



Automatic Plans and Insider Trading Considerations

Many companies have a number of automatic plans in place that gradually increase the shareholdings of their employees, officers or directors in shares of the company. These automatic arrangements include, among others, employee share ownership plans, dividend reinvestment plans and automatic securities purchase plans. Generally purchases (or dispositions in certain circumstances) under these plans do not raise the possibility of liability under the insider trading prohibitions pursuant to securities legislation of the various provinces of Canada. However, companies, as well as their employees, officers and directors, need to ensure that their plans are properly set up or other established policies are in place to prevent trades under such plans from raising the spectre of scrutiny from securities regulators.

The general prohibition under securities legislation against a person or company purchasing or selling securities of a reporting issuer when such person or company has knowledge of an undisclosed material fact or material change about such reporting issuer does not apply to a trade of securities pursuant to the operation of an automatic plan. However, this exception to the general insider trading prohibition is only available if there is no discrete investment decision made by the person or company at the time of the trade and where the plan is truly "automatic". To be "automatic", a company's plan must meet certain conditions as follows:

- the insider cannot be in possession of any material undisclosed information in relation to the issuer at the time of entry into the plan;
- the trading parameters and other instructions must be set out in a written plan document at the time of the establishment of the plan;
- the plan must contain meaningful restrictions on the ability of the insider to vary, suspend or terminate the plan or his/her participation in the plan. The restrictions must have the effect of ensuring that the insider cannot profit from material undisclosed information through a decision to vary, suspend or terminate the plan or his/her participation in such plan; and
- the plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the insider trading prohibitions.

Ultimately, a company's automatic plan cannot give the insider participants the ability to make "discrete investment decisions" at a time when the insider participant has knowledge of an undisclosed material fact or material change. Companies should ensure that the document governing these automatic plans contains such restrictions. If the plans are already in place, companies should consider amending the plans to include such restrictions. An added precaution would be to impose such restrictions in the

disclosure or trading policies of the company, and this would certainly be advisable if it is not feasible to amend the plans.

Suggested restrictions may include:

- restrictions that prevent directors, officers or employees of a company from enrolling in, withdrawing from, or varying their participation in such plans except at certain times of the year;
- restrictions that prevent directors, officers or employees of a company from enrolling in, withdrawing from, or varying their participation in such plans when the company is in blackout during such times of the year;
- restrictions that prevent directors and officers or any other responsible employees from altering, amending, or terminating the plan or the operation of the plan at any time when the company has imposed a blackout period or when the person is otherwise aware of undisclosed material information; and
- restrictions that prevent directors, officers, and employees from participating in any provision of an automatic plan that allows for optional purchases of securities of the company outside the normal automatic purchases pursuant to such plans (e.g. lump sum provisions under share purchase plans or cash payment options under dividend reinvestment plans). These restrictions could be all out restrictions or restrictions that are only applicable when the company is in blackout or when the participant is otherwise in possession of material undisclosed information.

The consequences of being found guilty of illegal insider trading are significant. Accordingly, it is important that companies evaluate the integrity of their plans to ensure the plans are fully "automatic", and to ensure the plans guard against any insider's ability to make discrete investment decisions.

This bulletin is intended as general information only and should not be taken as legal advice. Members of our Securities Team would be pleased to discuss the contents of the bulletin with you in the context of your own specific situation.

BD&P Securities Lawyers

Abougoush, Syd S.	403-260-0399	ssa@bdplaw.com
Allford, R. Bruce	403-260-0247	rba@bdplaw.com
Bacsalmasi, Nicole	403-260-0253	nbacsalmasi@bdplaw.com
Borich, Brian W.	403-260-0346	bwb@bdplaw.com
Breedlove, Kent	403-806-7871	wkbreedlove@bdplaw.com
Brown, Edward (Ted)	403-260-0298	ebb@bdplaw.com
Brown, Jessica	403-260-0137	jbrown@bdplaw.com
Bugeaud, Gary R.	403-260-0155	grb@bdplaw.com
Campbell, Harry S.	403-260-0281	hsc@bdplaw.com

Chetner, Stephen J.	403-260-0265	sjc@bdplaw.com
Clark, Kelsey C.	403-260-0172	kcc@bdplaw.com
Cohen, C. Steven	403-260-0103	csc@bdplaw.com
Cox, Lindsay	403-260-0192	lpc@bdplaw.com
Davidson, Fred D.	403-260-5718	fdd@bdplaw.com
Doelman, Peter	403-260-0110	pdoelman@bdplaw.com
Ervin, Michael	403-806-7873	mervin@bdplaw.com
Fridhandler, Daryl S.	403-260-0113	dsf@bdplaw.com
Gangl, Shannon M.	403-260-0279	smg@bdplaw.com
Goldman, Alyson F.	403-260-0258	agoldman@bdplaw.com
Greenfield, Keith A.	403-260-0309	kag@bdplaw.com
Hoepfner, Jacob	403-806-7874	jhoepfner@bdplaw.com
Hudolin, Jonathan (J.J.)	403-260-0373	jhudolin@bdplaw.com
Inkster, Bronwyn	403-260-9470	binkster@bdplaw.com
Kearl, Scott D.	403-260-0395	sdk@bdplaw.com
Kidd, James L.	403-260-0181	jlk@bdplaw.com
MacKenzie, Grant A.	403-260-9466	gam@bdplaw.com
Mann, Ravina K.	403-260-0390	rmann@bdplaw.com
Maslechko, William S.	403-260-0377	wsm@bdplaw.com
McGinnis, Kerry	403-260-0336	kmcginnis@bdplaw.com
Oke, Jeff T.	403-260-0116	jto@bdplaw.com
Pettie, Alan T.	403-260-0127	atp@bdplaw.com
Reid, Jay P.	403-260-0340	jpr@bdplaw.com
Sandrelli, Michael D.	403-260-0115	mds@bdplaw.com
Tetley, P.L. (Lonny)	403-260-0141	ltetley@bdplaw.com
Twa, Allan R.	403-260-0221	art@bdplaw.com
von Vegesack, Chris C.	403-260-0121	cvv@bdplaw.com
Sylvie C. Welsh	403-260-0166	swelsh@bdplaw.com
Zawalsky, Grant A.	403-260-0376	gaz@bdplaw.com

