Letter from Investment Company Institute and SIFMA AMG

September 5, 2025

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

Re: Concept Release on Foreign Private Issuer Eligibility (File No. S7-2025-01)

Dear Ms. Countryman:

The Investment Company Institute[1] and the Asset Management Group of the Securities Industry and Financial Markets Association[2] (collectively, the Associations) appreciate the opportunity to comment on the Securities and Exchange Commission's (SEC or the Commission) Concept Release on Foreign Private Issuer (FPI) Eligibility.[3] We support the Commission's intent to reassess the FPI definition to ensure it "better represents the issuers that the Commission

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[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $40.6 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $10.5 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] SIFMA AMG (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[3] Concept Release on Foreign Private Issuer Eligibility (Concept Release), SEC Release Nos. 33-11376; 34-103176 (Jun.4, 2025).

intended to benefit from current FPI accommodations while continuing to protect investors and promote capital formation."[4]

The Associations and its members, including regulated funds and other asset managers, represent a significant portion of U.S. investors and are deeply committed to ensuring that U.S. capital markets remain the most efficient, liquid, and attractive in the world. The U.S. capital markets have long been considered the preferred listing venue for foreign issuers due to their liquidity, market depth, investor base, and access. As of March 2025, more than 6,000 registered funds held a total of $1.2 trillion in securities issued by FPIs, which represents about 3.3 percent of long-term fund assets.[5] Access to a diverse range of investment opportunities, including those offered by major global issuers, is critical for U.S. investors seeking portfolio diversification and competitive returns. We strongly support the Commission's historical approach of providing regulatory flexibilities to foreign issuers to "preserve access for U.S. investors to such issuers' securities while maintaining appropriate investor protections."[6] These accommodations have long recognized that foreign issuers face unique challenges and are subject to different legal and regulatory requirements in their home jurisdictions.

The Associations commend the Commission for undertaking this comprehensive review of the FPI definition. As you consider potential amendments, we urge a nuanced approach that:

1. *Prioritizes retaining access for major global issuers to U.S. capital markets.* These issuers provide crucial liquidity and diversification opportunities for U.S. investors.

2. *Distinguishes between FPIs based on their size, global trading patterns, and the robustness of their home country regulation.* Data clearly shows that smaller FPIs primarily drive the observed shifts in the FPI population regarding U.S.-centric trading.[7]

3. *Adopts targeted solutions to address identified concerns without inadvertently penalizing well-regulated, globally traded FPIs.*

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[4] *See* Concept Release at 1.

[5] Data include long-term mutual funds, ETFs, and closed-end funds. Data exclude money market funds. Data use each fund's publicly available quarterly N-PORT filing between February 2025 and April 2025. FPIs include issuers that filed a Form 20-F in 2024.

[6] *See* Concept Release at 4.

[7] *See* Concept Release at 32-37.

4. *Carefully considers the potential costs and benefits, including impacts on efficiency, competition, liquidity, and capital formation, of any proposed changes.* The imposition of U.S. GAAP requirements or other domestic issuer obligations on existing FPIs could be highly burdensome and deter current or future global issuers from accessing U.S. markets.

Preserving Liquidity and Access for Major Global Issuers in U.S. Capital Markets

We recognize the Commission's staff findings regarding recent shifts in the FPI population, particularly the increase in FPIs from certain jurisdictions (e.g., entities incorporated in the Cayman Islands and headquartered in mainland China)[8] and the observed trend of some FPIs trading almost exclusively in U.S. capital markets.[9] We understand the Commission's concern that such trends may result in less information being available to U.S. investors or raise questions about the extent of overall regulation faced by these FPIs in their home country jurisdictions.[10]

We urge the Commission, however, to distinguish among different segments of the FPI population when considering potential amendments to the FPI definition. The staff's analysis indicates that the documented trends are driven by FPIs filing annual reports on Form 20-F (20-F FPIs) with relatively small market capitalizations.[11] Specifically, while those FPIs with 99% or more of their equity security trading volume in U.S. capital markets represent almost 55% of all 20-F FPIs by count, this group only makes up 9.2% of the aggregate 20-F FPI market capitalization.[12] In contrast, FPIs with significant trading outside the U.S. constitute only 24.2% of the FPI count but account for a substantial 66.3% of the aggregate 20-F FPI market capitalization.[13]

This data strongly suggests that the major global issuers, who contribute to the liquidity and depth of U.S. capital markets, typically maintain active trading in foreign markets. Moreover,

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[8] *See* Concept Release at 20-28.

[9] *See* Concept Release at 6.

[10] *See* Concept Release at 37-38.

[11] *See* Concept Release at 17.

[12] *See* Concept Release at 34.

[13] *See* Concept Release at 35.

these issuers often are subject to meaningful home country disclosure and regulatory requirements.[14] It is imperative that any revisions to the FPI definition are carefully calibrated to address the specific concerns identified (e.g., smaller FPIs that may lack meaningful home country oversight) without inadvertently imposing undue burdens on large, globally integrated issuers who currently rely on the existing FPI accommodations. Overly broad changes could lead to unintended consequences, including:

- **Decreased liquidity in U.S. markets:** Major global issuers, if no longer eligible for FPI status, may choose to delist from U.S. exchanges or refrain from future U.S. listings, thus limiting investment opportunities for U.S. investors and diminishing the breadth and depth of U.S. markets.

- **Reduced access to diverse investment opportunities for U.S. investors:** If major global issuers choose to report as domestic issuers, it could make their securities less accessible or more costly for U.S. investors, potentially leading to a loss of diversification benefits. Such a change could lead to disruptions, potentially affecting investor portfolios, asset allocations, and taxes, with knock-on implications for investor confidence.

- **Unnecessary competitive disadvantages:** Placing domestic issuer requirements on global FPIs that are already subject to robust, comparable home country regulations could create an uneven playing field.

Consideration of Potential Regulatory Responses

We offer the following comments on the potential regulatory responses outlined in the Concept Release, focusing on their potential impact on major global issuers and market liquidity:

Updating the Existing FPI Eligibility Criteria (Shareholder and Business Contacts Tests):

- The current definition's bifurcated test remains relevant in distinguishing foreign from "essentially U.S. issuers."

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[14] For example, Shell plc is incorporated under the laws of England and Wales with 19% of its shares outstanding from American Depository Receipts (ADRs). Similarly, Novartis is incorporated in Switzerland with 9% of its shares outstanding from ADRs.

- Any adjustment to the 50% U.S. ownership threshold or the business contacts test should consider the global nature of major issuers. A lower U.S. ownership threshold, for instance, could inadvertently classify large, multinational companies with significant global operations and shareholder bases as "domestic" even if their core business and country of incorporation remain abroad.

- The Commission should analyze the impact of such changes specifically on larger, globally traded FPIs, including any potential benefits for U.S. investors compared to the costs of transition.

Foreign Trading Volume Requirement:

- While we acknowledge the staff's analysis showing an increasing concentration of trading in U.S. markets for some FPIs, it is important to reiterate that these are largely smaller FPIs by market capitalization.

- Imposing a high foreign trading volume threshold (e.g., 50% non-U.S. trading) could disproportionately impact many well-established major global issuers. Due to the superior liquidity and depth of U.S. capital markets, many truly global companies naturally experience significant trading volume in the United States even when they are primarily listed and regulated in their home country. Such a test could inappropriately disqualify these companies from FPI eligibility, contradicting the goal of accommodating issuers with meaningful home country oversight.

- We urge the Commission to carefully consider the "benefits and costs to FPIs and U.S. investors under each or any proposed threshold," especially avoiding thresholds that would incentivize major global FPIs to reduce U.S. trading or delist.

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We appreciate the opportunity to provide our comments and stand ready to offer further assistance as the Commission proceeds with its reassessment. If you have any questions or would like to discuss this issue further, please feel free to contact Tara Buckley at tara.buckley@ici.org or William Thum at bthum@sifma.org.

Sincerely,

/s/ Tara R. Buckley

Tara R. Buckley

Deputy General Counsel, ICI

/s/ William C. Thum

William C. Thum

Managing Director and Associate General Counsel, SIFMA AMG

cc: The Honorable Paul S. Atkins
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda

Brian T. Daly, Director, Division of Investment Management