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Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

8 September 2025

**Re: Request for Comment on Concept Release on Foreign Private Issuer Eligibility
(Release Nos. 33-11376; 34-103176; File No. S7-2025-01)**

Dear Ms. Countryman:

Ernst & Young LLP is pleased to provide comments to the Securities and Exchange Commission (SEC or Commission) on its concept release soliciting public input on potential changes to the definition of a foreign private issuer (FPI). In preparing these comments, we solicited and incorporated views from professionals with roles elsewhere in the EY global network of firms.

We support the Commission's decision to review the FPI definition and consider whether updates are appropriate given developments in the global markets since the definition was last updated. We believe this review is consistent with the SEC's mission to protect US investors, facilitate capital formation and maintain fair, orderly and efficient markets.

We also support the Commission's use of a concept release to explore potential changes to the FPI definition, because it will allow investors and other stakeholders to provide input at an early stage in the rulemaking process on how to balance investor needs, the financial and operational consequences for issuers at risk of losing FPI status and broader implications for the competitiveness of US capital markets.

At this stage, we would support (1) allowing issuers subject to meaningful non-US regulation and oversight to retain FPI status, (2) defining FPI status in a way that avoids unnecessary complexity and volatility, and (3) preserving continuity in the accounting standards used by current FPIs to prepare financial statements.

We believe it is important to highlight the significant costs and efforts that could result from an FPI transitioning to domestic issuer status, including (1) converting from IFRS® Accounting Standards as issued by the International Accounting Standards Board (IFRS-IASB) to US GAAP for SEC reporting purposes, (2) complying with additional quarterly reporting obligations, such as preparing financial statements reviewed by independent auditors, and (3) meeting certain significant Form 8-K reporting requirements, including providing financial statements for acquired businesses required by Rule 3-05 of Regulation S-X and related pro forma financial information.

We recommend that the Commission include detailed questions about these costs and efforts in any rule proposal it may issue to obtain robust feedback to help it determine what changes to make and establish transition provisions. We also recommend certain other changes related to disclosures made by FPIs about certain events.

Potential update to the FPI definition

We believe it is important that any new definition be operational and retain the original intent of the FPI definition to provide accommodations for issuers subject to meaningful non-US regulation and oversight. Certain approaches suggested in the concept release could achieve this if they are tailored to mitigate potential operational challenges and prevent the loss of FPI status for issuers subject to meaningful non-US regulation and oversight, as discussed below.

- ▶ **Foreign exchanges and regulation assessment:** We acknowledge the original intent of the FPI definition contemplated that an FPI would be subject to meaningful non-US regulation and oversight. Despite the various challenges articulated in the concept release, we believe that some level of evaluation of exchange and other regulatory requirements in relevant jurisdictions would be necessary to achieve the Commission's objectives. One way to navigate these challenges may be to perform an initial, high-level analysis to identify exchanges and/or jurisdictions with (or without) meaningful non-US regulation and oversight and request public comment on that list as part of the proposal process. While this approach would require ongoing monitoring, we believe it is unlikely that there would be significant movement from year to year, considering the inherent complexities of reforming regulatory schemes.
- ▶ **Foreign trading volume requirement:** Calculating the split between US and non-US trading volume could result in unintended consequences and unnecessary complexity. For example, trading volume used to determine whether a particular issuer maintains its FPI status could fluctuate due to evolving market conditions that a registrant is not able to control or influence (e.g., macroeconomic and geopolitical factors). Such a requirement also could create year-over-year volatility in FPI status determinations, which would add uncertainty for issuers and investors. Such volatility could be partially mitigated by using a mechanism similar to the public float test in the accelerated filer definition.¹ However, the consequences of losing FPI status are generally more severe than those associated with, for example, transitioning from an accelerated filer to a large accelerated filer, which would indicate that the mechanism used to mitigate volatility should be stronger. We also note the SEC's acknowledgment that depending on the foreign trading volume threshold selected, there may be an opportunity for issuers to strategically maneuver around the threshold necessary to maintain FPI status.

Due to the significant consequences of losing FPI status and the potential challenges associated with some of the alternatives described in the concept release, we also recommend that the Commission seek stakeholder input on whether it should establish a mechanism for issuers expecting to lose status to appeal that determination based on their specific facts and circumstances.

¹ The exit thresholds based solely on public float for large accelerated filer status and accelerated filer status are set at 80% of the respective entry thresholds and have to be applied at every annual status redetermination date.

Transition considerations

As noted in section IV.C of the concept release and discussed above, the transition from FPI to domestic issuer status could involve substantial changes in reporting obligations, financial statement preparation and regulatory compliance. Accordingly, we believe a thoughtful and appropriately staged transition framework would be essential to mitigate disruption, preserve investor protection and support continued access to US capital markets.

We offer the following recommendations regarding transition.

Exemptive authority to allow issuers that lose FPI status as a result of a change in definition to retain use of IFRS-IASB

We believe the Commission could use its exemptive authority to allow existing issuers that lose FPI status due to a definitional change but still meet the original definition to continue reporting under IFRS-IASB using domestic forms.² This relief could address one of the most significant concerns we anticipate issuers will raise in response to the concept release.

Converting to US GAAP would likely require an issuer that loses FPI status to make substantial internal changes, including to personnel and systems, training and education (particularly in markets where the supply of suitably qualified US GAAP expertise is limited), and amendments to agreements, such as those that include debt covenants. Therefore, we also expect many issuers to seek external support from firms offering US GAAP expertise, and audit fees would likely increase significantly in the year of conversion, with more moderate increases in subsequent years.

We recommend that the Commission solicit investor and other stakeholder feedback during the proposal process to assess whether avoiding these potentially significant costs and efforts justifies allowing affected issuers to continue reporting under their current accounting standards.

Transition period for adoption of changes in the FPI definition

We recommend providing issuers that lose FPI status due to a change in definition with at least a three-year transition period.³ This extended timeline would give issuers sufficient time to evaluate the implications of losing FPI status and take the necessary actions to adapt to reporting on domestic forms.

The SEC should also consider a phased-in approach based on the issuer type, recognizing that smaller issuers may need additional time to transition due to limited resources. As part of this approach, the SEC should provide implementation guidance to help issuers whose filing status has changed.

² The Commission has allowed FPIs to report using IFRS-IASB without reconciliation to US GAAP since 2008.

³ The Commission also used a three-year transition period when it shortened the annual report filing deadline for FPIs from six months to four months in 2008 (see Release No. 33-8959, *Foreign Issuer Reporting Enhancements*).

Additionally, the Commission may consider offering relief, such as temporary exemption from quarterly Form 10-Q filings or an extension of deadlines for filing Form 10-K, to issuers that lose status due to a change in definition but choose to begin using domestic forms earlier than required. This incentive may help facilitate an orderly transition.

Compliance date for a subsequent FPI status loss unrelated to changes in the FPI definition

Rule 405 of the Securities Act of 1933 and Rule 3b-4(e) of the Securities Exchange Act of 1934 require that once an issuer fails to qualify for FPI status, in accordance with the shareholder or business contacts tests at its annual redetermination date, it would be subject to domestic reporting requirements starting on the first day of the fiscal year following the redetermination date.

For example, a calendar-year issuer that determines on 30 June 2025 it no longer qualifies as an FPI would become subject to domestic reporting requirements on 1 January 2026. Therefore, it would file its annual report for the year ended 31 December 2025 on Form 10-K rather than Form 20-F, and financial statements included in the Form 10-K would be required to conform with US GAAP for all periods presented.

We recommend that the Commission solicit feedback on whether the current timeline remains appropriate given the significant challenges associated with losing status.

Other matters

Smaller reporting company eligibility

While any FPI may qualify as a smaller reporting company (SRC) under the current rules, doing so requires the use of domestic forms (i.e., Form 10-K) and financial statements prepared in accordance with US GAAP. If the SEC proposes changes to the FPI definition, we recommend it also consider extending SRC eligibility to the remaining FPIs that otherwise meet the criteria for being an SRC. Although FPI status provides certain accommodations, none of them are specifically tailored to issuer size. We believe the SEC has an opportunity to incorporate size as a factor in determining the disclosure requirements, consistent with the approach used for domestic issuers.

Modernization of Form 6-K

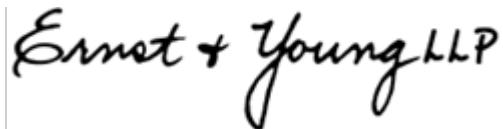
We suggest the SEC consider amending Form 6-K to add requirements for FPIs to disclose, on a timely basis, when they change auditors⁴ and when their financial statements can no longer be relied on, which would align more closely with the disclosures that domestic filers are required to provide in Form 8-K. We believe both of these disclosure items are foundational to the current reporting system (i.e., Form 8-K) applicable to domestic issuers but should be issuer agnostic.

⁴ Auditing Standard 1310, *Notification of Termination of the Auditor-Issuer Relationship*, adopted by the Public Company Accounting Oversight Board and effective in December 2026, requires audit firms to report changes in an FPI's certifying accountant to the SEC staff on a timely basis. However, there is no existing SEC requirement for FPIs to disclose that information to investors until their next annual report.

* * * *

We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,



Ernst & Young LLP

Copy to:

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Mr. Kurt Hohl, Chief Accountant, Office of the Chief Accountant
Ms. Heather Rosenberger, Chief Accountant, Division of Corporation Finance