September 8, 2025

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

Re: File No. S7-2025-01

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on the concept release on foreign private issuer (FPI) eligibility.[2] Issuers that qualify as FPIs "benefit from accommodations that provide full or partial relief from requirements for domestic issuers" under the securities laws.[3] The concept release solicits comment on 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."[4]

The answer is yes. As the concept release acknowledges, the accommodations for FPIs are based on the view that "most eligible FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions."[5] But it now appears that many issuers that qualify as FPIs are not subject to such meaningful disclosure and other regulatory requirements. This means that U.S. investors do not have the information that they need to make informed investment decisions regarding FPIs. It also means that the accommodations are less necessary to avoid duplicative regulatory regimes.[6] The Commission should revise the FPI definition so that the FPI accommodations are available only to those issuers who are otherwise subject to regulatory requirements that leave U.S. investors in these issuers protected.

---

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 90 Fed. Reg. 24, 232 (June 9, 2025).

3 *Id.* at 24,233.

4 *Id.* at 24,232.

5 *Id.* at 24,233.

6 *See* Pierre-Hugues Verdier, *International Finance and the Return of Geopolitics*, 119 Am. J. Int'l L. 229, 239 n.49 (2025) (stating that the SEC exempted FPIs from some of the requirements that apply to domestic issuers to "alleviat[e] the burdens that would arise from duplication of home and host state rules").

The concept release shows that this is not the case currently. According to the concept release, in fiscal year 2023, the most common jurisdiction of incorporation among FPIs was the Cayman Islands, and the most common jurisdiction of headquarters for these FPIs was China.[7] This means that most FPIs are not subject to stringent regulation in their home jurisdictions.

Although China is developing a securities regulatory regime, it is not comparable to that in the United States. Corporate governance and securities regulation "are still nascent in China," which means that at least "in the field of securities regulation, China still has a lot of catching up to do."[8] "China still lags behind many advanced markets, such as the United States and Hong Kong, in terms of the effectiveness of the legal and regulatory regime for corporate governance and investor protection."[9] This means that, "due to the immature disclosure system and the less sophisticated capital market infrastructure in China, investors suffer from a severe asymmetric information problem."[10] Issuers under this regulatory regime do not merit FPI accommodations.

Similarly, investors in issuers domiciled in the Cayman Islands are less protected than investors in issuers domiciled in the United States, both substantively and procedurally. With respect to substantive protections, the scope of the fiduciary duty is narrower in the Caymans.[11] With respect to procedural rules, "Cayman Islands law is less protective of shareholders than Delaware law"—the procedural rules "are so defendant friendly that public shareholders have never brought a lawsuit in the Cayman Islands against a listed Cayman firm or its insiders."[12]

The absence of meaningful investor protections for issuers headquartered in China and domiciled in the Cayman Islands means that the FPI definition should be revised so that these issuers (and other issuers who headquarters and domicile mean they are not subject to meaningful regulation) are excluded from the definition. There is no reason that such foreign firms should be subject to less stringent disclosure requirements than domestic issuers.

> Currently, almost all China-based firms trading in the United States are treated as foreign private issuers subject to much lighter disclosure obligations than domestic issuers—in terms of both the frequency and extent of disclosure. If the U.S. government believes that U.S. investors need the frequency and extent of disclosure required of domestic issuers, it stands to reason that China-based firms

---

7 90 Fed. Reg. at 24, 237.

8 Yawen Li, *"The Shell Game": Reverse Merger Companies and the Regulatory Efforts to Curb Reverse Merger Frauds*, 15 N.Y.U. J.L. & Bus. 153, 173 (2018).

9 Robin Hui Huang, *The IPO and Listing of Foreign Companies in China: Market Developments and Regulatory Responses*, 60 Tex. Int'l L.J. 57, 90 (2024).

10 Sang Hop Kang, *Analyzing Investor Protection in Chinese State-Owned Enterprises: Law and Economics Approach*, 40 Rev. Banking & Fin. L. 821, 841 (2021).

11 Jesse M. Fried and Ehud Kamar, *China and the Rise of Law-Proof Insiders*, 48 J. Corp. L. 215, 243 (2023).

12 *Id*.

> listing in the United States (or, for that matter, firms from other countries) should not be allowed to provide less disclosure than is believed to be optimal.[13]

The only reason to subject such firms to a different regulatory regime under the U.S. securities laws would be if the firms were subject to a comparable regulatory regime elsewhere. Insofar as that is not the case, the FPI definition should be revised.

A revised FPI definition that ensures FPIs gain the benefits of the accommodations that the FPI regulatory regime provides only if they are subject to meaningful regulation in their home jurisdiction would return the FPI regime to its roots. The SEC adopted the accommodations of the FPI regulatory regime because, at the time, "the overwhelming majority of foreign private issuers were European and already regulated by their domestic regulator," which meant "that regulation for these issuers would largely come from their home regulator."[14] To the extent that is no longer the case, the FPI definition should be revised so that foreign issuers do not escape regulation.

> The premise underlying U.S. securities law is that its mandatory disclosure requirements and enforcement mechanisms applicable to domestic issuers are necessary to protect investors. On this premise, enabling Chinese entrepreneurs to deviate from these arrangements comes at the expense of China-based firms' U.S. investors who receive insufficient protection. If this premise is correct, the solution is to *level up* the playing field by requiring China-based issuers . . . to provide standard disclosure. This rule should apply to other non-U.S. based firms as well. Less disclosure would be permitted only for issuers with a primary listing in a jurisdiction that requires, and can enforce, a high standard of reporting.[15]

In other words, if the foreign issuers now "coming to the U.S. to raise capital and list" are now "arriving from a less regulated and developed market,"[16] the SEC must revise the FPI definition so the usual protections of the U.S. securities laws apply to these issuers.[17]

A revised FPI definition is necessary not only to protect U.S. investors in foreign companies but to protect the competitiveness of U.S companies. The problem with allowing

---

13 Jesse M. Fried and Tamar Groswald Ozery, *The Holding Foreign Companies Accountable (HFCA) Act: A Critique*, 14 Harv. Bus. L. Rev. 257, 293 (2024).

14 Steven M. Davidoff, *Rhetoric and Reality: A Historical Perspective on the Regulation of Foreign Private Issuers*, 79 U. Cin. L. Rev. 619, 625 (2010).

15 Fried and Kamar, 48 J. Corp. L. at 218 (emphasis in original).

16 Davidoff, 79 U. Cin. L. Rev. at 644.

17 *See* Alexander E. Csordas, *Funding Entrepreneurial Ventures in China: Proposals to More Effectively Regulate Chinese Foreign Private Issuers*, 38 Brook. J. Int'l L. 373, (2012) ("Some have described the oversight of 'foreign private issuers,' including Chinese companies listed on U.S. securities exchanges, as a 'regulatory vacuum,' with neither the United States nor China effectively monitoring those companies.") (quoting Jamil Anderlini, *Investing: Problems Flagged Up*, Fin. Times (July 4, 2011, http://www.ft.com/cms/s/0/6f5c9c8e-a671-11e0-ae9c-00144feabdc0.html).

foreign issuers in jurisdictions with lax regulation to benefit from FPI status is that "while American entrepreneurs' firms are always considered domestic issuers subject to standard disclosure requirements, China-based and other foreign entrepreneurs can choose to have their firms treated as foreign private issuers, which are required to disclose much less than domestic issuers are."[18] This system creates "incentives for foreign issuers to list in the United States in order to extract regulatory advantages to the detriment of retail investors."[19]

The concept release asks commenters who believe the FPI definition should be revised to explain how they believe it should be modified. The theme running through all of the possible modifications raised in the concept release is the need for a definition that ensures FPIs are subject to "meaningful regulation and oversight in a foreign market."[20] As a result, the Commission should require that FPIs be incorporated and headquartered in jurisdictions that it identifies as providing meaningful regulation and oversight—an approach the concept release contemplates.[21]

The release states that this approach "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," and that such an assessment "would require a high level of cooperation with foreign authorities" and significant staff time and resources."[22] The Commission should be able to perform these assessments through its Office of International Affairs ("OIA"). OIA, which describes its role as "coordinat[ing]with a global network of securities regulators and law enforcement authorities to facilitate cross-border regulatory compliance,"[23] should be able to identify foreign jurisdictions that subject issuers to meaningful regulation and oversight.

As for the significant staff time and resources, such an investment seems worthwhile to ensure that issuers in jurisdictions with comparable regulatory regimes receive the benefits of the FPI accommodations while U.S. investors in issuers in jurisdictions with lax regulatory regimes receive the protections that U.S. securities laws normally provide them in their investments.

---

18 Fried and Kamar, 48 J. Corp. L. at 218.

19 Davidoff, 79 U. Cin. L. Rev. at 621.

20 90 Fed. Reg. at 24,251; *see also, e.g.*, 90 Fed. Reg. at 24,248 (potential modification to ensure FPIs are subject "to home country oversight, disclosure, and other regulatory requirements that merit accommodation"); 90 Fed. Reg. at 24,252 (potential modification to ensure FPIs are subject to a home country regime "indicative of robust securities regulation and oversight").

21 *See* Steven M. Davidoff, *Regulating Listings in a Global Market*, 86 N.C. L. Rev. 89, 158 n.341 (2007) (advocating for an approach based on the degree of regulation in the foreign market and stating that the FPI "scheme would likely function more appropriately if the SEC acknowledged that it should apply in varying degrees depending upon the quality of law of the non-domestic issuer's home country").

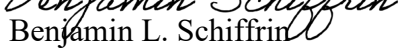
22 90 Fed. Reg. at 24,252.

23 https://www.sec.gov/about/divisions-offices/office-international-affairs; *see also, e.g.,* Robert B. Ahdieh, *Dialectic Regulation*, 38 Conn. L. Rev. 863, (2006) (stating that OIA "coordinates a growing pattern of regulatory cooperation and coordination with foreign and multinational regulatory entities").

Conclusion

We hope these comments are helpful as the Commission considers this matter.

Sincerely,



Benjamin L. Schiffrin
Director of Securities Policy
Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464

bschiffrin@bettermarkets.org
http://www.bettermarkets.org