UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **Plaintiff ,** **v.** **JAMES R. CANNATARO,** **Defendant.**	Civil Action File No.

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 James R. Cannataro and other officers and directors of Spiegel, Inc. ("Spiegel"), which resulted in material misstatements by Spiegel from April 2001 to February 2003. Spiegel had been a publicly owned company whose stock had traded on the Nasdaq since October 1987. 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.

2. In late 2000 Cannataro, who had been the Chief Financial Officer (CFO) of a Spiegel merchant subsidiary since 1990, was promoted to replace

Spiegel's CFO who was retiring June 30, 2001. As of July 1, 2001 Defendant Cannataro also became the President of Spiegel's subsidiary Spiegel Acceptance Corporation ("SAC"), and a member of Spiegel's Board of Directors, as well as a Director of Spiegel's subsidiaries Spiegel Credit Corporation III ("SCC III"), SAC and (as of August 21, 2001) Spiegel's wholly-owned credit card bank subsidiary First Consumers National Bank ("FCNB").

3. Spiegel sold apparel and household goods through three retail merchant subsidiaries. Consumers could purchase these goods on credit provided by FCNB.

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. The Monthly Trust Reports for the publicly held note series were filed 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 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 Cannataro 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. Defendant Cannataro knew that the 5% Interchange Fee reported as collected to the ABS trust was unsupported by written contracts and was not recorded in Spiegel's books and records. In August 2001, he advised the merchants that, effective January 1, 2002, the Interchange Fee they *actually* had to budget for and pay would double from 1% to 2%. Nonetheless, Defendant Cannataro took no action in connection with the false and misleading statements as to the current trust performance.

11. On September 24, 2001 Defendant Cannataro, as a Director of SAC, authorized SCC III to issue an additional note series, the $512 million 2001-VFN series. This series, issued in October and December 2001, 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 Cannataro knew, the Interchange Fee purportedly 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 Cannataro violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(2) and 77(q)(a)(3)] 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 Cannataro 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 increased intercompany Fee was reflected in executed contracts and properly entered in Spiegel's accounting records.

15. Defendant Cannataro 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. Defendant Cannataro aided and abetted Spiegel's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] by failing to ensure that Spiegel's 2001 Form 10-K and 2001 second and third quarter Forms 10-Q included information about the increases to the Interchange Fee.

17. Defendant Cannataro violated Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by certifying Spiegel's 2001 Form 10-K while knowing that the Form 10-K did not include information about the increases to the Interchange Fee.

18. 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

19. 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)].

20. 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.

21. 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.

22. 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

23. Defendant James R. Cannataro, age 54, resides in Sammamish, Washington. Defendant Cannataro passed the Certified Public Accountant (CPA) examination in 1984 but never practiced. Defendant Cannataro became the CFO of Eddie Bauer in 1990 and in late 2000 was appointed CFO of Spiegel, a title he assumed on July 1, 2001. Defendant Cannataro also was a Director and the President of Spiegel's Spiegel Acceptance Corporation (SAC) subsidiary, which sold credit card receivables for securitization to SCC III, a Director and

President of SCC III and a Director of FCNB. Defendant Cannataro left Spiegel in February 2003.

RELATED ENTITIES

24. **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.

25. **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 Cannataro was a Director of SCC III as of July 1, 2001 and the President of SCC III by at least October 17, 2002.

26. **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. Defendant Cannataro was a Director and the President of SAC.

The Interchange Fee Increase

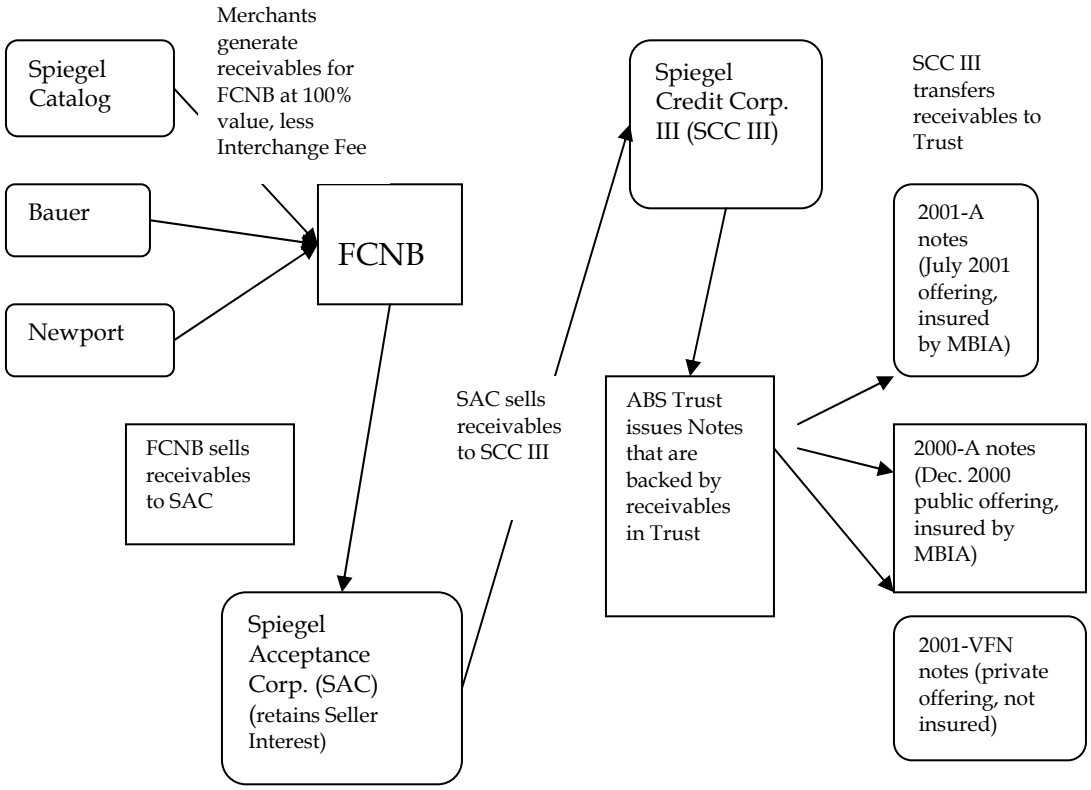
27. In 1990 Spiegel acquired a captive credit card bank subsidiary, FCNB, and began operating FCNB as support for Spiegel's three merchant retail subsidiaries ("merchants"). FCNB thus offered credit cards and related services to the merchants' customers. The convenience of purchasing on credit benefited all of Spiegel's subsidiaries because it increased the merchants' sales and allowed FCNB to collect fees for the services it provided.

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

29. 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 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.

30. 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.



31. 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

32. 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.

33. Defendant Cannataro was familiar with the Interchange Fee because of his position as CFO of Spiegel's merchant subsidiary Eddie Bauer, Inc. Indeed, Defendant Cannataro signed Eddie Bauer's initial Merchant Contract in 1990, agreeing to pay a 2.5% Interchange Fee. In January 1991 he signed a written Contract amendment, reflecting the merchants' success in negotiating the Interchange Fee down to 1%, where it stayed for over ten years. Defendant Cannataro, however, did not have exposure to the use of these rates for external trust reporting purposes while at Eddie Bauer.

34. 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.

35. 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.

36. 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

37. 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.

38. 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.

39. FCNB was the "Servicer" of the ABS Trust. As Servicer it prepared and sent Monthly Trust Reports to the rating agencies and, on behalf of the noteholders, the Trustees. Reports for the publicly held series also were filed with the Commission. 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

40. 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.

41. 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.

42. 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.

43. Defendant Cannataro and other Spiegel officers were notified of the increase to the Interchange Fee in memoranda dated April 26, 2001. At that time Defendant Cannataro was transitioning into the position of Spiegel CFO, which he assumed on July 1, 2001.

44. 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%.

45. 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).

46. Defendant Cannataro and other Spiegel officers received additional memoranda dated May 2, 2001 and May 9, 2001 confirming that because the merchants had not agreed to the higher Interchange Fee, the Merchant Contracts had not been amended and Spiegel would not change its internal management reports to reflect the increase. These memoranda, however, also advised that the purportedly 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, were filed with the Commission.

47. 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 purportedly 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.

48. Defendant Cannataro 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.

49. On June 26, 2001 and July 16, 2001 SCC III filed Prospectus Supplements with the Commission for the $600 million public offering of the 2001-A note series. Both Supplements 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 materials offering to sell the 2001-A note series.

50. On July 1, 2001 Defendant Cannataro assumed the title of CFO for Spiegel, Inc. as well as simultaneously becoming a Director, and later officer, of both SAC and SCC III. On August 21, 2001 Defendant Cannataro also was appointed as a Director of FCNB.

51. One of Defendant Cannataro's tasks, as Spiegel's new CFO, was to negotiate new agreements to govern transactions, including the Interchange Fee, between the Spiegel merchants and FCNB. Minutes from long-range planning meetings Defendant Cannataro began attending on July 13, 2001 reflect that the Interchange Fees, which were "currently showing 1%", were "to be finalized" by Defendant Cannataro and Spiegel's new CEO.

52. On July 18, 2001, July 26, 2001 and July 27, 2001, the merchants' representatives sent emails regarding the proposed new agreements to both Defendant Cannataro 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.

53. As of August 13, 2001 Defendant Cannataro had no reasonable basis for believing that the 5% Interchange Fee had been legally completed. Defendant Cannataro nonetheless signed Spiegel's second quarter 2001 Form 10-

Q, filed on August 13, 2001. The financial information in Spiegel's second quarter Form 10-Q was based on a 5% Interchange Fee. The Form itself, however, did not disclose the Fee increase or the fact that it was not supported by contracts and not recorded in Spiegel's books. The Form also did not disclose the significant impact of the increased Fee on Spiegel's liquidity – namely, that by reporting the increase as collected, Spiegel was able to avoid borrowing money from third parties to honor the contractual obligations that otherwise would have been triggered and required it to place millions of dollars into the cash collateral accounts. Spiegel's second quarter Form 10-Q therefore was false and misleading both to investors in Spiegel's common stock and to investors in the subsequently issued 2001-VFN note series.

54. Defendant Cannataro also signed Spiegel's third quarter 2001 Form 10-Q, filed with the SEC on November 13, 2001. As of November 13, 2001 Defendant Cannataro again had no reasonable basis to believe that the increase to the Interchange Fee had been legally completed. Nonetheless, the financial information in Spiegel's third quarter Form 10-Q was based on a 5% Interchange Fee. The Form, however, again did not disclose the Fee increase, the fact that it contradicted the rate in the existing Merchant Contracts or the fact that it was not recorded in Spiegel's accounting records. The Form also did not disclose the significant impact of the increased Fee on Spiegel's liquidity – namely, that by reporting the increase as collected, Spiegel was able to avoid borrowing money from third parties to honor the contractual obligations that otherwise would

have been triggered and required it to place millions of dollars into the cash collateral accounts. As such, the third quarter Form 10-Q was false and misleading both to investors in Spiegel's common stock and to investors in the subsequently issued 2001-VFN note series.

55. On August 16, 2001 Defendant Cannataro and a representative of Spiegel's merchants sent out a memorandum advising that effective January 1, 2002 the merchants would pay a 2% Interchange Fee. The memorandum advised the merchants to ensure that they budgeted for this doubling of the Fee in 2002. Defendant Cannataro sent out a revised version of this memorandum on August 28, 2001. Pursuant to Cannataro's directive, the merchants executed written amendments in which they agreed to pay a 2% Interchange Fee effective January 1, 2002. In the interim the merchants continued to record the 1% Interchange Fee that was actually transferred to FCNB pursuant to the Merchant Contracts in effect for 2001.

56. Defendant Cannataro, as an officer and Director of SAC, signed a resolution on September 24, 2001 authorizing SCC III to arrange for the offering of the 2001-VFN notes. 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. The offering materials for the 2001-VFN note series included trust performance metrics based on the inflated Interchange Fee, and in providing

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

The October 2001 Increase to the Interchange Fee

57. 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.

58. On August 20, 2001 Defendant Cannataro attended a meeting where the ABS Trust performance metrics were discussed. At this meeting Defendant Cannataro agreed that the Interchange Fee rate should be "adjusted" within reason to avoid having to place additional funds in the cash collateral account. This had the effect of avoiding Spiegel's contractual obligations to enhance the protection available to noteholders and the financial guaranty insurer.

59. FCNB's Asset Securitization Manager advised Defendant Cannataro and others, 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 concern about the cash collateral accounts. She advised that these concerns were valid because Spiegel did not have $12 million of the amounts it needed to fund the accounts.

60. The Interchange Fee – as Defendant Cannataro 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 purported 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.

61. As Spiegel's CFO from July 1, 2001 to February 2003, Defendant Cannataro, was responsible for Spiegel's Financial Reporting, Internal Audit and Treasury Departments as well as its Legal Department, which he knew was in

charge of amending the Merchant Contracts to ensure they were current and legally binding. It was important to each of these Departments that the Merchant Contracts were current, accurate and legally binding. Despite having just advised the merchants to budget for and execute Merchant Contracts reflecting a 2% Interchange Fee for 2002, Defendant Cannataro did nothing to advise the merchants about the October 2001 Interchange Fee increase to 6%. He also did nothing to ensure that the Merchant Contracts were amended to reflect the increase to 6% or that the merchants and FCNB were properly recording the increase in their accounting records and FCNB's reports to the FDIC or the OCC.

Spiegel's Subsequent Handling of the Increased Interchange Fee

62. 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.

63. 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 Cannataro and other Spiegel officers.

64. Two of Defendant Cannataro's direct reports also consulted with Spiegel's outside securitization counsel, who advised Spiegel to disclose all issues arising from its public reporting of a higher rate to every interested party. Counsel also advised that Spiegel's Merchant Contracts should be consistent with all of its accounting. Finally, counsel advised Spiegel to restate its Monthly Trust Reports for April to December 2001 unless it could support the 6% Interchange Fee which FCNB reported to the ABS Trust as collected from the Spiegel merchants. Outside counsel noted, however, that restatement could give rise to "Servicer Defaults," or possible Payout Events, based on FCNB's having provided inaccurate information in the Monthly Trust Reports.

65. In late May 2002 Spiegel obtained a "benchmarking study" it had commissioned to provide the "support" it sought in order to avoid restating its 2001 Trust Reports. The consultant, however, had obtained information for Interchange Fees charged in **2002**. Because companies generally review Interchange Fees at least annually and revise them as needed, the data was not relevant to, and could not support, the Interchange Fee Spiegel purportedly had charged in 2001. Nonetheless, Defendant Cannataro and others asserted that the "study" supported the 6% Interchange Fee each Spiegel merchant ostensibly paid FCNB in 2001 and that there accordingly was no need to restate the 2001 ABS Monthly Trust Reports using the actual 1% Interchange Fee in the Merchant Contracts. This decision meant Spiegel avoided the Payout Events that would have been disclosed by restating the Reports.

66. Defendant Cannataro subsequently resumed negotiations with all three Spiegel merchants and in October 2002, two of Spiegel's three merchants signed Contracts effective July 1, 2002 to pay the 6% Interchange Fee reported as collected by the ABS Trust. These Merchant Contracts however, nullified the 6% Interchange Fee by stating that FCNB would reimburse the merchants for "offsetting marketing expenses of approximately 4%." By this means, the ABS Trust "legitimately" could report "collection" of a 6% Fee while the merchants continued to pay only 2%. Defendant Cannataro approved these contracts. However, Spiegel's third merchant, Eddie Bauer, refused to sign a Merchant Contract to pay a 6% Interchange Fee.

67. On November 13, 2002, the CFO of FCNB told Defendant Cannataro that restating Spiegel's 2002 Monthly Trust Reports to show collection of the true 2% Interchange Fee from Eddie Bauer would send the Trust into Payout Events. The Trust Reports would not have to be revised, however, if Bauer signed the same Merchant Contract Spiegel's other merchants had. Defendant Cannataro did not object to this means of trying to prop up the trust performance metrics, which also violated Section 23B of the Federal Reserve Act [12 U.S.C. § 371-c].

68. Bauer's CEO nonetheless still refused to sign the Merchant Contract. The ABS Trust continued to report collection from Bauer of a 6% Interchange Fee through February 2003 when Cannataro resigned from Spiegel.

69. Spiegel filed its 2001 Form 10-K on February 4, 2003. The Form 10-K was misleading because it did not disclose any information about Spiegel's manipulations of the Interchange Fee in 2001 or 2002. Defendant Cannataro knew that the 2001 Form 10-K did not disclose any information about Spiegel's manipulations of the Interchange Fee. Defendant Cannataro nonetheless certified, pursuant to the requirements of the Sarbanes-Oxley Act and Rule 13a-14 [17 C.F.R. § 240.13a-14] of the Exchange Act, that the 2001 Form 10-K was complete and not misleading.

70. 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)]

71. Paragraphs 1 through 70 are realleged and incorporated herein by reference as if set forth fully.

72. 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.

73. As set forth above, Defendant Cannataro knew of the unsupported five-fold increase to the Interchange Fee as of April 26, 2001. Defendant

Cannataro knew that the merchants were not paying the increased amounts that were reported as collected to the ABS Trust, to the Trustees, rating agencies and for the publicly held note series, to the Commission. Defendant Cannataro nonetheless did nothing to stop the reporting of these misleading trust performance metrics and, as a Director of SAC, authorized SCC III to issue the 2001-VFN note series. The offering materials for the 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.

74. Defendant Cannataro 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 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)]

75. Paragraphs 1 through 70 are realleged and incorporated herein by reference as if set forth fully.

76. 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.

77. Defendant Cannataro, from April 2001 to 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 III

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

78. Paragraphs 1 through 70 are realleged and incorporated herein by reference as if set forth fully.

79. 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.

80. Defendant Cannataro, from April, 2001 to 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.

COUNT IV

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and240.13a-13]

81. Paragraphs 1 through 70 are realleged and incorporated herein by reference as if set forth fully.

82. Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§240.13a-1 and 240.13a-13] thereunder require

issuers of registered securities to file with the Commission annual and quarterly reports that contain accurate and complete information as required.

83. From July 1, 2001 to November 13, 2001 Defendant Cannataro, 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-13 [17 C.F.R. §§240. 13a-13] by signing Spiegel's second and third quarter 2001 Forms 10-Q without requiring them to include information about the increases to the Interchange Fee. Defendant Cannataro, directly and indirectly, also 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-1 [17 C.F.R. §§240.13a-1] by not requiring Spiegel to include in its 2001 Form 10-K information about the increases to the Interchange Fee.

COUNT V

Violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14]

84. Paragraphs 1 through 70 are realleged and incorporated herein by reference as if set forth fully.

85. On February 4, 2003, pursuant to Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], Defendant Cannataro certified Spiegel's 2001 Form 10-K filed with the Commission. Cannataro's certification stated that as Spiegel's CFO, he had reviewed the 2001 Form 10-K, that based upon his knowledge it did not contain

any untrue statement of a material fact or omit to state any material fact that was necessary in order to make the statements made, in light of the circumstances under which the statements were made, not misleading, and that based upon his knowledge the financial statements and information contained in Spiegel's 2001 Form 10-K fairly presented in all material respects the financial condition, results of operations and cash flows of Spiegel.

86. At the time he certified Spiegel's 2001 Form 10-K, Defendant Cannataro knew that this Form did not mention any of Spiegel's purported increases of the Interchange Fees or the effect of that continuing misconduct on Spiegel's financial condition.

87. By reason of the activities described in Paragraphs 94 through 96 above, Defendant Cannataro violated Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)].

PRAYER FOR RELIEF

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

I.

Finding that Defendant Cannataro 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 Cannataro, 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)], Rule 13a-14 [17 C.F.R. § 240.13a-14] promulgated under Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and from aiding and abetting 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], and 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)].

III.

Ordering Defendant 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,

_____

Peter K.M. Chan
Adolph Dean
Sally J. Hewitt
Attorneys for Plaintiff
U.S. Securities and Exchange Commission
175 West Jackson Boulevard – Suite 900
Chicago, IL 60604
(312) 353-7390

_____ 2006