

## No Longer Foreign to Section 16(a): NDAA May Bring Insider Reporting to FPIs

December 16, 2025

An obscure provision in pending legislation would impose Section 16 insider trading reporting requirements on directors and officers of foreign private issuers (FPIs). Section 8103 of the National Defense Authorization Act for Fiscal Year 2026, entitled the “Holding Foreign Insiders Accountable Act” ([S. 1071/H.R. 3838](#)), proposes to amend Section 16(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), to eliminate the current exemption enjoyed by FPIs.<sup>1</sup> The House of Representatives passed the legislation on December 10, 2025, and the Senate is scheduled to consider the bill this week.

If enacted, affected insiders<sup>2</sup> of FPIs whose securities are listed on U.S. exchanges or registered pursuant to Section 12(g) of the Exchange Act will face the same insider trading disclosure requirements as domestic issuers. Specifically, affected insiders would need to comply with the following requirements:

- Initial Ownership Reports (Form 3): File within 10 days of becoming an insider.
- Transaction Reports (Form 4): File within 2 business days of any purchase, sale, gift or other acquisition/disposition of the FPI's listed equity (including derivative securities).
- Annual Reports (Form 5): File within 45 days of the FPI's fiscal year-end for any missed or deferred transactions.
- Electronic Filing: Affected insiders must obtain SEC filing codes and file all Section 16 reports on the SEC's EDGAR system.

For current FPIs, the amendments would require affected insiders to file a Form 3 within 90 days after enactment of the legislation.

Critically, the legislation does not subject FPI insiders to the short-swing profit disgorgement provisions of Section 16(b) of the Exchange Act or the short sale restrictions of Section 16(c) of the Exchange Act, unlike versions of similar legislation that failed in prior years.

<sup>1</sup> A redline showing proposed changes to Section 16(a) is included at the end of this client alert.

<sup>2</sup> As drafted, it is not clear whether the requirements will apply to greater than 10% stockholders in addition to directors and officers. Such stockholders should prepare to comply, subject to SEC final regulations and guidance.

## What's Next

If enacted, the bill requires the SEC to issue final regulations within 90 days of enactment. As noted above, the amendments also require affected insiders to file a Form 3 within this time frame. Although the legislation authorizes the SEC to exempt affected insiders if it determines that the laws of a foreign jurisdiction that apply to the FPI are substantially similar to the requirements of Section 16(a), the bill does not provide any additional guidance on what countries may be eligible for this exemption.

FPIs should monitor the legislative process daily, as the Senate vote is expected imminently. If the bill is enacted, FPIs and their affected insiders should consider some or all of the following actions:

- Analyze home country law requirements and consider outreach to the SEC (with peers, if possible) if home country law requirements are substantially similar to Section 16(a).
- Engage with their U.S. securities counsel and activate internal implementation teams.
- Identify all Section 16 insiders and apply for necessary SEC EDGAR codes.
- Conduct a gap analysis comparing current practices to Section 16(a) requirements, and provide training to affected insiders and legal/compliance teams.
- Consider implementing a pre-clearance policy (if not already implemented) to manage filing deadlines.
- Budget for increased legal and compliance costs associated with Section 16 filings, particularly given the compressed implementation timeline.

## Amendments Proposed by the Holding Foreign Insiders Accountable Act

### SECTION 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

#### (a) DISCLOSURES REQUIRED.—

(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security (including, solely for the purposes of this subsection, every person who is a director or an officer of a foreign private issuer, as that term is defined in section 240.3b-4 of title 17, Code of Federal Regulations, or any successor regulation), shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

(2) TIME OF FILING.—The statements required by this subsection shall be filed—

(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

(B) within 10 days after he or she becomes such beneficial owner, director, or officer;

(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible; or

(D) with respect to a foreign private issuer, the securities of which are, as of the date of enactment of the Holding Foreign Insiders Accountable Act, registered pursuant to subsection (b) or (g) of section 12, on the date that is 90 days after that enactment.

(3) CONTENTS OF STATEMENTS.—A statement filed—

(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically and in English;

(B) Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.

(5) AUTHORITY TO EXEMPT.—The Commission by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the requirements of this section if the Commission determines that the laws of a foreign jurisdiction apply substantially similar requirements to such person, security, or transaction.

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



BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES  
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

Copyright © 2025 Willkie Farr & Gallagher LLP. All rights reserved.

This alert is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: [www.willkie.com](http://www.willkie.com).