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US Congress Eliminates Foreign Private Issuer Exemption for Insider Reporting Obligations Under Holding Foreign Insiders Accountable Act

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On December 18, 2025, the Holding Foreign Insiders Accountable Act was signed into law, subjecting directors and officers of foreign private issuers (FPIs) to the insider reporting requirements under Section 16(a) of the US Securities Exchange Act of 1934, as amended (Exchange Act). Existing directors and certain officers (Section 16 officers and, together with directors, "insiders") of FPIs will have 90 calendar days from the date the act is enacted to begin reporting under Section 16(a). As a result, effective March 18, 2026, such Insiders must timely report to the US Securities and Exchange Commission (SEC) their ownership of, and changes in their ownership of, the issuer's securities. While rulemaking by the SEC will be required to carry out the amendments made by the act, on its face, the act makes changes to Section 16(a) self-executing such that they will become effective without further SEC rulemaking.

To assist FPIs in preparing for this significant change in insider reporting obligations, we have summarized the below frequently asked questions and responses under the new law.

1. Who will be subject to Section 16(a) reporting obligations?

Directors

All directors of the issuer are subject to Section 16(a) reporting obligations. Note that if an institutional investor has the right to "deputize" a director (director by deputization) to serve on the issuer's board in furtherance of the institution's interests, the institutional investor may also be subject to Section 16(a) reporting obligations.

Section 16 officers

Under SEC rules, the definition of "officers" for Section 16(a) purposes is the same as the definition used for the FPI's clawback policy. Officers include:

- The president (or CEO).
- The principal financial officer.
- The principal accounting officer.
- Any vice president of the issuer in charge of a principal business unit, division or function.
- Any other person who performs a (significant) policy-making function, regardless of title.

In practice, the individuals disclosed as officers in an FPI's annual report on Form 20-F should generally correspond to the officers subject to Section 16(a) reporting obligations (assuming your Form 20-F names your principal accounting officer, or your chief financial officer also performs the principal accounting officer role).

The act specifically refers only to "officers and directors" of FPIs. Although Section 16(a) of the Exchange Act also applies to 10% owners, the act does not expressly remove the existing FPI exemption for them. Accordingly, 10% owners of FPIs may continue to rely on the current exemption.

2. Which forms are required to be filed, and what

events trigger these filings?

Form 3 (initial beneficial ownership statement)

Form 3 must be filed after becoming an insider. Form 3 must disclose all of the insider's beneficial ownership of equity securities of the issuer (including derivatives such as options, convertible bonds and warrants). Even if the insider does not beneficially own any securities of the issuer, a Form 3 must be filed indicating "no securities beneficially owned."

Form 4 (statement of changes in beneficial ownership)

Form 4 must be filed when an insider engages in any nonexempt transaction in equity securities (including derivatives) that results in a change in the insider's beneficial ownership. This typically includes purchases and sales of securities, equity compensation grants, option exercises and dispositions or withholdings of securities to pay taxes or an exercise price, among others.

Form 5 (annual statement)

Form 5 is used to report transactions in the prior fiscal year that were not required to be reported on Form 4, or transactions that should have been reported on Form 3 or Form 4 but were not reported (i.e., late filings), as well as total beneficial ownership as of the end of the issuer's fiscal year. In practice, Form 5 is commonly used to report small acquisitions, gifts, inheritances or changes in holdings resulting from dividend distributions or dividend reinvestment plans. As a best practice, transactions that are eligible for deferred reporting on Form 5 are often voluntarily reported on Form 4 in advance.

3. What are the filing deadlines?

Form 3

Insiders of an existing FPI will be required to report their equity holdings on a Form 3 for the first time on March 18, 2026. Thereafter, for newly appointed insiders, Form 3 must be filed within 10 calendar days after the person becomes an insider. In an initial public offering (IPO) context, Form 3 filings must be filed by the effective date of the registration statement (typically the IPO pricing date).

Form 4

Form 4 must be filed by the end of the second business day following the reportable transaction.

Form 5

Form 5 must be filed within 45 calendar days after the issuer's fiscal year-end.

The timing of the above filings will align with the rules currently applicable to insiders of US domestic issuers. Filings will be required in all cases, by 10:00 PM ET on the due date. If a filing deadline falls on a weekend or a US federal holiday, the deadline is extended to the next business day.

4. What are the direct impacts on an FPI's existing disclosure framework?

Public disclosure of equity compensation information

Currently, equity compensation for insiders of FPIs is often disclosed only on an aggregate basis unless individual disclosure is required in the issuer's home country. After the Section 16(a) amendments become effective, insiders of FPIs must publicly report their beneficial ownership of, and changes in their beneficial

ownership of, the issuer's securities, resulting in the disclosure of information that may not previously have been publicly disclosed, such as individual award-by-award grants and changes in holdings caused by grants.

Public disclosure of beneficial ownership information

Form 20-F permits individual securities ownership of any director or senior manager to be omitted if such person owns less than 1% of the outstanding securities of the issuer, **and** the person's individual securities ownership has not otherwise been disclosed to shareholders or otherwise been made public. Because the Section 16(a) amendments will require insiders of FPIs to file public reports with their individual beneficial ownership, such information will have been made public, and therefore the exemption from individualized disclosure will no longer be available. As a result, individualized securities ownership disclosure requirements for directors and officers in the Form 20-F may increase.

5. FPIs should promptly begin compliance preparations.

Given the short runway to the March 18, 2026, effectiveness date for the enhanced reporting requirements, FPIs should kick off their compliance readiness and establish a Section 16(a) reporting compliance program, including the following key steps:

- **Confirm the scope of Section 16 officers.** FPIs should revisit who is designated as "Section 16 officer" in their disclosure and in connection with the adoption of their clawback policies, as those same officers will now be subject to the above Section 16 reporting requirements.
- **Review insider trading policies.** FPIs should review insider trading policies to determine whether transfers of the FPI's stock by insiders are subject to pre-clearance in order to facilitate timely reporting of transactions.
- **Enroll in EDGAR Next.** FPIs should ensure all insiders have obtained EDGAR filing codes (SEC electronic filing credentials).
- **Prepare initial Form 3 filings.** Prepare initial ownership filings on Form 3 for insiders in order to be ready to file with the SEC on March 18, 2026.
- **Conduct internal compliance training.** Conduct internal training sessions with insiders to ensure compliance with the new filing requirements and types of transactions in the FPI's stock that are required to be reported under Section 16(a).

6.What are the consequences of late filing or not filing?

Failure to timely file Section 16(a) reports constitutes a violation of US securities laws by the insider and may also subject the issuer to regulatory scrutiny. The act also authorizes the SEC to issue additional regulations as necessary to implement the intent of the act, and it is possible that the SEC may, by reference to the disclosure approach applicable to domestic issuers, require FPIs to disclose in their annual reports the names of delinquent filers and information about untimely filings (including the number of late reports and related transactions).

If the issuer agrees to make Section 16 filings for its insiders, the issuer must determine whether it has sufficient controls and procedures in place to ensure the timely filing of Section 16 reports.

7. Will insiders be subject to Section 16(b) short-swing profit recovery or Section 16(c) short-selling prohibitions?

The act only makes changes to the reporting requirements in Section 16(a) of the Exchange Act and does not address the requirements of Section 16(b)'s "short-swing" liability, which require insiders of US domestic issuers to repay companies for profits on matching trades made under a six-month period, or Section 16(c), which prohibits insiders from short selling issuer securities. Historically, insiders of FPIs have been exempt from all three subsections of Section 16. While the act does not specifically address Section 16(b) or 16(c), it does specify that the language inserted into Section 16(a)(1) should state that the inclusion of FPI insiders is "solely for the purposes of this subsection." It is currently expected that the SEC will retain the exemption from Sections

16(b) and 16(c) for FPIs.

8. The SEC has authority to grant exemptions for FPIs listed in jurisdictions with substantially similar requirements.

The act grants the SEC authority to exempt insiders of FPIs that are subject to “substantially similar requirements” in a foreign jurisdiction from Section 16(a) reporting requirements. At this stage, however, it remains unclear whether – or how – the SEC will exercise this exemptive authority.

For further questions on US capital markets and securities regulation matters, please feel free to contact us.

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