

## Client Alert

# SEC Adopts Rules to Apply Section 16(a) to Directors and Officers of Foreign Private Issuers

March 2, 2026

On February 27, 2026, the US Securities and Exchange Commission (“SEC”) adopted certain rule and form amendments implementing the landmark requirements of the Holding Foreign Insiders Accountable Act (“HIFAA”).<sup>1</sup> As discussed in our [previous alert](#), the HIFAA extends 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”), who will be required to publicly report their ownership of and trades in the shares of those companies starting on **March 18, 2026**.

The SEC’s final rule amendments revise the following rules and forms to implement the administrative changes made by the HFIAA, generally not going beyond what was already included in HIFAA:

- **Removing Section 16(a) exemption from FPI rules:** Consistent with HIFAA, the amendments remove the current exemption from Section 16(a) from the rules applicable to FPI and include clear exemptions from the Section 16(b) short-swing profit rules and Section 16(c) short-selling prohibition.
- **Exempting 10-percent-or-more owners under Section 16(a) rules for FPIs:** Rule 16a-2 identifies the persons and transactions subject to Section 16(a). Consistent with HIFAA, the amendments to Rule 16a-2 specifically *exclude* 10 percent-or-more owners from the requirements of Section 16(a) and related rules.
- **Section 16 reports (Forms 3, 4, and 5):** The rules revise the instructions to these forms to:
  - include directors and officers of FPIs and exclude 10 percent holders of FPIs from the requirement to file the form; and
  - add an optional field for a foreign trading symbol and a country code and postal codes as part of the address of the reporting person.<sup>2</sup>

<sup>1</sup> The adopting release is available [here](#).

<sup>2</sup> Specifically, Forms 3, 4 and 5 will now also include an optional field (Box 3a. of Form 3 and Box 2a. of Form 4 and Form 5) to allow for the listing of a second trading symbol for FPIs with trading in both US and non-US markets. In cases where a Section 16 reporting person of FPIs holds shares that are traded in both in US and non-U.S. markets, they should include both trading symbols. In cases where shares only have a foreign trading symbol (e.g., a level-1 ADR program with an Exchange Act Section 12(g) registration in the US), a Section 16 reporting person of FPIs could either enter the foreign trading symbol in the first mandatory box (Box 3 of Form 3 and Box 2 of Form 4 and Form 5) if allotted space allows or enter “none” in that first trading symbol box and enter the foreign trading symbol in the second box (Box 3a. of Form 3 and Box 2a. of Form 4 and Form 5).

## Current Action Items

As a reminder to our prior alert, with the **March 18, 2026** effective date rapidly approaching, FPIs and their directors and officers should take the following steps immediately:

1. **Identify all Section 16 reporting persons.** Determine which directors and officers qualify as Section 16 reporting persons under the Exchange Act definitions.<sup>3</sup> FPIs should revisit who they have designated as “executive officers” in their Form 20-F disclosure, plus determine who is their “principal accounting officer,” as that collective group of officers<sup>4</sup> will now be subject to the above Section 16 reporting requirements.<sup>5</sup>
2. **Receive EDGAR codes and register on EDGAR Next.** To the extent directors and officers do not already have EDGAR filing codes and/or are not already enrolled in EDGAR Next, FPIs should ensure each director and officer obtains codes and is appropriately set up to make filings with the SEC. Obtaining the EDGAR codes of a director or officer will require collecting a notarized power of attorney from the individual to allow someone at the FPI or its outside counsel to submit to the SEC, on that individual’s behalf, a Form ID (EDGAR codes application), and then actually submitting such Form ID.
3. **Collect powers of attorney for ongoing Section 16 filings.** To ease the filing process, a power of attorney should enable an employee of the FPI to sign Section 16 filings on the director/officer’s behalf. For this purpose, the SEC requires that there be a power of attorney on file with the SEC showing the signatory’s designation as an attorney-in-fact. As a result, FPIs should distribute these powers of attorney so they can be filed in time as exhibits with the Form 3s. The powers of attorney need only be filed with the SEC once, not every time a director/officer files a Section 16 report with the SEC). These powers of attorney, unlike those for submitting a Form ID, do not need to be notarized.
4. **Prepare initial Form 3 reports.** All directors and officers must file Form 3 by March 18, 2026, reporting their initial beneficial ownership of the FPI’s equity securities. Notably, Form 3s must be filed even for those directors and officers that hold no securities (stating in “Remarks” that “No securities are beneficially owned” or something to that effect). FPIs should gather the necessary information from such directors and officers and prepare drafts of the initial Form 3 filings due on March 18, 2026, and also pay attention to any upcoming grants that will trigger Form 4 filings shortly after March 18.
5. **Establish ongoing compliance procedures** Implement systems to track and report changes in beneficial ownership on Form 4 within two business days of each transaction. This may require updating

<sup>3</sup> Some FPIs have a two-tier board structure, with a supervisory (non-management) board and a management board. The adopting release reminds issuers that whether a person is a “director” of an FPI for purposes of Section 16(a) reporting is a factual determination based on the Exchange Act Section 3(a)(7) definition, which defines “director” as any director of a corporation or any person performing similar functions with respect to any organization. FPIs with this structure should carefully assess which individuals on both boards qualify as “directors” for Section 16 purposes. In practice, the factors generally necessary for director status are access to confidential information and a policy-making function, as shown by attendance at board and committee meetings in a way that the person has a voice and can influence board decisions.

<sup>4</sup> “Executive officers” for purposes of Exchange Act Rule 3b-7 (those who are expected to be named in the annual report on Form 20-F) include the FPI’s “president” (i.e., CEO), individuals “in charge” of any “principal” business unit/division/function, and any other individual with a significant “policy-making function.” While the CFO is not explicitly named, in practice, this definition almost always picks up the CFO. “Officers” for purposes of Exchange Act Rule 16a-1(f) (those who are required to file Section 16 reports) include the FPI’s principal executive officer (i.e., CEO), principal financial officer (i.e., CFO), individuals “in charge” of any “principal” business unit/division/function, and any other individual with a significant “policy-making function.” The “officer” definition for Section 16 also technically includes the FPI’s “principal accounting officer,” or if there is none, the FPI’s controller (which position is explicitly *not* picked up by Exchange Act Rule 3b-7, and is often *not* called out in practice in the annual report on Form 20-F). Some FPIs may determine that the “principal accounting officer” role is performed by their CFO, such that the same person performs both the “principal financial officer” and “principal accounting officer” roles and the Section 16 rules do not in turn reach their controllers or other individuals who would normally be beyond the scope of those named as “executive officers” in the annual report on Form 20-F.

<sup>5</sup> The definition of “officer” for Section 16 also should also be identical to the list of individuals covered by the company’s clawback policy.

insider trading policies to include notice requirements from directors and officers and/or training directors and officers on how to comply.

6. **Review compensation and equity arrangements.** Assess current equity incentive and compensation structures for FPI directors and officers to outline a timeline of when Form 4 reporting obligations will be required.

## Additional Observations

The HFIAA also granted the SEC the authority to exempt any person, security, or transaction from the reporting requirements of Section 16(a) if the Commission determines that the laws of a foreign jurisdiction apply “substantially similar” requirements to such person, security, or transaction. The adopting release notes that the Commission may consider granting such exemptive relief in a separate action. Given no action has yet been taken, all directors and Section 16 officers of FPIs should prepare for the March 18, 2026 compliance deadline in the meantime. We will provide further updates as we receive them.

Additionally, while the HFIAA did not extend Section 16(b) short-swing profit disgorgement liability to FPI directors and officers, the new public filing obligations will meaningfully increase the visibility of FPI insider transactions to plaintiffs’ lawyers who systematically monitor EDGAR for Section 16 filings to identify potential short-swing profit transactions. FPIs looking to avoid more proactively such Section 16(b) lawsuits may want to consider a standard note that they always include in the “Remarks” section of the relevant Form 3, 4 or 5 making clear that the issuer is an FPI and not subject to Section 16(b) short-swing liability.

Although Section 16(b) does not apply to FPIs, the SEC did note in the release that the Section 16(b) exempt codes apply equally to FPIs, stating that “the Transaction Codes listed in the Instructions for Forms 4 and 5 also apply to transactions of directors and officers of FPIs, notwithstanding their exemption from Section 16(b) under Rule 3a12-3(b).” As a result, FPIs should consider using the Section 16(b) “exempt” codes to the extent possible when making a filing, as they should further minimize any scrutiny of a filing.

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