

The SEC Solicits Feedback to Potentially Amend the Definition of Foreign Private Issuer

On June 4, 2025, the Securities and Exchange Commission (“SEC”) [published](#) a concept release soliciting public comment in connection with its re-examination of the nearly 50 year old definition of foreign private issuer (“FPI”)¹ and the related regulatory framework. At its core, the question is whether foreign issuers should be permitted different standards than U.S. issuers when raising capital and trading in the U.S. Related questions focus on the following issues:

- disclosure requirements – in light of the increasing reliance on U.S. capital markets by FPIs, should FPIs be required to provide similar information as U.S. issuers?
- competitive advantages – do FPIs have an unfair competitive advantage over U.S. issuers due to reduced disclosure requirements? and
- investor protection – how best to balance investor protection with the need to promote capital formation and investment opportunities?

Under the existing regulatory regime, foreign issuers that qualify as FPIs under U.S. securities law benefit from reduced reporting obligations and exemptions from certain compliance requirements as compared to U.S. issuers.² The current FPI definition was crafted, in part, with the expectation that most FPIs would be “subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions,” as well as the foreign markets on which their securities traded. An analysis by the SEC of FPI-related data reveals that the population of FPIs has significantly changed, raising the question of the current FPI definition’s suitability.

Upon analyzing reporting FPIs that file annual reports primarily on Form 20-F from the fiscal year-end 2003³ to 2023, the SEC found that the number of FPIs steadily decreased, after peaking to 950 FPIs in 2004, until reaching its lowest point of 656 FPIs in 2016. Following 2016, the number of FPIs steadily increased to 967 in 2023. This U-shaped trend demonstrates a significant turnover within the population of FPIs from 2003 to 2023. For example, in 2003, the most frequently represented home country jurisdictions were Canada and the United Kingdom, both in the place of incorporation (330 FPIs and 35% of the FPI population) and the location of the issuer’s headquarters (324 FPIs and 34% of the FPI population). In contrast, in 2023, the most popular place of incorporation was the Cayman Islands (growing from 13 FPIs and 1% of the FPI population in 2003 to 322 FPIs in 2023 and 33% of the FPI population). Similarly, in 2023, the most popular location for the headquarters of FPIs was mainland China (growing from 20 FPIs and 2% of the FPI population to 219 FPIs and 22% of the FPI population in 2023). The data also showed a significant change in the number of FPIs with a differing place of incorporation and location of headquarters (in 2003, only 7% of FPIs had differing jurisdictions, but that increased to 48% in 2023).

In her remarks, SEC Commissioner Caroline Crenshaw [commented](#), “[t]he data appear to paint a picture of regulatory forum shopping.”

Another trend that the SEC has identified among FPIs that file annual reports on Form 20-F over the past decade is the number of FPIs whose securities are traded exclusively in U.S. capital markets. From 2014 to 2023, that number increased from 44% to 55%. Moreover, the SEC data shows that those FPIs that trade exclusively in the U.S. have lower market capitalizations and different home country jurisdictions than FPIs who do not trade exclusively in the U.S. In 2023, of the FPIs that were trading exclusively in the U.S., 67%⁴ were incorporated in the Cayman Islands, British Virgin Islands, or the Marshall Islands and 34% were headquartered in mainland China.

The data raises the question at the SEC of whether the FPI definition is appropriately tailored to adequately protect U.S. investors and create a level playing field between FPIs and U.S. issuers going forward. In response, the SEC proposed six (6) potential approaches to amend the definition of FPI:

- *Updating the existing FPI eligibility criteria.* The SEC asked whether the shareholder test should be lowered below the existing 50% threshold and/or if the existing criteria under the business contacts test should be revised.
- *Adding a foreign trading volume requirement.* The SEC queried whether, as an alternative or in addition to the current FPI criteria, FPIs need to assess their foreign and U.S. trading volumes on an annual basis similar to the tests used for Rule 12g3-2(b) and Rule 12h-6. Based on 2023 data, the SEC notes that if a 1% threshold of foreign trading volume was established for determining FPI status, over half of the 2023 FPIs would lose their FPI status. The SEC also noted that increasing the threshold from 1% to 5% would not drastically increase the number of issuers who would lose their FPI status, but the 5% threshold would “make it harder for FPIs seeking to minimize their regulatory burdens to ‘game’ the system.”
- *Adding a major foreign exchange listing requirement.* To ensure that FPIs are subject to meaningful regulation and oversight in their home jurisdiction, the SEC asked if requiring that FPIs are listed for trading on a major foreign (non-U.S.) exchange would further that aim.
- *Incorporating an SEC assessment of foreign regulation applicable to the FPI.* Under this approach, the SEC would assess and maintain a list of approved foreign jurisdictions that maintain a meaningful regulatory and oversight framework.
- *Establishing new mutual recognition systems* with respect to registration and periodic reporting between the U.S. and selected foreign jurisdictions.
- *Adding an international cooperation arrangement requirement* where each FPI must certify that it is either incorporated or headquartered in a jurisdiction that is a member of the International Organization of Securities Commissions (IOSCO).

The SEC will accept for consideration comments to the concept release received prior to September 8, 2025.

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¹ An FPI is any issuer which is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country. A foreign issuer that has 50 percent or less of its outstanding voting securities held of record directly or indirectly by U.S. residents would qualify for FPI status under the “shareholder test.” A foreign issuer with more than 50 percent of its outstanding voting securities held by U.S. residents would qualify for FPI status under the “business contacts test” if it has none of the following contacts with the United States: (1) a majority of its executive officers or directors are U.S. citizens or residents; (2) more than 50 percent of its assets are located in the United States; or (3) its business is administered principally in the United States. 17 CFR § 230.405.

² Accommodations for FPIs include, *inter alia*, an exemption from filing quarterly reports (10-Q), a longer deadline (4 months after the fiscal year-end) to file its annual report on Form 20-F, an exemption from using U.S. GAAP for financial statements, an exemption from the obligations under Section 16, an exemption from the proxy requirements, and the ability to use Form 6-K to furnish current reports rather than Form 8-K.

³ Fiscal year 2003 is the first fiscal year that FPIs were required to file their annual reports electronically through EDGAR. See Mandated EDGAR Filing For Foreign Private Issuers, [Release No. 33-8099](#) (May 14, 2002).

⁴ 51.1% were incorporated in the Cayman Islands, 9.8% were incorporated in the British Virgin Islands, and 6.4% were incorporated in the Marshall Islands.