Cross-border SEC spotlight

Key updates for non-U.S. companies – Q3 2025

Welcome back to our Hogan Lovells Cross-border SEC spotlight: Key updates for non-U.S. companies, a dedicated resource for non-U.S. companies listed or exploring a listing in the United States. This newsletter is published quarterly to provide regular updates on significant regulatory developments, market trends, and industry best practices that impact U.S. compliance and reporting obligations.

In an ever-evolving regulatory landscape, staying ahead of U.S. Securities and Exchange Commission (SEC) rulemaking, disclosure requirements, guidance, and enforcement trends is critical. Through our newsletter, our team at Hogan Lovells will distill the latest updates into actionable insights, helping non-U.S. companies proactively manage compliance risks and market opportunities. Each edition will feature content from client alerts and tailored analyses from our seasoned practitioners, offering practical guidance on SEC compliance.

To ensure you never miss an update, we invite you to **subscribe to our updates here**. By doing so, you'll receive our quarterly newsletter straight to your inbox, along with alerts on key developments affecting non-U.S. companies listed or exploring a listing in the United States. We look forward to keeping you informed and supporting you in navigating the U.S. public market.

SEC's regulatory agenda

The U.S. Office of Information and Regulatory Affairs publishes the Unified Agenda of Regulatory and Deregulatory Actions (the Agenda) twice each year. The Agenda includes details of the regulatory actions the SEC and other administrative agencies plan to take in the near- and long-term. The Spring 2025 Agenda was published on September 4, 2025. Details of the SEC's rulemaking agenda can be found here. Inclusion of potential rulemakings in the Agenda does not oblige the SEC to propose rules, and the SEC is not precluded from pursuing rulemakings not included in the Agenda.

We highlight some items on the Agenda that are likely to be most relevant to readers of this newsletter.

- ***Foreign private issuer eligibility:*** As discussed below, the SEC has asked for public comment on the definition of "foreign private issuer" (FPI) and the disclosure regime applicable to FPIs. The agency is responding to developments within the FPI population since the SEC last conducted a broad review of reporting FPIs and the eligibility criteria for FPI status. This Agenda item is at the pre-rule stage, without a specific timeframe for potential rulemaking.

- ***Rationalization of disclosure practices:*** The SEC is considering proposal of rule amendments to rationalize disclosure practices to facilitate material disclosure by companies and shareholders' access to that information.

- ***Rule 144 safe harbor:*** The SEC is considering reproposal of amendments to Rule 144 under the Securities Act of 1933 (Securities Act), a non-exclusive safe harbor that permits the public resale of restricted or control securities without registration if the conditions of the rule are met, to increase instances in which the safe harbor would be available.

- ***Enhancement of emerging growth company (EGC) accommodations and simplification of filer status for SEC reporting companies:*** The SEC is considering proposal of rule amendments to expand accommodations that are currently available only for EGCs (defined generally to include new registrants with total annual gross revenues of less than U.S.$1.235 billion). Such amendments would aim to simplify the categorization of reporting companies under SEC rules and reduce their compliance burdens.

- ***Shelf registration modernization:*** The SEC is considering proposal of rule amendments to modernize the shelf registration process to reduce compliance burdens and further facilitate capital formation.

- ***Updating the exempt offering pathways:*** The SEC is considering proposal of rule amendments to facilitate capital formation by private businesses by simplifying the pathways for raising capital for, and investor access to, those businesses.

- ***Crypto assets and crypto market structure:*** The SEC is considering proposal of rules relating to the offer and sale of crypto assets - potentially to include exemptions and safe harbors from Securities Act registration - to help clarify the regulatory framework for crypto assets and provide greater certainty to the market. The SEC is also considering amendments to certain rules under the Securities Exchange Act of 1934 to account for the trading of crypto assets on alternative trading systems and national securities exchanges, as well as to modernize the regulatory regime for transfer agents, with rules relating to crypto assets and the use by transfer agents of distributed ledger technology (such as blockchain).

SEC Chairman Paul Atkins issued a brief statement in connection with the Agenda noting that "The items on the agenda represent the Commission's renewed focus on supporting innovation, capital formation, market efficiency, and investor protection."

The Agenda is also notable for topics that were not included. Chairman Atkins noted "Importantly, the agenda reflects our withdrawal of a host of items from the last Administration that do not align with the goal that regulation should be smart, effective, and appropriately tailored within the confines of our statutory authority." Examples of topics that are no longer on the current rulemaking agenda include climate-related disclosures, human capital management, board diversity and disclosure of payments by resource extraction issuers.

Other SEC policy priorities

On September 10, 2025, Chairman Atkins delivered keynote remarks at the inaugural OECD Roundtable on Global Financial Markets (the OECD Roundtable), providing important context and direction for the SEC's evolving regulatory posture.

In his remarks, Chairman Atkins noted that the IFRS Foundation's trustees are now responsible for securing funding for both the International Accounting Standards Board (IASB) and the International Sustainability Standards Board (ISSB). He highlighted that "this recent expansion of the IFRS Foundation's remit cannot divert its focus from its long-standing core responsibility of funding the IASB," adding that IFRS standards should not "be used as a backdoor to achieve political or social agendas."

FPIs are permitted to report under IFRS without providing a reconciliation to U.S. GAAP. Chairman Atkins underscored that one of the key considerations in permitting FPIs to do so was "the IASB's sustainability, governance and continued operation in a stand-alone manner as a standard setter," and specifically "the ability of the IASC Foundation, which was the predecessor to the IFRS Foundation, to obtain stable funding for the IASB." Chairman Atkins cautioned that if the IASB lacks stable funding, the rationale for allowing IFRS filings without reconciliation to U.S. GAAP may no longer be sustainable, which could prompt a reevaluation of the current policy.

In addition, Chairman Atkins expressed concern over the European Union's "double materiality" approach–embodied in regulations such as the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive. He warned that these frameworks could impose costly and complex burdens on U.S. companies and investors, and advocated for a return to streamlined, investor-focused regulation grounded solely in financial materiality.

Foreign private issuer definition

In the Q2 2025 edition of this newsletter, we noted that the SEC had issued a concept release on June 4, 2025, inviting public comment on whether the definition of "foreign private issuer" should be revised. The concept release raised concerns that the foundational assumptions behind the FPI framework–namely, that FPIs are subject to meaningful disclosure obligations in their home jurisdictions and that their securities are primarily traded on foreign markets–may no longer hold true for a growing number of issuers. The deadline for comment was September 8, 2025. For more information on the concept release, see our SEC Update on this topic.

During his remarks at the OECD Roundtable, Chairman Atkins reaffirmed the SEC's longstanding goal of attracting foreign companies to U.S. markets while maintaining robust investor protections. He emphasized that the SEC has historically offered special accommodations to foreign issuers in recognition of the differences in business and market practice, accounting standards and corporate governance requirements. He acknowledged, however, that the demographics of FPIs have changed significantly, and the SEC is now actively reassessing whether those special accommodations continue to achieve the intended policy goals.

On September 18, 2025, SEC Chairman Atkins and SEC Commissioners Caroline Crenshaw and Hester Peirce delivered remarks at a meeting of the SEC's Investor Advisory Committee. Commissioner Peirce noted that "I would appreciate hearing your thoughts whether FPI disclosure is adequate and, if not, what missing information prevents investors from making informed investment decisions." In addressing the meeting, Commissioner Peirce raised the questions: "Have we framed the question correctly–have we properly identified the precise problem relating to foreign issuers? If not, help us pose the right question. And how do we fix the problem in a targeted manner, without causing too much disruption to compliant issuers and exchanges?"

The SEC continues to evaluate the issues raised in the concept release and the appropriate regulatory response. There is no fixed timescale within which any proposed rules may be published for public comment.

Cross-border fraud task force

On September 5, 2025, the SEC announced the launch of a Cross-Border Task Force within its Division of Enforcement to consolidate the SEC's investigative efforts. This new task force will initially focus on investigating potential U.S. federal securities law violations related to foreign-based companies, including potential market manipulative schemes. The task force will also focus enforcement efforts on so-called "gatekeepers," particularly auditors and underwriters, which help foreign-based companies access the U.S. capital markets. The SEC's announcement noted that the task force "will examine potential securities law violations related to companies from foreign jurisdictions, such as China, where governmental control and other factors pose unique investor risks."

Chairman Atkins has also directed other SEC divisions and offices to explore additional actions to protect U.S. investors, including new disclosure guidance and any necessary rule changes.

SEC's policy statement concerning mandatory arbitration provisions

On September 17, 2025, the SEC issued a policy statement providing that the presence of a mandatory arbitration clause, which restricts to arbitration the process for resolving federal securities law claims, will not affect the SEC's decision to accelerate the effectiveness of a registration statement so long as there is complete and adequate disclosure of material information with respect to the mandatory arbitration provision.

The policy statement represents a reversal of the SEC's long-standing unwritten policy of not accelerating effectiveness of registration statements for companies with issuer-investor mandatory arbitration provisions. In practice, the SEC's prior policy meant that companies seeking to list in the United States could not impose upon investors mandatory arbitration provisions for federal securities law claims.

The SEC acknowledges that, following the policy statement, some issuers may adopt mandatory arbitration provisions, "which could potentially deter or prevent some investors from filing civil actions arising under the Federal securities laws" because mandatory arbitration provisions could foreclose class action litigation in the

courts. However, the SEC highlighted U.S. Supreme Court decisions which note that that the U.S. federal securities statutes do not expressly include a right to proceed through class actions or collective actions.

The SEC notes that issuer-investor mandatory arbitration provisions may be contained in an issuer's articles of association, certificate of incorporation or bylaws. Such provisions may also be contained in bond indentures, limited partnership agreements, declarations of trust or trust agreements, American depositary receipts deposit agreements or in other documents. FPIs seeking to implement mandatory arbitration clauses will also need to evaluate the legality of such clauses under the laws of the issuer's jurisdiction of incorporation. For example, a recent amendment to the Delaware General Corporation Law may be interpreted to prohibit mandatory arbitration provisions in certificates of incorporation or bylaws of Delaware corporations.

Furthermore, companies evaluating whether to adopt mandatory arbitration provisions will also need to consider the policies of proxy advisory firms and the views and reactions of institutional investors, which may become clearer as market participants digest reactions to the policy statement. Arbitration of securities law claims could result in cost savings compared to court proceedings, both by preventing class actions being brought and because arbitration generally involves less discovery than court proceedings. Therefore, the cost of director and officer liability insurance policies may potentially decrease over time for companies that require mandatory arbitration provisions. Companies should also evaluate the risk of securityholder litigation in response to initial offerings that include mandatory arbitration provisions or in response to amendments that companies may seek to make to constitutional documents, bond indentures or other relevant documents to include mandatory arbitration provisions in respect of outstanding securities.

The policy statement was approved in a three to one decision, with Commissioner Crenshaw, the sole Democrat commissioner, dissenting. Commissioner Crenshaw argued that the SEC is "quietly shutting the door on investors" by allowing companies to force investors into mandatory private arbitration.

U.S. and UK announce joint taskforce for collaboration on digital assets and capital markets

On September 22, 2025, the U.S. Department of the Treasury and HM Treasury announced the Transatlantic Taskforce for Markets of the Future to align cryptocurrency regulations and facilitate cross-border capital flows. The purpose of the Taskforce is to explore (i) options for short-to-medium term collaboration on digital assets while each country develops relevant legislation and regulatory regimes, as well as options for long-term collaboration, and (ii) options to improve links between the U.S and UK capital markets, with a focus on reducing burdens for U.S. and UK firms raising capital cross-border.

Nasdaq proposes changes to its listing standards

On September 3, 2025, Nasdaq proposed a new set of amendments to its initial and continued listing standards.

The revised Nasdaq listing standards include (i) a U.S.$15 million minimum market value of public float, applicable to new listings on Nasdaq under the net income standard, (ii) an accelerated process for suspending and delisting companies with a listings deficiency that also have a market value of listed securities below U.S.$5 million, and (iii) a U.S.$25 million minimum public offering proceeds requirement for new listings of companies principally operating in China.

Nasdaq is reintroducing the U.S.$25 million requirement for new listings of Chinese companies after determining that this segment is necessary to strengthen investor protections and enhance the liquidity profile of Chinese issuers.

The deadline for comments on the proposed Nasdaq rule change is October 10, 2025.

Nasdaq proposes changes to minimum bid price rule

On August 22, 2025, Nasdaq filed a proposed rule change with the SEC to amend its minimum bid price rule. Under the proposal, any security with a closing bid price of U.S.$0.10 or less for ten consecutive trading days would be immediately subject to delisting and suspended from trading, without eligibility for the usual compliance periods. This change is intended to accelerate delisting for companies in severe financial distress. Additionally, Nasdaq

proposes that appeals to a Hearings Panel will no longer delay suspension from trading in these cases. The rule would become effective 45 days after SEC approval, and would not apply to companies already engaged in the appeals process before that date.

The deadline for comments on the proposed rule change was September 29, 2025.

SEC filing fees

Effective October 1, 2025, the SEC filing fee rate for public companies and other issuers registering securities is U.S.$138.10 per million U.S. dollars (a reduction from the previous U.S.$153.10 per million U.S. dollars).

The payment system used for SEC filing fees was updated in July 2025. This change affects how wire transfers are processed for filing fee payments. Companies paying filing fees must now use the new Fedwire payment template available in EDGAR and ensure that each payment includes the SEC-assigned CIK and the correct U.S. Treasury account number to avoid delays in filing acceptance.

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