

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF ALBERTA,
SASKATCHEWAN, MANITOBA, ONTARIO,
Québec, NOVA SCOTIA, AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
BALLARD POWER SYSTEMS INC.**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, and Newfoundland and Labrador (the "Jurisdictions") has received an application from Ballard Power Systems Inc. ("Ballard") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the requirement of the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer shall not apply to certain of the officers of Ballard;

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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;

AND WHEREAS Ballard has represented to the Decision Maker that:

1. Ballard was amalgamated under the *Canada Business Corporations Act* on May 30, 1989.
2. Ballard develops, manufactures and markets proton exchange membrane fuel cell products and other products for use in transportation, power generation and portable power markets.
3. Ballard is a reporting issuer in each province and territory of Canada and its common shares are listed and posted for trading on the Toronto Stock Exchange and the National Association of Securities Dealers Automated Quotation.
4. Ballard is not in default of any requirements of the Legislation.

5. Each of Ballard Power Systems Corporation ("BPSC") and Ballard Power Systems AG ("BPS AG") is a "major subsidiary" of Ballard (as that term is defined in National Instrument 55-101) ("NI 55-101").

6. Currently, Ballard has approximately 33 persons who are "insiders" of Ballard under the Legislation by reason of being a director or officer of Ballard or a major subsidiary of Ballard (the "Insiders").

7. None of the Insiders is exempt from the insider reporting requirements contained in the Legislation by reason of an existing exemption such as NI 55-101 or a previous decision or order.

8. Ballard has developed a stock trading policy (the "Policy") that applies to all the Insiders and other employees who have knowledge of material undisclosed information.

9. The Policy was developed to ensure that its directors, officers and employees who are "insiders" under the Legislation are aware of their responsibilities under the Legislation and to assist them in complying with the Legislation.

10. Under the Policy, the Insiders and other employees with knowledge of material undisclosed information may not trade in securities of Ballard. In addition, the Insiders may not trade in securities of Ballard during "black-out" periods as determined by Ballard.

11. Ballard considered the job requirements and principal functions of the Insiders to determine which of them met the definition of "nominal vice president" (or who hold an equivalent title and perform such equivalent functions and duties) contained in Canadian Securities Administrators Staff Notice 55-306 (the "Staff Notice") and has compiled a list of those Insiders who, in the opinion of Ballard, meet the criteria set out in the Staff Notice (the "Exempted Officers").

12. Each of the Exempted Officers satisfies the following criteria (the "Exempt Officer Criteria"):

(a) the individual is a vice president of, or holds an equivalent title and performs such equivalent functions and duties at, Ballard, BPSC or BPS AG;

(b) the individual is not a member of Ballard's executive team and is not appointed by the board of directors;

(c) the individual is not in charge of a principal business unit, division or function of Ballard or a major subsidiary of Ballard;

(d) the individual does not, in the ordinary course, receive or have access to information regarding material facts or changes concerning Ballard or its major subsidiaries before the material facts or material changes are generally disclosed; and

(e) the individual is not an insider of Ballard or its major subsidiaries in any capacity other than vice president or such equivalent title.

13. Ballard will assess any future employee of Ballard who has the title of vice president or such equivalent title on the same basis as set out above, and will re-assess all Exempted Officers who experience a change in job requirements or functions, to determine if such individuals meet, or continue to meet, the Exempt Officer Criteria.

14. If an individual who is designated as an Exempted Officer no longer satisfies the Exempt Officer Criteria, as a result of which the individual is subject to a renewed obligation to file insider reports, Ballard will immediately inform such individual of such renewed obligation.

15. Ballard has filed with the Decision Makers in connection with this application a copy of the Policy and the list of Exempted Officers.

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 the requirement contained in the Legislation to file insider reports shall not apply to insiders of Ballard who satisfy the Exempt Officer Criteria for so long as such insiders satisfy the Exempt Officer Criteria, provided that:

(a) Ballard prepares and maintains a list of all individuals who propose to rely on the exemption granted by this Decision, submits the list on an annual basis to the board of directors for approval, and files the list with the Decision Makers;

(b) Ballard files with the Decision Makers a copy of its internal policies and procedures relating to monitoring and restricting the trading activities of its insiders and other persons whose trading activities are restricted by Ballard; and

(c) the relief granted will cease to be effective on the date NI 55-101 is amended.

DATED May 16th, 2003.

"Robert L. Shirriff"

"Harold P. Hands"

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief granted to certain vice presidents of a reporting issuer from the insider reporting requirements subject to certain

conditions as outlined in CSA Staff Notice 55-306 - *Applications for Relief from the Insider Reporting Requirements by Certain Vice Presidents.*

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 107, 108, 121(2)(a)(ii)

Regulations Cited

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am., Part VIII

Rules Cited

National Instrument 55-101 - *Exemption From Certain Insider Reporting Requirements.*