

# Reminder for Foreign Private Issuers to Test Qualification Status

## Background

Annually, Foreign Private Issuers (“FPIs”) must pass certain Securities and Exchange Commission (“SEC”) requirements to continue to qualify for the eligible FPI status. These reporting requirements are measured as determined by the results at the end of the FPIs most recently completed second fiscal quarter. For FPIs with calendar year-ends, the annual qualification test must be performed using factors present on the last day of June. Additionally, with many Special Purpose Acquisition Companies (“SPACs”) trying to find quality target companies, their target searches are expanding to markets outside of the United States. Combining with a non-US target company often means encountering different accounting and reporting standards and regulations that require navigation throughout the De-SPAC process, which could result in the combined company qualifying as an FPI.

## FPI Status and Annual Qualification Test

The SEC provides FPIs eased financial reporting requirements, including the following:

- No requirement to use US GAAP as the accounting basis
- No quarterly reporting requirements
- Fewer requirements to submit 8K-related filings
- FPI CEOs and CFOs need to certify internal controls and financial reports (SOX Sections 302 and 906) annually on Form 20-F, rather than every quarter like domestic issuers
- Longer filing deadlines

Companies must test their qualification as an FPI 30 days prior to their initial filing and annually as of the last day of the second quarter. The SEC's qualification test specifies the following steps within the Securities Act Rule 405 and the Exchange Act Rule 3b-4:

**Test 1: Location of incorporation and owners of voting securities** – The company is incorporated outside the United States and more than half of its voting securities are owned of record by non-US residents. Companies that meet these requirements automatically qualify as FPIs.

**Test 2: Location of executive officers and directors, assets, and business** – If the company is incorporated outside the United States, but fails Test 1, it can still qualify as an FPI if all three of the following factors are **false**:

- The majority of the company's executive officers or directors are US citizens or residents.
- More than 50% of its assets are located in the United States.
- The company's business is administered principally in the United States.

If the FPI does not meet the qualifications above, the FPI will be required to follow US domestic SEC requirements starting the first day of the next fiscal year. For example, the change in reporting impacts the FPI's reporting for the year following the fiscal year in which it failed the FPI qualification test. The SEC recently has had increased scrutiny of FPI determinations noting that it is important to have adequate documentation regarding FPI conclusions reached.

## **Resulting Accounting and Financial Reporting Actions Required**

We at Centri can help you think through the accounting and financial reporting related impact of failing the FPI qualification test with the key actions required during the 3rd and 4th quarters and thereafter. Note the following list is not all-inclusive and you should discuss your specific situation with your accounting, tax, and legal professionals.

### **Action: Prepare a conversion from IFRS / home country GAAP to US GAAP**

- **What you need to do:** Review your trial balance and IFRS basis financial statements to understand and document key differences between IFRS / home country GAAP and US GAAP. Differences will need to be documented and journal entries posted to the current year for incorporation in quarterly and annual filings. The financial statement footnotes for IFRS financial statements are generally more extensive and need to be condensed and summarized for US GAAP financial statement reporting.

- **How we can help:** Centri can perform a detailed review of your existing trial balance and current period transactions and prepare a full conversion of your financial statements to US GAAP. We can assist with preparing audit documentation, including detailed journal entries and reformatting the related financial statement disclosures required.

**Action: Assess whether any newly issued US GAAP standards need to be implemented**

- **What you need to do:** As part of your US GAAP conversion, special attention should be made to the new US GAAP standards for credit losses, leasing, and revenue recognition. Larger conversion efforts may be required for these two standards including separate memos and scoping considerations.
- **How we can help:** Centri can perform a scoping exercise related to the complicated US GAAP standards and assist your team with all implementation efforts required. We can assist with preparing the memos and supporting documentation for your auditors, including detailed journal entries and related financial statement disclosures.

**Action: Incorporate new financial reporting deadlines into your financial reporting calendar and overall close process**

- **What you need to do:** Assess the existing timeline for your financial statement close process and incorporate new reporting deadlines. Determine if there are any expediciencies or timing concerns when the current close timeline is not able to be completed within the SEC reporting deadlines.
- **How we can help:** Centri has the expertise to be your financial reporting department and quality control reviewer. We will help you coordinate, draft, and file a wide variety of your recurring SEC forms, including 10-K, 10-Q, 8-Ks.

**Action: Assess Sarbanes-Oxley internal control requirements**

- **What you need to do:** Management of US domestic reporting companies are required to assess their internal control environment on a quarterly basis in their Form 10-Q, rather than an annual basis for FPIs (barring any material changes to the company's ICFR). There are also additional SOX requirements that could conflict with applicable foreign law or corporate governance practices, which need to be considered.
- **How we can help:** Centri can help implement a sustainable SOX program in accordance with the COSO 2013 internal control framework, including process documentation, risk, and control identification. Our team can provide ongoing support for management's assessment for ICFR, including training support to establish accountability for control and process owners to ensure companies are able to meet quarterly reporting requirements.

**Action: Compare US domestic filer board and committee requirements to your current structure**

- **What you need to do:** Resolve gaps in board and committee requirements. Hire/restructure as necessary in order to comply with US domestic filer requirements, such as having an independent audit committee board member.
- **How we can help:** Centri can guide you through the process of vetting and selecting board members and provide valuable resources for a strong corporate governance structure that addresses your needs and risks.

**If you are already a FPI filer, it's also important to assess common trigger events that cause loss of FPI status such as:**

- U.S. shareholder concentration changes
- U.S.-heavy management structure
- U.S.-based operations expansion
- De-SPAC mergers involving U.S. sponsor control

## Summary

As the SEC reporting requirements for US domestic filers represent a significant change for FPIs, companies should monitor their shareholder base on at least a quarterly basis to avoid any surprises.

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