

Foreign Private Issuers: Have You Assessed Your Status Under U.S. Securities Law?

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KEY POINTS

- FPIs registered with the SEC must annually reassess their status — including FPI eligibility, EGC status, and accelerated filer status — based on their public float as of the last business day of their second fiscal quarter.
 - The SEC's accelerated filer thresholds currently classify issuers as non-accelerated (under \$75 million public float), accelerated (\$75 million to \$700 million), or large accelerated (\$700 million or more), and these thresholds will continue to apply to FPIs even if the SEC's pending filer status proposal is adopted.
 - To use the SEC's multijurisdictional disclosure system, a Canadian issuer must be an FPI, have reported with Canadian regulators for 12 months, and maintain a public float of at least \$75 million.
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Foreign private issuers (FPIs) registered with the U.S. Securities and Exchange Commission (SEC) must periodically evaluate several filing statuses that affect the content and timing of their public disclosures. FPIs filing periodic reports with the SEC must, at least annually, assess their status to determine which SEC requirements are applicable to them. This alert explores these various SEC statuses as applicable to FPIs.

While this alert discusses current requirements, it is important that FPIs be aware of recent SEC rule proposals that could rework these assessments. First, on June 4, 2025, the SEC issued a [concept release](#) on Foreign Private Issuer Eligibility (the Concept Release), requesting public comment on potential amendments to the definition of “foreign private issuer” and possible changes to the accommodations available to FPIs. While the concept release indicates that the SEC is considering changes to FPI rules, as of the date of this alert, formal rule changes have not been proposed. Second, on May 19, 2026, the SEC [proposed a rule](#) that would simplify filer statuses and expand Emerging Growth Company (EGC) accommodations (the Filer Status Proposal). The Filer Status Proposal would have a more limited impact on FPIs than on domestic issuers, with many of the proposed benefits unavailable to FPIs. This design was intentional, as the SEC stated in the Filer Status Proposal that it was limiting “the effects of the proposed amendments on FPIs prior to completion of our more comprehensive review of the FPI framework.” In other words, the SEC is suggesting that it intends to more fully address FPI requirements through a future proposed rule on FPI matters and has therefore chosen to limit the impact of the Filer Status Proposal on FPIs.

ASSESSING STATUS AS A FOREIGN PRIVATE ISSUER

FPIs enjoy the benefits of significant disclosure accommodations under U.S. federal securities laws. The determination of whether an issuer satisfies the definition of “foreign private issuer” must generally be made

annually on the last business day of an issuer's second fiscal quarter (the last business day in June for issuers with a December 31 fiscal year end). For more information on assessing FPI status, see our [separate alert](#) detailing how to perform this important assessment.

QUALIFYING AS AN EMERGING GROWTH COMPANY AS AN SEC REPORTING ISSUER

Scaled SEC disclosure accommodations are also available to U.S. reporting issuers that are emerging growth companies (EGCs). One of the most significant of these accommodations exempts EGCs from the requirement to provide the burdensome annual auditor attestation of the issuer's management's report on internal control over financial reporting under the Sarbanes-Oxley Act of 2002, as amended (SOX). In addition, EGCs may defer compliance with certain changes in accounting standards. FPIs are permitted to take advantage of the disclosure accommodations available to EGCs.

An issuer qualifies as an EGC if it has total annual gross revenues of less than US\$1.235 billion (periodically adjusted for inflation) during its most recently completed fiscal year, and, as of December 8, 2011, had not sold common equity securities under a registration statement filed under the Securities Act of 1933, as amended (Securities Act). However, an issuer of equity securities cannot retain EGC status indefinitely. An issuer may retain EGC status until the earliest of: (1) the last day of the fiscal year in which the issuer has annual gross revenues exceeding US\$1.235 billion (periodically adjusted for inflation), (2) the date on which the issuer issues more than US\$1 billion in nonconvertible debt securities during the previous three years, (3) the date on which the issuer becomes a "large accelerated filer" (see "Determining SEC Accelerated Filing Status" below for more details), and (4) the last day of the fiscal year after the fifth anniversary of the date of the first sale of common equity securities under an effective Securities Act registration statement. Once EGC status is lost, it cannot be regained while an issuer is an SEC reporting issuer.

As EGC status is established by statute, the SEC's Filer Status Proposal would not change the core EGC eligibility requirements. Although the proposal would expand certain EGC-like accommodations for domestic issuers, those proposed changes would not apply to FPIs. Accordingly, FPIs would continue to rely on existing EGC accommodations only to the extent they independently qualify as EGCs under the current rules.

DETERMINING SEC ACCELERATED FILING STATUS

With certain limited exceptions, all SEC reporting issuers, including FPIs, have a filing status based on the size of an issuer's public float.^[1] These categories include non-accelerated filer, accelerated filer, and large accelerated filer. Upon their initial registration of securities with the SEC, all issuers are classified as non-accelerated filers, as a 12-month reporting history and at least one annual report are required to qualify as an accelerated or large accelerated filer. After the first 12 months of reporting history and the first annual report, an issuer must make its initial assessment as to its filing status.

The following table sets forth the relationship between filing status and an issuer's public float under the current SEC rules:

Determining SEC Accelerated Filing Status *(For issuers for which the revenue tests for smaller reporting companies are unavailable.)*

Status	Public Float
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Accelerated filer
 Large accelerated filer

the definition of accelerated filer or large accelerated filer)
 US\$75 million (an issuer that has \$75 million or more in revenue)
 US\$700 million or more

FPIs must make this assessment for the coming fiscal year based on the issuer’s public float as of the last business day of the most recently completed second fiscal quarter. For example, for fiscal year 2027, an issuer with a December 31 fiscal year end would determine its accelerated status based on its public float as of June 30, 2026, the last business day of the most recently completed second fiscal quarter. The Filer Status Proposal would revise the filing status framework for domestic issuers, including by increasing the public float threshold for large accelerated filer status from US\$700 million to US\$2 billion, eliminating the accelerated filer category, and defining non-accelerated filers as filers that do not meet the large accelerated filer requirements. However, those changes, as currently proposed, would not apply to FPIs. Accordingly, the table above reflects the current rules applicable to FPIs, which would continue to apply to FPIs even if the Filer Status Proposal is adopted as proposed.

For an FPI, the principal consequence of an issuer’s filing status is that non-accelerated filers are not required to provide the SOX-mandated annual auditor attestation on management’s report on the issuer’s internal control over financial reporting. An FPI that is an accelerated filer or large accelerated filer must provide such auditor attestation. Generally speaking, once an issuer determines its filing status, it will retain that status until it determines at a future status assessment that its public float meets the relevant thresholds.

Determining SEC Accelerated Status After Initial Assessment *(For issuers for which the revenue tests for smaller reporting companies are unavailable.)*

Initial Assessment	Subsequent Status	Subsequent Public Float
Large accelerated filer	Large accelerated filer	US\$560 million or more
	Accelerated filer	Less than US\$560 million, but US\$60 million or more
Accelerated filer	Non-accelerated filer	Less than US\$60 million
	Large accelerated filer	US\$700 million or more
	Accelerated filer	Less than US\$700 million but US\$60 million or more
Non-accelerated filer	Non-accelerated filer	Less than US\$60 million
	Large accelerated filer	US\$700 million or more
	Accelerated filer	Less than US\$700 million, but US\$75 million or more
	Non-accelerated filer	Less than US\$75 million

The SEC’s Filer Status Proposal would significantly rework filing status for domestic issuers. It would eliminate the categories of accelerated filer and smaller reporting company (smaller reporting company status has always been generally unavailable to FPIs). The Filer Status Proposal would retain the large accelerated filer and non-accelerated filer categories and also create a subcategory of small non-accelerated filers. For FPIs, the Filer Status Proposal offers little benefit, as it largely maintains the status quo for FPIs. Notably, the SEC did not propose conforming changes to the methodology used by Form 20-F filers to calculate public float for purposes of the internal control over financial reporting (ICFR) auditor attestation requirement. As a result, FPIs filing on Form 20-F would continue to determine public float for purposes of the ICFR attestation requirement based on the existing single-day measurement methodology and the current US\$75 million public float threshold, unless they qualify as an EGC. See our [alert](#) on the SEC’s Filer Status Proposal for more information. FPIs should monitor the SEC’s rulemaking on the Concept Release and the Filer Status Proposal and stay abreast of developments that could affect disclosure obligations.

EVALUATING MJDS ELIGIBILITY

For Canadian issuers, another status to track is eligibility for the SEC's multijurisdictional disclosure system (MJDS). The MJDS allows eligible Canadian issuers to register securities and make regular disclosures using materials mostly prepared according to Canadian requirements. Eligible issuers can use the Form F-10 securities registration statement and the Form 40-F annual report, both of which largely serve to "wrap" their Canadian disclosures under an SEC submission.

To be eligible to use the MJDS, an issuer must:

1. Be incorporated or organized under the laws of Canada or any Canadian province or territory;
2. Be an FPI;
3. Have been reporting for the preceding 12 months with Canadian securities regulatory authorities;
4. Be currently in compliance with its reporting obligations; and
5. Have an aggregate market value of the public float of its outstanding equity shares of at least US\$75 million.

Eligibility to use the MJDS Forms F-10 and 40-F must be determined based on the public float in the issuer's principal market^[2] for such shares within 60 days prior to the date of the filing. That is, so long as the issuer's public float is more than US\$75 million within 60 days of the filing of the Form F-10 or Form 40-F, such forms may be used. As discussed above, the SEC's Filer Status Proposal retains the status quo for FPIs calculating their public float.

CONCLUSION

FPIs should continue to assess their status under the existing SEC rules, including FPI eligibility, EGC status, accelerated filer status, ICFR auditor attestation requirements, and, where applicable, MJDS eligibility. Although the SEC has issued the Concept Release regarding potential changes to the FPI framework, no formal FPI rule amendments have been proposed as of the date of this alert. In addition, the SEC's Filer Status Proposal would not apply to FPIs, and FPIs would remain subject to the current regime even if that proposal is adopted as proposed. Should you require any assistance in assessing your SEC status under any of the rules applicable to FPIs, please contact [Thomas Rose](#), [Shona Smith](#), or [Nicole Edmonds](#).

[1] "Public float" means the aggregate worldwide market value of the issuer's voting and non-voting common equity held by non-affiliates. An affiliate is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the issuer. In determining SEC accelerated filing status, "affiliates" typically includes an issuer's executive officers, directors, and shareholders owning 10% or more of the issuer's common equity. Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by nonaffiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity.

[2] Determining "public float" for purposes of determining MJDS eligibility is different than for determining SEC accelerated filing status. For MJDS eligibility "public float" is the aggregate market value of the company's shares, other than those shares held by "affiliates," which for purposes of MJDS means anyone who beneficially

owns, directly or indirectly, or exercises control or direction over, more than 10% of the issuer's outstanding equity shares. The determination of an issuer's "affiliates" for purposes of MJDS shall be made as of the end of the issuer's most recent fiscal year. The market value of the public float is computed by use of the price at which such shares were last sold, or the average of the bid and asked price of such shares, in the principal market for such shares as of any one date within 60 days prior to the filing date.

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