Simpson Thacher

Memorandum

Foreign Private Issuers and Section 16: Understanding Your Equity Compensation Plan

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On December 18, 2025, President Trump signed the National Defense Authorization Act for Fiscal Year 2026, which includes the "Holding Foreign Insiders Accountable Act," requiring officers and directors of foreign private issuers (FPIs) to make filings under Section 16(a) of the U.S. Securities Exchange Act of 1934, as amended (the Exchange Act) to report beneficial ownership of, and transactions in, equity securities of the FPI. The new filing requirements will become effective on March 18, 2026. For an in-depth discussion of these amendments to Section 16 of the Exchange Act, please see here.

Under the new rules, officers and directors of an FPI will need to file a Form 3 by March 18, 2026, identifying their current holdings in the FPI, and thereafter a Form 4 within the prescribed time for each covered transaction in the FPI's securities, including both market transactions and transactions with respect to compensatory awards under the FPI's equity compensation plans. In preparation, FPIs should review their equity compensation arrangements and determine processes and procedures for reporting transactions in securities and derivatives arising from such arrangements.

Items to Consider

Review Equity Compensation Plans and Establish Reporting Principles for Equity Award Transactions. FPIs can start by preparing a summary of each officer's and director's equity holdings, including, with respect to equity awards, grant dates, vesting terms (including performance criteria), exercise prices and whether the securities are owned directly or indirectly. Understanding how the rules apply to those different types of securities, as well as the various stages of an equity award's lifecycle (grant, vest, settlement) is a necessary first step to ensuring Section 16 compliance.

FPIs should also establish clear policies and procedures to track transactions in securities and derivatives and an approach for how such securities will be reflected on Section 16 filings. As most issuers conclude that consistency across filings is desired, decisions where discretion is permitted (*e.g.*, footnote language, determining which table to use where there is discretion) should be determined early with a view to future similar instances.

Keep Track of Dividends, Dividend Equivalent Rights and Net Settlement or Cashless Exercises. The timing of Section 16 filings in connection with dividend or dividend equivalent rights will vary depending on the structure of the dividend program, specifically whether the issuer operates a qualifying dividend reinvestment plan or "DRIP". Similarly, net settlement or cashless exercises will impact how transactions are reported on Section 16 filings. Careful attention will be required to avoid missing filing deadlines. Reviewing the terms and conditions of equity compensation plans early on will be important in creating a streamlined process to comply with the strict timing requirements for Section 16 filings.

Understand How Transactions in Shares Held Through Employer Plans or Trust Arrangements Are Treated. It is not uncommon for shares to be held through trusts, including those associated with employer-sponsored retirement plans. These shares are often required to be disclosed on Section 16 forms as "indirect" holdings. Whether the acquisition or disposition of these shares by a Section 16 filer requires a Section 16 filing will depend on the terms of such acquisition or disposition, emphasizing the need for procedures to analyze and capture such a transaction prior to its execution.

Implement Procedures for Equity Award Transfer Transactions. Officers and directors may desire to engage in the transfer of equity awards, commonly for tax, and estate planning purposes. These transfers may result in Section 16 reporting obligations. Issuers should establish procedures for the review and approval of these transactions and communicate to officers and directors the importance of communicating with the issuer regarding such transactions, so that reporting obligations are not missed.

Key Takeaways

The relative brevity of the Section 16 forms can mask the complexity of completing the forms correctly. As the initial reporting approach for an equity award transaction type often serves as the template for future transactions of the same type, it is important that FPIs understand the rules at the outset and establish reporting principles for equity plan holdings and transactions.

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