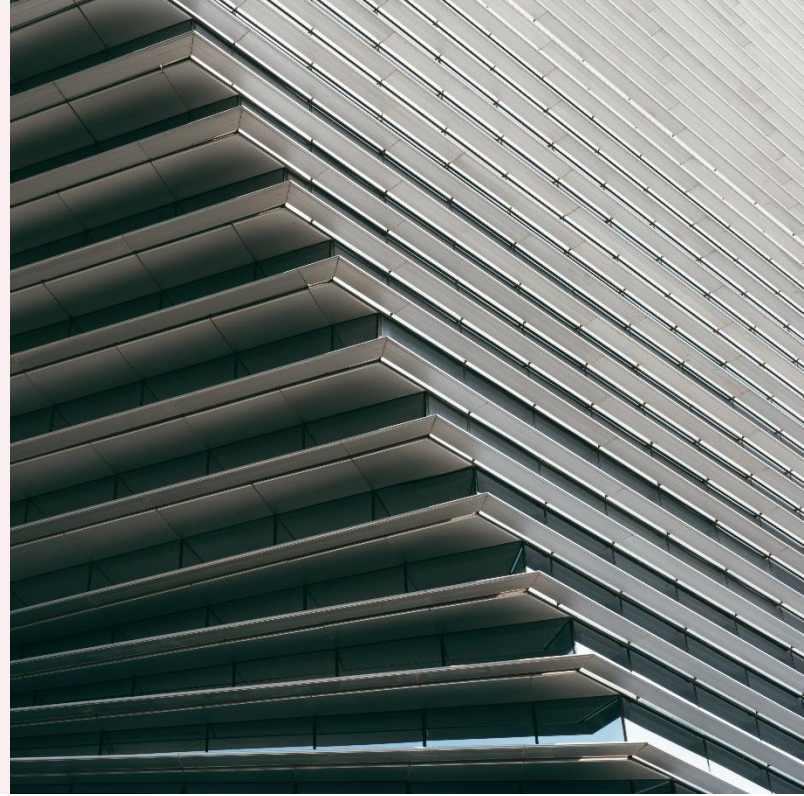


FPI insiders will be subject to US ownership and transaction reporting

22 December 2025



Directors and officers of US-listed foreign private issuers (FPIs) will soon become subject to US ownership and transaction reporting requirements. From March 18, 2026, these individuals must comply with the same ownership and transaction reporting obligations as insiders of other US-listed companies. The imposition of these reporting obligations is the result of the enactment of the Holding Foreign Insiders Accountable Act (HFIAA)¹, which partially invalidates a decades-old exemption for FPI insiders.

The HFIAA will require these FPI insiders to electronically file with the Securities and Exchange Commission (SEC) a Form 3 to provide an initial report of beneficial ownership of the relevant company's equity securities. Subsequently, they will be required to electronically file with the SEC reports on Form 4 to disclose beneficial ownership changes within two business days of a change. In addition, they may be required to report certain beneficial ownership information annually on Form 5 within 45 days after fiscal year end. These reports will be publicly available via the SEC's EDGAR system.

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¹ The HFIAA was enacted on December 18, 2025, as part of the US National Defense Authorization Act for Fiscal Year 2026.

Section 16(a) Reporting

Pursuant to the HFIAA, effective **March 18, 2026**, directors and officers of US-listed foreign private issuers will be required to comply with ownership and transaction reporting requirements imposed by Section 16(a) of the US Securities Exchange Act of 1934, as amended (Exchange Act). These requirements have for decades applied to directors and officers of other US-listed public companies. Insiders use the following forms for Section 16(a) reporting:

- **Form 3:** to provide an initial statement of beneficial ownership of any equity securities of the relevant company. Insiders must file these reports if they have no beneficial ownership to report.
- **Form 4:** to report any changes in beneficial ownership of any equity securities of the relevant company. It is due before the end of the second business day following the day on which the subject transaction has been executed.
- **Form 5:** to report certain beneficial ownership information annually, within 45 days after the relevant company's fiscal year end.

Who will be required to report? The HFIAA applies Section 16(a) reporting obligations to directors and "Section 16" officers of FPIs that have registered a class of equity securities with the SEC pursuant to Section 12 (which is required in connection with a listing on the NYSE or Nasdaq).

Who is a Section 16 officer? For purposes of Section 16(a) reporting, the category of "officer" includes members of senior management as well as any person, regardless of title, who performs significant policy-making functions. In connection with policies that facilitate the recovery of erroneously paid incentive compensation, US-listed FPIs are likely to already have identified employees in this category.

Which securities are in-scope? For purposes of Section 16(a) reporting, directors and officers are responsible for reporting their beneficial ownership in listed equity securities of the relevant company and any other security that relates to, or derives its value from, an equity security of that company. This includes options, warrants, and equity incentive grants.

What is beneficial ownership? For purposes of Section 16(a) reporting, a person is the beneficial owner of equity securities if that person has or shares the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in those securities. For example, an insider is generally considered to be a beneficial owner of equity securities that are directly owned by a close family member of that insider.

Electronic reporting required. Section 16(a) reporting obligations apply directly to directors and officers. Form 3, 4 and 5 filings must be made electronically with the SEC using the EDGAR filing platform. To be able to make these filings, each director and officer will need to have their own

electronic filing account with the SEC. Applications for access to the SEC's electronic filing system are made using Form ID.²

Company involvement. US public companies that have insiders subject to Section 16(a) reporting requirements customarily adopt board resolutions on an annual basis that identify each Section 16 officer. In addition, they provide administrative support to directors and officers to facilitate these filings. Directors and officers may grant powers of attorney to a listed company's corporate secretary or compliance officer so that they can make these filings on their behalf.

HFIAA Overview

The HFIAA amends Section 16(a) of the Exchange Act to require its application to directors and officers of any company that has registered a class of equity securities under Section 12 of the Exchange Act, including FPIs. This legislation directs the SEC to issue implementing regulations prior to March 18, 2026, which would likely include revisions to Rule 3a12-3 and could also include related amendments to Form 20-F.

This legislative change only applies to insiders of FPIs that have registered a class of equity securities with the SEC. It will not apply to insiders of:

- FPIs with Level 1 ADR programs; or
- FPIs that have only sold Rule 144A eligible securities to US institutional investors.

Why is this happening? Since the 1960s, Rule 3a12-3 under the Exchange Act has exempted all insiders of US-listed FPIs from ownership and transaction reporting obligations imposed by Section 16 of the Exchange Act. In 2022, an academic study evaluating Form 144 filings by insiders of US-listed FPIs found that:

- foreign insiders' stock sales were highly opportunistic; and
- since 2016, insiders at certain non-US companies had avoided trading losses of over \$9 billion.³

In response, the Holding Foreign Insiders Accountable Act (HFIAA) was developed to discourage opportunistic insider trading by non-US insiders and promote regulatory fairness.

Remaining exemptive relief. The HFIAA only partially invalidates Rule 3a12-3. Significant portions of this rule continue to remain in effect. Notably, it will continue to provide exemptive relief to:

- shareholders of more than 10% outstanding of a class of SEC-registered equity securities (who are not officers or directors) with respect to the reporting obligations imposed by Section 16(a); and

² We recommend filing a Form ID at least two weeks in advance of the expected filing date for a Form 3 to allow adequate time for the SEC staff to review the Form ID application.

³ Robert J. Jackson, Jr., Bradford (Lynch) Levy, and Daniel J. Taylor, Holding Foreign Insiders Accountable, NYU Law and Economics Research Paper No. 22-16, April 1, 2022.

- all insiders of FPIs with respect to the short swing profits liability provisions of Section 16(b) of the Exchange Act.

The Securities and Exchange Commission (SEC) has authority to exempt from Section 16(a) reporting any person or security subject to substantially similar requirements in a foreign jurisdiction, but no relevant comparability determinations have been announced.

Next steps

With the HFIAA taking effect on March 18, 2026, we recommend that US-listed FPIs and their insiders begin preparing for Section 16(a) reporting. US-listed FPIs and their insiders should consider taking the following steps:

- confirm which persons are "officers" for purposes of Section 16;
- apply for SEC electronic filing accounts;
- provide powers of attorney to facilitate filings; and
- revise existing policies or compliance manuals to align with US requirements.

Considerations for dual-listed public companies. US-listed foreign private issuers that are also listed on a non-US exchange will want to consider how the timing and scope of US reporting requirements differ from those that already apply to their insiders in connection with their non-US exchange listing. They will want to consider whether any existing policies or compliance manuals that refer to insider transaction reporting obligations need to be revised. In addition, if the US timing requirements are significantly earlier than the timing requirements imposed by the non-US exchange, they will want to consider whether to accelerate non-US exchange filings so that potentially material information is simultaneously made available in all relevant markets.

Clifford Chance has experience advising US-listed companies on Section 16 reporting and is available to help US-listed FPIs and their directors and officers navigate these new reporting requirements.

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