

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
**September 29, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13254**

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<b>In the Matter of</b>	:	
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	:	<b>ORDER INSTITUTING</b>
	:	<b>PUBLIC ADMINISTRATIVE AND</b>
	:	<b>CEASE-AND-DESIST PROCEEDINGS</b>
<b>RUDY 45</b>	:	<b>AND NOTICE OF HEARING</b>
	:	<b>PURSUANT TO SECTIONS 9(b) AND</b>
	:	<b>9(f) OF THE INVESTMENT COMPANY</b>
	:	<b>ACT OF 1940, SECTION 12(j) OF</b>
<b>Respondent</b>	:	<b>THE SECURITIES EXCHANGE ACT</b>
	:	<b>OF 1934, AND RULE 610(c) OF</b>
	:	<b>REGULATION E</b>
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**I.**

The Securities and Exchange Commission (“Commission”) deems it necessary and appropriate for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 610(c) of Regulation E against Rudy 45 (or “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENT**

1. Rudy 45 (CIK No. 1105413), a Nevada corporation with principal offices located in Santa Monica, California, elected to be regulated as a BDC on December 22, 2004. Prior to its BDC election, Rudy 45 was an operating company known as Malahat Energy Corp, which was engaged in oil-and-gas exploration. Its securities are registered under Section 12(g) of the Exchange Act.

## **B. INVESTMENT COMPANY ACT VIOLATIONS**

### **Issuing Convertible, Unequal-Voting Stock for Services**

2. From August 2005 through March 16, 2006, Rudy 45 issued 1,531 shares of common stock and 10 million shares of Series-A preferred stock to two individuals in exchange for consulting services. Each Series-A preferred share had ten votes whereas Rudy 45's common stock had one vote per share. The Series-A preferred stock, which had no dividend or distribution preference, was convertible to common stock on a one-to-one basis at a price of \$0.01.

3. 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." Rudy 45 became subject to the BDC provisions on December 22, 2004. 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. With certain exceptions not relevant here, Section 18(i) 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. Here, Rudy 45's Series-A preferred stock did not have voting rights equal to those of its common stock.

4. Section 18(d) prohibits registered management companies 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 securities holders." Rudy 45's convertible Series-A preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance and were not issued only to persons who already held Rudy 45 securities as required under Section 18(d).

5. 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 approve, the proposal to issue such securities; and the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance does not exceed 25% of the BDC's outstanding voting securities.

6. Rudy 45's shareholders did not authorize the issuance of the conversion feature on the Series-A preferred stock. On December 22, 2004, the preferred-stock conversion price equaled 50% of the market price of Rudy 45's common stock, which was \$0.02 that day. Moreover, on December 22, 2004, Rudy 45 had approximately 87 million shares of common stock outstanding. Assuming the outstanding Series-A preferred stock had converted on that date, Rudy 45 would have issued approximately 50 million additional shares, which would have equaled approximately 57% of Rudy 45's outstanding voting securities, exceeding the 25% limit of Section 61(a)(3).

7. Section 23(a) of the Investment Company Act, which Section 63 makes applicable to BDCs, prohibits any closed-end company from issuing securities for services. In addition to the

Series-A preferred stock, between August 2005 and October 2005, Rudy 45 issued 1,531 shares of common stock to individuals in exchange for consulting services.

### **Failure to Provide and Maintain a Fidelity Bond**

8. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, requires 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. Rudy 45 did not provide and maintain a fidelity bond.

### **Failure to Establish a Majority of Disinterested Directors**

9. 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. Since Rudy 45 became a BDC on December 22, 2004, most of its directors have also been officers, who were interested persons under Section 2(a)(19) of the Investment Company Act.

10. As a result of the conduct described above, Rudy 45 willfully violated Sections 17(g), 18(d), 18(i), 23(a), and 56(a) of the Investment Company Act and Rule 17g-1 thereunder.

## **C. FAILURE TO COMPLY WITH REGULATION E**

11. On December 23, 2004, and April 12, 2006, Rudy 45 filed Form 1-E notifications of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filings 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. Rudy 45 did not file the Form 2-E for December 23, 2004, that was due on or before July 23, 2005, nor has it ever filed a Form 2-E for the April 12, 2006, Form 1-E offering. Therefore, Rudy 45 failed to comply with Rule 609.

12. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the 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.

## **D. DELINQUENT PERIODIC FILINGS**

13. On June 26, 2006, the Commission suspended trading in Rudy 45's securities based upon a lack of current and accurate information concerning its securities, stemming from, among other things, the company's failure to file required periodic reports with the Commission. Since then, the company has remained delinquent in its Commission reports, and its securities have not been quoted publicly. Rudy 45 is delinquent in its periodic Commission reports, having not filed any

periodic reports since it filed a Form 10-Q report for the quarterly period ended April 30, 2006, and a Form 10-K report for the annual period ending July 31, 2005.

14. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

15. As a result of the foregoing, Rudy 45 failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Rudy 45 an opportunity to establish any defenses to such allegations;

B. Whether it is necessary and appropriate to issue a cease-and-desist order pursuant to Section 9(f) against Rudy 45 from committing or causing any violations and any future violations of Sections 17(g), 18(i), 18(d), 23(a), and 56(a) of the Investment Company Act and Rule 17g-1 thereunder;

C. Whether it is necessary and appropriate and in the public interest to obtain penalties and disgorgement against Respondent pursuant to Sections 9(b), 9(d), and 9(e) of the Investment Company Act;

D. Whether it is necessary and appropriate to issue an order that permanently suspends Rudy 45's Regulation E exemption; and

E. Whether it is necessary and appropriate for the protection of investors to suspend, for a period not exceeding twelve months, or to revoke the registration of each class of Rudy 45's securities pursuant to Section 12 of the Exchange Act.

### **IV.**

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Rudy 45 shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Rudy 45 fails to file the directed Answer, or fails to appear at a hearing after being duly notified, Rudy 45 may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Rudy 45 personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon  
Acting Secretary