

SEC to Consider Foreign Private Issuer Eligibility

June 10, 2025

On June 4, 2025, the Securities and Exchange Commission (the “SEC”) issued a [concept release](#) on potential changes to the definition of “foreign private issuer” (“FPI”) for purposes of U.S. federal securities law. FPIs benefit from significant disclosure and other accommodations under the Securities Act of 1933, as amended (the “Securities Act”), and Securities Exchange Act of 1934, as amended (the “Exchange Act”). The concept release solicits public comments on whether the current eligibility criteria for FPI status should be modified in light of significant changes to the FPI population since the SEC’s last review of the FPI framework in 2008.

Background. An FPI is any foreign issuer other than a foreign government, except for an issuer meeting the following conditions:

- More than 50% of the issuer’s outstanding voting securities are directly or indirectly held of record by residents of the United States; and
- Any of the following under the “business contacts test”: (1) the majority of the executive officers or directors are United States citizens or residents; (2) more than 50% of the assets of the issuer are located in the United States; or (3) the business of the issuer is administered principally in the United States.

FPI status is determined annually as of the end of a company’s second fiscal quarter for companies registered under the Exchange Act or within 30 days prior to filing an initial registration statement under the Securities Act or Exchange Act.

The most notable disclosure accommodations available to FPIs include: (1) reduced ongoing reporting obligations under the 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 of 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. The

definition of FPI is also used as the basis for certain exemptions from registration under the Exchange Act and for certain corporate governance requirements under the Exchange Act, as well as U.S. stock exchange rules.

Overall, the current accommodations for FPIs were based on the expectation that most FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions. For example, in 2003, Exchange Act registered FPIs were frequently cross-listed on foreign exchanges and most were incorporated and headquartered in the same jurisdiction. However, by 2023, more than half of Exchange Act registered FPIs traded almost (or entirely) exclusively in U.S. capital markets and an increasing percentage of FPIs were incorporated and headquartered in different countries. According to the concept release, if an FPI is not subject to “meaningful requirements in its home country jurisdiction that elicit disclosure in a timely manner,” the definition of FPI may need to be modified.

Potential Approaches to a Revised FPI Definition. The concept release seeks public input on the following possible approaches to amending the FPI eligibility criteria:

- Updating existing FPI eligibility criteria, either by increasing the thresholds applicable to non-U.S. connections (i.e., shareholders, assets, directors/officers) or revising the criteria under the business contacts test;
- Applying a foreign exchange trading volume requirement;
- Applying a “major foreign exchange” listing requirement;
- Incorporating an SEC assessment of foreign regulations applicable to the FPI;
- Establishing new mutual recognition systems, similar to the existing MJDS framework (currently applicable only to certain Canadian companies); or
- Applying an international cooperation arrangement requirement.

The concept release notes that the above approaches could be used in the alternative or in combination, while also raising questions about how the new standard would be applied to existing FPIs. The approaches proposed, however, would generally reduce the number of companies that qualify as FPIs.

Takeaways. The public [comment](#) period for the concept release closes on September 8, 2025, and interested parties can review comment letters as they are submitted. While a concept release is only the beginning of the process for reevaluating the definition of FPI (with any proposed rules subject to a separate rule-making process), given the

release's unanimous support by all four SEC commissioners and the current administration's increased focus on addressing perceived competitive disadvantages for U.S. companies, current and potential FPIs are advised to continue closely monitoring these developments.

For further information, please see the SEC's [Concept Release on FPI Eligibility](#).



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