



The Holding Foreign Insiders Accountable Act (HFIAA) and What it Means for Foreign Private Issuers

The 2026 Holding Foreign Insiders Accountable Act (HFIAA) was signed into law on December 18, 2025 as Section 8103 of the National Defense Authorization Act for Fiscal Year 2026. The HFIAA impacts foreign private issuers (or FPIs) (publicly-traded non-U.S. companies qualifying under U.S. Securities and Exchange Commission Rules 3b-4 and 405) and their directors and executive officers.

The HFIAA removes the longstanding exemption of FPIs and their directors and executive officers from Section 16(a) of the Securities Exchange Act of 1934, which generally requires company insiders such as directors, executive officers, and large shareholders who beneficially own more than 10% of a company's stock, to publicly report their stock ownership and any trades they make in the company's securities.

Previously, under SEC Rule 3a12-3(b), FPIs and all their insiders were exempt from these disclosure requirements, providing less regulatory burden and transparency than that imposed on U.S. domestic reporting companies.

HFIAA takes effect on March 18, 2026 (90 days after enactment) and will require directors and executive officers of FPIs that are reporting companies with securities registered under Section 12(b) or 12(g) of the Exchange Act to comply with Section 16(a) insider reporting obligations. This requires public disclosure of their beneficial ownership and transactions in the FPI's equity securities via SEC Forms 3, 4, and 5. 10%+ beneficial owners of FPIs are still exempt for reporting (provided they are not also a director or officer of the FPI).

The HFIAA only removes the exemption from the Section 16(a) reporting requirement; the exemptions from Section 16(b) short-swing profit liability and Section 16(c) short-sale restrictions continue to apply for all FPI insiders.

Directors and executive officers of FPIs will become subject to Section 16(a) on March 18, 2026, including:

- **Form 3:** Initial statement of beneficial ownership. Existing directors and executive officers must file Form 3 by March 18, 2026. Those who become a director or executive officer after this date must file a Form 3 within 10 calendar days of assuming their position.
- **Form 4:** Report on changes in beneficial ownership. A Form 4 is due within two business days of a transaction that changes the director's or officer's beneficial ownership position in the FPI's equity securities.
- **Form 5:** Annual statement of beneficial ownership. A Form 5 annual statement for any unreported transactions not previously disclosed on Form 4 is due within 45 days after the FPI's fiscal year-end. Alternatively, directors/officers should confirm to the FPI that it is compliant in their Form 4 reporting and that no Form 5 is required.

As all Section 16(a) filings are required to be made electronically via the SEC's EDGAR system, FPI directors and officers will need to obtain and maintain personal EDGAR or EDGAR NEXT access codes so that they can make the required filings.

Legally, the Section 16(a) filing obligation is a personal obligation of the Section 16(a) reporting individual, and not of the FPI itself. The failure of an FPI director or officer to timely comply with the Section 16(a) filing requirements can lead to consequences, including:

- The SEC can bring an enforcement action directly against the insider who failed to make the required filing or filed it late, which may include civil penalties or cease-and-desist orders.
- Late or missing filings can harm the insider's reputation, raise governance concerns for the FPI, and increase regulatory scrutiny of the FPI and its insiders.

Also, although there is no current requirement for a FPI to report its insider's late or missing filings on its Annual Report on Form 20-F, like the obligation for U.S. domestic reporting companies to publicly disclose the insider's late or missing filings in its Annual Report on Form 10-K identifying the insider and the number of late or missing reports, it is possible that the SEC may consider adopting similar obligations for FPIs in the future.

The SEC possesses the authority to grant conditional or unconditional exemptions for these reporting requirements for any particular person, security, or transaction where the foreign jurisdiction already imposes substantially similar insider disclosure requirements for directors and officers (e.g., the European Union and the United Kingdom). Due to the anticipated high volume of initial filings of Form IDs by FPI directors and executive officers with the SEC to obtain their personal EDGAR codes in preparing to comply with reporting requirements, the SEC has indicated that it will not recommend enforcement action against individuals who submit a Form ID before March 18, 2026 but are not issued their EDGAR code to enable them to timely file their Form 3 by March 18, 2026, provided they file by April 1, 2026.

The HFIAA is U.S. federal law that applies to all FPIs with equity securities registered under Section 12(b) or 12(g) of the Exchange Act. Neither NASDAQ nor the NYSE have adopted specific rule changes relating to this legal change, though FPIs should monitor related developments, such as possible NASDAQ or NYSE proposals to address reporting requirements for delinquent insider filings in their listing standards for foreign issuers.

FPIs and their directors/officers should act now: identify covered insiders, assess their equity holdings in the FPI; implement internal controls and training; make required filings if and when due; and consult securities counsel to mitigate risks, including potential SEC scrutiny or enforcement actions.

For more information or guidance on navigating these changes please contact Ruskin Moscou Faltischek, P.C.'s Corporate and Securities Department at:

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