

# SEC considers amending definition of “foreign private issuer”

## AUTHORS



Mile T. Kurta



Andrew J. Beck



Chris Bornhorst

On June 4, the U.S. Securities and Exchange Commission (SEC) issued a concept release<sup>1</sup> to solicit public comment on potential amendments to the definition of “foreign private issuer” (FPI). As currently defined, an FPI is an issuer organized outside the U.S. that either (1) has 50% or fewer of its outstanding voting equity securities held directly or indirectly by U.S. residents or (2) satisfies all of the following: (a) 50% or fewer of its executive officers are U.S. citizens or residents; (b) 50% or fewer of its directors are U.S. citizens or residents; (c) not more than 50% of its assets are located in the United States; and (d) its business is not administered principally in the United States. SEC-reporting companies that qualify as FPIs benefit from reduced disclosure and other regulatory requirements as compared to U.S. domestic issuers. FPI status is also a requirement for Canadian companies to report under the multijurisdictional disclosure system (MJDS).

In the concept release, the SEC cited an increase in Chinese-based companies incorporated in the Cayman Islands or British Virgin Islands that rely on FPI status and therefore are able to rely on the U.S. reporting and securities law accommodations applicable to FPIs. In many instances, such companies are not listed on any non-U.S. stock exchanges or not subject to any meaningful home country securities regulation. As a result, the SEC is soliciting public comment on the definition of “foreign private issuer” in order to address the significant changes in recent decades in the composition of companies that qualify as FPIs and that can take advantage of the various accommodations afforded to FPIs. Depending on how the rules are proposed and finally enacted, however, there could be repercussions to other foreign issuers outside of Chinese-based companies, including Canadian companies relying on the MJDS. Nevertheless, in public remarks in connection with the concept release, the SEC appeared supportive of the MJDS and indicated in the concept release that it is not seeking comment on the requirements of the MJDS.

## What you need to know

In the concept release, the SEC has requested public comments on the following aspects of FPI status:

- what factors should be considered in connection with FPI status (e.g., legal structure, market capitalization, home country regulation, non-U.S. stock exchange listing);
- whether the existing 50% threshold in the shareholder test for FPI status should be lowered;
- whether a foreign (non-U.S.) trading volume requirement should be imposed, and if so, what percentage of foreign trading volume should be required;
- whether a “major foreign exchange listing” requirement should be imposed, and if so, which foreign (non-U.S.) exchanges would qualify;

- whether the SEC should undertake to assess the adequacy of home country securities regulation as a requirement for FPI status;
- whether the SEC should adopt additional mutual recognition systems, similar to the MJDS, for other non-U.S. jurisdictions;
- whether there should be any other changes to the current FPI definition;
- whether any grandfathering of FPI status should be applied and whether, and for how long, there should be transition periods for loss of FPI status under the new rules; and
- whether FPI status adequately protects U.S. investors and if there should be any changes to the current accommodations for FPI companies.

While the SEC concept release does not propose any rules explicitly, the questions for public comment provide important directional guidance regarding the SEC staff's views on the topics presented. As described above, the focus of the concept release is Chinese-based companies that are incorporated offshore without a comparable non-U.S. trading market. In many places, the concept release refers to the MJDS approvingly and the SEC generally seems to be soliciting comments to ensure that FPI status aligns to its original assumption that FPIs "would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdiction". Nevertheless, as indicated in the SEC concept release, non-MJDS Canadian companies were the third-highest category by jurisdiction of FPIs in 2023 (with 75 such non-MJDS Canadian companies identified). As noted above, FPI status is a condition for MJDS status, which means that any changes to the FPI definition have the potential to affect Canadian companies, whether or not this population is specifically targeted.

Comments are being solicited from the public generally, which includes investors and reporting issuers alike, and we expect the SEC staff to be receptive to practical suggestions from commenters who seek to ensure that the amended FPI definition does not unduly increase regulation for reporting issuers that are already subject to robust home country regulation.

The public comment period will be open until 90 days after the publication of the concept release in the Federal Register. Any proposed rulemaking by the SEC would be subject to a separate notice and comment period.

## FOOTNOTE

*To discuss these issues, please contact the author(s).*

*This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.*

*For permission to republish this or any other publication, contact [Janelle Weed](#).*

© 2025 by Torys LLP.

*All rights reserved.*