Client Alert | US Public Company Advisory

SEC Exempts FPI Directors and Officers from Section 16 Reporting Obligations in Certain Jurisdictions

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On March 5, 2026, in advance of the March 18th compliance deadline, the U.S. Securities and Exchange Commission ("SEC") issued an order granting directors and officers of certain foreign private issuers ("FPIs") an exemption from Section 16(a) filing requirements.[1] The exemption is available to directors and officers of an FPI incorporated in a "qualifying jurisdiction" and subject to a "qualifying regulation" as further discussed below.

Background

The Holding Foreign Insiders Accountable Act ("HFIAA"), enacted on December 18, 2025, amended Section 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act") to require every director and officer of an FPI with a class of equity securities registered under Section 12 of the Exchange Act to file Section 16 reports disclosing their ownership of and trades in the shares of those companies. On February 27, 2026, the SEC adopted amendments to Exchange Act Rules 3a12-3(b) and 16a-2, and Forms 3, 4, and 5 to reflect the requirements of the HFIAA. Section 16(a)(5) of the Exchange Act, as added by the HFIAA, authorizes the SEC to conditionally or unconditionally exempt any person or class of persons from the requirements of Section 16(a) if the Commission determines that the laws of a foreign jurisdiction impose "substantially similar" requirements.

Who Qualifies for the Exemption

Under the SEC's order, the exemption is available to directors and officers of an FPI that is:

(i) incorporated or organized in a "qualifying jurisdiction", and

(ii) subject to a "qualifying regulation", either of the same jurisdiction or of a different qualifying jurisdiction.[2]

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1 The order is available here.

2 For example, directors and officers of an FPI that is incorporated in Canada with securities registered in Germany and subject to Article 19 of EU MAR that otherwise satisfy the conditions of this order would be exempt from Section 16(a) reporting obligations.

Qualifying Jurisdictions:

- Canada,
- Chile,
- the European Economic Area,[3]
- the Republic of Korea,
- Switzerland, and
- the United Kingdom.

Qualifying Regulations: The Commission identified a qualifying regulation from each qualifying jurisdiction, which it determined includes substantially similar requirements to the requirements of Section 16(a) based on five criteria: persons covered, securities covered, transactions covered, the content and timeliness of required reports, and public availability of reports in English.

The qualifying regulations are:

- Canada's National Instrument 55-104 — Insider Reporting Requirements and Exemptions (supported by National Instrument 55-102 – System for Electronic Disclosure by Insiders (SEDI) and companion policies);
- Articles 12, 17, and 20 of the Chilean Securities Market Law (Ley de Mercado de Valores, Ley No. 18,045) and General Rule (Norma de Carácter General) No. 269;
- Article 19 of the EU Market Abuse Regulation (Regulation (EU) No. 596/2014, as amended by Regulation (EU) No. 2024/2809) (including, as applicable, implementing legislation and regulations adopted by the European Union's member states);
- Article 173 of the Republic of Korea Financial Investment Services and Capital Markets Act and Article 200 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act;
- Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange; and
- Article 19 of the UK Market Abuse Regulation (Regulation (EU) No. 596/2014), as it forms part of United Kingdom domestic law pursuant to the European Union (Withdrawal) Act 2018.

Conditions for application of the exemption

The exemption is subject to two conditions:

1. **Reporting under qualifying regulation**: Any director or officer seeking to rely on the exemption must report their transactions in the issuer's securities as required under the qualifying regulation to which they are subject. This condition is intended to ensure that any director or officer that does not fall within the defined category of reporting persons under the applicable qualifying regulation will still be required to file Section 16(a) reports; and

[3] As of the date of this exemptive order, the European Economic Area consists of the 27 member states of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden) as well as Iceland, Liechtenstein, and Norway. Any country that joins the EEA would also be required to adopt EU MAR (and therefore this exemptive relief would apply to directors and officers of its FPIs), while a country that leaves the EEA may no longer be subject to EU MAR (and directors and officers of its FPIs would no longer be eligible for this exemptive relief to the extent the country is no longer subject to the EU MAR).

2. **English-language availability**: Any report filed pursuant to a qualifying regulation must be made available in English to the general public within no more than two business days of its public posting. If an English version of the report cannot be filed through an appropriate regulator's or listing venue's online database, the report may be made publicly available on the company's website.

Key Takeaways

- **FPIs incorporated in a qualifying jurisdiction should assess immediately** whether they and their directors and officers are subject to a qualifying regulation that would permit reliance on the exemption.

- **The English-language availability requirement is critical:** reports filed under a qualifying regulation must be publicly available in English within two business days of posting, either through a regulatory database or the company's website.

- **Directors and officers who do not fall within the defined category of reporting persons under the applicable qualifying regulation** will still be required to file Section 16(a) reports with the SEC. FPIs qualifying for the exemption should therefore still identify all Section 16 reporting persons under the Exchange Act definitions and consider whether each such reporting person already reports pursuant to the applicable qualifying regulation.[4]

- **Potential future exemptive relief**: The order notes that the Commission may, in future orders, extend exemptive relief to directors and officers of FPIs incorporated in or subject to regulation in other jurisdictions that impose substantially similar requirements.

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[4] "Officers" for purposes of Exchange Act Rule 16a-1(f) (those who are required to file Section 16 reports) include the FPI's principal executive officer (i.e., CEO), principal financial officer (i.e., CFO), individuals "in charge" of any "principal" business unit/division/function, and any other individual with a significant "policy-making function." The "officer" definition for Section 16 also technically includes the FPI's "principal accounting officer," or if there is none, the FPI's controller (which position is explicitly not picked up by Exchange Act Rule 3b-7, and is often not called out in practice in the annual report on Form 20-F). Some FPIs may determine that the "principal accounting officer" role is performed by their CFO, such that the same person performs both the "principal financial officer" and "principal accounting officer" roles and the Section 16 rules do not in turn reach their controllers or other individuals with similar titles.

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