

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 54945 / December 15, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2525 / December 15, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12322

In the Matter of

JAMES T. MCCURDY, CPA,

Respondent.

ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE

I.

On June 2, 2006, the Securities and Exchange Commission ("Commission") instituted public administrative proceedings pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice¹ against James T. McCurdy, CPA ("Respondent" or "McCurdy").

II.

In connection with 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 Making Findings and Imposing Remedial

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 . . . to any person who is found . . . to have engaged in . . . improper professional conduct.

Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice ("Order"), as set forth below.

III.

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

A. SUMMARY

1. This matter concerns failed audits of the financial statements of two mutual funds, the Liquid Green Money Market Fund ("Liquid Green") and the Florida Street Bond Fund ("Florida Street"), as the result of improper professional conduct by James T. McCurdy, CPA.

2. McCurdy engaged in improper professional conduct during the audit of Liquid Green's financial statements for the fiscal year ended September 30, 2001 ("the 2001 Liquid Green audit"). During the 2001 Liquid Green audit, McCurdy, who was the concurring review partner, became aware that more than half of the securities in the fund's portfolio had stated maturity dates exceeding the 397-day period set forth in Rule 2a-7 under the Investment Company Act of 1940 ("Investment Company Act"), and did not assure that the engagement partner performed audit procedures to determine whether the securities were in fact eligible for a money market fund or otherwise to test the fund's compliance with Rule 2a-7.

3. Because he did not require the engagement partner to audit Liquid Green's financial statements in accordance with generally accepted auditing standards ("GAAS") and did not do so himself, McCurdy allowed his firm to issue an audit report with an unqualified opinion even though the fund's financial statements were not prepared in conformity with generally accepted accounting principles ("GAAP") because the fund was using the amortized cost method of valuing its securities and holding itself out as a money market fund when it was not eligible to do so, in violation of the Investment Company Act.

4. McCurdy also engaged in improper professional conduct during the audits of Florida Street's financial statements for the fiscal years ended October 31, 1999 (the "1999 Florida Street audit") and October 31, 2000 (the "2000 Florida Street audit"). McCurdy assigned two inexperienced auditors as engagement partners and designated himself as the concurring review partner for the 1999 and 2000 Florida Street audits.

5. Because McCurdy failed to ensure that the 1999 Florida Street audit was conducted in accordance with GAAS, he failed to detect (i) that the fund was over-accruing interest for bonds that had missed interest payments, were in default, or had previously been sold and were no longer held by the fund; (ii) that a significant portion of the fund's interest receivable balance was uncollectible; and (iii) that Florida Street's financial statements were not fairly presented in conformity with GAAP.

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.

6. Florida Street's overstated interest receivable balance came to light during the 2000 Florida Street audit. As a result of the discovery, the fund was re-priced, the fund wrote off the uncollectible interest, and it was determined that the fund made a return of capital that had not been disclosed to shareholders. None of these events was disclosed in the October 31, 2000 financial statements in violation of GAAP.

7. As a result of McCurdy's reckless or at least highly unreasonable conduct, his accounting firm issued audit reports with unqualified opinions on Liquid Green's financial statements as of September 30, 2001, and Florida Street's financial statements as of October 31, 1999 and October 31, 2000, each of which falsely represented that those financial statements were fairly presented in conformity with GAAP and the audits were conducted in accordance with GAAS.

B. RESPONDENT

8. **McCurdy**, age 59, resides in Westlake, Ohio and has been a licensed certified public accountant ("CPA") in Ohio since 1979. From February 1980 until December 2003, McCurdy was the principal shareholder and managing partner of McCurdy & Associates CPAs, Inc. ("McCurdy & Associates"), an accounting firm that specialized in performing mutual fund audits. McCurdy was the concurring review partner for the 2001 Liquid Green audit and 1999 and 2000 Florida Street audits. McCurdy & Associates sold its investment industry practice, including its auditing practice, to Cohen McCurdy, Ltd. in January 2004. McCurdy & Associates continues to provide tax services to clients. The firm resigned its Public Company Accounting Oversight Board ("PCAOB") registration effective August 17, 2004. On May 19, 2005, McCurdy was temporarily denied the privilege of appearing or practicing before the Commission as an accountant for one year, as a result of his improper professional conduct in connection with the 1998 audit of the financial statements of the JWB Aggressive Growth Fund.

C. RELATED PARTIES

9. **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 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.

10. **AmeriPrime Funds ("AF")**, an Ohio business trust, is an open-end series investment company that has been registered with the Commission since 1995. From June 1997

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.

until November 2001, Florida Street was a high-yield bond fund under AF. As of October 31, 2001, Florida Street reported total assets of \$13,184,855. AF liquidated and closed Florida Street in November 2001.

11. **Unified Fund Services, Inc. (“Unified”)**, an Indiana corporation located in Indianapolis, Indiana, has provided administrative and accounting services to mutual funds since 1990. Unified’s clients included AAT and AF. As fund administrator and fund accountant for Liquid Green and Florida Street, Unified was responsible for, among other things, keeping the funds’ books and records and preparing their financial statements.

D. FACTS

Applicable Professional Standards

12. The “applicable professional standards” of care for accountants practicing before the Commission include, but are not limited to, GAAP and GAAS. GAAS consists of ten auditing standards, including three general standards, three standards of fieldwork and four standards of reporting.

13. The first general standard requires that an audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor. AU §210.01.

14. The third general standard provides that “due 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.

15. The first standard of fieldwork requires that audit work be adequately planned and supervised. AU §310.01.

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 §326.01. 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. The first standard of reporting states, “The report shall state whether the financial statements are presented in accordance with generally accepted accounting principles.” AU §410.01. The third standard of reporting further provides that “informative disclosures in the

financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.” AU §431.01. “If management omits from the financial statements, including the accompanying notes, information that is required by generally accepted accounting principles, the auditor should express a qualified or an adverse opinion and should provide the information in his report, if practicable, unless its omission from the auditor’s report is recognized as appropriate by a specific Statement on Auditing Standards.” AU §431.03

18. As set forth below, McCurdy engaged in improper professional conduct in connection with the 2001 Liquid Green audit and the 1999 and 2000 Florida Street audits because he failed to comply with GAAS.

The 2001 Liquid Green Audit

19. 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 bonds made up over 53.1% of the fund’s assets.

20. Under Rule 2a-7(c)(2)(i) under 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.

21. In this case, the callable bonds purchased by Liquid Green did not have a maturity-shortening feature as provided for by Rule 2a-7. 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.

22. 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.

23. AAT engaged McCurdy & Associates to provide audit and tax services to its series of funds, including Liquid Green. McCurdy assigned another member of his firm to be the engagement partner for the 2001 Liquid Green audit while he assigned himself the role of concurring review partner. As concurring review partner, McCurdy reviewed all of the audit workpapers, including the results of all of the fieldwork performed by the engagement partner.

24. The audit plan for the 2001 Liquid Green audit did not contain any procedures designed to test the fund's compliance with Rule 2a-7.

25. During the 2001 Liquid Green audit, McCurdy learned that more than one half of Liquid Green's investment portfolio consisted of callable bonds with stated maturities of greater than 397 days. McCurdy became aware of the callable bonds when he reviewed Liquid Green's financial statements, which included a schedule of investments that listed the callable bonds and their maturities.

26. Despite knowing that more than half of Liquid Green's portfolio consisted of callable bonds with stated maturities that appeared to make them ineligible for a money market fund under Rule 2a-7, McCurdy did not require the performance of any audit procedures to test the fund's compliance with the rule by the engagement partner; nor did he perform any such procedures himself.

27. As a result of his failure to properly follow up on red flags discovered during his review of the audit of Liquid Green's financial statements, McCurdy failed to require the fund to correct its audited financial statements containing 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.

28. McCurdy & Associates issued an audit report dated October 10, 2001, containing an unqualified opinion 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

29. The 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.

30. As the concurring review partner on the 2001 Liquid Green audit, McCurdy was required to conduct himself in accordance with GAAS. McCurdy was also responsible for reviewing documentation of the resolution of any significant auditing, accounting and financial reporting matters that arose during the audit and using professional judgment to determine whether reviewing more documentation and employing other procedures were necessary.

31. With respect to the 2001 Liquid Green audit, McCurdy failed to exercise sound professional judgment to determine whether additional procedures were in fact necessary to determine whether Liquid Green was in compliance with Rule 2a-7.

32. McCurdy failed to conduct himself in accordance with the first standard of fieldwork under GAAS because he failed to require the engagement partner to include in the audit plan procedures to test the fund's Rule 2a-7 compliance, even after discovering that a large

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.

percentage of the securities in the fund's portfolio had stated maturity dates that appeared not to comply with Rule 2a-7.

33. McCurdy violated the third standard of fieldwork because he failed to ensure that the engagement partner obtained sufficient competent evidential matter regarding Liquid Green's compliance with Rule 2a-7 and did not have a reasonable basis for allowing the issuance of the firm's audit report containing the opinion that the fund's financial statements were fairly presented in conformity with GAAP.

34. McCurdy failed to exercise due professional care in accordance with the third general standard by (i) failing to ensure that the audit plan included procedures appropriate to test the fund's Rule 2a-7 compliance; (ii) failing to ensure that sufficient competent evidential matter was obtained to determine whether the fund was in compliance with Rule 2a-7; and (iii) allowing his firm to issue an audit report with an unqualified opinion on Liquid Green's financial statements, even though those financial statements improperly held Liquid Green out as a money market fund, represented that the amortized cost method was appropriate, and improperly used the amortized cost method to value securities in the fund.

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

The 1999 and 2000 Florida Street Audits

36. From at least August 1999 until November 2001, Florida Street failed properly to account for interest due from its portfolio of bonds. During that time period, Florida Street continued to accrue interest for bonds that had missed interest payments, were in default or were no longer owned by the fund.

37. Because of these improper interest accruals, the interest receivable reflected in Florida Street's accounting books and records included a significant amount of uncollectible interest. As of August 1, 1999, Florida Street's interest receivable included approximately \$195,120 in uncollectible interest. By October 31, 2000, Florida Street's interest receivable balance was overstated by approximately \$796,356. Between November 1, 2000 and October 31, 2001, Florida Street accrued additional uncollectible interest of approximately \$473,275.

38. The uncollectible interest was included in Florida Street's trial balance and used to compute the fund's daily net asset value ("NAV"). From at least December 1, 1999 through June 25, 2001, Florida Street's daily NAV was overstated by between \$.01 and \$.34 per share. Throughout this period, the fund was redeeming and selling shares at inflated NAVs.

39. McCurdy & Associates audited Florida Street's financial statements for the fiscal year ended October 31, 1999. McCurdy assigned another member of his firm to serve as the engagement partner for the 1999 Florida Street audit even though she did not have adequate technical training, experience and proficiency as an auditor to serve as an engagement partner for

an audit of a high-yield bond fund.

40. McCurdy assumed the role of concurring review partner for the 1999 Florida Street audit. As concurring review partner, McCurdy reviewed all of the audit workpapers. In addition, McCurdy provided the engagement partner with the audit program to be used for the audit and trained her on how to carry out the audit procedures.

41. At the time of the 1999 Florida Street audit, the fund accountant could not provide the auditors with information to substantiate an interest receivable balance of over \$913,264 that had been carried over from the predecessor accountant. The unsubstantiated balance was included on Florida Street's trial balance and was used to calculate the fund's NAVs. Florida Street's recording of the unsubstantiated interest was inconsistent with GAAP because revenue must be (1) recognizable and (2) measurable to be recorded. Statement of Financial Accounting Concepts No. 6 ¶145.

42. Based on her training by McCurdy, the engagement partner for the 1999 Florida Street audit did not perform audit procedures to test the collectibility of Florida Street's interest receivable balance. McCurdy knew that such audit procedures, such as confirmation of the receivable balance, were not performed.

43. Because the auditors failed to conduct the 1999 Florida Street audit properly, they failed to detect (i) that the fund was over-accruing interest for bonds that had missed interest payments, were in default, or had previously been sold and were no longer held by the fund, (ii) that a significant portion of the fund's interest receivable balance was in fact uncollectible, and (iii) that the financial statements were not prepared in conformity with GAAP.

44. McCurdy & Associates also audited Florida Street's financial statements for the fiscal year ended October 31, 2000. As with the prior year's audit, McCurdy assigned an inexperienced auditor from his firm to serve as the engagement partner for the 2000 Florida Street audit, and assigned himself the role of concurring review partner.

45. Florida Street's overstated interest receivable balance came to light during the 2000 Florida Street audit. As a result of the discovery, the fund was re-priced back to December 1, 1999 and the fund wrote off a total of \$1,269,631 in uncollectible interest, approximately \$796,356 of which was attributable to periods on or before October 31, 2000. As a result of the interest write-offs, Florida Street's distributions from net investment income exceeded the fund's net investment income in 2000, and therefore constituted a return of capital.

46. Florida Street failed to disclose the repricing, interest write offs and return of capital in its financial statements for the fiscal year ended October 31, 2000, which were included in Florida Street's annual report filed with the Commission on March 22, 2002. Furthermore, Florida Street erroneously classified the return of capital distributions in its financial statements as being derived from the fund's net investment income.

47. McCurdy reviewed Florida Street's 2000 annual report and allowed his firm to issue an audit report with an unqualified opinion on the financial statements, even though he knew that the financial statements did not disclose the repricing, interest write-offs and return of capital.

48. Furthermore, despite knowing that a portion of the interest Florida Street wrote off during the fiscal year ended October 31, 2000 related to the prior fiscal year ended October 31, 1999, McCurdy did not require the recording of a prior period adjustment or take any steps to determine whether Florida Street should restate its financial statements for prior periods.

49. McCurdy did not comply with the first general standard under GAAS during the 1999 and 2000 Florida Street audits because he failed to assign staff members to those audits who possessed adequate technical training and proficiency.

50. McCurdy violated the third standard of fieldwork with respect to the 1999 Florida Street audit because he failed to ensure that the audit staff performed tests to confirm the fund's interest receivable balance even though he knew that collectibility of interest was an area of risk for an audit of a high-yield bond fund.

51. McCurdy failed to exercise due professional care as provided by the third general standard during the 1999 and 2000 Florida Street audits because he (i) failed to assign staff with sufficient technical training and proficiency, (ii) failed to require sufficient competent evidential matter be obtained regarding the fund's interest receivable during the 1999 audit, and (iii) allowed McCurdy & Associates to issue unqualified audit reports falsely stating that the financial statements conformed with GAAP and that the audits were conducted in accordance with GAAS.

52. McCurdy violated the first standard of reporting during the 1999 and 2000 Florida Street audits when he allowed McCurdy & Associates to issue audit reports with unqualified audit opinions on Florida Street's financial statements falsely stating that the financial statements conformed with GAAP and that the audits were conducted in accordance with GAAS.

E. VIOLATION

53. 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 . . . improper professional conduct."

54. With respect to persons licensed to practice as accountants, such as McCurdy, "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.

55. The conduct described above constitutes reckless conduct that resulted in a violation of applicable professional standards or at least negligent conduct as defined in Rule 102(e)(1)(iv)(B).

F. FINDINGS

56. Based on the foregoing, the Commission finds that McCurdy engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice in connection with the 2001 Liquid Green Audit and the 1999 and 2000 Florida Street Audits.

IV.

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

Accordingly, it is hereby **ORDERED**, effective immediately, that:

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

B. After 3 years from the date of this order, Respondent 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 dependent 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