Securities regulator to review share sale plans in wake of Bombardier controversy

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Canada's securities regulators are launching a review of automatic share sale programs after controversial trading last year at Bombardier Inc. led to calls for reform by investor rights advocates.

The Canadian Securities Administrators (CSA), an umbrella organization for provincial securities watchdogs, said on Thursday it will examine whether automatic securities disposition plans place "appropriate constraints" on the trading activities of senior executives and other insiders, and whether the rules governing them should be changed and harmonized across the country.

"The CSA's review aims to ensure that [such plans] remain a legitimate mechanism of trading by corporate insiders and do not undermine the fairness of our capital markets," Louis Morisset, CSA chairman and president of Quebec's Autorité des marchés financiers, said in a statement.

Automatic share sales plans allow senior executives to exercise options and sell stock without running afoul of Canadian insider-trading regulations, which forbid them to trade shares while they have material information that has not been disclosed to shareholders. The trades are to be made according to prearranged instructions given to arms-length brokers, who carry out the transactions following agreed-on parameters on things such as price and volume limits without any further influence from the executives.

The benefit of such plans is that they allow executives and other participants to cash in some of their equity compensation and sell a portion of their stock without having to do it during open trading windows under the company's insider-trading or black-out policies.

Insider trading rules usually require securities trades by insiders to be reported within five days. But companies that establish automatic share sales plans can seek an exemption from their provincial regulator that allows them to report all such sales just once a year.

CSA spokesperson Ilana Keleman said the organization hopes to publish its recommendations in the first quarter next year. She said Bombardier's situation "has raised several questions regarding this mechanism."

Investors and commentators criticized Montreal-based Bombardier for establishing a share disposition program in August, 2018, before the release of bad news that sent its share price sharply lower.

On Nov. 8, just weeks after the system launched, the plane maker announced a major restructuring effort that included 5,000 job cuts and a US$600-million shortfall in cash-flow projections for the year because of delays in delivering trains. The stock dropped 24 per cent that day. Investors questioned whether Bombardier executives had potentially market-moving information when the company created the plan.

Quebec's securities regulator launched a probe and cleared the company of wrongdoing in April of this year, but recommended Bombardier consider scrapping the arrangement.

Bombardier voluntarily ended the program shortly afterward. The company has said the plan was created at a time when trading was permitted under its internal guidelines and under applicable securities laws.

Insider trading filings reviewed by The Globe and Mail earlier this year show that 52 per cent of the shares Bombardier chief executive officer Alain Bellemare put into the company's 24-month share disposition plan were sold during the first two months of trading. He had total gains of $10.6-million on the transactions.

Considering that Mr. Bellemare's shares were sold at an average price of $4.55, and Bombardier's share price was as low as $1.67 after the restructuring was publicly disclosed, "there is an appearance of prejudice to the balance of the shareholders," said the Canadian Foundation for Advancement of Investors Rights (FAIR), an advocacy group. This undermines investor confidence in the company, the market and the regulators, FAIR said.

FAIR was among the observers who welcomed the CSA's actions on Thursday.

Regulators need to tighten up the controls on stock disposition plans to make sure they are truly automatic and there's "no opportunity for insiders to game the system," said Douglas Walker, FAIR's senior policy counsel.

"We're just concerned that those controls are not in place," Mr. Walker said. "And without timely reporting of insider trading, other investors don't have an opportunity to say: 'What's going on?'"

The CSA said it will also consider changes to rules governing the way trades are reported to the public under automatic share sales plans.

Michel Magnan, a business professor at Concordia University, said in a recent interview that the reporting exemptions are problematic, and the optics of the share disposition programs are not consistent with modern governance.

Ms. Keleman said securities regulators are unlikely to approve new exemption requests until the review is complete. She said companies can still set up new plans, but insider trading reports will have to be filed within five days.

Such exemptions, while not requested by all issuers setting up the plans, have been granted several times over the past decade, the CSA said.

Yvan Allaire of the Montreal-based Institute for Governance of Private and Public Organizations, said the CSA review is "timely and critical," and without changes, more controversies similar to the one that hit Bombardier are possible.

"There is a likelihood of controversy in all cases if the stock price drops some time after the beginning of the trading period," he said.