FESE response to the SEC concept release on the "Foreign Private Issuer" definition

8th September 2025, Brussels

Q1: Does the shift in the characteristics of the FPI population described above warrant a reassessment of the FPI definition, and if so, what considerations should be taken into account in determining how to amend the FPI definition?

To what extent are any concerns about this shift in the characteristics of the FPI population mitigated by the relatively limited total market capitalization of the growing subsets of U.S. Exclusive FPIs discussed above, contrasted with the relatively larger number of such FPIs?

To what extent are any concerns about this shift in the characteristics of the FPI population mitigated by any other factors?

The Federation of European Securities Exchanges (FESE) suggests that, should the SEC consider revising the FPI definition and its associated eligibility tests, we believe several key aspects must be carefully evaluated:

- If the SEC proceeds with a "major foreign exchange" requirement, regulated markets within the EU, as well as the EAA area, Switzerland, and the UK, should be designated as such under any revised framework for FPI eligibility. European regulated markets operate under comprehensive legal frameworks, such as MiFID II, the Prospectus Regulation, and the Market Abuse Regulation, which ensure timely and transparent disclosure, strong corporate governance, and effective regulatory oversight. These standards ensure that U.S. investors are adequately protected when investing in securities listed on European markets.
- Should the SEC choose to prioritise the development of a mutual recognition system, we encourage it to adopt a flexible, principle-based approach that acknowledges the EU regulatory framework as equivalent through such arrangements. European regulated markets are subject to stringent disclosure, governance, and oversight standards aligned with international best practices. We welcome continued dialogue and active participation in both bilateral and multilateral cooperation platforms between the EU and the U.S. to advance mutual recognition.

Q2: 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 41 traded in the United States? If changes to the current accommodations are necessary, what are the potential costs and benefits?

Q3: 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?

Q4: Are domestic issuers currently at a competitive disadvantage as compared to reporting FPIs that are listed exclusively in the United States and incorporated in jurisdictions that do not impose meaningful disclosure and other regulatory requirements in their home country?

Q5: When U.S. investors trade in shares of foreign issuers listed solely on foreign exchanges, what transaction costs do they incur? To what extent are U.S. investors restricted in trading on foreign exchanges? How has U.S. investor access to such foreign listed securities changed over time?

1. Update the Existing FPI Eligibility Criteria

Q6: 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?

Q7: Should we consider updating the existing FPI eligibility criteria rather than adding new eligibility criteria (as discussed in sections IV.B.2-6 below)? To what extent would such updated criteria address the considerations discussed in section IV.A above?

Q8: 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?

Q9: 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?

Q10: 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?

Q11: What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of updating the current FPI definition thresholds or criteria? We welcome any qualitative or quantitative information that could aid in such an evaluation.

2. Foreign Trading Volume Requirement

Q12: 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?

FESE believes that a foreign trading volume test may not be an appropriate criterion for determining whether a foreign issuer qualifies for FPI accommodations. There should not be a correlation between the issuer's FPI status and the levels of trading activity on a foreign exchange, so we believe this trading volume requirement should be removed.

Q13: 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?

Q14: 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?

Q15: 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?

Q16: 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?

Q17: 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?

Q18: 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?

Q19: 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?

FESE believes that a foreign trading volume test may not be an appropriate criterion for determining whether a foreign issuer qualifies for FPI accommodations. There should not be a correlation between the issuer's FPI status and the levels of trading activity on a foreign exchange, so we believe this trading volume requirement should be removed.

Q20: 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?

Q21: 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?

Q22: 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 50 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?

Q23: 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?

Q24: What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a foreign trading volume requirement to the FPI definition?

3. Major Foreign Exchange Listing Requirement

Q25: 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?

If the SEC decides to proceed with a “major foreign exchange” requirement, regulated markets within the EU, as well as the EAA, Switzerland, and the UK, should be designated as such under any revised framework for FPI eligibility. This recognition is essential to preserve the longstanding benefits afforded to FPIs, while upholding robust regulatory standards and investor protections.

It is crucial to adopt a qualitative approach rather than relying solely on quantitative metrics. The designation of an exchange as "major" should inherently recognise that European regulated markets operate under comprehensive legal frameworks and are subject to stringent disclosure, governance, and oversight requirements aligned with international best practices. For instance, EU exchanges are governed by EU legislation such as MiFID II, the Prospectus Regulation, and the Market Abuse Regulation, which ensures timely and transparent disclosure, strong corporate governance, and effective regulatory oversight. These standards ensure that U.S. investors are adequately protected when investing in securities listed on EU markets. These comprehensive legal and mandatory frameworks align with international best practices.

Q26: 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?

Q27: 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?

Q28: 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?

Q29: 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?

Q30: 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?

Q31: 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?

We suggest that only markets that are responsible for ensuring the issuer complies with initial, ongoing and ad hoc disclosure obligations should be considered eligible, as that will ensure that sufficient information is disclosed to investors regarding these companies.

Q32: 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?

Q33: What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a "major foreign exchange" requirement to the FPI definition?

4. Commission Assessment of Foreign Regulation

Q34: 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?

Q35: 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?

Q36: 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?

Q37: 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?

Q38: 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?

Q39: What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a Commission assessment of foreign regulation requirement to the FPI definition?

5. Mutual Recognition Systems

Q40: Should we seek to establish an additional system for mutual recognition with respect to Securities Act and Exchange Act requirements for FPIs? If so, what would be key areas for such mutual recognition? Are there impediments that would prevent this approach? Are there any areas of issuer regulation and oversight that we should not include in such a system?

Should the SEC choose to prioritise developing a mutual recognition system, we encourage it to adopt a flexible, principle-based approach that recognises the EU regulatory framework as equivalent through such mutual recognition arrangements. European regulated markets operate under comprehensive legal frameworks and are subject to stringent disclosure, governance, and oversight requirements aligned with international best practices. For instance, EU exchanges are governed by EU legislation such as MiFID II, the Prospectus Regulation, and the Market Abuse Regulation, which ensures timely and transparent disclosure, strong corporate governance, and effective regulatory oversight. These standards ensure that U.S. investors are adequately protected when investing in securities listed on EU markets.

We welcome continued dialogue and active participation in both bilateral and multilateral cooperation platforms between the EU and the U.S. to facilitate mutual recognition. This could include regular regulatory dialogue, supervisory collaboration, participation in international forums such as IOSCO, and direct engagement with European operators of trading venues.

Q41: Should any additional mutual recognition systems with respect to Securities Act and Exchange Act requirements be specifically tailored to each jurisdiction, or should we establish one umbrella system that encompasses multiple jurisdictions?

Is an umbrella system feasible given the disparate regimes, regulations, and laws across foreign jurisdictions?

Q42: Is the MJDS a good model for a new mutual recognition system with respect to Securities Act and Exchange Act requirements? Are there any issues regarding the MJDS relating to investor protection or capital formation? Are there particular advantages to the MJDS that should be replicated in any new mutual recognition system with respect to Securities Act and Exchange Act requirements?

Q43: If we explore a new mutual recognition system with respect to Securities Act and Exchange Act requirements, which jurisdictions should we consider as possible candidates? How would U.S. investors perceive the regulatory regimes of such jurisdictions in terms of investor protection or confidence in this type of system? To what extent would this approach address the concerns raised in this release?

Should the SEC choose to prioritise developing a mutual recognition system, we encourage it to adopt a flexible, principle-based approach that recognises the EU regulatory framework as equivalent through such mutual recognition arrangements. European regulated markets operate under comprehensive legal frameworks and are subject to stringent disclosure, governance, and oversight requirements aligned with international best practices. For instance, EU exchanges are governed by EU legislation such as MiFID II, the Prospectus Regulation, and the Market Abuse Regulation, which ensures timely and transparent disclosure, strong corporate governance, and effective regulatory oversight. These standards ensure that U.S. investors are adequately protected when investing in securities listed on EU markets. We welcome continued dialogue and active participation in both bilateral and multilateral cooperation platforms between the EU and the U.S. to facilitate mutual recognition. This could include regular regulatory dialogue, supervisory collaboration, participation in international forums such as IOSCO, and direct engagement with European operators of trading venues.

Q44: What criteria should we use to determine whether a particular jurisdiction's regulatory regime sufficiently shares investor protection goals and regulatory approaches with the U.S. regime to warrant mutual recognition with respect to Securities Act and Exchange Act requirements?

Q45: If we adopt a new mutual recognition system, should we limit the accommodations that can be relied upon by any FPIs that are not included in the new mutual recognition system? If so, which accommodations should be limited and why?

Alternatively, should FPIs that meet the current definition continue to benefit from the same FPI accommodations while FPIs that are covered by the new mutual recognition system be granted additional accommodations? If so, what accommodations should we consider?

Q46: Determining whether a system of mutual recognition should be established for a certain jurisdiction will likely create a burdensome and time-consuming undertaking for the Commission staff. If we adopt a new mutual recognition system, how should we balance the need to make this determination with concerns about imposing undue burdens on Commission resources?

Due to the burdens of establishing a mutual recognition system, the Commission may not be able to respond quickly to any regulatory changes in such foreign jurisdiction. What challenges would potential delays in the tailoring of any mutual recognition system pose to issuers and U.S. investors?

Q47: What are the potential costs and benefits to FPIs and U.S. investors, including impacts on efficiency, competition, and capital formation, of establishing a new mutual recognition system with respect to Securities Act and Exchange Act requirements? Is there any subset of issuers or U.S. investors that would be disproportionately and/or unintentionally affected by the creation of such a system?

6. International Cooperation Arrangement Requirement

Q48: Should we permit issuers to retain FPI status only if they, in addition to other eligibility criteria, certify that they are either incorporated or headquartered in a jurisdiction in which the foreign securities authority is a signatory to the IOSCO MMoU?

What are the advantages or disadvantages to this approach? Should we also require an FPI to be registered/listed on an exchange in that jurisdiction to ensure that an issuer is subject to regulations by the foreign securities authority that is a signatory to the IOSCO MMoU?

Q49: Should we require that the foreign securities authority be a signatory to the EMMoU, in addition to the MMoU?

Q50: Should we require the foreign securities authority to not only have signed the MMoU and/or EMMoU, but also not have been suspended or terminated from either arrangement by IOSCO?

Q51: Should the Commission consider alternative information-sharing arrangements as a criterion for FPI eligibility?

In particular, are there other information-sharing arrangements that would provide additional investor protection safeguards for U.S. investors in the event that an FPI fails to comply with the requirements of the Federal securities laws when accessing U.S. capital markets?

Q52: If we impose a MMoU/EMMoU signatory or similar requirement, should the Commission require each FPI applicant to certify annually that it is either incorporated or headquartered in a jurisdiction in which the foreign securities authority is an MMoU/EMMoU signatory? If so, how should the issuer make that certification?

Q53: What are the limitations of the MMoU/EMMoU in furthering the goal of providing appropriate accommodations for certain foreign issuers so that U.S. investors have these investment opportunities while also but maintaining adequate protections for U.S. capital markets participants?

Q54: What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of adding a MMoU/EMMoU signatory or similar requirement to the FPI definition?

7. Other considerations

Q55: 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?

Q56: If we amend the FPI definition, some issuers that lose FPI status may choose to change their listing, ownership, or other elements to access alternative non-U.S. markets or to regain FPI status rather than comply with all the requirements to which domestic issuers are subject. What are the most likely alternative markets that such issuers would access, or the most likely changes that such issuers would make?

What characteristics distinguish the issuers that are likely to react to an amended FPI definition in these ways? Which of the alternatives discussed in this release would be most likely to result in such reactions? What are the primary factors that would guide the decisions of such issuers?

Q57: U.S. investors can trade in equities in non-U.S. markets, though perhaps without the same ease as they can trade in U.S. markets. What are the frictions to such trading? To what degree would U.S. investors continue to invest in issuers that lose FPI status if they gave up their U.S. listing or registration?

Would FPIs that are currently exclusively listed in U.S. capital markets pursue alternative non U.S. listings of their securities upon losing their FPI status rather than report as domestic issuers, thereby making it difficult for current and future U.S. investors to trade in such FPIs' securities?

Q58: Are there other considerations we should take into account pertaining to relations with foreign regulators and conflict of laws in connection with potential changes to the FPI definition?

Q59: FPIs may present financial statements pursuant to U.S. GAAP, IFRS as issued by the IASB without reconciliation to U.S. GAAP, or home country GAAP with a reconciliation to U.S. GAAP. If the FPI definition were revised, any issuers that would lose FPI status would be required to present their financial statements pursuant to U.S. GAAP, as is required for domestic issuers. There is currently no guidance for the transition from IFRS as issued by the IASB to U.S. GAAP. This transition in financial reporting could be burdensome and costly.

What would be the costs and complexities in transitioning to U.S. GAAP? What would be the benefits of transitioning to U.S. GAAP? In light of potential costs and complexities, are there specific financial reporting accommodations that should be provided to former FPIs? For example, should a transition period be provided and, if so, for how long?

Should we reduce the number of years of financial statements required to be presented during the transition period or require application of U.S. GAAP only in future periods with transition provisions such as an opening balance sheet? Would any other accommodations be appropriate and how would their benefits and costs compare?

Q60: Are there any subsets of the current FPI population that should not be subject to any additional disclosure or other requirements that these issuers may incur due to any amendments to the FPI definition? Please explain which and why.

Alternatively, should any such subsets of the current FPI population be given a longer transition period and other transition accommodations if they lose FPI status due to any amendments to the FPI definition?

Q61: Should amendments to the FPI definition apply to reporting FPIs only and not to the FPIs who are exempt from section 12(g) registration pursuant to either Rule 12g3-2(a) or Rule 12g3-2(b)?

Are there different amendments that we should consider for these foreign issuers as opposed to reporting FPIs? In some cases, the securities of non-reporting FPIs are listed in the United States through the market activities of certain intermediaries such as depositaries engaged in creating ADRs without involvement by the non-reporting FPIs.

Amendments to the FPI definition may result in depositaries finding it more difficult to establish unsponsored ADR programs as fewer foreign issuers may be eligible to rely on Rule 12g3-2(b) due to loss of FPI status. Would amending the FPI definition unduly restrict the ADR market?

Q62: Would changing the FPI definition have a foreseeable impact in the number of foreign issuers that choose to trade on the U.S. OTC markets instead of on a U.S. exchange?

If we adopt an amendment to the FPI definition, it would also affect eligibility for the exemptions under Rule 12g3-2(a) and Rule 12g3-2(b) and foreign issuers that are no longer eligible to rely upon FPI exemptions from reporting could become subject to domestic issuer reporting obligations if their securities trade on the U.S. OTC markets. Would such issuers be more likely to pursue a listing on an exchange rather than on the U.S. OTC markets? Are investors likely to see potential consequences from any related shift in where such issuers are trading?

Q63: If we adopt an amendment to the FPI definition but retain the current FPI definition solely with regards to the exemptions under Rule 12g3-2(a) and Rule 12g3-2(b), would foreign issuers be more likely to trade their securities on the U.S. OTC markets rather than seeking and maintaining compliance with a new eligibility requirement? What impacts would U.S. investors be likely to experience as a result of such a shift?

Q64: Should we combine any of the potential regulatory responses described in this section IV? If so, which ones and why? What would be the economic effects of combining such responses for FPIs and U.S. investors?

Q65: Are there any other regulatory responses not discussed in this concept release that we should consider given the recent developments in the FPI population as described in section III, whether alone or in addition to any of those discussed?

What would be the potential costs and benefits, including impacts on efficiency, competition, and capital formation, to FPIs and U.S. investors of any such other regulatory responses?

Q66: Should any of the potential regulatory responses described in this section IV, in particular sections IV.B.2-4 and IV.B.6, be required only if the foreign issuer must apply the business contacts test, and not if the foreign issuer meets the shareholder test?

Q67: What would be the competitive effects for domestic and foreign issuers as well as U.S. capital markets of amending the FPI definition using one or more of the regulatory responses described in this section IV?

Q68: The FPI definition is currently similar to, but not the same as, the definition of a “foreign business” under Rule 1-02(l) of Regulation S-X.122 Should any change to the FPI definition also result in changes to the definition of a “foreign business”?

Q69: Should we consider applying any change to the FPI definition only to new FPIs registering for the first time to eliminate the transition costs for the current FPI population? What would be the competitive effects for domestic issuers and existing FPIs of such an accommodation?

Should existing FPIs be permitted to rely on the current FPI eligibility requirements indefinitely or be subjected to any changes to the FPI definition after a certain transition period, and, if so, what should that period be?