

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
FOUNDATION EQUITY CORPORATION**

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) makes the following allegations:

1. The Respondent, Foundation Equity Corporation (“Foundation”) is a private company which was incorporated pursuant to the laws of Alberta on May 24, 1990. Foundation is a venture capital company which invests in other companies. Its shareholders consist of approximately 40 individuals, each of whom has contributed varying amounts of capital. At the material time, Foundation had a trading account at CIBC Wood Gundy Inc. (“Wood Gundy”).
2. Kerry Brown (“Brown”) is an individual who resides in St. Albert, Alberta. At the material time, Brown was a shareholder of Foundation and was its President, CEO and Chairman.
3. Global Thermoelectric Inc. (“GLE”) is a company which was initially incorporated, under a different name, in Alberta in 1975 and is currently situated in Calgary. GLE’s primary line of business is designing and manufacturing fuel cells intended to supplement or replace gasoline engines.

4. GLE was one of the ventures in which Foundation invested. As of the close of business on April 15, 1999, Foundation owned 6,019,151 (or 37%) of the 16,173,184 common shares of GLE then issued and outstanding.
5. GLE became a reporting issuer in Alberta on August 3, 1994 and obtained a listing on the Alberta Stock Exchange on September 30, 1996.
6. GLE became a reporting issuer in Ontario on October 8, 1998, the date on which GLE obtained a listing on the Toronto Stock Exchange (“TSE”).
7. In addition to Alberta and Ontario, GLE also has reporting issuer status in British Columbia and Manitoba.
8. Between October 8, 1998, the date on which GLE obtained reporting issuer status in Ontario, and April 7, 1999, the shares of GLE traded on the TSE at prices ranging from \$.86 to \$1.20.
9. On April 8, 1999, GLE issued a press release in which it announced that “it has achieved record power output in the first test of a new proprietary design solid oxide fuel cell”.
10. On Friday, April 16, 1999, the opening price of GLE on the TSE was \$3.60. At approximately 11:20 a.m., GLE issued a news release announcing a major contract. Over the remainder of April 16, 1999, GLE traded as high as \$16 per share and closed the day at \$10.70 per share.
11. On the morning of Friday, April 16, 1999, Foundation instructed Wood Gundy to sell one million shares of GLE from Foundation’s account. The entire block of one million GLE shares was sold on April 16, 1999 at an average price of \$11.83 per share.

12. On Monday, April 19, 1999, Foundation instructed Wood Gundy to sell an additional one million shares of GLE. A total of 226,200 shares of GLE was sold that day at an average price of \$10.42 before Foundation instructed Wood Gundy to cancel the order at approximately 3:00 p.m.
13. By way of letter dated April 20, 1999, transmitted by fax on that date, Foundation filed a Form 23 (“Notice of Intention to Sell”) with the Commission, purportedly as provided for in section 72(7) of the Act. The Form 23 acknowledged that 1,226,000 shares of GLE had already been sold by Foundation on April 16 and 19, 1999.
14. Item #2 of Form 23 required Foundation to certify the “Date issuer became a reporting issuer:”. The Form 23 filed by Foundation incorrectly stated that: “Global Thermoelectric Inc. became a reporting issuer on August 3, 1994”-- being the date on which GLE became a reporting issuer in Alberta. GLE did not become a reporting issuer in Ontario until October 8, 1998.
15. On April 16, 1999, the first date on which Foundation sold shares of GLE, Foundation owned 37% of the issued and outstanding shares of GLE and therefore was in a position to affect materially the control of GLE within the meaning of clause (c) of section 1(1) of the Act. The sale of shares from Foundation’s “control block” in GLE therefore constituted a distribution within the meaning of the Act.
16. As a result, Foundation was not permitted to sell its shares of GLE unless it had first either complied with the prospectus requirements of section 53 of the Act; qualified for an exemption under the Act; established that the sale from its control block did not constitute a “distribution” within the meaning of the Act; or obtained an exemption order from the Commission; none of which Foundation did.

17. The Form 23 “Notice of Intention to Sell” filed by Foundation after it had already sold approximately 1.2 million shares of GLE from its control block did not comply with the provisions of section 72(7) of the Act because GLE had not been a reporting issuer in Ontario for at least 18 months. At the time Foundation sold its shares of GLE, GLE had only been a reporting issuer in Ontario for approximately six months. Further, and in any event, the Form 23 was deficient in so far as Foundation failed to comply with the timing requirements set out in section 72(7) of the Act governing the filing of the Form 23.
18. On the basis of the conduct described above, Foundation made an unlawful distribution from its control block of GLE shares contrary to the public interest and Ontario securities law.
19. Staff reserves the right to make such further and other allegations as counsel may advise and the Commission may permit.

DATED at Toronto this 27th day of September, 2002.

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