

Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Reference should be made to File No. SR-CBOE-83-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the commencement of CBOE stock index options trading is imminent and the Commission believes that the proposed rule change is desirable since it will allow the CBOE Board of Directors to reduce the advantage arising for those in long positions over those in short positions during trading halts in the last ten business days prior to expiration. The advantage arises from the ability of longs to exercise during the trading halt, receiving in settlement the cash difference between the exercise price and the last index value, while shorts are locked into their positions by virtue of the trading halt. The proposed rule change gives CBOE the flexibility needed to minimize this advantage and to meet extraordinary circumstances as they arise. Unless the Commission approved the proposed rule change before the commencement of trading, all series of CBOE-100 index options opened at the commencement of trading would be subject to the 10-day limitation until those series expired, and only with respect to options series opened after the approval of the proposed rule change

could the CBOE impose exercise restrictions until the final day of trading. Accordingly, the Commission finds that it is in the public interest to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 19591/March 10, 1983

Administrative Proceeding File No. 3-6223

In the Matter of

MONTAGU INVESTMENT MANAGEMENT LIMITED

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate and in the public interest following an inquiry by its Division of Enforcement that proceedings be, and they hereby are, instituted with respect to Montagu Investment Management Limited pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 ("Exchange Act")¹ to determine whether Montagu Investment Management Limited failed to comply with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder with respect to certain filings made and required to be made by Montagu Investment Management Limited in connection with transactions in the securities of Canal-Randolph Corporation and Blue Ridge Real Estate Company and Big Boulder Corporation.

Simultaneous with the institution of these proceedings, Montagu Investment Management Limited has submitted an Offer of Settlement

¹Section 15(c)(4) of the Exchange Act provides:

If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of Section 12, 13 or subsection (d) of Section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule or regulation in any material respect, the

Commission may publish its findings and issue an order requiring such person to comply with such provisions or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

solely for the purpose of disposing of the issues raised in this proceeding. Under the terms of its Offer of Settlement, Montagu Investment Management Limited solely for the purpose of this proceeding, without admitting or denying any of the facts or findings set forth herein and on the understanding that nothing herein shall constitute an adjudication of any issue of fact or law, consents to the issuance of the Findings, Conclusion and Order herein and undertakes certain actions all as more fully set forth below.

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of Montagu Investment Management Limited and accordingly, issues this Order.

I. RESPONDENT

Montagu Investment Management Limited ("Montagu") is an English Corporation located in London, England. It is engaged in business as an investment adviser. Montagu is a wholly owned subsidiary of Samuel Montagu & Co. (Holdings) Limited which is 60% owned by Midland Bank Plc. and 40% owned by Aetna Life and Casualty Company. David R. Stevens ("Stevens") is Chairman and a Managing Director of Montagu and a director of Samuel Montagu & Co.

II. OTHER ENTITIES

A. *Drayton Premier Investment Trust Plc.* ("DPIT") is a publicly held investment trust corporation organized under English law and located in London, England. Through a written agreement Montagu manages DPIT's investment trust business.

B. *Drayton Consolidated Trust Plc.* ("DCT") is a publicly held investment trust corporation organized under English law and located in London, England. Stevens, a Managing Director of Montagu and Samuel Montagu & Co. (Holdings) Limited is Chairman of DCT. Through a written agreement Montagu manages DCT's investment trust business.

C. *Canal-Randolph Corporation* ("Canal-Randolph") is a Delaware Corporation, headquartered in New York, N.Y. It owns interests in real estate and stockyard operations throughout the United States. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York and London Stock Exchanges. Sir Walter Salo-

mon ("Salomon") is the Chairman of and controls Canal-Randolph.

D. *Blue Ridge Real Estate and Big Boulder Corporation* ("Blue Ridge") is a Pennsylvania corporation whose common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is traded on NASDAQ. Blue Ridge is engaged in the business of leasing, timbering and selling land it owns in Northeastern Pennsylvania and owning and operating ski resorts and development properties.

III. FACTS

A. BACKGROUND

Since 1977 Montagu has shared the power to dispose of and the power to vote more than 5% of the common stock of Canal-Randolph. Since 1974, Montagu and two investment companies it manages shared the power to dispose of and the power to vote more than 5% of the common stock of Blue Ridge. A Schedule 13D disclosing Montagu's beneficial ownership of Canal-Randolph was not filed with the Commission until December 1982. A Schedule 13D disclosing Montagu's and the two investment companies it manages beneficial ownership of Blue Ridge was not filed with the Commission until January 1983.

B. THE OPERATION OF THE MONTAGU INVESTMENT TRUSTS

Montagu is the investment adviser to nine investment trusts that own Canal-Randolph common stock and five investment trusts that own Blue Ridge common stock. Stevens, the Chairman and managing director of Montagu is also the Chairman of four of the nine Montagu trust clients that presently hold Canal-Randolph common stock. Stevens also sits on the Boards of Directors of the five investment trusts that own Blue Ridge common stock, including DPIT and DCT, which separately own more than 5% of the outstanding common stock of Blue Ridge. Each investment trust has a separate investment adviser and separate investment objectives. The investment advisers are all employees of Montagu.

Each trust has executed a management agreement whereby the trusts have granted to Montagu discretion to purchase and sell and otherwise deal with securities on their behalf. Purchases and sales of securities are initiated by

Montagu and are subsequently brought before the trusts' boards for ratification.²

With respect to the voting of the securities owned by the Montagu trust clients, as a general matter, Montagu supports the management of the companies in which it makes investments on behalf of the Montagu trust clients. When voting a security owned by the various trusts, Montagu may seek instructions from the trusts, but, in practice, such consultation has rarely taken place.

C. MONTAGU'S BENEFICIAL OWNERSHIP OF BLUE RIDGE

In late 1973, Salomon brought the possibility of investing in Blue Ridge to Montagu's attention. Montagu understood that Salomon intended to seek control of Blue Ridge. Two substantial blocks of common stock existed; one block of 165,000 shares was purchased in March 1974 by Montagu for the Montagu trust clients. The second block of more than 300,000 shares, Salomon hoped to acquire, but apparently was unable to do so. Montagu understood that Salomon and his associates might seek to sell a substantial part of Blue Ridge's assets and even to liquidate the company. Montagu initially believed it had an agreement to coordinate its clients' strategy regarding Blue Ridge with Salomon and his associates. During 1974 and 1975 Montagu was informed, in writing and in meetings with Salomon and Raymond French (president of Canal-Randolph and a director of Blue Ridge since 1967) and perhaps others, of Blue Ridge's activities and Salomon's objectives and the latter's inability to "control" Blue Ridge.

By the end of 1974, Montagu had purchased 325,933 shares of Blue Ridge common stock (16.7%) on behalf of DPIT, DCT and three other Montagu trust clients. Of that amount, Montagu held 150,000 shares on behalf of DPIT (7.7%) and 127,746 shares (6.6%) on behalf of DCT. From time to time, beginning in 1974, Montagu purchased on behalf of the various trusts more than one percent (1%) of the outstanding common stock of Blue Ridge on an annual basis. The

cumulative common stock purchases and common stock dividends through February 1982 increased Montagu's control to 480,575 shares of Blue Ridge common stock (21.85%), including DPIT's position which was increased to 168,729 shares (7.6%) and DCT's position which was increased to 174,895 (7.95%).

On January 31, 1983 Montagu, DPIT and DCT filed for the first time a Schedule 13D with respect to Blue Ridge shareholdings.³ This Schedule 13D was not timely filed with the Commission and failed to disclose the agreement which was in existence between 1973 and 1975 to coordinate Montagu's purchases of Blue Ridge common stock with Salomon; that Montagu and its trust clients are a group for purposes of Section 13(d) of the Exchange Act with respect to acquiring, holding, voting and disposing Blue Ridge common stock; and, when the Blue Ridge common stock described in the Schedule 13D were purchased and the consideration paid for such shares.

The belief stated by Montagu, in its Schedule 13D filed on January 31, 1983, that it is not the beneficial owner of the Blue Ridge common stock is incorrect under Section 13(d) of the Exchange Act and the rules and regulations thereunder.⁴ Moreover, the belief stated in the Schedule 13D that Montagu and the various trusts do not constitute a group for purposes of Section 13(d) is also incorrect.

D. MONTAGU'S BENEFICIAL OWNERSHIP OF CANAL-RANDOLPH

Montagu commenced purchasing Canal-Randolph common stock for its clients in 1977. By May 1979, 114,000 shares had been acquired, or 7.4% of the outstanding stock. Although several of the trusts bought and sold the common stock among themselves, the overall positions of 114,000 shares remained constant until October 1982.⁵

In September 1981 Montagu entered into an undisclosed agreement with Canal-Randolph in connection with the special meeting of shareholders of Canal-Randolph to be held on October

²The trusts have the right to rescind any purchases of Canal-Randolph or Blue Ridge common stock purchased on their behalf. However, the trusts have never failed to ratify any acquisitions or dispositions of Canal-Randolph or Blue Ridge common stock.

³Montagu's clients publicly disclosed their ownership of Blue Ridge common stock in their "Annual Accounts" which were distributed in the United Kingdom. The ownership of more than 5% of Blue Ridge common stock by

DCT and DPIT also has been publicly disclosed in Blue Ridge proxy materials.

⁴Montagu represents that in earlier years, in connection with discussions concerning its obligations under laws of the United Kingdom ("U.K."), it had been advised by English counsel that for purposes of U.K. law it was not a beneficial owner of securities purchased for its clients.

⁵In 1979, four of the trusts sold their Canal-Randolph common stock. In every instance such shares were purchased by other Montagu trust clients.

5, 1981. Prior to the meeting, the Canal-Randolph board of directors had distributed a Notice of Special Meeting of Stockholders and Management's Proxy Statement regarding proposals by the board to, among other things, eliminate cumulative voting and stagger the election of directors. Sometime prior to the October 5, 1981 meeting, representatives of Canal-Randolph met a director of Montagu, to discuss Montagu's position. Montagu was opposed to the board's proposal to stagger the election of directors and informed Canal-Randolph that Montagu intended to vote the 7.5% of the outstanding stock owned by Montagu trust clients against all the proposals if the staggered election proposal was not withdrawn. Canal-Randolph and Montagu entered into an agreement whereby Montagu agreed to vote in favor of all the board's proposals in return for Canal-Randolph's agreement to propose the elimination of staggering the election of directors at the next Canal-Randolph annual meeting and the agreement that Salomon would seek to vote the shares of Canal-Randolph common stock beneficially owned by Rea Brothers, a merchant bank controlled by Salomon, in favor of the resolution at the next annual shareholders meeting.⁶ In fact, the cumulative voting and staggered board proposals passed with approximately 58% of the shares voting with management. The staggered board proposal was eliminated at the 1982 annual shareholders meeting pursuant to the undisclosed arrangement between Montagu and Canal-Randolph.

In the fall of 1982, Stevens and Salomon discussed the possibility of the two entities they were Chairman of, Montagu and Rea Brothers, purchasing additional Canal-Randolph shares on behalf of clients, with the knowledge that another group had been acquiring Canal-Randolph stock since June and that a proxy contest was likely to occur. An agreement was reached that Montagu and Rea Brothers would each purchase additional shares of Canal-Randolph common stock for their respective fund clients and that such purchases would be made through Rea Brothers so they would not "push up the price against [their] own behalf." Between October 25 and November 24, 1982, 4,200 shares were purchased for one of the Montagu trust clients.

On December 27, 1982 Montagu filed for the first time a Schedule 13D with respect to its holding of

⁶Stevens had received specific instructions from the trusts that Montagu should not take a position with respect to cumulative voting and should oppose staggering the election of directors.

Canal-Randolph common stock.⁷ On January 25, 1983, Montagu filed an amendment to its Schedule 13D. The Schedule 13D was not timely. Moreover, the Schedule 13D and the amendment thereto failed to disclose that Montagu and the Montagu trust clients are a group for purposes of Section 13(d) of the Exchange Act with respect to acquiring, holding, voting and disposing Canal-Randolph common stock; that Montagu had agreed with Rea Brothers in the fall of 1982, after it was known that a proxy battle was pending, to purchase additional shares of Canal-Randolph through Rea Brothers so they would not push the price up to their own detriment; and, when all of the shares of Canal-Randolph common stock described in the Schedule 13D were purchased and the consideration paid for such shares.

Montagu also failed to disclose in its Schedule 13D or its amendment the events surrounding the 1981 agreement it entered into on behalf of the trusts with Canal-Randolph regarding management's proposals to eliminate cumulative voting and to institute a staggered board of directors as discussed herein.

The belief stated by Montagu, in its Schedule 13D filed on December 27, 1982, that it is not the beneficial owner of the Canal-Randolph common stock is incorrect under Section 13(d) of the Exchange Act and the rules and regulations thereunder.⁸ Moreover, the belief stated in the Schedule 13D that Montagu and the various trusts do not constitute a group for purposes of Section 13(d) is also incorrect.

IV. FINDINGS AND CONCLUSIONS

A. As set forth herein, Montagu through its powers to vote and dispose of the Blue Ridge and Canal-Randolph common stock held by the Montagu trust clients, was the beneficial owner of such securities under Section 13(d) of the Exchange Act and the rules and regulations thereunder. Montagu failed timely to file with the Commission statements containing the information required by Schedule 13D.

B. As set forth herein, Montagu failed to file amendments to a Schedule 13D with respect to the increase in ownership of Blue Ridge common stock by Montagu and its trust clients.

C. As set forth herein, the Schedules 13D and amendments thereto filed by Montagu with re-

⁷Montagu's clients publicly disclosed their ownership of Canal-Randolph common stock in their "Annual Accounts" which were distributed in the United Kingdom.

⁸See footnote 4, *supra*.

spect to the ownership of the common stock of Blue Ridge and Canal-Randolph failed to disclose certain information required by Schedule 13D.

As a result of the foregoing, the Commission finds that Montagu failed to comply in material respects with Section 13(d) of the Exchange Act and the rules, regulations and Schedules promulgated thereunder.

The Commission wishes to emphasize the obligation of all persons to comply with the beneficial ownership reporting provisions of Section 13(d) of the Exchange Act. Though in some instances foreign persons may not be as familiar as domestic persons with the provisions of the federal securities laws, their obligations to file required reports are no less certain, even if such foreign persons may have reporting obligations under foreign laws which may differ from the federal securities laws or foreign statutory constructions may support differing legal interpretations for terms relevant to the federal securities laws.

Accordingly, all persons should exercise due care in understanding and being advised of the requirements of the beneficial ownership reporting obligations of the federal securities laws and should take all appropriate steps to ensure that timely, adequate and accurate disclosures are made as required by Section 13(d) and the rules, regulations and Schedules thereunder.

V. OFFER OF SETTLEMENT AND UNDERTAKING

Montagu, without admitting or denying the facts or findings set forth herein, has submitted an Offer of Settlement to the Commission pursuant to which it consents to the issuance of the Findings, Conclusion and Order herein.

In its Offer of Settlement Montagu has undertaken the following:

A. Montagu will comply with and cause DPIT, DCT and other clients which Montagu serves as an investment adviser, to comply with the requirements of Section 13(d) of the Exchange Act and the rules, regulations and schedules promulgated thereunder.

B. Montagu will file within 10 days of the institution of these proceedings, amendments to its Schedules 13D with respect to the common stock of Blue Ridge and Canal-Randolph, attaching a copy of this Order.

C. Montagu will adopt, implement and maintain internal procedures, policies and controls which

are reasonably designed to assure that it, DPIT, DCT and other clients for which Montagu serves as an investment adviser comply with Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder. Such procedures, policies and controls shall include:

1. The continued retention of counsel experienced in the federal securities laws to consult and advise it in connection with all filings required to be made with the Commission pursuant to Section 13(d) of the Exchange Act and the rules, regulations and schedules promulgated thereunder by Montagu, DPIT, DCT, and other clients for which Montagu serves as an investment adviser with respect to the securities of Canal-Randolph, Blue Ridge or any other issuer;
2. The establishment of appropriate review procedures reasonably to ensure that filings pursuant to Section 13(d) of the Exchange Act or the rules and regulations promulgated thereunder are made timely and otherwise comply fully with all provisions of Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder; and
3. The appointment of a person to be responsible for implementing and maintaining the procedures, policies and controls instituted pursuant to this paragraph and assuring that Montagu, DPIT, DCT and other clients for which Montagu serves as an investment adviser comply fully with all provisions of Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder with respect to the securities of Canal-Randolph, Blue Ridge or any other issuer.

VI. ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of Montagu, and accordingly:

IT IS ORDERED that Montagu:

1. Comply with and cause DPIT, DCT and other clients for which Montagu serves as an investment adviser to comply with the requirements of Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder;
2. File within 10 days of the institution of these proceedings, amendments to its Schedules 13D with respect to the common stock of Blue Ridge and Canal-Randolph, attaching a copy of the Findings and Order; and
3. Adopt, implement and maintain internal pro-

cedures, policies and controls which are reasonably designed to assure that it, DPIT, DCT and other clients for which Montagu serves as an investment adviser comply with Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder. Such procedures, policies and controls shall include:

a. The continued retention of counsel experienced in the federal securities laws to consult and advise it in connection with all filings required to be made with the Commission, pursuant to Section 13(d) of the Exchange Act and the rules, regulations and schedules promulgated thereunder, by Montagu, DPIT, DCT and other Montagu clients for which Montagu serves as an investment adviser, with respect to the securities of Canal-Randolph, Blue Ridge or any other issuer;

b. The establishment of appropriate review procedures reasonably to ensure that filings pursuant to Section 13(d) of the Exchange Act or the rules, regulations and schedules promulgated thereunder are made timely and otherwise comply fully with all provisions of Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder; and

c. The appointment of a person to be responsible for implementing and maintaining the procedures, policies and controls instituted pursuant to this paragraph and assuring that Montagu, DPIT, DCT and other Montagu clients for which Montagu serves as an investment adviser comply fully with all provisions of Section 13(d) of the Exchange Act and the rules, regulations and schedules thereunder with respect to the securities of Canal-Randolph, Blue Ridge or any other issuer.

IT IS FURTHER ORDERED that by the issuance of this Order, and subject to Montagu's compliance with the terms of this Order, this proceeding is concluded.

By the Commission

George A. Fitzsimmons
Secretary
