UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, **Plaintiff ,** **v.** **MARTIN ZAEPFEL,** **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 matter arises from actions by Defendant Martin Zaepfel 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 Zaepfel was a member of Spiegel's Board of Directors and Spiegel's President and Chief Executive Officer (CEO) from July 2001 to March 2003. He also was a member of the Board of Directors of several of Spiegel's wholly-owned subsidiaries.

2. First, Defendant Zaepfel allowed the public reporting of an increased intercompany Fee despite not having an adequate basis to believe that the increased Fee had been properly accounted for or memorialized. Second,

during the period from April 15, 2002 to May 29, 2002, Defendant Zaepfel recommended that Spiegel not file certain legally required reports. As a result, current information about Spiegel's financial condition was not publicly disclosed.

3. Defendant Zaepfel's actions in connection with the intercompany Fee 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)], 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).

4. Defendant Zaepfel also violated Section 13(b)(5) of the Securities and Exchange Act of 1934 ("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.

5. Defendant Zaepfel also 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)] because he certified that, to the best of his knowledge, Spiegel's 2001 Form 10-K and its 2002 Forms 10-Q fairly presented, in all material respects, Spiegel's financial condition and results of operations. At the time Zaepfel certified

Spiegel's Forms, he knew they did not identify or discuss the increases in the intercompany Fee that had occurred during 2001 and 2002.

6. Defendant Zaepfel 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.

7. Finally, Defendant Zaepfel 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] thereunder by participating in the decision to withhold filing Spiegel's 2001 Form 10-K and its first quarter 2002 Form 10-Q. This decision kept Spiegel's actual financial condition, including a "going concern" opinion of Spiegel's outside auditor, from timely public disclosure.

8. 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

9. This Court has jurisdiction over this action pursuant to Section

22(a) of the Exchange 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 pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

10. 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.

11. 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.

12. 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

13. Martin Zaepfel, age 62, resides in Germany and is a German citizen. He had been employed by Spiegel's former parent company, OTTO (Gmbh) KG ("OTTO") since 1983 and had been a member of Spiegel's Board of Directors since 1996. In 1997 the Chairman of Spiegel's Board of Directors appointed Zaepfel as the "liaison", or coordinator, between Spiegel and OTTO. Zaepfel also was one of the three members of Spiegel's Board Committee, which was authorized to make decisions for Spiegel between the semi-annual meetings of the full Board of Directors. In late 2000 the Chairman of Spiegel's Board of Directors appointed Zaepfel as Spiegel's President and CEO, a title Zaepfel assumed on July 1, 2001. Zaepfel also then became one of the Directors of SCC III, the wholly-owned Spiegel subsidiary that arranged for the issuance of notes backed by the receivables in Spiegel's Trust. Zaepfel left Spiegel in March 2003 and is consulting for various European companies.

RELATED ENTITIES

14. **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.

15. **Spiegel Credit Corporation III** (SCC III), a wholly-owned subsidiary of Spiegel, Inc., formed and operated the Trust ("Asset-Backed Securitized Trust" or "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.

16. **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 arrange for notes backed by the receivables in the Trust to be issued, both FCNB and SAC were required to enter into written contracts agreeing to actually transfer the receivables to SCC III on the understanding that SCC III would securitize them. Defendant Zaepfel was a Director of SAC and, by at least October 17, 2001, SAC's Chairman.

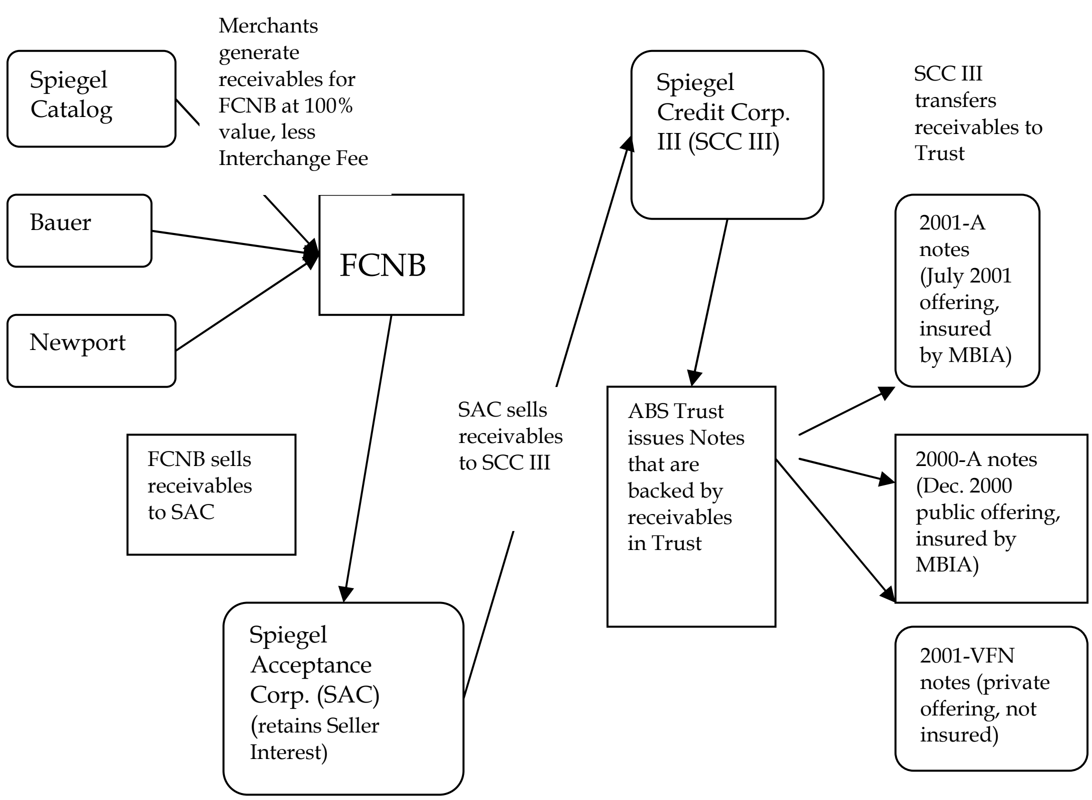
The Interchange Fee Increase

17. Spiegel, Inc. was the parent company of three merchant retail subsidiaries ("merchants"). In 1990 Spiegel acquired a credit card bank subsidiary, First Consumers National Bank, and began operating FCNB for the support of its merchants. FCNB offered credit cards and related services to the merchants' customers. Providing customers with this credit enhanced the convenience of purchasing from the merchants and the merchants' sales increased. It also allowed FCNB to collect fees for its credit services.

18. Spiegel also obtained funds by securitizing its credit card receivables through a series of complex transactions structured among its various subsidiaries. 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 then transferred the receivables to SCC III which placed them into the ABS Trust. However, 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.

19. SCC III periodically arranged for the ABS Trust to offer series of notes which conferred an interest in the receivables to public and private investors. As set forth in the offering materials the notes, backed by the receivables in the Trusts, provided for a certain level of interest with ultimate repayment in full.



20. The securitization process allowed FCNB to transfer the risk from the securitized 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

21. 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 one 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.

22. 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.

23. 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.

24. The Interchange Fee was a significant cost to the merchants and one for which they had to plan and budget. During the period prior to 2001, the senior officers of the merchant companies successfully resisted any increase to the Fee and FCNB had been unable to 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

25. 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.

26. 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.

27. FCNB was the "Servicer" of the ABS Trust. As Servicer it prepared and sent Monthly Trust Reports to the Trustees, rating agencies and, on the two publicly held note series Spiegel issued in December 2000 and July 2001, to the financial guaranty insurer MBIA Insurance Corporation ("MBIA"). The Monthly 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.

Spiegel's Decision in 1998 to Target Subprime Customers

28. The effects of selling to subprime customers began to surface in 2000 and early 2001 when numerous payments were late or not made at all. In addition, without Defendant Zaepfel's knowledge, FCNB had halted a credit review process known as "back-end screening", which previously had been

successful in reducing credit risk. The deterioration of the receivables in Spiegel's ABS Trust 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 ABS Trust noteholders either to waive the breach or to amend the particular trigger. However, the consequences of breaching a trigger, such as the Excess Spread Funding Trigger, would require Spiegel to place millions of dollars into cash collateral accounts as additional protection for the noteholders.

29. In November 2000 Defendant Zaepfel, who was then an officer of Spiegel's German parent company OTTO and a member of Spiegel's Board of Directors, was promoted to Spiegel President and CEO effective July 1, 2001. Zaepfel replaced two individuals who formerly had shared Spiegel's Office of the President (the "outgoing Spiegel President").

The April 2001 Increase to the Interchange Fee

30. 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 for this early buyout, Spiegel began planning a public offering for a $600 million new ABS Trust note series, the 2001-A series.

31. The financial condition of the ABS Trust, as measured by certain trust performance metrics, was material to whether investors would purchase the new note series. The outgoing Spiegel President knew that how the Trust

was performing would be a material factor to investors deciding whether to purchase the notes and that the offering materials thus would have to contain information on the ABS Trust performance. The outgoing President also knew that, because this was a public offering, SCC III would have to file a Prospectus Supplement with the Commission.

32. There was a concern that investors would not want to purchase the new note series because the Trust performance was so substandard. If investors did not purchase the new 2001-A note series, there would be a major financial impact on Spiegel.

33. The outgoing Spiegel President knew that increasing the Interchange Fee would result in an immediate improvement to the trust performance metrics. In April 2001, following discussions with FCNB management, the outgoing President authorized FCNB to calculate the trust performance metrics using an Interchange Fee of 5%, as opposed to the 1% rate in the parties' executed Merchant Contracts. Moreover, the outgoing President agreed to make the increase retroactive to January 1, 2001 and understood the increase would be reflected in the ABS Trust Reports sent to the Trustees, rating agencies and MBIA.

34. The five-fold increase succeeded in creating 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 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%.

35. The outgoing Spiegel President, however, did not ensure that the increased Interchange Fee was properly accounted for and memorialized. The merchants had not signed the required written amendments to the Merchant Contracts and therefore continued recording the Interchange Fee in their accounting records at the 1% rate that was contained in the Merchant Contracts they had agreed to and executed. 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 and investors in Spiegel's ABS Trust note series.

36. On May 2, 2001 and on May 9, 2001 the outgoing Spiegel President sent memoranda to Defendant Zaepfel concerning an increase in the Interchange Fee from 1% to 5%. The May 2, 2001 memorandum advised Defendant Zaepfel:

> "[T]he 'excess spread' or profit ratio is declining. This ratio is key to the performance of the financing trusts. In order to protect this ratio, …the Bank will require additional contributions from the merchants reflecting the deteriorated credit quality of the portfolio. This contribution must be in the form of increasing the current discount rate from 1% to 5% retroactive to January 1, 2001….[T]hese changes in discount fees will be

handled only in our legal financial statements. Internal management reporting will not be affected until we complete discussions on third party approaches between the Bank and the merchants."

Similarly, the May 9, 2001 memorandum provided Defendant Zaepfel with further information concerning "the reason for the change on our legal books for a 5% discount from the current 1%." The memorandum specifically stated that one of the purposes of the increase in the Interchange Fee was to permit Spiegel to report "1. continued healthy excess spread so as not to alarm investors; 2. Remove any risk of a negative excess spread month, which would create problems for obtaining additional short-term financing; 3. Excess spread lower than 5.5% causes a trigger in the 2000-A transaction which requires us to carry up to $48 million cash balance until excess spread improves, thus increasing corporate debt."

37. During the period from July 2001 to December 2001, Defendant Zaepfel failed to stop Spiegel's continued internal use of the Interchange Fees contained in the written Merchant Contracts while certain Spiegel subsidiaries publicly reported the collection of an increased Fee that both contradicted the Fee contained in the written Contracts and was not being recorded in Spiegel's accounting records.

Defendant Authorizes the Offer and Sale of New Securities

37. On May 15, 2001 Defendant Zaepfel as a Director of Spiegel, Inc. signed a resolution authorizing Spiegel to take all actions necessary to issue a

private note series (the 2001-VFN), backed by the receivables in the ABS Trust, after the public offering of the 2001-A series was completed in July 2001.

38. The outgoing Spiegel President retired on June 30, 2001. On July 1, 2001 Defendant Zaepfel became Spiegel's President and CEO as well as a Director of SCC III.

39. In July 2001, in anticipation of a possible sale of FCNB, Defendant Zaepfel initiated a "credit project" whereby, among other things, members of Spiegel management began negotiating new, arms-length agreements to govern transactions between the Spiegel merchants and FCNB, including the amount of the Interchange Fee. On July 18, 2001, July 26, 2001 and July 27, 2001, emails regarding the proposed new agreements were sent to Zaepfel and others. The emails disclosed that the merchants were offering to pay a 1.5% Interchange Fee while FCNB sought a 2% Fee for accounts over two years old and 4% for newer accounts. In these discussions, neither Defendant Zaepfel nor the other Spiegel officers involved in these negotiations expressed any concern regarding the fact that FCNB simultaneously was reporting collection of a 5% Interchange Fee to the ABS Trust.

40. Spiegel filed its second quarter 2001 Form 10-Q on August 13, 2001. The Form 10-Q did not disclose the Interchange Fee increase or the fact that the increase was reflected only in the Monthly Trust Reports and the 2001-A Prospectus Supplements, was not recorded in Spiegel's accounting records and was not supported by written contracts. The Form 10-Q also did not disclose the

significant impact of the increase on Spiegel's liquidity – namely, that the increase reported as collected to the Trust permitted Spiegel to divert to its own use millions of dollars that rightfully should have gone into cash collateral accounts. Spiegel's diversion of the funds to its own use meant it did not have to borrow this money from third parties. Thus, the second quarter Form 10-Q was false and misleading because it did not discuss the significant positive impact the inflated Interchange Fee increase had on Spiegel's reported liquidity.

The October 2001 Increase to the Interchange Fee

41. 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 metric indicated the Trust was profitable. The noteholders did not know that the appearance of profitability was false because it was based on inaccurate information.

42. On August 20, 2001, Defendant Zaepfel attended a meeting concerning FCNB with the outgoing Spiegel President, Spiegel's Chief Financial Officer, and senior officers of FCNB. At this meeting, Spiegel's CFO agreed that the Interchange Fee should be "adjusted" so that Spiegel would not have to incur

an obligation to pay monies into a cash collateral account and an FCNB officer agreed to discuss that change with Spiegel's Treasurer after the meeting.

43. Following the August 20, 2001 meeting, the Interchange Fee was increased from 5% to 6% effective October 1, 2001. This second purported increase again was made retroactive to January 1, 2001, revising figures on sales that had been completed and reported months before. Spiegel's merchants again were not told the Fee had been increased nor were the existing Merchant Contracts amended to reflect any change from the agreed 1% Interchange Fee. The merchants and FCNB did not record the increase in their accounting records and FCNB did not record it in its call reports to the FDIC or the OCC.

44. FCNB calculated the October 2001 trust performance metrics using a 6% Interchange Fee and a single "catch-up" adjustment for the nine prior months of Fees. As reflected in FCNB's October 2001 worksheets for the publicly-held Note Series 2001-A, the increase inflated the $1.1 million in Interchange Fees actually collected, based on the 1% rate reflected in the Merchant Contracts, to $15.85 million.

45. On October 17, 2001 Defendant Zaepfel, as a SAC Director, adopted a resolution authorizing SAC to enter into any agreements necessary so that SCC III could arrange for the new 2001-VFN note series to be issued in a private offering. SCC III marketed the $426 million 2001-VFN note series by again relying on Portfolio Yield figures that, as with the 2001-A series issued three months earlier, were based on the increased Interchange Fee. In December 2001

SCC III issued additional 2001-VFN notes, bringing the total notes issued to $512 million.

46. Spiegel filed its third quarter 2001 Form 10-Q on November 13, 2001. The Form did not disclose the increases to the Interchange Fee or that the increases were reflected only in the Monthly Trust Reports, were not recorded in Spiegel's accounting records and were not supported by written contracts. The Form also did not disclose that the increases reported as collected to the Trusts permitted Spiegel to divert to its own use millions of dollars that should have gone into cash collateral accounts. As such, the third quarter Form 10-Q was false and misleading because it did not discuss the significant positive impact the inflated Interchange Fee had on Spiegel's reported liquidity.

<u>Spiegel's Year-End 2001 Handling of the Increased Interchange Fee</u>

47. At year-end 2001 FCNB calculated that the difference between the 1% Interchange Fee actually collected and the 6% Interchange Fees it had reported to the Trust was $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. The Controller thereafter consulted with Spiegel's outside securitization counsel and began investigating the increases.

48. In March 2002 a Spiegel officer analyzed what effect the 2001 increases to the Interchange Fee had on ABS Trust performance metrics. The

manager concluded that using the actual 1% Interchange Fee agreed to in the Merchant Contracts would have led to Payout Events in November and December 2001. The Spiegel officer provided his analysis and conclusions to Defendant Zaepfel and others.

49. On April 29, 2002 Spiegel's Controller sent an email to Defendant Zaepfel and Spiegel's CFO, informing them that Spiegel's outside securitization counsel had advised that the OCC and Section 23B of the Federal Reserve Act [12 U.S.C. § 371-c] required Spiegel to use a single market rate Interchange Fee.

50. On July 18, 2002 Spiegel's Controller sent a memorandum to Defendant Zaepfel 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. Nonetheless, Defendant Zaepfel did not challenge FCNB's continued reporting to the ABS Trust collection of a 6% Interchange Fee from all three Spiegel merchants. After receiving this benchmarking study and while supervising FCNB and Spiegel's merchant companies, Zaepfel did not cause FCNB to stop reporting to the ABS Trust the collection of a 6% Interchange Fee from all three Spiegel merchant companies.

51. From at least February 2002 through February 2003 Spiegel continued preparing and sending to the ABS Trustees, rating agencies and others reports that misrepresented the condition of Spiegel's ABS Trust by listing trust performance metrics that had been calculated using the increased Interchange Fees which were neither legal nor binding.

Defendant's Certification of Spiegel's Forms 10-K and 10-Q

52. Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] requires the principal executive officer of each issuer to certify reports filed pursuant to Section 13(a) of the Exchange Act. Spiegel's 2001 Form 10-K and its 2002 Forms 10-Q did not contain any information about Spiegel's purported increases of the Interchange Fee or the effects of this practice on Spiegel's liquidity. Defendant Zaepfel nonetheless certified both Spiegel's 2001 Form 10-K and its 2002 Forms 10-Q as accurate and complete. Defendant's actions 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)].

Spiegel's Failure to Disclose Current Financial Information

53. In addition to the Interchange Fee increase, Defendant Zaepfel and other Spiegel officers and directors participated in an additional set of actions that caused Spiegel to fail to disclose current financial information on a timely basis. This second set of actions violated the federal securities laws requiring publicly held companies to file periodic reports with the Commission.

54. In October 1987 Spiegel stock began public trading on the Nasdaq. As a publicly held company, Section 13(a) of the Securities and Exchange Act of 1934 ("the Exchange Act") [15 U.S.C. § 78m(a)] required Spiegel to file periodic reports with the Commission. Spiegel filed its required reports on the dates they were due through its third quarter 2001 Form 10-Q quarterly report, filed on November 13, 2001. Spiegel's 2001 Form 10-K annual report was due to be filed with the Commission on March 31, 2002.

55. As discussed, Spiegel's financial condition was deteriorating rapidly in 2001. By December 31, 2001 Spiegel had breached four covenants in its on-balance sheet loan agreements. However, it had obtained waivers for only two of the breaches and those waivers were to expire on June 15, 2002. In addition, Spiegel had decided to sell FCNB at an estimated loss of $379.8 million.

56. Spiegel's independent auditor advised that it would have to consider including a "going concern" modification in its audit report that would accompany Spiegel's financial statements in Spiegel's 2001 Form 10-K unless Spiegel obtained: (a) a written commitment to provide funding for a cash shortfall Spiegel projected would begin in March 2002; (b) a binding agreement to sell Spiegel's credit business; and (c) a waiver of breaches of Spiegel's financial covenants through December 31, 2002, new credit agreements, or a written agreement from a source that was reliable and able to provide funding for debt requirements Spiegel incurred after June 15, 2002.

57. On February 21, 2002 Spiegel issued a press release announcing an expected loss of $398 million for 2001. The release did not disclose that Spiegel's auditor had advised it would have to consider including a "going concern" modification in its audit report on Spiegel's 2001 financial statements unless Spiegel resolved its underlying financial problems.

58. On the March 31, 2002 date its 2001 Form 10-K was due to be filed, Spiegel had not attained any of the conditions its auditor required to avoid including a "going concern" modification to its audit report. Spiegel therefore did not file its 2001 Form 10-K with the Commission but instead filed a Form 12b-25, which allowed Spiegel an additional 15 days to file the 2001 Form 10-K. The Form 12b-25 stated that Spiegel was "not in a position to issue financial statements for its 2001 fiscal year pending resolution of" the fact that it was not "currently in compliance with its 2001 loan covenants and ha[d] reached a strategic decision to sell its credit card subsidiary". The Form did not mention the auditor's "going concern" opinion.

59. From March 31, 2002 to April 15, 2002 Spiegel sought to negotiate additional financing which would obviate the need to include a "going concern" modification on the auditor's report of Spiegel's 2001 financial statements. Spiegel's lending banks, however, refused to provide it with new credit as of April 15, 2002, the date that the 15 day filing extension period sought by Spiegel's Form 12b-25 expired.

60. On April 15, 2002, after discussions held by Defendant Zaepfel, Zaepfel recommended that Spiegel not file its 2001 Form 10-K, which would have required the inclusion of a going concern opinion at that time. Defendant Zaepfel knew at the time that Spiegel was required to file this Form with the Commission.

61. On April 17, 2002 the NASD notified Spiegel that it intended to delist Spiegel's stock from the Nasdaq because the 2001 Form 10-K had not been filed. At Spiegel's request the NASD agreed to postpone delisting pending a hearing scheduled for May 17, 2002.

62. Spiegel's first quarter 2002 Form 10-Q was due to be filed with the Commission on May 15, 2002. Defendant Zaepfel recommended that Spiegel not file this Form 10-Q with the Commission at that time. Instead Spiegel again filed a Form 12b-25, stating only that it was not in a position to file its Form 10-Q pending resolution of its debt covenant violations and acquisition of new credit facilities. The Form 12b-25 did not mention the "going concern" opinion of Spiegel's independent auditor.

63. As a result of Spiegel's decision not to file its 2002 first quarter Form 10-Q, current financial information concerning Spiegel was not publicly available. Had Spiegel timely filed, it would have been required to disclose that on February 18, 2002 Spiegel reached its $700 million borrowing capacity under its revolving credit facility was capped and had no other available letter of credit facilities. Spiegel also would have been required to disclose that, because of its

difficulties in paying vendors, it entered into a March 2002 Agreement whereby a related OTTO party agreed to initially pay certain vendors for merchandise shipped to Spiegel.

64. On May 17, 2002 Spiegel's management attended a hearing before NASD officials. At this hearing, the NASD advised Spiegel that it was unacceptable not to file because the filing would contain a "going concern" modification. Spiegel's CFO represented to the NASD commissioners that Spiegel would file its 2001 Form 10-K within five business days, even if it contained a "going concern" opinion.

65. Despite the representation to the NASD, Spiegel still did not file its 2001 Form 10-K within five business days because it had not obtained new credit facilities that would have allowed it to avoid the "going concern" opinion of its independent auditor.

66. On May 29, 2002 Defendant Zaepfel wrote a letter to the Chairman of Spiegel's three-member Audit Committee, which was charged with making a recommendation to Spiegel's Board Committee about whether or not to file the 2001 Form 10-K with a "going concern" modification. Defendant Zaepfel was one of the three Spiegel Directors that comprised Spiegel's Board Committee, which was authorized to make decisions for Spiegel in between the semi-annual Board of Director meetings. Zaepfel's letter to the Chair of the Audit Committee advised that Zaepfel and the Chairman of Spiegel's Board of Directors had previously discussed the filing of the 2001 Form 10-K and that both Zaepfel and

the Chairman of the Spiegel Board of Directors believed that a de-listing of Spiegel's stock was preferable to filing the 2001 Form 10-K with a "going concern" opinion. Defendant Zaepfel expressly stated that he understood withholding the Form 10-K meant Spiegel "will not be in line with the legal situation."

67. On May 30, 2002 Defendant Zaepfel changed his mind after attending a meeting with Spiegel managers who wanted to file the 2001 Form 10-K. Zaepfel and Spiegel's CFO then wrote to the other two members of Spiegel's Board Committee to advise that he had changed his mind and now recommended filing the 2001 Form 10-K, even with a "going concern" modification. Although Zaepfel did not inform the head of Spiegel's Audit Committee directly that he had changed his mind, the other member of Spiegel's Audit Committee had received the May 30th memorandum and the Audit Committee received legal advice on May 31, 2002 that Spiegel should file the 2001 Form 10-K, even with a "going concern" opinion.

68. On May 31, 2002 Spiegel's Audit Committee recommended that Spiegel withhold filing its 2001 Form 10-K and its first quarter 2002 Form 10-Q until it received an "unqualified audit opinion." The remaining two members of Spiegel's Board Committee adopted the Audit Committee's recommendation not to file until an unqualified audit opinion was obtained.

69. Thereafter, when its quarterly 2002 Forms 10-Q were due, Spiegel simply filed Forms 12b-25 reiterating only that it was not in a position to file, pending resolution of its need for financing.

70. During the period from April 15, 2002 through May 29, 2002, Defendant Zaepfel's decision not to cause, or recommend, that Spiegel file its legally required 2001 Form 10-K and 2002 first quarter Form 10-Q meant that current financial information about Spiegel was not publicly disclosed to investors, lending banks and vendors.

71. Spiegel filed its 2001 Form 10-K on February 4, 2003, only after SEC staff advised that they intended to recommend that the Commission take enforcement action against Spiegel.

72. The Form 10-K, filed over fifteen months after Spiegel's prior public filing, disclosed that shareholders' equity had decreased from $792 million to $215 million, total assets had shrunk from $2.7 billion to $1.9 billion and total debt increased from $795 million to $1 billion.

73. On February 26, 2003 Spiegel filed its first, second and third quarter 2002 Forms 10-Q with the Commission.

74. 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 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13]. Spiegel filed for bankruptcy on March 17, 2003.

75. Defendant's actions 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 thereunder [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

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)]

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

77. 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.

78. As set forth above, Defendant Zaepfel, as a Director of Spiegel, Inc., signed a May 15, 2001 authorization directing Spiegel's subsidiary SCC III to issue the 2001-VFN notes. Zaepfel became Spiegel's CEO and a director of SCC III on July 1, 2001. In October 2001 and again in December 2001 SCC III prepared and distributed offering materials for its $512 million private note series, the 2001-VFN. The offering materials for the 2001-VFN 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.

79. Defendant Zaepfel, as a Director and the CEO of Spiegel, Inc. and as a Director of SCC III, participated in the process through which SCC III sold securities while filing documents with the Commission that contained the

misleading statements described above. Defendant Zaepfel should have known that the documents filed by SCC III contained those misleading statements and should have taken steps to prevent SCC III from engaging in such misconduct. Defendant Zaepfel and others therefore violated Sections 17(a)(2) and 17(a)(3) of the Securities Act with respect to the October and December 2001 offering materials SCC III provided for its 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 Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13]

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

81. 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 timely and accurate annual and quarterly reports.

82. On March 27, 2003, the U.S. District Court for the Northern District of Illinois entered an Amended Partial Final Judgment in the Commission's injunctive action against Spiegel, Inc. The Judgment included an Order that permanently enjoined Spiegel, Inc. 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].

83. Defendant Zaepfel, from March 31, 2002 through May 30, 2002, 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 Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

COUNT III

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 75 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 Zaepfel certified Spiegel's 2001 Form 10-K filed with the Commission. Zaepfel's certification stated that as Spiegel's CEO, 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. On February 26, 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 Zaepfel certified Spiegel's 2002 Forms 10-Q filed with the

Commission. Zaepfel's certifications stated that the Forms 10-Q fully complied with the requirements of Section 13(a) of the Exchange Act and that, to the best of his knowledge, the information contained in the Forms 10-Q fairly presented, in all material respects, Spiegel's financial condition and results of operations.

87. At the time he certified Spiegel's 2001 Form 10-K and Spiegel's 2002 Forms 10-Q, Defendant Zaepfel knew that these Forms 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.

88. By reason of the activities described in Paragraphs 84 through 87 above, Defendant Zaepfel 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)].

COUNT IV

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

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

90. 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.

91. Defendant Zaepfel, from at least July 1, 2001 through March 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 V

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)]

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

93. 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.

94. Defendant Zaepfel, from at least July 1, 2001 through March 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.

PRAYER FOR RELIEF

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

I.

Finding that Defendant Zaepfel committed the violations alleged above;

II.

Permanently enjoining, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, the Defendant, 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 (a)(3)], Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 13a-1, 13a-13 and 13a-14 [17 C.F.R. §§240.13a-1, 240.13a-13 and 240.13a-14] and Sections 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)].

III.

Ordering Defendant Zaepfel under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] to pay a civil monetary penalty for these violations.

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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