



U.S. Securities and Exchange Commission

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

**UNITED STATES SECURITIES AND EXCHANGE
COMMISSION**
450 5th Street, N.W.
Washington, D.C. 20549,

Plaintiff,

v.

JOSHUA C. CANTOR,

Defendant.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"), for its Complaint alleges as follows:

SUMMARY

1. Defendant, Joshua C. Cantor ("Cantor"), the former president and director of American Bank Note Holographics, Inc. ("ABNH"), participated in a systematic, fraudulent scheme to inflate the revenues and net income of ABNH and its publicly-held parent, American Banknote Corporation ("ABN"), in order to meet earnings forecasts and to condition the market for an initial public offering of stock by ABNH. The conduct took place over three years, beginning with fiscal year 1996, and continuing through fiscal year 1998. To avoid detection of the scheme, the defendant participated in actively deceiving ABN's and ABNH's independent auditors.

A. False Filings and Impact on the Market For ABN and ABNH Securities

2. On or about July 15, 1998, ABNH became a public company through an initial public offering ("IPO") that raised approximately \$107 million (pricing shares at \$8 ½ per share). ABN, which received the proceeds of the offering, used most of the proceeds to reduce its debt. Filings by ABN and ABNH in connection with the public offering, or relied upon in determining the price at which ABNH shares would be offered and purchased, included materially fraudulent revenue and earnings information.

3. In January 1999, ABNH announced that it would restate its results for each of the first three quarters of fiscal year 1998, and that its annual financial statements as of

December 31, 1996, and December 31, 1997, should no longer be relied upon. The prices of the securities of both ABNH and ABN dropped substantially as a result of these announcements.

4. ABNH's restated results, reported in December 1999, had a material effect on ABNH's reported annual revenue and net income and were material to ABN's operating results. For example, in fiscal year 1996, ABNH improperly recognized approximately \$1.9 million of revenue, resulting in approximately a \$962,000, or 22%, overstatement of ABNH's net income, and a 31% overstatement of ABN's net income. In fiscal year 1997, ABNH improperly recognized approximately \$7.8 million of revenue, resulting in approximately a \$4.7 million, or 167%, overstatement of ABNH's net income, and a 72% understatement of ABN's net loss for that year.

5. In the second quarter of fiscal year 1998, ABNH improperly recognized approximately \$5.0 million of revenue, resulting in approximately a \$1.9 million, or 498%, overstatement of ABNH's net income, and a 32% understatement of ABN's net loss for that quarter. Finally, in the third quarter of fiscal year 1998, ABNH improperly recognized approximately \$5.5 million of revenue, resulting in approximately a \$2.5 million, or 843%, overstatement of ABNH's net income for that quarter.

6. In part, as a result of the improper acts Cantor perpetrated, ABNH filed with the Commission a Registration Statement on Form S-1 that contained materially false and misleading financial statements and other information pertaining to ABNH for fiscal years 1996 and 1997. Also, in part as a result of Cantor's misconduct, ABNH's Registration Statement on Form S-1 contained materially false and misleading financial statements and other information pertaining to ABNH for the interim quarters for fiscal year 1997, and the first quarter of fiscal year 1998, and ABNH's Forms 10-Q filed with the Commission for the second and third quarters of fiscal year 1998 were materially false and misleading.

7. In part as a result of the improper acts Cantor perpetrated, ABN filed with the Commission materially false and misleading financial statements on Form 10-K for fiscal years ended December 31, 1996 and December 31, 1997, and filed with the Commission materially false and misleading financial statements on Form 10-Q for the first three quarters of fiscal years ended 1997 and 1998.

8. As a result of the fraud Cantor participated in, ABN's and ABNH's outside auditors and public investors were deceived into believing that ABN's net income, and ABNH's revenue and net income, were materially better than they were.

B. Foreign Corrupt Practices Act Violation

9. In addition to the financial statement fraud described above, Cantor violated the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"). In late 1998 Cantor, in part, caused ABNH to make a \$239,000 payment to a Swiss bank account for the purpose of influencing or affecting the acts or decisions of one or more Saudi Arabian officials or the Saudi Arabian government in order to assist ABNH in obtaining or retaining business with the Saudi Arabian government.

C. Statutes and Rules Violated and Requested Relief

10. In this action, the Commission is seeking an order of permanent injunction restraining and enjoining Cantor from:

11. directly or indirectly, violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5,

240.13b2-1, and 240.13b2-2];

12. aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)], and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13]; and

13. violating Section 30A of the Exchange Act [15 U.S.C. § 78dd-1(a)].

14. The Commission also is seeking, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], an order barring Cantor from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o], as a result of his violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

JURISDICTION AND VENUE

15. The Commission brings this action 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)] to restrain and enjoin permanently Cantor from engaging in the acts, practices, and transactions herein alleged.

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(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Venue lies in this Court pursuant to Section 20 of the Securities Act [15 U.S.C. § 77t] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

17. The defendant, directly and indirectly, has made use of the means and instrumentalities of interstate commerce, of the mails, or of the means or instrumentalities of transportation or communication in interstate commerce, and/or the facilities of a national securities exchange, in connection with the acts, practices and transactions alleged herein, certain of which occurred within the Southern District of New York.

DEFENDANT

18. Joshua C. Cantor, age 43, is a resident of Westfield, New Jersey. He served as president of ABNH from May 1997, until his resignation on February 4, 1999. From May 1998, until his resignation, Cantor also was an ABNH director. From November 1995, until May 1997, Cantor was ABNH's executive vice president and general manager. Cantor also served as an executive vice president of ABN from September 1995, until his resignation.

OTHER PERSONS AND ENTITIES

19. ABN is a holding company incorporated in Delaware with its principal offices located in New York, New York. During the relevant time period, ABN, through its subsidiaries, provided, among other things, stored-value telephone cards and magnetic-strip transaction cards, printed business forms, checks, and counterfeit-resistant documents of value such as money orders, passports, foreign currency, stock, and bond certificates. During the relevant time period, ABN's stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange ("NYSE"). ABN filed for Chapter 11 bankruptcy on December 8, 1999 and emerged from United States bankruptcy protection as of October 1, 2002. ABN's common stock currently trades on the OTC Bulletin Board.

20. ABNH is a Delaware corporation with its principal executive offices located in Elmsford, New York. ABNH is engaged in the origination, production, and marketing of mass-produced secure holograms. Until July 1998, ABNH was a wholly-owned subsidiary of ABN. On or about July 15, 1998, ABNH became a public company having raised approximately \$107 million through an S-1 Registration Statement filed with the Commission registering 13,636,000 shares of common stock for sale to the public. The proceeds of the offering went entirely to ABN, most of which ABN used to reduce its debt. Thereafter, ABNH's stock was registered pursuant to Section 12(b) of the Exchange Act and traded on the NYSE. In August 1999, ABNH's stock was suspended from trading. ABNH's common stock currently trades on the OTC Bulletin Board.

FIRST CLAIM

Cantor Violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1, and 13b2-2 Thereunder

21. Paragraphs 1 through 20 above are re-alleged and incorporated herein by reference.

During the time that ABNH was a wholly-owned subsidiary of ABN, ABNH's operations contributed materially to ABN's net income. To monitor ABNH's financial performance, Cantor, with the assistance of a senior officer and board member of ABNH and ABN (the "Senior Officer") and others, created annual budgets that projected ABNH's revenue and earnings for a particular fiscal year. The Senior Officer, among others, reviewed these financial forecasts to determine whether ABNH would meet its projected revenue and earnings for that quarter.

1. ABNH Improperly Recognized Revenue on Consignment and "Bill and Hold" Sales and for Research and Development Work for Fiscal 1996

22. ABNH's ability to meet or exceed its internal revenue and earnings budget for fiscal year 1996 was critical to ABN's efforts to meet earnings forecasts that fiscal year. As a result, in fiscal year 1996, with the Senior Officer's knowledge and approval, Cantor caused ABNH to improperly recognize revenue on consignment sales in order to inflate fiscal year 1996 revenue and net income. In addition, in January 1997, the need to meet earnings forecasts at ABN drove Cantor, among others, with the knowledge and approval of the Senior Officer, to cause ABNH to enter into fraudulent "bill and hold" sales and to improperly recognize revenue for research and development ("R&D") work.

A. ABNH Improperly Recognized Revenue on Consignment Sales

23. At the end of the third quarter of 1996, ABNH improperly recognized revenue of \$407,000 on a consignment sale to Colorado Plasticard, Inc., an ABNH customer. In the fourth quarter of 1996, ABNH improperly recognized revenue of approximately \$238,000 on a consignment sale to Gemplus Corp. USA ("Gemplus"), another ABNH customer. In each instance, Cantor, with the knowledge and approval of the Senior Officer, arranged for ABNH to ship holograms to these customers and for ABNH to bill them on a monthly basis based upon the number of holograms each customer used during the month. Despite the fact that the customers only agreed to purchase the holograms they actually used, Cantor, with the Senior Officer's knowledge and approval, caused ABNH to recognize revenue on the entire shipment of holograms to each customer. Since the risks and rewards of ownership for the unused holograms had not yet passed to the customers, recognizing revenue for all the holograms upon shipment did not conform with generally accepted accounting principles ("GAAP") and had the effect of fraudulently inflating revenue and net income.

B. ABNH Improperly Recognized Revenue on "Bill and Hold" Sales

24. "Bill and hold" sales, by which a sale is made but the goods are retained by the seller at the customer's request, may be recognized as revenue by the seller before delivery to the buyer if certain stringent conditions set forth in the Commission's Accounting Auditing and Enforcement Release ("AAER") Number 108 are met. If these conditions are not met, the seller may not recognize the sales as revenue until the goods are shipped to the customer.

25. In November and December 1996, Cantor, among others, learned that ABNH would fall short of its revenue and earnings forecast for the fourth quarter unless certain additional sales revenue was generated.

26. In mid to late January 1997, ABNH closed its books and sent preliminary work papers to ABN's independent auditors, Deloitte & Touche LLP ("Deloitte"). Shortly thereafter, Cantor, and others, learned that ABNH failed to meet its fourth quarter budget and forecasts for revenue. This shortfall, if not reduced, would materially impact ABN's fiscal year 1996 net income. It also would result in a reduction from ABN's target for earnings per share for the fourth quarter of fiscal 1996 and the 1996 fiscal year.

27. In order to make it appear that ABN met its earnings per share goal for the fourth quarter of fiscal year 1996 and for the 1996 fiscal year, Cantor, among others, with the knowledge and approval of the Senior Officer, caused ABNH, on or about January 30, 1997, to accrue revenue on two fraudulent "bill and hold" sales for December 1996. One of the "sales" was to Colorado Plasticard, in the amount of approximately \$404,000, while the other was to Gemplus, in the amount of approximately \$231,000.

28. Accruing the revenue for 1996 for the two "bill and hold" transactions was improper because Cantor knew, or was reckless in not knowing, that ABNH and the customers had not entered into these sales on or before December 31, 1996. In addition, Cantor knew, or was reckless in not knowing, that the two transactions did not meet the conditions set forth for recognizing revenue for "bill and hold" sales under AAER Number 108. For example, ABNH, not the customers, had requested that the transaction occur on a "bill and hold" basis. Also, the holograms had not been segregated from ABNH's inventory and identified as belonging to Colorado Plasticard and Gemplus as of December 31, 1996. Finally, the alleged "bill and hold" sale to Colorado Plasticard did not occur and ABNH reversed the sale in the first quarter of fiscal year 1997.

C. ABNH Improperly Recognized Revenue for R&D Work

29. In order to make it appear that ABN met its earnings per share goal for the fourth quarter of fiscal year 1996 and for the 1996 fiscal year, Cantor, among others, with the knowledge and approval of the Senior Officer, also caused ABNH, on or about January 31, 1997, to further inflate its fourth quarter revenue and net income by fraudulently accruing revenue of \$800,000 for R&D work it had performed for Kokusai Medicom Corporation ("KMC"), a Japanese customer.

30. Throughout much of 1996, ABNH was working with KMC to develop secure cards featuring holograms for use in connection with a pinball-type game called Pachinko, which is played in parlors throughout Japan. On or about January 30, 1997, ABNH accrued \$800,000 in fraudulent revenue for the Pachinko project for December 1996. However, as of December 31, 1996, ABNH had not billed its customer for this amount and KMC did not have an unconditional obligation to pay ABNH \$800,000 as of December 31, 1996. Cantor knew, or was reckless in not knowing, that payment of the \$800,000 obligation was contingent, at a minimum, upon certain approvals being obtained from government officials in Japan. The contingencies were not satisfied as of December 31, 1996, and, in fact, never were satisfied.

D. ABN's Auditors Receive False Confirmations and a False Management Representation Letter in Furtherance of the Fraudulent Scheme

31. In the course of auditing ABN, a team of Deloitte auditors audited ABNH's books. Cantor knew, or was reckless in not knowing, that the three fraudulent transactions described above required confirmation to Deloitte and that this required Colorado Plasticard, Gemplus, and KMC to sign false audit confirmations.

32. To convince Deloitte that the two December 29, 1996 "bill and hold" sales were proper, two audit confirmations were drafted on or about January 31, 1997, that falsely attested that the transactions had been entered into as of December 29, 1996, and that the transactions met certain of the criteria set forth in AAER Number 108. Cantor then induced the two customers involved to sign these false confirmations, which Deloitte later received.

33. Cantor also secured a false audit confirmation letter from KMC which Deloitte later received. In that confirmation, which was drafted on or about January 31, 1997, KMC falsely attested that, as of December 29, 1996, the amount of "\$800,000 is due and payable by [KMC] to [ABNH]." Also, in March 1997, Cantor, along with another individual, created a written agreement between KMC and ABNH falsely stating that, as of December 6, 1996, ABNH was due a balance of \$800,000 for development costs at such time as the "pre-test phase" was completed. Cantor knew, or was reckless in not knowing, that KMC's obligation to pay the \$800,000 was contingent and that none of the contingencies were met as of December 31, 1996.

2. ABNH Fraudulently Inflated Fiscal Year 1997 Revenue and Net Income in Anticipation of a Sale

A. ABNH Improperly Recognized Revenue on Consignment Sales During the First Three Quarters of 1997

34. ABNH continued fraudulently to inflate its revenue and net income in fiscal year 1997. During the first three quarters of fiscal 1997, Cantor, with the Senior Officer's knowledge and approval, caused ABNH improperly to recognize revenue of over \$900,000 for consignment sales.

35. To keep track of its customers' payment obligations under consignment sales, ABNH's accounting department, with Cantor's knowledge and approval, used a separate set of books and records. Upon receiving usage reports from its customers, ABNH issued invoices to bill them for that usage. Unlike the false invoices issued at the time of the initial "sale" of the holograms, which were not sent to the customers, these invoices reflected actual obligations of the customers. ABNH tracked the "usage" invoices in ledgers that were kept by hand.

B. ABNH Improperly Recognized Over \$4 Million in Net Income

in the Fourth Quarter of 1997 to Position Itself for a Sale or an IPO

36. As fiscal year-end 1997 approached, ABN, which was highly leveraged at the time, considered various approaches to reduce its debt, including a possible sale of ABNH. In order to condition the market for this possible sale, as well as to meet earnings forecasts, Cantor, with the Senior Officer's knowledge, approval, and, in some instances, direct participation, caused ABNH to inflate its fourth quarter revenue by over \$8,000,000, or 260%, and its fourth quarter net income by over \$4,000,000, or 429%. In order to accomplish this, ABNH recorded revenue on a number of transactions in the fourth quarter, including additional improper consignment sales, shipments of unusable work in process, and an improper "bill

and hold" sale.

i. ABNH Shipped Work in Process and Improperly Recognized Revenue on Additional Consignment Sales

37. Late in the fourth quarter of fiscal year 1997, Cantor, after consulting with the Senior Officer, arranged for ABNH to ship unusable work in process to Colorado Plasticard. The goods were shipped on or about December 31, 1997. Cantor, with the Senior Officer's knowledge and approval, caused ABNH to improperly recognize revenue of approximately \$1.3 million on this shipment. Cantor knew, or was reckless in not knowing, that the unusable work in process would be returned to ABNH shortly after being shipped.

38. Also in the fourth quarter of 1997, Cantor, with the knowledge and approval of the Senior Officer, caused ABNH to recognize revenue of approximately \$949,000 on improperly recorded consignment sales. These improperly recorded consignment sales involved Colorado Plasticard, Gemplus, and others.

ii. Improper Recognition of Approximately \$6 Million in Revenue on an \$8 Million "Bill and Hold" Sale

39. In December 1997, Cantor arranged for MasterCard, one of ABNH's largest customers, to place an \$8 million "bill and hold" order. Cantor and the Senior Officer then caused ABNH to recognize revenue of \$6.9 million on the "bill and hold" sale in fiscal year 1997. However, of the \$6.9 million in revenue that ABNH recognized in fiscal year 1997, approximately \$6 million was fraudulent because it should have been recognized in 1998. Cantor knew, or was reckless in not knowing, that, although ABNH had a valid "bill and hold" agreement in place with MasterCard, the transaction was improper because ABNH recognized revenue from the sale of holograms that had not actually been completed by December 31, 1997.

40. Cantor understood that in order for ABNH to recognize revenue in fiscal year 1997 on the sale of holograms to MasterCard, all the holograms would have to be completed, meaning that ABNH had to have at its facility, by December 31, 1997, "reels" of numbered holograms labeled as belonging to MasterCard. Cantor also understood that ABNH lacked the capacity to manufacture such a large quantity of holograms by year-end 1997. In an effort to manufacture and complete as many of the holograms as soon as possible, Cantor, with the Senior Officer's knowledge and approval, arranged for ABNH to subcontract the manufacturing of \$6.9 million worth of holograms to another company, Crown Roll Leaf, Inc. ("Crown Roll").

41. Cantor knew, or was reckless in not knowing, that Crown Roll could not manufacture and complete all of the holograms by December 31, 1997. First, Crown Roll did not have the capacity to manufacture all of the holograms by year-end 1997. In fact, ABNH's agreement with Crown Roll called for a production schedule that continued into mid-January 1998. Second, before ABNH could recognize the sale of these holograms as a valid "bill and hold" sale, the holograms had to be completed. This required the holograms, which are initially produced in "rolls," (e.g., like a roll of paper towels), to be slit down to smaller "reels," (like a roll of paper towels cut into thirds, for example), and then numbered and separately labeled as belonging to MasterCard. Cantor knew, or was reckless in not knowing, that Crown Roll was engaged only to manufacture rolls because Crown Roll's facility lacked the capacity to slit the rolls into reels and then number the holograms. Cantor, therefore, knew, or was reckless in not knowing, that the holograms Crown Roll produced would not be complete until they were delivered to ABNH's facility and ABNH then slit, numbered, and labeled them as belonging to MasterCard.

42. Crown Roll did not finish producing unslit, unnumbered rolls of holograms until mid-January 1998. Cantor knew, or was reckless in not knowing, that production had continued at Crown Roll into January 1998. Cantor also knew, or was reckless

in not knowing, that most of the rolls Crown Roll produced were delivered to ABNH's manufacturing facility in January 1998. In addition, Cantor knew, or was reckless in not knowing, that virtually all of the rolls Crown Roll produced were slit and numbered at ABNH's facility in early 1998. Nevertheless, Cantor, and the Senior Officer, caused ABNH to recognize revenue, in fiscal year 1997, for all of the holograms Crown Roll manufactured.

C. Cantor Misled Deloitte In Order To Hide The Improper Fiscal Year-end 1997 MasterCard "Bill and Hold" Sale

43. Deloitte identified the \$8 million "bill and hold" transaction as a major issue for its audit of ABNH's results for fiscal year 1997. In connection with the audit of this transaction, Cantor, and the Senior Officer, misled Deloitte into believing that the holograms Crown Roll produced were completed, and were delivered to ABNH's Huntington Valley facility, by December 31, 1997.

44. On a number of occasions, Cantor, the Senior Officer and those working at their direction, told Deloitte that all of Crown Roll's holograms had been completed and received at ABNH's facility by year-end 1997. In addition, at Cantor's direction, and with the Senior Officer's knowledge and approval, ABNH employees at the Huntington Valley facility backdated, and changed quantities on, ABNH receiving documents. These receiving documents were provided to Deloitte to convince it that ABNH had received all of Crown Roll's holograms by December 31, 1997.

45. Cantor, at the Senior Officer's direction, caused changes to be made on copies of Crown Roll's delivery receipts, altering dates and changing quantities to make them consistent with the inaccurate ABNH receiving documents. With Cantor's and the Senior Officer's knowledge and approval, the falsified Crown Roll delivery receipts and the ABNH receiving documents were provided to Deloitte. In addition, Cantor directed ABNH employees to fabricate "vault receipts," which purported to show that the hologram "rolls" ABNH had received had been slit into numbered "reels." Cantor and the Senior Officer both reviewed the fraudulent ABNH "vault receipts" to insure that they were consistent with the falsified copies of Crown Roll's delivery receipts and ABNH's receiving documents. Cantor knew, or was reckless in not knowing, that Deloitte was given the falsified "vault receipts."

46. Cantor, with the Senior Officer's knowledge and approval, also obtained a false written confirmation from Beau Dietl & Associates ("BDA"), the security firm hired to provide security at Crown Roll's facility. Cantor and the Senior Officer did this in a further effort to convince Deloitte that holograms Crown Roll manufactured had been completed and delivered to ABNH by December 31, 1997. The BDA confirmation, which was signed by Beau Dietl, falsely stated that personnel from BDA had witnessed ABNH pick up "reels" of holograms from Crown Roll and that all of the pickups were completed by December 31, 1997. Cantor knew, or was reckless in not knowing, that BDA provided this false written confirmation to Deloitte.

47. In March 1998, ABNH obtained a false written confirmation from Crown Roll. The confirmation, which was provided to Deloitte, falsely confirmed that Crown Roll manufactured "reels" of numbered holograms and that all of the holograms required under the terms of the purchase order were manufactured and picked up by ABNH, by December 31, 1997. Cantor knew, or was reckless in not knowing, that this false confirmation was given to Deloitte .

D. Deloitte Is Misled About Other Fiscal 1997 Transactions

48. In addition to the false and misleading oral and written statements made in connection with confirming the MasterCard transaction, Cantor also obtained two additional false audit confirmations that were provided to Deloitte in an effort to conceal other fraudulent fiscal year 1997 sales. In one instance, Cantor, with the

Senior Officer's knowledge and approval, convinced Colorado Plasticard to confirm an accounts receivable balance as of year-end 1997 that included the alleged sale of the unusable work in process that Colorado Plasticard returned to ABNH in early January 1998. Cantor also succeeded in persuading Gemplus to provide a confirmation to Deloitte that misleadingly confirmed an incorrect balance receivable as of December 31, 1997. In fact, the confirmed balance receivable constituted the sales value of a large quantity of holograms that were provided to Gemplus under a consignment arrangement pursuant to which Gemplus was obligated to pay only for those holograms it used.

49. ABNH employees never disclosed to Deloitte the "usage" invoices ABNH sent to customers that had accepted holograms on consignment. Nor did they disclose the ledgers in which these invoices were recorded.

50. Finally, Cantor, among others, also signed a management representation letter, which was given to Deloitte in connection with Deloitte's review of ABNH's fiscal year 1997 financial statements that they knew, or were reckless in not knowing, was false and misleading. Among other things, the letter falsely stated that: (1) "[t]here has been no fraud involving management or employees who have significant roles in internal controls;" (2) "[t]here are no transactions that have been improperly recorded in the accounting records underlying the financial statements;" (3) "[w]e have fully disclosed to you all sales terms including all rights of return . . . ;" and (4) "receivables at December 31, 1997 . . . do not include any amounts for goods shipped on consignment or approval." The management representation letter also falsely confirmed that the "bill and hold" sales that occurred during fiscal year-end 1996, as well as the MasterCard "bill and hold" sale, which occurred in the fourth quarter of 1997, accorded with certain criteria outlined under AAER Number 108.

3. ABNH's Fraudulent 1998 Transactions

51. The need to report strong revenue and net income was critical in fiscal year 1998 because ABN decided to sell ABNH through an IPO. Reporting sustained revenue and earnings growth at ABNH during the first quarter of fiscal year 1998, the reporting period leading up to the IPO, would enhance ABNH's spin-off value. This, in turn, would redound to the benefit of ABN, which was to take all the proceeds from the transaction. Also, reporting strong revenue and earnings during the second quarter of fiscal year 1998, would solidify investor confidence in ABNH as a public company.

A. First Quarter of 1998: Improper Revenue Recognition on Consignment Sales, Recognizing Revenue on Product that was Never Shipped, and Recognizing Revenue on Product that was Returned

52. Cantor, with the Senior Officer's knowledge and approval, caused ABNH in the first quarter of fiscal 1998 to improperly recognize revenue of approximately \$1.9 million on consignment sales with various customers. In addition, Cantor, with the Senior Officer's knowledge and approval, further inflated ABNH's revenue and net income in the first quarter of fiscal 1998 by approximately \$1.6 million by recognizing revenue on alleged sales to customers who never received any goods and, at times, recognizing revenue on shipments of holograms that Cantor knew, or was reckless in not knowing, would be returned.

B. The Second and Third Quarters of 1998: Improper Revenue Recognition on Consignment Sales and on Shipments to Warehouses, Recognizing Revenue on Product that was Never Shipped, and Recognizing Revenue on Product that was Returned

53. ABNH's IPO occurred on or about July 15, 1998. Its first filings as a public company were made on Form 10-Q for the second and third quarters of fiscal 1998.

During this period, Cantor, with the Senior Officer's knowledge and approval, caused ABNH fraudulently to recognize approximately \$1,397,000 in revenue for improperly recorded consignment sales during these two quarters.

54. Improper recognition of revenue on consignment sales was insufficient to achieve both internal and analyst revenue and earnings projections for ABNH in the second and third quarters of fiscal year 1998. In order to meet these expectations, Cantor, with the Senior Officer's knowledge and approval, caused ABNH to effect a warehousing arrangement with Brinks in June 1998, just weeks before ABNH's IPO. ABNH then began to ship large quantities of holograms to a Brinks warehouse, as well as occasional shipments to other warehouses.

55. Cantor, with the Senior Officer's knowledge and approval, caused ABNH improperly to recognize revenue on all the shipments to the warehouses in the second and third quarters of fiscal 1998, some of which involved consignment sales. In addition, some of the shipments to the Brinks warehouse were outright false sales. In these instances, without a customer purchase order, and without the customer's knowledge, authorization or approval, Cantor, with the Senior Officer's knowledge and approval, caused ABNH to recognize revenue after shipping holograms to the Brinks warehouse where they sat for months. These practices involved approximately eleven customers and, on an unrestated basis, amounted to fraudulently recognized revenue of over \$5.8 million during the second and third quarters of fiscal 1998.

56. During the second and third quarters of 1998, separate and apart from the products placed in the third party warehouses, Cantor, with the Senior Officer's knowledge and approval, continued to cause ABNH to recognize revenue in instances where the customer never issued purchase orders. In these cases, ABNH either never shipped the holograms to these customers or shipped holograms that were returned shortly after being shipped. In total, these practices involved seven customers and, on an unrestated basis, amounted to fraudulently recognized revenue of more than \$5 million.

C. Fourth Quarter of 1998: Improper Recording of Revenue on Consignment Sales, on Shipments to Warehouses, on Product that was Never Shipped, on Product that was Returned, and on the Shipment of Test Material

57. As ABNH approached its first year-end as a public company, Cantor knew, or was reckless in not knowing, that ABNH was going to fall short of its revenue and earnings budget. To make up for this shortfall, Cantor, with the Senior Officer's knowledge and approval, caused ABNH to record improperly, on an unrestated basis, over \$11.3 million in revenue on its books and records for the fourth quarter of fiscal year 1998.

58. This amount included, among other things, improperly recorded consignment sales, improperly recorded revenue on shipments to third-party warehouses, and the recording of revenue on product that was never shipped, product that was returned, and on the shipment of test material. In one instance, Cantor, with the Senior Officer's knowledge and approval, caused ABNH to improperly record almost \$4 million in revenue for a shipment to Colorado Plasticard of scrap material and empty boxes. The Senior Officer also directed Cantor to ship test material to another customer without a purchase order. Cantor, with the Senior Officer's knowledge and approval, then caused ABNH to improperly record revenue of nearly \$2 million on the shipment.

59. Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] prohibit, *inter alia*, any device, scheme or artifice to defraud in connection with the purchase or sale of securities, or the making of any untrue statement of a material fact or omitting to state a material fact, in connection with the purchase or sale of any security. Section 13(b)(5) of the

Exchange Act [15 U.S.C. §78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2] prohibit, *inter alia*, circumvention of internal accounting controls, falsification of corporate books and records and material misstatements or omissions by officers or directors to an accountant in connection with an audit or a filing with the Commission.

60. By virtue of the conduct described in paragraphs 21 through 58 herein, Cantor violated Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 thereunder.

SECOND CLAIM

Cantor Violated Section 17(a) of the Securities Act

61. Paragraphs 1 through 60 above are re-alleged and incorporated herein by reference.

62. On or about July 15, 1998, ABNH became a public company through an IPO that raised approximately \$107 million. ABN, which sold all of its shares in the offering, received all of the proceeds of the offering and used most of them to pay down its debt. The ABNH public offering took place pursuant to a Registration Statement ABNH filed on Form S-1 with the Commission, which included financial statements for ABNH for the fiscal years ended December 31, 1996 and December 31, 1997, as well as the interim quarters for fiscal year 1997 and the first quarter of fiscal year ended December 31, 1998.

63. Cantor signed ABNH's Registration Statement on Form S-1.

64. Cantor knew, or was reckless in not knowing, that the financial statements included in the Registration Statement on Form S-1 and disseminated to investors in conjunction with that offering were materially false and misleading.

65. Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] provides that it is unlawful in the offer or sale of any security to employ any device, scheme or artifice to defraud, to obtain money by means of any materially untrue statement or material omission or to engage in any transaction, practice of course of business which operates or would operate as a fraud or deceit upon the purchaser of a security.

66. By virtue of the conduct described in paragraphs 21 through 64 herein, Cantor violated Section 17(a) of the Securities Act.

THIRD CLAIM

Aiding and Abetting Violations of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 Thereunder, Against Cantor

67. Paragraphs 1 through 66 above are re-alleged and incorporated herein by reference.

68. ABN filed with the Commission annual reports on Form 10-K for its fiscal years 1996 and 1997, and filed quarterly reports on Form 10-Q for the first three quarters of fiscal years 1997 and 1998. ABNH filed with the Commission quarterly reports on Form 10-Q for the second and third quarters of its fiscal year ended December 31, 1998. ABNH also filed with the Commission a Registration Statement on Form S-1 in connection with its IPO that contained financial statements and other information pertaining to ABNH for its fiscal years 1996 and 1997, and quarterly financial results

for fiscal year 1997 and the first quarter of fiscal year 1998. As a result, in part, of the improper acts Cantor perpetrated as alleged in this Complaint, the financial statements in all of these filings were materially false and misleading because ABNH's revenue and net income had been fraudulently inflated.

69. From 1996 through 1998, ABN had securities registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)]. As of on or about July 15, 1998, ABNH had securities registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)]. As a result, ABN and ABNH were required under Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13] to file quarterly, annual and other reports and statements with the Commission which did not contain untrue statements of material facts or omissions of material facts and to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of ABN and ABNH assets. ABN and ABNH also were required to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements.

70. As a result, in part, of Cantor's participation in the fraudulent scheme, ABN, in fiscal years 1996, 1997, and 1998, and ABNH, in fiscal year 1998, maintained materially false and misleading books and records which, among other things, materially overstated ABNH's revenue and net income during those fiscal years. Among other things, ABNH failed properly to account for consignment sales and "bill and hold" sales. Moreover, ABNH's books, records, and accounts documented a number of transactions that did not take place.

71. By reason of the foregoing, ABN and ABNH violated Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-13, and ABN violated Exchange Act Rule 13a-1.

72. Cantor knowingly provided substantial assistance to ABN and ABNH in connection with the companies' violations of the aforesaid provisions.

73. By virtue of the conduct described at paragraphs 21 through 72 herein, and pursuant to Section 20(f) of the Exchange Act [15 U.S.C. § 78t(f)], Cantor is liable as an aider and abettor of ABN's and ABNH's violations described in paragraph 71 herein.

FOURTH CLAIM

Cantor Violated the FCPA

74. Paragraphs 1 through 73 are re-alleged and incorporated herein by reference.

75. In 1998, ABNH employed agents who were responsible for seeking out new business in various regions of the world. These agents were generally compensated on a commission basis for any business they generated for the company.

76. In late 1998, one of ABNH's agents, informed an ABNH employee of an opportunity to bid on a contract to produce holograms for the government of Saudi Arabia. In an effort to win the contract, Cantor, with the authorization of the Senior Officer and at his direction, authorized and directed an ABNH employee to wire \$239,000 to a Swiss bank account for the benefit of one or more officials of the Saudi Arabian government.

77. The employee wired the money as instructed and ABNH accounted for this payment as a consulting fee. This \$239,000 payment comprised nearly 40% of the contract's value. Cantor, and the Senior Officer, caused ABNH to make the payment for the purpose of influencing or affecting the acts or decisions of one or more Saudi Arabian officials, or the Saudi Arabian government, in order to assist ABNH in obtaining or retaining business with the Saudi Arabian government.

78. Section 30A (a) of the Exchange Act [15 U.S.C. § 78dd-1(a)], the anti-bribery provision of the FCPA, prohibits, in part, any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act or any officer, director, employee, or agent of such issuer, from making use of the mails or any means or instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to (1) any foreign official for purposes of (A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage, or; (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

79. By reason of the foregoing, Cantor violated Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue a Final Judgment of Permanent Injunction and Other Relief restraining and enjoining Cantor from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2];

II.

Issue a Final Judgment of Permanent Injunction and Other Relief restraining and enjoining Cantor from aiding and abetting violations of Sections 13(a) and 13(b)(2) (A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and (B)], and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13];

III.

Issue a Final Judgment of Permanent Injunction and Other Relief restraining and enjoining Cantor from, directly or indirectly, violating Section 30A of the Exchange Act [78dd-1];

IV.

Order, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], that Cantor be barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15

U.S.C. § 78o(d)], as a result of his violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

V.

Grant such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated:

Local Counsel

Respectfully submitted,

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