

Litigation Release No. 13994 / March 7, 1994

SEC v. Vintage Group, Inc., James A. Merriam and Dori Merriam
Civil Action No. C-94-0772 WHO (N.D. Cal.)

The Securities and Exchange Commission today announced that on March 7, 1994, a complaint was filed in the Northern District of California seeking injunctive and other equitable relief against Vintage Group, Inc. ("Vintage"), James A. Merriam and Dori Merriam. The complaint alleges that Vintage and James A. Merriam sold unregistered securities and committed fraud in the offering, sale and purchase of securities. It further alleges that Vintage violated the periodic reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act") and the accounts and records provisions of the Investment Company Act of 1940 ("Investment Company Act"). The complaint further charges James Merriam with a violation of the breach of fiduciary duty and aiding and abetting the violation of the periodic reporting provisions.

The complaint alleges that Vintage and James A. Merriam fraudulently offered and sold Vintage securities to the public. In connection with the scheme, Vintage, whose general purpose was to invest in new and developing companies offering long-term growth potential, issued financial statements that substantially overstated the fair value of Vintage's securities portfolio. These false and misleading financial statements were included in the reports on Forms 10-Q and Forms 10-K that Vintage filed with the Commission.

Merriam conducted the scheme as follows: (1) Merriam first terminated Vintage's auditor, Coopers & Lybrand, and then engaged a two person accounting firm which consisted of Vintage's chief financial officer as the Company's purportedly "independent" auditor for the fiscal year ended April 30, 1989; (2) Merriam then, with the assistance of the auditor, caused Vintage to file Forms 10-Q and 10-K containing financial statements that grossly overstated the net asset value of Vintage's investment portfolio; (3) Merriam then sold a large quantity of Vintage stock in the over-the-counter market while in possession of material nonpublic information concerning the Company's true financial condition in order to simulate an increase in trading interest in Vintage stock and provide certain market makers a foothold inventory; (4) Merriam then caused the Company to file a registration statement with the Commission under Regulation E which contained the same false and misleading financial statements and other material misstatements and omissions; (5) Merriam then "sold" 92% of the offering to two registered representatives in exchange for approximately \$2,000,000 in "rubber" subscription checks that he had agreed not to deposit until after the representatives had resold their shares to the public; (6) Merriam then lent assistance to the registered representatives as they pushed the

price of Vintage stock from 3/4 to 5 7/32 and the average volume from approximately 23,000 shares a day to 261,000 shares a day in one month's time; (7) Merriam then issued false and misleading press releases that grossly overstated Vintage's net asset value as part of the effort to support the price of Vintage's stock; (8) Merriam then deposited the registered representatives' checks after the representatives had resold a sufficient number of shares to the public to cover their purchase cost; and (9) Merriam misappropriated \$775,000 of the offering proceeds from the Company.

Two former employees of Vintage, Diane M. Lalosh ("Lalosh"), John J. Mohalley ("Mohalley"), and one former director of Vintage, Beatrice A. Brown ("Brown"), have consented to entries of orders by the Commission. In addition, Mohalley has consented to a permanent injunction.

Lalosh, the former vice president of administration, secretary and chief financial officer of Vintage, consented to the entry of an order that she permanently cease and desist from committing or causing any future violation of Section 31(a) of the Investment Company Act and Rule 31a-1 thereunder. For further information see Administrative Proceeding 3-8182 and Investment Company Act Release No. 19736 dated September 28, 1993.

Mohalley, former chief financial officer of Vintage, previously consented to the entry of a Final Judgment of Permanent Injunction on September 29, 1993. He was enjoined from future violations of Sections 5(a) and 17(a) of the Securities Act, Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 promulgated thereunder and barred from acting as an officer or director of any issuer having a class of securities registered pursuant to Section 12 of the Exchange Act or required to file reports pursuant to Section 15(d) of the Exchange Act. Mohalley also consented to the entry of an Order Pursuant to Rule 2(e) of the Commission's Rules of Practice denying him the privilege of appearing or practicing before the Commission. For further information see Litigation Release No. 13844 and Exchange Act Release No. 34-32992 dated October 21, 1993.

Brown, a former director of Vintage, consented to the entry of an order that found that Brown aided and abetted Vintage's violations of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 thereunder. The Commission ordered Brown to cease and desist from committing or causing any future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. The Commission also ordered Brown be barred from association with any broker, dealer, municipal securities dealer, investment advisor or investment company. For further information see Administrative Proceeding No. 3-8265, Exchange Act Release No. 33438 and Investment Company Act Release No. 20004, dated January 6, 1994.

In its complaint filed on March 7, 1994, the Commission seeks a permanent injunction enjoining Vintage from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 13(a) of the Exchange Act, Rules 10b-5, 12b-20, 13a-1 and 13a-13 promulgated thereunder, and Section 31(a) of the Investment Company Act and Rule 31a-1 promulgated thereunder. The Commission also seeks a permanent injunction enjoining James A. Merriam from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder, and Section 36(a) of the Investment Company Act, and aided and abetted Vintage's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder. The complaint also seeks disgorgement of ill-gotten gains, civil penalties and an officer and director bar against James Merriam. Dori Merriam is named as a defendant solely to obtain full monetary relief. For further information, please contact Melvyn H. Rappaport, District Trial Counsel of the Commission's San Francisco District Office at (415) 705-2500.

Litigation Release No. 13995/March 8, 1994

SECURITIES AND EXCHANGE COMMISSION v. BANNER FUND INTERNATIONAL, SWISS TRADE AND COMMERCE TRUST LTD., LLOYD R. WINBURN, EDDIE R. BLACKWELL AND BERT C. THOMPSON, United States District Court for the District of Columbia, Civil Action No. 94-0342 (HHG).

The Securities and Exchange Commission today announced that on Monday, March 7, 1993, the United States District Court for the District of Columbia issued a Preliminary Injunction and Order Freezing Assets and Granting Other Relief (the "Injunction") against defendants Banner Fund International ("Banner Fund"), Swiss Trade and Commerce Trust Ltd. ("Swiss Trade"), Lloyd R. Winburn ("Winburn"), Eddie R. Blackwell ("Blackwell") and Bert C. Thompson ("Thompson"). Without admitting or denying the allegations, Thompson consented to the Injunction. The Injunction preliminarily enjoins the defendants from fraudulently selling unregistered securities issued by Banner Fund, an unregistered foreign investment company that is doing business illegally in the United States.

The Injunction, continuing and supplementing the relief granted in a Temporary Restraining Order issued February 25, 1994, also:

- Freezes the assets of Banner Fund, Swiss Trade, Winburn and Blackwell, specifically including funds and assets of Fulfillment Center, Academy Equities, Hermes Leasing and Automotive Concepts which are entities that are controlled by those defendants;
- Directs the defendants to file with the Court, within three days of the entry of the Injunction, an accounting of all of their assets and all transfers of assets to other persons and entities;