Company insiders are selling stock during buyback programs and making additional profits when stock prices jump. And it’s legal.

At least 500 insiders sold their stock during active buyback programs at their companies in a 15-month period. (Martin Gee/For The Washington Post)

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In February 2017, the company behind the hit games Candy Crush and Call of Duty signaled optimism in its future and announced a $1 billion program to buy back its own shares — and investors responded by buying heavily.

But few of them could know that as they were buying, insiders at the mobile gaming titan Activision Blizzard were selling, and taking home additional profits as the stock price jumped.

On Feb. 10, a day after the company announced the buyback plan, Bobby Kotick, Activision's chief executive, sold nearly 4 million shares for $180.8 million. The average share price of his sales was 15 percent higher than he would have gotten before the stock rose on the news.

By Feb. 17, a total of five top Activision officials had sold shares totaling over $430 million, according to their filings with the Securities and Exchange Commission.

The Activision stock sales illustrate a pattern of corporate insiders selling during buybacks. These insiders — including chief executives and directors who authorize buybacks — often sell during the short-term price pops that typically follow disclosure of new authorizations, or when the companies are actively buying in the market.

"The companies are doing so much purchasing they're moving the stock's price," said SEC Commissioner Robert Jackson, who has been a vocal critic of insider selling into buybacks. "Isn't it market manipulation for a company to say we're doing a buyback, and then an officer says, 'I'm going to sell'?"

A review by The Washington Post found that insider stock sales during buybacks are surprisingly common. At least 500 insiders sold during buyback programs at their companies in just one 15-month period in 2017 and 2018, according to The Post analysis of data compiled by the SEC as well as regulatory filings. More than 50 of the insider sellers were chief executives.

A buyback is a repurchase by a company of shares it previously sold or issued. Buybacks are typically done in the open market, and they can benefit investors by supporting a stock's price when it may be undervalued.

Shareholders who don't sell into buybacks can wind up owning a bigger portion of the company at no added cost, as the buying reduces the number of outstanding shares.

The Post reviewed data from the SEC's research and publicly available insider trading and corporate regulatory reports to identify insiders selling during buyback programs.

In the 2017-2018 study, SEC researchers found that insiders were twice as likely to sell on the days following buyback announcements as they were in the days leading up to announcements. Their average sale was also five times larger than before the announcement, at about $500,000.

At companies where insiders sell heavily, a later SEC analysis found, stocks delivered subpar returns in the long term.

In the case of Activision, insiders sold into the sharp rise that followed its 2017 buyback announcement, but the company never purchased any shares under the program.

The Activision officials received prices up to 16 percent higher than the shares traded at before the announcement. Brian Kelly, Kotick's longtime business partner and chairman of the board, reported selling over 5 million shares for $230.1 million.

In a filing with the SEC, Kelly said 262,998 of the shares he sold were his alone, while the rest were sold by a partnership that was part of an investment group that he and Kotick managed as part of a deal to buy out the French media conglomerate Vivendi, which had owned a controlling stake in Activision.

Activision ended the buyback program late last year without buying any shares, the second time it has done so. The company also announced a $750 million repurchase program in February 2015 that ended two years later with no shares bought.

SEC rules do allow insider selling during a buyback, and Activision said it did not do anything improper. In a statement, the company said, "Consistent with common practice, we don't comment on why we purchase or do not purchase shares, but it is completely incorrect and irresponsible to assert that our Board of Directors' authorizations were entered into for any improper purpose."

Activision declined to make Kotick and Kelly available for interviews. The company statement said some insider sales follow buyback announcements because the quarterly windows in which employees are allowed to trade often open up after the announcements, which typically coincide with annual earnings reports.

At all times during its buyback programs, the statement said, Kotick "and other officers and directors continued to own millions of shares, ensuring the alignment of their interests with the rest of our shareholders."

Activision is not the only company that saw executives sell holdings during the upswing that typically follows the announcement of a buyback. The chief executives of Adobe, Electronic Arts, Home Depot, TJX and Yelp also sold stock after buyback announcements as share prices moved up at a higher rate than the broader market.

Most of these executives said in SEC filings that they sold under prearranged trading plans. The timing of the sales after buyback announcements, some of the companies said, was coincidental.

The trading plans, allowed by SEC rules, are intended to give insiders flexibility to arrange trades in advance on a regular schedule during the course of a year, or even longer. They give executives protection from insider trading charges as long as the plan is adopted when they are not in possession of insider information.

After retailer TJX, operator of the T.J. Maxx and Marshalls chains, announced a plan to buy up to $3 billion in shares in February 2018, CEO Ernie Herrman sold $2.8 million of his holdings over the next 13 days, at prices up to 9 percent higher than before the announcement.

In a statement, TJX said that under company policy, Herrman has limited trading periods that typically begin after earning announcements, and once a year, following its annual buyback announcement. It also said TJX buybacks and dividend policies have a long history of returning value to shareholders.

In 2017, Andrew Wilson, the CEO of video-game maker Electronic Arts, sold $2.1 million of stock within 23 days of the announcement of a $1.2 billion buyback, at prices 12 to 19 percent higher than before the announcement.

Wilson declined to comment. John Reseburg, a spokesman for Electronic Arts, said Wilson's stock sales are done "without his direct input" as part of a prearranged trading program in accordance with SEC rules.

Yelp CEO Jeremy Stoppelman prearranged his stock sales at set dates, according to his SEC filings. In an Aug. 3, 2017, news release, the company announced a $200 million stock buyback and an agreement to sell Yelp's Eat24 unit to Grubhub.

Stoppelman's sales were staggered over the next several weeks, beginning Aug. 4 and ending Sept. 1, according to SEC filings. In total, they involved about $2.7 million in stock sales, at prices up to 38 percent higher than before the announcement. The company declined requests for comment.

While many executives have prearranged procedures to sell stock, these plans do not have to be publicly disclosed and can be changed, Jesse Fried, a Harvard Law School professor who testified about buybacks at congressional hearings in October, said in a phone interview. He also noted that some insiders are in a position to decide the timing of a buyback announcement, meaning it could be set ahead of a prearranged sale, putting them in a position to benefit from any price rise.

Fried added that companies are misleading investors when they announce a buyback plan without intending to repurchase shares, while insiders sell. "They're giving the market false information, then profiting from it by selling," Fried said in an interview, speaking about buybacks generally, and not about a specific company.

Over the past decade, S&P 500 companies have spent a staggering $5 trillion repurchasing their own stock. Buybacks among the 500 surged 55 percent to a record $806 billion last year alone, buoyed by President Trump's corporate tax cuts.

Some companies used the tax cut to hire more workers or invest in research and development. But many companies used the money freed up by the tax cut to buy back their stock, which can help pump up share prices.

Although the volume has flattened out this year, companies like business software maker Oracle are still running huge programs. Oracle has bought back $99.8 billion in stock in the past 10 years, according to S&P Dow Jones Indices, making it one of the largest repurchasers.

One of the biggest insider sellers during that decade is CEO Safra Catz, who has cashed out $1.2 billion in Oracle stock, according to tallies kept by InsiderScore, a website that tracks executive trading.

In one of her biggest trades, Catz sold $162 million of the shares after a buyback announcement. Using options from a past pay package, she bought 4 million shares from the company and sold them on the same day, March 28, 2016. Oracle's stock gained about 5 percent in the 13 days after the announcement.

More recently, Catz called Oracle's stock "an unbelievable buy" and an "amazing deal" when the company announced earnings results and a $12 billion addition to its buyback program last September. The big new repurchase plan showed "we're putting our money where our mouth is," she told Wall Street analysts and investors on a conference call.

But Catz sold more Oracle shares six months later, with the stock about 8 percent higher. That sale, in which she received $265 million for 5 million shares, came March 20, 2019. It followed a gain of about 3 percent for the stock after Oracle disclosed a $12 billion addition to its buyback program on Feb. 15.

In her SEC filings, Catz said her sales were done under prearranged trading plans. Oracle declined to comment and did not respond to requests for interviews with Catz.

The Securities Exchange Act of 1934 defines market manipulation as an illegal scheme in which people conduct transactions that create actual or apparent trading activity in a stock to induce others to buy or sell the shares.

But under a 1982 provision, the SEC gives companies special protection — a "safe harbor" — from market-manipulation charges during buybacks so long as they abide by certain rules, including buying no more than 25 percent of a stock's average volume on any single day.

In 2003, the SEC altered the way the limits were calculated, which allowed for more repurchasing volume, and buybacks grew rapidly.

The SEC's Jackson is pushing for a review of those rules. "I don't know why we'd give a safe harbor from market manipulation to a company that allows executives to sell into a buyback," he said.

In a letter to SEC Chairman Jay Clayton in June 2018, 21 U.S. senators, including two Democratic presidential candidates, also called for a review, saying new rules are needed "to ensure that corporate executives are not using the rule inappropriately to enable advantageous sales of their own stock while ignoring the needs of their companies' workers."

Sen. Tammy Baldwin (D-Wis.) has introduced legislation calling for a ban on open-market buybacks, and Sen. Marco Rubio (Fla.), a rare Republican critic, has proposed a change in the tax code to discourage them.

Clayton, who controls the SEC's agenda, has shown little interest in tightening buyback rules and declined an interview request. In an appearance before the Senate Banking Committee last year, Clayton challenged the view that the safe harbor may be promoting excessive buybacks.

"There's no safe harbor if you're trying to manipulate," he said. "But if your intent is not to manipulate," and you follow the safe harbor rules, he added, "you can feel comfortable that the buyback is being done without subjecting you to a claim of manipulation."

Buybacks are also being stimulated by the rising and now-dominant share of executive compensation that comes in the form of stock and options awards, say experts.

Repurchases enrich executives several ways, says Nell Minow, vice chair of ValueEdge Advisors, which counsels investors on corporate governance issues.

"It's a triple dip," Minow said, that works like this:

First, the value of insiders' stock holdings stands to rise because buybacks reduce a company's total shares outstanding and increase earnings per share, a closely watched investment metric that drives stock prices. The insiders also can get a better price for any shares they want to shed by selling into the buyback. And last, the higher earnings per share can enable them to pass thresholds in compensation packages that trigger higher bonuses and incentive pay, according to Minow.

The recent SEC studies found that companies, on average, outperform the market by about 3 percentage points in the 30 trading days after a buyback announcement. But at the 90-day mark, companies where insiders sold heavily were underperforming the market — while companies whose insiders didn't sell continued to outperform, and were beating those with heavy insider selling by 8 points.

Jackson told U.S. Sen. Chris Van Hollen (D-Md.) in a letter earlier this year that the data showed why insider trading into buybacks needed curbs. "SEC rules do not address insiders' incentives to pursue buybacks at the expense of buy-and-hold American investors," he wrote.

Many insider sales into buybacks involve stock or stock options that executives receive in their pay packages. Trading at Home Depot, which has spent over $50 billion purchasing its own shares in the past 10 years, shows how buybacks can help sweeten those packages.

On Feb. 21, 2017, the retailer announced a strong quarter and a $15 billion program to repurchase its stock. The next day CEO Craig Menear sold 140,372 shares of Home Depot stock as its price climbed.

Menear was doing a quick cash-out of options he had received in an old pay package, according to SEC filings. The options allowed him to buy the stock from the company at

$26.84 a share, and to sell it the same day in the open market at prices averaging about $144.33, making a $16.5 million profit, according to Home Depot.

The next day, Carol Tomé, then chief financial officer, sold 100,000 shares for $14.3 million. Both she and Menear benefited from the performance of the stock post-announcement.

In a 27-day period that included the dates Menear and Tome sold, as Home Depot later reported to the SEC, it purchased $96.2 million of its stock, adding to demand for the stock. Public filings do not show — and companies are not obliged to tell — whether the company was buying on the exact days its executives sold.

Home Depot spokesman Stephen Holmes said the timing of Menear's and Tome's selling "has no relation to any announcement of buybacks." He said their selling follows a consistent pattern after trading windows open after earnings reports "regardless of whether a share buyback has been announced or not."

Eight days after Adobe's January 2017 buyback announcement, chief executive Shantanu Narayen sold $19.8 million of his stock, receiving 5 percent more than he would have gotten at the pre-announcement price.

On Jan. 25, 2019, Narayen sold $34.3 million in shares — the last day of a four-week period in which Adobe spent $175 million to repurchase shares, SEC filings show.

Adobe said its repurchases "are done under structured, prepaid repurchase agreements" and "there is no match in timing between our programmatic quarterly buys and sales made by our CEO." Narayen has done all his selling of Adobe shares under a valid prearranged trading plan for over five years, a company statement said.

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