

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8972 / September 30, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28423 / September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13267

In the Matter of

**AMERICAN ENERGY
PRODUCTION, INC.**

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST AND EXEMPTION SUSPENSION PROCEEDINGS, MAKING FINDINGS, IMPOSING A CEASE-AND-DESIST ORDER, AND PERMANENTLY SUSPENDING THE REGULATION E EXEMPTION AS TO AMERICAN ENERGY PRODUCTION, INC., PURSUANT TO SECTION 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 610(c) OF REGULATION E

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 610(c) of Regulation E against American Energy Production, Inc. (“American Energy” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to American Energy Production, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in January 2004, American Energy has, among other things, issued senior securities without the required asset coverage, issued rights to purchase securities without expiration to non-security holders, issued prohibited non-voting stock, issued securities for services, failed to make and keep required records; and failed to establish a majority of disinterested directors on its board. As a result, American Energy violated Sections 18(a), 18(d), 18(i), 23(a), 31(a)(1), and 56(a) respectively, of the Investment Company Act and Investment Company Act Rule 31a-1. In addition, American Energy failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and failed to implement a compliance program as required under Investment Company Act Rule 38a-1. Finally, American Energy failed to comply with Rule 609 of Regulation E because it did not file offering status reports on Form 2-E in connection with a securities offering under Regulation E commenced in January 2004.

Respondent

2. American Energy is a Delaware corporation with its principal offices located in Mineral Wells, Texas. It elected to be regulated as a BDC on January 12, 2004, and withdrew its election on April 3, 2007. American Energy's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol AENP.

Issuing Convertible Debentures and Unequal-Voting Convertible Preferred Stock

3. In October 2003, American Energy entered into a contract with a private consulting firm to assist American Energy in electing to be regulated as a BDC and in issuing stock pursuant to the securities-registration exemption under Regulation E of the Securities Act of 1933. Among other things, the contract obligated the consulting firm to prepare corporate-governance and other internal documents necessary for American Energy to operate as a BDC. It likewise called for the consulting firm to prepare the Commission filings necessary for American Energy to elect to be regulated as a BDC and to issue stock in an exempt offering under Regulation E. American Energy agreed to pay the consulting firm, among other things, \$30,000 in cash, plus a \$30,000 convertible debenture for these services.

4. On January 13, 2004, American Energy issued to the consulting firm the convertible debenture and, on January 12, 2004, filed a Form N-54A election with the Commission to elect to

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

be regulated as a BDC. As of January 12, 2004, American Energy had one convertible debenture valued at \$2 million outstanding to a third party. The debenture had an interest rate of 8% and could be converted at any time at either party's option at a price equal to 50% of the closing bid price of American Energy's common stock on the date of a conversion notice.

5. From January 13, 2004, through August 31, 2004, American Energy issued 6 additional convertible debentures to private investors, a service provider, and an affiliated entity in exchange for approximately \$2.3 million in total financing. These debentures had interest rates ranging from 6% to 8% and could be converted at any time at either party's option at a price equal to 50% of the closing bid price of American Energy's common stock on the date of a conversion notice.

6. On January 5, 2004, American Energy issued 3.5 million shares of Series-A convertible preferred stock to its chief executive officer. Each Series-A share was convertible into three common shares at the owner's election or upon liquidation. It had no voting rights, except that its owner was entitled to elect two directors to American Energy's board.

7. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." American Energy became subject to the BDC provisions on January 12, 2004.

8. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(a), as modified by Section 61(a) for application to BDCs, permits a BDC to issue any class of senior security representing indebtedness, if the BDC has asset coverage of at least 200% immediately after such issuance. Section 18(g) defines "senior security" to include debentures. Under Section 18(h), the asset coverage for senior securities representing indebtedness is determined by the ratio of the issuer's total asset value (less all liabilities and indebtedness not represented by senior securities) to the aggregate amount of the senior securities representing indebtedness. As of January 12, 2004, American Energy's asset coverage was below the required 200%. Moreover, American Energy did not have asset coverage of at least 200% immediately after any of the debentures issued from January 13, 2004, through August 17, 2004.

9. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders." American Energy's convertible debentures which constituted rights to subscribe to or purchase securities did not provide that the conversion feature would expire within 120 days after their issuance as required under Section 18(d) as applicable to BDCs.

10. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. American Energy's shareholders did not authorize the issuance of the convertible debentures.

11. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. American Energy's Series-A convertible preferred stock did not have voting rights equal to that of its common stock.

Issuance of Shares for Services

12. Section 23(a), which Section 63 makes applicable to BDCs, generally prohibits any closed-end company from issuing securities for services or property other than cash or securities. Between May 2004 and August 2005, American Energy issued 10.2 million shares of stock to individuals and entities in exchange for services.

Failure to Make and Keep Required Records

13. Section 31 of the Investment Company Act, made applicable to BDCs by Section 64 of the Investment Company Act, requires a BDC to make and keep certain books and records as the Commission may require pursuant to rule and regulation. Rule 31a-1 under the Investment Company Act sets forth the records a BDC must keep. From at least January 12, 2004, through September 2006, American Energy did not make and keep certain required records including: (a) daily journals of all debits and credits; (b) ledgers of all assets, liabilities, reserve capital, income and expense accounts reflecting account balances on each day (including details of monies borrowed and monies loaned); and (c) journals or other records containing an itemized daily record reflecting sales and redemptions/repurchases of its own securities.

Failure to Adopt and Implement Compliance Policies and Procedures

14. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. American Energy did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

Failure to Establish a Majority of Disinterested Directors

15. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. From October 25, 2004, through November 19, 2005, American Energy failed to have a board composed of a majority of persons who were not interested persons.

Failure to Provide and Maintain a Fidelity Bond

16. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. American Energy did not provide and maintain a fidelity bond.

Violations

17. As a result of the conduct described above, American Energy violated Sections 17(g), 18(a), 18(d), 18(i), 23(a), 31(a)(1), and 56(a) of the Investment Company Act and Rules 17g-1, 31a-1, and 38a-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

18. On January 14, 2004, American Energy filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. American Energy did not file the Forms 2-E that were due within 30 days after July 14, 2004, January 14, 2005, July 14, 2005, and January 14, 2006. Therefore, American Energy did not comply with Rule 609.

19. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending an issuer's Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent American Energy's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent American Energy cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(d), 18(i), 23(a), 31(a)(1) and 56(a) of the Investment Company Act and Rules 17g-1, 31a-1, and Rule 38a-1 thereunder.

B. The Regulation E exemption as to Respondent American Energy be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary