

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 27313 / May 5, 2006

INVESTMENT ADVISERS ACT OF 1940
Release No. 2512 / May 5, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12287

In the Matter of

VAUGHN WEIMER

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940 AND SECTION 203(f)
OF THE INVESTMENT ADVISERS ACT OF
1940 AS TO VAUGHN WEIMER.**

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 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Vaughn Weimer (“Weimer” 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 9(f) of the Investment Company Act of 1940 and Section 203(f) of the Investment Advisers Act as to Vaughn Weimer (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. Vaughn Weimer, portfolio manager for the Liquid Green Money Market Fund ("Liquid Green") and its predecessor, the Unified Taxable Money Market Fund ("UTMM") (collectively, the "Funds"), purchased bonds that exceeded the maturity limit for money market fund securities under Rule 2a-7 under the Investment Company Act. As a result, the Funds were unable to hold themselves out as money market funds. By this conduct, Weimer willfully² violated or caused violations of the Investment Company Act.

RESPONDENT

2. **Vaughn Weimer**, age 51, is a Certified Financial Planner. From 1989 to 2004, Weimer was employed as a financial planner by Fiduciary Counsel, Inc., a registered investment adviser located in New York, New York. Since 2004, Weimer has been employed in the same capacity by Oaktree Asset Management, LLC ("Oaktree"), a successor to Fiduciary Counsel. From early 2001 until September 2002, Weimer served as President of Fiduciary Counsel. Weimer has provided investment advisory services to individuals since 1997.

OTHER RELEVANT ENTITIES

3. **Unified Funds**, an Indiana corporation, was a registered investment company from 1996 until 2001. Unified Funds had a service contract with Unified Fund Services, Inc. ("Unified"), pursuant to which Unified provided fund accounting and administrative services to Unified Funds' portfolios. Among other things, Unified calculated net asset values ("NAVs"), prepared and filed regulatory reports with the Commission, and performed compliance testing for each fund of Unified Funds. One of Unified Funds' portfolios was UTMM. On October 1, 2001, UTMM dissolved after it transferred all of its assets to Liquid Green.

4. **AmeriPrime Advisors Trust ("AAT")**, an Ohio business trust, is an open-end series investment company³ that has been registered with the Commission since 1999. Currently, AAT has eight portfolios with over \$307 million in assets. In October 2001, AAT formed Liquid Green as one of its portfolios. In February 2002, Liquid Green dissolved after transferring all of its assets to another money market fund.

¹The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

²"Willfully" as used in this Order means intentionally committing the act which constitutes the violation. Cf. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

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

5. **Unified Investment Advisers, Inc. (“UIA”)**, was an Indiana corporation and registered investment adviser from February 1995 until it terminated its registration in October 2002. UIA was a wholly-owned subsidiary of Unified Financial Services, Inc. (“UFS”). UIA’s only client was UTMM and later Liquid Green, which ceased operations in February 2002. In October 2002, UIA merged into another subsidiary of UFS, Unified Fund Services, Inc., the mutual fund administrator for both Unified Funds and AAT.

FACTS

6. Prior to 1997, personnel at Fiduciary Counsel managed the UTMM portfolio on behalf of UIA. In early 1997, at the request of Fiduciary Counsel management, Weimer took over the role of UTMM portfolio manager from another individual at Fiduciary Counsel. Weimer had no previous experience with managing money market funds, and has not had any other money market fund experience apart from his role as portfolio manager for UTMM and later Liquid Green. Weimer was never compensated for his services as portfolio manager for UTMM or Liquid Green.

7. Upon becoming portfolio manager for UTMM, and at all relevant times, Weimer coordinated with staff at Unified when making purchases for the Funds. As securities in the portfolio matured, Unified staff advised Weimer on the amounts and maturities of new securities that he could purchase and still remain within the portfolio diversification and weighted average maturity limitations of Rule 2a-7. If purchases resulted in the portfolio not being in compliance with these limitations of Rule 2a-7, Unified’s procedures called for its staff to notify Weimer to unwind the trades.

8. Between March 20, 2001 and December 6, 2001, Weimer purchased 28 callable government agency bonds for UTMM and later Liquid Green with maturities of between two and a half and twelve years. By September 30, 2001, these bonds made up approximately 53% of the Funds’ assets. Under Rule 2a-7(c)(2)(i) under the Investment Company Act, a mutual fund generally 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 called for by Rule 2a-7. In this case, the bonds were callable within 397 days at the discretion of the government agency (and not at the option of the purchaser), but did not have a maturity shortening feature provided for by Rule 2a-7. Thus, UTMM and Liquid Green could not hold themselves out as money market funds.

9. By purchasing bonds with maturities over 397 days, Weimer caused UTMM and Liquid Green to have a dollar weighted average portfolio maturity that exceeded 90 days. Under Rule 2a-7(c)(2)(ii), a fund holding itself out as a money market fund must maintain a dollar weighted average portfolio maturity of 90 days or less.

10. Staff at Unified was informed each time Weimer made a purchase for the Funds’ portfolios and compiled information about the purchased securities. Unified compliance personnel produced periodic reports on the portfolios’ compliance with Rule 2a-7. The compliance reports were reviewed by Unified compliance personnel and the Funds’ legal counsel. Neither Unified compliance personnel nor the Funds’ legal counsel

advised Weimer that the agency bonds he purchased were not eligible for a money market fund or that the bonds otherwise caused the Funds' portfolio not to comply with Rule 2a-7. However, as portfolio manager, Weimer failed to exercise reasonable care at the point of purchase to confirm whether the callable agency bonds were eligible for a money market fund under Rule 2a-7.

11. In October 2001, Weimer drafted responses for the "Investment Review" section of the Liquid Green annual report for the year ended September 30, 2001. (The Investment Review section was presented in a Q&A format.) Weimer's responses stated that Liquid Green was a money market fund. However, Rule 2a-7(b)(1) makes it an untrue statement of material fact within the meaning of 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(c)(2), (c)(3) and (c)(4). Here, Liquid Green could not hold itself out as a money market fund because the bonds Weimer purchased did not meet the risk limiting conditions of Rule 2a-7(c)(2). Weimer also wrote in the Investment Review section of the annual report that during 2001 he 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. Although this statement accurately described his investment strategy for the fund, it was misleading because it suggested that this strategy was appropriate for a money market fund. An investment company cannot purchase these bonds and hold itself out as a money market fund. The correct maturity dates for the agency bonds were set forth in the audited financial statements that were part of the fund's September 30, 2001 annual report. The fund's legal counsel reviewed both Weimer's draft responses for the Investment Review section and the Fund's draft financial statements prior to the release of the annual report.

12. By purchasing the ineligible bonds, Weimer also caused UTMM and Liquid Green to adopt a materially misleading and deceptive name. Rule 2a-7(b)(2) provides that "it shall constitute the use of a materially deceptive or misleading name within the meaning of Section 35(d) of the Act for a registered investment company to adopt the term "money market" as part of its name ... unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of [Rule 2a-7]." As described above, UTMM and Liquid Green did not meet the risk limiting conditions of Rule 2a-7(c)(2). From March 2001 through December 2001, UTMM and Liquid Green filed prospectuses and semi-annual and annual reports, and the Funds' administrator, Unified, maintained a website for the Funds, which held them out as money market funds.

13. In mid-December 2001, Liquid Green's NAV per share dropped below \$.995. This caused compliance staff at Unified to investigate further and, with the advice of fund counsel, resulted in the determination that the callable agency bonds held in the Fund's portfolio were ineligible under Rule 2a-7. Weimer sold the ineligible bonds in late December 2001 and early January 2002. As a result of the sale, Liquid Green incurred a loss of over \$517,000, which UIA reimbursed in January 2002.

14. As a result of the purchases of the callable agency bonds, UFS, Fiduciary Counsel's then corporate parent, demoted Weimer from his position as President of Fiduciary Counsel and reduced his pay. Weimer's role as portfolio manager for Liquid

Green ceased commensurate with the dissolution of Liquid Green and transfer of its assets to another money market fund in 2002. Weimer continues to provide advisory services to individuals on behalf of Fiduciary Counsel's successor, Oak Tree.

VIOLATIONS

15. As a result of the conduct described above, Weimer willfully violated Section 34(b) of the Investment Company Act. Section 34(b) prohibits any person from making any untrue statement of a material fact in any report, account, record or other document filed or required to be kept under Section 31(a) of the Investment Company Act. Section 34(b) also prohibits any person filing or keeping those documents from omitting to state any fact necessary in order to prevent the statements made in those documents from being misleading. A violation of Section 34(b) does not require a finding of scienter. *In the matter of Fundamental Portfolio Advisers, Inc. et al.*, Investment Company Act Release No. 26099, 2003 SEC LEXIS 1654, *29 (July 15, 2003). Rule 2a-7(b)(1) provides that it is a material misrepresentation in violation of Section 34(b) for a fund to hold itself out as a money market where it does not meet the risk limiting conditions of Rule 2a-7(c).

16. As a result of the conduct described above, Weimer caused Unified Funds and AAT to violate Section 35(d) of the Investment Company Act. Section 35(d) prohibits any registered investment company from adopting as a part of its name or title any word or words that the Commission finds are materially deceptive or misleading. Rule 2a-7(b)(2) provides that "it shall constitute the use of a materially deceptive or misleading name within the meaning of Section 35(d) of the Act for a registered investment company to adopt the term 'money market' as part of its name . . . unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of [Rule 2a-7]." Because a violation of Section 35(d) does not require a finding of scienter, negligence is sufficient for liability for causing such violation. *See Howard v. SEC*, 376 F.3d 1136 (D.C. Cir. 2004).

IV.

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

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Section 203(f) of the Advisers Act, it is hereby **ORDERED** that:

A. Respondent Weimer is hereby ordered to cease and desist from committing or causing any violations and any future violations of Sections 34(b) and from causing any violations and any future violations of Section 35(d) of the Investment Company Act;

B. Respondent Weimer is hereby censured pursuant to Section 203(f) of the Advisers Act.

C. It is further ordered that Respondent Weimer shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money

order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Weimer as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Midwest Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

By the Commission.

Nancy M. Morris
Secretary