

# 2007 BCSECCOM 108

February 15, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 91 Insiders - Exemption from the requirement to file insider reports - A reporting issuer wants relief from the requirement to file insider reports for securities of its own issue that it acquires - The issuer is a closed-end investment trust; under its declaration of trust, the issuer is required to repurchase for cancellation up to 1.25% of its outstanding trust units per calendar quarter in certain situations; the issuer has publicly disclosed its intention to repurchase a portion of its trust units for cancellation from time to time in compliance with the requirements of its declaration of trust; instead of filing insider reports for each purchase for cancellation, the issuer will file within 10 days after the end of a month an insider report disclosing all purchases during that month

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, s. 91

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

and

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

and

In the Matter of  
EnerVest Energy and Oil Sands Total Return Trust  
(the Filer)

## MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempted from the reporting requirement under the Legislation to file an insider report (the Insider Report) within 10

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days of a purchase of its own security in connection with the Filer's obligation to purchase for cancellation its own trust units (the Requested Relief).

2. Pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS) established under National Policy 12-201:
  - 2.1 the Alberta Securities Commission is the principal regulator for this application; and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

3. Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

### **Representations**

4. This Decision is based on the following facts represented by the Filer:
  - 4.1 The Filer is a closed-end investment trust under the laws of Alberta governed by a declaration of trust dated February 22, 2006 (the Declaration of Trust).
  - 4.2 The administrator of the Filer is EnerVest Oil Sands Management Inc., a corporation incorporated under the laws of Alberta (the Administrator).
  - 4.3 The head and principal office of the Filer and the Administrator is located in Calgary, Alberta.
  - 4.4 The Filer is a reporting issuer in each of each of the Provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and Newfoundland and Labrador.
  - 4.5 To its knowledge, the Filer is not in default of any requirements under the Legislation.
  - 4.6 Pursuant to the Filer's Declaration of Trust, if at any time during a calendar quarter the closing market price of the Filer's trust units (Trust Units) is less than 95% of the latest published net asset value per Trust Unit, the Filer is obligated to purchase for cancellation

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any Trust Units offered in the market at the prevailing market closing price up to a maximum amount in any calendar quarter of 1.25% of the number of Trust Units outstanding at the beginning of that calendar quarter.

- 4.7 The Filer's intention to purchase for cancellation its own Trust Units in accordance with the Declaration of Trust has been publicly disclosed on numerous occasions, including in the Filer's preliminary prospectus dated February 23, 2006, in its final prospectus dated March 31, 2006, in the marketing of the Filer's initial public offering to potential investors and in the filing of the Declaration of Trust on SEDAR pursuant to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (NI 13-101) .
- 4.8 The Filer, as an insider under the Legislation, must file an Insider Report within 10 days of each purchase of its own Trust Units.
- 4.9 As the Filer is purchasing Trust Units for cancellation on a regular basis, the constant filing of Insider Reports to reflect the purchase of Trust Units and their cancellation would be confusing to the public and potential investors and unduly onerous and burdensome for the Filer.
- 4.10 National Instrument 55-101 *Insider Reporting Exemptions* (NI 55-101) provides for exceptions to the requirement to file an Insider Report to reflect a change in direct or indirect beneficial ownership of or control over securities of a reporting issuer within 10 days of the date such change takes place, including a reporting exemption in Part 6 for an issuer acquiring securities of its own issue under a normal course issuer bid.
- 4.11 The obligation of the Filer to purchase for cancellation its own Trust Units is comparable to a normal course issuer bid as the Filer is acquiring securities of its own issue to a maximum in any calendar quarter of 1.25% of the number of Trust Units outstanding at the beginning of that calendar quarter.
- 4.12 The Filer wishes to be permitted to file an Insider Report within 10 days after the end of the month in which the purchase and cancellation of Trust Units by the Filer occurred, rather than being required to file an Insider Report within 10 days after each such purchase and cancellation.

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### Decision

5. 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.
6. The Decision of the Decision Makers pursuant to the Legislation is that the Requested Relief is granted, provided that:
  - 6.1 the relief shall only relieve the Filer, as an insider of the Filer, from its obligation under the Legislation to report its purchase and cancellation of its own Trust Units pursuant to its Declaration of Trust within 10 days of the date the purchase and cancellation takes place, and will not apply to any other insider transaction of the Filer;
  - 6.2 the purchase and cancellation of Trust Units by the Filer will be carried out in accordance with the terms and conditions of the Declaration of Trust;
  - 6.3 the Filer remains the direct and beneficial owner of the Trust Units between the date of purchase from unitholders and the date the Trust Units are cancelled;
  - 6.4 the Filer files an Insider Report, disclosing each acquisition of Trust Units by it under the Declaration of Trust, within 10 days of the end of the month in which the purchase of Trust Units by the Filer occurred;
  - 6.5 the Filer remains a reporting issuer in each of the Jurisdictions and remains an electronic filer under NI 13-101; and
  - 6.6 the Filer continues to comply with all other continuous disclosure and insider reporting requirements under the Legislation and files all other documents required to be filed by the Legislation.

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