

# 2008 BCSECCOM 610

October 31, 2008

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* - Exemption from the interim certification requirements - An issuer wants relief from the requirement in part 3 of MI 52-109 to file interim certificates - The issuer wants relief for its first financial period following graduation to the TSX; the issuer will provide alternative interim certificates in the form of a venture issuer basic certificate; the issuer recently graduated to the TSX and has undergone changes and expansion in its business; for its next financial period, the issuer will file annual certificates in the form of Form 52-109F1 under National Instrument 52-109 that contain representations relating to disclosure controls and procedures and internal control over financial reporting

## Applicable British Columbia Provisions

Multilateral Instrument 52-109, ss. 3.1 & 4.5

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Zongshen PEM Power Systems Inc.  
(the Filer)

## Decision

## Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for exemptive relief from the requirement contained in section 3.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109)

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that the Filer, for its interim filings for the interim period ending September 30, 2003 (the Q3 Filings ), file certificates in the form of Form 52-109F2 (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) British Columbia is the principal regulator for this application,
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 52-109 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is incorporated under the laws of the Province of British Columbia and its head office is located in Vancouver, British Columbia;
  - 2. the common shares of the Filer were listed for trading on the TSX Venture Exchange until September 2, 2008;
  - 3. the Filer is a reporting issuer in each of the Jurisdictions and in Alberta and is not in material default of any of the requirements of the securities laws of such jurisdictions;
  - 4. the Filer's current business is focused on manufacturing and developing electric bikes and motorcycles and small cylinder gas motorcycles, which business was formally launched in 2007; prior to the launch of the current business, the Filer had been primarily involved in fuel cell research and development; the Filer's largest shareholder, Zongshen Industrial Group Co., Ltd. (Zongshen Industrial) was involved in motorcycle manufacturing in China; the Filer identified growth potential in the electric motorcycle market in China and secured support from Zongshen Industrial to pursue this market;

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5. since the launch of the Filer's current business, the Filer has transitioned from a research and development company to a manufacturing company and has amalgamated its electric bicycle product lines, commenced construction of a new manufacturing facility in Chongqing, China, and graduated to the Toronto Stock Exchange (the TSX); in addition, Zongshen Industrial has further granted the Filer the exclusive right to sell small gas motorcycles under the Zongshen brand, further expanding the Filer's line of business;
6. section 3.1 of MI 52-109 requires an issuer to file, for its interim filings, current Form 52-109F2; current Form 52-109F2 requires the chief executive officer and chief financial officer of the issuer to certify that they have designed certain disclosure controls and procedures (DC&P) and have designed certain internal control over financial reporting (ICFR);
7. on November 23, 2007, the Canadian Securities Administrators (the CSA) published Notice 52-319 *Status of Proposed Repeal and Replacement of MI 52-109* (the Notice); the Notice stated that the CSA planned to repeal and replace MI 52-109 with a new national instrument but that the time period for doing so had been extended;
8. concurrently with the publication of the Notice, the principal regulator adopted BC Instrument 52-511 *Relief for Venture Issuers from Certain Certification Requirements* (BCI 52-511); BCI 52-511 effectively granted transitional relief to venture issuers from making representations as to DC&P and ICFR by permitting them to file a form of venture issuer basic certificate for periods ended after December 31, 2007, and until such time as the proposed national instrument was adopted; the Alberta securities commission granted similar transitional relief under ASC Order MI 52-109 *Exemptive Relief*, 2007 ABASC 836; staff of the Ontario securities commission indicated in OSC Staff Notice 52-717 *Certification of Annual and Interim Filings - Venture Issuer Basic Certificate* that they would not consider a venture issuer that files a form of venture issuer basic certificate for a financial period ending on or after December 31, 2007, to be in default under OSC Policy 51-601 *Reporting Issuer Defaults*;
9. the Filer's fiscal year end is December 31; on August 28, 2008, the Filer filed its most recent financial statements and MD&A for the interim period ended June 30, 2008 (the Q2 Filings); for this period, the Filer was a venture issuer and relied on BCI 52-511, so the Filer's certifying officers did not make representations as to DC&P and ICFR in their certificates for the Q2 Filings;
10. on August 15, 2008, the CSA made National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (New NI 52-109); New

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NI 52-109 will be effective for financial periods ending on or after December 15, 2008;

11. section 5.5 of New NI 52-109 allows an issuer to file an alternative form of interim certificate (Form 52-109F2- IPO/RTO) for the first interim period after the issuer becomes a non-venture issuer if such period is an interim period; Form 52-109F2-IPO/RTO is similar to a venture issuer basic certificate in that it does not include representations as to DC&P and ICFR;
12. on September 2, 2008, the Filer graduated to the TSX and its common shares are now listed for trading on the TSX; as a result, the Filer is no longer a venture issuer;
13. the Filer is required to file the Q3 Filings and related certificates no later than November 14, 2008; as the Filer has now graduated to the TSX and is no longer a venture issuer, it can no longer rely on BCI 52-511;
14. if New NI 52-109 had been scheduled to be effective for financial periods ending on or after September 30, 2008, the Filer would have been eligible to use Form 52-109F2—IPO/RTO, which would not have required the Filer's certifying officers to make representations as to DC&P and ICFR relating to the Q3 Filings;
15. in addition, had the Filer waited until after December 15, 2008, to graduate to the TSX, it would have been eligible to rely on BCI 52-511 for the Q3 Filings and to use an alternative form of certificate under New NI-52-109 in the form of Form 52-109F1-IPO/RTO for its annual filings for the year ending December 31, 2008 (the 2008 Annual Filings), both of which would not have required representations as to DC&P and ICFR;
16. given the recent rapid expansion and transition of the Filer's business over the last year and the fact that the Filer's operations are in multiple locations in China and Canada, the Filer's certifying officers require additional time to improve the Filer's DC&P and ICFR so as to be able to certify them; and
17. the Exemption Sought is transitional relief only for one interim period; the Filer will file the prescribed form of full annual certificate under New NI 52-109, which includes representations as to DC&P and ICFR, for its 2008 Annual Filings.

### Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

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The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the Filer files:

- (a) the required certificates for its Q3 Filings in the form of a venture issuer basic certificate as set out in Appendix A; and
- (b) the required certificates for its 2008 Annual Filings in the form of Form 52-109F1 under New NI 52-109.

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission

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## APPENDIX A

### CERTIFICATION OF INTERIM FILINGS

#### VENTURE ISSUER BASIC CERTIFICATE

I, *<identify (i) the certifying officer, (ii) his or her position at the issuer, (iii) the name of the issuer and (iv) if the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate in which of these capacities the certifying officer is providing the certificate>*, certify the following:

1. **Review:** I have reviewed the interim financial statements and interim MD&A (together, the "interim filings") of *<identify the issuer>* (the "issuer") for the interim period ended *<state the relevant date>*.
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings.
3. **Fair presentation:** Based on my knowledge, having exercised reasonable diligence, the interim financial statements together with the other financial information included in the interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date of and for the periods presented in the interim filings.

Date: *<insert date of filing>*

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[Signature]

[Title]

*<If the certifying officer's title is not "chief executive officer" or "chief financial officer", indicate in which of these capacities the certifying officer is providing the certificate.>*

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### NOTE TO READER

In contrast to the certificate required under Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109), this Venture Issuer Basic Certificate does not include representations relating to the establishment and maintenance of disclosure controls and procedures (DC&P) and internal control over financial reporting (ICFR), as defined in MI 52-109. In particular, the certifying officers filing this certificate are not making any representations relating to the establishment and maintenance of:

- i) controls and other procedures designed to provide reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation; and
- ii) a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP.

The issuer's certifying officers are responsible for ensuring that processes are in place to provide them with sufficient knowledge to support the representations they are making in this certificate.

Investors should be aware that inherent limitations on the ability of certifying officers of a venture issuer to design and implement on a cost effective basis DC&P and ICFR as defined in MI 52-109 may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.