

90 Days to Comply: FPIs Face New Insider Reporting Mandate

December 22, 2025

On December 18, 2025, President Trump signed into law the National Defense Authorization Act for Fiscal Year 2026 ([S. 1071/H.R. 3838](#)) (NDAA). As reported in our [December 16, 2025 CAPITAL LETTERS alert](#), Section 8103 of the NDAA, the Holding Foreign Insiders Accountable Act, eliminates the long-standing exemption from Section 16(a) insider transaction reporting requirements for directors and officers of foreign private issuers (FPIs).

What Has Changed

On or prior to March 18, 2026 (within 90 days of the bill's enactment), (i) the U.S. Securities and Exchange Commission (SEC) is required to issue final regulations necessary to carry out the new reporting requirements and (ii) affected insiders of FPIs must file a Form 3 (in English) with the SEC. Thereafter, such insiders must file a Form 4 (in English) within two business days of any transaction in the FPI's equity securities (including derivative securities).

In addition to issuing the final regulations, the SEC may release guidance to assist affected insiders as they prepare to comply with the new reporting requirements, although there is no requirement for the SEC to do so.

As noted under "The SEC Regulatory Process" below, the SEC is authorized to exempt certain affected insiders, securities or transactions, although that process is expected to take longer than 90 days. Therefore, all affected insiders should prepare to comply with the new mandate.

What Remains Unchanged

The NDAA amends Section 16(a) "solely for the purposes of this subsection," which means that both Section 16(b) short-swing trading liability and Section 16(c) short-sale restrictions do not apply to FPI insiders. In other words, the

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amendments to Section 16 only apply to the reporting obligations for the equity securities of FPIs. Furthermore, ten percent stockholders or FPIs are also not affected by the change.

Suggested Compliance Steps

Beginning on March 18, 2026, FPI insiders will be subject to the same insider transaction reporting requirements as domestic company insiders.

Identify all Section 16 insiders. For purposes of Section 16(a), the definition of “officer” includes an FPI’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the FPI 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 FPI.¹ For this purpose, an officer of an FPI’s parent(s) or subsidiaries is deemed an officer of the FPI if the officer performs policy-making functions for the FPI. An FPI should document the board of director’s conclusion regarding Section 16 insiders.

Apply for SEC EDGAR codes and prepare to make Section 16 filings. Each affected insider must apply, and be approved, for EDGAR codes prior to their first Section 16 filing. A Section 16 insider must complete a Form ID, which must be signed and notarized, to obtain EDGAR codes. If applicable, the insider must submit a notarized power of attorney authorizing another person (such as legal/compliance employees) to be their account administrator. This PoA should also authorize appropriate persons to make SEC filings on their behalf. The SEC may take 5 to 10 business days to process a Form ID once it is submitted. Given this processing time, and an expected surge in submissions, obtaining EDGAR codes may be a gating item and could lead to delinquent Section 16 filings. Please refer to our [March 3, 2025 CAPITAL LETTERS alert](#) for additional information on the EDGAR code process and EDGAR Next. We are happy to assist in obtaining EDGAR codes.

FPIs should determine whether they plan to EDGARize and file Section 16 forms in-house or utilize a third-party service provider. Under EDGAR Next, anyone other than the Section 16 insider must be granted access to make SEC filings (e.g., as a delegated entity). To avoid filing delays, we recommend establishing the necessary delegations as soon as the Section 16 insider’s Form ID is approved by the SEC.

Assess current securities holdings by Section 16 insiders. A Form 3 must disclose all FPI equity securities beneficially owned by the affected insider, including stock, options, restricted stock, phantom stock, convertible securities and other derivative instruments. An insider is deemed to beneficially own securities if the insider has a pecuniary (i.e., economic) interest in the securities, which may arise through any contract, arrangement, understanding, relationship or otherwise. Additional disclosure is required to explain (a) indirect ownership, such as securities beneficially owned by the insider’s family members or through a trust or other entity and (b) the terms of derivative securities, such as vesting and expiration dates, exercise price, etc.

¹ See Rule 16a-1(f) of the Exchange Act. This definition of officer is identical to the definition used for purposes of the clawback policy required to be adopted by U.S. exchange listed FPIs in 2023.

Establish Section 16 systems and processes. In general, a Form 3 is due on the later of (a) the date the FPI's equity securities are listed on a national securities exchange or the effective date of a registration statement filed under Section 12(g) of the Exchange Act and (b) within 10 days of becoming an insider. In the case of FPIs that had a class of equity securities registered under the Exchange Act on December 18, 2025, the Form 3 is due on or before March 18, 2026. A Form 4 is due within two business days of a triggering transaction (*i.e.*, a purchase or sale of shares or the grant of an equity award). A Form 5 is due within 45 days after fiscal year-end, to report any missed or deferred transactions.

It is important that FPIs develop systems and processes to ensure that the team tasked with coordinating filings receives the data necessary to apply for EDGAR codes, populate relevant forms and report transactions on a timely basis. Currently, failure to timely file Section 16 reports requires public disclosure in a domestic company's annual proxy statement. The SEC could add a similar public disclosure requirement to annual reports for FPIs (FPIs are not currently subject to the SEC's proxy statement requirements). Additionally, repeat offenses may result in SEC enforcement actions, cease-and-desist orders, civil monetary penalties or reputational harm to the FPI and its insiders.

Section 16 filings should become part of an FPI's IPO process and should be part of an insider's early onboarding process. In addition, FPIs should consider adding a preclearance requirement to their insider trading policies. Requiring preclearance and prompt communication with insiders' brokers will allow FPIs to monitor transactions in real time.

Provide training to affected insiders and legal/compliance teams. FPIs should provide training to affected insiders and the appropriate legal/compliance team(s) on Section 16(a) obligations, including beneficial ownership concepts, filing deadlines and consequences of noncompliance.

Consider engaging with the SEC and monitor rulemaking. Given the SEC's ability to exempt affected insiders, securities or transactions from the new mandate, FPIs should monitor the SEC's proposed rulemaking on this matter and, if desired, engage in the rulemaking process.

The SEC Regulatory Process

The NDAA gives the SEC authority to issue additional regulations and amend existing regulations as it deems necessary to implement the new reporting requirements. The NDAA also permits the SEC to exempt any person, security or transaction from the requirements of Section 16(a) if it determines that the laws of a foreign jurisdiction apply substantially similar requirements to such person, security or transaction. The NDAA does not provide additional guidance on this point; however, FPIs that are dual-listed on certain securities exchanges could be candidates for exemption.

FPIs should monitor the SEC's proposed guidance, rulemaking and exemptive orders on this matter and, if desired, engage with the SEC (with peers, if possible) if applicable home country requirements are substantially similar to the requirements of Section 16(a). We will continue to monitor developments regarding this new mandate and are happy to assist FPIs that are interested in engaging with the SEC.

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If you have any questions regarding this client alert, please contact the Willkie attorney with whom you regularly work.



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