

Vital Briefing

Officers and directors at foreign private issuers will soon be subject to new disclosure obligations

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For many years, officers and directors at companies meeting the definition of “foreign private issuer” (FPI) have been exempt from making certain beneficial ownership disclosures that are routine for executives at domestic companies. Late last year, however, Congress enacted a new FPI disclosure obligation that is set to take effect via [SEC regulations](#) on March 18, 2026.

The SEC has since granted an exemption under the HFIAA to FPIs organized in six qualifying jurisdictions because those jurisdictions have adopted qualifying regulations that would make reporting under U.S. regulations redundant. In addition to summarizing the HFIAA, this paper examines in detail who is exempted under the HFIAA and explains the additional guidance the SEC has provided for companies to comply with U.S. HFIAA regulations.

Introduction

Section 8103 of the National Defense Authorization Act for Fiscal Year 2026 ([S. 1071](#)) which contains the [Holding Foreign Insiders Accountable Act](#) (HFIAA), expands the disclosures required under Exchange Act Section 16(a) to include officers and directors of FPIs. As a result, under amended Section 16(a), every person who beneficially owns more than 10 percent of any security registered under Exchange Act Section 12, or who is an officer or director

of the issuer of the security, including every person who is an officer or director of a foreign private issuer, must file the statements required to be filed by Section 16 (i.e., Forms 3, 4, and 5).

What companies are impacted by the new law?

Amended Exchange Act Section 16 applies to “foreign private issuer[s],” but it is necessary to read this term in conjunction with the term “foreign issuer,” both of which have been defined in Exchange Act Rule 3b-4. “Foreign issuer,” the broader of the two terms, means “any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.”

The term “foreign private issuer” means “any foreign issuer other than a foreign government,” although an exception exists for an issuer that, on the last business day of its most recently completed second fiscal quarter, meets certain criteria. As a result, an issuer is not an FPI if: (1) more than 50 percent of its outstanding voting securities are held by U.S. residents; and (2) any of the following is/are true—(a) a majority of the issuer’s executive officers or directors are U.S. citizens or residents; (b) more than 50 percent of the issuer’s assets are located

in the U.S.; or (c) the issuer’s business is administered principally in the U.S.

Which executives and owners at FPIs are affected?

The HFIAA specified that officers and directors of FPIs are to be subject to the new reporting requirement. Other 10 percent beneficial owners or holders of FPIs are not affected by the new law.

Footnote 11 to the SEC’s adopting release explained that the Commission interpreted the HFIAA’s language to be limited to FPI officers and directors. Presumably, if Congress desired, it could further amend the HFIAA to explicitly include 10 percent beneficial owners or holders of FPIs.

For its part, the Commission said the following: “The legislation inserts new language relating to FPIs only in reference to directors and officers and does not insert any such reference to FPIs’ 10 percent holders. Based on the statutory text, we interpret this amendment to mean that the new Section 16(a) reporting requirements apply only to directors and officers and not 10 percent holders of FPIs.”

The Commission also noted that prior versions of the HFIAA contained broader language and that the HFIAA’s sponsors focused on corporate executives at FPIs.

Which FPI securities are affected?

FPIs that have registered a class of equity securities with the SEC under Exchange Act Sections 12(b) or 12(g) are subject to the HFIAA.

How did Congress expect the SEC to implement the HFIAA?

The HFIAA mandates that foreign private issuers make any required filings 90 days after enactment (March 18, 2026). Filings also must be made electronically and in English.

Moreover, the SEC was granted authority to implement the HFIAA through regulations, which also were due 90 days after enactment of the HFIAA.

The SEC, via an Exchange Act rulemaking release, has implemented the HFIAA. As a result, FPIs must comply with SEC amendments to Exchange Act Rules 3a12-3 and 16a-2, both of which clarify that officers and directors of FPIs, but not other 10 percent beneficial owners, must comply with the new disclosure requirement.

On what forms are the new disclosures made?

The new FPI officer and director disclosures must be made on the SEC's Forms 3, 4, and 5. The SEC's implementing regulation amended Form 3, General Instructions 1.(a)(i), (ii), and (iv) to clarify how to make these disclosures. The primary substantive amendments were made to Form 3, but Forms 4 and 5 each include conforming amendments that include a new data field into which an FPI must enter a foreign trading symbol, the issuer's name, and a ticker or trading symbol.

When must FPIs begin making disclosures per Section 16(a)?

The HFIAA specified that its provisions requiring officers and directors of FPIs to make certain disclosures would take effect 90 days after enactment or March 18, 2026. The SEC's rulemaking release implementing the HFIAA also specifies an effective date of March 18, 2026. The SEC did not specify a separate compliance date(s), so the entirety of the agency's regulation will be effective, and compliance required, as of March 18, 2026.

Who is exempted from HFIAA compliance?

Within days of issuing its final regulation implementing the HFIAA, the Commission exercised its authority under the HFIAA to exempt certain FPIs. Specifically, the

Commission **exempted** FPIs located in six qualifying jurisdictions that each have a qualifying regulation that replicates many of the disclosures that would otherwise be required in the U.S. under the HFIAA.

The six qualifying jurisdictions are Canada, Chile, the European Economic Area, the Republic of Korea, Switzerland, and the U.K. With respect to the European Economic Area, the Commission added two observations: (1) the European Economic Area currently consists of the 27 European Union member states plus Iceland, Liechtenstein, and Norway, and that any change in that composition could result in a member state gaining or losing the benefit of U.S. exemptive relief; and (2) the U.K. continues to observe the same law as the European Economic Area under its agreement to withdraw from the European Union (i.e., Brexit).

FPIs exempt from HFIAA	
Qualifying jurisdictions	Qualifying regulations
Canada	National Instrument 55-104 – Insider Reporting Requirements and Exemptions
Chile	Articles 12, 17, and 20 of the Chilean Securities Market Law (Ley de Mercado de Valores, Ley No. 18,045) and General Rule (Norma de Carácter General) No. 269
European Economic Area	Article 19 of the European Union Market Abuse Regulation (Regulation (EU) No. 596/2014, as amended by Regulation (EU) No. 2024/2809)
Republic of Korea	Article 173 of the Republic of Korea Financial Investment Services and Capital Markets Act and Article 200 of the Enforcement Decree of the Financial Investment Services and Capital Markets Act
Switzerland	Article 56 of the Listing Rules and implementing directives of SIX Swiss Exchange as approved by the Swiss Financial Market Supervisory Authority
United Kingdom	Article 19 of the United Kingdom Market Abuse Regulation (Regulation (EU) No. 596/2014), as it forms part of United Kingdom domestic law pursuant to the European Union (Withdrawal) Act 2018

Source: Order Granting Directors and Officers of Certain Foreign Private Issuers an Exemption from the Filing Requirements of Section 16(a) of the Exchange Act, Release No. 34-104931 (Mar. 5, 2026).

The Commission's exemptive relief, however, imposed two conditions on FPIs from qualifying jurisdictions:

- A director or officer who seeks to rely on the exemption must report their transactions in the issuer's securities under the qualifying regulation to which they are subject; and
- A report filed under a qualifying regulation must be made available in English to the general public within two business days of its public posting.

The Commission, perhaps recognizing that not all qualifying jurisdictions allow formal posting of reports in English on a regulator's (or listing venue's) online database said in a footnote that, in such instance, a report could be made public in English on the FPI's website.

What additional guidance has the SEC issued?

The staff of the SEC's Division of Corporation Finance issued an [FAQ](#) for FPIs that may need to begin making responsive filings under the HFIAA. The FAQ covers multiple scenarios, including how FPIs should handle potential disclosures that may turn on the timing of when someone became an officer or director of an FPI or when an FPI registered a class of equity securities under the Exchange Act. The answers to these questions are likely to be highly individualized for many FPIs and may affect when filings on Forms 3 and 4 are made. The FAQ also reminds FPIs that filings must be made electronically on EDGAR unless the Regulation S-T hardship exemption applies, in which case paper filings may be made if SEC staff grant an FPI's application for an exemption.

SEC staff also have made available resources to aid FPIs to submit [Form ID](#) to

obtain access to the SEC's EDGAR database. Additional information about making filings on EDGAR has been circulated in a [draft update](#) to the EDGAR Filer manual.

What does the HFIAA rulemaking petition seek?

A group of securities law scholars filed a [rulemaking petition](#) with the Commission asking the Commission to consider closely whether the amendments to Exchange Act Section 16(a) by the HFIAA truly require application of the reporting requirement only to FPIs' officers and director or whether an agency interpretation is warranted to extend the reporting requirement to FPIs' ten percent beneficial owners. The Commission's final regulation interpreted the HFIAA as applying only to FPIs' officers and directors.

The HFIAA rulemaking petition was filed by: (1) Bradford Levy, Assistant Professor of Accounting and Applied AI at the University of Chicago School of Business; (2) Robert Jackson, former SEC commissioner and currently both the Nathalie P. Urry Professor of Law at the New York University School of Law and Co-Director of the Institute for Corporate Governance and Finance; and (3) Daniel Taylor, Arthur Andersen Chaired Professor at the Wharton School and Director of the Wharton Forensic Analytics Lab.

As mentioned above, Congress also could step in and close the ten percent beneficial owner loophole by amending the HFIAA. There is precedent for such action because Congress has previously made similar adjustments to the Holding Foreign Companies Accountable Act (HFCAA), which was enacted to regulate certain conduct of foreign entities, albeit in the accounting and auditing setting rather than the corporate disclosure setting (See,

Consolidated Appropriations Act, 2023 ([Pub. Law No. 117-328](#)), Division AA, Title III, Section 301, amending Sarbanes-Oxley Act Section 104(i) to hasten delisting of noncompliant covered issuers after fewer non-inspection years than originally enacted in the HFCAA).

Looking ahead

The HFIAA is the one of the latest attempts by Congress to exert greater oversight of foreign persons and entities that participate in U.S. financial markets regulated by the SEC. Congress also has on several occasions strengthened the law applicable to the Committee on Foreign Investment in the United States (CFIUS), including in the NDAA that amended Exchange Act Section 16(a), to better police transactions by foreign entities and persons that may impact U.S. military or other sensitive sites.

Previously, Congress enacted the HFCAA to help ensure that U.S. audit regulators can access the audit work papers of companies headquartered overseas in jurisdictions whose regulators deny access to U.S. regulators. In the past several years, the SEC and the Public Company, Accounting Oversight Board reached an agreement with regulators in China to examine firms located in mainland China and Hong Kong as a result of the HFCAA.

U.S. lawmakers, regulators, and both Republican and Democratic Administrations, have pursued foreign and domestic policies to ensure that the U.S. remains competitive with key economic and military rivals, especially China. In light of the current domestic U.S. and broader geopolitical environment, it is likely that Congress will remain an active regulator of foreign persons and entities doing business in the U.S.