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SEC Issues Exemptive Relief from Section 16(a) Reporting



March 2026

Exemptive relief covers FPIs incorporated in UK, EEA, Canada, Switzlerland, Korea and Chile subject to "substantially similar" regulations in those jurisdictions

Less than two weeks before the first filings are due, the U.S. Securities and Exchange Commission (the "SEC") has issued an order exempting directors and officers of foreign private issuers ("FPIs") incorporated or organized in a "qualifying jurisdiction" and subject to a "qualifying regulation" from filing reports required by the Holding Foreign Insiders Accountable Act (the "HFIAA").

The qualifying jurisdictions are: the United Kingdom, the European Economic Area (the "EEA"), Switzerland, Canada, Chile and the Republic of Korea, and the qualifying regulations are regulations in each of those jurisdictions that have been deemed "substantially similar" to Section 16(a) of the U.S. Securities Exchange Act of 1934 ("Exchange Act").

As discussed in more detail in our client briefing, the HFIAA amended Section 16 to require, for the first time, every person who is a director or an officer of an FPI with a class of equity securities registered pursuant to Exchange Act Section 12 to file Section 16(a) reports, with the first forms due by March 18, 2026. On February 27, 2026, as discussed in our client briefing, 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.

The HFIAA expressly provides the SEC with the authority to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the requirements of Section 16(a) if it determined that the laws of a foreign jurisdiction apply "substantially similar" requirements to such person, security, or transaction.

The new exemptive relief is available to directors and officers of an FPI that is either:

- incorporated or organized in a qualifying jurisdiction and subject to a qualifying regulation of the same jurisdiction; or
- incorporated or organized in a qualifying jurisdiction but subject to a qualifying regulation of a different jurisdiction.

Consequently, the exemptive relief will likely not be available to an FPI that is only listed in the United States, as the qualifying regulations listed in the order usually only apply if the issuer's common equity is publicly listed in one of the qualifying jurisdictions.

The exemption granted by the order is also subject to the following conditions:

- Any director or officer seeking to rely on the exemption is required to report their transactions in the issuer's securities as set forth under the qualifying regulation to which they are subject; and
- Any report filed pursuant to a qualifying regulation is 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 could be made publicly available on the company website.

Further, any director or officer under SEC rules who is not a reporting person under the relevant qualifying regulation would still need to file Section 16(a) reports.

Qualifying jurisdictions and qualifying regulations

The qualifying jurisdictions are:

- Canada;
- Chile;
- the EEA, which as of the date of the order 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;
- the Republic of Korea;
- Switzerland; or
- the United Kingdom.

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 European Union 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) and as incorporated into the domestic law of each EEA state;
- 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 as approved by the Swiss Financial Market Supervisory Authority; and
- Article 19 of the United Kingdom 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.

The SEC noted that it may modify the order if material changes cause the qualifying regulations to no longer substantially mirror Section 16(a) requirements. It is also possible that the SEC may issue further exemptions for other jurisdictions, but it is not clear that it will do so prior to the March 18 deadline for the first reports.

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We will continue to monitor developments in this area and welcome any queries you may have.

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