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SEC's Insider Reporting Obligations Extended to Foreign Private Issuers

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On December 18, 2025, President Donald Trump signed into law the National Defense Authorization Act for Fiscal Year 2026 (NDAA).¹ Included in the NDAA is Section 8103, "Disclosures by Directors, Officers, and Principal Stockholders," which extends Section 16(a) of the Securities Exchange Act of 1934 (Exchange Act) to the directors and officers of foreign private issuers (FPIs).

Historically, directors and officers of FPIs have been exempt from the reporting obligations of Section 16 of the Exchange Act, as they were applicable only to the directors, officers, and 10 percent or greater beneficial owners (collectively, insiders) of U.S. domestic public companies. With the passage of the NDAA, directors and officers of FPIs will become subject to Section 16(a) of the Exchange Act. However, they will continue to be exempt from Section 16(b) of the Exchange Act, which requires the disgorgement of any "short swing" profits made by insiders, and Section 16(c) of the Exchange Act, which prohibits short sales by insiders.

These changes will become effective 90 days after the signing of the NDAA, or March 18, 2026. Upon effectiveness, directors and officers (but not 10 percent or greater beneficial owners) of FPIs will be required to file reports in connection with their beneficial ownership of, and transactions in, company securities. With this significant change, FPIs and their directors and officers must begin preparing now for the commencement of these new reporting obligations.

FPI reporting obligations

On March 18, 2026, directors and officers of existing FPIs will be required to report their equity holdings as of that date on Form 3, regardless of whether a transaction occurred. Subsequent to that date, Forms 3, 4, and 5 will be due upon the occurrence of the following events:

- **Form 3:** Due generally within 10 calendar days after an individual becomes a director or officer of an FPI²
- **Form 4:** Due no later than the second business day after a reportable transaction is executed
- **Form 5:** Due within 45 calendar days after the end of the applicable fiscal year to report certain previously unreported transactions

Section 16(a) defines "officers" to include the president, the principal financial officer, the principal accounting officer (or if there is no such accounting officer, the controller), and any other person who performs a policymaking function for a public company. For FPIs, the identified "executive officers" for purposes of reporting on Form 20-F would be presumed to also be officers for purposes of Section 16 reporting. The term "directors" covers all individuals serving on a company's board as well as any "directors by deputization."³

Under the NDAA, the Securities and Exchange Commission (SEC) has broad authority to "exempt any person, security, or transaction" from the requirements of Section 16(a) if the SEC determines that the laws of a foreign jurisdiction impose "substantially similar requirements." It is unclear at this time how or when the SEC would grant exemptive relief or what requirements would qualify as "substantially similar."

Practical considerations

FPIs and their directors and officers should develop a clear understanding of the Section 16(a) rules and reporting obligations, such as determining which transactions are reportable and identifying when a “transaction” is deemed to occur. Training programs for directors, officers, and relevant personnel will be important in reducing the risk of late or inaccurate filings.

FPIs should evaluate which individuals are designated as “executive officers” for Form 20-F and other disclosure purposes and confirm whether those designations remain appropriate in light of the expanded consequences of officer status under Section 16. In some cases, companies may determine that certain titles or reporting lines should be adjusted to reflect where policymaking authority actually resides.

For many FPIs this will be the first time they are required to disclose and track equity compensation and other equity interests at the individual level for Section 16 purposes. FPIs may need to collect and reconcile information about historical and outstanding equity awards and other incentive arrangements from multiple sources. Establishing a centralized database of all equity and derivative holdings for each director and officer will be critical, both for the initial Form 3 filings and for ongoing monitoring.

FPIs and their directors and officers should review their insider trading policies and establish robust communication channels between the company and its directors and officers to ensure timely capture of relevant data. This typically involves implementing procedures that require directors and officers to preclear or promptly report transactions in company securities, designating an internal or external coordinator to gather transaction information, and setting up alerts keyed to the two-business-day Form 4 deadline.

Many companies streamline compliance by obtaining powers of attorney from directors and officers authorizing the company (or a designated compliance officer or outside counsel) to prepare, sign, and file Forms 3, 4, and 5 on the reporting person’s behalf. FPIs should consider whether to adopt this approach and should prepare and execute appropriate power of attorney documents in advance of the effective date.

Because Section 16 reports are filed electronically with the SEC on EDGAR, each reporting person will need valid EDGAR access credentials. FPIs should confirm that all existing directors and officers either already have EDGAR codes or have completed the process to obtain them in advance of the effective date. In addition, FPIs should consider the impact of the SEC’s EDGAR Next enhancements on their internal controls over the filing process, including the designation of account administrators, maintenance of user permissions, and clear allocation of responsibility for preparing and submitting Section 16 reports.

Contact us

For questions or guidance regarding Section 16 reporting for FPIs or other issuers, please reach out to a member of Lowenstein’s Capital Markets & Securities team. We are available to provide practical, tailored advice to help issuers, investment banks, and other market participants navigate the evolving regulatory landscape.

¹ The “National Defense Authorization Act for Fiscal Year 2026.”

² In the context of an initial public offering, a Form 3 is due the same day as the registration of a company’s securities on a national securities exchange or upon the effectiveness of a registration statement under Section 12(g) of the Exchange Act.

³ A “director by deputization” is an entity that by placing its designee on a company’s board or otherwise exercising board-level influence through that representative is deemed to be a director of the company.

Contacts

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