

# 2002 BCSECCOM 402

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from continuous disclosure requirements and proxy requirements subject to certain conditions - relief from requirements of Part IV of National Policy 41 subject to certain conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 85, 91, 117 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144 and 145

National Policy Statement 41 *Shareholder Communication*, Part IV and Part XII

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA, PRINCE EDWARD ISLAND AND NEWFOUNDLAND AND LABRADOR**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF BOLIDEN AB**

## **MRRS DECISION DOCUMENT**

**WHEREAS** the local securities regulatory authority or regulator (the “Decision Maker” and, collectively, the “Decision Makers”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Boliden AB (“BAB”) for:

- (A) a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to:
  - (i) file with the Decision Makers and send to its security holders audited annual financial statements and an annual report, where applicable (the “Annual Filing Requirement”);
  - (ii) file with the Decision Makers and send to its security holders unaudited interim financial statements (the “Interim Financial Statement Requirements”);

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(iii) issue and file with the Decision Makers press releases and file with the Decision Makers material change reports (together, the “Material Change Requirements”); and

(iv) comply with the proxy and proxy solicitation requirements under the Legislation including filing an information circular or report where applicable (the “Proxy Requirements”);

shall not apply to BAB, subject to the conditions set out below;

(B) a decision under the Legislation of Ontario and Saskatchewan that the requirements contained in Ontario Securities Commission Rule 51-501 *AIF and MD&A*, and Saskatchewan Instrument 51-501 *Annual Information Form and Management’s Discussion and Analysis* to file with the applicable Decision Makers an annual information form and send MD&A to its security holders (the “Local Requirements”) shall not apply to BAB, subject to the conditions set out below; and

(C) an order pursuant to Part XII of National Policy Statement 41 – Shareholder Communication (“NP 41”) exempting BAB from the requirements of Part IV of NP 41, subject to the conditions set out below;

**AND WHEREAS** under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

**AND WHEREAS** BAB has represented to the Decision Makers that:

1. The Boliden group of companies (the “Boliden Group”) is engaged in mining, processing and selling metals and mineral products, principally zinc and copper. Other metals and mineral products include gold, lead, silver and sulphuric acid. The Boliden Group has mining, milling and processing operations in Sweden and Canada and smelting and refining operations in Sweden. In addition to its minerals business, the Boliden Group is engaged in the fabrication and sale of copper tubing and brass products with production facilities in Belgium, the Netherlands, Sweden and the United Kingdom. As at September 30, 2001, the Boliden Group had assets of approximately U.S.\$1 billion.

The value of the Boliden Group’s Canadian assets and the operating income generated from Canada as at December 31, 2001 and for the year ended

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December 31, 2001 were less than 5% of the consolidated assets and operating income of the Boliden Group.

2. In June and July 1997, the Boliden Group completed an initial public offering and listed the common shares of Boliden Limited, a corporation incorporated under the *Canada Business Corporations Act*, on The Toronto Stock Exchange (the “TSE”). In May 1999, Boliden Limited obtained a listing of its common shares in the form of Swedish depository receipts on the Stockholm Exchange (the “SE”). Boliden Limited completed common share rights offerings in Canada and Sweden in March 2000 and August 2001.

Following completion of the most recent rights offering, approximately 87% of the outstanding common shares of Boliden Limited were represented by Swedish depository receipts. In addition, the SE had become the primary trading market.

3. In December 2001, the Boliden Group implemented a “redomiciliation transaction” intended to change the domicile of the public company parent of the Boliden Group from Canada to Sweden. The transaction was implemented by way of plan of arrangement (the “Arrangement”) under the *Canada Business Corporations Act*.
4. The Arrangement was approved by over 99% of the votes cast in person or by proxy at the meeting.
5. Upon completion of the Arrangement:
  - (a) shareholders of Boliden Limited received ordinary shares of BAB in exchange for their shares of Boliden Limited;
  - (b) Boliden Limited became a wholly-owned subsidiary of BAB; and
  - (c) BAB became a reporting issuer (or the equivalent) under the Legislation.
6. BAB is a company governed by the *Swedish Companies Act* (1975:1385). The principal office of BAB is located in Sweden. The authorized share capital of BAB consists of ordinary shares with a nominal value of SEK2 per share. The ordinary shares of BAB are listed on the SE and the TSE. BAB has a market capitalization of approximately C\$580 million.
7. BAB is subject to continuous disclosure requirements under Swedish law (the “Swedish Continuous Disclosure Requirements”) which are substantially similar to those prescribed by the Legislation including the Annual Filing

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Requirement, the Interim Financial Statement Requirements, the Material Change Requirements and the Proxy Requirements.

8. As at March 15, 2002, 85,811,638 ordinary shares of BAB were issued and outstanding of which:
  - (a) 4,404,304 ordinary shares (5.13%) were registered in the name of The Canadian Depository for Securities Limited ("CDS");
  - (b) 1,080,504 ordinary shares (1.26%) were registered in the names of 105 shareholders resident in Canada; and
  - (c) 80,326,830 ordinary shares (93.61%) were held by residents of countries other than Canada (principally, Sweden).

The aggregate of the percentages set out in paragraphs (a) and (b) above would be less than 7% if the number of equity securities of BAB were calculated on a fully-diluted basis.

9. The ordinary shares of BAB are reflected in securities accounts ("VP Accounts") in the register of holders maintained by VPC AB, the Swedish central securities depository. Separate VP Accounts have been established for CDS (on behalf of non-registered Canadian shareholders) and a nominee company established by Boliden Limited (on behalf of Canadian Registered Shareholders).
10. As a reporting issuer, BAB is subject to the continuous disclosure requirements of the Legislation.

**AND WHEREAS** under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

**AND WHEREAS** 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:

- A. the Annual Filing Requirement;
- B. the Interim Financial Statement Requirements;
- C. the Material Change Requirements; and

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D. the Proxy Requirements;

shall not apply to BAB provided that:

- (a) BAB files with the Decision Makers, in electronic format through SEDAR under BAB's SEDAR profile English language translations of all documents required to be filed with the securities regulatory authority or regulator in Sweden or with the SE under the Swedish Continuous Disclosure Requirements including:
  - (i) its annual and interim reports to shareholders;
  - (ii) its press releases; and
  - (iii) any materials relating to shareholder meetings published in Sweden within 24 hours of such publication;
- (b) BAB delivers copies of the English language translations of all documents required to be sent to shareholders under the Swedish Continuous Disclosure Requirements or under the requirements of the SE including:
  - (i) its annual and interim reports to shareholders; and
  - (ii) any materials relating to shareholder meetings published in Sweden, to registered Canadian shareholders and Independent Investor Communications Corporation ("IICC") (for delivery to Canadian shareholders holding shares registered in the name of CDS);
- (c) BAB delivers notice of the date of all shareholder meetings to CDS for publication in the register maintained by CDS;
- (d) BAB delivers letters to registered Canadian shareholders advising such shareholders of the meeting date and the voting mechanics required to participate in such meeting;
- (e) BAB delivers letters for delivery by IICC to Canadian shareholders holding shares registered in the name of CDS advising such shareholders of the meeting date and the voting mechanics required to participate in such meeting;

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- (f) BAB complies with applicable Swedish Continuous Disclosure Requirements and the requirements of Swedish law relating to proxy statements, proxies and proxy solicitation in connection with any meeting of security holders;
- (g) the annual financial statements of BAB include a note reconciling Swedish generally accepted accounting principles and Canadian generally accepted accounting principles as they pertain to BAB;
- (h) all filing fees that would otherwise be payable by BAB in connection with the Annual Filing Requirement, the Interim Financial Statement Requirements, the Material Change Requirements, the Proxy Requirements and the Local Requirements are paid; and
- (i) the foregoing decision and order will cease to be operative on such date as Proposed National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* or similar instrument relating to foreign issuer continuous disclosure comes into effect.

**DATED** this 8<sup>th</sup> day of May, 2002.

Robert L. Shirriff                      Theresa McLeod

**AND IT IS FURTHER THE DECISION** of the Decision Makers pursuant to Part XII of NP 41 that the requirements of Part IV of NP 41 shall not apply to BAB, provided that BAB complies with the conditions set out in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of the Decision above.

**DATED** this 8th day of May, 2002.

John Hughes  
Manager, Corporate Finance

**AND IT IS FURTHER THE DECISION** of the Decision Maker in each of Ontario and Saskatchewan is that the Local Requirements shall not apply to BAB provided that BAB complies with the conditions set out in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of the first Decision above.

**DATED** this 8th day of May, 2002.

John Hughes  
Manager, Corporate Finance