

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 10250 / November 10, 2016

SECURITIES EXCHANGE ACT OF 1934

Release No. 79280 / November 10, 2016

INVESTMENT ADVISERS ACT OF 1940

Release No. 4567 / November 10, 2016

INVESTMENT COMPANY ACT OF 1940

Release No. 32356 / November 10, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17672

In the Matter of

**DERIK J. TODD, MADISON
CAPITAL ENERGY INCOME
FUND II GP LLC, BIG HORN
MINERALS LLC, MADISON
CAPITAL INVESTMENTS
LLC, AND MADISON
ROYALTY MANAGEMENT
LLC,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e), 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Derik J. Todd (“Todd”), Madison Capital

Energy Income Fund II GP LLC (“Fund II GP”), Big Horn Minerals LLC (“Big Horn”), Madison Capital Investments LLC (“MCI”), and Madison Royalty Management LLC (“MRM”) (collectively hereinafter, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 Respondents and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that

Summary

1. These proceedings arise out of improper affiliate transactions conducted by unregistered investment advisers, Derik J. Todd (“Todd”) and Madison Capital Energy Income Fund II GP LLC (“Fund II GP”), and their Todd-controlled affiliates, Madison Capital Investments LLC (“MCI”), Big Horn Minerals LLC (“Big Horn”) and Madison Royalty Management LLC (“MRM”). In 2010, Todd formed Madison Capital Energy Income Fund II LP (“Fund II”) for the purpose of acquiring oil and gas royalty interests to generate a return for its investors. Todd raised \$11,125,500 from approximately 150 investors during Fund II’s offering period, October 2010 through January 2012.

2. Fund II’s offering materials represented to investors, among other items, that: (i) Todd and the Fund II GP would use Fund II’s assets and funds for the “exclusive benefit” of Fund II; (ii) Todd and the Fund II GP would conduct transactions with affiliates on an “arms-length basis;” and (iii) Todd, through MCI, would negotiate with sellers to purchase assets for Fund II at the “best price possible.”

3. From late 2011 through 2014, Todd and the Fund II GP improperly used their affiliates as intermediaries for many of Fund II’s sales and purchases of oil and gas royalty

¹ The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

interests. In breach of their fiduciary duties and contrary to the disclosures described above, Todd and the Fund II GP funneled \$308,638 in disguised illicit profits to Todd at the expense of Fund II and its investors through these affiliate transactions.

Respondents

4. **Madison Capital Investments LLC (“MCI”)** is a Wisconsin limited liability company controlled by Derik J. Todd (“Todd”) based in Madison Wisconsin. MCI organized a number of private placements of equity interests in oil and gas limited partnerships since 2009, including Fund II. The Fund II GP retained MCI to identify, review, and acquire oil and gas royalty interests for Fund II. MCI retained separate broker dealers and investment advisers to market Fund II to accredited investors under Regulation D Rule 506.

5. **Madison Capital Energy Income Fund II GP LLC (“Fund II GP”)** is a Delaware limited liability company wholly owned by MCI, controlled by Todd, and based in Madison, Wisconsin. The Fund II GP is the general partner of Fund II and is responsible for the management and administration of Fund II. The Fund II GP has authority to make all decisions related to the acquisition, management and divestiture of Fund II’s oil and gas royalty interests.

6. **Big Horn Minerals LLC (“Big Horn”)** is a Wisconsin limited liability company, controlled by Todd, based in Madison, Wisconsin. Big Horn is an affiliate of MCI. Big Horn acquires and sells, as well as acquires and holds, oil and gas royalty interests.

7. **Madison Royalty Management LLC (“MRM”)** is a Delaware limited liability company, controlled by Todd, based in Madison, Wisconsin. MRM is an affiliate of the Fund II GP. MRM provides administrative services to Fund II, which includes the processing of and accounting for, Fund II’s revenues, costs and distributions of oil and gas royalty payments.

8. **Derik J. Todd (“Todd”)** has served as the President of MCI since 2007. Todd has organized private placements of equity interests in oil and gas limited partnerships through MCI and other entities. Todd has been the President of MRM since May 2009 and the President of Big Horn since September 2012. Todd controlled the Fund II GP since 2010. Todd, 51 years old, is a resident of Madison, Wisconsin.

Other Relevant Entity

9. **Madison Capital Energy Income Fund II LP (“Fund II”)** is a Delaware limited partnership, controlled by Todd, based in Madison, Wisconsin. Fund II was formed for the general purpose of acquiring oil and gas royalty interests to generate a return for its investors. Fund II’s offering period was from October 2010 through January 2012. Fund II raised \$11,125,500 in subscriptions from approximately 150 investors.

Background Regarding Fund II's Offering

10. In 2010, Todd formed Fund II. According to Fund II's offering materials, Fund II sought to acquire various mineral interests, royalty interests, and overriding royalty interests in existing as well as potential income producing oil, gas, and/or mineral properties located in the United States (hereinafter collectively referred to as, "Royalty Interests"). Fund II's general partner was the Fund II GP. As general partner, the Fund II GP had full and exclusive control over Fund II's business and affairs. Fund II's offering materials also expressly stated that the Fund II GP had a "fiduciary responsibility for the safekeeping and use of all funds and assets of [Fund II]" and could not "employ or permit another Person to employ such funds or assets in any manner except for the exclusive benefit of [Fund II]."

11. Fund II disclosed two of Todd's entities as affiliates, MCI and MRM. These affiliates each had designated roles with Fund II. MCI advised the Fund II GP regarding the acquisition of Royalty Interests, and MRM provided administrative services relating to the Royalty Interests. Fund II's offering materials disclosed that the Fund II GP, MCI and MRM would each receive distinct compensation in exchange for their roles with Fund II.

12. Todd used MCI as the primary vehicle through which he conducted Fund II's acquisition and sale of Royalty Interests. Todd controlled the Fund II GP, MCI and MRM.

13. Todd and the Fund II GP arranged with registered broker-dealers and investment advisers (collectively, "Dealers") to offer and sell Fund II's limited partnership units to accredited investors. Prospective investors were solicited solely by the Dealers to purchase Fund II's limited partnership units. The Dealers provided prospective investors with a copy of Fund II's Confidential Private Offering Memorandum ("Fund II's PPM") before they invested in Fund II. Fund II's PPM attached copies of Fund II's Agreement of Limited Partnership ("Partnership Agreement"), Management Agreement and Subscription Agreement. Todd reviewed and approved the PPM and its attachments before they were distributed to Dealers and investors. Todd then provided the Dealers with Fund II's offering materials, including Fund II's PPM, Management Agreement, Subscription Agreement and Partnership Agreement. The Dealers, in turn, distributed these offering materials to Fund II's investors.

14. Between October 2010 and January 2012, Fund II raised \$11,125,500 in subscriptions from approximately 150 investors. According to the offering documents, investors would receive an amount ranging from 90% to 97% of Fund II's net proceeds. The investors' share of net proceeds was to be distributed to each investor on a pro rata basis according to ownership percentages.

15. Fund II's offering materials made certain written disclosures to investors concerning the Fund II GP's fiduciary duties, negotiation process and transactions involving Fund II's affiliates.

Disclosures Regarding the Fund II GP's Fiduciary Duties

16. Regarding the Fund II GP's fiduciary duties, Fund II's PPM provided:

[The Fund II GP] has fiduciary duties to [Fund II] and must exercise utmost good faith and integrity in handling [Fund II] affairs...It will have a responsibility for the safekeeping and use of all funds and assets of [Fund II], whether or not in its control, and may not employ or permit another to employ such funds or assets in any manner except for the exclusive benefit of [Fund II].

17. The Partnership Agreement also addressed these fiduciary duties:

[The Fund II GP] shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of [Fund II], whether or not in [the Fund II GP's] possession or control, and shall not employ or permit another Person to employ such funds or assets in any manner except for the exclusive benefit of [Fund II].

Disclosures Regarding MCI's Negotiation for Best Price Possible

18. Fund II's PPM disclosed to investors that the Fund II GP would retain MCI and rely on it for identifying, reviewing and acquiring Royalty Interests for Fund II. When acquiring Royalty Interests, Fund II's PPM stated: "MCI will negotiate directly with sellers of Royalty Interests on behalf of [Fund II] to acquire the Royalty Interests at the **best price possible**." (emphasis added) The PPM also stated that the Fund II GP "will not acquire Royalty Interests identified by MCI unless [the Fund II GP is] satisfied with MCI's due diligence with respect to the Royalty Interests."

Disclosures Regarding Transactions with Affiliates

19. The Partnership Agreement provided that transactions involving affiliates would be conducted on an "arms-length" basis. Specifically, the Partnership Agreement stated:

Except as otherwise described in [Fund II's PPM], all transactions between [Fund II] and [the Fund II GP] or its Affiliates shall be on terms no less favorable than those terms which could be obtained between [Fund II] and independent third parties dealing at arms-length.

Undisclosed Affiliate Transactions

20. From late 2011 through 2014, Todd employed entities he controlled as intermediaries for many of Fund II's sales or purchases of Royalty Interests. One of those entities was Big Horn, which Todd formed in August 2011. Todd controlled Big Horn as President. Big

Horn was therefore an affiliate within the meaning of the Partnership Agreement. Big Horn acquired oil and gas royalties, mineral rights, and other natural resources. Big Horn's sole function during Fund II's offering period was to sell Fund II's assets.

21. Another intermediary Todd used to effect Fund II transactions was MRM. MRM was another Todd-controlled entity, and Todd primarily used MRM to perform administrative services for Fund II. Thus, MRM was also an affiliate within the meaning of the Partnership Agreement.

22. Todd controlled all sales and acquisitions for Fund II, Big Horn and MRM. While the Fund II offering materials disclosed the potential for transactions with affiliated entities, Todd conducted numerous Fund II transactions through Big Horn and MRM to funnel disguised profits to himself at the expense of the Fund II investors (hereinafter, "Affiliate Transactions").²

23. Specifically, the Affiliate Transactions typically consisted of multi-part transactions that began with sales from Fund II to either Big Horn or MRM. Todd would first sell a portion of Fund II's assets to Big Horn or MRM at cost. On the same or proximate date, Todd would then sell all, or a part of, those same assets from Big Horn or MRM to an independent third party at a profit. Additionally, on at least one occasion, Todd arranged for Big Horn to purchase assets from an independent third party and on the same date sold the same assets to Fund II at an inflated nonmarket price, which generated a profit for Big Horn.

24. The Affiliate Transactions were typically consummated by two agreements: (i) one agreement between Fund II and Big Horn or MRM; and (ii) the other agreement between Big Horn or MRM and a third party buyer. Both agreements had the same effective date for the majority of the Affiliate Transactions, which reflected the critical date that the buyer would be entitled to revenue generated by the Royalty Interests purchased. The agreements typically had the same effective date because Todd often lined up a buyer for Big Horn or MRM before those entities owned or even purchased the assets from Fund II. Also, when the transaction was between two Todd-controlled entities (*i.e.*, Fund II and Big Horn or MRM), Todd did not typically sign on behalf of both the seller and buyer. In those instances, Todd directed another employee to sign on behalf of one of the Todd-controlled entities in an effort to conceal Todd's self-dealing.

25. Todd conducted 24 Affiliate Transactions during Fund II's offering period and generated approximately \$308,638 in overall profits for himself through Big Horn or MRM. These profits constituted more than 10 percent of the overall operating income of Fund II from inception of the fund through 2014. Further, the Affiliate Transactions constituted nearly half of all of Fund II's asset sales.

26. Todd never disclosed to investors that Fund II entered into the Affiliate Transactions with Big Horn or MRM, that he caused Fund II to sell assets at cost to Big Horn or

² New investors continued to invest in Fund II after Todd and the Fund II GP began engaging in the Affiliate Transactions.

MRM which in turn sold the assets for a profit, or that he did not transfer the Big Horn or MRM profits to Fund II and instead kept them for himself.

27. Furthermore, Todd, on behalf of MRM, sent monthly updates to Fund II's investors regarding Fund II's performance, but failed to disclose the Affiliate Transactions in these updates. For example, in MRM's October 15, 2012 letter to clients, Todd wrote, "[w]e continue to rebalance the portfolio and successfully sold a small undivided interest of a few positions this month. These assets realized a small profit for the fund which we included in distributions." Yet, Todd did not inform his investors in this letter that he had been utilizing his affiliates to siphon profits from Fund II and its investors over the preceding months.

28. Todd and the Fund II GP acted intentionally and knowingly when devising these Affiliate Transactions. They intentionally structured the timing and prices of the Affiliate Transactions to generate an illicit profit at the outset of these transactions. Furthermore, Todd and the Fund II GP attempted to conceal that the transactions were between his affiliates by failing to disclose the Affiliate Transactions, and by directing another employee to sign on behalf of one of his affiliates. Todd also knowingly kept the illicit profits generated by the Affiliate Transactions for himself.

29. By misappropriating \$308,638 from Fund II through the Affiliate Transactions, Todd and the Fund II GP breached their fiduciary duties to act in the utmost good faith as investment advisers to their client, Fund II. After the Commission's Office of Compliance Inspection and Examinations staff questioned these affiliate transactions, Todd transferred approximately a third of the \$308,638 in profits to Fund II for distribution to investors. Yet, Todd kept the balance of \$205,673 for himself.

Todd and the Fund II GP Made Material Misrepresentations to Fund II investors

30. Todd and the Fund II GP made three material misstatements to Fund II investors through Fund II's offering materials. Todd and the Fund II GP knew of the representations made to investors because they had reviewed and approved of Fund II's offering materials, and knew that investors received these materials before they had decided to invest in Fund II. As detailed below, Todd and the Fund II GP also knew that these representations were false.

31. First, Todd and the Fund II GP falsely represented in Fund II's offering materials that the Fund II GP would be responsible for the safekeeping and use of Fund II's assets and funds for the "exclusive benefit" of Fund II. They knew that this statement was false because they devised the Affiliate Transactions to divert profits for their personal benefit, rather than for Fund II's sole benefit.

32. Second, Todd and the Fund II GP falsely represented in Fund II's offering materials that all transactions between Fund II and its affiliates would be made on an "arms-length" basis and therefore on terms "no less favorable" than those which could be obtained between Fund II and independent third parties. They knew that that this statement was false because they intentionally

devised the Affiliate Transactions on terms that were less favorable than if they were made with independent third parties on an arms-length basis.

33. Third, Todd and the Fund II GP falsely represented in Fund II's offering materials that Todd, through MCI, would negotiate with sellers to purchase assets for Fund II at the "best price possible." They knew that this statement was false because, on at least one occasion, Todd arranged for Big Horn to purchase assets from an independent third party and on the same date sold the same assets to Fund II at an inflated nonmarket price, rather than the "best price possible."

34. The misrepresentations listed in paragraphs 30-33 above were material because investors would have wanted to know that: (i) a significant portion of Fund II's income was diverted to Todd and his affiliates; (ii) Todd sold Fund II assets on terms contrary to and less favorable than the representations made to investors; and (iii) Fund II purchased assets at a non-negotiated price that impacted the investors' return on the investment.

35. In addition to the material misrepresentations made in Fund II's offering materials, Todd also made material and misleading statements to investors in his monthly updates. Todd reported in these updates the benefits of rebalancing Fund II's portfolio of assets. Yet, he intentionally failed to disclose in these updates that he diverted profits from Fund II to himself and his affiliates. This omission was misleading and material because investors would have wanted to know that, as part of the rebalancing of Fund II, that Todd and his affiliates misappropriated a significant portion of income from Fund II.

Violations

36. As a result of the conduct described above, Todd and the Fund II GP willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

37. As a result of the conduct described above, Todd and the Fund II GP willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

38. As a result of the conduct described above, MCI, Big Horn and MRM willfully aided and abetted and caused Todd's and the Fund II GP's violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act.

B. Todd be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Fund II GP, MCI, Big Horn and MRM are censured.

D. Any reapplication for association by Todd will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Todd, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Respondents shall pay, on a joint and several basis, disgorgement of \$205,673 and prejudgment interest of \$21,581 to the Securities and Exchange Commission, and Todd shall pay a civil penalty of \$50,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$100,000 of disgorgement to be paid within 10 days of the entry of this Order, and the remaining \$177,254 of disgorgement, prejudgment interest and penalty to be paid in equal quarterly installments of \$44,313.50 over the year following the entry of this Order. Each of the four quarterly installment payments are due, respectively, within 90 days, 180 days, 270 days, and 360 days of the entry of this Order. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and if timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31

U.S.C. § 3717. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Todd, Fund II GP, MCI, Big Horn and MRM as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Steven Klawans, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraph E above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Todd's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Todd, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Todd under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Todd of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary