

March 31, 2005

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO, ALBERTA, SASKATCHEWAN, MANITOBA, QUÉBEC,  
NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, NEW BRUNSWICK,  
YUKON TERRITORY AND NUNAVUT  
(the Jurisdictions)**

**AND**

**IN THE MATTER OF  
THE MUTUAL RELIANCE REVIEW SYSTEM FOR  
EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF  
STUART ENERGY SYSTEMS CORPORATION (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 that the Filer is deemed to have ceased to a reporting issuer under the Legislation.

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 the decision.

**Representations**

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

1. The Filer was continued under the Canadian Business Corporations Act (the CBCA) by Certificate and Articles of Continuance effective July 28, 2000. The Filer's principal executive office is located at 5101 Orbitor Drive, Mississauga, ON L4W 4V1.
2. The authorized capital of the Filer consists of an unlimited number of common shares (the Shares) and an unlimited number of preference shares. As of February 18, 2005, there were no preference shares issued and outstanding and Hydrogenics Corporation (Hydrogenics) was the sole and direct beneficial owner of all of the issued and outstanding Shares by virtue of the Offer (as defined under paragraph 4 below).
3. The Filer is a reporting issuer in each of the Jurisdictions.
4. On November 30, 2005, Hydrogenics Corporation (Hydrogenics) made an offer (the Offer) by way of share exchange take-over bid in accordance with Part XX of the Securities Act (Ontario) to purchase all of the issued and outstanding Shares at an exchange ratio of 0.74 common shares of Hydrogenics for every Share. The Offer was initially scheduled to expire at 12:01 a.m. (Toronto time) January 6, 2005.
5. On January 6, 2005, Hydrogenics took up and paid for 86% of the Shares which had been deposited to the Offer and extended the Offer until 6:00 p.m. (Toronto time) January 20, 2005 to enable those shareholders of the Filer that had not yet tendered their Shares to the Offer to tender their Shares.
6. On January 20, 2005, the Offer expired and Hydrogenics took up and paid for those Shares that had been deposited to the Offer during the extension period, bringing Hydrogenics' total holdings in the Filer to more than 93% of the issued and outstanding Shares on a fully diluted basis. Accordingly, Hydrogenics exercised its right to effect a compulsory acquisition under subsection 206(3) of the CBCA to acquire the remaining Shares by delivering an offeror's notice to the remaining shareholders of the Filer on January 21, 2005.
7. Hydrogenics completed the compulsory acquisition of the remaining Shares on February 17, 2005. As a result, Hydrogenics is the sole and direct beneficial owner of all of the issued and outstanding Shares.
8. The Shares of the Filer were available for trading on the Toronto Stock Exchange (the TSX) until February 18, 2005 under the symbol HHO. The Shares have now been delisted from the TSX and no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 – Marketplace Operation. The Filer does not have any debt securities issued and outstanding.
9. The Filer does not intend to offer its securities to the public.
10. Pursuant to Part 4 of National Instrument 51-102 – Continuous Disclosure Obligations (NI 51-102), the Filer was required to file its interim financial statements for the three-month period ended December 31, 2004 by no later than February 15, 2005 (the Financial Statement Deadline).

11. As the compulsory acquisition of the Filer and delisting of the Shares were not completed until February 17 and 18, 2005, respectively, the Filer's failure to file its interim financial statements by the Financial Statement Deadline constitutes a technical violation of Part 4 of NI 51-102.

12. Other than as described in paragraph 11. above, the Filer is not otherwise in default of any of its reporting issuer (or equivalent) obligations under the Legislation.

### **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 Filer be deemed to have ceased to be a reporting issuer in each of the Jurisdictions.

"Paul M.  
Moore"  
Vice-Chair  
Ontario  
Securities  
Commission

"Wendell S. Wigle Q.C"  
Commissioner  
Ontario Securities Commission

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - Issuer has only one security holder - Issuer deemed to cease to be a reporting issuer under applicable securities laws.

### **Applicable Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., s. 83  
National Instrument 51-102 Continuous Disclosure Obligations