

SECURITIES EXCHANGE ACT OF 1934
Release No. 35708 / May 11, 1995

INVESTMENT COMPANY ACT OF 1940
Release No. 21062 / May 11, 1995

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 674 / May 11, 1995

ADMINISTRATIVE PROCEEDING
File No. 3-8693

)	ORDER INSTITUTING
)	ADMINISTRATIVE PROCEEDINGS
)	PURSUANT TO SECTION 15(b)(6)
In the Matter of)	OF THE SECURITIES EXCHANGE
)	ACT OF 1934 AND SECTION 9(b)
James A. Merriam)	OF THE INVESTMENT
)	COMPANY ACT OF 1940,
)	MAKING FINDINGS, AND
)	IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest to institute administrative proceedings against James A. Merriam ("Merriam") pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 9(b) of the Investment Company Act of 1940 ("ICA").

In anticipation of the institution of these proceedings, Merriam has submitted an Offer of Settlement 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 in which the Commission is a party, without admitting or denying the findings contained herein, except that Merriam admits the jurisdiction of the Commission over him and over the subject matter of this proceeding and the entry of the final judgment of permanent injunction, consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b)(6) of the Securities Exchange Act and Section 9(b) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions ("Order").

Accordingly, IT IS ORDERED that administrative proceedings against Merriam pursuant to Section 15(b)(6) of the Exchange Act and Section 9(b) of the ICA be and hereby are instituted.

II.

On the basis of this Order and the Offer of Merriam, the Commission finds: ^{1/}

A. THE RESPONDENT ^{2/}

James A. Merriam, 60 years old, is a resident of Tiburon, California. He has been the Chief Executive Officer, President and Chairman of the Board of Directors of Vintage Group, Inc. since 1983.

B. THE ENTITY INVOLVED

Vintage Group, Inc. ("Vintage") was incorporated in Colorado in 1983. On June 25, 1986, Vintage elected to be regulated as a Business Development Company ("BDC") under Section 54(a) of the ICA. Its principal place of business is in San Rafael, California.

C. STATUTORY OBLIGATIONS IMPOSED ON A BDC REGARDING PERIODIC VALUATION OF THE BDC'S INVESTMENT PORTFOLIO

As a BDC, Vintage's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act. As such, Vintage was required to file periodic reports on Forms

^{1/} Any findings contained in the Commission's Order are solely for the purpose of these proceedings and are not binding on any other person or entity named as a respondent in any other proceeding.

^{2/} On October 20, 1994, the United States District Court for the Northern District of California permanently enjoined Merriam from future violations of Sections 5 and 17(a) of the Securities Act of 1933, Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1 and 13a-13 promulgated thereunder, Section 36(a) of the Investment Company Act of 1940 and barred Merriam from acting as an officer or director of any issuer having a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or required to file reports pursuant to Section 15(d) of the Securities Exchange Act of 1934. See Litigation Release No. 14319 (November 2, 1994). Merriam consented, without admitting or denying any of the allegations contained in the complaint, except as to jurisdiction which was admitted, to the entry of a final judgment of permanent injunction.

10-K and 10-Q with the Commission pursuant to Section 13(a) of the Exchange Act. In these periodic reports, Vintage was required to list and value its portfolio securities pursuant to the methods set out in Section 2(a)(41)(B) of the ICA and Rule 2a-4 thereunder. Because "market quotations" for Vintage's portfolio securities were not "readily available", Section 2(a)(41)(B)(ii) of the ICA required that Vintage's Board of Directors determine the "fair value" of its portfolio securities in "good faith".

D. MERRIAM'S FAILURE TO FULFILL HIS STATUTORY OBLIGATION

As the Chief Executive Officer, President and Chairman of the Board of Directors, Merriam had a statutory obligation along with Vintage's two other directors to together determine the fair value of Vintage's portfolio securities in good faith for financial reporting purposes. Merriam failed to satisfy his statutory obligation during fiscal year 1989 and the first three quarters of fiscal year 1990 by having Vintage file false and misleading financial statements regarding the valuation process. Vintage's Board of Directors did not hold any meetings during fiscal years 1989 and 1990, and Merriam caused Vintage to file false and misleading valuations as to the portfolio securities. During this entire period of time, Merriam's participation involved directing press releases and signing Vintage's annual report which contained the list and values of Vintage's portfolio securities. Merriam also signed Vintage's certificates of corporate resolution.

E. THE RESULTING VIOLATIONS OF THE PERIODIC REPORTING PROVISIONS OF THE EXCHANGE ACT AND INVESTMENT COMPANY ACT

As a result of Merriam's failure to fulfill his statutory obligation, the periodic reports filed by Vintage for its fiscal year ended April 30, 1989 and its subsequent quarters ended July 31, 1989, October 31, 1989 and January 31, 1990, were materially deficient. The financial statements included in these periodic reports were not prepared in accordance with the applicable ICA Section and Rule.

In addition, Merriam's failure to exercise his statutory obligation rendered the narrative disclosure contained in the periodic reports false and misleading. Those reports represented that the Board of Directors was responsible for determining the fair value of Vintage's portfolio securities at each quarter's end. Merriam knew, or was reckless in not knowing, that the valuation process as described in Vintage's periodic filings was inaccurate.

Moreover, the periodic reports filed by Vintage for the fiscal year 1989 and the first three quarters of fiscal year 1990 materially overstated the value of Vintage's portfolio

securities. These reports also materially overstated Vintage's net income, assets and shareholders equity for these same periods. Merriam signed the annual report on Form 10-K for the fiscal year ended April 30, 1989.

F. MERRIAM'S WILLFUL VIOLATIONS OF THE FEDERAL SECURITIES LAWS

In view of the foregoing, Merriam has willfully 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.

III.

On the basis of the foregoing, it is appropriate and in the public interest to impose the sanctions which are set forth in the Offer submitted by Merriam.

Accordingly, IT IS HEREBY ORDERED THAT, effective immediately, James A. Merriam be, and hereby is, barred from association with any broker, dealer, municipal securities dealer, investment adviser and investment company, and further, that Merriam be and hereby is barred from participating in any offering of penny stock, as such participation is defined by Section 15(b)(6)(C) of the Exchange Act.

By the Commission.

Jonathan G. Katz
Secretary

[Release No. 34-35709; File No. 10-101]
60 FR 26752 05/18/95
Self-Regulatory Organizations; Notice of Filing of Application for Registration as a National Securities Exchange by the United States Stock Exchange, Inc., and Amendment No. 1 Thereto
May 11, 1995:

Pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), notice is hereby given that on March 28, 1995, the United States Stock Exchange, Inc. ("USSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an application for registration as a national securities exchange. On April 25, 1995, the USSE

filed Amendment No. 1 to the Application for Registration.¹ The Commission is publishing this notice to solicit comments on the application from interested persons.

The USSE initially intends to trade the most active issues that meet the proposed Exchange's listing requirements and are now eligible for trading on national securities exchanges, as well as those companies that choose to list on the Exchange. The proposed Exchange would operate through an electronic securities

¹ See letter from David Rusoff, Foley & Lardner, to Sharon Lawson, SEC, dated April 19, 1995.