

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8968 / September 29, 2008**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28418 / September 29, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13259**

**In the Matter of**

**AERO PERFORMANCE  
PRODUCTS, 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 AERO  
PERFORMANCE PRODUCTS, 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 AERO Performance Products, Inc. ( “AERO” 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 AERO Performance Products, 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 finds<sup>1</sup> that:

#### Summary

1. Since electing to be regulated as a business development company ("BDC") in December 2004, AERO has, among other things, issued debt securities without adequate asset coverage, issued rights to purchase securities without expiration to non-security holders without the authorization of its shareholders and a majority of its disinterested directors, and issued prohibited non-voting stock. As a result, AERO violated Sections 18(a), 18(d), and 18(i), respectively, of the Investment Company Act. In addition, AERO failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder. Finally, AERO failed to comply with Rule 609 of Regulation E because it did not file an offering status report on Form 2-E in connection with a securities offering under Regulation E commenced in December 2004.

#### Respondent

2. AERO, formerly known as Franchise Capital Corporation, is a Nevada corporation with its principal offices located in South Jordan, Utah. It elected to be regulated as a BDC on December 23, 2004, and withdrew its election on March 13, 2007. Prior to its BDC election, AERO was an operating company known as BGR Corp., which sought to develop and franchise casual-dining restaurants. AERO'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 AERP.

#### Issuing Convertible Senior Securities

3. On October 13, 2004, AERO entered into a contract with a private consulting firm to assist AERO in becoming a BDC and in issuing stock pursuant to the securities-registration exemption under Regulation E of the Securities Act of 1933 ("Securities Act"). Among other things, the contract obligated the consulting firm to prepare corporate-governance and other internal documents necessary for AERO to operate as a BDC. It likewise called for the consulting firm to prepare the Commission filings necessary for AERO to elect to be regulated as a BDC and to issue stock in an exempt offering under Regulation E. AERO agreed to pay the consulting firm, among other things, \$30,000 in cash, plus a \$30,000 convertible debenture for these services.

4. On December 19, 2004, AERO issued the consulting firm the convertible debenture and, on December 23, 2004, filed a Form N-54A election with the Commission to become a BDC. As of December 23, 2004, AERO had seven convertible debentures outstanding, including six issued earlier in 2004 in exchange for total financing of \$377,438. All seven debentures were convertible

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<sup>1</sup> 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.

into AERO common stock at the option of the debenture holder. They provided for conversion at discounts ranging from 20% to 50% of the stock's market price on the date of conversion. 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." AERO became subject to the BDC provisions on December 23, 2004.

5. 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 December 23, 2004, AERO's balance sheet reflected total assets of \$619,344 and total liabilities of \$654,246, which included convertible debentures totaling \$377,438. The asset coverage for the convertible debentures, therefore, was approximately 91%, below the required 200% coverage.

6. With one exception not relevant here, Section 18(d), as applicable to BDCs, generally prohibits BDCs 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." AERO'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 and were not issued to persons who already held AERO securities as required under Section 18(d).

7. 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; the exercise or conversion price is not less than the current market value at the date of issuance, and the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25% of the BDC's outstanding voting securities.

8. AERO's shareholders did not authorize, and a majority of its disinterested directors did not approve, the issuance of the convertible debentures issued and outstanding as of December 23, 2004. In light of the discounts to the market price of AERO's common stock, which was \$0.01 on December 23, 2004, the debentures' conversion price was less than the current market value of AERO's common stock at the date of issuance. Moreover, on December 23, 2004, AERO had approximately 48.5 million shares of common stock outstanding. Assuming the six debentures issued earlier in 2004 had converted on that date (five had a 50% conversion ratio and the sixth had an 80% ratio), AERO would have issued approximately 62 million additional shares, which would have equaled approximately 56% of AERO's voting securities, exceeding 25% of the BDC's outstanding voting securities.

### **Issuing Unequal-Voting Stock**

9. On December 17, 2004, AERO issued 13.5 million shares of “Series C” preferred stock. This stock had no voting rights, except to elect three members of the board of directors. 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. Here, AERO’s preferred stock did not have voting rights equal to that of its common stock.

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

10. From December 23, 2004, through at least March 2005, AERO did not file, provide or maintain a fidelity bond. 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.

### **Violations**

11. As a result of the conduct described above, AERO violated Sections 17(g), 18(a), 18(d), and 18(i), of the Investment Company Act and Rule 17g-1 thereunder.

### **Failure to Comply with Rule 609 of Regulation E**

12. On December 27, 2004, AERO filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act 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. AERO did not file until September 30, 2005 the Form 2-E that was due within 30 days after June 27, 2005. Therefore, AERO failed to comply with Rule 609.

13. 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.

### **Respondent’s Remedial Efforts**

14. 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 AERO'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 AERO cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(d), and 18(i) of the Investment Company Act and Rule 17g-1 thereunder.

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

By the Commission.

Florence E. Harmon  
Acting Secretary