2008 BCSECCOM 299

April 24, 2008

Headnote
Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, s. 88 – Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is a de minimis number of Canadian holders of the debt securities holding a de minimis amount of the outstanding debt; there is no market for the debt securities; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

Applicable British Columbia Provisions
Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan,
Manitoba, Ontario, Quebec, New Brunswick,
Nova Scotia, Newfoundland and Labrador
and Prince Edward Island
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Rio Tinto Alcan Inc.
(the Applicant)

MRRS Decision Document

Background
The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from Rio Tinto Alcan Inc. for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Applicant is not a Reporting Issuer under the Legislation (the Order).

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Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Autorité des marchés financiers (the AMF) is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation
Defined terms contained in *Regulation 14-101 respecting Definitions* (and elsewhere, *National Instrument 14-101 Definitions*) have the same meaning in this decision unless they are defined in this decision or the context otherwise requires.

Representations
This decision is based on the following facts represented by the Applicant:

1. The Applicant, successor to Alcan Inc. (Alcan) as a result of the January 1, 2008 vertical short-form amalgamation (the Amalgamation) under section 184 of the Canada Business Corporations Act (CBCA) between Rio Tinto Canada Holding Inc. (Rio Tinto Canada) and Alcan, is incorporated under the CBCA, with its head office located in Montréal, Quebec. References to the Applicant herein are references to the Applicant's predecessor Alcan, as the context requires.

2. The Applicant is a reporting issuer in each of the Jurisdictions and is thus subject to continuous disclosure requirements under the Legislation. The Applicant is not in default of any of its continuous disclosure obligations.

3. The Applicant is a wholly-owned subsidiary of Rio Tinto plc (Rio Tinto) as a result of the completion by Rio Tinto Canada of its offer, dated July 24, 2007, to purchase all of the outstanding Common Shares of Alcan (the Common Shares, now Common Shares of the Applicant following the Amalgamation) and the subsequent dissemination by Rio Tinto Canada of its notice of compulsory acquisition, in respect of those Common Shares not tendered into the offer.

Common Share Holders:

4. All of the Applicant's outstanding Common Shares are held directly or indirectly by Rio Tinto.

Commercial Paper Holders:

5. As of November 30, 2007, an aggregate principal amount of approximately US$ 153,500,000 of the Applicant's short term promissory notes (the Commercial Paper), originally issued in Canada under the Applicant's Canadian commercial paper programme, was outstanding with a weighted average time to maturity of 14.72 days.

6. The Commercial Paper was offered and sold by the Applicant in reliance on the registration and prospectus exemption under section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions*.

7. Since January 19, 2008, the Applicant no longer has any of its Commercial Paper outstanding, the last of the Applicant's outstanding Commercial Paper having reached maturity and been repaid. The Applicant's treasury needs, historically addressed by the Applicant through its Canadian commercial paper programme, are currently being funded by Rio Tinto.

Notes and Debentures Holders:

8. The Applicant has, from time to time since 1983, issued Notes and Debentures as senior indebtedness of the Applicant under the terms of a single indenture, being the New York law governed indenture of May 15, 1983 (as subsequently amended, the Indenture) by and between the Applicant and Deutsche Bank Trust Company Americas (formerly Bankers Trust Company) as trustee (the Trustee).

9. 10 series of the Applicant's Notes and Debentures (the Notes and Debentures), in aggregate principal amount of US$ 4,150,000,000, are outstanding.

10. The Notes and Debentures were issued in a form that permitted book-entry holdings through the depositary facilities maintained by the Depositary Trust Company (DTC) of the United States. All of the outstanding Notes and Debentures are currently held through DTC's facilities.

11. In light of the manner of the initial distribution of the Notes and Debentures, the absence of identifiable trading markets for the Notes and Debentures, the absence of any obligation or need by the Applicant in the past to communicate directly with holders of Notes and Debentures, the fact that the Indenture does not provide for reporting directly to holders of Notes and Debentures and the fact that there are no securities law requirements in the United States (or Canada) for the continuous reporting of certain beneficial ownership in debt securities (unlike publicly traded equity securities), little, if any public information about beneficial ownership exists. The Applicant has, in following

the market practice of engaging the assistance of an experienced, independent third party information services provider, used all commercially reasonable efforts to obtain accurate information regarding Canadian beneficial ownership of the Notes and Debentures and believes that the information presented below, as it relates to aggregate holdings of Notes and Debentures in Canada, is a good proxy to such holdings.

12. According to the information provided to the Applicant by the Trustee and Global Bondholder Services Corporation (GBSC) at the Applicant's request, there are 115 registered holders of Notes and Debentures around the world, 15 of whom reside in Canada (1 in British Columbia, 4 in Quebec and 10 in Ontario). Each of the Canadian resident registered holders is an institution. Together, the 15 Canadian resident registered holders hold less than US$ 46,000,000 (or less than 1.1% of the aggregate principal amount outstanding) of Notes and Debentures.

13. According to the information provided to the Applicant by GBSC at the Applicant's request, of the 1.1% of the aggregate principal amount of Notes and Debentures outstanding held by Canadian holders, no more than 0.17% is held by Canadian retail accounts.

14. According to the information provided to the Applicant by the Trustee and GBSC at the Applicant's request, more than 10% of the aggregate principal amount of outstanding Notes and Debentures (or more than nine times the Canadian holdings) are held in European custodial accounts, including the accounts maintained by Euroclear and Clearstream, for the benefit of holders in European jurisdictions.

Series of Notes and Debentures Treated as One Class:

15. Each of the 10 individual series of Applicant's Notes and Debentures currently outstanding was issued as senior indebtedness of the Applicant at various times under the terms of the New York law governed Indenture.

16. Aside from aggregate amounts, times of payment of interest and repayment of principal, and applicable interest rates (the main features of the Notes and Debentures that varied with the financing needs of the Applicant at the relevant time of issuance of each series), the rights and privileges of the holders of the outstanding Notes and Debentures, including the Applicant's principal negative covenants with respect to (i) the granting of security on its principal properties, (ii) the entering into of sale and leaseback transactions, and (iii) consolidation or merger, are identical, having been established in the Indenture for the benefit of all holders of Notes and Debentures that are senior

indebtedness at any time and from time to time outstanding. In addition, in the case of bankruptcy, the holders of all series of outstanding Notes and Debentures have the same priority in their respective claims against the assets of the Applicant, regardless of series, the claims of all holders of outstanding Notes and Debentures ranking equally amongst themselves and equally with all of the Applicant's other senior unsecured indebtedness.

17. The Indenture generally provides that, with the consent of not less than 66 2/3% in aggregate principal amount of Notes and Debentures of all series outstanding, voting as one class, the Applicant, when authorized by a resolution of its Board of Directors, and the Trustee may enter into an indenture or indentures supplemental to the Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes and Debentures of each such series.

U.S. Distribution of Notes and Debentures:

18. The offer and sale of the Applicant's Notes and Debentures was registered under the 1933 Act pursuant to successive "shelf" registration statements filed with the SEC. The Indenture was qualified under the United States *Trust Indenture Act of 1939* at the time of the first issuance of Notes and Debentures.

19. None of the Notes or Debentures were offered or sold by the Applicant or other participants in the initial distributions to residents of Canada.

20. The distribution outside of Quebec of each series of Notes and Debentures was the subject of a notice, under Section 12 of the Québec Securities Act (R.S.Q., c.V-1.1), filed by the Applicant with the AMF.

21. The *de minimis* amount of Notes and Debentures now held by Canadian residents was acquired in secondary trades in foreign markets.

Public Markets for Applicant's Securities:

22. Prior to the acquisition of the Applicant by Rio Tinto Canada, the Applicant's Common Shares were listed for trading on the Toronto Stock Exchange and the ones of New York, Paris, London and Swiss.

23. The Applicant's Common Shares were suspended from trading and delisted from these Exchanges, respectively as of November 16, 2007 (Toronto), as of

November 16, 2007 (Paris), as of December 4, 2007 (New York), as of December 11, 2007 (London) and as of December 14, 2007 (Swiss).

24. The Applicant's Commercial Paper was never listed or traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation* (NI 21-101).

25. With the exception of the Applicant's 4.875% Global Notes due 2012, no series of the Applicant's Notes and Debentures were listed or traded on a marketplace as defined in NI 21-101.

26. The Applicant's 4.875% Global Notes due 2012 were listed on the New York Stock Exchange, but not on a marketplace in Canada. This series of Notes and Debentures was suspended from trading and delisted from the NYSE as of December 4, 2007.

27. As a result of the foregoing, none of the Applicant's securities are now traded on a marketplace as defined in NI 21-101.

28. The Applicant has no obligation under the Indenture or any series of Notes and Debentures to ensure the creation or the maintenance of a marketplace for the Notes and Debentures anywhere in the world. While the Applicant's 4.875% Global Notes due 2012 were listed for trading on the New York Stock Exchange upon issuance, the Applicant had no obligation to ensure continued listing. The prospectuses used in the United States offering of the Notes and Debentures were clear in respect of the risks of an absence of markets for the securities.

Applicant's Reporting Obligations:

29. In its July 24, 2007 tender offer circular, Rio Tinto advised the market that it intended to cause the Applicant to cease to be a reporting issuer in Canada upon successful completion of its acquisition of the Applicant's Common Shares.

30. The Applicant's reporting obligations in the United Kingdom, France and Switzerland have been terminated following the delisting of the Common Shares on the London, Paris and Swiss stock Exchanges, without condition and regardless of the European holdings of Notes and Debentures referred to above.

31. On December 3, 2007, the Applicant filed the requisite documents with the SEC and, based on the delisting of the Common Shares and the 4.875%

Global Notes from the New York Stock Exchange and a certification that there are less than 300 holders of record of the Common Shares and of each class of Notes and Debentures in the United States, had its United States continuous disclosure obligations under sections 13 and 15(d) of the 1934 Act suspended as of December 4, 2007.

32. The Indenture does not require the Applicant to remain a reporting issuer in the United States or in any other jurisdiction of Canada or foreign jurisdiction.

33. The Indenture under which the Notes and Debentures were issued does not provide the Trustee or holders of Notes or Debentures with a right to receive periodic reports unless such reports are mandated by the SEC.

34. Accordingly, following the suspension of the Applicant's reporting obligations in the United States, the Applicant is no longer, under United States federal securities laws, or contractually, under the terms of the Indenture, obligated to file with the SEC, to file with any other securities regulatory authority, or to deliver to the Trustee or to holders of Notes and Debentures, whether resident in the United States, Canada or any other foreign jurisdiction, any continuous disclosure documentation.

35. On April 2, 2008, the Applicant issued a press release announcing that it has submitted an application to the Decision Makers to revoke its status as a reporting issuer in the Jurisdictions of Canada.

Other Available Relevant Information:

36. Following its stated intentions communicated in a January 19, 2008, Rio Tinto reported its 2007 full year financial results inclusive of the consolidated results of the Applicant with effect from October 24, 2007. The Applicant's contribution to Rio Tinto's 2007 full year financial results were reported as a separate line in the financial information by business unit, and Rio Tinto's other aluminium businesses were reported separately and in a format that is consistent with Rio Tinto's previous financial results announcements. For 2008 and beyond, Rio Tinto will, in its consolidated financial statement prepared in accordance with relevant financial reporting standards, report the Applicant as three separate business units (the Applicant's historical business segments) - Bauxite & Alumina, Primary Metal and Engineered Products. The Applicant's Packaging business unit will, given Rio Tinto's disclosed intention to sell it, be classified for accounting purposes as an asset held for sale.

37. Because Rio Tinto is a foreign private issuer subject to the continuous reporting obligations under Sections 13 and 15(d) of the 1934 Act as a result

of, among others, the listing of its ordinary shares and American depositary receipts on the New York Stock Exchange, the financial information referred to above will, among others, be filed with the SEC and available to the public through the SEC's EDGAR database on the SEC's website www.sec.gov.

38. In addition to the financial information referred to above, United States securities laws require Rio Tinto to furnish the SEC with information that Rio Tinto makes or is required to make public pursuant to the laws of the United Kingdom and Australia, files or is required to file with a stock exchange on which its securities are traded and which is made public by that exchange, or distributes or is required to distribute to its security holders. Thus other information about the Applicant, representing a material segment of Rio Tinto's consolidated operations, will also be available through the SEC's EDGAR database as and when disclosed by Rio Tinto.

39. The Applicant has confirmed that its Notes and Debentures will continue to be published by at least one recognized rating agencies upon the cessation by the Applicant of its reporting under Canadian and United States securities laws for the foreseeable future.

Other:

40. Since the maturity and repayment of the last of the Applicant's outstanding Commercial Paper on January 18, 2008, no debt securities of the Applicant have been publicly held apart from the Notes and Debentures.

41. The Applicant has no current intention of distributing its securities in any jurisdiction in Canada through a public or private offering.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Order is granted.

Jean St-Gelais
Président-directeur général
Autorité des marchés financiers