



Our File No.: 4828-114

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FILED ELECTRONICALLY

British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, BC V7Y 1L2
(as Principal Regulator)

Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON M5H 3S8

Dear Sirs and Mesdames:

Re: Hybrid Power Solutions Inc. (the "Filer") – Application under National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions for the Exemptions Sought (as defined herein)

On behalf of the Filer, we hereby make application to the British Columbia Securities Commission (the "BCSC"), as principal regulator, and the Ontario Securities Commission (the "OSC") for exemptive relief from Section 3.3(1)(a)(i) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"), as further described below. The Filer makes this application (the "**Application**") pursuant to National Policy 11-203 – *Process for Exemptive Relief Applications In Multiple Jurisdictions* ("NP 11-203") and Multilateral Instrument 11-102 – *Passport System* ("MI 11-102").

The Filer's head office is in Vancouver, British Columbia and, pursuant to Section 3.6 of NP 11-203, the BCSC is the principal regulator for the purpose of this Application. In accordance with NP 11-203, we advise that this application for exemptive relief is a dual application and the Filer is filing this application with the BCSC and the OSC. The Filer hereby provides notice pursuant to Section 5.2(2)(a)(v) of NP 11-203 that it will rely on Section 4.7(1) of MI 11-102 with respect to the equivalent provisions under the securities legislation of Ontario, Alberta, Saskatchewan, and Newfoundland and Labrador (British Columbia, Ontario, Alberta, Saskatchewan, and Newfoundland and Labrador collectively referred to as the "**Jurisdictions**").

Pursuant to Subsection 5.2(2)(a)(iv) of NP 11-203, attached as Appendix "A" to this Application is a table of concordance setting out the relevant legislative provisions from which relief is being sought in the Jurisdictions in which this Application is being made.

The Filer believes this Application is routine and does not involve any novel or substantive issues. As a result, no pre-filing consultations were undertaken with the BCSC as principal regulator.

A. EXEMPTIONS SOUGHT

The Filer is applying to the BCSC and OSC for a decision (the “**Exemptions Sought**”) that:

1. provides exemptive relief pursuant to Section 5.1 of NI 52-107 from the requirement in Section 3.3(1)(a)(i) of NI 52-107 that an auditor’s report for financial statements filed pursuant to section 4.1 of National Instrument 51-102 – *Continuous Disclosure Obligations* (“**NI 51-102**”) must express an unmodified opinion in respect of:
 - i. the Filer’s audited financial statements for the financial year ended May 31, 2023; and
 - ii. the comparative period in the Filer’s audited financial statements for the financial year ended May 31, 2022;

filed on September 28, 2023 pursuant to NI 51-102 (the “**2023 Financial Statements**”); and

2. provides exemptive relief pursuant to Section 5.1 of NI 52-107 from the requirement in Section 3.3(1)(a)(i) of NI 52-107 that an auditor’s report for financial statements included in a prospectus must express an unmodified opinion in respect of the 2023 Financial Statements, as the Filer proposes to file a short form base shelf prospectus pursuant to National Instrument 44-101 – *Short Form Prospectus Distributions* (“**NI 44-101**”) and National Instrument 44-102 – *Shelf Distributions* which incorporates (“**NI 44-102**”) the 2023 Financial Statements by reference.

B. FACTS AND BACKGROUND

3. The Filer previously operated under the name HPSI Holdings Inc. (“**HSPI**”), which was incorporated on December 7, 2015 under the Ontario *Business Corporations Act* (the “**OBCA**”). On June 13, 2022, HPSI continued its existence out of Ontario and into British Columbia under the British Columbia *Business Corporations Act* (the “**BCBCA**”). On July 22, 2022, HPSI and its former parent Hybrid Power Solutions Inc. (formerly, 2494760 Ontario Inc.) completed a vertical short-form amalgamation into a single corporate entity to form the Filer under the BCBCA. In connection with the vertical amalgamation, HPSI changed its name to Hybrid Power Solutions Inc., which is the current name of the Filer.
4. The Filer is a “reporting issuer” as defined in the applicable securities legislation in the Jurisdictions. The Filer is not in default of securities legislation in any Jurisdiction aside from the default related to the filing of the 2023 Financial Statements with a qualified opinion, as described in items 8 and 12 below.
5. The Filer’s common shares are listed for trading on the Canadian Securities Exchange under the symbol “HPSS”.
6. The Filer is a clean energy company specializing in producing industrial grade clean technology products such as portable power packs and stationary energy storage. The Filer’s business is not seasonal.

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7. On April 14, 2023, the Filer filed a preliminary long form prospectus with the BCSC and OSC (the “**Preliminary Prospectus**”) in connection with the Filer’s initial public offering of units. The BCSC and OSC provided a receipt for the Preliminary Prospectus on April 17, 2023.
 8. The Preliminary Prospectus incorporated the Filer’s audited annual financial statements for the year ended May 31, 2022 (the “**2022 Financial Statements**”) and auditor’s report thereon, which contained a qualified audit opinion from the Filer’s auditors, MNP LLP (“**MNP**”) related to opening inventories and the effect of opening inventories on the results of operations and cash flows. As MNP was appointed as auditor of the Filer during the financial year ended May 31, 2022, MNP was not able to observe the counting of physical inventories at June 1, 2021 or satisfy themselves concerning those inventory quantities by alternative means.
 9. The Preliminary Prospectus also incorporated the Filer’s audited interim financial statements for the 6-month period ended November 30, 2022 (the “**November 2022 Interim Statements**”). The audit report included with the November 2022 Interim Statements expresses an unmodified audit opinion.
 10. On July 14, 2023, the Filer filed its final long form prospectus with the BCSC and OSC (the “**Prospectus**”), containing the 2022 Financial Statements and the November 2022 Interim Statements. The BCSC and OSC provided a receipt for the Prospectus on July 17, 2023.
 11. Subsequent to the Prospectus, the Filer filed, and was issued receipts from the BCSC and OSC for:
 - i. an amended and restated long form prospectus dated August 28, 2023 (amending the Prospectus) (the “**Amended and Restated Prospectus**”);
 - ii. an amendment dated September 13, 2023 to the Amended and Restated Prospectus; and
 - iii. an amendment dated October 18, 2023 to the Amended and Restated Prospectus(the Amended and Restated Prospectus together with subsequent amendments referred to as the “**Final Prospectus**”).
 12. On September 28, 2023, the Filer filed the 2023 Financial Statements and auditor’s report thereon, pursuant to its obligations as a reporting issuer under section 4.1 of NI 51-102. The 2023 Financial Statements contained a qualified audit opinion from MNP in respect of the consolidated financial performance and cash flows for the comparative period ended May 31, 2022, due to MNP’s inability to satisfy themselves as to opening inventories for that financial year, as discussed in item 8 above. The auditor’s report for the 2023 Financial Statements is otherwise unmodified.
 13. In its submissions to the BCSC and OSC regarding the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus containing the 2022 Financial Statements, the Filer requested exemptive relief from the requirement that the audited financial statements contained in the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus contain an unmodified audit opinion, relying on Section 5.8(2) of 41-101CP, which provides that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor’s report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent

audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal (which requirement was met with the inclusion of the November 2022 Interim Statements in the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus). The receipts provided for the Prospectus and Amended and Restated Prospectus constituted evidence that the relief requested had been granted.

14. On December 28, 2023, the Filer filed a Notice Declaring Intention to be Qualified Under NI 44-101 and NI 44-102 so that it could proceed with the filing of a short form base shelf prospectus.

C. SUBMISSION

The Filer respectfully submits that it is appropriate to grant the Filer the Exemptions Sought for the following reasons:

15. Section 5.8(2) of 41-101CP contemplates that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements included in a prospectus to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal. The Filer received relief pursuant to Section 5.8(2) of 41-101CP from the requirement in Section 3.3(1)(a)(i) of NI 52-107 that the auditor's report on the 2022 Financial Statements included in the Prospectus and Final Prospectus express an unmodified opinion, such relief evidenced by the receipts issued for the Prospectus and Final Prospectus by the BCSC and OSC.
16. The Filer received receipts from the BCSC and OSC for its Final Prospectus containing the 2022 Financial Statements, including a receipt for its amendment dated October 18, 2023 to the Amended and Restated Prospectus, after the 2023 Financial Statements had been posted and formed part of its continuous disclosure record as a reporting issuer. The Filer was thus under the impression that no exemptive relief in connection with the filing of the 2023 Financial Statements was required because exemptive relief respecting the qualified audit report as it related to the 2022 Financial Statements had been provided in connection with the aforementioned prospectus filings.
17. The Filer can not reasonably eliminate the qualified opinion contained in the 2022 Financial Statements, as no auditor was appointed at the time its 2022 opening inventory count took place.
18. The 2023 Financial Statements contained an unmodified audit opinion respecting 12 months of financial statements, which is 6 months more than is required to qualify for the relief contemplated in Section 5.8(2) of 41-101CP. The Filer's business is not seasonal. The Filer would thus have qualified for the relief contemplated in Section 5.8(2) of 41-101CP in connection with the filing of the 2023 Financial Statements pursuant to Section 4.1 of NI 51-102 but for the fact that it was not a non-reporting issuer at the time of the filing and the 2023 Financial Statements were being filed pursuant to Section 4.1 of NI 51-102 rather than being included in a prospectus.
19. In our view, the differences between the scenario pursuant to which relief is available under Section 5.8(2) of 41-101CP and the scenarios contemplated in this application (allowing the 2023 Financial Statements with a modified audit opinion to be filed pursuant to Section 4.1 of NI 51-102 and included in a short form base shelf prospectus pursuant to NI 44-101 and NI 44-102) are minimal, with the only difference being that Section 5.8(2) of 41-101CP only applies to prospectus filings

by non-reporting issuers. The information available in the 2023 Financial Statements and not subject to any audit modification is more extensive (12 months with an unmodified audit opinion vs. 6 months with an unmodified) than the information required for relief under Section 5.8(2) of 41-101CP.

20. Similar relief to the Exemptions Sought has been granted by Canadian securities administrators in the past to non-reporting issuers.
21. It would not be prejudicial to grant the Exemptions Sought.

D. PRIOR DECISIONS

22. The Filer respectfully submits that the Exemptions Sought are not novel. Similar relief has been granted by provincial securities regulators in the past, including:
 - (a) *HSF Capital Corporation., Re*, 2010 BCSECCOM 88; and
 - (b) *Symax Lift (Holding) Co. Ltd.*, 2009 ABASC 592.

E. SUPPORTING DOCUMENTS

The following documents are being filed concurrently with this Application:

- (a) a copy of each of the precedent orders referenced in paragraph 22 above;
- (b) a copy of a draft decision document, attached as Appendix B; and
- (c) an executed verification statement of an officer of the Filer, attached as Appendix C.

Filing fees for this Application in the amount of \$9,650 are being submitted electronically concurrently with this application.

The Filer has pre-filed a preliminary short form base shelf prospectus, pursuant to CSA Staff Notice 43-310 (Revised) – *Confidential Pre-File Review of Prospectuses*, with the BCSC. The Filer’s intention is to finalize and submit a base shelf prospectus pursuant to National Instrument 44-101 as soon as possible. As a result, we kindly request your earliest attention to the foregoing Application and attached materials.

We trust you will find the foregoing and enclosed satisfactory. If you have any questions or require any additional information, please contact the undersigned at 604-331-9549.

MORTON LAW LLP

“Ryan Gill”

Per: Ryan Gill
RG
Enclosures

APPENDIX "A"

TABLE OF CONCORDANCE FOR EXEMPTION SOUGHT

	British Columbia	Ontario	Alberta	Saskatchewan	Newfoundland and Labrador
Exemption Sought	National Instrument 52-107 <i>Acceptable Accounting Principles, Auditing Standards and Reporting Currency</i>				

APPENDIX “B”

Citation: Hybrid Power Solutions Inc., Re, 2024 BCSC ●

Date: ●, 2024

In the Matter of
the Securities Legislation of
British Columbia and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Hybrid Power Solutions Inc. (the **Filer**)

Decision**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer pursuant to Section 5.1 of National Instrument 52-107 - *Acceptable Accounting Principles and Auditing Standards* (“**NI 52-107**”) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for exemptions (the **Exemptions Sought**) from the requirement in Section 3.3(1)(a)(i) of NI 52-107 that:

1. the auditor’s report for the Filer’s audited financial statements for the financial year ended May 31, 2023 (the “**2023 Financial Statements**”) filed pursuant to section 4.1 of National Instrument 51-102 – *Continuous Disclosure Obligations* (“**NI 51-102**”) express an unmodified opinion; and
2. the auditor’s report for the 2023 Financial Statements to be incorporated by reference into a short form base shelf prospectus which the Filer proposes to file pursuant to National Instrument 44-101 – *Short Form Prospectus Distributions* (“**NI 44-101**”) and National Instrument 44-102 – *Shelf Distributions* (“**NI 44-102**”) express an unmodified opinion.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Saskatchewan, and Newfoundland and Labrador; and

- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

3. The Filer previously operated under the name HPSI Holdings Inc. (“**HSPI**”), which was incorporated on December 7, 2015 under the Ontario *Business Corporations Act* (the “**OBCA**”). On June 13, 2022, HPSI continued its existence out of Ontario and into British Columbia under the British Columbia *Business Corporations Act* (the “**BCBCA**”). On July 22, 2022, HPSI and its former parent Hybrid Power Solutions Inc. (formerly, 2494760 Ontario Inc.) completed a vertical short-form amalgamation into a single corporate entity to form the Filer under the BCBCA. In connection with the vertical amalgamation, HPSI changed its name to Hybrid Power Solutions Inc., which is the current name of the Filer.
4. The Filer is a “reporting issuer” as defined in the applicable securities legislation of British Columbia, Alberta, Saskatchewan, Ontario, and Newfoundland and Labrador.
5. The Filer’s common shares are listed for trading on the Canadian Securities Exchange under the symbol “HPSS”.
6. The Filer is a clean energy company specializing in producing industrial grade clean technology products such as portable power packs and stationary energy storage. The Filer’s business is not seasonal.
7. The Filer’s auditor is MNP LLP (“**MNP**”).
8. On April 14, 2023, the Filer filed a preliminary long form prospectus with the BCSC and OSC (the “**Preliminary Prospectus**”) in connection with the Filer’s initial public offering of units. The BCSC and OSC provided a receipt for the Preliminary Prospectus on April 17, 2023.
9. The Preliminary Prospectus incorporated the Filer’s audited annual financial statements for the year ended May 31, 2022 (the “**2022 Financial Statements**”) and auditor’s report thereon, which contained a qualified audit opinion from MNP related to opening inventories and the effect of opening inventories on the results of operations and cash flows. As MNP was appointed as auditor of the Filer during the financial year ended May 31, 2022, MNP was not able to observe the counting of physical inventories at June 1, 2021 or satisfy themselves concerning those inventory quantities by alternative means.
10. The Preliminary Prospectus also incorporated the Filer’s audited interim financial statements for the 6-month period ended November 30, 2022 (the “**November 2022 Interim Statements**”). The

audit report included with the November 2022 Interim Statements expresses an unmodified audit opinion.

11. On July 14, 2023, the Filer filed its final long form prospectus with the BCSC and OSC (the “**Prospectus**”), containing the 2022 Financial Statements and the November 2022 Interim Statements. The BCSC and OSC provided a receipt for the Prospectus on July 17, 2023.
12. Subsequent to the Prospectus, the Filer filed, and was issued receipts from the BCSC and OSC for:
 - i. an amended and restated long form prospectus dated August 28, 2023 (amending the Prospectus) (the “**Amended and Restated Prospectus**”);
 - ii. an amendment dated September 13, 2023 to the Amended and Restated Prospectus; and
 - iii. an amendment dated October 18, 2023 to the Amended and Restated Prospectus(the Amended and Restated Prospectus together with subsequent amendments referred to as the “**Final Prospectus**”).
13. On September 28, 2023, the Filer filed the 2023 Financial Statements and auditor’s report thereon, pursuant to its obligations as a reporting issuer under section 4.1 of NI 51-102. The 2023 Financial Statements contained a qualified audit opinion from MNP in respect of the consolidated financial performance and cash flows for the comparative period ended May 31, 2022, due to MNP’s inability to satisfy themselves as to opening inventories for that financial year. The auditor’s report for the 2023 Financial Statements is otherwise unmodified.
14. In its submissions to the BCSC and OSC regarding the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus containing the 2022 Financial Statements, the Filer requested exemptive relief from the requirement that the audited financial statements contained in the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus contain an unmodified audit opinion, relying on Section 5.8(2) of 41-101CP, which provides that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor’s report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor’s report expresses an unmodified opinion and the business is not seasonal (which requirement was met with the inclusion of the November 2022 Interim Statements in the Preliminary Prospectus, Prospectus, and Amended and Restated Prospectus). The receipts provided for the Prospectus and Amended and Restated Prospectus constituted evidence that the relief requested had been granted.
15. The Filer is currently in default of securities legislation due to the inclusion of the modified audit opinion in the 2023 Financial Statements.
16. Except for the default noted above, the Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer.

- 17. The 2023 Financial Statements contain an unmodified opinion respecting the statement of financial position, statement of loss and comprehensive loss, statement of change in shareholders deficiency and statement of cash flows for the 12 months ended May 31, 2023.
- 18. On December 28, 2023, the Filer filed a Notice Declaring Intention to be Qualified Under NI 44-101 and NI 44-102 so that it could proceed with the filing of a short form base shelf prospectus.
- 19. Without the Exemptions Sought, the Filer will continue to be in default of securities legislation in connection with the filing of the 2023 Financial Statements and will not qualify to file a short form base shelf prospectus pursuant NI 44-101 and NI 44-102.
- 20. Except for the qualification referred to above, the 2023 Financial Statements comply with NI 52-107.

Decision

Each of the Decision Makers is satisfied that the decision meet the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptions Sought are granted, provided that the only modification in the auditor’s report accompanying the Filer’s annual financial statements for the year ended May 31, 2023 relates to opening inventories and the effect of opening inventories on the results of operations and cash flows on the financial information for the year ended May 31, 2022.

_____ (Name of signatory for the principal regulator)

_____ (Title)

_____ (Name of principal regulator)

APPENDIX "C"

CERTIFICATE OF VERIFICATION


TO: British Columbia Securities Commission

RE: Hybrid Power Solutions Inc. - *Application under the Process for Exemptive Relief Applications in Multiple Jurisdictions for the Request Relief (as defined in the attached application)*

We authorize the making and filing of the attached application by our solicitors, Morton Law LLP, and we confirm the truth of the facts contained therein.

DATED at Vancouver, B.C. this 15th day of January, 2024.

HYBRID POWER SOLUTIONS INC.

DocuSigned by:

By: _____
31F2353A7F10413
Alexander McAulay
Chief Financial Officer