BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
OF THE STATE OF TENNESSEE AT NASHVILLE

In the Matter of:	)	
	)	
TENNESSEE SECURITIES DIVISION	)	
	)	
Petitioner,	)	
	)	**File No.: 03-008**
vs.	)	
	)	
U.S. BANCORP PIPER JAFFRAY INC.	)	
	)	
Respondent.	)	

FILED
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STATE OF TENNESSEE
SECURITIES DIVISION

CONSENT ORDER

The Tennessee Securities Division (the "Division") and U.S. Bancorp Piper Jaffray Inc. agree to the entry of this Consent Order in accordance with Tennessee Code Annotated § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tennessee Code Annotated § 48-2-101, et seq. (the "Act"), which states that the Commissioner of Commerce and Insurance from time to time may make such orders as are necessary to carry out the provisions of the Act.

I.
GENERAL PROVISIONS

WHEREAS, the Tennessee Securities Act of 1980, as amended, Tennessee Code Annotated 48-2-101, et seq. (the "Act") places responsibility for the administration of the Act on the Commissioner of Commerce and Insurance. The Division is the lawful agent through which the Commissioner discharges this responsibility. T.C.A. § 48-2-115(a); and

WHEREAS, U.S. Bancorp Piper Jaffray Inc. (CRD #665) (hereinafter "USBPJ") is a broker-dealer registered in the state of Tennessee; and

WHEREAS, coordinated investigations into USBPJ's activities in connection with certain

of its equity research and investment banking practices during the period of approximately 1999 through 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators"); and

WHEREAS, USBPJ has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, USBPJ has advised regulators of its agreement to resolve the investigations relating to its equity research and investment banking practices; and

WHEREAS, USBPJ agrees to implement certain changes with respect to its equity research and investment banking practices, and to make certain payments; and

WHEREAS, USBPJ voluntarily elects to permanently waive any right to a hearing on this matter and judicial review of this Administrative Consent Order (the "Order") under the Tennessee Securities Act of 1980, as amended, and Tennessee's Uniform Administrative Procedures Act.

NOW, THEREFORE, the Commissioner of Commerce and Insurance, as administrator of the Act, hereby enters this Order:

II.
FINDINGS OF FACT

A. Background and Jurisdiction

1. USBPJ is a broker-dealer with its principal place of business in Minneapolis, Minnesota. The firm engages in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research.
2. USBPJ is currently registered with the Tennessee Securities Division as a broker-dealer, and has been so registered since August 17, 1981.

3. This action concerns the years 1999, 2000, and 2001 (the "relevant period"). During that time, USBPJ engaged in both research and investment banking ("IB") activities.

4. At various times during the relevant period, USBPJ placed undue emphasis on using its research analysts to maximize opportunities to obtain investment-banking revenues from companies in the technology, telecommunications, and biotechnology industry sectors. Such emphasis on obtaining investment-banking revenue created conflicts of interest for the research analysts that resulted in the issuance of research reports that constitute dishonest or unethical business practices. USBPJ failed adequately to monitor and supervise the conflicts of interest inherent in seeking investment-banking opportunities from companies covered by USBPJ research analysts. USBPJ's violative conduct, described herein, was caused by a flawed organizational structure, combined with inadequate supervision of the conflicts of interest.

5. USBPJ grouped its research analysts by industry sector and those analysts worked as a team with the firm's investment bankers, who focused on the same industry sector. The majority of research analysts' compensation was paid in the form of bonuses, which for some analysts was directly tied to revenues from investment banking transactions of companies in their industry sector. In other cases, the analyst's contribution to investment banking revenue, and investment banker input into analysts' evaluations played a significant part in determining the analysts' bonuses. In certain cases, investment bankers commented in reviews that research analysts needed to become lead analysts, a reference to using their professional opinions and reports to assist the firm in obtaining the top role in investment banking transactions. As a result of these influences, certain USBPJ research analysts indirectly were motivated to obtain, retain and increase investment-banking revenue.

6. In certain instances, USBPJ also provided draft research reports to potential investment banking clients during sales pitches, and this implicit promise of favorable research was an important aspect of USBPJ's attempts to gain the companies' investment banking business.

In other instances, after determining to issue research, USBPJ provided company executives with draft reports, including the proposed rating and target price, and solicited comments on the report from those company executives.

7. USBPJ failed to disclose that it received compensation from the proceeds of underwriting for, among other services, providing research. It also paid proceeds of certain underwritings to other broker dealer firms to issue research on companies whose offerings it underwrote and did not ensure that such payments were disclosed.

8. Finally, USBPJ engaged in improper behavior by threatening to drop research coverage on a company if USBPJ did not receive a certain role in the company's offering of securities.

B. USBPJ's Structure and Procedures Encouraged Research Analysts to Contribute to Investment Banking Revenue, Thus Creating Conflicts of Interest

(1). Overview of USBPJ and the Financial Contribution of its Equity Capital Markets Division

9. USBPJ was founded in 1895.[1] The firm is headquartered in Minneapolis, Minnesota, and has approximately 3,100 employees, including approximately 875 financial advisers, more than 80 investment bankers, and approximately 70 research analysts. USBPJ has operations in 124 offices in 25 states throughout the country.

10. During the relevant period, USBPJ's business included retail brokerage, known as Private Advisory Services; fixed income underwriting, sales and trading (known as Fixed Income Capital Markets); and equities investment banking, syndicate, research, and institutional sales and trading (known as Equity Capital Markets or "ECM"). Thus, equity research and investment banking were in the same business line and, ultimately, reported to the same individual.

11. In 1998, USBPJ generated equity investment banking revenue of approximately $79,500,000.

[1] U.S. Bancorp acquired USBPJ Inc., as a subsidiary in 1998.

That increased by 100 percent to approximately $159,000,000 in 1999. In 2000, revenue from equity investment banking grew to approximately $269,200,000, a 69 percent increase over 1999. In 2001, USBPJ's revenue from equity investment banking was approximately $153,000,000. From 1999 through 2001, revenue from equity investment banking represented a significant portion of the firm's revenue, accounting for between 19 – 26 percent of the firm's total revenue.

(2). USBPJ Aligned Research Analysts With the Firm's Investment Bankers

(a). USBPJ Developed and Implemented Specific Plans To Have Research Analysts Work With Investment Bankers in an Effort to Obtain Investment Banking Business

12. During the relevant period, many companies, particularly those in the technology area, issued stock through public offerings, and there was intense competition among investment banking firms to obtain this business. In order to maximize its chances to participate in these offerings, USBPJ made a concerted effort to include its research analysts in its solicitation of this business. This effort included developing and implementing specific marketing plans, which provided for research analyst involvement in the investment banking process.

(i). Move to the Left Strategy

13. In May 2000, USBPJ's ECM Operating Committee amended its procedures and strategies in a specific effort to gain lead manager status in more offerings. The Lead Manager is the firm typically listed on the left side of the offering prospectus. Thus, USBPJ implemented a plan referred to as the "Move to the Left Strategy." The ECM Operating Committee noted its strong commitment to a "multi-pronged strategy" to obtain lead-manager status on offerings. In instructions to ECM employees, the ECM Operating Committee stated that the firm "must begin to wage a war in earnest for lead-manager status." That plan instituted a "line in the sand" policy: The firm would not accept a syndicate position in any deal unless the firm was placed in the major bracket for the underwriting.

14. The Research Department played an important role in the firm's Move to the Left Strategy. Specifically, to develop a "lead manager mentality," the firm developed a "lead manager Red Zone training program." That program called for the senior bankers, senior research analysts, and Capital Markets personnel to "go through this special training seminar [focused] on pitching for the lead on public equity transactions."

(ii). Lead Manager Protocol

15. In August 2000, the head of ECM's syndicate department prepared another specific effort to gain additional lead managed offerings. In setting out his new "Lead Manager Protocol" to all ECM employees, the head of the syndicate department stressed that the "formal protocol of responsibilities ... will allow all of us—Investment Banking, Research, Sales, Trading and Capital Markets—to share responsibility for the success of each and every lead-managed offering."

16. The Lead Manager Protocol, issued in August 2000, called for:

- the lead banker and lead research analyst to make a presentation to the firm's Pre-Commitment Committee before any company would be considered for an underwriting;
- the research analyst to participate in a "get-to-know-you" session with prospective investment banking clients as part of a "Day at Piper" session;
- the lead banker and senior analyst to re-present the prospective company client to the Commitment Committee. The lead banker and "senior analyst must demonstrate continued due diligence effort and must provide renewed commitment to the transaction";
- research and sales to "set up a roadshow schedule to ensure a targeted and efficient roadshow.... [and] focus on ascertaining the right accounts to see and why these are the right accounts;"
- senior analysts to "provide aggressive pre-meeting preparation and post-meeting follow-up to each 1-on-1 appointment;"

- senior analysts to be "available during critical parts of roadshow and pricing"; and
- the senior analyst to "coordinate with Capital Markets to sort out the aftermarket intentions of each account."

17. The Lead Manager Protocol described a primary function of a research analyst in communicating regarding the progress of the transaction once the firm had obtained a lead management role in an IPO when it stated: "Senior analyst will coordinate with Capital Markets to communicate a consistent message regarding the progress of the transaction, acting as a supporter of Capital Markets' message and not as an independent filter .... The goal of the [s]enior analyst is to reinforce reasonable and exceedable expectations."

(b). Research Analysts "Pitched" for Investment Banking Deals and Advocated for the Issuer at Roadshows

18. USBPJ's procedures allowed for the close alignment of research analysts with investment bankers in the same industry sector. ECM marketed to potential clients its research coverage, market making and institutional sales as part of the firm's efforts to obtain investment banking business. USBPJ used the slogan, "One Team, One Business" in its marketing materials with prospective investment banking clients. Internally, the company had "transaction teams" that included investment bankers and research analysts.

19. The emphasis on securing investment banking business through pitches and then selling the securities through roadshows gave rise to conflicts of interest for the research analysts. In some instances, the research analyst became a prime contact person for the company with respect to soliciting investment-banking business. For example, on May 10, 1999, a research analyst wrote to an officer of E-Machines, a potential investment-banking client: "This is my final appeal to be a part of the underwriting team. This is your deal and you control the strings. All we are looking for is ten percent of the economics to participate in the underwriting. This itself should be indicative of my sincere interest in your story ... In the

final analysis, it is less important to have bulge bracket firm as a hood ornament than it is to have a quality analyst who will provide you with the support and coverage your company needs."

(c). Research Analysts' Participation in Pitch Meetings Was Important in Obtaining Investment Banking Mandates

20. Before USBPJ made its "pitches" to an issuer for investment banking business, the investment banker, teamed with a research analyst for the appropriate sector, would make a presentation to USBPJ's Pre-Commitment Committee. This presentation included a recommendation and analysis detailing why the firm should pursue an investment banking relationship with the issuer. After USBPJ determined to compete for a company's investment banking business, particularly in the case of an initial public offering ("IPO"), the research analyst's role was influential in obtaining that business.

21. One aspect of a research analyst's function was to play a key role in the process to "pitch" USBPJ to the prospective client. In certain instances, a research analyst's role at a pitch meeting with an issuer was to assist investment banking personnel in convincing the issuer that USBPJ should be chosen as the lead managing underwriter for the offering. A research analyst's presence suggested that the Research Department would work hand-in-hand with the investment bankers to provide service and support for the issuer. Research analysts routinely appeared with investment bankers at pitch meetings designed to help sell USBPJ to the potential client and provided information relating to their research in pitchbooks given to prospective client companies.

(d). In Certain Instances, Pitchbooks Provided to Potential Investment Banking Clients Contained Mock Research Reports Impliedly Promising Favorable Research

22. When investment bankers and research analysts presented "pitches" to prospective investment banking clients, USBPJ typically gave the prospective client a pitchbook explaining the

proposed services to be provided by the firm. These pitchbooks detailed, in a most favorable manner, why USBPJ should be selected to underwrite the offering. In addition to providing information about how USBPJ would conduct the underwriting, the pitchbooks routinely included a roadmap of the amount and type of research coverage that USBPJ would provide to support the company if it obtained the investment banking business. In certain instances, USBPJ included a "mock" research report for the companies, containing a valuation analysis and "mock" rating such as "buy," impliedly promising to the issuer that the research analyst would issue a favorable research report if it selected USBPJ for the investment banking business. In some instances, USBPJ's mock research reports also included a favorable "mock" target price for the issuer's stock.

23. For example, in August 2000, USBPJ made a pitch to be the lead underwriter for an offering by TheraSense, a medical technology issuer. In preparing for the pitch, a research analyst prepared a mock research report about the issuer and presented that mock report at the pitch meeting. The mock research report noted in several places a proposed rating of "Strong Buy." The mock report contained very positive news about the company, claiming that its initial sales of the product were "nothing short of breathtaking." In part, as a result of that pitch, the company awarded USBPJ the role of lead managing underwriter, which generated underwriting fees of $3,785,512 for the firm when the offering went effective in October 2001. USBPJ initiated coverage of the issuer with a "Strong Buy" recommendation shortly after the offering went effective.

24. Finally, after USBPJ was awarded an investment-banking mandate, another key function for a research analyst was to provide meaningful support to the firm's institutional investor clients to ensure that an underwriting was successful. Investment bankers, research analysts and company representatives generally traveled to the offices of institutional investor clients, to meet with them and describe the offering and determine their interest in purchasing the stock. At times, research analysts attended and provided significant assistance at these "roadshow"

meetings.

(3). USBPJ Tied Research Analysts' Compensation to Investment Banking Revenue

25. During the relevant period, USBPJ compensated research analysts, in part, based on the amount of investment banking revenue generated within their respective industry sector. This practice created a conflict of interest for research analysts, since analysts were compensated, in part, on issuing objective research and on the firm's success in obtaining investment-banking business.

26. Specifically, USBPJ paid certain analysts a percentage of investment banking revenue and institutional commissions generated by companies in their industry sector. The firm entered into written agreements with at least 16 research analysts to pay them a defined percentage of the revenue generated by the companies they covered. This included revenue from net underwriting profits, institutional sales commissions, trading commissions, equity and debt management fees, mergers and acquisition advisory fees, equity and debt private placement fees, research checks, and syndicate trading profits. The defined percentage set forth in these written agreements ranged from a guaranteed 7 to 15 percent of the revenues generated by the companies in their industry sector.

27. Compensation for other research analysts was comprised of base salary plus a bonus. Investment banking revenue was a significant factor in determining the bonus. The bonus was based, in part, on investment banking revenue received from companies in the specific industry sector that each analyst covered, and the level of contribution the research analyst made in the effort to obtain the investment banking business. The bonus usually formed the majority of a research analyst's total compensation. In 1999 and 2000, for example, more than 85 percent of a typical research analysts' compensation came from the bonus, while in 2001 approximately 77 percent of a typical research analyst's compensation was in the form

of a bonus. During that time, research analysts' salaries generally ranged from $60,000 to $250,000, while the discretionary bonuses ranged from $75,000 to $4,000,000.

28. In determining the amount of discretionary bonuses, supervisors in the research department considered, among other things, a research analyst's contributions to the firm's success in obtaining investment-banking revenues. Performance evaluations of the research analysts demonstrate this consideration. Research analysts received periodic reports detailing the year-to-date revenues generated by their covered companies. At times, senior investment bankers provided these reports to the research analysts, as well as to investment banking employees, and listed the projected investment banking revenue goals for the covered companies. One supervisor noted in a performance evaluation that a certain analyst should work on becoming a "lead managing analyst." That expression was a reference to the lead managing underwriter position that USBPJ sought in offerings because it resulted in the greatest amount of control and revenue. Thus, the supervisor's expression acknowledged the role that an analyst could play at USBPJ in obtaining investment-banking business. For example, one senior analyst received a salary of $160,000 and a bonus of over $3.8 million. In another example, an analyst received a salary of $130,000 and a bonus of over $3 million. In both of these instances, the bonus determination included consideration of investment banking and trading revenues for companies in the industry sector covered by the analyst.

29. The fact that research analysts contributed to the firm's efforts to obtain investment-banking revenue is also evident from the personal goals set by certain research analysts. Some analysts, in setting forth their goals, stated specific investment banking revenue goals and listed the ongoing support of investment banking and sales as important to their continued success.

(4). Investment Bankers Evaluated Research Analysts' Performance and Influenced Their Bonus Compensation

30. In 2000 and 2001, investment bankers who worked on investment banking business with

research analysts participated in the annual performance evaluations of those research analysts. Specifically, in certain instances, investment bankers completed and provided to the Director of Research a "Banker Peer Review" on certain research analysts. Investment bankers evaluated research analysts using specific criteria, including:

- "proactively generates and shares valuable M&A/strategic ideas;"
- "prepares for pitches and contributes to preparation of pitchbook;"
- "effective in pitches; [and] takes the aftermarket commitment seriously."

31. Thus, investment bankers provided significant input in the performance evaluation of research analysts which, in turn, influenced the bonus compensation of those research analysts. For example, an investment banker noted in his banker peer review that a particular analyst: "needs to be proactive in pursuing fee-generating companies for his coverage list. He is very focused on big cap names that do not pay."

32. This review process indicated to research analysts that, in part, their role was to assist the investment bankers and the firm's investment banking clients.

(5). USBPJ Lacked Procedures and Did Not Adequately Monitor Research Analysts' Sharing of Draft Research Reports With Issuers

33. In certain cases, prior to the dissemination of research reports, USBPJ research analysts provided copies of their draft reports to an issuer's executives, and solicited comments and suggestions for such reports. Providing draft research reports to an issuer's executives could potentially compromise a research analysts' independence in that the investment banking clients may pressure the analyst to make inappropriate changes to the draft report.

34. Certain draft research reports provided to an issuer included not only the factual portions of a draft report, but also the analyst's valuation, rating and suggested target price. In some cases, company executives were given electronic copies of the research report, and returned to the

firm a "red-lined" version of the report with their comments and edits. For example, on September 27, 2001, a USBPJ research analyst sent a representative of Genta, Inc. an e-mail containing a draft report with a rating. This e-mail stated, " Hope you are doing better. Here is a draft of our initiation note. Please review it and send me any comments you may have. Thanks..." On October 2, 2001, Genta responded to the e-mail with extensive comments on the note.

35. In other instances, USBPJ investment bankers suggested to issuer clients that research reports initiating coverage would be subject to approval by the issuer. For example, on January 11, 2001, an investment banker wrote to numerous executives at Metromedia Fiber Network, Inc. ("Metromedia") thanking them for their meeting with a USBPJ senior research analyst. The banker wrote, "[The analyst] has decided to initiate coverage with a Strong Buy, our firm's highest recommendation...his research associate...will be calling you later today to request help in finalizing the report. *Nothing will be published without your prior approval.*" (Emphasis added). On January 26, 2001, USBPJ initiated coverage of Metromedia with a "strong buy" and a $27 price target.

36. On November 22, 2000, a USBPJ senior investment banker wrote to executives of Qwest thanking them for an in-person meeting. The banker wrote: "We expect to initiate research coverage within the next few weeks and will submit a draft of such report for your review and approval prior to publication."

37. Notwithstanding the potential that research analysts could be subjected to pressure by issuers, USBPJ failed to have adequate procedures or controls to monitor such communications.

(6). USBPJ Lacked Procedures And Controls Sufficient To Monitor The Influence of Investment Banking on Research Analysts

38. In view of the interaction between research analysts and investment banking described above, USBPJ lacked adequate systems or procedures to supervise the influence that investment-

banking opportunities had on research personnel. For example, on January 17, 2001, a USBPJ senior research analyst wrote an e-mail to a junior analyst seeking input as to whether he should maintain a "buy" rating on Natural Microsystems, Inc. ("NMSS"). USBPJ had downgraded NMSS from "strong buy" in December 2000 based on the company's announcement that it would likely miss its earnings projections for the year. Upon the company's announcement in January 2001 that it had, in fact, not met its projections for 2000, the senior analyst again evaluated the company's rating. In response to the senior analyst's request for input, the junior analyst responded that, in his opinion, the company should stay a "buy" "taking into consideration banking relationship," but that absent such considerations he would rate the stock a neutral.

39. On January 18, 2001, USBPJ issued a research report that maintained the previously lowered "buy" rating.[2] The report included a lower price target than that published previously, cautionary statements about NMSS's short-term prospects and a predicted "struggle" for the company's shares during the first half of 2001. In the same research report, USBPJ lowered its revenue estimates by almost one half and reduced the earnings per share to show a loss in fiscal year 2001. At that time, USBPJ defined a "buy" rating as: "Expect positive price appreciation over next 12 months; Solid long term company fundamentals; attractive long-term valuation, though shares may be extended based on near-term parameters." USBPJ subsequently lowered its rating to "neutral" on April 12, 2001.

40. Moreover, USBPJ rarely issued a sell rating. During most of the review period, USBPJ had a four point rating scale: strong buy, buy, neutral, and sell. More than 80 percent of the research reports issued contained either "buy" or "strong buy" recommendations, with less than 20 percent of the companies, on average, rated as a "neutral." Throughout the review period, USBPJ gave less than one percent of companies a "sell" recommendation. In certain

[2] USBPJ widely distributed its research through public services such as Thompson Financial's First Call and on its website www.gotoanalyst.com.

cases, the firm would discontinue coverage, usually without explanation, rather than drop a company to a sell rating. In those cases, therefore, USBPJ had only a three point rating system.

C. USBPJ Issued Research on Two Companies That Lacked a Reasonable Basis Or Was Imbalanced

41. As to two companies, Esperion Therapeutics, Inc. and Triton Network Systems, USBPJ issued research reports that lacked a reasonable basis or were imbalanced.

(1). Esperion Therapeutics, Inc.

42. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc. ("Esperion") and consequently initiated research coverage of Esperion on September 5, 2000 with a "buy" rating. On January 9, 2002, a USBPJ senior research analyst stated in an e-mail to a senior investment banker: "ESPR delayed a pipeline product and completely dropped development of a second pipeline product, giving a reason that was nothing short of hokey. So it was bad news all around....Esperion has not met a single milestone that they have laid out since they went public. Everything has slipped. [Esperion's CEO] is a good scientist, an awful CEO."

43. Notwithstanding these statements, USBPJ's January 2002 industry report "Investing in Biotechnology" and research report on January 24, 2002, both reiterated the existing buy rating (now termed outperform).

(2). Triton Network Systems

44. In July 2000, USBPJ served as co-manager for Triton Network Systems ("Triton")'s IPO. On August 7, 2000, a USBPJ senior research analyst initiated research coverage of Triton with a "buy" rating and a $45 price target. Soon after the IPO, shares of Triton reached a high of

$47.75, but the value of the stock quickly declined. USBPJ maintained a "buy" rating while the stock price declined to $1 13/16 over the next eight months.

45. On March 30, 2001, the analyst issued a "blast" e-mail to institutional clients with cautionary statements about Triton due to the likely loss of a key customer, Advanced Radio Telecom, which was considering a Chapter 11 bankruptcy filing. Other than the "blast" e-mail, USBPJ did not issue a new research report directly on that information at that time. Notwithstanding this negative news, USBPJ maintained a "buy" rating. Another month passed before USBPJ disclosed in a broadly disseminated research report Triton's problems with this customer while downgrading Triton to a neutral on May 1, 2001. After two more months, when Triton was trading below $1, the research analyst told the head of USBPJ's equity research department, that since the company was in bankruptcy proceedings, "we can drop now if banking says ok." USBPJ discontinued coverage of Triton with a last published rating of neutral.

D. USBPJ Threatened to Drop Research Coverage of Emisphere Technologies, Inc., if it Did Not Award USBPJ the Lead Manager Role in an Offering

46. In September 1999, USBPJ attempted to compel Emisphere Technologies, Inc. to select it for investment banking business by informing company executives that it would drop research coverage of the company if it were not selected as the lead manager for an offering of Emisphere's securities. USBPJ's threatening conduct undermined competition for investment banking services.

E. USBPJ Failed to Disclose That it Received Payments From Proceeds of Certain Underwritings, In Part, To Publish Research Regarding The Issuer

47. From 1999 through 2001, USBPJ received payments out of the proceeds of certain underwritings to compensate the firm for services that included publishing research on the issuer. These payments were made in the form of "research guarantees" or "research

checks." During this period, USBPJ accepted more than $1.8 million in exchange for, among other services, issuing research reports. Despite having an obligation to do so, the firm failed to disclose in research reports or elsewhere that it received the payments, in part, as compensation for issuing the reports. For example:

48. In June 1999, USBPJ received a $400,000 research check in connection with a $200 million high yield debt offering in April 1999 for Just for Feet. USBPJ was not a manager on the offering and did not disclose this payment in its ongoing research or elsewhere.

49. In July 1999, USBPJ received a $150,000 check in connection with an offering of common stock by JDS Uniphase Corp. Although USBPJ was not an underwriter in the offering, the firm received the payment, in part, for continued research coverage of the company.

50. In March 2001, USBPJ received a $120,000 research check in connection with an underwriting that went effective in May 2001 for Comverse Technology Inc. USBPJ failed to disclose in research it published on the company that it had received this compensation, in part, for issuing research regarding the subject company.

F. USBPJ Failed to Ensure Public Disclosure of Payments It Made from the Proceeds of Underwritings to Brokerage Firms To Issue Research Coverage Regarding Its Investment Banking Clients

51. From 1999 through 2001, at the direction of certain issuer clients, USBPJ paid portions of certain underwriting proceeds to other brokerage firms to initiate or continue research coverage on issuers for which Piper served as lead or co-manager. It knew that these payments were, in part, for research. USBPJ did not take steps to ensure that the brokerage firms paid to initiate or continue coverage of its investment banking clients disclosed that they had been paid to issue such research. Further, USBPJ did not disclose or cause to be disclosed the fact of such payments.

52. For example, in 2000, USBPJ paid underwriting proceeds of $100,000 to another underwriter in conjunction with USBPJ's lead manager position on Onyx Pharmaceuticals' ("Onyx")

stock offering. While this underwriter was not invited to participate in Onyx's offering, the payment was made in response to a letter dated September 22, 2000 from the underwriter asking for $300,000 in "underwriting participation" for continued research and market making. A representative of the underwriter wrote, "From August 31, 1999 until August 15, 2000, we were the only firm in print on Onyx Pharmaceuticals and we remain a Strong Buy rating." USBPJ did not ensure that this payment was disclosed to the public in its published research on Onyx.

53. In April 2000, USBPJ, acting as lead manager for an offering for Buca, Inc. directed the payment of an aggregate of $105,000 to three brokerage firms for the issuance of research. In February 2001, while assisting in another investment banking transaction for Buca, Inc., USBPJ distributed $225,000 to other firms for their research coverage. USBPJ did not ensure that these payments were disclosed to the public.

G. USBPJ Failed to Adequately Supervise Its Research Analysts and Investment Banking Professionals

54. During the relevant period, USBPJ's management failed adequately to monitor the activities of the firm's research and investment banking professionals to ensure compliance with state securities laws and regulations. Among other things, this failure to supervise gave rise to and perpetuated the above-described violative conduct.

III.
CONCLUSIONS OF LAW

1. The Commissioner of Commerce and Insurance has jurisdiction over this matter pursuant to T.C.A. § 48-2-115(a). The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. The Commissioner of Commerce and Insurance finds that Respondent USBPJ engaged in acts and practices that created and/or maintained inappropriate influence by investment

banking over research analysts and therefore imposed conflicts of interest on research analysts. USBPJ failed to manage these conflicts in violation of T.C.A. § 48-2-112(a)(2)(G).

3. The Commissioner of Commerce and Insurance finds that Respondent USBPJ has violated T.C.A. § 48-2-112(a)(2)(G), as described in the Findings of Fact above, by issuing research that contained opinions for which there was no reasonable basis and/or exaggerated or unwarranted claims.

4. The Commissioner of Commerce and Insurance finds that Respondent USBPJ inappropriately threatened executives of a potential investment-banking client by stating that they would drop research coverage of the company if the firm was not selected as the lead manager in an investment banking transaction, in violation of T.C.A. § 48-2-112(a)(2)(G).

5. The Commissioner of Commerce and Insurance finds that Respondent USBPJ received compensation directly or indirectly, from an issuer, underwriter or dealer, in part, for issuing research reports, without fully disclosing the receipt or the amount of the compensation, in violation of T.C.A. § 48-2-112(a)(2)(G).

6. The Commissioner of Commerce and Insurance finds that Respondent USBPJ, as described in the Findings of Fact above, made payments for research to other broker-dealers not involved in an underwriting transaction, when the firm knew that these payments were made, at least in part, for research coverage, and failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments, in violation of T.C.A. § 48-2-112(a)(2)(G).

7. The Commissioner of Commerce and Insurance finds that Respondent USBPJ failed to establish and enforce written supervisory procedures reasonably designed to ensure that analysts were not unduly influenced by investment banking concerns. Despite knowledge

of research analysts' complex responsibilities and conflicts of interest, Respondent USBPJ failed to implement a system to detect and insulate its research analysts from improper influence and pressure by investment banking personnel. To the contrary, Respondent USBPJ's business practices motivated research analysts to issue research that would attract and retain investment-banking business, in violation of T.C.A. § 48-2-112(a)(2)(J).

8. The Commissioner of Commerce and Insurance finds the following relief appropriate and in the public interest.

IV.
ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Respondent USBPJ's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Tennessee Securities Division and any other action that the Division could commence under applicable Tennessee law on behalf of the State of Tennessee as it relates to Respondent USBPJ, relating to certain research or banking practices at Respondent USBPJ.
2. Respondent USBPJ will CEASE AND DESIST from violating T.C.A. §§ 48-2-112(a)(2)(G) and (J) in connection with research practices referenced in this Order, and will comply with T.C.A. §§ 48-2-112(a)(2)(G) and (J) in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.

3. **IT IS FURTHER ORDERED that:**

As a result of the Findings of Fact and Conclusions of Law contained in this Order, Respondent USBPJ shall pay a total amount of $32,500,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

a) $12,500,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Respondent USBPJ's offer to the state securities regulators hereinafter shall be called the "state settlement offer").

b) Upon execution of this Order, Respondent USBPJ shall pay the sum of $219,183 of this amount to the Tennessee Securities Division as a civil monetary penalty pursuant to T.C.A. § 48-2-112(d). Said amount shall be made by check payable to the **Tennessee Department of Commerce and Insurance** and mailed to the attention of:

Broker-Dealer Registration Section
Tennessee Securities Division
500 James Robertson Parkway
Nashville, Tennessee 37243

c) The total amount to be paid by Respondent USBPJ to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Respondent USBPJ's state settlement offer, the total amount of the Tennessee payment shall not be affected, and shall remain at $219,183;

d) $12,500,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

e) $7,500,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

Respondent USBPJ agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Respondent USBPJ shall pay

pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent USBPJ further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Respondent USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent USBPJ understands and acknowledges that these provisions are not intended to imply that the State of Tennessee would agree that any other amounts Respondent USBPJ shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

4. If payment is not made by Respondent USBPJ or if Respondent USBPJ defaults in any of its obligations set forth in this Order, the Commissioner of Commerce and Insurance may vacate this Order, at its sole discretion, upon 10 days notice to Respondent USBPJ and without opportunity for administrative hearing.

5. This Order is not intended by the Commissioner of Commerce and Insurance to subject any Covered Person to any disqualifications under the laws of any state, the District of Columbia or Puerto Rico (collectively, "State"), including, without limitation, any disqualifications from relying upon the State registration exemptions or State safe harbor provisions. "Covered Person" means Respondent USBPJ, or any of its officers, directors, affiliates, current or former employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

6. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against Respondent USBPJ (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under the applicable laws of the state of Tennessee and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.
7. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Respondent USBPJ including, without limitation, the use of any e-mails or other documents of Respondent USBPJ or of others regarding research practices, limit or create liability of Respondent USBPJ or limit or create defenses of Respondent USBPJ to any claims.
8. Nothing herein shall preclude the State of Tennessee, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Tennessee Securities Division and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent USBPJ in connection with certain research and/or banking practices at Respondent USBPJ.
9. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the state of Tennessee without regard to any choice of law principles.
10. Respondent USBPJ agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this Paragraph affects Respondent USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual

positions in defense of litigation or in defense of other legal proceedings in which the Tennessee Securities Division is not a party.

11. Respondent USBPJ, through its execution of this Consent Order, voluntarily waives their right to a hearing on this matter and to judicial review of this Consent Order under the Tennessee Securities Act of 1980, as amended, and Tennessee's Uniform Administrative Procedures Act.
12. Respondent USBPJ enters into this Consent Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Tennessee Securities Division or any member, officer, employee, agent, or representative of the Division to induce Respondent USBPJ to enter into this Consent Order.
13. The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Consent Order.
14. This Consent Order shall become final upon entry.

This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the state of Tennessee.

IT IS ORDERED that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner of Commerce and Insurance against U.S. Bancorp Piper Jaffray Inc. for research and banking practices during the relevant period which may be deemed violations of the Act.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, U.S. Bancorp Piper Jaffray Inc. affirmatively states that it neither admits nor denies the findings of fact and the conclusions of law contained

herein, that it has freely agreed to the entry of this Consent Order, that it waives its right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 6th day of November, 2003.

Paula A. Flowers

Paula A. Flowers, Commissioner
Department of Commerce and Insurance

Approved for Entry:

Tennessee Securities Division

By: _____

Daphne D. Smith
Assistant Commissioner for Securities

_____

Maliaka Bass EssamelDin (#015362)
Counsel for Petitioner
Department of Commerce and Insurance
Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-2199

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY US BANCORP PIPER JAFFRAY INC.

US Bancorp Piper Jaffray Inc. hereby acknowledges that it has been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

US Bancorp Piper Jaffray Inc. admits the jurisdiction of the Commissioner of Commerce and Insurance, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Commissioner of Commerce and Insurance as settlement of the issues contained in this Order.

US Bancorp Piper Jaffray Inc. states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Jim Chosy represents that he/she is MD + Secretary of US Bancorp Piper Jaffray Inc. and that, as such, has been authorized by US Bancorp Piper Jaffray Inc. to enter into this Order for and on behalf of US Bancorp Piper Jaffray Inc.

Dated this 17th day of September, 2003.

US Bancorp Piper Jaffray Inc.

By: _____

Title: Managing Director & Secretary

SUBSCRIBED AND SWORN TO before me this 17th day of September, 2003.

_____

Notary Public

My Commission expires:

1-31-07

Addendum A

Undertakings

The firm shall comply with the following undertakings:

I. Separation of Research and Investment Banking

1. Reporting Lines. Research and Investment Banking will be separate units with entirely separate reporting lines within the firm – i.e., Research will not report directly or indirectly to or through Investment Banking. For these purposes, the head of Research may report to or through a person or persons to whom the head of Investment Banking also reports, provided that such person or persons have no direct responsibility for Investment Banking or investment banking activities.

    a. As used throughout this Addendum, the term "firm" means the Respondent, Respondent's successors and assigns (which, for these purposes, shall include a successor or assign to Respondent's investment banking and research operations), and their affiliates, other than "exempt investment adviser affiliates."

    b. As used throughout this Addendum, the term "exempt investment adviser affiliate" means an investment adviser affiliate (including for these purposes, a separately identifiable department or division that is principally engaged in the provision of investment advice to managed accounts as governed by the Investment Advisers Act of 1940 or investment companies under the Investment Company Act of 1940) having no officers (or persons performing similar functions) or employees in common with the firm (which, for purposes of this Section I.1.b, shall not include the investment adviser affiliate) who can influence the activities of the firm's Research personnel or the content of the firm's research reports; provided that the firm (i) maintains and enforces written policies and procedures reasonably designed to prevent the firm, any controlling persons, officers (or persons performing similar functions), or employees of the firm from influencing or seeking to influence the activities of Research personnel of, or the content of research reports prepared by the investment adviser affiliate; (ii) obtains an annual independent assessment of the operation of such

policies and procedures; and (iii) does not furnish to its customers research reports prepared by the investment adviser affiliate or otherwise use such investment adviser affiliate to do indirectly what the firm may not do directly under this Addendum.

c. As used throughout this Addendum, the term "Investment Banking" means all firm personnel engaged principally in investment banking activities, including the solicitation of issuers and structuring of public offering and other investment banking transactions. It also includes all firm personnel who are directly or indirectly supervised by such persons and all personnel who directly or indirectly supervise such persons, up to and including Investment Banking management.

d. As used throughout this Addendum, the term "Research" means all firm personnel engaged principally in the preparation and/or publication of research reports, including firm personnel who are directly or indirectly supervised by such persons and those who directly or indirectly supervise such persons, up to and including Research management.

e. As used throughout this Addendum, the term "research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the common stock, any security convertible into common stock, or any derivative thereof, including American Depositary Receipts (collectively, "Securities"), of an issuer or issuers and provides information reasonably sufficient upon which to base an investment decision; provided, however, that a "research report" shall not include:

    i. the following communications, if they do not include (except as specified below) an analysis, recommendation or rating (e.g., buy/sell/hold, under perform/market perform/outperform, underweight/market weight/overweight, etc.) of individual securities or issuers:

        1. reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index;

2. reports commenting on economic, political or market (including trading) conditions;

3. technical or quantitative analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;

4. reports that recommend increasing or decreasing holdings in particular industries or sectors or types of securities; and

5. statistical summaries of multiple companies' financial data and broad-based summaries or listings of recommendations or ratings contained in previously-issued research reports, provided that such summaries or listings do not include any analysis of individual companies; and

ii. the following communications, even if they include information reasonably sufficient upon which to base an investment decision or a recommendation or rating of individual securities or companies:

1. an analysis prepared for a current or prospective investing customer or group of current or prospective investing customers by a registered salesperson or trader who is (or group of registered salespersons or traders who are) not principally engaged in the preparation or publication of research reports; and

2. periodic reports, solicitations or other communications prepared for current or prospective investment company shareholders (or similar beneficial owners of trusts and limited partnerships) or discretionary investment account clients, provided that such communications discuss past performance or the basis for previously made discretionary investment decisions.

2. Legal/Compliance. Research will have its own dedicated legal and

compliance staff, who may be a part of the firm's overall compliance/legal infrastructure.

3. Budget. For the firm's first fiscal year following the entry of the Final Judgment in the SEC's action against Respondent in a related proceeding ("Final Judgment") and thereafter, Research budget and allocation of Research expenses will be determined by the firm's senior management (e.g., CEO/Chairman/management committee, other than Investment Banking personnel) without input from Investment Banking and without regard to specific revenues or results derived from Investment Banking, though revenues and results of the firm as a whole may be considered in determining Research budget and allocation of Research expenses. On an annual basis thereafter, the Audit Committee of the firm's holding/parent company (or comparable independent persons/group without management responsibilities) will review the budgeting and expense allocation process with respect to Research to ensure compliance with this requirement.

4. Physical Separation. Research and Investment Banking will be physically separated. Such physical separation will be reasonably designed to prevent the intentional and unintentional flow of information between Research and Investment Banking.

5. Compensation. Compensation of professional Research personnel will be determined exclusively by Research management and the firm's senior management (but not including Investment Banking personnel) using the following principles:

    a. Investment Banking will have no input into compensation decisions.

    b. Compensation may not be based directly or indirectly on Investment Banking revenues or results; provided, however, that compensation may relate to the revenues or results of the firm as a whole.

    c. A significant portion of the compensation of anyone principally engaged in the preparation of research reports (as defined in this Addendum) that he or she is required to certify pursuant to the U.S. Securities and Exchange's Regulation Analyst Certification

("Regulation AC") (such person hereinafter a "lead analyst") must be based on quantifiable measures of the quality and accuracy of the lead analyst's research and analysis, including his or her ratings and price targets, if any. In assessing quality, the firm may rely on, among other things, evaluations by the firm's investing customers, evaluations by the firm's sales personnel and rankings in independent surveys. In assessing accuracy, the firm may use the actual performance of a company or its equity securities to rank its own lead analysts' ratings and price targets, if any, and forecasts, if any, against those of other firms, as well as against benchmarks such as market or sector indices.

d. Other factors that may be taken into consideration in determining lead analyst compensation include: (i) market capitalization of, and the potential interest of the firm's investing clients in research with respect to, the industry covered by the analyst; (ii) Research management's assessment of the analyst's overall performance of job duties, abilities and leadership; (iii) the analyst's seniority and experience; (iv) the analyst's productivity; and (v) the market for the hiring and retention of analysts.

e. The criteria to be used for compensation decisions will be determined by Research management and the firm's senior management (not including Investment Banking) and set forth in writing in advance.

f. Research management will document the basis for each compensation decision made with respect to (i) anyone who, in the last 12 months, has been required to certify a research report (as defined in this Addendum) pursuant to Regulation AC; and (ii) anyone who is a member of Research management (except in the case of senior-most Research management, in which case the basis for each compensation decision will be documented by the firm's senior management).

On an annual basis, the Compensation Committee of the firm's holding/parent company (or comparable independent persons/group without management responsibilities) will review the compensation process for Research personnel. Such review will be reasonably

designed to ensure that compensation decisions have been made in a manner that is consistent with these requirements.

6. Evaluations. Evaluations of Research personnel will not be done by, nor will there be input from, Investment Banking personnel.

7. Coverage. Investment Banking will have no input into company-specific coverage decisions (i.e., whether or not to initiate or terminate coverage of a particular company in research reports furnished by the firm), and investment banking revenues or potential revenues will not be taken into account in making company-specific coverage decisions; provided, however, that this requirement does not apply to category-by-category coverage decisions (e.g., a given industry sector, all issuers underwritten by the firm, companies meeting a certain market cap threshold).

8. Termination of Coverage. When a decision is made to terminate coverage of a particular company in the firm's research reports (whether as a result of a company-specific or category-by-category decision), the firm will make available a final research report on the company using the means of dissemination equivalent to those it ordinarily uses; provided, however, that no final report is required for any company as to which the firm's prior coverage has been limited to purely quantitative analysis. Such report will be comparable to prior reports, unless it is impracticable for the firm to produce a comparable report (e.g., if the analyst covering the company and/or sector has left the firm). In any event, the final research report must disclose: the firm's termination of coverage; and the rationale for the decision to terminate coverage.

9. Prohibition on Soliciting Investment Banking Business. Research is prohibited from participating in efforts to solicit investment banking business. Accordingly, Research may not, among other things, participate in any "pitches" for investment banking business to prospective investment banking clients, or have other communications with companies for the purpose of soliciting investment banking business.

10. Firewalls Between Research and Investment Banking. So as to reduce further the potential for conflicts of interest or the appearance of conflicts of interest, the firm must create and enforce firewalls between Research

and Investment Banking reasonably designed to prohibit all communications between the two except as expressly described below:

a. Investment Banking personnel may seek, through Research management (or an appropriate designee with comparable management or control responsibilities ("Designee")) or in the presence of internal legal or compliance staff, the views of Research personnel about the merits of a proposed transaction, a potential candidate for a transaction, or market or industry trends, conditions or developments. Research personnel may respond to such inquiries on these subjects through Research management or its Designee or in the presence of internal legal or compliance staff. In addition, Research personnel, through Research management or its Designee or in the presence of internal legal or compliance staff, may initiate communications with Investment Banking personnel relating to market or industry trends, conditions or developments, provided that such communications are consistent in nature with the types of communications that an analyst might have with investing customers. Any communications between Research and Investment Banking personnel must not be made for the purpose of having Research personnel identify specific potential investment banking transactions.

b. In response to a request by a commitment or similar committee or subgroup thereof, Research personnel may communicate their views about a proposed transaction or potential candidate for a transaction to the committee or subgroup thereof in connection with the review of such transaction or candidate by the committee. Investment Banking personnel working on the proposed transaction may participate with the Research personnel in these discussions with such committee or subgroup. However, the Research personnel also must have an opportunity to express their views to the committee or subgroup outside the presence of such Investment Banking personnel.

c. Research personnel may assist the firm in confirming the adequacy of disclosure in offering or other disclosure documents for a transaction based on the analysts' communications with the company and other vetting conducted outside the presence of Investment Banking personnel, but to the extent communicated to Investment Banking personnel, such communication shall only be made in the presence of

underwriters' or other counsel on the transaction or internal legal or compliance staff.

d. After the firm receives an investment banking mandate, or in connection with a block bid or similar transaction, Research personnel may (i) communicate their views on the structuring and pricing of the transaction to personnel in the firm's equity capital markets group, which group's principal job responsibility is the pricing and structuring of transactions (including by participating with the firm's equity capital markets group in the preparation of internal-use memoranda and other efforts to educate the sales force), and (ii) provide to such personnel other information obtained from investing customers relevant to the pricing and structuring of the transaction.

e. Research personnel may attend or participate in a widely-attended conference attended by Investment Banking personnel or in which Investment Banking personnel participate, provided that the Research personnel do not participate in activities otherwise prohibited herein.

f. Research and Investment Banking personnel may attend or participate in widely-attended firm or regional meetings at which matters of general firm interest are discussed. Research management and Investment Banking management may attend meetings or sit on firm management, risk or similar committees at which general business and plans (including those of Investment Banking and Research) and other matters of general firm interest are discussed. Research and Investment Banking personnel may communicate with each other with respect to legal or compliance issues, provided that internal legal or compliance staff is present.

g. Communications between Research and Investment Banking personnel that are not related to investment banking or research activities may take place without restriction.

11. Additional Restrictions on Activities By Research and Investment Banking Personnel.

a. Research personnel are prohibited from participating in company or Investment Banking-sponsored road shows related to a public offering or other investment banking transaction.

b. Investment Banking personnel are prohibited from directing Research personnel to engage in marketing or selling efforts to investors with respect to an investment banking transaction.

12. Oversight. An oversight/monitoring committee or committees, which will be comprised of representatives of Research management and may include others (but not personnel from Investment Banking), will be created to:

a. review (beforehand, where practicable) all changes in ratings, if any, and material changes in price targets, if any, contained in the firm's research reports;

b. conduct periodic reviews of research reports to determine whether changes in ratings or price targets, if any, should be considered; and

c. monitor the overall quality and accuracy of the firm's research reports;

provided, however, that Sections I.12.a and I.12.b of this Addendum shall not be required with respect to research reports limited to purely quantitative analysis.

II. Disclosure/Transparency and Other Issues

1. Disclosures. In addition to other disclosures required by rule, the firm must disclose prominently on the first page of any research report and any summary or listing of recommendations or ratings contained in previously-issued research reports, in type no smaller than the type used for the text of the report or summary or listing, that:

a. "[Firm] does and seeks to do business with companies covered in its research reports. As a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report."

b. With respect to Covered Companies as to which the firm is required to make available Independent Research (as set forth in Section III below): "Customers of [firm] can receive independent,

third-party research on the company covered in this report, at no cost to them, where such research is available. Customers can access this independent research at [website address/hyperlink] or can call [toll-free number] to request a copy of this research."

c. "Investors should consider this report as only a single factor in making their investment decision."

2. Transparency of Analysts' Performance. The firm will make publicly available (via its website, in a downloadable format), no later than 90 days after the conclusion of each quarter (beginning with the first full calendar quarter that commences at least 120 days following the entry of the Final Judgment), the following information, if such information is included in any research report (other than any research report limited to purely quantitative analysis) prepared and furnished by the firm during the prior quarter: subject company, name(s) of analyst(s) responsible for certification of the report pursuant to Regulation AC, date of report, rating, price target, period within which the price target is to be achieved, earnings per share forecast(s), period(s) for which such forecast(s) are applicable (e.g., 3Q03, FY04, etc.), and definition/explanation of ratings used by the firm.

3. Applicability. Except as specified in the second and third sentences of this Section II.3, the restrictions and requirements set forth in Sections I [Separation of Research and Investment Banking] and Section II [Disclosure/Transparency and Other Issues] of this Addendum will only apply in respect of a research report that is both (i) prepared by the firm, and (ii) that relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the principal equity trading market; provided, however, that such restrictions and requirements do not apply to Research activities relating to a non-U.S. company until the second calendar quarter following the calendar quarter in which the U.S. market became the principal equity trading market for such company. Notwithstanding the foregoing, Section I.7 [Coverage] of this Addendum will also apply to any research report (other than the Independent Research made available by the firm pursuant to Section III [Independent, Third-Party Research]of this Addendum) that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, but only to the extent that the report relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the

principal equity trading market. Also notwithstanding the foregoing, Section II.1 [Disclosures] of this Addendum will also apply to any research report (other than the Independent Research made available by the firm pursuant to Section III of this Addendum) that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, including a report that relates to a non-U.S. company for which a U.S. market is not the principal equity trading market, but only to the extent that the report has been furnished under the firm's name, has been prepared for the exclusive or sole use of the firm or its customers, or has been customized in any material respect for the firm or its customers.

a. For purposes of this Section II.3, the firm will be deemed to have furnished a research report to U.S. investors in the U.S. if the firm has made the research report available to investors in the U.S. or has arranged for someone else to make it available to investors in the U.S.

b. For purposes of this Section II.3, a "U.S. company" means any company incorporated in the U.S. or whose principal place of business or headquarters is in the U.S.

c. For purposes of this Section II.3, the calendar quarter in which a non-U.S. company's "principal equity trading market" becomes the U.S. market is a quarter when more than 50% of worldwide trading in the company's common stock and equivalents (such as ordinary shares or common stock or ordinary shares represented by American Depositary Receipts) takes place in the U.S. Trading volume shall be measured by publicly reported share volume.

4. General.

a. The firm may not knowingly do indirectly that which it cannot do directly under this Addendum.

b. The firm will adopt and implement policies and procedures reasonably designed to ensure that its associated persons (including but not limited to the firm's Investment Banking personnel) cannot and do not seek to influence the contents of a research report or the activities of Research personnel for purposes of obtaining or retaining investment banking business. The firm will adopt and

implement procedures instructing firm personnel to report immediately to a member of the firm's legal or compliance staff any attempt to influence the contents of a research report or the activities of Research personnel for such a purpose.

5. Timing. Unless otherwise specified, the restrictions and requirements of this Addendum will be effective within 120 days of the entry of the Final Judgment, except that Sections I.5 [Compensation], I.6 [Evaluations], I.7[Coverage], I.8[Termination of Coverage], I.9 [Prohibition on Soliciting Investment Banking Business], I.11 [Additional Restrictions on Activities by Research and Investment Banking Personnel], and II.4(a) [General subpart a)] and II.7 [Superseding Rules and Amendments] of this Addendum will be effective within 60 days of the entry of the Final Judgment, and Sections II.1.b [Disclosures (subpart b)] and III [Independent, Third-Party Research]of this Addendum will be effective within 270 days of the entry of the Final Judgment.

6. Review of implementation.
   a. The firm will retain, at its own expense, an Independent Monitor acceptable to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office to conduct a review to provide reasonable assurance of the implementation and effectiveness of the firm's policies and procedures designed to achieve compliance with the terms of this Addendum. This review will begin 18 months after the date of the entry of the Final Judgment. The Independent Monitor will produce a written report of its review, its findings as to the implementation and effectiveness of the firm's policies and procedures, and its recommendations of other policies or procedures (or amendments to existing policies or procedures) as are necessary and appropriate to achieve compliance with the requirements and prohibitions of this Addendum. The report will be produced to the firm and the Staff of the SEC, the NYSE and the NASD within 30 days from the completion of the review, but no later than 24 months from the date of entry of the Final Judgment. (The SEC Staff shall make the report available to the President of NASAA and the New York Attorney General's Office upon request.) The Independent Monitor shall have the option to seek an extension of time by making a written request to the Staff of the SEC.

b. The firm will have a reasonable opportunity to comment on the Independent Monitor's review and proposed report prior to its submission, including a reasonable opportunity to comment on any and all recommendations, and to seek confidential treatment of such information and recommendations set forth therein to the extent that the report concerns proprietary commercial and financial information of the firm. This report will be subject to the protections from disclosure set forth in the rules of the SEC, including the protections from disclosure set forth in 5 U.S.C. § 552(b) (8) and 17 C.F.R. § 200.80(b) (8), and will not constitute a record, report, statement or data compilation of a public office or agency under Rule 803(8) of the Federal Rules of Evidence.

c. The firm will adopt all recommendations contained in the written report of the Independent Monitor; provided, however, that as to any recommendation that the firm believes is unduly burdensome or impractical, the firm may demonstrate why the recommended policy or procedure is, under the circumstances, unreasonable, impractical and/or not designed to yield benefits commensurate with its cost, or the firm may suggest an alternative policy or procedure designed to achieve the same objective, and submit such explanation and/or alternative policy or procedure in writing to the Independent Monitor and to the Staff of the SEC. The firm and the Independent Monitor shall then attempt in good faith to reach agreement as to any policy or procedure as to which there is any dispute and the Independent Monitor shall reasonably evaluate any alternative policy or procedure proposed by the firm. If an agreement on any issue is not reached, the firm will abide by the determinations of the Staff of the SEC (which shall be made after allowing the firm and the Independent Monitor to present arguments in support of their positions), and adopt those recommendations the Staff of the SEC deems appropriate.

d. The firm will cooperate fully with the Independent Monitor in this review, including making such non-privileged information and documents available, as the Independent Monitor may reasonably request, and by permitting and requiring the firm's employees and agents to supply such non-privileged information and documents as the Independent Monitor may reasonably request.

e. To ensure the independence of the Independent Monitor, the firm (i) shall not have the authority to terminate the Independent Monitor without the prior written approval of the SEC staff; and (ii) shall compensate the Independent Monitor, and persons engaged to assist the Independent Monitor, for services rendered pursuant to this Order at their reasonable and customary rates.

f. For the period of engagement and for a period of three years from completion of the engagement, the Independent Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any entity with which the Independent Monitor is affiliated or of which he/she is a member, and any person engaged to assist the Independent Monitor in performance of his/her duties under this Order shall not, without prior written consent of the Staff of the SEC, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of three years after the engagement.

g. Five years after the date of the entry of the Final Judgment, the firm shall certify to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office, that the firm has complied in all material respects with the requirements and prohibitions set forth in this Addendum or, in the event of material non-compliance, will describe such material non-compliance.

7. Superseding Rules and Amendments. In the event that the SEC adopts a rule or approves an SRO rule or interpretation with the stated intent to supersede any of the provisions of this settlement, the SEC or SRO rule or interpretation will govern with respect to that provision of the settlement and such provision will be superseded. In addition, the SEC, NYSE, the NASD, the New York Attorney General's Office and any State that incorporates this Addendum into its settlement of related proceedings against the Respondent agrees that the SEC Staff may provide interpretive guidance with respect to the terms of the settlement, as requested by the firm and that, subject to Court approval, the SEC and

the firm may agree to amend or modify any term of the settlement, in each case, without any further action or involvement by any other regulator in any related proceeding. With respect to any term in Section I or II of this Addendum that has not been superseded (as set forth above) within five years of the entry of the Final Judgment, it is the expectation of Respondent, the SEC, NYSE, NASD, New York Attorney General's Office and the States that the SEC would agree to an amendment or modification of such term, subject to Court approval, unless the SEC believes such amendment or modification would not be in the public interest.

8. Other Obligations and Requirements. Except as otherwise specified, the requirements and prohibitions of this Addendum shall not relieve the firm of any other applicable legal obligation or requirement.

III. Independent, Third-Party Research

1. Obligation to Make Available. Each year, for the period ending five years after the effective date of this Section III (as set forth in Section II.5 [Timing] of this Addendum), the firm will be required to contract with no fewer than three independent providers of research ("Independent Research Providers") at a time in order to procure and make available Independent Research (as defined below) to the firm's customers in the U.S. as set forth below. There is, however, no requirement that there be at least three Independent Research Providers for the Common Stock of each Covered Company (as those terms are defined below):

    a. For common stock and equivalents (such as ordinary shares or common stock or ordinary shares represented by American Depositary Receipts) listed on a U.S. national securities exchange or quoted in Nasdaq (such securities hereinafter, collectively, "Common Stock") and covered in the firm's research reports (other than those limited to purely quantitative analysis) (an issuer of such covered Common Stock hereinafter called a "Covered Company"), the firm, through an Independent Consultant (as discussed below) will use its reasonable efforts to procure, and shall make available to its customers in the U.S., Independent Research on such Covered Company's Common Stock. (If the Independent Research

Providers drop coverage or do not timely pick up coverage of the Common Stock of a Covered Company, the firm will not be in violation of any of the requirements in this Section III, and may continue to disseminate its own research reports on the Common Stock of the Covered Company without making available any Independent Research on the Common Stock of the Covered Company, if the firm takes reasonable steps to request that the Independent Consultant procure such coverage promptly.)

i. For purposes of this Section III, the firm's research reports include research reports that have not been prepared by the firm, but only to the extent that such reports have been furnished under the firm's name, have been prepared for the exclusive or sole use of the firm or its customers, or have been customized in any material respect for the firm or its customers.

ii. A non-U.S. company for which a U.S. market is not the principal equity trading market shall only be considered a Covered Company if in the calendar quarter ended March 31, 2003, or in any subsequent calendar quarter during the period that the firm's obligations to procure and make available Independent Research under this Section III are effective, the publicly reported, average daily dollar volume of U.S. trading in such company's Common Stock (measured by multiplying the publicly reported, average daily share volume of U.S. trading during the quarter by the closing price per share of the Common Stock on the last day of the quarter), exceeded $2.5 million, and (b) the outstanding total public float of the Common Stock as of the last day of such calendar quarter exceeded $150 million. Further, the firm's obligation to procure and make available Independent Research with respect to such company shall become effective at the later of: (a) 90 days after the end of the calendar quarter in which the company met the foregoing trading and public float tests; or (b) the effective date of this Section III.

b. For purposes of this Section III, Independent Research means (i) a research report prepared by an unaffiliated person or entity, or (ii) a statistical or other survey or analysis of research reports (including ratings and price targets) issued by a broad range of persons and entities, including persons and entities having no association with investment banking activities, which survey or analysis has been prepared by an unaffiliated person or entity.

c. The firm will adopt policies and procedures reasonably designed to ensure that, in connection with any solicited order for a customer in the U.S. relating to the Common Stock of a Covered Company, and if Independent Research on the Covered Company's Common Stock is available, the registered representative will have informed the customer, during the solicitation, that the customer can receive Independent Research on the Covered Company's Common Stock at no cost to the customer (the "Notice Requirement").

d. Notwithstanding the foregoing, the Notice Requirement will not apply to (i) the solicitation of an institutional customer (an entity other than a natural person having at least $10 million invested in securities in the aggregate in its portfolio and/or under management) unless such customer, after due notice and opportunity, has advised the firm that it wishes to have the Notice Requirement apply to it (any customer who has not so advised the firm is hereinafter referred to as a "Non-Participating Institutional Customer"); (ii) orders as to which discretion was exercised, pursuant to a written discretionary account agreement or written grant of trading authorization; or (iii) a solicitation by an entity affiliated with the Respondent if such entity does not furnish to its customers research reports under the firm's name, prepared by the firm for the exclusive or sole use of the firm or its customers, or research reports that have been customized in any material respect for the firm or its customers.

e. Each trade confirmation sent by the Respondent to a customer with respect to an order as to which the Notice Requirement applies will set forth (or will be accompanied by a separate statement, which shall be considered part of the confirmation,

that will set forth), as of the time the trade confirmation is generated, the ratings, if any, contained in the firm's own research reports and in Independent Research procured for the firm with respect to the Common Stock of the Covered Company that is the subject of the order.

f. Each periodic account statement sent by the Respondent to a customer in the U.S. that reflects a position in the Common Stock of a Covered Company will set forth (or will be accompanied by a separate statement, which shall be considered part of the periodic account statement, that will set forth), as of the end of the period covered by the statement, the ratings, if any, contained in the firm's own research reports and in the Independent Research made available by the firm on the Common Stock of each such Covered Company; provided, however, that this requirement will not apply to Non-Participating Institutional Customers or discretionary accounts.

g. Notice of the availability of Independent Research on Covered Companies' Common Stock will also be included prominently in the periodic account statements of the Respondent's customers in the U.S., in the firm's research reports, and on the firm's website.

h. The firm will make the Independent Research available to its customers in the U.S. using, for each customer, the means of dissemination equivalent to those it uses to provide the customer with the firm's own research reports, unless the firm and customer agree on another means of dissemination; provided, however, that nothing herein shall require or authorize the firm to comply with the Notice Requirement or make available or disseminate Independent Research at a time when doing so would violate Section 5 of the Securities Act of 1933 or the other provisions of the federal securities laws or the rules and regulations thereunder. If and to the extent the firm is able to make available or disseminate its own research reports on the Common Stock of a Covered Company pursuant to Rule 137, Rule 138(a) or Rule 139(a) under the Securities Act of 1933 and in reliance on Regulation M under the Securities Exchange Act of 1934, then the firm is also authorized and

required to make available or disseminate Independent Research on the Common Stock of such Covered Company (even if the Independent Research does not meet the requirements of such Rule). Notwithstanding this Section III.1.h, if the firm determines, because of legal, compliance or similar concerns, not to furnish or make available its own research reports on the Common Stock of a Covered Company for a limited period of time, it shall not be required to make available the Independent Research on such Covered Company for such period of time.

i. If, during the period that the firm's obligations to procure and make available Independent Research under this Section III are effective, the firm terminates coverage of the Common Stock of a Covered Company, the firm, through its Independent Consultant, will make reasonable efforts to continue to procure and make available Independent Research on the Common Stock of such company for a period of at least 18 months after termination of coverage (subject to expiration of the firm's obligations under this Section III).

j. The firm will not be responsible or liable for (i) the procurement decisions of the Independent Consultant (as discussed in Section III.2 [Appointment of Independent Consultant to Oversee the Procurement of Independent Research] of this Addendum) with respect to the Independent Research, (ii) the Independent Research or its content, (iii) customer transactions, to the extent based on the Independent Research, or (iv) claims arising from or in connection with the inclusion of Independent Research ratings in the firm's confirmations and periodic account statements, to the extent such claims are based on those ratings. The firm will not be required to supervise the production of the Independent Research procured by the Independent Consultant and will have no responsibility to comment on the content of the Independent Research. The firm may advise its customers of the foregoing in its discretion.

k. The Independent Consultant will not be liable for (i) its procurement decisions, (ii) the Independent Research or its

content, (iii) customer transactions, to the extent based on the Independent Research, or (iv) claims arising from or in connection with the inclusion of Independent Research ratings in the firm's confirmations and periodic account statements, to the extent such claims are based on those ratings, unless the Independent Consultant has carried out such duties in bad faith or with willful misconduct. The firm will indemnify the Independent Consultant for any liability arising from the Independent Consultant's good-faith performance of its duties as such.

2. Appointment of Independent Consultant to Oversee the Procurement of Independent Research. Within 30 days of the entry of the Final Judgment, an Independent Consultant acceptable to the SEC Staff, the NYSE, the NASD, the President of NASAA, the New York Attorney General and the firm shall be named to oversee the procurement of Independent Research from Independent Research Providers. The Independent Consultant will have the final authority (following consultation with the firm and in accordance with the criteria set forth in Section III.3 [Selection of Independent Research Providers] of this Addendum) to procure the Independent Research. The Independent Consultant will not have had any significant financial relationship with the firm during the prior three years and may not have any financial relationship with the firm for three years following his or her work as the Independent Consultant. The Independent Consultant's fee arrangement will be subject to the approval of the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office. In the event that an Independent Consultant must be replaced, the replacement shall be acceptable to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, the New York Attorney General's Office and the firm, and shall be subject to these same conditions.

3. Selection of Independent Research Providers. The Independent Consultant will seek to procure research reports on the Common Stock of all Covered Companies from Independent Research Providers. Independent Research Providers may not perform investment banking business of any kind and may not provide brokerage services in direct and significant competition with the firm. In addition, the Independent Consultant will use the following criteria in selecting and contracting with Independent Research Providers to provide Independent Research.

a. whether and to what extent the Independent Research Provider or any of its affiliates or associated persons is engaged in activities (including, but not limited to, activities involving Covered Companies or their securities), or has a business or other relationship with the firm or any of its affiliates or associated persons, that may conflict or create the appearance of conflict with its preparation and publication of the Independent Research;

b. the desirability of multiple coverage of certain Covered Companies (e.g., by size of company, industry sector, companies underwritten by the firm, etc.);

c. the extent to which the Independent Research Provider has a client base and revenue stream broad enough to ensure its independence from the firm;

d. the utility of the Independent Research Provider's Independent Research to the firm's customers, including the inclusion of ratings and price targets in such research and the extent to which the firm's customers actually use the research; and with respect to surveys or analyses described above in Section III.1.b(ii), the extent to which the Independent Research provides customers with a means of comparing the firm's research reports to those published by other persons and entities, including persons and entities having no association with investment banking activities;

e. the quality and accuracy of the Independent Research Provider's past research, including during the term of the Independent Consultant's tenure;

f. the experience, expertise, reputation and qualifications (including, as appropriate, registrations) of the Independent Research Provider and its personnel; and

g. the cost of the Independent Research, especially in light of the five-year period set forth in Section III.1 above for the firm to

make Independent Research available to its investing customers.

4. Disclosure Language. Language substantially to the effect set forth below may be used by the firm and its registered representatives to inform the firm's customers of the availability of Independent Research:

    a. {Disclosure to customers as required by Section III.1.c [Obligation to Make Available subpart c] of this Addendum.}

    "There is also independent, third-party research available on this company, which you can get at no cost [from our website/hyperlink] or by calling [toll-free number], or which I can arrange to send to you if you would like."

    b. {General website and periodic customer account statement disclosure as required by Section III.1.g. [Obligation to Make Available subpart g] of this Addendum].}

    "Independent, third-party research on certain companies covered by the firm's research is available to customers of [firm] at no cost. Customers can access this research at [our website/hyperlink] or can call [toll-free number] to request that a copy of this research be sent to them."

5. Annual Reporting. The Independent Consultant will report annually to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office on its selection of Independent Research Providers, the Independent Research it has procured, the cost of the Independent Research it has procured to date, and the Independent Consultant's fees and expenses to date.