

Memorandum

Section 16 Reporting to Apply to Directors and Officers of Foreign Private Issuers

January 7, 2026

On December 18, 2025, President Trump signed the National Defense Authorization Act for Fiscal Year 2026 (the “NDAA”). Included within the NDAA is the “Holding Foreign Insiders Accountable Act” (the “HFIAA”). The HFIAA amends Section 16 of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”), to require directors and officers of foreign private issuers (“FPIs”) to make filings under Section 16 of the Exchange Act in order to report their beneficial ownership of company equity securities and transactions related to such securities. These amendments will have significant implications for FPIs and their directors and officers.

The new filing requirements will become effective on March 18, 2026, subject to any new related rules that may be issued by the U.S. Securities and Exchange Commission (the “SEC”). The below summarizes the Section 16 filing requirements that will be applicable to FPIs and how FPIs should prepare for such requirements.

Highlights

- *All directors and officers of FPIs (“FPI Section 16 Filers”) must file Section 16 reports with the SEC reporting their beneficial ownership in company equity securities and any transactions with respect to such securities, including with respect to equity compensation and derivative transactions involving equity securities.*
- *The Section 16 short swing profit rules will not apply to FPI Section 16 Filers.*
- *All Section 16 filers must be enrolled on the SEC’s EDGAR Next system to make filings with the SEC. FPIs will need to take action to ensure enrollment occurs prior to the effectiveness of the HFIAA.*
- *FPIs will need to familiarize themselves and their directors and officers with the Section 16 filing requirements and review their policies and procedures to ensure compliance.*
- *Any person who is a director or officer of an FPI as of March 18, 2026, will be required to file a Form 3 by March 18, 2026.*

Section 16 Background

GENERAL SECTION 16 FILING REQUIREMENTS

Section 16 of the Exchange Act currently applies to the directors, officers and ten percent beneficial owners (collectively, “insiders”) of U.S. domestic companies with a class of securities registered under Section 12 of the Exchange Act. Pursuant to Section 16(a) of the Exchange Act, these insiders must file the following forms with the SEC:

- **Form 3 (Initial Statement of Beneficial Ownership):** A person must file a Form 3 upon becoming an insider to report any company equity securities and any derivatives thereof that such person directly and indirectly beneficially owns at the time they become an insider. The Form 3 is due within ten calendar days of becoming an insider, except in the case of an initial registration of securities under the Exchange Act, in which case the Form 3 is due on the date of effectiveness of the registration. A Form 3 is required by each insider, whether or not they beneficially own any securities at such time.
- **Form 4 (Statement of Changes in Beneficial Ownership):** Thereafter, any transaction in company equity securities is generally reportable on a Form 4 within two business days of the transaction (subject to certain exceptions).
- **Form 5 (Annual Statement of Beneficial Ownership of Securities):** A Form 5 is due within 45 days after the end of a company’s fiscal year to report any transactions that are permitted under the rules to be reported on a delayed basis on a Form 5 instead of a Form 4 or to report transactions that should have been reported during such year but were not. If all transactions were previously reported on a Form 4, no Form 5 is required. Most insiders do not need to file a Form 5.

All filings must be made by 10:00 p.m. ET through the SEC’s Electronic Data Gathering, Analysis and Retrieval (EDGAR) filing system, which are publicly available.

Under the HFIAA, the reporting obligations applicable to insiders under Section 16(a) of the Exchange Act will now also apply to FPI Section 16 Filers.¹

Note that, while the Section 16(a) reporting obligations do not extend to ten percent beneficial owners of FPIs, some large beneficial owners with designees serving on the board of an FPI may be deemed to be “directors by deputization.” A “director by deputization” files Section 16 reports as if such person were itself a director. Whether a person should be deemed to be a “director by deputization” is a question of fact that necessitates review with counsel.

¹ The HFIAA does not change the existing obligations of beneficial owners of more than five percent of an FPI’s registered class of shares to report their beneficial ownership under Sections 13(d) and (g) of the Exchange Act (e.g., on Schedule 13D and Schedule 13G).

The Section 16 reporting rules can be complex in practice and certain exceptions apply. FPIs will want to familiarize themselves and their FPI Section 16 Filers with these rules.

OTHER ASPECTS OF SECTION 16

Section 16(b) of the Exchange Act provides, subject to certain exceptions, that any purchases and sales made within a period of less than six months are “matched”, and if the sales price is greater than the purchase price, such “short swing profits” are disgorgable to the company. Section 16(c) prohibits short sales by its insiders (though certain hedging is permitted in compliance with the rules). The HFIAA only extends Section 16(a)’s reporting requirements to FPI directors and officers and does not extend the Section 16(b) short swing profit rules or Section 16(c) prohibition on short sales to FPI directors and officers.

What Do These Amendments Mean for FPIs and FPI Section 16 Filers?

WHEN DO THESE FILING REQUIREMENTS BEGIN?

The HFIAA is effective on March 18, 2026. However, the HFIAA requires that the SEC issue rules to implement the amendments to Section 16 before then. It is not clear if the SEC will delay commencement of compliance by FPIs until such rules are implemented. Nevertheless, until the SEC issues such rules, FPIs should prepare to file Forms 3 for its FPI Section 16 Filers by March 18, 2026.

WHO SHOULD BE CONSIDERED FPI SECTION 16 OFFICERS?

The Section 16 rules define an “officer” for these purposes to mean an issuer’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer 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 issuer. Officers of the issuer’s parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. “Policy-making function” is not intended to include policy-making functions that are not significant. Note that this definition is not necessarily the same as the definition used to identify senior management in a Form 20-F annual report. However, this definition is the same as the definition used for purposes of the FPI clawback rules. Therefore, FPIs may have already identified their Section 16 officers when implementing the clawback rules.

Once individualized equity ownership is reported under Section 16(a) by an FPI Section 16 Filer, FPIs can no longer rely on the exemption under Form 20-F to omit individual equity ownership where it has not otherwise been made public.

WHAT TYPE OF SECURITIES ARE REPORTABLE?

An FPI Section 16 Filer must report all company equity securities and any derivatives thereof on the Section 16 forms. This includes each class of common shares (whether registered or not, and whether in the form of American Depository Shares or underlying shares), preferred stock, options, warrants, convertible securities, other derivatives such as equity swaps (including cash-settled swaps) and most types of equity awards. It does not apply to debt securities, unless they are convertible into a company equity security (*e.g.*, debt convertible into common shares).

WHAT TYPE OF BENEFICIAL OWNERSHIP MUST AN FPI SECTION 16 FILER REPORT?

An FPI Section 16 Filer must report any securities that it directly or indirectly beneficially owns. Indirect beneficial ownership may include securities held by a spouse or certain other family members and securities held by or through certain trusts, corporations, limited liability companies, limited partnerships or other entities that hold company equity securities for the benefit of the FPI Section 16 Filer or certain family members. An analysis must be performed for each FPI Section 16 Filer to determine what securities must be reported.

WHAT TYPES OF TRANSACTIONS MUST BE REPORTED?

Section 16 filings must report any transactions in company equity securities or any derivative thereof for value (whether in the open market or through private transactions and whether traded in the U.S. or on a local exchange), equity award grants, certain equity award vestings and settlements, option and warrant exercises, the conversion and settlement of derivatives, certain trust, estate and tax planning transfers (even if transferred for no value), gifts of securities and certain other transfers for no value, certain forfeitures, among other transactions. Cash compensation is not reportable (though certain equity awards payable in cash are reportable). Companies typically have pre-clearance procedures in place to determine whether potential transactions may be permitted under company insider trading policies and to determine whether such transactions are reportable under Section 16. Many companies use these procedures to coordinate any information needed to prepare and timely file the applicable Section 16 forms.

FPIs may want to review their insider trading policies to ensure compliance with the newly applicable Section 16 reporting requirements.

WHO FILES THESE REPORTS?

Section 16 filings are the responsibility of the insiders. However, typically, companies manage on behalf of their directors and officers the preparation of the forms and coordinate the filings with the SEC. Companies often arrange for insiders to execute powers of attorney permitting certain employees or members of management at the company to prepare and file these forms on behalf of their directors and officers to aid in the filing process. These powers of attorney allow companies to coordinate filings without having to chase signatures.

Law firms often assist with the preparation of the Section 16 forms and coordinate the filings with the SEC, although some companies coordinate these filings in-house through software providers or with financial printers. Companies should evaluate the process that best works for them.

WHAT ELSE DOES AN FPI SECTION 16 FILER NEED TO DO IN ORDER TO MAKE SECTION 16 FILINGS?

Anyone making filings with the SEC must be enrolled on the SEC's EDGAR Next filing system. Some FPI Section 16 Filers may have previously obtained EDGAR codes to make SEC filings (e.g., Form 144, Schedule 13D or Schedule 13G or may already be Section 16 filers at other companies). Even if an FPI Section 16 Filer previously made SEC filings, companies should confirm whether such filer enrolled on the EDGAR Next system.

Any FPI Section 16 Filers without EDGAR Next filing credentials will need to submit a notarized Form ID with the SEC to be enrolled on the EDGAR Next system. This process currently takes 7-8 business days (but could take longer). With the expected number of Form ID applications resulting from these amendments, companies should plan well in advance to make any necessary Form ID submissions. FPI Section 16 Filers will also need to ensure that their brokers and other personal advisors are aware of the filing requirements and know to communicate any transaction plans and other relevant information with the company to ensure compliance.

For more information on the EDGAR Next system, please see our client memo on EDGAR Next available [here](#).

WHAT ELSE SHOULD AN FPI DO TO PREPARE FOR SECTION 16 REPORTING?

Each company should educate itself and its directors and officers on the Section 16 rules. In addition to obtaining EDGAR filing credentials for its FPI Section 16 Filers, companies should (i) reach out to its FPI Section 16 Filers to determine what securities they beneficially own and (ii) put in place any policies or procedures to be informed about upcoming transactions to ensure that the company receives any necessary information in order to assist in preparing and timely making the required Section 16 filings.

For example, if an FPI Section 16 Filer is to trade in the open market, trading information must be timely delivered from the broker to the company so that it can assist in preparing and filing any required forms. Similarly, if an FPI Section 16 Filer contemplates certain trust, estate or tax planning transfers, the company must be informed by the filer or his or her advisor to assist in making any necessary filings to report applicable transfers. Additionally, Forms 4 are due within two business days of reportable transactions. Therefore, companies and FPI Section 16 Filers will need to be prepared to act quickly to coordinate timely filings (including taking into account any time zone differences to meet the 10:00 p.m. ET filing deadline).

ARE THERE ANY EXEMPTIONS TO THESE NEW RULES?

The NDAA permits the SEC to exempt any person or security subject to substantially similar requirements in a foreign jurisdiction. However, it is unclear whether the SEC will make any such determinations or when. All FPIs should prepare to comply with Section 16 until notified otherwise by the SEC.

Key Takeaways:

The key takeaways for FPIs are to: (i) educate themselves and their directors and officers about the Section 16 reporting rules, (ii) determine who are their FPI Section 16 Filers and the company equity securities directly and indirectly beneficially owned by each such filer, (iii) determine which FPI Section 16 Filers need to be enrolled on the SEC's EDGAR Next system, (iv) review and implement policies and procedures necessary to ensure ongoing compliance with the Section 16 reporting obligations and (v) develop a plan for preparing and filing the Section 16 forms.

Note that the guidance set forth in this memorandum is subject to final rules to be issued by the SEC relating to FPIs.



Simpson Thacher invites you to a webinar to discuss the new Section 16(a) reporting requirements for directors and officers of FPIs on Tuesday, January 13, 2026, at 11:00 a.m. EST / 1:00 p.m. BRT / 10:00 a.m. CST. Please [click here](#) to register.

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