Davis Polk

SEC exempts D&Os of dual-listed FPIs in specified jurisdictions from Section 16 reporting

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In welcome news for directors and officers of dual-listed foreign private issuers domiciled in Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland and the United Kingdom, the SEC issued an order exempting them from Section 16(a) beneficial ownership reporting requirements.

As we explained in our prior client update, the Holding Foreign Insiders Accountable Act extended insider reporting obligations to 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, the SEC issued an order granting an exemption from Section 16(a) reporting requirements to directors and officers of dual-listed FPIs in certain jurisdictions, exercising this exemptive authority. Davis Polk actively engaged with SEC staff and submitted letters seeking relief relating to four of the jurisdictions for which exemptive authority was exercised.

The order applies to directors and officers of FPIs incorporated or organized in a qualifying jurisdiction and subject to a qualifying regulation, each as defined in the order. The relief extends to directors and officers of an FPI:

- Incorporated or organized in Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland or the United Kingdom and subject to a qualifying regulation of that jurisdiction; or
- Incorporated or organized in such jurisdiction but subject to a qualifying regulation of another jurisdiction listed above.

The FPI must be subject to a qualifying regulation referenced in the order (set forth in an annex at the end of this client update), which would generally only apply if the FPI's common equity is publicly listed in one of the qualifying jurisdictions. Directors and officers of an FPI that is not subject to the qualifying regulation in an applicable jurisdiction (for example, an FPI that is only listed on a U.S. stock exchange and as a result not subject to a qualifying regulation) will not get the benefit of the exemptive relief and therefore will be subject to Section 16(a) reporting requirements. This means that in practice, the exemptive relief will primarily benefit dual-listed issuers in the qualifying jurisdictions.

The relief is further conditioned on:

- Directors and officers reporting their transactions in the relevant company's securities as required under the qualifying regulation to which they are subject.
- Any report they file being made publicly available and in English within no more than two business days of its public posting in the applicable jurisdiction. The order indicates that if it is not possible to file an English version of the report on the appropriate regulator's or listing venue's online database, the report may be made publicly available on the company's website.

Importantly, the order clarifies that any director or officer (as defined under SEC rules) who does not fall within the defined category of reporting persons under the applicable qualifying regulation will be required to file reports under Section 16(a). Foreign private issuers in a jurisdiction covered by the order should therefore ensure that the reporting

persons required to file under the applicable jurisdiction overlap with directors and officers under SEC rules, because any director or officer not required to file under the applicable qualifying regulation will still be required to report under Section 16(a). For example, if a chief accounting officer is not required to comply with the applicable qualifying regulation, then they will not be exempt from filing reports under Section 16(a).

In issuing the exemptive relief, the SEC reasoned that "each of the qualifying regulations covers substantially similar persons, securities, and transactions as those covered by Section 16(a) of the Exchange Act, and requires timely public disclosures of the covered persons' changes in beneficial ownership." In making this determination, the SEC took account of several criteria, including that "directors and officers must report transactions and other changes in beneficial ownership, including acquisitions and dispositions of any direct or indirect beneficial ownership interest, with a focus on the director's or officer's opportunity to profit or share in the profit derived from a transaction."

The order makes clear that the SEC could revisit its analysis if any changes to the qualifying regulations or otherwise are sufficiently material "such that the qualifying regulations are no longer substantially similar to the requirements of Section 16(a)."

The SEC also notes that it may "exercise its exemptive authority from time to time and extend exemptive relief to the directors and officers of FPIs incorporated or organized in and subject to regulation in other jurisdictions that set forth requirements substantially similar to Section 16(a) requirements." We are hopeful that the SEC will continue to assess other jurisdictions not covered in this order and grant exemptive relief as appropriate.

Annex

The qualifying regulations referenced in the order 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) (and any implementing legislation and regulations adopted by the European Union's member states) as incorporated into the domestic law of each European Economic Area state ("EU MAR"). The order notes that any country that joins the EEA would also be required to adopt EU MAR for the exemptive relief to apply to directors and officers of its FPIs. Conversely, a country that leaves the EEA may no longer be subject to EU MAR, and in that case, directors and officers of its FPIs would no longer be eligible for the exemptive relief.
- 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.
- 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.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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