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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, and 249

[Release Nos. 33-11376; 34-103176; File No. S7-2025-01]

RIN 3235-AN35

Concept Release on Foreign Private Issuer Eligibility

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing this concept release to solicit comments on the definition of a foreign private issuer ("FPI"). There have been several developments within the FPI population since the Commission last conducted a broad review of reporting FPIs and the eligibility criteria for FPI status. These developments have prompted us to consider whether the current FPI definition should be revised so that it better represents the issuers that the Commission intended to benefit from current FPI accommodations while continuing to protect investors and promote capital formation.

DATES: Comments should be received on or before September 8, 2025.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/submitcomments.htm); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-2025-01 on the subject line.

Paper Comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-2025-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (https://www.sec.gov/rules/proposed.shtml). All comments received will be posted without change. Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. Do not include personally identifiable information in submissions; you should submit only information that you wish to make available publicly. The Commission may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

FOR FURTHER INFORMATION CONTACT: Kelsey Glover, Special Counsel, or Kateryna Kuntsevich, Special Counsel, in the Office of International Corporate Finance, Division of Corporation Finance, at (202) 551-3450, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

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I. Introduction

The Commission has long recognized that foreign issuers[1] face unique challenges in accessing U.S. capital markets and over the years has sought to provide such issuers with regulatory flexibilities[2] that preserve access for U.S. investors to such issuers' securities while maintaining appropriate investor protections. Foreign issuers that qualify for FPI status[3] under the Federal securities laws benefit from accommodations that provide full or partial relief from requirements for domestic issuers. When the Commission adopted the regulatory framework governing FPIs, it did so with a recognition that foreign issuers were subject to different circumstances than domestic issuers due to the laws and practices imposed by their home country jurisdictions and, as a result, certain accommodations were necessary, and that FPIs' securities

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1 *See infra* section II.A for the definition of a "foreign issuer."

2 *See* Release No. 34-323 (July 15, 1935) ("An endeavor has been made to adapt the requirements for domestic issuers to the peculiar circumstances of foreign issuers. In view of the disparity between the laws and practices existing in the several countries it was necessary to introduce great flexibility in the requirements."), Release No. 34-324 (July 15, 1935), Release No. 34-325 (July 15, 1935), and Release No. 34-412 (Nov. 6, 1935) (together, the "1935 Releases"); *Registration of Foreign Securities,* Release No. 34-7746 (Nov. 16, 1965) [30 FR 14737 (Nov. 27, 1965)] (describing an in-depth study of foreign regulatory requirements that the Commission undertook prior to adopting various foreign issuer accommodations, including an assessment of the extent of the trading market for foreign securities in the United States, the disclosure and reporting requirements and practices in many of the countries whose issuers have securities traded in the United States, the requirements of many leading foreign stock exchanges, and the nature of the information presently furnished to the Commission and noting that "the Commission will continue to observe developments in foreign disclosure practices to determine whether the proposed rules and forms should be modified in the future"); *Rules, Registration and Annual Report Form for Foreign Private Issuers*, Release No. 34-16371 (Nov. 29, 1979) [44 FR 70132 (Dec. 6, 1979)] ("Form 20-F Adopting Release") ("[T]he Commission recognizes that there are differences in various national laws and businesses and accounting customs which the Commission should take into account when assessing disclosure requirements for foreign issuers."); *Foreign Issuer Reporting Enhancements,* Release No. 33-8900 (Feb. 29, 2008) [73 FR 13403, 13405 (Mar. 12, 2008)] ("[W]e acknowledged that differences in the national laws and accounting regulations applicable to foreign private issuers should be considered when establishing disclosure requirements for foreign private issuers. . . . Foreign private issuers are subject to different legal and regulatory requirements in their home jurisdictions, and as a result frequently follow different corporate governance practices from domestic companies.").

3 A "foreign private issuer" is a foreign issuer other than a foreign government, except for an issuer that as of the last business day of its most recently completed second fiscal quarter has more than 50% of its outstanding voting securities directly or indirectly held of record by U.S. residents and meets any of the following: a majority of its executive officers or directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States. 17 CFR 230.405; 17 CFR 240.3b-4.

would be traded in foreign markets.[4] Updates to the FPI accommodations since their adoption have reflected an understanding that, while legal and regulatory requirements differ across home country jurisdictions, most eligible FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions.[5]

A recent broad review by the Commission staff of FPIs that are subject to reporting obligations under 15 U.S.C. 78m(a) ("section 13(a)") or 15 U.S.C. 78o(d) ("section 15(d)") of the Securities Exchange Act of 1934 (the "Exchange Act")[6] shows significant changes in that population since 2003.[7] In particular, the composition of home country jurisdictions of FPIs that file annual reports on Form 20-F ("20-F FPIs") has shifted dramatically in recent decades. The home country jurisdictions represented by current FPIs that file annual reports on either Form

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[4] *See* Release No. 34-323, *supra* note 2; Release No. 34-412, *supra* note 2 (concerning foreign issuer exemptions from reporting requirements under 15 U.S.C. 78p ("section 16") of the Exchange Act, the Commission noted that "comparatively few foreign corporations have stock listed on American exchanges, and even in such cases the principal market is rarely in this country.").

[5] *See, e.g., supra* note 2; *Adoption of Rules Relating to Foreign Securities*, Release No. 34-8066 (Apr. 28, 1967) [32 FR 7845 (May 30, 1967)] ("[T]o assure that American investors would have available adequate information about [foreign] issuers, the Commission made an extensive study of the disclosure and reporting requirements and practices in many of the countries whose issuers have securities traded in the United States, and the requirements of many leading foreign stock exchanges . . . the Commission noted the improvement in the reporting of financial information by foreign issuers, resulting from changes in foreign corporate laws, stock exchange requirements, and voluntary disclosure by the companies themselves.").

[6] 15 U.S.C. 78a *et seq*.

[7] *See infra* section III for further discussion. *See also* Evan Avila and Mattias Nilsson, *Trends in the Foreign Private Issuer Population 2003-2023: A Descriptive Analysis of Issuers Filing Annual Reports on Form 20-F* (Dec. 2024) (the "FPI Trends White Paper"), available at https://www.sec.gov/files/dera_wp_fpi-trends-2412.pdf). The data used and analysis provided by the Commission staff in this release are consistent with the data used and analysis provided in the FPI Trends White Paper.

20-F or Form 40-F[8] ("reporting FPIs")[9] have varying levels of disclosure requirements, including some that rely on the FPI regulatory framework in the United States to be the primary set of regulations governing their issuers.[10] Additionally, the majority of 20-F FPIs today have their equity securities almost exclusively traded in U.S. capital markets.[11] Because the FPI population has changed such that it may no longer reflect the issuers that the Commission intended to benefit from current FPI accommodations, we are soliciting comments on whether the current FPI definition should be amended.

We begin this concept release with an overview of the FPI definition and regulatory framework. We then outline some of the recent changes that have been observed in the FPI population. We next discuss potential concerns these developments raise and solicit comments on whether and how the current FPI definition might be revised to address those concerns.[12]

While we pose a number of general and specific questions throughout this release, we also welcome comments on any other aspects of the current FPI definition or our review of the FPI population discussed in this release, and we particularly welcome comments and data on any costs, burdens, or benefits that may result from possible regulatory responses identified in this release or otherwise proposed by commenters. Interested persons are also invited to comment on

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[8] Form 40-F is filed by Canadian issuers that are eligible for and elect to take advantage of the Multijurisdictional Disclosure System ("MJDS"). Under the MJDS, eligible Canadian issuers may satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities. *See Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers*, Release No. 33-6902 (June 21, 1991) [56 FR 30036 (July 1, 1991)] ("MJDS Adopting Release").

[9] Some FPIs voluntarily file their annual reports on Form 10-K instead of Form 20-F or Form 40-F. Those FPIs may take advantage of some, but not all, of the FPI accommodations. *See infra* section II.B for more information about the FPI accommodations.

[10] *See infra* section IV.A for further discussion.

[11] *See infra* sections III and IV.A for further discussion.

[12] The FPI definition was last amended in 1999. *See supra* note 3 and *infra* section II.A for more detail.

whether alternative approaches, or a combination of approaches, would better address any potential concerns associated with the current FPI definition.

II. The Current FPI Definition and Regulatory Accommodations

A. History of the FPI Definition and Regulatory Framework

The Commission established the initial regulatory framework for foreign issuers in 1935.[13] That framework has continued to evolve in order to preserve appropriate investor protections while addressing FPIs' needs for certain accommodations from the Commission's rules to reduce burdens on those issuers arising from duplicative or conflicting domestic and foreign disclosure requirements.[14] The initial regulatory framework did not include a definition for FPIs and instead applied to (1) a national of a foreign country other than a North American country or Cuba, (2) a national of a North American country or Cuba whose securities were guaranteed by any foreign government (only for the permanent registration of bonds or other evidence of indebtedness), or (3) any corporation or unincorporated association, foreign or domestic, which is directly or indirectly owned or controlled by any foreign government.[15] The 1935 Releases also included a broad reference to foreign issuers in the context of exempting them from section 16 beneficial ownership reporting requirements,[16] but did not adopt a specific definition of a "foreign issuer."[17]

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[13] *See* the 1935 Releases, *supra* note 2.

[14] *See supra* note 2; *supra* note 5.

[15] *See* the 1935 Releases, *supra* note 2.

[16] Section 16 generally requires, among other things, that specified officers, directors and principal security holders of an issuer with a class of equity securities registered under 15 U.S.C. 78l ("section 12") of the Exchange Act report initial beneficial ownership and changes in ownership of certain issuer securities and subjects them to disgorgement of profit realized from transactions in these securities that occur within a period of less than six months.

[17] *See* the 1935 Releases, *supra* note 2.

The Commission established the foundation of the current FPI definition in 1983 when it adopted a bifurcated test to determine whether a foreign issuer is an "essentially U.S. issuer" depending upon its percentage of U.S. ownership and the location of its business operations.[18] The Commission adopted further amendments in 1999 to base the U.S. ownership portion of the definition more closely on the percentage of securities beneficially owned by U.S. residents, rather than record ownership.[19] The current definitions of "foreign issuer" and "foreign private issuer" are contained in 17 CFR 230.405 ("Rule 405") of the Securities Act of 1933 (the "Securities Act")[20] and 17 CFR 240.3b-4 ("Rule 3b-4") of the Exchange Act.

A "foreign issuer" is any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.[21] A foreign issuer that has 50 percent or less of its outstanding voting securities held of record directly or indirectly by U.S. residents would qualify for FPI status under the "shareholder test." A foreign issuer with more than 50 percent of its outstanding voting securities held by U.S. residents would qualify for FPI status under the "business contacts test" if it has none of the following contacts with the United States: (1) a majority of its executive officers or directors are U.S. citizens or residents; (2) more than 50 percent of its assets are located in the United States; or (3) its business is administered principally in the United States.[22] For a

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[18] *Foreign Securities*, Release No. 33-6493 (Oct. 6, 1983) [48 FR 46736 (Oct. 14, 1983)] ("1983 Release").

[19] *International Disclosure Standards*, Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)] ("1999 International Disclosure Standards Release"). The 1999 amendments, in effect, changed the test of whether more than 50% of an issuer's outstanding voting securities are held by residents of the United States from a record ownership test to one that more closely reflects the beneficial ownership of the issuer's securities.

[20] 15 U.S.C. 77a *et seq*.

[21] 17 CFR 230.405; 17 CFR 240.3b-4.

[22] *Id*.

reporting issuer,[23] FPI eligibility is determined annually as of the end of a foreign issuer's second fiscal quarter. A foreign issuer filing an initial registration statement under the Securities Act or Exchange Act determines its FPI status as of a date within 30 days prior to filing.[24]

The Commission has sought to balance the information needs of U.S. investors with a recognition of the benefit to those investors of having opportunities for investment in foreign securities[25]—a benefit that could be diminished without accommodations that take into account the disclosure requirements, accounting standards, and other regulatory and legal requirements that the FPI is subject to in its home country.[26] At the time the current FPI accommodations were adopted, the Commission's understanding was that most eligible FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions, and that FPIs' securities would be traded in foreign markets.[27] As global markets evolve, the Commission periodically assesses whether the FPI regulatory framework continues to appropriately serve U.S. investors and U.S. capital markets, with its most recent broad review of the framework conducted in 2008.[28]

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[23] As used in this release, the term "reporting issuer" refers to any issuer that is subject to Exchange Act section 13(a) or 15(d) reporting obligations. *See supra* section I for the definition of a "reporting FPI."

[24] 17 CFR 230.405; 17 CFR 240.3b-4.

[25] 1999 International Disclosure Standards Release, *supra* note 19, at 53901 ("[W]e historically have sought to balance the information needs of investors with the public interest served by opportunities to invest in a variety of securities, including foreign securities.").

[26] *See supra* note 2.

[27] *See supra* note 4; *supra* note 5.

[28] *See* Form 20-F Adopting Release, *supra* note 2; *Foreign Issuer Reporting Enhancements,* Release No. 33-8959 (Sept. 23, 2008) [73 FR 58300 (Oct. 6, 2008)].

B. Summary of Current FPI Accommodations

Over the years, the Commission has implemented a number of specific accommodations from which eligible FPIs may currently benefit as compared to domestic issuers, including, for example, the following:

- 20-F FPIs have until four months after the fiscal year-end to file annual reports on Form 20-F,[29] whereas annual reports on Form 10-K must be filed within 60, 75, or 90 days after the fiscal year-end.[30]
- Reporting FPIs are not required to file quarterly reports, whereas domestic issuers must file quarterly reports on Form 10-Q.[31]
- FPIs may present their financial statements using (1) International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), (2) generally accepted accounting principles in the United States ("U.S. GAAP"), or (3) a comprehensive set of accounting principles other than U.S. GAAP and IFRS as issued by the IASB ("home country GAAP") with a reconciliation to U.S. GAAP, whereas domestic issuers are required to use U.S. GAAP.[32]
- FPIs are exempt from obligations under section 16.[33]

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[29] General Instruction A.(b) to Form 20-F. Canadian FPIs that file annual reports on Form 40-F under the MJDS ("MJDS issuers") must file their reports "on the same day the information included therein is due to be filed with any securities commission or equivalent regulatory authority in Canada." *See* General Instruction D.(3) to Form 40-F.

[30] General Instruction A.(2) to Form 10-K.

[31] 17 CFR 240.13a-13.

[32] 17 CFR 210.4-01(a); Item 17(c) of Form 20-F. FPIs presenting their financial statements in accordance with IFRS as issued by the IASB do not need to provide a reconciliation to U.S. GAAP. However, the use of IFRS not as issued by the IASB is considered equivalent to home country GAAP and must be reconciled to U.S. GAAP.

[33] 17 CFR 240.3a12-3(b). *See supra* note 16; 15 U.S.C. 78p.

- FPIs are exempt from proxy requirements that apply to domestic issuers and that specify procedures and required documentation for soliciting shareholder votes.[34]
- FPIs are exempt from say-on-pay rules that require domestic issuers to periodically enable shareholders to make certain advisory votes.[35]
- Reporting FPIs furnish current reports on Form 6-K promptly after the information in the report is made public[36] rather than file or furnish current reports on Form 8-K, either within four business days after occurrence of the event or as otherwise specified in Form 8-K, as domestic issuers are required to do.[37] The current Form 6-K requirements for reporting FPIs are limited to the disclosures that a reporting FPI already (1) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (2) files or is required to file with a stock exchange on which its securities are traded and that were made public by that exchange, or (3) distributes or is required to distribute to its security holders.[38]
- Interim financial statements included in a registration statement are not required to be updated as soon for FPIs as for domestic issuers. The registration statement of an FPI dated more than nine months after the end of the last audited financial year requires

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[34] 17 CFR 240.3a12-3(b); Regulation 14A (17 CFR 240.14a-1 through 17 CFR 240.14b-2). FPIs also are not subject to information statement requirements. *See* Regulation 14C (17 CFR 240.14c-1 through 17 CFR 240.14c-101).

[35] 17 CFR 240.3a12-3(b). *See Shareholder Approval of Executive Compensation and Golden Parachute Compensation*, Release No. 33-9178 (Jan. 25, 2011) [76 FR 6010 (Feb. 2, 2011)], for more information about the say-on-pay and frequency rules that apply to domestic issuers.

[36] 17 CFR 240.13a-16; 17 CFR 240.15d-16.

[37] 17 CFR 240.13a-11; 17 CFR 240.15d-11.

[38] General Instruction A to Form 6-K.

consolidated interim financial statements, which may be unaudited, covering at least the first six months of the subsequent financial year.[39] In contrast, a registration statement of a domestic issuer generally requires interim financial statements dated no more than 134 days[40] before the effective date of a registration statement.[41]

- Certifications mandated by the Sarbanes-Oxley Act of 2002[42] are only required from reporting FPIs in their annual filings, whereas domestic issuers must also include such certifications on a quarterly basis.[43]
- FPIs are not subject to Regulation Fair Disclosure,[44] which addresses the selective disclosure of material nonpublic information.[45]
- Non-GAAP financial measures disclosed by FPIs are exempt from compliance with Regulation G[46] if certain conditions are met.[47]

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[39] Item 8.A.5 of Form 20-F.

[40] For large accelerated filers and accelerated filers, a registration statement requires financial statements dated no more than 129 days before the effective date of a registration statement. 17 CFR 210.3-12; 17 CFR 210.8-08.

[41] The requirements for the age of annual financial statements of FPIs and domestic issuers are more similar than those for interim financial statements. For an FPI, a registration statement may become effective with audited annual financial statements as old as 15 months, except in certain circumstances. Item 8.A.4. of Form 20-F. For a domestic issuer, a registration statement may become effective with audited annual financial statements as old as one year and 45 days to 90 days, depending on certain circumstances. 17 CFR 210.3-12.

[42] 15 U.S.C. 7214 (as amended by Pub. L. 116-222).

[43] 17 CFR 240.3a-14; 17 CFR 240.15d-14; *Certification of Disclosure in Companies' Quarterly and Annual Reports*, Release No. 33-8124 (Aug. 29, 2002) [67 FR 57276 (Sept. 9, 2002)].

[44] 17 CFR 243.101(b).

[45] 17 CFR part 243. Regulation Fair Disclosure aims to prevent selective disclosure of material nonpublic information to market professionals and certain shareholders by requiring domestic issuers to disclose such information to the public simultaneously or promptly.

[46] 17 CFR part 244.

[47] 17 CFR 244.100(c). Regulation G does not apply to a non-GAAP financial measure disclosed by FPIs whose securities are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States provided that the non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with U.S. GAAP, and the disclosure is made by or on behalf of the FPI outside the United States, or is included in a written communication that is released by or on behalf of the registrant outside the United States.

- Non-GAAP financial measures disclosed by FPIs that would otherwise be prohibited under 17 CFR 229.10(e)(1)(ii) are permitted in a filing if certain conditions are met.[48]

- FPIs are exempt from compliance with Regulation Blackout Trading Restriction if certain conditions are met.[49]

- The disclosure requirements for annual reports filed by reporting FPIs differ from the requirements for annual reports filed by domestic issuers.[50] In regard to 20-F FPIs, some of these differences include:

    - Distinct disclosure requirements pertaining to descriptions of the issuer's business, material developments, legal proceedings, liquidity and capital resources, and results of operations;[51]

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[48] Note to paragraph (e) of 17 CFR 229.10. To be permitted in a filing of an FPI, such non-GAAP financial measures must relate to the generally accepted accounting principles ("GAAP") used in the registrant's primary financial statements included in its filing with the Commission, be required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in the registrant's primary financial statements, and be included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated, or organized or for distribution to its security holders.

[49] 17 CFR part 245. Regulation Blackout Trading Restriction is a set of rules adopted pursuant to the Sarbanes-Oxley Act. It relates to restrictions on insider trades during pension fund blackout periods and applies to the directors and officers of FPIs where 50% or more of the participants or beneficiaries located in the United States in individual account plans maintained by the FPI are subject to a temporary trading suspension in the FPI's equity securities, and the affected participants and beneficiaries represent an appreciable portion of the FPI's worldwide employees.

[50] The requirements for FPI annual reports on Form 20-F were revised in 1999 to conform to the international disclosure standards endorsed by the International Organization of Securities Commissions ("IOSCO") in Sept. 1998. *See International Disclosure Standards*, Release No. 33-7637 (Sept. 28, 1999) [64 FR 61962 (Nov. 15, 1999)].

[51] These distinctions may not result in actual differences in issuer disclosure. For example, 17 CFR 229.101 requires domestic issuers to disclose "information material to an understanding of the general development of the business" while Item 4.A.4 of Form 20-F requires disclosure regarding "important events in the development of the company's business." As another example, when disclosing legal proceedings, domestic issuers are required to provide specific details as set forth in 17 CFR 229.103 including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceedings, and the relief sought, whereas 20-F FPIs are subject to a more general requirement to "provide information" pertaining to legal proceedings under Item 8.A.7 of Form 20-F.

- No specific requirement that 20-F FPIs disclose material changes to board nomination procedures or recent sales of unregistered securities;
- Absent a separate disclosure requirement in the FPI's home country, 20-F FPIs are not required to disclose the age or date of birth of directors, or make certain executive compensation disclosures including individualized executive compensation details; and
- Only the 20-F FPI registrant is required to sign the 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.

- FPIs may file Securities Act registration statements on Forms F-1, F-3, and F-4,[52] which differ in structure and disclosure requirements from the corresponding Forms S-1, S-3, and S-4[53] used by domestic issuers to register securities offerings.
- FPIs may register securities on Form 20-F,[54] which differs in structure and disclosure requirements from the corresponding Form 10[55] used by domestic issuers, pursuant to section 12(b) or (g) of the Exchange Act.[56]

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[52] 17 CFR 239.31; 17 CFR 239.33; 17 CFR 239.34.

[53] 17 CFR 239.11; 17 CFR 239.13; 17 CFR 239.25.

[54] 17 CFR 249.220f.

[55] 17 CFR 249.210.

[56] *See* General Instruction A.(a) to Form 20-F. MJDS issuers may also register securities on Form 40-F pursuant to section 12 of the Exchange Act. *See* General Instruction A.(2) to Form 40-F; MJDS Adopting Release *supra* note 8.

- An FPI is exempt from section 12(g) registration[57] if either, pursuant to Rule 12g3-2(a),[58] it has fewer than 300 recordholders that are resident in the United States as of its most recent fiscal year-end, or, pursuant to Rule 12g3-2(b),[59] the issuer 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.
- FPIs may rely upon an exclusion from Securities Act registration for certain offerings and sales of securities that occur 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.[60]
- An FPI can terminate its section 12(g) registration if its U.S. trading volume falls below a certain level, or if the FPI has fewer than 300 recordholders resident in the United States,[61] whereas a domestic issuer typically may only terminate its section 12(g) registration if it has fewer than 300 recordholders of such class of securities.[62]

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[57] 15 U.S.C. 78l(g). Section 12(g) sets forth the registration requirements for securities under the Exchange Act. An issuer that is not a bank or bank holding company must register a class of equity securities (other than exempted securities) within 120 days after its fiscal year-end if, on the last day of its fiscal year, the issuer has total assets of more than $10 million and the class of equity securities is "held of record" by either 2,000 persons, or 500 persons who are not accredited investors. Different registration thresholds apply for banks and bank holding companies.

[58] 17 CFR 240.12g3-2(a).

[59] 17 CFR 240.12g3-2(b).

[60] 17 CFR 230.903; 17 CFR 230.904; 17 CFR 230.135e.

[61] 17 CFR 240.12h-6 ("Rule 12h-6").

[62] 17 CFR 240.12g-4. A domestic issuer with total assets that have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years may terminate registration of a class of securities with fewer than 500 recordholders.

- An FPI can terminate its section 15(d) reporting obligations, whereas domestic issuers may only suspend their duty to file reports under section 15(d).[63]

Additionally, only a limited subset of FPIs is required to appoint an agent and formally consent to service of process.[64]

III. Recent Developments in the FPI Population

The staff recently conducted a broad review of reporting FPIs. The review focused primarily on 20-F FPIs from fiscal year 2003 through fiscal year 2023.[65] The staff examined issuers' jurisdictions of incorporation and headquarters, global market capitalizations, trading volumes, and other characteristics for the subsets of such issuers for which such data was available. In section III.A, we present the staff's findings on how the total number of reporting FPIs changed from 2003 to 2023. In section III.B, we present the staff's findings on changes in the distribution of 20-F FPIs' jurisdictions of incorporation and headquarters since 2003, which demonstrate that 20-F FPIs now represent a different composition of home country jurisdictions that have varying levels of disclosure requirements. Finally, in section III.C, we present the staff's review of 20-F FPIs' equity trading markets. In particular, the staff observed that the

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[63] Rule 12h-6, *supra* note 61; 17 CFR 240.12h-3. Following suspension of a duty to file reports under section 15(d), if the number of recordholders for a class of securities of a domestic issuer increases above the 300- or 500-person threshold (as applicable), such issuer must resume periodic reporting. An FPI that has terminated its duty to file reports pursuant to Rule 12h-6 will not be required to resume periodic reporting absent a new registration.

[64] *See* 17 CFR 249.250; 17 CFR 239.42 ("Form F-X"). Form F-X is required to be filed by certain foreign issuers to appoint an agent for service of process, including MJDS issuers, foreign issuers filing certain tender offer documents, and foreign issuers filing Form CB in connection with a tender offer, rights offering, or business combination. *See supra* note 8, *supra* note 29 and section IV.B.5 for more information regarding the MJDS. Formal appointment of an agent and consent to service of process is unnecessary for most actions involving domestic issuers, whereas foreign legal barriers including blocking statutes, data privacy laws and other laws in foreign jurisdictions can present unique challenges for regulatory authorities in enforcement cases against FPIs.

[65] The earliest filings included in the staff's review are from fiscal year 2003 because this is the first year for which Forms 20-F are consistently available from the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system for all 20-F FPIs. Prior to 2002, FPIs filed paper copies of their Forms 20-F, which are not as readily analyzed using automated techniques.

majority of 20-F FPIs today have their equity securities almost exclusively traded in U.S. capital markets.[66] Across these analyses, the staff also observed that the documented trends are driven by 20-F FPIs with relatively small market capitalizations. Accordingly, the 20-F FPIs driving the trends identified by the staff represent a relatively smaller percentage of the overall population of 20-F FPIs in terms of aggregate global market capitalization than in terms of absolute numbers.

A. FPI Population Overview[67]

The staff found that 967 FPIs filed annual reports on Form 20-F covering fiscal year 2023,[68] whereas 146 FPIs filed on Form 40-F under MJDS for fiscal year 2023.[69] To provide insight into how the size of the reporting FPI population has shifted over time, Figure 1 below shows the number of reporting FPIs each year by their type of annual filing (Form 20-F or Form 40-F) from fiscal year 2003 through fiscal year 2023.[70] As shown in Figure 1, the number of 20-F FPIs has followed a U-shaped trend over this period. After initially rising slightly from 937 to 950 issuers in fiscal year 2004, the number of issuers exhibited a clear downward trend until reaching its lowest point of 656 issuers in fiscal year 2016, after which the number of 20-F FPIs steadily increased to 967 issuers by fiscal year 2023. By contrast, the count of issuers reporting

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[66] By "almost exclusively traded in U.S. capital markets," we are referring to 20-F FPIs that have had less than 1% of their equity security trading volume outside U.S. capital markets (or equivalently 99% or more of such volume in U.S. capital markets) in a 12-month period centered around their fiscal year-end dates, which for fiscal year 2023 included almost 55% of all 20-F FPIs. *See* section III.C below for details on this analysis.

[67] This section is based on data and analysis contained in section 3 of the FPI Trends White Paper.

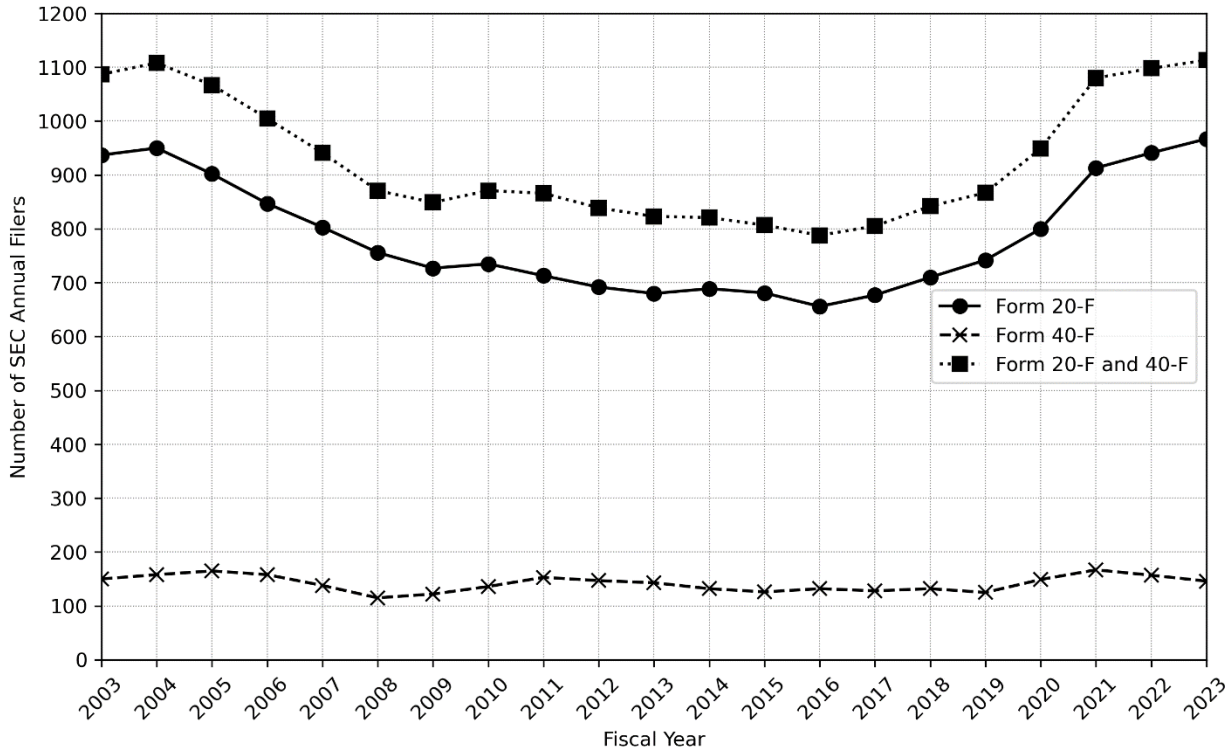
[68] For this analysis, the staff followed the convention of assigning a given fiscal year to any issuer's annual report with a fiscal year-end between June 1st of that calendar year through May 30th of the following calendar year.

[69] These numbers are estimated as the number of unique registrants, identified by Central Index Key ("CIK"), that filed either a Form 20-F or Form 40-F with financial statements pertaining to fiscal year 2023. We note that the analysis in this section does not include registered FPIs electing to file on Form 10-K.

[70] For each fiscal year, the staff counted the number of unique FPIs, identified by CIK, filing an annual report either on Form 20-F or Form 40-F pertaining to that fiscal year.

on Form 40-F (*i.e.*, MJDS issuers)[71] fluctuates throughout the period without any discernible trend.

Figure 1. Reporting FPI Counts by Type of Annual Filing, Fiscal Years ("FYs") 2003-2023



In the analysis that follows, the staff focused on 20-F FPIs, as this subpopulation of FPIs is the subject of the considerations regarding the current FPI definition discussed in this release. In particular, the staff excluded MJDS issuers because the Commission had previously compared Canadian securities regulations to U.S. regulations in adopting the MJDS and determined, at that time, that permitting certain Canadian issuers to register securities under the MJDS using their home country jurisdiction disclosure documents was in the "public interest and fully adequate for the protection of U.S. investors."[72] Since then, the Commission has continued to monitor the

[71] *See supra* note 8 and *supra* note 29 for more information regarding the MJDS.

[72] MJDS Adopting Release, *supra* note 8. The Commission is not soliciting comment on changes to MJDS in this release.

operation of the MJDS, including any changes to law and policy that may necessitate updates to the MJDS requirements. The staff also excluded (1) FPIs electing to file on domestic forms (*e.g.*, filing their annual reports on Form 10-K) because they are already restricted from taking advantage of a number of the FPI accommodations[73] and (2) FPIs that are not subject to reporting obligations under section 13(a) or section 15(d) of the Exchange Act.[74] As a measure of the economic significance of the 20-F FPI population, the aggregate market capitalization for these issuers as of fiscal year 2023 was approximately $9 trillion, the mean market capitalization per issuer was approximately $9.5 billion, and the median market capitalization per issuer was approximately $256 million.[75]

The decline and subsequent increase of 20-F FPIs documented in Figure 1 above suggests that there has been significant turnover within this population of FPIs in recent decades. To provide additional insights into the nature of this turnover, the following two subsections present the staff's findings on the jurisdictions of incorporation and headquarters and equity trading markets of 20-F FPIs.

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[73] There is a comparatively small number of FPIs electing to file on Form 10-K any given year. For example, using a textual search of all Forms 10-K filed in calendar year 2023, the staff identified only nine such FPIs. *See supra* section II.B for a summary of the current accommodations for FPIs. FPIs filing on domestic forms would not be eligible to take advantage of the accommodations specific to reporting FPIs.

[74] For example, some FPIs may trade American Depositary Receipts ("ADRs") on the U.S. over-the-counter ("OTC") markets in reliance on Rule 12g3-2(b). *See supra* note 59. FPIs may be exempt from Exchange Act reporting requirements when trading on the U.S. OTC markets if they maintain a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that constitutes the primary trading market for those securities, and electronically publish certain information on an ongoing basis. *See also supra* note 58.

[75] For each company, market capitalization is measured as global U.S. dollar market value of all traded common equity securities as of the fiscal year-end date or, if there is no data available for that date, from the next closest trading day with available data. This data was collected from LSEG Workspace, a database of worldwide financial data owned by the London Stock Exchange Group. FPIs that have no available market capitalization (28 FPIs) are excluded from these calculations. The main reason for missing market capitalization data is that the FPI has no publicly traded equity securities at the fiscal year-end date.

B. FPI Jurisdictions of Incorporation and Headquarters[76]

The staff's analysis of the jurisdictional makeup of 20-F FPIs demonstrates a significant shift in recent decades. For example, in fiscal year 2023, the most common jurisdiction of incorporation among 20-F FPIs was the Cayman Islands, and the most common jurisdiction of headquarters for these issuers was mainland China. In contrast, in fiscal year 2003, the most common jurisdictions for both incorporation and headquarters for 20-F FPIs were Canada (non-MJDS issuers) and the United Kingdom. Below, we provide more detail on this analysis.

Tables 1 and 2 below present the top 20 jurisdictions of incorporation and headquarters, respectively, for 20-F FPIs in fiscal year 2023.[77] The tables also provide statistics on the global market capitalization (aggregate, mean, and median) of 20-F FPIs from each jurisdiction. Table 1 shows that the Cayman Islands is the most common jurisdiction of incorporation in fiscal year 2023, with more than 30 percent of 20-F FPIs being incorporated in the Cayman Islands. The 20-F FPIs incorporated in the Cayman Islands tend to be smaller than the typical 20-F FPI overall, with a median (mean) market capitalization of approximately $104 million (approximately $3.3 billion).[78] As a result, despite the Cayman Islands representing the jurisdiction of incorporation of over 30 percent of 20-F FPIs, the aggregate global market capitalization for the 20-F FPIs incorporated in the Cayman Islands represents around 11.6 percent of the aggregate global market capitalization of all 20-F FPIs. Table 2 below shows that mainland China was the most common jurisdiction of headquarters for 20-F FPIs in fiscal year 2023, with more than 20 percent of such FPIs being headquartered in China. However, because the average 20-F FPI

[76] This section is based on data and analysis contained in section 3 of the FPI Trends White Paper.

[77] Information about jurisdictions of incorporation and of company headquarters (*i.e.*, "principal executive offices") is collected from the FPIs' commission filings pertaining to any given fiscal year.

[78] *See supra* section III.A for the market capitalization figures of all 20-F FPIs.

headquartered in China is smaller than the average 20-F FPI, the aggregate global market capitalization for such FPIs represents around five percent of the aggregate global market capitalization of all 20-F FPIs.[79]

Table 1. Top 20 Jurisdictions of Incorporation of 20-F FPIs in FY 2023

Jurisdiction	Count	Fraction of all FPIs (%)	Aggregate Market Cap ($MM)	Mean Market Cap ($MM)	Median Market Cap ($MM)	Fraction of Total FPI Market Cap (%)
Cayman Islands	322	33.3	1,047,823	3,274	104	11.6
Israel	97	10.0	116,454	1,201	121	1.3
Canada (non-MJDS)[a]	75	7.8	24,097	326	24	0.3
British Virgin Islands	62	6.4	13,008	220	29	0.1
United Kingdom	44	4.6	1,593,934	39,848	13,072	17.7
Marshall Islands	37	3.8	19,421	555	217	0.2
Netherlands	31	3.2	637,474	21,249	827	7.1
Brazil	29	3.0	494,825	17,672	7,892	5.5
Bermuda	29	3.0	62,567	2,157	877	0.7
Australia	23	2.4	497,161	21,616	171	5.5
Switzerland	17	1.8	473,843	29,615	451	5.3
Japan	15	1.6	930,908	62,061	26,490	10.3
Mexico	14	1.4	160,776	12,367	3,647	1.8
France	14	1.4	325,461	23,247	290	3.6
Luxembourg	13	1.3	114,032	8,772	3,048	1.3
Argentina	13	1.3	25,665	1,974	1,345	0.3
Ireland	11	1.1	68,580	6,235	302	0.8
South Korea	11	1.1	102,902	9,355	7,582	1.1
Singapore	10	1.0	22,313	2,231	117	0.2
Germany	9	0.9	260,403	28,934	4,161	2.9

[a] Canadian issuers are not MJDS issuers if they do not qualify based on the eligibility requirements for the MJDS (*e.g.*, because they do not meet the 75 million U.S. dollar public float requirement) or if they have elected to report as a 20-F FPI.

[79] For a full breakdown of 20-F FPIs in fiscal year 2023 by jurisdictions of incorporation and headquarters, *see* tables A1 and A2, respectively, in the FPI Trends White Paper.

Table 2. Top 20 Jurisdictions of Headquarters of 20-F FPIs in FY 2023

Jurisdiction	Count	Fraction of all FPIs (%)	Aggregate Market Cap ($MM)	Mean Market Cap ($MM)	Median Market Cap ($MM)	Fraction of Total FPI Market Cap (%)
China	219	22.6	$462,669	$2,122	$84	5.1
Israel	103	10.7	$119,202	$1,157	$121	1.3
Canada (non-MJDS)	70	7.2	$17,836	$258	$24	0.2
United Kingdom	63	6.5	$1,844,040	$31,255	$2,957	20.5
Hong Kong, Special Administrative Region ("SAR"), China	45	4.7	$220,018	$5,117	$56	2.4
Singapore	45	4.7	$52,660	$1,197	$96	0.6
Brazil	39	4.0	$506,586	$13,331	$5,081	5.6
United States	26	2.7	$55,152	$2,121	$132	0.6
Bermuda	24	2.5	$50,368	$2,099	$1,555	0.6
Australia	21	2.2	$242,470	$11,546	$106	2.7
Greece	21	2.2	$7,849	$374	$124	0.1
Germany	20	2.1	$263,756	$13,188	$347	2.9
Switzerland	18	1.9	$473,863	$27,874	$409	5.3
Netherlands	17	1.8	$551,337	$34,459	$8,378	6.1
Japan	16	1.7	$930,975	$58,186	$23,465	10.3
Mexico	15	1.6	$162,914	$11,637	$3,258	1.8
Argentina	15	1.6	$27,129	$1,809	$1,312	0.3
France	15	1.6	$326,248	$21,750	$345	3.6
Ireland	13	1.3	$278,582	$21,429	$361	3.1
Taiwan	13	1.3	$575,596	$44,277	$630	6.4

The statistics presented in tables 1 and 2 reflect a different composition of home country jurisdictions of 20-F FPIs today than in fiscal year 2003, both in terms of jurisdiction of incorporation as well as jurisdiction of headquarters. To illustrate this shift, tables 3 and 4 below present the top 20 jurisdictions of incorporation and of headquarters, respectively, for 20-F FPIs in fiscal year 2003 alongside the previously presented ranking of jurisdictions for fiscal year 2023.

Table 3. Top 20 Jurisdictions of Incorporation: FY 2003 vs. 2023

Fiscal Year			
2003		2023	
Country	**Count**	**Country**	**Count**
Canada (non-MJDS)	224	Cayman Islands	322
United Kingdom	106	Israel	97
Israel	81	Canada (non-MJDS)	75
Brazil	48	British Virgin Islands	62
Mexico	38	United Kingdom	44
Netherlands	33	Marshall Islands	37
France	32	Netherlands	31
Japan	29	Bermuda	29
Australia	27	Brazil	29
Bermuda	23	Australia	23
Chile	22	Switzerland	17
Germany	19	Japan	15
Argentina	16	France	14
British Virgin Islands	16	Mexico	14
China	15	Argentina	13
Switzerland	14	Luxembourg	13
Cayman Islands	13	Ireland	11
Sweden	13	South Korea	11
Hong Kong, SAR, China[a]	12	Singapore	10
Ireland[a]	12	Germany	9
South Korea[a]	12		

[a] Shared 19th place

Table 4. Top 20 Jurisdictions of Headquarters: FY 2003 vs. 2023

Fiscal Year			
2003		2023	
Country	**Count**	**Country**	**Count**
Canada (non-MJDS)	218	China	219
United Kingdom	106	Israel	103
Israel	81	Canada (non-MJDS)	70
Brazil	50	United Kingdom	63
Mexico	38	Hong Kong, SAR, China	45
Netherlands	35	Singapore	45
France	31	Brazil	39
Hong Kong, SAR, China	30	United States	26
Japan	29	Bermuda	24
Australia	25	Australia	21
Chile	22	Greece	21
China	20	Germany	20
Germany	20	Switzerland	18
Argentina	17	Netherlands	17
Ireland	16	Japan	16
Switzerland	16	Argentina	15
South Korea	12	France	15
Sweden	12	Mexico	15
Bermuda	11	Ireland	13
Italy	11	Taiwan	13

Although the total number of 20-F FPIs in fiscal year 2023 is similar to that in fiscal year 2003, as shown in figure 1, tables 3 and 4 demonstrate that the composition of the 20-F FPI population in these two years is very different. The two jurisdictions most frequently represented among 20-F FPIs in fiscal year 2003 were Canada (non-MJDS issuers) and the United Kingdom, both in terms of incorporation and the location of headquarters. However, by fiscal year 2023 the number of 20-F FPIs either incorporated or headquartered in one of these two countries had dropped significantly (by more than 66 percent for Canada in each category, and by 58 percent and 40 percent for the United Kingdom as jurisdiction of incorporation or headquarters, respectively). In contrast, the number of 20-F FPIs incorporated in the Cayman Islands grew from only 13 20-F FPIs in fiscal year 2003 to 322 in fiscal year 2023, becoming, by far, the most common jurisdiction of incorporation for 20-F FPIs in fiscal year 2023. Similarly, the number of 20-F FPIs headquartered in mainland China has grown significantly over the same period, and mainland China was, by far, the most common jurisdiction of headquarters in fiscal year 2023.

Besides showing a substantial change in the jurisdictional composition of the 20-F FPI population in recent decades, tables 3 and 4 also suggest that there has been an increase in the divergence between 20-F FPIs' jurisdictions of incorporation and jurisdictions of headquarters. Further analysis by the staff demonstrated a significant change in the fraction of 20-F FPIs with differing jurisdictions of incorporation and of headquarters: the fraction of 20-F FPIs with differing jurisdictions was seven percent in fiscal year 2003 but increased to 48 percent in fiscal year 2023.[80]

[80] *See* Figure 2 in the FPI Trends White Paper for a complete illustration of the trend in increasing divergence between jurisdiction of incorporation and jurisdiction of headquarters over the fiscal year 2003-2023 period.

The staff observed that one driver of the increased divergence between jurisdictions of incorporation and jurisdictions of headquarters was the increase in China-based issuers ("CBIs") within the 20-F FPI population since fiscal year 2003. For purposes of this release, we define a CBI as an issuer that is either incorporated or headquartered in one of the three Chinese jurisdictions: (1) mainland China, (2) Hong Kong, SAR, or (3) Macau, SAR. In fiscal year 2003, the number of CBIs represented approximately five percent of all 20-F FPIs, with this number increasing to approximately 28 percent of all 20-F FPIs in fiscal year 2023, representing an over five-fold increase in the proportion of 20-F FPIs that were CBIs. Some of the CBIs in the 20-F FPI population in fiscal year 2023 were headquartered in China (219 issuers), Hong Kong, SAR (45 issuers), or Macau, SAR (two issuers), but nearly all were incorporated outside one of these three Chinese jurisdictions.

In particular, we observe a significant overlap between being a CBI and being incorporated in the Cayman Islands or the British Virgin Islands (another jurisdiction that has risen to become a common jurisdiction of incorporation for 20-F FPIs by fiscal year 2023). The 20-F FPIs that were CBIs in fiscal year 2023 were almost exclusively incorporated (97 percent) in one of these two jurisdictions, with 219 issuers (82 percent) incorporated in the Cayman Islands and 40 issuers (15 percent) incorporated in the British Virgin Islands.[81] Conversely, among 20-F FPIs incorporated in the Cayman Islands or the British Virgin Islands,[82] more than 67 percent (259 issuers) were CBIs.

The statistics discussed above suggest that much of the recent resurgence of the 20-F FPI population has been driven by CBIs that are incorporated in the Cayman Islands or the British

[81] The remaining countries of incorporation for CBIs in 2023 are China (four issuers), Antigua (one issuer), Marshall Islands (one issuer), and the United Kingdom (one issuer).

[82] 384 issuers in total, making up almost 40% of all 20-F FPIs in fiscal year 2023.

Virgin Islands.[83] Figure 2 below provides further insight into the increasing prominence of this group of FPIs in the overall population of 20-F FPIs by documenting the trends of the fraction of 20-F FPIs that are (1) Cayman Islands or British Virgin Islands incorporated ("CI-BVI Incorporated") FPIs, (2) CBIs, and (3) both a CBI *and* CI-BVI Incorporated.

[83] Many CBIs are incorporated in these island jurisdictions, while having their operations occur in mainland China. Specifically, non-Chinese holding companies may enter into contractual arrangements with China-based operating companies asunder the Variable Interest Entities ("VIEs") model. Through these contractual arrangements, the non-Chinese holding companies are generally able to consolidate the VIEs in their financial statements. The Commission staff has noted in recent years that these "CBI VIE Structures" pose risks to U.S. investors that are not present in other organizational structures (*i.e.*, difficulties enforcing and exerting control through contractual arrangements; the possibility of the Chinese government subjecting the issuer to penalties, revocation of business and operating licenses or forfeiture of ownership interests; or jeopardized control over the China-based VIE if a natural person who holds equity interest in the China-based VIE breaches the terms of the agreement, is subject to legal proceedings, or uses any physical instruments without the China-based issuer's authorization to enter into contractual arrangements in China). *See* CF Disclosure Guidance: Topic No. 10, *Disclosure Considerations for China-Based Issuers*, available at https://www.sec.gov/rules-regulations/staff-guidance/disclosure-guidance/disclosure-considerations-china-based-issuers. The statements in the CF Disclosure Guidance represent the views of the Division of Corporation Finance. The CF Disclosure Guidance is not a rule, regulation or statement of the Commission. Further, the Commission has neither approved nor disapproved its content. The CF Disclosure Guidance, like all staff statements, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

Figure 2: Trends in the CBI and CI-BVI Incorporated FPI Sub-populations, FY 2003-2023

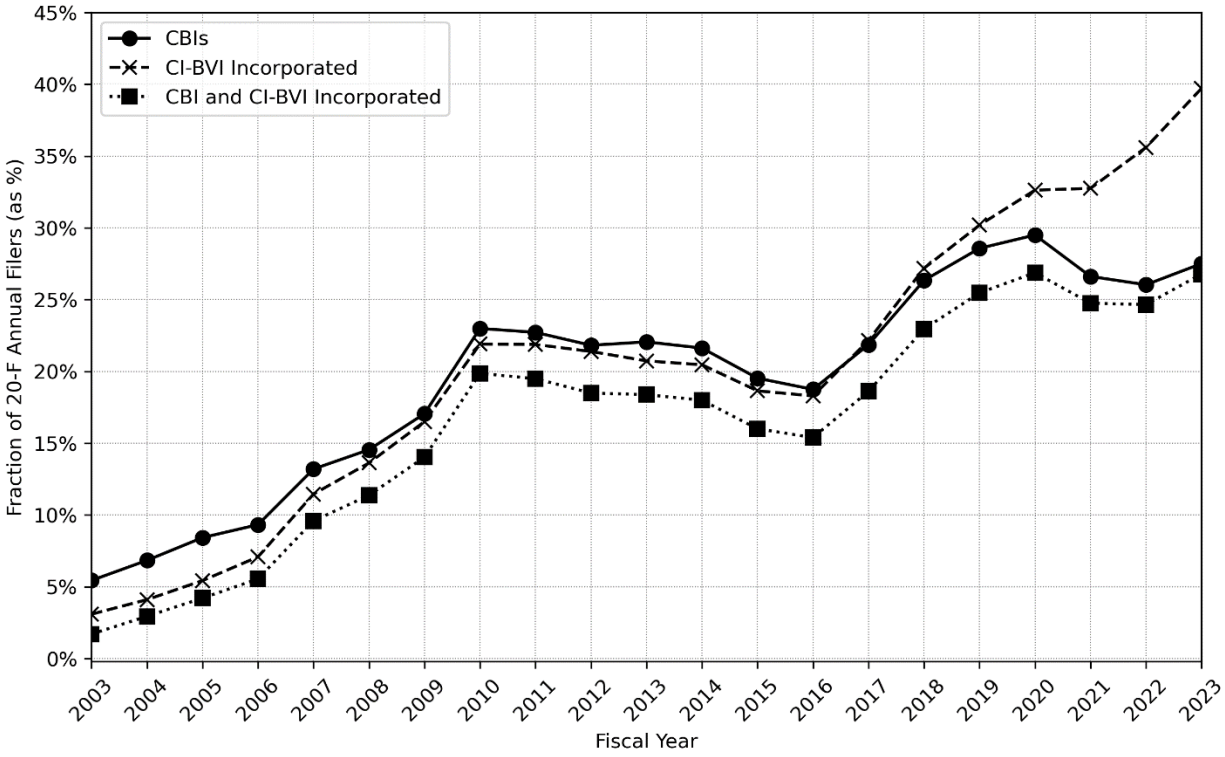

Figure 2 demonstrates a number of key findings. First, consistent with table 4, the figure shows the increase in prevalence of CBIs in the 20-F FPI population from fiscal year 2003 to 2023. Second, the close tracking of the line representing the percentage of CBIs and the line representing the percentage of issuers that are both CBIs and CI-BVI Incorporated indicates that 20-F FPIs that are CBIs have had a strong tendency to be CI-BVI Incorporated over the entire period. Third, the fact that the distance between these lines has decreased in the most recent years shown indicates that this tendency was especially strong in those years. Finally, the fraction of 20-F FPIs that are CI-BVI Incorporated has increased in the most recent years shown, well beyond the other lines in the graph. Thus, it appears that incorporating in the Cayman Islands or the British Virgin Islands is also becoming increasingly popular among 20-F FPIs that are not CBIs. Because staff observed that these additional CI-BVI Incorporated FPIs are

generally not headquartered in the same jurisdiction in which they are incorporated, this trend further illustrates the increasing divergence between 20-F FPIs' jurisdictions of incorporation and jurisdictions of headquarters as observed in the staff's analysis.[84]

C. FPI Reliance on U.S. Capital Markets[85]

In this section, we present the staff's analysis of the percentage of 20-F FPIs' global equity trading volume that occurred in U.S. capital markets and how this has changed over time.[86] We then describe the staff's analysis of the market capitalization and home country jurisdictions of 20-F FPIs whose equities trade almost exclusively in U.S. capital markets. These analyses focused on the period from fiscal year 2014 through fiscal year 2023.[87] Overall, the staff observed that the global trading of 20-F FPIs' equity securities has become increasingly concentrated in U.S. capital markets over this period, whereby a majority of 20-F FPIs today have their equity securities almost exclusively traded in U.S. capital markets.

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[84] Given that home country jurisdictions impose varying levels of regulatory oversight as discussed in section IV.A below, increased divergence between the jurisdictions of incorporation and jurisdictions of headquarters may be an indication that some FPIs are seeking to limit regulatory costs through changing their place of incorporation or headquarters.

[85] This section is based on the data and analysis contained in section 4 of the FPI Trends White Paper.

[86] The sample used for the analysis in this section starts with all FPIs that filed an annual report on Form 20-F for any fiscal year in the 2014-2023 period. The staff obtained each FPI's list of global equities using LSEG's Advanced Equity Search tool ("EQSRCH") in LSEG Workspace, which contains a comprehensive global history of an FPI's equity trading. Using LSEG Workspace, the staff then mapped each stock to its global list of Ticker and Exchange combinations.

[87] The staff examined trading in years beginning in 2014 because a previous study has documented that the fraction of reporting FPIs that list their securities only on a U.S. exchange increased over the 2004-2013 period. In particular, using a large sample of reporting FPIs (including MJDS issuers) with exchange-listed equity securities in the United States, this study found that the fraction of such FPIs that have securities exclusively listed on U.S. exchanges steadily increased from less than 15% in 2004 to more than 35% in 2013. *See* Boone, Audra L., Kathryn Schumann-Foster, and Joshua T. White, 2021. "Ongoing SEC Disclosures by Foreign Firms," *The Accounting Review* 96 (3), 91-120 ("Boone et al. study"). When comparing the staff's findings to the findings of the Boone et al. study, it is important to note that the sample the staff uses for the analysis in this section includes only 20-F FPIs, whereas the Boone et al. study also includes MJDS issuers. At the same time, the staff's sample includes registered FPIs without a U.S. exchange listing that have their equity securities traded on U.S. OTC markets, whereas the Boone et al. study excludes such FPIs.

1. U.S. Percentage of Global Trading

For purposes of this analysis, the staff computed global daily trading volume in U.S. dollars for all of the 20-F FPIs across all global markets for which daily trading volume information was available for each FPI.[88] This global daily trading volume was then aggregated for a 12-month window around each 20-F FPI's fiscal year-end date, with a similar variable constructed for each 20-F FPI's aggregated 12-month U.S. dollar trading volume specifically in U.S. capital markets. The staff used the ratio of these two variables to construct the "U.S. Percentage of Global Trading," an estimate of an FPI's reliance on U.S. capital markets for trading of its equity securities in the 12-month period centered around each fiscal year-end.

Figure 3 below uses rank-percentile distributions to demonstrate how the distribution of different levels of reliance on U.S. capital markets has changed from fiscal year 2014 compared to fiscal year 2023.[89]

[88] Trading data was available for approximately 97.5% of the 967 20-F FPIs that the staff identified for fiscal year 2023. The remaining 24 20-F FPIs from fiscal year 2023 with missing trading data were excluded from this analysis. For each fiscal year that an FPI filed a Form 20-F, the staff collected the U.S. dollar value of daily trading volume for each ticker-exchange combination available for each 20-F FPI over a 12-month period centered around the fiscal year-end date. Using dollar trading value instead of the number of shares traded helped the staff to overcome the complications of converting each ADR to its common share equivalent, since ADR ratios vary and can change throughout the lifetime of an ADR. Trading was measured for a 12-month period around the fiscal year-end date to help ensure that the trading data reflected the conditions as of the time of the other data in the analysis, which are recorded as of the fiscal year-end dates. Additional details on the staff's methodology are available in the FPI Trends White Paper.

[89] The rank-percentile distribution ranks 20-F FPIs in each year by their U.S. Percentage of Global Trading, from the smallest such percentage to the largest such percentage, dividing them into 100 bins. The first percentile bin, at the far left of the x-axis, represents the 1% of 20-F FPIs with the lowest U.S. Percentage of Global Trading. The 50th percentile bin, in the center of the x-axis, represents the 1% of 20-F FPIs with the median U.S. Percentage of Global Trading. The graph then plots, on the y-axis, the level of U.S. Percentage of Global Trading for each of these bins.

Figure 3: Rank-percentile distribution of U.S. Percentage of Global Trading, FY 2014 vs. FY 2023

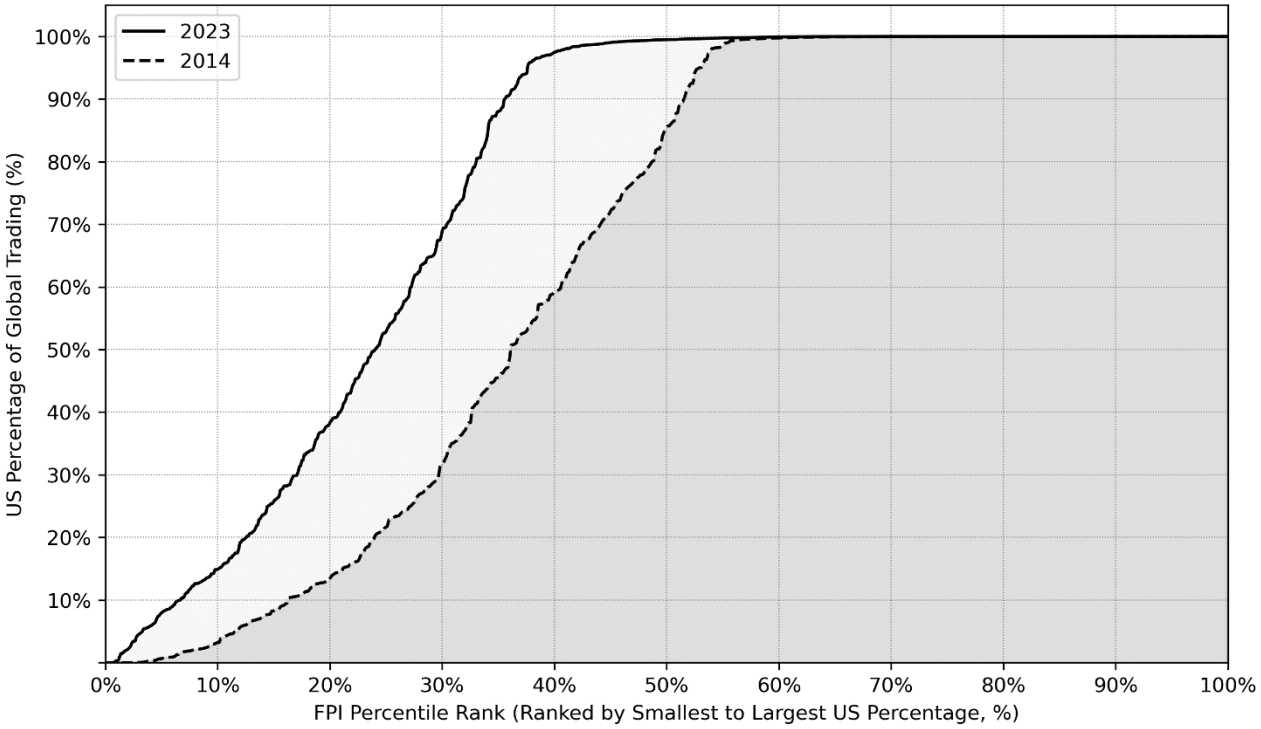
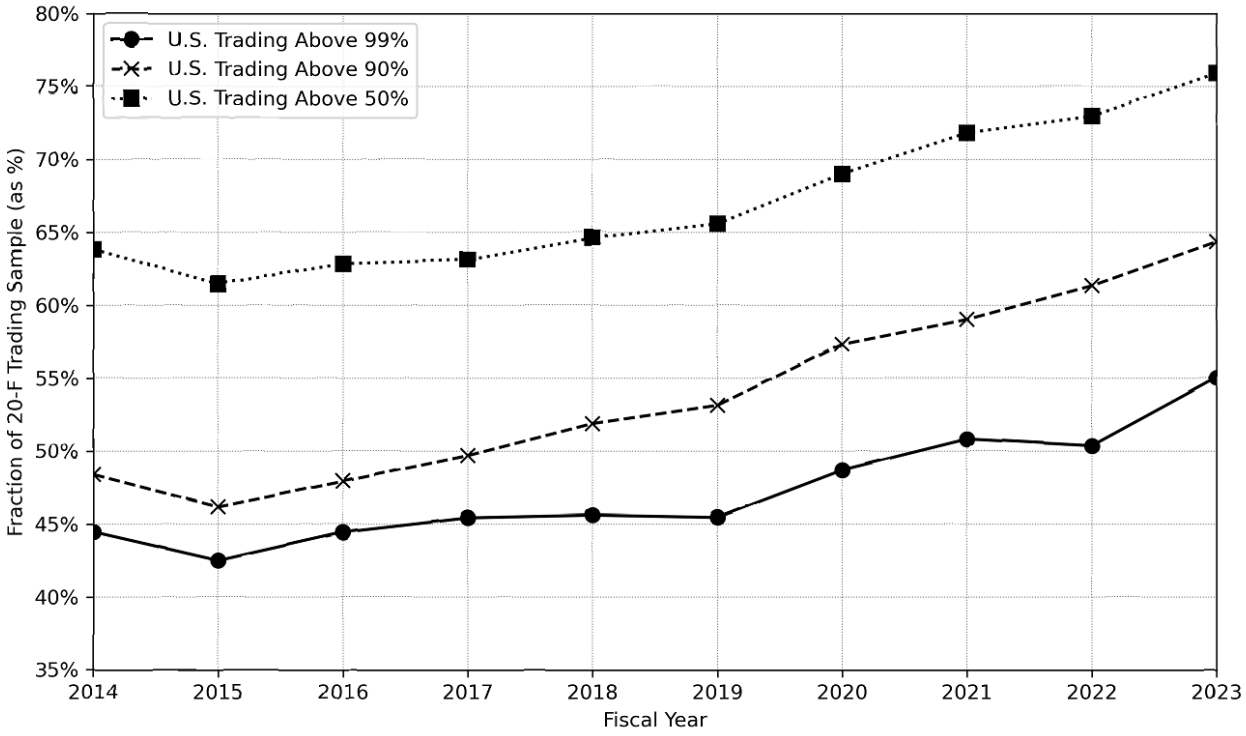


Figure 3 demonstrates that, even in fiscal year 2014, a large fraction of 20-F FPIs seemed to trade almost exclusively in U.S. capital markets—the 56th to 100th percentiles, or approximately 44 percent of the 20-F FPIs, were nearly at the maximum of 100 percent (specifically, between 99 and 100 percent) U.S. Percentage of Global Trading. But this fraction, and the degree of reliance on U.S. capital markets even for those with lower reliance, increased by fiscal year 2023. In fiscal year 2023, 99 percent U.S. Percentage of Global Trading was reached at about the 45th percentile, such that approximately 55 percent of 20-F FPIs traded almost exclusively in U.S. capital markets. Furthermore, in fiscal year 2014, 25 percent of 20-F FPIs (from the first to the 25th percentile along the x-axis) had no more than approximately 22 percent U.S. Percentage of Global Trading. In contrast, the lowest 25 percent of 20-F FPIs in fiscal year 2023 had up to approximately 53 percent U.S. Percentage of Global Trading. Thus,

overall, there has been a shift from fiscal year 2014 to fiscal year 2023 toward a greater reliance on trading in U.S. capital markets across the whole distribution of 20-F FPIs.

Figure 4 below presents more detail of the trends over time in the fraction of 20-F FPIs that have a U.S. Percentage of Global Trading in excess of the 99 percent, 90 percent, and 50 percent U.S. Percentage of Global Trading thresholds, respectively (or equivalently, no more than one percent, 10 percent, and 50 percent of global trade occurring outside U.S. markets). Based on the data shown in Figure 4, there has been a gradual increase from fiscal year 2014 to fiscal year 2023 in the number of 20-F FPIs that appear to trade almost exclusively in the United States.

Figure 4: Trends in Fraction of FPIs with Different Degrees of U.S. Market Trading Focus, FYs 2014-2023



The staff relied on the category meeting the 99 percent threshold of U.S. Percentage of Global Trading to identify the group of 20-F FPIs that appears to have their equity securities traded almost exclusively in U.S. capital markets ("U.S. Exclusive FPIs") versus those that do

not ("Non-U.S. Exclusive FPIs"). The 99 percent threshold ensures that FPIs above this level are not likely to have a meaningful listing of their equity securities outside of U.S. capital markets while allowing that some occasional OTC trading can happen outside the United States.[90]

Using this bifurcation, Figure 4 shows that the fraction of U.S. Exclusive FPIs among 20-F FPIs has increased from approximately 44 percent in fiscal year 2014 to almost 55 percent in fiscal year 2023, consistent with the result from Figure 3 above. If we instead bifurcate the population at the 90 percent U.S. Percentage of Global Trading threshold, which can be viewed as a cut-off between 20-F FPIs that do not have any significant trading outside U.S. capital markets versus those that do, the group with more than 90 percent U.S. Percentage Global Trading has increased its fraction in the population even more dramatically than the U.S. Exclusive FPIs, going from approximately 48 percent in fiscal year 2014 to 64 percent in fiscal year 2023. Finally, Figure 4 shows that a large majority of 20-F FPIs in fiscal year 2023 had more than 50 percent of their trading in U.S. capital markets. This fraction also has significantly increased over the period from approximately 64 percent in fiscal year 2014 to about 76 percent in fiscal year 2023.

2. FPIs Trading Almost Exclusively in U.S. Capital Markets

This section presents the staff's analysis of the size and home country jurisdictions of U.S. Exclusive FPIs, as defined in the previous section, as compared to other 20-F FPIs. As detailed below, the staff observed that U.S. Exclusive FPIs tend to have lower market capitalizations and have a different composition of home country jurisdictions than other 20-F

[90] A staff review of all 20-F FPIs in fiscal year 2023 that had a U.S. Percentage of Global Trading of 99% or more (or equivalently, less than 1% of global trade occurring outside U.S. markets) confirmed that there is limited evidence of a cross listing on an exchange outside the United States for these FPIs. The minimal recorded non-U.S. trading is largely due to transactions conducted on foreign OTC markets.

FPIs. In particular, U.S. Exclusive FPIs have a higher propensity of being incorporated in the Cayman Islands and headquartered in China.

Table 6 below displays statistics on global market capitalizations for U.S. Exclusive and Non-U.S. Exclusive FPIs, respectively, for fiscal year 2023.

Table 6: Global Market Capitalization Statistics for FY 2023: U.S. Exclusive vs. Non-U.S. Exclusive FPIs[a]

U.S. Exclusive FPIs				Non-U.S. Exclusive FPIs				
Count	Aggregate Market Cap ($MM)	Mean Market Cap ($MM)	Median Market Cap ($MM)	Count	Aggregate Market Cap ($MM)	Mean Market Cap ($MM)	Median Market Cap ($MM)	Market Cap Fraction of U.S. Exclusive FPIs (%)
519	827,288	1,594	86	424	8,180,951	19,295	1,646	9.2

[a] U.S. Exclusive FPIs are those with a U.S. Percentage of Global Trading of more than 99% and Non-U.S. Exclusive FPIs are those with a U.S. Percentage of Global Trading of 99% or less. For each company, market capitalization is global U.S. dollar market value of all traded common equity securities as of the fiscal year-end date or if there is no data available for that date, from the next closest trading day with available data. This data was collected from LSEG Workspace.

The table above shows that the aggregate global market capitalization of U.S. Exclusive FPIs is much smaller on average than that of Non-U.S. Exclusive FPIs. As a result, the aggregate global market capitalization of U.S. Exclusive FPIs is only a small fraction (nine percent) of the total aggregate global market capitalization of 20-F FPIs despite representing a majority of the 20-F FPIs.[91]

The following pie charts graphically illustrate the fraction of 20-F FPIs that are U.S. Exclusive FPIs (*i.e.*, at least 99 percent U.S. Percentage of Global Trading) in fiscal year 2023 in numerical terms as well as in terms of the fraction of global market capitalization of 20-F FPIs, with additional thresholds of U.S. Percentage of Global Trading included for context.

[91] *See* table 4 in the FPI Trends White Paper for similar yearly market capitalization statistics covering the entire fiscal year 2013-2023 period.

Figure 5: Distribution of Companies and Market Capitalization by U.S. Global Trading Percentage Categories for 20-F FPIs in FY 2023

Figure 5a: Distribution of 20-F FPIs

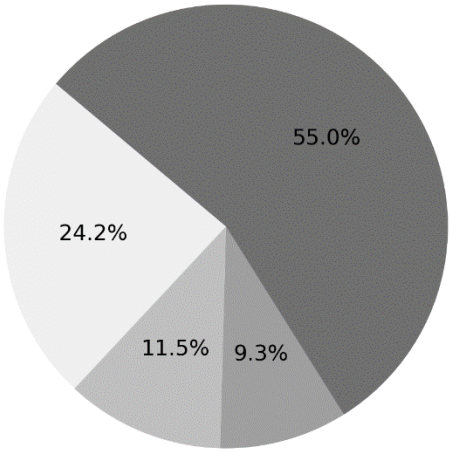
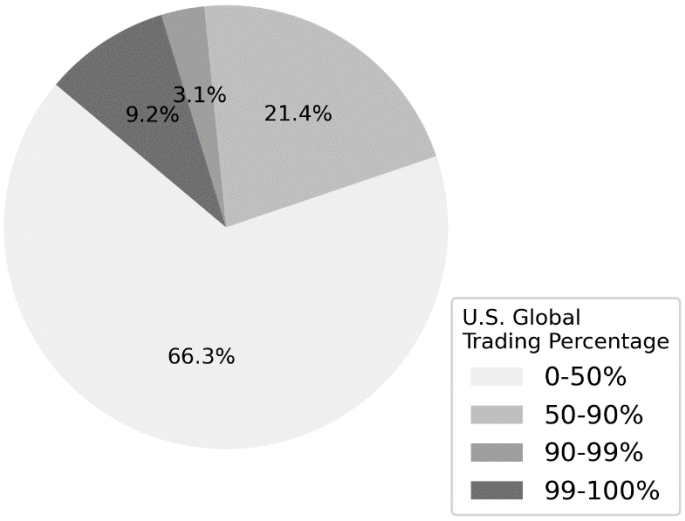


Figure 5b: Distribution of Aggregate 20-F FPI Market Capitalization



The pie charts illustrate that while FPIs with a heavy reliance on U.S. capital markets represent a large proportion of the number of 20-F FPIs in fiscal year 2023 (pie chart A), they represent a smaller fraction of the global market capitalization of 20-F FPIs due to their smaller size (pie chart B). In particular, while 55 percent of 20-F FPIs are U.S. Exclusive FPIs, this group only makes up 9.2 percent of the aggregate 20-F FPI market capitalization. In contrast,

24.2 percent of 20-F FPIs have a U.S. Global Trading Percentage of less than 50 percent, but that group makes up 66.3 percent of the 20-F FPI market capitalization.

Next, tables 7 and 8 present the top jurisdictions of incorporation and headquarters of U.S. Exclusive FPIs, relative to Non-U.S. Exclusive FPIs for fiscal year 2023.

Table 7: Jurisdiction of Incorporation, FY 2023; U.S. Exclusive vs. Non-U.S. Exclusive FPIs

U.S. Exclusive			Non-U.S. Exclusive		
Country	**Count**	**Fraction (%)**	**Country**	**Count**	**Fraction (%)**
Cayman Islands	265	51.1	Canada	61	14.4
Israel	58	11.2	Cayman Islands	53	12.5
British Virgin Islands	51	9.8	Israel	38	9.0
Marshall Islands	33	6.4	United Kingdom	32	7.5
Bermuda	14	2.7	Brazil	27	6.4
Canada	13	2.5	Netherlands	21	5.0
Netherlands	9	1.7	Australia	18	4.2
United Kingdom	8	1.5	Bermuda	15	3.5
Ireland	7	1.3	Argentina	13	3.1
Japan	6	1.2	Mexico	12	2.8
Luxembourg	6	1.2	France	11	2.6
Australia	5	1.0	Switzerland	11	2.6
Singapore	5	1.0	Germany	9	2.1
Switzerland	5	1.0	Japan	9	2.1
China	4	0.8	South Korea	9	2.1
Guernsey	4	0.8	British Virgin Islands	7	1.7
Jersey	4	0.8	Chile	7	1.7
France	3	0.6	Luxembourg	7	1.7
Italy	3	0.6	India	6	1.4
All other jurisdictions (12)	16	3.1	All other jurisdictions (22)	58	13.7
Total	*519*	*100.0*	*Total*	*424*	*100.0*

Table 8: Jurisdiction of Headquarters, FY 2023; U.S. Exclusive vs. Non-U.S. Exclusive FPIs

U.S. Exclusive			Non-U.S. Exclusive		
Country	**Count**	**Fraction (%)**	**Country**	**Count**	**Fraction (%)**
China	177	34.1	Canada	57	13.4
Israel	63	12.1	China	39	9.2
Hong Kong, SAR, China	40	7.7	Israel	39	9.2
Singapore	39	7.5	United Kingdom	34	8.0
United Kingdom	25	4.8	Brazil	28	6.6
Greece	19	3.7	Germany	18	4.2
United States	14	2.7	Argentina	15	3.5
Bermuda	13	2.5	Australia	15	3.5
Canada	12	2.3	Mexico	12	2.8
Brazil	10	1.9	Bermuda	11	2.6
Ireland	9	1.7	France	11	2.6
Japan	7	1.3	Netherlands	11	2.6
Australia	6	1.2	Switzerland	11	2.6
Cayman Islands	6	1.2	United States	11	2.6
Switzerland	6	1.2	Japan	9	2.1
Luxembourg	5	1.0	South Korea	8	1.9
Malaysia	5	1.0	Taiwan	8	1.9
Netherlands	5	1.0	Chile	7	1.7
UAE	5	1.0	Luxembourg	7	1.7
All other jurisdictions (27)	53	10.2	All other jurisdictions (26)	73	17.2
Total	*519*	*100*	*Total*	*424*	*100*

Table 7 shows that the Cayman Islands is by far the most common jurisdiction of incorporation among U.S. Exclusive FPIs, with more than 50 percent of all U.S. Exclusive FPIs incorporated there.[92] By contrast, the Non-U.S. Exclusive group displays less concentration of jurisdictions, with a larger set of countries being significantly represented in the population. Similarly, table 8 shows that the concentration of jurisdictions of headquarters is high among U.S. Exclusive FPIs, albeit to a lesser extent than for incorporation, where three jurisdictions

[92] Given the trend of a significant increase in CI-BVI incorporated FPIs, we note that such FPIs combined make up almost 61% of U.S. Exclusive FPIs in fiscal year 2023. If we add FPIs incorporated in either of the two nations of the Marshall Islands and Bermuda, the combined group of FPIs incorporated in any of these island nations make up 70% of all U.S. Exclusive FPIs. *See infra* section IV.A and note 94 for some points for consideration regarding this subset of FPIs.

(China, Israel, and Hong Kong, SAR) make up more than 50 percent of the jurisdiction of headquarters among U.S. Exclusive FPIs, whereas the distribution of jurisdictions is much less concentrated among Non-U.S. Exclusive FPIs.

IV. Reassessment of the FPI Definition

A. Background

The changes in the characteristics of the FPI population reflected in the staff's analysis in section III raise questions about whether the current FPI definition is appropriately tailored. First, the breakdown of 20-F FPIs' home country jurisdictions has changed significantly in recent decades. As a result, more FPIs today appear to have disclosure requirements under the rules of their home country jurisdiction,[93] specifically in regard to current reporting, that differ from the disclosure requirements imposed on domestic issuers and on issuers in countries whose representation within the FPI population has been decreasing.[94] This trend may have resulted in less information about 20-F FPIs being made available to U.S. investors than in the past, due to

[93] *See, e.g.,* those incorporated or organized in the Cayman Islands (33.3%), British Virgin Islands (6.4%), Bermuda (3.0%), and Marshall Islands (3.8%). *See supra* table 1. Cayman Islands Companies Act 2023 (which appears to limit current reporting obligations to mergers and consolidations, bankruptcies, increases in capital, and some corporate governance matters); BVI Companies Act (which appears to only require the filing of amendments to governing corporate documents and a register of directors); Bermuda Companies Act 1981 (which appears to have limited disclosure requirements in the case of: a material change to the accuracy of particulars included in a prospectus issued pertaining to continuously offered shares, a reduction in share capital, a conversion of shares, a change in accounting standards, and some mergers as well as requirements to file certain information to be accessible for public inspection in the case of mergers, amended corporate governance documents, and changes in directors); Marshall Islands BCA (which appears to have no public current reporting requirements and only minimal requirements to disclose to shareholders amended corporate governance documents, dividend issuances, cancellations of shares and reductions in stated capital).

[94] *See, e.g.*, *supra* table 3 and table 4 in section III.B for data regarding the decrease in 20-F FPIs incorporated or headquartered in Canada, the European Union (*e.g.*, the Netherlands, France, Germany, et al.), the United Kingdom, Brazil and Japan. *See also*, *e.g.*, Canada's National Instrument 51-102, available at https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-5/51102-NI-July-25-2023.pdf?dt=20230720164040; Europe's Market Abuse Regulation, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596; the UK's Market Abuse Regulation ("U.K. MAR"), available at https://www.legislation.gov.uk/eur/2014/596/contents and Disclosure Guidance and Transparency Rules, available at https://www.handbook.fca.org.uk/handbook/DTR; Brazil's CVM Instruction No 480, of Dec. 7, 2009; Japan's Financial Instrument and Exchange Act (Act No. 25 of Apr. 13, 1948) and Corporate Disclosure Ordinance Art. 19.

the FPI disclosure accommodations and their interaction with home country requirements. The trend may also raise questions about the extent of overall regulation that such FPIs face in their home country jurisdictions, potentially resulting in increased risks to U.S. investors in FPIs' securities or competitive implications for domestic issuers and other FPIs.[95]

Second, the staff's analysis in section III indicates that an increasing percentage of 20-F FPIs' equity securities trade almost entirely in U.S. capital markets, rather than foreign markets, which raises questions about the extent to which such issuers are regulated in foreign markets. While the staff's analysis indicated that these documented trends are driven by 20-F FPIs with relatively small market capitalizations, the number of these FPIs is significant, and their share of aggregate global market capitalization may increase over time. The staff analysis shows that as of fiscal year 2023, over 50 percent of 20-F FPIs appear to have had no or minimal (less than one percent of total global) trading of their equity securities on any non-U.S. market over a 12-month period centered around the fiscal year-end date and appear to maintain listings of their equity securities only on U.S. national securities exchanges. As a result, the United States is effectively those issuers' exclusive or primary trading market and such issuers may be even less likely to be subject to meaningful disclosure requirements and oversight outside of the United States. As discussed above in section II.A, the current regulatory accommodations for FPIs were based, in part, on the expectation that most FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions, which no longer appears to be the case for a significant number of FPIs.

[95] *See supra* section II.B for a discussion of the FPI accommodations as compared to the requirements for domestic issuers.

Some jurisdictions provide issuers organized under their laws or listed on their exchanges with exemptions from their disclosure requirements or other regulatory accommodations if the issuers qualify as FPIs under U.S. securities laws. For example, the Israel Securities Authority[96] exempts such issuers from certain home country reporting requirements and instead permits them to report according to the laws of the jurisdiction of their primary listing. The amendments and guidance promulgated by some regulators specifically consider the accommodations granted under the FPI regulatory framework in the United States.[97] The reasons that foreign jurisdictions have chosen to defer to U.S. securities law may vary and are not necessarily a sign that foreign

[96] *See* Israel Securities Authority (ISA), section 35EE(b) of the Law and the Securities Regulations (Periodic and Immediate Reports of Foreign Corporations) 2000, available at https://www.new.isa.gov.il/images/Fittings/isa/asset_library_pic/al_lobby/al_lobby-64805b1867e84/2652015_2.pdf, which does not require the disclosure under the ISA rules and instead relies on the reports that dual listed companies are required to file according to the foreign law, including for those companies incorporated in Israel. *See also*, ISA, *Legal Position No. 1991-11: Reporting Requirements of Dual Listed Companies* (Aug. 18, 2013), available at https://www.new.isa.gov.il/en/nav-index/supervised-double-listing/Staf-Positions-PlenaryDecisions ("[T]his arrangement exempts companies listed for trade in Israel from reporting requirements pursuant to the Israeli Securities Law and permits them to continue to report exclusively according to the foreign law that applies to them (U.S. or U.K. security laws, including the directives of the relevant stock exchanges).").

[97] *See* ISA *Legal Position No. 1991-11*, *supra* note 97 ("By adopting the dual listing arrangement, the legislator accepted the significant differences between the reporting format of companies traded exclusively in Israel and the reporting format of companies traded on another main market, and for which the TASE is a secondary trading arena" and "we note that at the time the dual listing arrangement was enacted, it was known that Israeli companies overseas receive exemptions on certain disclosure requirements compared to the disclosure requirements that apply to U.S. companies, but it was ultimately decided not to demand that they meet the more stringent requirements."). Other jurisdictions, such as the UK, specifically consider the accommodations granted under the U.S. FPI framework in their continuous disclosure regulations. *See* Financial Conduct Authority, *PS 24/6 Primary Markets Effectiveness Review: Feedback to CP 23/31 and final UK Listing Rules* (July 17, 2024), available at https://www.fca.org.uk/publication/policy/ps24-6.pdf, which applies the more flexible continuous disclosure rules of the previous standard listing segment to overseas issuers in the international commercial companies secondary listing category and requires overseas issuers to comply with the applicable rules of the overseas market of their primary listing: ("[W]e proposed introducing a new secondary listings category for the equity shares of non-UK incorporated companies that sought a 'secondary' listing in the UK (i.e. they already had at least one other equity listing on another market). The intention was to ensure the new listing structure remains accessible to non-UK incorporated companies where either domestic company law or rules flowing from their 'primary' listing venue may mean they would not be eligible for the commercial companies category….. We have removed the reference to 'without modification' in the definition of qualifying home listing that was included in the draft rule. This is to reflect feedback that some regimes impose additional requirements on primary listings when an issuer is treated as a foreign primary listing for the purposes of that market. It was not our intention to exclude these issuers from this category (eg. issuers treated as Foreign Private Issuers in the US) and so we have amended the rule.").

disclosure frameworks are deficient. However, the result of this deference is that a key element that would otherwise assure investor protections 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,[98] and the Commission's rules and regulations might effectively be providing the primary or sole source of reporting requirements. This appears to be at odds with the historical expectations expressed by the Commission with regard to FPIs.[99]

If an FPI is not subject to meaningful requirements in its home country jurisdiction that elicit disclosure in a timely manner, or if there are other limitations to foreign regulatory oversight of the FPI, the FPI definition may need to be revised. In particular, the FPI definition may need to be adjusted to ensure that (1) U.S. investors receive appropriate disclosure and remain adequately protected when investing in FPIs' securities and (2) that the discrepancy in regulatory requirements does not have unintended competitive implications.

B. Potential Regulatory Responses

To ensure that the Commission's accommodations for foreign issuers are appropriately tailored to reflect today's FPI population while continuing to protect U.S. investors and provide them with access to foreign issuers' securities, we are soliciting public comments on whether accommodations afforded to FPIs today should continue to apply to the foreign issuers currently captured by the FPI definition or if the definition should be amended to reflect recent changes to the FPI population described above.[100] Further, we are soliciting public input on several possible approaches to amending the FPI definition. We welcome and encourage market participants and

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[98] *See* ISA *Legal Position No. 1991-11*, *supra* note 97 ("Protection of the investor public in Israel based on several rings of regulation, mainly the foreign law, the regulation by the foreign regulator, and the market discipline in those countries.").

[99] *See supra* section I. *See also, supra* note 2.

[100] We are not seeking comments on the requirements for MJDS issuers because this release is focused on the FPI definition. *See supra* section III.

other interested persons to submit their views on the potential regulatory responses discussed below or on any alternatives that they deem appropriate. We also encourage the submission of qualitative information, quantitative data or analyses, or suggestions of analyses that could better inform us about the potential costs and benefits of these approaches, including anticipated impacts on efficiency, competition, and capital formation.

Request for Comment

1. Does the shift in the characteristics of the FPI population described above warrant a reassessment of the FPI definition, and if so, what considerations should be taken into account in determining how to amend the FPI definition? To what extent are any concerns about this shift in the characteristics of the FPI population mitigated by the relatively limited total market capitalization of the growing subsets of U.S. Exclusive FPIs discussed above, contrasted with the relatively larger number of such FPIs? To what extent are any concerns about this shift in the characteristics of the FPI population mitigated by any other factors?
2. Given the accommodations afforded to FPIs, as outlined in section II.B, are U.S. investors in issuers currently eligible for FPI status sufficiently protected? Specifically, do investors receive the information they need to make informed investment decisions about issuers currently eligible for FPI status? Do the expectations of U.S. investors and other U.S. capital market participants sufficiently incentivize reporting FPIs to voluntarily provide more disclosure and comply with additional regulatory requirements even if they are registered or incorporated in countries with less stringent regulations and/or are primarily

traded in the United States? If changes to the current accommodations are necessary, what are the potential costs and benefits?

3. Are U.S. investors that are currently invested in FPIs that utilize a CBI VIE Structure, or that utilize a structure similar to a CBI VIE Structure, sufficiently protected? Do investors have sufficient information about such structures to evaluate their attendant risks? Should foreign issuers with CBI VIE structures, or similar structures, be eligible for FPI status?
4. Are domestic issuers currently at a competitive disadvantage as compared to reporting FPIs that are listed exclusively in the United States and incorporated in jurisdictions that do not impose meaningful disclosure and other regulatory requirements in their home country?
5. When U.S. investors trade in shares of foreign issuers listed solely on foreign exchanges, what transaction costs do they incur? To what extent are U.S. investors restricted in trading on foreign exchanges? How has U.S. investor access to such foreign listed securities changed over time?

1. Update the Existing FPI Eligibility Criteria

As discussed in section II.A above, the current FPI definition was first adopted in 1983 and amended in 1999.[101] The criteria in the current FPI definition were originally set forth by the Commission as intended to determine whether an issuer is an "essentially U.S. issuer," with the Commission stating an expectation that the criteria of the shareholder and business contacts tests would suffice to prevent evasion but be unlikely to apply to issuers not intended to be covered.[102]

[101] *See* 1983 Release, *supra* note 18 and 1999 International Disclosure Standards Release, *supra* note 19.

[102] *See* 1983 Release, *supra* note 18.

One potential approach to amending the FPI definition given the changes we have observed in the FPI population would be to update the existing bifurcated test.[103] For example, we could lower the existing 50 percent threshold of U.S. holders in the shareholder test, above which a foreign issuer would need to apply the business contacts test to be eligible for FPI status.[104] We could also revise the existing list of criteria under the business contacts test by either adding new criteria (*see* discussion in sections IV.B.2-6 below) or revising the existing threshold for assets located in the United States.

Request for Comment

6. Does the current FPI definition appropriately capture those foreign issuers that are subject to home country disclosure and other regulatory requirements that merit accommodation under the Federal securities laws?
7. Should we consider updating the existing FPI eligibility criteria rather than adding new eligibility criteria (as discussed in sections IV.B.2-6 below)? To what extent would such updated criteria address the considerations discussed in section IV.A above?
8. Should we update the existing 50 percent threshold in the shareholder test by decreasing that level to a lower percentage threshold, which may reduce the number of eligible FPIs? What should the new threshold be? Would decreasing the U.S. ownership threshold result in advantages or disadvantages to U.S. investors and FPIs?

[103] *See supra* section II.A for definitions of the "shareholder test" and the "business contacts test."

[104] *Id*.

9. Should we update the existing criteria for the business contacts test? For example, should we update the threshold for U.S. assets? What should the new threshold be? Should the test consider citizenship or residency of anyone else? Are there other criteria that should be considered in the business contacts test? If so, what should they be?

10. Is the current FPI definition that relies on ownership and business contacts still relevant in today's capital markets or should any part of it be removed completely?

11. What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of updating the current FPI definition thresholds or criteria? We welcome any qualitative or quantitative information that could aid in such an evaluation.

2. Foreign Trading Volume Requirement

One potential approach to revising the FPI definition, either as an alternative or in addition to updating the existing eligibility criteria, would be to add a foreign trading volume test. For example, an amended definition could require that FPIs assess their foreign and U.S. trading volume on an annual basis to determine continued eligibility for FPI status. We currently apply similar tests in other contexts, including in Rule 12g3-2(b),[105] which contemplates a 55 percent threshold of trading on foreign markets, and Rule 12h-6,[106] which contemplates a 95 percent threshold of trading on foreign markets. It is possible that issuers that have a consistent

[105] *Supra* note 59. Rule 12g3-2(b)(1) requires FPIs relying on the exemption to maintain a listing on an exchange in a foreign jurisdiction where at least 55% of trading in the subject class of the issuer's securities takes place.

[106] *Supra* note 61. Rule 12h-6 restricts the ability of an FPI to terminate its U.S. registration and reporting obligations if the average daily trading volume of the subject class of the FPI's securities in the United States for a recent 12-month period has been greater than 5% of its volume on a worldwide basis.

and meaningful amount of their securities traded on a non-U.S. market could be more likely to be subject to home country oversight, disclosure, and other regulatory requirements that merit accommodation than issuers whose securities are primarily or exclusively traded in the United States.[107]

For example, a foreign trading volume test could apply in addition to the current shareholder test or business contacts test[108] and require an FPI to have a certain percentage of the trading volume of its securities in a market or markets outside the United States over a preceding 12-month period. The Commission staff has recently conducted an analysis to estimate how many current reporting FPIs would be affected through loss of FPI status under a selection of such foreign trading volume requirements, based on the sample of 20-F FPIs and calculation of U.S. Percentage (or conversely Non-U.S. Percentage) of Global Trading in the analysis in section III.B above.

The staff's current estimates of affected FPIs using a one percent, three percent, five percent, 10 percent, 15 percent, and 50 percent threshold for non-U.S. trading volume to determine FPI status are as follows:

Table 9: Counts of Affected vs. Non-Affected 20-F FPIs for Different Non-U.S. Trading Thresholds (FY 2023)

	1% Non-U.S. Trading		3% Non-U.S. Trading		5% Non-U.S. Trading	
	Count	% of Sampled FPIs	Count	% of Sampled FPIs	Count	% of Sampled FPIs
Affected	519	55.04	571	60.55	588	62.35
Unaffected	424	44.96	372	39.45	355	37.65
Total	943	100.00	943	100.00	943	100.00
	10% Non-U.S. Trading		15% Non-U.S. Trading		50% Non-U.S. Trading	
	Count	% of Sampled FPIs	Count	% of Sampled FPIs	Count	% of Sampled FPIs
Affected	607	64.37	621	65.85	716	75.93
Unaffected	336	35.63	322	34.15	277	24.07
Total	943	100.00	943	100.00	943	100.00

[107] *See, e.g., supra* notes 94-99.

[108] *See supra* section II.A for definitions of the "shareholder test" and the "business contacts test."

Table 10: Affected 20-F FPIs by Most Affected Jurisdictions of Incorporation for Different Non-U.S. Trading Thresholds (FY 2023)

1% Non-U.S. Trading			3% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
Cayman Islands	265	83.33	Cayman Islands	284	89.31
Israel	58	60.42	Israel	62	64.58
British Virgin Islands	51	87.93	British Virgin Islands	55	94.83
Marshall Islands	33	94.29	Marshall Islands	34	97.14
Bermuda	14	48.28	Canada (non-MJDS)	18	24.32
Canada (non-MJDS)	13	17.57	Bermuda	17	58.62
Netherlands	9	30.00	Netherlands	12	40.00
United Kingdom	8	20.00	United Kingdom	11	27.50
Ireland	7	63.64	Luxembourg	9	69.23
Japan	6	40.00	Ireland	8	72.73
Luxembourg	6	46.15			
5% Non-U.S. Trading			10% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
Cayman Islands	288	90.57	Cayman Islands	294	92.45
Israel	63	65.62	Israel	63	65.62
British Virgin Islands	55	94.83	British Virgin Islands	55	94.83
Marshall Islands	34	97.14	Marshall Islands	34	97.14
Canada (non-MDJS)	20	27.03	Canada (non-MDJS)	23	31.08
Bermuda	18	62.07	Bermuda	19	65.52
Netherlands	13	43.33	Netherlands	16	53.33
United Kingdom	13	32.50	United Kingdom	13	32.50
Australia	9	39.13	Australia	10	43.48
Ireland	9	81.82	Ireland	9	81.82
Luxembourg	9	69.23	Luxembourg	9	69.23
15% Non-U.S. Trading			50% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
Cayman Islands	297	93.40	Cayman Islands	308	96.86
Israel	68	70.83	Israel	80	83.33
British Virgin Islands	56	96.55	British Virgin Islands	57	98.28
Marshall Islands	34	97.14	Canada (non-MDJS)	40	54.05
Canada (non-MJDS)	23	31.08	Marshall Islands	34	97.14
Bermuda	20	68.97	Bermuda	24	82.76
Netherlands	16	53.33	Netherlands	22	73.33
United Kingdom	13	32.50	United Kingdom	15	37.50
Australia	10	43.48	Australia	13	56.52
Ireland	9	69.23	Ireland	10	90.91
Luxembourg	9	81.82	Luxembourg	10	76.92
Singapore	9	90.00	Argentina	10	76.92

Table 11: Affected 20-F FPIs by Most Affected Jurisdictions of Headquarters for Different Non-U.S. Trading Thresholds (FY 2023)

1% Non-U.S. Trading			3% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
China	177	81.94	China	192	88.89
Israel	63	61.76	Israel	67	65.69
Hong Kong, SAR, China	40	93.02	Singapore	41	93.18
Singapore	39	88.64	Hong Kong, SAR, China	40	93.02
United Kingdom	25	42.37	United Kingdom	31	52.54
Greece	19	90.48	Greece	20	95.24
United States	14	56.00	United States	17	68.00
Bermuda	13	54.17	Canada (non-MJDS)	15	21.74
Canada (non-MJDS)	12	17.39	Bermuda	14	58.33
Brazil	10	26.32	Brazil	10	26.32
			Ireland	10	76.92
5% Non-U.S. Trading			10% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
China	193	89.35	China	199	92.13
Israel	68	66.67	Israel	68	66.67
Singapore	42	95.45	Singapore	42	95.45
Hong Kong, SAR, China	40	93.02	Hong Kong, SAR, China	40	93.02
United Kingdom	33	55.93	United Kingdom	33	55.93
Greece	20	95.24	Canada (non-MJDS)	20	28.99
United States	18	72.00	Greece	20	95.24
Canada (non-MJDS)	17	24.64	United States	18	72.00
Bermuda	14	58.33	Bermuda	15	62.50
Ireland	11	84.62	Ireland	11	84.62
			Australia	11	52.38
15% Non-U.S. Trading			50% Non-U.S. Trading		
Jurisdiction	Count	% affected FPIs in Jurisdiction	Jurisdiction	Count	% affected FPIs in Jurisdiction
China	202	93.52	China	209	96.76
Israel	73	71.57	Israel	86	84.31
Singapore	43	97.73	Singapore	43	97.73
Hong Kong, SAR, China	40	93.02	Hong Kong, SAR, China	41	95.35
United Kingdom	33	55.93	Canada (non-MJDS)	36	52.17
Canada (non-MJDS)	20	28.99	United Kingdom	35	59.32
Greece	20	95.24	United States	20	80.00
United States	18	72.00	Greece	20	95.24
Bermuda	16	66.67	Bermuda	19	79.17
Australia	11	52.38	Germany	14	70.00
Ireland	11	84.62			

According to these estimates, at the lowest one percent threshold, over half of current reporting FPIs would lose their FPI status. Increasing the threshold from one percent to five

percent would not dramatically increase the number of affected FPIs but could make it harder for FPIs seeking to minimize their regulatory burdens to "game" the system (*e.g.,* by establishing a small foreign market for their securities solely to avoid complying with the registration and reporting requirements for domestic issuers).

Request for Comment

12. Is a foreign trading volume test an appropriate way to determine whether a foreign issuer should be eligible for FPI accommodations? Would it be a useful means of assessing the likelihood that a foreign issuer is subject to home country disclosure and other regulatory requirements that merit accommodation? To what extent would it disqualify FPIs for which such accommodations would be appropriate? Might some home country jurisdictions still provide exemptions from reporting requirements to issuers that either qualify as an FPI in the United States or whose primary trading market is the United States even if the percentage of the FPI's securities traded in U.S. capital markets falls under a threshold below 50 percent?
13. Would adopting a foreign trading volume test for FPIs enhance securities pricing in U.S. capital markets by ensuring that information is being efficiently incorporated into an FPI's equity security prices through trading activity on its foreign market exchange?
14. Are investors in FPIs' securities that are traded primarily or exclusively in the United States disadvantaged by potential delays in disclosure, differential access to information, or more limited liability (*i.e.*, for disclosures that are "furnished" rather than "filed"), that may result in a greater likelihood of FPI securities being mispriced by U.S. capital markets?

15. What would be the appropriate threshold for a foreign trading volume test (*e.g.,* one percent, three percent, five percent, 10 percent, 15 percent, 50 percent, or some other percentage)? Why would any of these thresholds be appropriate? What would be the benefits and costs to FPIs and U.S. investors under each or any proposed threshold?
16. Would a low threshold be susceptible to "gaming" by issuers who may seek to establish minimal foreign trading that satisfies such threshold shortly before the annual determination date of their FPI status? If so, how could a foreign trading volume requirement be revised to reduce the risk of such gaming? Are there other forms of potential gaming with respect to a foreign trading volume requirement that we should consider?
17. Should the threshold percentage for a foreign trading volume test be computed as the percentage of the aggregate annual daily trading volume attributable to non-U.S. markets (*i.e.*, weighted by shares traded) or as the average of the percentage of daily trading volume attributable to non-U.S. markets (*i.e.*, weighted by days) or in some other way? Please explain why. Should foreign trading volume for this purpose be measured in dollars or shares, and why?
18. Given that a foreign trading volume test would necessitate compiling and tracking data on the foreign trading of FPIs, what source should be used for such data? Are there known methods and sources of information that market participants use to obtain reliable and readily available data on trading volume in foreign markets?

19. Would a foreign trading volume test at any particular percentage disproportionately impact issuers in a specific industry or jurisdiction? If so, what, if anything, should or could be done to mitigate such effects? Would a foreign trading volume test at any particular percentage disproportionately impact issuers within a particular range of market capitalization? If so, what, if anything, should or could be done to mitigate such effects? Would any other categories of issuers be disproportionally impacted?
20. If the FPI definition is amended to include a foreign trading volume test, should the test assess the level of foreign trading of the issuer's common equity or ordinary shares? Should it also assess trading of other types of securities, such as debt securities? Should the test consider any disparate voting rights that are present in the issuer's capital structure (such as publicly traded common stock with no voting rights)? If the foreign trading volume test assesses foreign trading of the issuer's common equity or ordinary shares as well as trading of other types of securities, how should those metrics be weighted? What would be the potential costs and benefits of such a multi-factor approach?
21. Should trading only in certain types of foreign trading markets be considered in any foreign trading volume test? For example, should only trading that takes place on a major foreign exchange, as discussed in section IV.B.3 below, be considered in such a test?
22. What period of time is appropriate for assessing whether a foreign issuer has a meaningful level of trading activity in a non-U.S. market? For example, would a

test that assesses the level of trading in a non-U.S. market over a 52-week period preceding the issuer's determination date for FPI eligibility be appropriate?

23. If a foreign trading volume test is imposed, how often should the Commission reassess the threshold and consider amendments to the rule, if at all?

24. What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a foreign trading volume requirement to the FPI definition?

3. Major Foreign Exchange Listing Requirement

We are also soliciting comment on potentially requiring FPIs to be listed on a major foreign exchange, particularly in connection with a trading volume requirement as described above. Adding a major exchange listing requirement may help to ensure that FPIs are subject to meaningful regulation and oversight in a foreign market and increase the market incentives to provide material and timely disclosure to investors. In determining which exchanges fit the definition of a "major foreign exchange," one approach would be for the Commission to maintain a list of foreign exchanges whose listing requirements meet certain specific criteria. We currently apply variations of this approach in other contexts, including in Regulation S[109] to specify certain exchanges as a "designated offshore securities market."[110] For example, the Commission could prescribe certain criteria that the listing requirements of a foreign exchange must meet to be considered "major," which could include a threshold of total market size

[109] 17 CFR 230.901through 230.905.

[110] 17 CFR 230.902. Designated offshore securities markets are defined under Regulation S for purposes of identifying whether an offer or sale is made in an "offshore transaction" and can include any foreign securities exchange or non-exchange market designated by the Commission. Although a number of attributes are listed in Regulation S as factors for consideration in determining whether to designate such a market, a designated offshore securities market within the meaning of Regulation S might not meet the same eligibility standards we would potentially set forth under a major foreign exchange listing requirement.

reflected, corporate governance requirements, reporting and other public disclosure requirements, enforcement authority, or other factors. Exchanges that meet the requisite standards could be automatically deemed "major," or the Commission could require a formal application and determination process for each individual exchange.

While a "major foreign exchange" requirement could help to ensure that FPIs are subject to meaningful regulation and oversight in a foreign market, it would require the Commission to evaluate and stay apprised of the particulars of each relevant exchange, which could depend in part on the level of cooperation and information-sharing it receives from the relevant exchange. Once an exchange has been designated a "major foreign exchange," any subsequent determination that warrants a change in the designation could be highly disruptive to issuers. Furthermore, any particular criteria we may set forth for a "major" exchange based on our understanding of U.S. exchanges may prove to be less suitable in the foreign context, potentially giving rise to unintended consequences for both U.S. investors and FPIs. It could also result in foreign issuers that are not listed on qualifying major exchanges, but that are still subject to meaningful regulation in their home country jurisdiction, becoming ineligible for FPI status.

Request for Comment

25. Should we consider a requirement that FPIs be listed on a "major foreign exchange"? If so, how should we define whether a foreign exchange is "major"? In determining whether a foreign exchange is "major," how should we treat exchanges that offer different listing tiers, some of which may have less stringent listing requirements?
26. Would a requirement that FPIs be listed on a "major foreign exchange" reduce the incentive for foreign issuers to list in U.S. capital markets? Would many FPIs leave U.S. capital markets if they are also required to be listed on a "major

foreign exchange" to maintain the FPI status and avoid reporting as a domestic issuer?

27. What specific criteria should be considered in evaluating whether a foreign exchange is "major"? For example, which, if any, of the following criteria should be considered and what thresholds should apply: aggregate market value of publicly held shares, closing price of shares, number of shareholders, average monthly trading volume, earnings, global market capitalization, triggers for stockholder approval, requirements for an independent compensation committee, periodic reporting, review of public disclosure, the authority of a particular exchange to enforce its rules, or any other criteria? Which data sources should be used to evaluate such criteria? Would applying such criteria help ensure that FPIs are subject to meaningful regulation and oversight in a foreign market?
28. How often should we assess whether a foreign exchange is "major," and what procedure should be followed to transition FPIs that are listed on an exchange that is no longer deemed "major" to reporting as a domestic issuer?
29. Should we consider the disclosure and corporate governance requirements of an exchange's listing standards when determining whether it is a "major foreign exchange"? If so, what requirements should be considered and why?
30. Should we consider the type of securities an FPI has listed on such major foreign exchange when determining whether a listing would meet this new requirement? If so, what types of securities (*e.g.*, only common equity, both common equity and debt, etc.) should be considered and included? Should the requirement state

that securities of the same type as those an FPI is registering in the United States must be listed on a major foreign exchange?

31. Are there certain types of foreign trading markets that should not be considered "major" for purposes of the FPI definition? For example, should there be different treatment of trading in an OTC market as opposed to trading on an exchange? Should we consider the level of public information available about the trading activity and oversight in the market when determining whether the market is "major" for purposes of the FPI definition?
32. In considering the appropriate criteria and process for determining a "major foreign exchange," it is likely that including more detail and complexity will result in a more burdensome and time-consuming undertaking for the Commission staff. If we propose a requirement that FPIs must be listed on a "major foreign exchange," how should we balance the need to make a detailed assessment about which listings and exchanges satisfy the requirement with concerns about imposing undue burdens on Commission resources? Due to the burdens of such an assessment, the Commission may not be able to respond quickly to any regulatory changes in such foreign exchanges. What challenges would possible delays in re-assessment of any "major foreign exchanges" pose to issuers and U.S. investors?
33. What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a "major foreign exchange" requirement to the FPI definition?

4. Commission Assessment of Foreign Regulation

Another approach on which we request feedback is whether to require that each FPI be (1) incorporated or headquartered in a jurisdiction that the Commission has determined to have a robust regulatory and oversight framework for issuers and (2) be subject to such securities regulations and oversight without modification or exemption. Similar to the potential "major foreign exchange" requirement discussed above, the Commission could designate certain foreign jurisdictions as meeting applicable criteria considered indicative of robust securities regulation and oversight. This requirement would necessitate that the Commission individually assess the regulatory regimes of foreign jurisdictions on an ongoing basis to determine if they meet certain regulatory standards that the Commission deems adequate for the protection of U.S. investors. Such assessment would require a high level of cooperation with foreign authorities and determinations about the nature of their disclosure requirements, the extent to which the Commission believes those foreign authorities' regulations protect U.S. investors, and the effectiveness of their enforcement programs, and would require the Commission staff to devote significant time and resources to continuously monitor the particulars of each relevant foreign regulatory regime.

For example, we could require that an FPI be incorporated and/or headquartered in a jurisdiction where the FPI must file annual reports with financial statements audited by an independent auditor and reports disclosing interim financial results and material events,[111] that has liability provisions for material misstatements and omissions and an effective enforcement mechanism, and that conducts regular reviews of public filings. Such assessments could be determinative for all issuers within a given jurisdiction or could be adjusted to account for

[111] *See supra* note 95 and related discussion for examples of home country jurisdictions with similar requirements, as well as note 94 for examples of home country jurisdictions without similar requirements.

variations in the applicable regulation based upon the size, industry, or listing venue of the issuer, allowing for a tailored approach that could be used to minimize the burdens of duplicative regulatory requirements on specific subsets of FPIs. This approach would be effective only to the extent that the Commission and its staff would be able to adequately assess a foreign jurisdiction's regulatory requirements, which may be limited by the staff's expertise in foreign laws, the transparency of those jurisdictions' rules, regulatory actions, case law, and the ability to obtain sufficient cooperation from foreign authorities. Furthermore, once the regulatory requirements of a foreign jurisdiction have been assessed, any subsequent changes in those requirements and resulting assessments that warrant a change in the Commission's determination could be highly disruptive to issuers.

Request for Comment

34. Should we permit an issuer to retain FPI status only if is incorporated or headquartered in a jurisdiction that the Commission has determined to have securities regulations and oversight sufficient to protect U.S. investors? Should we require the issuer to be both incorporated and headquartered in such a jurisdiction? Would that be sufficient to protect U.S. investors and ensure that an issuer is subject to meaningful home country regulations, or should we also require an FPI to be registered/listed on an exchange in that jurisdiction?
35. If the Commission designates certain jurisdictions as having securities regulations and oversight sufficient to protect U.S. investors, should we permit foreign issuers that have been granted exemptions or accommodations from certain regulatory requirements by their home country regulator to retain FPI status? How should we assess whether an issuer is fully subject to the home country securities regulations and oversight that the Commission has designated

as sufficient to protect U.S. investors? For example, should we require FPIs to certify that they are subject to the securities regulations and oversight of their home country regulator without modification or exemption? If the home country regulator incorporates a scaled regime that includes modifications to or exemptions from regulatory requirements for certain subsets of issuers (*e.g.*, the foreign issuer is subject to modified regulatory requirements in its home country jurisdiction due to being newly public or falling below a specified market capitalization threshold), should we permit such issuers to take advantage of FPI accommodations provided they adhere fully to the applicable requirements of the home country jurisdiction?

36. How should we assess which jurisdictions have sufficient regulatory regimes? More specifically, what standards should we apply in assessing a foreign jurisdiction's regulatory regime for purposes of FPI eligibility? Is it possible to develop an objective test for making this determination? Are there key disclosures or other requirements that the foreign jurisdictions should have in their securities regulation for issuers in those jurisdictions to be eligible for the Commission's FPI accommodations?
37. How often should we reassess the regulatory regimes of foreign jurisdictions to ensure that U.S. investors in FPIs are protected? What would be the impacts on issuers, investors and capital markets from conducting such reassessment? How should we account for any lags in time between when a foreign jurisdiction changes its regulatory requirements and when our reassessment occurs pursuant to any review cycle we adopt?

38. In considering the appropriate criteria and process for determining whether a jurisdiction applies a robust regulatory and oversight framework and whether a foreign issuer is subject to such framework, it is likely that including more detail and complexity will result in a more burdensome and time-consuming undertaking for the Commission staff. If we propose such a requirement, how should we balance the need to make the determination with concerns about imposing undue burdens on Commission resources? Due to the burdens of such an assessment, the Commission may not be able to respond quickly to any regulatory changes in such foreign jurisdiction. What challenges would possible delays in re-assessment of any foreign regulatory and oversight framework pose to issuers and U.S. investors?

39. What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a Commission assessment of foreign regulation requirement to the FPI definition?

5. Mutual Recognition Systems

Another approach to tailor the FPI accommodations to the FPI population would be to develop a system of mutual recognition, with respect to Securities Act registration and Exchange Act periodic reporting, for issuers from selected foreign jurisdictions. We currently apply a limited mutual recognition approach for Canadian issuers under the MJDS, which permits eligible U.S. and Canadian issuers to conduct cross-border securities offerings and fulfill their reporting requirements primarily by complying with, and using disclosure documents prepared in

accordance with, home country securities regulations.[112] The MJDS was established in part because of the shared investor protection goals and regulatory approaches of the U.S. and Canadian regulatory regimes and because of the large number of Canadian issuers accessing U.S. capital markets.[113] Several other potential mutual recognition systems were previously considered by the Commission in 2008, including expanding the regulatory relationship with Canada.[114]

Mutual recognition systems are premised upon principles of mutual benefit and reciprocity.[115] While participant jurisdictions would be expected to meet certain standards in their regulatory approaches, their requirements would not need to be exactly the same as the Commission's requirements for domestic issuers; they would need only to offer comparable protections to U.S. investors. An advantage of mutual recognition systems is that they can be

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[112] The MJDS does not include deference on enforcement matters. To use the MJDS, MJDS issuers must also consent to service of process and appoint a U.S. person as agent for process, as well as consent to service of an administrative subpoena and an undertaking to assist the Commission in responding to inquiries made by the Commission staff. *See supra* note 64.

[113] *Multijurisdictional Disclosure,* Release No. 33-6841 (July 24, 1989) [54 FR 32226 (Aug. 4, 1987)] (noting the maturity of Canadian capital markets and strength of regulatory tradition, the common goal between United States and Canada of "investor protection through refined and developed disclosure systems for both the primary and secondary markets," and the level of cooperation in enforcement matters supported by the 1988 Memorandum of Understanding); MJDS Adopting Release, *supra* note 8 ("Canada is the logical first partner for the United States in such an initiative because of the significant presence of Canadian companies in the U.S. trading markets."). The Commission has similarly used comparability as a factor justifying substituted compliance in rules under 15 U.S.C. 78m(q) ("section 13(q)") regarding disclosure pertaining to resource extraction. *See Disclosure of Payments by Resource Extraction Issuers,* Release No. 34-90679 (Dec. 16, 2020) [86 FR 4662 (Jan. 15, 2021)].

[114] *See* Statement of the European Commission and the U.S. Securities and Exchange Commission on Mutual Recognition in Securities Markets (Feb. 1, 2008), available at https://www.sec.gov/news/press/2008/2008-9.htm; Schedule Announced for Completion of U.S.–Canadian Mutual Recognition Process Agreement (May 29, 2008), available at https://www.sec.gov/news/press/2008/2008-98.htm; Mutual Recognition Arrangement Between the United States Securities and Exchange Commission and the Australian Securities and Investments Commission, together with the Australian Minister for Superannuation and Corporate Law (Aug. 25, 2008), available at https://download.asic.gov.au/media/1346672/SEC_framework_arrangement_aug_08.pdf. *See also* Tafara, Ethiopis and Robert J. Peterson, A Blueprint for Cross-Border Access to U.S. Investors: A New International Framework, 48 Harv. Int'l L.J. 31 (2007).

[115] Wei, Tzung-bor. The Equivalence Approach to Securities Regulation. 27 Nw. J. Int'l L. & Bus. 255, 282 (2006-2007).

tailored to suit the specific jurisdiction and could continue evolving as necessary. In some cases, foreign jurisdictions would need to undertake regulatory changes in order to establish a mutual recognition system. A disadvantage of such an approach is the time that it would take to assess jurisdictions on a case-by-case basis.

Request for Comment

40. Should we seek to establish an additional system for mutual recognition with respect to Securities Act and Exchange Act requirements for FPIs? If so, what would be key areas for such mutual recognition? Are there impediments that would prevent this approach? Are there any areas of issuer regulation and oversight that we should not include in such a system?
41. Should any additional mutual recognition systems with respect to Securities Act and Exchange Act requirements be specifically tailored to each jurisdiction, or should we establish one umbrella system that encompasses multiple jurisdictions? Is an umbrella system feasible given the disparate regimes, regulations, and laws across foreign jurisdictions?
42. Is the MJDS a good model for a new mutual recognition system with respect to Securities Act and Exchange Act requirements? Are there any issues regarding the MJDS relating to investor protection or capital formation? Are there particular advantages to the MJDS that should be replicated in any new mutual recognition system with respect to Securities Act and Exchange Act requirements?
43. If we explore a new mutual recognition system with respect to Securities Act and Exchange Act requirements, which jurisdictions should we consider as possible candidates? How would U.S. investors perceive the regulatory regimes of such

jurisdictions in terms of investor protection or confidence in this type of system? To what extent would this approach address the concerns raised in this release?

44. What criteria should we use to determine whether a particular jurisdiction's regulatory regime sufficiently shares investor protection goals and regulatory approaches with the U.S. regime to warrant mutual recognition with respect to Securities Act and Exchange Act requirements?

45. If we adopt a new mutual recognition system, should we limit the accommodations that can be relied upon by any FPIs that are not included in the new mutual recognition system? If so, which accommodations should be limited and why? Alternatively, should FPIs that meet the current definition continue to benefit from the same FPI accommodations while FPIs that are covered by the new mutual recognition system be granted additional accommodations? If so, what accommodations should we consider?

46. Determining whether a system of mutual recognition should be established for a certain jurisdiction will likely create a burdensome and time-consuming undertaking for the Commission staff. If we adopt a new mutual recognition system, how should we balance the need to make this determination with concerns about imposing undue burdens on Commission resources? Due to the burdens of establishing a mutual recognition system, the Commission may not be able to respond quickly to any regulatory changes in such foreign jurisdiction. What challenges would potential delays in the tailoring of any mutual recognition system pose to issuers and U.S. investors?

47. What are the potential costs and benefits to FPIs and U.S. investors, including impacts on efficiency, competition, and capital formation, of establishing a new mutual recognition system with respect to Securities Act and Exchange Act requirements? Is there any subset of issuers or U.S. investors that would be disproportionately and/or unintentionally affected by the creation of such a system?

6. International Cooperation Arrangement Requirement

We could require, as a criterion for FPI eligibility, that an FPI certify that it is either incorporated or headquartered in, and subject to the oversight of the signatory authority of, a jurisdiction in which the foreign securities authority[116] has signed the IOSCO[117] Multilateral Memorandum of Understanding Concerning Consultation, Cooperation, and the Exchange of Information ("MMoU") or the Enhanced MMoU ("EMMoU").[118]

While the MMoU is voluntary, non-binding, and does not supersede domestic laws, IOSCO members that sign the MMoU are expressing their intent and legal authority to assist other MMoU members in enforcement matters, including the sharing of information in

[116] 15 U.S.C. 78c(a)(50) (section 3(a)(50)) of the Exchange Act defines a "foreign securities authority" as "any foreign government, or governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters."

[117] IOSCO is an association of the world's securities regulators that develops, implements, and promotes internationally recognized standards for financial markets regulation. Its membership covers 130 jurisdictions and regulates more than 95% of the world's securities markets. IOSCO's Objectives and Principles of Securities Regulation are endorsed by both the G20 and the Financial Stability Board and form the basis for the evaluation of the securities sector for the Financial Sector Assessment Programs of the International Monetary Fund ("IMF") and the World Bank. IOSCO's three main objectives are to enhance investor protection, ensure markets are fair and efficient and promote financial stability by reducing systemic risk. The Commission is an IOSCO member.

[118] The full text of the MMoU is available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf; the full text of the EMMoU is available at https://www.iosco.org/about/pdf/Text-of-the-EMMoU.pdf. As of Feb. 2025, there are 136 authorities that are members of the MMoU (the full list is available at https://www.iosco.org/v2/about/?subSection=mmou&subSection1=signatories) and 27 authorities that have signed the EMMoU (the full list is available at https://www.iosco.org/v2/about/?subSection=emmou&subSection1=signatories). The Commission is a signatory to both the MMoU and EMMoU.

enforcement matters involving FPIs. IOSCO screens prospective MMoU applicants to confirm their legal authority to provide other MMoU members with such assistance, in particular the ability to provide other MMoU members with bank, brokerage, and beneficial ownership records.[119]

The EMMoU seeks to build on the MMoU and facilitate the provision of a broader array of assistance among securities authorities in enforcement matters, including the following categories of assistance: obtaining and sharing audit information; compelling physical attendance for testimony; freezing assets or advising on how to do so; and obtaining and sharing certain subscriber and log information from internet and telephone service providers and communications held by regulated entities.

While the criteria for permitting an authority to sign the MMoU (and EMMoU) primarily relate to an authority's ability to provide information and other assistance to authorities investigating potential violations of their securities laws and abide by the MMoU's/EMMoU's provisions on confidentiality and use of information, the MMoU and EMMoU do not require their signatories to have robust disclosure requirements applicable to issuers in their jurisdictions. As such, the MMoU and EMMoU are not a proxy for robust disclosure rules in the FPI's home country or the FPI actually being subject to such rules.

The Commission regularly uses the MMoU and EMMoU to further its mission of investor protection by obtaining and providing international enforcement cooperation, including with respect to issuers. Because the MMoU and EMMoU do not reflect the adequacy of

[119] *See* Appendix B, sections I and II to the MMoU.

signatories' securities regulation or oversight, this requirement would likely function as a complement to other regulatory responses discussed in section IV.[120]

Request for Comment

48. Should we permit issuers to retain FPI status only if they, in addition to other eligibility criteria, certify that they are either incorporated or headquartered in a jurisdiction in which the foreign securities authority is a signatory to the IOSCO MMoU? What are the advantages or disadvantages to this approach? Should we also require an FPI to be registered/listed on an exchange in that jurisdiction to ensure that an issuer is subject to regulations by the foreign securities authority that is a signatory to the IOSCO MMoU?
49. Should we require that the foreign securities authority be a signatory to the EMMoU, in addition to the MMoU?
50. Should we require the foreign securities authority to not only have signed the MMoU and/or EMMoU, but also not have been suspended or terminated from either arrangement by IOSCO?
51. Should the Commission consider alternative information-sharing arrangements as a criterion for FPI eligibility? In particular, are there other information-sharing arrangements that would provide additional investor protection safeguards for U.S. investors in the event that an FPI fails to comply with the requirements of the Federal securities laws when accessing U.S. capital markets?

[120] For example, several jurisdictions, such as the Cayman Islands, British Virgin Islands, and Bermuda, are signatories to the MMoU but appear to have limited current reporting requirements under the rules of their home country jurisdictions. *See supra* note 92.

52. If we impose a MMoU/EMMoU signatory or similar requirement, should the Commission require each FPI applicant to certify annually that it is either incorporated or headquartered in a jurisdiction in which the foreign securities authority is an MMoU/EMMoU signatory? If so, how should the issuer make that certification?

53. What are the limitations of the MMoU/EMMoU in furthering the goal of providing appropriate accommodations for certain foreign issuers so that U.S. investors have these investment opportunities while also but maintaining adequate protections for U.S. capital markets participants?

54. What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a MMoU/EMMoU signatory or similar requirement to the FPI definition?

C. Other Considerations

We recognize that amending the current FPI definition may involve incorporating elements of several of the potential regulatory responses set forth above, as well as careful consideration of any anticipated consequences. We welcome any comments on the additional questions outlined below as well as any other relevant consideration that we should keep in mind as we evaluate the FPI definition.

Request for Comment

55. If we amend the FPI definition, issuers that lose FPI status would become subject to the requirements for domestic issuers. This may mark a significant change in reporting and other regulatory requirements, with such issuers no longer being able to avail themselves of the FPI accommodations discussed in section II.B above. Each additional requirement imposed on former FPIs would involve costs

and benefits. Which of these additional requirements are likely to be most burdensome to issuers that lose FPI status? Which are likely to be most beneficial to investors? Given the extent of possible changes, what data or analyses should we consider as part of our assessment of the potential costs and benefits of an issuer transitioning out of FPI status?

56. If we amend the FPI definition, some issuers that lose FPI status may choose to change their listing, ownership, or other elements to access alternative non-U.S. markets or to regain FPI status rather than comply with all the requirements to which domestic issuers are subject. What are the most likely alternative markets that such issuers would access, or the most likely changes that such issuers would make? What characteristics distinguish the issuers that are likely to react to an amended FPI definition in these ways? Which of the alternatives discussed in this release would be most likely to result in such reactions? What are the primary factors that would guide the decisions of such issuers?

57. U.S. investors can trade in equities in non-U.S. markets, though perhaps without the same ease as they can trade in U.S. markets. What are the frictions to such trading? To what degree would U.S. investors continue to invest in issuers that lose FPI status if they gave up their U.S. listing or registration? Would FPIs that are currently exclusively listed in U.S. capital markets pursue alternative non-U.S. listings of their securities upon losing their FPI status rather than report as domestic issuers, thereby making it difficult for current and future U.S. investors to trade in such FPIs' securities?

58. Are there other considerations we should take into account pertaining to relations with foreign regulators and conflict of laws in connection with potential changes to the FPI definition?

59. FPIs may present financial statements pursuant to U.S. GAAP, IFRS as issued by the IASB without reconciliation to U.S. GAAP, or home country GAAP with a reconciliation to U.S. GAAP. If the FPI definition were revised, any issuers that would lose FPI status would be required to present their financial statements pursuant to U.S. GAAP, as is required for domestic issuers. There is currently no guidance for the transition from IFRS as issued by the IASB to U.S. GAAP. This transition in financial reporting could be burdensome and costly. What would be the costs and complexities in transitioning to U.S. GAAP? What would be the benefits of transitioning to U.S. GAAP? In light of potential costs and complexities, are there specific financial reporting accommodations that should be provided to former FPIs? For example, should a transition period be provided and, if so, for how long? Should we reduce the number of years of financial statements required to be presented during the transition period or require application of U.S. GAAP only in future periods with transition provisions such as an opening balance sheet? Would any other accommodations be appropriate and how would their benefits and costs compare?

60. Are there any subsets of the current FPI population that should not be subject to any additional disclosure or other requirements that these issuers may incur due to any amendments to the FPI definition? Please explain which and why. Alternatively, should any such subsets of the current FPI population be given a

longer transition period and other transition accommodations if they lose FPI status due to any amendments to the FPI definition?

61. Should amendments to the FPI definition apply to reporting FPIs only and not to the FPIs who are exempt from section 12(g) registration pursuant to either Rule 12g3-2(a) or Rule 12g3-2(b)? Are there different amendments that we should consider for these foreign issuers as opposed to reporting FPIs? In some cases, the securities of non-reporting FPIs are listed in the United States through the market activities of certain intermediaries such as depositaries engaged in creating ADRs without involvement by the non-reporting FPIs.[121] Amendments to the FPI definition may result in depositaries finding it more difficult to establish unsponsored ADR programs as fewer foreign issuers may be eligible to rely on Rule 12g3-2(b) due to loss of FPI status. Would amending the FPI definition unduly restrict the ADR market?

62. Would changing the FPI definition have a foreseeable impact in the number of foreign issuers that choose to trade on the U.S. OTC markets instead of on a U.S. exchange? If we adopt an amendment to the FPI definition, it would also affect eligibility for the exemptions under Rule 12g3-2(a) and Rule 12g3-2(b) and foreign issuers that are no longer eligible to rely upon FPI exemptions from reporting could become subject to domestic issuer reporting obligations if their securities trade on the U.S. OTC markets. Would such issuers be more likely to

[121] *See* Rule 12g3-2(b), *supra* note 59. Rule 12g3-2(b)(2) exempts an eligible FPI from the requirement to register a class of equity securities under section 12(g) if the issuer maintains a foreign listing and makes certain information available in English on its website or through an electronic information delivery system generally available to the public in its primary trading market. Securities of FPIs that are exempt under Rule 12g3-2(b) may be held on deposit and traded in the United States as ADRs.

pursue a listing on an exchange rather than on the U.S. OTC markets? Are investors likely to see potential consequences from any related shift in where such issuers are trading?

63. If we adopt an amendment to the FPI definition but retain the current FPI definition solely with regards to the exemptions under Rule 12g3-2(a) and Rule 12g3-2(b), would foreign issuers be more likely to trade their securities on the U.S. OTC markets rather than seeking and maintaining compliance with a new eligibility requirement? What impacts would U.S. investors be likely to experience as a result of such a shift?
64. Should we combine any of the potential regulatory responses described in this section IV? If so, which ones and why? What would be the economic effects of combining such responses for FPIs and U.S. investors?
65. Are there any other regulatory responses not discussed in this concept release that we should consider given the recent developments in the FPI population as described in section III, whether alone or in addition to any of those discussed? What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of any such other regulatory responses?
66. Should any of the potential regulatory responses described in this section IV, in particular sections IV.B.2-4 and IV.B.6, be required only if the foreign issuer must apply the business contacts test, and not if the foreign issuer meets the shareholder test?

67. What would be the competitive effects for domestic and foreign issuers as well as U.S. capital markets of amending the FPI definition using one or more of the regulatory responses described in this section IV?

68. The FPI definition is currently similar to, but not the same as, the definition of a "foreign business" under Rule 1-02(l) of Regulation S-X.[122] Should any change to the FPI definition also result in changes to the definition of a "foreign business"?

69. Should we consider applying any change to the FPI definition only to new FPIs registering for the first time to eliminate the transition costs for the current FPI population? What would be the competitive effects for domestic issuers and existing FPIs of such an accommodation? Should existing FPIs be permitted to rely on the current FPI eligibility requirements indefinitely or be subjected to any changes to the FPI definition after a certain transition period, and, if so, what should that period be?

V. Regulatory Planning and Review

This concept release and request for comments is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

VI. Conclusion

We are interested in the public's views regarding the matters discussed in this concept release. We recognize that the public interest is served when U.S. investors have more

[122] 17 CFR 210.1-02(l) of Regulation S-X defines "foreign business" as "A business that is majority owned by persons who are not citizens or residents of the United States and is not organized under the laws of the United States or any state thereof, and either: (1) More than 50 percent of its assets are located outside the United States; or (2) The majority of its executive officers and directors are not United States citizens or residents." Qualifying acquired foreign businesses benefit from certain accommodations under Regulation S-X, including following requirements applicable to FPIs when presenting financial statements.

opportunities to invest in a variety of securities, including foreign issuers' securities, and, in this regard, want to continue to facilitate U.S. investors' access to those investment opportunities. At the same time, we believe it is important to reassess whether the current FPI definition adequately reflects today's FPI population and is serving its intended function. We encourage all interested parties to submit comments on these topics. If possible, please reference the specific question numbers or sections of this release when submitting comments. In addition, we solicit comments on any other aspect of foreign issuer securities regulation that commenters believe may be improved. Please be as specific as possible in your discussion and analysis of any additional issues.

By the Commission.

Dated: June 4, 2025.

Vanessa A. Countryman,

Secretary.