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US Insider Reporting Requirements Coming for Directors and Officers of Foreign Private Issuers

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Officers and directors of certain foreign private issuers[1] that have securities listed on a U.S. securities exchange or registered with the Securities and Exchange Commission (SEC) (for purposes of this alert, FPIs) will soon be required to publicly report ownership of, and trades in, the securities of the FPIs of which they are insiders.

This new requirement stems from a provision inserted into the 2026 National Defense Authorization Act (NDAA), which was signed into law on December 18, 2025. Buried in the massive defense bill is a section titled the "Holding Foreign Insiders Accountable Act" that amends Section 16(a) of the Securities Exchange Act of 1934, as amended (Exchange Act), to specifically state that directors and officers of FPIs are subject to the reporting requirements of Section 16(a). Officers and directors of FPIs have long enjoyed an exemption from such requirements,[2] which has now been revoked by legislative mandate.

Mandated Reporting to Take Effect March 18, 2026

Similar legislation was introduced into the fiscal year 2024 NDAA in late 2023, and the legislative sponsors of the law have decried the different requirements for U.S. companies and FPIs. While the legislation signed into law will produce less of a seismic shift in the Section 16 requirements for directors and officers of FPIs than its 2023 counterpart would have done, the changes will be significant and will require substantial ongoing compliance efforts.

Generally speaking, Section 16 of the Exchange Act requires directors, officers, and beneficial owners of more than 10% of the stock of an SEC reporting company (Insiders) to report transactions in such a company's stock. Section 16(a) requires Insiders to report transactions in a company's securities in as few as two business days. Section 16(b) subjects Insiders to short-swing liability for any profits realized by an Insider on any purchase and sale, or sale and purchase, of a company's equity securities within six months.

The new law mandates that directors and officers of FPIs report their holdings of, and transactions in, company securities as required under Section 16(a), beginning March 18, 2026. This 90-day compliance window will create an administrative headache for companies as they must now scramble to secure the necessary SEC reporting codes for all company Insiders within this time frame, familiarize themselves with Section 16 reporting requirements, and prepare initial reports for all directors and officers. **Directors and officers will need to report their holdings of company securities on a Form 3 beneficial ownership report no later than March 18, 2026.**

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Following the initial report on Form 3, directors and officers will, on an ongoing basis, be required to report their transactions in company securities on a Form 4 within two business days of most transactions. Such transactions will include purchases, sales, and gifts of company securities, as well as the receipt or disposition of shares through company equity compensation programs.

Directors and officers will also be required to report on a Form 5 any previously unreported transactions during a year, within 45 days of the end of a company's fiscal year.

Importantly, unlike the 2023 proposal, the current law does not add beneficial owners of more than 10% of an FPI's shares to the Section 16(a) requirements. It is not clear why the law did not mandate beneficial ownership reporting for those holding more than 10% of an FPI's securities from reporting under Section 16(a), as this is required for such owners of domestic reporting company securities. However, certain foreign jurisdictions do not have beneficial ownership reporting thresholds for such persons.

Short-Swing Profit Liability in Section 16(b) Remains Inapplicable

The law also does not subject directors and officers of FPIs to the short-swing liability provisions of Section 16(b), which prohibits "short-swing profits" and is a strict liability rule. Short-swing profits occur when a company Insider purchases and sells, or sells and purchases, shares of a company within a six-month window. Insiders must disgorge any short-swing profits to their company, and the company cannot waive a right to recover any such short-swing profits. The requirement imposes strict liability; accidental or good-faith mistakes that create a short-swing profit will not preclude liability.

Exemption Authority and Implementation Questions

The law provides the SEC with the authority to put forward certain exemptions to the Section 16(a) requirements if it determines that the laws of a foreign jurisdiction apply substantially similar requirements to such persons, securities, or transactions. However, there is no guidance in the law as to what it means to be "substantially similar," and the SEC has not yet proposed any such exemptions.

This raises particular concerns for FPIs located in countries that already have insider reporting systems. For example, officers and directors of certain Canadian FPIs currently report insider trading in such companies' securities using Canada's System for Electronic Disclosure by Insiders (SEDI), and certain beneficial shareholders must file "early warning reports" when their holdings cross a certain threshold. While statements from the legislation's sponsors clearly show the legislative intention is directed primarily at Chinese companies, it will remain to be seen how the law will impact companies that operate in jurisdictions with similar reporting requirements. It also remains to be seen how the SEC will interpret the law for Canadian FPIs that are also FPIs in light of the U.S.-Canada Multijurisdictional Disclosure System (MJDS), which recognizes the similarities in the two countries' securities laws and has long afforded certain Canadian companies with exemptions from U.S. reporting requirements in recognition of similar Canadian requirements.

The law reflects a growing sense of frustration with foreign companies and their access to U.S. capital markets. On September 5, 2025, the SEC announced the formation of a "Cross-Border Task Force," and in June 2025 it put forth a concept release on FPI eligibility. Meanwhile, the NDAA itself contains a broader set of requirements

directed at foreign investments, and broader cultural trends have also seen increasing attacks against foreign companies. As such, it is unclear how the SEC will approach exercising any exemptive authority.

There are numerous implementation questions that will have to be addressed in the coming days. The SEC has not yet issued any statement or guidance on how it plans to interpret or implement the law. Apart from revoking the current rule exempting FPIs from Section 16 reporting requirements, the SEC will have to change many long-standing practices and consider any possible exemptions.

What Should FPIs Do Now?

FPIs should identify their "Section 16 officers" and be prepared to make the initial holding reports for such officers and directors on Form 3 and to report ongoing transactions on Form 4. Given the short time frame for reporting transactions, companies will need to develop robust systems to monitor trades by officers and directors and alert them to these requirements. This would include assigning internal responsibilities for preparing required reports and for monitoring trading activity by directors and officers. It would also include an assessment of existing insider trading policies for compliance. Section 16 reporting is a complicated and detailed process, and it will take time to implement a reporting program. Companies should also begin the process of securing SEC filing codes (EDGAR codes) for directors and officers, which will require notarized signatures and compliance with SEC requirements. We recommend that close attention be given to any guidance or instructions the staff at the SEC provides regarding such matters as the effective date for these new requirements approaches.

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[1] "Foreign Private Issuers" or FPIs, are generally non-U.S. incorporated or organized companies that satisfy the requirements set forth in Exchange Act Rule 3b-4 and a company calculates whether it qualifies as an FPI on the last business day of its second fiscal quarter. Please see our prior alert for details on how to determine if a company qualifies as an FPI.

[2] See Exchange Act Rule 3a12-3(b).

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