

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff ,

: Civil Action
: File No.
:

v.

JOHN R. STEELE,

Defendant.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S
COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Plaintiff United States Securities and Exchange Commission

("Commission") alleges as follows:

INTRODUCTION

1. This case arises from actions by Defendant John R. Steele ("Defendant") and other officers and directors of Spiegel, Inc. ("Spiegel"), which resulted in material misstatements by Spiegel from in or about April 2001 through March 2003. Defendant Steele had been the Treasurer for Spiegel since 1993 and was a member of the Board of Directors of Spiegel's wholly-owned subsidiary Spiegel Credit Corporation III ("SCC III").

2. Spiegel sold apparel and household goods through three retail merchant subsidiaries. Consumers could purchase these goods on credit provided by Spiegel's wholly-owned credit card bank subsidiary, First Consumers National Bank ("FCNB").

3. In October 1987 Spiegel stock began public trading on the Nasdaq. As a publicly held company, the Securities and Exchange Act of 1934 (“the Exchange Act”) required Spiegel to file periodic reports with the Commission which provided accurate, material information about Spiegel’s business and financial condition.

4. Spiegel securitized its credit card receivables by placing them into a Trust operated by its subsidiary SCC III. SCC III periodically arranged for the Trust (hereinafter the “Asset-Backed Securitized Trust” or “ABS Trust”) to issue notes, backed by the receivables in the Trust, in public and private offerings. The securitization process allowed Spiegel to transfer debt off of FCNB’s balance sheet and to obtain financing and other monies from sales of the notes. Spiegel used the excess cash that the ABS Trust generated to help fund its daily operating requirements.

5. The ABS Trust was structured to incorporate different “triggers” that reflected how well the Trust was performing. Certain triggers measured the number of late payments and uncollectible accounts while the “Excess Spread” trigger measured the Trust’s profitability. If the ABS Trust performance dropped so low that it threatened the noteholders’ investments, the Excess Spread trigger would be breached, leading to a Payout Event in which all monies in a note series were immediately paid out to investors.

6. Investors who purchased ABS Trust notes received information about how the Trust was performing through the initial offering materials for the

note series and thereafter through Monthly Trust Reports which FCNB prepared and sent and which contained information on the various trust performance metrics. Defendant Steele filed the Monthly Trust Reports for the publicly held note series with the Commission.

7. The “Interchange Fee” was an inter-company fee that Spiegel’s merchant subsidiaries paid to FCNB in exchange for the credit FCNB provided to the merchants’ customers. The Interchange Fee was one component used in calculating the ABS Trust performance metrics.

8. The quality of the receivables in Spiegel’s ABS Trust deteriorated rapidly in 2000 and early 2001. SCC III was planning to issue a new public offering, the \$600 million 2001-A ABS Trust note series, in July 2001. As a public offering, SCC III had to file a Prospectus Supplement with the Commission which investors would use in deciding whether to purchase the notes. There was a concern that investors would not purchase the new 2001-A note series because the trust performance metrics were so poor.

9. In April 2001 Spiegel’s Office of the President (hereinafter “President”) authorized a five-fold increase in the Interchange Fee. This increase resulted in an immediate and significant improvement to the trust performance metrics. Defendant Steele and other Spiegel officers received copies of memoranda that advised of the increase. The President, however, did not ensure that the increase in the Interchange Fee was memorialized in written Contracts,

as required by the terms of the Contracts themselves, or properly recorded in Spiegel's accounting records.

10. On June 26, 2001 and July 16, 2001 SCC III filed with the Commission Prospectus Supplements that described its new \$600 million 2001-A public note series. Defendant Steele participated in preparing, reviewing and approving the Prospectus Supplements. The Prospectus Supplements contained false and misleading statements about the performance of Spiegel's ABS Trust because the trust performance metrics were based on the purportedly increased Interchange Fee, which had not been properly documented in Spiegel's accounting records or Merchant Contracts, as required. Investors, however, were unable to determine this from the Prospectus Supplements and SCC III succeeded in selling out the entire \$600 million note series.

11. On May 15, 2001 Defendant Steele, as a Director of SCC III, authorized SCC III to issue another ABS Trust note series. This series, the \$512 million 2001-VFN, again was marketed using trust performance metrics calculated on a 5% Interchange Fee which had not been recorded in written contracts nor in Spiegel's books and records.

12. In October 2001, as Defendant Steele knew, the Interchange Fee was increased again from 5% to 6%, retroactive to January 2001. This second increase also was not properly negotiated, recorded in accounting records, reported to regulatory authorities or memorialized in amended Merchant Contracts. The purported increase also was not identified in public filings and investors,

Trustees, noteholders, rating agencies and others were unable to determine that the purported increase had occurred or whether it had been properly recorded.

13. Defendant's actions violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] which prohibit making untrue statements of fact and misleading omissions of facts in the offer or sale of a security. Conduct that is negligent, rather than intentional, is sufficient to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act. Aaron v. SEC, 446 U.S. 680, 697 (1980).

14. Defendant's actions also violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] in that he knowingly failed to implement a system of internal accounting controls by not ensuring that the purportedly increased intercompany Fee was reflected in executed contracts and properly entered in Spiegel's accounting records.

15. Defendant also aided and abetted Spiegel's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by failing to ensure the making and keeping of books, records and accounts that reasonably and fairly reflected the increases in the intercompany Fee that occurred during 2001 and 2002 and by ensuring that these increases were properly executed and recorded in conformity with Spiegel's internal accounting systems.

16. Finally, Defendant aided and abetted Spiegel's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-11 promulgated

thereunder because he filed Monthly Trust Reports for the publicly held ABS Trust note series between August 2001 and February 2002 which contained trust performance metrics that were not based on properly recorded intercompany Fees.

17. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

JURISDICTION

18. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

19. During all periods relevant in this Complaint, Spiegel's corporate headquarters were in Downers Grove, Illinois which is located in the Northern District of Illinois. In addition, the acts, practices and courses of business constituting the violations alleged herein have occurred within the jurisdiction for the United States District Court for the Northern District of Illinois and elsewhere. Venue is proper because acts, transactions, practices, and courses of

business constituting the violations alleged in this Complaint occurred within the Northern District of Illinois.

20. Defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of conduct alleged herein.

21. Defendant, directly and indirectly, has engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business set forth in this complaint, and acts, practices and courses of business of similar purport and object.

DEFENDANT

22. Defendant John R. Steele, age 53, resides in Lombard, Illinois. He was Spiegel's Treasurer from 1993 until he left the company in March 2004. Defendant Steele also was a Director and the Treasurer for SCC III. Defendant Steele arranged the financing for Spiegel's business operations including the Asset-Backed Securitized Trust.

RELATED ENTITIES

23. **Spiegel, Inc.** was a Delaware corporation founded in 1865. OTTO (GmbH & Co.) KG acquired Spiegel in 1982 and in 1987 registered it as a public company with the Commission pursuant to Section 12(g) of the Exchange Act. Until June 2002 Spiegel's stock traded on the Nasdaq market. On June 3, 2002 the NASD delisted Spiegel's stock because Spiegel had not filed its 2001 Form 10-K

or first quarter 2002 Form 10-Q. Spiegel's stock was traded in the Pink Sheets after June 3, 2002 until it agreed to the revocation of its securities in July 2004.

24. **Spiegel Credit Corporation III ("SCC III")**, a wholly-owned subsidiary of Spiegel, Inc., owned and operated the Asset-Backed Securitized Trust in which Spiegel, through its subsidiaries, placed its credit card receivables. Once the receivables were placed into the Trust, they were used as the security for notes SCC III periodically issued in public or private offerings. The Trust, however, was not an independent legal entity which could act on its own. SCC III therefore directed the operations of the Trust including decisions to cause the Trust to issue new offering materials and note series. Defendant Steele was a Director of SCC III as well as its Treasurer.

25. **Spiegel Acceptance Corporation (SAC)** was another wholly-owned subsidiary of Spiegel, Inc. FCNB sold its credit card receivables to SAC; SAC in turn transferred the receivables to SCC III. This two-step transfer meant that the receivables could not be reached by creditors in the event of bankruptcy. Before SCC III could issue notes backed by the receivables in the ABS Trust, both FCNB and SAC were required to enter into a written contract, the Receivables Purchase Agreement, agreeing to transfer the receivables to SCC III on the understanding that SCC III would securitize them.

The Interchange Fee Increase

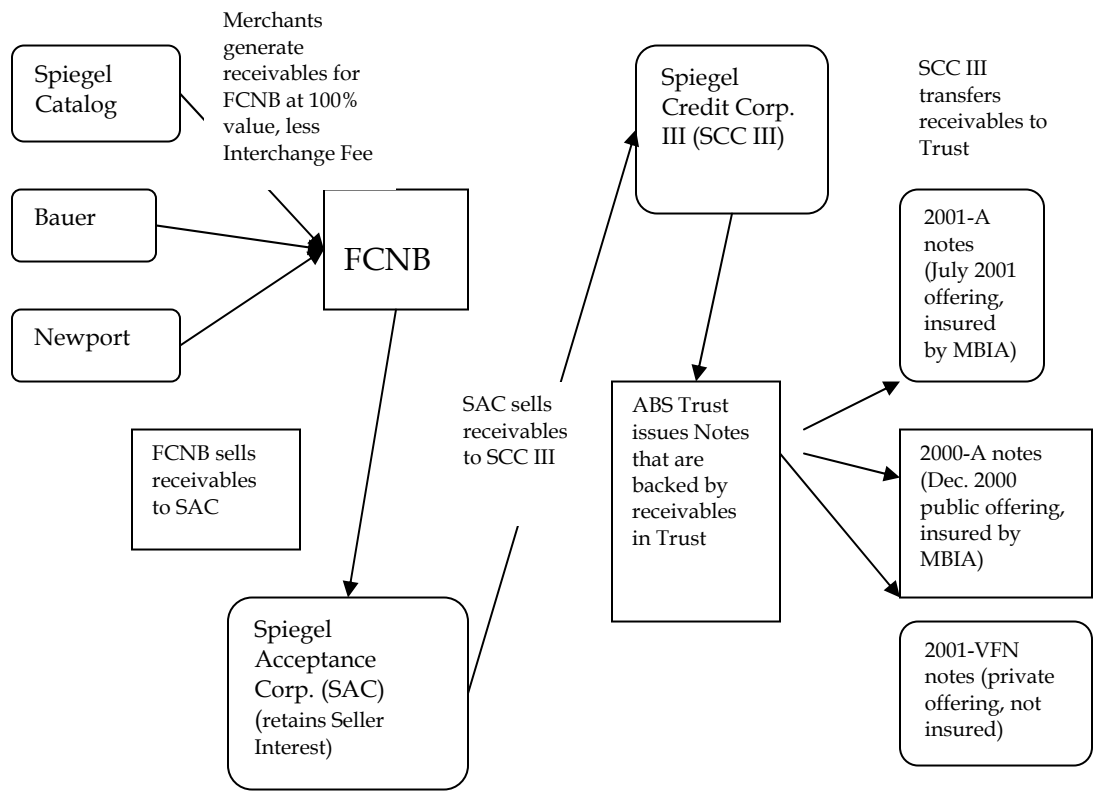
26. In 1990 Spiegel acquired a captive credit card bank subsidiary, FCNB, and began operating FCNB as support for Spiegel's three merchant retail

subsidiaries (“merchants”). FCNB thus offered credit cards and related services to the merchants’ customers. The convenience of purchasing on credit benefited all of Spiegel’s subsidiaries because it increased the merchants’ sales and allowed FCNB to collect fees for the services it provided.

27. Spiegel also obtained funds by securitizing its credit card receivables through a series of complex transactions structured among its various subsidiaries.

28. The securitization process operated as follows. FCNB, which owned the receivables generated by the customers to whom it had issued credit cards, sold the receivables to Spiegel Acceptance Corporation (SAC), another Spiegel subsidiary. SAC retained an interest in the receivables which allowed it to receive all cash in excess of the Trust’s operating needs. In turn SAC would transfer that excess cash back to Spiegel.

29. SAC sold the receivables to SCC III which placed them into the ABS Trust. As indicated in the chart below, SCC III periodically offered series of notes issued by the ABS Trust which conferred an interest in the receivables to public and private investors. SCC III’s offering materials provided for a certain level of interest on the notes, which were backed by the receivables in the ABS Trust, with ultimate repayment of principal in full.



30. The securitization process allowed FCNB to transfer the risk from the receivables off of its balance sheet and eliminated the need to fund the receivables. In addition, Spiegel received the initial proceeds from the notes and, through SAC's retained interest, all excess cash generated by the Trust. Spiegel used the ABS Trust's excess cash to help fund its daily operating requirements.

Trust Performance Metrics and the Interchange Fee

31. The ABS Trust was structured to incorporate certain metrics that monitored how the Trust was performing. The metrics were calculated using many factors over which Spiegel had no control, such as the number of payments

that were late or accounts that had to be written off as uncollectible. The single factor which Spiegel could change unilaterally, quickly and without notice to any third party was the "Interchange Fee". The Interchange Fee was a percentage of the merchants' gross sales that had been placed on credit cards provided by FCNB. The Interchange Fee was used to calculate certain key trust performance metrics called Excess Spread and Portfolio Yield.

32. Two requirements governed the establishment of the Interchange Fee. First, pursuant to Section 23B, "Restrictions on transactions with affiliates", of the Federal Reserve Act [12 U.S.C. § 371-c], the Interchange Fee was legally required to be comparable to fees set in arm's length transactions by unrelated parties.

33. Second, the Interchange Fee was agreed through negotiations between the merchants and FCNB and then memorialized in signed Merchant Contracts. According to their terms, the Merchant Contracts, including the Interchange Fees, could not be amended unless both sides agreed and memorialized their agreement in a formal written amendment to the Contract.

34. The Interchange Fee was a significant cost to the merchants for which they had to plan and budget. The merchants had always resisted any increase to the Fee and FCNB had been unable to successfully negotiate an agreement to charge the merchants an Interchange Fee higher than the 1% Fee they agreed to pay in January 1991.

The Trust Performance Metrics Directly Affected Spiegel's Liquidity

35. The trust performance metrics had a direct effect on Spiegel's liquidity. If, for example, the Excess Spread metric was at or above a certain percentage, the ABS Trust was deemed to be profitable and Spiegel received millions in excess cash through SAC's retained interest in the Trust receivables. However, if the Excess Spread or Portfolio Yield metrics were low enough to breach a metric called the "Excess Spread Funding trigger", the securitization agreements and offering materials required Spiegel to place specified amounts of cash into "cash collateral accounts". Money in the cash collateral accounts would be drawn on if ABS Trust funds were too low to make the payments to investors.

36. The most severe consequence of breaching an ABS Trust trigger was a Payout Event in which all Trust monies in a note series were immediately paid out to investors. A Payout Event potentially exposed Spiegel to bankruptcy by cutting off access to its daily operating funds.

37. FCNB was the "Servicer" of the ABS Trust. As Servicer it prepared and sent Monthly Trust Reports to the Trustees, on behalf of the noteholders. The Trustees then sent the Monthly Trust Reports to the rating agencies and MBIA. For publicly held series, FCNB sent the Reports to Spiegel's Accounting Department for filing with the Commission. The Monthly Trust Reports were attached to Forms 8-K which Defendant Steele signed. The Monthly Trust Reports listed the Excess Spread and Portfolio Yield trust performance metrics that were calculated using the Interchange Fee. If FCNB provided inaccurate

information in the Monthly Trust Reports, including information based on an inaccurate Interchange Fee, a “Servicer Default” could arise. A Servicer Default that was not cured within a specified time after FCNB had been notified could lead to “rapid amortization”, or a Payout Event of *all* funds in the ABS Trust.

The April 2001 Increase to the Interchange Fee

38. In 1998 Spiegel began targeting subprime or less creditworthy consumers with offers of easy credit. These subprime customers responded in large numbers and Spiegel’s sales soared. The effects of selling to subprime customers surfaced in 2000 when late payments and uncollectible accounts escalated.

39. At the end of 2000 an institutional investor asked to terminate a private note series early because the performance was so deficient. In order to raise the capital needed for the early buyout of the private note series, Spiegel decided to issue a new public note series, the 2001-A. There was a concern, however, that investors would not want to purchase the new series because the Trust performance was so poor.

40. Spiegel’s President knew that increasing the Interchange Fee could quickly boost the trust performance metrics that potential investors relied on in making investment decisions. In April 2001 Spiegel’s President authorized FCNB to increase the Interchange Fee to 5% from the agreed-upon 1% rate reflected in the written Merchant Contracts the merchants and FCNB had previously signed. Spiegel’s President and FCNB management also agreed to

make the increase retroactive to January 1, 2001. The retroactive increase meant that the April Trust Reports, sent to the Trustees, rating agencies and the financial guaranty insurer, contained only a single entry that contained all three prior months of Interchange Fees, increased five times.

41. Defendant Steele was notified of the Interchange Fee increase in memoranda dated April 26, 2001. Defendant Steele, who arranged all of Spiegel's financing, knew that Spiegel's intercompany transactions had to comply with certain requirements of Spiegel's loan agreements as well as satisfy federal banking regulations. On April 27, 2001, upon learning that the Interchange Fee purportedly had been increased to 5%, Steele conferred with inhouse counsel to determine what, if any, obligations Spiegel had to provide notice of the increase. During the conversation Steele noted that the increase was retroactive to January 1, 2001 and would increase Excess Spread. Thereafter, Spiegel's inhouse counsel advised Defendant Steele that the increase was a substantive change to the terms of the Merchant Contracts and therefore had to be in writing.

42. Defendant Steele also was responsible for determining whether the ABS Trust would breach any "triggers" that would result in adverse events including automatic Payout Events. On May 11, 2001 FCNB's Finance Manager sent Defendant Steele an email, stating "John - Per your request" and attaching analyses confirming that increasing the Interchange Fee through July 31, 2001 to either 4% or 5% would prevent trust triggers from being breached.

43. The five-fold increase in the Interchange Fee had the effect of providing an incorrect appearance of improved ABS Trust performance. By calculating the April 2001 trust performance metrics using a 5% Interchange Fee, and including a single retroactive “catch-up” adjustment consisting of three months of Interchange Fees calculated at 5%, the Interchange Fees increased from \$1.02 million to \$16.93 million while Excess Spread rose from 2.71% to 12.02%.

44. The increase, however, was unsupported by written contracts. The merchants were not asked to sign amended Merchant Contracts that contained a higher Interchange Fee. The merchants therefore continued recording the Interchange Fee in their accounting records at the 1% rate contained in the Merchant Contracts. FCNB similarly continued recording the Interchange Fee at 1% in its records and in the reports it was required to submit to the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC).

45. Defendant Steele and other Spiegel officers received subsequent memoranda dated May 2, 2001 and May 9, 2001 confirming that the merchants had not agreed to the higher Interchange Fee, the Merchant Contracts had not been amended and Spiegel therefore would not change its internal management reports to reflect the increase. These memoranda, however, also advised that the increased Interchange Fee *would* be used for the Monthly Trust Reports sent to

the Trustees, rating agencies and the financial guaranty insurer and which, for the publicly held series, Defendant Steele signed and filed with the Commission.

46. Consistent with these memoranda, each Monthly Trust Report FCNB prepared in and after April 2001 was based on the 5% Interchange Fee that was not supported by written contracts or properly recorded. The increased Fees, however, were not identified or discussed in the Reports and could not be detected without the underlying calculations. Each of these Monthly Trust Reports accordingly was false and misleading because it misrepresented the actual ABS Trust performance and concealed the severe deterioration of one of Spiegel's principal sources of liquidity.

47. Defendant Steele did not challenge Spiegel's continued internal use of the actual 1% agreed rate while publicly reporting collection of a 5% Fee which the merchants had not agreed to pay, which was not recorded as paid in their accounting records and which contradicted the terms of the parties' written Contracts governing the Fee. Defendant Steele made presentations to potential investors in the new 2001-A note series in which he advised, without qualification, that the Interchange Fee was 5%.

48. On June 26, 2001 SCC III filed a Prospectus and Prospectus Supplement with the Commission for the \$600 million public offering of the 2001-A note series. SCC III filed a second Prospectus Supplement for the 2001-A series on July 16, 2001. Both Supplements, which Defendant Steele participated in preparing, reviewing and approving, listed ABS Trust Portfolio Yield for the

periods ending December 31, 1999, December 31, 2000 and April 30, 2001. The 2001 figures reflected the unsupported increase to the Interchange Fee. The Supplements stated that increases to the Portfolio Yield in 2001 were primarily attributable to “an increase in [Interchange] Fees and late fees.” However, they omitted that the merchants had not agreed to the higher Interchange Fee, that the increase contradicted the rate in the legally executed Merchant Contracts, that the increase was not recorded in the accounting records of the merchants or FCNB or in the call reports FCNB filed with the FDIC and OCC, and that the increase was reflected only in Monthly Trust Reports and these public filings offering to sell the 2001-A note series.

49. In July 2001 the Spiegel merchants and FCNB began to negotiate new Merchant Contracts that in part would include new Interchange Fees. On July 18, 2001, July 26, 2001 and July 27, 2001, the merchants’ representatives sent emails regarding the proposed new agreements to Defendant Steele and other Spiegel officers. In the emails, the merchants offered to pay a 1.5% Interchange Fee while FCNB sought a 2% Interchange Fee for accounts over two years old and 4% for newer accounts.

50. Defendant Steele was responsible for filing Forms 8-K with the Commission which contained the trust performance metrics for the publicly owned ABS Trust note series. The first Form 8-K filed for the 2001-A note series, issued in July 2001, was filed with the Commission on August 29, 2001. As of that date, Defendant Steele had no reasonable basis for believing that the 5%

increase to the Interchange Fee had been legally completed. Defendant Steele nonetheless filed a Form 8-K with the Commission which included a July 2001 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics, calculated on the unsupported Interchange Fee increase. The Form 8-K did not identify either the increase or its impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in both Spiegel's common stock as well as its 2001-VFN note series, described below, relied on the Form 8-K for truthful information about Spiegel's financial condition.

51. Defendant Steele had no reasonable basis for believing that the 5% increase to the Interchange Fee had been legally completed as of September 18, 2001. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included an August 2001 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics, calculated on the unsupported Interchange Fee increase. The Form 8-K did not identify either the increase or its impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in both Spiegel's

common stock as well as its 2001-VFN note series, described below, relied on the Form 8-K for truthful information about Spiegel's financial condition.

52. Defendant Steele had no reasonable basis for believing that the 5% increase to the Interchange Fee had been completed as of October 23, 2001. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included a September 2001 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics, calculated on the unsupported Interchange Fee increase. The Form 8-K did not identify either the increase or its impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in both Spiegel's common stock as well as its 2001-VFN note series, described below, relied on the Form 8-K for truthful information about Spiegel's financial condition.

53. On October 17, 2001 SCC III issued the third ABS Trust note series in ten months, the \$426 million 2001-VFN series, in a private offering. In December 2001 SCC III issued additional 2001-VFN notes, bringing the total to \$512 million. Defendant Steele, as an officer and Director of SCC III, had signed a resolution on May 15, 2001 authorizing SCC III to arrange for the offering of the 2001-VFN note series. Defendant Steele also was heavily involved in preparing the offering materials for the 2001-VFN note series, which included trust performance metrics based on the unsupported Interchange Fee increase, and in

providing prospective investors with information about the ABS Trust and its inflated performance metrics.

The October 2001 Increase to the Interchange Fee

54. The performance of the ABS Trust continued to deteriorate despite calculating the metrics based on the purportedly increased Interchange Fee. The Excess Spread performance metric declined in May, June and July 2001. In August 2001 Spiegel advised that its ABS Trust note series 1999-B had breached its delinquent payment trust trigger for the third consecutive month, giving the noteholders the right to declare a Payout Event. The noteholders, however, waived the Payout Event because the Excess Spread trust performance metrics indicated the Trust was profitable. The noteholders did not know that the appearance of profitability was false because it was based on inaccurate information.

55. On August 20, 2001 various Spiegel officers attended a meeting where the ABS Trust performance metrics were discussed. At this meeting the officers, including Spiegel's Chief Financial Officer ("CFO") to whom Defendant Steele reported, agreed that the Interchange Fee rate should be "adjusted" so Spiegel could "avoid" its contractual obligations to enhance the protection available to noteholders and MBIA by placing additional funds in the cash collateral accounts. The CFO of FCNB agreed to talk to Defendant Steele, who was not present at the meeting, about the "adjustment".

56. On September 14, 2001 FCNB's Asset Securitization Manager emailed Defendant Steele in response to a request inquiring about Spiegel's options for improving the Excess Spread trust performance metric. The email stated in part that "I understand that your end-goal is to reduce the cash collateral funding requirements...." It also stated that "Outside of improved performance, we are limited to three options to improve excess spread" followed by an analysis of each option. The email recommended the option of increasing the Interchange Fee, "as it requires no disclosure, no notification to outside parties, no pre-approval by outside parties, and can be utilized and discontinued at our discretion." The email included analyses disclosing the effect on trust performance metrics if the Interchange Fee was increased to amounts ranging from 5.5% to 8%.

57. FCNB's Asset Securitization Manager also advised Defendant Steele and Spiegel's CFO, in a September 2001 report on the ABS Trust, that the new 2001-A note series, then two months old, was performing badly and that forecasts indicated Spiegel would need to increase the money it placed in the cash collateral accounts from \$45 million to \$120 million. On September 19, 2001 FCNB's Asset Securitization Manager corresponded with FCNB's Finance Manager and Assistant Controller regarding Defendant Steele's concern about the cash collateral accounts. She advised that Steele's concern was valid because Spiegel did not have \$12 million of the amounts it needed to fund the accounts.

58. On September 20, 2001 FCNB's Asset Securitization Manager informed Defendant Steele that if the Interchange Fee were raised one point, from 5% to 6%, the cash collateral account funding requirements would no longer be triggered and Spiegel could avoid funding the accounts.

59. The Interchange Fee - as Defendant Steele was aware - was purportedly increased a second time, from 5% to 6%, in October 2001. This second purported increase again was made retroactive to January 1, 2001, revising figures on sales that had been completed and reported up to ten months earlier. FCNB accordingly calculated the October 2001 trust performance metrics using a 6% Interchange Fee and a single "catch-up" adjustment recalculating and increasing nine prior months of Fees. As indicated in FCNB's October 2001 worksheets for the publicly-held Note Series 2001-A, the increase meant that the \$1.1 million in Interchange Fees that were based on the 1% rate reflected in the Merchant Contracts rose to \$15.85 million. Because of the increase Spiegel did not have to place fund the cash collateral accounts it otherwise would have been required to fund.

60. Defendant Steele had no reasonable basis for believing that either of the two Interchange Fee increases was supported by executed agreements as of November 19, 2001. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included an October 2001 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics which were based on the unsupported collection of \$15.85 million in Interchange

Fees. The Form 8-K did not identify either the increases or their impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in Spiegel's common stock relied on the Form 8-K for truthful information about Spiegel's financial condition.

61. Defendant Steele had no reasonable basis for believing that either of the two Interchange Fee increases was supported by executed agreements as of December 27, 2001. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included a November 2001 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics that were based on the unsupported Interchange Fee increases. The Form 8-K did not identify either the increases or their impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in Spiegel's common stock relied on the Form 8-K for truthful information about Spiegel's financial condition.

62. Defendant Steele had no reasonable basis for believing that either of the two Interchange Fee increases was supported by executed agreements as of January 31, 2002. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included a December 2001 Monthly Trust Report,

prepared by FCNB, setting forth the 2001-A note series trust performance metrics that were based on the unsupported Interchange Fee increases. The Form 8-K did not identify either the increases or their impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in Spiegel's common stock relied on the Form 8-K for truthful information about Spiegel's financial condition.

63. Defendant Steele had no reasonable basis for believing that either of the two Interchange Fee increases was supported by executed agreements as of February 25, 2002. On that date, however, Defendant Steele filed a Form 8-K with the Commission which included a January 2002 Monthly Trust Report, prepared by FCNB, setting forth the 2001-A note series trust performance metrics that were based on the unsupported Interchange Fee increases. The Form 8-K did not identify either the increases or their impact on the trust performance metrics. The Form 8-K thus contained untrue statements regarding the material factor of the trust's performance and omitted to make statements which were necessary in order to ensure the statements made were not misleading. Investors in Spiegel's common stock relied on the Form 8-K for truthful information about Spiegel's financial condition.

Spiegel's Subsequent Handling of the Increased Interchange Fee

64. At year end 2001 FCNB calculated that the difference between the 1% Interchange Fee in the Merchant Contracts and the 6% Interchange Fees it had reported to the ABS Trust totaled \$53.8 million. In order to make its accounting records agree with what it had reported to the Trust, FCNB recorded a single year-end entry of \$53.8 million in income. Thereafter, however, Spiegel's Controller directed FCNB to reverse this entry because there was no documentation to support the increased Interchange Fee.

65. Several Spiegel officers subsequently investigated the increase. In March 2002 a Spiegel officer concluded that if the actual 1% Interchange Fee in the Merchant Contracts were used, there would have been Payout Events in November and December 2001. The Spiegel officer provided his analysis and conclusions to Defendant Steele and other Spiegel officers.

66. Spiegel's outside securitization counsel, who had not previously been advised of the 2001 increases to the Interchange Fee, advised Spiegel to disclose all issues arising from its public reporting of a higher rate to every interested party, to ensure that Spiegel's Merchant Contracts were consistent with all of its accounting and to restate Spiegel's Monthly Trust Reports from April through December 2001, using the 1% Interchange Fee, unless Spiegel could support the 6% Interchange Fee which FCNB reported to the ABS Trust as collected in 2001. Outside counsel noted, however, that if FCNB restated the 2001 trust reports using the 1% Interchange Fee, the restatement could give rise

to “Servicer Defaults,” or possible Payout Events, based on FCNB’s having provided inaccurate information in the Monthly Trust Reports.

67. On July 18, 2002 Spiegel’s Controller sent a memorandum to Defendant Steele and others. The memorandum stated that, according to a “benchmarking study” Spiegel had commissioned, a 6% Interchange Fee would reflect an appropriate market rate for two of Spiegel’s merchants only after certain restrictions OCC was requiring FCNB to impose on its grants of credit became effective. The memorandum further noted that charge-off rates for Spiegel’s third merchant, Eddie Bauer, were so low that Spiegel could justify only a 2% Interchange Fee for Bauer.

68. Spiegel filed its 2001 Form 10-K on February 4, 2003. On March 7, 2003 the Commission filed a complaint against Spiegel, Inc. in the U.S. District Court for the Northern District of Illinois which in part alleged that Spiegel’s failure to timely file its required reports violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.13a-1 and 240.13a-13]. On March 27, 2003, the Court entered an Amended Partial Final Judgment in which Spiegel agreed to the Judgment including an Order that permanently enjoined it from violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

COUNT I

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77(q)(a)(3)]

69. Paragraphs 1 through 68 are realleged and incorporated herein by reference as if set forth fully.

70. Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)] prohibit making untrue statements of fact and misleading omissions of facts in the offer or sale of a security. Section 17(a)(2) specifically proscribes obtaining “money or property by means of any untrue statements of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” Section 17(a)(3) specifically proscribes engaging “in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” To constitute a violation of Sections 17(a)(2) and 17(a)(3), the alleged untrue statements or omitted facts must be material. Information is deemed material upon a showing of a substantial likelihood that the misrepresented or omitted facts would have assumed significance in the investment deliberations of a reasonable investor. Establishing violations of Sections 17(a)(2) and 17(a)(3) does not require a showing of scienter; negligence is sufficient.

71. As set forth above, Defendant Steele knew of the undocumented five-fold increase to the Interchange Fee as of April 26, 2001 but had no

reasonable basis for believing that the 5% increase to the Interchange Fee had been legally completed. Thereafter Defendant Steele advised potential investors in the 2001-A note series of the ABS trust performance metrics, without advising that the metrics for 2001 were based on an unsupported Interchange Fee.

Defendant Steele also prepared, reviewed and authorized the issuance of SCC III's Prospectus Supplements dated June 26, 2001 and July 16, 2001 which contained trust performance metrics that also were based on unsupported Interchange Fees. In addition, Defendant Steele, as a Director of SCC III, signed a May 15, 2001 authorization to issue the 2001-VFN notes and prepared and distributed offering materials to investors in the 2001-VFN series which included trust performance metrics that were based on unsupported Interchange Fees.

From August 2001 to February 2002 Defendant Steele also filed with the Commission Monthly Trust Reports for the publicly held ABS Trust note series which contained trust performance metrics that were based on unsupported Interchange Fees. The offering materials for the 2001-A and 2001-VFN note series and the Monthly Trust Reports for the publicly held ABS Trust note series included statements regarding the ABS Trust performance metrics that were misleading because they failed to disclose that they were based on Interchange Fees which were not supported, not recorded in accounting records and not actually collected. Accurate information about the Interchange Fees and the impact they had on Trust performance metrics was material because a reasonable investor would want to know the truth about the Trusts' performance. The

investing public and analysts following SCC III's ABS Trusts could not discern this information from the disclosures SCC III made.

72. Defendant Steele therefore violated Sections 17(a)(2) and 17(a)(3) of the Securities Act with respect to the Monthly Trust Reports and the offering materials SCC III provided for its 2001-A and 2001-VFN note series.

COUNT II

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rule 13a-11 [17 C.F.R. § 240.13a-11]

73. Paragraphs 1 through 68 are realleged and incorporated herein by reference as if set forth fully.

74. Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rule 13a-11 [17 C.F.R. §240.13a-11] require issuers of registered securities to file with the Commission certain accurate and current information on Forms 8-K.

75. From at least August 2001 through at least February 2002, Defendant Steele, directly and indirectly, aided and abetted Spiegel's violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Exchange Act Rule 13a-11 [17 C.F.R. §240.13a-11] by filing Forms 8-K that contained Monthly Trust Reports and trust performance metrics which were misleading because they were calculated based on unsupported Interchange Fees.

COUNT III

Aiding and Abetting Spiegel's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)]

76. Paragraphs 1 through 68 are realleged and incorporated herein by reference as if set forth fully.

77. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets and that appropriate action is taken with respect to any differences that are found to exist.

78. Defendant Steele, from April 2001 through February 2003, aided and abetted Spiegel's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] by failing to ensure that Spiegel's books, records and accounts accurately reflected the Interchange Fees, that such Fees were properly recorded in order to permit the preparation of financial statements in conformity with generally accepted accounting principles and that appropriate action was taken with regard to the differences

that existed between Spiegel's accounting records and the Trust Reports.

COUNT IV

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)]

79. Paragraphs 1 through 68 are realleged and incorporated herein by reference as if set forth fully.

80. Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] prohibits persons from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account that issuers are required to maintain in order to ensure accurate and fair recording of, and accounting for, transactions.

81. Defendant Steele, from April, 2001 through February 2003, violated Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)] by knowingly failing to implement a system of internal accounting controls that accurately and fairly recorded Spiegel's Interchange Fee-related transactions.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Judgment:

I.

Finding that Defendant Steele committed the respective violations alleged above;

II.

Permanently enjoining, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, Defendant Steele, his agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of the order of permanent injunction by personal service or otherwise, and each of them, from further violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)], Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], and from aiding and abetting further violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rule 13a-11 [17 C.F.R. § 240.13a-11];

III.

Ordering Defendant Steele to pay an appropriate civil monetary penalty under Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

IV.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

V.

Granting such other relief as this Court may deem just and appropriate.

Respectfully submitted,

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