

FOREIGN PRIVATE ISSUER INSIDERS TO BECOME SUBJECT TO SECTION 16 REPORTING

Dec 29, 2025

WHAT HAPPENED

On December 18, 2025, President Trump signed into law the National Defense Authorization Act for Fiscal Year 2026. Section 8103 of the act, entitled the “Holding Foreign Insiders Accountable Act” (“HFIAA”), eliminates the exemption to the Section 16(a) reporting requirements for directors and officers of foreign private issuers (“FPIs”) that have equity securities registered under Section 12(b) or 12(g) of the Exchange Act. The new law becomes effective March 18, 2026.

TAKEAWAYS

Pursuant to the HFIAA, directors and officers of public company FPIs (referred to as “insiders”) will be required to file initial reports regarding their beneficial ownership of FPI equity securities by March 18, 2026. This obligation will require each insider to file a Form 3 reporting their beneficial ownership as of that date. Thereafter, insiders will be required to file Form 4s reporting transactions in such securities within two business days after the triggering event, which reports will include disclosure of trading activity, receipt of equity grants and gifts of securities, among other transactions. In certain cases, an annual report on Form 5 may be required to be filed within 45 days after the end of the FPI’s fiscal year when there were insider transactions during the prior fiscal year that had not yet been reported. For insiders, “beneficial ownership” is generally defined as having a direct or indirect pecuniary interest in the subject securities.

For purposes of Section 16, an “officer” is a company’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president 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 company. Officers of the company’s parent or subsidiaries are deemed officers of the issuer if they perform such policy-making functions for the company. It is likely that there will be substantial overlap between the senior managers identified in Item 6.A. of Form 20-F and Section 16 officers.

In order to prepare for the filing requirements, we recommend that FPIs:

- Confirm the identities of their insiders to be subject to the Section 16 reporting obligations;
- Identify and train company personnel that will be responsible for coordinating Section 16 filings;
- Coordinate with insiders to obtain EDGAR Next filing codes or ensure that insiders' existing credentials remain active (see our [December 2024 blog post](#) for information regarding enrollment in Edgar Next);
- Collect information from insiders regarding their beneficial ownership of issuer securities;
- Educate insiders about the new Section 16 filing obligations;
- Create procedures to ensure that company personnel responsible for Section 16 filing activities timely receive information regarding insider equity grants and other transactions in company securities; and
- Monitor upcoming SEC rule releases and guidance to ensure compliance with the new requirements.

In light of the March 18, 2026 initial reporting date, FPIs may wish to promptly initiate these activities. As noted below, the SEC may provide for certain exemptions to these filing obligations through new regulations or amendments to current regulations.

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Background

Exchange Act Section 16(a) requires directors and officers of a public company, as well as persons beneficially owning more than 10% of any registered class of the company's equity securities, to file reports with the SEC disclosing their ownership of, and transactions in, the company's securities. Form 4s, reporting transactions in company securities, are generally required to be publicly filed within two business days of transactions. Historically, FPIs have been exempt from the Section 16(a) reporting requirements.

In recent years, members of Congress have attempted to repeal the long-standing exemption to Section 16 reporting applicable to FPI insiders. As a refresher, an FPI is a company that is a foreign issuer (excluding a foreign government) that as of the last business day of its most recently completed second fiscal quarter either:

1. Has 50% or less of its outstanding voting securities directly or indirectly held of record by residents of the U.S.; or

2. Has more than 50% of its outstanding voting securities held of record directly or indirectly by U.S. residents and none of the following apply:

- The majority of executive officers or directors are U.S. citizens or residents;
- More than 50% of its assets are located in the U.S.; or
- Its business is principally administered in the U.S.

As indicated above, the National Defense Authorization Act for Fiscal Year 2026 was signed into law on December 18, 2025 and included a repeal of the Section 16(a) reporting exemption applicable to FPIs – with the initial reports to be filed on the date that is 90 days after the enactment of the HFIAA (March 18, 2026). This action comes on the heels of an [SEC Concept Release](#) soliciting comment as to whether the FPI definition itself should be modified to potentially be more restrictive, with the intent to, among other things, ensure FPI investors receive material information about U.S.-listed foreign companies, in light of the reduced reporting obligations imposed on FPIs. In adopting the HFIAA, Congress may believe that the extension of the Section 16 reporting obligation to FPIs is another way to provide material information to investors, by mandating disclosure of the trading activities of insiders. Additionally, mandated disclosure of insider's trading activity may be viewed as a method to identify trading on the basis of material non-public information in violation of securities laws.

A few items to note regarding the HFIAA:

- It provides authority to the SEC to exempt persons, securities or transactions from Section 16 reporting obligations if the SEC determines that the laws of a foreign jurisdiction apply substantially similar securities ownership/transaction reporting requirements;
- It does not extend the application of the short-swing profit rule included in Section 16(b) to FPI insiders (the short-swing profit rule imposes strict liability on Section 16 reporting persons to the issuer for any profit realized by insiders for engaging in opposite way non-exempt transactions within six months of each other); and
- It does not extend the reporting obligations to 10% holders of an FPI's registered class of equity securities, as is applicable to 10% holders of a registered class of equity securities of a domestic issuer.

The HFIAA directs the SEC to issue final regulations, or amend existing regulations, to carry out the statute's requirements by March 18, 2026. It is possible that in doing so, the SEC may also adopt rules that go beyond the statutory mandate of applying Section 16(a) reporting to insiders.

Ramifications for Failure to Make Filings

Although insiders have the legal obligation to make Section 16 filings, domestic issuers commonly coordinate filings with the insider to ensure timely and accurate filings. Recently, [the SEC conducted a sweep against insiders for failing to make Section 16 filings](#), which included charges against certain insider's companies of negligence in handling such filings that the companies voluntarily agreed to manage. This sweep emphasizes the importance of ensuring filings are timely and accurately made.

Additionally, domestic issuers are required to annually disclose the identity of insiders that failed to make timely filings, including the number of late filings and number of transactions. This disclosure obligation was not addressed in the HFIAA, but it is possible that the SEC may amend Annual Report on Form 20-F to mandate such disclosure (or require disclosure elsewhere) as part of the adoption of rules to implement the new Section 16 filing requirements for FPI insiders.

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