

SEC Grants Targeted Exemption from Section 16(a) to Directors and Officers of Certain Foreign Private Issuers

On March 5, 2026, the U.S. Securities and Exchange Commission (the “SEC”) issued an exemptive order under Section 16(a)(5) of the U.S. Securities Exchange Act of 1934 (the “Exchange Act”). The order conditionally exempts qualifying directors and officers of certain foreign private issuers (“FPIs”) from the reporting obligations of Section 16(a) as a result of such FPIs being subject to substantially similar insider reporting regimes in specified non-U.S. jurisdictions.

As previously described in [our client alert](#), the order is a targeted response to the Holding Foreign Insiders Accountable Act (the “HFIAA”), that expands Section 16(a), effective as of March 18, 2026, to include directors and officers of FPIs that have a class of equity securities registered under Section 12 of the Exchange Act.

Scope of the Exemption

Under the order, the SEC exempts from Section 16(a) reporting obligations the qualifying directors and officers of any FPI that:

- is incorporated or organized in a “qualifying jurisdiction”; and
- is subject to a “qualifying regulation” (which may be from the same or a different qualifying jurisdiction).

The exemption applies only so long as the FPI, and its relevant directors and officers, meet the jurisdictional and regulatory tests and comply with the conditions summarized below.

Qualifying Jurisdictions and Regulations

The following jurisdictions are designated as “qualifying jurisdictions”:

- Canada
- Chile
- European Economic Area (EEA) (currently the 27 EU member states plus Iceland, Liechtenstein, and Norway)
- Republic of Korea
- Switzerland
- United Kingdom

The order notes that the SEC may in the future extend similar exemptive relief to additional jurisdictions where local requirements are determined by the SEC to be substantially similar to Section 16(a).

The SEC identifies the following “qualifying regulations” as substantially similar to Section 16(a):

- Canada: 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 (collectively, “NI 55-104”). In general, NI 55-104 requires directors and officers of covered issuers to promptly report initial holdings and changes in beneficial ownership of issuer securities, including security description, transaction nature, price, and volume, with public availability of the reports.
- Chile: 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. These provisions generally require directors and executive officers to promptly report initial holdings and any changes in beneficial ownership, with disclosure of security details, transaction nature, price, volume, and public availability of reports.
- European Economic Area: Article 19 of the European Union Market Abuse Regulation (Regulation (EU) No. 596/2014), as amended by Regulation (EU) No. 2024/2809, including implementing legislation and regulations in each EEA state (“EU MAR”). EU MAR generally requires persons discharging managerial responsibilities (including directors and officers) to promptly report to the issuer changes in beneficial ownership, including security description, transaction nature, price, and volume, and mandates public availability of these reports.
- Republic of Korea: Article 173 of the Financial Investment Services and Capital Markets Act and Article 200 of the Enforcement Decree. These provisions require directors and executives to promptly report initial holdings and subsequent changes in beneficial ownership of issuer securities, including security description, transaction nature, price, and volume, with public access to the reports.
- Switzerland: Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange, as approved by the Swiss Financial Market Supervisory Authority (the “SIX Listing Rules”). The SIX Listing Rules require members of the board of directors and the executive committee to promptly report to the issuer changes in beneficial ownership, including security description, transaction nature, price, and volume, and provide for public availability of such reports.
- United Kingdom: Article 19 of the United Kingdom Market Abuse Regulation (Regulation (EU) No. 596/2014) as it forms part of U.K. domestic law pursuant to the European Union (Withdrawal) Act 2018 (“UK MAR”). UK MAR similarly requires persons discharging managerial responsibilities (including directors and officers) to promptly report to the issuer changes in beneficial ownership, including security description, transaction nature, price, and volume, and ensures public availability of the reports.

The order provides that “qualifying regulations” include any successor regulations that are “materially the same” as those listed, and reserves the SEC’s right to reassess and modify the order if changes to the regulations or the relevant jurisdictions render them no longer substantially similar to Section 16(a).

Conditions to Reliance on the Exemption

It should be noted that the exemptive relief described above is not automatic. Directors and officers seeking to rely on it must satisfy both of the following conditions:

- Compliance with Local Reporting Regime. Any person who is a “director” or “officer” as defined in Exchange Act and related regulations must report transactions in the issuer’s securities in accordance with the applicable qualifying regulation to which they are subject. If a person qualifies as a director or officer under the Exchange Act definitions but falls outside the local category of reporting persons, that individual would not satisfy the condition and thus must report under Section 16(a).
- Public Availability of Reports in English Within Two Business Days. Any report filed under a qualifying regulation must be made available to the general public, in English, within no more than two business days of its public posting. For jurisdictions whose rules do not mandate English-language reporting, the English version may, for example, be made available on the company’s website if it cannot be filed on the regulator’s or listing venue’s database.

If these conditions are not met, the exemption is unavailable and the affected director or officer remains subject to Section 16(a) reporting obligations, including Forms 3, 4, and 5.

Accordingly, FPIs and their directors and officers relying on this exemption should monitor developments in both U.S. and relevant foreign regulatory frameworks to ensure continued eligibility for relief.

Our Cross-Border Capital Markets team is closely monitoring the SEC’s regulations and guidance addressing the implementation and interpretation of the HFIAA, and can assist with the evaluation of best practices under the HFIAA. Please contact any member of our team with questions about how the adoption of the HFIAA may impact your company, and its directors and officers.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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