

Section 16(a) To Apply to Foreign Private Issuers: Takeaways from the SEC's Final Rule

MARCH 10, 2026

On February 27, 2026, the Securities and Exchange Commission (SEC) adopted a final rule ([Release No. 34-104903](#)) (Final Rule) implementing the Holding Foreign Insiders Accountable Act (HFIAA), which was enacted on December 18, 2025 as part of the National Defense Authorization Act for fiscal year 2026. The Final Rule extends the beneficial ownership reporting requirements of Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act) to foreign private issuers (FPIs). It takes effect on March 18, 2026, the same date on which the new reporting obligations begin for covered insiders as required by the HFIAA. This update focuses on clarifications in the Final Rule, key interpretive guidance from the SEC and what FPIs should do now.

EXTENSION OF SECTION 16(A) REPORTING TO FPIS

The Final Rule eliminates the exemption from Section 16 reporting requirements that previously applied to directors and officers of FPIs. Specifically, revised Rule 3a12-3(b), which formerly exempted FPIs from all of Section 16, now exempts FPIs only from Section 16(b) (short-swing profit disgorgement) and Section 16(c) (short-sale prohibition). Directors and officers of FPIs with equity securities registered under Section 12 of the Exchange Act must now file Section 16 reports electronically and in English on EDGAR, using structured data, on Forms 3, 4 and 5.

The Final Rule confirms that a beneficial owner of 10% or more of the equity securities of an FPI will continue to be exempt from Section 16 in its entirety unless the holder is also a director^[i] or an officer,^[ii] in which case Section 16(a) reporting obligations apply to them in that capacity. The SEC rejected commenters' arguments that the HFIAA should extend to 10% beneficial owners, noting that the text of the HFIAA inserted FPI-specific language only with reference to directors and officers.

FORMS 3, 4 AND 5: FILING REQUIREMENTS AND TECHNICAL UPDATES

The standard Section 16 filing deadlines apply to FPI insiders. Form 3 must be filed within ten calendar days of becoming a director or officer (or, for those serving as of March 18, 2026, on that date); a Form 4 must be filed within two business days of a reportable transaction and is due before 10:00 p.m. Eastern time on the filing deadline; and a Form 5 is due within 45 calendar days after the issuer's fiscal year-end for unreported or deferred transactions. The Final Rule adds some clarifications and technical updates:

- Forms 3, 4, and 5 now include optional fields for a foreign trading symbol and for postal codes and country codes, accommodating FPIs with securities trading in both U.S. and non-U.S. markets. Where a reporting person holds shares that are traded in both U.S. and non-U.S. markets, they should include both trading symbols. In cases where shares only have a foreign trading symbol, a reporting person may either enter the foreign trading symbol in the first mandatory box (Box 3 of Form 3 and Box 2 of Forms 4 and 5) if allotted space allows or enter “none” in that box and enter the foreign trading symbol in the second box (Box 3a of Form 3 and Box 2a of Forms 4 and 5).
- The SEC confirmed that the Transaction Codes listed in the Instructions for Forms 4 and 5, including those applicable to transactions qualifying for an exemption from Section 16(b), apply to transactions by directors and officers of FPIs notwithstanding their exemption from Section 16(b) under Rule 3a12-3(b).
- The SEC cautioned that language in Rule 16a-3(g)(1) and (f)(1) and in the Instructions to Forms 4 and 5 referencing “transactions not exempt from Section 16(b)” should not be read to exempt FPI directors and officers from reporting transactions otherwise required to be reported by Section 16(a).

SEC’S EXERCISE OF ITS EXEMPTIVE AUTHORITY

The HFIAA grants the SEC discretionary authority to exempt persons, securities, or transactions from Section 16(a) reporting requirements where foreign law imposes “substantially similar” reporting obligations. The Final Rule does not provide such exemptive relief and states only that the SEC may consider granting such exemptions in a “separate rulemaking or order.” In his [statement](#) on the Final Rule, Chairman Paul S. Atkins stated that SEC staff is “actively evaluating” whether to recommend that the SEC exercise this exemptive authority. Pursuant to this authority, the SEC has since granted an exemption from Section 16(a)’s reporting requirements for FPIs in six qualifying jurisdictions, subject to other requirements. These qualifying jurisdictions include Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland and the United Kingdom. This exemption is more fully discussed in our post [here](#). FPIs in other jurisdictions should continue to plan for full Section 16(a) compliance in light of the Final Rule taking effect on March 18, 2026.

COMPLIANCE CONSIDERATIONS AND NEXT STEPS

With the March 18, 2026 compliance deadline rapidly approaching, FPIs not exempt from Section 16(a) should act swiftly to comply. As discussed in greater detail in our prior discussion on recommended [next steps](#), FPIs should (1) identify covered insiders, (2) map beneficial ownership, (3) prepare for EDGAR access, (4) establish filing processes and (5) update policies and practices.

Winston’s Capital Markets and Securities Law Watch will continue to monitor SEC guidance, rulemaking, and enforcement developments under the HFIAA, including whether the SEC further exercises or clarifies its exemptive authority for “substantially similar” foreign regimes, 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.

[i] Whether a person is a “director” of an FPI for purposes of Section 16(a) reporting is a factual determination based on Exchange Act Section 3(a)(7), which defines a director as “any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.” 15 U.S.C. § 78c(a)(7).

[ii] Rule 16a-1(f) defines “officer” as “an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer 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 issuer.” 17 C.F.R. § 240.16a-1(f).

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