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Securities Regulation & Corporate Governance |  
Capital Markets Update

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## To Be Exempt or Not to Be: Certain Foreign Private Issuer Directors' and Officers' Section 16(a) Reporting Begins March 18, 2026

*Gibson Dunn's lawyers remain available to assist with any questions companies may have regarding the interpretation and application of the Section 16 reporting rules applicable to foreign private issuers.*

Beginning **March 18, 2026**, directors and officers of certain foreign private issuers (FPIs) with a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 (the Exchange Act) must commence filing Section 16(a) reports electronically in English on the Securities and Exchange Commission (SEC)'s EDGAR platform. Notably, on March 5, 2026, the SEC granted exemptive relief from the upcoming Section 16(a) reporting obligations to directors and officers of FPIs organized in the qualifying jurisdictions of Canada, Chile, the European Economic Area (EU member states plus Iceland, Liechtenstein, and Norway), South Korea, Switzerland, and the United Kingdom, who are subject to "substantially similar" insider reporting requirements.

### **HFIAA Overview**

On December 18, 2025, the Holding Foreign Insiders Accountable Act (the HFIAA) was signed into law as part of the National Defense Authorization Act for Fiscal Year 2026 (the NDAA). The HFIAA amends Section 16(a) of the Exchange Act to extend insider reporting obligations to

directors and officers of FPIs<sup>[1]</sup>. On February 27, 2026, the SEC adopted [final rules](#) and form amendments implementing the HFIAA. On March 5, 2026, the SEC granted exemptive relief from the Section 16(a) reporting rules to directors and officers of FPIs (1) organized in qualifying jurisdictions and (2) subject to qualifying regulations that impose “substantially similar” insider reporting requirements.<sup>[2]</sup> As of the date of this client alert, the SEC has determined that the qualifying jurisdictions are Canada, Chile, the European Economic Area (EU member states plus Iceland, Liechtenstein, and Norway), South Korea, Switzerland, and the United Kingdom. The SEC may extend exemptive relief to additional jurisdictions in the future. The SEC may also reconsider the exemptive relief granted if foreign regulations change materially.

## Next Steps

FPIs that do not qualify for exemptive relief should immediately begin to prepare their directors and officers for Section 16(a) reporting given the imminent March 18, 2026 deadline. FPIs should ensure they:

- **Properly identify directors and officers** subject to Section 16. Identification of officers may cover more than the current group identified in the company’s Form 20-F and will require an assessment that goes beyond looking at a person’s title. Generally, the term “officer” under Rule 16a-1(f) covers a company’s president, principal financial and accounting officers, certain vice presidents in charge of major business units or functions, and any other person who performs significant “policymaking functions” for the company. In most instances, this group will be equivalent to the “senior management” identified in a Form 20-F and will consist of persons who are currently subject to the FPI’s clawback policies.
- **Enroll directors and officers** subject to Section 16 *immediately* in EDGAR Next and *before* March 18, 2026 in order to gain access to (and the ability to make filings with) EDGAR. Under the SEC’s EDGAR Next procedures, review of Form ID applications for new EDGAR access codes currently takes eight to ten business days, and there is little flexibility. Accordingly, filers should allow sufficient lead time to enroll. See our prior client alert [here](#) for more details.
- **Prepare initial Form 3 filings** for all current directors and officers, which are due by 10:00 p.m. Eastern time on March 18, 2026.
- **Review and update** internal compliance procedures, including pre-clearance and transaction monitoring processes and insider trading policies, to ensure they are updated to address Section 16 reporting.
- **Provide training opportunities** to directors and officers on the Section 16 reporting obligations.
- **Implement internal updates** to monitor and track equity compensation and other reportable transactions in order to meet the two-business-day Form 4 deadline.

## Background of Section 16(a)

Section 16(a) of the Exchange Act mandates the timely disclosure of beneficial ownership of a company’s registered equity securities and any changes in beneficial ownership by directors, officers, and any person who beneficially owns more than 10% of any registered class of a U.S. public company’s equity securities (collectively, “insiders”). Insiders must publicly disclose, in

filings with the SEC, transactions in securities or derivatives of such securities on Form 3 (initial statement of beneficial ownership), Form 4 (statement of changes in beneficial ownership) and Form 5 (annual statement of changes in beneficial ownership).

Historically, Rule 3a12-3(b) of the Exchange Act exempted FPIs from Section 16 requirements. Instead, FPI insiders only had to comply with the insider reporting requirements of their home jurisdictions and specified share ownership disclosure requirements in annual reports on Form 20-F.

## **Reporting Requirements for Directors and Officers of FPIs**

### **General Forms 3, 4 and 5 Reporting**

Beginning on March 18, 2026, directors and officers of FPIs must file electronically in English through the SEC's EDGAR platform:

- **Form 3:** directors and officers of FPIs listing or registering securities on or after March 18, 2026 must report their initial equity holdings on a Form 3 *upon listing* or the effectiveness of a registration statement under Section 12(g) of the Exchange Act, while directors and officers of FPIs that are already public must report their initial ownership *within 10 days* after an individual becomes a director or officer of the company. Directors and officers of FPIs that are public as of the date of this client alert need to report their ownership on Form 3 on March 18, 2026.
- **Form 4:** directors and officers must report changes in beneficial ownership—including open-market trades, gifts, equity compensation grants, vesting events, option exercises, and tax withholdings— on Form 4 within *two business days*.
- **Form 5:** directors and officers must file annual statements of changes in beneficial ownership on Form 5 within 45 days after the end of the applicable fiscal year.

### **Equity Compensation Reporting**

Prior to the enactment of the NDAA, FPIs historically were allowed to disclose compensation information for directors and officers on an aggregate basis, unless individual disclosure was made in the home country. In addition, share ownership of each director and officer needed to be disclosed only if it was greater than 1% of a class of shares. The NDAA's Section 16(a) reporting obligations will elicit individualized, real-time disclosure of equity compensation information, such as individual grants (i.e., on an award-by-award basis) and aggregate holdings or ownership in the company.

### **Exempt FPI Directors & Officers**

In its March 5, 2026 order, the SEC exempted from section 16(a) reporting directors and officers of FPIs (A) organized in (i) Canada, (ii) Chile, (iii) the European Economic Area (EU member states plus Iceland, Liechtenstein, and Norway)<sup>31</sup>, (iv) South Korea, (v) Switzerland, and (vi) the United Kingdom and (B) subject to a qualifying regulation. To rely on the exemptive relief, such directors and officers:

- must file transaction reports under the applicable laws of the home jurisdictions, even when they may not qualify as subject directors or officers under the applicable laws (if they qualify as a director or officer subject to Section 16(a) requirements)<sup>[4]</sup>; and
- ensure those reports are publicly accessible in *English* within two business days.

If the foreign filing system does not support English submissions, the FPI may post translations on its website. Individuals who do not meet these conditions remain subject to U.S. Section 16(a) filing obligations.

As noted above, the SEC indicates it will reassess and monitor the jurisdictions subject to the exemptive relief and may either expand or contract the list of qualifying jurisdictions in the future based on an assessment of whether qualifying regulations are substantially similar to the requirements of Section 16(a).

**Gibson Dunn will continue to monitor developments, including any potential expansion of exemptive relief based on “substantially similar” foreign reporting regimes. Our lawyers remain available to assist with any questions you may have regarding the interpretation and application of these evolving Section 16 reporting rules.**

<sup>[1]</sup> What is Not Covered by the NDAA:

- 10% Owner Reporting: 10% insiders of FPIs are not subject to Section 16(a) reporting obligations.
- Short-Swing Liability: Section 16(b) “short swing profit disgorgement” and Section 16(c) “short sale restrictions” are not specifically addressed.

<sup>[2]</sup> Qualifying regulations are: (i) 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), (ii) Articles 12, 17, and 20 of the Chilean Securities Market Law (Ley de Mercado de Valores, Ley No. 8,045) and General Rule (Norma de Carácter General) No. 269, (iii) 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”), (iv) 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, (v) 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”), and (vi) 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”).

<sup>[3]</sup> As of the date of the 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.

[4]Order Granting Directors and Officers of Certain Foreign Private Issuers an Exemption from the Filing Requirements of Section 16(a) of the Exchange Act, Release No. 34-104931 (March 5, 2026), at n.10, available at <https://www.sec.gov/files/rules/exorders/2026/34-104931.pdf>.

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Gibson Dunn's lawyers are available to assist with any questions you may have regarding the SEC's announcement, or federal securities laws and regulations more generally. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm's Securities Regulation & Corporate Governance, Capital Markets, or Securities Litigation practice groups:

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