September 8, 2025

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Request for Comment on the Regulatory Treatment of Foreign Private Issuers

Dear Ms. Countryman:

Investor Choice Advocates Network ("ICAN") submits this response to the Securities and Exchange Commission's request for comment on whether Foreign Private Issuers ("FPIs") should continue to benefit from reduced regulatory requirements compared to U.S. domestic issuers. Attachment A provides detailed responses to specific questions raised in the SEC's Concept Release on Foreign Private Issuer Eligibility.[1]

As a nonprofit dedicated to removing regulatory barriers that limit investor choice and capital formation, ICAN strongly urges the SEC to preserve existing FPI accommodations and adopt innovative, market-driven solutions to enhance transparency without stifling the growing presence of FPIs in U.S. markets. ICAN's mission is to expand opportunities for Main Street investors while respecting their autonomy to make investment decisions based on the investors' own preferences.

<u>The SEC Should Not Become a Merits-Based Regulator, Putting its Disclosure Preferences Ahead of Investors'</u>

The SEC is not and should not be a merits-based regulator.[2] A merits-based regulator has the ability to prohibit investors from exercising their own decisions, an approach to regulation that risks imposing requirements that are ill-suited to the diverse objectives of investors. Many calls for greater regulation of FPIs reflect not concerns about inadequate disclosure, but rather judgments about the merits of FPIs as investments. For example, critics of China-based issuers argue that the SEC should go so far as to bar them from U.S. markets entirely, not because investors lack information, but because these companies may be structurally difficult to pursue in U.S. courts.[3] These arguments conflate disclosure policy with investment merit and invite the SEC to substitute its own view of what constitutes a "good" or "safe" investment for the preferences and risk judgments of investors themselves.

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[1] Available at https://www.sec.gov/files/rules/concept/2025/33-11376.pdf
[2] Colombo, Ronald J. (2013) "Merit Regulation via the Suitability Rules," Journal of International Business and Law: Vol. 12: Iss. 1, Article 2.
[3] Jesse M. Fried & Matthew Schoenfeld, Beijing's 'Legal Great Wall' Helps Fleece U.S. Investors, WALL ST. J. (Aug. 27, 2025), https://www.wsj.com/opinion/beijings-legal-great-wall-helps-fleece-u-s-investors-china-7dfaa247

From an investor choice perspective, the SEC's role should be to ensure truthful, non-misleading markets and enable the flow of material information—not to substitute the Commissioners' own risk judgments for those of investors. As SEC Commissioner Hester M. Peirce has cautioned in a different context, prescribing particularized disclosures risks "forcing investors who do not share [regulators' or special interests' preferences] to foot the bill."[4] Questions in the Concept Release, such as whether U.S. investors in FPIs are "sufficiently protected" or receive the information they "need," presuppose that the Commission, rather than investors themselves, should determine what level of "protection" and disclosure is sufficient, undermining the investor autonomy that drives efficient markets. Some investors choose to invest in FPIs domiciled in countries with disclosure regimes that impose greater or lesser disclosure costs on issuers than the United States does, each investor deciding for herself what level of protection is "sufficient" for that investor's objectives and risk tolerances. That is as it should be.

In 2025, the investing public operates in an environment where information, including concerns about potentially problematic issuers, can be and is disseminated and discussed instantaneously. Markets can and do incorporate these crowd-sourced signals into prices rapidly. This environment enables private, reputation-based solutions that complement—not replace—existing disclosure requirements. The SEC can help increase the choices available to investors by encouraging private evaluation and rating systems.

Some Investors Prefer to Invest in FPIs with Minimal Disclosures

The SEC's own data underscore the importance of maintaining FPI investment variety.[5]

According to SEC's DERA, the aggregate market capitalization of U.S.-exclusive FPIs ranged from about $0.8 trillion in 2014 to $0.9 trillion in 2023, while non-U.S.-exclusive FPIs ranged from roughly $5.0 trillion in 2014 to $8.1 trillion in 2023, yielding combined totals that increased from $5.8 trillion in 2014 to $9.0 trillion in 2023. These figures show that while the overall market capitalization of FPIs listed in the U.S. has grown substantially over the past decade, nearly all of that growth is attributable to non-U.S.-exclusive FPIs, with U.S.-exclusive FPIs remaining a relatively small and stable portion of the total.

The foreign jurisdictions where FPIs are located exhibit a wide range of disclosure requirements, spanning from those approaching the rigorous standards of U.S. SEC regulations, such as in Canada and the United Kingdom, to jurisdictions like the Cayman Islands and British Virgin Islands, where disclosure obligations can be minimal, especially for entities headquartered elsewhere. This diversity reflects varying levels of regulatory oversight, with some jurisdictions, particularly those hosting FPIs incorporated in one place but headquartered in another (e.g.,

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[4] Hester M. Peirce, *Green Regs and Spam: Statement on the Enhancement of Mandatory Climate-Risk Disclosures* (Mar. 6, 2024), available at U.S. Securities & Exchange Commission, SEC Speeches & Statements, *Green Regs and Spam: Statement on the Enhancement of Mandatory Climate-Risk Disclosures* (Mar. 6, 2024)

[5] U.S. Securities and Exchange Commission, Division of Economic and Risk Analysis. (2025, May 1). *Trends in U.S. trading and ownership of foreign private issuers*. U.S. Securities and Exchange Commission.

China-based companies with various incorporation locales), often providing limited public disclosure compared to the comprehensive reporting mandated by the SEC.

But the magnitude of the FPI market relative to the US domestic publicly traded market should not be overstated. Over a similar period to that covered in the SEC DERA report, the aggregate market capitalization of U.S.-listed domestic issuers (that is, issuers subject to substantially higher disclosure requirements than FPIs) increased from about $26 trillion in 2014 to $62.2 trillion in 2024, reflecting more than a doubling in value.[6] This steady and substantial rise in domestic market capitalization underscores that, while FPI capitalization also grew, the expansion of U.S. domestic issuers far outpaced that of foreign private issuers, further reducing FPIs' relative share of the U.S. equity markets.

In other words, despite little change in the SEC disclosure requirements for FPIs over the last 10 years, investors sometimes chose to invest in FPIs and sometimes preferred to invest in publicly traded US domestic companies with the greater regulatory disclosure requirements. For those investors who prefer to invest only in stocks of companies required to make voluminous disclosures, there is no shortage of options.

ICAN opposes reducing the diversity of disclosure regime options currently available to investors. Restricting FPIs eligible for reduced US disclosures would unnecessarily restrict U.S. investors' access to diverse investment opportunities and diminish the competitiveness of U.S. capital markets.

The Commission Should Highlight Existing Private Market Information Sources for FPIs

To enhance investor access to information about FPIs, the Commission should promote awareness of the robust private market resources already available for evaluating FPI transparency, financial performance, and governance.

These resources, ranging from established credit and equity rating providers to investor-driven platforms, offer investors a diverse array of tools to make informed decisions without the additional regulatory mandates. By emphasizing these existing options, the Commission can support investor choice, maintain the competitiveness of U.S. capital markets, and respect the autonomy of investors to assess risks based on their own objectives and tolerances.

1. Existing Private Market Evaluation and Rating Sources for FPIs

    a. Credit Rating Agencies

Overview: Nationally Recognized Statistical Rating Organizations (NRSROs), such as S&P Global Ratings, Moody's, Fitch Ratings, and DBRS Morningstar, provide credit ratings for FPIs, assessing their creditworthiness and default risk on debt securities. These ratings, ranging from AAA to D, are based on transparent methodologies that evaluate financial stability, governance, and market risks specific to an FPI's domicile (*e.g.*, Canada's rigorous disclosure regimes or the Cayman Islands' minimal requirements). For example, DBRS Morningstar rates FPIs like Royal Bank of Canada or Alibaba Group, offering investors clear signals of financial health.

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[6] SIFMA. (2025). *2025 SIFMA Capital Markets Fact Book*. Securities Industry and Financial Markets Association. Available at https://www.sifma.org/wp-content/uploads/2024/07/2025-SIFMA-Capital-Markets-Factbook.pdf

Investor Benefits: These ratings provide standardized, objective assessments accessible to retail and institutional investors, enabling comparisons across FPIs from diverse jurisdictions. They complement the SEC's disclosure requirements by offering independent evaluations of credit risk.

Regulatory Context: As NRSROs, these agencies are subject to SEC oversight under the Credit Rating Agency Reform Act of 2006 and Dodd-Frank Act of 2010, ensuring transparency, conflict-of-interest management, and compliance with anti-fraud provisions. This regulatory framework ensures credibility but highlights the need for investors to understand potential issuer-paid conflicts, as noted in critiques of the 2008 financial crisis.

b. Equity Research Providers

Overview: Firms like Morningstar, Zacks Investment Research, S&P Global Market Intelligence, and Thomson Reuters (Refinitiv) offer equity ratings for FPIs listed on U.S. exchanges or global markets, covering companies like Shopify (Canada), AstraZeneca (UK), and Alibaba (China/Cayman Islands). Morningstar's Star Rating (1 to 5 stars) assesses FPIs based on fair value estimates derived from discounted cash-flow models, while its Economic Moat, Capital Allocation, and ESG Risk Ratings evaluate competitive advantages, management quality, and governance transparency. Zacks' Rank (1 = Strong Buy, 5 = Strong Sell) focuses on earnings revisions, and S&P's Capital IQ Stock Reports score FPIs on growth and quality metrics.

Investor Benefits: These ratings provide retail investors with accessible, data-driven insights into FPI valuation, governance, and risks, supporting informed decision-making. For example, Morningstar's ESG ratings highlight governance challenges for FPIs like Alibaba, addressing concerns about limited disclosure in certain jurisdictions, as noted in the SEC's DERA report.

Regulatory Context: These providers mitigate risks through transparent methodologies and disclaimers, offering a model for reliable, private market evaluations without additional SEC intervention.

b. Investor-Driven Platforms

Overview: Platforms like BetterInvesting, StockTwits, and Seeking Alpha enable retail investors to access or generate information about FPIs through community-driven analysis. BetterInvesting, a nonprofit supporting investment clubs, provides tools like the Stock Selection Guide for members to evaluate FPIs based on growth, value, and governance, fostering collaborative research. Seeking Alpha aggregates user-generated articles and ratings on FPIs like Shopify or AstraZeneca, offering diverse perspectives from individual investors and analysts.

Investor Benefits: These platforms empower Main Street investors. Seeking Alpha's crowd-sourced model, in particular, mirrors the instantaneous dissemination of information in today's communications environment, allowing investors to share insights and warnings about FPI transparency or risks, complementing formal ratings.

Regulatory Context: These platforms focus on education (BetterInvesting) or user opinions (Seeking Alpha), though they must ensure content is not misleading to avoid anti-fraud liability exposure. Their independence from issuer-paid models reduces conflict-of-interest concerns.

2. Government and NGO Data

For investors who want information about the domestic securities regulatory regimes, various government and NGO information is widely available. For example, the international Organization of Securities Commissioners ("IOSCO") provides a Database of Securities Regulators, a resource for understanding the regulatory framework and authority in various jurisdictions (and for determining which jurisdictions are not IOSCO members).[7] Similarly, the OECD Corporate Governance Factbook provides critical insights into governance practices for a variety of jurisdictions, including descriptions of various regulatory regimes' structures and expectations.[8]

Finally, the SEC staff has also published guidance on the securities disclosure regime in at least one foreign jurisdiction, China, in a 2020 publication, "Disclosure Considerations for China-Based Issuers."[9] Among other things, the publication details risks associated with China-based issuers, including the nature and quality of financial reporting, access to information and regulatory oversight, companies' organizational structure, and the Chinese regulatory environment.

Recommendations for the Commission

ICAN urges the Commission to maintain current FPI accommodations, as outlined earlier, and to promote these existing private market information sources as effective tools for investors. To enhance their utility without imposing new regulatory burdens, we recommend the following.

Create a Regulatory Sandbox

To address lingering concerns about transparency and enforcement challenges with FPIs, the SEC could implement a regulatory sandbox, providing a controlled environment for innovation without excessive legal exposure. Such a sandbox would be particularly beneficial for platforms or "super-apps" that aggregate and disseminate enhanced, voluntary disclosures about FPIs—such as detailed governance metrics, real-time risk analyses, or crowd-sourced investor insights—yet currently hesitate due to the risk of being classified as investment advisers or brokers under existing rules and the Commission's propensity for taking an expansive view of its own jurisdiction.[10]

As Commissioner Peirce has articulated, such a sandbox "can serve as a bridge between our current rulebooks and future financial markets by allowing people to experiment with technology that may underpin the markets of the future," fostering cross-border cooperation and enabling regulators to gather real-world data while empowering market participants to enhance

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[7] Available at: https://www.iosco.org/v2/about/?subsection=membership

[8] Available at: https://www.oecd.org/en/publications/oecd-corporate-governance-factbook-2023_6d912314-en.html

[9] Available at https://www.sec.gov/rules-regulations/staff-guidance/disclosure-guidance/disclosure-considerations-china-based-issuers

[10] *See*, *e.g.*, the SEC's enforcement actions alleging that certain buyers and sellers of convertible debt instruments are "dealers," or the SEC's unprecedented action in *SEC v. Schueler*, where it named blockchain software entities like a token, network, and protocol as defendants, both of which exemplify the kind of expansive enforcement that creates uncertainty and could chill innovation among super-app developers facilitating FPI data.

transparency organically, rather than through top-down mandates.[11] This approach aligns with preserving investor choice by protecting innovative tools that expand information access for FPIs, ultimately strengthening U.S. markets without stifling competition.

Increase Awareness

The Commission and staff could highlight resources through investor education initiatives, such as its Investor.gov platform, ensuring retail investors know where to access FPI ratings and analyses.

Encourage Transparency

The Commission should encourage rating providers and platforms to maintain robust, transparent methodologies and conflict-of-interest disclosures, aligning with existing NRSRO and anti-fraud standards, to bolster investor trust.

Engage in Low-Cost Preventative Measures

The Commission should proactively adopt low-cost preventive measures—such as enhanced monitoring of FPI filings, advanced data analysis programs to identify reporting anomalies, and deepened cooperation with foreign regulators and firms—to deter fraud without imposing additional compliance burdens on issuers or restricting investor choice. These strategies could include leveraging existing tools like the SEC's Corporate Issuer Risk Assessment (CIRA) program or similar data-driven systems to identify potential red flags, such as inconsistent financial reporting or unusual market trends among FPIs from jurisdictions with minimal disclosure regimes. By fostering voluntary collaborations, such as information-sharing agreements with international counterparts, the Commission can promote a "soft enforcement" approach that encourages self-correction among issuers while maintaining the attractiveness of U.S. markets for diverse FPIs. This balanced method aligns with empirical evidence showing that aggressive enforcement may not be optimal for foreign issuers, as it risks driving away high-quality firms without proportionally reducing fraud risks.[12]

The Commission can and should enhance U.S. market competitiveness, protect investor choice, and support the growing presence of FPIs in U.S. securities markets without stifling innovation or imposing unnecessary costs.

Sincerely,

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Nicolas Morgan
President
Investor Choice Advocates Network

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[11] Hester M. Peirce, Remarks to the City of London Corporation at Guildhall (July 18, 2025), https://clsbluesky.law.columbia.edu/2025/07/18/sec-commissioner-peirce-discusses-a-uk-u-s-digital-securities-sandbox/.

[12] Yuliya Guseva, *The SEC and Foreign Private Issuers: A Path to Optimal Public Enforcement*, 59 B.C. L. Rev. 2055, 2116-22 (2018) (advocating for low-cost preventive measures, such as enhanced monitoring and international cooperation, to deter fraud among foreign issuers without increasing compliance burdens).

Attachment A

Investor Choice Advocates Network
Responses to Specific Questions Posed
in the Securities and Exchange Commission's
Concept Release on Foreign Private Issuer Eligibility

The following Q&A supplements the response from Investor Choice Advocates Network by providing responses to specific questions raised by the Securities and Exchange Commission (SEC) in its Concept Release on Foreign Private Issuers, as outlined in File No. S7-2025-01.[1] For ease of reference, the format has been re-ordered to present each question immediately followed by its corresponding answer.

RESPONSES TO REQUESTS FOR COMMENT

B. Potential Regulatory Responses

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?

> The shift in the characteristics of the FPI population described in the Concept Release does not warrant a reassessment of the FPI definition. When considering an amendment to the FPI definition, the Commission should be guided by principles that encourage U.S. investor access to foreign issuers by providing accommodations against regulations that would be cost-prohibitive or would otherwise discourage foreign issuers from offering their securities to U.S. investors. The Commission should also ensure investor protection through disclosure of the characteristics of the specific foreign securities regulatory regimes that govern FPIs.
>
> The limited total market capitalization of the U.S. Exclusive FPI subset does not warrant narrowing the scope of the FPI definition in a way that would reduce the general FPI population. This is especially true if concerns about the shift are mitigated by adopting the proposed additional disclosure about the home country's securities regulation.

[1] Available here: https://www.sec.gov/files/rules/concept/2025/33-11376.pdf

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[1] Available here: https://www.sec.gov/files/rules/concept/2025/33-11376.pdf

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?

We recommend replacing the current reporting requirement on Form 6-K -- which requires "prompt" reporting of only events that the FPI is required to disclose pursuant to the law of its domicile or by the stock exchange on which its securities are traded, or otherwise disseminated to its security holders -- with the Form 8-K, including the imposition of liability for information required to be "filed" on Form 8-K, rather than merely "furnished" on Form 6-K.

Because FPIs are not subject to Regulation Fair Disclosure, the risk of selective disclosure, as well as the potential for widespread and immediate dissemination of false or misleading rumor, underscores the importance of timely disclosure of the events and information that U.S. domestic registrants must disclose on Form 8-K.

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?

Actions taken by Congress and the Commission in the last five years sufficiently protect U.S. investors currently invested in FPI CBI VIE Structures. These actions adequately address risks associated with CBI VIE Structures; namely, the risk that the PRC government may find the Structures

noncompliant with relevant PRC laws and risk that PRC courts may not enforce contracts within them.[2]

Since at least as early as 2021, the Division of Corporation Finance has targeted disclosures by CBI VIEs.[3] CBI VIE issuers also have had clear disclosure guidelines since November 2020, when the Division of Corporation Finance published its guidance on disclosure considerations for companies based in or with significant operations in China.[4]

Congressional action relating to the quality of the requisite audits of all FPIs further protects U.S. investors currently invested in CBI VIE FPIs. The Sarbanes-Oxley Act specifies that foreign firms that prepare or issue audit reports with respect to any domestic issuers (including issuers listed on U.S. exchanges) are subject to the authority and jurisdiction of the PCAOB to the same extent as domestic firms. See 15 U.S.C. Sec 7216(a)(1). In response to the Chinese government's initial reluctance to grant access to work papers of Chinese-based auditing firms, Congress enacted the Holding Foreign Companies Accountable Act in 2020. The 2020 Act, which subjects issuers to delisting if they retain a registered public accounting firm in a foreign jurisdiction that prohibits the PCAOB from inspecting or investigating the auditing firm, ensures that auditors of FPI's will be subject to PCAOB inspection.[5]

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

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[2] *See*, Zhen Tian, *La "Vie" Continue: Legal Recognition as a Gateway to Sustainable Cross-Border Investments Between China and the U.S.*, 74 Emory L. J. 711 (2025). Available here: https://scholarlycommons.law.emory.edu/elj/vol74/iss3/3

[3] See Gary Gensler, "Statement on Investor Protection Related to Recent Developments in China" (July 30, 2021). Available here: https://www.sec.gov/news/public-statement/gensler-2021-07-30

[4] Division of Corporation Finance – CF Disclosure Guidance: Topic No. 10, "Disclosure Considerations for China-Based Issuers" (Nov. 23, 2020). Available here: https://www.sec.gov/corpfin/disclosure-considerations-china-based-issuers

[5] Available here: https://www.sec.gov/rules-regulations/holding-foreign-companies-accountable-act

not impose meaningful disclosure and other regulatory requirements in their home country?

> Yes. Domestic issuers are at a competitive disadvantage compared to FPIs that are exclusively listed in the U.S. and incorporated in jurisdictions with less stringent disclosure and regulatory requirements. The cost of compliance for domestic registrants puts them at this disadvantage. The Commission is encouraged to consider providing smaller domestic reporting issuers with accommodations like those for FPIs.

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?

> We understand that the cost of U.S. investors to trade in shares of foreign issuers listed solely on foreign exchanges involves the cost of opening an account at a foreign securities brokerage. We understand that U.S. investors may be precluded from opening accounts in some jurisdictions, effectively precluding U.S. investors from investing in foreign companies that do not trade (or have an ADR program) in the U.S.

1. Update the Existing FPI Eligibility Criteria

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?

> The current FPI definition, at 17 CFR 230.405 and 17 CFR 240.3b-4, which does not incorporate a home country disclosure or other regulatory requirement, but instead is limited to a business contacts test, is appropriate, provided the Commission adopts investor-protection measures such as those we propose in this letter. As described above, U.S. investors should have an opportunity to invest in any foreign company that elects to trade in the U.S. and abide by the rules for FPIs. However, in making their investment decision, investors deserve to have information about the home country's disclosure and other regulatory requirement. U.S. investors' choice should not be limited by effectively excluding companies based on a merit review of the company's particular home country's disclosure and regulatory requirements.

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)?

No. The current contacts eligibility criteria are sufficient to exclude foreign domiciled companies with significant U.S. contacts from the FPI definition.

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?

No. The existing 50% threshold in the shareholder test is sufficient.

If the Commission adopts the proposed investor-protection measures, limiting the number of FPIs that U.S. investors can invest in by decreasing the shareholder threshold would be a disadvantage to U.S. investors.

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?

No. The existing criteria for the business contacts test is sufficient.

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?

Eliminating the officer/director contact criteria would reflect modern immigration practices.

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?

Updating the current FPI definition thresholds or criteria will serve only to reduce the number of FPIs without improving the quality of reporting or governance of FPIs.

2. Foreign Trading Volume Requirement

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?

No. A foreign trading volume test is not an appropriate way to determine if a foreign issuer should be eligible for FPI accommodations. The location of a foreign company's trading volume is not necessarily a measure of a home country's disclosure and regulatory requirements. Factors unrelated to the strength of a home country's regulations may lead to greater trading volume in U.S. markets than in its home market.

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?

No. While an efficient foreign market could better inform U.S. capital markets, a foreign trading volume test would likely reduce the current FPI issuer pool by limiting status to larger capitalized foreign issuers. There is no evidence that securities pricing on a foreign exchange will necessarily better inform U.S. capital markets. In fact, securities pricing based on trading volume in an inefficient or less regulated foreign market would likely cause pricing distortions in U.S. markets.

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?

Yes. The risk of selective disclosure and the potential for the widespread dissemination of false or misleading rumors highlights the importance of timely disclosure, which is currently lacking for FPIs.

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?

Setting a threshold is not considered appropriate for the reasons outlined in the response to question 13.

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?

Yes. In less regulated markets, foreign brokers may knowingly or unknowingly participate in wash sales and other forms of market manipulation.

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?

The methodology to measure foreign trading volumes is not relevant because imposing a foreign trading volume requirement does not provide a substantial benefit to U.S. investors.

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?

Please see Response 17 above.

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?

Yes. A foreign trading volume test would disproportionately impact earlier-stage foreign issuers whose total trading volume would not be enough to support such a test.

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?

Please see Response 17 above.

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?

No. Please see Response 13 above.

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?

Please see Response 17 above.

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?

Please see Response 17 above.

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?

Please see Response 13 above.

3. Major Foreign Exchange Listing Requirement

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?

No. The Commission should not require FPIs to be listed on a "major foreign exchange," as this would prevent U.S. investors from having the opportunity to invest in foreign companies that are not listed on such exchanges. Providing U.S. investors with the necessary information to evaluate the home country's securities regulatory regime will allow them to decide for themselves the significance of a foreign exchange listing.

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?

Yes. A "major foreign exchange" requirement would likely reduce the incentive for foreign issuers to list in U.S. capital markets, or at least affect their ability to access them.

Yes. FPIs that cannot list on a major foreign exchange would likely exit U.S. capital markets to avoid being required to report 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?

Providing U.S. investors with information to evaluate the foreign exchange listing requirements will enable them to decide for themselves the importance of a foreign exchange listing. See, generally, Response 25.

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?

Providing U.S. investors with information to evaluate the foreign exchange listing and transition requirements will empower them to decide for themselves the significance of a foreign exchange listing. See, generally, Response 25.

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?

Providing U.S. investors with information to evaluate the corporate governance listing requirements of a foreign exchange will empower them to decide for themselves the significance and weight of a foreign exchange listing. See, generally, Response 25.

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?

Providing U.S. investors with information to evaluate the type of securities an FPI has listed on a foreign exchange and to analyze the significance of such an additional listing will empower them to decide for themselves the significance and weight of the additional listed securities. See, generally, Response 25.

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?*

Providing U.S. investors with information necessary to evaluate the type of foreign exchange listing requirements will empower investors to decide for

themselves the significance and weight of a foreign exchange listing. See, generally, Response 25.

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?

Providing incentives for private-market agencies to evaluate foreign exchanges as well as foreign disclosure and regulatory regimes will require Commission resources to oversee such agents avoiding imposing under burdens on Commission resources.

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?

Adding a "major foreign exchange" requirement would not increase the number of opportunities for U.S. investors to invest in FPIs, which would increase costs and benefits to U.S. investors.

4. Commission Assessment of Foreign Relations

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?

No. The Commission should not limit its FPI definition to foreign issuers incorporated or headquartered in jurisdictions it has approved. The Commission's role should be to ensure truthful, non-misleading markets and

enable the flow of material information, not to substitute its own risk judgments for those of investors.

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?

The Commission should not limit its FPI definition to those foreign issuers incorporated or headquartered in jurisdictions approved by the Commission.

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?

The Commission should not limit its FPI definition to those foreign issuers incorporated or headquartered in jurisdictions approved by the Commission.

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?

The Commission should not limit its FPI definition to those foreign issuers incorporated or headquartered in jurisdictions approved by the Commission.

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?

Providing incentives for private-market agencies to evaluate foreign exchanges and regulatory regimes will require the Commission to use resources to oversee these agents, which would help avoid imposing undue burdens on the Commission's own resources.

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?

As discussed above, providing an assessment of foreign regulation – whether by the Commission or by a third-party -- would benefit significantly U.S. investors.

5. Mutual Recognition Systems

ICAN is not providing responses to questions 40-47 concerning Mutual Recognition Systems.

6. International Cooperation Arrangement Requirement

ICAN is not providing responses to questions 48 – 54 regarding International Cooperation Arrangement Requirement.

C. Other Considerations

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?

Quarterly reporting along with the requirement to file reviewed financial statements prepared in accordance with U.S. GAAP would be among the most burdensome requirements for FPIs. As noted above, replacing the current reporting requirement on Form 6-K, which requires "prompt" reporting of only events that the FPI is required to disclose pursuant to the law of its domicile or by the stock exchange on which its securities are traded, or otherwise disseminated to its security holders, with the Form 8-K would provide the most benefit to U.S. investors. The Form 8-K obligation includes imposition of liability for information required to be "filed" on Form 8-K, rather than merely "furnished" on Form 6-K. Further, because FPIs are not subject to Regulation Fair Disclosure, the risk of selective disclosure, as well as the potential for widespread and immediate dissemination of false or misleading roomer, underscores the importance of timely disclosure of the events and information that U.S. domestic registrants must disclose on Form 8-K.

FPI's are not exempt from Section 404(a) of the Sarbanes-Oxley Act, which requires management to assess and report on the issuer's internal controls over financial reporting.[6] We recommend that the Commission revisit a Section 404(a) accommodation for FPIs meeting the criteria of smaller reporting companies, as well as a similar accomodation for smaller reporting companies.

While the benefits of Section 404 have been the subject of much debate, as early as 2005, the SEC recognized the cost of compliance with Section 404

[6] In the wake of the Worldcom and Enron defalcations, neither Congress nor the SEC exempted FPI's from Sarbanes-Oxley. See, Final Rule: Standards Relating to Listed Company Audit Committees, Rel. Nos 33-8220; 34-47654 (April 9, 2003) ("the importance of maintaining effective oversight over the financial reporting process is relevant for listed securities of any issuer, regardless of its domicile.").

exceeded all expectations.[7] Now, data over the last twenty years confirms that the cost to comply with Section 404 vastly exceeded original estimates and remains substantial.[8] And because these compliance costs scale poorly, small issuers disproportionately bear the large costs.[9] Most scholars agree that the high cost of compliance of Section 404 does not outweigh its benefits. [10]

In 2021, smaller reporting companies averaged internal Section 404 compliance costs of $1,126,000 per year, while large accelerated filers averaged $1,328,300. Issuers with a float of $500 million to $999 million averaged internal compliance costs of $1,061,500, while issuers with a float exceeding $10 billion spent $2,014,100 on average. A 10-fold increase in the size of an issuer's float thus produces less than a doubling in its § 404(a) compliance cost.[11]

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[7] See, e.g., Speech by SEC Staff: Remarks before the Practicing Law Institute Fifth Annual Institute on Securities Regulation in Europe, by Alan L. Beller, Director, Division of Corporation Finance (Dec. 5, 2005), available at http://www.sec.gov/news/speech/spch120505alb.htm ("The unexpectedly high costs of compliance with the internal control assessment, reporting and audit requirements have caused continuing focus on [companies who are deregistering].").

[8] Report to the Chairman of the Subcommittee on Capital Markets, Committee on Financial Services, House of Representatives, June 2025, GAO-25-107500United States Government Accountability Office. (Available at: https://files.gao.gov/reports/GAO-25-107500/index.html). In 2006, then Commissioner Paul Atkins presciently called Section 404 SOX's "most controversial provision." Atkins Reviews Trends in Transatlantic Capital Markets, SEC TODAY (CCH) 8214399 (Feb. 7, 2006), 2006 WL 8214399.

[9] See Advisory Comm. on Smaller Pub. Companies, Exchange Act Release No. 53,385 (Feb. 28, 2006), 2006 WL 520112, at *15 (explaining that "smaller public companies have been disproportionately subject to the burdens associated with Section 404 compliance").

[10] See, Stephen M. Bainbridge, "Sarbanes-Oxley § 404 at Twenty" (2022), *UCLA School of Law, Law-Econ Research Paper No. 22-05, 2022* ("Bainbridge"); Fischer, Gral, and Lehner, Othmar, "SOX Section 404 Twenty Years After: Reviewing Costs and Benefits, ACRN Journal of Finance and Risk Perspectives" (2020).

[11] Bainbridge at 18.

The Commission's efforts thus far to reduce Section 404 costs of compliance, especially as they apply to smaller reporting companies, have had limited success.[12] The difference in compliance costs before and after significant reforms in 2007 were not statistically significant.[13] The mean total compliance cost decreased from $769,000 to $690,000 before and after the reforms among filers with public float lower than $75 million, a statistically insignificant difference. For non-accelerated filers, the median total compliance cost decreased from $579,000 to $439,000, again, not statistically significant.[14] Among Section 404(a)-only companies, the mean total cost decreased by a statistically insignificant amount from $425,000 to $336,000.

Section 404 has not clearly resulted in better financial reporting. Although it is difficult to determine the impact of Section 404 on accounting quality, analysis of the number of adverse management reports and auditor attestations suggest that Section 404 has not reduced them over time. Further, many issuers report persisting material weaknesses over several years without remediating them.[15]

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[12] In 2007, the SEC approved the PCAOB's revised Auditing Standard No. 5, replacing Auditing Standard No. 2. The revision was intended to simplify compliance obligations, eliminate unnecessary processes, and focus the audit on the most critical aspects of the issuer's internal controls. [Exchange Act Release No. 56,152]. The SEC also published its Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. [Securities Act Release No. 8,810 (June 20, 2007)]. In the 2010 Dodd-Frank Act, Congress provided smaller issuers with permanent relief by exempting non-accelerated filers from § 404(b). Subsequent rulemaking has exempted smaller issuers from Section 404(b), although in 2020 only about 50% of all filers appeared to be exempt from 404(b). See, Bainbridge at 8.

[13] SEC Office of Economic Analysis (2009), *Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements* ("OEA Study").

[14] Filers with public float below $75 million complying with Section 404(b) may be either non-accelerated filers choosing to comply with Section 404(b) (although not required to do so) or accelerated filers whose public float has dropped below $75 million but remained above $50 million.

[15] Bainbridge at 12.

> As for the cost-benefit trade-off of Section 404 compliance, survey results showed that while most widely reported some benefit -- in the quality of the respondent company's internal control structure (73%), the audit committee's confidence in the company's ICFR (71%), the quality of the company financial reporting (49%), the company's ability to prevent and detect fraud (48%), and the respondent's confidence in the financial reports of other companies complying with Section 404 (40%) -- the majority of respondents recognized no effect of Section 404 compliance on the company's ability to raise capital, investor confidence in the company's financial reports, the company's overall firm value, and the liquidity of the company's common stock.[16]

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.

> Eliminating FPI accommodations would likely result in the foreign issuer exiting U.S. capital markets depriving U.S. investors of the opportunity to invest in those companies.

ICAN is not providing responses to questions 57 through 69.

[16] See OEA Study.