FORUM FOR US SECURITIES LAWYERS IN LONDON

Via Email: rule-comments@sec.gov

September 8, 2025

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

Attention: Ms. Vanessa A. Countryman, Secretary

Re: Request for Public Comments on SEC Concept Release on Foreign Private Issuer Eligibility – File No. S7-2025-01

Dear Ms. Countryman,

This letter is submitted on behalf of the Forum for U.S. Securities Lawyers in London (the "**Forum**") with respect to the Concept Release on Foreign Private Issuer Eligibility (the "**Concept Release**") published by the U.S. Securities and Exchange Commission (the "**Commission**") on June 4, 2025. This letter is submitted in response to the Commission's request for public comments on the Concept Release.

The Forum is a trade association representing U.S.-qualified lawyers and market participants in the London capital markets. It has more than 1,500 members, including U.S.-qualified lawyers from over 45 law firms and 30 financial institutions in the London capital markets, as well as market participants such as securities exchanges, settlement systems and registrars. Founded in 2006, the Forum is an independent, self-funded organization dedicated to addressing issues relating to the application of, and compliance with, the U.S. securities laws in the London and other international capital markets.

The Forum supports the Commission's initiative to solicit public input on this matter and thanks the Commission for this opportunity to comment on the Concept Release. The Forum believes that its comments reflect the aims of the Commission to maintain investor protection and promote capital formation. The Forum's views on the Concept Release are informed by the comprehensive experience of its members in U.S. federal securities law matters relevant to foreign private issuers ("**FPIs**") in the London and other international capital markets, including in relation to securities offerings and other transactional work, corporate governance and ongoing reporting obligations. The Forum hopes that the comments herein will serve as helpful suggestions for the Commission as it considers whether any changes should be proposed to the existing framework applicable to foreign private issuers FPIs under U.S. federal securities laws.

The comments in this letter summarize the discussions held among the Forum's members on the implications of such potential changes, including for the London and other international capital markets, in a series of in-person and virtual meetings. However, these comments do not purport to reflect the views of any individual member of the Forum or any of the organizations with which they may be affiliated.

Unless otherwise defined herein, capitalized terms included in this comment letter have the same meanings as given in the Concept Release.

Summary of Comments

The following is a summary of our comments:

1. The Forum does not believe that changes to the FPI definition are warranted.

2. The Forum urges the Commission to address any significant concerns through other means, including by making incremental changes to existing disclosure requirements applicable to FPIs. This might entail, for example, imposing additional disclosure requirements on non-U.S. issuers whose equity securities are listed solely in the United States that fail to satisfy a minimum market capitalization requirement.

3. Should the Commission decide instead to make changes to the FPI definition, the Forum encourages the Commission to consider narrow, targeted changes with limited potential for market disruption and minimal administrative burden for the Commission.

4. The Forum believes the Commission should thoroughly consider the unintended consequences that changes to the FPI definition may have under existing U.S. securities laws and regulations. Even if changes are made to the FPI definition, the Forum strongly recommends that the current definition continue to apply for purposes of Regulation S, non-U.S. issuers that only have registered debt securities and/or structured products and the exemption under Rule 12g3-2(b) under the Exchange Act.

5. In the event that changes to the FPI definition are proposed, the Forum urges the Commission to minimize market disruption by grandfathering the status of existing FPIs, providing a sufficiently long transition timeline and facilitating deregistration for those non-U.S. issuers for which compliance with any modified reporting and other requirements will be not feasible and/or too burdensome.

Comments

1. The Forum does not believe that changes to the FPI definition are warranted.

The Forum does not believe that changes to the FPI definition are warranted and submits that narrowing the FPI definition to exclude a segment of the current FPI population and requiring them to comply with all of the disclosure, reporting, accounting and other requirements applicable to U.S. domestic issuers would be an overly broad response to the concerns identified by the Commission.

The Forum has carefully reviewed the Commission's findings on the changes in the composition of the FPI population over the 2003-2023 period, as outlined in the Concept Release, and commends the Commission's staff for their thorough and diligent work.[1] The Forum notes that such findings highlight shifts in the composition of the FPI population and, in particular, the increased prevalence of U.S. Exclusive FPIs, CBIs and CI-BVI Incorporated issuers over the review period.

While the Forum acknowledges these trends and the associated risks identified by the Commission, the Forum notes that the Concept Release does not present data supporting the view that FPIs are disproportionately associated with investor harm or other potential harms identified by the Commission. Based on the experience of its members, the Forum also has not observed meaningful empirical evidence that the accommodations afforded to FPIs (relative to the disclosure, reporting, accounting and other requirements applicable to U.S. domestic issuers) have in fact resulted in

[1] To provide a more complete picture of current trends, the Forum suggests updating the data set included in the Concept Release also to cover fiscal year 2024.

significant investor or other harms disproportionately associated with FPIs that would justify making changes to the longstanding FPI definition. In addition, the Forum does not believe that the concerns of regulatory arbitrage suggested in the Concept Release are justified in the markets the Forum covers, including in the case of non-U.S. issuers whose equity securities are listed solely in the United States. On the contrary, the Forum believes that non-U.S. issuers generally perceive the disclosure and governance requirements applicable to FPIs as rigorous, and that there is no indication that non-U.S. issuers view U.S. markets as attractive due to a perception that the regulatory burden in the United States is lighter for FPIs relative to other jurisdictions.

Further, based on the experience of its members, the Forum is not convinced that the accommodations afforded to FPIs necessarily provide a competitive advantage compared to U.S. domestic companies, even for U.S. Exclusive FPIs that are CBIs or CI-BVI Incorporated. In particular, the Forum notes that the Concept Release does not fully credit the critical role that heightened market expectations and the requirements of U.S. stock exchanges already play in shaping FPI disclosure and governance practices – expectations that often overlap with, and at times exceed, requirements under U.S. federal securities laws. The Forum encourages the Commission to refine its regulatory gap analysis by considering that many FPIs, including U.S. Exclusive FPIs, CBIs and CI-BVI Incorporated issuers, are also expected by the market (taking into account the baseline disclosure level-setting accompanying their entry into the U.S. market that would typically be intermediated by prominent investment banks, lawyers, auditors and other market participants) or, for FPIs that have securities listed in the United States, required by the principal U.S. exchanges,[2] to adopt disclosure and governance practices comparable to those followed by FPIs subject to home country requirements that are perceived as more rigorous. Alternatively, the Commission might instead consider whether a more appropriate way to eliminate any perceived gaps with the regime applicable to U.S. domestic issuers would be to ease domestic requirements that are ultimately deemed unduly burdensome.[3]

The Forum also believes that any sweeping changes to the longstanding FPI definition could result in significant legal uncertainty and, more generally, in fewer non-U.S. issuers maintaining or seeking a listing in the United States. In turn, any material decline in U.S. listings by non-U.S. issuers could mean fewer investment opportunities for U.S. investors – particularly in the retail segment – to diversify their portfolios. At the same time, U.S. investors that continue to invest in securities issued by non-U.S. issuers would likely end up doing so through secondary market purchases outside the United States or through private placements (*e.g.*, Rule 144A offerings), with less U.S. regulatory oversight, greater difficulty enforcing their rights in private U.S. litigation and potentially more limited available information (depending on the rules of the non-U.S. exchange on which a non-U.S. issuer may choose to list in lieu of a U.S. exchange, or to the extent a non-U.S. issuer determines to remain a private company), all of which could ultimately defeat the objectives the Commission seeks to achieve by revisiting the FPI definition.

2. The Forum urges the Commission to address any significant concerns through other means, including by making incremental changes to existing disclosure requirements applicable

[2] For example, the rules of the NYSE and Nasdaq already require FPIs to provide half-year financial information and to comply with audit committee independence standards (irrespective of whether the rules in the home country of such FPIs include such requirements). *See* Sections 203.03 and 303A.00 of the NYSE Company Manual, and Nasdaq Rules 5250(c)(2) and 5615-(a)(3)(A).

[3] In this respect, the Forum notes that these types of initiatives have been considered by the Commission in the past including, for example: (i) simplifying or removing the obligation for U.S. domestic issuers to report on a quarterly basis (which would level the playing field with FPIs); and (ii) allowing U.S. domestic issuers to prepare financial statements in accordance with IFRS. *See* Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33-10588; 34-84842; File No. S7-26-18, 83 FR 65601 (Dec. 21, 2018) and Concept Release on Allowing U.S. Issuers to Prepare Financial Statements in Accordance with International Financial Reporting Standards, Release No. 33-8831; File No. S7-20-07, 72 FR 45600 (Aug. 14, 2007).

to FPIs. This might entail, for example, imposing additional disclosure requirements on non-U.S. issuers whose equity securities are listed solely in the United States that fail to satisfy a minimum market capitalization requirement.

Assuming meaningful evidence of the need for any change is established, which the Forum believes should be required before any changes are made, more tailored adjustments should instead be considered. Instead of amending the longstanding FPI definition, the Forum urges the Commission to consider making incremental changes to the current disclosure requirements applicable to FPIs to address areas where significant perceived gaps with disclosure requirements applicable to U.S. domestic issuers have been identified.

In particular, the Commission could consider creating a two-tiered reporting system for FPIs whereby additional disclosure requirements could apply to U.S. Exclusive FPIs that have a market capitalization below a specified threshold ("**Smaller U.S. Exclusive FPIs**"), while these additional requirements would not apply to any other FPIs. Such minimum market capitalization threshold would be set by the Commission such that it can be comfortable that, because of their level of market capitalization, any U.S. Exclusive FPIs that exceed such threshold would be subject to significant market scrutiny. This reflects the Forum's observation that many U.S. Exclusive FPIs incorporated or based in the specific jurisdictions identified as areas of concern in the Concept Release are companies with a large market capitalization that attract in-depth scrutiny from prominent investment banks, lawyers, auditors and other market participants before they come to market. Thereafter, such companies with large market capitalizations will typically receive significant investor and analyst focus, meaning detailed ongoing disclosures will be expected of them regardless of their jurisdiction of incorporation. However, in setting this minimum market capitalization requirement, the Forum also urges the Commission to consider a level for such threshold that is not set so high that it could deter smaller non-U.S. companies with high-growth potential, such as, for example, innovative biotechnology companies or AI start-ups, from seeking a U.S. listing.[4]

In terms of enhanced disclosure for such Smaller U.S. Exclusive FPIs, the Forum believes that the most likely areas of focus would be the Form 6-K requirements, for example, by adding a disclosure requirement for specified material events and, to the extent not already required to do so by applicable exchange requirements, imposing an obligation to disclose half-year financial information,[5] and possibly accelerating the Form 20-F filing deadline to more closely match the deadlines applicable to domestic issuers.

In addition to not impacting other FPIs, another advantage of such a minimum market capitalization requirement would be its administrative simplicity, as it would offer a bright-line test that is predictable, objective and effective – particularly if based on a methodology and following parameters that do not result in unwarranted or frequent status changes (*e.g.*, minimizing the impact of short-term market movements, such as by requiring the status only to be reassessed every three years).

3. Should the Commission decide instead to make changes to the FPI definition, the Forum encourages the Commission to consider narrow, targeted changes with limited potential for

[4] The Forum believes that such threshold should not exceed US$75 million, which the Forum notes is the threshold already used by the Commission as part of the test for determining whether an issuer is eligible to register primary offerings of securities with the Commission on Form S-3 or Form F-3 as well as accelerated filer status under the Exchange Act.

[5] Any such revision would bring Form 6-K closer to Form 8-K for Smaller U.S. Exclusive FPIs but should take into account that certain Smaller U.S. Exclusive FPIs may already have home country reporting requirements in these areas. As noted above, the rules of the NYSE and Nasdaq also already require FPIs listed on such exchanges to provide half-year financial information, so there should be no need to duplicate the requirement to publish half-year financial information in the case of FPIs listed on such exchanges.

market disruption and minimal administrative burden for the Commission.

The Forum believes that, for any non-U.S. issuer, losing FPI status and, in turn, becoming subject to the disclosure, reporting, accounting and other requirements applicable to U.S. domestic issuers, would be extremely burdensome – both in terms of efforts dedicated to the transition and the ongoing costs of complying with these new obligations.[6] Separately, the Forum notes that the concerns identified by the Commission in the Concept Release primarily relate to U.S. Exclusive FPIs that are CBIs or CI-BVI Incorporated. These issuers, despite an increase in absolute numbers, represent only a small percentage of the aggregate market capitalization of all FPIs.[7]

Given the significant impact of losing FPI status and the limited subset of FPIs on which the Concept Release seems most focused, the Forum urges the Commission only to make changes to the FPI definition that are narrowly tailored to achieve the Commission's objectives, without risk of widespread disruption for other FPIs. In this respect, the Forum acknowledges the six possible approaches to amending the FPI definition that are considered by the Commission. As discussed in more detail below, the Forum believes that such approaches may not be sufficiently tailored and that some would also likely involve significant administrative burden for the Commission.

- The Forum is of the view that the criteria included in the current FPI definition are appropriately calibrated to achieve the intended regulatory objectives, and that amending such criteria may have unintended consequences, including significantly affecting the predictability of a non-U.S. issuer's FPI status. In particular, because shareholder identification methods are imperfect, lowering the 50% threshold of U.S. holders in the shareholder test may incentivize non-U.S. issuers to seek ways to restrict U.S. investor access to their shares to create a cushion against the required threshold.

- The Forum believes that the foreign trading volume requirement would not be appropriate, primarily because it could indiscriminately exclude all U.S. Exclusive FPIs, without regard to whether the investor protection concerns identified by the Commission in fact justify their exclusion from the FPI definition. As noted above, this could also make U.S. markets significantly less attractive for high-growth non-U.S. issuers that have yet to select a venue for their listing. In addition, the Forum notes that issuers have no control over the trading volume of their securities, and that such a requirement would expose non-U.S. issuers to a

[6] Based on the experience of Forum members, the most burdensome and costly change would likely be the shift from reporting in accordance with IFRS to U.S. GAAP (including because of the lack of accounting personnel outside the United States familiar with U.S. GAAP), followed by the application of the U.S. proxy rules (they would be difficult to implement given conflicting home country requirements) and the reporting obligations and other requirements under Section 16 of the Exchange Act (these would be both burdensome to implement for companies and non-U.S. investors, and laws designed to deter insider trading already exist in many jurisdictions). Because the Forum expects any shift from reporting in accordance with IFRS to U.S. GAAP to be particularly challenging, the Forum believes that, should the Commission decide to make changes to the FPI definition, it should consider permitting FPIs that lose their status as such nevertheless to continue preparing their financial statements in accordance with IFRS.

[7] The research discussed in the Concept Release found that, for fiscal year 2023, "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" (Concept Release, p. 33). Similarly, for fiscal year 2023, the global market capitalization of FPIs incorporated in the Cayman Islands and FPIs headquartered in China represented 11.6% and 5.1% of the aggregate global market capitalization of all FPIs, respectively (Concept Release, pp. 21-22). Similarly, the Wall Street Journal recently reported that "Chinese initial public offerings still pour in—in fact, 2024 saw the highest number in years—but most are tiny, highly speculative stocks, not the megabillion-dollar "red chips" of yesteryear. The 62 Chinese offerings last year raised an average of under $7 million." *See* Chinese Stocks and American Exchanges Head for a Breakup, The Wall Street Journal (June 22, 2025).

significant degree of unpredictability.

- The Forum does not believe that imposing a requirement for FPIs to have their securities listed on a "major foreign exchange" would be appropriate, mainly because it would likely: (i) require the Commission to expend time and resources to make initial judgments on, and continuously reassess, which foreign exchanges qualify; (ii) incentivize U.S. Exclusive FPIs to obtain and maintain an unnecessary second listing just to "check the box," thereby impacting the liquidity of their equity securities and, in turn, negatively impacting investors; and (iii) add a new layer of regulatory complexity and costs, without necessarily addressing the concerns identified in the Concept Release. Moreover, such a requirement would disregard the trend away from dual listings and the reality that U.S. exchanges are attractive because they are perceived to offer unparalleled benefits on their own, including rigorous governance and disclosure requirements.

- More generally, the Forum is concerned that, among other challenges, any regulatory response that requires the Commission to make jurisdiction-by-jurisdiction determinations will inevitably require it to devote significant resources to such tasks over a long period of time without guarantee of a satisfactory outcome. The Forum is also concerned that any such approach will not provide a bright-line test, will need to be adjusted over time and will create significant legal uncertainty for non-U.S. issuers. For these reasons, the Forum does not believe that approaches involving assessments of foreign regulation or mutual recognition systems[8] should be pursued as means to address the concerns identified in the Concept Release.

In summary, the Forum is of the view that none of the six approaches considered in the Concept Release would fully address the concerns raised by the Commission, and instead would introduce more complexity and unnecessary costs, and potentially lead to some non-U.S. issuers that do not raise the concerns identified by the Commission inappropriately losing FPI status. Instead, if any changes are to be made to the current FPI regime, the Forum urges the Commission to consider incremental changes to the existing disclosure requirements applicable to FPIs to address the concerns identified in the Concept Release, as described in Section 2 above.

4. The Forum believes the Commission should thoroughly consider the unintended consequences that changes to the FPI definition may have under existing U.S. securities laws and regulations. Even if changes are made to the FPI definition, the Forum strongly recommends that the current definition continue to apply for purposes of Regulation S, non-U.S. issuers that only have registered debt securities and/or structured products and the exemption under Rule 12g3-2(b) under the Exchange Act.

The FPI definition is a key concept under U.S. federal securities laws, and the Forum believes that the possible changes being considered by the Commission could inadvertently impact other areas that are not associated with the potential risks that the Commission has identified in the Concept Release, including the following:

- Regulation S Offerings. The offshore offering safe harbors under Regulation S depend, in part, on whether an issuer can be classified as an FPI. Members of the Forum advise on or are otherwise involved in a large number of Regulation S offerings and are particularly concerned that changes to the FPI definition, could lead to the inadvertent reclassification of certain issuers into categories under Regulation S that impose additional restrictions on

[8] The Forum nevertheless believes that the Multijurisdictional Disclosure System is functioning effectively for eligible Canadian issuers and does not require adjustments.

offshore offerings. Specifically, the Forum believes that any such reclassification could make it harder for issuers and investment banks to comply with the safe harbors under Regulation S and could impose significant additional compliance or other costs. The Forum notes that Regulation S already contains its own protections associated with the trading characteristics of non-U.S. issuers, namely through the definition of "substantial U.S. market interest," and believes that there has been no indication that Regulation S is not working adequately in this regard or raises the same type of investor protection concerns as those identified in the Concept Release.

- Issuers that only have registered debt securities and/or structured products. Some of the approaches being considered by the Commission to amend the FPI definition do not take into account non-U.S. issuers that are subject to U.S. reporting obligations under the Exchange Act solely because they have registered offerings of debt securities or structured products with the Commission ("**Debt-only Non-U.S. Issuers**"). The Forum urges the Commission not to modify the current FPI regime applicable to Debt-only Non-U.S. Issuers as these non-U.S. issuers do not raise the same investor protection concerns as those identified in the Concept Release.

- The Rule 12g3-2(b) exemption under the Exchange Act. Rule 12g3-2(b) under the Exchange Act is an exemption from Exchange Act registration for FPIs that are listed abroad and are not seeking to access the U.S. public securities markets or to obtain a U.S. listing.

    - Given the global nature of trading markets, non-U.S. issuers often attract U.S. investors even without deliberately accessing the U.S. market. It would seem unfair, and unnecessary from a U.S. regulatory standpoint, to force such companies to register their securities under the Exchange Act, so care should be taken not to inadvertently limit the availability of this exemption as a result of changes to the FPI definition (for example, were the test to be modified based on the location of the non-U.S. issuer's listing).

    - In addition, inadvertently limiting reliance on Rule 12g3-2(b) could unnecessarily make it more challenging for depositaries to establish unsponsored ADR programs for certain non-U.S. issuers. More broadly, changes to the FPI definition could create other difficulties for the ADR market. For example, if a minimum foreign trading volume requirement is adopted, non-U.S. issuers might be discouraged from establishing sponsored ADR programs for fear of reducing the trading volume associated with their non-U.S. listing. The Forum is concerned that any such outcome would be detrimental to U.S. investors by limiting their ability to trade the equity securities of non-U.S. issuers in U.S. dollars, through the facilities of The Depository Trust Company and with the full protection of the U.S. federal securities laws, thereby forcing U.S. investors to trade them offshore instead.

For the reasons described above, the Forum strongly recommends that, should changes be made to the FPI definition, the current definition should continue to apply for purposes of Regulation S, Debt-only Non-U.S. Issuers and the exemption under Rule 12g3-2(b) under the Exchange Act. In addition to the above examples, the Forum believes that there could be other examples of unintended consequences and encourages the Commission to undertake a systematic review of the impact that any of the considered changes to the FPI definition could have under all U.S. federal securities laws and the rules and regulations thereunder were it to consider any such changes.

5. In the event that changes to the FPI definition are proposed, the Forum urges the Commission to minimize market disruption by grandfathering the status of existing FPIs,

providing a sufficiently long transition timeline and facilitating deregistration for those non-U.S. issuers for which compliance with any modified reporting and other requirements will be not feasible and/or too burdensome.

Should the Commission decide to propose changes to the FPI definition, the Forum encourages the Commission to consider:

- Grandfathering the status of existing FPIs. Given the extremely burdensome impact of losing FPI status, the Forum believes it would be appropriate to apply any new FPI definition only prospectively to new non-U.S. issuer registrants;[9]

- Providing a sufficiently long transition timeline. Extended implementation windows should be provided to FPIs that would become U.S. domestic issuers as a result of any changes to the FPI definition (*e.g.*, two or three fiscal years). The Forum expects that any such non-U.S. issuers would require a significant amount of time to change their accounting standards, governance structures and disclosure processes to comply with the requirements applicable to U.S. domestic issuers; and

- Facilitating deregistration. Under the current rules, an FPI can terminate its registration under the Exchange Act only if certain strict conditions are met, including maintaining a foreign listing. The Forum urges the Commission to relax such rules to provide an orderly exit for any non-U.S. issuers that do not wish or are unable to comply with requirements applicable to U.S. domestic issuers.

Generally, the Forum believes that adopting appropriate transitional relief – such as the proposals described above – would be essential to ensure that the Commission's objectives are attained with predictability and minimal disruption to non-U.S. issuers, U.S. investors and the markets generally.

Conclusion

We would be pleased to respond to any enquiries regarding this letter or our views on the Concept Release generally. Please contact the Forum's Co-Chairs Miriam Patterson, Senior Director, Market Practice and Regulatory Policy, the International Capital Market Association (Tel: +44 20 7213 0321 or email: miriam.patterson@icmagroup.org) or Daniel Winterfeldt, General Counsel EMEA & Asia, Jefferies (Tel: +44 20 7029 8434 or email: dwinterfeldt@jefferies.com) if you have any enquiries in relation to this letter.

Respectfully submitted,

The Forum for U.S. Securities Lawyers in London

[9] Any such grandfathering provisions should be in addition to continuing to apply the current FPI definition for purposes of Regulation S, Debt-only Non-U.S. Issuers and the exemption under Rule 12g3-2(b) under the Exchange Act, as discussed in Section 3 above.