

Title: Foreign Private Issuers Must Report All Insider Trades Under Section 16(a) March 2026

‘Holding Foreign Insiders Accountable Act’

Effective March 18, 2026

There has been a recent push by the U.S. Securities and Exchange Commission (the “SEC”) and Congress, to align the reporting requirements for foreign private issuers (“FPIs”), more closely with those of U.S. companies. In June, the SEC [published a concept release](#) soliciting public comment on the definition of foreign private issuer.

This push is driven by concerns over investor protection and a desire to level the playing field between U.S. issuers and FPI. It results from the SEC’s conclusion that a majority of FPIs now trade almost exclusively in the U.S. markets, while the original premise of reduced regulation for FPIs was that they are subject to robust regulation by their home country, which is no longer true for many FPIs.

On the heels of this concept release, there is a renewed effort to compel insiders of FPIs to disclose their trades based on concerns that insiders of FPIs have avoided disclosing trading losses by selling company stock before significant price declines. Subjecting those trades to disclosure under Section 16(a) and effectively nullifying the [FPI Rule 3a12-3 exemption](#) would alert investors to insider sell-offs and give U.S. regulators better ability to identify insider trading. Extending the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) to insiders of FPIs would have the collateral effect of providing visibility into insiders’ transactions in company stock, particularly equity compensation transactions, since most FPIs only report their insiders’ compensation annually and in the aggregate.

On Wednesday December 17, 2025, the Senate passed the fiscal year (FY) 2026 defense authorization bill, voting 77-20 to send the measure to President Donald Trump, who subsequently [signed it](#) on December 18, 2025. The [FY 2026 National Defense Authorization Act](#) (the “NDAA”) principally authorizes \$900.6 billion in defense spending, but in Section 8103 completely reshapes how Section 16(a) of the Exchange Act applies to FPIs, and this has substantial implications to foreign companies traded in the U.S.

Background on Section 16(a) of the Exchange Act

A key provision of the Exchange Act, following the stock market crash of 1929, was Section 16, which, among other things, required corporate insiders to file reports with the SEC disclosing their ownership of and transactions in the issuer’s equity securities. Section 16 was a rudimentary anti-insider trading provision intended to prevent insiders from making unfair use of confidential corporate information to profit from trading in the corporation’s securities.

Section 16(a) requires insiders to file with the SEC reports of their holdings and transactions in the issuer’s equity securities. These reports become publicly available immediately upon filing. Under Section 16(a) executive officers, directors and over 10% shareholders must report not only transactions occurring while they are insiders, but also certain transactions occurring within six months before the issuer registered a class of equity security under Section 12 of the Exchange Act or within six months after terminating service as an insider.

Section 16(a) requires insiders of beneficial ownership to file three different kind of forms. Until now, these forms only applied to U.S. companies.

An insider includes all **directors** of a public company, **officers**, including each executive officer in charge of a principal business unit of a public company and beneficial owners of more than 10% of a public company's securities. A person is deemed to beneficially own securities if that person, directly or indirectly, has or shares the power to vote or sell those securities.

The forms and the deadlines of filings for Section 16(a) filings are as follows:

Form 3	10 days after becoming an insider (or no later than the effective date of the registration is registering equity for the first time). Even if you own no securities, you must file to s
Form 4	2 business days after the transaction date in which an insider of a company trades regis
Form 5	On or before 45th day after the end of the company's fiscal year for trades not disclos

Application to FPIs

Section 8103, renamed the Holding Foreign Insider Accountable Act, adopts the requirements of Section 16(a) with two important changes:

1. It will apply only to directors and executive officers of the FPI and not to 10% beneficial owners.
2. The SEC is empowered to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from its requirements if the SEC determines that the laws of a foreign jurisdiction apply substantially similar requirements to such person, security, or transaction.[\[1\]](#)

Timeline

The new rule will go into effect on March 18, 2026. The NDAA requires the SEC to issue final regulations no later than that date.

Implications and Consequences

This is a very significant change for all non-U.S. companies trading in the U.S. (including those companies with ADS trading only) that are registered under the Exchange Act. Every executive officer and director needs to prepare themselves for this change, which means registering on EDGAR Next. [As a reminder](#), the SEC's new electronic filing system, EDGAR Next, is now live and became mandatory for all SEC filers, including private funds and their managers, as of September 15, 2025. Beginning December 19, 2025, filers not enrolled lost access and have to reapply via Form ID. Getting access to EDGAR Next takes time, and FPIs had little reason to register *all* their directors and executive officers before (except for possible use with Schedule 13D or 13G or Form 144). This is an undertaking that needs to be taken now and CLM would be glad to assist you.

The definition of executive officers subject to Section 16(a) reporting should be the same list of executive officers as those subject to the clawback rules. That [definition](#) includes the issuer's president, principal financial officer, principal accounting officer ("PAO") or controller if there is no PAO, any VP of the issuer in charge of a principal business unit, division or function (e.g., 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.

It remains to be seen which, if any, non-U.S. jurisdictions will be exempt and to what extent. The SEC also has authority to adopt temporary exemptions from Section 16 and has done so in the past.

Sections 16(a) is enforced by the SEC, except that the federal banking agencies are responsible for enforcement against banks. There is a split of authority among the courts regarding whether

private parties (e.g., shareholders of the issuer) also have limited authority to enforce Section 16(a).^[2]

Foreign private issuers need to be aware of consequences of non-compliance. The SEC and the federal banking agencies may issue **cease-and-desist orders or seek injunctions** and orders from the U.S. district courts compelling compliance. In some cases, the courts and the SEC may impose **civil money penalties** for violations, and either of the agencies may recommend **criminal action** to the Justice Department for willful violations of Section 16(a). The SEC also can seek relief against non-insider third parties for aiding and abetting or causing an insider's violation of Section 16(a).

Effect on Specific Jurisdictions

Every foreign jurisdiction has different rules, but generally an FPI insider's equity ownership was not required to be disclosed in an SEC filing unless it exceeded 1% of the FPI's total outstanding shares (in an Annual Report on Form 20-F and sometimes in proxy statements). In the 20-F, individual compensation of insiders was only required if such disclosure was required to be made in the home country, so each jurisdiction varied.

Australia

Australia has one of the [broadest](#) prohibitions on insider dealing in financial products in the world. However, thresholds may apply (e.g., a "substantial holding" or a "[relevant interest](#)").

Canada

In Canada, there is a robust system to report insider holdings. The System for Electronic Disclosure by Insiders ([SEDI](#)) is Canada's service for the filing and viewing of insider trading reports as required by various provincial securities rules and regulations. The provincial rules provide for [reporting obligations](#) similar to those under Section 16 but within 10 calendar days of becoming an insider and within 5 calendar days of any subsequent trade or change in interest for the partners, directors and officers. These rules, together with the existing SEDI system, is a good bet that Canadian companies could be exempt.

Israel

Public companies in Israel are required to report the compensation and its components of the five highest paid people in the company. If the amended Section 16(a) now applies to Israel, without an exemption, all of the insiders will have to report their equity ownership in the company.

Sweden

It is [mandatory for insiders to report](#) their holdings of equities and equities-related financial instruments in the company in which they hold an insider position.

Other European Union countries

Under the [Market Abuse Regulation \(MAR\)](#), all EU member states have strict rules requiring insiders (directors, employees, major shareholders) to report transactions above specific thresholds (often 1% initially, then 5%) to their national competent authority (e.g., Finansinspektionen in Sweden, FCA in UK).

Under Section 16(a), unless the SEC makes exemptions pursuant to the Holding Foreign Insider Accountable Act, there are no minimum thresholds for insider reporting.

Conclusion

A substantial undertaking for FPIs is about to take effect. The amendments to Section 16 will become effective on March 18, 2026.

Notably, **"Holding Foreign Insiders Accountable Act"** did not subject the over-10% shareholders in a FPI to Section 16(a) reporting, FPI insiders to the short-swing profit recovery provisions of Section 16(b) nor FPI directors to the anti-shortening provision of

Section 16(c). Section 16(b) requires insiders of domestic issuers to return to the company any profits made from the purchase and sale of company stock if both transactions occur within a six-month period. Not including Section 16(b) is a big relief for FPIs because including it would be a very strong disincentive to list their shares in the U.S. However, the reporting requirements themselves are also very significant and company insiders need to be aware of this – the board of directors, committees, insurance carriers, director nominees and shareholders in the home country, all have to adapt to the new reality.

[1] While this is widely reported as significant, the SEC already has authority to exempt transactions from the requirements of Section 16, and many of the SEC’s rules provide exemptions from one or more of the provisions of Section 16(a), Section 16(b), and Section 16(c). Section 23(a) of the Exchange Act authorizes the SEC to “make such rules and regulations as may be necessary or appropriate to implement the provisions” of the Exchange Act, and Section 36(a) empowers the SEC to exempt, by rule, regulation, or order, “any person, security, or transaction, or any class or classes of persons, securities or transactions” from any provision of the Exchange Act. The SEC also may, under Section 3(b) of the Exchange Act, define trade, technical and other terms used in the Exchange Act. By defining such terms as “beneficial owner” and “derivative security” the SEC can, through exclusion, effectively exempt a person, security, or class of transaction from the application of Section 16.

[2] PETER J. ROMEO & ALAN L. DYE, SECTION 16 OF THE SECURITIES EXCHANGE ACT – TREATISE AND REPORTING GUIDE (6th ed. 2024) § 1.01, page 16.

Author(s)

Guy Ben-Ami, Partner
benami@clm.com

Steven J. Glusband, Partner
glusband@clm.com

Guy P. Lander, Partner
lander@clm.com