

## SEC Rulemaking and Interpretation Updates



By **Peter Bariso**  
Partner | Corporate



By **Olivia Maraj**  
Associate | Corporate

In February, the Securities and Exchange Commission's ("SEC's") Division of Corporation Finance issued several new or revised Compliance and Disclosure Interpretations ("C&DIs") addressing resale registrations on Form S-4, going private transactions, and tender offers; the SEC also adopted [final rules](#) implementing the Holding Foreign Insiders Accountable Act ("HIFAA"), which as of March 18, 2026 now requires directors and officers ("D&Os") of foreign private issuers ("FPIs") to comply with the reporting obligations under Section 16(a) of the Exchange Act.

### SEC Issues New C&DIs on Form S-4 and Tender Offers

The SEC's Division of Corporation Finance issued several new or revised C&DIs addressing (i) resale registrations in connection with business combinations, (ii) going private transactions, and (iii) tender offers.

With respect to business combinations registered on Form S-4, the staff confirmed that securities previously issued to officers, directors, or affiliates of a target company in exempt transactions connected to the same transaction may be registered for resale on that Form. This represents a change from earlier guidance and allows those holders to register the resale of their privately placed securities in the Form S-4 rather than waiting until such shares are included on a Form S-1 (or S-3 if available). The staff also indicated that, following completion of the transaction, the resale prospectus may be updated through a post-effective amendment (See revised C&DI [225.03](#)).

The new interpretations also address going private transactions and the use of potential exemptions from rules regulating such transactions. The staff clarified the ability to use the exemption available under Rule 13e-3(g)(2), which exempts transactions in which security holders are offered or receive only equity securities if such securities (i) have substantially the same rights, (ii) are registered pursuant to Section 12 of the Exchange Act of 1934 (the "Exchange Act") or reports are required to be filed by the issuer pursuant to Section 15(d) of the Exchange Act and (iii) are either listed on a national exchange or authorized to be quoted on an inter-dealer quotation systems.

In new C&DI [112.03](#), the staff clarified the timing of prongs (ii) and (iii), stating that the exemption remains available even if the equity securities offered as consideration are not yet listed or quoted at the time the transaction is announced, provided that registration under Section 12 and exchange listing or quotation approval are express conditions to closing and are properly disclosed.

In new C&DI [112.04](#), the staff stated that Rule 13e-3 generally would not apply to tender offers made by the issuer where the tender offer includes a non-waivable condition that the offer will not cause the securities to become eligible for termination of registration or no longer be listed on a national securities exchange or authorized to be quoted on an inter-dealer quotation system.

Finally, the staff issued two new C&DIs on tender offers.

- New C&DI [101.22](#) explains that, for purposes of the exemption under Section 14(d)(8)(B) exempting offers by the issuer of the security, an offer by a

wholly owned subsidiary would qualify, but not a subsidiary or affiliate that is less than 100% owned, meaning that a parent company's offer for securities of a majority owned affiliate may be treated as a third party tender offer.

- Additionally, new C&DI [163.02](#) addresses “mini-tender offers” (i.e., where a third party tender is structured to result in ownership of not more than 5% of an issuer's securities and is subject only to limited requirements, including the requirement under Rule 14e-2 that the issuer must generally recommend acceptance or rejection of the bidder's tender offer within 10 business days). Pursuant to the new C&DI, the staff noted that, if the issuer was not aware of the mini-tender offer, it will not object to the issuer's failure to comply with the 10 business day requirement, provided the issuer communicates its position promptly after becoming aware.

### **New Section 16 Reporting for FPI D&Os**

On February 27, 2026, the SEC adopted [final rules](#) implementing the HFIAA. As a result, as of March 18, 2026, D&Os of FPIs are now required to comply with the reporting obligations under Section 16(a) of the Exchange Act. HFIAA removes in part a previous exemption available to FPIs. Going forward, D&Os of FPIs will now be subject to the same requirements as domestic issuer directors and officers with respect to Form 3s reporting initial ownership, Form 4s reporting subsequent transactions involving an issuer's securities and Form 5 exit reports.

The revised rules bring FPIs in line with domestic filers only with respect to disclosure obligations of directors and officers under Section 16(a). However, 10 percent beneficial owners of a FPI's securities remain exempt from Section 16 reporting obligations. FPI D&Os also continue to remain exempt from the Section 16(b) short swing profit rules and the Section 16(c) short selling prohibition.

As such, FPI D&Os would not be subject to disgorgement of profits in the event of a matching purchase and sale transaction under Section 16(b); nor would they be prohibited from engaging in short sales of a company's securities under Section 16(c), absent the existence of a countervailing company policy or applicable restriction.

The revised rules allow the SEC to continue to exempt from Section 16 reporting requirements D&Os of an FPI incorporated or organized in a “qualifying jurisdiction” and subject to a “qualifying regulation.” On March 5, 2026, the SEC issued an [exemptive order](#) exempting from the new disclosure obligations FPIs in the following qualifying jurisdictions: (i) Canada; (ii) Chile; (iii) The European Economic Area<sup>[1]</sup>; (iv) The Republic of Korea; (v) Switzerland; and (vi) the United Kingdom.

Additionally, the order identifies certain laws in those jurisdictions that impose substantially similar requirements and are thus qualifying regulations, including: (a) Canada's National Instrument 55-104 – Insider Reporting Requirements and Exemptions; (b) Articles 12, 17, and 20 of the Chilean Securities Market Law and General Rule No. 269; (c) Article 19 of the European Union Market Abuse Regulation, No. 596/2014, as amended by Regulation (EU) No. 2024/2809; (d) Article 173 of the Republic of Korea's Financial Investment Services and Capital Markets Act and Article 200 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act; (e) Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange; and (f) Article 19 of the UK Market Abuse Regulation.

The order further clarifies that to qualify for the exemption, D&Os must report their transactions in the FPIs' securities under the applicable qualifying regulation, which report must be in English and made available to the public within two business days of its posting.

FPIs should prepare to support directors and officers with the new reporting obligations, including identifying all Section 16 reporting persons, confirming which employees are “officers” under the Exchange Act and gathering ownership information to prepare initial Form 3 filings.

[1] The European Economic Area includes 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, Sweden, Iceland, Liechtenstein, and Norway.