

CHICAGO BRIDGE & IRON CO N V
Form S-4/A
November 16, 2012

As filed with the Securities and Exchange Commission on November 16, 2012

Registration No. 333-183950

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 3
TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CHICAGO BRIDGE & IRON COMPANY N.V.

(Exact name of registrant as specified in its charter)

The Netherlands
(State or other jurisdiction of
incorporation or organization)

1700
(Primary Standard Industrial
Classification Code Number)

Not Applicable
(I.R.S. Employer
Identification Number)

Oostduinlaan 75

2596 JJ The Hague

The Netherlands

011-31-70-373-2010

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Philip K. Asherman

Chief Executive Officer

One CB&I Plaza

2103 Research Forest Drive

The Woodlands, Texas 77380

(832) 513-1000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Daniel A. Neff, Esq. and

David E. Shapiro, Esq.

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1000

John Donofrio

Executive Vice President and General Counsel
The Shaw Group Inc.

4171 Essen Lane

Baton Rouge, Louisiana 70809
(225) 932-2500

Keith Fullenweider, Esq.

Vinson & Elkins LLP
First City Tower

1001 Fannin Street, Suite 2500

Houston, Texas 77002-6760
(713) 758-2222

Approximate date of commencement of the proposed sale of the securities to the public: As soon as practicable after this registration statement becomes effective and upon completion of the Transaction described in the enclosed document.

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If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller reporting company

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 3 to the Form S-4 Registration Statement, Registration No. 333-183950, is being filed solely to reflect a revised Exhibit 5.1 reflecting the final opinion regarding the legality of the Chicago Bridge and Iron Company N.V. common stock to be issued in the merger. No other changes have been made.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers

Article 25 of the Chicago Bridge and Iron Company N.V.'s (the Registrant) Articles of Association, as amended (the Articles of Association), provides that a current or former director or officer of the Registrant shall be indemnified by the Registrant against:

(a) all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with any litigation or other legal proceeding (other than an action by or in the right of the Registrant) brought against him by virtue of his position as a director or officer of the Registrant if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Registrant, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; and

(b) all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with any action by or in the right of the Registrant brought against him by virtue of his position as a director or officer of the Registrant if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Registrant, except that no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Registrant, unless a court determines that, despite such adjudication but in view of all of the circumstances, he is fairly and reasonably entitled to indemnification of such expenses.

Notwithstanding the foregoing, to the extent that a director or officer has been successful, on the merits or otherwise, in defense of any such litigation, action or claim, he is required to be indemnified by the Registrant against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses may be advanced to a director or officer at his request and upon a resolution of the Supervisory Board, provided that he undertakes to repay the amount advanced if it is ultimately determined that he is not entitled to indemnification for such expenses. Indemnification is only required to be made if a majority of supervisory directors not a party to the action or, if all supervisory directors are named as parties to the action, independent legal counsel, or the general meeting of shareholders, determines that the applicable standard of conduct required for indemnification has been met.

Article 25 of the Articles of Association further provides that the indemnification provided therein is not exclusive of any other right to which a person seeking indemnification may be entitled under the laws of The Netherlands (as from time to time amended) or under any agreement, resolution of the general meeting of shareholders or of the disinterested members of the Supervisory Board or otherwise.

Article 25 of the Articles of Association also provides that directors of the Registrant will not be personally liable to the Registrant or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Registrant or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) for any transaction from which the director derived an improper personal benefit or (iv) for personal liability which is imposed by the law of The Netherlands, as from time to time amended.

The Registrant has entered into indemnification agreements with certain of its directors providing for indemnification similar to that provided in the Articles of Association. The Registrant has also obtained officers' and directors' liability insurance in amounts it believes are reasonable under the circumstances.

Item 21. Exhibits and Financial Statement Schedules

A list of the exhibits included as part of this registration statement is set forth in the Exhibit Index that immediately precedes such exhibits and is incorporated herein by reference.

Item 22. Undertakings

(a) The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in the volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) that, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(4) that, for the purpose of determining liability under the Securities Act to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectus filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness; *provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use;

(5) that for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

- (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.
- (d) The undersigned registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (a) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Securities Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to this registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (e) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.
- (f) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(g) The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first-class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(h) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in this registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in The Woodlands, Texas, on November 16, 2012.

CHICAGO BRIDGE & IRON COMPANY, N.V.

By: /s/ Richard E. Chandler, Jr.
 Name: Richard E. Chandler, Jr.
 Title: Executive Vice President, Chief

Legal Officer and Secretary

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|----------------------------|--|-------------------|
| /s/ Philip K. Asherman | President and Chief Executive Officer | November 16, 2012 |
| Philip K. Asherman | (Principal Executive Officer) Supervisory Director | |
| /s/ Ronald A. Ballschmiede | Executive Vice President and Chief | November 16, 2012 |
| Ronald A. Ballschmiede | Financial Officer (Principal Financial Officer) | |
| /s/ Westley S. Stockton | Vice President, Corporate Controller | November 16, 2012 |
| Westley S. Stockton | and Chief Accounting Officer (Principal Accounting Officer) | |
| * | Supervisory Director | November 16, 2012 |
| James R. Bolch | | |
| * | Supervisory Director and Non- | November 16, 2012 |
| L. Richard Flury | Executive Chairman | |
| * | Supervisory Director | November 16, 2012 |
| J. Charles Jennett | | |
| * | Supervisory Director | November 16, 2012 |
| W. Craig Kissel | | |

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| | | |
|----------------|------------------------|-------------------|
| Larry D. McVay | * Supervisory Director | November 16, 2012 |
| Gary L. Neale | * Supervisory Director | November 16, 2012 |

| | | | |
|----------------------------------|---|--------------------------------|-------------------|
| | * | Supervisory Director | November 16, 2012 |
| Michael L. Underwood | | | |
| | * | Supervisory Director | November 16, 2012 |
| Marsha C. Williams | | | |
| | * | Registrant's Agent for Service | November 16, 2012 |
| Walter G. Browning | | in the United States | |
| by: /s/ Richard E. Chandler, Jr. | | Attorney-in-Fact | November 16, 2012 |

EXHIBIT INDEX

| Exhibit Number | Description of Document | Location of Document |
|-----------------------|---|---|
| 2.1 | Transaction Agreement, dated as of July 30, 2012, between Chicago Bridge & Iron Company N.V., The Shaw Group Inc. and Crystal Acquisition Subsidiary Inc. | Previously filed. |
| 3.1 | Amended Articles of Association of Chicago Bridge & Iron Company N.V. | Incorporated by reference to Exhibit 3 to CB&I's Form 10-Q for the quarter ended June 30, 2005. |
| 4.1 | Specimen common stock certificate. | Incorporated by reference to Exhibit 4.1 to CB&I's Registration Statement on Form S-1 (File No. 333-18065). |
| 5.1 | Opinion of Van Campen & Partners N.V. regarding the legality of the Chicago Bridge & Iron Company N.V. common stock to be issued in the merger. | Filed herewith. |
| 21.1 | Subsidiaries of Chicago Bridge & Iron Company N.V. | Incorporated by reference to Exhibit 21 to CB&I's Annual Report on Form 10-K for the fiscal year ended December 31, 2011. |
| 23.1 | Consent of Ernst & Young LLP (with respect to CB&I). | Previously filed. |
| 23.2 | Consent of KPMG LLP (with respect to Shaw). | Previously filed. |
| 23.3 | Consent of Ernst & Young LLP (with respect to Toshiba Nuclear Energy Holdings (US), Inc. and Toshiba Nuclear Energy Holdings (UK) Ltd.) | Previously filed. |
| 23.7 | Consent of Van Campen & Partners N.V. regarding the legality of the common stock to be issued in the merger. | Included as part of the opinion filed as Exhibit 5.1 hereto and incorporated herein by reference. |
| 24.1 | Power of Attorney. | Previously filed. |
| 99.1 | Consent of Morgan Stanley & Co. LLC | Previously filed. |
| 99.2 | Consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated | Previously filed. |
| 99.3 | Form of Proxy of Chicago Bridge & Iron Company N.V. | Previously filed. |
| 99.4 | Form of Proxy of The Shaw Group Inc. | Previously filed. |