

May 12, 2008

**EXECUTIVE DIRECTOR**

Cynthia M. Fornelli

**GOVERNING BOARD**

Chairman  
James S. Turley, Chairman and CEO  
Ernst & Young LLP

Vice Chair  
Michele J. Hooper, Co-Founder  
& Managing Partner  
The Directors' Council

Vice Chair  
Barry C. Melancon, President and CEO  
AICPA

Charles M. Allen, CEO  
Crowe Chizek and Company LLC

Harvey J. Goldschmid, Dwight Professor of Law  
Columbia University

Dennis M. Nally, Chairman and Senior Partner  
Pricewaterhouse Coopers LLP

Ed Nusbaum, CEO and Executive Partner  
Grant Thornton LLP

Lynn S. Paine, John G. McLean Professor  
Harvard School of Business

Barry Salzberg, CEO  
Deloitte & Touche USA LLP

Dave Scudder, Managing Partner  
McGadrey & Pullen, LLP

John B. Veihmeyer, Deputy Chairman  
& Americas Regional Chairman  
KPMG LLP

Jack Weisbaum, CEO  
BDO Seidman, LLP

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Ms. Morris:

**RE: File Number S7-05-08 Foreign Issuer Reporting Enhancements**

The Center for Audit Quality (the CAQ or Center) is an autonomous public policy organization serving investors, public company auditors and the capital markets and is affiliated with the American Institute of CPAs. The CAQ's mission is to foster confidence in the audit process and to aid investors and the markets by advancing constructive suggestions for change rooted in the profession's core values of integrity, objectivity, honesty, and trust. Based in Washington, D.C., the CAQ consists of approximately 800 member firms that audit or are interested in auditing public companies. We welcome the opportunity to share our views on the Securities and Exchange Commission's (the SEC or the Commission) proposing release, *Foreign Issuer Reporting Enhancements* (the SEC Proposal or the Release).

We generally support the Commission's overall efforts to enhance the reporting of foreign private issuers. For the most part, the Center generally agrees with the individual proposals, but we suggest a few refinements and observations that merit the Commission's consideration. The suggested refinements are in the spirit of giving greater recognition to the efforts of regulators in other countries to enhance financial reporting in their home markets by mandating adoption of International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS").

## **ACCELERATING THE REPORTING DEADLINE FOR FORM 20-F ANNUAL REPORTS**

Currently, a foreign private issuer must file its annual reports on Form 20-F within six-months after its fiscal year-end. The Proposal would accelerate the due date for annual reports on Form 20-F to within 90 days after the foreign private issuer's fiscal year-end in the case of large accelerated and accelerated filers; and to within 120 days after the foreign private issuer's fiscal year-end for all other filers, after a two-year transition. While we support the acceleration of the due date for annual reports on Form 20-F, we believe the filing deadline should be within 120 days after the foreign private issuer's fiscal year-end for all foreign private issuers. We believe a single due date of within 120 days after the foreign private issuer's fiscal year-end would simplify compliance and monitoring; provide greater consistency with local statutory deadlines; allow foreign private issuers adequate time to either reconcile to or prepare U.S. GAAP financial statements and translate such information; and still provide investors with information on a much more timely basis than today.

Regarding the proposed two-year transition, we note that an acceleration of the filing deadlines could impose a significant burden for those foreign private issuers that reconcile home country GAAP to U.S. GAAP or voluntarily prepare U.S. GAAP financials due to the time required to gather and provide more information than is required in the home jurisdiction. For example, many foreign private issuers file their annual report on Form 20-F near the existing six-month due date. Therefore, we recommend that the Commission consider providing a three-year transition period. Specifically, we recommend the Form 20-F filing deadline be changed to fiscal years ending on or after December 15, 2011 for all foreign private issuers. We believe this would align the transition date for accelerating the due date of the annual report on Form 20-F with the date when many countries have announced mandatory adoption of IFRS for home country reporting purposes.

## **REQUIRING ITEM 18 RECONCILIATION IN ANNUAL REPORTS AND REGISTRATION STATEMENTS FILED ON FORM 20-F**

The Center supports the eventual elimination of the Item 17 reconciliation in annual reports and registration statements filed on Form 20-F. As more jurisdictions require IFRS, the Item 17 reconciliation becomes less relevant. We note that many countries will be adopting IFRS over the next few years – most notably Canada. We understand that many Canadian registrants (excluding those preparing financial statements under U.S. GAAP or filing on MJDS forms) opt for Item 17 reconciliations in their annual reports on Form 20-F. These foreign private issuers tend to be smaller companies. We believe the stress on their financial accounting and reporting systems of providing the additional Item 18 disclosures and then adopting IFRS, while accelerating the Form 20-F reporting deadline, could be significant. Since the proposed transition would be for fiscal year 2009 (i.e., first fiscal year ending on or after December 15, 2009), a Canadian registrant would be required to provide the extensive U.S. GAAP disclosures required by Item 18 for fiscal years 2009 and 2010 and then adopt IFRS in fiscal year 2011. In this example, the elimination of the Item 17 option would impose a temporary burden in terms of both time and cost. Therefore, we believe the Commission should consider other countries' announced timetables for their mandatory adoption of

IFRS when establishing the compliance date for elimination of the Item 17 reconciliation. Consequently, we believe that a reasonable approach to transition would be to select a compliance date that is effective for fiscal years ending on or after December 15, 2011, and mandate universal compliance from that date forward.

## **CURRENT REPORTING REQUIREMENTS**

While the Commission is not proposing to mandate broader current reporting for foreign private issuers, we believe that current reporting requirements should be given further consideration, preferably in a separate proposal. Ultimately, we believe the scope and timeliness of current reporting requirements for global companies should be consistent regardless of country of domicile. Therefore, we encourage the Commission to work with its regulatory counterparts through the International Organization of Securities Commissions to address the broader issue of current reporting requirements by companies listed across borders.

We recognize that addressing the broader issue of current reporting by global companies could take some time. As an interim step, the Commission might wish to move forward with the Release. To that end, we believe the following matters should be considered.

*Disclosure about Changes in a Registrant's Certifying Accountant* – The SEC Proposal would require foreign private issuers to disclose any change in and disagreements with certifying accountants (i.e., disclosures currently contained in Item 304 of Regulation S-K) in annual reports on Form 20-F and in initial registration statements. We support the disclosure of this information; however, we believe the potential time between the resignation or dismissal of the certifying accountant and the proposed reporting diminishes the value of this disclosure to an investor. In addition, it is unclear to us why the proposed disclosure would not be required in new registration statements for existing foreign private issuers. For example, a change in certifying accountants that occurs after the filing of the Form 20-F, but before the filing of a new registration statement, seemingly would be material to investors in that offering just as it would seem material to investors in an initial offering. Finally, we believe the SEC should consider whether compliance with the proposed requirements could be frustrated or precluded when the disclosure pertains to a foreign-based certifying accountant because of privacy laws that exist in other countries.

*Financial Information For Significant, Completed Acquisitions* – The SEC Proposal would require foreign private issuers to provide the financial information required by Rule 3-05 and Article 11 of Regulation S-X for “highly significant” (greater than 50% significance) acquisitions completed during the most recently completed fiscal year in the Form 20-F. We believe that such information might not be disclosed sufficiently timely to provide investors with meaningful information. In most cases, the possible effect on the market for an issuer’s securities of such a significant transaction will have taken place long before the filing of the annual report on Form 20-F. The financial information (particularly information regarding the earliest of the three years of historical information about the acquired company) will be outdated for the most part by the time that the annual report on Form 20-F is filed. Since the proposed disclosure of this financial information is not on a timely basis, the

time and effort in preparing and auditing such financial information might outweigh the benefits. Furthermore, the foreign private issuer's financial statements would already include disclosure of pro forma combined results of operations as if the acquisition had taken place at the beginning of the year as required by U.S. GAAP or IFRS. Consequently, we do not support this proposal.

## **ANNUAL TEST FOR FOREIGN PRIVATE ISSUER STATUS**

Under the SEC Proposal, a registrant determines its foreign private issuer status only at the end of its second fiscal quarter. If a foreign private issuer fails the proposed second-quarter test, the foreign private issuer will have six months to prepare for reporting in accordance with the SEC requirements applicable to a domestic issuer. Overall, the Center is supportive of testing foreign private issuer status only on an annual basis on the last day of the second quarter of the registrant's fiscal year. For registrants changing status, this early determination would provide adequate time to develop additional systems and secure supplementary resources to prepare U.S. GAAP financial statements. Finally, we also support the proposed amendment that would permit a newly qualifying foreign private issuer to begin to avail itself of the related accommodations immediately.

*Factors Under the Definition of Foreign Private Issuer* – Under Rule 405 of the Securities Act and Rule 3b-4 of the Exchange Act, the definition of foreign private issuer includes several factors or tests. For example, under an asset test if more than 50 percent of a foreign non-governmental entity's assets are located in the United States, then the entity may not qualify as a foreign private issuer. However, there is no formal guidance on measuring or determining the location of assets in applying this test. We believe this lack of guidance creates ambiguity and a greater risk of manipulation considering today's complex and diverse corporate structures (e.g., significant intangible assets or other non-physical assets might be located in certain jurisdictions, but core operations are located in another jurisdiction). Furthermore, the measurements of some assets at a particular location might be at fair value, while others are at historical cost. Therefore, we believe it would be helpful for the SEC to provide clarification regarding valuation approaches and acceptable methodologies (e.g., carrying value, fair value, and push down of goodwill) on how registrants should perform the computational tests.

*Notification of Change in Foreign Private Issuer Status* – An issuer's loss of foreign private issuer status or new qualification as a foreign private issuer during a fiscal year is a significant event as it relates to form and content of financial information provided to investors and other users. We support disclosure of these events.

*Impact on MJDS Filers* – The Proposal asks whether MJDS filers should be required to test their foreign private issuer status on the last day business day of their most recent second fiscal quarter, as well as the end of the fiscal year. We believe that a MJDS filer should only have to test its MJDS and foreign private issuer status once per year, preferably the last business day of its second fiscal quarter. In addition, if a MJDS filer did not qualify as a MJDS filer on the last business day of its second fiscal quarter, then we believe that filer should still be able to use the MJDS forms for Securities Act offerings until the end of its fiscal year.

## SEGMENT DISCLOSURES

We understand that a small number of foreign private issuers avail themselves of the Item 17 accommodation to omit segment data when preparing financial statements that otherwise fully comply with U.S. GAAP. Furthermore, we understand that the accounting standard-setters in other countries are considering an accounting standard that would require segment reporting using a management approach that is substantially equivalent to U.S. GAAP and IFRS. We believe that the proposal to eliminate this accommodation provided by Item 17 should provide a transition period that considers the effective date of the other countries' final or proposed accounting standards on segment reporting. By recognizing accounting standard-setting activities of other countries in developing the transition period for this proposal, it would allow affected foreign private issuers to avoid early adopting new segment disclosures that they would adopt in due course. Consequently, we believe that a reasonable approach to transition would be to select a compliance date that is effective for fiscal years ending on or after December 15, 2011, and mandate universal compliance from that date forward.

## DISCLOSURES ABOUT DIFFERENCES IN CORPORATE GOVERNANCE PRACTICES

The Center supports the SEC Proposal to require disclosure in the Form 20-F about differences that a foreign private issuer might have in corporate governance practices in its local jurisdiction as compared with those of a domestic registrant. We agree that inclusion of this disclosure in the Form 20-F would facilitate locating all corporate governance information in one location to the benefit of investors. In addition, we believe that the SEC Proposal should allow foreign private issuers to report such information consistent with the reporting of such information to the U.S. exchange where their securities are traded. This will minimize the added cost of providing such information.

\* \* \* \* \*

We appreciate the opportunity to comment on the SEC Proposal and would welcome the opportunity to meet with you to clarify any of our comments.

Sincerely,



Cynthia M. Fornelli  
Executive Director  
Center for Audit Quality

cc: SEC  
Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Kathleen L. Casey  
Conrad Hewitt, Chief Accountant  
John W. White, Director of the Division of Corporation Finance