

SEC Intensifies Oversight of Foreign Companies that Participate in U.S. Capital Markets

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[According to NERA](#), a leading consulting and expert firm, the share of foreign-based companies listed on U.S. stock exchanges has risen steadily in the last decade, from 17.4% in 2016 to 26.9% in 2025. As noted in our [September 18 blog post](#), the U.S. Securities and Exchange Commission (SEC) recently announced the formation of the Cross-Border Task Force to investigate potential U.S. federal securities law violations related to foreign-based companies. The press release indicates that the task force will “strengthen and enhance the Division of Enforcement’s efforts to identify and combat cross-border fraud harming U.S. investors.” The announcement followed a series of SEC investigations and enforcement actions involving China-based companies listed in the U.S., as we discussed in the blog.

The task force is one of several recent SEC initiatives focused on foreign-based companies. Most recently, the SEC temporarily suspended trading in the securities of nine foreign-based issuers listed on Nasdaq suspected of market manipulation. Notably, as the SEC trading suspensions expire, [Nasdaq has been announcing](#) that the trading of these issuers’ securities continue to be halted “for additional information requested from the company.” In June, the SEC indicated it is considering tightening eligibility for accommodations available to foreign issuers. In August, the SEC announced a settled enforcement action against a British security-based swap dealer for failing to comply with U.S. securities laws, either directly or through substituted compliance. Taken together, these developments indicate that foreign companies participating in the U.S. capital markets should anticipate heightened SEC oversight and enforcement in the coming years.

Recent trading suspension orders against foreign-based issuers

A recent uptick in temporary trading suspensions reflects the SEC’s increased scrutiny of foreign-based issuers. [Section 12\(k\)](#) of the Securities Exchange Act of 1934 (Exchange Act) grants the SEC broad authority to suspend trading in any security for up to 10 business days if it believes doing so protects investors and serves the public interest. The SEC suspends trading when the staff identifies suspicious trading activity that poses an imminent risk to investors, such as during the “pump” phase of a suspected “pump and dump” scheme. After the suspension ends, exchange-listed securities [can resume trading immediately](#). However, SEC enforcement staff often continue to investigate the potential misconduct after the trading suspension is lifted, and after the investigation is completed may bring an action alleging violations of the securities laws against the individuals and/or entities involved.

Between September 26 and October 22, 2025, the SEC issued orders [suspending the trading on Nasdaq of nine Asia-based companies](#) due to suspected social-media-driven schemes to inflate price and volume. While the SEC’s authority to suspend trading is limited to 10 business days, Nasdaq is able to effectively extend that period of time by conducting its own investigation. Indeed, thus far, once the trading suspensions ordered by the SEC in this time period have expired, [Nasdaq has announced](#) that trading in the stock will “remain halted” until the issuer “has fully satisfied Nasdaq’s request for additional information.” This signals a coordinated and effective effort by the SEC and Nasdaq to keep the stock from trading in the U.S. pending the issuer’s ability to satisfy the concerns that led to the suspension. It is currently unclear if the issuers are engaging with Nasdaq and providing the requested information. Even if they are, they may not successfully satisfy Nasdaq to have the trading halts lifted. If the issuers do not satisfy Nasdaq’s requests, trading in the stock will remain halted long term and the stock could eventually be delisted. In the meantime, the SEC’s Enforcement Division is likely also investigating the suspected market manipulation that led to the trading suspensions, and enforcement actions could follow.

The uptick in trading suspensions is notable given their relative scarcity in the last few years: two in 2024, four in 2023 and two in 2022. Moreover, seven of the recent trading suspensions were issued during the government shutdown, when the SEC was operating with limited staffing. These circumstances underscore that this area is a top priority for the current administration.

SEC’s concept release on foreign private issuer eligibility

As discussed in this [June 10 Cooley client alert](#), the SEC is considering amendments to the definition of a “foreign private issuer” (FPI). Under current rules, a non-government foreign issuer can qualify as an FPI if either (1) no more than 50%

of its outstanding voting securities are held by U.S. persons, or (2) it lacks sufficient U.S. contact under a three-part test that considers the domicile of directors and officers, the location of assets and the principal place of business. FPIs benefit from accommodations not available to U.S. domestic issuers, including extended annual reporting deadlines, reduced current reporting, and exemptions from quarterly reporting and Section 16 reporting, among others.

The SEC established the foundation of the current FPI definition in 1983 and last amended it in 1999. At the time, FPIs were most commonly incorporated and headquartered in Canada and the UK. The SEC anticipated that such issuers would be subject to meaningful home-jurisdiction regulatory and disclosure regimes, and the FPI framework was designed to avoid the burdens of duplicative or conflicting requirements.

The population of FPIs has since changed markedly. As the SEC noted in its concept release, the most prominent changes are the jurisdictional makeup and primary trading market of the FPIs:

- While the FPIs in the early 2000s were concentrated in Canada and the UK, by 2023, the most common jurisdiction of incorporation for FPIs was the Cayman Islands, and the most common jurisdiction of headquarters was China.
- The proportion of FPIs with differing jurisdictions for incorporation and headquarters increased from 7% in 2003 to 48% in 2023, in part driven by China-based issuers incorporated in offshore jurisdictions.
- The proportion of FPIs with securities traded almost exclusively in the U.S. increased steadily, from less than 15% in 2004 to 55% in 2023.

The SEC observed that this population shift raises the concern that current FPIs are not “subject to meaningful disclosure requirements and oversight outside of the United States,” and the trend “may have resulted in less information” being made available to U.S. investors.

In his [remarks at the Investor Advisory Committee meeting on September 18](#), SEC Chair Paul Atkins stated that the “current standard for extending special accommodations to foreign companies” no longer “make sense” given the “significant changes to the population of foreign companies listed in the United States.” He emphasized that the SEC is not trying to “disincentivize” foreign companies from listing in the U.S.; rather, the SEC’s objective is to protect U.S. investors.

The concept release outlined several potential amendments to the FPI definition, including revising the existing eligibility tests, imposing a foreign trading volume requirement, requiring FPIs to be listed on a “major foreign exchange,” incorporating an SEC assessment of foreign regulation applicable to the FPI, establishing a new mutual recognition system, or adding an international cooperation arrangement requirement. If the SEC narrows the FPI definition, a number of foreign-based companies would likely lose their FPI status and accommodations. Those companies would likely face more frequent and expansive disclosure obligations, potentially leading to higher noncompliance and enforcement risks.

Enforcement action against UK-based company for compliance failures

A recent enforcement action further underscores the SEC’s scrutiny of non-U.S. market participants, including those in jurisdictions with comparable regulatory regimes. On August 6, 2025, the SEC [announced settled charges](#) against MUFG Securities EMEA, a UK-based security-based swap dealer (SBSD). The SEC permits non-U.S. SBSDs to satisfy certain requirements under the Exchange Act by complying with comparable requirements in their home jurisdiction. The SEC alleged that when MUFG registered with the SEC as an SBSD in 2021, it elected for substituted compliance with UK rules for certain recordkeeping, financial reporting and compliance requirements. However, MUFG allegedly failed to comply with those requirements, including calculating and recording quarterly “net liquid assets,” making financial disclosures publicly available on its website and submitting an annual compliance report to the SEC.

As a result of its noncompliance with the comparable UK requirements, MUFG was obligated to comply directly with the Exchange Act, and it failed to do so. The SEC also alleged that MUFG failed to establish written compliance policies that would have prevented these failures or a robust risk management system adequate for managing its business. To settle the charges, MUFG agreed to pay \$9.8 million and engage in undertakings related to a compliance consultant’s comprehensive review of its compliance program.

The case serves as a reminder that electing substituted compliance is not a substitute for compliance. A foreign SBSD that elects, but then fails, to comply with home-jurisdiction requirements must comply directly with U.S. securities laws – and the SEC has shown it will enforce that obligation.

Key takeaways

- The SEC has stepped up enforcement actions against non-U.S. market participants (including through the Cross-Border Task Force) and issued several trading suspensions of Asia-based issuers whose securities traded on Nasdaq.
- The SEC is considering narrowing the FPI definition, which could remove FPI accommodations for some foreign companies and subject them to more frequent and expansive U.S. disclosure obligations.
- These recent developments make clear that cross-border enforcement is a top priority of the SEC. As a result, foreign companies seeking access to U.S. capital markets should consider reassessing and enhancing their compliance programs and ensure the accuracy of their disclosures to address the increased risk of enforcement.

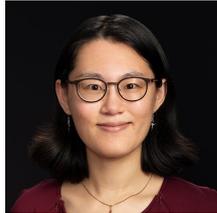
For over-the-counter (OTC) securities, however, broker-dealers generally may not solicit transactions until they have satisfied certain regulatory requirements, including reviewing and confirming that current information about the company and its financials is publicly available.

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