

2006 BCSECCOM 123

February 23, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *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 is listed on an exchange outside of Canada; the issuer is not seeking to create a market for its securities in Canada by offering its securities to new Canadian investors; the issuer will provide security holders who are resident in Canada with the same continuous disclosure materials that are provided to foreign shareholders

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
Clean Air Power Limited (the "Corporation")

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 Corporation for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the prospectus requirements contained in the Legislation do not apply to the first trade of the Canadian Shares (as defined below) held by the Canadian Owners (as defined below) (the "Requested Relief").

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Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision 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 Corporation:

1. The Corporation was incorporated and registered in Bermuda on November 4, 2005 as an exempted company limited by shares with registered number EC 375 42.
2. The registered office of the Corporation is located in Hamilton, Bermuda and the principal place of business of the Corporation is located in Lancashire, United Kingdom.
3. The Corporation is not a reporting issuer or its equivalent in any jurisdiction of Canada and the Corporation has no present intention of becoming a reporting issuer in any jurisdiction of Canada.
4. Immediately prior to the Offering and the AIM Listing (each as defined below), none of the Corporation's securities are listed or quoted on any exchange or market in Canada or outside of Canada.
5. The Corporation has entered into a merger agreement pursuant to which Clean Air Power Merger Corporation, a wholly-owned Delaware incorporated subsidiary of the Corporation, will be merged with and into Clean Air Power, Inc. ("Clean Air US") and Clean Air US will survive to become a wholly owned subsidiary of the Corporation (the "Merger").
6. Following the Merger, the Corporation will become the parent holding company of Clean Air US and Clean Air Power Ltd., a private limited company incorporated under the laws of England and Wales.
7. Upon the Merger becoming effective the Corporation will issue to the stockholders of Clean Air US, in the aggregate, 16,318,479 common shares of the Corporation. At the time of the Merger, the Corporation also intends to

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adopt new share option plans and assume certain outstanding warrants to purchase 327,300 shares of common stock in Clean Air US, which will automatically convert to warrants to purchase 21,820 common shares of the Corporation upon the AIM Listing.

8. As a consequence of the Merger and immediately prior to the Offering, the Corporation's issued and outstanding share capital, on a fully diluted basis will consist of
 - (a) 16,318,479 common shares (the "Common Shares");
 - (b) 2,883,582 Common Shares reserved for issuance under the new share option plans; and
 - (c) 21,820 Common Share warrants.
9. After giving effect to the Merger, but before giving effect to the Offering, 3,765,400 Common Shares (the "Existing Canadian Shares") will be owned by residents of Canada. The Existing Canadian Shares will represent 19.59% of the outstanding Common Shares, on a fully diluted basis, prior to the Offering. One institutional investor owns 3,392,459 Common Shares, representing 90.10% of the total Existing Canadian Shares (the "Significant Canadian Shareholder").
10. After giving effect to the Merger, but before giving effect to the Offering, 18 persons or companies will own the Existing Canadian Shares (the "Canadian Owners"). The Canadian Owners will represent 32.14% of the total number of owners of Common Shares. All Canadian Owners are "accredited investors" as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106") and acquired the Existing Canadian Shares under private placement exemptions.
11. The Corporation proposes to conduct an initial public offering (the "Offering") of Common Shares outside of Canada. As part of the Offering, a private placement of Common Shares to the Significant Canadian Shareholder in reliance upon exemptions contained in NI 45-106 is contemplated. The Significant Canadian Shareholder intends to subscribe for up to 1,100,000 Common Shares (the "Canadian Offering Shares") under the Offering, in reliance upon such exemptions (the Canadian Offering Shares and Existing Canadian Shares referred to collectively as the "Canadian Shares").
12. The Corporation intends to obtain a listing of all of the outstanding Common Shares, immediately following the Offering, on the London Stock Exchange –

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Alternative Investment Market (“AIM”) in February 2006 (the “AIM Listing”). Following the Offering and the AIM Listing, the Common Shares will be publicly traded on AIM.

13. Immediately following completion of the Offering, it is anticipated that:
 - (a) the total number of Canadian Shares held by the Canadian Owners will be between 10% and 19% of the total number of issued Common Shares;
 - (b) assuming the Significant Canadian Shareholder subscribes for all of the Canadian Offering Shares, 92.33% of the Canadian Shares will be held by the Significant Canadian Shareholder; and
 - (c) the total number of Canadian Owners will exceed 10% of the total number of holders of Common Shares.
14. Any resale of the Canadian Shares by the Canadian Owners is expected to be effected through the facilities of AIM as there is no market for the Common Shares in Canada and none is expected to develop.
15. In the absence of exemptive relief, the first trade of the Canadian Shares will be deemed to be a distribution unless, among other things, the Corporation has been a reporting issuer for four months immediately preceding the trade in one of the Jurisdictions.
16. Section 2.14 of National Instrument 45-102 *Resale of Securities* cannot be utilized by the Canadian Owners with respect to a first trade of the Canadian Shares because, as at the date of distribution of the Canadian Shares, residents of Canada owned directly or indirectly more than 10% of the outstanding Common Shares and represented in number more than 10% of the total number of owners directly or indirectly of the Common Shares.
17. As required by the rules of the London Stock Exchange, holders of the Canadian Shares who are residents of Canada will receive copies of all materials provided to all other holders of the Common Shares.

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:

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- (a) the Corporation completes the Offering and the Common Shares are listed on AIM;
- (b) the Corporation is not a reporting issuer in any jurisdiction of Canada at the date of the trade; and
- (c) the first trade of the Canadian Shares is made through an exchange or market outside of Canada or to a person or company outside of Canada.

Paul M. Moore, Q.C.
Vice-Chair
Ontario Securities Commission

Robert W. Davis, FCA
Commissioner
Ontario Securities Commission