

Directors and Officers of FPIs will be Subject to Section 16 Reporting Requirements

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In a significant shift for foreign private issuer status, President Trump signed into law legislation that will extend the application of insider reporting obligations under Section 16(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) to directors and officers of foreign private issuers (“FPIs”).¹

As a result, directors and officers of FPIs will be required to publicly report their ownership of and trades in the shares of those companies to the U.S. Securities and Exchange Commission (“SEC”). The new reporting requirements are expected to go into effect on March 18, 2026.

Currently, FPIs are exempt from Section 16(a), which requires directors, officers and 10% shareholders to make public filings reporting their beneficial ownership as well as to disclose almost all transactions in company securities within two business days of such transaction. This will add a significant compliance burden for companies and could change the landscape with respect to how FPIs choose to compensate their directors and officers, as the filings will include compensatory grants of company equity securities.

While the SEC will have the authority to provide exemptions from the reporting requirements if it determines that the laws of the foreign jurisdiction where the FPI is incorporated already apply substantially similar requirements, it is unclear what the mechanism or timing of such an exemption might be.

Background: Current Section 16(a) Requirements

Section 16(a) of the Exchange Act requires directors, officers and 10% shareholders (collectively, “insiders”) of U.S. public companies with SEC-registered equity securities to publicly disclose transactions in such securities or derivatives of such securities. Insiders must report their initial ownership on Form 3 by either the date the registration statement becomes effective in the case of an IPO, or, for already public companies, within 10 calendar days of becoming a reporting person under Section 16. Subsequent transactions in the public company’s equity securities (e.g., purchases and sales, gifts, and compensation-related transactions, including equity compensation grants and other transactions in connection with such equity compensation grants) must be reported on Form 4 within two business days of the relevant transaction, and certain other holdings or

¹ The law is the “National Defense Authorization Act for Fiscal Year 2026,” which includes the “Holding Foreign Insiders Accountable Act” (the “Act”) enacting these changes.

transactions that were not reported on either Forms 3 or 4, must be reported on Form 5 within 45 days of the public company's fiscal year end.

Pursuant to Rule 3a12-13(b) under the Exchange Act, insiders of FPIs have historically been exempt from Section 16 requirements, and only had to comply with share ownership disclosure requirements in annual reports on Form 20-F, as well as any home jurisdiction insider reporting requirements, or their individual ownership exceeded 5% of the company's registered voting equity securities, on Schedule 13D or 13G. Additionally, in limited circumstances, certain insiders of FPIs have had to publicly report on Form 144 sales of their equity securities of the company in the open market in the United States (but not purchases or other acquisitions or dispositions).

New Application of Section 16(a) to Directors and Officers of FPIs

Required Disclosures: The amendments to Section 16(a) will require directors and officers (but not 10% shareholders) of FPIs to file reports on Forms 3, 4 and 5 on EDGAR to disclose their beneficial ownership of the issuer's equity securities (both derivative and non-derivative), as well as any subsequent changes in ownership, for so long as they serve as a director or officer. These reports must be made in English and will apply to all holdings and transactions in the issuer's equity securities (other than those already exempt under Section 16(a)), whether or not conducted in the United States or to United States persons.

Timing of Disclosures: The timing of these filings will align with the rules currently applicable to directors and officers of U.S. domestic issuers. Filings will be required (in all cases, by 10 PM Eastern Time on the due date):

- Upon the registration of the issuer's equity securities on a national securities exchange, or upon the effectiveness of a registration statement under Section 12(g) of the Exchange Act;
- Within 10 days after an individual becomes a director or officer of the issuer; and
- Following any reportable transaction, no later than the second business day after the transaction is executed.

Who this Applies to:

- **Directors:** In addition to individuals serving on a company's board, the SEC and U.S. Courts have sometimes recognized that a shareholder can be expressly or implicitly "deputized" as a director if it appoints a representative to serve on the board. In such a case, the entity or other person could be deemed a director and required to file reports under Section 16(a). This is a complicated analysis where counsel's assistance is required.²
- **Officers:** Under SEC rules, individuals that an FPI identifies as "executive officers" for purposes of reports on Form 20-F would be presumed to also be officers for purposes of Section 16(a) reporting. In addition, the principal financial officer and the principal accounting officer (or, if there is no such accounting officer, the controller), if not already identified as executive officers, would also be considered executive officers, as both are specifically identified in the definition of officer applicable for Section 16(a) reporting and claw-back policies.

² Since Section 16(b) short-swing profit liability will not apply to FPIs, the pressure for shareholders of FPIs to determine whether they are "directors by deputization" is expected to be less. The principal motivations for shareholders of domestic companies currently to report as "directors by deputization" are tied to Section 16(b), namely: (1) in the case of 10% shareholders of domestic companies, to take advantage of certain Section 16(b) exemptions available to directors but not 10% shareholders; and (2) in the case of shareholders under 10%, to plan for and avoid short-swing transactions requiring disgorgement under Section 16(b), to the extent that plaintiffs' firms in the Section 16(b) space – who mainly seek attorneys' fees for their claims for disgorgement – allege that such shareholders are in fact subject to all of Sections 16 a "director (by deputization)."

Exemptions:

- **Major shareholders of FPIs will not be subject to Section 16(a) reporting obligations:** In contrast to U.S. domestic companies, beneficial owners of more than 10% of an FPI's registered voting equity securities will not be required to file Section 16 reports.³
- **Section 16(b) short swing profit repayment obligations and Section 16(c) short-sale restrictions (likely) do not apply to FPI directors and officers:** Directors and officers of FPIs will likely remain exempt from the requirements of Section 16(b)'s "short swing" liability, which require insiders of U.S. domestic registrants to repay companies for profits on matching trades made in under a six-month period, and Section 16(c), which prohibits insiders from short selling company securities. While the Act does not specifically address these provisions, it does specify that the language inserted into Section 16(a)(1) should state that the inclusion of FPI directors and officers is "solely for the purposes of this subsection."
- **Reporting already required by foreign jurisdiction:** The Act permits the SEC, "by rule, regulation, or order, [to] conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of 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 such person, security, or transaction. While "substantially similar" is not defined or explained in the Act, many jurisdictions subject directors and certain executives to similar insider reporting requirements as those in Section 16(a), and thus directors and officers in those jurisdictions *may* be entitled to relief from the new requirements. However, the Act does not specify when or how the SEC will grant exemptive relief, and Section 16(a) reporting obligations may apply before the SEC finalizes such exemptive actions.

Timing

Existing directors and officers of FPIs will have 90 calendar days from the date the Act is enacted to begin reporting under Section 16(a). While rulemaking by the SEC will be required to carry out the amendments made by the Act, on its face the Act makes the changes to Section 16(a) self-executing such that they will become effective without further SEC rulemaking.

Practical Considerations and Implications

- **First-time disclosure of equity compensation:** Historically, FPIs have only reported compensation for directors and officers in Form 20-F on an aggregate basis unless public reporting if individualized disclosure was required under home country law, and individual share ownership and option holdings disclosure has only been required if an individual owns more than 1% of the total outstanding class of shares. For many FPI directors and officers, the new filings will represent the first time they need to publicly disclose their individual shareholdings (including equity-based compensation grants by the issuer, exercises/vestings of such grants, share holdings in entities they control, share purchases they make voluntarily and sales of all such shares, whether or not in the United States). FPIs and their directors and officers should begin assessing compliance processes and internal reporting mechanisms to ensure timely and accurate filings. Given the magnitude of this change from current practice, as well as possible concerns for the personal security of executive officers in certain jurisdictions whose share compensation and sales will now be fully public absent an exemption, consideration should be given to any additional disclosures regarding compensation philosophy or strategy, such as paying executive officers more in cash than shares.
- **Reevaluate individuals designated as "executive officers":** FPIs should revisit who they have designated as "executive officers" 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.

³ Individuals holding substantial stakes in any U.S.-listed company, including FPIs, remain subject to the separate reporting requirements of Section 13(d), 13(g), and 13(f) of the Exchange Act as well as the share ownership disclosure requirements in annual reports on Form 20-F.

- **EDGAR Next enrollment:** To the extent directors and officers are not already enrolled in EDGAR Next, FPIs should ensure each director and officer is appropriately set up to make filings with the SEC. For more information on this process, see our prior alert, [Prepare now for EDGAR Next](#).⁴
- **Review insider trading policies:** FPIs whose officers and directors will be subject to Section 16(a) should consider revisiting their [insider trading policies](#) or adopting new policies to require that directors and officers report trades internally to ensure compliance with new Section 16(a) reporting requirements, including potentially subjecting trading by directors and executive officers to pre-clearance in order to facilitate timely reporting of transactions.
- **Confirm filing responsibilities:** Many companies assume the responsibility for making Section 16 filings on behalf of their directors and officers. If this is the case, companies should ensure they have the proper reporting systems in place. Late or missing beneficial ownership reports under Sections 13 and 16 have been a recent focus of the SEC (with more focus on domestic companies, but still some actions against FPIs, in Section 13 reports), including [several enforcement actions](#) against both individuals and the affiliated public companies that had undertaken to file on their behalf for failure to timely file Section 16 reports. Companies that are not familiar with Section 16(a) reporting should coordinate with U.S. counsel to ensure that transactions and shareholdings are reported correctly.

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⁴ Individuals who are or have been directors of U.S. domestic issuers may already have EDGAR codes from their U.S.-company board or executive officer service, but access should be verified.

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