

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2550 / September 14, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27481 / September 14, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12421

In the Matter of

JAMES A. CASSELBERRY, JR.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTIONS 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, and SECTIONS
9(b) AND 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940**

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 Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against James A. Casselberry, Jr. (“Casselberry” 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 Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

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

Summary

Casselberry was chairman of Trias Capital Management, Inc. ("Trias") and chairman, chief executive officer and portfolio manager for the Millennium Income Trust ("Millennium"), an investment company that operated the Treasurer's Government Money Market Fund (the "Fund"). On various occasions between January 2002 and December 2003, Casselberry failed to ensure that Trias paid in a timely manner a receivable owed to Millennium, which resulted in a prohibited borrowing from an investment company. In addition, between April and December 2001, Casselberry purchased bonds for the Fund that exceeded the maturity limit for money market fund securities under Rule 2a-7 of the Investment Company Act. As a result of its impermissible investments, the Fund was prohibited from holding itself out as a money market fund. Nonetheless, Casselberry allowed the Fund to continue to hold itself out as a money market fund. Finally, Casselberry failed to ensure that Trias kept accurate books and records. By this conduct, Casselberry willfully violated or willfully aided and abetted and caused violations of the Investment Company Act and Advisers Act.

Respondent

1. Casselberry is 46 years old and is a resident of Chicago, Illinois. At all relevant times, Casselberry was the chairman, controlling owner and a director of Trias, an investment adviser registered with the Commission, and was also chief executive officer and chairman of the board of Millennium, an investment company registered with the Commission.

Other Relevant Entities

2. Trias, incorporated in Delaware in 1996, was an investment adviser registered with the Commission from 1996 to 2004. Trias's principal place of business was in Chicago, Illinois. Commencing in or about 1998, Trias provided investment advisory services to Millennium. Millennium terminated Trias as its investment adviser effective on or about January 29, 2004. Trias soon thereafter ceased operations and, on September 22, 2004, withdrew its registration with the Commission.

3. Millennium, a Massachusetts Business Trust established in 1994, was an open-end diversified investment company registered with the Commission from 1994 to 2004. Millennium consisted of one series, the Fund, a money market fund that invested in fixed income securities and offered its shares for sale primarily to institutional investors. In April 2004, the

¹ 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.

Fund liquidated its portfolio and withdrew its registration with the Commission effective in May 2004.

Facts

The Illegal Failure to Reimburse Expenses

4. In or about 1998, Trias became the investment adviser for the Fund, with Casselberry acting as the portfolio manager. Trias's fee was to be 0.20% of the Fund's average daily net assets. Because the Fund's assets were never sufficient to cover its operating expenses, Trias waived its fees to reduce expenses and thus, never received any management fees or other payments from Millennium. In addition, Trias agreed voluntarily to reimburse the Fund for any expenses that exceeded .25% of the average daily net assets of the Fund. Each month, Ultimus Fund Solutions, LLC ("Ultimus"), the Fund's administrator, calculated the amount that the Fund's expenses exceeded the 0.25% cap, sent an invoice to Trias for that amount, and recorded a receivable in the Fund's books.

5. Despite being billed for the receivable on a monthly basis, Trias consistently failed to pay the receivable in a timely manner. In July 1999, the examination staff of the Commission's Midwest Regional Office wrote a letter to Casselberry concerning the fact that the receivable had not been paid by Trias for a six-month period. In that letter, the staff told Casselberry that Section 17(a) of the Investment Company Act prohibits an investment adviser from borrowing from a registered investment company and that the failure to reimburse excess expenses has been held to be an unlawful borrowing under Section 17(a)(3). The letter further instructed Casselberry that the receivable should be paid on a monthly basis. Subsequently, Millennium's board and Ultimus made numerous requests to Casselberry that Trias pay the receivable on a more timely basis.

6. Despite the staff's instructions and the requests from the board and Ultimus, Trias continued to fail to pay the receivable in a timely manner. Trias was delinquent in its obligation to pay the receivable throughout most of 2002 and 2003. In 2002, Trias made no payments until June, letting the receivable build up to over \$59,000. Trias made a partial payment of \$39,950 in June, but did not pay off the receivable entirely until November 2002, when the Fund's annual audit was being completed. Thereafter, Trias made partial payments in January and March 2003, but did not pay the receivable in full until October 2003. By that time, the receivable had built up to \$78,687 and represented 3% of the Fund's assets. A new adviser took over responsibility for expense reimbursements in December 2003 and the Fund was liquidated in April 2004. At the time of the liquidation, no receivable was owed to the Fund.

The Purchase of Ineligible Bonds for a Money Market Fund

7. Between April 30 and December 10, 2001, Casselberry purchased 34 callable government agency bonds for the Fund that had remaining maturities of between three and a half and fourteen years. The bonds were callable at the discretion of the government agency, but not at the option of the purchaser. By October 30, 2001, these bonds made up approximately 95%

of the Fund's assets. Under Rule 2a-7(c)(2)(i) of 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 as called for by Rule 2a-7. In this case, the bonds did not have a maturity shortening feature provided for by Rule 2a-7. The Fund treated the call date, which was within 397 days of the purchase, as the maturity date, even though it was not permissible to do so under Rule 2a-7. Thus, the Fund could not hold itself out as a money market fund.

8. By purchasing bonds with maturities over 397 days, Casselberry caused the Fund 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.

9. In or before December 2001, Ultimus personnel advised Casselberry that the callable bonds were not eligible investments for a money market fund and that he should remove them from the Fund's portfolio as soon as possible. Casselberry and Ultimus personnel brought the issue to the attention of the Fund's board during the board's meeting in February 2002. At that time, the board and Casselberry determined not to purchase any more of the callable bonds.

10. Casselberry's purchases of callable bonds resulted in inaccuracies in the Fund's books and records. When Casselberry purchased the callable bonds, Trias personnel, at Casselberry's direction, frequently entered the call dates as the bonds' termination dates on the trade tickets sent to Ultimus. As a result, the call dates appeared in the Fund's accounting records as the bonds' effective maturity dates. In addition, Ultimus prepared, and Casselberry reviewed, periodic Rule 2a-7 compliance reports for the Fund. The April 30, 2001, September 30, 2001 and December 31, 2001 Rule 2a-7 reports all reflected an average portfolio maturity under 90 days when the actual average portfolio maturity was between 264 and 1,526 days. The reports also inaccurately reflected the Fund's longest maturity investment. For example, the June 30, 2001 Rule 2a-7 report disclosed the longest maturity investment as 137 days instead of over 1,909 days.

11. From April 2001 through February 2002, Ultimus prepared the Fund's prospectuses and Statements of Additional Information that held out the Fund as a money market fund. The reports were filed after being reviewed by Casselberry. Those reports misrepresented that the Fund was a money market fund and could use the amortized cost method to price its securities. An investment company, however, could not purchase those bonds and hold itself out as a money market fund. In addition, the prospectuses and Statements of Additional Information represented that all the Fund's "investments must have remaining maturities of one year or less," and that the Fund "maintains a dollar weighted average maturity of 90 days or less."

Trias' Failure to Keep Accurate Books and Records

12. Trias maintained a checking account at LaSalle Bank in Chicago. On April 17, 2003, LaSalle Bank erroneously deposited \$322,003.52 into Trias's account. Casselberry was aware of the deposit, but mistakenly believed the deposit to be a loan from a business associate. Between April 2003 and November 2003, however, Trias's financial statements inaccurately

reflected the \$322,003.52 as a positive balance in its checking account and did not reflect any loan from Casselberry's business associate. In November 2003, LaSalle Bank informed Casselberry of the erroneous deposit. At that time, Casselberry revised Trias's financial statements to reflect inaccurately that the \$322,003.52 was a loan from LaSalle Bank. Also during 2003, Trias's financial statements inaccurately reflected as an asset, a \$50,000 investment in AFA Capital, Inc., an Ohio-based investment adviser. In 2003, that investment was worth less than \$50,000. In January 2004, Casselberry revised Trias's financial statements to correctly reflect the \$322,003.52 as a negative balance in its checking account, and to take a \$50,000 reserve against the investment in AFA Capital.

Violations

13. As a result of the conduct described above, Casselberry 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. 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).

14. As a result of the conduct described above, Casselberry willfully aided and abetted and caused Trias's violations of Section 17(a)(3) of the Investment Company Act, which prohibits any affiliated person of a registered investment company from borrowing money or other property from such registered company.

15. As a result of the conduct described above, Casselberry willfully aided and abetted and caused Millennium 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]."

16. As a result of the conduct described above, Casselberry willfully aided and abetted and caused Trias's violations of Section 204 of the Advisers Act, and Rule 204-2(a)(6) promulgated thereunder. Section 204 requires that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(6) requires that registered investment advisers "make and keep true, accurate and current . . . financial statements relating to the business of such investment adviser."

Undertakings

17. Respondent shall provide to the Commission, within 20 days after the end of the 12 month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

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

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

A. Respondent Casselberry cease and desist from committing or causing any violations and any future violations of Sections 17(a)(3), 34(b) and 35(d) of the Investment Company Act, and Section 204 of the Advisers Act and Rule 204-2(a)(6) promulgated thereunder;

B. Respondent be, and hereby is, suspended from association with any investment adviser for a period of six months, effective on the second Monday following the entry of this Order.

C. Respondent is 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 for a period of twelve months, effective on the second Monday following the entry of this Order.

D. It is further ordered that Respondent shall pay a civil money penalty in the amount of \$25,000 to the United States Treasury. Such payment shall be made: \$8,500 within 10 days of the entry of this Order, \$8,250 within six months of the entry of this Order, and \$8,250 within twelve months of the entry of this Order. 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 James A. Casselberry, Jr. 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, Associate Regional Director, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

E. Respondent shall comply with the undertakings enumerated in Section III, paragraph 17 above.

By the Commission.

Nancy M. Morris
Secretary