UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66064 / December 28, 2011

Admin. Proc. File No. 3-14640

In the Matter of the Application of CLEANTECH INNOVATIONS, INC. For Review of Action Taken by The NASDAQ Stock Market, LLC	ORDER DENYING MOTIONS FOR STAY OF DELISTING AND EXPEDITED DISCOVERY

By letter dated November 23, 2011, Cleantech Innovations, Inc. ("CleanTech" or "Company") applied for review of the decision of the NASDAQ Stock Market, LLC ("NASDAQ" or "Exchange") to delist CleanTech's securities from the Nasdaq Capital Market. NASDAQ determined that CleanTech intentionally withheld documents regarding a financing. On December 22, 2011, CleanTech requested a stay from the Commission of the delisting and sought expedited discovery.[1]

I.

CleanTech, through wholly owned subsidiaries in China, designs and manufactures wind turbines and other wind products. The Company was formed in July 2010 by a reverse merger of a Chinese entity and an American shell company. Thereafter, CleanTech sought listing on the Exchange.

During the listing application process, NASDAQ staff sought information concerning the relationship between CleanTech and a certain Benjamin Wey and any entities related to Wey, including any "loans or similar arrangements to or from" Wey or any entities affiliated with

[1] Commission Rule of Practice 401(d)(2) provides that we may consider a stay of an action by a self-regulatory organization summarily, without notice and opportunity for hearing. 17 C.F.R. § 201.401(d)(2); *see also* Section 19(d)(2) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(d)(2) (stating that the appropriate regulatory agency may consider summarily the question of whether to grant a stay of a self-regulatory organization's action).

Wey.[2] CleanTech produced documents. Thereafter, the NASDAQ staff determined that additional documents were available that had been sent or copied to CleanTech's corporate counsel. CleanTech provided to NASDAQ some additional documents on November 24, December 3, and December 7, 2010. The Listing and Hearing Review Council ("Council") opinion found that none of these documents referred to a potential financing. On December 10, 2010, NASDAQ staff approved the listing for CleanTech.

On December 16, 2010, the company filed a Form 8-K disclosing financing transactions involving affiliates of Wey that closed on December 13, 2010 ("December Financing"). NASDAQ staff contacted CleanTech and obtained an additional 190 e-mails that had not been previously disclosed, which the Council found showed significant correspondence with Wey and his affiliates regarding the December Financing. The staff then notified CleanTech of its decision to delist the Company. CleanTech requested a hearing, which was held on February 24, 2011. On February 28, 2011, the NASDAQ Hearings Panel determined to delist the Company's securities. On March 2, 2011, trading in CleanTech on the Nasdaq Capital Market was suspended and has not resumed, although it continues to trade on the Pink Sheets Electronic Quotation System.

CleanTech appealed the decision to the Council. On May 19, 2011, the Council remanded the proceeding to the Hearings Panel for further findings, including whether the Company intentionally withheld information about the December Financing and whether the Company knew that the listing approval was imminent when it failed to provide that information. However, according to the Council's decision, "it was discovered that the Company had failed to provide a copy of its written submission to the" NASDAQ staff. Following the staff's responses to CleanTech's submissions and CleanTech's subsequent reply, the Council concluded that CleanTech had intentionally withheld documents in violation of NASDAQ rules and affirmed the Hearing Panel's decision to delist the Company's securities.

The NASDAQ Board of Directors declined to call the Council's decision for review. CleanTech's application for review to the Commission followed. On December 16, 2011, NASDAQ filed a Form 25 with the Commission to effectuate the formal delisting of the Company from the Nasdaq Capital Market.[3]

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[2] NASDAQ states that it was concerned about Wey's involvement with CleanTech because Wey had a regulatory disciplinary history and was involved with a company that was delisted from the American Stock Exchange.

[3] On December 20, 2011, the New York State Supreme Court issued an order requiring NASDAQ to show cause why the delisting should not be stayed and issued a temporary restraining order with respect to the delisting. *CleanTech Innovations, Inc. v. NASDAQ Stock Market, LLC,* Index No. 653524-2011. On December 20, 2011, NASDAQ removed the state court action to the United States District Court for the Southern District of New York. 11 Civ. 9358 (KBF).

II.

Under Rule of Practice 401(d), the Commission may stay an action of the Exchange upon a motion by a person aggrieved by such action.[4] In determining under Rule 401(d) whether to stay CleanTech's delisting from the Nasdaq Capital Market, the Commission considers (1) whether there is a strong likelihood that CleanTech will succeed on the merits of its application for review, (2) whether, absent a stay, CleanTech will suffer irreparable injury, (3) whether there will be substantial harm to the public if we stay the delisting, and (4) whether staying the delisting will serve the public interest.[5]

Commission review of the delisting of CleanTech stock is governed by Exchange Act Section 19(f).[6] Pursuant to Section 19(f), the Commission must dismiss an application for review of an Exchange delisting if it finds that "the specific grounds on which such [delisting]. . . is based exist in fact, that such [delisting] . . . is in accordance with the rules of [the Exchange] and that such rules are, and were applied in a manner, consistent with the purposes of [the Exchange Act]."[7]

Although any final determination must await Commission review on the merits, it appears, based on the briefs filed by the parties thus far, that CleanTech has not established a strong likelihood that it will succeed. From the pleadings currently before us, while CleanTech states that it provided substantial information about its relationship with Wey to NASDAQ staff, it appears that CleanTech does not dispute that it did not disclose the pending December Financing until it filed its Form 8-K. CleanTech suggests that it did not produce all the requested information because it was unaware that its listing approval was imminent and it believed it had additional time to comply with the staff's requests. CleanTech also cites barriers to its production, including time zone differences, language barriers, and unspecified technical issues. However, it appears that negotiations with respect to the December Financing may have been occurring while the staff was asking for information about it.

CleanTech states that NASDAQ also improperly sought to force it to waive the attorney-client privilege. However, CleanTech asserts only that "many" of the documents were protected

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4 17 C.F.R. § 201.401(d).

5 *Rules of Practice*, 60 Fed. Reg. 32738, 32772 (June 9, 1995) (comment to Rule 401); *JD American Workwear, Inc.*, Securities Exchange Act Rel. No. 43283 (Sept. 12, 2000), 73 SEC Docket 748, 752; *Robert J. Prager*, Exchange Act Rel. No. 50634 (Nov. 4, 2004), 84 SEC Docket 162, 163 (citing *Cuomo v. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985)).

6 15 U.S.C. § 78s(f).

7 *Fog Cutter Capital Group, Inc.*, Exchange Act Rel. No. 52993 (Dec. 21, 2005), 86 SEC Docket 3164, 3169-70 & n.13, *aff'd*, 474 F.3d 822 (D.C. Cir. 2007).

by the privilege, and the Council opinion states that some documents were "copied" to corporate counsel. The Council opinion further noted that, under NASDAQ rules, the Exchange "may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing"[8] or to support its continued listing.[9]

CleanTech also suggests that the NASDAQ staff was biased against it because it is a Chinese company. While an assessment of this assertion must be deferred until the Commission has an opportunity to review the merits, it should be noted that the Commission in the past has stated that its "*de novo* review of the evidence cures whatever bias, if any, that may have existed."[10]

CleanTech complains that the NASDAQ Board of Directors did not review the Council's decision and correct the errors that CleanTech alleges occurred. However, Board review is discretionary.[11] CleanTech had a hearing before the Hearings Panel, appealed to the Council, and has now sought Commission review of NASDAQ's actions.

Nor has CleanTech established that, absent a stay, it will suffer irreparable injury. CleanTech argues that delisting unfairly penalizes the Company and its shareholders. The Commission, however, has held that the fact that a security is delisted does not necessarily result in irreparable harm to the issuer because its securities may continue to trade in other markets.[12] It appears that its securities have been quoted on the Pink Sheets Electronic Quotation Service since that suspension. Moreover, quotation of CleanTech's securities has been suspended since March 2011. If its securities cannot be quoted on the Nasdaq Capital Market, any harm from CleanTech's delisting appears attenuated.

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8 NASDAQ Rule 5205(e).

9 NASDAQ Rule 5250(a)(1) (permitting the request of "any information or documentation, public or non-public" as NASDAQ deems necessary to make a determination regarding a company's continued listing).

10 *Richard G. Cody*, Exchange Act Rel. No. 64565 (May 27, 2011), __ SEC Docket __, __ n.79, 2011 WL 2098202, at *19.

11 NASDAQ Rule 5825 (providing review may be called by one or more Directors and stating that "review will be undertaken solely at the discretion of the Nasdaq Board").

12 *JD American Workwear*, 73 SEC Docket at 753-54 & n.18 (citing *Millenia Hope*, Exchange Act Rel. No. 42739 (May 1, 2000), 72 SEC Docket 965, 966); *see also East St. Louis Laborers' Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700, 704 (7th Cir. 2005) (claims of "speculative injuries" do not demonstrate irreparable harm); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (holding that "injury must be certain and great; it must be actual and not theoretical").

CleanTech suggests that its "insolvency is imminent," citing the difficulty that it has had in obtaining financing. In support of this assertion, CleanTech states that in December 2010 it was working on a stock offering and that its share price fell from $9.00 per share to $.70 per share between November 2010 and December 2011. However, it is unclear how the filing of the Form 25 on December 16, 2011 was a cause of these events.

Although the Commission recognizes that the existing CleanTech shareholders may be disadvantaged by the delisting, it is nevertheless critical to NASDAQ's ability to regulate its markets for it to obtain full and accurate information when it requests it from its issuers. Therefore, this detriment is outweighed by the public interest in the Exchange's obtaining full responses from the Company to the Exchange's requests for information.[13]

CleanTech also seeks "expedited discovery related to the failure to NASDAQ to follow its own policies and procedures." It appears that CleanTech questions whether NASDAQ gave each of its Board members "access to complete information about the matter" and whether each Board member "made a fully informed decision not to call the matter for review." The pleadings are unclear as to the basis for CleanTech's assertion, what additional evidence CleanTech seeks,

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[13] *JD American Workwear*, 73 SEC Docket at 754 (citing *Millenia Hope*, 72 SEC Docket at 966-67); *see also Biorelease Corp.*, 52 S.E.C. 219, 224 (1995) (noting that, while delisting may hurt existing investors, their interests are outweighed by prospective future investors).

or the relevance of such evidence to this proceeding, which is now under the Commission's *de novo* review. The Commission's Rules of Practice do not provide for discovery in proceedings under Section 19(f).[14]

Accordingly, IT IS ORDERED that the motion to stay the ruling by the NASDAQ Stock Market, LLC to delist CleanTech Innovation, Inc. be, and it hereby is, denied; and it is further

ORDERED, that the motion of CleanTech Innovation, Inc. for expedited discovery to obtain additional evidence be, and it hereby is, denied.

For the Commission by the Office of General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary

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[14] 17 C.F.R. §§ 201.420, 421.