

# Goodmans<sup>LLP</sup> Update

## Canadian Securities Regulators Announce Review of Automatic Securities Disposition Plans

Canadian Securities Administrators (CSA) recently announced that they will review the regulatory framework governing Automatic Securities Disposition Plans (ASDPs), which, subject to certain conditions, permit sales of securities on behalf of insiders during trading “blackouts” or when the insider may be in possession of material non-public information (MNPI). The purpose of the review is to consider whether ASDPs continue to be an appropriate exemption from insider trading restrictions and, if so, whether the regulations governing them should be enhanced and/or harmonized across Canada. The CSA will also consider whether the more lenient insider reporting rules that have traditionally been afforded to reporting insiders adopting an ASDP continue to be appropriate.

### Overview of ASDPs

ASDPs may be established when an insider does not possess MNPI. They provide for the automatic sale of securities by a third party broker on behalf of the insider in accordance with pre-determined instructions that are not subject to the exercise of discretion by the insider. ASDPs are intended to provide flexibility to permit insiders – who may otherwise have limited windows during which they would be permitted to trade in the company’s securities – to achieve some degree of liquidity in an orderly manner that mitigates price volatility.

Each province and territory regulates ASDPs independently. For example, section 175 of the General Regulations to the *Securities Act* (Ontario) provides an exemption from insider trading liability under section 76(1) of the *Securities Act* for a trade in securities under an automatic dividend reinvestment plan, share purchase plan or other “similar automatic plan” that was entered into when the insider did not have knowledge of MNPI. OSC Staff Notice [55-701 – Automatic Securities Disposition Plans and Automatic Securities Purchase Plans](#) provides that, for a plan to be truly “automatic”, the following key criteria must be satisfied:

- at the time of entry into the plan, the insider is not in possession of any MNPI with respect to the issuer;
- the trading parameters and other instructions are set out in a written plan document at the time the plan is established;
- the plan contains meaningful restrictions on the insider’s ability to profit from MNPI by varying, suspending or terminating the plan;
- the plan prohibits the broker from consulting with the insider regarding any sales or purchases under the plan; and
- the plan prohibits the insider from disclosing to the broker information concerning the issuer that might influence the execution of the plan.

Through a series of discretionary relief orders, regulators have relatively consistently afforded reporting insiders adopting ASDPs the benefit of more lenient “alternative reporting” rules for reporting sales under an ASDP. These alternative reporting requirements permit insiders to report trades made through ASDPs annually (instead of within five days of a trade).

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## Scrutiny of ASDPs

ASDPs have come under scrutiny in recent years by securities regulators (most notably, review by the Autorité des marchés financiers (AMF) – Quebec’s securities regulator – of the ASDP implemented by Bombardier Inc. in 2018 shortly before Bombardier’s share price declined) and by governance advocates who recommend the removal of trade reporting exemptions and enhanced structural rules regarding the implementation and execution of ASDPs (such as mandatory fixed formulas or algorithms and mandatory waiting periods in connection with the implementation or termination of ASDPs).

In its initial announcement, the CSA has not suggested any specific changes to the rules governing ASDPs. However, the CSA has indicated that until the results of its review are released and the market is notified of its conclusions, CSA staff are unlikely to grant any new insider reporting relief for trades made under ASDPs (though existing relief orders will be unaffected).

We will continue to monitor and report on developments relating to the CSA’s review. For further information regarding these developments or assistance with the regulations governing ASDPs, please contact any member of our [Corporate Securities Group](#).