

Law Note - Insider Trading Exemption: Automatic Securities Trading

June 30, 2008

Under Ontario law, insiders are prohibited from purchasing or selling securities of an issuer with knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed (“material undisclosed information”). However, the purchase or sale by insiders of securities of issuers with material undisclosed information may be exempt from this prohibition where the purchase or sale is effected pursuant to “automatic securities dispositions plans” or “automatic securities purchase plans” (that we are collectively referring to as “automatic securities trading plans” or “ASTPs”). (The Ontario Securities Commission (“OSC”) Staff Notice 55-701 – *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans* (the “Staff Notice”) sets out the view of the staff of the OSC in this regard.)

An ASTP is generally an arrangement whereby an insider will instruct his or her broker to purchase or sell securities on the insider’s behalf in accordance with a pre-determined set of instructions. The ASTP will usually contemplate that the broker will continue to purchase or sell securities on behalf of the insider regardless as to whether a “blackout” period established by the issuer is in effect or whether the insider is in possession of material undisclosed information at the time of the purchase or sale.

Ontario law provides that an insider will be exempt from the prohibition against purchasing or selling with knowledge of material undisclosed information where the purchase or sale is made by the insider through an “automatic dividend reinvestment plan, share purchase plan or other similar automatic plan” which the insider entered into before he or she acquired the material undisclosed information.

The Staff Notice provides that an ASTP will be considered “automatic” when the insider no longer has the ability to make decisions relating to the trading of the securities held under the ASTP, and when a number of conditions are met, including these two:

1. At the time of entry into the plan, the insider is not in possession of any material undisclosed information in relation to the issuer.
2. At the time of entry into the plan, in the case of plans that have not been established by the issuer, the insider provides the broker with a certificate from the issuer confirming that the issuer is aware of the plan and certifying that, to the best of its knowledge, the insider is not in possession of material undisclosed information about the issuer.

This law note was prepared by Stephen J. White.

Law Notes: This section offers a brief note or comment on an area or point of law that may be of interest.

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This is merely an introduction to this insider trading exemption and an article written by Stephen J. White that appeared in Securities Brief Spring 2008. To subscribe to this publication, please visit the Publications Request page of our website.