

Section 16(a) Insider Reporting: Legislation Ends Foreign Private Issuer Exemption

December 19, 2025

On December 18, 2025, the President of the United States signed into law the Holding Foreign Insiders Accountable Act (“HFIAA”), making officers and directors of foreign private issuers (“FPIs”) subject to public reporting of holdings of, and transactions in, the issuers’ equity securities under Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The new law will become effective on March 18, 2026.

The HFIAA takes aim at the longstanding exemption from Section 16(a) beneficial ownership reporting requirements under the Exchange Act for insiders of FPIs. Under the new law, officers and directors of FPIs will become subject to the same disclosure regime that currently applies to their domestic issuer counterparts.

I. Introduction

On December 18, 2025, President Trump signed the HFIAA into law.¹ The legislation eliminates a nearly five-decade-old exemption from Exchange Act Section 16(a) beneficial ownership reporting obligations for FPI insiders.² Under the HFIAA, FPI officers and directors will become subject to the same public disclosure requirements as their domestic counterparts, obligating them to report holdings of classes of equity securities registered under Section 12(b) or Section 12(g) of the Exchange Act and transactions in those securities on Forms 3, 4, and 5,³ as prescribed by the Securities and Exchange Commission (the “SEC”).

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Oddly, the HFIAA is embedded in the National Defense Authorization Act for Fiscal Year 2026, an annual defense policy bill signed into law by President Trump on December 18, 2025.⁴ This legislative effort forms part of a broader, coordinated regulatory strategy to strengthen oversight of non-U.S. issuers in U.S. public markets. In particular, it aligns with concurrent SEC enforcement and rulemaking initiatives, including the June 2025 FPI Concept Release⁵ and the September 2025 establishment of the Cross-Border Task Force,⁶ aimed at addressing perceived competitive asymmetries between domestic and non-U.S. issuers.⁷

II. The HFIAA's Impact on the FPI Section 16(a) Reporting Exemption

A. Summary of the HFIAA

The HFIAA breaks new ground by subjecting FPI officers and directors to Section 16(a)'s beneficial ownership reporting regime for the first time.⁸ To accomplish this, the HFIAA amends the language of Section 16(a)(1) to expressly reference officers and directors of FPIs.⁹ In addition, the HFIAA nullifies SEC Rule 3a12-3(b), which previously exempted FPI insiders from Section 16, and any successor rule, to the extent it conflicts with the amended Section 16(a)(1).¹⁰

B. Scope of Amendment

The HFIAA only amends Section 16(a) and, by its express terms, applies "solely for the purposes" of that subsection.¹¹ Importantly, it does not amend Sections 16(b) and 16(c) of the Exchange Act.¹² Accordingly, while FPI officers and directors will become subject to initial and ongoing beneficial ownership disclosure obligations, they will remain exempt from both the short-swing profit recovery provisions of Section 16(b) and the short-sale prohibitions of Section 16(c).

While Section 16(a) reporting obligations as applicable to domestic issuers also extend to more than 10% holders of securities, the HFIAA, as drafted, does not subject holders of more than 10% of securities of FPIs to Section 16(a) reporting obligations. The legislation's amendment to Section 16(a)(1) of the Exchange Act expressly references officers and directors — not holders of more than 10% of securities — and Section 8103(c) only nullifies the FPI exemption under SEC Rule 3a12-3(b) to the extent inconsistent with the language of the amendment.¹³

III. Practical Implications for FPI Insiders

A. Filing Requirements

Section 16(a) requires insiders to report their beneficial ownership and transactions through three forms:

- **Form 3** reports initial beneficial ownership and must be filed within 10 calendar days after becoming an insider with reportable holdings or transactions under Section 16(a) of the Exchange Act.¹⁴
- **Form 4** reports any changes in beneficial ownership and must be filed by the end of the second business day following the transaction.¹⁵ Unlike amendments to Schedule 13D and 13G beneficial ownership reports, which are triggered when there have been material changes to previously reported content and changes in ownership above certain thresholds, a Form 4 must be filed for "*each* transaction resulting in a change in beneficial ownership," regardless of amount.¹⁶

- **Form 5** reports certain deferred transactions or corrections annually and is due within 45 calendar days after the issuer's fiscal year-end.¹⁷ It captures transactions and holdings that were not previously reported on Forms 3, 4, or 5, including certain transactions such as specified gifts, inheritances, and voting trust contributions and withdrawals, as well as "small acquisitions" eligible for deferral and any unreported holdings or transactions that should have been reported on Forms 3 and 4.¹⁸

B. Who Must Report

Section 16(a), as amended by the HFIAA, applies to FPI officers and directors (each, an "insider") of issuers with equity securities registered under Section 12 of the Exchange Act. FPIs should identify their officers and directors based on the applicable definitions.

- **Officers** include (i) the president, (ii) the principal financial officer, (iii) the principal accounting officer, (iv) any vice-president of the issuer in charge of a principal business unit, division, or function, and (v) other policy-making individuals, regardless of title.¹⁹ While FPIs are not required to identify their "officers" as defined in Item 401(b) of Regulation S-K in their annual Form 20-F reports each year (in contrast to domestic issuers), the definition of "officers" for Section 16(a) purposes is the same as the definition used for the FPI's clawback policy under NYSE and Nasdaq listing rules.²⁰
- **Directors** include "any director of a corporation or any person performing similar functions."²¹ For Section 16(a) purposes, this definition should be interpreted broadly. It may encompass advisory, emeritus, or honorary directors, as well as members of other similar corporate bodies that either (i) participate in formulating and deciding policy issues, or (ii) have access to material nonpublic information.²² Furthermore, under the "director-by-deputization theory," any shareholder may be deemed a director — and thereby subject to the insider reporting obligations imposed by Section 16(a) — if it deputizes a representative to serve on the issuer's board in furtherance of the shareholder's own interests rather than in an independent capacity.²³ The relevant jurisprudence evaluates deputization based on the totality of circumstances, focusing on whether the individual director represents the deputizing entity's interests through various indicia of control, alignment, and representative capacity.²⁴

For officers and directors meeting these criteria, Section 16(a) of the Exchange Act, as amended by the HFIAA, imposes new transaction-level disclosure obligations. Each change in reportable beneficial ownership triggers a public reporting obligation — including equity compensation awards, stock grants, options, warrants, and derivatives.²⁵

C. Filing Procedures and EDGAR Next

Section 16(a) forms must be filed electronically through the SEC's EDGAR Next system.²⁶ Under EDGAR Next, insiders bear direct responsibility for their submissions; issuers may not use issuer credentials to file reports on an insider's behalf.²⁷

Each insider must obtain individual EDGAR credentials. This requires filing Form ID with the SEC to secure a Central Index Key (CIK) and CIK Confirmation Code (CCC).²⁸ However, FPIs may prepare and submit Forms 3, 4, and 5 on behalf of insiders if the insider designates the issuer (or its agent) as an authorized account administrator or user within the insider's individual EDGAR account.²⁹

Section 16(a) filers should consider engaging financial printers to handle the technical submission process, given the XML conversion requirements for EDGAR filings.

IV. Timeline, Effective Date, and Potential Exemptions

A. Effective Date

Following the HFIAA's enactment on December 18, 2025, officers and directors of FPIs will have 90 calendar days to file their initial Form 3, due March 18, 2026.³⁰ Following the initial Form 3 filing, ongoing reporting obligations will commence. Insiders must file Form 4 within two business days of any change in beneficial ownership reported on their Form 3 filing.³¹ Insiders may also need to file Form 5 within 45 calendar days of the FPI's fiscal year-end following the HFIAA's 90-calendar day transition period, covering certain transactions eligible for deferred reporting and corrections to prior filings.³²

The SEC must implement the law's amendments to the Exchange Act within the same 90-calendar day period.³³ Affected officers and directors should monitor forthcoming SEC guidance addressing implementation, exemptive relief, and interpretive developments.

B. Failure to Comply

Failure to timely comply with the reporting obligations under Section 16(a) of the Exchange Act may subject the insider to enforcement action by the SEC, including the imposition of civil penalties. Domestic issuers are required to disclose Section 16(a) delinquencies in their annual proxy statements or annual reports on Form 10-K. The amendment does not currently address this disclosure obligation for FPIs. However, the SEC could determine to impose a comparable disclosure requirement on FPIs, which will likely require disclosure of such delinquencies in annual reports on Form 20-F. In the interim, FPIs should consider whether voluntary disclosure in their annual reports on Form 20-F is appropriate, taking into account investor expectations and corporate governance practices.

C. SEC Exemptive Authority

The HFIAA grants the SEC discretionary authority to exempt FPI insiders from Section 16(a) reporting requirements where foreign law imposes "substantially similar" obligations.³⁴ Under proposed Section 16(a)(5), the SEC could provide broad exemptive relief on either a conditional or unconditional basis. The statute does not, however, mandate such relief. Rather, the SEC retains discretion to deny exemptions even where foreign reporting regimes appear functionally equivalent to U.S. requirements.

This exemptive framework may benefit FPI officers and directors subject to comparable regulatory regimes abroad. Several jurisdictions maintain insider reporting frameworks with requirements comparable to Section 16(a). For example, the Market Abuse Regulation in the UK and the EU imposes similar reporting obligations on insiders of companies listed in the UK and on EU exchanges,³⁵ and insider reporting requirements under Canadian securities laws impose comparable reporting obligations on insiders of public companies in Canada.³⁶

Notwithstanding the existence of comparable foreign reporting obligations, SEC exemptions would require formal rulemaking procedures. Under the HFIAA, the SEC must affirmatively determine that foreign reporting standards are “substantially similar” to Section 16(a) requirements before it can grant relief. It remains uncertain whether the SEC will undertake such rulemaking within the 90-calendar day period before the law takes effect. FPIs should not assume that exemptive relief will be available when the HFIAA becomes effective.

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¹ Holding Foreign Insiders Accountable Act (HFIAA), S. 1071, 119th Cong. § 8103(b)(1) [hereinafter HFIAA] (engrossed amendment as passed by House, Dec. 10, 2025).

² HFIAA, S. 1071, § 8103(c) (2025).

³ 17 C.F.R. § 240.16a-3 (2025).

⁴ National Defense Authorization Act for Fiscal Year 2026, S. 2296, 119th Cong. (2025).

⁵ Concept Release on Foreign Private Issuer Eligibility, Release Nos. 33-11376, 34-103176 (June 4, 2025), <https://www.sec.gov/files/rules/concept/2025/33-11376.pdf>.

⁶ Press Release, SEC, SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sep. 5, 2025), <https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud>.

⁷ For additional analyses of these developments, please refer to our prior publications on the [FPI Concept Release](#) and the [SEC Cross-Border Task Force](#).

⁸ See 17 C.F.R. § 240.3a12-3 (2025).

⁹ HFIAA, S. 1071, § 8103(b)(1)(A) (2025).

¹⁰ HFIAA, S. 1071, § 8103(c) (2025).

¹¹ HFIAA, S. 1071, § 8103(b)(1)(A) (2025).

¹² 15 U.S.C. § 78p(b)-(c).

¹³ Beneficial owners of more than 5% of a class of equity securities of an FPI will continue to have reporting obligations on Schedule 13D or Schedule 13G under Section 13 of the Exchange Act. See 15 U.S.C. § 78m(d); 15 U.S.C. § 78m(g); 17 C.F.R. § 240.13d-1 (2025).

¹⁴ 17 C.F.R. § 249.103 (2025).

¹⁵ 17 C.F.R. § 249.104 (2025).

¹⁶ SEC, Form 4: Statement of Changes in Beneficial Ownership of Securities (SEC 1474 (02-23)), <https://www.sec.gov/files/form4data.pdf> (emphasis added).

¹⁷ 17 C.F.R. § 249.105 (2025).

¹⁸ 17 C.F.R. § 240.16a-3 (2025).

¹⁹ 17 C.F.R. § 240.16a-1 (2025).

²⁰ Securities Exchange Act Release Nos. 33-11126, 34-96159, at 49–51 (Oct. 26, 2022); 17 C.F.R. § 229.401(b).

²¹ SEC Release No. 34-18114 (Sep. 24, 1981).

²² See SEC Release No. 34-28869 (Feb. 8, 1991); SEC Release Nos. 34-26333 (Dec. 2, 1988); SEC Release No. 34-18114 (Sep. 24, 1981).

²³ *Feder v. Martin Marietta Corp.*, 406 F.2d 260 (2d Cir. 1969), cert. denied, 396 U.S. 1036 (1970); see also SEC Release Nos. 34-26333 (Dec. 2, 1988).

²⁴ Case law relating to deputization considers the “totality of circumstances,” focusing on whether the individual director represents the deputizing entity’s interests through factors including: (i) mutual understanding that the director represents the entity’s interests; (ii) the entity’s approval of the board appointment in connection with its investment position; (iii) the director’s control over the entity’s investment decisions; (iv) the director’s access to material nonpublic information; and (v) evidence of a pattern whereby the entity similarly places representatives on other boards. SEC guidance confirms that deputizing entities are deemed directors for purposes of Section 16(a), and accordingly, FPIs should assess whether any shareholders qualify as deputized directors. *Feder v. Martin Marietta Corp.*, 406 F.2d 260 (2d Cir. 1969), cert. denied, 396 U.S. 1036 (1970); SEC Release Nos. 34-26333 (Dec. 2, 1988). See also *Blau v. Lehman*, 368 U.S. 403 (1962); SEC Release No. 34-18114 (Sep. 24, 1981); Brief of the SEC as, Amicus Curiae, in Support of the Position of the Appellees, *Roth v. Perseus, L.L.C.*, No. 06-3771-cv (2d Cir. Jan. 2007), <https://www.sec.gov/files/litigation/briefs/2007/perseusbrief.pdf>.

²⁵ See SEC, Form 4: Statement of Changes in Beneficial Ownership of Securities (SEC 1474 (02-23)), <https://www.sec.gov/files/form4data.pdf>; 17 C.F.R. § 240.16a-1(c) (2025).

²⁶ SEC, *Enroll in EDGAR Next*, (Sep. 15, 2025), <https://www.sec.gov/submit-filings/filer-support-resources/how-do-i-guides/enroll-edgar-next> (last visited Dec. 4, 2025).

²⁷ SEC, *Understand EDGAR Next Roles* (Apr. 24, 2025), <https://www.sec.gov/submit-filings/filer-support-resources/how-do-i-guides/understand-edgar-next-roles>.

²⁸ 17 C.F.R. § 232.10 (2025).

²⁹ SEC, *Understand EDGAR Next Roles* (Apr. 24, 2025), <https://www.sec.gov/submit-filings/filer-support-resources/how-do-i-guides/understand-edgar-next-roles>.

³⁰ HFIAA, S. 1071, § 8103(b)(2) (2025); HFIAA, S. 1071, § 8103(b)(1)(D) (2025).

³¹ 17 C.F.R. § 249.104 (2025).

³² 17 C.F.R. § 249.105 (2025).

³³ HFIAA, S. 1071, § 8103(d) (2025).

³⁴ HFIAA, S. 1071, § 8103(b)(1)(D) (2025).

³⁵ Article 19 of Regulation (EU) No 596/2014, as it forms part of UK law pursuant to the European Union (Withdrawal) Act 2018 (the UK Market Abuse Regulation or UK MAR); Article 19 of Regulation (EU) No 596/2014, (the EU Market Abuse Regulation or EU MAR).

³⁶ Securities Act, R.S.O. 1990, c. S.5, §107 (Can.); National Instrument 55-104, Insider Reporting Requirements and Exemptions (Can. Sec. Adm. 2010).