

New Amendments and Pending Legislation Impact SEC Beneficial Ownership Reporting: What Foreign Private Issuers Need to Know

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On November 7, the U.S. Securities and Exchange Commission (SEC) [published amendments](#) to the beneficial ownership reporting rules under Sections 13D and 13G of the Securities Exchange Act of 1934 (the Exchange Act). These changes will apply to holders of both domestic and foreign private issuers with securities registered under Section 12 of the Exchange Act, including Canadian issuers eligible to use the multijurisdictional disclosure system. This means foreign private issuers (FPIs) should prepare for these newly enacted changes, which will go into effect on February 5, 2024.^[1]

However, this is potentially not the only change on the horizon for FPIs. Congress is also proposing changes to Section 16 of the Exchange Act, through the pending [National Defense Authorization Act for Fiscal Year 2024](#) (NDAA). Section 16 requires beneficial ownership reports be filed by directors, officers, and greater than 10% shareholders, and is designed to promote transparency and fairness in the securities markets by preventing insiders from abusing their access to nonpublic information. Currently, FPIs and their insiders are exempt from Section 16's reporting requirements, but the proposed legislation would subject insiders of FPIs to the same reporting obligations as insiders of U.S. domestic companies.

Overview of Key Amendments to Section 13

As detailed in [our prior advisory](#), the amendments to Section 13 primarily focus on the timing and format of Schedule 13 filings. In addition, all information disclosed on Schedules 13D and 13G will be required to be filed using a structured, machine-readable data language. This change aims to facilitate easier access, compilation, and analysis of the information submitted on these schedules. Most importantly, the SEC has finalized rules that now require issuers to report interests in derivative securities and has provided additional guidance with respect to evaluating potential beneficial ownership interests that must be reported.

Proposed Changes to Section 16

The NDAA, which is currently pending, specifically proposes to eliminate FPIs' [exemption](#) from Section 16 and would require FPI insiders to file SEC Forms 3, 4, and 5. Forms 3, 4, and 5 are SEC filings used by company insiders to report and subsequently update their beneficial ownership of company securities, and to disclose any unreported transactions or deferred reporting transactions on an annual basis.

Additionally, the suggested bill would make FPI insiders liable under Section 16(b). Under Section 16(b), an issuer and its shareholders are entitled to recapture “short-swing” profits earned by insiders from buying or selling their company’s registered securities.

If the bill passes, the requirement to comply with Section 16 could impose significant administrative burdens on FPIs, particularly those already subject to similar disclosure requirements in their home countries.

Conclusion

The upcoming amendments and potential changes to SEC reporting rules represent a significant change in the U.S. securities regulatory landscape. FPIs should take note of these changes and consider how they may impact their reporting obligations in the U.S.

[1] Issuers are required to comply with the new Schedule 13G filing deadlines as of September 30, 2024. Issuers are required to meet the new structured data requirement for Schedules 13D and 13G as of December 18, 2024.

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