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Via First Class Mail and Facsimile

August 4, 2005

Honorable Christopher Cox, Chairman  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Complaint filed with the Division of Market Regulation on behalf of defaulted creditors of the Government of China.

Dear Mr. Cox:

Please allow me to express my congratulations regarding confirmation of your appointment as SEC Chairman. I firmly believe that market participants as well as the public-at-large will benefit from your appointment. The central purpose of my writing is to respectfully direct your attention to the matter described herein. On March 31, 2005 our firm, acting on behalf of defaulted creditors of the Chinese Government and the public-at-large, filed a complaint with the SEC Division of Market Regulation.<sup>1</sup> The complaint referenced above describes specific concerns involving inadequate disclosure in registration statements and offering documents pertaining to the offer, sale and trading of debt securities of the Government of China and inappropriate and misleading sovereign credit ratings presently assigned to the long-term foreign currency debt of the Government of China by the three major nationally recognized statistical rating organizations (i.e., Standard and Poor's Ratings Service, Moody's Investors Service and Fitch Ratings, collectively referenced herein as "the three major NRSROs").

The issue of inadequate disclosure is addressed in detail in the complaint, and is not reiterated in this letter. The specific concerns pertaining to the inappropriate and misleading sovereign credit ratings presently assigned to the Chinese Government by the three major NRSROs are summarized as follows:

- ▶ That under accepted conventions of international law, the Government of China remains in default on full faith and credit sovereign debt of the Chinese Government;

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<sup>1</sup> See "On Behalf of Defaulted Creditors of the Government of China: COMPLAINT Misleading Sovereign Credit Ratings and Inadequate Disclosure Pertaining to the Offer, Sale and Trading of Debt Securities of the People's Republic of China: Deceptive Practices and Violations of International Law." Complaint filed with the SEC Division of Market Regulation (March 31, 2005). Copy of complaint enclosed with this correspondence. Testimony presented at a public hearing conducted by the House International Relations Committee, along with legal memorandums prepared by the law firm of Stites & Harbison PLLC describing the legal authority for U.S. citizens' claims, are accessible on the world wide web at the following URL: <http://www.globalsecuritieswatch.org>

- ▶ That the claims of British holders of this series of defaulted debt obligations were settled by the Chinese Government in 1987;
- ▶ That the 1987 British settlement excluded from settlement any claims of American bondholders;
- ▶ That the Chinese Government continues to evade settlement of claims of American bondholders while continuing to honor payment to other creditors of its sovereign obligations;
- ▶ That such practices as described above constitute both selective default and discriminatory settlement against U.S. citizens;
- ▶ That such extant facts and circumstances are not reflected in the sovereign credit ratings presently assigned by the three major NRSROs to the Government of China in violation of fiduciary responsibilities implicit to NRSRO status, and which omission constitutes a “reckless” standard of care particularly since each of the three major NRSROs have established rating classifications which describe the extant facts and circumstances (e.g., “selective default” in the case of Standard and Poor’s) and failed to act after each was explicitly notified in writing in November 2002 of the existence of defaulted sovereign debt of the Chinese Government;<sup>2</sup>
- ▶ That by the willful omission and exclusion of such pertinent and material facts and circumstances, including disregard of the “willingness to pay” metric, the three NRSROs named above have improperly applied their own procedure for establishing a rating, and in so doing have perpetrated a false, manipulative, deceptive, misleading and fraudulent action on the public including concealment of material risk factors. Failure to take into account the extant facts and circumstances in properly assigning the appropriate rating classifications which accurately describe the extant facts and circumstances represents violations of both the rating agencies’ internal policies and procedures as well as the Investment Advisers Act of 1940 (“the Advisers Act”), under which the three NRSROs named above are registered as “Registered Investment Advisors”;<sup>3</sup>
- ▶ That the three major NRSROs should be regulated under the provisions of the Advisers Act under which they are registered as the opinions issued by each of the three major NRSROs are particularly influential and are relied upon by the investing public and should therefore reflect a standard of care upon which the public may depend in confidence;

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<sup>2</sup> See the statement “All ratings agencies agree that a debtor is in default when it either misses a payment beyond a grace period or seeks to renegotiate the loan – *anything, says S&P’s Marie Cavanaugh, that is not ‘timely service of debt according to the terms of issue’*” (emphasis added). Source: “The Ratings Game”. Martin Mayer. *The International Economy* (July 1999).

<sup>3</sup> Investment Advisers Act of 1940 as amended. August 22, 1940. 54 Stat. 847, 15 U.S. Code §80b-1 – 80b-21, as amended. For application of the Investment Advisers Act of 1940 in the immediate instance, see specifically Rule 102(a)(4)-1 “Unethical Business Practices of Investment Advisers” (esp. subsection 20), and Section 206 “Prohibited Transactions by Investment Advisers”. See also Section 209 “Enforcement of Title” (esp. subsection (a) and subsection (e)(2)(C)(II)). For a description of each of the three major NRSROs’ rating classifications describing the state of selective default, see the complaint dated March 31, 2005 filed with the Division of Market Regulation. Copy of complaint enclosed with this correspondence.

- ▶ That such practices as described in the complaint (e.g., concealment and omission of material facts in assigning credit ratings to the sovereign debt of the Government of China) directly harm U.S. creditors holding defaulted debt of the Chinese Government by enabling the Government of China to continue to circumvent payment on its full faith and credit sovereign debt without incurring adverse credit ratings;
- ▶ That such practices expose the investing public to serious danger and represent a source of potential harm to the public-at-large, which depends upon the diligence of the three major NRSROs in formulating investment decisions; and
- ▶ That as Registered Investment Advisers, the three major NRSROs by their actions and conduct in the instance described herein and in the complaint, are subject to enforcement and sanction pursuant to the provisions of the Advisers Act as well as pursuant to other regulatory powers of the Commission.

As of the date of this letter, we have not received any acknowledgement whatsoever from the SEC regarding the complaint filed with the Division of Market Regulation. After a period of almost ninety days from the date that the complaint was filed, and acting in accordance with a sense of the Congress, we have notified Mr. David M. Walker, Comptroller General of the United States, informing the Government Accountability Office of the complaint and the nature of the facts and circumstances described therein.<sup>4</sup>

We respectfully reiterate our request for an investigation by the SEC into the very serious matter referenced herein and more fully described in the complaint and in the letter to Mr. Walker.

Sincerely,

Kevin O'Brien  
President  
KO:jwc

Attachments in Sequence:

1. Copy of complaint filed March 31, 2005 with the SEC Division of Market Regulation.
2. Copies of letters from members of the 109th United States Congress requesting the SEC to investigate the matter described in the complaint filed with the SEC.
3. Copy of letter dated June 21, 2005 addressed to Mr. David M. Walker, Comptroller General of the United States.

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<sup>4</sup> See various letters addressed to the SEC Chairman by members of the 109<sup>th</sup> United States Congress including the Honorable Jim Saxton, Chairman of the Joint Economic Committee, requesting the SEC to conduct an investigation into the matter described in the complaint. Copies of several Congressional letters enclosed with this correspondence. See also the letter dated June 21, 2005 addressed to Mr. David M. Walker, Comptroller General of the United States. Copy of letter enclosed with this correspondence.

Honorable Christopher Cox, Chairman  
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Attachments in Sequence: (continued)

4. Copy of recent Thomson *FindLaw*<sup>®</sup> reference to complaint.
5. Copy of letter dated November 27, 2002 addressed to Mr. Clifford L. Alexander, Chairman and Mr. John Rutherford Jr., President and Chief Executive Officer of Moody's Corporation, describing the existence of defaulted full faith and credit sovereign debt of the Chinese Government.

cc: Members of the 109th United States Congress

Mr. David M. Walker, Comptroller General of the United States  
Government Accountability Office

United States Department of Justice

United States-China Economic and Security Review Commission

Honorable Eliot Spitzer, Attorney General for the State of New York  
New York State Department of Law, Office of the Attorney General  
(Internal Reference No.: 05/001211)

Mr. Michael Macchiaroli, Associate Director  
Division of Market Regulation, U.S. Securities and Exchange Commission

Mr. John Petty, President  
Foreign Bondholders Protective Council, Inc.

Ms. Jonna Z. Bianco, President  
American Bondholders Foundation