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FOREIGN PRIVATE ISSUERS IN 2026: TIMES ARE CHANGING

Historically, the United States federal securities laws have provided certain reporting and other accommodations to foreign private issuers, based on the fact that many of such issuers were subject to substantial regulation in their home country jurisdiction. This paper explores whether this position is evolving, such that foreign private issuers are becoming subject to increasingly robust regulation in the United States, along with some of the potential reasons for this regulatory evolution.

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For decades, U.S. securities regulation treated foreign private issuers ("FPIs") with 'home country deference,' offering accommodations based on the premise that robust local oversight rendered many U.S. requirements duplicative. Over time, however, that premise has begun giving way to 'domestication': a move to align FPIs with U.S. reporting norms, at least in part based on the idea that these issuers primarily access capital in the U.S. markets.

Stretching as far back as 1935, when the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") stated that "an endeavor has been made to adapt the requirements for domestic issuers to the peculiar circumstances of foreign issuers. In view of the disparity between the laws and practices existing in the several countries, it was necessary to introduce great flexibility in the requirements;" the federal securities laws have considered that the different characteristics of domestic and foreign issuers requires a different regulatory approach.[1] This difference in approach is evident in our current regulatory scheme, which provides a number of corporate governance, disclosure-related, and procedural accommodations to foreign private issuers. However, in recent years, the question as to whether these accommodations remain appropriate for all foreign issuers has been the subject of debate, and the current framework seems poised for change.

For example, in June 2024, Commissioner Mark Uyeda shared his views on the accommodations provided to FPIs, requesting that "to provide greater certainty to [foreign] companies and ultimately to protect U.S. investors, the agency should articulate a philosophy for when disclosure by foreign companies should be equivalent to disclosure by U.S. companies."[2] Commissioner Uyeda continued, "As part of this process, the SEC should ensure that its 'foreign private issuer' definition reflects today's capital markets and corporate structures, and captures the appropriate foreign companies," an idea that may be on its way to fruition

[1] Rel. No. 34-323 (1935).

[2] Commissioner Mark T. Uyeda "Remarks at the Harvard Law School Program on International Financial Systems, 2024 U.S.-China Symposium" (June 6, 2024), *available at* https://www.sec.gov/newsroom/speeches-statements/uyeda-harvard-law-060624.

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