

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 53944 / June 6, 2006

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2437 / June 6, 2006

ADMINISTRATIVE PROCEEDING

File No. 3-12325

In the Matter of

DAVID A. RODRIGUEZ, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against David A. Rodriguez, CPA ("Rodriguez" or "Respondent") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . to have engaged in . . . improper professional conduct.

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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

A. SUMMARY

1. David A. Rodriguez, CPA, engaged in improper professional conduct in the audit of the financial statements of the Liquid Green Money Market Fund (“Liquid Green”) for the fiscal year ended September 30, 2001. Because he did not audit Liquid Green’s financial statements properly, Rodriguez (i) failed to detect that the fund was holding itself out as a money market fund and using the amortized cost method to value its securities when it was not entitled to do so, in violation of the Investment Company Act of 1940 (“Investment Company Act”); and (ii) caused his accounting firm, McCurdy & Associates CPAs, Inc. (“McCurdy & Associates”) to issue an unqualified audit report falsely representing that Liquid Green’s financial statements fairly presented the fund’s financial position in conformity with generally accepted accounting principles (“GAAP”) and that McCurdy & Associates had conducted its audit in accordance with generally accepted auditing standards (“GAAS”).

B. RESPONDENT

2. **Rodriguez**, age 49, has been an Ohio-licensed certified public accountant (“CPA”) since 1985. From May 1993 until December 2003, Rodriguez was a partner in McCurdy & Associates, an accounting firm in Westlake, Ohio that specialized in performing mutual fund audits. Rodriguez was the engagement partner for McCurdy & Associates’ audit of Liquid Green’s financial statements for the fiscal year ended September 30, 2001 (the “2001 Liquid Green audit”). McCurdy & Associates sold its investment industry practice, including its auditing practice, to Cohen McCurdy, Ltd. in January 2004. From January 2004 until November 2004, Rodriguez held the position of principal at Cohen McCurdy. Since November 2004, Rodriguez has been employed outside of public accounting.

² 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.

C. OTHER RELEVANT ENTITY

3. **AmeriPrime Advisors Trust (“AAT”)**, an Ohio business trust, is an open-end series investment company³ that has been registered with the Commission since 1999. On September 20, 2001, AAT organized Liquid Green as one of its series of funds. On September 28, 2001, Liquid Green acquired the assets and assumed the liabilities of the Unified Taxable Money Market Fund (“UTMM”), which was a series of the open-end series investment company Unified Funds. UTMM transferred its assets to Liquid Green and thereafter dissolved.⁴ As of September 30, 2001, Liquid Green had total net assets valued at \$37,695,013. In February 2002, Liquid Green dissolved after transferring all of its assets to another money market fund.

D. FACTS

4. Between March 20, 2001 and December 6, 2001, Liquid Green’s portfolio manager followed an investment strategy of purchasing fixed-rate, government agency bonds with remaining maturities of between 2 1/2 and 12 years. The bonds were callable within 397 days at the discretion of the government agency, but not at the option of the purchaser. As of September 30, 2001, the last day of fiscal year 2001, these callable bonds made up over 53.1% of the fund’s assets.

5. Under Rule 2a-7(c)(2)(i) of the Investment Company Act, a mutual fund cannot acquire securities with maturities in excess of 397 days and hold itself out as a money market fund unless the securities have a maturity shortening feature as provided by the rule. Furthermore, Rule 2a-7(b)(1) expressly provides that it is a material misrepresentation under Section 34(b) of the Investment Company Act for a mutual fund to hold itself out as a money market fund when it does not meet the risk limiting conditions of Rule 2a-7.

6. In this case, the callable bonds purchased by Liquid Green did not have a maturity shortening feature as provided for by Rule 2a-7 because the bonds were callable only at the discretion of the issuer. Thus, during the time period when the fund held these bonds, Liquid Green was not permitted to hold itself out as a money market fund and it was a material misrepresentation for the fund to do so.

7. In addition, a money market fund that does not meet the requirements of Rule 2a-7 is not permitted to use the amortized cost method of valuing the securities in its investment portfolio, but instead must calculate the current net asset value of its portfolio securities on a daily basis to reflect current market prices. Because Liquid Green did not meet the requirements of Rule 2a-7 during the time period when it held the ineligible bonds, the fund was not permitted to use the amortized cost method to value its securities.

³ Although a series investment company such as AAT is organized as a single corporate entity, it may be comprised of several different series or portfolios that function as separate investment companies.

⁴ For the purposes of this Order, “Liquid Green” refers collectively to both Liquid Green and its predecessor UTMM.

8. AAT engaged McCurdy & Associates to provide audit and tax services to its series funds, including Liquid Green. Rodriguez was assigned as the engagement partner for the 2001 Liquid Green audit. As engagement partner, he had primary responsibility for planning the audit and performing the fieldwork.

9. During the fieldwork for the 2001 Liquid Green audit, Rodriguez learned that more than one half of Liquid Green's investment portfolio consisted of bonds with stated maturities greater than 397 days. Rodriguez became aware of these bonds because: (i) he reviewed Liquid Green's portfolio listing for the annual report, which accurately reported the bonds' maturities; (ii) he reviewed the "Investment Review" prepared by the fund's portfolio manager for the annual report, which stated that during 2001 the fund had "endeavored to maximize our yields" by investing in agency bonds "with a duration of many years but with a right for the agency to 'call' or redeem the bonds"; and (iii) he discussed the fund's investment strategy of purchasing callable securities with long maturities with staff of the fund administrator.

10. Despite knowing that more than half of Liquid Green's portfolio consisted of bonds with stated maturities that appeared to make them ineligible for a money market fund under Rule 2a-7, Rodriguez did not perform adequate audit procedures to review or test the bonds held in the fund's investment portfolio to determine whether they were in fact eligible for a money market fund.

11. As a result of his failure to adequately test Liquid Green's compliance with Rule 2a-7, Rodriguez failed to detect that the fund's financial statements and related notes contained material misrepresentations, including that Liquid Green was a "money market fund" and that it was proper for the fund to use the amortized cost method to value its portfolio securities.

12. On October 10, 2001, McCurdy & Associates issued an unqualified audit report on Liquid Green's financial statements as of September 30, 2001 that was included in the fund's annual report filed with the Commission on November 28, 2001.⁵

13. The unqualified audit report stated that McCurdy & Associates "audited the statements of assets and liabilities, including the portfolios of investments, of Liquid Green Money Market Fund (formerly Unified Taxable Money Market Fund) as of September 30, 2001." The report further falsely represented that (i) the fund's financial statements were presented in conformity with GAAP, and (ii) that McCurdy & Associates had audited the fund's financial statements in accordance with GAAS.

14. GAAS consist of ten auditing standards, including three general standards, three standards of fieldwork and four standards of reporting.

15. The first standard of fieldwork requires that audit work be adequately planned and supervised. AU §310.01. Rodriguez failed to comply with the first standard of fieldwork because

⁵ Liquid Green's 2001 annual report was originally filed on November 28, 2001 under the wrong investment company name. After the fund administrator discovered the error, the annual report was re-filed, with no changes, under the correct investment company name on December 26, 2001.

he failed to include in the audit plan procedures to test the fund's Rule 2a-7 compliance, even after discovering that a large percentage of the fund's portfolio appeared not to comply with Rule 2a-7.

16. The third standard of fieldwork requires that "sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit." AU §330.01. GAAS further provide that "representations from management are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." AU §333.02. "[W]hen evidential matter can be obtained from independent sources outside an entity, it provides greater assurance of reliability for the purposes of an independent audit than that secured solely within the entity." AU §326.21(a).

17. Rodriguez violated the third standard of fieldwork because he failed to obtain competent evidential matter of Liquid Green's compliance with Rule 2a-7 and did not have a reasonable basis for opining that the fund's financial statements and related notes were fairly presented in accordance with GAAP.

18. The third general standard under GAAS provides that, "[d]ue professional care is to be exercised in the performance of the audit and the preparation of the report." AU §230.01. Among other things, due professional care requires an auditor to observe the field work and reporting standards of GAAS. AU §230.02. Additionally, due professional care requires an auditor to employ professional skepticism, which is "an attitude that includes a questioning mind and a critical assessment of audit evidence." AU §230.07. Professional skepticism requires an auditor to obtain no less persuasive evidence merely because he assumes that management is honest. AU §230.09.

19. Rodriguez failed to exercise due professional care during the 2001 Liquid Green audit by (i) failing to include in the audit plan appropriate procedures to test the fund's Rule 2a-7 compliance; (ii) failing to obtain sufficient competent evidential matter to determine whether the fund was in compliance with Rule 2a-7; and (iii) signing off on the unqualified audit report for Liquid Green even though the fund's financial statements and related notes improperly held Liquid Green out as a money market fund and misrepresented that the fund was properly using the amortized cost method of valuing securities.

20. The reporting standards under GAAS provide that an audit report "shall state whether the financial statements are presented in accordance with generally accepted accounting principles." AU §410.01. The auditor's opinion that financial statements present fairly an entity's financial position, results of operations and cash flows in conformity with GAAP should be based on a judgment that, among other things, the accounting principles are appropriate under the circumstances and that the financial statements, including the related notes, are informative of matters that may affect their use, understanding, and interpretation. AU §411.04. Furthermore, the presentation of financial statements in conformity with GAAP includes adequate disclosure of material matters, including matters relating to the form, arrangement and content of the financial statements and their appended notes. AU §431.02.

21. Rodriguez violated the reporting standards under GAAS when he caused McCurdy & Associates to issue an unqualified audit report on Liquid Green's financial statements as of September 30, 2001 even though the financial statements and related notes contained material misrepresentations and failed to disclose material matters.

E. VIOLATIONS

22. Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in pertinent part, that, "[t]he Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . to have engaged in unethical or improper professional conduct."

23. With respect to persons licensed to practice as accountants, such as Rodriguez, "improper professional conduct" under Rule 102(e)(1)(ii) includes:

(A) intentional or knowing conduct, including reckless conduct, that resulted in violation of applicable professional standards; or

(B) negligent conduct, consisting of (1) a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which an accountant knows, or should have know, that heightened scrutiny was warranted, or (2) repeated instances of unreasonable conduct by an accountant, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

24. The conduct described above constitutes negligent conduct consisting of a single instance of highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which Rodriguez knew, or should have known, that heightened scrutiny was warranted.

F. FINDINGS

25. Based on the foregoing, the Commission finds that Rodriguez engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

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

Accordingly, pursuant to Rule 102(e)(1) of the Commission's Rules of Practice, it is hereby **ORDERED**, effective immediately, that:

A. Respondent Rodriguez is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After twelve (12) months from the date of this order, Respondent Rodriguez may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision.

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependant on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary