

SEC Reporting & Compliance Alert

December 23, 2025

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Foreign Private Issuers' D&Os Will No Longer Be Exempt From Section 16(a) Insider Reporting Obligations

Executive Summary

- **What's new:** Effective March 18, 2026, directors and officers (D&Os) of foreign private issuers (FPIs) will be subject to insider reporting requirements under Securities Exchange Act Section 16(a). FPI D&Os will remain exempt from the short-swing profits rule under Section 16(b) and the short sale prohibition under Section 16(c), and significant shareholders of FPIs who are not D&Os will remain entirely exempt from Section 16.
- **Why it matters:** FPI D&Os will be required to disclose their initial ownership of company equity securities and report any subsequent transactions in company equity securities generally within two business days. This represents a significant change in compliance obligations for FPIs and their insiders, with implications for internal processes and disclosure practices.
- **What to do next:** FPIs should review their internal procedures and prepare to assist their D&Os with Section 16(a) reports beginning March 18, 2026. Among other things, FPIs should (i) confirm or obtain the necessary EDGAR filing credentials for all current and incoming D&Os, (ii) confirm internal or external capacity to make Section 16 filings on behalf of the D&Os, and (iii) confirm appropriate communication channels with D&Os' securities brokers for timely reporting of D&Os' transactions in company securities.

On December 18, 2025, as part of the FY 2026 National Defense Authorization Act, the Holding Foreign Insiders Accountable Act (HFIAA) was signed into law. The HFIAA amended Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act), to require FPI D&Os to comply with the Section 16(a) insider reporting requirements **beginning March 18, 2026**. See Appendix B for the text of Section 16(a) as amended by the HFIAA.

Notably, FPI D&Os remain exempt from the short-swing profits rule under Section 16(b) and the short sale prohibition under Section 16(c). Ten percent beneficial owners of FPIs will remain exempt from Section 16 in its entirety.

Key aspects of the rule change and compliance considerations for FPIs are described in further detail below.

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Section 16(a) Reporting Obligations

Section 16(a) requires all public company D&Os and shareholders who beneficially own more than 10% of any of the company's publicly traded voting class of equity security (10% beneficial owners) to file reports on Forms 3, 4 and 5 to disclose their direct and indirect beneficial ownership of company equity securities (and any derivatives thereof) and any subsequent transactions or changes in beneficial ownership.

Previously, Exchange Act [Rule 3a12-3](#) exempted insiders of FPIs from the application of Section 16 in its entirety. The HFIAA now mandates that D&Os of FPIs, but not 10% beneficial owners, be subject to the Section 16(a) reporting obligations.

Beginning March 18, 2026, FPI D&Os will become subject to the following reporting obligations under Section 16(a):

- **Initial ownership reports:** Any individual who is a director or officer of an FPI as of March 18, 2026, will need to file a Form 3 by 10 p.m. Eastern Time (ET; *i.e.*, Washington, D.C. time) on the same day, disclosing their ownership of company equity securities. New D&Os joining after this date must file a Form 3 within 10 calendar days of assuming their role. For FPIs going public after March 18, 2026, their D&Os must file a Form 3 by 10 p.m. ET on the date the company's Exchange Act Section 12 registration of its securities becomes effective (typically the pricing date in an IPO).
- **Transaction reports:** After filing Form 3, FPI directors and officers must report transactions in company equity securities on Form 4 by 10 p.m. ET on the second business day following the transaction. Transactions requiring the filing of a Form 4 include purchases or sales of equity securities, many types of grants of equity-based compensation awards, vesting and settlement of equity-based compensation awards, exercise of stock options, sales or withholding of shares for tax payments on equity-based compensation awards, and gifts of securities.
- **Annual reports:** In certain cases, a catch-up Form 5 may be required within 45 days after the end of the company's fiscal year.

See Appendix A for additional details on reporting requirements for Forms 3, 4 and 5.

Next Steps for FPIs

While individual D&Os are ultimately responsible for their own Section 16 reports, public companies generally assist with the preparation and filing of these reports for their D&Os, given the complexity of reporting rules and short deadlines. To that end, FPIs should assess their internal procedures and prepare to implement Section 16(a) reporting for D&Os by the March 18, 2026, effective date, including the following considerations:

- **Confirm which officers would be subject to the reporting requirements.** For Section 16 purposes, Rule 16a-1(f) of the Exchange Act defines the term "officer" to mean certain senior officers of an issuer who perform a policy-making function, including president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

Note that FPIs should have already identified their Section 16 "officers," because the definition of "executive officers" subject to the SEC's Rule 10D-1 implementing the Dodd-Frank clawback rules (in effect since late 2023) is the same as the "officer" definition under Exchange Act Rule 16a-1(f). However, certain FPIs that might have applied the definition of "executive officer" expansively for purposes of the Dodd-Frank clawback rules might want to revisit that list when identifying their "officers" for purposes of the Section 16(a) reporting obligations.

- **Confirm which directors would be subject to the reporting requirements.** Exchange Act Section 3(a)(7) defines the term "director" to mean any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated. While applying the term "director" in certain non-U.S. jurisdictions may require careful analysis, FPIs are expected to use consistent criteria for their director rosters for both Section 16(a) and the FPI eligibility test under Exchange Act Rule 3b-4.
- **Collect and verify company security ownership information for all D&Os** to prepare the initial Form 3 reports.
- **Confirm or obtain the necessary EDGAR filing credentials for all current and incoming D&Os.** FPI D&Os who are also insiders of a domestic issuer or have filed at least one Schedule 13D or 13G or Form 144 should already have filing credentials, but those credentials may be outdated, or the account may not have been enrolled in EDGAR Next. Obtaining new filing credentials or renewing any legacy credentials (including EDGAR Next enrollment) would require the filing of a notarized Form ID with the SEC, a process that can take a few weeks.
- **Confirm internal or external capacity to make Section 16 filings on behalf of the D&Os,** including through arrangements with outside counsel and/or a financial printer.
- **Confirm appropriate communication channels with D&Os' securities brokers** for timely reporting of D&Os' transactions in company securities.

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- **Revisit the company's insider trading policy** to reflect any necessary updates in light of the application of Section 16(a) reporting requirements to D&Os.
- **Consider the implications of having to disclose all D&Os' ownership of company securities and the details of each equity-based compensation award to D&Os in real time**, beyond the current limited disclosure requirements on insider compensation on Form 20-F or other applicable SEC filings.

SEC Authority for Potential Exemptions

The HFIAA provides that the SEC may exempt any persons, securities or transactions from the requirements of Section 16(a) if the SEC determines that the laws of a foreign jurisdiction apply "substantially similar requirements" to that person, security or transaction. The SEC has not yet created any exemptions as of this date, but jurisdictions such as the U.K., EU and Canada are seen as possible candidates.

Appendix A

Exchange Act Section 16(a) Reporting Obligations: Forms 3, 4 and 5

Form 3	Form 4	Form 5
Generally		
A form used to report initial beneficial ownership of a reporting company's equity securities (and derivatives thereof)	A form used to disclose changes in beneficial ownership of a reporting company's equity securities (and derivatives thereof) Absent a specific exemption, every change of beneficial ownership in applicable securities should be presumed to give rise to a Form 4 filing obligation.	A form used to report an annual statement of changes in beneficial ownership of a reporting company's equity securities (and derivatives thereof)
Who Must File		
Section 16 Insiders (officers and directors for foreign private issuers; officers, directors and greater than 10% shareholders for domestic issuers)		
Filing Events		
Upon becoming a Section 16 Insider, even if the Section 16 Insider is not an owner of any company's equity securities (or any derivatives thereof) at the time A blank Form 3 is still required if the Section 16 Insider has no beneficial ownership to report.	Examples of transactions that would require filing: <ul style="list-style-type: none"> - Buying or selling equity or derivative securities, or any securities of a registered closed-end fund other than short-term paper, whether in public or private transactions - Receiving a company equity-based compensation award (including stock options, restricted shares, time-based restricted stock units and performance-based restricted stock units that vest based on an increase in the issuer's stock price) - Option exercise 	"Catch all" filing events: All transactions that occurred during the previous fiscal year that are specifically permitted to be reported on a Form 5 or should have been reported on a Form 3 or Form 4 but were not (a delinquent filing) <ul style="list-style-type: none"> - For the first Form 5 filing only, any transactions that should have been reported during the past two fiscal years but were not Mandatory Filing Events: <ul style="list-style-type: none"> - Inheritances and other transfers by will - Acquisitions by gift (which may include certain acquisitions related to tax and estate planning transfers)

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	<ul style="list-style-type: none"> - Vesting and/or settlement of restricted stock/RSUs (in certain situations) - Sales or withholding of shares for tax payments on equity-based compensation awards - Exercising or converting other derivative securities - Certain transfers to or from a trust or other vehicle - Transaction in company stock by a partnership of which the reporting person controls and is a member - Dispositions by gift, including a charitable donation of company equity securities and certain tax and estate planning transfers 	Form 5 is not required to be filed if there is no change in ownership or all transactions required to be reported were already disclosed in Form(s) 4.
Filing Deadlines		
<p>If the company is already a reporting company, within 10 days of the event</p> <p>If the issuer is registering securities for the first time under the Exchange Act, no later than 10 p.m. ET on the day such registration becomes effective (typically the pricing date in an IPO)</p>	Before 10 p.m. ET on the second business day following any direct or indirect change in such person's "pecuniary interest" in the company's equity securities, subject to limited exceptions	45 days after the company's fiscal year end

Information Required to Be Reported

Form 3	Form 4	Form 5
<p>Identifying information of the company and individual</p> <p>Date of triggering event</p> <p>Securities beneficially owned</p> <ul style="list-style-type: none"> - Table I for non-derivative securities <ul style="list-style-type: none"> • Amount beneficially owned • Direct or indirect ownership - Table II for derivative securities <ul style="list-style-type: none"> • Date the security is exercisable • Exercise price • Direct or indirect ownership 	<p>Identifying information of the company and individual</p> <p>Date of earliest triggering event (one form can be used to report several different events occurring on one or different days)</p> <p>Securities beneficially owned</p> <ul style="list-style-type: none"> - Table I for non-derivative securities <ul style="list-style-type: none"> • Amount beneficially owned • Direct or indirect ownership - Table II for derivative securities <ul style="list-style-type: none"> • Date the security is exercisable • Exercise price • Direct or indirect ownership 	<p>Identifying information of the company and individual</p> <p>Whether the form includes information that should have been reported earlier on a Form 3 or Form 4</p> <p>Securities beneficially owned</p> <ul style="list-style-type: none"> - Table I for non-derivative securities <ul style="list-style-type: none"> • Amount beneficially owned • Direct or indirect ownership - Table II for derivative securities • Date the security is exercisable • Exercise price • Direct or indirect ownership

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Appendix B

Text of Exchange Act Section 16(a) as amended by the Holding Foreign Insiders Accountable Act (additions in blue)

(a) Disclosures required

1. Directors, officers, and principal stockholders required to file

Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 78l of this title, or who is a director or an officer of the issuer of such security (including, solely for the purposes of this subsection, every person who is a director or an officer of a foreign private issuer, as that term is defined in section 240.3b-4 of title 17, Code of Federal Regulations, or any successor regulation), shall file the statements required by this subsection with the Commission.

2. Time of filing

The statements required by this subsection shall be filed —

(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78l(g) of this title;

(B) within 10 days after he or she becomes such beneficial owner, director, or officer, or within such shorter time as the Commission may establish by rule;

(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible; or

(D) with respect to a foreign private issuer, the securities of which are, as of the date of enactment of the Holding Foreign Insiders Accountable Act, registered pursuant to subsection (b) or (g) of section 12, on the date that is 90 days after that date of enactment.

3. Contents of statements

A statement filed —

(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements or security-based swaps as have occurred since the most recent such filing under such subparagraph.

4. Electronic filing and availability

Beginning not later than 1 year after July 30, 2002 —

(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically and in English;

(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.

5. Authority to exempt. — The Commission by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the requirements of this section if the Commission determines that the laws of a foreign jurisdiction apply substantially similar requirements to such person, security, or transaction.

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