

FEBRUARY 28, 2026

## SEC ADOPTS FINAL RULE AMENDMENTS REQUIRING SECTION 16(A) REPORTING FOR OFFICERS AND DIRECTORS OF FOREIGN PRIVATE ISSUERS

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On February 27, 2026, more than two weeks in advance of the deadline, the U.S. Securities and Exchange Commission (the "SEC") adopted final amendments to certain rules and forms under the Securities Exchange Act of 1934 (the "Exchange Act") to reflect the requirements of the Holding Foreign Insiders Accountable Act (the "HFIAA"). The HFIAA, and the SEC's related rules, subject officers and directors of foreign private issuers ("FPIs") to the beneficial ownership reporting requirements of Section 16(a) of the Exchange Act, beginning with an obligation to file an initial statement of beneficial ownership on Form 3 no later than March 18, 2026. Importantly, the SEC's rule amendments do not go beyond what was required by the HFIAA, providing needed certainty with respect to the scope of this new obligation for insiders of FPIs. This client alert summarizes the SEC's rule changes and provides suggestions for FPIs and their insiders as they prepare to comply with the new requirements.

### SEC RULE AMENDMENTS

Under Section 16(a) of the Exchange Act, directors, officers, and beneficial owners of more than 10 percent of any class of a company's equity securities registered under Exchange Act Section 12 have long been required to disclose their holdings of and transactions in the company's securities through SEC filings on Forms 3, 4, and 5. Insiders of FPIs have historically been exempt from Section 16. The HFIAA required the SEC to revise its rules to include directors and officers of FPIs in the list of persons subject to the Section 16(a) disclosure requirements.

The SEC revised Exchange Act Rules 3a12-3(b) and 16a-2 and the text of Forms 3, 4, and 5 to implement the HFIAA requirement. Consistent with the HFIAA, officers and directors of FPIs that have a class of securities registered under Section 12 of the Exchange Act will be subject to the following Section 16(a) reporting requirements:

- Form 3: initial statement of beneficial ownership filed by directors or officers; required to be filed within 10 calendar days of becoming a director or officer or, in connection with an IPO, on the day the Exchange Act registration statement is declared effective, which is generally the day of pricing.
- Form 4: filed by directors and officers to report changes in their holdings of the company's securities; required to be filed within two business days after the transaction. For example, a sale of securities that occurs on a Tuesday must be reported by 10:00 pm Eastern time on Thursday.

- Form 5: filed to report any transaction not previously reported on Form 4. This is an annual catch-all filing for any unreported or exempt transactions and is required to be filed within 45 calendar days after the company's fiscal year end.

## TECHNICAL REPORTING GUIDANCE

In the adopting release, the SEC addressed a number of compliance and reporting questions that have arisen since the passage of the HFIIA, as follows:

- *Identification of reporting persons:* Some FPIs have a two-tier board structure, with a supervisory, or non-management, board and a management board. In determining which individuals are required to file Section 16(a) reports as directors, the SEC stated that FPIs should look to the definition of "director" in Section 3(a)(7) of the Exchange Act, and conduct a factual determination to determine whether a person is a "director" for purposes of Section 16(a) reporting.<sup>1</sup> Importantly, this may be broader than what is required by Form 20-F, where the term "board of directors" generally refers only to the supervisory, or non-management, board.
- *Interaction with Section 16(b):* Exchange Act Rule 16a-3(g)(1) requires reporting persons to report "all transactions not exempt from section 16(b)" on Form 4, while Rule 16a-3(f)(1) requires reporting persons to report on Form 5 transactions not previously reported on Form 4 or eligible for deferred reporting, including certain transactions exempt from Section 16(b). The SEC clarified that directors and officers of FPIs should not view these rules, or similar language in the Instructions to Forms 4 and 5, as exempting them from reporting transactions otherwise required to be reported by Section 16(a).
- *Transaction Codes:* The Instructions to Forms 4 and 5 include a variety of Transaction Codes, some of which explicitly apply to transactions under Rule 16b-3<sup>2</sup> and other Section 16 rules. The SEC noted that these Codes will apply to the reporting of transactions by directors and officers of FPIs, notwithstanding the continuing exemption for FPIs from Section 16(b)'s short-swing profit disgorgement provision.
- *New Field on Forms 3, 4, and 5 for Reporting Foreign Trading Symbols:* The SEC updated Forms 3, 4 and 5 so they each will now include an optional field (Box 3a. of Form 3 and Box 2a. of Forms 4 and 5, respectively) for a foreign trading symbol. This will allow for reporting a second trading symbol for FPIs with trading in both U.S. and non-U.S. markets. The adopting release states that when a reporting person holds shares that are traded in both in U.S. and non-U.S. markets, s/he should include both trading symbols. When shares only have a foreign trading symbol, a reporting person could either enter the foreign trading symbol in the first mandatory box (Box 3 of Form 3 and Box 2 of Forms 4 and 5) or enter "none" in that box and enter the foreign trading symbol in the second box.
- *New Fields on Forms 3, 4 and 5 for Postal Code and Country Code:* Each reporting form is being amended to include an optional field for a postal code and a country code as part of the address of the reporting person. EDGAR country codes are documented in the EDGAR Form D XML Technical Specification and EDGAR Ownership XML Technical Specification. A list of country

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<sup>1</sup> Section 3(a)(7) defines "director" as "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated."

<sup>2</sup> Rule 16b-3 governs transactions between an issuer and its officers and directors. These transactions are generally exempt from the short-swing profit disgorgement rules of Section 16(b), subject to certain conditions.

codes is available at <https://www.sec.gov/submitfilings/filer-support-resources/edgar-state-country-codes>.

## **ECONOMIC ANALYSIS**

The SEC included an economic analysis in the adopting release, analyzing the potential costs and benefits that could stem from the amended forms and rules, or, in other words, from the HFIAA. Notably, the SEC acknowledged that the impact of many changes, such as the indirect costs that will be incurred by directors and officers to comply with the requirements, are very challenging to quantify. Further, the SEC noted that “it is difficult to predict” whether the benefits of the new disclosure requirements will be similar to the benefits realized today for domestic issuers. However, the SEC believes that the new reporting requirements will increase transparency into the beneficial ownership levels of, and transactions in, securities by officers and directors of covered FPIs, thereby decreasing information asymmetry for investors and increasing pricing efficiency. The SEC also noted favorably that the reporting requirements may deter FPI officers and directors from trading while in possession of material non-public information.

The SEC noted that both benefits and costs will be lower in cases of FPIs whose directors and officers are already subject to similar reporting requirements in their home country jurisdictions, since investors already have access to this information. This is also the case when FPI officers and directors already voluntarily comply with Section 16 reporting requirements, or already report some information about their transactions in, or ownership of, securities pursuant to another requirement under the U.S. federal securities law, for example, under Rule 144 of the Securities Act of 1933.

## **WILL THE SEC PROVIDE EXEMPTIONS?**

The HFIAA provided the SEC with explicit authority to exempt certain “persons, securities, or transactions” from the Section 16(a) reporting requirements where foreign laws already impose substantially similar reporting obligations. The SEC has not yet taken any action to do so. SEC Chairman Paul Atkins, in a statement discussing the February 27 rule changes, stated that the SEC Staff is “actively evaluating” whether it will exercise the authority provided to it in the HFIAA, but gave no indication of possible timing of any action, including whether any exemptive relief may be granted prior to the March 18, 2026 effective date. As a result, FPIs and their directors and officers should continue with their preparations to comply, as discussed below.

## **NEXT STEPS**

Officer and directors of FPIs with a class of equity securities registered under Section 12 of the Exchange Act will be required to file a Form 3 no later than March 18, 2026. In order to complete this filing, all new reporting persons must have access to EDGAR Next. A crucial first step in the process is to determine which individuals will be subject to the Section 16(a) reporting requirements under the SEC’s definitions of “officer” and “director.” Once the reporting persons are identified, we encourage new reporting persons to submit an appropriately-notarized Form ID to the SEC as soon as possible, as processing times are likely to become longer as the deadline approaches. For context, the SEC estimated a range of approximately 3,728 – 21,017 potential FPI directors and officers who could be Section 16 reporting persons—a number of which will need EDGAR Next access by March 18.

In addition, FPIs should consider the following:

- Ensure that all directors and officers know their holdings, including indirect holdings and those of spouses and minor children, and are prepared to report on Form 3 by March 18.
- Develop controls and procedures to assist reporting persons in complying with ongoing filing requirements. Decide if the company will file for reporting persons (note that this is the case for many domestic U.S. companies, although reporting persons are still responsible for ensuring that the company has the information necessary to file).
- Consider adopting a policy to assist directors and officers, as well as their family and household members, in complying with reporting requirements. Any such policy should clearly provide for timely information sharing between all the parties; domestic companies sometimes require mandatory pre-clearance of any transactions in company securities by directors, officers and their family members prior to engaging in any transaction involving the company's securities
- Provide training so that directors and officers are aware of reporting obligations and timing requirements. Many domestic companies include reminders about Section 16 compliance in their annual D&O questionnaires and provide regular educational opportunities for reporting persons, which will be especially important given that these requirements will be unfamiliar to many FPI officers and directors.



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## CONTACTS

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

**LIZ WALSH**

+1 202 263 3883

[LWALSH@MAYERBROWN.COM](mailto:LWALSH@MAYERBROWN.COM)

**JENNIFER ZEPRALKA**

+1 202 263 3446

[JZEPRALKA@MAYERBROWN.COM](mailto:JZEPRALKA@MAYERBROWN.COM)

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