

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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| In re:            | : | Chapter 11            |
|                   | : |                       |
| AMERICAN BANKNOTE | : | Case No. 05-10174 ( ) |
| CORPORATION,      | : |                       |
|                   | : |                       |
| Debtor.           | : |                       |

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**DEBTOR'S MOTION FOR AN ORDER PURSUANT TO 11 U.S.C. §§  
105(a), 345, 363, 364, 1107 AND 1108 AUTHORIZING MAINTENANCE OF  
EXISTING BANK ACCOUNTS, BUSINESS FORMS AND CASH  
MANAGEMENT SYSTEM AND INTERIM ORDER WAIVING THE  
DEPOSIT AND INVESTMENT REQUIREMENTS UNDER 11 U.S.C. § 345**

American Banknote Corporation, a Delaware corporation, the above-captioned debtor and debtor in possession (the "Debtor"), by its undersigned proposed attorneys, for its motion (the "Motion"), pursuant to sections 105(a), 345, 363, 364, 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of an order authorizing the maintenance of existing bank accounts, business forms and cash management system and interim order waiving the investment requirements under section 345 of the Bankruptcy Code, respectfully states as follows:

**Jurisdiction**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

**(a) The Debtor's Business**

2. The Debtor is a holding company which, through its subsidiaries in the United States, Brazil, France, and Argentina, is a provider of secure printed documents, printed and personalized

secure and non-secure transaction and identification cards and systems, and a wide array of document management and transaction services and solutions.

3. The Debtor operates and manages its business based on geographic location along three principal product lines: Transaction Cards and Systems; Printing Services and Document Management; and Security Printing Solutions.

4. The Debtor's principal subsidiaries are: American Bank Note Company ("ABNCO") a New York Corporation (and the Debtor's domestic operating subsidiary), American Bank Note Ltd. ("ABNB"), a 77.5% owned Brazilian company, CPS Technologies, S.A., a French company, and Transtex S.A., an Argentine company.

5. Only the Debtor is the subject of this Chapter 11 case. None of the Debtor's subsidiaries is a debtor under the Bankruptcy Code.

**(b) The First Chapter 11 Proceeding**

6. On December 8, 1999, the Debtor filed its first Chapter 11 petition (the "First Bankruptcy") in the United States Bankruptcy Court for the Southern District of New York ("NY Bankruptcy Court"). None of the Debtor's affiliates or subsidiaries filed bankruptcy petitions as part of the First Bankruptcy.

7. On September 12, 2000, the Debtor's Amended Disclosure Statement with Respect to the Debtor's Fourth Amended Plan of Reorganization was approved by the NY Bankruptcy Court. On August 22, 2002, the Debtor's Fourth Amended Plan of Reorganization was confirmed by the NY Bankruptcy Court (the "2002 Plan"). The NY Bankruptcy Court entered an order closing the Debtor's First Bankruptcy on January 12, 2005.

**(c) The Debtor's Capital Structure**

8. The Debtor presently has \$108 million outstanding under the 10<sup>3</sup>/<sub>8</sub>% Notes due 2005 (the "Notes"), which mature on January 31, 2005. The Notes are secured by a pledge of the stock of

certain of the Debtor's subsidiaries. These Notes were restructured pursuant to the Debtor's 2002 Plan, under which \$56.5 million principal amount of Notes were reinstated at par value, with accrued interest and a two percent consent fee paid in the form of additional Notes, which in total aggregated approximately \$79.0 million of the Notes. Under the 2002 Plan, the Debtor also agreed to exchange approximately \$8.0 million principal amount of its 11 $\frac{5}{8}$ % Notes due August 1, 2002, which, with accrued interest and consent fees, aggregated approximately \$12.6 million in Notes. As a result, on the effective date of the 2002 Plan, the total amount of Notes was \$91.6 million. Interest payments on the Notes after the effective date of the 2002 Plan, which occurred semi-annually on December 1, 2002, June 1, 2003, December 1, 2003, June 1, 2004 and December 1, 2004 were paid in kind at the Debtor's option in accordance with its rights under the Indenture to the Notes, dated as of May 15, 1992, as modified on May 31, 1994 and October 1, 2002, between the Debtor and HSBC Bank USA (the "Notes Indenture").

9. Pursuant to the 2002 Plan, 11,828,571 shares of the Debtor's common stock ("Old Common Stock") were issued, which included 1,428 shares of Old Common Stock issued pursuant to a rights offering. Each share of Old Common Stock represents one voting right and the Old Common Stock does not have any pre-emptive rights. Dividends on the Old Common Stock are payable solely at the discretion of the Debtor's Board of Directors and are restricted pursuant to the terms of the Notes Indenture.

**(d) Realignment of Operations**

10. During the past several years, the Debtor has undergone several major restructurings of its operations and has made strategic decisions to (i) restructure, consolidate, and reduce its manufacturing costs, (ii) diversify and expand its products and services in the major geographic regions where it conducts business, (iii) package complete "end-to-end" transaction, printing fulfillment and distribution solutions, products and services to retain and grow market share, and (iv)

create strategic joint ventures and alliances with partners who provide strong technology and/or value added products that are complementary to its business. These restructurings and strategic decisions were directed at reducing the Debtor's reliance on maturing product lines which have been declining, in favor of new products and services with growth potential albeit at significantly lower gross margins.

**(e) Need For Chapter 11 Relief**

11. Despite its restructuring efforts, over the past two years since the consummation of the 2002 Plan, the Debtor has been unable to generate sufficient cash flow from operations to either amortize or service its Notes, which are due on January 31, 2005. This factor combined with the Debtor's limited access to capital and financial markets for the purpose of obtaining new financing or raising equity to refinance the Notes has required the Debtor to seek this current restructuring.

12. The Debtor has also been plagued by several unfavorable economic factors most notable of which are: (i) the high degree of dependence on its Brazilian operations, which operate in a highly volatile economic environment that has caused significant foreign currency exchange rate variations and thereby directly impacted cash dividends available to be repatriated to the Debtor, (ii) declining markets at ABNCo in the United States as a result of diminishing overall demand for secure paper-based documents and ABNCo's inability to find sufficient new opportunities to completely offset this decline, (iii) competitive pricing and the loss of market share in France, and (iii) the political and economic instability that has occurred in Argentina which has resulted in tight credit markets and left uncertainty as to the ongoing stability of the Debtor's Argentine operations.

**(f) The Debtor's Chapter 11 Filing**

13. On the date hereof (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its properties as debtor in possession.

14. On the Petition Date, the Debtor also filed its Disclosure Statement with Respect to Debtor's Plan of Reorganization under Chapter 11 of the Bankruptcy Code and its Plan of Reorganization under Chapter 11 of the Bankruptcy Code. This plan was negotiated with, and agreed to by, holders of approximately 80% of the Debtor's Notes (these holders also hold a majority of the Debtor's common stock). These holders have indicated that they will vote in favor of the plan as currently drafted.

**Relief Requested<sup>1</sup>**

**Maintenance of Existing Bank Accounts,  
Business Forms and Cash Management System is Warranted**

15. Prior to the Petition Date and in the ordinary course of its business, the Debtor maintained three (3) bank accounts with Wachovia Bank National Association (collectively, the "Bank Accounts"). The Bank Accounts are listed in Exhibit A hereto.

16. The Debtor's transition in this proceeding will be smoother, more orderly and minimally disruptive to operations if the Bank Accounts are continued postpetition with the same account numbers; provided, however, that checks issued or dated prior to the Petition Date will not be honored, absent prior order of the Court. By preserving continuity and avoiding the enormous disruption and delay that would result from closing the Bank Accounts and opening new accounts, all parties in interest, including employees, vendors and customers, will be best served if the Bank Accounts are continued postpetition. The benefit to the Debtor's estate will be considerable. The confusion that would otherwise result, absent the relief requested herein, would ill serve the rehabilitative efforts of the Debtor.

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<sup>1</sup> The facts and circumstances supporting this Motion are set forth in the Affidavit of Patrick J. Gentile in Support of First Day Motions and Other Filings, filed contemporaneously herewith.

17. The Debtor respectfully requests that the Court waive the requirement of the United States Trustee guidelines which mandates, *inter alia*, the closure of the Debtor's prepetition bank accounts, the opening of new bank accounts and the immediate printing of new checks with a "Debtor in Possession" designation on them. Upon information and belief, the Bank Accounts are located at financial institutions designated as an authorized depositories by the United States Trustee.

18. Maintenance of the Bank Accounts would greatly facilitate the Debtor's "seamless transition" to postpetition operations. To avoid delays in payment of debts incurred postpetition and to ensure as smooth a transition into chapter 11 as possible, the Debtor should be permitted to continue to maintain the existing Bank Accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations. The transfer of the Bank Accounts would be disruptive and time consuming.

19. This Court, and courts in other districts, have routinely granted the requested relief. Accordingly, the Debtor respectfully requests that this Court waive the enforcement of bank account closing requirements and replace those requirements with alternative procedures that provide the same protection. Specifically, the Debtor requests that the Bank Accounts be deemed debtor in possession accounts and that the Debtor be authorized to maintain and continue to use the Bank Accounts in the same manner and with the same account numbers, styles and document forms as those employed prior to the Petition Date.

**The Debtor Should be Granted Authority  
to use Existing Business Forms and Checks**

20. To minimize expense to its estate, the Debtor also requests authority to continue to use all correspondence and business forms (including, but not limited to letterhead, purchase orders, invoices, etc.), as well as checks existing immediately before the Petition Date, without reference to the Debtor's status as debtor in possession.

21. Parties doing business with the Debtor undoubtedly will be aware, as a result of the size of this chapter 11 case, of the Debtor's status as debtor in possession. Changing correspondence and business forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtor's business operations. For this reason, the Debtor requests that it be authorized to use its checks and business forms without placing the label "debtor in possession" on each such check or form. This Court and others have allowed debtors to use their prepetition forms without the "debtor in possession" label.

22. The Debtor should be granted relief from the United States Trustee guidelines to the extent those guidelines require that the Debtor make all disbursements by check. In particular, the United States Trustee's Guidelines require that all receipts and all disbursements of estate funds be made by check with a notation representing the reason for the disbursement.

23. Considering the complexity of the Debtor's operations, it is necessary for the Debtor to conduct some transactions by wire transfer. To deny the Debtor the opportunity to conduct transactions by wire transfer would interfere with the Debtor's performance of its contracts and unnecessarily disrupt the Debtor's business operations, as well as create additional costs to the Debtor.

**Continuation of the Cash Management System  
is in the Best Interest of the Debtor's Estate and Creditors**

24. In the ordinary course of its business, the Debtor maintains a cash management system (the "Cash Management System") by which the Debtor uses the Bank Accounts to receive and distribute funds with respect to its entire business operation. The Debtor routinely deposits, withdraws and otherwise transfers funds to, from, and between such Bank Accounts by various methods including checks and wire transfers. A description of the business use of each account is found on Exhibit A.

25. By virtue of the size and complexity of the business in which the Debtor is involved, it is imperative that the Debtor be permitted to continue to utilize the existing Cash Management System in accordance with usual and customary practices. Given the corporate and financial structure of the Debtor, it would be difficult for the Debtor to establish an entirely new system of accounts and a new cash management system for each separate legal entity. The attendant delays from opening new accounts, revising cash management procedures and instructing customers to redirect payments would negatively impact the Debtor's ability to operate its business while pursuing these arrangements. Thus, under the circumstances, maintenance of the Debtor's cash management system is not only essential, it is also in the best interests of its estate and creditors.<sup>2</sup> Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary distractions that would inevitably be associated with any substantial disruption in the Debtor's cash management system obviously will facilitate the Debtor's reorganization efforts.

26. If the Debtor is not permitted to continue to utilize its Cash Management System in its current form, its operations would be severely, and perhaps, irreparably, impaired. Accordingly, the Court should authorize the Debtor's continued use of its existing Cash Management System.

27. Bankruptcy courts routinely grant chapter 11 debtors authority to continue to utilize existing cash management systems and treat requests for such authority as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, a chapter 11 case involves a debtor with complex financial affairs.

28. The bankruptcy court in the *Columbia Gas* chapter 11 case explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticabilities of maintaining separate cash accounts for the many different purposes that require

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<sup>2</sup> Of course, the Debtor will continue to maintain strict records with respect to all transfers of cash, so that all transactions can be readily ascertained, traced and recorded properly on applicable accounts.



cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff’d in part* and *rev’d in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 114 S. Ct. 1050 (1994). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061. *See also, In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”); *In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

29. The continued use of cash management systems employed in the ordinary course of a debtor’s prepetition business has also been approved as a routine matter by this Court.

30. It is critical both to the continued operation of the Debtor’s business and to the preservation of the value of that business that the Debtor continue to utilize its existing Cash Management System without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Debtor’s Cash Management System in its current form.

**Waiver of the Deposit and Investment Requirements  
Under Section 345 is Warranted**

31. By this Motion, and pursuant to section 105(a) of the Bankruptcy Code, the Debtor seeks an interim order waiving the deposit guidelines set forth in section 345(b) of the Bankruptcy Code to permit the Debtor to maintain each of its Bank Accounts that may, from time to time, exceed the amount insured by the Federal Deposit Insurance Corporation (the “FDIC”) and setting a final hearing with respect to such order. The Debtor’s Bank Accounts are maintained with the banks set forth in Exhibit A attached hereto, each a financially stable banking institution. Consequently, the

interim waiver of the section 345 deposit guidelines sought by the Debtor should not pose a risk to the Debtor's estate or to its creditors.

32. Section 345 of the Bankruptcy Code governs a debtor's deposits and investments during a chapter 11 case. Section 345(a) of the Bankruptcy Code authorizes investments of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." However, for deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) of the Bankruptcy Code requires that the estate obtain from the entity with which such money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, unless the court orders otherwise.

33. The Debtor maintains that a waiver of the deposit guidelines set forth in section 345 of the Bankruptcy Code is necessary to ensure the Debtor's smooth transition into Chapter 11 and should pose no risk to its estate or its creditors. The deposits at issue are relatively safe because of the strength of the Debtor's banking institutions. Requiring the Debtor to change its deposits and other procedures abruptly could result in harm to the Debtor, its estate and its creditors, because it would disrupt the Cash Management System. In addition, requiring the Debtor to open multiple accounts at different banks so that the deposits in each such account would be insured by the FDIC would be unnecessarily burdensome, and would prevent the Debtor's limited financial staff from focusing its undivided attention on its business. Conversely, the Debtor's estate and its creditors will not be harmed by the maintenance of the status quo because of the relative safety of the Debtor's deposits in the Bank Accounts.

34. For each of the foregoing reasons, the Debtor submits that a waiver of the deposit guidelines set forth in section 345(b) of the Bankruptcy Code to permit the Debtor to maintain its Bank Accounts that may from time to time exceed the amount insured by the FDIC is in the best interest of the Debtor, its estate and its creditors.

**Notice**

35. Notice of this Motion has been given to (i) the United States Trustee, (ii) the top 20 unsecured creditors (if any), (iii) the *ad hoc* committee of Note holders and (iv) Wachovia Bank National Association. In light of the nature of the relief requested, the Debtor submits that such notice is good and sufficient, and no other or further notice is necessary or required.


**No Prior Request**

36. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order authorizing the maintenance of existing bank accounts, business forms, cash management system and interim order waiving the investment requirements under section 345 of the Bankruptcy Code; and granting the Debtor such other and further relief as this Court deems just and proper.

Dated: Wilmington, Delaware  
January 19, 2005

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Proposed Co-Counsel to the Debtor  
and Debtor-in Possession

**Exhibit A**

**LIST OF BANK ACCOUNTS WITH NUMBERS AND LOCATIONS**

| <b>Account Number</b> | <b>Business Use of Account</b>   | <b>Banking Institution</b>         |
|-----------------------|--|------------------------------------|
| 2000011591302         | Operating Account  | Wachovia Bank National Association |
| 200001159289          | Payroll Account  | Wachovia Bank National Association |
| 2000011591292         | Money Market Account used to earn higher rate of interest on funds before transferring to Operating and Payroll Accounts | Wachovia Bank National Association |