**UNITED STATES DISTRICT COURT**
**FOR**
**THE NORTHERN DISTRICT OF ILLINOIS**

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| **UNITED STATES SECURITIES AND EXCHANGE COMMISSION,**<br>**Plaintiff ,**<br>**v.**<br>**MICHAEL R. MORAN AND JAMES W. SIEVERS,**<br>**Defendants.** | 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 matter involves actions by Defendant Michael Moran and Defendant James Sievers from in or about late April 2001 to June 30, 2001 which resulted in material misstatements by Spiegel, Inc. in connection with certain asset-backed securitizations. During this period, Defendants shared the Office of the President of Spiegel. Defendants also were Directors both of Spiegel, Inc. ("Spiegel") and of Spiegel's wholly-owned subsidiary Spiegel Credit Corporation III ("SCC III") and Moran was Chairman of the Board of Directors of Spiegel's wholly owned subsidiary First Consumers National Bank ("FCNB").

2. Spiegel was founded in 1865 and entered the apparel and home furnishings catalog mail order business in 1905. Spiegel operated three merchant

retail subsidiaries that sold clothing, home furnishings and consumer goods. It also owned FCNB, a special purpose bank which provided credit related services that supported the merchant subsidiaries' business.

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. One of Spiegel's principal sources of liquidity came from securitizing its credit card receivables by placing them into a Trust that its SCC III subsidiary operated. SCC III periodically arranged for public and private offerings in which the Trust (hereinafter the "Asset-Backed Securitized Trust" or "ABS Trust") issued notes that were backed by the receivables in the Trust. 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 certain metrics that measured its performance. 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 these trust performance metrics.

6. 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. Defendants’ actions at issue here consisted of authorizing FCNB to calculate the trust performance metrics using an increased “Interchange Fee”.

7. During 2001 Defendants knew that SCC III was planning to issue a new $600 million ABS Trust note series – the 2001-A series - in a public offering. They also knew that SCC III was required to file with the Commission a Prospectus Supplement which investors would use in deciding whether to purchase the notes. Defendants knew that the Prospectus Supplement would contain trust performance metrics that had been calculated using the Interchange Fee.

8. The quality of the receivables in Spiegel’s ABS Trust had deteriorated rapidly during 2000 and early 2001. There was a concern that investors would not purchase the new 2001-A note series because the trust performance metrics were so poor. Defendants therefore authorized a five-fold increase in the Interchange Fee. This increase resulted in an immediate and significant improvement to the trust performance metrics.

9. Defendants, 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. Moreover, there was no adequate basis to believe that anyone else at Spiegel had completed these requirements.

10. Despite not ensuring that the increase had been properly implemented, Defendants on June 6, 2001 authorized SCC III to proceed with its offer and sale of securities. On June 26, 2001 SCC III issued a Prospectus Supplement for the new public note series, the 2001-A series. The Prospectus Supplement contained false and misleading statements about the performance of Spiegel's ABS Trust because the trust performance metrics were based on an Interchange Fee that 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 Supplement and SCC III succeeded in selling out the entire $600 million note series.

11. Defendants retired from the Office of the President and from their position as Directors of SCC III on June 30, 2001. The April 2001 increase to the Interchange Fee which they authorized and approved was never properly recorded, accounted for or implemented.

12. Defendants' actions 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 77q(a)(3)] because they authorized SCC III to offer and sell the 2001-A note series securities, with documents that contained untrue statements about information that was material to investors. Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] 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).

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

14. Finally, Defendants 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 in April 2001 and by ensuring that these increases were properly executed and recorded in conformity with Spiegel's internal accounting systems.

15. 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

16. 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 the acts, practices and courses of business described herein pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

17. 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.

18. Defendants, 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.

19. Defendants, directly and indirectly, have engaged in, and unless restrained and enjoined by this Court could 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.

## DEFENDANTS

20. Michael R. Moran, age 60, is a resident of Homer Glen, Illinois. Moran began working for Spiegel in 1970 as a lawyer. From 1988 until 1997 he was head of Spiegel's legal department. From 1997, until Spiegel abolished the position on June 30, 2001, he and Defendant James Sievers shared Spiegel's Office of the President. Moran was appointed as a Director of Spiegel's wholly-owned credit card bank subsidiary FCNB in 1990 and by at least the year 2000 was Chairman of the FCNB Board. Moran also was a Director of Spiegel, Inc. and a Director of Spiegel Credit Corporation III, the Spiegel subsidiary that held public and private offerings in which Spiegel's ABS Trust issued notes backed by the credit card receivables in the Trust.

21. James W. Sievers, age 64, is a resident of Langley, Washington. Sievers joined Spiegel's merchant subsidiary Eddie Bauer, Inc. in 1983 as the Chief Financial Officer (CFO) and was promoted to Spiegel's CFO in 1994. In 1997 he was appointed to Spiegel's Board of Directors and from 1997 until June 30, 2001 he and Defendant Michael Moran shared Spiegel's Office of the President. Like Moran, Sievers was a Director of Spiegel Credit Corporation III until his retirement on June 30, 2001.

## RELATED ENTITIES

22. 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.

23. Spiegel Credit Corporation III (SCC III) was a wholly-owned subsidiary of Spiegel, Inc. that formed and operated the ABS Trust in which Spiegel's credit card receivables were placed. SCC III periodically arranged for the ABS Trust to issue notes, backed by the receivables in the Trust, in public or private offerings.

**The Interchange Fee Increase**

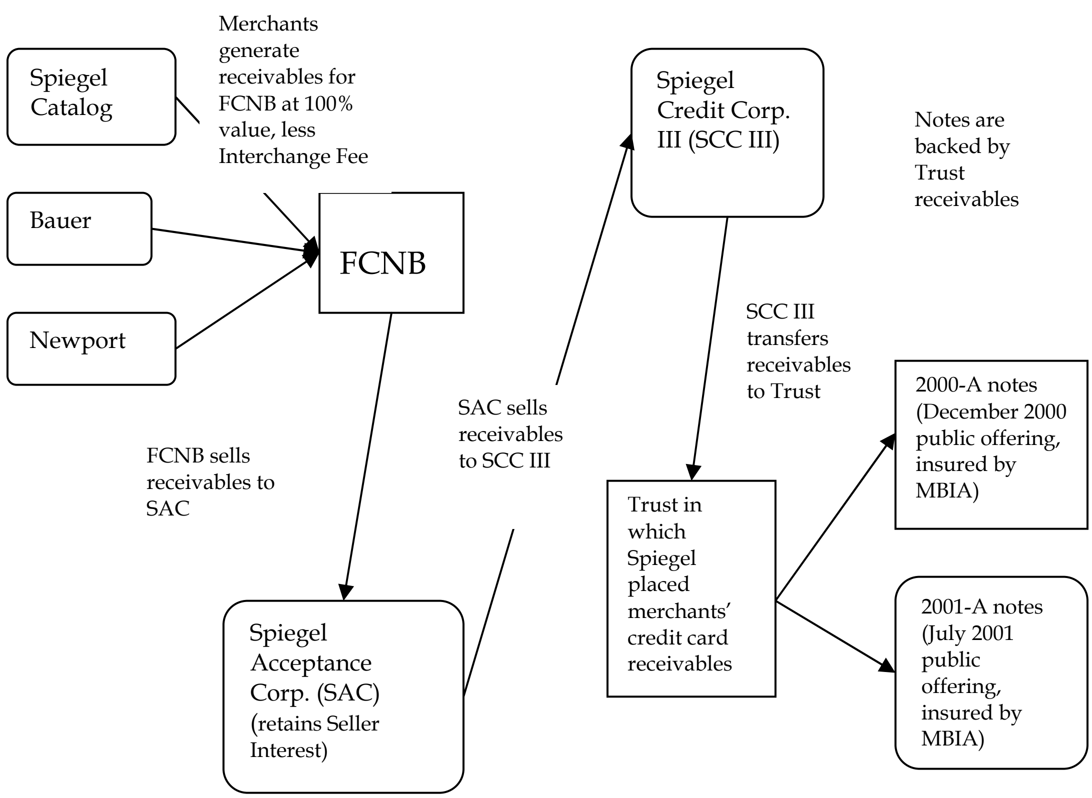
24. Spiegel, Inc. was the parent company of three merchant retail subsidiaries ("merchants"). In 1990 Spiegel acquired a captive credit card bank subsidiary, First Consumers National Bank, and began operating FCNB as support for the merchants. FCNB thus offered credit cards and related services to the 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.

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

26. 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.

27. 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.




28. 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**

29. 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 charged on credit cards FCNB provided. The Interchange Fee was used to calculate certain key trust performance metrics called Excess Spread and Portfolio Yield.

30. 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 arms-length transactions by unrelated parties.

31. 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.

32. The Interchange Fee was a significant cost to the merchants and one 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.

**<u>The Trust Performance Metrics Directly Affected Spiegel's Liquidity</u>**

33. 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.

34. 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.

35. FCNB was the "Servicer" of the ABS Trust. As Servicer it prepared and sent Monthly Trust Reports to the Trustees, rating agencies and, on certain publicly held note series, to the financial guaranty insurer MBIA Insurance Corporation ("MBIA"). 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 Payout Events of all funds in the ABS Trust.

**<u>Defendants' Involvement with the ABS Trust and Offering Materials</u>**

36. Defendants knew that the ABS Trust was one of Spiegel's principal sources of liquidity and that failing to sell the ABS Trust notes would severely affect the company.

37. Defendants, sharing Spiegel's Office of the President and in their capacities as Directors of SCC III and Spiegel, Inc., had the authority as to whether SCC III could proceed with issuing offering materials for a new ABS Trust note series. Defendant Moran had worked on a number of securitized offerings during his tenure at Spiegel and both Defendants knew that investors relied on offering materials in determining whether or not to invest in notes issued by SCC III.

**Inaccurate Information Is Used in the Offer and Sale of Securities**

38. The effects of selling to subprime customers began to surface in late 2000 and early 2001 when numerous payments were late, partial or not paid at all. Spiegel began having to write off millions of dollars in uncollectible receivables which in turn resulted in several "triggers" incorporated into the ABS Trust structure being breached. Spiegel could, and did, avoid the consequences of some of these breaches by asking the noteholders either to waive the breach or to amend the particular trigger. However, the consequences of breaching the Excess Spread Funding Trigger would require Spiegel to place millions of dollars into cash collateral accounts as additional protection for the ABS Trust noteholders.

39. In late 2000, an investor in one of Spiegel's private ABS Trust note series asked to terminate its series early because the Trust performance was so poor. In order to raise the capital needed to retire the private note series early, Spiegel decided to issue new notes, the $600 million 2001-A series, in a public offering. Defendants knew that the offering materials would have to contain information on the ABS Trust performance and that trust performance metrics were material to whether prospective investors would purchase the new note series. There was a concern that investors would not want to purchase the new note series because the Trust performance was so substandard. Failing to sell the new ABS Trust note series would have a major financial impact on Spiegel. Moreover, Defendants knew that the Excess Spread in the 2000-A note series,

issued only a few months before, was forecast to breach the Excess Spread Funding Trigger which would require Spiegel to place $48 million into the cash collateral accounts in May 2001.

40. Most of the options for improving the trust performance metrics would take months to show results, required disclosure to or consent from third parties and were at best uncertain. Defendants discussed with FCNB management and agreed that the historic 1% Interchange Fee should be increased to 5%. Defendants knew that increasing the Interchange Fee would result in an immediate and significant improvement to the trust performance metrics that potential investors relied on to make investment decisions. Moreover, increasing the Interchange Fee did not require disclosure to or consent from any third parties.

41. In late April 2001, following discussions with FCNB management, Defendants authorized the increase in the Interchange Fee to 5%. They also authorized FCNB to calculate the ABS Trust performance metrics using an Interchange Fee of 5%, as opposed to the 1% rate in the executed Merchant Contracts. They also agreed to make the increase retroactive to January 1, 2001. Defendants understood that the increase would be reported in the ABS Trust Reports, sent to the Trustees, rating agencies and MBIA Insurance Corporation.

42. The five-fold increase had the effect of providing an incorrect appearance of improved ABS Trust performance. By calculating the trust performance metrics for April 2001 using a 5% Interchange Fee and including a

single retroactive "catch-up" adjustment, consisting of the prior three months of Fees calculated at 5%, the Interchange Fees increased from $1.02 million to $16.93 million and the Excess Spread rose from 2.71% to 12.02%.

43. The increase, however, was unsupported by written contracts. The merchants were not asked to sign amended Merchant Contracts that reflected the higher Interchange Fee. The merchants therefore continued recording the Interchange Fee in their internal accounting records at the 1% rate that was 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). The increased Fee, however, was reflected in the trust performance metrics provided to rating agencies, the Trustees for Spiegel's ABS Trust note series and (for the public series) the financial guaranty insurer.

44. On May 2, 2001 Defendant Sievers sent a memorandum to the Chairman of Spiegel's Board Finance Committee and to the Vice-Chairman of Spiegel's Board (who also was Spiegel's incoming President) and other senior members of Spiegel management advising them of the increase to the Interchange Fee. Sievers' memorandum stated that the increased Fee would be publicly reported as actual collected revenue. It further advised, however, that the company would not change its internal management reporting to reflect the increase "until we complete discussions on third party approaches between the

bank and the merchants." Defendant Moran sent a similar memorandum to Spiegel's Vice Chairman (and incoming President) on May 9, 2001.

45. As of May 9, 2001 neither Defendant had discussed with the merchants about how the increased Interchange Fee would comport with the "third party" approach required by Section 23B of the Federal Reserve Act [12 U.S.C. § 371-c]. In fact, before they retired from Spiegel on June 30, 2001, Defendants never advised the merchants' presidents of the purported increase.

46. Defendant Moran was the head of Spiegel's legal department from 1988 until 1997, when he and Defendant Sievers began sharing the Office of the President. This nine year period included the 1990 drafting of the Merchant Contract, with its express requirement that amendments be written and executed by both parties, as well as the sole amendment revising the Interchange Fee in 1991. Defendant Sievers' responsibilities included acting as Spiegel's CFO. Despite their experience and Defendant Sievers' orally advising Spiegel's Manager of Corporate Accounting of the increase, Defendants did not ensure that the increase was properly documented, accounted for or recorded in Spiegel's records.

**Defendants Authorize the Offer and Sale of New Securities**

47. On June 6, 2001 Defendant Moran and other Directors of FCNB executed a resolution authorizing SCC III to take all actions necessary or desirable to cause SCC III to issue the 2001-A note series. The resolution ratified

"any and all actions taken" as if they had been taken pursuant to the Board's specific authorization.

48. On June 6, 2001 Defendant Sievers and other officers and directors of SAC, which sold the receivables to SCC III to be securitized, adopted a resolution authorizing SCC III to cause the ABS Trust to issue the 2001-A note series. The resolution ratified all actions taken that were necessary to issue the notes. Also on June 6, 2001 Defendant Sievers and others executed a similar resolution as a Director of SCC III.

49. On June 26, 2001 SCC III filed a Prospectus and Prospectus Supplement with the SEC for a $600 million new public offering, the 2001-A note series. The Prospectus Supplement listed ABS Trust Portfolio Yield for the periods ending December 31, 1999, December 31, 2000 and April 30, 2001. The 2001 figures reflected the increased Interchange Fee. The Supplement stated that increases to the 2001 Portfolio Yield were primarily attributable to "an increase in [Interchange] Fees and late fees." At this time, Defendants had not properly acted to legally implement or record the increase and had no adequate basis to believe that others had done so. In fact, on June 26, 2001 and when the Defendants retired on June 30, 2001 the merchants had not agreed to pay the higher Interchange Fee and were not recording the higher Fee in their internal accounting records. The increase also contradicted the rate in the executed Merchant Contracts; and FCNB was not recording the increase in its accounting

records or the call reports filed with the FDIC and OCC. The statements in the Prospectus Supplement thus were untrue and misleading.

## COUNT I

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

50. Paragraphs 1 through 49 are realleged and incorporated herein by reference as if set forth fully.

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

52. As set forth above, in late April 2001 Defendants Moran and Sievers authorized FCNB to calculate the ABS Trust performance metrics retroactive to January 1, 2001 using an Interchange Fee that was five times the amount of the Fee set forth in the Merchant Contracts. At that time the merchant company presidents had not agreed to pay the increased Fee, the Merchant Contracts had not been amended to reflect the higher Fee and the increased Fee was not being properly recorded in Spiegel's accounting records. Calculating the ABS Trust performance metrics using a 5% Interchange Fee thus resulted in untrue and misleading trust performance metrics.

53. On June 6, 2001 Defendants authorized SCC III to sell the 2001-A note series in a public offering which included publicly distributing, and filing with the Commission, a Prospectus Supplement. Defendants knew that the Prospectus Supplement for the 2001-A note series contained trust performance metrics that had been calculated using the increased Interchange Fee. Defendants also knew that statements about the performance of the ABS Trust were material to investors. As of June 6, 2001 Defendants had not ensured that the increased Interchange Fee was legally implemented and recorded and they had no adequate basis for believing that others had completed these actions.

54. On June 26, 2001 SCC III filed with the Commission a Prospectus Supplement for the public offering of the $600 million 2001-A note series. The Prospectus Supplement included statements regarding the ABS Trust performance metrics that were untrue and 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 Trusts' actual performance. The investing public and analysts following the ABS Trust could not discern this information from public disclosures SCC III made.

55. Defendant Moran, as one of two individuals sharing Spiegel's Office of the President and as a Director of SCC III, authorized SCC III to make the statements described above at a time when he had no adequate basis for believing the statements were true. Defendant Moran therefore violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] with respect to the June 26, 2001 Prospectus Supplement for the 2001-A note series filed with the Commission.

56. Defendant Sievers, as one of two individuals sharing Spiegel's Office of the President and as a Director of SCC III, also authorized SCC III to make the statements described above at a time when he had no adequate basis for believing the statements were true. Defendant Sievers therefore violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] with respect to the June 26, 2001 Prospectus Supplement for the 2001-A note series filed with the Commission.

## COUNT II

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

57. Paragraphs 1 through 49 are realleged and incorporated herein by reference as if set forth fully.

58. 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.

59. Defendant Moran, from at least April 26, 2001 through June 30, 2001, violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by failing to implement a system of internal accounting controls that accurately and fairly recorded Spiegel's Interchange Fee-related transactions.

60. Defendant Sievers, from at least April 26, 2001 through June 30, 2001, violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by failing to implement a system of internal accounting controls that accurately and fairly recorded Spiegel's Interchange Fee-related transactions.

## COUNT III

### Aiding and Abetting 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)]

61. Paragraphs 1 through 49 are realleged and incorporated herein by reference as if set forth fully.

62. 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.

63. Defendant Moran, from late April 2001 through June 30, 2001, 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.

64. Defendant Sievers, from late April 2001 through June 30, 2001, 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.

## PRAYER FOR RELIEF

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

I.

Finding that each of the Defendants committed the violations alleged above;

II.

Permanently enjoining, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them 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)] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and from aiding and abetting 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)].

III.

Ordering each of the defendants to pay a civil monetary penalty under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and 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.

Respectfully submitted,

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