

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

MAY 11 2020

Via E-mail

Mr. Michael D. Kennedy
Chairman
Federal Retirement Thrift Investment Board
77 K Street, NE
Washington, D.C. 20002

Dear Chairman Kennedy:

I wish to thank you and your fellow Board members for your service on the Federal Retirement Thrift Investment Board. The work you have done on behalf of the millions of current and former federal employees and service-members invested in the Thrift Savings Plan (TSP) is deeply appreciated.

I am writing with regard to the Board's decision to change the benchmark index for the TSP's International Stock Index Investment Fund, or "I Fund," and to communicate to the Board a direction from the President.

As you know, the I Fund gives plan participants the option to invest a portion of their retirement savings in the international equity markets. The Board, as plan fiduciaries, must select a stock index as a benchmark for the Fund, and retirement savings directed to the Fund are then invested directly in the stocks comprising the benchmark index. The I Fund is the principal means for plan equity participation in international equity markets. Currently, there are more than \$40 billion in the I Fund.

In November 2017, the Board selected a new benchmark index for the I Fund, switching from the MSCI Europe, Australasia, and Far East Index—which captures equities in developed markets—to the MSCI All Country World ex USA Investable Market Index (MSCI ACWI ex USA IMI), which contains equities in what MSCI has labeled "Emerging Markets" as well, including the People's Republic of China. The Board evaluated that decision again last year, after a bipartisan group of Senators expressed concern that companies benefiting from this investment would include those involved in military activities, espionage, and human rights abuses by the Chinese government. However, the Board declined to reverse the decision. The I Fund is scheduled very shortly to begin investing in companies listed in the MSCI ACWI ex USA IMI, including approximately \$4.5 billion in Chinese equities.

Enclosed is a letter from the Assistant to the President for National Security Affairs, Robert O'Brien, and the Assistant to the President for Economic Policy and Director of the National Economic Council, Larry Kudlow,¹ expressing grave concerns with the planned investment on

grounds of both investment risk and national security. In their letter, Messrs. Kudlow and O'Brien document risks to investors resulting from inadequate investor disclosures and protections under Chinese law, drawing in part on a recent series of joint statements by the chairs of the Securities and Exchange Commission (SEC) and Public Company Accounting Oversight Board (PCAOB). Kudlow and O'Brien state that this investment risk is augmented by the Chinese government's concealment of critical information concerning the novel coronavirus, which exacerbated the COVID-19 pandemic and, they note, materially increases the risk that Chinese companies will be subject to sanctions or boycotts. Messrs. Kudlow and O'Brien also explain that some of the Chinese companies in which the TSP will invest "present significant national security and humanitarian concerns for the United States, which increases the risk that they could be subject to sanctions, public protests, trade restrictions, boycotts, and other punitive measures that jeopardize their business and profitability." Several of the companies listed on the MSCI ACWI ex USA IMI arm the People's Liberation Army, provide equipment that is used to oppress China's religious minorities, and have violated U.S. sanctions by engaging in economic activity with Iran and North Korea.

As you know, the concerns expressed in this letter have also been voiced by both Republican and Democratic members of Congress, as well as in the extraordinary recent joint statement by the chairs of the SEC and PCAOB.¹ SEC Chairman Clayton has personally reinforced these investor protection concerns to me.

The attached letter, which is authored by the President's principal economic and national security advisors, establishes that linking the I Fund to the MSCI ACWI ex USA IMI would place millions of federal employees, retirees, and service-members in the untenable position of choosing between forgoing any investment in international equities, or placing billions of dollars in retirement savings in risky companies that pose a threat to U.S. national security. Moreover, because the federal government "matches" TSP contributions, selecting the MSCI ACWI ex USA IMI would result in the federal government funding activities that are diametrically opposed to U.S. military interests.

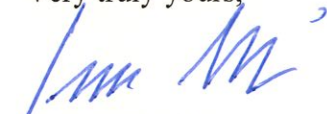
At the direction of President Trump, the Board is to immediately halt all steps associated with investing the I Fund according to the MSCI ACWI ex USA IMI, and to reverse its decision to invest Plan assets on the basis of that international equities index. This now is the only acceptable course, given the concerns expressed by the President's advisors and the chairs of the SEC and PCAOB, as well, of course, as the President's own directive to the Board. I also note, with all respect to the many years of service by you and your fellow Board members, that you and the other members serve on expiring terms, and the President last week nominated three replacements. Deferring the MSCI ACWI ex USA IMI investment will enable a newly-

¹ See Letter from Sen. Marco Rubio, Sen. Jeanne Shaheen, et al. to Michael Kennedy (Oct. 22, 2019), *available at* <https://bit.ly/2ST0HNP>; Statement on Continued Dialogue with Audit Firm Representatives on Audit Quality in China and Other Emerging Markets; Coronavirus – Reporting Considerations and Potential Relief (Feb. 19, 2020), *available at* <http://www.sec.gov/news/public-statement/statement-audit-quality-china-2020-02-19>; Press Release, SEC Chairman Clayton, PCAOB Chairman Duhnke, and Members of SEC Staff Meet With Auditing Firm Representatives to Discuss Audit Quality in Emerging Economies and Markets (Nov. 4, 2019), *available at* <http://www.sec.gov/news/press-release/2019-228>.

constituted Board, impaneled with the advice and consent of the Senate, to decide what index—if any—should be selected to replace the current I Fund index.

Chairman Kennedy, please confirm by close of business Wednesday that the Board will take the steps described above. And thank you again for your service, which I appreciate has extended much longer than you and your colleagues originally expected.

Very truly yours,



Eugene Scalia

Cc: Dana K. Bilyeu, Member of the Board
Bill S. Jasien, Member of Board
David A. Jones, Member of Board
Ron D. McCray, Member of the Board
Ravindra Deo, Executive Director
Lawrence A. Kudlow, Assistant to the President for Economic Policy and
Director of the National Economic Council
Robert C. O'Brien, Assistant to the President for National Security Affairs