

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE

In the matter of)
U.S. BANCORP PIPER JAFFRAY INC.)
800 Nicollet Mall)
Suite 800) C.A. No. 03-6-4
Minneapolis, MN 55402,)
Respondent.)

ADMINISTRATIVE CONSENT ORDER

WHEREAS, U.S. Bancorp Piper Jaffray Inc. (hereinafter "USBPJ") is a broker-dealer registered in the State of Delaware; 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 Delaware

1 Securities Act (6 Del. C. Chap. 73);

2 NOW, THEREFORE, the Securities Commissioner of the Division of Securities of the State
3 of Delaware Department of Justice ("Commissioner"), as administrator of the Delaware Securities
4 Act, hereby enters this Order:

5 I.

6 FINDINGS OF FACT

7 A. Background and Jurisdiction

- 8 1. USBPJ is a broker-dealer with its principal place of business in Minneapolis, Minnesota. The
9 firm engages in a full-service securities business, including retail and institutional sales,
10 investment banking services, trading, and research.
- 11 2. USBPJ is currently registered with the Commissioner as a broker-dealer, and has been so
12 registered since October 6, 1981.
- 13 3. This action concerns the years 1999, 2000, and 2001 (the "relevant period"). During that
14 time, USBPJ engaged in both research and investment banking ("IB") activities.
- 15 4. At various times during the relevant period, USBPJ placed undue emphasis on using its
16 research analysts to maximize opportunities to obtain investment-banking revenues from
17 companies in the technology, telecommunications, and biotechnology industry sectors. Such
18 emphasis on obtaining investment-banking revenue created conflicts of interest for the
19 research analysts that resulted in the issuance of research reports that violated the Delaware
20 Securities Act. USBPJ failed adequately to monitor and supervise the conflicts of interest
21 inherent in seeking investment-banking opportunities from companies covered by USBPJ
22 research analysts. USBPJ's violative conduct, described herein, was caused by a flawed
23 organizational structure, combined with inadequate supervision of the conflicts of interest.
- 24 5. USBPJ grouped its research analysts by industry sector and those analysts worked as a team
25 with the firm's investment bankers, who focused on the same industry sector. The majority of
26 research analysts' compensation was paid in the form of bonuses, which for some analysts

1 was directly tied to revenues from investment banking transactions of companies in their
2 industry sector. In other cases, the analyst's contribution to investment banking revenue, and
3 investment banker input into analysts' evaluations played a significant part in determining the
4 analysts' bonuses. In certain cases, investment bankers commented in reviews that research
5 analysts needed to become lead analysts, a reference to using their professional opinions and
6 reports to assist the firm in obtaining the top role in investment banking transactions. As a
7 result of these influences, certain USBPJ research analysts indirectly were motivated to
8 obtain, retain and increase investment-banking revenue.

9 6. In certain instances, USBPJ also provided draft research reports to potential investment
10 banking clients during sales pitches, and this implicit promise of favorable research was an
11 important aspect of USBPJ's attempts to gain the companies' investment banking business.
12 In other instances, after determining to issue research, USBPJ provided company executives
13 with draft reports, including the proposed rating and target price, and solicited comments on
14 the report from those company executives.

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

19 8. Finally, USBPJ engaged in improper behavior by threatening to drop research coverage on a
20 company if USBPJ did not receive a certain role in the company's offering of securities.
21
22
23
24
25
26

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

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

- 5 9. USBPJ was founded in 1895.¹ The firm is headquartered in Minneapolis, Minnesota, and has
6 approximately 3,100 employees, including approximately 875 financial advisers, more than
7 80 investment bankers, and approximately 70 research analysts. USBPJ has operations in 124
8 offices in 25 states throughout the country.
- 9 10. During the relevant period, USBPJ's business included retail brokerage, known as Private
10 Advisory Services; fixed income underwriting, sales and trading (known as Fixed Income
11 Capital Markets); and equities investment banking, syndicate, research, and institutional sales
12 and trading (known as Equity Capital Markets or "ECM"). Thus, equity research and
13 investment banking were in the same business line and, ultimately, reported to the same
14 individual.
- 15 11. In 1998, USBPJ generated equity investment banking revenue of approximately \$79,500,000.
16 That increased by 100 percent to approximately \$159,000,000 in 1999. In 2000, revenue
17 from equity investment banking grew to approximately \$269,200,000, a 69 percent increase
18 over 1999. In 2001, USBPJ's revenue from equity investment banking was approximately
19 \$153,000,000. From 1999 through 2001, revenue from equity investment banking
20 represented a significant portion of the firm's revenue, accounting for between 19 - 26
21 percent of the firm's total revenue.

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

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

- 26 12. During the relevant period, many companies, particularly those in the technology area, issued

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

1 stock through public offerings, and there was intense competition among investment banking
2 firms to obtain this business. In order to maximize its chances to participate in these
3 offerings, USBPJ made a concerted effort to include its research analysts in its solicitation of
4 this business. This effort included developing and implementing specific marketing plans,
5 which provided for research analyst involvement in the investment banking process.

6 (i). Move to the Left Strategy

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

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

21 (ii). Lead Manager Protocol

22 15. In August 2000, the head of ECM's syndicate department prepared another specific effort to
23 gain additional lead managed offerings. In setting out his new "Lead Manager Protocol" to
24 all ECM employees, the head of the syndicate department stressed that the "formal protocol of
25
26

1 responsibilities ... will allow all of us—Investment Banking, Research, Sales, Trading and
2 Capital Markets—to share responsibility for the success of each and every lead-managed
3 offering.”

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

- 5 • the lead banker and lead research analyst to make a presentation to the firm’s Pre-
6 Commitment Committee before any company would be considered for an underwriting;
- 7 • the research analyst to participate in a “get-to-know-you” session with prospective
8 investment banking clients as part of a “Day at Piper” session;
- 9 • the lead banker and senior analyst to re-present the prospective company client to the
10 Commitment Committee. The lead banker and “senior analyst must demonstrate continued
11 due diligence effort and must provide renewed commitment to the transaction”;
- 12 • research and sales to “set up a roadshow schedule to ensure a targeted and efficient
13 roadshow.... [and] focus on ascertaining the right accounts to see and why these are the
14 right accounts;”
- 15 • senior analysts to “provide aggressive pre-meeting preparation and post-meeting follow-up
16 to each 1-on-1 appointment;”
- 17 • senior analysts to be “available during critical parts of roadshow and pricing”; and
- 18 • the senior analyst to “coordinate with Capital Markets to sort out the aftermarket intentions
19 of each account.”

20 17. The Lead Manager Protocol described a primary function of a research analyst in
21 communicating regarding the progress of the transaction once the firm had obtained a lead
22 management role in an IPO when it stated: “Senior analyst will coordinate with Capital
23 Markets to communicate a consistent message regarding the progress of the transaction,
24 acting as a supporter of Capital Markets’ message and not as an independent filter The
25 goal of the [s]enior analyst is to reinforce reasonable and exceedable expectations.”
26

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

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

9 19. The emphasis on securing investment banking business through pitches and then selling the
10 securities through roadshows gave rise to conflicts of interest for the research analysts. In
11 some instances, the research analyst became a prime contact person for the company with
12 respect to soliciting investment-banking business. For example, on May 10, 1999, a research
13 analyst wrote to an officer of E-Machines, a potential investment-banking client: "This is my
14 final appeal to be a part of the underwriting team. This is your deal and you control the
15 strings. All we are looking for is ten percent of the economics to participate in the
16 underwriting. This itself should be indicative of my sincere interest in your story ... In the
17 final analysis, it is less important to have bulge bracket firm as a hood ornament than it is to
18 have a quality analyst who will provide you with the support and coverage your company
19 needs."

20
21 (c). Research Analysts' Participation in Pitch Meetings Was Important in
22 Obtaining Investment Banking Mandates

23 20. Before USBPJ made its "pitches" to an issuer for investment banking business, the investment
24 banker, teamed with a research analyst for the appropriate sector, would make a presentation
25 to USBPJ's Pre-Commitment Committee. This presentation included a recommendation and
26 analysis detailing why the firm should pursue an investment banking relationship with the

1 issuer. After USBPJ determined to compete for a company's investment banking business,
2 particularly in the case of an initial public offering ("IPO"), the research analyst's role was
3 influential in obtaining that business.

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

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

16 22. When investment bankers and research analysts presented "pitches" to prospective investment
17 banking clients, USBPJ typically gave the prospective client a pitchbook explaining the
18 proposed services to be provided by the firm. These pitchbooks detailed, in a most favorable
19 manner, why USBPJ should be selected to underwrite the offering. In addition to providing
20 information about how USBPJ would conduct the underwriting, the pitchbooks routinely
21 included a roadmap of the amount and type of research coverage that USBPJ would provide
22 to support the company if it obtained the investment banking business. In certain instances,
23 USBPJ included a "mock" research report for the companies, containing a valuation analysis
24 and "mock" rating such as "buy," impliedly promising to the issuer that the research analyst
25 would issue a favorable research report if it selected USBPJ for the investment banking
26 business. In some instances, USBPJ's mock research reports also included a favorable

1 “mock” target price for the issuer’s stock.

2 23. For example, in August 2000, USBPJ made a pitch to be the lead underwriter for an offering
3 by TheraSense, a medical technology issuer. In preparing for the pitch, a research analyst
4 prepared a mock research report about the issuer and presented that mock report at the pitch
5 meeting. The mock research report noted in several places a proposed rating of “Strong Buy.”
6 The mock report contained very positive news about the company, claiming that its initial
7 sales of the product were “nothing short of breathtaking.” In part, as a result of that pitch, the
8 company awarded USBPJ the role of lead managing underwriter, which generated
9 underwriting fees of \$3,785,512 for the firm when the offering went effective in October
10 2001. USBPJ initiated coverage of the issuer with a “Strong Buy” recommendation shortly
11 after the offering went effective.

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

19
20 (3). USBPJ Tied Research Analysts’ Compensation to Investment Banking Revenue

21
22 25. During the relevant period, USBPJ compensated research analysts, in part, based on the
23 amount of investment banking revenue generated within their respective industry sector. This
24 practice created a conflict of interest for research analysts, since analysts were compensated,
25 in part, on issuing objective research and on the firm’s success in obtaining investment-
26 banking business.

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

10 27. Compensation for other research analysts was comprised of base salary plus a bonus.
11 Investment banking revenue was a significant factor in determining the bonus. The bonus
12 was based, in part, on investment banking revenue received from companies in the specific
13 industry sector that each analyst covered, and the level of contribution the research analyst
14 made in the effort to obtain the investment banking business. The bonus usually formed the
15 majority of a research analyst's total compensation. In 1999 and 2000, for example, more
16 than 85 percent of a typical research analysts' compensation came from the bonus, while in
17 2001 approximately 77 percent of a typical research analyst's compensation was in the form
18 of a bonus. During that time, research analysts' salaries generally ranged from \$60,000 to
19 \$250,000, while the discretionary bonuses ranged from \$75,000 to \$4,000,000.

20 28. In determining the amount of discretionary bonuses, supervisors in the research department
21 considered, among other things, a research analyst's contributions to the firm's success in
22 obtaining investment-banking revenues. Performance evaluations of the research analysts
23 demonstrate this consideration. Research analysts received periodic reports detailing the
24 year-to-date revenues generated by their covered companies. At times, senior investment
25 bankers provided these reports to the research analysts, as well as to investment banking
26 employees, and listed the projected investment banking revenue goals for the covered

1 companies. One supervisor noted in a performance evaluation that a certain analyst should
2 work on becoming a "lead managing analyst." That expression was a reference to the lead
3 managing underwriter position that USBPJ sought in offerings because it resulted in the
4 greatest amount of control and revenue. Thus, the supervisor's expression acknowledged the
5 role that an analyst could play at USBPJ in obtaining investment-banking business. For
6 example, one senior analyst received a salary of \$160,000 and a bonus of over \$3.8 million.
7 In another example, an analyst received a salary of \$130,000 and a bonus of over \$3 million.
8 In both of these instances, the bonus determination included consideration of investment
9 banking and trading revenues for companies in the industry sector covered by the analyst.

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

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

17 30. In 2000 and 2001, investment bankers who worked on investment banking business with
18 research analysts participated in the annual performance evaluations of those research
19 analysts. Specifically, in certain instances, investment bankers completed and provided to the
20 Director of Research a "Banker Peer Review" on certain research analysts. Investment
21 bankers evaluated research analysts using specific criteria, including:

- 22 • "proactively generates and shares valuable M&A/strategic ideas;"
23 • "prepares for pitches and contributes to preparation of pitchbook;"
24 • "effective in pitches; [and] takes the aftermarket commitment seriously."
25

26 31. Thus, investment bankers provided significant input in the performance evaluation of research

1 analysts which, in turn, influenced the bonus compensation of those research analysts. For
2 example, an investment banker noted in his banker peer review that a particular analyst:
3 “needs to be proactive in pursuing fee-generating companies for his coverage list. He is very
4 focused on big cap names that do not pay.”

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

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

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

14 34. Certain draft research reports provided to an issuer included not only the factual portions of a
15 draft report, but also the analyst’s valuation, rating and suggested target price. In some cases,
16 company executives were given electronic copies of the research report, and returned to the
17 firm a “red-lined” version of the report with their comments and edits. For example, on
18 September 27, 2001, a USBPJ research analyst sent a representative of Genta, Inc. an e-mail
19 containing a draft report with a rating. This e-mail stated, “ Hope you are doing better. Here
20 is a draft of our initiation note. Please review it and send me any comments you may have.
21 Thanks...” On October 2, 2001, Genta responded to the e-mail with extensive comments on
22 the note.

23 35. In other instances, USBPJ investment bankers suggested to issuer clients that research reports
24 initiating coverage would be subject to approval by the issuer. For example, on January 11,
25 2001, an investment banker wrote to numerous executives at Metromedia Fiber Network, Inc.
26

1 ("Metromedia") thanking them for their meeting with a USBPJ senior research analyst. The
2 banker wrote, "[The analyst] has decided to initiate coverage with a Strong Buy, our firm's
3 highest recommendation...his research associate...will be calling you later today to request
4 help in finalizing the report. *Nothing will be published without your prior approval.*"
5 (Emphasis added). On January 26, 2001, USBPJ initiated coverage of Metromedia with a
6 "strong buy" and a \$27 price target.

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

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

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

15 38. In view of the interaction between research analysts and investment banking described above,
16 USBPJ lacked adequate systems or procedures to supervise the influence that investment-
17 banking opportunities had on research personnel. For example, on January 17, 2001, a
18 USBPJ senior research analyst wrote an e-mail to a junior analyst seeking input as to whether
19 he should maintain a "buy" rating on Natural Microsystems, Inc. ("NMSS"). USBPJ had
20 downgraded NMSS from "strong buy" in December 2000 based on the company's
21 announcement that it would likely miss its earnings projections for the year. Upon the
22 company's announcement in January 2001 that it had, in fact, not met its projections for 2000,
23 the senior analyst again evaluated the company's rating. In response to the senior analyst's
24 request for input, the junior analyst responded that, in his opinion, the company should stay a
25
26

1 "buy" "taking into consideration banking relationship," but that absent such considerations he
2 would rate the stock a neutral.

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

12 40. Moreover, USBPJ rarely issued a sell rating. During most of the review period, USBPJ had a
13 four point rating scale: strong buy, buy, neutral, and sell. More than 80 percent of the
14 research reports issued contained either "buy" or "strong buy" recommendations, with less
15 than 20 percent of the companies, on average, rated as a "neutral." Throughout the review
16 period, USBPJ gave less than one percent of companies a "sell" recommendation. In certain
17 cases, the firm would discontinue coverage, usually without explanation, rather than drop a
18 company to a sell rating. In those cases, therefore, USBPJ had only a three point rating
19 system.

20
21 C. USBPJ Issued Research on Two Companies That Lacked a Reasonable Basis Or Was
22 Imbalanced

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

25
26 ² USBPJ widely distributed its research through public services such as Thompson Financial's First Call and on its
website www.gotoanalyst.com.

1 (1). Esperion Therapeutics, Inc.

2
3 42. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc.
4 (“Esperion”) and consequently initiated research coverage of Esperion on September 5, 2000
5 with a “buy” rating. On January 9, 2002, a USBPJ senior research analyst stated in an e-mail
6 to a senior investment banker: “ESPR delayed a pipeline product and completely dropped
7 development of a second pipeline product, giving a reason that was nothing short of hokey.
8 So it was bad news all around...Esperion has not met a single milestone that they have laid
9 out since they went public. Everything has slipped. [Esperion’s CEO] is a good scientist, an
10 awful CEO.”

11 43. Notwithstanding these statements, USBPJ’s January 2002 industry report “Investing in
12 Biotechnology” and research report on January 24, 2002, both reiterated the existing buy
13 rating (now termed outperform).

14 (2). Triton Network Systems

15
16 44. In July 2000, USBPJ served as co-manager for Triton Network Systems (“Triton”)’s IPO. On
17 August 7, 2000, a USBPJ senior research analyst initiated research coverage of Triton with a
18 “buy” rating and a \$45 price target. Soon after the IPO, shares of Triton reached a high of
19 \$47.75, but the value of the stock quickly declined. USBPJ maintained a “buy” rating while
20 the stock price declined to \$1 13/16 over the next eight months.

21 45. On March 30, 2001, the analyst issued a “blast” e-mail to institutional clients with cautionary
22 statements about Triton due to the likely loss of a key customer, Advanced Radio Telecom,
23 which was considering a Chapter 11 bankruptcy filing. Other than the “blast” e-mail, USBPJ
24 did not issue a new research report directly on that information at that time. Notwithstanding
25 this negative news, USBPJ maintained a “buy” rating. Another month passed before USBPJ
26 disclosed in a broadly disseminated research report Triton’s problems with this customer

1 while downgrading Triton to a neutral on May 1, 2001. After two more months, when Triton
2 was trading below \$1, the research analyst told the head of USBPJ's equity research
3 department, that since the company was in bankruptcy proceedings, "we can drop now if
4 banking says ok." USBPJ discontinued coverage of Triton with a last published rating of
5 neutral.

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

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

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

15 47. From 1999 through 2001, USBPJ received payments out of the proceeds of certain
16 underwritings to compensate the firm for services that included publishing research on the
17 issuer. These payments were made in the form of "research guarantees" or "research
18 checks." During this period, USBPJ accepted more than \$1.8 million in exchange for, among
19 other services, issuing research reports. Despite having an obligation to do so, the firm failed
20 to disclose in research reports or elsewhere that it received the payments, in part, as
21 compensation for issuing the reports. For example:

22 48. In June 1999, USBPJ received a \$400,000 research check in connection with a \$200 million
23 high yield debt offering in April 1999 for Just for Feet. USBPJ was not a manager on the
24 offering and did not disclose this payment in its ongoing research or elsewhere.
25
26

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

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

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

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

18 52. For example, in 2000, USBPJ paid underwriting proceeds of \$100,000 to another underwriter
19 in conjunction with USBPJ's lead manager position on Onyx Pharmaceuticals' ("Onyx")
20 stock offering. While this underwriter was not invited to participate in Onyx's offering, the
21 payment was made in response to a letter dated September 22, 2000 from the underwriter
22 asking for \$300,000 in "underwriting participation" for continued research and market
23 making. A representative of the underwriter wrote, "From August 31, 1999 until August 15,
24 2000, we were the only firm in print on Onyx Pharmaceuticals and we remain a Strong Buy
25 rating." USBPJ did not ensure that this payment was disclosed to the public in its published
26 research on Onyx.

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

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

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

12 II.

13 CONCLUSIONS OF LAW

- 14 1. The Commissioner has jurisdiction over this matter pursuant to 6 Del. C. § 7325.
- 15 2. The Commissioner finds that Respondent USBPJ engaged in acts and practices that created
16 and/or maintained inappropriate influence by investment banking over research analysts
17 and therefore imposed conflicts of interest on research analysts. USBPJ failed to manage
18 these conflicts in an adequate and appropriate manner. 6 Del. C. § 7316(a)(7).
- 19 3. The Commissioner finds that Respondent USBPJ has committed dishonest and unethical
20 practices under 6 Del. C. § 7316(a)(7), as described in the Findings of Fact above, by
21 issuing research that contained opinions for which there was no reasonable basis and/or
22 exaggerated or unwarranted claims. 6 Del. C. § 7316(a)(7).
- 23 4. The Commissioner finds that Respondent USBPJ inappropriately threatened executives of a
24 potential investment-banking client by stating that they would drop research coverage of the
25 company if the firm was not selected as the lead manager in an investment banking
26 transaction. 6 Del. C. § 7316(a)(7).

- 1 5. The Commissioner finds that Respondent USBPJ received compensation directly or
2 indirectly, from an issuer, underwriter or dealer, in part, for issuing research reports,
3 without fully disclosing the receipt or the amount of the compensation. 6 Del. C. §
4 7316(a)(7).
- 5 6. The Commissioner finds that Respondent USBPJ, as described in the Findings of Fact
6 above, made payments for research to other broker-dealers not involved in an underwriting
7 transaction, when the firm knew that these payments were made, at least in part, for
8 research coverage, and failed to disclose or cause to be disclosed in offering documents or
9 elsewhere the fact of such payments. 6 Del. C. § 7316(a)(7).
- 10 7. The Commissioner finds that Respondent USBPJ failed to establish and enforce written
11 supervisory procedures reasonably designed to ensure that analysts were not unduly
12 influenced by investment banking concerns. Despite knowledge of research analysts'
13 complex responsibilities and conflicts of interest, Respondent USBPJ failed to implement a
14 system to detect and insulate its research analysts from improper influence and pressure by
15 investment banking personnel. To the contrary, Respondent USBPJ's business practices
16 motivated research analysts to issue research that would attract and retain investment-
17 banking business. 6 Del. C. § 7316(a)(10).
- 18 8. The Commissioner finds the following relief appropriate and in the public interest.
19

20 III.

21 ORDER

22 On the basis of the Findings of Fact, Conclusions of Law, and Respondent USBPJ's consent
23 to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without
24 admitting or denying any of the Findings of Fact or Conclusions of Law,
25
26

1 IT IS HEREBY ORDERED:

- 2 1. This Order concludes the investigation by the Commissioner and any other action that the
3 Commissioner could commence under the Delaware Securities Act (6 Del. C. Chap. 73) on
4 behalf of the State of Delaware as it relates to Respondent USBPJ, relating to certain
5 research or banking practices at Respondent USBPJ.
- 6 2. Respondent USBPJ will CEASE AND DESIST from violating the Delaware Securities Act in
7 connection with the research practices referenced in this order and will comply with the
8 Delaware Securities Act in connection with the research practices referenced in this Order and
9 will comply with the undertakings of Addendum A, incorporated herein by reference.
- 10
- 11 3. IT IS FURTHER ORDERED that:

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

- 15 a) \$12,500,000 to the states (50 states, plus the District of Columbia and Puerto Rico)
16 (Respondent USBPJ's offer to the state securities regulators hereinafter shall be called
17 the "state settlement offer"). Upon execution of this Order, Respondent USBPJ shall
18 pay the sum of \$125,000 of this amount to the Commissioner as a civil monetary
19 penalty pursuant to 6 Del. C. § 7325, to be deposited in the Investor Protection Fund,
20 6 Del. C. § 7329. The total amount to be paid by Respondent USBPJ to state
21 securities regulators pursuant to the state settlement offer may be reduced due to the
22 decision of any state securities regulator not to accept the state settlement offer. In the
23 event another state securities regulator determines not to accept Respondent USBPJ's
24 state settlement offer, the total amount of the Delaware payment shall not be affected,
25 and shall remain at \$125,000;
- 26

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

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

5 Respondent USBPJ agrees that it shall not seek or accept, directly or indirectly,
6 reimbursement or indemnification, including, but not limited to payment made pursuant to
7 any insurance policy, with regard to all penalty amounts that Respondent USBPJ shall pay
8 pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such
9 penalty amounts or any part thereof are added to the Distribution Fund Account referred to
10 in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent
11 USBPJ further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit
12 with regard to any state, federal or local tax for any penalty amounts that Respondent
13 USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless
14 of whether such penalty amounts or any part thereof are added to the Distribution Fund
15 Account referred to in the SEC Final Judgment or otherwise used for the benefit of
16 investors. Respondent USBPJ understands and acknowledges that these provisions are not
17 intended to imply that the Commissioner would agree that any other amounts Respondent
18 USBPJ shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified
19 (whether pursuant to an insurance policy or otherwise) under applicable law or may be the
20 basis for any tax deduction or tax credit with regard to any state, federal or local tax.

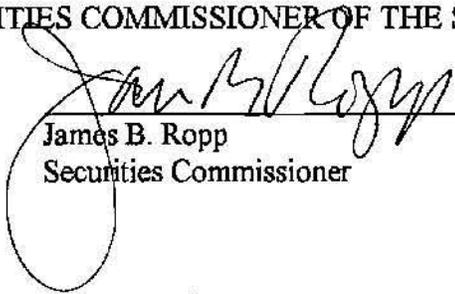
21
22 4. If payment is not made by Respondent USBPJ or if Respondent USBPJ defaults in any of
23 its obligations set forth in this Order, the Commissioner may vacate this Order, at its sole
24 discretion, upon 10 days notice to Respondent USBPJ and without opportunity for
25 administrative hearing.
26

- 1 5. This Order is not intended by the Commissioner to subject any Covered Person to any
2 disqualifications under the laws of any state, the District of Columbia or Puerto Rico
3 (collectively, "State"), including, without limitation, any disqualifications from relying
4 upon the State registration exemptions or State safe harbor provisions. "Covered Person"
5 means Respondent USBPJ, or any of its officers, directors, affiliates, current or former
6 employees, or other persons that would otherwise be disqualified as a result of the Orders
7 (as defined below).
- 8 6. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of
9 Acceptance, Waiver and Consent, this Order and the order of any other State in related
10 proceedings against Respondent USBPJ (collectively, the "Orders") shall not disqualify any
11 Covered Person from any business that they otherwise are qualified, licensed or permitted
12 to perform under the applicable law of the State of Delaware and any disqualifications from
13 relying upon this state's registration exemptions or safe harbor provisions that arise from
14 the Orders are hereby waived.
- 15 7. For any person or entity not a party to this Order, this Order does not limit or create any
16 private rights or remedies against Respondent USBPJ including, without limitation, the use
17 of any e-mails or other documents of Respondent USBPJ or of others regarding research
18 practices, limit or create liability of Respondent USBPJ or limit or create defenses of
19 Respondent USBPJ to any claims.
- 20 8. Nothing herein shall preclude the State of Delaware, its departments, agencies, boards,
21 commissions, authorities, political subdivisions and corporations, other than the
22 Commissioner and only to the extent set forth in paragraph 1 above, (collectively, "State
23 Entities") and the officers, agents or employees of State Entities from asserting any claims,
24 causes of action, or applications for compensatory, nominal and/or punitive damages,
25 administrative, civil, criminal, or injunctive relief against Respondent USBPJ in connection
26 with certain research and/or banking practices at Respondent USBPJ.

- 1 9. This Order and any dispute related thereto shall be construed and enforced in accordance
2 with, and governed by, the laws of the State of Delaware without regard to any choice of
3 law principles.
- 4 10. Respondent USBPJ agrees not to take any action or to make or permit to be made any
5 public statement denying, directly or indirectly, any finding in this Order or creating the
6 impression that this Order is without factual basis. Nothing in this Paragraph affects
7 Respondent USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual
8 positions in defense of litigation or in defense of other legal proceedings in which the
9 Commissioner is not a party.
- 10 11. Respondent USBPJ, through its execution of this Consent Order, voluntarily waives their
11 right to a hearing on this matter and to judicial review of this Consent Order under the
12 Delaware Securities Act (6 Del. C. Chap. 73).
- 13 12. Respondent USBPJ enters into this Consent Order voluntarily and represents that no
14 threats, offers, promises, or inducements of any kind have been made by the Commissioner
15 or any member, officer, employee, agent, or representative of the Commissioner to induce
16 Respondent USBPJ to enter into this Consent Order.
- 17 13. The parties represent, warrant and agree that they have received independent legal advice
18 from their attorneys with respect to the advisability of executing this Consent Order.
- 19 14. This Consent Order shall become final upon entry.

20
21
22 Dated this 11th day of September 2003.

23 BY ORDER OF THE SECURITIES COMMISSIONER OF THE STATE OF DELAWARE

24 
25 _____
26 James B. Ropp
Securities Commissioner

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

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

5 US Bancorp Piper Jaffray Inc. admits the jurisdiction of the Securities Commissioner of the Division
6 of Securities of the State of Delaware Department of Justice ("Commissioner"), neither admits nor denies the
7 Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the
8 Commissioner as settlement of the issues contained in this Order.

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

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

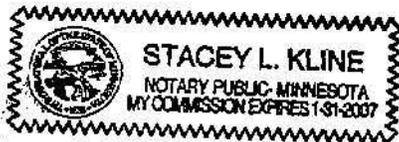
14 Dated this 27th day of August, 2003.

16 US Bancorp Piper Jaffray Inc.

17 By: [Signature]

18 Title: General Counsel

19
20 SUBSCRIBED AND SWORN TO before me this 27th day of August, 2003.



23 [Signature: Stacey L. Kline]
24 Notary Public

25 My Commission expires:

26 1-31-07