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RE: Release on Foreign Private Issuer Eligibility (File No. S7-2025-01)

Dear Special Counsels and Secretary:

CFA Institute[1] appreciates the opportunity to respond to the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") regarding its *Concept Release on Foreign Private Issuer Eligibility* (the "Release").[2]

CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education, and competencies for investment professionals, and on issues of fairness, transparency, and accountability of global financial markets.

We are responding to the Release, despite doing so after expiration of the comment period, because of the limited number of investors who have responded to the Release and because we believe we need to make our position as an organization of professional investors known to a new group of Commissioners and Commission staff.

CFA Institute has argued in multiple responses to SEC rule proposals[3] dating back three decades

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1 CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to creates an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 180,000 CFA® charterholders worldwide in more than 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies.

2 Release at https://www.sec.gov/files/rules/concept/2025/33-11376.pdf and comments at SEC.gov | Comments on File No. S7-2025-01

3 See various CFA Institute letters at:
- SEC Proposed Rule: Foreign Issuer Reporting Enhancements (S7-05-08);

for regulation that requires foreign private issuers ("FPIs") to adhere to the same disclosure and governance rules for FPIs as are imposed on domestic U.S. issuers. In this Release, we see evidence that our previously articulated concerns regarding FPIs have emerged in practice[4].

We find it especially important to add an investor perspective – and refresh the Commission on our historical perspective – as most of the comments received by the Commission have come from legal and accounting firms and other vendors working on behalf of foreign private issuers rather than investors who suffer losses because of inadequate investor protections. We believe it is important that the Commission hears and understands the views of investors as it reconsiders potential revisions to the disclosure, governance and regulatory requirements of FPIs (what we refer to herein as the "FPI Regime").

EXECUTIVE SUMMARY

For decades, CFA Institute has consistently cautioned that granting disclosure and governance accommodations to foreign issuers under the FPI Regime – without rigorous verification of home-market regulatory systems – creates risks for U.S. investors and disadvantages U.S. issuers. The developments described in the Release confirm those concerns.

The U.S. securities regulatory system is fundamentally a disclosure-based system built to protect investors through transparency, governance standards, and enforcement. From its inception, the FPI Regime has relied upon an implied assurance to U.S. investors that the SEC understands, and can assess, the home-market regulatory regimes governing FPIs. That implied assurance has become increasingly untenable as the universe of FPIs has expanded dramatically, as issuers increasingly reincorporate in third-country jurisdictions, and as their trading activity has migrated overwhelmingly to U.S. markets. The Release illustrates how weaknesses in the FPI Regime – particularly the broad FPI definition and the absence of meaningful assessment of home-market regulation – have enabled serious investor protection failures. In particular, certain China-based issuers exploited regulatory arbitrage by combining incorporation in lightly regulated offshore jurisdictions with exemptions intended for traditional foreign issuers, while listing and trading almost exclusively in U.S. markets. These practices undermined disclosure, governance, and enforcement expectations and transmitted weak regulatory standards into the U.S. capital markets.

The current two-tiered regulatory system also disadvantages U.S. issuers – especially small and medium-sized enterprises – by imposing higher disclosure, governance, and compliance costs on domestic companies while allowing FPIs competing for the same capital to operate under materially lighter requirements. At the same time, U.S. investors are harmed by reduced transparency, delayed or absent disclosure of material information, weaker governance safeguards, and increased exposure to fraud and abuse. The costs of these failures have far outweighed any incremental benefits of expanded foreign issuer access, especially when the improved access to foreign markets by U.S. investors over the last several decades is concerned.

- SEC-Release on Allowing U.S. Issuers to Prepare Financial Statements in IFRS (S7-20-07);
- SEC Proposal-Acceptance from Foreign Private Issuers of Financial Statements (S7-13-07);
- Comments of the Association for Investment Management and Research (S7-08-02);
- Comments of AIMR on Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date (S7-22-02);
- Proposal to Amend Form 20-F Disclosure Requirements and Revise the Definition of Foreign Private Issuer (S7-3-99);
- The Regulation of Securities Offerings (S7-30-98).

[4] See also the presentation of Wharton Professor Daniel Taylor during the SEC Investor Advisory Committee Meeting dated September 18, 2025.

The Release focuses primarily on potential revisions to the FPI definition and on mechanisms for understanding foreign regulatory systems. CFA Institute believes the Commission should focus on a more fundamental question: whether FPIs should continue to receive broad disclosure and governance exemptions at all. Trading volume metrics, foreign exchange listings, mutual recognition, and bilateral cooperation cannot substitute for investor-first regulatory standards or for the SEC's accountability to U.S. investors.

CFA Institute urges the Commission to adopt U.S. disclosure, governance, and enforcement requirements as the foundation for all issuers accessing U.S. capital markets. Limited and carefully tailored exemptions could be granted, but only to FPIs from jurisdictions with demonstrably strong regulatory regimes and only where those requirements closely align with U.S. standards. FPIs from weak regulatory environments should be required to comply fully with U.S. rules or be denied access to U.S. public markets. The SEC must also retain clear authority to reject listings and to delist issuers that fail to meet these standards.

In short, restoring investor confidence in the FPI Regime requires re-centering the framework on investor protection, regulatory accountability, and competitive fairness. The long-term strength and attractiveness of U.S. capital markets depend not on regulatory accommodation, but on consistent application of the transparency and governance principles that have made U.S. markets the global standard.

RESPONSE TO CONCEPT RELEASE

Historical Context and SEC's Implied Promise to U.S. Investors

The U.S. securities regulatory system – essentially a disclosure-based system – has nearly a century-long track record of providing investors with the kinds of information proven necessary to assess the financial performance, financial condition, and value of securities and securities issuers.

Congress granted the Commission a combination of regulatory authorities to a) impose transparency through disclosures; b) establish corporate governance standards; and c) engage in enforcement of those regulations.

Because Congress did not expect that the Commission and the relevant regulations would prevent all fraud and abuse, it granted the SEC additional powers:

- First, it granted the authority for the SEC to suspend or withdraw securities from exchange trading if the issuer required to submit the filings failed to do so or included material misstatements or omissions;[5] and
- Second, it gave the Commission power to seek remedy against parties that engaged in such wrongdoings to cheat investors.

The mandated disclosures and corporate governance requirements, together with the Commission's enforcement powers have acted as a barrier against fraud, market manipulation, and abuse and have facilitated the creation of the U.S. capital markets– the largest in the world.

[5] Federal Register, Vol. 25, No. 137, page 6720, Sec. 200.2(b), describing the SEC's Statutory Functions under the Exchange Act of 1934. See: FR-1960-07-15.pdf

Just three years after its founding, however, the SEC was assessing how to adjust the newly constructed U.S. financial market regulatory system to permit FPIs to raise capital in the U.S. market.[6] That review concluded that due to "the disparity between the laws and practices in the *several countries* [emphasis added] it was necessary to introduce great flexibility in the requirements."[7] The Release notes that that early-days assessment considered the extent of trading of foreign securities in the United States, home-market disclosure and reporting regulation of FPIs, rules of leading foreign stock exchanges, and the information FPIs were providing to the Commission at the time.

Congress laid the groundwork for the new FPI Regime in the Securities and Exchange Act of 1934. The original structure for the FPI Regime has expanded since then in tandem with the expansion of the Commission's investor protection mission, which now includes the maintenance of fair, orderly and efficient markets, and the facilitation of capital formation. Still, its first and primary role is to protect investors.

From its origins, the SEC has granted exceptional deference to FPIs that has – in our view – always conflicted with its investor protection mandate. In its 1936 Annual Report,[8] for instance, the Commission reported that FPIs with securities on U.S. trading exchanges were "exempt from the requirements of filing annual reports."[9]

When the FPI Regime was officially created in statute in the 1930s, the limited number of jurisdictions and issuers no doubt made the SEC's oversight manageable. The SEC's 1936 Annual Report indicated that just 33 foreign governments had, to that point, sought permanent U.S. registration for their securities.[10]

At the same time there were 11 foreign issuers of 13 "American certificates against foreign issues and for the underlying securities;" three foreign issuers of five registered "securities other than bonds;" and 55 foreign issuers, including subdivisions of national governments, of 92 bonds during 1935.[11]

The FPI Regime's evolution over the past century has included a substantial growth in the accommodations provided to FPIs. Pages 10-15 of the Release include a list of these accommodations, which we recreate in comparison with the requirements of domestic issuers in the **Appendix.**

The FPI Regime has always included an implied warranty to U.S. investors that it – the SEC – understands and would understand the home-market regulatory systems under which FPIs operate (the "Implied Warranty"). If this weren't the case, it is difficult to imagine how the SEC could have fulfilled its investor protection mission if it were letting entities domiciled in markets lacking established and proven regulatory structures to sell securities in the United States.

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6 See Release, Footnote 2. The footnote directs readers to Release No. 34-323 from 15 July 1935, in which the Commission considers adapting requirements for domestic issuers to foreign issuers.

7 See Supra.

8 See www.sec.gov/files/1936.pdf.

9 See Supra, penultimate paragraph on page 24.

10 See Supra. Table at top of page 27 provides details about the number of securities registered and issuers involved.

11 See Supra, paragraph 3 on page 26.Information about the total number of FPI jurisdictions at that time,

Today, with a much larger universe of FPIs from a wider swath of jurisdictions and many reincorporating in third-market jurisdictions for legal advantages, this Implied Warranty has become a significant burden that is even more difficult for the Commission to fulfill.

The Commission's investor protection pledge and its breakdown, together with its failure to adopt and enforce its own regulatory system on FPIs, has helped create the problems discussed in the Release and is the basis for this Release and our response.

Long-Standing Position of CFA Institute on FPIs

As noted at the outset of this letter, CFA Institute has responded to multiple SEC consultations that have considered the FPI Regime dating back to at least 1998. In these letters, ***we have repeatedly expressed our belief that all securities issuers seeking capital from U.S. investors must adhere to the same regulations that domestic registrants must observe***.

Despite our repeated warnings against lowering the regulatory bar in the United States for FPIs through the *de facto* endorsement of foreign regulatory systems, the Commission has repeatedly opted to grant disclosure and governance accommodations to FPIs and their insiders[12] that are not available to U.S. issuers. Implied in the granting of these exemptions was the Commission's Implied Warranty about FPIs' home-market regulatory systems. The Release reveals that this Implied Warranty was flawed, and that the Commission has not understood such home-country regulatory systems. As a result, the FPI Regime has, as CFA Institute cautioned, disadvantaged both US investors and domestic U.S. registrants. We explain these circumstances in subsequent sections of this letter.

The result of this defective system has been an abuse by certain FPIs as articulated in the Release and described later in this letter. We reiterate that it has been our long-standing view that FPIs should apply the same rules as U.S. domestic issuers such that they are playing by the same rules that have made the U.S. capital markets the deepest and most liquid capital markets in the world.

These failures are especially harmful because not all market participants have the ability to recognize and prepare for these risks. While professional investors have the expertise to seek out additional information and understand the regulatory, governance, and disclosure gaps of FPIs, for example, less-sophisticated investors cannot necessarily bridge these gaps due to both knowledge and language differences. For that reason, we believe application of the U.S. system for FPIs would be even more valuable to less-sophisticated investors.

[12] See U.S. Securities and Exchange Commission website, "Information about Foreign Issuers - Division of Corporation Finance." "Insiders of foreign private issuers are exempt from filing beneficial ownership reports required by Section 16(a) of the Exchange Act and are not subject to the short-swing trading rules under Section 16(b) of the Exchange Act…"

CFA Institute

The Essential Questions: Are U.S. Issuers and Investors Benefiting from the FPI Regime?

The Release poses a formidable number of questions to respondents which may help the Commission decide how best to improve the FPI Regime.

We believe the questions may not help the Commission reach a satisfactory conclusion on how best to improve the FPI Regime because it has not asked what we believe are the most important questions needed to improve the FPI Regime, which are:

1. **U.S. Issuers:** Is the FPI Regime serving the best interests of U.S. issuers?
2. **U.S. Investors:** Is the FPI Regime serving the best interests of U.S. investors?

In the same way that the interests of U.S. investors and issuers are a stated priority for the Commission since its founding, they have been a key concern of CFA Institute throughout its commentary on FPIs. In the paragraphs that follow, we provide our views on how we believe the Commission should answer these questions.

The FPI Regime Disadvantages U.S. Issuers'

We believe the SEC's two-tiered regulatory regime for issuers—one for FPIs and one for domestic U.S. issuers—puts U.S. issuers and small and medium-sized enterprises ("SMEs"), in particular, at a competitive disadvantage for capital with FPIs. We describe reasons for this view below.

FPIs Incur Less Costs to Access U.S. Capital Markets – With limited exceptions for micro-issuers, SMEs must create the administrative infrastructure that all other domestic issuers need to be able to sell securities in the public U.S. capital markets. This infrastructure comes with significant costs as noted above, beyond, and more sustaining than the typical 6% underwriting costs needed to underwrite a public offering. In contrast, FPIs often come from jurisdictions with lighter-touch home-market regulation. These cost advantages are compounded when they get to the U.S. market because the FPI Regime exempts them from much of the disclosure and governance requirements imposed upon U.S. registrants.

FPIs Are Required to Disclose Less Potentially Material Information – More concerning to U.S. issuers and investors than the administrative costs, are the real risks and costs that arise from the withholding of potentially material information. The FPI accommodations allow FPIs and FPI insiders to mask information that may have material adverse effects on the value of their securities if disclosed and give those insiders time to trade on inside information before, or in some cases without ever disclosing material information to U.S. investors.[13]

FPIs Are Allowed to Enter U.S. Markets with Weaker Governance Structures – The benefits from disclosure accommodations is exacerbated by exemptions that permit FPIs to operate with weaker governance structures than required of U.S. issuers. Ultimately, this means certain FPIs and their insiders do not bear the higher costs of independent boards, auditors, and external consultants.

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[13] On slide 30 of "Revisiting Disclosure Requirements for Foreign Private Issuers: Holding Foreign Insiders Accountable," Daniel Taylor, the Arthur Andersen Chaired Professor at the Wharton Business School and Director of the Wharton Forensic Analytics Lab, described at the SEC's Investor Advisory Council Open Meeting on 18 September 2025 how shares of Regencell Bioscience Holdings Ltd. soared more than 82,000% before losing 80%, or $33 billion, of the higher value, all in a matter of days. He noted the company did not report any material events prior to the run-up or the sell-off.

Are U.S. Issuers Disadvantaged: Yes – The Release asks whether U.S. issuers face a competitive disadvantage in comparison with FPIs that list solely on U.S. securities exchanges and are "incorporated in jurisdictions that do not impose meaningful disclosure and other regulatory requirements?" We believe the answer is yes for the following reasons.

Few foreign-market regulators impose requirements as comprehensive as U.S. companies face at home through SEC regulation. Accordingly, we have always believed that any transparency and governance exemptions create advantages for FPIs. Paradoxically, the greater investor protections and transparencies built into the U.S. market also give U.S. issuers an advantage through lower capital costs. FPIs have been able to nullify their cost of capital disadvantage by listing exclusively in the United States, thus benefitting from the perceived transparency of the U.S. market while potentially evading their disclosure requirements, as described in the Release and in the following section.

In sum, FPIs' competitive advantages begin with lighter-touch, home-market regulation and are enhanced by U.S. market regulation that does not expect FPIs to increase their reporting or governance standards when entering the U.S. market. U.S. issuers are disadvantaged even when foreign-market regulators impose greater disclosure requirements, such as for environmental purposes or to prohibit voting rights for non-local shareowners. In these cases, local-market regulators are less likely to exempt U.S. companies from these extra burdens.

Besides the competitive disadvantage the FPI Regime has created for U.S. issuers, it also creates disadvantages for the large, established FPIs from markets with proven home-market regulatory systems (the "Large Caps"). Having abided by the FPI Regime, these entities may face higher regulatory hurdles if the FPI Regime is significantly revised to address abuses by other FPIs. Worse, they also may see their capital costs rise if U.S. investor faith in FPIs and the FPI Regime wanes.

The FPI Regime Has Also Let U.S. Investors Down

The weaker transparency and governance of the FPI Regime articulated above – and highlighted in the **Appendix** – not only gives FPIs advantages over domestic issuers; it also harms U.S. investors as U.S. investors rely upon the US and SEC disclosure and governance protections every day to make reasoned investment decisions. FPI decisions will be based on lower-quality information and without the protections they readily expect from SEC regulations.

The Release Articulates How U.S. Investors Have Been Let Down by the FPI Regime – Per the Release, it is apparent the FPI Regime has become a locus for the serious lapses in investor protection that CFA Institute hoped to prevent with its prior comment letters.

The accommodations and exemptions afforded by the FPI Regime allowed some China-based issuers ("CBIs"), in particular, to gain access to U.S. investors and their capital without fulfilling the disclosure and governance obligations of the FPI Regime.

As the Release describes, exemptions from U.S. requirements enabled several CBIs to raise capital from U.S. investors using legal devices to exploit loopholes to get around their disclosure and governance requirements. The mechanisms used included the CBIs' incorporation in either the Cayman Islands or the British Virgin Islands (jointly, the "CBVI"),[14] which when combined with the Chinese regulatory system

[14] Of the 249 CBIs that issued Forms 20-F in fiscal year 2023, the Release noted that 82% were incorporated in Cayman and 15% in BVI. Conversely, of all FPIs incorporated in Cayman and BVI, 67% were CBIs. The

enabled these CBIs to avoid mandated disclosures and other requirements. The CBIs circumvented U.S. reporting and governance obligations because, first, the SEC considered CBVI regulation sufficiently acceptable to grant the accommodations. CBIs were then granted FPI status, and later more than a few made U.S. exchanges, including over-the-counter markets,[15] the primary trading markets for their securities.

Because of the generic definition of an FPI and the actual (not simply implied) reliance by the SEC on home-country regulation, many FPIs have not been adequately vetted before entering the U.S. capital markets. These failures provide a prime example of why the FPI Regime needs to be changed.[16]

Though it was the CBIs working through the CBVI systems that enabled evasion of the FPI Regime's mandates, it is imaginable that other jurisdictions might intermediate similar abuses in the future unless adequate precautions are adopted. The interlocking nature of exemptions and accommodations within the FPI Regime created an opportunity for FPIs to seek similar loopholes in other markets while gaining access into the U.S. market.

The FPI Regime's ill-considered system of exemptions and allowances built upon toothless international agreements and recognition rather than the strength of home-market regulation in the United States and abroad, proved itself incapable of protecting U.S. investors. For these reasons we contend that the SEC must amend the FPI Regime to protect U.S. investors. We believe such amendments should use the U.S. financial market regulatory system as its foundation and limit the ability of the SEC to provide exemptions or accommodations without investor input.

These changes are needed because U.S. investors rely upon SEC-mandated disclosures and governance protections every day to make investment decisions. This reliance is critical, regardless of the size of the issuers. Even though the CBIs are relatively small – the 2023 median market capitalization of CBVI-incorporated CBIs was just $84 million[17] – publicly listed SMEs have added greatly to market turmoil in

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Release also describes how CBIs had grown to 28% of all FPIs filing Forms 20-F in 2023 compared with just 5% two decades earlier.

[15] See U.S. Securities and Exchange Commission website, Information about Foreign Issuers - Division of Corporation Finance: "Under the rules relating to the OTCBB, in order to be quoted on the OTCBB, an issuer must be required to file reports under the Exchange Act. To meet this requirement, issuers may voluntarily register a class of securities under Section 12(g) of the Exchange Act. Once registered under Section 12(g), the Exchange Act requires an issuer to file periodic and current reports to the same extent as issuers with a class of securities registered pursuant to Section 12(b) and listed on an exchange. ***Foreign private issuers may also register a class of securities under Section 12(g) to facilitate trading in other U.S. over-the-counter markets. Foreign private issuers interested in having a class of securities quoted in other segments of the over-the-counter market should review the information on the over-the-counter market on the Commission's website***" [emphasis added].

[16] See discussion beginning on page 39 of the Release: "However, the result of this deference is that a key element that would otherwise assure investor protection despite the FPI accommodations—that an FPI is subject to meaningful disclosure requirements in its home country or due to its foreign listing—could be absent, and the Commission's rules and regulations might effectively be providing the primary or sole source of reporting requirements."

[17] See Table 2 on page 22 of the Release.

the past.[18] And in the case of the CBIs, some seemingly small enterprises were able to create losses in the tens of billions of dollars through their market abuses.[19]

Is the FPI Regime Still Necessary and Beneficial for U.S. Investors?– The FPI Regime created over the past century was meant to provide U.S. investors exposure to foreign investment opportunities (i.e. companies and markets). The FPI accommodations were deemed beneficial because U.S. investors could obtain exposure to foreign investment opportunities without having to incur the costs of going to foreign markets to invest in non-U.S. securities.

In our view, however, the Commission must ask several questions before determining whether the cost-benefit analysis of the legacy FPI Regime still produces a net benefit to U.S. investors. These questions include, but are not limited to, the following:

- Has the global business and market structure in many foreign jurisdictions evolved to the point that U.S. investors can directly access foreign markets to make such investments easily? As a result, are these FPI accommodations and the FPI Regime still necessary to give U.S. investors foreign investment exposure?

- Does an FPI listing in the U.S. imply the issuer is meeting a higher threshold for admittance to the U.S. capital markets then they would face in their home markets when in fact they have not? In our view, the U.S. listing of FPIs may imply to investors, particularly to less-sophisticated investors, a higher level of vetting of foreign companies than is actually occurring. Accessing those same securities in a foreign market is likely to make it more obvious to investors that there are additional risks they must consider.

  For example, accessing a Chinese company, registered in the Cayman Islands or British Virgin Islands that requires an investor trade in those markets would likely alert those investors to the higher degree of risk (e.g., less transparency, less enforcement, less liquidity) they are likely to face than if they were able to buy the securities in U.S. markets.

- Are the benefits (i.e., liquidity, depth of markets and perception) to FPIs (foreign issuers) of listing in the U.S. capital markets greater than the benefits of giving U.S. investors immediate exposure to such investments?

In our view, the Release does not consider the bigger picture questions regarding whether the cost to U.S. investors of allowing such FPIs – with such significant accommodations – into the U.S. capital markets supersedes their ability to access such exposures directly in foreign markets. Nor does it consider whether the benefit of the FPI Regime has tilted almost entirely in favor of FPIs who can access the world's largest capital markets and U.S. investors without meeting additional requirements than their home

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[18] Billions of dollars of investor savings poured into tech- and telecom initial public offerings starting in the mid-1990s. Many of these offerings failed with the bursting of the tech/telecom bubble in early 2000. The governance, disclosure, and financial reporting rule failures in the United States during this period led to the Sarbanes-Oxley Act of 2002 whose rules helped investors and regulators recognize the dismal financial reporting and corporate governance record of SMEs listed on U.S. exchanges. A 2007 Glass, Lewis & Co. report (Glass Lewis & Co., *Trend Alert,* February 27, 2007) described how not only did SMEs account for 69% of all companies reporting material weaknesses between 2004 and 2007, but also were the slowest to improve their internal controls.

[19] See Footnote 12.

country regime. And, has this disadvantaged U.S. companies competing for this same capital with higher requirements?

Overall, it is challenging not to conclude that the SEC has given a U.S. capital markets passport to many foreign companies while asking less of them than is expected of U.S. companies while putting U.S. investors at greater risk.

Responses to Release Questions

With aforementioned historical context and consideration of the impact of FPIs on U.S. issuers and investors as framing, we respond to the questions within the Release. We have not responded to each question, opting instead to address broader issues and several specific questions as we deemed necessary.

Which Is Needed Most:
Revising the FPI Definition or Improved Understanding of Foreign Securities Regulations?

In seeking respondents' views on the direction for improvements to the FPI Regime, the Release – from our perspective – divides the six potential improvements into three primary categories: 1) revisions to the definition of FPIs; 2) an improved understanding of foreign (home market) regulatory systems; and 3) other considerations. These items are described below in the list of proposed improvements ("the List").

Revised Definition of FPI

1. **Revise FPI Definition**—Should the SEC revise the FPI definition in 17 CFR 230.405 (the "Definition"), which requires;
    i. the majority of an FPI's outstanding voting securities are directly or indirectly owned by non-U.S. citizens or residents;
    ii. the majority of its assets are located outside of the United States;
    iii. the majority of its executive officers or directors are not U.S. citizens or residents; and
    iv. the administration of its business is conducted principally outside of the United States.
2. **Revise FPI Definition to Require Trading Volume**—Should the SEC amend the Definition to require a minimum percentage of the trading volume of its voting securities occurs on markets outside of the United States, and if so, what percentage?

Improved Understanding of Foreign (Home Market) Regulatory Systems

3. **Require Major Foreign Exchange Listing**—Should the FPI Regime require FPIs to maintain a listing for its voting securities on a Major Foreign Exchange Listing ("MFEL") outside of the United States?
4. **Require SEC Assessment of Home Market Regulatory Systems**—Should the SEC thoroughly assess FPIs' home-market regulatory systems and/or in their adopted markets of incorporation?
5. **Allow SEC to Rely on Mutual Recognition**—Should the SEC rely upon mutual recognition with and among foreign market regulatory authorities as a means of assessing the regulatory systems of FPIs per #4 above?
6. **Allow SEC to Rely on Bilateral International Cooperation Agreements**—Should the SEC also or otherwise rely upon bilateral "international cooperation arrangements" with regulatory counterparts overseeing FPIs as a means of performing assessments described in #4 above?

Other

7. **Other Matters**—Are there other concerns the Commission should assess before or while it alters the FPI Regime?

We separated the key proposals in the Release into these primary categories and consider them in the sections which follow because we do not believe the options considered in the List are mutually exclusive to the others. For example, we do not believe the Commission can apply options three (MFELs), five (mutual recognition), or six (international cooperation) without already having addressed four (assessments of home market regulatory systems). Further, the existing definition of FPI – whether or not

a trading volume criteria is added – may be determinative as to what might define a foreign company, but – as the recent abuses highlight, it should not be determinative as to whether a foreign company seeking access to the U.S. capital market deserves the accommodations afforded under the FPI Regime without an assessment of its home-market regulatory systems.

Revising the FPI Definition

The abuses exploited by the CBIs provide ample evidence of a regulatory structure and definition that is neither adequately vetting FPIs nor fulfilling the Commission's investor protection mandate. The question is how to curtail such abuses. One approach being considered in the Release is to change the definition of an FPI, either through changing the existing characteristics or by adding a trading volume characteristic.

FPI Definition: Existing FPI Characteristics

Presently FPI's have four defining characteristics as per CFR 230.405:

1. the majority of an FPI's **outstanding voting securities** are directly or indirectly owned by non-U.S. citizens or residents;
2. the majority of its **assets** are located outside of the United States;
3. the majority of its **executive officers or directors** are not U.S. citizens or residents; and
4. the **administration of its business** is conducted principally outside of the United States.

While these are important factors that U.S. investors find useful and valuable to know, they are not characteristics which, alone, are sufficiently indicative of whether a foreign company is worthy of U.S. registration as an FPI, let alone worthy of the reporting and governance accommodations afforded by the FPI Regime – as compared to a U.S. company.

We believe the Commission must consider other questions and factors as the definition is not sufficient:

- What kind of issuers is/has the FPI Regime letting/let into the U.S. market?
- What reporting and governance requirements are those issuers subject to in their home countries?
- What enforcement regime are such issuers subject to in their home country foreign jurisdiction?
- Should FPIs warrant accommodations which may jeopardize the capital of U.S. investors?
- Why do FPIs warrant accommodations when U.S. registrants are subject to more significant listing requirements?
- Can U.S. investors readily access FPIs' securities in foreign markets given changes in market structure in recent decades?
- What is the risk vs. return trade-off being made by allowing FPIs into the U.S. market?

To answer these questions, we believe the Commission must understand the nature of the businesses being allowed to access the U.S. capital markets and the relative competitiveness issues the admittance creates for U.S. issuers; the transparency and governance requirements they are subject to in their home markets; and the structures mandated by foreign market authorities overseeing FPIs. ***Essentially, the question is: who are we letting into our market and is this good for U.S. investors, U.S. issuers, and the U.S. economy?***

We think the definition as it stands now does not include characteristics that answer the essential questions above or those we highlight at the outset of the letter. ***Accordingly, it seems the Commission has no choice but to research and understand the home-market regulatory system of FPIs and assess whether the home-market regulator requirements are sufficient to allow FPI's to gain entry to the U.S. capital markets.***

Heretofore, the Commission has implicitly relied on the home-market regulatory system and the FPI definition is not sufficient to make a determination of whether the company should be given FPI status.

FPI Definition: Adding a Trading Volume Characteristic

Item 2 in the List and Questions 12 to 33 in the Release focuses on factors that could define an FPI based on where its securities are traded and how much is traded in such foreign jurisdiction. The Release appears to recommend examination of trading volume that an FPI has in the United States versus in its home market or other trading venues. The purpose appears to be to determine whether it should be an FPI or is adhering to the FPI Regime.

The focus in the Release on where trading occurs seems based upon changes that have taken place in the FPI universe over the past 20 years.

- In 2003 nearly all FPIs were based, incorporated, operating, and a majority of their shares traded in the FPI's home market. Of these, 40% were headquartered in Canada and the United Kingdom.
- By 2023, more than 30% of FPIs were headquartered in China or Hong Kong, and nearly 44% were incorporated in the Cayman Islands or the British Virgin Islands. By comparison, Canadian and U.K. issuers accounted for just 15%. Moreover, nearly 76% of FPIs had more than half of their trading volume on U.S. regulated markets, with nearly two-thirds having 90% of their trading on U.S. markets.

CFA Institute sees trading volume as a valuable investment metric, one that helps investors understand the ease or difficulty they may face buying or selling securities of an issuer and the depth of the market. The Commission should require FPIs to disclose this information for the benefit of investors. It also should look to this data for anomalies that may indicate potential market abuse.

Despite being a valuable investment metric to understand the depth of the market in a security, however, we do not believe trading levels or trading locations provide definitive answers, clues, or defining characteristics about whether an issuer should be allowed to enter the U.S. capital markets. The metric does not indicate whether the interests of U.S. investors are being served or protected or whether such issuers warrant the FPI accommodations in transparency and governance that are not provided to U.S. issuers. Said differently, just because an investor understands where and how much a security is traded, it doesn't mean this data will help them evaluate the quality or price of the security.

For these reasons, we reject recommendations such as the one from the American Bar Association for a new class of FPI—the Restricted Foreign Private Issuer. While the rule would restrict issuers if 99% of their trading volume were in the United States at a given point during a calendar year, it seems likely to be gamed. More importantly, it would not get to the essence of the Commission's mandate on investor protection. Having 1% less trading volume in the U.S. would not ensure protection of U.S. investors.

Improved Understanding of Foreign (Home Market) Regulatory Systems

Major Foreign Exchange Listings – The SEC expresses an interest in using a Major Foreign Exchange Listing (MFEL) (Item #3 on the List above) to indirectly verify and certify that FPIs' home-market regulators provide appropriate investor protection. The CBIs have shown that the indirect/implicit means of verifying and certifying FPIs has led to abuses.

This requirement certainly could be made explicit, but as an explicit requirement there would need to be an assessment and definition of MFEL's. One consideration for the SEC is whether this is a worthwhile exercise as U.S. investors today are likely to as easily and readily acquire an interest in such FPIs in their home-country foreign markets – given they are a major foreign exchange listing.

While a rule requiring an MFEL listing or foreign trading market requirement may have raised alarms about problems with these FPIs,[20] it is unlikely that the lack of an MFEL would have highlighted what the CBIs were doing within the tripartite national structure they had created for themselves. It is imaginable that regulatory evasion would have occurred even if the CBIs had securities listed on MFELs in the same way they likely would have sought ways to evade FPI Regime rules even if their home-market regulators were signatories to mutual recognition or bilateral cooperative agreements.

To grasp what was happening, how it was accomplished, and the potential abuses it would create would have required a thorough review and understanding of all the relevant markets. If FPIs are not required to adhere to such requirements in their home markets where the issuers have greater agency, the regulation has proximity, and the regulators have direct legal authority, it is reasonable to expect they would seek to evade such requirements in other markets if they could, even if they have to use a third nation to intermediate the evasion.

SEC Assessment of Home Market Regulatory Systems – Item 4 in the List – a requirement that the SEC assess the home market regulatory system – seems the most logical and technically accurate path to protect U.S. investors' interests and assess the degree of accommodations really being offered to FPIs versus U.S. issuers. This method is, in fact, the method currently used, albeit without any assessment of the home market regulatory system.

The Release describes concerns about the economic and workforce viability of such prophylactic assessments. It also suggests the Commission knows it could not launch such an effort because of the magnitude of the demand for human and financial resources at a time when the Commission already faces budgetary pressures to fulfill its domestic mission.

Further, the magnitude of the global effort to enable FPIs to list in the United States would go beyond an initial assessment of each market, itself a monumental task. To make this effort valuable to U.S. investors, the Commission would have to provide ongoing reviews and assessments of those regulatory authorities and systems. Beyond the domestic budgetary concerns this would raise, the Commission would no doubt face resistance from authorities in the very markets most in need of review, as well.

It is important to note that the SEC did not perform such home market regulatory assessments, even though it knowingly granted FPI status to CBIs in the past without the insights into home-market

[20] The foreign private issuer maintains a listing of the subject class of securities on one or two exchanges in a non-U.S. jurisdiction(s) that comprise more than 55% of its worldwide trading volume (its "Primary Trading Market")… the registrant must have maintained a listing of the subject class of securities in the registrant's primary trading market for at least the 12 months preceding deregistration.

regulation it knew were needed to properly vet them. If this isn't the explicit reason for the Release, we believe it should have been.

In the CBI cases, the Commission opted against using its authority to reject applications where the issuers lacked track records of transparency and good governance, and where their home-market regulators lacked track records of enforcing investor-first rules. The SEC has the authority to make such assessments when they see the potential for abuses. We believe it must be as willing to use that authority when it comes to potential FPIs as when it comes to potential domestic issuers.

The Release asks whether investor expectations might induce FPIs to seek similar governance and transparency regulations in their home markets. We do not believe this is likely, particularly in markets without a history of putting investors' interests first, either in regulation or in enforcement. In fact, the leniency in the current FPI Regime appears to have created negative incentives for certain FPIs rather than encouraging them to higher standards of integrity.

We do not believe the expectations of U.S. investors have demonstrably produced or encouraged upgrades in regulatory standards for issuers or foreign authorities in other markets. To the contrary, some markets have maintained rules preventing non-resident investors from exercising their rights as owners.[21]

To promote the investor protection mandated of the Commission, we believe the Commission must either have a comprehensive understanding of the FPI's home-market regulator before granting FPI status to any entity or at least have the ability to require such assessments when it sees abuses emerging, Alternatively, it must have an alternative approach to ensuring U.S. investors have the information they expect from foreign issuers.

Allow Mutual Recognition/Bilateral Agreements for Home-Market Assessments? – We believe direct and ongoing communication amongst the SEC and other regulatory authorities globally would be valuable for a variety of reasons. It can provide for the sharing and swapping of best regulatory practices that could benefit all regulators globally. Likewise, bilateral arrangements can be helpful to the SEC when attempting to enforce amended FPI Regime rules.

Nevertheless, we do not believe either mutual recognition or bilateral arrangements will prevent certain regulatory authorities from reneging on their formal or informal obligations to adhere to agreed-upon standards. These agreements are therefore inadequate to protect U.S. investors.

What the Release Doesn't Ask: Should the SEC Grant FPIs Disclosure and Governance Exemptions?
The Release and the List do not ask respondents to consider whether or not granting reporting and governance exemptions to FPIs is appropriate. Nor does it ask what disclosures or governance requirements are acceptable to exempt. Rather, its focus is only on the FPI definition and an understanding of home country regulations.

We believe these reporting and governance exemptions are the basic characteristics or tenants of investor protection and of any FPI Regime. They need to be the focus of the Commission's attention, particularly in light of the market abuse of the CBIs.

[21] See footnote 83 in the Release which describes potential restrictions imposed on non-resident investors by Chinese authorities.

The Release suggests that these reporting and governance accommodations are granted because the existing regulatory provisions in FPIs' home markets are deemed sufficient to supplant those required under domestic U.S. regulation[22] Yet the SEC does not have the answer to this question and they assert they do not have the resources to pursue the answer to that question for all the various jurisdictions of those seeking FPI status. The SEC is thus communicating that they do not have enough resources to police the entrants to our capital markets.

Based on the demographics of FPIs reported in the Release from two decades ago, it appears exemptions in those cases were based on mutual recognition (without mutual verification) of specific foreign market authorities' practices and enforcement of rules which were deemed largely consistent with the FPI Regime. We did not believe that was the case then, and our skepticism is even greater now.

What The SEC Should Do and Why

As noted multiple times in this letter, CFA Institute has not supported the accommodations provided to FPIs under the FPI Regime and it has been our long-standing position that foreign companies should be required to follow U.S. regulatory requirements in the same manner as domestic registrants.

Using U.S. regulation as the foundation for FPI regulation, we would consider granting exemptions to non-resident Large Caps and other FPIs in consideration of certain transparency and governance structures mandated in their home markets. For example, these might be useful to address the use of unified board structures in the United States while home-market statutes require dual-board structures. Nevertheless, we urge caution granting such exemptions, which the Commission should grant only on a nation-by-nation and FPI-by-FPI basis, and then only if their home-market rules correspond closely with U.S. regulations and the FPIs are in compliance with those rules.

As the Commission considers revisions to the FPI Regime we urge it to consider the experiences and abuses which led to this Release before granting exemptions to FPIs and market authorities from unverified markets. FPI status should be granted solely on the basis of evidence of adherence to high regulatory standards. Large Caps from nations with strong regulatory systems would be the first FPIs the SEC should consider granting exemptions to. Beyond this limited number of companies and markets, however, the SEC should refrain from granting any form of exemption or accommodation unless the specific FPIs and their home-market regulatory authorities have shown a history of practicing and enforcing high regulatory and transparency standards.

All other FPIs seeking status should have to register with the SEC and adhere to all regulations imposed on U.S.-domiciled and registrant companies. We believe these changes would protect U.S. investors by enhancing their knowledge of the issuers and the securities.

We summarize our position as follows:

- The SEC would adopt the U.S. regulatory structure as applied to domestic U.S. issuers as the foundation for all FPIs.
- FPIs from markets with established regulatory systems that promote good corporate governance, and transparency would be eligible for select and limited exemptions and accommodations to avoid duplication or conflict with domestic company law requirements.

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[22] See **Appendix** for a tabular re-presentation of accommodations granted to FPIs in juxtaposition with the domestic (U.S.)-issuer requirements that FPIs do not have to fulfill.

- FPIs from markets without these qualities would not be eligible to receive exemptions or accommodations until they prove adherence to these standards.
- The SEC would reject applications of any FPI unwilling to adhere to these standards and regulations.
- The SEC would stand ready to delist any FPI that does not adhere to these standards and regulations.

In short, we believe the SEC must put its obligations to U.S. investors and U.S. issuers ahead of any concerns for listing FPIs.

Will Changing the Requirements Cause FPIs to Go Elsewhere?

We do not believe the SEC should fret about losing established and diligent FPIs due to changes in FPIs' ongoing obligations under a revised FPI Regime. FPIs such as Large Caps have a proven history of meeting obligations under the FPI Regime. Depending upon how revisions are made, we believe they should not create significant new burdens for this group of FPIs.

We strongly believe that as long as U.S. policymakers retain and continue to require strong transparency and governance principles on securities issuers that there is very little risk that global securities issuers will conclude any non-U.S. market is a better place for them to list their securities. The transparency-first approach to U.S. regulation has created capital markets whose capitalization is nearly as great as the capitalization of all other markets in the world, combined. The greater transparency and market integrity of the U.S. market continues to reduce the cost of capital investors charge issuers. FPIs will continue to migrate to the United States for capital so long as these principles and qualities are maintained. In turn, this approach would reinforce that the Commission must focus the attention of the FPI Regime on the interests of U.S. investors and not on how current or aspiring FPIs feel about potentially tighter regulation.

The Commission's primary concern in regard to FPI listings should be those FPIs that do not have disclosure and governance mandates in their home jurisdictions or in the jurisdictions of their reincorporation or non-U.S. securities listings. By comparison, the Commission has *de facto* verified and certified market authorities for Large Caps and SMEs in Great Britain, the European Union, Australia/New Zealand, Singapore, and Canada. It should be able to monitor these markets without great cost or effort unless there are significant changes.

Regardless, if FPIs do not wish to adhere to the FPI Regime's amended rules, we do not believe the SEC should make accommodations to retain their listing on U.S. securities exchanges. Rather, they should deny them FPI status and the ability to sell securities to U.S. investors.

CONCLUSION

As we note at the outset of this letter, we do not believe a revision to the definition of an FPI should be the key concern of the Commission. At the same time, we believe the FPI Regime should be amended to impose disclosure and governance requirements on FPIs that are on par with what the SEC currently demands from domestic issuers. Thank you for your consideration of our views and perspectives. If you would like to discuss the matters, please feel free to contact us at sandra.peters@cfainstitute.org.

Sincerely,

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CFA Institute

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APPENDIX

COMPARISON OF FPI AND DOMESTIC ISSUER REQUIREMENTS

FPI REQUIREMENTS	DOMESTIC ISSUER REQUIREMENTS
1. **Annual Report Filing Timing** – Must file annual reports on Form 20-F within four months of fiscal year-end.	Must file annual reports on Form 10-within 60, 75, or 90 days of fiscal year-end.
2. **Quarterly Reports** – Not required to file quarterly reports.	Must file quarterly reports on Form 10-Q.
3. **Accounting Principles** – May present financial statements using (1) IFRS from the IASB, (2) U.S. GAAP, or (3) home country GAAP reconciled to U.S. GAAP.	Must use U.S. GAAP.
4. **Section 16 Requirements** – Exempt from obligations under section 16, relating to large shareowners and insiders, and sections 14a (proxies), 14b (forwarding of proxies to owners), 14c (annual reports and other information provided to investors) and 14f (change in majority of directors).	Must adhere to section 16 and sections 14(a), 14(b), 14(c) and 14(f).
5. **Shareholder Votes** – Exempt from proxy requirements that apply to domestic issuers and that specify procedures and required documentation for soliciting shareholder votes.	Must adhere to Regulation 14A.
6. **Say on Pay** – Exempt from say-on-pay rules that require domestic issuers to periodically enable shareholders to make certain advisory votes.	Must give shareowners a precatory vote on executive compensation plans.
7. **Current Reports** – Furnish current reports on Form 6-K promptly after the information in the report is made public.	Must file or furnish current reports on Form 8-K, either within four business days after event or as specified in Form 8-K.
8. **Current Reports** – Form 6-K for FPIs are limited to disclosures that a reporting FPI already: (1) makes or must make public pursuant to the domicile's law or where it is incorporated or organized, (2) files or must file with a stock exchange where its securities are traded and were made public by that exchange, or (3) distributes or must get to its shareowners.	Must make 8-K disclosures on all matters of material importance to the company.
9. **Updating of Financial Statements** – Interim financial statements included in a registration statement need not be updated as soon for FPIs as for domestic issuers. The FPI's registration statement dated more than nine months after the end of the last audited financial year requires consolidated interim financial statements, which may be unaudited, covering at least the first six months of the subsequent financial year.	A registration statement generally including interim financial statements dated no more than 134 days before the effective date of a registration statement.
10. **SOX Certifications** – Sarbanes-Oxley certifications are only required from FPIs in their annual filings.	Domestic issuers must include such certifications on a quarterly basis.
11. **Regulation Fair Disclosure** – FPIs are not subject to Regulation Fair Disclosure, which addresses the selective disclosure of material nonpublic information.	Reg FD applies to domestic registrants.
12. **Regulation G and Non-GAAP Measures** – Non-GAAP financial measures disclosed by FPIs are exempt from compliance with Reg G if certain conditions are met.	Domestic companies use of non-GAAP metrics must provide the most directly comparable GAAP metric and reconcile the two metrics.
13. **Non-GAAP Measures Permitted** – Permitted to disclose non-GAAP financial measures in certain conditions.	Prohibited under 17 CFR 229.10(e)(1)(ii) from disclosure of certain non-GAAP financial measures.
14. **Regulation Blackout Trading Restrictions** – Exempt from Regulation Blackout Trading Restrictions under certain conditions.	Subject to Regulation Blackout Trading Restrictions.
15. **Annual Report Requirements** – FPI annual report requirements include some of the following differences: • Distinct disclosures for descriptions of FPI's business, material developments, legal proceedings, liquidity and capital resources, and results of operations; • No requirement to disclose material changes to board nomination procedures or recent sales of unregistered securities;	Standard disclosures about business and material developments. Must disclose material changes to board nomination processes and sales of unregistered securities.

• Absent a requirement FPI's home country, FPIs do not have to disclose directors' ages or dates of birth or disclose certain executive compensation elements, including individualized compensation details; and • Only the registrant on 20-F FPIs must sign annual report, whereas domestic annual reports must be signed by the registrant, principal executive officer, principal financial officer, principal accounting officer, and a majority of the board.	Must disclose directors' ages. dates of birth and individualized compensation elements. CEO and CFO must sign annual report along with majority of the Board.
16. **Registration Statements –** May file Securities Act registration on Forms F-1, F-3, and F-4.	Must register using Forms S-1, S-3, and S-4.
17. **Registration of Securities** –May register securities on Form 20-F.	Must register using Form 10 pursuant to section 12(b) or (g) of the Exchange Act.
18. **Exempt Securities** – Exempt from section 12(g) registration if either, re: Rule 12g3 2(a), has fewer than 300 recordholders that are resident in the United States, or, pursuant to Rule 12g3-2(b), satisfies foreign listing and electronic publishing conditions and does not register a class of securities under section 12 or incur a section 15(d) reporting obligation.	
19. **Foreign Offerings** – May rely upon Securities Act registration exclusion for offerings and securities sales occurring outside the United States, including a related safe harbor under 17 CFR 230.135e pertaining to press conferences and press releases issued in connection with such offerings.	
20. **Section 12(g) Registration Termination** – Can terminate section 12(g) registration if U.S. trading volume falls below a certain level, or if the FPI has fewer than 300 recordholders resident in the United States,	May only terminate section 12(g) registrations if it has fewer than 300 recordholders of such class of securities.
21. **Section 15(d) Reporting Obligations** – Can terminate section 15(d) reporting obligations.	May only suspend duty to file reports under section 15(d).
22. **Materiality** – Not subject to US and SEC materiality standards.	Subject to US and SEC materiality standards.
23. **Enforcement** – Not subject to meaningful enforcement in certain countries.	Subject to meaningful enforcement.