

# Foreign Private Issuers



The Securities and Exchange Commission issued a concept release to solicit public comment on the definition of foreign private issuer.

Foreign private issuers benefit from accommodations that provide full or partial relief from the disclosure requirements of the federal securities laws. In light of significant changes in the global capital markets and characteristics of foreign private issuers (FPIs) since the last Commission review, the Commission is soliciting comments on whether the current definition should be amended to protect U.S. investors while continuing to facilitate capital formation.

## Background

FPIs enjoy accommodations and exemptions from the SEC disclosure and filing requirements. Any foreign issuer (other than a foreign government) can qualify:

- 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.

The Commission provided the current FPI accommodations and exemptions based on its understanding that most FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions and that FPIs' securities would be traded in foreign markets.

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## Highlights of the Concept Release

### Recent Developments in Exchange Act Reporting FPI Population

The Commission staff's review of FPIs that are subject to reporting obligations under the Securities Exchange Act of 1934 (Exchange Act reporting FPIs) shows significant changes in that population over the last two decades in terms of their jurisdictions of incorporation and headquarters and their primary trading market. In particular, these changes include:

- The two jurisdictions most frequently represented among Exchange Act reporting FPIs in fiscal year 2003 were Canada and the United Kingdom, both in terms of incorporation and the location of headquarters. In contrast, the most common jurisdiction of incorporation for Exchange Act reporting FPIs in fiscal year 2023 was the Cayman Islands, and the most common jurisdiction of headquarters in fiscal year 2023 was mainland China. The

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Commission staff also found a substantial increase in Exchange Act reporting FPIs with differing jurisdictions of incorporation and of headquarters, from 7% in fiscal year 2003 to 48% in fiscal year 2023.

- The Commission staff found that the global trading of Exchange Act reporting FPIs' equity securities has become increasingly concentrated in U.S. capital markets over the last decade. As of fiscal year 2023, approximately 55% of Exchange Act reporting FPIs appear to have had no or minimal trading of their equity securities on any non-U.S. market and appear to maintain listings of their equity securities only on U.S. national securities exchanges. As a result, the United States is effectively those issuers' exclusive or primary trading market.

### **Reassessment of the FPI Definition**

The concept release solicits public comments 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 amended in light of the recent changes to the FPI population.

The concept release seeks public input on the following possible approaches to amending the FPI definition:

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

Interested persons are invited to comment on the general and specific questions asked throughout the release, as well as on any other aspects of the current FPI definition or the Commission staff's review of the FPI population discussed in the release.

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## **What's Next?**

The concept release will be published on the SEC's website and in the Federal Register. The comment period will remain open for 90 days.

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