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Headnote

Securities Act s. 76 - Prospectus Requirements - An issuer that is not a reporting issuer in Canada is seeking first trade relief for securities that it will issue or has issued to Canadian residents - The issuer meets all of the conditions of section 2.14 of Multilateral Instrument 45-102 Resale of Securities except that residents of Canada will own more than 10% of the securities of the class and will represent more than 10% of the total number of holders of the securities of the class; the issuer has a de minimis connection to Canada; the issuer will provide security holders who are resident in Canada with the same continuous disclosure materials that are provided to foreign shareholders

Exemption Order

PolyFuel, Inc.

Section 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 PolyFuel applied for an exemption from the requirement to file and obtain receipts for a preliminary prospectus and prospectus in section 61 of the Act for first trades of its common shares by its stockholders resident in British Columbia.

Representations

- ¶ 2 PolyFuel represents that:
1. it was incorporated under the laws of the State of Delaware;
 2. its principal offices are in Mountain View, CA and its principal management, assets and operations are in the United States;
 3. it has a wholly owned subsidiary in Canada that carries on certain research and development activity for PolyFuel's benefit;
 4. it is an engineering research company focussed on engineering membranes for fuel cells and developing this technology for use in portable fuel cells for use in consumer electronic devices;
 5. it has seven stockholders resident in Canada (the Canadian stockholders), of which five are resident in British Columbia (the BC stockholders);

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6. its common shares are scheduled to be listed on the London Stock Exchange – Alternative Investment Market (AIM) on July 5, 2005, concurrently with completing a financing to investors (the offering);
7. its authorized capital consists of an aggregate of 65,000,000 common and preferred shares;
8. as of May 30, 2005, its outstanding stock consisted of
 - (a) 98,001 common shares,
 - (b) 4,510,434 shares of Series AA Convertible Preferred Stock (the AA Preferred Shares), and
 - (c) 18,414,087 shares of Series BB Preferred Stock (the BB Preferred Shares);
9. as of the close of business on May 30, 2005, the Canadian stockholders owned approximately 33.5% of PolyFuel's outstanding AA Preferred Shares, and approximately 42.6% of PolyFuel's outstanding BB Preferred Share, on a non-diluted basis;
10. in particular, as of the close of business on May 30, 2005,
 - (a) two Canadian investment firm stockholders resident in British Columbia held
 - (i) an aggregate of 1,509,487 AA Preferred Shares, representing approximately 33.5% of the issued and outstanding AA Preferred Shares,
 - (ii) an aggregate of 4,550,000 BB Preferred Shares, representing approximately 24.7% of the issued and outstanding BB Preferred Shares, and
 - (iii) warrants to acquire an additional 384,827 BB Preferred Shares,
 - (b) two Canadian individual stockholders resident in British Columbia, a vice-president of PolyFuel and a close personal friend of the vice-president, held an aggregate of 300,000 BB Preferred Shares, representing approximately 1.6% of the issued and outstanding BB Preferred Shares,

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- (c) one Canadian individual resident in British Columbia, a former employee of PolyFuel, held options to acquire 5,000 common shares of PolyFuel and subsequently exercised those options, and
 - (d) two Canadian investment firm stockholders resident in Québec held an aggregate of 3,000,000 BB Preferred Shares, representing approximately 16.3% of the issued and outstanding BB Preferred Shares;
11. prior to the AIM listing,
- (a) all warrants to purchase BB Preferred Shares held by AA Preferred Share stockholders, including those held by the Canadian stockholders, will be extinguished, and
 - (b) its preferred stockholders, including the Canadian stockholders, will be required, pursuant to the terms of PolyFuel's Amended and Restated Certificate of Incorporation, to exchange their shares of preferred stock for common shares of the Filer at a conversion ratio of 1:1.25;
12. concurrent with the AIM listing, PolyFuel intends to raise up to £8.0 million by issuing up to 15,686,276 common shares and warrants to purchase an aggregate of 7,843,128 common shares under the offering;
13. one of the Canadian investment firm stockholders resident in British Columbia and the two investment firm stockholders resident in Québec are participating in the offering;
14. on completion of the offering, the Canadian stockholders will own more than 10% of the outstanding common shares of PolyFuel and will represent more than 10% of the total number of the PolyFuel's common stockholders;
15. it is not a reporting issuer in any province in Canada and does not currently intend to become a reporting issuer in Canada;
16. it will provide the Canadian stockholders with the same information it is required by the AIM to provide to its foreign stockholders;
17. its securities are not currently listed on any exchange or quotation system and it has no plans to apply for a listing in Canada; and
18. the common shares that will be held by the Canadian stockholders will be subject to resale restrictions that may never expire.

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Order

¶ 3 Because the Executive Director considers that to do so would not be prejudicial to the public interest, it is ordered under section 76 of the Act that the first trade in PolyFuel common shares by the BC stockholders are exempt from the prospectus requirements, provided that:

(a) PolyFuel is not a reporting issuer in any jurisdiction of Canada at the date of the trade; and

(b) the trade is made through an exchange or market outside of Canada.

¶ 4 July 18, 2005

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