

Section 16(a) Reporting Obligations to Be Extended to Directors and Officers of Foreign Private Issuers

December 18, 2025

On December 17, 2025, Congress passed the Fiscal Year 2026 National Defense Authorization Act (the “NDAA”) that, for the first time, would require directors and officers of foreign private issuers (“FPIs”) with equity securities registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to comply with the insider reporting requirements of Section 16(a) of the Exchange Act. Previously, such insiders of FPIs have been exempt from Section 16 by virtue of Rule 3a12-3(b) under the Exchange Act. President Trump is expected to sign the bipartisan bill before the end of 2025. Importantly, the NDAA does not extend Section 16(a) to 10% shareholders of FPIs and does not extend either Section 16(b)’s short-swing profit recovery provisions or Section 16(c)’s prohibitions on short sales to any insiders of FPIs. If enacted, the amendments would take effect 90 days after signature, which is also the deadline for the SEC to adopt implementing rules.

Overview of Section 16(a)

As amended by the NDAA, Section 16(a) will require directors and officers of FPIs with equity securities registered under the Exchange Act to publicly report their ownership and changes in ownership on the SEC’s EDGAR system. Reportable ownership interests include direct ownership and certain forms of indirect ownership, such as through entities or trusts and, in some cases, holdings by family members sharing the insider’s home, subject to the ability to disclaim ownership in appropriate circumstances. For purposes of Section 16(a), an “officer” includes the issuer’s president, principal financial officer and principal accounting officer or controller, any vice president in charge of a principal business unit, division or function, and any other person who performs similar policy-making functions for the issuer. These obligations apply regardless of whether the securities are listed on a national securities exchange, such as the New York Stock Exchange or Nasdaq.

An insider must file an initial Form 3 upon registration of the issuer’s securities under the Exchange Act or, for issuers already registered under the Exchange Act, generally within 10 days of becoming an insider. A Form 3 reports an insider’s “pecuniary interest”

in all the issuer's registered equity securities as well as derivative securities that are convertible or exercisable into or otherwise derive their value from the class of registered securities (e.g., warrants, options, restricted stock units). Thereafter, a Form 4 must generally be filed within two business days after execution of a transaction involving the class of registered securities or related derivative securities, including purchases, sales, gifts and receipt of equity-compensation awards from an issuer. Certain transactions not required to be reported on Form 4, or transactions inadvertently not reported, must be disclosed annually on Form 5 within 45 days after the issuer's fiscal year-end. Section 16(a) contains no extension provision for filing deadlines, and the SEC has been focused in recent years on targeting delinquent filers for enforcement.¹

Section 16(a) reporting obligations will apply for as long as a person is a director or officer of an issuer. In addition, former directors and officers may remain subject to Section 16(a) reporting requirements for a limited period following termination of service under certain circumstances.

See Appendix for further information regarding the requirements of Forms 3, 4 and 5.

SEC Exemptive Authority and Possible Relief

The NDAA grants the SEC broad authority to exempt any person, security, transaction or class thereof from Section 16(a) if the SEC determines that the laws of a foreign jurisdiction impose "substantially similar requirements." The statutory text does not define "substantially similar" or specify how the SEC should evaluate foreign regulatory regimes and permits the SEC to grant exemptions by rule, regulation or order. As a result, it is unclear what the SEC would view as satisfying the "substantially similar" standard or how it would exercise this authority in practice.

The NDAA also requires the SEC to issue final regulations implementing the amendments within 90 days after enactment, implying an accelerated proposal and comment cycle on the final rules before adoption. Given the short timeframe and the breadth of the exemptive authority, the scope and availability of exemptions will depend significantly on the approach the SEC outlines in the implementing rules.

¹ See SEC Press Release No. 2024-148, "SEC Levies More Than \$3.8 Million in Penalties in Sweep of Late Beneficial Ownership and Insider Transaction Reports" (Sept. 25, 2024), *available at* <https://www.sec.gov/newsroom/press-releases/2024-148>.

If the SEC elects to exercise its exemptive authority under the NDAA, it could do so on a jurisdiction-by-jurisdiction basis. Existing foreign insider reporting regimes that could potentially satisfy the “substantially similar” standard include the following:

- **Canada.** For public companies listed in Canada, insiders are generally required to file an initial insider report within 10 days of becoming an insider on the System for Electronic Disclosure by Insiders (“SEDI”) and to file insider reports within five days of a trade. Under SEDI, the term “insider” includes, among others, a director or senior officer of a reporting issuer.
- **European Union.** For issuers who have requested or approved admission to trading of their securities on a European Union regulated market, multilateral trading facility or organized trading facility, insider transaction reporting is governed by Article 19 of the Market Abuse Regulation (“EU MAR”), which applies to persons discharging managerial responsibilities (“PDMRs”)² and persons closely associated with them (“PCAs”).³ EU MAR requires PDMRs and their PCAs to notify both the issuer and the relevant national competent authority of transactions in the issuer’s financial instruments, subject to certain exceptions, promptly and no later than three business days after the transaction, once transactions exceed a specified annual threshold (the default threshold is €20,000, although national competent authorities may increase it to €50,000 or reduce it to €10,000). Issuers must publicly disclose the notified transactions within two business days of receipt. While EU MAR is directly applicable across EU member states, certain elements of the regime, including the applicable reporting threshold and aspects of enforcement, may vary by jurisdiction.
- **United Kingdom.** In the United Kingdom, a substantively similar PDMR transaction reporting regime applies to insiders of issuers who have requested or approved admission to trading of their securities on a UK-regulated market, multilateral trading facility or organized trading facility under the UK Market Abuse Regulation (“UK MAR”). Under UK MAR, PDMRs and their PCAs are required to notify both the issuer and the UK Financial Conduct Authority (the “FCA”) of relevant transactions within three working days. Issuers must then publicly disclose such transactions within two working days of receiving the notification. The

² PDMRs include members of an issuer’s administrative, management or supervisory body and senior executives who are not members of those bodies but have regular access to inside information and power to take managerial decisions affecting the issuer’s future developments and business prospects.

³ PCAs include a PDMR’s spouse, partner treated as equivalent to a spouse under national law, dependent children and relatives who have shared the same household for at least one year at the time of the transaction. PCAs also include legal entities, trusts or partnerships that are managed or controlled (directly or indirectly) by a PDMR or their PCA as set out above, established for their benefit or whose economic interests are substantially equivalent to theirs.

reporting threshold is €5,000 within a calendar year, which can be increased by the FCA to €20,000.

Implications for Directors and Officers of FPIs

Under the current FPI reporting framework, beneficial owners of more than 5% of a class of an issuer's voting equity securities are subject to beneficial ownership reporting under Section 13 of the Exchange Act (i.e., Schedule 13G or Schedule 13D). By contrast, directors and officers of FPIs are not subject to Section 16(a) reporting and disclose equity ownership on an aggregate basis in the issuer's annual report on Form 20-F. Individual disclosure of share ownership by a director or officer is required to be reported on Form 20-F only if that person holds more than 1% of a class of the issuer's shares.

Directors and officers of FPIs that become subject to Section 16(a) reporting and FPIs are advised to undertake a number of practical compliance steps. These include identifying which members of management qualify as "officers" for Section 16 purposes, establishing or enhancing internal controls and procedures to ensure timely reporting of equity compensation awards and other insider transactions (including decisions regarding whether to centralize reporting internally or to engage outside counsel or service providers), and ensuring that directors and officers obtain EDGAR access credentials to permit timely filings.

Next Steps

FPIs and their directors and officers will need to start to prepare for compliance with the reporting obligations of Section 16(a). The SEC's implementing rulemaking likely will determine the scope of any exemptive relief for foreign jurisdictions and clarify how FPIs should assess their reporting obligations. We will continue to monitor developments.

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Please do not hesitate to contact us with any questions.



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Appendix: Summary of Section 16(a) Reporting Requirements

Form Name	Timing	Disclosure Requirements	Notes
Form 3 (Initial Ownership Statement)	(i) At the time of registration of the securities under Section 12, or (ii) for persons becoming insiders after the initial registration, within ten (10) calendar days after becoming a reporting insider.	Details of all of the issuer's registered equity securities owned on the date of becoming an insider (including related derivative securities).	<p>An insider should file only one Form 3.</p> <p>There is no minimum requirement of ownership to trigger the reporting requirement for directors and officers (i.e., a newly appointed director with no beneficial ownership of the issuer's securities must still file a Form 3).</p>
Form 4 (Report of Changes in Beneficial Ownership)	Before 10:00 p.m. ET on the second (2nd) business day following a change in ownership.	Details of any changes in ownership (e.g., purchases, sales or gifts) of the issuer's registered equity securities (including related derivative securities) after filing the Form 3.	<p>Certain exemptions from or deferrals of reporting may apply, including for transactions involving stock dividends, stock splits, purchases pursuant to company-wide dividend reinvestment plans and inheritances.</p> <p>A single Form 4 can be used to report multiple transactions that occur within a single reporting period.</p>

Form 5 (Annual Report)	Forty-five (45) days after the end of the issuer's fiscal year.	Details of (i) holdings or transactions that should have been previously reported on Form 3 or Form 4 but were not or (ii) transactions subject to reporting but not required to be reported on Form 4.	No Form 5 required if all reportable transactions for the fiscal year (i) were documented on Form 3 or Form 4 or (ii) the insider provides the issuer with a written representation that no Form 5 filing is due.
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