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SEC Considers Changes to Definition of Foreign Private Issuer

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On June 4, 2025, the U.S. Securities and Exchange Commission (SEC) published a concept release soliciting public comment on the definition of a foreign private issuer (FPI) and whether changes are needed to reflect the current state of the U.S. markets. Concept releases typically outline a topic of concern, identify different potential approaches, and raise a series of questions for public input.

Currently, FPIs benefit from many accommodations that provide full or partial relief from certain disclosure requirements under U.S. federal securities laws. The population of companies that qualify as FPIs has changed significantly since 2003, which is the last time the SEC conducted a broad review of publicly-reporting FPIs and the eligibility criteria for FPI status. These trends led the SEC to publish the concept release to solicit public comments about whether the current definition should be amended to further protect U.S. investors, while still allowing flexible, practical standards for FPIs to promote capital formation.

Background on FPIs

Under the current definition, an FPI is any company that is a foreign issuer, other than a foreign government, *except* for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) more than 50% of its outstanding voting securities are directly or indirectly held by U.S. residents, and any of the following: (A) a majority of its executive officers or directors are U.S. citizens or residents; (B) more than 50% of its assets are located in the U.S.; or (C) its business is administered principally in the U.S.

FPIs are exempt from certain SEC disclosure and filing requirements because FPIs are typically subject to robust disclosures in their home country jurisdictions where their securities are also publicly traded. The SEC's policy has therefore historically considered it too burdensome and costly to require FPIs to fully comply with the same requirements as domestic public companies.

Overview of Findings in the Concept Release

The concept release contains extensive data about FPIs subject to reporting obligations under the Securities Exchange Act of 1934, as amended (Exchange Act), that was collected and analyzed by the SEC's Staff (the Staff). The Staff's findings show that there have been significant changes in the home country jurisdictions of FPIs since 2003. Specifically, the two most represented FPI jurisdictions in 2003 were Canada and the U.K. In 2023, however, the most common FPI jurisdiction of incorporation was the Cayman Islands, and the most common headquarters jurisdiction was China. Additionally, the SEC staff found a substantial increase in FPIs with

disconnected jurisdictions of incorporation and headquarters — from 7% in 2003 to 48% in 2023.

The Staff concluded that global trading of equity securities of Exchange Act reporting FPIs has become increasingly concentrated in the U.S. capital markets over the last decade and, as of 2023, approximately 55% of these FPIs appear to have had little or no trading of their equity securities on exchanges outside the U.S. As a result, the U.S. is effectively the exclusive or primary trading market for many FPIs, which runs counter to the expectation that FPIs generally have their equity securities meaningfully traded outside the U.S. on a foreign exchange.

SEC's Call for Public Comment on Amending the FPI Definition

Based on the findings of the Staff's review, the SEC has published the concept release to solicit public comments on amending the FPI definition. Amending the FPI definition could potentially modify the current accommodations and exemptions from disclosure and reporting requirements under federal securities laws afforded to FPIs.

For example, the concept release seeks public input on the following possible approaches to amending the FPI definition:

- **Updating the existing FPI eligibility criteria**. The existing FPI eligibility criteria could be updated, such as potentially reducing the existing 50% threshold of U.S. holders in the shareholder test, or adding new criteria for the business contacts test.

- **Adding a foreign trading volume requirement**. Adopting a foreign trading volume requirement test could require FPIs to assess their foreign and U.S. trading volume on an annual basis and impose a minimum percentage of foreign trading volume to maintain FPI status.

- **Adding a major foreign exchange listing requirement**. This change would require FPIs to be listed on a major foreign exchange, which would also require defining the criteria for a "major" foreign exchange.

- **Incorporating an SEC assessment of foreign regulation applicable to the FPI**. This possible SEC assessment could require FPIs to (1) be incorporated or headquartered in a jurisdiction where the SEC has determined there is a robust regulatory and oversight framework for issuers; and/or (2) be subject to such securities regulations and oversight without modification or exemption.

- **Establishing new mutual recognition systems**. The SEC could establish new mutual recognition systems with respect to registration under the Securities Act of 1933, as amended, and periodic reporting under the Exchange Act for FPIs from selected jurisdictions. These new mutual recognition systems would be similar to the mutual recognition approach under the current Multijurisdictional Disclosure System (MJDS) for Canadian issuers.

- **Adding an international cooperation arrangement requirement**. An international cooperation arrangement requirement could require FPIs to certify that they are either incorporated or headquartered in a jurisdiction with a securities authority that has signed the International Organization of Securities Commissions Multilateral Memorandum of Understanding (MMoU) or Enhanced MMoU.

The public comment period will remain open for 90 days, or until September 8, 2025. The SEC is seeking comments on all aspects of the concept release, including potential regulatory responses, alternative approaches, and the costs, burdens, and/or benefits of any proposed changes.

Impact of a Change in the FPI Definition

SEC Chairman Paul S. Atkins noted in response to the publication of the concept release that "[a]ttracting 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, [but] 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 concept release also highlights that a potential impact of recent trends is that FPIs may not be subject to equivalent disclosure rules in their home jurisdictions, depending on the regulatory regimes in those jurisdictions. Instead, the Staff is concerned that FPIs may be benefitting from U.S. markets, while their home jurisdictions' rules fail to provide equivalent transparency and accountability to investors. Given current U.S. foreign policy, we think the Staff appears to be especially concerned about FPIs that are incorporated in the Cayman Islands and headquartered in China — effectively bypassing their home country exchange rules and solely leveraging U.S. securities exchanges and markets. Changes to the FPI definition could disproportionally, and perhaps unintentionally, impact good-faith FPIs, especially companies in Australia, Canada, and the U.K., that are already subject to meaningful securities oversight in their home country jurisdictions.

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