

**Date:** May 26th, 2005

In the Matter of  
the Securities Legislation of  
Alberta, British Columbia, Saskatchewan, Manitoba,  
Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island,  
Newfoundland & Labrador, the Northwest Territories, the Yukon Territory and Nunavut

and

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

and

In the Matter of  
APF Energy Trust ("APF Trust"), APF Energy Inc. ("APF Energy"),  
Rockyview Energy Inc. ("Rockyview") and 1163947 Alberta Inc. ("NewCo Sub")  
(collectively, the "Filers")

### **MRRS Decision Document**

#### **Background**

1. The local securities regulatory authority or regulator (collectively, the "Decision Makers") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, the Northwest Territories (the "NWT"), the Yukon Territory ("Yukon") and Nunavut (collectively the "Jurisdictions") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

1.1 in Manitoba, Yukon and Nunavut the prospectus requirement and the dealer registration requirement shall not apply to the trades made in connection with the Arrangement (defined below), provided that the first trade of Amalco Shares acquired under the Arrangement shall be subject to the dealer registration requirement and the prospectus requirement of such Jurisdictions;

1.2 in Manitoba, Yukon and Nunavut the first trade of Amalco Shares (defined below) acquired pursuant to the Arrangement (defined below) is not subject to the prospectus requirement of such Jurisdictions, provided that such trade is made in compliance with the requirements set out in Subsection 2.6(3) of Multilateral Instrument 45 102 Resale of Securities ("MI 45 102");

1.3 in Quebec and Nova Scotia the prohibition against making a representation that an application has been or will be made to list a security on an exchange shall

not apply to the representation in the Information Circular (defined below) with respect to the Amalco Shares (defined below); and

1.4 the requirement that the Information Circular include three years of audited financial statements in respect of a significant acquisition shall not apply;

2. The application is made under the Mutual Reliance Review System for Exemptive Relief Applications (the "System").

3. Pursuant to the System, the Manitoba Securities Commission is the principal regulator for this application.

### **Interpretation**

4. Defined terms contained in National Instrument 14 101 or Québec Notice 14 101 have the same meaning in this decision unless they are defined in this decision.

### **Representations**

5. The decision is based on the following facts represented by the Filers:

#### ***APF Energy Trust***

5.1 APF Trust is an open ended investment trust formed under the laws of the Province of Alberta, on October 10, 1996 and governed by an amended and restated trust indenture dated May 18, 2004 (the "Trust Indenture").

5.2 The authorized capital of APF Trust consists of an unlimited number of trust units of APF Trust ("APF Units") and an unlimited number of special voting units ("Special Voting Units").

5.3 As of the date hereof, there are issued and outstanding 60,665,490 APF Units and nil Special Voting Units.

5.4 APF Trust was initially formed for the purpose of issuing APF Units to the public and using the funds so raised to purchase royalties on oil and natural gas properties.

5.5 APF Trust's primary assets are royalties granted by APF Energy and APF Energy Limited Partnership, an Alberta limited partnership wholly owned, indirectly, by APF Trust.

5.6 APF Trust is a reporting issuer or has equivalent status in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland & Labrador in which such status is available and has been for more than four months.

5.7 The APF Units are listed for trading on the Toronto Stock Exchange (the "TSX").

5.8 APF Trust has filed all of the information that it has been required to file as a reporting issuer in the Jurisdictions in which it is a reporting issuer and is not in default of the Legislation in those Jurisdictions.

APF Energy Inc.

5.9 APF Energy is a wholly owned subsidiary of APF Trust that was incorporated pursuant to the Business Corporations Act (Alberta) (the "ABCA") on December 8, 1995 as 677633 Alberta Inc. and changed its name to APF Energy pursuant to Articles of Amendment filed on May 8, 1996.

5.10 The head and principal office of APF Energy is located at 2100, 144 – 4th Avenue S.W., Calgary, Alberta, T2P 3N4 and its registered office is located at 3400, 150 6th Avenue S.W., Calgary, Alberta, T2P 3Y7.

5.11 APF Energy is engaged in the business of acquisition, exploration, development, production, marketing and sale of crude oil and natural gas in Western Canada and has granted a royalty to APF Trust under which 99% of the income of APF Energy, after deduction of certain expenses, is paid to APF Trust.

5.12 Computershare Trust Company of Canada, the trustee of APF Trust, has delegated to APF Energy the authority to make all significant management decisions of APF Trust.

5.13 APF Energy is a non distributing body corporate that is not a reporting issuer in any of the Jurisdictions.

### ***Rockyview Energy Inc.***

5.14 Rockyview is a wholly owned subsidiary of APF Energy that was incorporated pursuant to the ABCA on April 12, 2005 as 1163924 Alberta Inc. and has changed its name to Rockyview pursuant to Articles of Amendment filed on April 14, 2005.

5.15 The head and principal office of Rockyview is located at 2100, 144 4th Avenue S.W., Calgary, Alberta, T2P 3N4 and its registered office is located at 3400, 150 6th Avenue S.W., Calgary, Alberta, T2P 3Y7.

5.16 Rockyview is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, issuable in series, of which 100 common shares and no preferred shares are issued and outstanding as of the date hereof.

5.17 Rockyview was incorporated to facilitate the Arrangement described below and currently has no business, operations, or assets other than nominal proceeds from share subscriptions.

5.18 Rockyview is a non distributing body corporate that is not a reporting issuer in any of the Jurisdictions.

### ***1163947 Alberta Inc.***

5.19 NewCo Sub is a wholly owned subsidiary of Rockyview that was incorporated pursuant to the ABCA on April 12, 2005.

5.20 The head and principal office of NewCo Sub is located at 2100, 144 4th Avenue S.W., Calgary, Alberta, T2P 3N4 and its registered office is located at 3400, 150 6th Avenue S.W., Calgary, Alberta, T2P 3Y7.

5.21 NewCo Sub is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, issuable in series, of which 100 common shares and no preferred shares are issued and outstanding as of the date hereof.

5.22 NewCo Sub has been organized to acquire a portion of the business of APF Energy and facilitate the Arrangement described below and has no business, operations, or assets other than nominal proceeds from share subscriptions.

5.23 NewCo Sub is a non distributing body corporate that is not a reporting issuer in any of the Jurisdictions.

### ***The Merger***

5.24 Pursuant to the terms of the combination agreement dated April 13, 2005, entered into between APF Trust and StarPoint Energy Trust ("StarPoint"), among other things, StarPoint will acquire all of the assets of APF Trust in exchange for trust units of StarPoint and thereafter all of the APF Units (except one APF Unit issued to StarPoint as part of this transaction) will be redeemed and exchanged for such trust units of StarPoint (the "Merger"). The result of the Merger is that StarPoint will acquire the assets of APF Trust and the holders of APF Units ("APF Unitholders") will become holders of trust units of StarPoint.

5.25 The Merger will require approval by not less than two thirds of the aggregate votes cast by APF Unitholders, present in person or by proxy, and voting at the meeting called for the purpose of voting on the Merger and other matters, including the Arrangement (the "Meeting") pursuant to the terms of the Trust Indenture.

### ***The Arrangement***

5.26 Prior to but as a condition to the Merger, the business of APF Energy will be divided by a series of transactions that will result in certain assets of APF Energy being sold to Amalco at a price determined by an independent oil and gas reserves evaluation and APF Unitholders being entitled to become shareholders of Amalco (the "Arrangement"). The steps to accomplish the Arrangement include the following:

(a) NewCo Sub will issue to Rockyview, for nominal consideration, warrants ("NewCo Sub Warrants") to purchase common shares of NewCo Sub ("NewCo Shares"). The NewCo Sub Warrants will have an aggregate exercise price sufficient to finance the purchase by NewCo Sub of certain assets ("Assets") of APF Energy ("Asset Purchase"). The consideration for the issuance of the NewCo Sub Warrants to Rockyview will be paid by Rockyview issuing an adjustable note to NewCo Sub;

(b) APF Energy and NewCo Sub will enter into an agreement respecting the Asset Purchase;

(c) Rockyview will transfer the NewCo Sub Warrants to APF Energy by declaration of a dividend;

(d) APF Energy will:

(i) transfer the NewCo Sub Warrants to APF Trust for nominal consideration paid by reduction of debt owed by APF Energy to APF Trust in an amount equal to the fair market value of the NewCo Sub Warrants; and

(ii) issue notes ("APF Energy Notes") to APF Trust having an aggregate principal amount equal to the aggregate exercise price of the NewCo Sub Warrants. The APF Energy Notes will be payable within one year of the closing date of the Merger and will bear interest at 6% per annum. In consideration of the issuance of the APF Energy Notes to APF Trust, debt owed by APF Energy to APF Trust will be reduced by an amount equal to the aggregate principal amount of the APF Energy Notes;

(e) APF Trust will distribute the NewCo Sub Warrants and the APF Energy Notes to the APF Unitholders;

(f) APF Unitholders individually elect to:

(i) exercise their NewCo Sub Warrants and direct their APF Energy Notes be tendered in satisfaction of the exercise price of the NewCo Sub Warrants;  
or

(ii) not exercise their NewCo Sub Warrants and retain APF Energy Notes;

(g) APF Unitholders who do not make an election will be deemed (under the Arrangement) to have elected to exercise their NewCo Sub Warrants;

(h) NewCo Sub Warrants not exercised expire;

(i) Rockyview and NewCo Sub will amalgamate and continue as one corporation ("Amalco") under the ABCA; and

(j) APF Energy Notes received by NewCo Sub in satisfaction of the exercise price of NewCo Sub Warrants will be tendered by Amalco in satisfaction of the purchase price under the Asset Purchase.

(each of the trades described above referred to collectively as the "Trades")

5.27 The Arrangement will be effected by way of a plan of arrangement pursuant to Section 193 of the ABCA which will require approval: (i) by at least two thirds of the aggregate votes cast by APF Unitholders, present in person or by proxy, voting at the Meeting; and (ii) by the Court of Queen's Bench of Alberta.

5.28 The information circular and proxy statement with respect to the Arrangement (the "Information Circular") and the related materials to be sent to APF Unitholders for approval of the Arrangement and the Merger will contain (or to the extent permitted, will incorporate by reference) prospectus level disclosure concerning the respective businesses of APF Trust, StarPoint, NewCo Sub and Amalco and a detailed description of the Arrangement and the Merger, and will be prepared in conformity with the provisions of the ABCA and the Securities Act (Alberta), except where relief is granted pursuant to this application.

5.29 Any NewCo Sub Warrants, NewCo Sub Shares and APF Energy Notes issued will not be listed on the TSX.

5.30 Upon completion of the Merger, APF Unitholders will own approximately 60% of the issued and outstanding trust units of StarPoint. Upon completion of the steps of the Arrangement, APF Unitholders will own all of the issued and outstanding common shares of Amalco (the "Amalco Shares").

5.31 An application will be made to list the Amalco Shares on the TSX.

5.32 Amalco will become a reporting issuer in Ontario upon the listing of the Amalco Shares on the TSX, and in British Columbia, Alberta and Québec upon the distribution of securities following the Arrangement.

### ***Reasons for Requesting Relief***

5.33 In certain of the jurisdictions the precise mechanics of various issuances and exchanges in securities pursuant to the Arrangement do not or may not satisfy the technical requirements of the registration and prospectus exemptions provided for under the Legislation in those Jurisdictions;

5.34 APF Trust intends to make a representation in the Information Circular that application has been made to list the Amalco Shares on the TSX and Legislation in certain jurisdictions prohibits the making of such a representation;

5.35 The Asset Purchase will be a "significant acquisition" (as defined in NI 51-102) that is an interest in an oil and gas property;

5.36 Pursuant to Section 14.2 of NI 51-102F5, because the Arrangement is a transaction under which securities of NewCo Sub and Amalco are being distributed and the Asset Purchase is a "significant acquisition", APF Trust is required to include certain annual and interim financial statement disclosure in respect of NewCo Sub, Amalco and the Assets, including annual and interim financial statements for each of the three most recently completed financial years for the Assets;

5.37 Pursuant to Canadian Securities Administrators (the "CSA") Staff Notice 42-303 (the "Staff Notice"), APF Trust may submit an application to the provincial and territorial securities regulatory authorities requesting relief from certain requirements of the prospectus rules that are not consistent with NI 51-102 and the CSA have indicated that they are prepared to recommend that the relief be granted on the condition that the issuer provides the financial statements specified in Item 8.5 of NI 51-102;

5.38 APF Trust is unable to provide financial statements in respect of the Assets because those financial statements do not exist, the Asset Purchase does not constitute a reverse take over and the Assets did not, immediately before the time of completion of the acquisition, constitute a "reportable segment" of the vendor, as defined in the Handbook;

5.39 APF Trust proposes to include in the Information Circular:

- (a) an audited Schedule of Revenues, Royalties and Operating Expenses for the Assets for the years ended December 31, 2004

and 2003 and the three month period ended March 31, 2005 which will include gross revenue, royalty expenses, production costs and operating income;

(b) an audited consolidated balance sheet for Rockyview (consolidated with NewCo Sub), as at April 12, 2005, the date of the incorporation of Rockyview and NewCo Sub; and

(c) a pro forma balance sheet as at March 31, 2005 and pro forma statements of Operations for the year ended December 31, 2004 and the three month period ended March 31, 2005 giving effect to the amalgamation of Rockyview and NewCo Sub and the Asset Purchase;

## **Decision**

6. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the decision has been met.

7. The decision of the Decision Makers under the Legislation is that:

7.1 In Manitoba, Yukon and Nunavut, the dealer registration requirement and in Manitoba, Yukon and Nunavut, the prospectus requirement shall not apply to the Trades provided that the first trade of Amalco Shares acquired pursuant to the Arrangement shall be subject to the dealer registration requirement and the prospectus requirement of such Jurisdictions;

7.2 In Manitoba, Yukon and Nunavut, the first trade of Amalco Shares acquired pursuant to the Arrangement shall not be subject to the prospectus requirement, provided that such first trade is made in compliance with the requirements set out in Subsection 2.6(3) of MI 45 102;

7.3 In Quebec and Nova Scotia, the prohibition against making of a representation that an application has been or will be made to list a security on an exchange shall not apply to the representation in the Information Circular that application has been made to list the Amalco Shares on the TSX;

7.4 In the Jurisdictions, the requirement to include in the Information Circular annual financial statements for each of the three most recently completed financial years of the Assets, shall not apply, provided that the Information Circular includes:

(a) an audited Schedule of Revenues, Royalties and Operating Expenses for the Assets for the years ended December 31, 2004 and 2003 and the three month period ended March 31, 2005 which



will include gross revenue, royalty expenses, production costs and operating income;

(b) a description of the Assets; and

(c) disclosure of the annual oil and gas production volumes from the Assets; and

(d) the Information Circular discloses:

(i) the estimated reserves and related future net revenue attributable to the Assets, the material assumptions used in preparing the estimates and the identity and relationship to APF Trust of the person who prepared the estimates; and

(ii) the estimated oil and gas production volumes from the Assets for the first year reflected in the estimate disclosed under subparagraph (i).

## **MANITOBA SECURITIES COMMISSION**

"Chris Besko"

Per:

Name: Chris Besko

Title: Deputy Director, Legal