KAYE | SCHOLER LLP

[redacted] office
[redacted]

250 West 55th Street
New York, NY 10019-9710
+1 212 836 8000 main
+1 212 836 8211 fax

September 14, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-12-15 (Listing Standards for Recovery of Erroneously Awarded Compensation)

Dear Mr. Secretary:

Kaye Scholer LLP appreciates the opportunity to submit this comment letter with respect to the proposal (the "Clawback Proposal") by the Securities and Exchange Commission (the "Commission") to implement §954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), by requiring US securities exchanges to adopt listing standards relating to the recovery (or "clawback") of erroneously awarded incentive compensation[1]. Our comments are limited to one aspect of the Clawback Proposal; whether foreign private issuers ("FPIs") should be subject to those requirements and one related issue of conflict with foreign law.

APPLICATION TO FOREIGN PRIVATE ISSUERS

The Clawback Proposal asks: *"Should the listing standards and other requirements of the Proposed Rule and rule amendments apply generally to all listed issuers, as proposed? If not, what types of issuers should be exempted, and why? Please explain the rationale that justifies exemption any particular category of issuer."*

---

[1] Release No. 33-9861, 34-75342, IC-31702, "Listing Standards for Recovery of Erroneously Awarded Compensation"

We believe that the Commission should either construe §954 of Dodd-Frank as not applying to FPIs, or use its general exemptive authority under Section 36(a) of the Exchange Act to exempt FPIs from these requirements.[2] Our view is based on various factors, most notably the presumption against the extraterritorial application of US law (including securities law) absent an express statutory directive[3] and related principles of international comity, as well as the substantive nature of the Clawback Proposal, consistency with prior treatment of FPIs (particularly in the areas of corporate governance and executive compensation), and the feasibility of implementing these requirements in light of potentially conflicting home country requirements. We suggest instead that the Commission require listed FPIs to disclose their recovery policies (or the absence thereof), which is consistent with the approach taken by the Commission under Exchange Act Rule 10C-1 regarding the independence of listed FPI compensation committees.

As an initial matter, we would like to emphasize that the conduct which the Commission seeks to regulate by applying the Clawback Proposal to listed FPIs is fundamentally both substantive and extraterritorial, as it purports to regulate an aspect of a foreign issuer's employment practices in a foreign country by specifying (in detail) the circumstances under which a non-US entity must recover incentive compensation granted to its *own* executives, many of whom are not citizens or residents of, and are not employed in, the United States, in the event of a financial restatement (which will often be governed by non-US accounting principles).

For such foreign conduct to be subject to regulation by the Commission, an express mandate to do so must be included in the applicable legislation. §954 of Dodd-Frank, which the Clawback Proposal would implement, contains no such mandate. As the Supreme Court noted in the anti-trust context in *F. Hoffman-La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (2004)*: "Absent express congressional direction to the contrary, principles of comity and customary international law" must guide the interpretation of

---

[2] The Clawback Proposal recognizes that the Commission has the authority to grant such an exemption; see text at Note 23.

[3] We do not question the power of Congress to apply §954 extraterritorially, if it chooses to do so.

legislation, so as to "avoid unreasonable interference with the sovereign authority of other nations." In this regard, the Supreme Court stressed that: "This rule of statutory construction cautions courts to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws. It thereby helps the potentially conflicting laws of different nations work together in harmony—a harmony particularly needed in today's highly interdependent commercial world."

No Presumption of Extraterritorial Application

Without a clear statement from Congress expressing its intention to regulate foreign conduct, the Commission may not assume that such intention exists. With respect to the Clawback Proposal, the Commission's *belief* that Congress intended §954 to reach listed FPIs is not enough. As stated by the United States Supreme Court in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), which pertained to the extraterritorial reach of antifraud provisions of the US securities laws:

> [I]t is a "longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" EEOC v. Arabian American Oil Co., 499 U. S. 244, 248 (1991) (Aramco) (quoting Foley Bros., Inc. v. Filardo, 336 U. S. 281, 285 (1949)). This principle represents a canon of construction, or a presumption about a statute's meaning, rather than a limit upon Congress's power to legislate, see Blackmer v. United States, 284 U. S. 421, 437 (1932). It rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters. Smith v. United States, 507 U. S. 197, 204, n. 5 (1993). Thus, "unless there is the affirmative intention of the Congress clearly expressed" to give a statute extraterritorial effect, "we must presume it is primarily concerned with domestic conditions." Aramco, supra, at 248 (internal quotation marks omitted). The canon or presumption applies regardless of whether there is a risk of conflict between the American statute and a foreign law, see Sale v. Haitian Centers Council, Inc., 509 U. S. 155, 173–174 (1993). When a statute gives no clear indication of an extraterritorial application, it has none (561 U.S. 247, 255).

In further explanation of this rule of construction, the Supreme Court in *Morrison* emphasized that imputing Congressional intent where a statute is silent is inappropriate when analyzing the extraterritorial reach of US securities laws:

> Despite this principle of interpretation, long and often recited in our opinions, the Second Circuit believed that, because the Exchange Act is silent as to the extraterritorial application of §10(b), it was left to the court to "discern" whether Congress would have wanted the statute to apply. See 547 F. 3d, at 170 (internal quotation marks omitted). (561 U.S. 247, 255)
>
> The results of judicial-speculation-made-law - [divining what Congress would have wanted if it had thought of the situation before the court] - demonstrate the wisdom of the presumption against extraterritoriality. Rather than guess anew in each case, we apply the presumption in all cases, preserving a stable background against which Congress can legislate with predictable effects. (561 U.S. 247, 261)

As the Supreme Court stated, this presumption is intended to apply in all cases. The text of Dodd-Frank clearly demonstrates that Congress was aware of the *Morrison* ruling and understood how to provide a "clear indication of extraterritorial application" when it wished to do so -- see §929P(b) of Dodd-Frank, which Congress labeled "Extraterritorial Jurisdiction of the Antifraud Provisions of the Federal Securities Laws." As §954 of the same legislation contains no express mandate for extraterritorial application, the presumption must be that it does not apply to FPIs.

Even before the *Morrison* decision and the enactment of Dodd-Frank, Congress demonstrated that it understood how to provide a clear statement when it intends provisions of the Exchange Act to apply to foreign behavior. As the amicus brief submitted by the International Chamber of Commerce, the Swiss Bankers Association, Economiesuisse, the Federation of German Industries and the French Business Confederation in the *Morrison* case (the "ICC Brief") noted, if extraterritorial reach of securities laws is contemplated, Congress will so state:

> For example, Congress prohibited security issuers from giving non-U.S. officials anything of value to gain a business opportunity. 15 U.S.C. § 78dd-1(a)(1). This provides context-specific proof of "Congress' awareness of the need to make a clear statement that a statute applies overseas ..." (quoting *Aramco*).

Congress has demonstrated that it understands how to provide a "clear indication" of its intention to apply employment legislation extraterritorially. The Age Discrimination in Employment Act provides for limited extraterritorial application by defining "employee" to include "any individual who is a citizen of the United States employed by an employer outside of the United States" (29 U.S.C. §630(f)), but excludes application to employers that are foreign persons not controlled by an American employer (29 U.S.C. §623(h)).

Respect for International Sovereignty

Although the presumption against the extraterritorial application of US securities laws is a rule of construction, the Supreme Court has also noted that even where Congress has the *ability* to legislate, it does not necessarily follow that it *should*. As stated in the ICC Brief, although Congress may hope that the principles underlying its laws (here, the Exchange Act, in *Empagran*, the Sherman Act) "would commend themselves to other nations," Congress does not seek "to impose them, in an act of legal imperialism, through legislative fiat." (quoting *Empragran*). Thus §954 of Dodd-Frank should be interpreted to avoid creating, as the Court described in *Empagran*, "a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs." This ability represents a fundamental sovereign right, which must be accorded due respect.

The Clawback Proposal is a clear example of such substantive regulation. In a marked departure from the sections of Dodd-Frank pertaining to non-financial institution executive compensation matters (§951 – §955), which relate primarily to corporate governance and/or disclosure requirements, §954 (as implemented by the Clawback Proposal's proposed Rule 10D-1) would require listed issuers to adopt a specified clawback policy, and enforce that policy against foreign nationals working for foreign companies outside of the United States. In the absence of a clear directive in the text of the legislation, it is not appropriate for the Commission to demand more than disclosure, and thereby usurp the power of foreign nations to make their own determinations concerning executive compensation by their own issuers (whether listed or not).

As noted in the amicus brief submitted by The United Kingdom of Great Britain and Northern Ireland (the "UK Brief") in the *Morrison* case, "The fundamental interest at stake is the right of sovereign nations to make … policy determinations for themselves and to have their choices respected by other nations." Whether and under what conditions a foreign entity must clawback incentive compensation from its executives is just such a policy determination (and does not become less so simply by virtue of listing on a US securities exchange). In explaining its position, the UK Brief notes:

> The United Kingdom has made numerous important policy choices regarding securities regulation and litigation practices and procedures. Many of those choices reflect a balancing of interests and policies that differs from the balances that have been struck in the United States. The Government of the United Kingdom is responsible for formulating and implementing the financial and economic policies of the country. It has a strong interest in ensuring that companies based in the United Kingdom comply with its laws.

The amicus brief submitted by the Republic of France in the *Morrison* case echoes these sentiments, stating that: "Foreign nations have a primary interest in protecting their citizens and residents, punishing their wrongdoers, and regulating their exchanges...By contrast, the U.S. has little, if any, interest in regulating transactions that occur on foreign soil between foreign parties."

The provision of the Clawback Proposal that would allow US exchanges to permit listed FPIs to forgo recovery of erroneously awarded compensation "as impractical" if such recovery would violate the home country's laws (as described in more detail below) is insufficient to address the issue, as it completely discounts decisions of foreign jurisdictions to require the pursuit of such recoveries in a manner different from that set forth in the Clawback Proposal. For example, the proposed exemption would not apply where home country laws require the recovery of excess incentive compensation if executive misconduct has been proven, but through silence permit the executive to retain such compensation absent misconduct, since that approach does not *prohibit* the "strict liability" recovery policy embodied in the Clawback Proposal. Similarly, where a jurisdiction has determined to simply require companies to disclose whether or not they have adopted recovery policies, the Clawback Proposal's mandate would bypass this determination.

Although the Commission stated in the Clawback Proposal that the objective of recovering excess incentive-based compensation is as relevant for FPIs as it is for any other listed issuer, this derogation of national sovereignty should not be the price paid to reach it. As stated in the UK Brief (in *Morrison*): "Most importantly, the assertion by the Second Circuit that 'anti-fraud enforcement objectives are broadly similar as governments and other regulators are generally in agreement that fraud should be discouraged', may be true, but is not pertinent to the analysis here. It fails to recognize and credit the diverse interests of other nations' legal and regulatory schemes." The UK

Brief continued: "... a concern that some jurisdictions may not have regulatory and legal systems that are perceived as adequate does not justify or necessitate the U.S. taking on the role of international securities policeman." It is for this reason that even where the objective is laudable, Congress generally does not impose its values on foreign jurisdictions (for example, the US Fair Labor Standards Act provides exemptions with respect to employees performing services in foreign countries). This view was succinctly stated by Commissioner Gallagher in his Dissenting Statement at an Open Meeting to propose Compensation Clawback Listing Standards: "...injecting U.S. corporate governance theory into foreign countries via a U.S. listing standard is an overreach." In addition, the consequences may be far-reaching and adverse to our interests, as the UK Brief notes: "...interference in those decisions risks damaging the mutual respect that comity is meant to protect."

Consistency in Treatment of FPIs

Although, as stated in the Clawback Proposal, "Section 10D does not distinguish among issuers or types of securities, and does not specifically instruct the Commission to exempt any particular types of issuers or securities or direct the Commission to permit the exchanges to provide such exemptions in listing them," the Commission has acknowledged that it has the authority to provide an exemption to FPIs to the extent necessary or appropriate in the public interest, and consistent with the protection of investors. The same principles of international comity and market competitiveness that led the Commission to provide many accommodations to FPIs warrant an exemption for FPIs from the Clawback Proposal as well[4].

---

[4] The Commission has a long history of providing accommodations to FPIs in an effort to make US capital markets more attractive to them, to improve the competitiveness of such markets, and in recognition of potential inconsistencies between US and foreign securities regulations. A few examples are as follows: annual reports of FPIs are submitted on a separate form, which is due later and requires less disclosure than that required of US issuers reporting on Form 10-K; reports on Form 10-Q are not required; FPIs are not subject to the US proxy rules or S-K Item 402 executive compensation disclosure; less extensive disclosure is required with respect to related party transactions; current reporting on Form 8-K is not required; less demanding exhibit requirements are imposed on FPIs; §16 shareholder reporting and short-swing profit disgorgement is not applicable; accommodations have been made with respect to certain audit committee independence requirements; financial statements of FPIs may be prepared in accordance with International Financial Reporting Standards without reconciliation to U.S. GAAP; deregistration procedures are less onerous for FPIs; exemptions from registration are provided for certain

(continued...)

The Commission faced a similar situation when interpreting §953(b) of Dodd-Frank, the "pay ratio" disclosure rules. In the applicable adopting release (the "Pay Ratio Release"), the Commission noted that: "We recognize that the reference to 'each issuer' in Section 953(b) could be interpreted to apply to all registrants." Nonetheless, based on a definitional reference to S-K Item 402, "and the absence of Congressional direction to apply this requirement to registrants not previously subject to Item 402(c) requirements," FPIs were exempted from the applicability of these disclosure rules. We believe that the Commission's decision to exempt FPIs from the pay ratio disclosure rules was correct, and that the same rationale is even more compelling with respect to an exemption from the more substantive Clawback Proposal.

The sections of Dodd-Frank that pertain to non-financial institution executive compensation matters (§951 – §955) relate primarily to corporate governance and/or disclosure requirements. Specifically, §951 pertains to executive compensation shareholder votes, §952 pertains to compensation committee member independence and other specified compensation committee matters, and §953 and §955 contain disclosure requirements pertaining to the relationship between executive compensation and the financial performance of the registrant, pay ratio information, and specified insider hedging activities. None of these provisions, however, requires listed issuers to adopt specific substantive policies, and *none* of them apply to FPIs. Even §952 (relating to compensation committee matters), which is arguably the most substantive of such provisions, exempts listed FPIs as long as specified disclosures are made. Although it is sometimes articulated that this approach is based on the fact that these requirements mandate proxy statement disclosures (which are not applicable to FPIs), we believe the more relevant rationale is the appropriate and consistent deference given to home county laws with respect to matters of executive compensation and governance. If the Commission saw fit to exempt FPIs from these disclosure and governance

---

cross-border rights offers, exchange offers and business combinations; and there are procedures for the confidential treatment of certain FPI registration statements. These accommodations represent a consistent approach where a wide range of requirements for US issuers are either less demanding on or inapplicable to FPIs.

requirements, surely an exemption is appropriate from this more substantive requirement.

Furthermore, as the Commission stated in the Pay Ratio Release in the context of executive compensation disclosure, "we have generally limited our use of discretionary or exemptive authority to those items that would not have an appreciable effect on the information that Congress intended that shareholders have when they make their say-on-pay votes." As FPIs are not subject to the say-on-pay votes, this logic dictates that an exemption for FPIs should be granted here. As to whether such exemption would be consistent with the protection of investors, we note that FPIs are already subject to the clawback provisions of the Sarbanes Oxley Act of 2002 ("SOX"), negating the need for further clawback requirements for FPIs. Note that although the SOX clawback is at least limited to circumstances involving misconduct (unlike the Clawback Proposal), it is still considered by many to be an unwarranted intrusion into foreign governance matters.

We believe that another appropriate analogy for an exemption for listed FPIs from the Clawback Proposal is the longstanding exemption for FPIs from the applicability of the Section 16 short-swing profit rules. As stated by the Commission in "Accessing the U.S. Capital Markets — A Brief Overview for Foreign Private Issuers": "The Commission has adopted specific rules applicable to foreign private issuers that are designed to recognize international and home jurisdiction standards." One of those rules exempts FPIs from the applicability of §16. In marked similarity to the Clawback Proposal, the short swing profit rules relate to amounts recoverable by issuers, do not require misconduct, generally prohibit issuers from settling for less than the entire amount owed, and prohibit issuers from entering into indemnification agreements for amounts recovered. We believe that the principles of international comity that led the Commission to exempt FPIs from Section 16 requirements apply equally here, and should result in an exemption for listed FPIs from the applicability of the Clawback Proposal.

Implementation Issues

From a practical perspective, we believe that it would be potentially unfeasible to subject listed FPIs to potentially overlapping and conflicting clawback requirements (the same basis for many of the existing accommodations granted to FPIs). Although the Clawback Proposal addresses appropriate "crediting" where both the Clawback Proposal and SOX §304 require repayment of the same compensation by a particular executive officer, we do not believe that the Clawback Proposal gives due consideration to (or addresses) the complications that would arise where an FPI is *also* required to recover incentive compensation under home country rules. There is no discussion of how "crediting" would be administered in such event, creating the potential for over-recovery, and inevitable litigation. Administration would be even further complicated by conflicting recovery provisions, for example, where the home country has a different definition of "incentive compensation" from that set forth in the Clawback Proposal. Furthermore, there is doubt with respect to the ability of a listed FPI to enforce a recovery requirement imposed by a US securities regulator on a foreign executive in such executive's home country, where the home country itself does not require such recovery, and the relevant executive's agreement either does not contemplate such recovery (as no such requirement existed at the time of execution, for example), or has expired after the incentive compensation has been paid, but prior to the effective date of the rule. As noted in the ICC Brief, "In April 2005, Germany enacted a law that expressly grants, in securities fraud cases, exclusive venue to the issuer's home court, and consequently blocks the enforcement of judgments or settlements in U.S. securities fraud class actions against German issuers. If the U.S. judiciary continues to entertain extraterritorial actions, other nations may well follow Germany's lead." This type of reaction may ensue in the clawback context as well. In addition, the Clawback Proposal does not account for existing determinations by foreign courts and securities regulators with respect to incentive compensation recovery. This may require home-country courts to establish jurisprudence interpreting Rule 10D-1, both independently and in the context of SOX §304 and home-country rules. There is no evidence that Congress intended such a result.

Although the Commission recognizes that: "...due to the potential differences in home country law, the proposed rule requirements may be especially burdensome for FPIs relative to non-FPIs," we believe that this summary statement understates the case. In addition to being burdensome, such requirements are potentially unworkable.

Suggested Treatment of FPIs

We believe that with respect to the Clawback Proposal, listed FPIs should be treated as they are by the Commission with respect to the independence of compensation committees (providing an exemption for FPIs that disclose why they don't have them), as implemented by the New York Stock Exchange ("NYSE"), which exempts FPIs from such requirement, but requires that they disclose in their annual reports significant ways in which their governance practices differ from those followed by domestic companies under relevant listing standards.

Specifically, we believe that listed FPIs should not be required to adopt and enforce the recovery policy specified in the Clawback Proposal, but should instead be required to state in their annual reports one of the following: (i) they have a recovery policy consistent with the rules set forth in the Clawback Proposal; (ii) they have a recovery policy that differs from that required in the Clawback Proposal (disclosing significant differences); or (iii) they do not have a recovery policy.

With respect to the disclosure aspects of the Clawback Proposal, to the extent listed FPIs have adopted a recovery policy, such policy should be required to be attached an as exhibit to their annual reports. We do not believe, however, that the proposed additional disclosures about the implementation of any applicable recovery policy should apply to FPIs. Although these additional disclosures were not specifically required by §954, the Commission expressed the view that they were justified, in part, to better inform shareholder's voting and investment decisions. However, as say-on-pay votes are inapplicable to FPIs, we believe they should be exempted from such additional disclosure requirements (which are not mandated by Dodd-Frank). With respect to investment decisions, the commentary to Section 303A.11 of the NYSE Listed Company Manual on the required "statement of differences" regarding FPI corporate governance practice is instructive: "...this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company." We believe that in order to make an informed investment decision, shareholders are entitled to know whether an FPI has adopted a clawback policy, and if so, what it contains and how it differs significantly from the policy required by the Clawback Proposal. This is sufficient to meet the objective of providing relevant comparative information to an FPI's potential and actual investors.

CONFLICT WITH HOME COUNTRY LAW

The Clawback proposal asks: *"Should a listed issuer be permitted to forego recovering incentive-based compensation if doing so would violate home country law? In this circumstance, should the issuer first be required to obtain a legal opinion from home country counsel, as proposed? If not, why not? Are there any other conditions that should be met* *beyond a legal opinion from home country counsel before an issuer should be permitted to forego recovering incentive-based compensation in these circumstances? Should the proposed accommodation apply only to the extent that recovery would conflict with home country laws in effect before the date of publication of proposed Rule 10D-1 in the Federal Register, as proposed? If not, please explain why not. In addition, as proposed, the listed issuer would need to provide such opinion to the exchange upon request. Should a copy of this opinion be filed with the Commission as an exhibit? Why or why not?"*

The Clawback Proposal includes a limited exemption for conflict with foreign law by permitting the issuer's board to decline to pursue recovery as impractical if it would violate the issuer's home country law as in effect prior to publication of the Clawback proposal in the federal register. We believe that this exemption is insufficient in two respects: the limitation to laws in effect prior to July 14, 2015, and the limitation to "home country" laws.

The Clawback Proposal attempts to justify the first limitation by stating that "... to minimize any incentive countries may have to change their laws in response to this provision, the relevant home country law must have been adopted in such home country prior to the date of publication in the Federal Register of proposed Rule 10D-1." We believe that this rationale gives insufficient respect to the interests of foreign sovereigns in legislating on employment and compensation matters and there is no clear indication in Dodd-Frank that Congress intended any such limitation. The contrasting approach taken by Congress in the Age Discrimination in Employment Act, which (as described in more detail above) does provide for limited extraterritorial application, is instructive. 29 U.S.C. §623(f)(i) excuses compliance that would "violate the laws of the country in which the workplace is located."

The limitation of this exemption to "home country" laws is also potentially troublesome. Although not defined, we understand the Clawback Proposal to have used the term "home country" laws to refer to the laws of the issuer's domicile. However, employment and compensation matters are often governed by the law of the jurisdiction in which the employee is located, which may not be the same as the issuer's domicile. The exemption for conflict with foreign law should be applicable to any foreign law having applicability to the matters covered by the Clawback Proposal; issuers should not be placed in the position of having to decide which legal requirement to violate.

CONCLUSION

The benefits to imposing the requirements of the Clawback Proposal on FPIs are, by the Commission's own words, at best unclear: "Although the direct costs are not expected to be substantial, the proposed rule and rule amendments would increase the compliance burden on listed issuers and could thereby potentially reduce the advantage of listing on a U.S. market. As a result, foreign issuers could choose to delist from U.S. exchanges. Further, foreign issuers that are not currently listed on U.S. exchanges, but are considering listing on a non-home country exchange, may choose to list on a foreign exchange because of the increased burden of our proposed rule and rule amendments." We believe that these concerns will become the reality if the Clawback Proposal is applied to FPIs. Although the Commission states in the Clawback Proposal that "many foreign issuers list on a U.S. exchange to signal their high quality, which is achieved by subjecting themselves to more rigorous corporate governance rules and regulations," it is not necessarily the case that US standards are more rigorous than those of other jurisdictions, and it is by no means clear that this is the reason that FPIs list on US exchanges (as opposed to a desire to access US capital markets and/or provide more liquidity for their stock).

As has been noted by several commentators, the perceived "excesses" of US regulatory measures on FPIs, most notably those imposed by SOX (including its clawback requirement), have contributed to a decline in FPI listings in the US. Unlike the SOX clawback, however, which was rooted in a desire to correct abuses uncovered by the US financial crisis, no such justification exists with respect to the Clawback Proposal (as unlike SOX, misconduct is not required), making any argument that the unspecified benefits to FPIs outweigh the costs far less persuasive.

In the final analysis, we believe that the Commission's longstanding goal of encouraging FPIs to participate in our markets (accomplished in large part through exemptions from many rules applicable to US issuers), combined with the absence of any express Congressional directive to apply §954 of Dodd-Frank to listed FPIs, provides a strong basis for exempting FPIs from the applicability of the Clawback Proposal.

We appreciate the opportunity to participate in this process and would be pleased to discuss our comments or any questions the Commission or the Staff may have; you may contact Joel I. Greenberg [redacted], [redacted]) or Sara Adler ([redacted], [redacted]) of this firm.

Very truly yours,

Mayer Schoch LLP