Council of Institutional Investors®
The voice of corporate governance

Via Email

September 4, 2025

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

Re: SEC Solicitation of Public Comment on the Foreign Private Issuer Definition, File No. S7-2025-01

Dear Secretary Countryman:

I am writing on behalf of the Council of Institutional Investors (CII). CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately $5.2 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than fifteen million participants – true "Main Street" investors through their pension funds. Our associate members include non-U.S. asset owners with about $5.8 trillion in assets, and a range of asset managers with more than $74 trillion in assets under management.[1]

CII appreciates the opportunity to share its views in response to the Securities and Exchange Commission's (SEC) Concept Release on Foreign Private Issuer (FPI) Eligibility (Concept Release).[2] Echoing SEC Chairman Paul S. Atkins's statement on the Concept Release, CII recognizes that attracting foreign companies to U.S. markets through reasonable accommodations in federal securities laws must be balanced with "providing investors with material information about these foreign companies, including their unique corporate structures, and ensuring that domestic companies are not competitively disadvantaged with respect to regulatory requirements."[3] Indeed, CII believes that "effective corporate governance and

[1] For more information about the Council of Institutional Investors ("CII"), including its board and members, please visit CII's website at http://www.cii.org.
[2] *See* Concept Release on Foreign Private Issuer Eligibility, Securities Act Release No. 11,376, Exchange Act Release No. 103,176, 90 Fed. Reg. 24,232 (June 6, 2025), https://www.federalregister.gov/documents/2025/06/09/2025-10428/concept-release-on-foreign-private-issuer-eligibility; Press Release, U.S. Securities and Exchange Commission, SEC Solicits Public Comment on the Foreign Private Issuer Definition (June 4, 2025), https://www.sec.gov/newsroom/press-releases/2025-82-sec-solicits-public-comment-foreign-private-issuer-definition.
[3] Chairman Paul S. Atkins, Statement on Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-foreign-private-issuer-060425.

disclosure serve the best long-term interests of companies, shareowners and other stakeholders."[4] In this sense, good governance, including good disclosure, are key elements of appropriate regulation of FPIs by the SEC.

In this letter, we share CII's perspective on three topics that correspond to some of the questions posed in the Concept Release: (1) protection of U.S. investors through transparency and appropriate disclosures, (2) China-based issuers (CBIs) operating through variable interest entities (VIEs); and (3) foreign regulatory regimes and international cooperation arrangements. In general, CII seeks more stringent and expansive regulations on FPIs. This position includes CII's broader views regarding the benefits of disclosures applicable to all issuers, whether domestic or foreign.

(1) Protection of U.S. investors through transparency and appropriate disclosures

The Concept Release asks in Request for Comment 2:

> **Given the accommodations afforded to FPIs, . . . 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?**[5]

CII's view is that U.S. investors may not always be sufficiently protected given the accommodations and benefits enjoyed by FPIs, which include: "(1) reduced ongoing reporting obligations under the [Securities Exchange Act of 1934 (Exchange Act)] Exchange Act, such as extended time to file annual reports, no quarterly reporting and current reporting requirements that tie to disclosures required to be made under non-U.S. regulations, (2) an exemption from Section 16 reporting for officers, directors and 10% shareholders of a company, (3) more flexible accounting requirements in respect to annual financial statements, (4) less onerous disclosure requirements around executive compensation and (5) an exemption from the proxy statement requirements under Regulation 14A of the Exchange Act."[6]

These accommodations may undercut what CII believes to be effective corporate governance due to: (a) insufficient disclosure and transparency, generally, and (b) insufficient reporting (i) on a quarterly basis, (ii) on executive compensation, and (iii) on trades subject to Section 16.

(a) Insufficient Disclosure and Transparency, Generally

CII generally believes that effective corporate governance helps companies achieve strategic goals and manage risks by ensuring that shareowners can hold directors to account as their representatives, and in turn, directors can hold management to account, with each of these

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[4] Council of Institutional Investors, Policies on Corporate Governance, Preamble (last updated Mar. 11, 2025), https://www.cii.org/corp_gov_policies.
[5] 90 Fed. Reg. at 24,247 (emphasis added).
[6] Debevoise & Plimpton, LLP, SEC to Consider Foreign Private Issuer Eligibility (June 10, 2025), https://www.debevoise.com/insights/publications/2025/06/sec-to-consider-foreign-private-issuer-eligibility.

constituents contributing to balancing the interests of the company's varied stakeholders.[7] As such, effective corporate governance is key to protecting the rights of shareholders.

However, lower quality reporting requirements may produce a situation in which shareholders are disadvantaged from not having enough access to the material information they need to make investment and voting decisions. CII's own statement on company disclosure underscores the link between reporting requirements, and disclosure more broadly, and shareowner protection.[8] For instance, in evaluating proposals to expand company disclosure, CII generally considers the following to be critical considerations: the materiality of disclosure to investment and voting decisions; the depth, consistency and reliability of empirical evidence supporting the connection between disclosure and long-term shareowner value; the anticipated benefit of disclosure to investors, net of the cost of collection and reporting; and the prospect that disclosure will substantially improve transparency, comparability, reliability and accuracy.[9]

This perspective on disclosure reflects CII's view on the importance of transparency to effective decision-making by investors. CII has long been a strong proponent of transparency, as exemplified by CII's corporate governance policies, which repeatedly ask companies to make disclosures above and beyond those required by law.[10] This includes, for example, the timely disclosure of the final results of votes cast at annual and special meetings of shareowners *with tallies for each class for companies with multiple share classes with unequal voting rights*.[11] The ultimate purpose of CII transparency and disclosure best practices is to allow CII members to make informed investment and voting decisions for the benefit of plan participants and beneficiaries.

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[7] *See* CII, Preamble ("Effective corporate governance helps companies achieve strategic goals and manage risks by ensuring that shareowners can hold directors to account as their representatives, and in turn, directors can hold management to account, with each of these constituents contributing to balancing the interests of the company's varied stakeholders.").

[8] *See* Council of Institutional Investors, Policies on Other Issues, Statement on Company Disclosure (adopted Mar. 10, 2020), https://www.cii.org/policies_other_issues#Company_disclosure ("In evaluating proposals to expand company disclosure, CII considers the following factors:

- Materiality to investment and voting decisions
- Depth, consistency and reliability of empirical evidence supporting the connection between the disclosure and long-term shareowner value
- Anticipated benefit to investors, net of the cost of collection and reporting
- Prospect of substantially improving transparency, comparability, reliability and accuracy").

[9] *Id.*

[10] *See, e.g.,* Council of Institutional Investors, Policies on Corporate Governance, § 4.4 Timely Disclosure of Voting Results (last updated Mar. 11, 2025), https://www.cii.org/corp_gov_policies#shareowner_meetings ("Companies with multiple share classes with unequal voting rights should supplement their final results with tallies for each class.").

[11] *See id.*; *see also* Jeffrey P. Mahoney, CII Letter to The Honorable French Hill, Chairman, House Committee on Financial Services et al., on H.R. 3357, the Enhancing Multi-Class Disclosures Act and improving disclosure of voting results for multi-class companies, at 5 (May 19, 2025), https://www.cii.org/files/issues_and_advocacy/correspondence/2025/May%2019,%202025%20Letter%20to%20Committee%20on%20Financial%20Services.pdf ("SEC rules require companies to disclose two primary pieces of information with respect to meeting results: aggregate vote tallies for each proposal and whether each proposal passed or failed [and] [u]nfortunately, this level of transparency masks the degree to which high-vote shareholders of multi-class companies are 'vetoing' the preferences of the holders of the majority of the company's equity.").

In this context, CII's views are in line with SEC Commissioner Mark T. Uyeda's statement on the Concept Release: "Investment risks due to materially incomplete disclosure runs counter to the fundamental purpose behind U.S. securities laws."[12]

(b) Insufficient Reporting

i. On a Quarterly Basis

FPIs are required to file an Annual Report on Form 20-F within four months after fiscal year end, as required by Exchange Act Rule 13a-1. They are also required to furnish reports on Form 6-K from time to time, as required by Exchange Act Rule 13a-16. Form 6-K calls for "promptly" furnishing to the SEC information that is (1) material to the FPI and (2) that the FPI makes or is required to make public under home country law, that it publicly files or is required to publicly file under stock exchange rules, and that it distributes, or is required to distribute, to its shareholders. Aside from the fact that a "promptly disclose" requirement (as opposed to the 8-K's four-business-day requirement) may represent vague guidance, the absence of a requirement to file quarterly reports is a critical gap in today's disclosure rules for FPIs.

CII believes that investors, companies, and other market participants may benefit from the current reporting frequency model, which requires domestic issuers to file quarterly reports on Form 10-Q.[13] In our view, the requirement to report historical earnings on a quarterly basis is a key element of the timely and accurate information flow that underpins the quality and efficiency of our capital markets.[14] The requirement helps ensure that important information is promptly and transparently provided to the marketplace allowing investors to assess concrete progress against strategic goals.[15]

In addition, CII believes that less frequent reporting likely leads to greater share price volatility, and more intense investor focus on short-term share price fluctuations, as investors expend more

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[12] Commissioner Mark T. Uyeda, Statement on the Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-foreign-private-issuer-eligibility-060425.

[13] *See* Jeffrey P. Mahoney, CII Letter to SEC on Earnings Releases and Quarterly Reports, at 1 (Mar. 21, 2019), https://cii.membershipsoftware.org/files/issues_and_advocacy/correspondence/2019/March%2021,%202019%20letter%20to%20SEC%20on%20RFC%20(final).pdf ("CII believes that investors, companies, and other market participants benefit from the current reporting frequency model, which requires from domestic issuers filing quarterly reports on Form 10–Q.").

[14] *Id.* ("In our view, the requirement to report historical earnings on a quarterly basis is a key element of the timely and accurate information flow that underpins the quality and efficiency of our capital markets.").

[15] *Id.* ("The requirement helps ensure that important information is promptly and transparently provided to the marketplace allowing investors to assess concrete progress against strategic goals."); *see also* CII: The Voice of Corporate Governance, "The Benefits of Quarterly Reporting with Salman Arif," Sept. 10, 2018, *available at* https://podtail.com/en/podcast/the-voice-of-corporate-governance/the-benefits-of-quarterly-reporting-with-salman-ar/ ("In this episode, CII General Counsel Jeff Mahoney interviews Professor Salman Arif, assistant professor of accounting at Indiana University's Kelley School of Business. Professor Arif discusses his recent research paper that examines the effects of the frequency of corporate financial reporting on investors and the capital markets.").

effort guessing how the company is doing.[16] As such, quarterly financial reports are an important reality check for investors on stock valuation.[17]

Conversely, CII does not believe that requiring quarterly reporting leads public company managers to focus on short-term results to the detriment of long-term performance.[18] The notion that quarterly reporting encourages short-term thinking is outdated and generally not supported by empirical evidence.[19]

In this context, quarterly reporting principles should apply to FPIs as well domestic issuers. The exemption from filing Form 10-Q may compromise the ability of investors to assess how a company is progressing in its performance over time.

ii. On Executive Compensation

FPIs are permitted to disclose executive compensation on an aggregate basis and need not supply a Compensation Discussion & Analysis (CD&A), as is required for domestic companies.

Executive compensation has long been a top priority for CII and its members. Concerns over time have centered not simply on the amount paid to CEOs and other top executives, but also on the board processes for setting pay, the disclosure of pay, the structure of pay and the pay-versus-performance metrics. Poorly structured packages may harm shareowner value by wasting owners' money, diluting ownership, and creating inappropriate incentives that may damage a company's long-run performance. Inappropriate pay packages may also reflect poorly on the board and its compensation committee given their roles in aligning executive incentives with broader company goals.[20]

Given that incentives can significantly impact managers' priorities and, by extension, companies' long-term performance, CII considers the effective oversight of executive compensation programs to be among the most critical of all board responsibilities. When investors have consistent, high-quality information on executive compensation practices, including the board's explanation of how those practices support business objectives, they become better equipped to optimize their monitoring roles. This also helps them support pay

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[16] *See* Mahoney, CII Letter to SEC on Earnings Releases and Quarterly Reports, at 2 ("We believe that less frequent reporting would likely lead to greater share price volatility, and more intense investor focus on short-term share price fluctuations, as investors expend more effort guessing how the company is doing.").
[17] *Id.* at 2-3 ("Quarterly . . . [reports] are an important reality-check for investors on stock valuation.").
[18] *Id.* at 1 ("We do not believe that requiring quarterly reporting leads public company managers to focus on short-term results to the detriment of long-term performance").
[19] *Id.* at 1-2 ("The notion that quarterly reporting encourages short-term thinking is in our view outdated and generally not supported by empirical evidence.").
[20] *See* Robert McCormick, CII Letter to SEC on its June 26 Roundtable on Executive Compensation Disclosure Requirements, at 1 (June 25, 2025), https://www.cii.org/files/issues_and_advocacy/correspondence/2025/06-25-25%20CII%20Letter%20to%20SEC%20re%20Executive%20Compensation%20Roundtable,%20File%20Number%204-855.pdf ("Inappropriate pay packages may also reflect poorly on the board and its compensation committee given their roles in aligning executive incentives with broader company goals.").

programs that are "effective, reasonable and rational with respect to company performance, industry considerations, risk considerations and compensation paid to other employees."[21]

Accordingly, the fact that FPIs are not required to report details on executive compensation is generally inconsistent with CII policies. Indeed, CII policies on executive compensation are grounded in providing transparency of all material information that will help investors make informed investment and voting decisions. CII policy states that "[c]ompensation committees should make compensation disclosures . . . as clear, straightforward and comprehensible as possible. Each element of pay should be clear to shareholders, especially with respect to any goals, metrics for their achievement and maximum potential total cost."[22]

The lack of reporting on executive compensation details, in the absence of a CD&A and other information, may be detrimental to investors who look to this information to assess not only an FPI's compensation philosophy, but also the degree to which the compensation of executives is proportional and optimal relative to the company's performance.

iii. On Trades Subject to Section 16

Insiders of FPIs are exempt from filing beneficial ownership reports required by Section 16(a) of the Exchange Act.[23] This means that FPI insiders (i.e., company directors and officers, as well as shareholders who own more than 10% of a class of the company's equity securities registered under the Exchange Act) are not required to report most of their transactions involving the company's equity securities to the SEC on Form 4 within two business days, unlike insiders of U.S. companies.

CII has been and is concerned with the lack of transparency of trades by insiders at foreign companies listed on U.S. exchanges. When FPI insiders are exempted from disclosing trades that they otherwise would be required to report under Section 16, U.S. investors may miss out on material information represented by the trades themselves. All material information to U.S. investors should be readily disclosed. As Wharton Accounting Professor Daniel Taylor has stated, "All companies that are listed in the U.S. should have the same disclosure standards. . .. Our disclosure standards are based on where the company is domiciled, not based on where the company is listed. . .. That is a problem because institutional investors need insight into what the insiders at the company are actually doing. . .. There is asymmetry in disclosure standards where disclosure standards are not harmonized across all firms that are listed on U.S. exchanges. . .. Insiders of foreign companies take advantage of [lower disclosure standards] and engage in widespread opportunistic trading."[24]

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[21] CII, § 5.1 Core Objectives of Executive Pay.
[22] CII, § 5.3 Transparency of Compensation.
[23] *See* Exemption from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers, 17 C.F.R § 240.3a12-3 (1991), *available at* https://www.law.cornell.edu/cfr/text/17/240.3a12-3.
[24] CII: The Voice of Corporate Governance, "Holding Foreign Insiders Accountable," Sept. 6, 2022, *available at* https://music.amazon.de/podcasts/9a89141e-e2c4-4c9a-99f9-5011c2498248/episodes/a670a28b-957e-4792-9be8-d61e97ea8a96/the-voice-of-corporate-governance-holding-foreign-insiders-accountable-with-professor-daniel-j-

More specifically, we generally share the following views of SEC Commissioner Caroline A. Crenshaw about the existing Section 16 exemption for FPIs:

> Has the scale tipped too far in terms of relieving foreign private issuers of important reporting and integrity obligations? Take the Section 16 exemption. While corporate insiders of U.S. public issuers are required to publicly disclose their trades electronically within two days on Form 4, insiders of foreign private issuers do not have the same reporting obligations. Recent bi-partisan legislation and studies have put on display the inequities around trading among insiders at foreign private issuers, which show opportunistic trading resulting in significant loss avoidance by foreign insiders. This appears to be the case especially in connection with foreign insiders in certain non-extradition countries such as China and Russia. Why are U.S. insiders held to account for insider trading, when (it appears) foreign insiders may do so with impunity? This does not to me seem the correct policy result.[25]

Thus, requiring Form 4 reporting of foreign insiders for every company listed in the U.S. could be critical to harmonizing disclosure standards for the benefit of investors.

Overall, the lack of transparency provided by the more permissive regulations available to FPIs—particularly, those related to quarterly reporting, executive compensation, and Section 16—means that U.S. investors, including CII members, are not as well protected. Limited access to material information means that investors cannot fully assess the risks that they may be exposed to from investing in FPIs.

(2) <u>CBIs operating through VIEs</u>

Request for Comment 3 in the Concept Release asks:

> **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?**[26]

CII generally believes that U.S. investors may not be sufficiently protected from VIEs based in China. In our recent CII staff report, we state that CBIs' VIEs are "fraught with complexity and

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taylor ("In this episode, CII General Counsel Jeff Mahoney interviews Daniel J. Taylor, the Arthur Anderson Professor of Accounting at the Wharton School of the University of Pennsylvania. Professor Taylor is the co-author of a research paper entitled 'Holding Foreign Insiders Accountable.'").

[25] Commissioner Caroline A. Crenshaw, Statement on the Concept Release on Foreign Private Issuer Eligibility (June 4, 2025) (footnotes omitted), https://www.sec.gov/newsroom/speeches-statements/statement-crenshaw-concept-release-foreign-private-issuer-eligibility-060425.

[26] 90 Fed. Reg. at 24,247 (emphasis added).

risk for U.S. investors,"[27] including vulnerability to the Chinese government's pressures and management conflicts of interest. Also, the VIE structure "could be deemed to contravene Chinese laws that restrict foreign investment in strategically sensitive industries."[28] Additionally, VIEs operate using "contractual arrangements rather than direct ownership, leaving foreign investors without the rights to residual profits or control over the company's management that they would otherwise enjoy through equity ownership."[29]

While VIEs have established themselves as common practice among Chinese companies listed in the U.S. and have won some validation from some market actors,[30] the structure puts public shareholders in a risky position. VIEs depend heavily on executives who are Chinese nationals and own the underlying business licenses to operate in China, introducing unusually significant "key person" succession risk.[31] Aside from the fact that as many as 64% of initial public offerings by Chinese VIEs from 2010 to 2025 involved companies with dual-class structures and that these companies are incorporated in jurisdictions with limited shareholder rights, frequently the Cayman Islands,[32] the VIE structures themselves create "significant management conflicts of interest, complicating, if not foreclosing, the ability of outside shareholders to challenge executives for poor decision-making, weak management, or value-eroding actions."[33] VIEs lead

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[27] Emmanuel Tamrat, Behind the Veil: Risks of Chinese Companies and the VIE Structure, Council of Institutional Investors, at 7 (Aug. 2025) (Attachment), Behind the Veil: Risks of Chinese Companies and the VIE Structure.
[28] *Id.*
[29] *Id.*
[30] *See* Lina Choi, et al., "Baidu and Tencent Can Manage Risks from VIE Structure," Moody's (May 27, 2014), https://www.moodys.com/research/Moodys-Baidu-and-Tencent-can-manage-risk-of-VIE-structure--PR_300293 ("'While Baidu and Tencent are exposed to the risks associated with the VIE structure, we believe they are manageable given the companies' ownership structure, control of cash flow and long track record of using the VIE structure . . . .'").
[31] *See* Attachment, at 7 ("VIEs depend heavily on executives who are Chinese nationals and own the underlying business licenses to operate in China, introducing significant 'key person' succession risk.").
[32] *See* Jesse M. Fried & Matthew Schoenfeld, Beijing's 'Legal Great Wall' Helps Fleece U.S. Investors, Wall St. J., Aug. 27, 2025, 5:12 PM ET (on file with CII) ("U.S. IPOs by China-based companies . . . are typically incorporated in the Cayman Islands and listed only in the U.S. . . . thus subject only to weak Cayman corporate law and a watered down version of American securities law."); *see also* William J. Moon, Havens for Corporate Lawbreaking, Was. U. L. Rev., at 34 (forthcoming 2026), *available at* https://ssrn.com/abstract=5148347 ("[T]he Cayman Islands has deliberately chosen to differentiate its corporate law from that of Delaware. While directors and officers of Cayman Islands-incorporated corporations are required to act in good faith in what they consider is the best interests of the company, they have no specific obligations to exercise oversight over corporate lawbreaking. Even if they did, such suits are matters that can largely be exculpated, rendering these claims dead on arrival. Cayman Islands law has no statutory limitations regarding indemnification or limitation of liability for directors and officers. Rather, the limits have been imposed by common law, which allows corporations to exculpate all types of liability of a director and officer 'except willful default or neglect, or fraud.' As a result, directors and officers are exculpable from liability arising from 'all but the narrowest of circumstances.'") (footnotes omitted); *see also* CII: The Voice of Corporate Governance, "Havens for Corporate Lawbreaking with William Moon," June 18, 2025, *available at* https://www.buzzsprout.com/202904/episodes/17359632-havens-for-corporate-lawbreaking-with-william-moon ("In this episode, CII General Counsel Jeff Mahoney interviews Professor William J. Moon, the J.B. and M.K. Pritzker Family Foundation Distinguished Visiting Professor of Law, Northwestern Pritzker School of Law & Edward M. Robertson Professor of Law, University of Maryland Carey School of Law. Professor Moon is the author of a recent essay 'Havens for Corporate Lawbreaking' that discusses the trend of jurisdictions [the Cayman Islands and Nevada] undercutting the legal compliance obligations of directors and officers.").
[33] Attachment, at 7.

some foreign investors to believe that they can meaningfully participate in China's emerging companies, but such participation is precarious and may ultimately prove illusory."[34]

Compounding the structure's complexity, the "listing company," i.e., the entity that is actually listed on a U.S. or other foreign exchange, is generally a holding company that bears the same name as the Chinese VIE, obscuring the reality that investors purchase depositary shares of a shell company with a third-tier relationship to the potentially lucrative VIE.[35]

In this context, there is the risk that the Chinese government may at any time enforce its regulations and order Chinese companies to terminate their contracts with the foreign entities that form part of the VIE.[36] Other than dismantling VIEs, however, "the government could also use the threat of enforcement to compel companies to take actions favorable to Beijing at the expense of shareholders."[37] The risk of government intervention, which suggests that leaders of VIE firms may act more consistently with public policy in order to maintain government support, may pose a challenge to some investors because they cannot ascertain whether a firm's operating decisions are motivated by business considerations or the public policy environment.[38]

In addition to the risk of adverse government action, the Chinese owner of the VIE could decide to breach the contractual arrangements and expropriate the company's earnings.[39] To illustrate, investors may own shares in a company listed in, say, the Cayman Islands while the real operating company and its assets are located in China. In this context, courts may be less likely to enforce the contracts.[40] Because the value of the listed company derives from its ability to consolidate the Chinese operating company on its financial statements, losing the VIE as a result

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[34] *Id.*
[35] *See id.* at 9 ("This ListCo owns the WFOE and funnels capital from foreign investors into China [and] [c]ompounding the structure's complexity, the ListCo is generally a holding company that bears the same name as the Chinese VIE, obscuring the reality that investors purchase depositary shares of a shell company with a third-tier relationship to the lucrative VIE.").
[36] *See id.* at 13 ("These precedents underscore the risk of the Chinese government at any time enforcing MOFCOM's Catalogue and ordering Chinese companies to terminate their contracts with the WFOE.").
[37] *Id.*
[38] *See id.* at 14 ("The findings of an academic research paper by Justin Hopkins and colleagues underscore the risk of government intervention, suggesting that leaders of VIE firms may act more consistently with public policy in order to maintain government support."); *see also* Justin Hopkins, Mark Lang, and Jianxin (Donny) Zhao, The Rise of US-Listed VIEs from China: Balancing State Control and Access to Foreign Capital, at 33 (Darden Bus. Sch., Working Paper No. 3119912, Feb. 13, 2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3119912 ("consistent with VIE firms seeking to curry favor with the government, VIE firms are more likely to comply with government priorities as evidenced by an increased tendency to donate for disaster relief and greater levels of excess employment").
[39] *See* Attachment, at 15 ("In addition to the risk of adverse government action, the Chinese owner of the VIE could decide to breach the contractual arrangements and expropriate the company's earnings.").
[40] *See, e.g.,* Fried & Schoenfeld ("The problem, U.S. investors and the SEC discovered, is that China surrounds its residents and firms with a 'Legal Great Wall' that American investors and authorities can't scale [and] [i]t shields China-based insiders from extradition, prevents the seizure of their personal assets in China, and stymies the discovery of litigation-critical information.").

of breached contracts (or government enforcement) could significantly devalue shareholders' investments.[41]

In addition, when the consolidation of financial statements of Chinese VIEs occurs, transactions between the various entities are eliminated or obscured. Current U.S. accounting standards presume that consolidated financial statements are more "meaningful" than separate statements and are necessary for a "fair" portrayal of the entity's financial position.[42] In this sense, "the consolidation of financial statements may prevent investors from seeing dividends and other granular information that would be otherwise disclosed for each reporting entity . . . . "[43] This lack of clarity affects the ability of investors to account for all material information to inform investment and voting decisions.

Furthermore, CII analysis has found that "only 21% of U.S.-listed Chinese VIEs currently pay or intend to pay dividends to shareholders."[44] While not uncommon in start-ups, indefinite reinvestment for at least some of these VIE-dependent companies appears more related to Chinese restrictions on moving money from the VIE to the wholly foreign-owned company and listed company.[45] In short, all the money made in China may stay in China. This situation "potentially leaves investors to rely solely on the appreciation of the company's stock price for a return on their investment."[46] Indeed, a study notes that Chinese VIE companies listed in the U.S. may be subject to a discount in their valuation by investors by as much as 30%, relative to the valuations of U.S.-listed Chinese non-VIE companies.[47]

In short, CBI VIEs pose several risks for U.S. investors that should be carefully considered by the SEC in its potential redefinition of what constitutes an FPI, including CBIs with or without a VIE structure and the regulations and accommodations that will apply to them.

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[41] *See* Attachment, at 15 ("Because the value of the ListCo derives from its ability to consolidate the Chinese VIE on its financial statements, losing the VIE as a result of breached contracts (or government enforcement) would significantly devalue shareholders' investments.").
[42] *See id.* at 11 ("Current U.S. accounting standards presume that consolidated financial statements are more 'meaningful' than separate statements and are necessary for a 'fair' portrayal of the entity's financial position."); *see also* FASB ASC 810-10-10-1, https://asc.fasb.org/1943274/2147481432/810-10-10-1 ("There is a presumption that consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for a fair presentation when one of the entities in the consolidated group directly or indirectly has a controlling financial interest in the other entities.").
[43] Attachment, at 11.
[44] *Id.* at 19 (Only 34 of the 159 VIE companies in CII staff's analysis have paid at least one dividend to their shareholders between January 1, 2024, and May 6, 2025, per Yahoo Finance.)
[45] *See id.* ("While not uncommon in start-ups, indefinite reinvestment for at least some of these VIE-dependent companies appears more related to Chinese restrictions on moving money from the VIE to the WFOE and ListCo.")
[46] *Id.*
[47] *See id.* at 15 ("Justin Hopkins and colleagues also note that Chinese VIE companies listed in the U.S. may be subject to a discount in their valuation by investors by as much as 30% from their market cap, relative to the valuations of U.S.-listed Chinese non-VIE companies."); *see also* Hopkins, The Rise of US-Listed VIEs from China, at 3 ("Our estimates suggest a discount (across multiple estimation approaches) of as much as 30% in valuations for the VIE firms.").

(3) Foreign regulatory regimes and international cooperation arrangements

Several questions in the Concept Release touch on the notion of whether FPIs are subject to adequate regulatory requirements outside the United States. Request for Comment 6 in the Concept Release asks:

> **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?**[48]

In addition, Request for Comment 34 in the Concept Release asks:

> **Should we permit an issuer to retain FPI status only if it 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?**[49]

Finally, Request for Comment 48 in the Concept Release asks:

> **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 [International Organization of Securities Commissions' Multilateral Memorandum of Understanding]?**[50]

We generally believe that when the U.S. is effectively a foreign company's exclusive or primary trading market, FPIs are less likely to be subject to meaningful disclosure requirements or securities law oversight in its jurisdiction of incorporation or headquarters, and therefore consideration should be given to whether the foreign company is eligible for accommodations under the federal securities laws that are unavailable to U.S. companies.

In this context, in what SEC Commissioner Crenshaw calls "regulatory shopping," FPIs are setting up headquarters in one country; seeking incorporation in another, which may not have the same level of oversight, disclosure, or reporting requirements; and then fulfilling their capital

[48] 90 Fed. Reg. at 24,247 (emphasis added).
[49] *Id.* at 24,252 (emphasis added).
[50] *Id.* at 24,254 (emphasis added).

needs in the U.S.[51] To the extent that "home rules" for these companies fail to provide "meaningful transparency and accountability" in their places of business or incorporation[52] – in the sense envisioned by the foreign issuer framework in its original form – U.S. investors in these companies may be disadvantaged by the lack of regulations on all fronts, in the U.S. and abroad.

The reporting and disclosure accommodations given to FPIs may be justified, provided that these entities are subject to regulation in their places of incorporation or the location of their headquarters. Potentially, an international regulatory regime to which these entities might be subject could also ensure that lack of oversight in the U.S. could be made up by regulation in jurisdictions subject to that regime.

However, as CII has written previously, "[i]t is far from certain whether global financial regulatory coordinators could ever generate substantive change on [certain] matter[s], given their advisory function and their apparent reticence to undertake [certain] . . . initiative[s] in the past, even as misalignment grew and stock market listing requirements deteriorated."[53] And we generally share the views expressed in SEC Commissioner Hester M. Peirce's statement on the Concept Release: "Neither the MMoU nor the [Enhanced MMoU (EMMoU)] . . . does anything to ensure that American investors have access to the material disclosure that is an essential part of our regulatory regime."[54]

In this sense, perhaps one way forward to protect the interests of U.S. investors, including CII members, is to consider establishing a cost-effective mechanism at the SEC for evaluating the comparability of regulation and disclosure in foreign jurisdictions, given that international cooperations arrangements, such as IOSCO, may not be well positioned to provide the optimal level of regulation and disclosure that such entities require and U.S. investors deserve.

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[51] Commissioner Crenshaw, Statement on the Concept Release on Foreign Private Issuer.
[52] *Id.*; *see also* Moon, Havens for Corporate Lawbreaking, at 28 ("directors of a corporation incorporated in the Cayman Islands or Nevada can turn a blind eye to lawbreaking to predictably boost profits [and] [p]owerful procedural barriers also constrain the ability of shareholders to bring claims even when directors and officers actively participate in lawbreaking").
[53] Kenneth A. Bertsch, CII Letter to MSCI on Treatment of Unequal Voting Structures, at 3 (May 9, 2018), CII response to MSCI Expanded Consultation FINAL.pdf.
[54] Commissioner Hester M. Peirce, From Canada to the Caymans: Statement on Concept Release on Foreign Private Issuer Eligibility (June 4, 2025), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-foreign-private-issuer-eligibility-060425.

We appreciate the opportunity to provide CII's investor-focused perspective on the FPI definition and related matters. Please contact me (Jeff@cii.org) if you have any questions about the content of this letter.

Sincerely,

Jeffrey P. Mahoney
General Counsel

Attachment: Emmanuel Tamrat, Behind the Veil: Risks of Chinese Companies and the VIE Structure, Council of Institutional Investors