



## Section 16 Obligations Expand to Apply to Foreign Private Issuers

DECEMBER 31, 2025

Foreign private issuers (FPIs) and their directors and officers have long operated outside the U.S. insider reporting regime that applies to domestic public companies. That will change on March 18, 2026.

On December 18, 2025, as part of the National Defense Authorization Act for fiscal year 2026, the Holding Foreign Insiders Accountable Act (HFIAA) was signed into law. The HFIAA amends Section 16(a) of the Securities Exchange Act of 1934 to require directors and executive officers of foreign private issuers with a class of equity securities registered under Section 12 of the Exchange Act to comply with the same insider reporting rules that apply to U.S. domestic issuers. Beginning in March 2026, covered FPI insiders must publicly disclose their equity ownership and transactions on the same Forms used by U.S. issuers—Forms 3, 4, and 5.

The change reflects the SEC's broader effort to harmonize insider disclosure standards across domestic issuers and FPIs and to enhance market transparency and accountability.

### WHAT WILL CHANGE ON MARCH 18, 2026

Starting March 18, 2026, directors and executive officers of covered FPIs must report their beneficial ownership of, and transactions in, the issuer's equity securities by filing Forms 3, 4, and 5 on EDGAR.

The HFIAA is narrowly focused on Section 16(a) reporting. It does not extend other Section 16 provisions to FPIs:

- FPI directors and officers remain exempt from Section 16(b) short-swing profit disgorgement.
- They also remain exempt from Section 16(c) short-sale prohibitions.

In addition, ten-percent beneficial owners of FPIs will continue to be exempt from Section 16 entirely—unless the holder is also a director (including under the director-by-deputization doctrine), in which case reporting obligations apply in that capacity.

### WHO IS COVERED

Covered "officers" include the issuer's president, principal financial officer, principal accounting officer or controller, any vice president in charge of a principal business unit, division, or function, and any other person who performs

policy-making functions for the issuer. Individuals identified as “executive officers” for Form 20-F purposes are presumed to be officers for Section 16(a).

“Directors” include seated board members and, under the director-by-deputization doctrine, entities or persons deemed to serve as directors through their representatives. In certain cases, officers of parent companies or subsidiaries who perform policy-making functions for the FPI may also be treated as officers subject to reporting.

## FORMS 3, 4, AND 5: WHAT MUST BE FILED—AND WHEN

- **Form 3 (Initial Ownership Statement):** Any individual who is a director or officer of an FPI as of March 18, 2026 must file a Form 3 on that date. After the effective date, a newly appointed director or officer must file within ten calendar days of assuming the role. In connection with an FPI’s initial Section 12 registration, a Form 3 is due by the registration’s effective date.
- **Form 4 (Changes in Ownership):** Form 4 reports most transactions involving equity securities and is due by 10:00 p.m. Eastern Time on the second business day following the transaction. Reportable events include open-market purchases and sales, equity award grants, option exercises, vesting and settlement of equity awards (including tax-withholding transactions), gifts, and similar changes in beneficial ownership.
- **Form 5 (Annual Catch-Up Filing):** Form 5 is due within 45 days after fiscal year-end and captures certain transactions eligible for deferred reporting, as well as any previously missed or corrected filings.

There is no *de minimis* threshold for reporting. Even small transactions must be reported on time, and the rules apply regardless of where the trade occurs.

## EDGAR MECHANICS AND ADMINISTRATIVE CONSIDERATIONS

All Section 16 filings must be submitted in English through the SEC’s EDGAR Next system. Each insider must have individual EDGAR credentials and may not rely on the issuer’s access codes.

Insiders who do not already have credentials—or whose legacy credentials require renewal or EDGAR Next enrollment—must submit a notarized Form ID to obtain a CIK and related codes. While companies commonly assist insiders with account administrators, outside counsel, financial printers, and powers of attorney, the legal obligation to file remains with the individual.

For FPIs operating across multiple time zones, the two-business-day Form 4 deadline can pose operational challenges. Internal notification, pre-clearance, and trade-reporting processes should be calibrated to ensure that filings can be made by the applicable U.S. Eastern Time deadlines.

## SEC EXEMPTION AUTHORITY—BUT NO RELIEF YET

The HFIAA authorizes the SEC to exempt persons, securities, or transactions from Section 16(a) where a foreign jurisdiction imposes “substantially similar” insider reporting requirements. To date, no exemptions have been granted.

Although jurisdictions with robust home-country insider reporting regimes could be candidates for relief, the timing, scope, and standards for any exemption remain uncertain. FPIs and their directors and officers should plan to comply in full absent formal SEC action.

## COMPLIANCE POSTURE AND PRACTICAL NEXT STEPS

With the effective date rapidly approaching, FPIs should begin readiness efforts now. Key steps include:

- **Identify covered insiders.** Confirm which directors and officers fall within the Section 16 definitions.
- **Map beneficial ownership.** Collect and verify each insider’s direct and indirect holdings, including interests held through family members, controlled entities, and trusts, and inventory all equity-linked instruments and award terms.

- **Prepare for EDGAR access.** Obtain or refresh EDGAR Next credentials for every covered insider well in advance of March 18, 2026.
- **Establish filing processes.** Implement reliable procedures for two-business-day Form 4 reporting, including pre-clearance, same-day trade notifications, broker coordination, and clear lines of responsibility among in-house teams, outside counsel, and financial printers.
- **Update policies and practices.** Revise insider trading policies to reflect the new reporting requirements and consider whether compensation design or disclosure practices should be adjusted in light of the new public reporting requirements for awards, vesting, exercises, and sales.

## CONSEQUENCES OF NON-COMPLIANCE

Late or missing Section 16 filings are violations by the individual filer and may attract SEC scrutiny or enforcement, including civil penalties. While FPIs are not currently subject to the requirement applicable to domestic issuers to disclose delinquent filings under Item 405 of Regulation S-K, the SEC has historically focused enforcement attention on untimely Section 16 reporting.

The SEC has also been directed to adopt implementing regulations on an accelerated timeline. Those rules may address compliance mechanics, potential exemptions, and disclosure of reporting delinquencies in Form 20-F filings.

## THE BOTTOM LINE

The HFIAA marks a significant shift in the SEC's approach to foreign private issuers, ending the longstanding exemption from Section 16(a) and bringing FPI directors and executive officers into the U.S. domestic insider reporting regime beginning on March 18, 2026.

The practical effects of this expansion of Section 16(a) to FPIs—and any potential exemptive relief—remain uncertain and will depend in part on forthcoming SEC rulemaking and implementation.

Winston's Capital Markets and Securities Law Watch will continue to monitor SEC guidance, rulemaking, and enforcement developments under the HFIAA and will provide updates as they become available. For more information, or if you have questions about preparing for Section 16(a) compliance, please reach out to your regular Winston contacts.

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