

September 4, 2025

By email: rule-comments@sec.gov

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Concept Release on Foreign Private Issuer Eligibility; File Number S7-2025-01

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is a nonpartisan public policy organization serving as the voice of US public company auditors and in respect of matters related to the audits of public companies. The CAQ promotes high-quality performance by US public company auditors; convenes capital market stakeholders to advance the discussion of critical issues affecting audit quality, US public company reporting, and investor trust in the capital markets; and using independent research and analyses, champions policies and standards that bolster and support the effectiveness and responsiveness to dynamic market conditions of US public company auditors and audits. This letter represents the observations of the CAQ based upon feedback and discussions with certain of our member firms, but not necessarily the views of any specific firm, individual, or CAQ Governing Board member.

The CAQ appreciates the opportunity to share our views and provide input on the Securities and Exchange Commission's ("Commission" or "SEC") Release No. S7-2025-01, *Concept Release on Foreign Private Issuer Eligibility* (the "Concept Release").¹

Overall, the CAQ supports the Commission's efforts to consider whether the current Foreign Private Issuer (FPI) definition should be revised. We understand the Commission's goal to better represent the issuers the Commission intended to benefit from current FPI accommodations while continuing to protect investors and promote capital formation. Since public company auditors serve as independent gatekeepers for companies seeking access to US capital markets, the profession has a strong interest in the Commission's efforts. In this letter, we comment through the lens of the public company auditor and respond to certain specific questions posed in the Concept Release. In this respect, we recommend the Commission consider:

¹ *Concept Release on Foreign Private Issuer Eligibility*; Release Nos. 33-11376 and 34-103176; File No. S7-2025-01 (June 4, 2025) [hereinafter "Concept Release"].



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- The impact of changes to the FPI definition on the financial reporting ecosystem outside the United States;
- Refining the eligibility criteria for the use of International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB) for dual listed registrants that are incorporated outside the United States;
- Providing transition provisions that provide enough time and flexibility to enable preparers to build the appropriate processes, systems and controls to report high quality financial information to investors in the shorter domestic registrant timelines;
- Extending Smaller Reporting Company (SRC) accommodations to FPIs;
- Aligning the Foreign Business definition with the current definition of an FPI; and
- Modifying current FPI accommodations.

Considering the Financial Reporting Ecosystem Outside the United States

The CAQ observes that the potential approaches for revising the FPI definition discussed in the Concept Release could result in the loss of FPI status for a number of registrants that currently report using IFRS-IASB. Depending on the change(s) made to the FPI definition the following entities could also be impacted: (1) dual listed registrants subject to meaningful oversight and reporting requirements by their home country regulators, (2) Canadian registrants that currently file under the Multijurisdictional Disclosure System and (3) registrants that are solely listed in the US but have statutory or other reporting obligations in their home jurisdiction. For example, the data reflected in the Concept Release indicates that incorporating even a relatively low minimum non-US trading volume into the definition could affect more than 50% of the current FPIs across a number of different jurisdictions.

As the Commission considers public comment on the definition of a foreign private issuer, we want to highlight the practical challenges posed to the financial reporting ecosystem outside the US if there is an increase in the number of foreign-incorporated registrants that are required to prepare their financial statements in accordance with US Generally Accepted Accounting Principles (US GAAP) as if they were currently US domestic issuers.

In the years since its mandatory adoption in the European Union, IFRS-IASB has become the primary, and in many cases the only, accounting standards framework used in many jurisdictions. Consequently, IFRS-IASB has become the accounting framework for academic curricula and is what accountants in many



foreign jurisdictions apply as they progress through their career at accounting firms and in the private sector. Additionally, since 2008 when the SEC adopted rules permitting FPIs to present financial statements in accordance with IFRS-IASB without reconciliation to US GAAP, there has been a reduced need in these locales for individuals with US GAAP knowledge and experience.

The potential impacts on demand for accounting staff with US GAAP expertise could affect all stages of the financial reporting process, including (1) the initial recording of transactions and preparation of financial statements by registrant personnel, (2) the need for consultation with external specialists/advisory firms on certain transactions, and (3) the audits of the financial statements. In relation to (2) and (3), this will be particularly important if a significant number of registrants lose status at the same time because of a change to the definition.

We also note that many of the registrants that could lose FPI status under a revised FPI definition will retain a reporting obligation in their home jurisdiction which may require financial statements prepared in accordance with IFRS-IASB. Further, in our experience, most dual-listed FPIs operate their businesses primarily outside the US and may have (1) foreign competitors that report under IFRS-IASB and (2) investors and users familiar with IFRS-IASB prepared financial statements. As such, affected registrants may need to report under both sets of accounting standards.

Consequently, we encourage the Commission to evaluate all alternatives when determining how best to protect the interest of investors and ensure that they are provided with high quality financial reporting, including considering whether changes to the FPI definition that would result in the loss of the ability to use IFRS-IASB, for dual listed registrants in particular, is in the best interest of investors. As such, we recommend the Commission consider whether the benefits of reporting as a domestic registrant outweigh the potential risks and costs associated with the adoption and ongoing application of US GAAP.

If after these considerations the Commission decides to move forward with changes to the FPI definition that result in certain entities losing FPI status, we recommend the Commission provide those impacted registrants with adequate time to build the infrastructure required to effectively report as a domestic registrant such that investor confidence is maintained. This recommendation is further described below in the “Providing Adequate Transition Provisions” section.



Refining the Eligibility Criteria for the Use of IFRS-IASB for Dual Listed Registrants That Are Incorporated Outside the United States

As noted in the Concept Release, when the SEC initially adopted the FPI reporting structure and subsequently modified it, it had the expectation that “most eligible FPIs would be subject to meaningful disclosure and other regulatory requirements in their home country jurisdictions.”² As stated in the Concept Release, this no longer appears to be the case as “the majority of 20-F FPIs today have their equity securities almost exclusively traded in U.S. capital markets.”³

The CAQ appreciates this significant shift in the characteristics of the FPI population over the last 20 years and recognizes the potential need for changes. However, we also note that there remains a significant number of companies that are dual listed on major non-US stock exchanges which require companies to maintain robust disclosure and corporate governance regimes and report primarily under IFRS-IASB. As stated above, the Commission has accepted IFRS-IASB reporting for these entities since 2008. As such, we recommend the Commission consider whether a refined eligibility criteria for the use of IFRS-IASB for such registrants could be an alternative approach. We believe investor feedback would be valuable in developing any such criteria.

Providing Adequate Transition Provisions

As the Commission evaluates potential modifications to the definition or application of FPI status, we recommend that any changes include appropriate transition provisions. We acknowledge that many of the reporting requirements applicable to domestic issuers – including those related to the timing, scope, and format of disclosures under Regulations S-K and S-X — can pose significant operational challenges for issuers that have historically qualified as FPIs. Such challenges include IFRS-IASB to US GAAP conversions, availability of personnel with US GAAP knowledge outside of the US, faster reporting timelines, new quarterly reporting requirements including interim financial statements reviewed by independent auditors under PCAOB standards, quarterly SOX-mandated executive officer certifications, proxy statement reporting, executive compensation disclosures, and Section 16 reporting and liability considerations. These requirements could be particularly costly and challenging for affected FPIs,

² Concept Release, p. 9.

³ Ibid, p. 6



particularly smaller FPIs that lack the infrastructure of large multinational FPIs. As such, a transition which would allow those impacted registrants with sufficient time to adopt the rules and design and implement systems/controls necessary for quality financial reporting in a controlled manner as a domestic registrant may be necessary. An adequate transition period would help avoid disruption in the capital markets and support the Commission's goals of maintaining market integrity, investor protection, and comparability of disclosures.

We urge the Commission to consider the following transition relief:

1. Providing an adequate transition period before effectiveness of any final rule to allow registrants the appropriate time to build the systems, processes, quality characteristics and internal control mechanisms necessary to adhere to the domestic reporting regime. For example, when the Commission shortened the filing deadlines for FPIs in 2008 from six months to four months, it allowed for a three-year transition period before FPIs had to report under the new timeline.⁴ A similar transition period may be useful for the FPI off-ramp that occurs when an FPI loses FPI status during reassessment and is then required to follow domestic reporting timelines. Even in these situations, it would be beneficial for registrants, auditors and investors alike, to have a longer transition period to prepare for the change. Such a transition could include staggered effective dates based on the registrant's size (e.g., public float, filer status, revenue, etc.).
2. Offering limited relief for certain high-impact changes, such as a temporary exemption from quarterly Form 10-Q filings during the first year after effectiveness of the new rules and/or extended deadlines for impacted companies.
3. Providing transition disclosure relief for IFRS-IASB to US GAAP conversions by permitting registrants that historically prepared financial statements under IFRS-IASB to retrospectively revise financial statements under US GAAP only for the most recent comparative period. This would be similar to the accommodation provided for the first-time application of IFRS-IASB as described in General Instruction G of Form 20-F and Section 6340 of the Division of Corporation Finance's Financial Reporting Manual.
4. Clarifying that registrants will not need to provide selected quarterly financial information in their first reported Form 10-K required under Regulation S-K Item 302. Instead, such disclosures would only be required after the registrant has filed all subsequent quarterly reports with the SEC on Form 10-Q in which US GAAP has been applied.

⁴ *Foreign Issuer Reporting Enhancements*, Release Nos. 33-8959 and 34-58620 (Sept. 23, 2008).



5. Further, providing similar relief as noted immediately above for any new registration statement that a registrant may file in the transition period before such quarterly information has been filed.
6. Allowing for a simplified conversion process for active shelf registrations (e.g., F-3 to S-3) so that impacted registrants can easily convert their shelf registrations without the need to file a new registration statement (i.e., not requiring consents, and not triggering the requirement to keep current).
7. Considering other transition impacts that could require IFRS-IASB FPI registrants to adopt US GAAP earlier than the effective date due to registration statement form requirements and providing relief to registrants such that US GAAP reporting would not be required until after an applicable US GAAP effective date.

Other Matters

The Commission requested input on other areas of foreign issuer securities regulation that could be improved. We offer these recommendations for consideration:

- **Extending FPI Eligibility for Smaller Reporting Company (SRC) Accommodations**

Consider extending SRC eligibility to FPI filers who report under IFRS-IASB. While any FPI is eligible to qualify as an SRC in accordance with the existing threshold requirements, in order to take advantage of the disclosure relief as an SRC, an FPI must use domestic forms (e.g., Form 10-K, not Form 20-F) and file financial statements prepared using US GAAP. Considering that smaller issuers are typically more sensitive to compliance costs and given that a number of jurisdictions require only two years of financial statements, the requirement for the third year may be an incremental cost burden to smaller FPI issuers. Accordingly, we recommend extending SRC status to FPIs who file foreign forms (e.g., Form 20-F).

- **Aligning the Foreign Business and the Current FPI Definition if it Remains Relevant**

Question No. 68 notes that the FPI definition is currently similar to, but not the same as, the definition of a “Foreign Business” under Rule 1-02(l) of Regulation S-X.



We note that the basis for consideration of a change to the definition of an FPI is grounded in whether investors are being provided material information for all registrants on a timely basis while the Foreign Business definition is generally used to determine the financial statement requirements for other entity financial statements (e.g., those that might be required under Regulation S-X Rule 3-05 or 3-09). In most cases, an acquired business or an investee may be a private company and would not be expected to have a public listing in any jurisdiction. Further, the need for robust and active oversight of its reporting would not appear to be relevant given the financial reporting requirements for such entities are driven exclusively by the SEC's rules and it is the registrant, not the investee or acquiree, that has the reporting obligation.

In addition, the landscape of the capital markets has evolved since the Foreign Business definition was incorporated into the regulations. The economy has globalized significantly and with it, the ownership of companies is significantly less nationalized. As a result, fewer companies meet the definition of a Foreign Business than an FPI, and therefore fewer investees or acquirees are able to utilize the accommodation available to Foreign Businesses. Further, IFRS-IASB reporting is accepted by the SEC, which was not the case when the definition of a Foreign Business was originally contemplated.

For these reasons, we recommend that the Commission consider revising the Foreign Business definition to align with the existing definition of an FPI (i.e., utilize the current ownership and business contacts tests for an FPI). We also recommend that any additional requirements (e.g., non-US trading volume or listing on a major exchange) that may be proposed and adopted be applicable only to the definition of an FPI.

- **Considering Modifications to the FPI Accommodations**

While we support the Commission's basis for taking a fresh look at the definition of an FPI given the evolution of FPIs over the years since these accommodations were adopted, we also believe there may be alternative ways to ensure that investors are provided with material information for all registrants, including FPIs. For example, a modification to the accommodations for FPIs could be implemented that would include specific requirements for reporting certain material information by entities that are not listed on major non-US stock exchanges which generally maintain robust disclosure and corporate governance regimes and therefore do not currently have a requirement to furnish such material information on a Form 6-K. For example, these disclosures could include communications when the registrant changes auditors and when financial statements can no longer be relied upon. Such modifications to the existing reporting requirements could alleviate the need for revisions to the FPI definition while (1) ensuring that a minimum level of material



information is made available to investors for both domestic and FPI registrants on a timely basis and (2) continuing to recognize and respect other jurisdictions' reporting requirements and oversight.

* * *

The CAQ appreciates the opportunity to comment on the Concept Release, and we look forward to future engagement. As the Commission continues to gather feedback from other interested parties, we would be pleased to discuss our comments or answer questions regarding the views expressed in this letter. Please address questions to Annette Schumacher (aschumacher@thecaq.org) or Dennis McGowan (dmcgowan@thecaq.org).

Sincerely,

A handwritten signature in blue ink that reads "Annette Schumacher".

Annette Schumacher, CPA
Senior Director, Professional Practice
Center for Audit Quality

cc:

SEC

Paul S. Atkins, Chair
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