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September 3, 2025

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

Re: Concept Release on Foreign Private Issuer Eligibility (Release Nos. 33-11376; 34-103176)

Dear Ms. Countryman:

Nasdaq, Inc. ("Nasdaq")[1] appreciates the opportunity to comment on the Commission's Concept Release on Foreign Private Issuer Eligibility (the "FPI Concept Release").[2] Nasdaq operates regulated entities in the United States, Canada, the Nordics, and the Baltics, which are home to over 5,300 listings worldwide. Nasdaq entities, including The Nasdaq Stock Market LLC (the "Nasdaq Stock Market"), which is a self-regulatory organization mandated under the Securities Exchange Act of 1934 (the "Exchange Act") to protect investors and the public interest, drive the global economy and provide investment opportunities for institutional and Main Street investors.

Nasdaq applauds the Commission for focusing on the issues raised in the Concept Release. As described more fully below, Nasdaq believes that the foreign private issuer regime generally works well and benefits U.S. investors, and therefore believes that any adjustments should be targeted to specific, observed problems. In that regard, Nasdaq has taken proactive steps to address concerns with trading in the securities of certain foreign companies. Specifically, Nasdaq submitted to the SEC proposed changes to its initial listings qualification rules to require increased offering proceeds for companies based in China seeking to list on Nasdaq.[3] These proposed changes are intended to help address extreme volatility and

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[1] Nasdaq (Nasdaq: NDAQ) is a global technology company serving corporate clients, investment managers, banks, brokers, and exchange operators as they navigate and interact with the global capital markets and the broader financial system. We aspire to deliver world-leading platforms that improve the liquidity, transparency, and integrity of the global economy. Our diverse offering of data, analytics, software, exchange capabilities, and client-centric services enables clients to optimize and execute their business vision with confidence.

[2] Concept Release on Foreign Private Issuer Eligibility, Release Nos. 33-11376; 34-103176, (June 4, 2025) 90 FR 24232 (June 9, 2025).

[3] See Proposed Rule Change SR-NASDAQ-2025-069 (September 3, 2025). Nasdaq has also filed Proposed Rule Change SR-NASDAQ-2025-068 (September 3, 2025) to address concerns more broadly with microcap

potential trading market manipulation observed in connection with certain Chinese microcap companies, although they will not achieve their full potential impact unless other exchanges also take similar steps. However, the Commission is rightly recognizing that there are certain concerns that may need to be addressed by the Commission itself.

Since shortly after the birth of the 1934 Exchange Act, rules have allowed special accommodations for foreign issuers in order to attract foreign registrants to U.S. markets, give U.S. investors access to those foreign companies, and ensure that these investors retain the protection of U.S. securities laws.[4] Public markets are a powerful engine for economic progress. By going public, FPIs can access the capital needed to innovate, grow, and create jobs both in their home country jurisdictions and in the United States. The relaxed disclosure and filing requirements afforded to FPIs are an incentive for foreign companies to list on U.S. exchanges. Companies classified as FPIs currently benefit from significant accommodations. For example, FPIs are not subject to Section 16(a) of the Exchange Act's beneficial ownership reporting requirements, the SEC's proxy rules, Regulation FD, and say-on-pay requirements. They also benefit from longer reporting deadlines, no requirement to file quarterly reports or disclose significant current events on Forms 8-K, and an ability to report their financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

The Commission historically has sought to balance the information needs of investors with the public interest served by opportunities to invest in a variety of securities, including foreign securities.[5] This framework promotes a stable, predictable and trustworthy market environment, attracting high-quality non-U.S. companies that are aligned with U.S. investor expectations. The FPI framework, generally, strikes an appropriate regulatory balance for most foreign issuers. Based on Nasdaq's research, foreign companies listed on the U.S. national securities exchanges have a combined market capitalization in excess of $13 trillion,[6] which represents a significant portion of the total U.S. equity market capitalization ($62.2 trillion as of January 2025). Of this total, more than two thirds is held by non-U.S. investors. Attracting the inflow of capital into the United States by these foreign investors adds to the overall liquidity of the U.S. markets, which makes the U.S. markets more appealing to the benefit of all companies that trade here.

In addition, access to international equities helps U.S. investors to diversify risk, including during economic downturns and uncertainty. The table below demonstrates performance of FTSE indexes of large foreign economies over the last 25 years. Notably, during recessionary periods, international equities outperformed U.S. companies, providing protection to U.S. investors with portfolios that include international equities.

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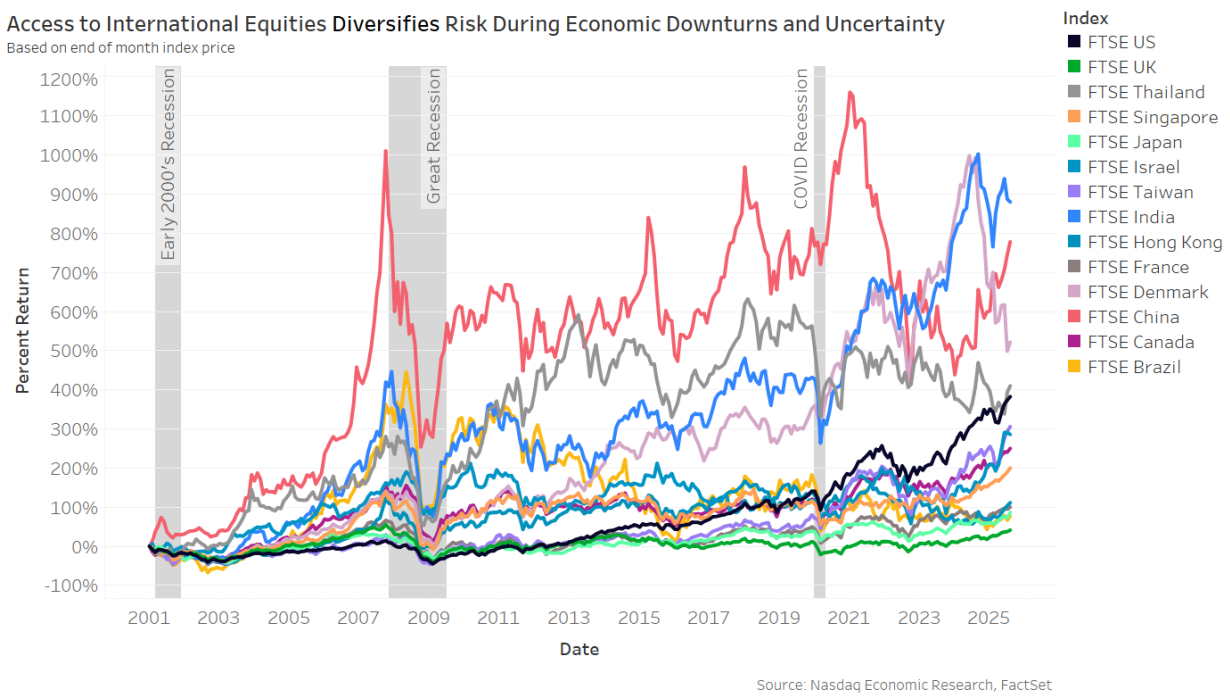
companies. This proposed rule change requires companies applying to list on Nasdaq to have a $15 million minimum market value of publicly held shares under the net income standard, and the rule further provides for an accelerated process for suspending and delisting companies that are non-compliant with numeric listing requirements and have a market value of listed securities below $5 million.

[4] This framework was last amended in 1999 to focus more closely on the actual beneficial ownership of the foreign company's securities, rather than the holders of record.

[5] See FPI Concept Release at 24234, footnote 25.

[6] Includes all listed companies incorporated outside the U.S., except for those headquartered in the U.S.



The adoption of changes to the FPI framework could create greater regulatory uncertainty and increase the cost and complexity of accessing the U.S. capital markets for non-U.S. companies. For example, requiring foreign companies to list on a home market before exemptions become available might make the companies view a U.S. listing as duplicative and unnecessary. They therefore may opt not to list in the United States or follow U.S. regulation. Given the benefits of international diversification, however, U.S. investors would still pursue these same securities, but in more costly and less regulated environments. In addition, U.S. investors could still purchase foreign securities on foreign markets through their existing accounts, or through a foreign intermediary; however, they would incur greater transaction costs in doing so. These U.S. investors also would be subject to greater risks related to their investments because they will be limited in their rights by the laws of the jurisdiction where the company lists and that may be applicable to the intermediaries.

For these reasons, Nasdaq believes that the current FPI regime is generally well-calibrated and that significant changes should not be made. Nonetheless, Nasdaq acknowledges that there may be regulatory gaps with certain jurisdictions and, to the extent that the Commission concludes that there are such gaps, Nasdaq encourages the Commission to address that concern specifically, rather than by making wholesale changes. Nasdaq supports stricter rules for companies from countries where the Commission determines there are heightened risks for investors. Further, to ensure companies cannot easily circumvent any new rules, the Commission should consider not just where a company is incorporated and headquartered, but should also look holistically at where the company is from, including where its directors, officers and employees reside, where its assets are held, where it earns revenue, and the citizenship and residency of any controlling beneficial owners.

Once the Commission identifies these heightened risk jurisdictions, it could exclude companies from those jurisdictions from the FPI definition and deny those companies the benefits available to FPIs. Instead, companies from these jurisdictions that the Commission identifies would be subject to the same requirements that are applicable to domestic companies.

The adoption of changes to exclude companies from heightened risk jurisdictions from the FPI definition would also impact exchange listing standards. Exchanges currently allow companies with FPI status to follow home-country corporate governance practices instead of complying with the exchange listing standards for domestic companies, including majority independent board; independent board committees (e.g., audit, compensation, and nominating/governance committees); and shareholder approval for certain share issuances. Creation of a list of heightened risk jurisdictions whose issuers are not FPIs would subject companies from these jurisdictions to all corporate governance requirements of the U.S. national securities exchanges, and thereby help reduce any gap in the current FPI regime with respect to the governance of companies from these jurisdictions. The publication of such a list of countries could also help Nasdaq and other exchanges adopt and apply other rules, including quantitative measures, calibrated specifically for the risks presented and also allow brokers and other market participants to impose additional requirements on their customers where they consider it appropriate.[7]

As the Commission considers revising its FPI rules, it must also focus on the fact that many of the concerns raised about foreign companies actually relate to secondary market trading in the companies' securities, and not necessarily to the companies themselves. In particular, Nasdaq believes it is important for the Commission to protect our financial borders from non-U.S. entities trading in our markets by adopting rules that shed light on trading through nondisclosed foreign omnibus accounts. Such accounts are maintained at U.S. broker dealers for their foreign financial institution clients. The identities of a foreign financial institution's underlying customers and/or the ultimate beneficial owners are unknown to the U.S. broker-dealer because of the omnibus account structure.[8] Adopting rules on foreign omnibus trading would enhance the transparency of cross-border capital flows and level the playing field by ensuring that foreign investors trade on the U.S. markets with the same level of oversight and transparency as U.S. investors.

Current regulation may incentivize U.S. broker-dealers to use the foreign omnibus account structure in part because it eases certain of their own regulatory compliance obligations under the Bank Secrecy Act ("BSA").[9] Nasdaq Regulation, however, often refers to the SEC and FINRA instances of potential manipulation of microcap securities through foreign omnibus accounts, often from jurisdictions with weak regulatory oversight. The opacity of these accounts complicates trade surveillance, including efforts to reduce false positives, track a trader's activity over time, or take decisive action when manipulation is detected. This harms U.S. issuers and retail investors most directly. Furthermore, while Nasdaq Regulation brings appropriate enforcement action against its members that fail to reasonably supervise

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[7] For example, Nasdaq's recently filed Proposed Rule Change SR-NASDAQ-2025-069 (September 3, 2025) is tailored to address the risks presented by companies based in China. The framework of this proposed rule change could be repurposed and retailored to address risks presented by other companies based in countries identified as heightened risk jurisdictions.

[8] SEC Staff Bulletin: Risks Associated with Omnibus Accounts Transacting in Low-Priced Securities, *available at* https://www.sec.gov/tm/risks-omnibus-accounts-transacting-low-priced-securities.

[9] BSA guidance considers the foreign financial institution that holds the omnibus account as the U.S. broker-dealer's customer, and not the underlying accountholder. Question and Answer Regarding the Broker-Dealer Customer Identification Program Rule (31 C.F.R. 103.122) (Oct. 1, 2003), *available at* https://www.sec.gov/divisions/marketreg/qa-bdidprogram.htm; FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Covered Financial Institutions," FIN-2020-G002 (Aug. 3, 2020).

for potentially manipulative trading through foreign omnibus accounts,[10] U.S. regulators have limited jurisdiction over the foreign financial institutions or their underlying customers. Nested omnibus accounts – nondisclosed omnibus accounts within nondisclosed omnibus accounts – exacerbate these issues.

The Commission should impose restrictions on nondisclosed foreign omnibus accounts to address the risks posed by such accounts and put foreign and U.S. investors on equal footing. Requiring U.S. broker-dealers to accept orders only from foreign omnibus accounts that include identifying information (anonymized or actual) for the underlying accountholder would address many of these surveillance challenges. Any such policy change should also consider restrictions on nested omnibus accounts. Additionally, prohibiting orders from nondisclosed omnibus accounts located in high-risk jurisdictions and/or in microcap securities would target the most problematic trading.

Lastly, Nasdaq believes it is important to assess any potential changes to the FPI regime in light of the emerging market innovations in blockchain technology, share tokenization, continuous trading, and cross-border trading. These advancements create a complex dynamic that could significantly reshape U.S. capital market competitiveness. The convergence of these technological trends with the FPI regulatory changes could have a significant negative impact on the traditional advantages of the U.S. capital markets – deep liquidity, regulatory clarity, and a strong investor base – making these advantages less compelling relative to the increased compliance costs. This scenario could accelerate the development of alternative global capital market centers and potentially fragment the existing U.S.- dominated system.

Conclusion

Any modifications to the FPI regime should preserve the fundamental benefits that attract foreign capital and provide U.S. investors with valuable international investment opportunities, while ensuring appropriate safeguards are in place. Nasdaq respectfully urges the Commission to exercise caution in making wholesale changes to the FPI framework, which has successfully facilitated over $13 trillion in foreign market capitalization on U.S. exchanges and provided significant diversification benefits to American investors. The current framework generally strikes an appropriate regulatory balance that attracts high-quality international companies while maintaining investor protections. To the extent the Commission concludes that regulatory gaps exist, Nasdaq recommends a narrowly tailored approach that addresses specific jurisdictional risks rather than broad systemic changes. In particular, we encourage the Commission to implement heightened requirements only for companies from jurisdictions where the Commission identifies elevated investor risks, including through a holistic evaluation of corporate presence beyond mere jurisdiction of incorporation and headquarters. As an example of this approach, Nasdaq proactively submitted to the Commission enhancements to its listing rules targeted to address the specific risks posed by companies based in China and we believe that this approach can be replicated for other heightened risk jurisdictions. In addition, we encourage the Commission to address the opacity and manipulation risks posed by nondisclosed foreign omnibus accounts through enhanced transparency requirements and restrictions on nondisclosed foreign omnibus accounts. Finally, to maintain the leadership of the U.S. capital markets in this fast-changing world, we encourage the SEC to lead by innovation and explore the interplay of the FPI framework with current and evolving regulatory frameworks around trading technology, tokenized shares, and cross-border trading, while prioritizing investor protection and maintaining the unmatched draw of the U.S. capital markets and listing venues.

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[10] Nasdaq Matter No. 2022.08.0414 (Jan. 6, 2025), *available at* https://www.nasdaq.com/docs/2025/01/07/DisciplinaryActions_NQ_Velox-Clearing_1.6.25.pdf.

Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely yours,

John A. Zecca