

SEC Concept Release Regarding Foreign Private Issuer Eligibility

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On June 4, 2025, following an open meeting of the Securities and Exchange Commission, the Commission issued a concept release to solicit public comment on the definition of foreign private issuer (“FPI”).

Currently, the FPI definition is based on a two-pronged analysis that looks at whether more than 50% of the issuer’s outstanding voting securities are owned by U.S. residents and whether the majority of the issuer’s business contacts, in terms of location of officers and directors, assets or business administration, are in the US (for more detail on these requirements, see our alert: [Foreign Private Issuers: Don’t Forget to Confirm Your FPI Status!](#)).

The concept release seeks input on the following possible approaches to amending the FPI definition:

- Updating the existing FPI eligibility criteria;
- Adding a foreign trading volume requirement;
- Adding a major foreign exchange listing requirement;
- Incorporating an SEC assessment of foreign regulation applicable to the FPI;
- Establishing new mutual recognition systems, similar to the approach used for Canadian issuers under the Multijurisdictional Disclosure System; or
- Adding an international cooperation arrangement requirement that the FPI be incorporated or headquartered in a jurisdiction that is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation, Cooperation, and the Exchange of Information (“MMoU”) or the Enhanced MMoU.

Background

FPI status provides companies with significant accommodations and exemptions from SEC disclosure and filing requirements¹. These accommodations were premised on the SEC’s understanding that most FPIs would be subject to “meaningful disclosure and other regulatory requirements in their home country jurisdictions” and that FPIs’ securities would be traded in foreign markets as well. This understanding is challenged by “significant changes” that have occurred in the FPI population since the SEC last conducted a broad review of FPI eligibility,

¹ These include having four months to file an annual report; being able to present financials under IFRS, GAAP or home country GAAP; not needing to file quarterly reports; not needing to comply with the proxy solicitation rules or to file proxy statements; their insiders not needing to file Section 16 reports; not being subject to Regulation FD; and furnishing current reports on Form 6-K, rather than filing the more prescriptive Form 8-K

such that the population “may no longer reflect the issuers that the Commission intended to benefit from current FPI accommodations.”

Specifically, in 2003, the most frequent jurisdictions of both incorporation and headquarters were Canada and the United Kingdom, which have significant regulatory requirements for companies, while today the most common jurisdiction of incorporation for FPIs is the Cayman Islands and the most common jurisdiction of headquarters is China. These and other home country jurisdictions have varying levels of disclosure requirements, including “some that rely on the FPI regulatory framework in the United States to be the primary set of regulations governing their issuers.”²

In addition, the global trading of Exchange Act reporting FPIs’ equity securities has become increasingly concentrated in the U.S. As of 2023, approximately 55% of Exchange Act reporting FPIs had little to no trading of their equity securities on any non-U.S. market and seem to maintain listings of their equity securities only on U.S. exchanges, leaving the US as “effectively those issuers’ exclusive or primary trading market.”

In his [remarks](#), Chair Atkins stated that “maintaining reasonable accommodations in the federal securities laws to attract foreign companies to U.S. markets and to provide U.S. investors with the opportunity to trade in those companies under U.S. laws and regulations remains an objective. That objective must be balanced with other considerations, including 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.”

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² For example, the concept release cites that the Israeli Security Authority exempts FPIs from certain home country reporting requirements and instead permits them to report according to the laws of the jurisdiction of their primary listing