Cross-border SEC spotlight

Key updates for non-U.S. companies – Q2 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 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 SEC updates, 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 solicits public comment on foreign private issuer definition

On June 4, the SEC published a concept release seeking public comment on whether the definition of a "foreign private issuer" (FPI) under the Securities Act and the Exchange Act should be amended in light of significant changes in the make-up of FPIs since 2003.

FPIs benefit from a number of accommodations, including in relation to registering securities offerings, exemptions from registration and ongoing reporting, and corporate governance.

The release expresses concern that the SEC's assumption at the time the FPI concept was introduced – that FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions, and that FPIs' securities would be traded in foreign markets – is no longer the case for an increasing number of FPIs, and that, as a result, U.S. investors may be receiving inadequate information from those issuers.

Potential reforms discussed in the concept release include: updating (and tightening) the current tests for FPI status; requiring a minimum volume of trading on non-U.S. markets; or various possible measures intended to ensure that FPIs are subject to robust securities regulation and oversight in non-U.S. jurisdictions in which they are incorporated or headquartered, or in which their securities are traded.

Takeaway – A concept release is not a proposed rule amendment, let alone a final rule. It is a means for the SEC to communicate to the public certain concepts, concerns, and measures that might later become the subject of proposed rules. However, FPIs and non-U.S. companies considering listing in the United States and availing themselves of FPI status should be aware that qualifying for and maintaining that status may become more difficult if the concept release results in SEC rulemaking that narrows the types of issuer that can qualify for FPI status. For further information, please see our Hogan Lovells publication from June 11, 2025.

EDGAR Next – two months until the end of the transition period

The SEC's new filing platform, EDGAR Next, went live on March 24. A transition phase in which both the EDGAR and the EDGAR Next platforms run simultaneously will end at 10:00 p.m. ET on September 12. From September 15, filers will not be able to make filings until they have enrolled in the new platform. Existing filers may enroll in EDGAR Next until 10:00 p.m. ET on December 19. Starting December 22, existing filers who have not enrolled will need to complete the full EDGAR Next application process.

Takeaway – Every SEC filer – a category that includes not only FPIs filing annual reports on Form 20-F but also, for example, shareholders filing beneficial ownership reports on Schedule 13D or 13G – needs to take the necessary steps to ensure compliance with EDGAR Next.

- All existing filers should enroll in EDGAR Next before the discontinuation of the existing EDGAR platform on September 12.
- Filers should note that those not enrolled by December 19 will need to complete a new application process, including submission of a new Form ID.

For further information on EDGAR Next, including how it differs from the existing EDGAR platform, please see our Hogan Lovells publication from January 22, 2025.

SEC hosts roundtable on executive compensation disclosure requirements

On June 26, the SEC hosted a roundtable to discuss executive compensation disclosure requirements. The SEC commissioners' remarks at the roundtable are available here. As a general matter, these remarks suggest an intention to re-shape disclosure requirements to provide investors with material information while avoiding complexity and expense seen as unnecessary. Particular emphasis was given to the idea that executive compensation disclosure should exclusively serve investors' need for material information and should not be used to influence how issuers structure and set compensation.

While the roundtable sessions appeared to highlight a consensus that compensation disclosures are overly complicated and difficult to use, in addition to being unduly costly to prepare, differences of opinion emerged between representatives of investors on the one hand and issuers and advisors on the other regarding the way in which the compensation disclosure rules should be amended.

Takeaway – Many disclosure requirements concerning executive compensation – in particular, the detailed and complex presentation and analysis of various components of compensation – affect U.S. domestic issuers, not FPIs. However, in light of possible reforms to the FPI definition (see above) and the way in which changes in the approach to compensation disclosures could inform the SEC's overall approach, FPIs may want to monitor developments in this area.

FCPA: revised enforcement guidelines and an end to the DOJ "enforcement pause"

In February, President Trump issued an Executive Order directing a pause in investigations and enforcement actions by the Department of Justice (the DOJ) under the U.S. Foreign Corrupt Practices of 1977 (the FCPA) pending issuance of new enforcement guidelines that take into consideration U.S. national security and the competitiveness of U.S. companies abroad.

On June 9, the DOJ issued revised enforcement guidelines, ending the enforcement pause. Under the revised guidelines, the DOJ clearly signals that FCPA enforcement remains active within the scope of the new FCPA guidelines and the administration's national security and foreign policy priorities. However, the DOJ's focus will be narrower, and enforcement will be subject to political oversight:

- Priority will be given to investigations and enforcement aimed at conduct with alleged connections to narcotics trafficking, money laundering and other international criminal activity; at conduct that the DOJ believes unfairly disadvantages U.S. entities; at bribery involving key infrastructure or assets in sectors critical for U.S. national security; and at cases involving substantial bribe payments and complex schemes to conceal bribery and obstruct justice.

- In a significant change from prior practice, investigations and charging decisions will now require the approval of the DOJ's politically appointed leadership.
- The guidelines expand the possibility for companies to self-report misconduct and to advocate to the DOJ from the early stages of an investigation, potentially reducing the consequences of the misconduct.

Although the SEC previously indicated that they are "obviously going to follow the lead of the DOJ," the DOJ Criminal Division priorities announced on May 12, 2025, and the FCPA guidelines suggest that the DOJ is factoring regulatory action in its decision-making process. How the new priorities and guidelines will shape the relationship between the DOJ and the SEC remains to be seen. It is conceivable that the SEC will pursue civil FCPA actions for alleged misconduct that falls outside the scope of the DOJ's priorities, leading to a continuation of typical FCPA enforcement actions for SEC-regulated entities and individuals – which includes FPIs that have registered a class of securities with the SEC or that are required to file reports with the SEC.

Takeaway – As with any new policy, questions pertaining to the guidelines' implementation remain, requiring multinational companies to closely monitor developments and enforcement trends.

Although the new guidelines point to a narrower enforcement focus, companies should remember that violations of the FCPA have a minimum five-year statute of limitations. The DOJ is able to enforce against companies even where conduct does not fall within the stated priorities, and can change its enforcement guidelines at any time, whether under the current administration or a subsequent administration.

Companies should continue to mitigate corruption risks across their operations, not only areas specifically affected by the revised FCPA guidelines, because the implementation of the guidelines leaves questions unresolved. This includes a number of factors that are subjective, including the DOJ's evaluation of a company's overall cooperation effort, what may be considered as timely, and how a company responds to impediments such as foreign evidence collection or legal regimes that apply to data collection and review.

Some of the non-exhaustive factors, such as the focus on national security and U.S. competitiveness, mark a significant departure from the types of factors that prosecutors have historically been assessing before initiating corruption investigations. It is unclear how prosecutors will assess these factors or how they will prioritize between such cases and cases with more typical facts, such as complex schemes or egregious conduct.

For an analysis of the new guidelines, please see our Hogan Lovells publication from June 12, 2025.

New CD&Is on reporting restatements of financial statements

On April 11, 2025, the Staff of the SEC published six Compliance and Disclosure Interpretations (C&DIs) giving guidance on the annual report check boxes that must be marked, and disclosures that must be made, when a U.S.-listed issuer has an accounting restatement that may trigger a clawback of erroneously-awarded compensation under Exchange Act Rule 10D-1 and the related listing standards.

As a reminder, when filing their annual report on Form 20-F, FPIs must consider two check boxes on the front of the form. The first check box asks the company to disclose whether the financial statements included in the filing correct an error to previously issued financial statements. The second check box asks whether the corrected error indicated by marking the first check box was a restatement requiring a clawback analysis under Exchange Act Rule 10D-1. The related disclosure requirements are set forth in Item 6.F of Form 20-F.

The CD&Is provide guidance addressing common questions that the SEC has received on when to mark the check boxes and what disclosure is (or is not) required under Item 6.F of Form 20-F in various scenarios that may be difficult for issuers to analyze. In summary:

- An out-of-period adjustment does not require the error correction check box to be marked because previously issued financial statements are not revised by an out-of-period adjustment.
  [Question 104.20]

- If a corrected error is a restatement, the recovery analysis check box must be marked even if the company determines that recovery of erroneously awarded compensation was not required. The FPI must also briefly explain why the recovery policy resulted in no recovery pursuant to Item 6.F(2) of Form 20-F. [Question 104.21]
- After a company has checked the applicable check boxes in a 20-F, it does not need to check the boxes in subsequent 20-Fs as long as there are no additional restatements. However, Item 6.F(2) disclosure may be required in both the current year and in subsequent 20-Fs depending on whether the restatement occurred during or after the last completed fiscal year. [Question 104.22]
- However, and notwithstanding the prior bullet, where a restatement of prior year financial statements is identified before filing a current year 20-F, if:
  - after applying the recovery policy, no recovery is required,
  - the current-year 20-F marks the applicable check boxes and includes the Item 6.F(2) disclosure, and
  - there are no additional facts that change the recovery analysis,

  then no Item 6.F(2) disclosure is required in the subsequent 20-F. [Question 104.23]
- An FPI must mark the applicable 20-F check boxes even if a restatement was previously disclosed (e.g., on a Form 6-K or a Securities Act registration statement). [Question 104.24]

If an FPI restates interim financial statements issued during the financial year, it is not required to mark the check boxes on the cover page of its 20-F for that year. However, it is required to make Item 6.F disclosures because it determined during the financial year that it needed to prepare an accounting restatement. [Question 104.25]

Takeaway – The new CD&Is provide additional clarity on a subject that can be confusing, helping FPIs and other SEC registrants be confident that their annual reports are in compliance with the SEC's form requirements and with Regulation S-K, which governs the filing of forms with the SEC, including under the Exchange Act.

SEC agrees to settle lawsuit against SolarWinds alleging fraud related to cyber breach

In late 2023, the SEC brought a civil action against software provider SolarWinds Corp. and its Chief Information Security Officer (CISO). The lawsuit alleged that SolarWinds, aided and abetted by its CISO, had committed securities fraud by failing to provide adequate disclosure relating to cyber breaches. On July 2, 2025, attorneys for plaintiff and defendants filed a joint letter with the U.S. District Court for the Southern District of New York stating that they had agreed in principle to settle all remaining claims. (The settlement remains subject to approval by the SEC's Commissioners.)

SEC v. SolarWinds was a novel case on a number of fronts. Although the SEC had previously sued registrants alleging negligence in connection with the reporting of cyber breaches, this lawsuit was the first time it brought a lawsuit alleging intentional fraud. It was also the first time the SEC had included an individual – SolarWinds' CISO – as a defendant.

The district court had previously dismissed most of the SEC's allegations against SolarWinds, including allegations of fraud in connection with its disclosure of a major breach in 2020. SolarWinds argued, and the court accepted, that its disclosures were not fraudulent because, at the time they were made, it could not have known that this breach was connected with earlier breaches and hence could not have recognized the full severity of the breach. The court also accepted that several of the SEC's claims were based on overbroad (or simply incorrect) construction of the relevant statutes and regulations.

However, the court allowed the SEC to proceed with allegations that a security statement on the company's website was fraudulent because it failed to disclose that its access control and password protection were "lax". Oral arguments, scheduled to begin on July 22, have been indefinitely postponed pending the Commissioners' approval of the settlement. The terms of the settlement have not yet been disclosed.

Takeaway – *SEC v. SolarWinds* represented a step-up in the SEC's stance against issuers it deemed to have provided inadequate disclosure about cyber breaches. That the District Court dismissed most of the claims indicates its belief that the SEC had failed to plead those claims adequately. It cannot be ruled out, however, that the SEC may take a similarly aggressive stance in a future action if it believes that it can state claims that a court will view as properly grounded in the relevant statutes and rules.

SEC approves liberalization of NYSE distribution standard for IPO candidates outside North America

On May 2, 2025, the SEC approved a proposed change to the distribution standard that companies outside North America (defined for this purpose as the United States, Canada and Mexico) must meet to be eligible to list on the New York Stock Exchange (the NYSE).

NYSE's Listed Company Manual (LCM) Section 102.01 requires companies seeking to list on the exchange to have a minimum of 400 round-lot shareholders. Sec. 102.01 sets the distribution standard for U.S. domestic issuers, but FPIs may elect to apply this standard rather than the alternative, FPI-specific standard of LCM Sec. 103.01. (That standard sets a significantly higher hurdle – 5,000 round-lot shareholders on a global basis – and, as Sec. 103.00 notes, applies "only where there is a broad, liquid market for the company's shares in its country of origin".)

Section 102.01 permits NYSE, at its discretion, to count home-country shareholders together with shareholders in North America in determining whether non-North American companies with shares listed on a regulated exchange outside North America satisfy the distribution standard. Prior to the newly approved change, by contrast, only shareholders in the United States were considered in determining the eligibility of companies from outside North America that were not listed on a regulated exchange.

Under the revised LCM Sec. 102.01, NYSE will now consider all shareholders on a global basis when determining the eligibility of IPO candidates from outside North America that are not listed on any other regulated exchange.

In filing the proposed rule change with the SEC, NYSE noted that the speed and reliability of links between brokerage accounts outside North America and the U.S. listing market, and the ease of transferring securities between different countries, enable holders of a listed company's securities outside North America to be active real time participants in the U.S. trading market. Furthermore, NYSE stated that it was reasonable to consider all shareholders on a global basis when determining the eligibility of a previously unlisted company from outside North America to list on the exchange because, if that company lists its shares solely on a U.S. exchange, all its shareholders, both within and outside the United States, will be sources of liquidity in the U.S. trading market. NYSE also noted that the rule change would improve competition by putting the exchange on an equal footing with Nasdaq, which already permitted calculation of distribution standards on a global basis.

Takeaway – NYSE's revision of LCM Sec. 102.01 can be expected to make satisfaction of NYSE's distribution standard easier for previously unlisted companies from outside North America, which in practical terms would not be able to use the alternative standard of Sec. 103.01.

The change may also signal an increased effort by NYSE to attracts life sciences and tech companies, many of which list solely in the United States and which may, historically, have been more likely to seek a listing on Nasdaq.

The LCM includes a number of provisions – in particular, Sec. 103.00 et seq. – that apply expressly to FPIs. A potential future change to the definition of "FPI" (see above) should not, however, affect the ability of non-North American IPO candidates to rely on the liberalized distribution standard of Sec. 102.01. Application of that standard is predicated not on FPI status, but on being a previously unlisted company from outside North America.

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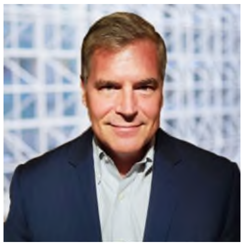

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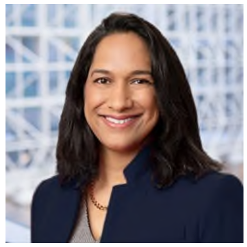

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