

ICMA response to US SEC concept release on foreign private issuer eligibility

On 8 September, ICMA submitted its response to the US SEC's Concept Release on Foreign Private Issuer Eligibility. The release, published on 4 June 2025, is a forerunner to potential SEC rulemaking and sought public comment on the definition of foreign private issuer (FPI). The release indicates the SEC may be considering significant changes to its FPI regime for the first time in decades. The FPI definition is a gateway to various accommodations under US securities laws, mainly for non-US issuers to access the public equity and debt securities market in the US. Although the main focus of the release is on FPI accommodations for non-US issuers accessing the US market, the potential changes discussed in the release could have an impact on the offering of securities outside the US pursuant to Regulation S under the US Securities Act of 1933, as amended.

ICMA's response mainly focussed on the potential impact that a change to the definition of FPI could have on Regulation S debt offerings (convertible and non-convertible debt). In light of this, in the response:

- ICMA urges the SEC not to make any changes to the definition of FPI, but if deemed necessary, to make targeted changes to disclosure requirements applicable to FPIs accessing the US market.
- If the SEC decides to address its concerns by changing the definition of FPI, ICMA strongly recommends that the current FPI definition should continue to apply to Regulation S.

The ICMA response also cross-referred to two sections of the response from the Forum for US Securities Lawyers in London. These sections discuss the potential impact of changes to the definition of FPI on Regulation S offerings and ask for provisions relating to grandfathering and having a long implementation timeline.

Market participants are waiting to see how the SEC will respond after its review of submitted comments, and whether it will propose new rules to address the concerns outlined in its concept release. ICMA will continue to monitor developments in this area.



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