

ADMINISTRATIVE PROCEEDING
File No. 3-18024

SEC Charges Former CEO and CFO of Logistics Company With Failing to Disclose the Company's Liquidity Problems

June 15, 2017 – The Securities and Exchange Commission today announced that Eric W. Kirchner, the former CEO of UTi Worldwide, Inc., and Richard G. Rodick, the company's former CFO, have agreed to settle charges that they caused UTi to violate the reporting provisions of the federal securities laws by not including adequate information in the company's disclosures concerning serious risks to UTi's liquidity and capital resources.

As noted in the settled order, the Management's Discussion & Analysis (MD&A) section of a periodic filing is intended to provide investors with "an opportunity to look at the company through the eyes of management by providing both a short- and long-term analysis of the business of the company." According to the order, beginning in October 2013, UTi, a British Virgin Islands company that was based in Long Beach, California, internally identified its U.S. rollout of a proprietary operating system as a possible contributing factor to its lower-than-historical cash flow volumes. The order explains that the operating system had properly recorded transactions but the system had not automatically printed out associated invoices, resulting in UTi's issuance of late invoices to certain customers which caused delays in the receipt of payment. The order states that after UTi discovered the operating system's role in issuing late invoices, the company took steps to try to improve its liquidity position, including delaying payments to vendors and making preliminary inquiries concerning the possibility of a convertible debt offering. The order explains that Kirchner and Rodick were aware of the billing delays and inaccurate invoices caused by the operating system rollout as well as the company's efforts to try to improve cash flow. Indeed, Rodick prepared, and Kirchner reviewed, an internal report discussing the extent of UTi's liquidity issues and potential liquidity options that was circulated before the company filed its Form 10-Q. The report stated UTi had failed its debt covenants for three successive quarters and that UTi had been notified that it would not receive any further amendments to its debt covenants for the fourth quarter.

However, according to the order, on December 10, 2013, when UTi filed its Form 10-Q for the period ended October 31, 2013, UTi did not disclose in its MD&A the operating system's role in the liquidity issues. Instead, the company's disclosures stated that its operating cash position had declined since the beginning of the fiscal year, noted the seasonal nature of its business and explained that, historically, UTi's liquidity improved in the second half of the third quarter and in the fourth quarter. Kirchner and Rodick each signed and certified the report. In the weeks that followed, UTi experienced a liquidity crisis. UTi's auditor was notified that UTi would not meet its debt covenants for the fourth quarter and would likely not be able to obtain an amendment of those covenants. On February 26, 2014, UTi disclosed through the filing of a Form 8-K its liquidity problems, attributing them to the operating system, among other factors.

The order finds that Kirchner and Rodick caused UTi to violate Section 13(a) of the Securities Exchange Act of 1934 and Rules 12b-20 and 13a-13 thereunder by failing to disclose in the MD&A information concerning the reasons for UTi's deteriorating liquidity and the uncertainty

surrounding UTi's ability to meet its future cash needs. The order also finds that Kirchner and Rodick violated Exchange Act Rule 13a-14. Without admitting or denying the findings, Kirchner and Rodick agreed to a cease-and-desist order and to pay a \$40,000 civil penalty.

The SEC's investigation was conducted by DoHoang T. Duong and Carol Shau, and the case was supervised by Diana K. Tani.

See also: [Order](#)