

Section 16(a) Reporting: SEC Adopts Final Rules for Foreign Private Issuers

March 2, 2026

On February 27, 2026, the Securities and Exchange Commission adopted final rules implementing the Holding Foreign Insiders Accountable Act, or HFIAA. As expected, the final rules require directors and officers of foreign private issuers with a class of equity securities registered under Section 12 of the Exchange Act to report their beneficial ownership and transactions on Forms 3, 4, and 5. The rules take effect on March 18, 2026, meaning initial Form 3 filings are due in less than three weeks. The final rules contain no major surprises, and address several interpretive questions that remained open following enactment. As the SEC noted in explaining its decision to forgo notice-and-comment rulemaking, the amendments "*simply conform the Commission's rules and forms to the requirements of HFIA Act and involve limited exercise of agency discretion.*" In this alert, we highlight the most significant clarifications and practical considerations for compliance. For additional background on HFIAA, please refer to our prior alert, [Section 16\(a\) Insider Reporting: Legislation Ends Foreign Private Issuer Exemption](#).

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Key Takeaways from the Final Rules

- **Overall Scope.** As expected, [the final rules](#) confirm that foreign private issuer ("FPI") officers and directors remain exempt from the short-swing profit and short-sale rules under Sections 16(b) and 16(c). Only the Section 16(a) reporting obligations will apply. As Chairman Paul Atkins noted in his statement accompanying the release, the rules "*align the reporting obligations of foreign executives with those of U.S. executives.*"
- **10% Holders Confirmed Outside Scope.** In welcome news for institutional investors and other large shareholders, the SEC confirmed that the new Section 16(a) reporting requirements apply only to directors and officers of FPIs, not to holders of more than 10% of the issuer's securities.¹ The SEC grounded this interpretation in both the statutory text and legislative history. HFIAA, the SEC explained, inserts new language "only in reference to directors and officers" of FPIs and "does not insert any such reference to FPIs' 10 percent holders." As footnote 11 to the final rules explains, earlier versions of the bill would have extended Section 16(a) to "any . . . security of a foreign private issuer" more broadly, but Congress narrowed this language before enactment.
- **Foreign Jurisdiction Exemptions Deferred.** For FPIs hoping for immediate relief, the news is less conclusive. While HFIAA granted the SEC discretionary authority to exempt FPI officers and directors from Section 16(a) reporting where foreign law imposes "substantially similar" requirements, the SEC did not adopt any such exemptions in this rulemaking. The door remains open, however. As Chairman Atkins noted: "*The Commission staff is actively evaluating whether it*

¹ The final rules do not specifically address whether a 10% holder could become subject to Section 16(a) reporting through "deputization," a theory under which a 10% holder may be deemed to perform director functions through a representative it designates to serve on the board. Deputization may arise where a director serves in furtherance of the shareholder's interests rather than in an

will recommend that the Commission exercise this exemptive authority." Footnote 55 to the release acknowledges that certain jurisdictions (the UK, EU, and Canada are noted) have insider transaction disclosure requirements, but it does not indicate whether or when exemptive relief may be granted. FPIs subject to comparable reporting regimes should monitor SEC announcements for developments, though they should not assume relief will arrive by March 18, 2026.

- **Two-Tier Board Coverage Clarified.** For FPIs with two-tier governance structures, the final rules provide helpful confirmation on who must file. As anticipated, members of both supervisory and management boards will generally qualify as "directors" subject to Section 16(a) reporting. The SEC grounded this interpretation in Section 3(a)(7) of the Exchange Act, which defines "director" as "*any director of a corporation or any person performing similar functions with respect to any organization.*"

The SEC also clarified how this definition differs from Form 20-F usage, where "board of directors" often refers only to the supervisory or non-management board. For Section 16(a) purposes, the analysis is broader, though still fact-specific. As the release notes, "*whether a person is a 'director' of an FPI for purposes of Section 16(a) reporting is . . . a factual determination.*" FPIs should assess their governance structures carefully, identifying all individuals who perform director-like functions regardless of formal title.

- **Delinquency Disclosure Not Required.** FPIs also hoped for clarity on whether the new rules would require them to disclose Section 16(a) filing delinquencies, as domestic issuers must do in their annual proxy statements or Form 10-K filings. The

independent capacity. This determination requires a facts and circumstances analysis, examining whether the individual director represents the deputizing entity's interests through various indicia of control, alignment, and representative capacity. FPIs with significant shareholders who have designated board representatives should evaluate this question carefully.

answer is no: HFIAA did not impose a comparable disclosure requirement on FPIs, and the SEC did not add one in its final rules. As the release notes, "*Neither the HFIA Act nor the Commission rules include a requirement for FPIs to disclose non-compliance with Section 16(a) filing requirements by directors and officers.*" FPIs should nonetheless consider whether voluntary disclosure in Form 20-F may be appropriate, taking into account investor expectations and corporate governance practices.

- **Section 16 Forms: Technical Updates.** The SEC made several technical amendments to Forms 3, 4, and 5 to accommodate FPI filers:
 - **Foreign Trading Symbol:** The forms will include an optional field for a second trading symbol. This addition recognizes that many FPIs trade in both U.S. and non-U.S. markets, and filers should include both symbols in such cases. For shares with only a foreign trading symbol, filers may enter "none" in the primary trading symbol box and enter the foreign symbol in the new optional field.
 - **Address Fields:** The forms will include dedicated fields for postal codes and country codes. While some foreign filers previously entered country codes in the "State" field, the SEC determined that the anticipated volume of new filings by foreign individuals warranted clearer designation of each reporting person's country.
 - **Form Instructions:** The SEC revised the General Instructions for Form 3 to clarify which persons must file. Notably, the instructions now specify that the filing requirement for 10% beneficial owners applies only to issuers that are not foreign private issuers, reinforcing that FPI 10% holders remain outside the scope of Section 16(a).

Looking Ahead

With the final rules now adopted and the March 18 deadline approaching, FPIs should finalize compliance preparations and update internal policies and

procedures to accommodate ongoing Section 16(a) obligations.

- **Obtain EDGAR credentials.** Officers and directors who have not yet obtained individual credentials through the SEC's EDGAR Next system should do so immediately. The process requires submitting a notarized Form ID and can take 10 business days or more.
- **Execute powers of attorney.** Companies coordinating filings on behalf of their officers and directors should ensure that each individual has executed a power of attorney authorizing personnel to prepare and submit filings.
- **Collect beneficial ownership information.** FPIs should confirm that holdings data has been collected from all officers and directors to prepare accurate Form 3 filings. This data should include derivative instruments to be reported in Table II for Form 3.
- **Plan for ongoing reporting obligations.** Following the initial Form 3 filing, officers and directors must file Form 4 within two business days of any transaction resulting in a change in beneficial ownership. Form 5 is due within 45 calendar days after the FPI's fiscal year-end for certain deferred transactions and corrections.
- **Review equity award programs.** FPIs should analyze their equity compensation arrangements to determine which awards trigger Section 16(a) reporting obligations. Stock options, restricted stock units, performance shares, and other derivative securities must be reported on Table II of the Section 16 forms. Companies should identify reportable events (such as grants, vesting, and exercises), confirm applicable reporting deadlines, and evaluate whether any exemptions may apply.
- **Monitor for foreign jurisdiction exemptions.** The SEC staff continues to evaluate whether to recommend relief for FPIs subject to substantially similar foreign reporting regimes. While the release notes that certain jurisdictions have insider

disclosure requirements (footnote 55 identifies the UK, EU, and Canada), FPIs from any jurisdiction with comparable obligations should continue to watch for developments.

Please contact us if you have questions about how the final rules apply to your specific circumstances.

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