

Why Foreign Cos. Should Prep For Increased SEC Oversight

By **Tejal Shah** (November 14, 2025)

The U.S. Securities and Exchange Commission under Chairman Paul Atkins has prioritized oversight of foreign-based companies that participate in the U.S. capital markets.

Most recently, the SEC temporarily suspended trading in the securities of 10 foreign-based issuers listed on the Nasdaq suspected of market manipulation. Notably, as the SEC trading suspensions expire, Nasdaq has been announcing that the trading of these issuers' securities continues to be halted "for additional information requested from the company."^[1]



Tejal Shah

The trading suspensions are just the latest in SEC actions concerning foreign-based companies. In June, the commission indicated it is considering tightening eligibility for accommodations available to foreign private issuers.

In August, the SEC announced a settled enforcement action against a U.K. security-based swap dealer for failing to comply with U.S. securities laws, either directly or through substituted compliance. And in September, the SEC announced the formation of a cross-border task force to investigate potential U.S. federal securities law violations related to foreign-based companies.

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 grants the SEC broad authority to suspend trading in any security for up to 10 business days if the commission determines that a trading suspension is required to protect investors and the public interest.^[2]

Often, a trading suspension follows the staff's identification of 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 automatically.^[3]

However, SEC enforcement staff often continue to investigate the potential misconduct after the trading suspension is lifted, and after the investigation is completed, the commission may bring an action alleging violations of the securities laws against the individuals and/or entities involved.

Since Sept. 26, the SEC issued orders suspending the trading on the Nasdaq of 10 Asia-based companies due to suspected market manipulation.^[4] Of these companies, four are headquartered in Hong Kong, three in Singapore, one in Malaysia, one in Indonesia and one in Japan.

According to the SEC's trading suspension orders, "unknown persons" used social media to recommend purchases of these companies' securities, apparently in an effort to "artificially inflate the price and trading volume" of those securities.

As noted above, the SEC's authority to suspend trading is limited to 10 business days. However, the shares of these 10 companies have not been automatically resuming trading after that period ends. Instead, as 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." [5]

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. Thus far, the companies subjected to the SEC trading suspension followed by a Nasdaq trading halt have issued Form 6-Ks indicating they had not participated in market manipulation and will fully cooperate with the SEC and Nasdaq. It is currently unclear if they will ultimately 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 Division of Enforcement is likely also investigating the suspected market manipulation that led to the trading suspensions, and enforcement actions could follow.

Given the SEC's reference in its trading orders to "unknown persons" having conducted the suspected manipulative trading, it is unclear if the activity was conducted by anyone connected to the company or wholly unrelated. In any event, the impact of the trading suspensions and subsequent Nasdaq halts on the companies' ability to continue accessing the U.S. markets is potentially devastating.

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, eight 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

On June 4, the SEC published a concept release soliciting public comment on potential changes to the definition of a foreign private issuer. [6] The SEC publishes concept releases to "obtain public input in advance of making decisions about possible rulemaking," and they "typically outline a topic of concern, identify different potential approaches, and raise a series of questions for public commenters." [7]

The SEC's concept release, as well as comments made by SEC officials, signal that the commission is considering narrowing the eligibility criteria for FPIs, potentially making it harder for FPIs to benefit from such accommodations.

Under current rules, a nongovernment 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 U.K. 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 U.K., 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 Sept. 18, Atkins stated that the "current standard for extending special accommodations to foreign companies" no longer makes sense, given the "significant changes to the population of foreign companies listed in the United States."^[8] He emphasized that the SEC is not trying to disincentivize foreign companies from listing in the U.S.; rather, its 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 U.K.-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 Aug. 6, the SEC announced settled charges against MUFG Securities EMEA, a U.K.-based security-based swap dealer.^[9]

The SEC permits non-U.S. security-based swap dealers 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 a security-based swap dealer in 2021, it elected for substituted compliance with U.K. 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 U.K. 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 security-based swap dealer that elects, but then fails, to comply with home-jurisdiction requirements must comply directly with the U.S. securities laws — and the SEC has shown it will enforce that obligation.

Cross-Border Task Force

On Sept. 5, the SEC announced the formation of the cross-border task force.^[10] 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 press release identifies three areas that the task force will initially focus on: (1) "potential U.S. federal securities law violations related to foreign-based companies," such as pump-and-dump schemes; (2) companies from foreign jurisdictions "where governmental control and other factors pose unique investor risks," including China; and (3) "gatekeepers, particularly auditors and underwriters, which help these companies access the U.S. capital markets."

Given the challenges that the SEC often faces in obtaining information from foreign-based companies, its focus on auditors and underwriters signals that the SEC may attempt to compel information from these U.S.-based intermediaries to obtain relevant materials for its investigation.

The task force is the SEC's first major enforcement initiative announced under Atkins. The commission emphasized that the task force "will consolidate SEC investigative efforts" and involve the collaboration of several divisions across the agency. In the coming months, we can expect the task force to increase scrutiny of foreign-based — in particular, China-based — companies, as well as their U.S.-based auditors and underwriters.

Key Takeaways

In recent months, the SEC has made clear that it is focused on violations by foreign-based companies that participate in the U.S. capital markets. It has stepped up enforcement actions against non-U.S. market participants, including through the new cross-border task force and by issuing trading suspensions in the securities of 10 Asia-based companies.

The trading suspensions and subsequent Nasdaq trading halts can have a potentially devastating impact on a foreign-based company's ability to continue accessing the U.S. capital markets. In order to minimize harm and resume trading, companies should respond to Nasdaq's requests for information in a timely and thorough manner.

The SEC is also considering narrowing the FPI definition, which could remove such accommodations for some foreign companies and subject them to more frequent and expansive U.S. disclosure obligations. These developments make clear that cross-border enforcement is a top priority of the SEC.

An SEC investigation or enforcement action carries the risk of penalties, market access constraints, and other collateral consequences for a company and its directors and officers. As such, foreign-based companies seeking access to U.S. capital markets should ensure compliance with the U.S. securities laws, including by making accurate disclosures.

In addition, foreign-based companies should consider enhancing their compliance programs and strengthening their internal reporting systems to mitigate the risks of an SEC investigation. Finally, given the SEC's focus on gatekeepers, auditors and underwriters retained by foreign-based companies should be prepared to respond to SEC subpoenas in investigations following trading suspensions.

Tejal Shah is a partner at Cooley LLP. She previously served as associate director in the Division of Enforcement at the SEC's New York office.

Cooley resource attorney Bingxin Wu contributed to this article.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-qmmm-holdings-limited>.

[2] <https://www.law.cornell.edu/uscode/text/15/78l>.

[3] 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. <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/investor-5>.

[4] <https://www.sec.gov/enforcement-litigation/trading-suspensions>

[5] <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-smart-digital-group-limited>; <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-qmmm-holdings-limited>; <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-etoiles-capital-group-co-ltd>; <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-platinum-analytics-cayman-limited>; <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-pitanium-limited>

limited; <https://ir.nasdaq.com/news-releases/news-release-details/nasdaq-halts-empro-group-inc>; <https://www.nasdaq.com/press-release/nasdaq-halts-nusatrip-incorporated-2025-10-23>.

[6] <https://www.sec.gov/files/rules/concept/2025/33-11376.pdf>.

[7] <https://www.sec.gov/newsroom/press-releases/2025-82-sec-solicits-public-comment-foreign-private-issuer-definition>.

[8] <https://www.sec.gov/newsroom/speeches-statements/atkins-091825-remarks-investor-advisory-committee-meeting>.

[9] <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-103646-s>.

[10] <https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud>.