SEC's Proposed Amendments to Foreign Private Issuer Rules

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On June 4, 2025, the SEC voted to publish a concept release ("Concept Release") seeking public comment on changes to the definition of a foreign private issuer ("FPI"). The changes, if approved, could have significant implications for foreign companies, investors, and other stakeholders.

The Concept Release seeks to reassess decades-old assumptions that underpin the current FPI framework. When the FPI definition was first adopted, the core assumption was that most of the eligible FPIs would be subject to meaningful disclosure and regulatory oversight in their foreign jurisdictions and the primary trading market would be outside the U.S. According to SEC analysis, however, the data seems to show a trend that does not reflect those assumptions. For instance, in 2023, 55% of FPIs were traded exclusively or almost exclusively in the U.S. Similarly, when comparing data from 2003 and 2023, the SEC analysis found that the most common jurisdiction for incorporation in 2023 was the Cayman Islands, in contrast to Canada and the United Kingdom in 2003. This data seems to suggest that foreign based entities are accessing U.S. markets without the meaningful disclosure and oversight assumptions that the FPI framework was designed upon. Thus, the objective with the Concept Release is to strike a balance between attracting foreign companies to U.S. markets while not creating a disadvantage to domestic issuers.

Under the current definition, an FPI is defined as any issuer that is incorporated outside the United States, except for an issuer that (1) has more than 50% of its voting shares U.S. owned (the "Shareholder Test"); and (2) the majority of its officers or directors are U.S. citizens or residents; more than 50% of its assets are located in the U.S.; or its business is principally based in the U.S. (collectively, the "Business Contacts Test"). An issuer that qualifies as an FPI receives significant regulatory accommodations and reporting exemptions compared to domestic issuers. This includes (but not limited to), (1) reduced annual, quarterly, and current

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reporting obligations; (2) exemptions from SEC's proxy solicitation rules; (3) exemptions from Section 16 of the Securities Exchange Act (limited insider reporting); and (4) more flexibility in corporate governance.

However, in light of the SEC analysis, the Concept Release proposes a series of changes to the definition of FPIs. Below are the key changes under consideration.

- **Revising the definition of FPI**. The proposed changes to the definition would lower the threshold for the "Shareholder Test" – in effect, this would potentially reduce the pool of companies that can qualify as FPIs. In addition, the proposal considers adding new criteria or revising the current criteria for the Business Contacts Test.
- **Foreign Trading Volume Requirement**. The proposal considers mandating a minimum trading volume test to determine FPI eligibility. The trading volume test would require that an FPI maintain a certain percentage of its trading volume outside the U.S. Consequently, the SEC conducted an analysis identifying a range of minimum trading percentages and their effects on current FPIs. For instance, the SEC projects that imposing a 1% minimum non-U.S. trading requirement would result in over half of current FPIs losing their FPI status, including 83% of the FPIs incorporated in the Cayman Islands and over 82% of FPIs headquartered in China.
- **Mandatory Listing on a Major Non-U.S. Exchange**. One possible change is a requirement that FPIs be listed on "major foreign exchange" to ensure that FPIs are subject to robust regulation and oversight in a foreign market. The SEC would determine what constitutes a "major foreign exchange" based on market size, its corporate governance regime, enforcement authority, and other factors.
- **Incorporation in Jurisdictions with "Robust" Regulation**. This would require that an FPI be headquartered in countries that are deemed to have strong disclosure and enforcement regimes

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- **Mutual Recognition or Cooperation Agreements**. This proposal includes a framework mirroring the U.S. Canada Multijurisdictional Disclosure System (MJDS) (allowing U.S. and Canada issuers to conduct cross border transactions by complying with their home country eligibility and disclosure requirements), where U.S. regulators may accept certain home-country disclosures or require formal agreement to ensure oversight.

Currently, the SEC is seeking comments for each of the proposed changes, in which the comment period will remain open until September 8, 2025. If the changes do get approved, there could be significant implications for FPIs, investors, and other stakeholders. First, the narrowing of the FPI definition could mean that some current FPIs will lose their FPI status. This would subject issuers to full U.S. domestic reporting requirements and regulatory oversight. Additionally, clients may need to restructure their organization or relocate their operations in order to increase non-U.S. trading volumes, list on a major foreign exchange, or reincorporate in a jurisdiction that is deemed to have meaningful regulatory oversight.[1]

For more information and assistance as it relates to the topics covered above, please contact the authors or any attorney with Frost Brown Todd's Securities & Corporate Governance team.

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[1]Sources:

- https://www.law.com/international-edition/2025/06/26/secs-planned-changes-to-rules-for-foreign-private-issuer-listings-expected-to-put-82-of-china-headquartered-sellers-at-risk-data-shows-/?slreturn=20250709093658
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foreign-private-issuer

- Microsoft Bing Search on SEC Considers Narrowing Foreign Private Issuer Definition

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