

# FPI Reporting Update: Section 16(a) Share Ownership and Transaction Reporting Obligations to Apply to Directors and Officers of Foreign Private Issuers from March 18, 2026

The Holding Foreign Insiders Accountable Act (the “HFIAA”) was signed into law by President Trump on December 18, 2025 as part of the 2026 U.S. National Defense Authorization Act (the “2026 NDAA”).

The HFIAA will require directors and officers of foreign private issuers with a class of equity securities registered pursuant to Section 12 of the U.S. Securities Exchange Act of 1934 (the “Exchange Act”, and such foreign private issuers, “FPIs”), to begin complying with the share ownership and transaction reporting obligations of paragraph (a) of Section 16 (“Section 16”) of the Exchange Act within 90 days of the enactment of the 2026 NDAA, *i.e.*, from March 18, 2026.

This represents a significant change for FPIs, whose directors and officers previously may not have publicly disclosed individual shareholdings or been required to obtain EDGAR credentials to make individual filings with the U.S. Securities and Exchange Commission (the “SEC”).

As enacted, the changes apply to FPIs from all jurisdictions, including Canadian issuers reporting under the Multijurisdictional Disclosure System (“MJDS”) program. We recommend that FPIs start preparing for these changes early, including by informing officers and directors, as the timeline for compliance is unusually short and the regulations underpinning Section 16 are technical and are not always intuitive in their application.

## HISTORY AND CONTEXT

A previous version of the HFIAA was included in, but ultimately removed from, the NDAA for 2024

and 2025. Its inclusion in the 2026 NDAA could be viewed as an indication of the momentum for potential reform by the SEC of accommodations historically granted to foreign companies that access the U.S. capital markets. The SEC may propose further changes to the FPI definition or related exemptions in 2026 following its review of public comments submitted in response to its June 2025 Concept Release on Foreign Private Issuer Eligibility.<sup>1</sup>

## WHAT IS CHANGING?

Currently, the directors and officers of an FPI, as well as shareholders owning more than 10% of the relevant class of securities of an FPI, are exempt from all requirements of Section 16 pursuant to Rule 3a12-3(b) under the Exchange Act.

The HFIAA amends paragraph (a) of Section 16 so that it will apply to directors and officers of FPIs. Rule 3a12-3(b) will be of no force or effect to the extent that it is inconsistent with this amendment. Shareholders owning more than 10% of the relevant class of securities of an FPI will continue to be exempt from Section 16.

## WHAT IS SECTION 16(a) OF THE EXCHANGE ACT?

Section 16(a) requires disclosure by an issuer’s insiders (*i.e.*, (i) directors, officers and

(ii) shareholders owning more than 10% of the relevant class of securities) of their holdings of and transactions in the issuer's equity securities via the filing of Forms 3, 4 and 5.

- Form 3 is an initial report of beneficial ownership.

Filing is required (i) at the time of registration of a class of equity security on a national securities exchange or by the effective date of a registration statement filed pursuant to Section 12(g) of the Exchange Act or (ii) within 10 days after a person becomes an issuer's insider. A Form 3 must be filed by a director or officer even if he or she does not own any securities of the relevant class.

- Form 4 is a report of a change in beneficial ownership.

Reportable changes may include purchases and sales of equity or the entry into of derivative instruments, the receipt of share dividends, equity gifts, trusts and other estate planning arrangements, and equity compensation grants and related sell-to-cover transactions. Changes are reportable whether or not they occur pursuant to a 10b5-1 plan.

Filing is required before the end of the second business day following the day on which a transaction is executed.

- Form 5 is an annual statement of changes in beneficial ownership.

Filing may be required within 45 days after the end of the fiscal year to disclose transactions not reported on Form 4 during the year either because of an exemption or due to delinquency.

## WHO WILL NEED TO MAKE FILINGS?

Each director and officer of an FPI will need to comply with Section 16(a) filing requirements.

This will include each member of an FPI's board of directors. It will also include each "officer", as defined in Rule 16a-1(f) under the Exchange Act.<sup>2</sup> For many FPIs, the definition of "officer" for purposes of Section 16(a) will capture a broader group of individuals than those currently identified by them as "senior management" in their annual reports under Item 6 of Form 20-F. The rule ties "officer" status to function rather than particular

titles, which may differ within FPI structures from those more commonly used in U.S. companies.

FPIs will be familiar with this more expansive "officer" definition, as it aligns with the definition used in the compensation clawback policies that have been mandated for all listed issuers since 2023.

## WHEN WILL DIRECTORS AND OFFICERS OF FPIs NEED TO MAKE INITIAL FILINGS?

The initial filing due date is March 18, 2026.

New Section 16(a)(2)(D) of the Exchange Act provides that, with respect to any securities that were already registered with the SEC pursuant to Section 12(b) or Section 12(g) of the Exchange Act on the date of enactment of the HFIAA, the first filings under Section 16(a) are required "on the date that is 90 days after that date of enactment". The HFIAA was enacted on December 18, 2025 when the NDAA was signed by President Trump, and the first filings on Form 3 will be required within 90 days after that date, on March 18, 2026.

The HFIAA also instructs the SEC to issue final regulations to carry out the amendments within the same 90-day window. However, the HFIAA amendments to Section 16(a) outlined above will take effect independently of any action by the SEC.

## WILL FPIs' COMPLIANCE REQUIREMENTS PURSUANT TO SECTION 16 NOW BE IDENTICAL TO THOSE OF U.S. DOMESTIC ISSUERS?

No. The HFIAA is limited in scope. For example:

- 10% shareholders of FPIs remain exempt from Section 16(a). As drafted, the HFIAA explicitly applies Section 16(a) only to the directors and officers of FPIs. It does not include equivalent language with respect to beneficial owners of more than 10% of an FPI's equity securities.
- FPIs remain exempt from Section 16(b) and Section 16(c). The HFIAA does not subject FPIs to the obligations for insiders to disgorge profits resulting from "short-swing" transactions in the issuer's equity securities under Section 16(b) or to refrain from short sales of the issuer's equity securities under Section 16(c).

U.S. domestic issuers are also required to include disclosures in their annual reports on Form 10-K

about delinquent Section 16(a) filers, pursuant to Item 405 of Regulation S-K. This requirement currently does not apply with respect to annual reports on Form 20-F, though the SEC may decide to impose a similar requirement via regulation.

### WILL OFFICERS AND DIRECTORS OF FPIs NEED TO REPORT TRANSACTIONS THAT DO NOT TAKE PLACE IN THE UNITED STATES?

Yes. Section 16(a) addresses changes in beneficial ownership of an FPI's equity securities. Reports must be filed regardless of the venue of the transaction. Relatedly, trades in underlying ordinary shares outside the United States will be reportable even if the ordinary shares are traded only in the form of American Depositary Shares in the United States.

### HOW DO SECTION 16(a) REPORTING REQUIREMENTS DIFFER FROM EXISTING NOTICES ON FORM 144 REQUIRED TO BE FILED BY CERTAIN INSIDERS OF FPIs PURSUANT TO RULE 144 UNDER THE U.S. SECURITIES ACT OF 1933 (THE "SECURITIES ACT")?

Section 16(a) requires reporting with respect to a materially broader set of transactions. Pursuant to Rule 144 under the Securities Act, Form 144 filings are required only in respect of a limited subset of resales of restricted or control securities. In contrast, Section 16(a) reporting requirements apply, among other things, to purchases and sales of equity or the entry into of derivative instruments, the receipt of share dividends, equity gifts, trusts and other estate planning arrangements, and equity compensation grants and related sell-to-cover transactions.

### ARE THERE PENALTIES FOR NON-COMPLIANCE WITH SECTION 16(a) REQUIREMENTS?

Yes. The SEC can impose civil penalties on individuals for failing to timely report transactions and holdings and can also fine issuers for contributing to their insiders' failures. For example, the SEC conducted enforcement sweeps in [September 2024](#) and in [September 2023](#).

### WILL ANY FPIs BE EXEMPT FROM THE NEW REQUIREMENTS?

As enacted, the HFIAA does not exempt any FPI from the new Section 16(a) reporting requirements. Notably, this includes Canadian FPIs reporting under

the MJDS program, which otherwise benefit from the greatest deference to their local filing requirements and historically have often been exempted from new SEC rulemaking.

The HFIAA grants the SEC the authority, conditionally or unconditionally, to exempt "any person, security, or transaction, or any class or classes of persons, securities, or transactions" from the new requirements if the SEC "determines that the laws of a foreign jurisdiction apply substantially similar requirements to such person, security, or transaction". The words "substantially similar requirements" are not defined.

There is no certainty that the SEC will exercise this exemptive authority or that any such exemption will be granted before the initial March 18, 2026 filing deadline.

### WHAT SHOULD FPIs DO TO PREPARE FOR COMPLIANCE WITH SECTION 16(a) REQUIREMENTS?

1. **Begin planning.** We recommend that clients begin preparing for compliance early. The period before the March 18, 2026 deadline for compliance with the new Section 16(a) requirements is quite short and will compete with a busy annual reporting season for many FPIs.
2. **Identify the issuer's "officers".** Each FPI needs to identify which individuals fall within the "officer" definition pursuant to Rule 16a-1(f) under the Exchange Act. FPIs should consider having this determination confirmed by the board of directors.
3. **Help officers and directors obtain EDGAR filing codes.** The Section 16(a) reporting obligations attach to the individual officers and directors rather than the FPI.
  - o Unless the individual has previously made filings with the SEC (for example, due to beneficial ownership reporting requirements under Regulation 13D/G or to report an unregistered trade on Form 144), a new "Form ID" application will be required.
  - o The SEC provides guidance for this process on its website.<sup>3</sup>

- The Form ID application requires notarization, which may add delays to the planning process.
- The SEC's website states that an application, once submitted, should be processed in approximately six (6) business days. However, we expect it is likely that a backlog will develop in light of the very high volume of applications that will be made over the next 90 days due to the HFIAA.
- If individual directors and officers plan to delegate filing responsibilities to the issuer or another third party, those delegations must be set up in accordance with the procedures of EDGAR Next.<sup>4</sup> The issuer may also need to obtain powers of attorney to assist officers and directors with filings.

**4. Dedicate internal resources to support officers and directors with disclosure preparation.** Although the issuers themselves do not have direct responsibility for Section 16(a) filings, most issuers handle this reporting on behalf of their insiders.

FPIs should therefore create internal procedures to coordinate with officers and directors and their brokers, as well as with financial printers if applicable, to ensure they receive and can help log and disclose individual share ownership and transaction information in a timely manner. At a minimum:

- Each “officer” and director will need to file an initial report on Form 3 by March 18, 2026 to report his or her current holding (including, if applicable, to report that the individual does not own any shares).

- After March 18, 2026, each officer and director will need to file a report on Form 4 within two (2) business days of any subsequent change in beneficial ownership.

The rules underlying Section 16(a) reporting are quite technical. As their application may require assistance of counsel, we recommend gathering facts and getting draft reports on Form 3 underway soon.

**5. Educate officers and directors.** For some individuals, this will be the first time that personal shareholdings are disclosed publicly. Under Form 20-F, individual disclosure about share ownership of officers and directors is required only if it represents 1% or more of the applicable class of securities. Additionally, individual disclosure of compensation of officers and directors must be provided under Form 20-F only if required under home country rules or otherwise made public. As individual disclosure may be more sensitive for some than for others, we recommend communicating this development early for awareness.

**6. Update insider trading policies.** To the extent not already mandated as a result of trade pre-clearance requirements, FPIs should update their policies to require all officers and directors to provide advance notice of transactions to their compliance team.

Cravath can assist FPIs with all aspects of their preparatory efforts to ensure compliance by March 18, 2026.

<sup>1</sup> See Cravath's June 11, 2025 memo titled [SEC Solicits Public Comment on the Eligibility Criteria for Foreign Private Issuer Status](#) for more information.

<sup>2</sup> See [Rule 16a-1\(f\)](#): “The term ‘officer’ means 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.”

<sup>3</sup> See [Prepare and Submit My Form ID Application for EDGAR Access](#).

<sup>4</sup> See Cravath's March 11, 2025 memo titled [Preparing for EDGAR Next - Upcoming New Enrollment Requirements If You Need to Remain an EDGAR Filer After September 12, 2025](#) for more information.

Please feel free to contact us if we can provide further information

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