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RESPONSES TO THE SEC'S CONCEPT RELEASE ON FOREIGN PRIVATE ISSUER ELIGIBILITY

On June 4, 2025, the U.S. Securities and Exchange Commission (the "SEC") published a Concept Release on Foreign Private Issuer Eligibility (the "Concept Release") soliciting public comment on proposed changes to the definition of foreign private issuer ("FPI"). The Concept Release highlights numerous changes to the FPI population since the rules were adopted in 2003, including that global trading of FPIs' equity securities has become increasingly concentrated in U.S. capital markets over the last decade, and approximately 55% of FPIs, as of FY 2024, appear to have had no or minimal trading of their equity securities on any non-U.S. market and appear to maintain listings of their equity securities only on U.S. national securities exchanges. Further, in FY 2003, the two jurisdictions most frequently represented among FPIs in terms of both incorporation and location of headquarters were Canada and the United Kingdom. In contrast, in FY 2023, the Cayman Islands was the most common jurisdiction of incorporation and mainland China was the most common jurisdiction of headquarters.

In light of these changes, the SEC is considering whether accommodations for FPIs, in combination with the fact that many FPIs are not currently subject to stringent home country reporting obligations, means there is less information available to U.S. investors, which could create increased risk. It posits two primary reasons for potential changes to the FPI definition, including to ensure that (i) U.S. investors receive appropriate disclosure and remain adequately protected when investing in FPIs' securities and (ii) the discrepancy in regulatory requirements between FPIs and U.S. domestic issuers does not have unintended negative competitive implications for U.S. domestic issuers.

The Concept Release includes 69 requests for comment on potential changes to the FPI definition, centered around six potential ideas for a new regulatory scheme: (i) update existing FPI eligibility criteria; (ii) require FPIs to have a certain percentage of the trading volume of securities in a market or markets outside the U.S. over a preceding time period at a certain threshold; (iii) include a major foreign exchange listing requirement; (iv) incorporate an SEC assessment of foreign regulations applicable to FPIs, requiring that each FPI be incorporated or headquartered in a jurisdiction that the SEC has determined to have a robust regulatory and oversight framework for issuers, and subject to such securities regulations; (v) establish a new mutual recognition system; or (vi) implement an international cooperation arrangement requirement.

As of September 10, 2025, the SEC had posted approximately 70 responses to the Concept Release on its website. The response letters, in large part, come from law firms, FPIs and other industry groups, and can be broken into three main groups:

- Many of the letters are generally supportive of the SEC's policy goals and understand the intentions behind the proposed changes to the FPI definition; however, these supportive letters also explore alternatives to or explain potential negative consequences of the proposals in the Concept Release.

- In the alternative, many letters share the view that "a change in the nature of the FPI population alone may not in and of itself be a reason for change in the FPI regulatory framework."[1] These letters ask the SEC to provide data and quantitative support that the changing FPI population actually creates risk to investors or otherwise that would warrant rule changes.

- Other letters share the view that the current definition of FPI is working effectively, and changing it could have unintended and unforeseen negative consequences. For example, one commenter wrote that the "current framework appropriately balances the information needs of American investors with the benefits afforded to them by having access to investment opportunities in foreign companies;" "proposed changes to the FPI eligibility standards may discourage new-entrant foreign companies from accessing the U.S. public markets or lead publicly reporting FPIs to pursue 'going private' transactions or otherwise avail themselves of streamlined deregistration procedures available to FPIs to exit the U.S. reporting system in favor of alternative capital raising forums—in each case, depriving American investors of investment opportunities afforded by, and with the protections of, the robust FPI regulatory framework."[2]

Within these general categories, there are a number of specific themes repeated across the letters:

- A very large number of letters argued that the SEC should narrowly tailor any changes to the specific problems it intends to solve, since broad based changes may have unintended and unwanted consequences. More specifically, some letters request narrowly tailored disclosure changes focusing only on issuers that have failed to provide robust disclosure necessary to ensure the protection of U.S. investors (i.e., making "targeted, incremental changes to existing disclosure requirements applicable to FPIs accessing the U.S. markets through registered offerings or as reporting issuers").[3]

- Other letters favored limited, specifically tailored changes to the FPI definition for other reasons, arguing that any changes should be made in a manner that considers the impact of the definition on other terms and rules under the federal securities laws, including Regulation S and Exchange Act Rule 12g3-2(b).

- Similarly, a number of commenters stated that the SEC should be wary of potential changes that are duplicative of or contrary to existing home requirements to which FPIs adhere, and understand that the additional burden and cost of navigating the two regimes could be significant, such that some issuers may choose to exit the U.S. markets.

- Many letters argued in favor of continued reporting in IFRS, either for FPIs or for all issuers. In the alternative, if foreign issuers that lose FPI status must report in U.S. GAAP, the SEC should provide guidance and a suitable transition period (several commenters suggested a minimum of two or three years). Concern about switching from IFRS to U.S. GAAP was the most commonly repeated idea across all letters.

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[1] *See* Davis Polk & Wardwell LLP, s7202501-648927-1945014.pdf.
[2] *See* Jones Day, s7202501-648747-1944014.pdf.
[3] *See* Mariam Patterson, Senior Director, ICMA Primary Markets, International Capital Market Association, s7202501-651647-1950614.pdf.

- Some letters advocated requiring meaningful non-U.S. trading (e.g., ≤90% of global trading in the U.S.), potentially with de-minimis exclusions for bona fide dual-listings, and providing a safe harbor for issuers listed on a designated "major foreign exchange" or in jurisdictions assessed as robust. Interestingly, a number of other letters took the opposite approach, arguing that significant non-U.S. trading is not required or helpful in demonstrating meaningful regulation of a foreign issuer.

- A few letters asked the SEC to consider carve-outs or refined eligibility criteria that preserve FPI status for companies with genuine foreign governance and infrastructure, regardless of shareholder geography or incorporation jurisdiction.

- A number of letters advocated for a requirement that a FPI be (i) incorporated or headquartered in a jurisdiction that the SEC has determined to have a robust regulatory and disclosure oversight framework and (ii) be subject to such securities regulations and oversight without modification or exemption. Other letters suggested that the SEC should avoid any approach requiring jurisdiction-specific judgments because developing the relevant assessment criteria would be a large undertaking and require constant monitoring, straining SEC resources, and would lead to unpredictability for non-U.S. companies that are reliant upon a given jurisdiction or exchange continuing to meet the SEC's criteria to maintain their FPI status.

- At least one letter argued that meeting a required jurisdictional threshold alone is not sufficient, and the SEC should consider not just where a company is incorporated and headquartered but should also look holistically at where the company is from, including where its directors, officers and employees reside, where its assets are held, where it earns revenue, and the citizenship and residency of any controlling beneficial owners.

- A handful of other letters argued that, in the alternative to requiring that FPIs be subject to certain named robust regulatory jurisdictions, the SEC should identify jurisdictions of incorporation that do not have securities regulations and oversight sufficient to protect U.S. investors. Companies from these jurisdictions could be subject to the same reporting obligations and rules as domestic issuers.

- A number of letters argued that the SEC should keep the current multijurisdictional disclosure system with Canada, or MJDS, unchanged, and explore mutual recognition pilots (e.g., EU, UK, Australia) where regulatory objectives demonstrably align.

The SEC is required to read and consider all responses received to the Concept Release. If the Concept Release moves forward into a proposing release, FPIs and others will have another opportunity to review and comment on any proposed changes to the FPI definition prior to any final rules.

All letters received as of September 10 are included in Appendix A and are posted on the SEC's website here. The Concept Release can be found here.

The Free Writings & Perspectives, or FW&Ps, blog provides news and views on securities regulation and capital formation. The blog provides up-to-the-minute information regarding securities law developments, particularly those related to capital formation. FW&Ps also offers commentary regarding developments affecting private placements, mezzanine or "late stage" private placements, PIPE transactions, IPOs and the IPO market, new financial products and any other securities-related topics that pique our and our readers' interest. Our blog is available at: www.freewritings.law.

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APPENDIX A

AUTHOR	TOPICS AND IDEAS
Karl T. Muth, Lecturer in Economics, Organizational Behavior, Public Policy, and Statistics, Lecturer by Separate Appointment, Pritzker School of Law, Northwestern University, Lecturer in Strategy, The University of Chicago	• By making an issuer's regulatory status dependent on a subjective analysis by the Commission's staff or the courts, the SEC would be injecting a poison pill of ambiguity into the U.S. listing process. This would directly contravene the Commission's mission to facilitate capital formation. • The U.S. domestic reporting regime is so burdensome that FPI status has become a coveted prize. Rather than building a higher wall around that prize, the Commission should ask why the burdens of the domestic regime are so great. The logical conclusion of a market-based approach is not to tighten the FPI definition, but to liberalize the rules for all issuers to make U.S. markets the most attractive destination for capital. • The Commission should consider allowing any issuer listed on a qualified foreign exchange with a robust disclosure and governance regime to use its home-country reporting standards in the United States, supplemented by a reconciliation to U.S. GAAP or IFRS. This would unleash competition, increase the number of investment opportunities for U.S. investors, and properly place the onus of diligence on the investor, where it belongs.
Jin Lee	• Adapting to the proposed revised FPI definition would impose a significantly greater burden, not only in terms of compliance cost but also in operational complexity and task volume. • Adopt more clearly defined and narrowly targeted criteria that distinguish between non-compliant or opaque issuers and those who demonstrate strong governance and regulatory adherence.
James Foster, Chief Executive Officer of Virax Biolabs (NASDAQ: VRAX)	• The existing "business contacts" test appropriately reflects the operational reality of companies like ours. • Consider carve-outs or refined eligibility criteria that preserve FPI status for companies with genuine foreign governance and infrastructure, regardless of shareholder geography or incorporation jurisdiction. A blanket rule that removes eligibility based on ownership thresholds and place of incorporation—without regard to operational substance—risks penalizing good-faith issuers and undermining the global accessibility of U.S. capital markets, particularly for emerging-stage or non-U.S. headquartered companies that rely on balanced regulatory frameworks to participate in global capital formation.
Kimberly Yee, Arizona Treasurer; et al.	• Prohibit any issuer based in a country designated by the United States government as a designated foreign adversary ("DFA"), including the People's Republic of China, from being granted FPI status • Not only should the SEC remove FPI status from issuers based in DFA countries and consider delisting certain DFA-based issuers altogether, but the SEC should also require such issuers that remain on U.S. exchanges to disclose all material risks related directly to the DFA designation of the country in which the issuer is based.

Anonymous	The local equity market in our jurisdiction of domicile is not sufficiently developed for the sector in which we operate, such that we have no choice but to list elsewhere, such as in the U.S. The fact that we are solely U.S.-listed (and therefore all trading volumes are in the U.S.) does not change the fact that we are a foreign company with almost all of our investors, assets, and business operations outside the U.S., and are therefore truly a foreign private issuer in every sense of the word. The current criteria accurately measure FPI status.
Siddharth Mahajan, Director of Operations, Armada Research	Adopt a two-pillar eligibility reset: Pillar 1 (Market presence): Require meaningful non-U.S. trading (e.g., ≤90% of global trading in the U.S.), measured over 52 weeks, with de-minimis exclusions for bona fide dual-listings. Pillar 2 (Regulatory anchor): Provide a safe harbor for issuers listed on a designated "major foreign exchange" or in jurisdictions assessed as robust, plus an IOSCO MMoU cooperation condition. This retains most high-cap FPIs (e.g., UK, Netherlands, Japan) while focusing scrutiny on Cayman/BVI structures with minimal foreign oversight. Keep MJDS unchanged and explore mutual recognition pilots (e.g., EU, Australia) where regulatory objectives demonstrably align, recognizing the resource trade-offs. Targeted monitoring and periodic recalibration of trading thresholds and exchange/jurisdiction lists to reflect market evolution.
Per Magne Hansen, Vice President, Financial Reporting, Opera Ltd.	• IFRS Accounting Standards should continue to be an option and propose a solution to achieve this in a manner that would enable the Commission to narrow the FPI definition to address concerns regarding the scope of other accommodations currently available to FPIs. • Requiring foreign issuers that currently apply IFRS Accounting Standards to prepare financial statements in accordance with U.S. GAAP would introduce material cost and complexity. • Permit all U.S.-listed public companies, including domestic issuers, to elect to report under IFRS Accounting Standards as issued by the IASB. This approach would allow the Commission to narrow the FPI definition to address concerns regarding accommodations currently afforded to FPIs that provide full or partial relief from requirements for domestic issuers, while at the same time ensuring that companies that are affected by a narrower FPI definition can continue to apply IFRS Accounting Standards.
Chris Barnard	A combination of above proposals with a strong focus on SEC assessment of foreign regulation, that would apply to the most egregious cases, would be appropriate to achieve the SEC's goals. The SEC should require that each FPI be (a) incorporated or headquartered in a jurisdiction that the SEC has determined to have a robust regulatory and oversight framework for issuers and (b) be subject to such securities regulations and oversight without modification or exemption.
Joseph Sanderson	• Require that the issuer have a principal regulator overseas (i.e., not an exclusive U.S. listing) that is recognized as providing reasonably comparable duties of disclosure and the country would generally extradite its citizens if criminal securities fraud charges are filed in the United States. • Require consent to beneficial owners having the right to bring derivative claims and should condition marker access on a U.S.-based agent for service for all officers and directors of the issuer too. Certainly it should require all directors and officers of an FPI to submit to personal jurisdiction in the United States for securities and shareholder actions.

	• As an alternative to fully disqualifying FPI status from countries with major compliance issues, require issuers to post a bond or maintain a substantial amount of insurance.
Caroline Ferland, AGC & Group Company Secretary, British American Tobacco p.l.c.	• For issuers incorporated in a jurisdiction with a meaningful regulatory regime (such as companies incorporated under the laws of the UK), that have an active listing (i.e., representing a majority of the shares held by non-affiliates (the "free float")) on a non-U.S. exchange that imposes meaningful disclosure and regulatory requirements (such as the LSE), certain dispensations for raising capital and/or establishing a presence for their securities in the U.S. remain necessary to avoid potentially confusing, duplicative disclosures. • FPI eligibility criteria should minimize short-term volatility so that issuers will be treated consistently between reporting periods. • Tests should rely on fact-based criteria and measures that are objectively identifiable by third-party observers and can be used consistently by all foreign issuers. • Existing shareholder and business contacts tests should be discarded. If the existing tests are retained, we believe that the existing 50% thresholds in the shareholder test and the business contacts test should be increased rather than decreased, should be assessed over a two-year period rather than at a single point in time, and should be split into a two-tier format for status acquisition versus status loss. • As a first step, the eligibility criteria should assess where the majority of an FPI's free float is listed and this should be on a major foreign exchange with meaningful regulatory oversight. Second, we believe that a foreign issuer whose jurisdiction of incorporation provides no meaningful regulatory oversight should not qualify as an FPI. Third, we believe that even if a foreign issuer is listed on a major foreign exchange and incorporated in a jurisdiction with a meaningful regulatory regime, it should not qualify as an FPI if 50% or less of its free float is listed on a stock exchange outside the U.S. • Supportive of the proposal to establish an additional system for recognizing other home jurisdictions through mutual cooperation agreements or recognition systems for purposes of attaining FPI status. • Foreign issuers that lose FPI status and are required to report in IFRS under a non-U.S. regulatory regime should still be allowed to report under IFRS in SEC filings. In the alternative, if foreign issuers that lose their FPI status must prepare U.S. GAAP reporting, the Commission should provide guidance and a suitable transition period.
Deutsches Aktieninstitut, German Capital Market Association	• Jurisdiction related equivalence decisions are the best way to identify FPI eligible issuers. This is the best way to ensure investor protection, while avoiding unduly burdensome requirements that would discourage foreign companies from trading in U.S. markets (e.g., in ADR programs). • For jurisdictions where the level of protection and supervision is so low that effective investor protection is clearly not guaranteed, the SEC could recognize a lack of equivalence.

	• Introducing new threshold values, for example for foreign trading volume, or raising the previous threshold values, would help to alleviate the symptoms, but would in substance not safeguard an appropriate level of investor protection.
Davis Polk & Wardwell LLP	• A change in the nature of the FPI population alone may not in and of itself be a reason for change in the FPI regulatory framework, especially if there is not clear support for the notion that U.S. investors are being harmed by the current FPI regulatory regime. • Market practice and investor expectations result in many FPIs not utilizing all of the accommodations and thus, in practice, reduce the reporting differences between domestic issuers and FPIs. • The FPI definition is intricately linked to related well-functioning regulatory regimes–and an approach as broad as changing the criteria for FPI eligibility could risk creating more problems than it solves. • There are valid reasons for FPIs to only list in the United States. • Forced transition from IFRS to U.S. GAAP could drive foreign companies away. • Allow for a transition period of at least two years for foreign companies that qualify as FPIs under the current definition. • If the Commission were to adopt any change to the FPI definition, which we believe is not necessary, certainly those companies with characteristics about which the Commission does not express concerns (such as dual-listed companies or companies whose home jurisdiction is known to provide rigorous oversight and disclosure requirements) should be exempted.
Seckin Koseoglu, Chief Financial Officer, D-Market Electronic Services & Trading	• Request narrowly tailored disclosure changes focusing only on issuers that have failed to provide robust disclosure necessary to ensure the protection of U.S. investors. • Does not support mandating a specific trading volume or a requirement that FPIs be listed on a major foreign exchange; unduly burdensome. • Costly and challenging to transition from reporting in IFRS to reporting in U.S. GAAP. • Either grandfather in existing FPIs from rule changes, provide a list of approved jurisdictions or provide at least a two-year transition period.
Annette Schumacher, CPA, Senior Director, Professional Practice, Center for Audit Quality	• Ask the Commission to consider: • The impact of changes to the FPI definition on the financial reporting ecosystem outside the United States; • Refining the eligibility criteria for the use of International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB) for dual listed registrants that are incorporated outside the United States; • Providing transition provisions that provide enough time and flexibility to enable preparers to build the appropriate processes, systems and controls

	to report high quality financial information to investors in the shorter domestic registrant timelines; • Extending Smaller Reporting Company (SRC) accommodations to FPIs; • Aligning the Foreign Business definition with the current definition of an FPI; and • Modifying current FPI accommodations.
Jones Day	• The current framework appropriately balances the information needs of American investors with the benefits afforded to them by having access to investment opportunities in foreign companies. In the absence of clear evidence that proposed changes are necessary, we believe that the Commission should exercise significant caution in regard to proposals that may increase regulatory burdens for foreign companies and potentially discourage their participation in the U.S. capital markets. • Proposed changes to the FPI eligibility standards may discourage new-entrant foreign companies from accessing the U.S. public markets or lead publicly reporting FPIs to pursue "going private" transactions or otherwise avail themselves of streamlined deregistration procedures available to FPIs to exit the U.S. reporting system in favor of alternative capital raising forums—in each case, depriving American investors of investment opportunities afforded by, and with the protections of, the robust FPI regulatory framework.
Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors	• Overall, the lack of transparency provided by the more permissive regulations available to FPIs—particularly, those related to quarterly reporting, executive compensation, and Section 16—means that U.S. investors, including CII members, are not as well protected. • U.S. investors may not be sufficiently protected from VIEs based in China. • When the U.S. is effectively a foreign company's exclusive or primary trading market, FPIs are less likely to be subject to meaningful disclosure requirements or securities law oversight in its jurisdiction of incorporation or headquarters, and therefore consideration should be given to whether the foreign company is eligible for accommodations under the federal securities laws that are unavailable to U.S. companies.
Beatriz Garcia-Cos, Chief Financial Officer, Ferroglobe PLC	• Shift in the characteristics of the FPI population does not demonstrate any fundamental flaw in the design of the FPI regime. • In assessing potential changes to the FPI definition, the Commission should keep in mind two principles. First, the rules should prioritize investor protection. The Commission should grant accommodations to FPIs that are adequately regulated, to ensure that U.S. investors receive the material information they need to make informed investment decisions. Second, the Commission should ensure that the revised FPI eligibility criteria are straightforward in their application, both by the Commission and by foreign issuers, to minimize unnecessary costs. • Significant non-U.S. trading, as a result of a non-U.S. stock exchange listing or otherwise, is not required in order to demonstrate meaningful regulation of a foreign issuer.

	• Creating and maintaining a comprehensive list of approved jurisdictions of incorporation could impose undue burdens on the Commission. Commission should instead identify jurisdictions of incorporation that do not have securities regulations and oversight sufficient to protect U.S. investors. • The need to report under U.S. GAAP would be the most burdensome consequence of losing FPI status.
Milbank LLP	• There are a number of reasons why an issuer may choose to, in good faith and for reasons unrelated to disclosure requirements, incorporate their company in an "offshore jurisdiction" rather than in the jurisdiction where they are headquartered. • Adoption of any of the proposed solutions may result in loss of FPI status for many current FPIs. This loss of status will likely result in the delisting and deregistration of various issuers, affecting U.S. investors' investments in FPIs.
Reinier Kleipool, General Secretary, Vereniging Effecten Uitgevende Ondernemingen (VEUO)	• The existing eligibility requirements for FPIs are sufficient to protect U.S. investors, and allow them to make informed investment decisions with respect to Foreign-Listed FPIs. By contrast, any changes to the definition of FPI, or the Commission's rules and regulations applicable to FPIs, is likely to expose Foreign-Listed FPIs to unnecessary and onerous dual reporting burdens. • To the extent that the Commission proceeds with any proposals to change the approach to defining or regulating FPIs, the Commission should ensure that such proposals do not have any impact on Foreign-Listed FPIs. • Foreign-Listed FPIs that currently rely on the Rule 12g3-2(b) exemption should not be required to register as U.S. domestic registrants and therefore become subject to costly, duplicative and unnecessary regulation in the United States in addition to their home market. • To the extent that any proposals involve Commission assessment of qualifying stock exchange listings or equivalent regulatory regimes, all regulated markets and issuers incorporated in The Netherlands, as well as other European Union jurisdictions, should be deemed sufficient.
Grant Thornton LLP	• A substantial number of FPIs currently use IFRS or home country GAAP to prepare their financial statements filed with the SEC. If such issuers lose their FPI status due to amendments to the FPI definition, they will incur substantial costs and face operational burdens in transitioning to U.S. GAAP. • Consider providing a reasonable transition period for the affected issuers to adopt U.S. GAAP and to implement relevant nonfinancial disclosures. • As an alternative to amending the FPI definition and requiring affected issuers to transition to U.S. GAAP, the Commission could, if consistent with investor feedback, consider revisiting certain accommodations provided to FPIs related to the frequency and timeliness of reporting.

	• Align the definition of a “foreign business” under Rule 1-02(l) of Regulation S-X with the current FPI definition.
Ernst & Young LLP	• At this stage, we would support (1) allowing issuers subject to meaningful non-U.S. regulation and oversight to retain FPI status, (2) defining FPI status in a way that avoids unnecessary complexity and volatility, and (3) preserving continuity in the accounting standards used by current FPIs to prepare financial statements. • Important to highlight the significant costs and efforts that could result from an FPI transitioning to domestic issuer status. • Despite the various challenges articulated in the concept release, we believe that some level of evaluation of exchange and other regulatory requirements in relevant jurisdictions would be necessary to achieve the Commission’s objectives. • Calculating the split between U.S. and non-U.S. trading volume could result in unintended consequences and unnecessary complexity. • A thoughtful and appropriately staged transition framework would be essential to mitigate disruption, preserve investor protection, and support continued access to U.S. capital markets. • If the SEC proposes changes to the FPI definition, consider extending SRC eligibility to remaining FPIs that otherwise meet criteria for being an SRC. • Consider amending Form 6-K to add requirements for FPIs to disclose, on a timely basis, when they change auditors and when their financial statements can no longer be relied on, which would align more closely with disclosures that domestic filers are required to provide in Form 8-K.
AB InBev SA/NV, Diageo plc, Equinor ASA, National Grid plc, SAP SE and UBS Group AG	• New disclosure or conduct requirements for dual-listed companies, such as a requirement that FPIs report in U.S. GAAP, would impose costly compliance burdens that are unnecessary for protection of U.S. investors. Any such new requirements would disincentivize large multinational companies headquartered and listed outside the U.S. from accessing the U.S. capital markets and ultimately impede U.S. investors’ access to global investment opportunities. • If the Commission proposes to modify its rulemaking relating to FPIs following the review of responses to the Concept Release, the SEC should maintain unchanged the existing framework for dual-listed companies. • Adding a requirement that companies maintain a meaningful foreign listing to qualify as FPIs would be preferable to changing the U.S. shareholder or business contacts tests in the existing FPI definition. Updating the thresholds for the existing U.S. shareholder and business contacts tests would make it more difficult for companies to maintain FPI status. Conversely, modified thresholds for those tests would not assist the Commission in identifying which foreign companies are subject to meaningful home country disclosure and governance requirements. If a non-U.S. trading threshold is introduced, we would propose that it be set so it can be satisfied in the alternative by an issuer having either a minimum percentage threshold of total global trading volume outside the

	U.S. or having a minimum absolute aggregate USD-equivalent amount of trading outside the U.S. • If the Commission elects to implement a requirement that a secondary listing be on a "major foreign exchange," the Commission should include within the definition those exchanges that are deemed regulated markets by European authorities.
CLIFFORD CHANCE US LLP	• Any amendment to the definition of foreign private issuer could potentially have wide-ranging adverse impacts on non-U.S. companies that have not registered and do not intend to register any public offerings of securities to U.S. investors and that have not sought to list their securities on a national securities exchange. • Any amendment to the foreign private issuer definition that would render a wider range of non-U.S. issuers ineligible for foreign private issuer status will likely to result in additional compliance costs and burdens not previously contemplated in connection with the adoption of these and other similar specifically tailored rules. In addition, new compliance costs and burdens may cause such rules to no longer effectively serve the policy purposes intended at the time of adoption.
Jonathan Samford, President and CEO, Global Business Alliance	• Broad revisions to the FPI definition could disrupt compliant FPIs by forcing changes to accounting practices and reporting schedules, increase compliance costs through higher legal, auditing, and consulting fees, and reduce the U.S. capital markets' appeal, limiting investment opportunities for U.S. investors. • Adopt targeted measures addressing bad actors, such as enhanced enforcement or tailored disclosure for high-risk jurisdictions, rather than broad changes impacting all FPIs.
Jarrett Dieterle, Legal Policy Fellow, and Jim Copland, Legal Policy Director and Senior Fellow, Manhattan Institute for Policy Research	• Even under the most modest threshold requirement—that FPIs have at least 1% non-U.S. securities trading—there appears to be a high risk that the trading volume requirement would be overbroad in its application. • Instead of countries needing to affirmatively qualify as having sufficient robust regulatory oversight, the Commission could choose a narrowing mechanism that instead directly excludes a small handful of particularly problematic jurisdictions (or raises disclosure requirements on issuers based in such locales). • If the Commission does opt for a broader approach, consider if there are ways to create tiered options that could protect companies which, regardless of where the majority of their shares are sold, are obviously housed in jurisdictions with robust regulatory oversight. • Ideally, however, a private actor response could be utilized to address concerns around FPIs, rather than relying on a governmental response. In this vein, we would direct the Commission's attention to the comment letter filed by Investor Choice Advocates Network (ICAN), which lays out existing private market evaluations and rating sources for FPIs.
Mark Berman, Founder and CEO, CompliGlobe Ltd	• The current definition of FPI should remain unchanged, except for: (a) change the percentage of outstanding voting securities directly or indirectly owned of record by residents of the United States to 25 percent;

	(b) require that at least 25 percent of a FPI's securities that trade on a U.S. exchange are also listed and traded in its home country on a designated offshore securities market (in the Concept Release, called a "major foreign exchange"), as this term is defined in Rule 902 of Regulation S under the Securities Act; (c) reduce the percentage of the assets located in the United States to 25 percent; (d) require that the FPI must be subject to and in compliance with continuing obligations and audit requirements established by its primary foreign securities authority and home country exchange that satisfy standards set by the Commission. Such criteria must include compliance with continuing obligations and audit standards, with disclosure on its website of compliance with primary foreign securities authority's proxy voting, large holding and short position requirements (e.g., three percent of float) and mandated disclosure filings, as well as published examination reports and enforcement actions. These must be posted prominently on the issuer's website, with English language translations. • Recommend that the Commission negotiate, adopt and implement, with recognized non-U.S. securities regulators (such as the UK Financial Conduct Authority, the Israel Securities Authority, the Australian Securities and Investments Commission, and the Singapore Monetary Authority), a multijurisdictional disclosure system using criteria based upon that currently in effect in the U.S./Canadian MJDS.
Beth Zorc, Chief Executive Officer, Institute of International Bankers	• Exempt internationally headquartered financial institutions ("IHFIs"), a sub-set of the FPI population, from being subject to any such changes. We believe that this exemption is warranted because, as highly regulated financial institutions, IHFIs are already subject to extensive disclosure requirements. The curtailment of the FPI status of IHFIs could make it difficult for them to continue to list their securities in the United States, to the detriment of the market and the ability of U.S. investors to access geographically diverse investment opportunities. • Codifying a requirement to have securities listed on a "major foreign exchange" would lead to regulatory uncertainty. To implement a "major foreign exchange" listing requirement, the Commission would need to transparently communicate its standards, as well as an initial determination of all other foreign exchanges around the world to establish which foreign exchanges qualify as a "major foreign exchange." It would also need to communicate how often these determinations would be revisited. This would be an ambitious and resource intensive exercise for the Staff of the Commission. In addition, even if these standards were clearly communicated, issuers do not have control over a foreign exchange's listing requirements or rules. • Concerned with the prospect of the Commission attempting to assess foreign regulations for sufficiency and the presence of a "robust regulatory and oversight framework." Such an effort seems challenging from an administrative perspective.
Miriam Patterson, Senior Director, ICMA Primary Markets	• Any changes to the definition of FPI could impact the intended application of Regulation S.

	• Do not make any changes to the definition of FPI. If deemed necessary, address the concerns raised in the Concept Release by making targeted, incremental changes to existing disclosure requirements applicable to FPIs accessing the U.S. markets through registered offerings or as reporting issuers. • If the Commission decides to address its concerns by changing the definition of FPI, the current FPI definition should continue to apply to Regulation S.
Sullivan & Worcester LLP	• Business Contacts Test should remain the central determinant of FPI status. It properly evaluates where a company's business, management, and operations are located–factors that go to the heart of whether the issuer is substantively foreign–and, importantly, it has served as a clear and reliable standard for many years without giving rise to interpretive or enforcement concerns. • The shareholder test is intended to assess the extent of U.S. ownership and influence, but in practice has several shortcomings as a means to analyze the foreign nature of a FPI. • Conditioning FPI eligibility on a dual-listing or "major foreign exchange" requirement would not provide meaningful additional investor protections.
Investor Choice Advocates Network	• Strongly urges the SEC to preserve existing FPI accommodations and adopt innovative, market-driven solutions to enhance transparency without stifling the growing presence of FPIs in U.S. markets. • To enhance investor access to information about FPIs, promote awareness of the robust private market resources already available for evaluating FPI transparency, financial performance, and governance. • To address lingering concerns about transparency and enforcement challenges with FPIs, the SEC could implement a regulatory sandbox, providing a controlled environment for innovation without excessive legal exposure. • Proactively adopt low-cost preventive measures—such as enhanced monitoring of FPI filings, advanced data analysis programs to identify reporting anomalies, and deepened cooperation with foreign regulators and firms—to deter fraud without imposing additional compliance burdens on issuers or restricting investor choice.
Anne Clayton, Group Head, Public Policy & Regulatory Affairs, Johannesburg Stock Exchange	• It is unclear whether the changing demographics of FPIs has led to or caused harm to U.S. investors. Consequently, we respectfully recommend that a targeted or narrow approach to address observable or potential harm to U.S. investors may be more appropriate to avoid regulatory uncertainty, duplicative disclosure and governance requirements, and an increase in costs and complexity of accessing the U.S. capital markets for foreign companies. • Reservations regarding the criteria to determine a 'major foreign exchange'. The total market size of a foreign exchange or the volume of trading of a company on a foreign exchange would not reasonably

	indicate that the foreign company is subject to meaningful regulation and oversight. • Supportive of recognition regimes. The criteria for recognition of a foreign exchange should be the disclosure and governance requirements of that exchange, and the level of protection and supervision provided in the jurisdiction where foreign exchange is established. The implementation of a recognition regime for foreign exchanges based on a qualitative assessment of disclosure and governance standards of the foreign exchange against the standards applicable to U.S. domestic issuers would place an ongoing resource intensive burden on the Commission staff. Consider (i) the role U.S. exchanges, as front-line regulators of listed companies, may play to lighten the administrative burden thorough the use of their rule-making powers and the information-sharing or cooperation agreements established with foreign exchanges and (ii) consider requiring that a FPI is either incorporated or headquartered in a jurisdiction in which the foreign securities authority is a signatory to the IOSCO MMoU or EMMoU.
KPMG, LLP	• Address the possible complexities of requiring a U.S. GAAP transition for entities that no longer qualify as FPIs. • Provide transition guidance for registrants that are required to convert to U.S. GAAP, with adequate time allotted for the transition. • Clarify how the proposed changes would impact requirements for audited financial statements of other foreign and domestic entities beyond the registrants that rely on the current definition of FPI (e.g., those filing financial statements under Regulation S-X Rule 3-05 and Rule 3-09). • Consider a new issuer status that permits former FPIs to report IFRS financial statements on domestic forms under the revised definition.
Euronext	• If the SEC proceeds with a “major foreign exchange” requirement, such qualification should be based on clear and objective criteria. Qualifying exchanges should operate under comprehensive legal frameworks aligned with international best practices, ensuring robust disclosure, governance, and investor protection. Only exchanges with a significant global share in aggregate market capitalization and annual trading volumes should qualify. • Should the SEC choose to prioritize the development of a mutual recognition system, adopt a flexible, principle-based approach that acknowledges the EU regulatory framework as equivalent through such arrangements. • A foreign trading volume test may not be an appropriate criterion for determining whether a foreign issuer qualifies for FPI accommodations. There is no causality in the potential correlation between the company’s FPI status and the levels of trading activity on a foreign exchange.
Vertical Aerospace Ltd.	• The current 50% U.S. ownership threshold and the related “business contacts” test continue to serve their intended purpose and are critical to distinguishing between companies that are genuinely foreign in nature and those that are, in substance, U.S. domestic issuers.

	• Conditioning FPI eligibility on maintaining certain levels of trading activity outside of the U.S. or on having an additional, non-U.S. exchange listing would not meaningfully advance the Commission's objectives. • The existing FPI disclosure framework already allows companies to provide sufficient information to U.S. investors and does so in a comprehensive and effective manner. • International investors with global portfolios are already accustomed to and comfortable with IFRS. A forced shift to U.S. GAAP reporting would disrupt continuity in financial reporting and undermine comparability across periods, making it more difficult for investors to assess performance year over year. • Listing in the United States subjects us [Cayman Islands incorporation] to comprehensive SEC and NYSE oversight. Incorporation in Cayman Islands should not be viewed as de facto evidence of an intent to arbitrage disclosure or regulatory standards.
Julie Andress, Chair of the Board, and James Toes, President and CEO, Security Traders Association	• Delistings resulting from revised FPI eligibility criteria that would disallow ownership by U.S. investors would heighten market disruption and subject shareholders to heightened regulatory uncertainty, pricing challenges, and liquidity risks.
Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc.	• The absence of meaningful investor protections for issuers headquartered in China and domiciled in the Cayman Islands means that the FPI definition should be revised so that these issuers (and other issuers who headquarters and domicile mean they are not subject to meaningful regulation) are excluded from the definition. • Require that FPIs be incorporated and headquartered in jurisdictions that it identifies as providing meaningful regulation and oversight. As for the significant staff time and resources, such an investment seems worthwhile to ensure that issuers in jurisdictions with comparable regulatory regimes receive the benefits of the FPI accommodations while U.S. investors in issuers in jurisdictions with lax regulatory regimes receive the protections that U.S. securities laws normally provide them in their investments.
Michael Arnold, Chair, Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association	• The current definition of the term "foreign private issuer" and the existing regime for the regulation of FPIs continues to function precisely as intended in achieving the necessary and appropriate balancing of interests. • If the Commission nevertheless determines to propose changes to the FPI definition, consider the following: 1. Any change in the FPI definition should not affect the eligibility to use IFRS by any foreign issuer that is currently eligible to use IFRS. 2. Any change in the FPI definition should not affect the eligibility of any foreign issuer to have its securities trade in the United States in the form of depositary shares evidenced by American depositary receipts (ADRs), and should not affect the ability of any depositary bank to create unsponsored ADR facilities for those securities. 3. Any change in the FPI definition should not affect Canadian companies. Since the Commission has accepted that the MJDS system will not change,

	there would be no public policy purpose for Canadian companies not yet eligible for MJDS to be forced to adopt any domestic practices while they wait for MJDS eligibility.
Andrew Reilly, Partner, Rimon	• Any regulatory response, including any proposed change to the FPI definition, should be: (a) focused on the relevant concern and avoid any unintended consequences; and (b) as easy to implement as possible and avoid any unnecessary compliance burden on FPIs or the Commission. • To address a concern that some FPIs are not subject to sufficient regulatory oversight in their home jurisdiction to warrant the accommodations available to FPIs, we propose creating a new type of issuer – Domestic Reporting Foreign Private Issuer – that would include FPIs that are not listed on a major foreign exchange nor subject to meaningful home country regulation. • If a domestic reporting foreign private issuer must use the forms and rules designated for domestic issuers that it be permitted to provide financial statements prepared in accordance with IFRS if it is required under the laws of its home jurisdiction to submit annual financial statements prepared in accordance with IFRS (or other accounting principles of its home jurisdiction) to a regulatory authority in its home jurisdiction. • Permit an FPI to rely upon the definition of "smaller reporting company" solely for purposes of determining the applicability of paragraphs (1)(iv) and (2)(iv) of the "accelerated filer" and "large accelerated filer" definitions in Rule 12b-2 without using the forms and rules designated for domestic issuers or providing financial statements prepared in accordance with U.S. GAAP. • Permitting the distribution of securities by an Eligible Issuer (as described below) through a Qualified DRP (as described below) [each relates to listed companies in Australia] to its U.S. securityholders without an effective registration statement under Section 5 of the Securities Act as such distribution would not constitute an "offer to sell" or a "sale" of securities "for value" for purposes of Section 2(a)(3) of the Securities Act.
Federation of European Securities Exchanges (FESE)	• If the SEC proceeds with a "major foreign exchange" requirement, regulated markets within the EU, as well as the EAA area, Switzerland, and the UK, should be designated as such under any revised framework for FPI eligibility. European-regulated markets operate under comprehensive legal frameworks, such as MiFID II, the Prospectus Regulation, and the Market Abuse Regulation, which ensure timely and transparent disclosure, strong corporate governance, and effective regulatory oversight. These standards ensure that U.S. investors are adequately protected when investing in securities listed on European markets. • Should the SEC choose to prioritize the development of a mutual recognition system, we encourage it to adopt a flexible, principle-based approach that acknowledges the EU regulatory framework as equivalent through such arrangements. European-regulated markets are subject to stringent disclosure, governance, and oversight standards aligned with international best practices.

	• Foreign trading volume test may not be an appropriate criterion for determining whether a foreign issuer qualifies for FPI accommodations. There should not be a correlation between the issuer's FPI status and the levels of trading activity on a foreign exchange, so we believe this trading volume requirement should be removed.
Linklaters LLP	• Be wary of bringing about competitive and absolute harm to U.S. exchanges and U.S. investors through increased regulation of non-U.S. companies that are listed or are considering listing in the United States. Regulatory change of this magnitude should be predicated on clear evidence of harm, rather than perceived imbalance, as well as a robust assessment of the costs and benefits. • Concerned about the collateral effects of amending the FPI definition, particularly the impact on regulations other than those relating to U.S. listing. As noted in the Concept Release, both Rule 12g3-2(b) and Regulation S make important use of the FPI concept, as do the cross-border tender offer rules, and disruption of these regulatory schemes would open a variety of questions not raised in the Concept Release. We are aware of no rationale for changes to these regulatory schemes.
Goldfarb Gross Seligman & Co., Gornitzky & Co., Herzog Fox & Neeman, Meitar Law Offices, Naschitz, Brandes, Amir & Co., Advocates, Leading Israeli Law Firms in U.S. Securities Law Practice for Israeli FPIs	• With respect to Israeli FPIs, such changes are not warranted and may inadvertently adversely affect the equilibrium that has developed over several decades between U.S. federal securities laws and rules of national securities exchanges, on the one hand, and Israeli securities and corporate law, on the other hand. • SEC might consider focusing primarily or exclusively on whatever adjustments to the rules (if any) it feels are appropriate for issuers incorporated in those problematic jurisdictions. • If the SEC were to impose not just a foreign trading requirement, but also a minimal level of trading on a foreign stock exchange, as a threshold condition for FPI status, companies headquartered in countries like Israel may determine to dual list on their own domestic stock exchange (such as the TASE for Israeli companies). This, however, would likely reduce trading in the company's securities on the U.S. markets by diverting such trading to foreign markets, thereby hurting the liquidity and vitality of trading in the subject securities on the relevant U.S. stock exchange. • A minimum foreign trading volume requirement for FPI status would create significant uncertainty for issuers from year to year, and contradicts the main reason most companies seek to list in the United States— to develop a deep (institutional), high-volume market in the United States, with all the associated benefits that come with such a following from the U.S. investor community (which, in many cases, is triggered by or accompanied by the shifting of trading volume over time from the home country market to the U.S. market). • We do not believe that a mutual recognition system would work very well with respect to Israeli issuers (in place of the current FPI system), as applying Israeli securities law disclosure requirements could create contradictions with U.S. rules and would lead to divergences from U.S.

	practice and custom, which most Israeli companies traded in the U.S. as Israeli FPIs anyway follow.
Rona Nairn, Regulatory Affairs, Richard Metcalfe, Head of Regulatory Affairs, and Nandini Sukumar, CEO, World Federation of Exchanges	• Key factors in how the SEC should proceed will be (1) whether the change in FPI population has, in fact, exposed investors to significant harm, and (2) whether the existing FPI criteria adequately ensure that FPIs meet the standards expected of companies trading in the U.S. • If the SEC does decide to pursue regulatory change, the SEC should take care to ensure that proposed amendments are appropriately calibrated and targeted to address any specific issues and subsets of the FPI population identified as posing harm. • Cautions against an exchange's total market size being one of the relevant criteria. Market size does not inherently equate to the presence of robust disclosure, listing, or regulatory requirements. • FPI eligibility should be centered on whether a company will meet the high standards expected of companies trading in the U.S. by virtue of its home-country listing and regulatory requirements. Qualitative assessments of issuers' home-country listing rules and regulations would tackle the core issue at hand, which is ensuring that FPI status does not allow companies that do not adhere to sufficiently robust listing standards to trade in the U.S. • To determine whether a jurisdiction has a robust regulatory and oversight framework for issuers, and requires an exchange to subject its issuers to meaningful regulation and oversight, the SEC should consider as relevant factors whether there is an MoU with the jurisdiction in question, either bilateral or multilateral (e.g., IOSCO's MMoU).
Forum for U.S. Securities Lawyers in London	• No changes to the FPI definition are warranted. • Address any significant concerns through other means, including by making incremental changes to existing disclosure requirements applicable to FPIs. This might entail, for example, imposing additional disclosure requirements on non-U.S. issuers whose equity securities are listed solely in the United States that fail to satisfy a minimum market capitalization requirement. • Should the Commission decide instead to make changes to the FPI definition, consider narrow, targeted changes with limited potential for market disruption and minimal administrative burden for the Commission. • The Commission should thoroughly consider the unintended consequences that changes to the FPI definition may have under existing U.S. securities laws and regulations. Even if changes are made to the FPI definition, the current definition should continue to apply for purposes of Regulation S, non U.S. issuers that only have registered debt securities and/or structured products and the exemption under Rule 12g3-2(b) under the Exchange Act. • In the event that changes to the FPI definition are proposed, minimize market disruption by grandfathering the status of existing FPIs, providing a sufficiently long transition timeline and facilitating deregistration for

	those non-U.S. issuers for which compliance with any modified reporting and other requirements will be not feasible and/or too burdensome.
Canadian Bankers Association	• Support maintaining the current FPI definition, including the shareholder test and the business contact test. • Exempt MJDS issuers from any additional requirements, if the SEC were to decide to revise the FPI definition, so that the current definition of FPI would continue to be used in determining MJDS eligibility and FPI status of MJDS-eligible issuers.
Liga Dugdale and Amanda Cantwell, GC100 Joint Secretaries	• The current regime works well for U.S. investors and companies like GC100 members that are listed on the internationally respected LSE. • Some of the Commission's potential changes are duplicative or contrary to existing home requirements to which FPIs adhere, and that the additional burden and cost of navigating the two regimes could be significant. • Amending the shareholder threshold and/or introducing a trading volume test would be impractical to implement and unlikely to achieve their objectives. • Debt-only registrants should not be affected by any potential changes to the definition of FPI. • Other potential consequences of changing the FPI definition should be carefully considered, including any limits on the availability of or changes to the Regulation S safe harbours for offshore offerings of securities by non-U.S. issuers, or the availability of the exemption from Exchange Act reporting requirements contained in Rule 12g3-2(b). • Any adjustments should be tailored and targeted to the specific areas where the Commission has identified evidence of harm or detriment to U.S. investors from the existing FPI definition, and they should take account of variations in disclosure, governance, and reporting requirements that are already adhered to by FPIs and specifically those listed on major, recognized stock exchanges like the LSE; and steps be taken to minimize the impact for existing registrants, including grandfathering of existing FPIs and implementing transition periods that are sufficiently long to allow for the smooth implementation of any changes.
CLEARY GOTTLIEB STEEN & HAMILTON LLP	• Carefully balance both the benefits and trade-offs of the current regime against the risks and potential unintended consequences of any changes, including a potential decline in U.S. listings by non-U.S. companies and a related exodus from the U.S. reporting regime, which would ultimately be harmful for U.S. investors and markets. • The existing FPI framework that has been in place for decades functions effectively and strikes the correct balance between imposing disclosure and governance requirements on non-U.S. companies that are appropriate for the protection of U.S. investors while still encouraging such companies to access the U.S. capital markets.

	- While we believe the current regime functions well, if the Commission ultimately determines that some change is necessary, it should consider bolstering the requirements applicable to certain FPIs to fill identified gaps, rather than changing the universe of entities that qualify as an FPI. Potential adjustments for the Commission to consider would include: Form 6-K Amendments, Form 20-F Deadline Acceleration, and Regulation FD Application. - Continue to allow non-U.S. companies to report under IFRS as issued by the International Accounting Standards Board. - Maintain the current FPI regime for debt-only issuers. - Avoid any regulatory approach that requires it to make jurisdiction-specific judgments, as would be required for the alternatives outlined in the Concept Release relating to major foreign listings, SEC assessments of foreign regulation or mutual recognition systems. Developing the relevant criteria for assessing any of these alternatives would be a large undertaking. In addition, the Commission would have to constantly monitor whether the criteria should be refined, keeping abreast of and reacting to any local legal or regulatory developments. We are concerned that this would significantly test Commission resources, and lead to unpredictability for non-U.S. companies that are reliant upon a given jurisdiction or exchange continuing to meet the Commission's criteria to maintain their FPI status. - Undertake a comprehensive inventory of the term's use in the Securities Act, the Exchange Act, the Investment Company Act of 1940, and the respective rules and regulations thereunder, and address any potential inadvertent knock-on effects (including Regulation S, Rule 12g3-2(b), Rule 801, Rule 802, Regulation 14D, and Regulation 14E, as well as the Investment Company Act, specifically Section 3(c)(7)). - Grandfather existing FPIs and provide an adequate transition period and process.
BDO USA, P.C.	- Consider the prevalent use and benefits of IFRS-IASB, as well as the population of and current basis of accounting used by registrants that would be impacted. We also believe investor feedback regarding knowledge of IFRS-IASB versus U.S. GAAP and other aspects of the concept release would be valuable to further evaluate any potential changes to the FPI eligibility requirements. - If the Commission determines it is appropriate to move forward with changes to the FPI eligibility requirements, consider the time and effort newly domestic entities will need to be able to comply with the domestic reporting requirements and allow sufficient time for these entities to effectively transition, which includes developing accounting policies and manuals, new internal controls, governance policies and procedures, and likely obtaining additional U.S. GAAP knowledge. - As an alternative to changing the definition of an FPI, consider specifically requiring certain disclosures or removing certain existing

	accommodations. The FPI accommodations could be adjusted to ensure matters of most significance to an investor are disclosed on a timely basis. • Consider aligning the definition of Foreign Business with the current definition of an FPI.
Herbert Smith Freehills Kramer (US) LLP	• The current FPI definition should not be revised. The potential regulatory responses discussed in the Release would have the effect of increasing regulatory burdens on investor choice and capital formation. • Potential gaps in governance standards or disclosure practices should be addressed through incremental guidance and disclosure requirements.
Herman Raspe, Partner, Patterson Belknap Webb & Tyler LLP	• The current FPI definition strikes an appropriate balance between criteria outside of the issuer's control (e.g., percentage ownership of voting securities by U.S. residents) and criteria within the issuer's control (e.g., location of incorporation, citizenship and residency of executive officers and directors / location of assets / administration of business). • The addition of a trading volume requirement would not be desirable as the issuer has no control over the trading volume. • Ambivalent about adding a foreign-listing requirement to the FPI definition. While maintaining a foreign listing is within the issuer's control, mitigating the uncontrolled risks noted above, some FPIs traditionally consider consolidating liquidity by eliminating multiple listing venues. This is frequently the case for FPIs originating from smaller jurisdictions where the lack of liquidity in the local market negatively affects effective price recognition. • Supportive of an SEC assessment mechanism in the context of mutual recognition regimes. However, to introduce this requirement in the context of a revised FPI definition seems to create an overly burdensome regulatory regime on the SEC and we question whether this is an appropriate allocation of future use of SEC resources. • Supportive of efforts to establish additional mutual recognition systems to bridge the gap between U.S. regulatory requirements and those of similarly regulated markets abroad. This type of recognition should be based on conceptual assessments of financial and non-financial disclosure standards, without mandating identical disclosure items. • Supportive of international cooperation among similarly situated regulators across the globe, particularly when the arrangements for cooperation focus on the enforcement benefiting U.S. investors and the streamlining of regulatory reporting / disclosure standards and processes benefiting U.S. investors and FPIs. • Regulatory concerns could be better addressed with a targeted increase of disclosure rather than loss of FPI status. • While the disclosure standards for domestic issuers are significantly more onerous than the corresponding standards for FPIs, the traditional domestic company accessing the U.S. capital markets typically operates in the U.S., has existing financial and non-financial reporting standards that are U.S.-centric, and has access to staff and third-party advisors that are

	well versed in the U.S. record-keeping, accounting, tax, legal, and related requirements. For companies created and operating outside the U.S., the same U.S.-centric operating history is not present, and U.S. resources are not as readily available. As a result, in our view, the domestic issuers are not typically at a significant disadvantage to FPIs in terms of clearing the hurdles for becoming a publicly listed company in the U.S. and their access to U.S. capital does not appear to be significantly adversely affected.
Rajeeve Thakur, Vice President, Regulatory Affairs, TMX Group Limited	• Of the alternative potential changes to the FPI eligibility requirements identified in the Concept Release, incorporating a "major foreign exchange listing requirement" is most directly aligned with achieving the goals identified by the SEC in the Concept Release at a reasonable administrative burden. Incorporating a "major foreign exchange listing requirement" will best ensure enhanced protection to U.S. investors and competitive fairness to U.S. issuers while reducing the opportunities for regulatory forum shopping or gaming the system. • We recommend that the SEC simply rely on the markets identified under Regulation S as "designated offshore securities markets" to satisfy such a requirement. Although the SEC expresses some reservations with this approach, the list of designated offshore securities markets is a reasonable proxy for foreign markets subject to a robust regulatory framework and having appropriate listing standards. • Although the current eligibility criteria (50% threshold of U.S. investors and limited business contacts) might have been effective for their original purpose of identifying U.S. ties, recalibrating these criteria will not address the fundamental concern over the robustness of the regulatory framework applicable to FPIs.
Charles Crain, Managing Vice President, Policy, National Association of Manufacturers,	• Proceed cautiously and not adopt draconian changes to the FPI definition that would have the unintended consequence of deterring foreign companies from raising the capital they need to expand their U.S. manufacturing operations. Most larger FPIs are also listed in their home jurisdictions, and are already subject to significant corporate governance and disclosure requirements. If these entities cannot use the accommodations allowed for FPIs today, it may be difficult for them to retain their dual listings in the United States—potentially threatening their ability to access capital in the U.S. and expand their U.S. operations. • Requiring FPIs to also report under U.S. GAAP would effectively require that many FPIs prepare two sets of audited accounts, under IFRS and U.S. GAAP – a mandate that would be highly uneconomical for companies and which could jeopardize companies' ability to speedily prepare and publish their financial statements. • While we agree that FPI status should only be available to companies that have a listing on a non-U.S. exchange, we caution the SEC against imposing an onerous non-U.S. trading requirement (such as requiring companies to have at least 10% or 15% in trading volume trade on foreign exchanges). Such a standard, which would target 64.4% to 65.8% of current FPIs, could end up excluding some dual-listed companies that have significant U.S. manufacturing operations, have a long history of

	marketing American depositary receipts to U.S. investors, or have acquired widely held U.S. companies. • Suggests that the SEC permit three alternative means to qualify as an FPI, as follows: 1. Is a company traded on a "major foreign exchange," such as Euronext or the London Stock Exchange? 2. In those cases where a company is listed on a foreign exchange that has not been deemed "major" by the SEC, the Commission should then consider whether the company is subject to robust disclosure and investor protection regulations. To assist FPIs and their investors, the SEC could publish an annually updated list of nations that it deems to have sufficiently robust investor protections. 3. Finally, a company should be able to qualify for FPI relief if its home nation negotiates a Multijurisdictional Disclosure System ("MJDS") agreement with the United States (like the current U.S.-Canada MJDS arrangement). • Provide a sufficient transition period for those companies that lose FPI status to reduce disruption and mitigate additional compliance costs. Manufacturers suggest these companies should have at least one year.
Freshfields US LLP	• Take a reasoned and pragmatic approach to the regulatory regime governing FPIs because of the risk of unintended consequences from potential rule changes that could harm both U.S. investors and U.S. markets. These harms would come from deterring high-quality, non-U.S. companies from conducting listings and IPOs in the United States and reducing the number of public companies in U.S. markets. • Re-focus potential new rules on specific problems on which the Commission has reliable and comprehensive data and then craft a regulatory response that is narrowly tailored to solve those problems. • FPI accommodations do not stem merely from comity or deference to home country laws, regulators, or exchanges. Many of these accommodations recognize that some features of the U.S. federal securities laws were designed for domestic corporations and do not function well under foreign legal regimes. • Switching from IFRS to U.S. GAAP would impose substantial costs on registrants and require significant time, as registrants would need to make considerable investments, including in new personnel, accounting systems, controls, and audit functions. If the SEC were to enact a new FPI definitional test, it should allow registrants that lose FPI status under that test to continue reporting under IFRS. • If the Commission is concerned that home country rules and listing standards do not provide adequate disclosures and investor protections, it seems its real area of inquiry is the following: (a) which items of Form 8-K and Form 10-Q are material to U.S. investors in FPIs; and (b) on which of those items are U.S. investors not receiving disclosure. • Imposing a requirement that, to retain FPI status, registrants need to have a minimum amount of trading outside the United States would be a relatively objective test, but one that brings significant policy disadvantages. Creating incentives to move liquidity away from U.S.

	markets comes at a cost to investors investing in FPIs on U.S. exchanges in terms of worse pricing and worse price discovery. • The Concept Release approaches of conditioning FPI status on an FPI trading on a "major" exchange or being subject to the rules of a country with "robust" securities law protections have considerable theoretical promise: they offer to tailor the FPI criteria to the precise problems that the SEC finds with protecting U.S. investors. Of course, the rub, as the Concept Release notes, is defining the criteria for "major" and "robust." Meeting that challenge would require immense Commission rulemaking time and resources, both initially and on a continuous, going-forward basis.
Jaime L. Klima, General Counsel, New York Stock Exchange	• The Exchange believes that the existing construct of FPI reporting — a combination of federal securities law, Exchange rules, and a widespread practice of voluntary reporting — is both effective at ensuring the dissemination of meaningful corporate disclosure and conscious of the differences between FPIs and domestic companies. • To the extent the Commission perceives a problem with a certain subset of FPIs, the Exchange encourages it to consider whether its goals can be achieved by less disruptive means than a revision to the FPI definition. • Thoroughly consider all unintended outcomes before making any revisions to the FPI definition.
Michal Sarig-Kaduri, Director, Israel Growth Forum	Rather than applying a uniform standard, we respectfully submit that the Commission consider (i) developing tailored treatment for Israel, or (ii) adopting a tiered or country-level assessment that allows for nuance when addressing small but highly innovative markets. Such an approach would preserve the integrity of the FPI definition, protect investors, and ensure that markets like Israel's, unique in size, governance/investor protection and related disclosure, and contribution to global innovation, can continue to thrive within the U.S. capital markets.
Daniel Zinn, General Counsel, and Flavia Vehbiu, Deputy General Counsel, OTC Markets Group, Inc.	• If the Commission were to revise the FPI definition without appropriate consideration for OTC FPIs that rely on 12g3-2(b) and that have not contributed to the problems identified in the Release, these issuers would become collateral damage. OTC FPIs (i) maintain their primary trading market outside of the U.S., (ii) tend to keep a jurisdictional consistency between the location of their headquarters and country of formation, (iii) must maintain a foreign exchange listing and thus are already subject to meaningful disclosure and regulatory oversight in their home country, and (iv) must make their home country disclosure publicly available in English. • Require a foreign exchange listing or impose a foreign trading volume threshold could be appropriate for FPIs seeking to list on a U.S. national securities exchange using the lighter reporting regime under Form F-1. Companies that do not meet such a standard could instead be required to register under Form S-1. These types of reforms would more closely align the FPI definition with its original purpose, while avoiding adverse impacts on issuers that currently trade over the counter under the well-functioning Rule 12g3-2(b) regime. • Expand 12g3-2(b) to cover FPIs listed on Qualified Foreign Exchanges that would otherwise need to meet the SEC's standards under the Investment

	Company Act of 1940. Currently, these issuers have no path for compliance with U.S. securities laws other than full 40 Act registration.
Anonymous	Temporarily prohibit enterprises from China (including Hong Kong, Macao, and Taiwan regions) from listing on NASDAQ Capital Market and NASDAQ Global Market, except for those enterprises that have already listed on Chinese stock exchanges and are subject to the supervision of the corresponding Chinese regulatory authorities.
Paul Hastings LLP	• Significant changes to the definition that would result in a large percentage of FPIs losing their status as FPIs is not warranted and would be counter to the promotion of investor protection, capital formation, and the Commission's objective of "maintaining reasonable accommodations in the federal securities laws to attract foreign companies to U.S. markets and to provide U.S. investors with the opportunity to trade in those companies under U.S. laws and regulations." • Consider adopting rules that address risks surgically rather than risk making the U.S. capital markets less attractive to a significant number of high-quality foreign issuers. If the Commission has identified disclosure gaps with respect to specific areas—such as executive compensation or periodic reporting— that are particularly important to investors, we believe there may be merit in aligning FPI disclosures more closely with domestic standards. This could be done without altering the definition of FPI, but by developing targeted disclosure enhancements where investor protection objectively calls for it. • While we are not aware of any evidence that these smaller companies are more prone to securities law violations than their U.S. counterparts, it would be consistent with the ethos of the U.S. securities laws to extend the benefits of reduced disclosure obligations to foreign companies that meet a certain market capitalization upon the entry into the U.S. securities law regime. • Depending on the scope of changes to the definition that is ultimately adopted, companies could seek structural alternatives to continue to qualify as an FPI under a revised definition. These workarounds would add complexity and increase legal costs without enhancing transparency or investor protection. In effect, changing the definition could result in more form-over-substance structuring rather than improving market integrity.
Allen Overy Shearman Sterling US LLP	• Do not believe there is a regulatory failure with the existing FPI definition, or the FPI reporting and governance regime, that warrants change at this time. To the extent the Commission identifies instances where foreign companies with specific characteristics take advantage, or even abuse, the current FPI regulatory framework in a manner that harms, or could harm, U.S. investors, we believe that targeted measures directed at those companies, or types of companies, or the associated practices are preferable to blanket changes to the FPI regime that would adversely affect all FPIs to the detriment of U.S. investors. • Stock exchange rules and market discipline that apply equally to Non-U.S. Exclusive and U.S. Exclusive FPIs, coupled with Exchange Act reporting obligations applicable to FPIs, ensure that U.S. investors receive adequate

	and timely disclosure. Market discipline drives all 20-F FPIs, including U.S. Exclusive FPIs, toward providing U.S. investors with adequate and timely information. • The Commission should not introduce a minimum market capitalization or public float threshold for all 20-F FPIs or specifically for U.S. Exclusive FPIs. Doing so would unnecessarily exclude from the FPI accommodations many innovative fast-growing companies, thus potentially depriving U.S. investors of the opportunity of sharing in the value creation by those companies. • The Commission should not condition FPI status or FPI accommodations on a cross-listing on a foreign securities market or on a minimum trading volume outside the United States. Especially for smaller, more early stage companies with higher growth potential, cross-listing in two separate securities markets is often not a realistic option because it would split and thereby further reduce what is already a relatively small liquidity pool for the shares. If these types of foreign companies then decide not to list their shares in the United States, or decide to do so only at a later point in their development and growth trajectory, U.S. investors will lose out on the ability to invest in these companies through the convenience of a U.S. listing and with the protections of the U.S. securities laws.
G.D.	• The current 50% U.S. shareholder test is outdated; recommend lowering it to 30–35%. • Companies should be required to align their place of incorporation with their principal place of business. Where that is not possible, the SEC should demand stricter disclosure and proof of reciprocal market access for U.S. firms. • To qualify as an FPI, companies should be listed on at least one major, regulated foreign exchange with meaningful liquidity, strong investor protections, and reciprocal access for U.S. issuers. At least 50% of an FPI's trading volume should occur on a qualifying foreign exchange. • Compliance must be swift. Companies should be required to meet the new standards within 11 months, with a 30-day grace period for technical adjustments. At the 12-month mark, penalties begin automatically. • For nations that deny reciprocity, the U.S. should coordinate with Congress and trade authorities to impose 10% tariffs on industries where access is restricted.
Joseph P. Corcoran, Managing Director and Associate General Counsel, SIFMA	SIFMA is submitting this brief comment letter to alert the Commission to the benefits of maintaining open U.S. capital markets, and is not commenting on the FPI definition or the questions contained in the Concept Release.
Deloitte & Touche LLP	• A requirement to prepare financial statements pursuant to U.S. GAAP due to a change in their FPI status could be challenging to these companies, both because they are subject to existing IFRS reporting requirements in their home country and because there may be limited U.S. GAAP expertise in their jurisdiction. More broadly, a change of definition could result in a significant number of companies transitioning to U.S. GAAP in the same

	year, which could strain the resources of not only individual companies, but also others in the reporting ecosystem, including legal and financial reporting advisors, independent auditors, and the SEC staff who will need to address transition issues that may arise. • Recommend the Commission consider adopting transition provisions that: provide extended transitions, e.g., a multi-year and/or a phased approach to transition; permit former FPIs to first report financial statements prepared in accordance with U.S. GAAP in the annual report on Form 10-K in the year of transition; permit one year of comparative financial statements. • Consider whether goals could be achieved by revising the requirements of Form 6-K so that there is a standard, minimum level of material information that is required to be communicated by all FPIs and would align more closely with the information required to be reported by a domestic issuer on Form 8-K, but that still allows some accommodations. • Consider a similar standard minimum approach for interim financial statements and other information (e.g., MD&A). For example, if an FPI is subject to a home-country interim reporting requirement, it could follow the form and timing requirements of the home country (e.g., half-yearly financial statements are required by most European-listing authorities). The SEC could also consider adopting a "back stop" requirement, whereby all FPIs are required to file interim financial statements for the first six months of the year within a time frame set forth in the form, with the goal of providing investors timely interim financial information for all FPIs. • Consider if it would be appropriate to extend the SRC definition to FPIs (or adopt a specific definition for an FPI SRC). • Consider aligning is the "foreign business" definition, which applies to "other entity" financial statements, such as those filed to comply with Rules 3-05 and 3-09 of Regulation S-X.
Christopher A. Iacovella, President & Chief Executive Officer, American Securities Association	Opportunity for the SEC to put an end to the use of CCP-backed VIEs in America's capital markets.