

2002 BCSECCOM 491

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the registration and prospectus requirements for trades in connection with an arrangement under Australian law and issuance of bonus shares under English law – first trade registration relief for trades of securities acquired under the arrangement through a sale facility in Australia

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, AND THE NORTHWEST TERRITORIES

AND

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

AND

IN THE MATTER OF BHP BILLITON LIMITED AND BHP BILLITON PLC

- ¶ 1 WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories (the “Jurisdictions”) has received an application:
- (a) from BHP Billiton Limited (“BHPBL”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a prospectus (the “Prospectus Requirement”) shall not apply to intended trades in ordinary shares (“BHP Steel Shares”) of BHP Steel Limited (“BHP Steel”) under a scheme of arrangement; and

2002 BCSECCOM 491

(b) from BHP Billiton Plc (“PLC”) for a decision under the Legislation that the Registration Requirement and the Prospectus Requirement shall not apply to intended trades in ordinary shares of PLC (“PLC Bonus Shares”) in connection with PLC’s proposed bonus share issuance;

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

¶ 3 AND WHEREAS BHPBL and PLC (the “Applicants”) have represented to the Decision Makers that:

1. the Applicants are the two publicly listed members of a dual listed company (the “BHP Billiton Group”) formed by merger in 2001; while the Applicants are separate legal entities, the shareholders of the Applicants have a common economic interest in the BHP Billiton Group and the ratio of their respective economic interests and effective voting rights in the BHP Billiton Group is maintained by the BHP Billiton Group;
2. BHPBL is a company organized under the *Corporations Act* of Australia;
3. BHPBL’s ordinary shares are listed and posted on the Australian Stock Exchange (the “ASX”) under the symbol “BHP”;
4. as at March 15, 2002, BHPBL had in excess of 292,100 shareholders, of whom approximately 376 were resident in Canada as follows: 191 resident in British Columbia, 41 in Alberta, 3 in Saskatchewan, 5 in Manitoba, 100 in Ontario, 16 in Québec, 1 in New Brunswick, 9 in Nova Scotia, 1 in Newfoundland and Labrador, and 9 in the Northwest Territories;
5. as at March 15, 2002, BHPBL had approximately 3,714,590,604 fully paid ordinary shares (“BHPBL Shares”) and 3,048,500 partly paid ordinary shares outstanding, of which approximately 1,020,313 BHPBL Shares were held by Canadian residents as follows: 422,716 BHPBL Shares held in British Columbia, 121,253 in Alberta, 4,682 in Saskatchewan, 3,950 in Manitoba, 332,594 in Ontario, 57,908 in Québec, 11 in New Brunswick, 30,136 in Nova Scotia, 2,402 in Newfoundland and Labrador, and 44,661 in the Northwest Territories;
6. as at March 15, 2002, there were approximately 69 residents of British Columbia, 63 residents of Alberta, 4 residents of Saskatchewan, 6 residents of Ontario, 2 residents of Québec, 1 resident of New Brunswick, 1 resident of Nova Scotia, and 273 residents of the Northwest Territories who collectively

2002 BCSECCOM 491

held options to acquire 1,025,451 BHPBL Shares to acquire fully paid shares; these options were held by Canadian residents as follows: 323,876 options held in British Columbia, 72,339 in Alberta, 3,308 in Saskatchewan, 8,267 in Ontario, 1,354 in Québec, 827 in New Brunswick, 1,033 in Nova Scotia, and 614,447 in the Northwest Territories;

7. BHPBL is not a reporting issuer or the equivalent in any jurisdiction in Canada and has no current intention of becoming a reporting issuer in any Canadian jurisdiction;
8. BHPBL is presently a substantial diversified natural resources company with interests in mineral exploration, processing and production, oil and gas exploration and development and (prior to the spin-out and demerger) steel production and merchandizing;
9. PLC is a company organized under the *Companies Act* of England and Wales;
10. the outstanding ordinary shares of PLC ("PLC Shares") are listed and posted for trading on the London Stock Exchange and the Johannesburg Stock Exchange;
11. as at March 15, 2002, PLC had in excess of 8,800 shareholders of whom approximately 14 were resident in Canada as follows: 1 resident in British Columbia, 9 in Ontario, 2 in Québec, and 2 in Nova Scotia;
12. as at March 15, 2002, PLC had approximately 2,319,147,885 PLC Shares outstanding, of which 128,087 were held by residents of Canada as follows: 38,500 PLC Shares held in British Columbia, 55,982 in Ontario, 25,085 in Québec, and 8,520 in Nova Scotia;
13. PLC is not a reporting issuer or the equivalent in any jurisdiction in Canada and has no current intention of becoming a reporting issuer in any Canadian jurisdiction;
14. PLC is a substantial diversified natural resources company with interests in aluminium smelting and milling, and bauxite, coal, lead, zinc and heavy minerals mining;
15. BHP Steel is a company organized under the *Corporations Act* of Australia and is currently a wholly-owned subsidiary of BHPBL;
16. BHP Steel is the major producer of flat steel products in Australia and New Zealand;

2002 BCSECCOM 491

17. BHPBL intends to spin-out and demerge its wholly-owned subsidiary, BHP Steel, by way of a reduction of capital and scheme of arrangement (the “Scheme”);
18. the Scheme contemplates that, through the implementation of a capital reduction of approximately A\$0.69 per share (the “Reduction Amount”), holders of BHPBL Shares will receive one BHP Steel Share for each 5 BHPBL Shares currently held; a separate arrangement is proposed between BHPBL and holders of partly paid shares of BHPBL whereby the capital reduction of approximately A\$0.69 per share will be applied to meet an interim call on the partly paid shares;
19. BHP Steel Shares will be listed and posted on the ASX on or about July 15, 2002;
20. holders of options to acquire BHPBL Shares may elect to acquire BHPBL Shares in accordance with the terms of the options (in which case they will be treated under the Scheme in the same manner as other BHPBL shareholders), or to have the exercise price of the options reduced by the Reduction Amount;
21. the Scheme further contemplates that holders of BHPBL Shares who are entitled to receive BHP Steel Shares will have the option to sell those BHP Steel Shares through a sales facility to be established outside of Canada (the “Sale Facility”) by BHPBL before the BHP Steel Shares are listed on the ASX;
22. the Scheme requires both shareholder and court approval;
23. a Scheme booklet (the “Scheme Booklet”) (which will include all material information regarding the operation and business of BHP Steel prepared in accordance with the *Corporations Act* in Australia) will be mailed to holders of BHPBL Shares in connection with meetings of BHPBL’s shareholders scheduled for June 26, 2002 to approve the Scheme;
24. BHPBL intends to mail the Scheme Booklet to its shareholders on May 24, 2002;
25. in order to ensure that the holders of PLC Shares receive equitable treatment to the holders of BHPBL Shares who will receive BHP Steel Shares under the Scheme, PLC will issue PLC Bonus Shares to the holders of PLC Shares concurrently with the Scheme; holders of PLC Shares must approve the

2002 BCSECCOM 491

proposed demerger of BHP Steel from BHPBL and the issuance of the PLC Bonus Shares;

26. a circular will be sent to all holders of PLC Shares on or about May 24, 2002 (the "Circular") in connection with a meeting of PLC's shareholders scheduled for June 26, 2002;
27. each Canadian shareholder of BHPBL has received all public disclosure with regard to BHPBL, including ongoing information regarding the steel manufacturing and distribution activities carried on by BHP Steel in the past, and will receive a Scheme Booklet;
28. each holder of PLC Shares will receive a Circular, together with the Scheme Booklet, that will set out all information required under the laws of the United Kingdom with respect to the Scheme and the issue of Bonus Shares, including the means of calculating the number of PLC Bonus Shares to be distributed;
29. there is no market in Canada for either the BHP Steel Shares or the PLC Bonus Shares and there is no likelihood of one developing;
30. BHP Steel will send copies of its disclosure materials to its shareholders resident in Canada at the same time and in the same manner as they are delivered to its shareholders in Australia, and PLC will send copies of its disclosure materials to its shareholders resident in Canada at the same time and in the same manner as they are delivered to its shareholders in England and Wales;
31. trades in BHP Steel Shares in connection with the Scheme to BHPBL shareholders in the Jurisdictions are not exempt from the Registration Requirement and the Prospectus Requirement under the Legislation of certain of the Jurisdictions;
32. trades in PLC Bonus Shares to holders of PLC Shares in the Jurisdictions are not exempt from the Registration Requirement and the Prospectus Requirement under the Legislation of the Jurisdictions; and
33. trades of BHP Steel Shares received in connection with the Scheme through the Sale Facility are not exempt from the Registration Requirement under the Legislation of the Jurisdictions;

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

2002 BCSECCOM 491

¶ 5 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;

¶ 6 THE DECISION of the Decision Makers under the Legislation is that:

1. the Registration Requirement and the Prospectus Requirement shall not apply to BHPBL's distribution of BHP Steel Shares in connection with the Scheme, or to PLC's distribution of PLC Bonus Shares, provided that the first trade in BHP Steel Shares or PLC Bonus Shares acquired under this Decision in a Jurisdiction shall be deemed to be a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless:
 - (a) except in Québec, the conditions in section 2.14(1) of Multilateral Instrument 45-102 *Resale of Securities* are satisfied; or
 - (b) in Québec, the alienation is made through an exchange, or a market, outside of Canada or to a person or company outside of Canada; and
2. the Registration Requirement shall not apply to a trade by a holder in the Jurisdictions in BHP Steel Shares acquired in connection with the Scheme if:
 - (a) at the time of the trade, BHP Steel is not a reporting issuer under the Legislation of any of the Jurisdictions;
 - (b) at the time of the distribution of the BHP Steel Shares to the holders in the Jurisdictions, after giving effect to the issuance of the BHP Steel Shares, residents of Canada: (A) did not own directly or indirectly more than 10 percent of the outstanding BHP Steel Shares, and (B) did not represent in number more than 10 percent of the total number of owners directly or indirectly of BHP Steel Shares; and
 - (c) the trade is executed through the Sale Facility.

¶ 7 DATED June 5, 2002

Brenda Leong
Director