

# 2007 BCSECCOM 398

July 5, 2007

## **Headnote**

### **Mutual Reliance Review System for Exemptive Relief Applications**

*Securities Act*, s. 76 – First trade relief for securities acquired under an exemption that are subject to a restricted period - The auditors' report on the issuer's annual financial statements filed for continuous disclosure purposes does not comply with NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* because it contains a reservation of opinion relating to opening inventory of an acquired company; had the financial statements been included in a prospectus, it is reasonably likely that the regulators would have issued a receipt notwithstanding the reservation and granted related continuous disclosure relief; first trades in the issuer's securities by insiders and officers must satisfy conditions 1 to 6 of subsection 2.5(2) of NI 45-102 *Resale of Securities*, and the selling insider or officer must have no reasonable grounds to believe that, except for the reservation, the issuer is in default of securities legislation.

National Instrument 44-101 *Short Form Prospectus Requirements*, s. 8.1 – Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The auditors' report on the issuer's annual financial statements filed for continuous disclosure purposes does not comply with NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* because it contains a reservation of opinion relating to opening inventory of an acquired company; had the financial statements been included in a prospectus, it is reasonably likely that the regulators would have issued a receipt notwithstanding the reservation and granted related continuous disclosure relief; at the time of filing a short form prospectus, the issuer must satisfy all the criteria in s. 2.2 of NI 44-101 including paragraph (c) except for the reservation.

## **Applicable British Columbia Provisions**

*Securities Act*, ss. 61 and 76

National Instrument 44-101, ss. 2.2 and 8.1

National Instrument 45-102, s. 2.5

National Instrument 52-107, s. 3.2

In the Matter of  
the Securities Legislation of  
British Columbia and Alberta

and

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In the Matter of  
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Hanwei Energy Services Corp.

## MRRS Decision Document

### **Background**

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia and Alberta (the Jurisdictions) has received an application from Hanwei Energy Services Corp. (the Filer) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the requirement that:
- (a) an insider or officer of the Filer, to be qualified to sell a security of the Filer acquired under an exemption from the prospectus requirements (a First Trade) in accordance with National Instrument 45-102 *Resale of Securities* (NI 45-102), must have no reasonable grounds to believe that the Filer is in default of the Legislation, does not apply to the First Trades (the First Trade Relief); and
  - (b) the Filer, to be qualified to file a short form prospectus under National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101), must have filed in the Jurisdictions all periodic and timely disclosure documents that it is required to have filed under the Legislation, does not apply to the Filer (the Short Form Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 The Filer has represented to the Decision Makers that:

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1. the Filer was incorporated under the name Y&O Ventures Corp. on October 26, 2005 under the *Business Corporations Act* (British Columbia);
2. the Filer changed its name from Y&O Ventures Corp. to its present name on December 8, 2006;
3. the Filer was a capital pool company until it completed its qualifying transaction on December 12, 2006 by acquiring an 82.15% equity interest in Daqing Harvest Longwall High Pressure FRP Pipe Co. Ltd. (Daqing Harvest), a sino-foreign joint venture enterprise established under the laws of China (the Qualifying Transaction);
4. the head office of the Filer is in Vancouver, British Columbia;
5. the Filer is a reporting issuer in the provinces of British Columbia and Alberta;
6. the common shares of the Filer are listed on the TSX Venture Exchange (the Exchange) as a Tier 1 issuer under the symbol “HE”;
7. Ernst & Young LLP (the Auditors) were appointed the auditors of Daqing Harvest in 2005;
8. as the Auditors were appointed after January 1, 2005, the Auditors were not able to observe the counting of physical inventories of Daqing Harvest as at December 31, 2004 and December 31, 2003 nor satisfy themselves concerning the inventory quantities as of those dates by alternative means;
9. since opening inventories enter into the determination of the results of operations and cash flows, the Auditors were not able to determine whether adjustments to cost of sales, income taxes, net income, cash flows from operating activities and opening retained earnings of Daqing Harvest for the years ended December 31, 2005 and 2004 might have been necessary (the Reservation); the Reservation was made in the Auditors’ report to the consolidated financial statements of Daqing Harvest for the years ended December 31, 2005 and 2004 (the Financial Statements);
10. the Exchange accepted the Reservation made in the Auditors’ report to the Financial Statements subject to there being no reservation contained in the Auditors’ report accompanying the financial statements of Daqing Harvest for the six-month period ended June 30, 2006 (the Interim Financial Statements);

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11. the Financial Statements accompanied by the Reservation and the Interim Financial Statements accompanied by an Auditors' report containing no reservations were included in the Filer's filing statement dated November 23, 2006, that was filed with the Exchange and on SEDAR on November 24, 2006, in connection with the Qualifying Transaction in accordance with the policies of the Exchange;
12. the Qualifying Transaction was completed on December 12, 2006 and the Exchange issued their final approval for the Qualifying Transaction on December 11, 2006;
13. Paragraph 3.20(4) of the companion policy to Ontario Securities Commission Rule 41-501 (the long form prospectus rule, implemented in BC under BC Instrument 41-501) contemplates that relief may be granted to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory; the issuer may be requested to include in the prospectus audited financial statements of the business for a subsequent period of at least six months on which the auditor's report contains no reservation; as the Filer has complied with this condition it is reasonably likely that, had the Filer filed a prospectus containing the same financial statements as were included in the filing statement, the Jurisdictions would have issued a receipt for the prospectus;
14. under the Legislation, financial statements filed for continuous disclosure purposes that are required by securities legislation to be audited must be audited in accordance with Canadian GAAS and accompanied by an auditors' report that, among other things, does not contain a reservation; the Filer could have applied for relief from this requirement and, because the financial statements included in the filing statement would likely have been acceptable in a prospectus, it is reasonably likely that the Jurisdictions would have granted this relief;
15. under the Legislation, if a security was distributed under a restricted period trade, the first trade of that security is subject to restrictions unless certain conditions are satisfied, which among them include, if the selling security holder is an insider or officer of the Filer, the selling security holder has no reasonable grounds to believe that the Filer is in default of securities legislation;
16. due to the Reservation, insiders and officers of the Filer will not be able to trade their securities that were distributed under a restricted period trade pursuant to the Legislation with respect to the resale of securities;

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17. under the Legislation, to meet the qualification criteria to file a prospectus in the form of a short form prospectus for the distribution of any of its securities, the Filer is required to have, among other things, filed with the securities regulatory authority in each jurisdiction in which it is reporting all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation; and
18. due to the Reservation, the Filer will not be able to meet the qualification criteria to file a prospectus in the form of a short form prospectus for the distribution of any of its securities.

### **Decision**

- ¶ 4 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 First Trade Relief is granted, provided that:

- (a) conditions 1 to 6 of subsection 2.5(2) of NI 45-102 are satisfied; and
- (b) the selling insider or officer has no reasonable grounds to believe that, except for the Reservation, the Filer is in default of the Legislation.

The further Decision of the Decision Makers under the Legislation is that the Short Form Relief is granted, provided that, at the time of filing a short form prospectus, the Filer satisfies all the criteria in section 2.2 of NI 44-101 including paragraph (c) except for the Reservation.

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