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August 2, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 81-106, s.17.1 - Continuous Disclosure Requirements for Investment Funds - An investment fund wants relief from the requirement in s.14.2(3)(b) of National Instrument 81-106 to calculate its net asset value at least once every business day - The fund is a closed-end investment fund that allows redemptions or retractions no more frequently than once per month; units of the fund are either: (a) listed or to be listed on a stock exchange and unitholders can buy or sell shares of the fund through the exchange, or (b) convertible into units listed or to be listed on a stock exchange; the fund calculates its net asset value on a regular basis and makes that calculation available to the public on request

## Applicable British Columbia Provisions

National Instrument 81-106, s. 14.2(3)(b) and 17.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova  
Scotia, New Brunswick, Newfoundland and Labrador, Yukon Territory,  
Northwest Territory and Nunavut Territory  
(the “Jurisdictions”)

and

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

and

In the Matter of  
OilSands Canada Corporation  
(the “Fund”)

## 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 Fund for a decision under the securities legislation of the Jurisdictions (the “Legislation”) for an exemption from the requirement contained in section 14.2(3)(b) of National Instrument 81-106 - *Investment Fund Continuous Disclosure* (“NI 81-106”) to

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calculate net asset value (“NAV”) at least once every business day (the “Requested Relief”).

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 Fund:

The Fund

1. The Fund is a corporation incorporated under the laws of Ontario. The Fund’s head office is located in Ontario.
2. The Fund is not considered to be a “mutual fund” because the shareholders are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund as contemplated in the definition of “mutual fund” in the securities legislation of the provinces and the territories of Canada. Accordingly, the Fund will be a “non-redeemable investment fund” as defined in NI 81-106.
3. Middlefield Fund Management Limited (the “Manager”) will be the manager of the Fund and will be responsible for providing or arranging for the provision of administrative services to the Fund.
4. Middlefield Capital Corporation will act as investment advisor (the “Advisor”) to the Fund. Groppe, Long & Littell, will provide the Advisor with long-term oil and gas price forecasts, including ongoing analysis of the global economic and political forces impacting the prices of oil and natural gas.
5. A bank, trust company or other custodian will act as custodian of the assets of the Fund.

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### The Offering

6. The Fund will make an offering (the “Offering”) to the public of units of the Fund (“Units”), each Unit consisting of one redeemable equity share (an “Equity Share”) and one-half of one transferable Equity Share purchase warrant. Each whole Equity Share purchase warrant (a “Warrant”) entitles the holder to purchase one Equity Share of the Fund at a subscription price of \$10.25 on or before 5:00 p.m. (Toronto time) on July 31, 2010 (the “Expiry Time”). Warrants not exercised by the Expiry Time will be void and of no value. The Fund does not intend to continuously offer units once the Fund is out of primary distribution.
7. A preliminary prospectus for the Fund dated June 4, 2007, as amended by Amendment No. 1 thereto dated June 26, 2007 (collectively, the “Preliminary Prospectus”) has been filed with the securities regulatory authority in each of the Jurisdictions under SEDAR Project No. 1115341.
8. The Fund’s investment objective is to achieve capital appreciation of the Fund’s investment portfolio. The Fund will invest the net proceeds of the Offering in the securities of issuers that operate in or have exposure to the Canadian oil sands sector, supplemented with the securities of private issuers, which in the view of the Advisor, are acquisition targets or are likely to become publicly-listed in the near to mid-term, thereby offering the potential for capital appreciation.
9. The Fund will have the ability to invest in or utilize derivatives from time to time including to offset or reduce risks associated with an investment or group of investments and to offset or reduce risks such as currency value fluctuations, commodity price fluctuations, stock market risks and interest rate changes. However, the Fund will not invest in or use derivatives if it will result in the Fund failing to comply with its investment restrictions regarding its status as a “mutual fund corporation” as defined in the *Income Tax Act* (Canada).
10. The Equity Shares are expected to be listed and posted for trading on the TSX (the “TSX”). An application for conditional listing approval has been made by the Fund to the TSX.

### The Shares

11. The Equity Shares will be redeemable on a date that is at least 20 business days prior to the last day of any month (each a “Valuation Date”). Holders of

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Equity Shares of the Fund (“Shareholders”) who properly surrender an Equity Share and, if applicable, Warrants for redemption will receive payment on or before the 15<sup>th</sup> business day following such Valuation Date, subject to the Fund’s right to suspend redemptions.

12. The “Monthly Redemption Price per Equity Share” means the amount, if any, equal to the lesser of (a) 90% of the weighted average trading price of the Equity Shares on the TSX during the 15 trading days preceding the applicable Valuation Date, and (b) the “closing market price” (as defined in the Preliminary Prospectus) of the Equity Shares on the principal market on which the Equity Shares are quoted for trading, less (c) applicable redemption costs.
13. The “Redemption Price per Equity Share” means the amount which is equal to (A) the basic NAV per Equity Share as at the Valuation Date (which basic NAV includes the intrinsic value, if any, attributable to the Warrants) less (B) any costs associated with the redemption including, without limitation, if the Manager determines that it is not practicable or necessary for the Fund to sell portfolio securities to fund such redemption, the aggregate of all brokerage fees, commissions and other transaction costs that the Manager estimates would have resulted from such a sale. However, at the sole option of the Manager for the purposes of calculating the Redemption Price per Equity Share, the Manager may value any security which is listed or traded on a stock exchange (or if more than one, on the stock exchange where the security primarily trades, as determined by the Manager) by taking the volume weighted average trading price of the security on such exchange during the three most recent trading days of such exchange ending on and including such Valuation Date, or lacking any sales during such period or any record thereof, the simple average of the latest available offer price and the latest available bid price (unless in the opinion of the Manager such value does not reflect the value thereof and in which case the fair market value as determined by the Manager shall be used), all as reported by any means in common use.
14. In respect of any December Valuation Date in 2008 or 2009, Shareholders must concurrently surrender for redemption one-half of one Warrant with each Equity Share surrendered for redemption, provided that if a shareholder surrenders for redemption a number of Equity Shares that is not evenly divisible by two then the shareholder must concurrently surrender that number of Warrants that is equal to the number of Equity Shares surrendered for redemption divided by two and rounded up to the nearest whole Warrant.
15. A Shareholder who properly surrenders one or more Equity Shares and, if applicable, the appropriate number of Warrants, for redemption will receive the following proceeds therefor:

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- (i) in respect of Equity Shares, together with the applicable Warrants, properly surrendered for redemption on the December Valuation Date in 2008 or 2009, each Equity Share will be redeemed for an amount, if any, equal to the Redemption Price per Equity Share as of the relevant Valuation Date;
- (ii) in respect of Equity Shares properly surrendered for redemption on any December Valuation Date following the Expiry Time, each Equity Share will be redeemed for an amount, if any, equal to the Redemption Price per Equity Share as of the relevant Valuation Date; and
- (iii) in respect of Equity Shares properly surrendered for redemption on any Valuation Date, other than any December Valuation Date commencing in 2008, each Equity Share will be redeemed for an amount, if any, equal to the Monthly Redemption Price per Equity Share as of the relevant Valuation Date.

16. Shareholders will have the opportunity to trade their Equity Shares on the TSX and as such do not have to rely on the redemption features to provide liquidity for their shares.

### Calculation of Net Asset Value

17. Under subsection 14.2(3) of NI 81-106, an investment fund that is a reporting issuer is generally required to calculate the NAV of the fund on at least a weekly basis. Furthermore, an investment fund that uses specified derivatives, such as the Fund intends to do, must calculate its NAV on a daily basis.
18. The Fund intends to calculate the NAV per Equity Share (a) at a minimum once per week, (b) on each Valuation Date, and (c) on any other date on which the Manager elects, in its discretion, or is required by applicable laws, to calculate the NAV per Equity Share.
19. The basic NAV per Equity Share on any date on which NAV per Equity Share is calculated shall be calculated by dividing the NAV on such Valuation Date (the “numerator”) by the total number of Equity Shares issued and outstanding on such Valuation Date (the “denominator”). If as a result of such calculation the basic NAV per Equity Share is greater than \$10.00, the diluted NAV per Equity Share will be calculated by adding to the denominator the total number of Warrants then outstanding and by adding to the numerator the product of

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such number of Warrants and \$10.00 and the diluted NAV per Equity Share shall be deemed to be the resulting quotient.

20. The final prospectus will disclose that the basic NAV per Equity Share, and when applicable, the diluted NAV per Equity Share, will be made available through the internet at [www.middlefield.com](http://www.middlefield.com), together with an explanation of the difference between the two figures.

### **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:

- (a) the Equity Shares remain listed on the TSX; and
- (b) the Fund calculates its NAV per Equity Share at least once per week.

Leslie Byberg  
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Ontario Securities Commission