Cross-border SEC spotlight – Q1 2025 developments

Key updates for non-U.S. companies

Welcome to the inaugural edition of 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 will be published quarterly to provide regular updates on key 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.

EDGAR Next goes live

On March 24, the SEC's new filing platform, "EDGAR Next" went live and enrollment opened. The SEC will maintain a hybrid model in which both the EDGAR platform and the EDGAR Next platform run simultaneously until 10:00 p.m. ET on September 12. From September 15, existing EDGAR codes will be deactivated, and filers will not be able to make filings until they have enrolled in EDGAR Next. Existing filers can enroll in EDGAR Next until 10:00 p.m. ET on December 19. Starting December 22, existing filers who have not enrolled in EDGAR Next, will need to complete the full EDGAR Next application process including filing a new Form ID.

Takeaway – There are a number of differences between EDGAR and EDGAR Next, including that (i) filers must authorize individuals, who must have their own account credentials, to manage the filer's EDGAR account instead of having one set of filer credentials that anyone can use, (ii) filers must designate "Account Administrators" and, (iii) only "Users" that Account Administrators designate may make filer submissions. Every SEC filer will need to take the necessary steps to ensure compliance with EDGAR Next. For further information, please see our Hogan Lovells publication from January 22, 2025.

SEC withdraws from defense of climate-related disclosure rules

On March 27, the SEC voted to end its defense of the climate-related disclosure rules, which are currently in litigation before the U.S. Court of Appeals for the Eighth Circuit (the Court of Appeals). The SEC adopted the rules a little over a year ago, before staying their effective date pending completion of numerous legal challenges to the rules which were ultimately consolidated in the Eighth Circuit. The vote comes after the SEC requested in February that the Court of Appeals not schedule the case for argument to provide time for the Commission to deliberate and determine the next steps in the case. Following the SEC's vote, the SEC staff sent a letter to the Court of Appeals stating that the SEC wishes to withdraw its defense of the rules and SEC counsel is no longer authorized to advance the arguments in the brief the SEC had previously filed.

Takeaway – The SEC was widely expected to take this step following the change in administration and the public statements of Acting SEC Chair Mark Uyeda and SEC Commissioner Hester Peirce. The SEC's withdrawal alone does not end the litigation, as other parties may continue to present arguments in favor of the climate-related disclosure rules. However, it further increases the likelihood that the rules do not survive legal challenge. Furthermore, we expect that, following the confirmation of Paul Atkins, President Donald Trump's nominee for SEC Chair, the new leadership will begin the process of formally repealing the climate disclosure rules.

Pause on DOJ FCPA action

On February 10, President Trump issued an Executive Order directing the U.S. Attorney General Pam Bondi (AG) to pause investigations and enforcement actions by the Department of Justice (DOJ) under the U.S. Foreign Corrupt Practices of 1977 (the FCPA) and issue new enforcement guidelines that take into consideration U.S. national security and the competitiveness of U.S. companies abroad. A few days earlier, on February 5, the AG directed DOJ to prioritize foreign corruption enforcement linked to transnational criminal organizations and narcotics trafficking cartels over traditional foreign corruption cases – likely foreshadowing key elements of the forthcoming enforcement guidelines.

Takeaway – As we await guidelines from the AG, foreign private issuers should remember that:

- the FCPA remains in force and has a five-year statute of limitations, which can be extended up to eight years if foreign legal assistance is requested, suspended with tolling agreements, or extended using a conspiracy charge;
- particularly during this interim period, uncertainty remains as to precisely how DOJ will handle existing whistleblower tips and pending investigations;
- subject to future executive orders and the policy direction set by Paul Atkins (should he be confirmed by the Senate as SEC Chair), the SEC continues to have the authority to bring civil FCPA enforcement actions against U.S. domestic issuers and foreign private issuers of securities registered in the United States. Nevertheless, given the rationale set forth in the Executive Order and Bondi instruction, we expect the SEC to follow an approach consistent with DOJ's;
- the Executive Order does not impact the anti-bribery and corruption enforcement regimes of other jurisdictions or multinational bodies, or the ability of U.S. state attorneys general to enforce state anti-bribery and corruption laws in the absence of enforcement at the federal level; and
- non-U.S. entities may emerge as primary targets of enforcement given the Executive Order's focus on levelling the playing field for U.S. companies and protecting U.S. foreign policy goals.

For information on the expected DOJ enforcement guidelines and how companies should respond to the pause on FCPA action, please see our Hogan Lovells publication from February 13, 2025.

Staff guidance on prior reporting of change in certifying accountant

On March 20, the SEC's Division of Corporation Finance added a new compliance and disclosure interpretation (C&DI) related to Item 16F(a) of Form 20-F. Item 16F(a) requires a foreign private issuer to disclose a change in a registrant's certifying accountant that occurred during the two most recent fiscal years or any subsequent interim period. Instruction 2 to Item 16F states that the disclosure called for need not be provided if it has been "previously reported" (i.e., if it has been reported in, among other things, a report under Exchange Act Sections 13 or 15(d)).

Takeaway – New C&DI 110.10 clarifies that if a foreign private issuer includes disclosure in a Form 6-K about a change in accountant that otherwise satisfies the requirements of Item 16F(a) of Form 20-F, then the information has been "previously reported" and the issuer is not required to include Item 16F(a) disclosure in its Form 20-F.

Expansion of non-public review process

On March 3, the SEC's Division of Corporation Finance announced that it had expanded the availability of the non-public review process pursuant to which issuers may voluntarily submit draft Securities Act or Exchange Act registration statements to the SEC for non-public review before their public filing. The accommodations extend the non-public review process to additional registration statement forms, allow issuers to submit draft registration statements regardless of how long they have been subject to Exchange Act reporting requirements (the previous

limit was 12 months), and permit issuers to make their initial submissions without naming the underwriters of the offering.

Takeaway – The announcement increases the ability of U.S.-listed foreign private issuers to advance the SEC's review of registration statements for follow-on issuances on a confidential basis, if only by a single draft submission, before they are required to make public filings. This could be particularly attractive to U.S.-listed foreign private issuers that are not subject to prospectus or offering review requirements in their home market. For further information on the expanded policy, please see our Hogan Lovells SEC update from March 11, 2025.

Changes to NASDAQ's liquidity requirements

On March 12, the SEC approved changes to increase Nasdaq's liquidity requirements for listings in connection with an IPO. Under the amended listing standards, Nasdaq modified Listing Rules 5405 and 5505 to (i) require that a company listing on the Nasdaq Global Market or Nasdaq Capital Market in connection with an IPO satisfy the applicable minimum Market Value of Unrestricted Publicly Held Shares requirement solely from the proceeds of the offering and (ii) make similar changes affecting companies that uplist to Nasdaq Global Market or Nasdaq Capital Market from the U.S. over-the-counter market in conjunction with a public offering. The changes become effective 30 days after the SEC's approval.

Takeaway – When listing on Nasdaq in connection with a U.S. IPO, including through the issuance of American depositary receipts, non-U.S. issuers will not be able to count previously issued shares that are registered for resale in demonstrating compliance with Nasdaq's liquidity requirements.

Extension of action on NYSE stockholder requirement proposal

On March 5, the SEC designated a longer period for action on the NYSE's proposal to amend Section 102.01 of its Listed Company Manual to facilitate foreign private issuer listings. Section 102.01 provides that, in connection with the listing of any issuer from outside of Canada, Mexico or the United States (together, North America), the NYSE has the discretion, but is not required, to consider holders and trading volume in the issuer's home market or primary trading market outside the United States (as long as such market is a regulated stock exchange) in determining whether it meets the minimum stockholder and trading volume requirements for listing. Only North American holders and trading volume are counted for U.S. domestic issuers. The proposed changes provide that the NYSE will include all holders on a global basis and worldwide trading volume in assessing compliance with the minimum stockholder and trading volume requirements.

Takeaway – The change aims to facilitate the listing of non-U.S. companies, which typically sell a portion of their IPO in their home market and, in the NYSE's experience, may have difficulty placing shares with a sufficient number of North American investors to meet current distribution requirements for listing.

Changes to NASDAQ and NYSE reverse stock split rules

In January, the SEC approved two amendments, which are now effective, to the Nasdaq and the NYSE listing rules that significantly affect companies seeking to use reverse stock splits to regain or maintain compliance with Nasdaq's and the NYSE's U.S.$1.00 minimum bid price requirements.

Takeaway – The changes to the Nasdaq rules alter the compliance period framework, eliminate the automatic stay of delisting during appeals in certain circumstances, and restrict the frequency of reverse stock splits to prevent companies from repeatedly using them as part of their minimum bid price compliance strategy. Similarly, the changes to the NYSE rules introduce new limitations on companies' ability to effect multiple reverse stock splits within a specified time frame. For our detailed analysis of these changes, please see our Hogan Lovells publication from February 17, 2025.

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