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Amendments to Rules Governing Trading Plans and Insider Filings

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In a recent article for the *Harvard Law School Forum on Corporate Governance*, Eleazer Klein, Adriana Schwartz and Daniel A. Goldstein discuss the SEC's adopted amendments to Rule 10b5-1 under the Securities Exchange Act of 1934, which may impact fund managers who have board representation or otherwise have access to material nonpublic information.

On Dec. 14, 2022, the Securities and Exchange Commission (the "SEC") adopted amendments to Rule 10b5-1 under the Securities Exchange Act of 1934 (the "Exchange Act"), that include, among other things, changes to Rule 10b5-1(c)(1)'s affirmative defense to insider trading liability under Section 10(b) and Rule 10b-5 under the Exchange Act. These changes are aimed at addressing concerns that have long been raised as to whether corporate insiders purport to utilize 10b5-1 plans under the affirmative defense in situations that in fact involve opportunistic trading while in possession of material non-public information ("MNPI"). As discussed below, the amendments may impact fund managers who have board representation or otherwise have access to MNPI. The SEC also adopted amendments to Forms 4 and 5 filed under Section 16 of the Exchange Act to require that filers identify transaction that have been executed pursuant to 10b5-1 plans as well requiring Forms 4 to be filed to report gifts of securities (and no longer allow for deferred reporting of gifts on Form 5).

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