

## Headnote

National Policy 11-203 – exemption granted from the requirement to include financial statements in an information circular for an entity participating in an arrangement – the information circular will be sent to the trust's unitholders in connection with a proposed internal reorganization pursuant to which its business operations will be conducted through a corporate entity – the arrangement does not contemplate the acquisition of any additional interest in any operating assets or the disposition of any of the trust's existing interests in operating assets.

## Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, 13.1, Form 51-102F5 *Information Circular*, Item 14.2

**Citation: Advantage Energy Income Fund, Re, 2009 ABASC 284**

**Date: 20090616**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Advantage Energy Income Fund (**Advantage** or the **Filer**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement under Section 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**) of the Legislation to provide: (i) the financial statements of Advantage Oil & Gas Ltd. (**AOG**) for the financial years ended December 31, 2008, December 31, 2007 and December 31, 2006; and (ii) comparative financial statements for the financial period ended March 31, 2009 (collectively, the **Financial Statements**) in the management information circular (the **Circular**) to be prepared by the Filer and delivered to the holders (**Advantage Unitholders**) of trust units (**Advantage Units**) in connection with a special meeting (**Advantage Meeting**) of Advantage Unitholders expected to be held in early July 2009 for the purposes of considering a plan of arrangement under the *Business Corporations Act* (Alberta) (the **Arrangement**) resulting in the internal reorganization of Advantage's trust structure into a corporate structure (collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this Application,
- (b) the Filer has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

This decision is based on the following facts represented by the Filer:

### **Advantage and AOG**

#### *Advantage*

1. Advantage is an unincorporated open-ended limited purpose trust established under the laws of the Province of Alberta pursuant to an amended and restated Trust Indenture dated December 31, 2007. The principal office of Advantage is located in Calgary, Alberta.
2. Advantage is a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada. To its knowledge, Advantage is not in default of securities legislation in any jurisdiction of Canada.
3. The authorized capital of Advantage includes an unlimited number of Advantage Units and special voting units. As at June 5, 2009, there were 145,198,130 Advantage Units and no special voting units outstanding.
4. The Advantage Units are listed on the Toronto Stock Exchange (**TSX**) under the symbol "AVN.UN" and on the New York Stock Exchange (**NYSE**) under the symbol "AAV".
5. As at June 5, 2009, Advantage had (i) \$29,839,000 principal amount of 8.75% convertible unsecured subordinated debentures outstanding, (ii) \$15,528,000 principal amount of 8.00% convertible unsecured subordinated debentures outstanding, (iii) \$46,766,000 principal amount of 7.75% convertible unsecured subordinated debentures outstanding, (iv) \$52,268,000 principal amount of 7.50% convertible unsecured subordinated debentures outstanding and (v) \$69,927,000 principal amount of 6.50%

convertible unsecured subordinated debentures outstanding (collectively, the **Debentures**). The Debentures are currently listed and posted for trading on the TSX.

6. Advantage has filed an "AIF" and has "current annual financial statements" (as such terms are defined in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**)) for the financial year ended December 31, 2008.

#### *AOG*

7. AOG is a corporation amalgamated under the laws of the Province of Alberta. The principal office of AOG is located in Calgary, Alberta.
8. AOG is wholly-owned by Advantage.
9. AOG is not a reporting issuer in any jurisdiction and to its knowledge, is not in default of applicable securities legislation in any jurisdiction of Canada.
10. The authorized capital of AOG includes an unlimited number of AOG Shares (as defined below), non-voting shares, preferred shares and exchangeable shares. As at June 5, 2009, there were 12,445,034 AOG Shares outstanding and no non-voting shares, preferred shares or exchangeable shares outstanding.
11. The AOG Shares (as defined below) are not listed or posted for trading on any exchange or quotation and trade reporting system.

#### **Arrangement**

12. As part of the Arrangement, (i) Advantage will be dissolved; (ii) the Advantage Units will be cancelled; (iii) common shares (**AOG Shares**) of AOG, Advantage's administrator and wholly-owned subsidiary, will be distributed to Advantage Unitholders on a one-for-one basis; and (iv) AOG will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of Advantage (including Advantage's outstanding convertible debentures), effectively resulting in the internal reorganization of Advantage's trust structure into a corporate structure.
13. Following the completion of the Arrangement: (i) the sole business of AOG will be the current business of Advantage; (ii) AOG would be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iii) the AOG Shares would, subject to approval by the TSX and the NYSE, be listed on the TSX and NYSE.
14. Pursuant to Advantage's constating documents and applicable securities laws, the Advantage Unitholders will be required to approve the Arrangement at the Advantage Meeting. The Arrangement must be approved by not less than two-thirds of the votes cast by Advantage Unitholders at the Advantage Meeting. The Advantage Meeting is

anticipated to take place in early July 2009 and the Circular is expected to be mailed in early June 2009.

15. The Arrangement will be a "restructuring transaction" under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) in respect of Advantage and therefore would require compliance with Section 14.2 of the Circular Form. The Filer is applying for an exemption pursuant to Section 13.1 of NI 51-102 from the requirement of Section 14.2 of the Circular Form (which requires compliance with National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and therefore with Form 41-101F1 *Information Required in a Prospectus* (**Prospectus Form**)) that pursuant to Subsection 32.2(1) of the Prospectus Form, the financial statements of AOG for the financial years ended December 31, 2008, December 31, 2007 and December 31, 2006 which include an income statement, statement of retained earnings, and a cash flow statement for each of these years as described in Section 32.2(1) of the Prospectus Form and pursuant to Subsection 32.3(1) of the Prospectus Form, comparative interim financial statements for the financial period ended March 31, 2009 which includes a comparative balance sheet, comparative income statement, comparative statement of retained earnings and a comparative cash flow statement as described in Section 32.2(2) of the Prospectus Form (collectively, the **Financial Statements**) be included in the Circular that would be mailed to the Advantage Unitholders in connection with the Arrangement.
16. The Arrangement is being undertaken to reorganize Advantage following the enactment by the federal government of rules in respect of the tax treatment of specified investment flow-through trusts. Pursuant to the Arrangement, Advantage will be reorganized into a public growth oriented oil and gas production, exploration and development corporation that will retain the name "Advantage Oil & Gas Ltd." and will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of Advantage.
17. The rights of Advantage Unitholders and holders of Debentures in respect of AOG following the Arrangement will be substantially equivalent to the rights the Advantage Unitholders and holders of Debentures currently have in respect of Advantage and AOG, as applicable, and their relative interest in and to the business carried on by AOG will not be affected by the Arrangement.
18. The only securities that will be distributed to Advantage Unitholders pursuant to the Arrangement will be AOG Shares.
19. While changes to the consolidated financial statements of AOG will be required to reflect the organization structure of AOG following the Arrangement, the financial position of AOG will be substantially the same as reflected in Advantage's audited annual consolidated financial statements most recently filed or required to have been filed under Part 4 of NI 51-102 prior to the date of the Circular and the unaudited interim consolidated financial statements of Advantage most recently filed or required have been filed under Part 4 of NI 51-102 prior to the date of the Circular. In particular, the entity that exists both before and subsequent to the Arrangement would be substantially the same given the fact that the assets and liabilities of the enterprise, from both an

accounting perspective and economic perspective, are not changing based on the Arrangement. However, as the tax structure will be changing from that of an income trust to a corporation, the tax advantages of the income trust structure would be lost. As a result, the only reconciling items would be with respect to both the current and future income tax due to the elimination of the deduction for the interest on certain promissory notes between the Trust and subsidiaries of the Trust. This would therefore require these entities to use tax pools to shield their taxability therefore creating a future income tax liability and to the extent that the income could not be shielded by tax pools, it would trigger cash taxes.

### **Financial Statement Disclosure in the Circular**

20. Section 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that AOG would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities. Therefore, the Circular must contain the disclosure in respect of AOG prescribed by the Prospectus Form.
21. Subsection 32.2(1) of the Prospectus Form requires Advantage to include certain annual financial statements of AOG in the Circular, including: (i) an income statement, a statement of retained earnings, and a cash flow statement of AOG for each of the financial years ended December 31, 2008, December 31, 2007 and December 31, 2006; and (ii) a balance sheet of AOG as at the end of December 31, 2008 and December 31, 2007 and Subsection 32.3(1) of the Prospectus Form requires Advantage to include certain comparative interim financial statements of AOG in the circular, including (i) a comparative income statement, a statement of retained earnings, and cash flow statement of AOG for the interim period ended March 31, 2009 and (ii) a balance sheet of AOG as at the end of March 31, 2009.
22. Subsection 4.2(1) of NI 41-101 requires that the financial statements (other than interim financial statements) required to be included in the Circular must be audited in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107).
23. The Arrangement will not result in a change in beneficial ownership of the assets and liabilities of Advantage, from both an accounting perspective and an economic perspective. Accordingly, no acquisition will occur as a result of the Arrangement and therefore the significant acquisition financial statement disclosure requirements contained in the Prospectus Form are inapplicable.
24. The Arrangement will be an internal reorganization undertaken without dilution to the Advantage Unitholders or additional debt or interest expense.

**Exemption Sought**

25. The granting of the Exemption Sought would not be prejudicial to the public interest, nor would disclosure of the Financial Statements be necessary to allow Advantage Unitholders to form a reasoned judgement concerning the nature and effect of the Arrangement for the following reasons:
- (a) the financial statements of Advantage are reported on a consolidated basis, which includes the financial results for AOG. AOG does not report its financial results independently from the consolidated financial statements of Advantage. The Financial Statements, if prepared, would not include the accounts of Advantage. Management, after consulting with Advantage's auditors, believes this would be misleading, since there are transactions between AOG and Advantage that eliminate when consolidation is performed at the trust level. To present the Financial Statements, which would exclude accounts of Advantage, would present the effects of only one side of the financing activities between AOG and Advantage. This would result in significant intra-group liabilities and large amounts of intra-group interest expense being reflected on the Financial Statements. Additionally, an agreement exists between Advantage and AOG whereby AOG pays a regular royalty to Advantage related to net resource cash flows. To present the Financial Statements excluding the accounts of Advantage, would present the one side of the intra-group royalty expense. As a result, the presentation of these intra-group transactions, that will be eliminated upon completion of the Arrangement, would present a confusing (and potentially misleading) picture of financial performance;
  - (b) the Financial Statements, if prepared, would not include the accounts of Advantage. Management, after consulting with Advantage's auditors, believes this would be misleading, since there are liabilities and transactions within Advantage that would be excluded. Advantage currently has outstanding convertible debentures and pays semi-annual interest on the outstanding debentures. To present AOG excluding the convertible debentures would be potentially misleading as the debentures will be assumed by AOG under the Arrangement;
  - (c) the Financial Statements are not relevant to the Advantage Unitholders for the purposes of considering the Arrangement as the financial statements of AOG following the completion of the Arrangement would be substantially and materially the same as the consolidated financial statements of Advantage filed in accordance with Part 4 of NI 51-102 prior to the completion of the Arrangement because the financial position of the entity that exists both before and after the Arrangement is substantially the same; and
  - (d) the Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements) and will contain sufficient information to enable a reasonable securityholder to form a reasoned judgement

concerning the nature and effect of the Arrangement including information explaining how the tax position of AOG after the completion of the Arrangement will differ from the existing tax position of Advantage and how the retained cash flows of AOG following the completion of the Arrangement will differ from the existing cash flows of Advantage.

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

*“original signed by”*  
Agnes Lau, CA  
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