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January 12, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 76 – Exemption from s. 61 requirement to file a prospectus in connection with a distribution - An issuer wants relief from prospectus requirements in connection with the use of electronic roadshow materials during the waiting period for a prospectus offering - The issuer is offering securities by prospectus in Canada and the US; the electronic roadshow will comply with U.S. offering rules; all sales to Canadian investors will be made through a Canadian registrant; if the electronic roadshow materials contain a misrepresentation, any Canadian investor who views the materials and subsequently purchases under the Canadian prospectus has a right to sue the issuer and the Canadian underwriters

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61, 76 and 78

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec,
Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward
Island, Yukon, Northwest Territories And Nunavut
(the Jurisdictions)

and

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

and

In the Matter of
Photowatt Technologies Inc.
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for a ruling exempting the posting of certain roadshow materials on www.retailroadshow.com during the “waiting period” from the prospectus requirement and, except in British

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Columbia where registration relief is not required, the registration requirement under the Legislation (collectively, the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) Ontario is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decisions of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the federal laws of Canada under the name Photowatt Technologies Inc. on July 10, 2006.
2. The principal office of the Filer is located at 25 Reuter Drive, Cambridge, Ontario, N3E 1A9.
3. On August 29, 2006, the Filer filed a preliminary base PREP prospectus in respect of the proposed initial public offering (the Offering) of common shares of the Filer and contemporaneously filed a registration statement with the United States Securities and Exchange Commission (the SEC) in respect of the Offering.
4. On October 16, 2006, the Filer filed an amended and restated preliminary base PREP prospectus in respect of the Offering and contemporaneously filed an amendment no.1 to the registration statement with the SEC in respect of the Offering.
5. On November 9, 2006, the Filer filed an amendment no. 2 to the registration statement with the SEC in respect of the Offering.
6. The Filer intends to file an amended and restated preliminary base PREP prospectus in connection with the Offering as early as December 1, 2006 (the Amended Prospectus) and to commence the marketing of the Offering after the Amended Prospectus is filed and a MRRS decision document is obtained therefor.

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7. During the “waiting period”, the Filer intends to utilize electronic roadshow materials (the Website Materials) as part of the marketing of the Offering. In light of the international nature of the Offering, the Filer intends to make the Website Materials available equally to potential Canadian and U.S. investors.
8. Rule 433(d)(8)(ii) under the U.S. *Securities Act of 1933*, which came into effect in December 2005, requires the Filer to either file the Website Materials with the SEC or make them “available without restriction by means of graphic communication to any person....”
9. Compliance with applicable U.S. securities laws thus requires either making the Website Materials available in a manner that affords unrestricted access to the public, or filing the Website Materials on the SEC's EDGAR system, which will have the same effect of affording unrestricted access; however, this is inconsistent with Canadian securities laws, in particular, the prospectus requirement and ‘waiting period’ which when applied together require that access to the Website Materials be controlled by the Filer or the underwriters by such means as password protection and otherwise as suggested by National Policy 47-201 – *Trading Securities Using the Internet and Other Electronic Means* (NP 47-201).
10. The Filer wishes to comply with applicable U.S. securities laws by posting the Website Materials on www.retailroadshow.com. Access to the Website Materials on www.retailroadshow.com will not be controlled by the Filer or the underwriters in the manner suggested by NP 47-201; however, the Filer and the underwriters intend to take the measures described herein with respect to the Website Materials posted on www.retailroadshow.com.
11. The Website Materials will contain a statement that information conveyed through the Website Materials does not contain all of the information in the Amended Prospectus and the final version thereof (the Final Prospectus) and that the Amended Prospectus and the Final Prospectus should be reviewed by prospective purchasers for complete information.
12. The Website Materials will also contain a hyperlink to the Amended Prospectus and, once filed, the Final Prospectus.
13. The Website Materials, as well as each of the Amended Prospectus and the Final Prospectus will state that Canadian purchasers of common shares of the Filer will have a contractual right of action against the Filer and the underwriters in connection with the information contained in the Website Materials posted on www.retailroadshow.com.

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14. At least one underwriter signing the Amended Prospectus and the Final Prospectus will be registered in each of the Jurisdictions.
15. Canadian purchasers will only be able to purchase common shares of the Filer through an underwriter that is registered in the Jurisdiction of residence of the purchaser.
16. The Filer acknowledges that the Requested Relief relates only to the posting of the Website Materials on www.retailroadshow.com, and not in respect of the Amended Prospectus and the Final Prospectus.

Decision

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 Requested Relief is granted provided that the Amended Prospectus, and any further amendments thereto, and the Final Prospectus state that Canadian purchasers of the Filer's common shares have a contractual right of action against the Filer and the Canadian underwriters, substantially in the following form:

"We may make available certain materials describing the offering (the "Website Materials") on www.retailroadshow.com under the heading "Photowatt Technologies Inc. (IPO)" in accordance with U.S. securities law during the period prior to obtaining a final MRRS decision document for the final version of our amended and restated prospectus dated December •, 2006 (the "Prospectus") from the Canadian securities regulatory authorities. In order to give potential Canadian purchasers the same unrestricted access to the Website Materials as provided to potential U.S. purchasers, we have applied for exemptive relief from the securities regulatory authority in each of the provinces and territories of Canada. Pursuant to the terms of that exemptive relief, we and the Canadian underwriters will agree that, in the event that the Website Materials contained any untrue statement of a material fact or omitted to state a material fact required to be stated or necessary in order to make any statement therein not misleading in light of the circumstances in which it was made (a "misrepresentation"), a purchaser resident in any province or territory of Canada who purchases our common shares pursuant to the Prospectus during the period of distribution shall have, without regard to whether the purchaser relied on the misrepresentation, rights against us and each Canadian underwriter with respect to such

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misrepresentation as are equivalent to the rights under section 130 of the *Securities Act* (Ontario) and the comparable provision of the securities legislation of each of the other provinces and territories of Canada, subject to the defences, limitations and other terms thereof, as if such misrepresentation was contained in the Prospectus.”

Paul M. Moore
Vice-Chair
Ontario Securities Commission

Robert L. Shirriff
Commissioner
Ontario Securities Commission