UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,	Case: 1:10-cv-00908 Assigned To : Friedman, Paul L. Assign. Date : 6/2/2010 Description: General Civil
Plaintiff,	
v.	: **COMPLAINT**
DIEBOLD, INCORPORATED,	:
	:
Defendant.	:
	:

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

SUMMARY

1. This action concerns an earnings management fraud by Diebold, Incorporated ("Diebold"), an Ohio corporation that manufactures and sells automated teller machines ("ATMs"), bank security systems, and electronic voting machines. From at least 2002 to 2007, Diebold engaged in fraudulent accounting practices in order to inflate earnings to meet forecasts. These practices included (i) improper use of "bill and hold" accounting; (ii) recognition of revenue on a lease agreement subject to a side buy-back agreement; (iii) manipulating reserves and accruals; (iv) improperly delaying and capitalizing expenses; and (v) writing up the value of used inventory.

2. As a result of these practices, Diebold filed at least 40 annual, quarterly, and current reports with the Commission, and issued dozens of press releases, that contained material misstatements and omissions concerning the company's financial performance. Diebold's improper, and in many instances fraudulent, accounting practices misstated the company's reported pre-tax earnings by at least $127 million. To correct the recent misstatements, on

September 30, 2008, Diebold restated its financial statements for the years 2003 through 2006, and the first quarter of 2007, in its Form 10-K for 2007.

3. By engaging in the practices and transactions alleged in this Complaint, Diebold violated Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

4. The Commission seeks entry of a final judgment permanently enjoining Diebold from further violations of these federal securities laws and imposing a civil monetary penalty.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Exchange Act Sections 21 and 27 [15 U.S.C. §§ 78u and 78aa]. Diebold, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails in connection with the conduct alleged herein.

6. Venue is proper because certain of the acts, practices, and courses of business constituting the violations occurred within this judicial district.

DEFENDANT

7. Diebold is an Ohio corporation headquartered in North Canton, Ohio. Diebold manufactures and sells ATMs, bank security systems, and electronic voting machines. Diebold's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and is listed on the New York Stock Exchange.

FACTS

8. During the relevant time period, Diebold regularly manipulated earnings to meet forecasts. As quarters came to a close, Diebold's financial management received "flash reports,"

sometimes on a daily basis, comparing Diebold's actual earnings to analyst earnings forecasts, which certain Diebold management often referred to as "required" or "necessary" earnings.

9. Toward the end of certain quarters, the company's financial management prepared "opportunity lists" of ways to close the gap between the company's actual financial results and analyst forecasts. While some items on the "opportunity lists" represented legitimate business opportunities, others were fraudulent accounting transactions designed to improperly recognize revenue or otherwise inflate Diebold's financial performance. As described below, these fraudulent accounting practices included, but were not limited to, (i) improper use of "bill and hold" accounting; (ii) recognition of revenue on a lease agreement subject to a side buy-back agreement; (iii) manipulating reserves and accruals; (iv) improperly delaying and capitalizing expenses; and (v) writing up the value of used inventory.

Fraudulent Revenue Recognition -- F-Term Orders

10. From at least 2002 through 2007, Diebold prematurely recognized revenue on many of the transactions it called "F-term" orders. Diebold recognized revenue on F-term orders, or Factory orders, when it shipped products from its factory to a Diebold warehouse. Under generally accepted accounting principles ("GAAP"), normally a product must be shipped to the customer or services must be rendered before revenue can be recognized.

11. With a "bill and hold" transaction, however, revenue can be recognized on the sale of products prior to delivery to a customer if the "bill and hold" criteria are met. The criteria for a bill and hold transaction include: (i) the buyer, not the seller, requests that the transaction be on a bill and hold basis; (ii) the buyer has a substantial business purpose for ordering on a bill and hold basis; (iii) there is a fixed delivery schedule that is reasonable and consistent with the buyer's business purpose; (iv) the seller does not retain any specific performance obligations such that the earnings process is incomplete; and (v) the products are ready for shipment.

12. Diebold prematurely recognized revenue on certain F-term orders by improperly using bill and hold accounting. A significant number of Diebold's F-term orders failed to satisfy the stringent bill and hold criteria.

13. Under GAAP, to use bill and hold accounting, the customer, not Diebold, must request that the transaction be on a bill and hold basis, and the customer must have a substantial business purpose for ordering on a bill and hold basis. Many of Diebold's F-term orders failed to satisfy these criteria.

14. With many F-term orders, Diebold asked customers to sign Diebold's form contract -- its standard Memorandum of Agreement ("MOA") -- which contained a boilerplate clause stating that the customer had requested Diebold to hold items for the customer's convenience. Diebold then recognized revenue when the company shipped the products from its factory to its warehouse in accordance with a "ship to warehouse" date contained in the MOA. Notwithstanding the language in the MOA, Diebold's accounting was not in accordance with GAAP because generally Diebold's customers had not requested that the transaction be on a bill and hold basis.

15. In addition, certain F-term orders also failed to meet other bill and hold criteria. For example, to recognize revenue on a bill and hold basis, there must be a fixed delivery schedule, the seller must not retain any specific performance obligations such that the earnings process is incomplete, and the products must be complete and ready for shipment.

16. Many of Diebold's F-term contracts often failed to meet these criteria. For instance, these transactions generally did not have fixed delivery schedules. Moreover, in certain instances when Diebold recognized revenue on ATMs shipped from its factory to its warehouse, the ATMs were not complete because software had not yet been installed and/or quality testing

had not yet been performed. In addition, on certain occasions, Diebold recognized revenue on a bill and hold basis on certain products and services for which bill and hold accounting is never appropriate, including software orders and professional services.

17. The bill and hold criteria are well established. Certain Diebold management knew, or were reckless in not knowing, that many F-term orders failed to satisfy the criteria for bill and hold accounting, and that Diebold was prematurely recognizing revenue on those transactions.

"Pulling in" F-Term orders

18. At certain times from the period 2004 through 2006, in connection with Diebold's efforts to meet its earnings forecasts, Diebold management looked for ways to recognize revenue even earlier on some F-term orders. In some instances, Diebold manufactured and shipped products to the warehouse before the shipment dates contained in the MOAs. Diebold would then record revenue on the products it shipped to its warehouse prematurely. This practice was known as "pulling in" F-terms.

19. The amount of orders "pulled in" varied by quarter, but in many instances was done purposely to inflate earnings in order to meet forecasts. In these instances, Diebold's management instructed Diebold's manufacturing personnel to manufacture products early, without customer notice or approval, for the purpose of recognizing revenue in an earlier reporting period. For example, in June 2004 (the last month of the second quarter), Diebold "pulled in" about $3.4 million of F-term orders that were scheduled to ship to the warehouse in July 2004, and in December 2004 (the last month of the fourth quarter), Diebold "pulled in" about $3.8 million of F-term orders that were scheduled to ship to the warehouse in January 2005. These "pull ins" inflated Diebold's earnings in these quarters by about $1.1 million and about $1.3 million, respectively.

20. Diebold finance and manufacturing personnel raised concerns about this practice on several occasions. Indeed, in a March 2005 email to company management, a Diebold manufacturing manager raised concerns and stated that "my employees in scheduling believe that manufacturing these orders without customer approval to pull the order in is a violation of Sarbanes-Oxley." Notwithstanding these concerns, no action was taken at the time to end this practice. Diebold knew, or was reckless in not knowing, that "pulling in" F-term orders was not in accordance with GAAP, and that Diebold was prematurely recognizing revenue on these transactions.

Converting I-Term Orders to F-Term orders

21. In 2004, Diebold created a standard form contract to convert I-term orders -- orders for which Diebold recognized revenue upon installation at the customer site -- to bill and hold transactions. When a Diebold customer agreed to sign this form, Diebold improperly recognized revenue on the transaction when the product shipped from its factory to its warehouse. Under GAAP, to use bill and hold accounting, the customer, not Diebold, must request that the transaction be on a bill and hold basis, and the customer must have a substantial business purpose for ordering on a bill and hold basis. Diebold's conversion practice was inconsistent with GAAP. Diebold routinely requested that customers execute these contract modification forms to convert I-term orders to purported bill and hold transactions, in order to inflate earnings.

22. For example, in the fourth quarter of 2004, at the direction of company management, a Diebold sales representative had Customer A sign a bill and hold form to convert a $4 million I-term order to a purported bill and hold transaction. On a conference call, the sales representative advised company management that Customer A had signed the bill and hold form (which by its terms required payment upon receipt of the invoice sent when Diebold shipped the

products to its warehouse), but that Customer A would not pay for the ATMs before they were installed. Company management nevertheless improperly recognized revenue on the transaction.

23. Diebold recognized revenue on this transaction in the fourth quarter of 2004. Even though Customer A was invoiced in the fourth quarter of 2004, it did not pay for this transaction until the second quarter of 2005 (after Diebold delivered and installed the products). This transaction inflated Diebold's earnings in the fourth quarter of 2004 by about $2 million. By prematurely including the revenue from the Customer A transaction, Diebold was able to report that it met the low end of the quarter's projected earnings. Without the revenue from the Customer A transaction, Diebold would have missed its projected earnings.

24. Diebold management encouraged its sales force, often on "make the quarter" calls, to request that customers execute these forms notwithstanding concerns raised by sales personnel. For example, in June 2005, a Diebold sales manager wrote an email to Diebold management stating that the sales staff was "trying to help Diebold's revenue recognition drive," but raised concerns about asking customers to sign bill and hold forms in instances when Diebold was at fault for installation delays. The email was forwarded to an officer of the company, who took no action at the time to correct this improper practice. Another employee responded to the sales manager's original email stating: "This is like the crazy aunt in the cellar no one wants to talk about."

Diebold's $7.5 Million Revenue Recognition Reserve

25. In January 2004, as part of its 2003 year-end audit, Diebold's auditor tested a sample of Diebold's 2003 bill and hold transactions. This testing found that Diebold had prematurely recognized revenue on certain transactions, and that in certain instances Diebold had recognized revenue on transactions inconsistent with company policy. In response, Diebold established a reserve representing $7.5 million of profit margin in the last quarter of 2003. This

reserve was derived by extrapolating the errors found in the auditor's sample. The creation of this reserve was not in accordance with GAAP as the revenue errors identified in the audit should have been reversed.

26. In February 2004, management learned that Diebold had prematurely recognized revenue in the fourth quarter of 2003, on a $5.2 million order from Customer B. This had not been identified as an error by the company's auditor during its testing. Notwithstanding, Diebold management did not correct this error or adjust the $7.5 million profit margin reserve that the company had established to account for errors the auditor had found during its audit, even though this error demonstrated that the reserve was inadequate.

Diebold's Failure to Disclose Its Revenue Recognition Practices

27. Prior to 2007, Diebold never disclosed to shareholders that it had any bill and hold transactions, even though purported bill and hold transactions constituted a material portion of Diebold's revenues.

28. After Staff Accounting Bulletin 104 was published in December 2003 (which, among other things, reiterated the criteria for bill and hold accounting), Diebold management became concerned that its revenue recognition practices would not withstand scrutiny. In 2004, Diebold made changes to its revenue recognition practices. Although these changes did not eliminate Diebold's improper use of bill and hold accounting on certain F-term transactions, the changes did reduce the number of F-term transactions.

29. Under Diebold's revised revenue recognition practices, in North America an order could only be designated as an F-term order if the customer signed a new standard MOA, which required a larger percentage of payment from the customer before delivery and installation. The MOA also contained a new boilerplate clause stating that "Customer requests that Diebold hold Items purchased for the Customer's convenience until shipment to the Customer's destination."

30. Diebold management knew that these changes would result in fewer F-term orders, as they envisioned that many customers would not be willing to agree to the new terms. Diebold's internal financial analysts informed management that the proposed changes to the company's revenue recognition practices -- with the predicted sharp drop-off of F-term contracts -- would significantly reduce 2004 revenues.

31. To improperly smooth the negative impact to earnings from these changes, Diebold financial management decided to stagger the implementation of the new practices. Starting in April 2004, Diebold started applying the new practices to orders from its larger national bank customers. Diebold decided to wait until July 2004 to apply the practices to orders from its smaller regional bank customers.

32. However, certain Diebold personnel began applying the new revenue recognition practices to some regional bank orders earlier than management planned, resulting in fewer orders being designated as F-term, and thus less revenue being recognized. When management discovered this and realized that the company would not meet its earnings forecast for the third quarter of 2004, Diebold improperly made an $18.8 million top-level journal entry that pulled in revenue that would not have been recognized until subsequent quarters under its new practices. As a result of this improper entry, Diebold met its revised earnings forecast in the third quarter of 2004.

33. Diebold never disclosed in 2004 these changes to its revenue recognition practices, or the impact these changes had on Diebold's reported revenues. In at least one meeting Diebold management discussed the issue of publicly disclosing these revenue recognition changes. Diebold management, however, decided against disclosure because they were concerned disclosure would create an "investor relations issue."

The Impact of Diebold's Premature Revenue Recognition Practices

34. In 2008, Diebold restated its financial statements for the reporting periods from 2003 through the first quarter of 2007, and announced that going forward it would recognize revenue upon customer acceptance of products at a customer location. In its restatement, Diebold retroactively applied this new revenue recognition policy which alone resulted in a decrease of the company's total earnings before taxes of $56.2 million. Diebold's premature recognition of revenue on certain F-term orders resulted in revenue and earnings misstatements in each of Diebold's quarterly and annual financial statements from 2003 through the first quarter of 2007. In 2003 alone, Diebold overstated its earnings before taxes by $29.5 million due to premature recognition of revenue.

Fraudulent Revenue Recognition -- The Cash Depot Transaction

35. In the first quarter of 2005, Diebold entered into an agreement to lease a portfolio of ATMs located in Company C stores to a private company, Cash Depot, for $5 million. In this transaction, Diebold entered into a side agreement with Cash Depot, giving Cash Depot the right to sell the ATMs back to Diebold at a later date.

36. Diebold improperly recognized all $5 million in revenue on this transaction in the first quarter of 2005, which accounted for approximately 8% of Diebold's total pretax earnings that quarter.

37. Under GAAP, revenue cannot be recognized on a transaction that has significant future obligations or contingencies, such as a buy-back agreement. Accordingly, as the Cash Depot transaction was subject to buy-back agreement, it was improper for Diebold to recognize $5 million in revenue on this transaction in the first quarter of 2005. At the time Diebold recognized revenue on this transaction, Diebold management knew, or was reckless in not

knowing, that the sale was subject to a buy-back agreement, and that the company's recognition of revenue on the transaction was improper.

Manipulating Reserves and Accruals

Release of the $7.5 Million Revenue Recognition Reserve

38. As described in paragraphs 25 to 26, Diebold established a reserve of profit margin of $7.5 million in the last quarter of 2003. Under GAAP, if this had been a properly recorded deferred revenue liability, Diebold should have released the reserve when the extrapolated revenue associated with these transactions was properly earned by Diebold. However, over the course of 2004, Diebold management released the reserve, without any legitimate accounting analysis, to fill shortfalls in operating results.

39. Diebold released $1 million of the reserve in the first quarter 2004, $1.25 million in the second quarter of 2004, and the remaining $5.25 million in the third quarter of 2004. Diebold exactly met analyst earnings consensus for the first two quarters and revised analyst earnings consensus in the third quarter. Diebold knew, or was reckless in not knowing, that these entries had no legitimate accounting basis, and they were recorded to fraudulently manage Diebold's reported earnings.

Under-accrued Liabilities

40. Under GAAP, an issuer is required to accrue for anticipated liabilities. During the relevant time period, Diebold inflated earnings by failing to accrue for known liabilities. For example, Diebold management knew that the liability account for the company's Long Term Incentive Plan ("LTIP") -- an employee benefit plan intended to reward long term company performance -- was under-accrued for much of 2002 and 2003. Diebold's management knew, or was reckless in not knowing, that the company had not properly accounted for the LTIP liability. For example, in a May 9, 2003 email from one officer to another, the officer explained that

"GAAP requires variable accounting for the LTIP, so technically each quarter we should be adjusting the accrual to reflect expected shares to be earned on a pro-rata basis times the price of the stock at quarter-end." At the time of this email, the officer's calculations indicated that the LTIP accrual was under-accrued by at least $5 million.

41. To accrue for the LTIP in 2003 without negatively impacting earnings, Diebold offset the liability by improperly reducing other accounts, including an unreconciled accounts payable account and an unreconciled deferred revenue account. Indeed, when Diebold management made one such $1.2 million off-setting journal entry in May 2003, the description in the notes to that journal entry was: "to fund a LTIP reserve." In 2003 alone, Diebold management's manipulation of these accounts had the effect of improperly under-accruing Diebold's liabilities, and overstating Diebold's reported pre-tax earnings by at least $16 million.

42. From at least 2002 through 2005, Diebold also knew, or was reckless in not knowing, that it failed to properly accrue for other liabilities, including its North American sales commission accrual (commissions to be paid to sales personnel) and its team incentive accrual (incentive pay to be paid to service personnel). In 2005, Diebold restated its financial statements to correct errors in certain accounts for the years 2002 to 2004 and the first quarter of 2005, including the North American sales commission accrual account (which in 2005 had been materially underaccrued by $11.4 million). In a letter to the audit committee, a Diebold officer acknowledged that this account was underaccrued because "[an accounting manager] felt that given the need to meet forecast, these [commission accrual] adjustments should be deferred until a later date."

Manipulating Other Reserves

43. Under GAAP, a liability should be released upon the occurrence of a specified event or when the estimate should be revised in response to new information. Moreover,

maintaining general or excess reserves (i.e., cookie jar reserves) are expressly prohibited under GAAP.

44. From 2002 to 2006, Diebold management manipulated certain reserves in order to manage earnings. For example, to meet internal forecasts, a Diebold accounting manager improperly reduced the Master Purchase Agreement accrual (a liability account established for payment of customer rebates) to inflate net income in both the fourth quarter of 2003 and the fourth quarter of 2004. Diebold knew, or was reckless in not knowing that, there was no legitimate accounting basis for either of these entries. Indeed, both entries were subsequently reversed in later quarters.

45. Diebold also used cookie jar reserves to manage earnings. For example, Diebold established a $4.5 million corporate obsolescence and excess inventory account. This corporate inventory account was a cookie jar reserve that Diebold knew, or was reckless in not knowing, had no legitimate accounting basis.

<u>Improperly Delaying and Capitalizing Expenses</u>

Division 35 and CAP 250

46. During the relevant time period, Diebold management failed to recognize certain expenses as incurred, and instead improperly deferred these expenses or spread the expenses over several reporting periods, which artificially increased net income in several fiscal years. Diebold engaged in improper expense deferrals in at least two accounts: the "Division 35" and "CAP 250" accounts.

47. Division 35 was a finished goods inventory account. From 2003 through 2005, Diebold management knew, or was reckless in not knowing, that the value of the account was overstated. Nevertheless, Diebold improperly failed to reconcile the account until 2005. Then, in 2005, instead of restating its prior financial statements to correct the material error in the

account and record expenses in the proper reporting periods as required under GAAP, Diebold fraudulently spread $15 million of expenses over two quarters in 2005. The overstatement of the Division 35 account inflated Diebold's earnings by $4.3 million in 2003, and more than $6.2 million in periods prior to 2003.

48. CAP 250 was an installation accounting system, primarily consisting of two accounts accruing for the cost of installation. By at least 2004, Diebold's management knew that one of the CAP 250 accounts was unreconciled since at least 2002. As with Division 35, Diebold management did not reconcile the account until 2005. Then, as with Division 35, Diebold management did not restate its prior financial statements to correct the material error as was required under GAAP, but instead improperly booked a series of entries totaling approximately $9 million during 2005. The overstatement of this CAP 250 account inflated Diebold's earnings by $2.1 million in 2004, $2.2 million in 2003, and $4.4 million in periods prior to 2003.

The Oracle Project

49. In 2002, Diebold began a project, which is still ongoing, to replace many of its older internal software systems with Oracle software. Under GAAP, capitalization of a software asset requires companies to properly capture internal and external costs involved with the various stages of software development. Consequently, Diebold was permitted to capitalize certain costs associated with the Oracle project. However, from 2003 through 2006, Diebold improperly capitalized information technology costs that should have been expensed in the periods they were incurred.

50. In certain quarters when Diebold's earnings were short of forecast, Diebold management made top-level entries to fraudulently capitalize additional expenses to the Oracle project. These improper "additions," which often were round numbers such as $1 million, had

the effect of materially reducing reported expenses, and thus increasing reported earnings. Diebold's improper capitalization of expenses to the Oracle project increased Diebold's pre-tax earnings in 2003, 2004, and 2005, by $.5 million, $3 million, and $6.8 million, respectively.

Used Equipment Write-Ups

51. Under GAAP, used equipment inventory should be valued at the lower of cost or market. From 2003 to 2005, Diebold management improperly "wrote-up" the value of certain used inventory, such as used ATMs. These "write-ups" had the effect of reducing cost of goods sold and thus inflating earnings. The company used these "write-ups" in order to meet forecasts.

52. For example, in the second quarter of 2004, Diebold wrote up the value of used equipment inventory by $1 million (and thus increased net income by $1 million) to inflate earnings to meet forecasts. Indeed, an accounting manager wrote in a July 13, 2004 email:

> I followed up with [a company officer] this morning, the primary reason we needed to book the used equipment re-valuation was due to two issues:
> 1- TFE [a recent Diebold acquisition] missing their OP forecast by 300k
> 2 - The overall corp tax rate was a little higher than forecast causing an approx $500K problem at Net Income (as a result we need a little more NIBT to deliver the required Net Income. [sic]

53. In another example, in the fourth quarter of 2003, Diebold improperly wrote up the value of parts contained in some used ATMs by $650,000. Tellingly, these parts were never removed from the ATMs, and the ATMs were later scrapped.

54. Furthermore, Diebold improperly wrote up the value of other used equipment inventory (and inflated earnings) by $750,000 in the fourth quarter of 2004 and $1.2 million in the first quarter of 2005.

55. Diebold knew, or was reckless in not knowing, that these used equipment "write-ups," which were listed on several "opportunity lists," had no legitimate accounting basis and were used improperly to inflate Diebold's earnings.

Diebold's 2008 Restatement

56. As result of Diebold's improper, and in many instances fraudulent, accounting practices from at least 2002 to 2007, the financial statements that Diebold incorporated into its periodic filings and other materials disseminated to the investing public were materially false and misleading. Diebold's improper accounting practices inflated the company's reported pre-tax earnings by at least $127 million. To correct the more recent misstatements, on September 30, 2008, Diebold restated its financial statements for the years 2003 through 2006, and the first quarter of 2007, in its Form 10-K for 2007.

FIRST CLAIM FOR RELIEF
Violations of the Antifraud Provisions of the Exchange Act
(Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5])

57. Paragraphs 1 through 56 are realleged and incorporated by reference.

58. By reason of the conduct described above, Diebold, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or course of business which operates or would operate as a fraud or deceit upon any persons, including purchasers or sellers of the securities.

59. By reason of the conduct described above, Diebold violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

Violations of the Reporting Provisions of the Exchange Act
(Section 13(a) [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13])

60. Paragraphs 1 through 56 are realleged and incorporated by reference.

61. By reason of the conduct described above, Diebold, whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781], failed to file annual, current, and quarterly reports (on Forms 10-K, 8-K, and 10-Q) with the Commission that were true and correct, and failed to include material information in its required statements and reports as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

62. By reason of the conduct described above, Diebold violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and l3a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

THIRD CLAIM FOR RELIEF

Violations of the Books and Records and Internal Control Provisions of the Exchange Act
(Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)]

63. Paragraphs 1 through 56 are realleged and incorporated by reference.

64. By reason of the conduct described above, Diebold, whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781]:

a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets;

b) failed to devised and maintain a system of internal controls sufficient to provide reasonable assurances that (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting

principles or any other criteria applicable to such statements, and (ii) to maintain accountability of assets.

65. By reason of the conduct described above, Diebold violated 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)].

PRAYER FOR RELIEF

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

I.

Permanently enjoining Diebold from violating, directly or indirectly:

1. Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];

2. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13];

3. 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)].

II.

Ordering Diebold to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

III.

Granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

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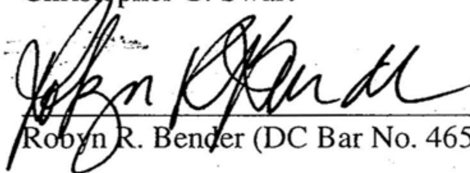
David J. Gottesman
Christopher G. Swart



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Dated: June 2, 2010