

# SEC Invites Public Input on Reassessment of Foreign Private Issuer Eligibility

Posted in: Foreign Private Issuers, SEC

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**Update: The public comment period will remain open through September 8, 2025**

***Although the SEC is unlikely to propose rulemaking that encompasses the full array of potential revisions suggested by the concept release, rulemaking on even some of these issues could have significant consequences for foreign private issuers—particularly China-based issuers—making it more costly and challenging to access U.S. equity markets***

“Attracting foreign companies to U.S. markets and providing 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, and ensuring that domestic companies are not competitively disadvantaged with respect to regulatory requirements. The first step in striking this balance is to determine which foreign companies should qualify as foreign private issuers and be able to avail themselves to the accommodations that go with that status.”

“When the United States is effectively a foreign company’s exclusive or primary trading market and the company is not subject to meaningful disclosure requirements or securities law oversight in its jurisdiction of incorporation or headquarters, careful consideration should be given to whether the foreign company is eligible for accommodations under the federal securities laws that are unavailable to U.S. companies.”

On June 4, 2025, the U.S. Securities and Exchange Commission (SEC) voted unanimously to publish a concept release—a forerunner to potential rulemaking—seeking public feedback on the current definition of “foreign private issuer” (FPI) and whether, to better protect U.S. investors, the definition should be narrowed in light of significant changes in the global capital markets, corporate legal structures and the population of FPIs since the SEC’s last broad evaluation of the FPI regulatory framework in 2008.

FPIs benefit from certain accommodations and exemptions from the SEC disclosure and filing requirements that are not available to U.S. domestic issuers, including having additional time to file annual reports; not needing to file quarterly reports, proxy statements or Section 16 reports disclosing insider ownership; not being subject to Regulation FD requirements prohibiting selective disclosure; and furnishing current reports on Form 6-K rather than filing the more prescriptive Form 8-K.

The existing accommodations for FPIs were premised on the SEC’s expectation that most FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions and that their securities would be traded in foreign markets. According to the SEC, this no longer appears to be the case for a substantial number of FPIs.

### **Current FPI Definition**

Under the current definition, any foreign issuer (other than a foreign government) can qualify as an FPI:

- If 50% or less of its outstanding voting securities are held of record directly or indirectly by U.S. residents; or
- If more than 50% of its outstanding voting securities are held by U.S. residents, and 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% of its assets are located in the United States; or (3) its business is administered principally in the United States.

### **Recent Developments in the FPI Population**

According to a recent review by SEC staff of SEC-registered FPIs, there have been significant changes in the characteristics of FPIs over the last two decades in terms of their jurisdictions of incorporation and headquarters and their primary trading market. In particular, these changes include:

- From 2003 to 2023, the composition of FPIs shifted from companies with home country jurisdictions predominantly in Canada and the United Kingdom (which have robust regulatory oversight) to companies most commonly incorporated in the Cayman Islands and headquartered in mainland China.
- Over the last decade, the global trading of FPIs' equity securities has become increasingly concentrated in U.S. capital markets. As of 2023, a majority (55%) of FPIs were trading exclusively or primarily in the United States rather than in their home country (up from 44% in 2014). Additionally, FPIs that trade almost exclusively in the United States have a higher propensity of being headquartered in China and incorporated in the Cayman Islands.

## **Reassessment of the FPI Definition and Potential Regulatory Responses**

In light of the recent changes in the FPI population described above, the SEC is soliciting public comment on whether accommodations afforded to FPIs today should continue to apply to the foreign issuers currently captured by the FPI definition, or if the definition should be updated to better represent the non-U.S. issuers the SEC intended to benefit from FPI accommodations. The concept release—which runs 71 pages in length and contains 69 numbered requests for comment, most with multiple subparts—features discussion and questions on several possible approaches to amending the existing definition, including:

- Updating the existing FPI eligibility criteria
- Adding a foreign trading volume requirement
- Adding a major foreign exchange listing requirement
- Incorporating an SEC assessment of the robustness of foreign regulation applicable to the FPI
- Establishing new systems of mutual recognition with foreign regulatory regimes
- Adding an international cooperation arrangement requirement

The SEC invites comment on the potential costs and benefits of each of these proposed approaches to FPIs and U.S. investors, including the impact on issuers that would lose FPI status, and on whether alternative approaches, or a combination of approaches, would better address concerns associated with the current FPI definition. The concept release also questions whether any changes to the FPI definition should apply only to new FPIs to eliminate transition costs for the existing FPI population, or whether a transition period or other transition accommodations

should be provided before existing FPIs would be subject to any additional disclosure or other requirements resulting from loss of FPI status.

## **Comment Period**

The public comment period will remain open for 90 days following publication of the concept release in the *Federal Register* (which should occur shortly), or at least through early September. Interested parties are invited to comment on the general and specific questions asked throughout the concept release, as well as on any other aspects of the current FPI definition or the SEC staff's review of the FPI population discussed in the concept release.

The FPI community and other stakeholders should consider taking advantage of the SEC's invitation to comment, which presents a meaningful opportunity to engage with SEC staff and help inform their understanding of this topic. We encourage companies to review the concept release and consider submitting comment letters individually or through industry associations, as their recommendations can be persuasive in SEC rulemaking. While the time frame for any rulemaking process is uncertain at this early stage, the SEC would publish a formal proposal and solicit comments on that proposal before adopting any final rule. Proposed rules typically take 12-24 months to complete.

If you would be interested in discussing this topic, or would like assistance preparing a comment submission, please reach out to any of your usual Gunderson contacts.

## **Additional Information**

- [Concept Release on Foreign Private Issuer Eligibility](#)
- [Fact Sheet](#)
- [Press Release](#)
- Commissioner Statements:
  - [Chair Paul Atkins](#)
  - [Commissioner Hester Peirce](#)
  - [Commissioner Caroline Crenshaw](#)
  - [Commissioner Mark Uyeda](#)
- [Comment Submission Form](#)

- *Trends in the Foreign Private Issuer Population 2003-2023: A Descriptive Analysis of Issuers Filing Annual Reports on Form 20-F* (SEC Division of Economic and Risk Analysis White Paper, May 2025)

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## PUBLIC VENTURES

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