February 20, 2020

Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Ave NW
Washington, DC
20220

Ambassador Robert Lighthizer
United States Trade Representative
600 17th St NW
Washington, DC
20006

Re: China Phase One Trade Agreement and Financial Services

On behalf of the Engage China Coalition[1], I would like to convey our deepest gratitude to you for ensuring the financial services industry was comprehensively included in the Phase One Agreement signed by President Trump and Vice Premier Liu on January 15th.

The financial services sectors that our Coalition represent employ almost 9 million people in the United States and account for approximately 8 per cent of GDP. We are also a source of competitive strength for the U.S., exporting around $130 billion worth of services per annum. Recognizing the importance of financial services within trade and investment agreements, as you did on January 15th, is crucial to facilitating investment, jobs and growth.

As you'll recall, in 2017 we wrote to '*encourage you to prioritize the reduction of barriers to U.S. financial services exports to China. Specifically, we believe that addressing the long-standing ownership caps that U.S. financial services firms face should be a top priority for the two sides*'.

Measured against that long-standing aspiration, we were therefore extremely impressed with the details of the January 15th Agreement. In particular, we welcome the cementing of landmark commitments by China in a binding agreement and especially the pledges by China to:

[1] Engage China is a coalition of financial services trade associations united in support of high-level engagement between the United States and China. Our website can be found here.

- *remove the foreign equity cap in the life, pension, and health insurance sectors and allow wholly U.S.-owned insurance companies to participate in these sectors (no later than April 1, 2020); and*

- *eliminate foreign equity limits and allow wholly U.S.-owned services suppliers to participate in the securities, fund management, and futures sectors (no later than April 1, 2020).*

Equity cap abolition is a long-standing goal of our Coalition and one that we have worked on for many years. To have that goal realized – and officially codified in a bilateral agreement – is a significant milestone and testament to the administration's focus and hard work. We thank you for prioritizing this issue for the good of the U.S. economy and persisting on it through the ebb and flow of the three-year negotiation. Provided it is implemented, the outcome will enable our internationally competitive financial services providers to operate more freely and fairly in China than at any time previously.

We also welcome all other aspects of the financial services chapter. For example, we were very pleased to see China:

- *affirm that it substantially reduced the high net asset value requirement on majority shareholders of securities services suppliers on July 5, 2019.*

- *agree to remove, by no later than April 1, 2020, any business scope limitations, discriminatory regulatory processes and requirements, and overly burdensome licensing and operating requirements for all insurance sectors (including insurance intermediation), and shall thereafter review and approve expeditiously any application by U.S. financial services suppliers for licenses to supply insurance services.*

- *commit that when a qualified subsidiary of a U.S. financial institution provides or seeks to provide securities investment fund custody services, its parent company's overseas assets shall be taken into consideration in order to fulfill applicable asset requirements.*

- *commit to review and approve, on a non-discriminatory basis, a qualified application of a financial institution for a securities, fund management, or futures license and affirm that licensed financial institutions are entitled to supply the same full scope of services in these sectors as licensed Chinese financial institutions.*

We also recognize that the U.S. has committed to potentially allowing greater participation by Chinese firms in the U.S. (re)insurance market. The resulting global diversification of risk from the mutual market opening is a benefit to both countries.

There is, of course, more to be done in realizing a truly open Chinese market to U.S. financial services providers – not least of all working together to ensure the positive commitments set out in the agreement are implemented in good faith (see below).

For example, China has committed to ultimately permit 100 percent ownership of life insurance operations by non-Chinese entities by April 1 of this year. However, at this time, China has not released the necessary implementing regulations to pave the way. It is urgent that Chinese authorities do so as soon as is practicable.

There are also aspects of the agreement where we would find clarification or more precision extremely helpful. Specifically:

- Does the term “financial institutions” refer to any financial institution to serve as a Type-A lead underwriters (as currently only Chinese-regulated banks – but not other financial institutions – can provide Type-A underwriting services)?

- Is there a time horizon associated with the allowance of US financial services suppliers to apply for provincial Asset Management Company (AMC) licenses? Will U.S. financial services suppliers be able to apply for provincial AMC licenses even if the cap of 2 per province has been reached or is the Chinese government looking at relaxing that cap?

- Can the two sides provide clarity on the April 1 deadline and what the industry should expect by that date?

- In what forms / channels can US institutions invest in the full scope of futures products? Does the agreement address issues associated with US institutions being prevented from serving as an Overseas Intermediary / Overseas Broker in the listed derivatives market?

- The status of the Net Asset Valuation requirement in fund management (both for majority-owned foreign JVs and 100% owned fund management companies (FMCs)).

- Clarification of the operating model for foreign branches to conduct local custody business including whether the global custodian’s matured global operating model can be adopted.

Monitoring and enforcing the commitments contained within the agreement

We also welcome the agreement’s plans for enforcement and dispute resolution.

‘*Establishing a Bilateral Evaluation and Dispute Resolution Arrangement (the “Arrangement”) to effectively implement the Agreement, to resolve issues in the economic and trade relationship of the Parties in a fair, expeditious, and respectful manner, and to avoid the escalation of economic and trade disputes and their impact on other areas of the Parties’ relationship*….’

In addition to the resolution arrangement, we also welcome the creation of the Trade Framework Group and the resumption of a form of macroeconomic dialogue. It is vital that there is regular dialogue between the two sides to evaluate progress and discuss issues and we hope these new platforms devote quality time to the issues in the financial services chapter of the agreement. Having a mechanism to raise and resolve disputes will be critical in translating the spirit of the Phase One Agreement into a fully accessible financial services industry in China.

In terms of the mechanics, we believe such a dialogue could take place twice a year – comparable to the rhythm of the U.S./EU Financial Regulatory Forum - and, ideally, would seek advance input from industry on how these commitments are being implemented and affecting the business environment on the ground. It would promote systematic monitoring and engagement and make realizing the commitments of the agreement a smoother process for all parties. We would be happy to provide further elaboration on what such a dialogue might look like.

Next Steps and Looking Toward a Possible Phase Two Agreement

Finally, while the Phase One Agreement is a significant positive development for the financial services industry, we ask you to continue to focus on the other challenges our industry faces when operating within China as you pursue the second phase of talks. For example, in recent years China has designed and implemented various measures, ostensibly aimed at promoting national security, that impose very restrictive and draconian measures on financial services operators in China, including but not limited to data localization requirements.

Therefore, while developments in terms of market access are very welcome, it is important to not lose sight of the broader policy environment in China – where many impediments to non-Chinese entities operating freely and fairly remain.

We welcome the opportunity to work with you on a comprehensive and detailed set of measures that we would look to China to commit to in order to ensure a truly open market and level playing field for non-Chinese institutions.

Respectfully,

Kenneth E. Bentsen, Jr.
President & CEO, SIFMA
Chair, Engage China Coalition

The Engage China Coalition:
American Bankers Association
American Council of Life Insurers
American Property Casualty Insurance Association
BAFT (Bankers Association for Finance and Trade)
The Council of Insurance Agents and Brokers
The Financial Services Forum
The Futures Industry Association
Insured Retirement Institute
Investment Company Institute
Securities Industry and Financial Markets Association