

SEC Solicits Public Comment on the Eligibility Criteria for Foreign Private Issuer Status

On June 4, 2025, the Securities and Exchange Commission (the “SEC”) published a [concept release](#) (the “Concept Release”) to seek public comment on whether to revise the “foreign private issuer” (“FPI”) definition in light of shifting trends in the characteristics of the FPI population.

Issued with unanimous support from the SEC’s four commissioners, the Concept Release calls for a sweeping, data-driven re-examination of FPI eligibility criteria, the first such comprehensive review in half a century.

In his [Statement](#) about the Concept Release, SEC Chairman Paul Atkins reaffirms the objective of maintaining reasonable accommodations to attract foreign companies so that U.S. investors can trade in their securities under the protection of U.S. laws and regulations. However, he states that it is also important to ensure that U.S. investors receive material information about FPIs and that U.S. domestic issuers are not competitively disadvantaged by FPI accommodations.

CURRENT FPI DEFINITION

Currently, the FPI definition is tied to the percentage of U.S. beneficial ownership and U.S. business contacts. As defined by the SEC in Rule 3b-4 under the Securities Exchange Act of 1934 (the “Exchange Act”), an FPI is an issuer incorporated or organized under the laws of a foreign country, except for an issuer that, as of the last business day of its most recently completed second fiscal quarter:

- has more than 50% of its outstanding voting securities directly or indirectly held of record by U.S. residents (the “shareholder test”); and
- has any of the following contacts with the United States (the “business contacts test”):
 - the majority of the executive officers or directors are U.S. citizens or residents;

- more than 50% of the assets are located in the United States; or
- the business is administered principally in the United States.

RATIONALE FOR FPI REGIME AND CONSEQUENCE OF FPI STATUS

The SEC created a regulatory framework specific to FPIs “with a recognition that foreign issuers were subject to different circumstances than domestic issuers due to the laws and practices imposed by their home country jurisdictions and, as a result, certain accommodations were necessary”.¹

The Concept Release identifies over 20 exemptions from the U.S. domestic reporting regime that the SEC has granted to FPIs. These accommodations generally lengthen filing deadlines, limit the frequency and number of required reports and reduce the scope of the information that must be disclosed.

In addition to these exemptions, FPIs whose securities are listed on U.S. stock exchanges are also exempt from various corporate governance requirements, as codified in those exchanges’ listing standards. The listing standards expressly rely on the SEC’s FPI definition to identify the listed companies entitled to those exemptions.²

FPI POPULATION SHIFT

A [survey](#) of 2003–2023 FPI population trends published in December 2024 by the SEC staff

challenged the continuing relevance of the current FPI eligibility criteria. Notably:

- Change in Most Common Jurisdiction of Incorporation and Headquarters of FPIs: In 2003, the two jurisdictions most commonly represented among FPIs, both in terms of jurisdiction of incorporation and headquarters location, were Canada and the United Kingdom, each of which has long been considered to have a robust regulatory regime that provides a level of information to shareholders comparable to what is required of U.S. domestic registrants. As of 2023, however, the most common jurisdiction of incorporation for FPIs was the Cayman Islands and the most common headquarters location for FPIs was mainland China.
- Change in Primary Trading Market of FPIs: As of 2023, 55% of the 967 Form 20-F filing FPIs had more than 99% of trading of their equity securities occurring within the United States (“U.S. Exclusive FPIs”), compared to 44% in 2014.

U.S. Exclusive FPIs do not have their primary stock exchange listing in their home country (or elsewhere outside the United States) and are generally smaller companies, collectively accounting for only 9% of the total aggregate global market capitalization of Form 20-F filing FPIs.

RE-EXAMINING FPI ELIGIBILITY

In light of these fundamental shifts, the Concept Release asks five overarching questions:

- FPI Definition. Should the FPI definition be reassessed and, if so, what considerations should be taken into account?
- U.S. Investor Protection. Do U.S. investors receive the information they need to make informed investment decisions about issuers currently eligible for FPI status?
- China-based Issuers / Variable Interest Entities (“CBI-VIE”). Should foreign issuers that use a CBI-VIE structure³ or a similar structure be eligible for FPI status?

- Impact on U.S. Competition. Are U.S. domestic issuers at a competitive disadvantage as compared to U.S. Exclusive FPIs, which have limited or no home jurisdiction regulation?
- Alternatives for U.S. Investment in Foreign Equity. What transaction costs do U.S. investors incur when they trade in foreign shares listed solely on foreign stock exchanges, and how has U.S. investor access to such foreign shares changed over time?

The Concept Release also solicits public input on six specific alternative approaches to FPI status eligibility, to be considered individually or in tandem. These seek to realign applicable criteria with the policy rationale for the FPI regulatory framework:

1. Amend the Existing FPI Eligibility Criteria. For example, this could involve lowering the 50% threshold under the shareholder test or revising the business contacts test criteria, such as changing the U.S. asset threshold or considering U.S. citizenship or residency of a different subset of individuals.
2. Create a New Foreign Trading Volume Requirement. This could require FPIs to maintain a minimum percentage of trading on non-U.S. markets and confirm their non-U.S. trading volumes on an annual or other periodic basis. This requirement could replace or supplement existing eligibility criteria.
3. Create a New Major Foreign Exchange Listing Requirement. This could require FPIs to maintain a listing on a major foreign stock exchange approved by the SEC.
4. Create a New Approved Foreign Jurisdiction Requirement. This could require FPIs to be incorporated or headquartered in, and be regulated by, a jurisdiction that the SEC has determined to have a robust regulatory environment.
5. Expand the Mutual Recognition System Beyond MJDS. By analogy to the Canadian Multijurisdictional Disclosure System (“MJDS”), this would involve the SEC establishing mutual recognition systems applicable to issuers from select foreign jurisdictions that share U.S. investor protection goals and regulatory approaches.

6. Create an IOSCO-based International Cooperation Requirement. To facilitate cooperation in enforcement matters, this would require FPIs to certify that they are either incorporated or headquartered in a jurisdiction in which the securities regulation authority has signed the International Organization of Securities Commissions' ("IOSCO's") Multilateral Memorandum of Understanding Concerning Consultation, Cooperation, and the Exchange of Information (the "MMoU") or the Enhanced MMoU.

KEY TAKEAWAYS

- **The Concept Release is a precursor to potentially fundamental changes to the eligibility criteria for FPI exemptions. Rulemaking will likely follow.**

The Concept Release is both sweeping and meticulously detailed. It questions every prong of the FPI definition and solicits public comment on multiple alternatives, including a complete overhaul of the existing criteria. While a concept release does not constitute proposed rulemaking, and the SEC is not obligated to move forward with new proposed rules after public consultation, we believe it is likely that rulemaking will follow.⁴ The Concept Release earned bipartisan support, with all four SEC Commissioners agreeing that shifting trends in the FPI population warrant a re-evaluation of eligibility criteria.⁵

- **U.S. Exclusive FPIs and CBI-VIEs are most likely to be affected, but all FPIs should take note.**

If rulemaking follows, we believe it is likely that U.S. Exclusive FPIs and other FPIs with their primary stock exchange listing in the United States, as well as issuers that utilize a CBI-VIE structure, will be most significantly affected. However, the Concept Release is open-ended, and changes to the existing prongs of the FPI definition have the potential to affect all categories of FPIs. Therefore, all FPIs should be aware that they have a stake in the outcome of this public consultation.

At this stage, we believe the changes most likely to result in rulemaking will be those involving revisions to the SEC's existing FPI definition, including the addition of a foreign trading requirement (items 1

and 2 above). The Concept Release already acknowledges that the practical viability of approaches relying on international cooperation or scrutiny of foreign regulatory regimes (items 3 to 6 above) may be constrained by limited SEC resources. Additionally, in her [Statement](#) on the Concept Release, Commissioner Hester Peirce preemptively dismisses the IOSCO-based solution (item 6 above) as "particularly weak".

- **The Concept Release focuses on the FPI eligibility criteria, but the underlying FPI exemptions may separately come under scrutiny.**

The need for comprehensive modernization of the FPI regulatory framework was first flagged by Commissioner Mark Uyeda in [remarks](#) in June 2024. The topic then appeared on former SEC Chair Gary Gensler's fall 2024 rulemaking [agenda](#) before the January 2025 change in U.S. administration.

In her [Statement](#) on the Concept Release, Commissioner Caroline Crenshaw echoes the need to "revisit whether the actual securities law exemptions offered to foreign issuers are fit for purpose today". She notes in particular the lack of justification for FPIs' exemption from corporate insider reporting under Section 16 of the Exchange Act. In recent years, this Section 16 exemption has been the subject of successive bipartisan Senate bill proposals, including most recently on [March 24, 2025](#).

While the bill proposals have not been successful to date, FPIs should note that the spotlight put on FPIs by the Concept Release may prove to be a catalyst for broader reform.

- **The SEC is interested in conducting rulemaking that is informed by data and a robust cost-benefit analysis. FPIs should consider sharing their facts as well as their perspectives on the implications of regulatory change.**

The Concept Release is not a formal rule proposal, so it is not possible for FPIs to begin taking concrete steps to address potential regulatory change.

However, we believe the review triggered by the Concept Release will be most effective if there is

broad and active participation by the FPI community. Even before the Concept Release was published, in his various appearances on the 2025 speaking circuit, the Chief of the Office of International Corporate Finance at the SEC's Division of Corporation Finance, Michael Coco, made explicit pleas for engagement from FPIs or other stakeholders with respect to the FPI regulatory framework.

In addition to the themes outlined above, FPIs should consider communicating data and views on as broad a set of implications as possible, including:

- what alternative venues or structural changes FPIs are likely to seek or make if they lose FPI status, rather than comply with U.S. domestic requirements;
- which U.S. domestic requirements would be most burdensome to comply with, for issuers that lose FPI status;

- which NYSE or Nasdaq U.S. domestic corporate governance requirements would be most difficult to comply with, if the stock exchanges continue to offer exemptions from their listing standards only to FPIs as (re)defined by the SEC;
- how changes might affect the American Depositary Share market; and
- what transition periods the SEC should grant to issuers that lose FPI status, including with respect to the requirement to transition from local GAAP or IFRS financial reporting to U.S. GAAP financial reporting.

NEXT STEPS

The comment period will be open for a 90-day period ending on September 8, 2025.

We encourage clients to contact us for further guidance or assistance in preparing comment submissions to the SEC.

1 [Concept Release on Foreign Private Issuer Eligibility](#), Federal Register, Volume 90, No. 109, 24233.

2 See [Rule 303A.00](#) of the New York Stock Exchange ("NYSE") Listed Company Manual and [Rule 5005\(a\)\(19\)](#) and [Rule 5615\(a\)\(3\)](#) of the Nasdaq Rules. Listed FPIs must comply with the audit committee requirements set out in Rule 10A-3 under the Exchange Act but are otherwise permitted to follow home country practice with respect to, among others:

- director independence criteria;
- the number of independent directors on the board;
- executive sessions;
- the existence, independence and composition of a nominating / corporate governance committee and a compensation committee;
- audit committee functions beyond those set out in Rule 10A-3 under the Exchange Act;
- the internal audit function;
- shareholder approval of equity compensation plans and certain transactions;
- the adoption and contents of corporate governance guidelines; and
- the approval of related party transactions.

Absent revisions by the U.S. stock exchanges to their listing standards (which are not, to our knowledge, currently being considered), foreign issuers who lose their FPI status would also lose their exemption from a large swath of U.S. stock exchange corporate governance requirements.

3 Many China-based issuers are incorporated in the Cayman Islands or the British Virgin Islands while having their operations in mainland China. Non-Chinese holding companies sometimes enter into contractual arrangements with China-based operating companies under the Variable Interest Entities ("VIEs") model to consolidate the VIEs in their financial statements.

4 We also believe that any rulemaking that could result in existing FPIs losing their FPI status will grant issuers time to prepare for compliance. Although the topic is alluded to in the Concept Release, this is something that Commissioner Hester Peirce explicitly asks the SEC staff to consider in her [Statement](#) on the Concept Release: "If we were to move forward with a change, what kind of transition period would you envision recommending?"

5 Nevertheless, in his [Statement](#) on the Concept Release, Commissioner Mark Uyeda recognizes that the existing FPI regime is not inherently flawed: "it is important to note that we have not seen to date large scale market failures from the differing disclosure regimes for U.S. issuers and foreign private issuers".

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