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SEC insider reporting obligations will apply to directors and officers of FPIs

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With the National Defense Authorization Act signed into law, Section 16(a) of the Exchange Act will extend insider reporting obligations to directors and officers of foreign private issuers effective March 18, 2026.

On December 18, 2025, President Trump signed the National Defense Authorization Act for Fiscal Year 2026 (NDAA) passed by Congress. This means that the proposed amendments to Section 16(a) that we wrote about in our client update last week have now been adopted.

As a reminder, Section 16(a) of the Exchange Act has historically required directors, officers and any person who beneficially owns more than 10% of any registered class of a domestic company's equity securities (commonly referred to as "insiders") to immediately report to the SEC transactions in company equity securities. Previously, these rules have only applied to insiders of domestic public companies, and have not applied to insiders of foreign private issuers, or FPIs.

The amendments effected by the NDAA extend the requirements of Section 16(a) to directors and officers of FPIs (but not to more than 10% stockholders of FPIs). Notably, however, they retain the exemption for FPIs from Section 16(b) "short-swing" liability (requiring insiders to disgorge all profits derived from short-swing trading).

We are discussing with the SEC how it might exercise its exemptive authority under the statute, but FPIs should prepare their directors and officers to comply with Section 16 reporting obligations. As we explained in our prior client update, while the NDAA allows the SEC to exempt any person or security subject to "substantially similar requirements" in a foreign jurisdiction, it is unclear at this stage what would be considered substantially similar, and how and on what timing that exemptive authority would be exercised in practice.

The amendments to Section 16 will become effective on **March 18, 2026**. We include the text of the as-amended Section 16(a) in an annex at the end of this client update and address a few key questions on what this means for FPIs below.

What and when will an FPI insider be required to report?

Directors and officers of an existing FPI will be required to report their equity holdings (even absent a purchase or sale) on a Form 3 for the first time on March 18, 2026, and a new director or officer of that FPI taking up their role after that date will be required to file the Form 3 within 10 calendar days after they assume their role.

In the context of an IPO, similar to domestic companies, directors and officers of a foreign company listing after March 18, 2026 must report their initial equity holdings on a Form 3 on the same day that the company goes public (which generally is the date the registration statement becomes effective).

In addition, these insiders must report most equity transactions (including purchases and sales, gifts and compensation-related transactions (e.g., equity compensation grants, sales to cover exercise price payments and tax withholding obligations)) on a Form 4 within two business days of the transaction.

Finally, director and officers must also report certain previously unreported transactions on Form 5 within 45 days after the end of the applicable fiscal year.

Which FPI insiders fall within the scope of the Section 16(a) amendments?

All FPI board members and certain members of management are insiders for purposes of the Section 16(a) amendments.

Board members. All members of a board are Section 16 insiders. This can include a sponsor or other entity shareholder who has a contractual right to appoint one or more directors to the board, who may be deemed a "director by deputization".

Section 16 officers. Identifying which members of management fall within the scope of Section 16 involves nuanced analysis of an individual's duties and significance to the organization. With the SEC's adoption of the clawback rule, existing FPIs have effectively had to identify their Section 16 officers.

If Section 16 requires an FPI insider to report equity transactions, why does that mean compensation information will be made public?

Compensation of FPI directors and officers is currently only disclosed on an aggregate basis unless individual disclosure is made in the home country. Equity compensation can be a significant component of director and officer compensation, and the change to Section 16 will require individualized, real-time disclosure of equity compensation information that such insiders may never have previously publicly disclosed, such as individual grants (i.e., on an award-by-award basis) and aggregate holdings or ownership in the company (including indirect ownership, such as through estate planning vehicles). This is a significant change from existing disclosure obligations for directors and officers of FPIs.

Does Section 16 apply to both compensation-related transactions and non-compensatory transactions?

Yes. Compensation-related transactions include equity compensation grants, as well as the vesting and settlement of awards, the exercise of stock options and the withholding of shares to pay taxes or an exercise price. Non-compensatory transactions include the purchase and sale of company shares and derivative instruments, as well as gifts, the foreclosure of a margin loan and the receipt of dividends and dividend equivalents in shares.

Does it help if an insider has a 10b5-1 plan?

No. A transaction that is executed pursuant to a 10b5-1 plan will be required to be disclosed on a Form 4. In addition, the Form 4 will be required to note that the transaction was executed pursuant to a 10b5-1 plan.

What are the consequences of non-compliance with Section 16?

Violating Section 16 reporting rules can be embarrassing for insiders and companies alike and could trigger SEC scrutiny. It is also a violation of the securities laws by the insider. Over the last few years, including as recently as 2024, the SEC announced a "sweep" of enforcement actions for failures to timely file insider transaction reports in violation of Section 16 (including against individual insiders and issuers alike).

Under Section 8103 of the NDAA, the SEC "may issue such additional regulations as necessary to implement the intent of this [section 8103]", so it is possible that the SEC would consider requiring FPIs to disclose delinquent Section 16(a) reports in Form 20-F just as it does for domestic companies (Regulation S-K Item 405). However, it is too soon to tell at this stage whether the SEC would move forward with that kind of change.

Is the filing of a Section 16 report the responsibility of the company or the insider?

Technically, Section 16 reports are the responsibility of the insider. However, in practice, most public companies prepare and file reports on behalf of their insiders.

Does the rule apply to all FPIs in any jurisdiction?

Yes. As written, the changes to Section 16 cover all FPIs, including dual-listed FPIs and FPIs reporting under the MJDS regime. While the NDAA allows the SEC to exempt any person or security subject to "substantially similar requirements" in a foreign jurisdiction, it is unclear what would be considered substantially similar, and how and on what timing that exemptive authority would be exercised in practice.

How does the amendment impact an FPI's reporting obligations?

For FPIs reporting on Form 20-F, Item 6 of the form requires disclosure of the share ownership of directors and officers. The form allows individual share ownership of any director or officer to be omitted if (i) such person owns less than 1% of the outstanding shares of the company and (ii) the person's individual share ownership has not otherwise been disclosed

to shareholders or otherwise been made public.

Because the Section 16 amendment would require insiders to file public reports with their share ownership, that information will have been made public and therefore the exemption permitting individualized disclosure to be omitted from Form 20-F would no longer be available.

If a company only has ADS trading on a U.S. stock exchange, do directors and officers need to report transactions in the underlying shares that trade on a non-U.S. exchange?

Yes. The ADS are SEC-registered equity securities under Section 12 so are picked up by Section 16(a), and the shares underlying the ADS are also registered under Section 12 (even though they do not trade on a U.S. stock exchange). This means that trades of both ADS and the underlying shares are picked up by Section 16(a), whether effected on a U.S. exchange or non-U.S. exchange.

When do the changes become effective?

March 18, 2026. While the NDAA requires the SEC to issue final regulations no later than that date, we believe FPIs should be prepared to comply by the effective date of amended Section 16. And this also means that the initial filing due date will be March 18, 2026.

What should FPIs and foreign companies listing on a U.S. stock exchange do now?

FPIs should prepare their directors and officers to comply with Section 16 reporting obligations. This means identifying who is an "insider" for Section 16 purposes and building a compliance infrastructure around Section 16, including conducting appropriate training for directors and officers as well as the company's compliance personnel, obtaining EDGAR Next filings codes from the SEC for any director or officer that does not already have one (so they can file reports with the SEC) and obtaining powers of attorney to permit the company to make required Section 16 filings on the insider's behalf.

Obtaining codes from the SEC and applying for EDGAR Next access can be a time-consuming process and, with the influx of insiders needing to obtain filing codes as a result of this change, there could be meaningful delays in the SEC processing requests for codes.

Annex

Section 16(a) – Securities Exchange Act of 1934

Sec. 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.

(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, or within such shorter time as the Commission may establish by rule;

(C) If there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement 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 date of 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 or security-based swaps 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) The 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 the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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