

FPI Section 16(a) Reporting Update: Final Rules, Conditional Exemptive Relief Order and Frequently Asked Questions

Ahead of the upcoming March 18, 2026 deadline for compliance with the Holding Foreign Insiders Accountable Act (the “HFIA Act”),¹ the U.S. Securities and Exchange Commission (the “SEC”) has adopted final rule and form amendments and issued a conditional exemptive relief order, and the staff of the Division of Corporation Finance of the SEC (the “Staff”) has posted Frequently Asked Questions (“FAQs”).

BACKGROUND

As discussed in our [December 23, 2025 Client Alert](#), the HFIA Act was signed into law on December 18, 2025 and 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 from March 18, 2026.

FINAL RULEMAKING

Although the amendments to Section 16(a) made by the HFIA Act were self-executing, the HFIA Act required the SEC to issue final regulations to carry out the amendments no later than March 18, 2026.² Accordingly, on February 27, 2026, the SEC published an adopting release in respect of HFIA Act Disclosure (the “Final Rules”).³

The Final Rules:

- **Reconfirm which insiders of FPIs must file reports pursuant to Section 16(a) beginning on March 18, 2026.** The HFIA Act applies to directors⁴ and officers⁵ of FPIs (collectively, “Section 16 Insiders”) but not 10 percent holders⁶ of equity securities of FPIs.
- **Make necessary conforming amendments to existing rules and forms.** Rule 3a12-3(b) under the Exchange Act, which previously exempted the securities of FPIs from all of Section 16, will now exempt them only from Section 16(b)⁷ and Section 16(c), and Rule 16a-2 under the Exchange Act will now explicitly refer to the exemption available to 10 percent holders of FPIs’ equity securities under Section 16(a) and related rules. The General Instructions to Form 3 are being similarly amended.
- **Make technical amendments to Section 16(a) reports.** The forms will include:
 - an optional field for a foreign trading symbol;⁸
 - a postal code; and
 - a country code.⁹

- **Do not require FPIs to disclose information about their Section 16 Insiders’ delinquent filings.** While U.S. domestic issuers must disclose information about any noncompliance with Section 16(a) filing requirements by their insiders in their annual reports on Form 10-K, proxy statements and information statements, neither the HFIA Act nor the Final Rules amend Form 20-F or Form 40-F to add a requirement for such disclosure.

The Final Rules were not subject to notice and comment and will be effective on March 18, 2026.

EXEMPTIVE RELIEF ORDER

The HFIA Act granted 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.”¹⁰

Pursuant to that mandate, on March 5, 2026, the SEC issued an order to grant a conditional exemption to the Section 16 Insiders of certain FPIs (the “Order”).¹¹

The Order exempts the Section 16 Insiders of FPIs that are both:¹²

- incorporated or organized in a “**qualifying jurisdiction**” (*i.e.*, (i) Canada, (ii) Chile, (iii) the European Economic Area,¹³ (iv) the Republic of Korea, (v) Switzerland or (vi) the United Kingdom); and
- subject to a “**qualifying regulation**.”¹⁴

Importantly, the Order:

- **Exempts individual Section 16 Insiders only if they are required to report under a qualifying regulation.** If a Section 16 Insider¹⁵ does not fall within the defined category of reporting persons under the applicable qualifying regulation, he or she will not be eligible for the exemption and therefore will still be required to file Section 16(a) reports. This may be relevant, for example, for principal accounting officers or controllers who would be required to report under Section 16(a), to the extent they were not previously reporting under certain qualifying

regulations. FPIs should assess whether any such individuals could be deemed to be captured under the relevant qualifying regulation so that compliance can be achieved thereunder rather than under Section 16(a).

- **Requires that foreign reports be made publicly available in English.** Any report filed pursuant to a qualifying regulation must be made available in English to the general public within no more than two business days of the report’s public posting.¹⁶

The criteria assessed by the SEC in evaluating whether various regulations were “substantially similar” to Section 16 were the following: (i) persons covered; (ii) securities covered; (iii) transactions covered; (iv) reports required; and (v) public availability of reports in English.

The SEC may exercise its exemptive authority to grant further exemptions in subsequent orders or may reassess and modify the Order if there are material changes to the qualifying regulations in the future.

FREQUENTLY ASKED QUESTIONS

On March 9, 2026, the Staff published FAQs relating to the implementation of the HFIA Act.¹⁷

Among other clarifications, the FAQs:

- confirm that all Section 16(a) filings must be made via the SEC’s Electronic Data Gathering Analysis and Retrieval System (“EDGAR”);
- confirm that the initial Form 3 filing date for each person serving as a Section 16 Insider of an FPI as of December 18, 2025 is March 18, 2026, except if the person is no longer a director or officer as of that date; and
- clarify that the initial Form 3 filing of a Section 16 Insider appointed after December 18, 2025 but before March 18, 2026 will be due by the later of March 18, 2026 and the date that is 10 days after the person’s date of appointment.

Cravath can assist FPIs and their Section 16 Insiders with compliance with Section 16(a) reporting requirements by March 18, 2026 and thereafter.

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- 1 Sec. 8103 of the National Defense Authorization Act (cited as Holding Foreign Insiders Accountable Act, or HFIA Act), [Public Law 119-60](#), (Dec. 18, 2025).
 - 2 Sec. 8103(d)(1) of the National Defense Authorization Act (cited as HFIA Act), [Public Law 119-60](#), (Dec. 18, 2025).
 - 3 See [Holding Foreign Insiders Accountable Act Disclosure adopting release](#).
 - 4 As defined in Section 3(a)(7) of the Exchange Act: “any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.”
 - 5 As defined in Rule 16a-1(f) under the Exchange Act: “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.”
 - 6 The SEC denied the *Rulemaking Petition Pursuant to the Holding Foreign Insiders Accountable Act (HFIAA)*, [File No. 4-879](#), submitted on January 26, 2026, which had suggested that the HFIA Act’s requirements should extend to 10 percent holders of FPIs. The SEC considered that the HFIA Act’s express language limits its scope to directors and officers and found that the legislative history of the HFIA Act was consistent with this position.
 - 7 The Section 16(b) exemption exempts directors and officers of FPIs from the short-swing disgorgement provisions of Section 16. Although Rules 16a-3(g)(1) and (f)(1) under the Exchange Act and certain Instructions to Forms 4 and 5 refer to transactions that are, or are not, exempt from Section 16(b), the SEC clarified that directors and officers of FPIs should not view this language as exempting them from reporting transactions otherwise required to be reported by Section 16(a). The SEC also confirmed that directors and officers of FPIs must use the Transaction Codes listed in the Instructions for Forms 4 and 5 notwithstanding their exemption from Section 16(b).
 - 8 The SEC noted: “In cases where shares only have a foreign trading symbol, a Section 16 reporting person of FPIs could either enter the foreign trading symbol in the first mandatory box if allotted space allows or enter ‘none’ in that first trading symbol box and enter the foreign trading symbol in the second box.”
 - 9 A list of the country codes is available on the SEC website at [SEC.gov | EDGAR State and Country Codes](#).
 - 10 See Section 16(a)(5) of the Exchange Act, as enacted by Section 8103(b)(1) of the National Defense Authorization Act (cited as HFIA Act), [Public Law 119-60](#), (Dec. 18, 2025).
 - 11 See [Order Granting Directors and Officers of Certain Foreign Private Issuers an Exemption from the Filing Requirements of Section 16\(a\) of the Exchange Act](#).
 - 12 Section 16 Insiders of FPIs from a qualifying jurisdiction are eligible for an exemption so long as the FPI is subject to one of the enumerated qualifying regulations, which need not be the regulation applicable in the FPI’s jurisdiction of incorporation or organization. For example, Section 16 Insiders of an FPI that is incorporated in Canada with securities registered in Germany and subject to Article 19 of EU MAR (as defined below) that otherwise satisfy the conditions of the Order would be exempt from Section 16(a) reporting obligations.

On the other hand, the Section 16 Insiders of an FPI that is subject to a qualifying regulation but incorporated in a non-qualifying jurisdiction will not have access to relief. For example, an FPI incorporated in the Cayman Islands that is listed on the London Stock Exchange and subject to Article 19 of UK MAR (as defined below) would not qualify for the exemption. This would remain true even if the FPI’s headquarters were located in a qualifying jurisdiction, as the exemptive relief is tied only to the jurisdiction where the FPI is “incorporated or organized.”
 - 13 The European Economic Area currently consists of the 27 member states of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden) as well as Iceland, Liechtenstein, and Norway.
 - 14 The qualifying regulations are:
 - (i) Canada’s National Instrument 55-104 – Insider Reporting Requirements and Exemptions (supported by National Instrument 55-102 – System for Electronic Disclosure by Insiders (SEDI) and companion policies);
 - (ii) Articles 12, 17, and 20 of the Chilean Securities Market Law (Ley de Mercado de Valores, Ley No. 18,045) and General Rule (Norma de Carácter General) No. 269;
 - (iii) Article 19 of the European Union Market Abuse Regulation (Regulation (EU) No. 596/2014, as amended by Regulation (EU) No. 2024/2809) (including, as applicable, implementing legislation and regulations adopted by the European Union’s member states) and as incorporated into the domestic law of each European Economic Area state (“EU MAR”);
 - (iv) Article 173 of the Republic of Korea Financial Investment Services and Capital Markets Act and Article 200 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act;

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- (v) Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange as approved by the Swiss Financial Market Supervisory Authority; and
- (vi) Article 19 of the United Kingdom Market Abuse Regulation (Regulation (EU) No. 596/2014), as it forms part of United Kingdom domestic law pursuant to the European Union (Withdrawal) Act 2018 ("UK MAR").
- 15 As noted above, for directors, as defined in Section 3(a)(7) of the Exchange Act, and for officers, as defined in Rule 16a-1(f) under the Exchange Act.
- 16 If an English version of the report cannot be filed through an appropriate regulator's (or listing venue's) online database, then the report could be made publicly available on the FPI's website.
- 17 See [Holding Foreign Insiders Accountable Act Frequently Asked Questions](#). The full text of the FAQs is reproduced below:

(1) Question: Must all Section 16(a) filings be made via the Commission's Electronic Data Gathering Analysis and Retrieval System ("EDGAR")?

Answer: All Section 16(a) filings, such as Forms 3, 4 and 5, must be made via EDGAR in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232), except that a filing person that has obtained a hardship exception under Regulation S-T Rule 202 (17 CFR 232.202) may file the form in paper. The forms must be submitted and accepted by EDGAR no later than 10:00 p.m., Eastern U.S. time, in order to be timely filed.

(2) Question: When is a Form 3 due for a person serving, as of December 18, 2025, as a director or officer of a foreign private issuer with a class of equity securities registered under Section 12 of the Exchange Act as of that same date?

Answer: New Section 16(a)(2)(D) of the Exchange Act, added by the HFIA Act, requires the Form 3 to be filed on March 18, 2026. However, if the person is no longer a director or officer as of March 18, 2026, then no Form 3 filing is required.

(3) Question: A foreign private issuer has a class of equity securities registered under Section 12 of the Exchange Act as of December 18, 2025. A person is appointed or elected as a director or officer of the foreign private issuer, with the person becoming a director or officer effective after December 18, 2025 but before March 18, 2026. When must the person file a Form 3?

Answer: The Form 3 for such a person would be due by the later of March 18, 2026 or the date that is ten days after the person became a director or officer. For example, a person who joins as an officer of a foreign private issuer effective March 1, 2026 would need to file a Form 3 on March 18, 2026, while a person who joins as an officer of a foreign private issuer effective March 15, 2026 would need to file a Form 3 by March 25, 2026.

(4) Question: A foreign private issuer registers a class of equity securities under Section 12 of the Exchange Act for the first time, with the registration statement becoming effective after December 18, 2025 but before March 18, 2026. When must a director or officer of the foreign private issuer file a Form 3?

Answer: If the person was a director or officer as of the date of the registration statement's effectiveness, the Form 3 would be due on March 18, 2026. If the person became a director or officer after the effective date of the registration statement, the Form 3 would be due by the later of March 18, 2026 or the date that is ten days after the person became a director or officer.

(5) Question: Rule 16a-2(a) requires a director or officer to report certain transactions that occurred within six months prior to the director or officer becoming subject to Section 16 solely as a result of the issuer registering a class of equity securities pursuant to Section 12 of the Exchange Act. Following the effective date of the HFIA Act, is a director or officer of a foreign private issuer obligated to report on the first required Form 4 certain transactions effected prior to March 18, 2026 under Rule 16a-2(a)?

Answer: If a foreign private issuer had a class of equity securities registered under Section 12 of the Exchange Act prior to March 18, 2026, then Rule 16a-2(a) would not obligate directors and officers of such foreign private issuer to report on the first required Form 4 certain transactions effected prior to March 18, 2026.

However, if a director or officer of a foreign private issuer becomes subject to Section 16 because the foreign private issuer registers a class of equity securities under Section 12 of the Exchange Act on or after March 18, 2026, then Rule 16-2(a) would obligate such director or officer to report on the first required Form 4 certain transactions effected prior to March 18, 2026.

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

NEW YORK

John W. White
+1-212-474-1732
jwhite@cravath.com

Andrew J. Pitts
+1-212-474-1620
apitts@cravath.com

Craig F. Arcella
+1-212-474-1024
carcella@cravath.com

Joseph D. Zavaglia
+1-212-474-1724
jzavaglia@cravath.com

D. Scott Bennett
+1-212-474-1132
sbennett@cravath.com

Nicholas A. Dorsey
+1-212-474-1764
ndorsey@cravath.com

Douglas C. Dolan
+1-212-474-1310
ddolan@cravath.com

Kimberley S. Drexler
+1-212-474-1434
kdrexler@cravath.com

LONDON

Philip J. Boeckman
+44-20-7453-1020
pboeckman@cravath.com

George A. Stephanakis
+44-20-7453-1040
gstephanakis@cravath.com

Alyssa K. Caples
+44-20-7453-1090
acaples@cravath.com

Margaret R. M. Rallings
+44-20-7453-1010
mrallings@cravath.com

Roberto Bruno
+44-20-7453-1034
rbruno@cravath.com

Nicoleta D. Lupea
+44-20-7453-1054
nlupea@cravath.com

Virginie Marier
+44-20-7453-1056
vmarier@cravath.com

Lawrence J. Verhelst
+44-20-7453-1082
lverhelst@cravath.com

WASHINGTON, D.C.

Elad Roisman
+1-202-869-7720
eroisman@cravath.com

Lisa M. Kohl
+1-202-869-7722
lkohl@cravath.com

CRAVATH, SWAINE & MOORE LLP

NEW YORK

Two Manhattan West
375 Ninth Avenue
New York, NY 10001
+1-212-474-1000

LONDON

100 Cheapside
London EC2V 6DT
+44-20-7453-1000

WASHINGTON, D.C.

1601 K Street NW
Washington, D.C. 20006-1682
+1-202-869-7700

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