDAQ RUL.,

observed pattern is also in congruence with the perception that NYSE is home to more established big blue-chip companies.³⁵

Figure 3: Market Capitalization Distribution of the U.S.-Listed Chinese Firms



Contrary to the generally held belief,³⁶ state ownership is not common among the U.S.-listed Chinese firms. Among the 224 sample firms, only 5.8 percent, or thirteen, are state-owned firms. They are almost invariably national champions of China Inc., including the three largest Chinese oil companies,³⁷ the largest Chinese life insurance company,³⁸ two of the largest Chinese airlines,³⁹ and the two largest Chinese telecommunication

5315(e) & 5315(f)(3) (Mar. 12, 2005), <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-5300-series> [<https://perma.cc/C18Z-Z8DY>].

35. See Calloun, *supra* note 32.

36. See, e.g., Michaels & Otavi, *supra* note 9.

37. *BLOOMBERG*, *China's Big Three Oil Giants PetroChina, Sinopec and CNOOC to Spend US\$77 Billion on Boosting Output from Old Fields*, S. CHRIS MOONSHIC PRESS (Mar. 25, 2019, 11:42 PM), <https://www.scmp.com/print/business/companies/article/3007095/chinas-big-three-oil-giants-petro-china-sinopec-and-cnooc-spend> [<https://perma.cc/XC2E-R2RR>].

38. *China Life Insurance Co. Ltd.*, NIKKEI ASIA (Jan. 15, 2011), <http://asia.nikkei.com/Companies/China-Life-Insurance-Co.-Ltd> [<https://perma.cc/T7D3-Q8FM>].

39. Dan Reed, *China's Big Three Airlines Are on a Fast Track to Overtake U.S. Big Three Within a Few Years*, FORBES (Sept. 20, 2018, 6:05 AM), <https://www.forbes.com/sites/danielreed/2018/09/20/chinas-big-three-airlines-are-on-a-fast-track-to-overtake-u-s-big-three-within-a-few-years/?sh=145e00d12343> [<https://perma.cc/L3A6-5RXP>].

companies.⁴⁰ These state-owned Chinese companies are all NYSE-listed, and they are all cross-listed in Shanghai, Hong Kong, and/or London.⁴¹ These state-owned firms are among the earlier movers, with the latest being the listing of China Life Insurance in 2003.⁴² This supposedly has to do, at least in part, with the class action brought against China Life Insurance and its directors soon after its listing.⁴³ The lawsuit, which was dismissed in 2008,⁴⁴ sent a chilling effect to the Chinese state sector;⁴⁵ no major Chinese state-owned firms have been listed on the NYSE or NASDAQ since. State-owned firms tend to be larger in size: out of the thirteen state-owned firms, ten firms (76.92 percent) are big cap firms with a market capitalization of \$10–200 billion.⁴⁶

The places of incorporation of the U.S.-listed Chinese companies are dichotomized along the state-owned and non-state-owned divide. Most (ten) state-owned enterprises (SOEs) are PRC-incorporated, with a small number (three) of them incorporated in Hong Kong.⁴⁷ By contrast, as shown in Figure 4, 179 out of the 211 (84.83 percent) non-SOEs were incorporated in the British Virgin Island (BVI) or Cayman Islands (Cayman); twenty-five of them (11.85 percent) stated their place of incorporation to be the United States. The rest of the seven non-SOEs were incorporated in Antigua and Barbuda, Bermuda, Canada, Hong Kong, and Marshall Islands, respectively.

40. Alan Weissberger, *China Mobile Has 15.4 Million 5G Customers; 5G+ Is Primary Focus Area*, IEEE COMM'NS SOC'Y (Mar. 19, 2020), <https://techblog.comsoc.org/2020/03/19/china-mobile-15-4-million-5g-customers-5gis-primary-focus-area/> [<https://perma.cc/4MAY-BKWG>]; see also Robert Clark, *China Unicom Boosts Earnings but Sales Remain Flat*, LIGHT READING, (Mar. 23, 2020), <https://www.lightreading.com/asia/china-unicom-boosts-earnings-but-sales-remain-flat/d/d-id/758391> [<https://perma.cc/8RCU-86E4>].

41. *China Mobile Ltd.*, NIKKEI ASIA (Jan. 15, 2021), <https://asia.nikkei.com/Companies/China-Mobile-Ltd> [<https://perma.cc/K67H-UEHC>]; BLOOMBERG, *supra* note 37; *China Life Insurance Co. Ltd.*, *supra* note 38; Reed, *supra* note 39; Clark, *supra* note 40.

42. *China Life Insurance Co. Ltd.*, *supra* note 38.

43. *In re China Life Sec. Litig.*, 2008 WL 4066919, at 1-2 (S.D.N.Y. Sept. 3, 2008).

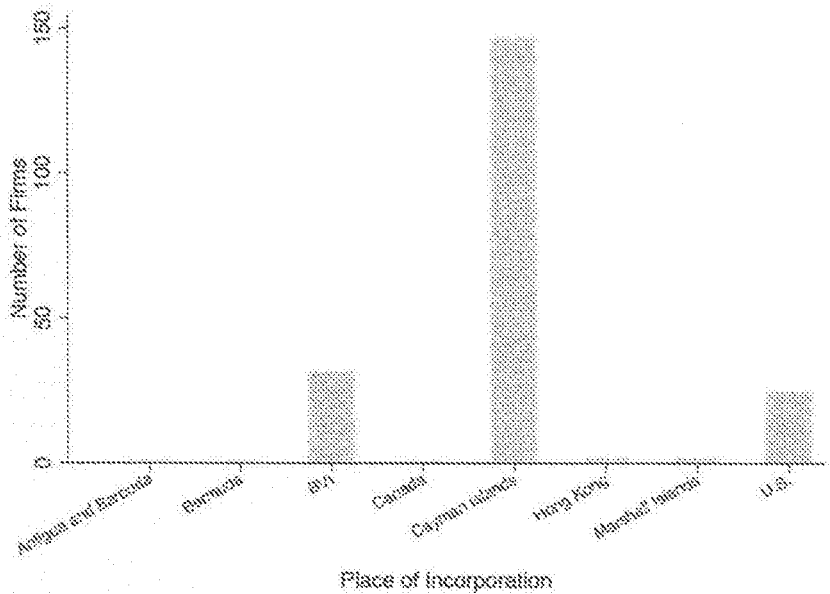
44. *Id.* at 10.

45. Miao. Yinzhi, *The Interplay of the State and the Firms: Overseas Listing as a Governance Institution for Chinese SOEs*, 10 FRONTIERS L. CHINA 46, 72 (2015).

46. *Chinese Companies Listed on Major U.S. Stock Exchanges*, U.S.–CHINA ECON. & SEC. REV. COMMISSION (Oct. 2, 2020), <https://www.uscc.gov/research/chinese-companies-listed-major-us-stock-exchanges> [<https://perma.cc/A3DG-4MTD>].

47. Stephanie Segal et al., *Chinese Company Listings on U.S. Exchanges: The Beginning of the End?*, CTR. FOR STRATEGIC & INT'L STUD., (Aug. 12, 2020), <https://www.csis.org/analysis/chinese-company-listings-us-exchanges-beginning-end> [<https://perma.cc/3L3Q-USBK>].

Figure 4: Places of Incorporation of the U.S.-Listed Chinese Firms



III. The Board and Board Committees in Corporate Governance: The Issue of Independence

The board plays a central role in the governance of public companies. Its roles, functions, and practices can significantly differ from one company to another among each jurisdiction.⁴⁸ In general, the board can be said to typically play certain fundamental functions: the setting of strategy and direction, steering and advising, management, and monitoring and oversight.⁴⁹ Among these, the monitoring role has evolved to become a primary role of the board,⁵⁰ so much so that there has been a decades-long process of codifying this role in, for instance, the United Kingdom and United States.⁵¹

48. See, e.g., Paul Davies & Klaus Hopt, *Corporate Boards in Europe—Accountability and Convergence*, 61 *AM. J. COMP. L.* 301, 302–03 (2013).

49. See, e.g., BRIAN R. CHESEBROUGH, *COMPANY LAW: THEORY, STRUCTURE, AND OPERATION* 603–07 (Oxford Univ. Press 1997); Adams et al., *The Role of Boards of Directors in Corporate Governance*, *supra* note 11, at 65; STEPHEN M. BACCHIBRIDGE & M. TOULI HENDERSON, *OUTSOURCING THE BOARD: HOW BOARD SERVICE PROVIDERS CAN IMPROVE CORPORATE GOVERNANCE* 31–32 (Cambridge Univ. Press 2018).

50. Miriam Schwartz-Ziv & Michael S. Waisbach, *What Do Boards Really Do? Evidence from Minutes of Board Meetings*, 108 *J. FIN. ECON.* 349, 351 (2013) (showing that “boards spend most of their time monitoring management”).

51. BACCHIBRIDGE & HENDERSON, *supra* note 49, at 46–48.

Great emphasis has been placed on the independence of the board in fulfilling its oversight role in the aftermath of the corporate scandals that have thrust the board into the center of the corporate governance reforms in the past two decades. In the United States, the Sarbanes-Oxley Act (SOX) of 2002 requires that the boards of public companies have a majority of independent directors.⁵² The requirement for independent directors has since gained traction globally.⁵³ The OECD Corporate Governance Factbook 2019, surveying as many as forty-nine jurisdictions, concludes that “almost all jurisdictions have introduced a requirement or recommendation with regard to a minimum number or ratio of independent directors” and that “the recommendation for boards to be composed of at least 50 [percent] independent directors is the most prevalent voluntary standard, while two to three board members (or at least 30% of the board) are more commonly subjected to legal requirements for independence.”⁵⁴

It has been well documented that most board functions are indeed performed by the board committees⁵⁵ and that committees are where firm-level board governance really varies.⁵⁶ The audit committee, the compensation committee, and the nominating and governance committee are seen as the three key, if not required, board committees.⁵⁷ In general, the audit committee oversees financial reporting, monitors compliance and accounting policies, and oversees risk management.⁵⁸ The compensation committee’s role is to “oversee compensation plans for the CEO and the company’s other senior executives.”⁵⁹ The nominating and governance committee “takes the lead in identifying director candidates, organizing

52. See discussion *infra* Section IV.

53. See, e.g., Lucian A. Bebchuk & Assaf Hamdani, *Independent Directors and Controlling Shareholders*, 165 U. PA L. REV. 1271, 1280–84 (2017).

54. OECD CORPORATE GOVERNANCE FACTBOOK (2019) 116, <https://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf> [<https://perma.cc/48HG-QXSE>] [hereinafter OECD Factbook].

55. See, e.g., Christian Laux & Volker Laux, *Board Committees, CEO Compensation, and Earnings Management*, 84 ACCT. REV. 868, 869 (2009).

56. See, e.g., Renée B. Adams et al., *Death by Committee? An Analysis of Corporate Board (Sub-) Committees* (May 1, 2020) (unpublished manuscript), <https://ssrn.com/abstract=2736027>.

57. Kevin D. Chen & Andy Wu, *The Structure of Board Committees* (Harvard Business School Working Paper, No.17-032, 2016), https://www.hbs.edu/faculty/Publication%20Files/17-032_22ea9e7a-4f26-4645-af3d-042f2b4e058c.pdf [<https://perma.cc/TZ94-X97F>]; see also Steve Klemash et al., *A Fresh Look at Board Committees*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 10, 2018), <https://corpgov.law.harvard.edu/2018/07/10/a-fresh-look-at-board-committees/> [<https://perma.cc/45A7-DUU7>] (For the purpose of this research, the terms “nominating committee,” “nominating and governance committee,” and “nominating and corporate governance committee” are used interchangeably).

58. *Board Committees Resources*, PWC GOVERNANCE INSIGHTS CTR., <https://www.pwc.com/us/en/services/governance-insights-center/board-committee-resources.html> [<https://perma.cc/J7GM-RNT9>] (last visited Jan. 11, 2021).

59. *Id.*

board and committee membership, recommending governance principles and practices[,] and takes the lead on board self-assessments.”⁶⁰

Board committees have been a focus of the broader corporate governance reforms in response to the corporate fiascos and failures. The SOX requires that the audit committee be composed solely of independent directors,⁶¹ and the Exchange rules further provide for independence of other board committees, notably, the compensation committee, and the nominating and governance committee.⁶² Like the notion of board independence, the committee independence requirement has also gained global prominence.⁶³ The OECD Corporate Governance Factbook 2019 reports that nearly all of the forty-nine jurisdictions surveyed require an independent audit committee.⁶⁴ The Factbook adds that more than 80 percent of the jurisdictions surveyed recommend nomination and remuneration committees “to be established and often to be comprised wholly or largely of independent directors.”⁶⁵

A body of empirical studies has shown that independence of the board and its committees helps to ensure the integrity of financial reporting and, more generally, to enhance firm value.⁶⁶ Using a sample of 692 publicly traded U.S. firm-years, Klein found that board independence and audit committee independence are correlated with less earnings management and more effective monitoring of the corporate accounting process.⁶⁷ This finding is confirmed by Agrawal and Chadha’s research, which demonstrates that independent directors with financial expertise reduce the probability of a company restating earnings.⁶⁸ Looking at both U.S. and foreign firms, Aggarwal et al. show that firms with an independent board and with an audit committee composed solely of outsiders have a higher value.⁶⁹ In a broader study examining the impact of corporate board reforms on firm value in forty-one countries, Fauver et al. present compelling evidence that reforms improving board and audit committee independence increase shareholder value.⁷⁰

60. *Id.*

61. Sarbanes-Oxley Act of 2002, 15 U.S.C.A. § 7231, §202(3).

62. See discussion *infra* Section IV.

63. Bebchuk & Hamdani, *supra* note 53, at 1283.

64. OECD Factbook, *supra* note 54, at 14.

65. *Id.* at 121.

66. To be sure, the empirical evidence to date remains unsettled on this matter. See, e.g., S. Burcu Avci et al., *Do Independent Directors Curb Financial Fraud? The Evidence and Proposals for Further Reform*, 93 IND. L. J. 757, 759 (2018); see also, Adams et al., *Death by Committee?*, *supra* note 56, at 98 (highlighting the methodological challenges).

67. April Klein, *Audit Committee, Board of Director Characteristics, and Earnings Management*, 33 J. ACC’G. & ECON. 375, 376 (2002).

68. Agrawal Anup & Chadha Sahiba, *Corporate Governance and Accounting Scandals*, 48 J. L. & ECON. 371 (2005).

69. Reena Aggarwal et al., *Differences in Governance Practices Between U.S. and Foreign Firms: Measurement, Causes, and Consequences*, 22 REV. FIN. STUD. 3131, 3134-35 (2009).

70. Larry Fauver et al., *Board Reforms and Firm Value: Worldwide Evidence*, 125 J. FIN. ECON. 120, 139 (2017).

IV. Board and Board Committee Rules under the U.S. Law and BVI/Cayman Law

The board and board committees of U.S.-listed Chinese firms are primarily subject to the U.S. federal securities laws, including the Securities Exchange Act of 1934 (the Exchange Act) the SOX, SEC regulations, as well as listing standards of the exchange on which the companies are listed.⁷¹ The focus of our discussions is on the question of independence.

A. U.S. FEDERAL LAW

In July 2002, in response to a string of corporate and accounting scandals, such as Enron and Worldcom, the U.S. Congress passed the SOX, which sets forth rules concerning issues of corporate governance and disclosure.⁷² The SEC then amended the Exchange Act in order to comply with the requirements set forth in the SOX.⁷³ Section 10A-3 under the Exchange Act provides for the general criteria with respect to audit committee independence pursuant to the Section 3 of the SOX.⁷⁴ It is worth noting that the SEC does not impose any requirements of independence on directors generally and does not even require companies to set up an audit committee.⁷⁵ But for the company that has an audit committee, the Exchange Act and the SOX both require that each member of its audit committee must be a member of the board of directors and must be independent.⁷⁶ Independence is defined to prohibit an individual from accepting any form of compensation from the company, except as a board member, and the individual may not be an affiliate of the issuer or any of its subsidiaries.⁷⁷

71. See *U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options*, LEXOLOGY (July 30, 2020), <https://www.lexology.com/library/detail.aspx?g=8260378c-4b0a-4b55-8f1c-4f508ef49469> [<https://web.archive.org/web/20200809112647/https://www.lexology.com/library/detail.aspx?g=8260378c-4b0a-4b55-8f1c-4f508ef49469>].

72. Sarbanes-Oxley Act of 2002, 15 U.S.C.A. § 7201; see also, John C. Coffee Jr., *Racing Towards the Top?: The Impact of Cross-Listings and Stock Market Competition on International Corporate Governance*, 102 COLUM. L. REV. 1757, 1768 (2002); Roberta Romano, *Empowering Investors: A Market Approach to Securities Regulation*, 107 YALE L.J. 2359, 2373 (1998); Mark L. DeFond & Jere R. Francis, *Audit Research After Sarbanes-Oxley*, 24 AUDITING: A J. PRAC. & THEORY 5, 5 (2005).

73. Standards Relating to Listed Company Audit Committees, Securities Act Release No. 33-8220, 79 SEC DOCKET 2876, at § VII (Apr. 9, 2003).

74. *Audit Committee Requirements and Governance Topics*, DELOITTE (Apr. 2018), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-audit-committee-resource-guide-section-1.pdf> [<https://perma.cc/B525-PNQV>].

75. Practical Law Corporate & Securities U.K., *Corporate Governance Standards: Audit Committee*, THOMSON REUTERS, Resource ID No. 3-3810-8544 (2021).

76. The Securities Exchange Act of 1934, 17 C.F.R. § 240.10A-3(b)(1)(i) (2020).

77. Kevin W. Kelly, *The Sarbanes-Oxley Act and Foreign Private Issuers*, in U.S. SECURITIES LAWS & FOREIGN PRIVATE ISSUERS 214 (Brian Lane ed. 2007).

1. *The Foreign Private Issuers Exception*

Certain exemptions from the independence requirements for foreign private issuers (FPIs) may be granted in cases where the SEC's stringent requirements conflict with their home country regulations and standards.⁷⁸ A non-U.S. company qualifies as an FPI if it meets both of the following standards:

- Less than 50 percent of its outstanding voting securities are held by residents of the United States; and
- Either:
 - the majority of its executive officers or directors are not U.S. citizens or residents;
 - less than 50 percent of its assets are located in the United States; or
 - its business is administered principally outside of the United States.⁷⁹

One general exemption for FPI is that it can use a board of auditors, a similar body, or certain statutory auditors established and selected pursuant to home country legal or listing provisions to perform the role of the audit committee subject to a series of requirements.⁸⁰ If the FPI adopts a two-tier board system consisting of a board of director and a supervisory board, the SEC regards the supervisory board as the “board of directors” for purposes of Rule 10A-3(b)(1) of the Exchange Act.⁸¹ The SEC allows for a phase-in for compliance when a company, either FPI or non-FPI, is completing an IPO.⁸² In particular, all but one member of the audit committee may be exempted from the independence requirements for ninety days following the IPO, and a minority of the audit committee may be exempted from the independence standards for one year from the date of effectiveness of the registration statement.⁸³

For FPIs that do form an audit committee, there are three specific exemptions.⁸⁴ First, the independence requirement is relieved if a member of the audit committee who is also a non-executive employee of the FPI is appointed to the board of directors or audit committee under local

78. Standards Relating to Listed Company Audit Committees, *supra* note 73, at § I.L.F.3.

79. Securities Act of 1933, 17 C.F.R. § 230.405 (2020); Securities Exchange Act of 1934, 17 C.F.R. § 240.3b-4(c) (2020).

80. 17 C.F.R. § 240.10A-3(c)(3) (2020).

81. DIANE E. AMBLER ET AL., *SARBANES-OXLEY ACT: PLANNING & COMPLIANCE* 5-24 (Aspen Publishers, 2008 Supplement); Exchange Act 10A-3(b)(1) (providing independence standards of the audit committee).

82. *IPO Insights: Assembling Your Public Company Board of Directors*, ORRICK, <https://www.orrick.com/Insights/2018/06/Assembling-Your-Public-Company-Board-of-Directors#> [<https://perma.cc/5PXF-GE65>] (last visited Jan. 11, 2021).

83. 17 C.F.R. § 240.10A-3(b)(1)(iv)(A) (2020). The date of effectiveness of the registration statement for Luckin Inc. was May 16, 2019 (ETS).

84. Listing Standards Relating to Audit Committees, 17 C.F.R. § 210.10A-3(b)(1)(iv)(C-E).

jurisdiction laws, regulations by local securities authorities, listing standards of local securities exchanges, or a collective bargaining agreement.⁸⁵ Second, a member who is “an affiliate of the [FPI] or a representative of such an affiliate” can sit on the audit committee provided that the member only has observation status (non-voting member), and “neither the member nor the affiliate is an executive officer of the [FPI].”⁸⁶ Third, the SEC allows a member of an audit committee to be a “representative or designee of a foreign government or foreign governmental entity,” if the member is not an executive officer of the issuer.⁸⁷ Additionally, the SEC may relieve the independence requirements of audit committee members for both FPIs and non-FPIs whenever it determines “appropriate in light of the circumstances.”⁸⁸ If an FPI relies on any of the above exemptions to avoid compliance with the rules of the SEC, it must properly disclose this information in its annual report.⁸⁹ To sum up, “an expanded definition of permitted members of audit committee[s] for FPIs was adopted,” and “alternative structures” lawfully established in accordance with the law of the FPI’s home jurisdiction may provide exemptions from the audit committee’s independence and oversight requirements.⁹⁰

a. NASDAQ Rules

The NASDAQ listing rules require that a majority of the board of directors is comprised of independent directors, and the specific standards for director independence are also set out under the NASDAQ rules.⁹¹ In general, a “cure period” for having one non-independent director on the board by the “earlier of one year or the next annual meeting is provided for both FPIs and non-FPIs.”⁹²

With regard to the board committees, the companies listed on the NASDAQ are normally required to have an audit committee composed of at least three members and a compensation committee composed of at least two members.⁹³ The audit committee members must comply with the independence requirements of both the Exchange Act and the NASDAQ Listing Rules, and are subject to an exception of having one non-independent director under certain “exceptional and limited

85. 17 C.F.R. § 210.10A-3(b)(1)(iv)(D).

86. 17 C.F.R. § 210.10A-3(b)(1)(iv)(D).

87. Christopher Hung Nie Woo, *United States Securities Regulation and Foreign Private Issuers: Lessons from the Sarbanes-Oxley Act*, 48 AM. BUS. L. J. 119, 146 (2011); see also 17 C.F.R. § 210.10A-3(b)(1)(iv)(E).

88. 17 C.F.R. § 210.10A-3(b)(1)(iv)(E).

89. 17 C.F.R. § 210.10A-3(d).

90. Kelly, *supra* note 77, at 214–15.

91. 56 NASDAQ Rules 5(2)(a)(2), IM-5605 (2009), <https://listingcenter.NASDAQ.com/rulebook/NASDAQ/rules/NASDAQ-5600-series> [<https://perma.cc/5VF6-YPDT>].

92. Practical Law Corporate & Securities U.K., *Comparative Corporate Governance Standards Chart: NYSE vs NASDAQ*, WESTLAW Resource ID No. 9-503-6198 (2021).

93. NASDAQ Rules, *supra* note 91, at Rule IM-5605-4; 5605 (c)(2).

circumstances.”⁹⁴ More specifically, if a director who is neither a current executive officer, employee of the company, nor a family member of any current executive officer of the company only satisfies the independence requirement of SEC, and the board of directors properly decide that the director’s membership on the audit committee is in the best interests of the company and its shareholders, the director can be appointed to any position on the audit committee except for the chairman.⁹⁵ This exception applies to all companies (both FPIs and non-FPIs) listed on NASDAQ and special disclosure is required when it is invoked.⁹⁶ An FPI that relies on this exception must make the necessary disclosure in its next annual report about the applicability of this exception.⁹⁷ The NASDAQ listing standards incorporate the independence requirements of SEC, but also has its own additional requirements which probably indicates that the criteria of independence under NASDAQ is stricter than under the Exchange Act.⁹⁸

Different from the audit committee, the members of compensation committee are only required to comply with the independence standards of the NASDAQ Listing Rules because the SEC does not provide any independence standards for the compensation committee.⁹⁹ A company may have one member of its compensation committee who does not meet NASDAQ’s independence standards, if the compensation committee is comprised of at least three members and the board of directors decides that the membership of a specific director who is not a current executive officer or employee of the company is in the best interest of the company and its stockholders.¹⁰⁰ This exception is substantially similar to the exception of the audit committee and companies (either FPIs or non-FPIs) that rely on this exception are also subject to specific disclosure requirements.

The companies listed on the NASDAQ can either form a nominations committee comprised solely of independent directors or entitle the nomination right to a group consisting of a majority of the independent directors on the board.¹⁰¹ If the company chooses to form a nominating committee, the committee must be composed entirely of independent directors, subject to a limited exception to have one non-independent director under certain “exceptional and limited circumstances” that are same as the compensation committee.¹⁰² In line with the compensation

94. 17 C.F.R. § 210.10A-3(b)(1); NASDAQ Rules, *supra* note 91, at Rule 5605-5 (c)(2)(B).

95. NASDAQ Rules, *supra* note 91, at Rule 5605 (c)(2)(B).

96. *Id.*

97. *Id.*

98. *Audit Committee Requirements and Governance Topics*, *supra* note 74, at 5.

99. See NASDAQ Rules, *supra* note 91, at Rule 5605 (d)(2).

100. *Id.*

101. *Comparative Corporate Governance Standards Chart*, *supra* note 92; see also NASDAQ Rules, *supra* note 91, at Rule 5605 (e).

102. NASDAQ Rules, *supra* note 91, at Rule 5605 (e)(3).

committee, only the NASDAQ's director independence standards are applied to the members of nominations committee.¹⁰³

The NASDAQ listing rules allow an FPI to follow its home country practice in lieu of most corporate governance standards of the Listing Rules stated above, provided that the FPI must have an audit committee whose members shall meet the independence criteria under the Exchange Act (subject to the exemptions provided in Rule 10A-3(c)).¹⁰⁴ Disclosure requirements are imposed on the FPI under this exemption to make sure that its practice is not prohibited by the law of its home country.¹⁰⁵

b. NYSE Rules

The listing standards of NYSE in its Listed Companies Manual (NYSE Manual), are similar to, but not the same as, the NASDAQ standards.¹⁰⁶ Generally speaking, the NYSE rules are more stringent and less flexible than the NASDAQ standards with regard to the board of directors and board committees.¹⁰⁷

Same as the board independence standard of NASDAQ, NYSE also requires that a majority of the board of directors be independent.¹⁰⁸ In regard to the board committees, the companies listed on the NYSE are generally required to have an audit committee composed of at least three members, a compensation committee, and a nominating/corporate governance committee.¹⁰⁹ The members of the audit committee shall satisfy the independence requirements of both the Exchange Act and the NYSE.¹¹⁰ Generally, the criteria of independence under the NYSE is stricter than under the Exchange Act.¹¹¹ The members of a compensation committee and nominating/corporate governance committee only need to comply with the independence standards of the NYSE.¹¹² The director independence requirements of the NYSE are substantially similar to the NASDAQ listing

103. See *Comparative Corporate Governance Standards Chart*, *supra* note 92; NASDAQ Rules, *supra* note 91, at Rule 5605 (e)(1)(B).

104. MORRISON & FOERSTER LLP, *Frequently Asked Questions About Foreign Private Issuers*, 14 (2018), <https://media2.mofo.com/documents/100521faqforeignprivate.pdf> [<https://perma.cc/673A-LVTH>].

105. *Id.* at 14.

106. See generally *Comparative Corporate Governance Standards Chart*, *supra* note 92.

107. Practical Law Corporate & Securities U.K., *Corporate Governance Standards: Board of Directors*, WESTLAW, Resource ID No. 0-381-5330 (2021).

108. *Compare NYSE Listed Companies Manual*, Rule 303A.01, (2009), https://nyse.wolterskluwer.cloud/listed-company-manual/document?treeNodeId=csh-da-filter!WKUS-TAL-DOCS-PHC-%7B0588BF4A-D3B5-4B91-94EA-BE9F17057DF0%7D--WKUS_TAL_5667%23teid-71 [<https://perma.cc/6FU2-833Q>] with NASDAQ Rules, *supra* note 91, at Rule 5605 (a)(2).

109. NYSE Manual, *supra* note 34, at Rule 303A.04(a), 303A.05(A), 303A.06(a), 303.07(a).

110. 17 C.F.R. § 210.10A-3(b)(1); NYSE Manual *supra* note 34, at Rule 303A.07(a).

111. Valentine V. Craig, *The Future of Banking in America the Changing Corporate Governance Environment: Implications for the Banking Industry*, 16 FDIC BANKING REV. 121, 127 (2005).

112. NYSE Manual, *supra* note 34, at Rule 303A.04(a), 303A.05(a).

rules with minor differences.¹¹³ It is notable that there is no exception of having one non-independent director under certain exceptional and limited circumstances for all of the three committees in the NYSE.¹¹⁴

FPIs are permitted to follow their home country practice in lieu of most of the corporate governance standards of the NYSE provided above,¹¹⁵ except that FPIs must have an audit committee that satisfies the director independence standards of Rule 10A-3 of the Exchange Act.¹¹⁶ FPIs must disclose any significant differences between their home country corporate governance practices and those required under the NYSE listing standards in their annual report.¹¹⁷

c. BVI/Cayman Laws

As stated above, FPIs may follow their home country's practices in lieu of most corporate governance requirements established by the SEC and the National Stock Exchanges.¹¹⁸ Home country here refers to "the jurisdiction in which the company is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing," according to the General Instructions of form 20-F formulated by the SEC.¹¹⁹ Since most of the Chinese companies listed in the United States are incorporated in the BVI or the Cayman Islands, the company law of the two jurisdictions may prevail if the FPI status is invoked by the company.¹²⁰

According to the BVI Business Companies Act (BCA), there is normally a "unitary board structure" and at least one director is required.¹²¹ The BCA contains no requirements for board independence and does not provide any definitions for non-executive, independent, or supervisory directors.¹²² But the company must define different titles of directors in its Memorandum & Articles of Association if it proposes to elect different types of directors.¹²³ The board of directors may delegate nearly all of its responsibilities to committees of directors consisting of one or more directors with certain

113. See generally *Comparative Corporate Governance Standards Chart*, *supra* note 92.

114. See NYSE Manual, *supra* note 34, at Rule 303A.04(a), 303A.05(a), 303A.06.

115. *Comparative Corporate Governance Standards Chart*, *supra* note 92.

116. 17 C.F.R. § 210.10A-3(b)(1).

117. *Comparative Corporate Governance Standards Chart*, *supra* note 92; see also NYSE Manual, *supra* note 34, at Rule 303A.11.

118. *Comparative Corporate Governance Standards Chart*, *supra* note 92.

119. U.S. SEC, FORM 20-F 6, <https://www.sec.gov/files/form20-f.pdf> [<https://perma.cc/E7JH-ZCQG>] (last visited Dec. 17, 2020).

120. See U.S. SEC, *Foreign Companies Registered and Reporting with the U.S. Securities and Exchange Commission* (2014), <https://www.sec.gov/divisions/corpfin/international/foreigngeographic2014.pdf> [<https://perma.cc/G5S9-VVRE>] (Showing that 81.3 percent of the NASDAQ-listed sample firms and 90.6 percent of NYSE-listed sample firms are incorporated in BVI or Cayman Islands).

121. Jaqueline Daley-Aspinall et al., *Corporate Governance and Directors' Duties: British Virgin Islands*, WESTLAW, Resource ID 3-506-6032 (Apr. 1, 2011).

122. *Id.*

123. *Id.*

limited exceptions.¹²⁴ No requirements for the board committee composition and independence are established under the BCA.

Similar to the rules of BCA, the Cayman Islands' company laws also allow for considerable flexibility regarding the composition and independence of boards and board committees.¹²⁵ Basically, companies can write their own corporate governance rules in the Memorandum of Association.¹²⁶ Early in 2013, the Cayman Islands Monetary Authority (CIMA) launched a corporate-governance consulting process aimed at introducing corporate governance guidelines for all financial services entities.¹²⁷ In 2016, an updated version of the Statement of Guidance on corporate governance (Statement) was issued by CIMA, which provided minimum expectations of a regulated entity's corporate governance arrangements.¹²⁸ The Statement provides that the board of director has "ultimate responsibility" for effectively supervising the affairs of the regulated entity, and it may appoint and maintain supervision over sub-committees.¹²⁹ It is also essential that the board of directors establishes a compliance committee or appoints a person who should report directly and regularly about the compliance affairs to the board under the Statement.¹³⁰ Further, the conflict interest rule requires the directors to disclose their interests in any contract where the regulated entity is an existing or potential party.¹³¹ The Statement shows an increasing awareness of the importance of corporate governance from the Cayman regulators, but it is fair to argue that a principle-based approach is still favored.

In summary, both BVI and Cayman Islands grant companies an extraordinary degree of contractual freedom. Thus, FPIs incorporated in the BVI or Cayman Islands can therefore opt to deviate from the corporate governance standards set out by the SEC, NASDAQ, and NYSE by relying on their home country practice as long as the exemptions provided for and discussed above are rightfully invoked.

V. Luckin Coffee, the U.S.-Listed Chinese Companies, their Boards and Board Committees: An Empirical Analysis

Our earlier discussions depicted the firm characteristics of the U.S.-listed Chinese firms, as well as the rules on board composition and independence

124. BVI Business Companies Act, 2004, (S.I. 2005 No. 96), at 110(1)(a-b) (Virgin Is.).

125. Michael Austin, *The Cayman Island Approach to Corporate Governance*, CAYMAN FIN. (July 8, 2014), [<https://perma.cc/A97M-YF9K>].

126. Daley-Aspinall et al., *supra* note 121.

127. Austin, *supra* note 125.

128. Cayman Is. Monetary Auth., *Statement of Guidance Corp. Governance*, (Feb. 2016), <https://www.cima.ky/upimages/commonfiles/>

1499756317SOGCorporateGovernance2015FINALbacktoindustryandforgazetta1.pdf [<https://perma.cc/85T7-HVK2>] [hereinafter The Statement].

129. *Id.* at Rule 5.9.

130. *Id.* at Rule 5.4.1(g).

131. *Id.* at Rule 5.6.2.

applicable to those firms. This section will explore whether NASDAQ- and NYSE-listed Chinese firms, as a group, differ characteristically from their non-Chinese peers, from a board governance viewpoint. Also discussed is whether Luckin is typical of the U.S.-listed Chinese firms in respect to the board attributes.

A. THE BOARDS AND COMMITTEES OF THE U.S.-LISTED CHINESE COMPANIES

1. *Board Dataset*

Little is empirically known about the boards and board committees of the U.S.-listed Chinese firms. To remedy this important gap, we constructed a unique, manually collected dataset (Board Dataset) to shed empirical light on where they stood at the end of 2019. The Board Dataset includes a wide array of board and committee characteristics considered important in the literature. The firm-level data includes:

- the number of directors;
- the number of independent directors;
- the number of board committees and their names; and
- where applicable, the number of committee members, the number of independent committee members, and the independence of the committee chairperson of each of the board committees.

Several general notes on our data are warranted to discuss our empirical findings. First, the thirteen state-owned Chinese firms are excluded from the Board Dataset.¹³² As noted above, most of these firms are PRC-incorporated, featuring a two-tier board (both a board of directors and a supervisory board) as required under the PRC law.¹³³ Therefore, their board structure (and supposedly board practice) characteristically differ from their non-state-owned peers listed in the U.S. exchanges. As such, the Board Dataset consists of 211 sample firms.¹³⁴ Second, considering the differences between NYSE and NASDAQ regarding their rules of board and board committees, the Board Dataset is further divided into two sub-samples: the NASDAQ subsample (149 firms) and the NYSE subsample (62 firms).¹³⁵ Third, the census date for the data is June 1, 2020. For most sample boards, data was hand-collected from the sample firms' 2019 annual reports. Where the 2019 annual report was unavailable by the census date, data was either extracted from the 2018 annual report or any proxy statements issued by the sample firms after the 2018 annual report. In the case that a sample firm went to public in 2019 (such as Luckin),¹³⁶ data was collected from the company's IPO prospectus, its official website, or its proxy statement on the

132. See *infra* Table 1.

133. See *id.*

134. See *infra* Table 1.

135. See *id.* (descriptive statistics for the Board Dataset).

136. See Yang, *China Moves to Punish Luckin for Fabricating Sales*, *supra*, note 1.

census date. Lastly, the data relied on sample firms' director independence disclosures.

2. *Board Size and Independence*

The number of directors for each of the 149 firms in the NASDAQ subsample lies between four and eleven, with an average of 6.42 (median six), as Table 1 shows. The sixty-two firms in the NYSE subsample also have a board size ranging from four to eleven, but with a larger average board size of 7.21 (median seven), as Table 1 demonstrates. Typically the U.S.-listed Chinese companies feature a smaller board compared to their non-Chinese peers; the average board size of the companies indexed in Russell 3000 is 10.1.¹³⁷ The ISS ESG Governance Quality Score Guide takes the position that a board with nine to twelve members is considered ideal, and that a board of directors generally should not have fewer than six members or more than fifteen members.¹³⁸ It follows that 33.87 percent of NYSE-listed Chinese firms and 11.41 percent of NASDAQ-listed Chinese firms can be considered to have met the ideal board size as suggested by the ISS.¹³⁹ By contrast, 44.97 percent of NASDAQ-listed sample firms and 20.97 percent of NYSE-listed sample firms have fewer than six members on the board, falling below the lower end of board size range as recommended in the ISS Guide.¹⁴⁰ It is a received wisdom that the board size be commensurate and proportionate to the size of the firm itself.¹⁴¹ Further, 22 percent of U.S. microcap companies are also found to have fewer than six members serving on the board.¹⁴² Because 52.61 percent of the sample firms in our Board Dataset are microcap companies, it is perhaps not a surprise that our sample boards are smaller in size.

137. See 2019-2020 NACD Public Company Governance Survey, NACD 31 (2019), <https://corpgov.law.harvard.edu/wp-content/uploads/2020/01/2019-2020-Public-Company-Survey.pdf> [<https://perma.cc/U77S-48U9>]. It is worth noting that the board size of microcap U.S. companies is 6.9 on average, similar to the U.S.-listed Chinese companies. See Annalisa Barrett & Jon Lukomnik, *Microcap Board Governance*, HARV. L. SCH. FORUM ON CORP. GOVERNANCE (Aug. 18, 2018), <https://corpgov.law.harvard.edu/2018/08/18/microcap-board-governance/> [<https://perma.cc/C8Z9-67YM>] Sixty percent of NASDAQ subsample firms and 35.48% of NYSA subsample firms are micro-cap. *Id.*

138. ISS ESG, *Governance QualityScore Methodology Guide*, INST. S'HOLDER SERVS. (Jan. 11, 2021), <https://www.issgovernance.com/file/products/qualityscore-techdoc.pdf> [<https://perma.cc/MP8F-3H5T>].

139. See *id.*; see Table 1.

140. See ISS ESG, *supra* note 138; see Table 1.

141. OECD, FLEXIBILITY AND PROPORTIONALITY IN CORPORATE GOVERNANCE 61 (OECD Publishing, 2018) [<https://doi.org/10.1787/20776535>].

142. Barrett & Lukomnik, *supra* note 137.

Table 1: Board Composition and Independence of the U.S.-listed Chinese Firms

Variable	Nasdaq Subsample					NYSE Subsample				
	N	Mean	Median	Max	Min	N	Mean	Median	Max	Min
Number of Directors	149	6.42	6	11	4	62	7.21	7	11	4
Number of Independent Directors	149	3.44	3	8	2	62	3.32	3	9	2
Board Independence*	149	0.55	0.6	0.86	0.18	62	0.47	0.5	0.88	0.22
Number of Committees	149	2.97	3	5	1	62	3	3	4	1

* Board independence is measured by the ratio of the number of independent directors and the total number of directors.

Board independence, measured by the independent directors as a share of the total board members, of NASDAQ subsample ranges from 18 percent to 86 percent with an average of 55 percent (median 60 percent), as shown by Table 1. Exactly 70.47 percent of the NASDAQ-listed Chinese firms closely followed the rule of majority independent board.¹⁴³ In the NYSE subsample, board independence varies from 22 percent to 88 percent, with a mean of 47 percent (median 50 percent), as Table 1 demonstrates. Only 37.10 percent of NYSE-listed Chinese firms have majority independent boards.¹⁴⁴ By contrast, an average independence level of 84 percent exists in S&P 1,500 companies according to the ISS report.¹⁴⁵ Further, 96.9 percent of Russell 3000 companies have majority independent boards,¹⁴⁶ and 95.2 percent of Nano-cap (<\$50M) Russell 3000 companies' boards are composed of majority independent directors.¹⁴⁷ It seems that U.S.-listed Chinese companies, particularly the NYSE-listed sample firms, fall behind—albeit not drastically—with respect to independence, compared to their non-Chinese peers.¹⁴⁸

143. See Table 1.

144. *Id.*

145. Kosmas Papadopoulos et al., *U.S. Board Study: Board Accountability Practices Review*, INST. S'HOLDER SERVS. (Apr. 17, 2018), <https://www.issgovernance.com/file/publications/board-accountability-practices-review-2018.pdf> [<https://perma.cc/A33U-53VG>].

146. *2019-2020 NACD Public Company Governance Survey*, *supra* note 137, at 33.

147. *Id.*

148. See *id.*

3. *Board Committees: Types and Size*

All our sample firms established an audit committee in compliance with the corporate governance rules of the NYSE and NASDAQ.¹⁴⁹ Exactly 93.55 percent of the NYSE-listed sample firms have set up all three board committees as required under NYSE listing rules, namely, the audit committee, the compensation committee, as well as the nominating and corporate governance committee (hereafter referred to as nominating committee).¹⁵⁰ On the other hand, NASDAQ-listed firms are free to institute a nominating committee, although the audit committee and compensation committee are mandatory for them.¹⁵¹ Exactly 97.32 percent of NASDAQ-listed sample firms establish the two mandated board committees.¹⁵² Interestingly, even though firms listed on NASDAQ are not required to have a standing nominating committee in general, 89.93 percent of our sample firms opt to set it up.¹⁵³ This results in the average number of board committees of our sample NASDAQ-listed firms being 2.97, which is relatively less complex than the boards of United States' top 200 technology companies, with an average of 3.5 committees.¹⁵⁴

149. See Table 2.

150. *Id.*

151. *NASDAQ Rules, supra note 91, at Rule IM-5605-4; 5605 (c)(2).*

152. See Table 2.

153. See Table 2.

154. *2019 U.S. Technology Spencer Stuart Board Index*, SPENCER STUART 12 (2019), <https://www.spencerstuart.com/-/media/2019/techbi-2019/us-tech-board-index-2019.pdf> [<https://perma.cc/YTD2-9N7T>].

Table 2. Board Committee Independence of the U.S.-listed Chinese Firms

Variable	Nasdaq Subsample					NYSE Subsample				
	N	Mean	Median	Max	Min	N	Mean	Median	Max	Min
Audit Committee Independence*	149	0.98	1	1	0.67	62	0.96	1	1	0.5
Audit Committee Chair Independence**	149	0	0	0	0	62	0	0	0	0
Compensation Committee Independence*	145	0.89	1	1	0	61	0.76	0.75	1	0
Compensation Committee Chair Independence**	145	0.17	0	1	0	61	0.33	0	1	0
Nominating Committee Independence*	134	0.88	1	1	0	57	0.74	0.67	1	0
Nominating Committee Chair Independence**	134	0.21	0	1	0	57	0.46	0	1	0

* Committee independence is measured by the ratio of the number of independent members serving on the committee and the total number of committee members.

** A committee is assigned the value of 0 if its chair is independent, and a value of 1 if its chair is non-independent.

Our sample firms do not show a strong inclination to set up board committees beyond the three common board committees; only 4.70 percent of NASDAQ-traded sample firms and 8.06 percent of NYSE-traded sample firms choose to institute additional board committees.¹⁵⁵ Indeed, three sample firms only have an audit committee.¹⁵⁶ By contrast, 71 percent of the S&P 500 boards have more than the three NYSE-mandated committees.¹⁵⁷ But such a contrast should be read with some caution because of the size pattern of our sample firms where only 7.11 percent are large-cap companies. By comparison, the S&P 500 index is composed entirely of

155. Where additional board committees are established, the next most common committees in our sample firms are the executive committee (1.42 percent of the sample firms), the risk committee (1.42 percent), and the compliance committee (0.94 percent). See Table 1.

156. *Id.*

157. 2020 U.S. Spencer Stuart Board Index, SPENCERSTUART 22 (2020), https://www.spencerstuart.com/-/media/2020/december/ssbi2020/2020_us_spencer_stuart_board_index.pdf [<https://perma.cc/G2BW-8AWJ>].

large-cap companies. Board committees are sensitive to the size of the company.¹⁵⁸

Regarding the size of board committees, the sample firms' committee memberships range between two to five. Three members sitting on the board committee is the most common practice for the sample firms regardless of the specific type of board committees. In the NASDAQ subsample, 81.88 percent of the sample firms have three members on the audit committee, 78.62 percent have three-member compensation committee, and 75.37 percent have three directors sitting on the nominating committee. Similarly, 70.97 percent of the NYSE-listed sample firms have three-member audit committee, 70.49 percent have three members on the compensation committee and 68.42 percent have three members on the nominating committee.

The average size of the audit committee is 2.96 in the NASDAQ subsample and 2.90 in the NYSE subsample, whereas the average audit committee size for public companies in the Russell 3000 is 3.9.¹⁵⁹ A smaller board committee size was observed in the compensation and the nominating committees as well when compared to Russell 3000 companies.¹⁶⁰ Specifically, the average size of the compensation committee is 2.91 for the NASDAQ-listed sample firms and 2.92 for the NYSE-listed sample firms.¹⁶¹ By contrast, the size of the compensation committee of Russell 3000 companies in 2019 was 3.8 on average in 2019.¹⁶² Similarly, the average nominating committee size is 2.94 for the NASDAQ subsample and 2.84 for the NYSE subsample, while the average nominating committee size for Russell 3000 companies is 3.8.¹⁶³

4. *Board Committees: Independence*

The audit committees of 94.63 percent of the NASDAQ-listed sample firms are composed entirely of independent directors,¹⁶⁴ and 87.1 percent of NYSE-listed sample firms have a fully independent audit committee. By

158. OECD, *supra* note 141, at 61.

159. See 2019-2020 NACD Public Company Governance Survey, *supra* note 137, at 7.

160. See *id.*

161. See *id.*

162. *Id.*

163. *Id.*

164. Some caution is warranted in interpreting board and committee independence of U.S.-listed Chinese firms, as an overwhelming majority of them are not U.S.-incorporated and some are newly listed in 2019. They are therefore entitled to rely upon the FPI exemption and/or the one-year grace period, as described in Part 4. See Robert Ellison et al., *Corp. Governance for Foreign Private Issuers: Overview*, PRACTICAL L. CO. 2 (Aug. 3, 2009), https://www.shearman.com/~/media/Files/NewsInsights/Publications/2009/08/Corporate-Governance-for-Foreign-Private-Issuers_/Files/Click-here-to-view-the-full-article-Corporate-Go_/FileAttachment/CM080309CorporateGovernanceforForeignPrivateIssu_.pdf [https://perma.cc/5X7Q-8LLG] (It is worth noting that in practice many, if not most, U.S.-listed Chinese firms eligible for invoking these waivers have opted not to).

contrast, 97.33 percent of the S&P 1500 boards had a 100 percent independent audit committee.¹⁶⁵ All of our sample firms have an independent chair sitting on their audit committee, as Table 2 demonstrates. The audit committee independence (measured by independent committee members as a share of the whole committee) is between 67 percent and 100 percent, with an average of 98 percent (median 100 percent) in the NASDAQ subsample, as shown in Table 2. In comparison, the NYSE-listed sample firms' audit committee independence varied from 50 percent to 100 percent with a mean of 96 percent (median 100 percent), as Table 2 shows. Of the fifteen sample audit committees with non-independent chairpersons, eight firms in the NASDAQ subsample and six firms in the NYSE subsample have one non-independent director serving on the audit committee.¹⁶⁶ One outlier sample firm listed at the NYSE has two non-independent directors sitting on its audit committee. These fifteen firms seem to be evenly distributed in regard to their size. Two of them are large-cap, four of them are mid-cap, five of them are small-cap, and four of them are micro-cap.

In regards to the compensation committee, 76.55 percent of firms in the NASDAQ subsample have fully independent compensation committee, and the chairpersons of 82.76 percent of firms' compensation committee are in compliance with the prescribed independence requirements.¹⁶⁷ In contrast, only 47.54 percent of NYSE-listed firms have completely independent compensation committees and 67.21 percent firms have an independent director serving as the compensation committee chair.¹⁶⁸ In the NASDAQ subsample the compensation committee independence is between 0 to 100 percent, with an average of 89 percent (median 100 percent).¹⁶⁹ Meanwhile, the NYSE-listed firms' compensation committee independence varies from 0 to 100 percent with a mean of 76 percent (median 75 percent).¹⁷⁰ Notably, the compensation committees of two NASDAQ-listed firms and one NYSE-listed firm are composed entirely of non-independent directors.¹⁷¹ Overall, the compensation committee independence of the NYSE-listed sample firms is lower than the sample firms listed on NASDAQ.¹⁷²

The same can be said of the independence of the nominating committee. Of the NASDAQ-listed sample firms, 73.88 percent have 100 percent independent nominating committees, and the chair of the nominating

165. See Table 2.

166. See *id.*

167. There are 146 effective observations for the variable of Compensation Committee Chair Independence and Compensation Committee Member Independence in the NASDAQ subsample due to the unavailability of data. See *id.*

168. The data of one firm is unavailable for the variable of Compensation Committee Chair Independence and Compensation Committee Member Independence in the NYSE subsample. See *id.*

169. See *id.*

170. See *id.*

171. See *id.*

172. See *id.*

committee is independent in 79.1 percent of the sample firms at NASDAQ.¹⁷³ The nominating committee independence varies from 0 to 100 percent, with an average of 88 percent (median 100 percent) in the NASDAQ subsample.¹⁷⁴ In comparison, the nominating committee independence of the NYSE-listed sample firms is much lower. Only 42.11 percent of the firms in the NYSE subsample have completely independent nominating committees, and 54.39 percent of the firms' nominating committees are chaired by independent directors.¹⁷⁵ Additionally, in the NYSE subsample the nominating committee independence varies from 0 to 100 percent with an average of 74 percent (median 66.67 percent).¹⁷⁶ Overall, the compensation and nomination committees of the U.S.-listed Chinese firms appear less independent than their counterparts in the S&P 500 companies, where the compensation and nomination committees were 99.8 percent and 99.6 percent independent, respectively.¹⁷⁷ In so comparing, the same caution should be afforded to the size pattern of our sample firms, which tilts toward the smaller sized firms, compared to the firms indexed in the S&P 500. As earlier studies show, small-sized firms tend to have less independent boards.¹⁷⁸

To be fair, 84.83 percent of our sample firms are incorporated in the BVI or Cayman Islands, and they are entitled to invoke the exemption of a foreign private issuer or the controlled company exemption, or both, in regard to the independence requirements. Indeed, most of our sample firms disclosed their intention to invoke those exemptions in their annual reports or prospectuses. Insofar as the exemptions are relied upon by the sample firms, the deviations as observed above in the U.S.-listed Chinese firms are not a question of non-compliance with the SOX and Exchange rules as such. It does, however, raise the issue of best corporate governance practice. It is worth noting that there are also sample firms which clearly stated that even though they were qualified as a foreign private issuer or a controlled company, they had no current intention to rely on these exemptions and intended to comply with the listing rules in lieu of their home country practice.¹⁷⁹

B. LUCKIN'S BOARD AND BOARD COMMITTEES

Luckin is incorporated in the Cayman Islands, while most operations are in China.¹⁸⁰ Luckin went public on NASDAQ in May 2019.¹⁸¹ Following its

173. There are 135 effective observations in the NASDAQ subsample due to the unavailability of data. *See id.*

174. *See id.*

175. There are fifty-seven effective observations in the NYSE subsample due to the unavailability of data. *See id.*

176. *See id.*

177. 2019 U.S. Technology Spencer Stuart Board Index, *supra* note 154, at 12.

178. Barrett & Lukomnik, *supra* note 137.

179. *See e.g.* Pinduoduo, Inc., 2019 Annual Report (Form 20-F) (April 24, 2020) at 110.

180. Yang, *China Moves to Punish Luckin for Fabricating Sales*, *supra* note 1.

much-hyped IPO, Luckin raised nearly U.S. \$1.8 billion through the IPO, a convertible bond sale, and a follow-on stock sale.¹⁸² In April 2020, it was discovered that Luckin fabricated much of its reported sales from the second to fourth quarters of 2019, amounting to Renminbi 2.2 billion (U.S. \$310 million).¹⁸³ Some of its costs and expenses were also substantially inflated.¹⁸⁴ It was reported that the fraud was perpetrated by a network of companies, all with ties with Luckin's chairman and controlling shareholder, acting as fake buyers.¹⁸⁵ This was later confirmed by investigations conducted by the Chinese regulatory authorities.¹⁸⁶ Luckin was subsequently delisted in July 2020.¹⁸⁷

We compare Luckin's board and board committees¹⁸⁸ against the cohort of NASDAQ-listed Chinese firms. We start with size. Luckin's board was comprised of eight directors,¹⁸⁹ greater than the 6.42 member average of the NASDAQ subsample. Similar to most other NASDAQ sample firms, Luckin set up an audit committee, compensation committee, and a nominating and corporate governance committee.¹⁹⁰

However, Luckin was characteristically less independent than its Chinese NASDAQ peers in regard to the board and board committees. Only two members of Luckin's eight-member board were independent, translating to a 25 percent independence ratio—significantly lower than the 55 percent average (median 60 percent) among the NASDAQ subsample and placing it among the least independent boards in the subsample, as Figure 5 shows.

Luckin's audit committee was alarmingly less independent than its Chinese peers in the NASDAQ subsample. One non-independent member

181. *Id.*

182. Webb & Chiu, *supra* note 3.

183. Jing Yang & Heather Gillers, *Luckin's Accounting Scandal Thwarts Backer's \$2 Billion Fund*, WALL ST. J. (Apr. 17, 2020, 4:17 AM), <https://www.wsj.com/articles/luckin-coffees-accounting-scandal-thwarts-backers-2-5-billion-fund-11587109890> [<https://perma.cc/BAT3-HWHP>].

184. *Id.*

185. Jing Yang, *Behind the Fall of China's Luckin a Network of Fake Buyers and a Fictitious Employee*, WALL ST. J. (May 28, 2020, 12:12: PM), <https://www.wsj.com/articles/behind-the-fall-of-chinas-luckin-coffee-a-network-of-fake-buyers-and-a-fictitious-employee-11590682336> [<https://perma.cc/L882-5P5G>].

186. Yang, *China Moves to Punish Luckin for Fabricating Sales*, *supra* note 1.

187. *Id.*

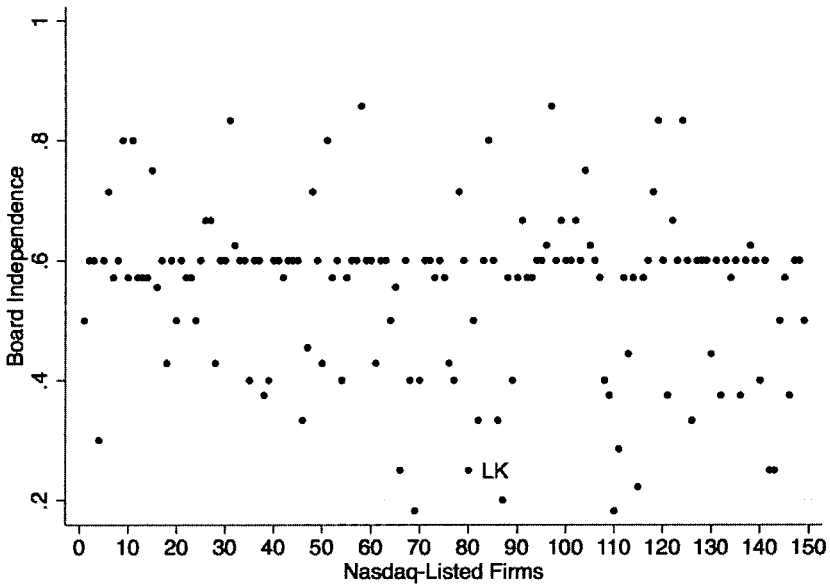
188. Luckin's board underwent significant changes starting from March 27, 2020, just a few days prior to the accounting fraud which was unearthed on April 2, 2020. See *Luckin Coffee (LKNKY) Announces Changes to Board of Directors, Appoints New Chairman*, STREETINSIDER (July 13, 2020, 4:33 PM), <https://www.streetinsider.com/Corporate+News/Luckin+Coffee+%28LKNKY%29+Announces+Changes%20+Board+of+irectors%2C+Appoints+New+Chairman/17108109.html> [<https://web.archive.org/web/20201224022736/https://www.streetinsider.com/Corporate+News/Luckin+Coffee+%28LKNKY%29+Announces+Changes%20+Board+ofDirectors%2C+Appoints+New+Chairman/17108109.html>]. For the purpose of our comparison, we look at the eight-member board serving much of the time prior to the scandal broke out.

189. *Id.*

190. *Id.*

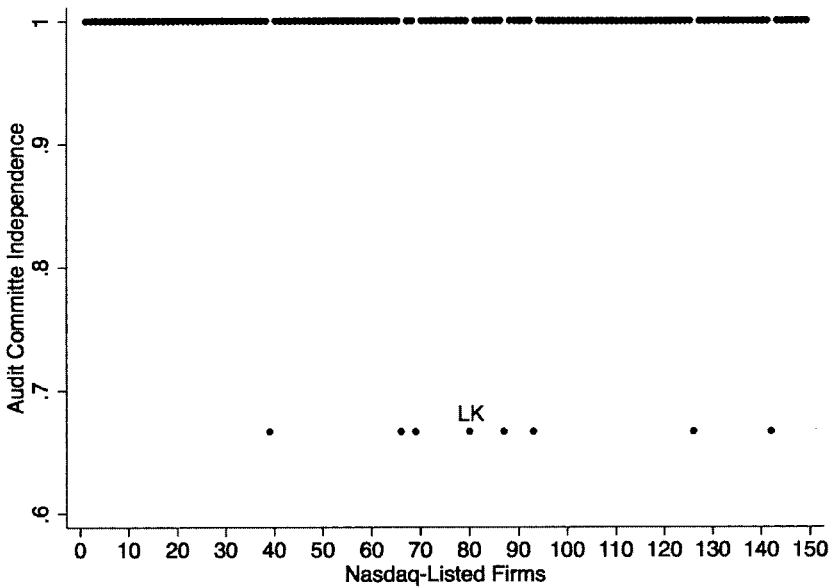
sat on Luckin’s audit committee, making it among the very few NASDAQ-listed Chinese firms whose audit committees were composed not entirely of independent directors,¹⁹¹ as Figure 6 illustrates.

Figure 5: Board Independence of the NASDAQ-Listed Chinese Firms



191. To be sure, the one-year grace period pertaining to the NASDAQ’s rule on audit committee independence seems applicable here. See 17 C.F.R. § 10A-3(b)(1)(iv)(A). It is, however, not as much a question of compliance as one of best corporate governance practice here, since 87.10 percent of NASDAQ-listed Chinese firms in our Board Dataset entitled to the one-year grace period have opted for total compliance with the NASDAQ’s corporate governance requirements on audit committee.

Figure 6: Audit Committee Independence of the NASDAQ-Listed Chinese Firms



Luckin’s compensation committee was similarly less independent among the cohort of NASDAQ-listed Chinese firms. It was chaired by a non-independent director, a practice uncommon in the cohort (only 17.24 percent of the NASDAQ subsample firms had the same practice). Additionally, two of the three-member compensation committee were non-independent—a 33 percent independence ratio—once again placing Luckin among one of the NASDAQ sample firms with the lowest levels of independence—as Figure 7 demonstrates. The same can be said about Luckin’s nominating committee, as seen in Figure 8.

Figure 7: Compensation Committee Independence of the NASDAQ-Listed Chinese Firms

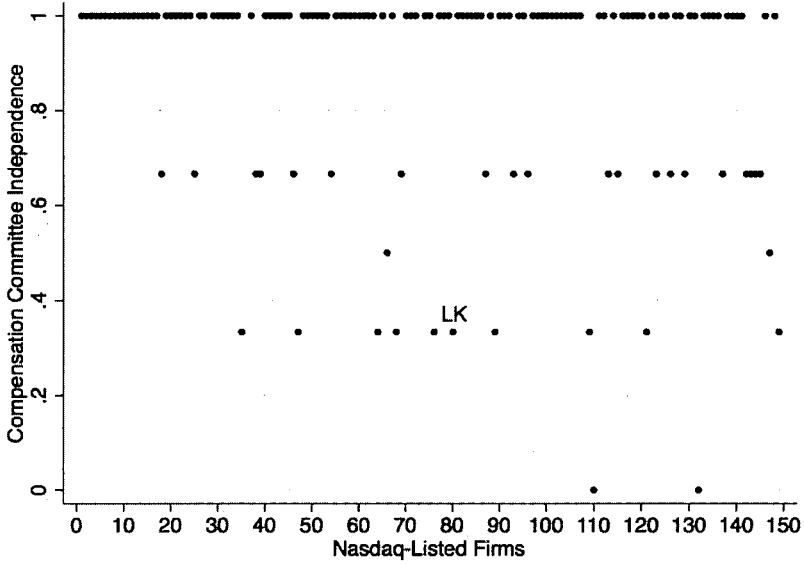
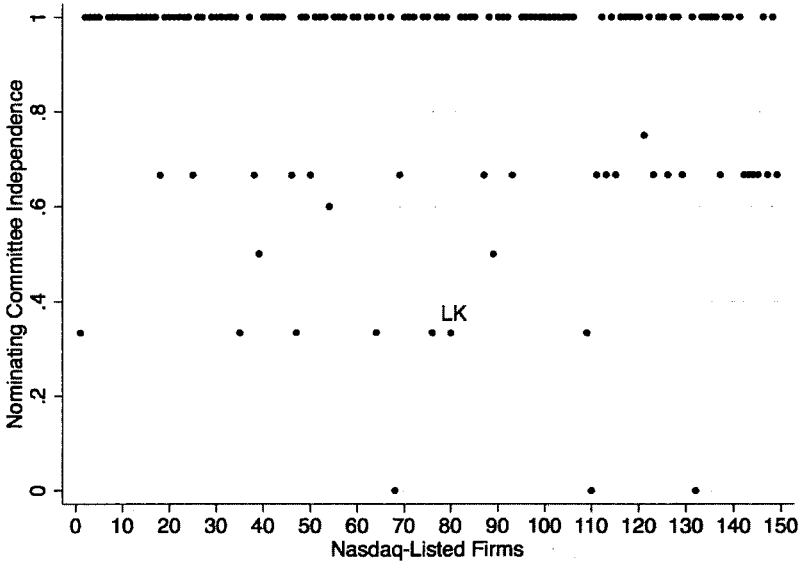


Figure 8: Nominating and Corporate Governance Committee Independence of the NASDAQ-Listed Chinese Firms



In a nutshell, when accounting frauds of an appalling scale were perpetrated against Luckin's investors, its board and board committees were among the least independent of NASDAQ-listed Chinese firms. Luckin can hardly be seen as typical of NASDAQ-listed Chinese firms as the board characteristics are concerned.

VI. Conclusions

Despite the fanfare and intense media attention, relatively little is empirically known about the U.S.-listed Chinese companies as a group. This research is a step toward filling this critical gap. Drawing upon two comprehensive, unique datasets on the NYSE- and NASDAQ-listed Chinese firms, our research sheds fresh empirical light on these firms, in particular, their boards and board committees.

With a total market capitalization of over U.S. \$1.8 trillion as of December 31, 2019, the cohort of U.S.-listed Chinese companies are far more heterogeneous than widely perceived. They range from mega-cap firms (larger than U.S. \$200 billion) to microcap firms (smaller than U.S. \$300 million). There are far less state-owned enterprises (5.8 percent) than non-state-owned firms (94.2 percent). The diversity of the U.S.-listed Chinese firms is such that the NASDAQ-listed and NYSE-listed firms should be treated as two separate and distinct groups, each with its own characteristics and patterns in respect of the board and board committees. Counterintuitively, the NYSE-listed Chinese companies, generally larger in size (as measured by market capitalization) and more mature (as measured by the years of listing), have less independent boards than their NASDAQ-listed counterparts. Equally counterintuitive are our findings that the Chinese firms listed on the NYSE are (slightly) less likely than their NASDAQ-listed counterparts to set up all three key board committees (i.e., the audit committee, compensation committee, and nominating and corporate governance committee). They are also less likely than the NASDAQ-listed Chinese firms to have fully independent audit committees, compensation committees, and nominating and governance committees. The factors that account for these counterintuitive findings are topics for future research.

Boards of the NASDAQ-listed Chinese firms, as a group, appear to be less independent than those of the S&P 500 and Russell 3000 firms. Their audit committees are, however, pretty much as independent as those of the S&P 1500-indexed companies, although their compensation committees and nominating committees exhibit a lower level of independence than those of the S&P 500 firms. One must, however, resist the temptation of drawing the conclusion that independence of the NASDAQ-listed Chinese firms' boards and board committees are questionable and they therefore pose a particularly greater governance risk. Caution is warranted in two respects. For one, the Chinese firms listed on NASDAQ are characteristically smaller in size (59.73 percent of them are micro-cap firms) than, for instance, S&P 500 and S&P 1500 companies. Empirically, small-sized firms (in particular,

micro-cap firms) tend to have less independent boards. Perhaps more importantly, the NASDAQ-listed Chinese firms are mostly BVI or Cayman Islands incorporated, entitling them to deviate from the NASDAQ board governance standards by virtue of the foreign private issuer exemption. Overall, our research does not lend much support to the view that the U.S.-listed Chinese firms, in particular the NASDAQ-listed Chinese firms, are a minefield in respect of board governance.

Our research also offers little support to the popular views that Luckin is representative of all U.S.-listed Chinese companies and that the Luckin scandal unearths serious systemic governance failures commonly plaguing that group of firms as a whole. We show that Luckin's board and board committees were among the least independent in the 149 NASDAQ-listed Chinese companies. In that sense, Luckin should better be seen as an outlier, rather than as the tip of the iceberg. To be clear, important lessons must be learnt from the Luckin scandal, lessons based upon further analysis and evidence-gathering: How did it happen? To what extent did the lack of adequate board (and committee) independence contribute to the accounting fraud? What can be done, at both national and international levels, to prevent the scandals of this kind from happening? It is too hasty, however, to judge the whole group of U.S.-listed Chinese companies on the basis of what appears to be an outlier member of that group. That risks throwing the baby out with the bathwater.

Appendix: U.S.-Listed Chinese Companies (N = 224)

Ticker	Company	Listed Exchange	IPO Date	Place of Incorporation	Ownership
AACG	ATA, Inc.	NASDAQ	2008	Cayman Is.	non-state-owned
ACH	Aluminum Corporation of China, Ltd.	NYSE	2001	China	state-owned
AGBAU	AGBA Acquisition, Ltd.	NASDAQ	2019	BVI	non-state-owned
AGMH	AGM Group Holdings, Inc.	NASDAQ	2018	BVI	non-state-owned
AIH	Aesthetic Medical International Holdings Group, Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
AIHS	Senmiao Technology, Ltd.	NASDAQ	2018	U.S.	non-state-owned
ANTE	AirMedia Group, Inc.	NASDAQ	2007	Cayman Is.	non-state-owned
APM	Aptorum Group, Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
ATCO	Atlas, Corp.	NYSE	2005	Marsh. Is.	non-state-owned
ATHM	Autohome, Inc.	NYSE	2013	Cayman Is.	non-state-owned
ATIF	ATIF Holdings, Ltd.	NASDAQ	2019	BVI	non-state-owned
ATV	Acorn International, Inc.	NYSE	2007	Cayman Is.	non-state-owned
BABA	Alibaba Group Holding, Ltd.	NYSE	2014	Cayman Is.	non-state-owned
BEDU	Bright Scholar Education Holdings, Ltd.	NYSE	2017	Cayman Is.	non-state-owned
BEST	BEST, Inc.	NYSE	2017	Cayman Is.	non-state-owned
BGNE	Beigene, Ltd.	NASDAQ	2016	Cayman Is.	non-state-owned

Ticker	Company	Listed Exchange	IPO Date	Place of Incorporation	Ownership
BHAT	Blue Hat Interactive Entertainment Technology	NASDAQ	2019	Cayman Is.	non-state-owned
BIDU	Baidu, Inc.	NASDAQ	2005	Cayman Is.	non-state-owned
BILI	Bilibili, Inc.	NASDAQ	2018	Cayman Is.	non-state-owned
BIMI	NF Energy Saving Corp.	NASDAQ	2010	U.S.	non-state-owned
BITA	Bitauto Holdings Ltd.	NYSE	2010	Cayman Is.	non-state-owned
BRQS	Borqs Technologies, Inc	NASDAQ	2015	BVI	non-state-owned
BYSI	BeyondSpring, Inc.	NASDAQ	2017	Cayman Is.	non-state-owned
BZUN	Baozun, Inc.	NASDAQ	2015	Cayman Is.	non-state-owned
CAAS	China Automotive Systems, Inc.	NASDAQ	2004	U.S.	non-state-owned
CAN	Canaan Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
CANG	Cango Inc.	NYSE	2018	Cayman Is.	non-state-owned
CBAT	CBAK Energy Technology, Inc.	NASDAQ	2006	U.S.	non-state-owned
CBPO	China Biologic Products Holdings, Inc.	NASDAQ	2009	Cayman Is.	non-state-owned
CCCL	China Ceramics Co., Ltd.	NASDAQ	2007	BVI	non-state-owned
CCM	Concord Medical Services Holdings Ltd.	NYSE	2009	Cayman Is.	non-state-owned
CCNC	Code Chain New Continent Ltd.	NASDAQ	2015	U.S.	non-state-owned
CCRC	China Customer Relations Centers, Inc.	NASDAQ	2015	BVI	non-state-owned

Ticker	Company	Listed Exchange	IPO Date	Place of Incorporation	Ownership
CEA	China Eastern Airlines Corporation Ltd.	NYSE	1997	China	state-owned
CEO	CNOOC Ltd.	NYSE	2001	H.K.	state-owned
CGA	China Green Agriculture, Inc.	NYSE	2009	U.S.	non-state-owned
CHA	China Telecom Corp. Ltd.	NYSE	2002	China	state-owned
CHL	China Mobile Limited	NYSE	1997	H.K.	state-owned
CHNR	China Natural Resources Inc.	NASDAQ	1995	BVI	non-state-owned
CHU	China Unicom (Hong Kong) Ltd.	NYSE	2000	H.K.	state-owned
CIH	China Index Holdings Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
CJJD	China Jo-Jo Drugstores, Inc.	NASDAQ	2010	U.S.	non-state-owned
CLPS	CLPS Inc.	NASDAQ	2018	Cayman Is.	non-state-owned
CLWT	Euro Tech Holdings Co. Ltd.	NASDAQ	1997	BVI	non-state-owned
CMCM	Cheetah Mobile Inc.	NYSE	2014	Cayman Is.	non-state-owned
CNET	ChinaNet Online Holdings, Inc.	NASDAQ	2010	U.S.	non-state-owned
CNF	CNFinance Holdings Ltd.	NYSE	2018	Cayman Is.	non-state-owned
CO	Global Cord Blood Corp.	NYSE	2009	Cayman Is.	non-state-owned
COE	China Online Education Grp.	NYSE	2016	Cayman Is.	non-state-owned
CREG	China Recycling Energy Corp	NASDAQ	2010	U.S.	non-state-owned
CSIQ	Canadian Solar Inc.	NASDAQ	2006	Can.	non-state-owned
CTK	Cootek (Cayman) Inc.	NYSE	2018	Cayman Is.	non-state-owned

Ticker	Company	Listed Exchange	IPO Date	Place of Incorporation	Ownership
CXDC	China XD Plastics Company Ltd.	NASDAQ	2009	U.S.	non-state-owned
CYD	China Yuchai International Ltd.	NYSE	1994	Berm.	non-state-owned
DAO	Youdao, Inc.	NYSE	2019	Cayman Is.	non-state-owned
DL	China Distance Education Holdings Ltd.	NYSE	2008	Cayman Is.	non-state-owned
DNJR	Golden Bull Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
DOGZ	Dogness (International) Corp.	NASDAQ	2017	BVI	non-state-owned
DOYU	DouYu International Holdings Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
DQ	DAQO New Energy Corp.	NYSE	2010	Cayman Is.	non-state-owned
DSWL	Deswell Industries Inc.	NASDAQ	1995	BVI	non-state-owned
DTSS	Datasea Inc.	NASDAQ	2018	U.S.	non-state-owned
DUO	FangDD Network Group Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
EDU	New Oriental Education & Technology Group Inc.	NYSE	2006	Cayman Is.	non-state-owned
EH	EHang Holdings	NASDAQ	2019	Cayman Is.	non-state-owned
EVK	Ever-Glory International Group, Inc.	NASDAQ	2008	U.S.	non-state-owned
FAMI	FARMMI, INC.	NASDAQ	2018	Cayman Is.	non-state-owned
FANH	Fanhua Inc.	NASDAQ	2007	Cayman Is.	non-state-owned
FEDU	Four Seasons Education (Cayman) Inc.	NYSE	2017	Cayman Is.	non-state-owned

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FENG	Phoenix New Media Ltd.	NYSE	2011	Cayman Is.	non-state-owned
FFHL	Fuwei Films (Holdings) Co., Ltd.	NASDAQ	2006	Cayman Is.	non-state-owned
FINV	FinVolution Grp.	NYSE	2017	Cayman Is.	non-state-owned
FORK	Fuling Global Inc.	NASDAQ	2015	Cayman Is.	non-state-owned
FTFT	Future FinTech Group Inc.	NASDAQ	2009	U.S.	non-state-owned
FUTU	Futu Holdings	NASDAQ	2019	Cayman Is.	non-state-owned
GDS	GDS Holdings Limited	NASDAQ	2016	Cayman Is.	non-state-owned
GHG	Greentree Hospitality Group Ltd.	NYSE	2018	Cayman Is.	non-state-owned
GLG	China Bat Group, Inc.	NASDAQ	2013	U.S.	non-state-owned
GSH.N	Guangshen Railway Company Limited	NYSE	1996	China	state-owned
GSMG	Glory Star New Media Group Holdings Limited	NASDAQ	2018	Cayman Is.	non-state-owned
GSUM	Gridsum Holding Inc.	NASDAQ	2016	Cayman Is.	non-state-owned
GSX	GSX Techedu Inc.	NYSE	2019	Cayman Is.	non-state-owned
GTEC	Greenland Technologies Holding Corp	NASDAQ	2018	BVI	non-state-owned
GURE	Gulf Resources, Inc.	NASDAQ	2009	U.S.	non-state-owned
HAPP	Happiness Biotech Group Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
HCM	Hutchison China MediTech Ltd.	NASDAQ	2016	Cayman Is.	non-state-owned
HEBT	Hebron Technology Co., Ltd.	NASDAQ	2016	BVI	non-state-owned

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HGSH	CHINA HGS REAL ESTATE INC.	NASDAQ	2010	U.S.	non-state-owned
HHT	Color Star Technology Co., Ltd.	NASDAQ	2009	Cayman Is.	non-state-owned
HIHO	Highway Holdings Ltd.	NASDAQ	1996	BVI	non-state-owned
HKIB	AMTD International Inc.	NYSE	2019	Cayman Is.	non-state-owned
HLG	Hailiang Education Group Inc.	NASDAQ	2015	Cayman Is.	non-state-owned
HMI	Huami Corp.	NYSE	2018	Cayman Is.	non-state-owned
HNP	Huaneng Power International, Inc.	NYSE	1994	China	state-owned
HOLI	Hollysys Automation Technologies, Ltd.	NASDAQ	2008	BVI	non-state-owned
HTHT	Huazhu Group Ltd.	NASDAQ	2010	Cayman Is.	non-state-owned
HUSN/CIFS	Hudson Capital Inc.	NASDAQ	2017	BVI	non-state-owned
HUYA	Huya Inc.	NYSE	2018	Cayman Is.	non-state-owned
HX	Hexindai Inc.	NASDAQ	2017	Cayman Is.	non-state-owned
ICLK	iClick Interactive Asia Group Ltd.	NASDAQ	2017	Cayman Is,	non-state-owned
IDEX	Ideanomics, Inc.	NASDAQ	2012	U.S.	non-state-owned
IQ	iQIYI, Inc.	NASDAQ	2018	Cayman Is.	non-state-owned
JD	JD.com, Inc.	NASDAQ	2014	Cayman Is.	non-state-owned
JFIN	Jiayin Group Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
JFU	9F Inc.	NASDAQ	2019	Cayman Is.	non-state-owned

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JG	Aurora Mobile Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
JKS	JinkoSolar Holding Co., Ltd.	NYSE	2010	Cayman Is.	non-state-owned
JOBS	51job, Inc.	NASDAQ	2004	Cayman Is.	non-state-owned
JP	Jupai Holdings Ltd.	NYSE	2015	Cayman Is.	non-state-owned
JRJC	China Finance Online Co., Ltd.	NASDAQ	2004	H.K.	non-state-owned
JT	Jianpu Technology Inc.	NYSE	2017	Cayman Is.	non-state-owned
KBSF	KBS Fashion Group Ltd.	NASDAQ	2013	Marsh. Is.	non-state-owned
KGJI	Kingold Jewelry Inc.	NASDAQ	2010	U.S.	non-state-owned
KNDI	Kandi Technologies Group, Inc.	NASDAQ	2008	U.S.	non-state-owned
KRKR	36Kr Holdings Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
KXIN	Kaixin Auto Holdings	NASDAQ	2017	Cayman Is.	non-state-owned
LAIX	LAIX Inc.	NYSE	2018	Cayman Is.	non-state-owned
LEJU	Leju Holdings Ltd.	NYSE	2014	Cayman Is.	non-state-owned
LFC.N	China Life Insurance Company Ltd.	NYSE	2003	China	state-owned
LITB	LightInTheBox Holding Co., Ltd.	NYSE	2013	Cayman Is.	non-state-owned
LK	Luckin Coffee Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
LKCO	Luokung Technology Corp.	NASDAQ	2019	BVI	non-state-owned
LLIT	Lianluo Smart Limited	NASDAQ	2010	BVI	non-state-owned
LOACU	Longevity Acquisition Corporation	NASDAQ	2018	BVI	non-state-owned

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LX	LexinFintech Holdings Ltd.	NASDAQ	2017	Cayman Is.	non-state-owned
LYL	Dragon Victory International Ltd.	NASDAQ	2017	Cayman Is.	non-state-owned
MARK	Remark Holdings, Inc.	NASDAQ	2007	U.S.	non-state-owned
MDJH	MDJM Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
MFH	Mercurity Fintech Holding Inc.	NASDAQ	2015	Cayman Is.	non-state-owned
MKD	Molecular Data Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
MLCO	Melco Resorts & Entertainment LTD	NASDAQ	2006	Cayman Is.	non-state-owned
MOGU	Mogu Inc.	NYSE	2018	Cayman Is.	non-state-owned
MOHO	Ecmoho Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
MOMO	Momo Inc.	NASDAQ	2014	Cayman Is.	non-state-owned
MOXC	Moxian, Inc.	NASDAQ	2016	U.S.	non-state-owned
MSC	Studio City International Holdings Ltd.	NYSE	2018	Cayman Is.	non-state-owned
MTC	MMTec, Inc.	NASDAQ	2019	BVI	non-state-owned
MYT	Urban Tea, Inc.	NASDAQ	2015	BVI	non-state-owned
NCTY	The9 Limited	NASDAQ	2004	Cayman Is.	non-state-owned
NEW	Puxin Ltd.	NYSE	2018	Cayman Is.	non-state-owned
NEWA	Newater Technology, Inc.	NASDAQ	2017	BVI	non-state-owned
NFH	New Frontier Health Corp	NYSE	2018	Cayman Is.	non-state-owned
NIO	NIO Inc.	NYSE	2018	Cayman Is.	non-state-owned

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NIU	Niu Technologies	NASDAQ	2018	Cayman Is.	non-state-owned
NOAH	Noah Holdings Ltd.	NYSE	2010	Cayman Is.	non-state-owned
NTES	NetEase, Inc.	NASDAQ	2000	Cayman Is.	non-state-owned
NTP	NAM TAI PROPERTY INC	NYSE	1991	BVI	non-state-owned
NVFY	Nova Lifestyle, Inc.	NASDAQ	2014	U.S.	non-state-owned
OCFT	ONECONNECT FINANCIAL TECHNOLOGY CO., LTD.	NYSE	2019	Cayman Is.	non-state-owned
OIIM	O2Micro International Ltd.	NASDAQ		Cayman Is.	non-state-owned
ONE	OneSmart International Education Group Ltd.	NYSE	2018	Cayman Is.	non-state-owned
OSN	Ossen Innovation Co., Ltd.	NASDAQ	2010	BVI	non-state-owned
PBTS	Powerbridge Technologies Co., Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
PDD	Pinduoduo Inc.	NASDAQ	2018	Cayman Is.	non-state-owned
PETZ	TDH Holdings, Inc.	NASDAQ	2017	BVI	non-state-owned
PHCF	Puhui Wealth Investment Management Co., Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
PLIN	China Xiangtai Food Co., Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
PME	Pingtan Marine Enterprise Ltd.	NASDAQ	2011	Cayman Is.	non-state-owned
PT	Pintec Technology Holdings Limited	NASDAQ	2018	Cayman Is.	non-state-owned

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PTR.N	Petrochina Company Limited	NYSE	2000	China	state-owned
PUYI	Puyi Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
QD	Qudian Inc.	NYSE	2017	Cayman Is.	non-state-owned
QFIN	360 Finance, Inc	NASDAQ	2018	Cayman Is.	non-state-owned
QK	Q&K International Group Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
QTT	Qutoutiao Inc.	NASDAQ	2018	Cayman Is.	non-state-owned
RCON	Recon Technology, Ltd.	NASDAQ	2009	Cayman Is.	non-state-owned
REDU	RISE Education Cayman Ltd.	NASDAQ	2017	Cayman Is.	non-state-owned
RENN	Renren Inc.	NYSE	2011	Cayman Is.	non-state-owned
RETO	ReTo Eco-Solutions, Inc.	NASDAQ	2017	BVI	non-state-owned
RUHN	Ruhnn Holding Limited	NASDAQ	2019	Cayman Is.	non-state-owned
RYB	RYB Education, Inc.	NYSE	2017	Cayman Is.	non-state-owned
SECO	Secoo Holding Limited	NASDAQ	2017	Cayman Is.	non-state-owned
SEED	Origin Agritech Limited	NASDAQ	2005	BVI	non-state-owned
SFUN	Fang Holdings Ltd.	NYSE	2010	Cayman Is.	non-state-owned
SGOC	SGOCO Group, Ltd.	NASDAQ	2008	Cayman Is.	non-state-owned
SHLN	Sinopec Shanghai Petrochemical Company Limited	NYSE	1993	China	state-owned
SINA	Sina Corporation	NASDAQ	2000	Cayman Is.	non-state-owned

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SINO	Sino-Global Shipping America, Ltd.	NASDAQ	2008	U.S.	non-state-owned
SKYS	Sky Solar Holdings Ltd.	NASDAQ	2014	Cayman Is.	non-state-owned
SNPN	China Petroleum & Chemical Corp.	NYSE	2000	China	state-owned
SOGO	SOGOU Inc.	NYSE	2017	Cayman Is.	non-state-owned
SOHU	Sohu.com Ltd.	NASDAQ	2000	Cayman Is.	non-state-owned
SOL	ReneSola Ltd.	NYSE	2008	BVI	non-state-owned
SPI	SPI Energy Co., Ltd.	NASDAQ	2016	Cayman Is.	non-state-owned
STG	Sunlands Technology Grp.	NYSE	2018	Cayman Is.	non-state-owned
SVA	Sinovac Biotech, Ltd.	NASDAQ	2004	Ant. & Barb.	non-state-owned
SXTC	China SXT Pharmaceuticals, Inc.	NASDAQ	2019	BVI	non-state-owned
SY	So-Young International Inc.	NASDAQ	2019	Cayman Is.	non-state-owned
TAL	TAL Education Group	NYSE	2010	Cayman Is.	non-state-owned
TANH	Tantech Holdings Ltd.	NASDAQ	2015	BVI	non-state-owned
TAOP	Taoping Inc.	NASDAQ	2006	BVI	non-state-owned
TC	TuanChe Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
TCOM	Ctrip.com International, Ltd.	NASDAQ	2003	Cayman Is.	non-state-owned
TEDU	Tarena International, Inc.	NASDAQ	2014	Cayman Is.	non-state-owned
TIGR	Up Fintech Holding Ltd.	NASDAQ	2019	Cayman Is.	non-state-owned
TME	Tencent Music Entertainment Grp.	NYSE	2018	Cayman Is.	non-state-owned

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TOUR	Tuniu Corp.	NASDAQ	2014	Cayman Is.	non-state-owned
TYHT	Shineco, Inc.	NASDAQ	2016	U.S.	non-state-owned
UTSI	UTStarcom Holdings Corp.	NASDAQ	2000	Cayman Is.	non-state-owned
UXIN	Uxin Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
VIOT	Viomi Technology Co., Ltd.	NASDAQ	2018	Cayman Is.	non-state-owned
VIPS	Vipshop Holdings Ltd.	NYSE	2012	Cayman Is.	non-state-owned
VNET	21Vianet Group, Inc.	NASDAQ	2011	Cayman Is.	non-state-owned
WAFU	Wah Fu Education Grp. Ltd.	NASDAQ	2019	BVI	non-state-owned
WB	Weibo Corp.	NASDAQ	2014	Cayman Is.	non-state-owned
WBAI	500.com Ltd.	NYSE	2013	Cayman Is.	non-state-owned
WEI	Weidai Ltd.	NYSE	2018	Cayman Is.	non-state-owned
WINS	Wins Finance Holdings Inc.	NASDAQ	2015	Cayman Is.	non-state-owned
WSG	Wanda Sports Group Co., Ltd.	NASDAQ	2019	H.K.	non-state-owned
WUBA	58.com Inc.	NYSE	2013	Cayman Is.	non-state-owned
XIN	Xinyuan Real Estate Co., Ltd.	NYSE	2007	Cayman Is.	non-state-owned
XNET	Xunlei Ltd.	NASDAQ	2014	Cayman Is.	non-state-owned
XRF	China Rapid Finance Ltd.	NYSE	2017	Cayman Is.	non-state-owned
XYF	X Financial	NYSE	2018	Cayman Is.	non-state-owned
YI	111, Inc.	NASDAQ	2018	Cayman Is.	non-state-owned

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YIN	Yintech Investment Holdings Ltd.	NASDAQ	2016	Cayman Is.	non-state-owned
YJ	Yunji Inc	NASDAQ	2019	Cayman Is.	non-state-owned
YRD	Yiren Digital Ltd.	NYSE	2015	Cayman Is.	non-state-owned
YUMC	Yum China Holdings, Inc.	NYSE	2016	U.S.	non-state-owned
YY	JOYY Inc.	NASDAQ	2012	Cayman Is.	non-state-owned
ZKIN	ZK International Group Co., Ltd.	NASDAQ	2017	BVI	non-state-owned
ZLAB	Zai Lab Ltd.	NASDAQ	2017	Cayman Is.	non-state-owned
ZNH	China Southern Airlines Company Ltd.	NYSE	1997	China	state-owned
ZTO	ZTO Express (Cayman) Inc.	NYSE	2016	Cayman Is.	non-state-owned