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New Reporting Obligations for Directors and Officers of Foreign Private Issuers

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On December 18, 2025, President Trump signed into law the Holding Foreign Insiders Accountable Act (the "***HFIAA***"), which will terminate an exemption that long enabled directors and officers of foreign private issuers ("***FPIs***") to avoid certain insider reporting obligations under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"). The HFIAA will become effective on March 18, 2026.

Pursuant to the HFIAA, directors and officers of FPIs will be required to report their holdings and transactions in public filings with the U.S. Securities and Exchange Commission (the "***SEC***") under Section 16(a).

What are Section 16(a) reporting requirements?

Section 16 of the Exchange Act currently applies to "insiders" of U.S. domestic public companies, which comprise the company's officers and directors *and* beneficial owners of more than 10 percent of the company's public voting equity securities. Section 16(a) requires these insiders to report to the SEC all of their holdings and transactions in the company's equity securities, including derivative securities such as stock options and warrants.

The HFIAA extends the requirements of Section 16(a) to directors and officers of FPIs, *but not* to 10-percent owners of an FPI's securities. Nevertheless, beneficial owners of more than five percent of an FPI's securities are, and will continue to be, obligated to publicly report their holdings on Schedule 13G or Schedule 13D under the Exchange Act.

Importantly, officers and directors of FPIs are still exempt from other provisions of Section 16, including the Section 16(b) "short-swing profit" recovery provisions and the prohibition on "short selling" in Section 16(c).

What securities are covered under Section 16(a)?

Section 16 reporting applies to all equity securities of a company, and not just the securities listed in the United States and registered with the SEC. This includes ordinary shares, American depositary shares and any derivative securities such as options, warrants, stock appreciation rights, restricted stock units, phantom stock, convertible debt securities and any similar security whose value is derived from the value of the company's stock. For purposes of Section 16(a), insiders must disclose ownership of and transactions in any securities of the company that they "beneficially own."

Who will be subject to the new reporting requirements?

All members of the company's board of directors and all officers. For FPIs, determining who is an "officer" for Section 16 purposes often requires an assessment of the employee's duties, regardless of their title. A company's president, chief financial officer and chief accounting officer are always considered officers. Beyond those positions, the term "officer" includes (1) any vice president in charge of a principal business unit, division or function and (2) any person performing similar or other significant policy-making functions.

What forms are used to report Section 16(a) information?

- **Form 3** is used to report holdings at the time a person becomes an insider. Form 3 is due within 10 calendar days of the individual becoming an insider (or the effective date of a registration statement for newly public companies). A Form 3 is required even if the individual does not own any securities at the time of the filing obligation.
- **Form 4** is used to report changes in beneficial ownership, including purchases, sales, gifts and grants related to compensation and other acquisitions or dispositions. A Form 4 filing is due within two business days of the transaction date.
- **Form 5** is used to report certain acquisitions eligible for deferred disclosure, as well as transactions that should have been reported earlier on Form 4. If required, Form 5 is due within 45 days of the company's fiscal year-end.

What should an FPI do now to prepare for these new reporting obligations?

Identify officers and directors pursuant to Section 16

As an initial step, FPIs should promptly identify all individuals who qualify as officers and directors, as described above.

Promptly Obtain EDGAR Codes for Officers and Directors

To enable filing of information with the SEC, officers and directors must obtain individual EDGAR access codes and be enrolled in the SEC's EDGAR Next reporting system. The process of obtaining EDGAR codes takes approximately five to seven business days. FPIs are advised to coordinate enrollment of any persons who are not yet on EDGAR Next well ahead of the March 18th deadline. EDGAR code applications must be notarized for non-US citizens, a process that could be burdensome, depending on the jurisdiction.

Prepare Forms 3 for Current Officers and Directors

Unless an extension is provided or the SEC exempts certain jurisdictions, initial Form 3 filings for current directors and officers of all FPIs must be submitted by 10:00 p.m. Eastern time on March 18, 2026. Although it is the officers and directors who are responsible for the filing, FPIs typically prepare the filings on their behalf pursuant to powers of attorney executed by the officers and directors. This means an FPI's compliance personnel should prepare a Form 3 for each officer and director and have such persons review and approve them in time to allow timely filing. After March 18, 2026, newly appointed directors and officers will have ten calendar days to file a Form 3.

Develop a Written Section 16(a) Compliance Policy

FPIs should adopt, with the assistance of U.S. counsel, a Section 16(a) compliance policy, or incorporate Section 16(a) into existing compliance policies, and designate a compliance team to continually monitor transactions in the company's equity and derivative securities, prepare and file Forms 3, 4 and 5 and maintain insider reporting controls and pre-clearance procedures.

Are any jurisdictions or categories of FPIs exempt from Section 16(a) reporting?

The HFIAA contemplates the possibility that certain jurisdictions or categories of FPIs may be exempted from Section 16(a) reporting based on factors such as home-country regulation or existing disclosure regimes. At present, the SEC has not identified any exempt jurisdiction and no rule or interpretation has been issued addressing the scope or availability of exemptions. Until that guidance is issued, FPIs should assume that the HFIAA applies globally.

The new reporting requirements resulting from the HFIAA and Section 16(a) of the Exchange Act involve complex regulation and legal analysis. The Proskauer team can provide key legal insights to FPIs to ensure compliance with these obligations.

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