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SEC Issues Order Exempting Directors and Officers of Certain Foreign Private Issuers From Section 16(a) Reporting Obligations, Provides FAQs

March 11, 2026

On March 5, 2026, the Securities and Exchange Commission (SEC) issued an order exercising its authority under Section 16(a)(5) of the Exchange Act – added by the Holding Foreign Insiders Accountable Act (HFIA Act) – which permits the SEC to exempt any person or class of persons from Section 16(a) reporting requirements if the laws of a foreign jurisdiction impose substantially similar requirements. The SEC's action brings meaningful relief to directors and officers of dual-listed foreign private issuers (FPIs) in Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland and the United Kingdom by lifting their Section 16(a) beneficial ownership reporting obligations.

Further, on March 9, 2026, the staff of the SEC's Division of Corporation Finance posted Frequently Asked Questions clarifying certain Section 16 reporting obligations.

The HFIA Act, signed into law on December 18, 2025, subjects directors and officers of FPIs to the insider reporting requirements under Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act). The SEC's subsequent February 27, 2026, amendments removed the prior exemption from Section 16 in its entirety, replacing it with narrower exemptions covering only Section 16(b) short-swing profit rules and Section 16(c) short-selling prohibitions, and amended Rule 16a-2 to exclude 10% holders of FPIs' equity securities from the new Section 16(a) reporting requirements.[1]

Who is exempt?

The order exempts directors and officers of any 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 that is listed in the SEC's order as a qualifying jurisdiction.

Qualifying jurisdictions

The qualifying jurisdictions are:

- Canada
- Chile
- The European Economic Area (comprising all 27 European Union member states,[2] plus Iceland, Liechtenstein and Norway)
- The Republic of Korea
- Switzerland
- United Kingdom

Cooley played an active role in this outcome, engaging with staff at the SEC regarding current regulations in the jurisdictions considered by the SEC.

Qualifying regulations

- **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) (NI 55-104),**

which provides, in general, requirements that directors and officers of covered issuers promptly report their initial holdings and any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.

- **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**, which provide, in general, requirements that directors and executive officers promptly report their initial holdings and any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.
- **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 European Economic Area state (EU MAR)**, which provides, in general, requirements that persons discharging managerial responsibilities (which includes directors and officers) promptly report to the issuer any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.
- **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**, which provide, in general, requirements that directors and executives promptly report their initial holdings and any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.
- **Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange as approved by the Swiss Financial Market Supervisory Authority (SIX Listing Rules)**, which provide, in general, requirements that members of the board of directors and members of the executive committee promptly report to the issuer any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.
- **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 (UK MAR)**, which provides, in general, requirements that persons discharging managerial responsibilities (which includes directors and officers) promptly report to the issuer any changes in beneficial ownership of the issuer's securities, including a description of the security, the nature of the transaction, and the price and volume of the transaction, and that such reports be made available to the general public.

Conditions for the exemption

The exemption is subject to two conditions:

1. Any director or officer, as defined in Section 3(a)(7) of the Exchange Act and Rule 16a-1(f) of the Exchange Act, respectively, seeking to rely on the exemption must report their transactions in the issuer's securities as required under the applicable qualifying regulation.[3]
2. 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, it may be made publicly available on the company's website.

Why the SEC granted the exemption

The SEC determined that each qualifying regulation imposes substantially similar requirements to Section 16(a), covering the same categories of persons (directors and officers, including those performing policy-making functions), securities (equity securities and derivatives), and transactions (acquisitions, dispositions and other changes in beneficial ownership), with timely public disclosure of such changes in English. The SEC may exercise its exemptive authority in the future to extend exemptive relief to the directors and officers of FPIs incorporated or organized in other jurisdictions that set forth requirements substantially similar to Section 16(a) requirements. Likewise, the SEC may reassess and modify its order if there are future changes to the qualifying regulations such that the qualifying regulations are no longer substantially similar to the requirements of Section

16(a). We look forward to the SEC's continued review of jurisdictions not yet covered by this order and the granting of additional exemptive relief where warranted.

FAQs

The FAQs address:

- The need to file Section 16 reports electronically on EDGAR.
- When the first Form 3s are due (March 18, unless the director or officer is no longer in such role on March 18, or became a director or officer after March 8, in which case the Form 3 is due 10 calendar days after becoming an officer or director).
- That if a director or officer becomes subject to Section 16 because the FPI registers a class of equity securities under Section 12 of the Exchange Act on or after March 18, 2026, then Rule 16-2(a) obligates such director or officer to report on the first required Form 4 certain transactions effected prior to March 18, 2026; if the FPI was registered prior to March 18, the officer or director would not have to report such transactions.

Next steps for FPIs

FPIs should assess whether they and their directors and officers qualify for this exemptive relief (including determining whether the particular director or officer is reporting in the home jurisdiction) – and, if so, confirm that they are in compliance with all applicable qualifying regulation reporting requirements and the English-language availability condition. FPIs that do not qualify should continue their Section 16(a) compliance preparations.

Notes

1. See this March 3, 2026, Cooley alert, "UPDATED: US Congress Eliminates Foreign Private Issuer Exemption for Insider Reporting Obligations Under Holding Foreign Insiders Accountable Act."
2. As of March 5, 2026, the 27 member states of the EU are: 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.
3. This exemption is on an individual basis (rather than on an issuer basis) – that is, a particular officer or director is only exempted from Section 16 reporting if they are already reporting pursuant to one of the qualifying regulations. In a case where the list of Section 16 officers and directors (including entities that consider themselves to be "directors by deputization") differs from the list of officers and directors subject to reporting under the qualifying regulation, whoever is not covered by the qualifying regulation would either need to report pursuant to that regulation or under Section 16.

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