

investigation of Towers' business practices, the Chapter 11 trustee concluded that "from at least 1988 until the commencement of the Chapter 11 Cases, virtually every aspect of Towers' business was permeated by fraud." The trustee estimated in the disclosure statement that the aggregate losses suffered by Towers exceed \$500 million, and that most of these losses will not be recoverable by creditors, as the bulk of the proceeds were squandered or dissipated. Hoffenberg has been arrested for his role in the massive Towers fraud, and has been indicted by a federal grand jury for, among other things, obstructing the Commission's investigation of Towers.

Litigation Release No. 14318 / November 2, 1994

SECURITIES AND EXCHANGE COMMISSION v. PREMIER CAPITAL CORPORATION,
ROBERT C. ANDERSON, WILLIAM R. CONE AND DEMITRIOS JULIUS SHIVA,
Civil No. 2 94-2374 1 (D. S.C.)

The Commission announced that on October 21, 1994 the Honorable Falcon B. Hawkins, Judge of the United States District Court for the District of South Carolina, Charleston Division entered a permanent injunction against defendant Demitrios Julius Shiva ("Shiva") of Charleston, South Carolina restraining him from further conduct in violation of Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

The order was issued after the Commission demonstrated that the \$1.6 billion in "Series 57" Japanese yen bond certificates that the defendant Shiva, a registered representative, was attempting to deposit in an American brokerage account were counterfeit and worthless. The court made specific findings of fact against Shiva, including that the certificates representing the bonds were counterfeit.

The complaint alleged that a Tokyo resident purportedly assigned the certificates to defendant Premier Capital Corporation ("Premier") in early 1994. Premier hired foreign agents to deposit the certificates in the brokerage firm that employed Shiva.

Litigation Release No. 14319 / November 2, 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 announced that, on October 20, 1994, the United States District Court for the Northern District of California entered a Final Judgment of Permanent Injunction and Other Equitable Relief against Vintage Group, Inc. ("Vintage") and James A. Merriam ("Merriam") of Tiburon, California. The Final Judgment enjoins 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 Final Judgment also enjoins Merriam from future violations of Sections 5(a), 5(c) 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 Section 36(a) of the Investment Company Act. In addition, the Court barred Merriam from serving or acting as an officer or director of any issuer either having a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, or any registered investment company. The Court will determine, at a subsequent hearing, the amounts, if any, of disgorgement and/or civil penalties. Vintage and Merriam consented to the entry of the permanent injunction without admitting or denying the allegations in the Commission's complaint.

The complaint, filed on March 7, 1994, alleged 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 alleged 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 fired 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, 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 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 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 "sold" 92% of the offering to two registered representatives in exchange for \$2,047,000 in "rubber" subscription checks that he had agreed not

to deposit until after the representatives had resold their shares to the public; (6) Merriam 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 23,000 shares a day to 261,000 shares a day in one month's time; (7) Merriam 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 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.

For further information, see Litigation Release No. 13994 dated March 7, 1994.

Litigation Release No. 14320 / November 2, 1994

SECURITIES AND EXCHANGE COMMISSION v. MOTZFELDT FUNDING CORPORATION, BIRGIT MECHLENBURG a/k/a GITTE MECHLENBURG, AND SAMUEL J. ABRAHAM, 93 Civ. No. 3942 (JES) (U.S.D.C. - S.D.N.Y.)

The Securities and Exchange Commission announced the entry of a default judgment and the issuance of an order of permanent injunction against Samuel J. Abraham ("Abraham"). The judgment was entered, and the order of permanent injunction issued, on October 25, 1994 by the Honorable John E. Sprizzo, of the United States District Court for the Southern District of New York. The order permanently enjoins Abraham from further violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The judgment orders Abraham to pay the sum of \$211,108.25, representing (1) \$95,685 in disgorgement of Abraham's ill-gotten gains; (2) \$19,738.25, in prejudgment interest on such disgorgement; and (3) \$95,685 as a civil penalty pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990.

The Commission's Complaint, filed on June 10, 1993, alleged that Abraham and other defendants misappropriated investors' funds invested in the Motzfeldt Investment Club (the "Club"). The Complaint also alleged that the defendants promised extraordinary profits with little risk to investors in the Club, which purportedly would pool investors' funds and invest them in a so-called "roll trade program" involving the purchase and sale of standby letters of credit, promissory bank notes, and promissory bank guarantees. The Complaint further alleged that a materially false and misleading offering document was used to induce at least nineteen investors to purchase interests in the Club, which were securities. According to the Complaint, instead of using the investors' funds as promised, Abraham used such funds to pay his personal and business expenses.