

Memorandum

Navigating the Evolving SEC Regime for Foreign Private Issuers: Key Regulatory Debates, Risks and Strategic Considerations

September 24, 2025

On September 18, 2025, the SEC's Investor Advisory Committee held roundtable discussions on the evolving role of foreign private issuers ("FPIs") in the U.S. capital markets. The discussions were prompted by the SEC's Concept Release on Foreign Private Issuer Eligibility,¹ issued on June 4, 2025, which solicited public comments on proposed changes to the definition of FPIs.

These latest discussions follow the SEC's rule-making in recent years in which several significant rules adopted equally apply to FPIs and domestic issuers (such as the [Rule on Clawback Policies](#), certain portions of the [Rules on 10b5-1 Trading Plans and Insider Trading Policies](#) and the [Rules on Cybersecurity Disclosures](#), as described in our prior memoranda), departing from the SEC's long-standing practice of granting accommodations to FPIs that defer to home country rules or excluding application to FPIs altogether. While the SEC noted that it does not intend to discourage listings by foreign registrants, the Concept Release questions whether the current accommodations for FPIs remain appropriate in light of significant changes in the issuer landscape over time—notably, the fact that a majority of FPIs now trade almost exclusively in U.S. markets ("U.S. Exclusive FPIs") and the marked rise in the incorporation in offshore jurisdictions by companies whose headquarters and principal operations are located elsewhere. The Concept Release outlined several potential revisions to the FPI eligibility criteria, including (1) lowering the U.S. ownership threshold under the current shareholder test, (2) introducing a minimum percentage of trading that must occur outside the United States and/or (3) requiring listing on a major foreign exchange.

The SEC's concerns were echoed in recent statements by SEC Chairman Paul Atkins noting the importance of ensuring that domestic issuers and FPIs experience a level playing field,² questioning whether the original rationale for FPI accommodations remains valid and whether the SEC should reconsider the elimination of the ability of FPIs to present financial statements prepared in accordance with the International Financial Reporting

¹ Securities and Exchange Commission, Concept Release on Foreign Private Issuer Eligibility, Release No. 33-11376, June 4, 2025, available [here](#).

² U.S. Department of State, Press Briefing: U.S. Securities and Exchange Commission Chairman Paul Atkins, September 5, 2025, available [here](#).

Standards (IFRS), as issued by the International Accounting Standards Board (IASB), without reconciliation to U.S. GAAP.³

The Investor Advisory Committee discussions and the public comments received in response to the Concept Release offer insights into issues that the SEC Staff may be considering.

- **Acknowledging certain potential risks to investors under current FPI regime.** Some commentators acknowledged certain risks identified in the Concept Release associated with China-based and Cayman-incorporated issuers, particularly in relation to the opacity of variable interest entity (VIE) structures and limitations on SEC and private enforcement actions, including difficulties in obtaining evidence necessary to pursue enforcement or recover losses. While commentators noted the investor protections provided by the U.S. securities laws, reputational incentives and the increased oversight of listed FPIs by U.S. securities exchanges such as the NYSE and Nasdaq, some commentators raised questions regarding the effectiveness of traditional gatekeepers, including underwriters and auditors, acknowledging that there may be variations in gatekeeper quality, especially for smaller or riskier issuers.
- **Assessing compliance burdens and potential unintended consequences of rule revisions.** While acknowledging the SEC's policy objectives, commentators have also identified significant risks associated with the proposed changes. These include increased compliance burdens and the potential for operational and strategic disruptions if an issuer loses its FPI status. Many commentators have opposed the use of modified bright-line tests to define FPI status, citing concerns that issuers could lose their status due to temporary fluctuations in U.S. ownership, that potential issuers might reconsider their U.S. listings or that existing issuers would seek to delist if compliance becomes excessively burdensome or costly, particularly if they were required to switch to or offer a reconciliation to U.S. GAAP reporting.

Commentators also pointed to the absence of significant evidence of investor protection failures under the current FPI regime, arguing that the current disclosure requirements applicable to FPIs are substantially similar to those for U.S. domestic issuers. As examples, FPIs are required to provide Sarbanes-Oxley certifications, PCAOB-audited financials and timely market disclosures and, in practice, the market and exchange rules (including potential liability under Rule 10b-5 and insider trading rules) help to drive FPIs to provide robust, frequent and material disclosures.⁴ Commentators also noted that the definition of “FPI” is embedded in a wide array of SEC rules—including Regulation S, Rule 144A, tender offer rules and deregistration provisions—such that changes to the FPI definition could have far-reaching and unintended consequences across the regulatory landscape.

³ Chairman Paul S. Atkins, Keynote Address at the Inaugural OECD Roundtable on Global Financial Markets, September 10, 2025, available [here](#).

⁴ It should be noted that if the SEC were to eliminate the quarterly reporting requirement for domestic issuers, as recently proposed, U.S. filers would report in a manner that more closely aligns with the current requirements for FPIs.

- ***Anchoring FPI regulation in assessments of home country jurisdictions.*** Certain commentators proposed to anchor FPI eligibility to the quality of the issuer's home country regulation and the degree of enforcement cooperation available, potentially using International Organization of Securities Commission (IOSCO) standards or a major foreign exchange listing as benchmarks. However, participants noted that implementing this approach would require the SEC to conduct ongoing assessments of foreign regulatory regimes, which may involve resource-intensive processes, the development of standardized templates and the establishment of reciprocal arrangements with foreign authorities. While issuers from jurisdictions such as the U.K., EU or Japan may benefit from a more streamlined process, those from less known or smaller regulatory environments could encounter new barriers or additional obligations. In addition, a dual listing may not be feasible or attractive for some issuers, which could lead potential U.S. Exclusive FPIs to seek alternative listing venues.
- ***Alternatively, considering more targeted adjustments.*** Other commentators have argued that targeted adjustments to the current disclosure requirements are preferable to broad, sweeping changes to the FPI eligibility criteria and would address perceived disclosure gaps more effectively. Among the proposals discussed is the creation of an enhanced disclosure requirement for U.S. Exclusive FPIs to file new Form 7-K reports, which would mirror the event-driven disclosures required by Form 8-K and would be subject to similar filing deadlines. A number of commentators have also suggested that these FPIs should be required to apply the Regulation FD selective disclosure rules and to comply with Section 16(a) insider reporting obligations.

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The SEC's ongoing review of the FPI regime has the potential to bring about significant changes to eligibility criteria, disclosure obligations and compliance requirements for foreign issuers accessing U.S. capital markets. Issuers should closely monitor SEC rulemaking and prepare for possible changes to disclosure and reporting. Strategic planning will undoubtedly play an important role for both current and prospective FPIs—particularly those with U.S.-only listings or certain cross-border structures—to maintain access to U.S. capital markets and to adapt to evolving regulatory requirements.

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