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October 26, 2004

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications National Instrument 51-102, s. 13.1 - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization or acquisition - Alternate disclosure will be provided about the issuer that is consistent with the information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole; the alternate disclosure complies with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

## Applicable British Columbia Provisions

National Instrument 51-102, *Continuous Disclosure Obligations*, s. 13.1

National Instrument 44-101, *Short Form Prospectus Distributions*, s 4.4 and 4.6

Form 51-101.F1 *Statement of Reserves Data and Other Oil and Gas Information*

CSA Staff Notice 42-303 *Prospectus Requirements*

## IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND ONTARIO

AND

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

AND

## IN THE MATTER OF MIDNIGHT OIL & GAS LTD.

## MRRS DECISION DOCUMENT

## Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia and Ontario (the Jurisdictions) has received an application from Midnight Oil & Gas Ltd. (Midnight) for a decision under the securities legislation of the Jurisdictions (the Legislation) that Midnight be exempt from the requirements contained in the Legislation which (i) require Midnight to include three years of audited financial statements in an information circular in respect of a significant

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acquisition; (ii) require Midnight to include three years of audited financial statements in an information circular in respect of a business for which securities are being distributed in connection with a restructuring transaction; and (iii) require Midnight to include reserves data and other oil and gas information in an information circular as at the date of the most recent audited balance sheet included in the information circular.

2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the System), the Alberta Securities Commission is the principal regulator of this application.

### **Interpretation**

3. Unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 – *Definitions*.

### **Representations**

4. Midnight has represented to the Decision Makers that:
  - 4.1 Midnight was formed by amalgamation under the laws of the Province of Alberta and Midnight's head office is located in Calgary, Alberta;
  - 4.2 The common shares of Midnight are listed and posted for trading on the Toronto Stock Exchange under the trading symbol "MOG";
  - 4.3 Midnight is a reporting issuer in the provinces of Alberta, British Columbia and Ontario;
  - 4.4 To its knowledge, Midnight is not in default of any of the requirements of the applicable securities legislation in any of the provinces in which it is a reporting issuer;
  - 4.5 Vintage Petroleum Canada Inc. (Vintage Canada) was formed by amalgamation under the laws of the Province of Alberta on June 21, 2002 and its head office is located in Calgary, Alberta. Vintage Canada is a wholly owned indirect subsidiary of Vintage Petroleum Inc. (the US Parent), a public company listed on the New York Stock Exchange;
  - 4.6 Vintage Canada is not a reporting issuer in any jurisdiction of Canada, nor are its shares listed for trading on any stock exchange or other market;

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- 4.7 Midnight and the securityholders of Vintage Canada entered into an agreement dated September 22, 2004 whereby Midnight agreed to purchase all of the shares of Vintage Canada for a total of \$350 million (the Acquisition);
- 4.8 The Acquisition is not a reverse take-over;
- 4.9 The Acquisition will be made in connection with a concurrent reorganization of the business of Midnight as an income trust (the Trust) and the spin-off of certain assets into a separate public company (ExploreCo), conducted by way of a plan of arrangement (the Arrangement);
- 4.10 The mind and management of the Trust will be substantially the mind and management of Midnight, and the mind and management of ExploreCo will also be derived from Midnight. There will be no involvement in management of either the Trust or ExploreCo by the executive management or by the Board of Directors of Vintage Canada;
- 4.11 The acquisition of the Vintage Canada shares by Midnight (and effectively the Trust) constitutes a “significant acquisition” under the Legislation;
- 4.12 Midnight is preparing an information circular (the Information Circular) in connection with a meeting of its securityholders which is expected to be held in late November or early December, 2004. At the shareholders' meeting, the Midnight securityholders will be given the opportunity to vote on the Arrangement which includes the Acquisition;
- 4.13 Pursuant to Section 14.2 of National Instrument 51-102F5, because the Acquisition is a “significant acquisition,” Midnight is required to include certain annual financial statement disclosure in the Information Circular in respect of the Arrangement, including annual financial statements for each of the three most recently completed financial years of Vintage Canada (the Vintage Annual Disclosure Requirements);
- 4.14 Midnight proposes to include in the Information Circular certain annual financial information in accordance with Sections 8.4 and 8.5 of National Instrument 51-102 in respect of the Acquisition, including audited annual financial statements of Vintage Canada

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for the years ended December 31, 2003 and 2002 including an auditor's report thereon (the Alternative Annual Vintage Financial Disclosure);

- 4.15 Pursuant to Section 14.2 of National Instrument 51-102F5, because the Arrangement is a restructuring transaction under which securities of ExploreCo are being distributed, Midnight is required to include audited statements of income, retained earnings and cash flows for a three year period in respect of ExploreCo. (the ExploreCo Disclosure Requirements);
- 4.16 Midnight proposes to include in the Information Circular certain financial information in accordance with OSC 41-501 Companion Policy Part 3.3(2), including audited operating statements relating to the properties to be acquired by ExploreCo for the two years ended December 31, 2003 and 2002 and the six months ended June 30, 2004 and 2003 (the Alternative ExploreCo Financial Disclosure);
- 4.17 Pursuant to Section 14.2 of National Instrument 51-102F5, because the Arrangement is a restructuring transaction under which securities of ExploreCo and the Trust are being distributed, pursuant to Section 6.5.1(b) of Form 41-501F1, Midnight is required to provide reserves data and other oil and gas information prescribed by Form 51-101 F1 as at the most recent date for which an audited balance sheet is included in the Information Circular (collectively, for each of the Trust and ExploreCo, the Oil and Gas Disclosure Requirements);
- 4.18 As the Trust and ExploreCo were only recently incorporated, the date of the respective audited balance sheets are not practical dates for the preparation of the reserves data and other oil and gas information to be included in the Information Circular;
- 4.19 Midnight proposes to include in the Information Circular the Oil and Gas Disclosure as at June 30, 2004, being the date of a pro forma balance sheet included in the Information Circular for each of the Trust and ExploreCo (collectively, the Alternative Oil and Gas Disclosure);
- 5. The Alternative Annual Vintage Financial Disclosure will comply with National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency;

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6. The Alternative ExploreCo Financial Disclosure will comply with National Instrument 52-107 – Acceptable Accounting Principles, Auditing Standards and Reporting Currency;
7. The Alternative Oil and Gas Disclosure will comply with National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities;
8. Under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision).
9. Each of the Decision Makers is satisfied that the Decision Maker has the jurisdiction to make the Decision;

### **Decision**

The Decision of the Decision Makers under the Legislation for the purposes of the Information Circular is that (i) the Vintage Annual Disclosure Requirements shall not apply to Midnight, provided that Midnight includes the Alternative Annual Vintage Financial Disclosure, (ii) the ExploreCo Disclosure Requirements shall not apply to Midnight, provided that Midnight includes the Alternative ExploreCo Financial Disclosure; and (iii) with respect the Trust and ExploreCo, the Oil and Gas Disclosure Requirements shall not apply to Midnight, provided that Midnight includes the Alternative Oil and Gas Disclosure in the Information Circular.

DATED at Calgary, Alberta on this 26<sup>th</sup> day of October, 2004.

Mavis Legg, CA  
Manager, Securities Analysis