

SEC GRANTS CONDITIONAL EXEMPTION TO SECTION 16 REPORTING FOR CERTAIN FOREIGN PRIVATE ISSUER INSIDERS

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WHAT HAPPENED

As discussed in our prior post, the Holding Foreign Insiders Accountable Act, adopted on December 18, 2025, eliminated the exemption to the Section 16(a) reporting requirements for directors and officers of foreign private issuers (“FPIs”), but allowed the SEC to exempt any person or security subject to “substantially similar requirements” in a foreign jurisdiction.

On March 5, 2026, only a week after the SEC amended Exchange Act rules and forms to implement the Section 16(a) reporting requirements, the SEC exercised its exemptive authority and issued an order conditionally exempting directors and officers (“insiders”) of certain FPIs. The order applies to insiders of FPIs incorporated or organized in certain jurisdictions, and for which the insiders are subject to certain similar reporting requirements to those of Section 16(a) of the U.S. Securities Exchange Act of 1934, subject to the specific conditions set forth in the order.

EXEMPTION REQUIREMENTS

Pursuant to the SEC’s exemptive order, insiders of FPIs will not be required to file reports under Section 16(a) if:

1. the insider is a director or officer of an FPI that is incorporated or organized in a “*qualifying jurisdiction*” and subject to a “*qualifying regulation*” of the same or a different qualifying jurisdiction;
2. the insider is required to report their transaction in the FPI’s securities as set forth under the qualifying regulation to which they are subject to; and
3. any report filed pursuant to the qualifying regulation is made available in English to the general public within two business days of its public posting.

The order identifies the following countries as “**qualifying jurisdictions**”:

- Canada;
- Chile;
- the current 27 member states of the European Union;
- the Republic of Korea;
- Switzerland; and
- the United Kingdom.

The order identifies “**qualifying regulations**” as:

- 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 European Economic Area 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.

In summarizing the insider reporting requirements under the qualifying regulations, the SEC indicated that generally, each regulation required prompt insider reporting of changes in beneficial ownership of the issuer’s securities, including the nature of the transaction, the price and volume of the transaction, and that the reports be made available to the general public.

The SEC further indicated that it may, from time to time, extend exemptive relief to insiders of FPIs incorporated in additional jurisdictions whose regulatory frameworks impose requirements substantially similar to those of Section 16(a). The Commission may also revisit its analysis and

revise the order if amendments to any qualifying regulations or other material changes in an issuer's jurisdiction of incorporation cause the qualifying regulations to no longer be substantially similar to the reporting requirements of Section 16(a).

NEXT STEPS

Insiders who do not meet the conditions of the SEC's exemptive order will need to be prepared to make their initial Section 16(a) filings by March 18, 2026, and to comply with all ongoing reporting obligations thereafter.

RELATED CAPABILITIES

- Securities & Corporate Governance

MEET THE TEAM



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