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# Defense bill extends insider reporting obligations to FPIs

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Buried (again) in a sprawling defense spending bill is an amendment to Section 16 of the Exchange Act that would extend insider reporting obligations to foreign private issuers, adding a meaningful compliance burden on foreign companies listed or seeking to go public in the United States.

On December 7, 2025, lawmakers released the text of the proposed National Defense Authorization Act for Fiscal Year 2026 (NDAA). The reported compromise version of the NDAA is slated to be taken up by Congress before the end of the year. Buried in the defense bill is Section 8103, which would extend the application of insider reporting obligations under Section 16(a) of the Exchange Act to foreign private issuers (FPIs). Though prior efforts to expand Section 16 to apply to FPIs have failed, this most recent attempt through the annual defense bill has advanced significantly, and could remain in the final version of the bill that is sent to President Trump's desk for his signature.

As we discussed in our client update on the SEC's FPI concept release earlier this year, the FPI regime was designed to ease regulatory burdens to attract foreign issuers to the United States. We are hopeful that legislators will carefully consider the adverse implications of extending the application of Section 16 to FPIs, as this could cut against ongoing efforts to spur competitiveness of the U.S. capital markets and SEC Chair Paul Atkins' stated goal to "make IPOs great again."

## Why Section 16 matters

Section 16 of the Exchange Act applies to directors, officers and any person who beneficially owns more than 10 percent of any registered class of a company's equity securities (commonly referred to as "insiders"). It requires insiders to immediately report transactions in company securities (Section 16(a)) and disgorge imputed profits from short-term trading in those securities (Section 16(b)). Securities of FPI insiders are currently exempt from these reporting requirements, and such insiders are not subject to the short-swing disgorgement rules that apply to insiders of domestic public companies.

In addition, compensation of FPI directors and officers is currently only disclosed on an aggregate basis unless individual disclosure is made in the home country, and share ownership of each director and officer is disclosed only if it is greater than 1% of a class of shares. Equity compensation can be a significant component of director and officer compensation, and the proposed change to Section 16 would require individualized, real-time disclosure of equity compensation information that such insiders may never have previously publicly disclosed, such as grants and holdings. This would represent a significant change from existing FPI insider disclosure obligations.

### Insider reporting requirements

Directors, officers and 10 percent shareholders must report their initial holdings on Form 3 on the same day that a company goes public (which generally is the date the registration statement becomes effective), or within ten calendar days of when a person becomes a new director or officer of an already-public company. In addition, they must report most equity transactions (including purchases and sales, gifts, and compensation-related transactions (e.g., equity

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compensation grants, sales to cover exercise price payments and tax withholding obligations)) on Form 4 within two business days of the transaction. They must also report certain previously unreported transactions on Form 5 within 45 days after the end of the applicable fiscal year.

## Consequences of Section 16 violations

Violating Section 16 reporting rules can be embarrassing for insiders and companies alike, and can occasionally trigger SEC scrutiny. And it is a violation of the securities laws by the insider. The SEC also has broad authority to seek "any equitable relief that may be appropriate or necessary for the benefit of investors" for violations of any provisions of the securities laws. In addition, 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 Exchange Act Section 16, which we wrote about in a client update.

# Extending Section 16 to FPIs

SEC rules applicable to FPIs generally defer to home country standards and allow for accommodations in form and other requirements to encourage foreign company listings in the United States. However, one recent study has linked this disparity in part to a significant amount of opportunistic selling by corporate insiders at certain foreign companies listed in the United States. In response, a few lawmakers have sought to impose the same level of disclosure to transactions by insiders of FPIs, despite the lack of any groundswell of interest from investors for this information.

Our reading of the most recent iteration of the bill is that it does not go as far as prior versions, which would have also extended the application of Section 16(b) to FPIs (requiring insiders to disgorge all profits derived from short-swing trading). However, the extension of the disclosure requirements under Section 16(a) to FPIs would represent a significant shift from existing FPI insider disclosure obligations as discussed above, and while the bill 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.

If Congress passes the bill as currently written, the proposed amendments would take effect 90 days after the bill is signed into law.

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