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DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
DIVISION OF FINANCE AND CORPORATE SECURITIES  
SECURITIES SECTION  
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND  
BUSINESS SERVICES

In the Matter of: ) S-03-0033  
)  
U.S. BANCORP PIPER JAFFRAY INC. ) ADMINISTRATIVE ORDER  
) ORDER IMPOSING MONETARY  
800 Nicollett Mall ) OBLIGATIONS AND CONSENT  
Suite 800 ) TO ENTRY OF ORDER  
Minneapolis, MN 55402 )  
)  
Respondents. )  
)  
)  
)

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

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1 and

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

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

8 WHEREAS, USBPJ voluntarily elects to permanently waive any  
9 right to a hearing on this matter and judicial review of this  
10 Administrative Consent Order (the "Order") under ORS Chapter 59  
11 and Chapter 183.

12 NOW, THEREFORE, the Director of the Department of Consumer  
13 and Business Services (hereinafter the "Director"), as  
14 administrator of ORS Chapter 59, the Oregon Securities Law,  
15 hereby enters this Order:

16  
17 FINDINGS OF FACT

18 A. Background and Jurisdiction

19 1. USBPJ is a broker-dealer with its principal place of  
20 business in Minneapolis, Minnesota. The firm engages in a full-  
21 service securities business, including retail and institutional  
22 sales, investment banking services, trading, and research.

23 2. USBPJ is currently registered with the State of Oregon  
24 as a broker-dealer, and has been so registered since June 14,  
25 1972.

26 3. This action concerns the years 1999, 2000, and 2001

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1 (the "relevant period"). During that time, USBPJ engaged in  
2 both research and investment banking ("IB") activities.  
3 4. At various times during the relevant period, USBPJ  
4 placed undue emphasis on using its research analysts to maximize  
5 opportunities to obtain investment-banking revenues from  
6 companies in the technology, telecommunications, and  
7 biotechnology industry sectors. Such emphasis on obtaining  
8 investment-banking revenue created conflicts of interest for the  
9 research analysts that resulted in the issuance of research  
10 reports that violated the ORS Chapter 59. USBPJ failed  
11 adequately to monitor and supervise the conflicts of interest  
12 inherent in seeking investment-banking opportunities from  
13 companies covered by USBPJ research analysts. USBPJ's violative  
14 conduct, described herein, was caused by a flawed organizational  
15 structure, combined with inadequate supervision of the conflicts  
16 of interest.

17 5. USBPJ grouped its research analysts by industry sector  
18 and those analysts worked as a team with the firm's investment  
19 bankers, who focused on the same industry sector. The majority  
20 of research analysts' compensation was paid in the form of  
21 bonuses, which for some analysts was directly tied to revenues  
22 from investment banking transactions of companies in their  
23 industry sector. In other cases, the analyst's contribution to  
24 investment banking revenue, and investment banker input into  
25 analysts' evaluations played a significant part in determining  
26 the analysts' bonuses. In certain cases, investment bankers

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1 commented in reviews that research analysts needed to become  
2 lead analysts, a reference to using their professional opinions  
3 and reports to assist the firm in obtaining the top role in  
4 investment banking transactions. As a result of these  
5 influences, certain USBPJ research analysts indirectly were  
6 motivated to obtain, retain and increase investment-banking  
7 revenue.

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

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

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

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1 revenue from equity investment banking was approximately  
2 \$153,000,000. From 1999 through 2001, revenue from equity  
3 investment banking represented a significant portion of the  
4 firm's revenue, accounting for between 19 - 26 percent of the  
5 firm's total revenue.

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

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

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

20 (i). Move to the Left Strategy

21 13. In May 2000, USBPJ's ECM Operating Committee amended  
22 its procedures and strategies in a specific effort to gain lead  
23 manager status in more offerings. The Lead Manager is the firm  
24 typically listed on the left side of the offering prospectus.  
25 Thus, USBPJ implemented a plan referred to as the "Move to the  
26

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<sup>1</sup> U.S. Bancorp acquired USBPJ Inc., as a subsidiary in 1998.

1 Left Strategy." The ECM Operating Committee noted its strong  
2 commitment to a "multi-pronged strategy" to obtain lead-manager  
3 status on offerings. In instructions to ECM employees, the ECM  
4 Operating Committee stated that the firm "must begin to wage a  
5 war in earnest for lead-manager status." That plan instituted a  
6 "line in the sand" policy: The firm would not accept a  
7 syndicate position in any deal unless the firm was placed in the  
8 major bracket for the underwriting.

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

17 (ii). Lead Manager Protocol

18 15. In August 2000, the head of ECM's syndicate department  
19 prepared another specific effort to gain additional lead managed  
20 offerings. In setting out his new "Lead Manager Protocol" to  
21 all ECM employees, the head of the syndicate department stressed  
22 that the "formal protocol of responsibilities ... will allow all  
23 of us—Investment Banking, Research, Sales, Trading and Capital  
24 Markets—to share responsibility for the success of each and  
25 every lead-managed offering."  
26

16. The Lead Manager Protocol, issued in August 2000,



1 called for:

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

24 17. The Lead Manager Protocol described a primary function  
25 of a research analyst in communicating regarding the progress of  
26 the transaction once the firm had obtained a lead management

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1 role in an IPO when it stated: "Senior analyst will coordinate  
2 with Capital Markets to communicate a consistent message  
3 regarding the progress of the transaction, acting as a supporter  
4 of Capital Markets' message and not as an independent filter ...  
5 The goal of the [s]enior analyst is to reinforce reasonable and  
6 exceedable expectations."

7

8 (b). Research Analysts "Pitched" for Investment

9 Banking Deals and Advocated for the Issuer at Road Shows

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

19 19. The emphasis on securing investment banking business  
20 through pitches and then selling the securities through road  
21 shows gave rise to conflicts of interest for the research  
22 analysts. In some instances, the research analyst became a  
23 prime contact person for the company with respect to soliciting  
24 investment-banking business. For example, on May 10, 1999, a  
25 research analyst wrote to an officer of E-Machines, a potential  
26 investment-banking client: "This is my final appeal to be a

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1 part of the underwriting team. This is your deal and you  
2 control the strings. All we are looking for is ten percent of  
3 the economics to participate in the underwriting. This itself  
4 should be indicative of my sincere interest in your story ... In  
5 the final analysis, it is less important to have bulge bracket  
6 firm as a hood ornament than it is to have a quality analyst who  
7 will provide you with the support and coverage your company  
8 needs."

9

10 (c). Research Analysts' Participation in Pitch

11 Meetings Was Important in Obtaining Investment Banking Mandates

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

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22 21. One aspect of a research analyst's function was to  
23 play a key role in the process to "pitch" USBPJ to the  
24 prospective client. In certain instances, a research analyst's  
25 role at a pitch meeting with an issuer was to assist investment  
26 banking personnel in convincing the issuer that USBPJ should be

1 chosen as the lead managing underwriter for the offering. A  
2 research analyst's presence suggested that the Research  
3 Department would work hand-in-hand with the investment bankers  
4 to provide service and support for the issuer. Research  
5 analysts routinely appeared with investment bankers at pitch  
6 meetings designed to help sell USBPJ to the potential client and  
7 provided information relating to their research in pitchbooks  
8 given to prospective client companies.

9  
10 (d). In Certain Instances, Pitchbooks Provided to  
11 Potential Investment Banking Clients Contained Mock  
12 Research Reports Impliedly Promising Favorable Research

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

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1 research report if it selected USBPJ for the investment banking  
2 business. In some instances, USBPJ's mock research reports also  
3 included a favorable "mock" target price for the issuer's stock.  
4 23. For example, in August 2000, USBPJ made a pitch to be  
5 the lead underwriter for an offering by TheraSense, a medical  
6 technology issuer. In preparing for the pitch, a research  
7 analyst prepared a mock research report about the issuer and  
8 presented that mock report at the pitch meeting. The mock  
9 research report noted in several places a proposed rating of  
10 "Strong Buy." The mock report contained very positive news  
11 about the company, claiming that its initial sales of the  
12 product were "nothing short of breathtaking." In part, as a  
13 result of that pitch, the company awarded USBPJ the role of lead  
14 managing underwriter, which generated underwriting fees of  
15 \$3,785,512 for the firm when the offering went effective in  
16 October 2001. USBPJ initiated coverage of the issuer with a  
17 "Strong Buy" recommendation shortly after the offering went  
18 effective.

19 24. Finally, after USBPJ was awarded an investment-banking  
20 mandate, another key function for a research analyst was to  
21 provide meaningful support to the firm's institutional investor  
22 clients to ensure that an underwriting was successful.

23 Investment bankers, research analysts and company  
24 representatives generally traveled to the offices of  
25 institutional investor clients, to meet with them and describe  
26 the offering and determine their interest in purchasing the

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1 stock. At times, research analysts attended and provided  
2 significant assistance at these "road show" meetings.

3

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

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

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

26 27. Compensation for other research analysts was comprised

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

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

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

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

20  
21 (4). Investment Bankers Evaluated Research Analysts'  
22 Performance and Influenced Their Bonus Compensation

23 30. In 2000 and 2001, investment bankers who worked on  
24 investment banking business with research analysts participated  
25 in the annual performance evaluations of those research  
26 analysts. Specifically, in certain instances, investment

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1 bankers completed and provided to the Director of Research a  
2 "Banker Peer Review" on certain research analysts. Investment  
3 bankers evaluated research analysts using specific criteria,  
4 including:

- 5 • "proactively generates and shares valuable M&A/strategic  
6 ideas;"
- 7 • "prepares for pitches and contributes to preparation of  
8 pitchbook;"
- 9 • "effective in pitches; [and] takes the aftermarket  
10 commitment seriously."  
11

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

19 32. This review process indicated to research analysts  
20 that, in part, their role was to assist the investment bankers  
21 and the firm's investment banking clients.  
22

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

25 33. In certain cases, prior to the dissemination of  
26 research reports, USBPJ research analysts provided copies of

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1 their draft reports to an issuer's executives, and solicited  
2 comments and suggestions for such reports. Providing draft  
3 research reports to an issuer's executives could potentially  
4 compromise a research analysts' independence in that the  
5 investment banking clients may pressure the analyst to make  
6 inappropriate changes to the draft report.

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

20 35. In other instances, USBPJ investment bankers suggested  
21 to issuer clients that research reports initiating coverage  
22 would be subject to approval by the issuer. For example, on  
23 January 11, 2001, an investment banker wrote to numerous  
24 executives at Metromedia Fiber Network, Inc. ("Metromedia")  
25 thanking them for their meeting with a USBPJ senior research  
26 analyst. The banker wrote, "[The analyst] has decided to

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1 initiate coverage with a Strong Buy, our firm's highest  
2 recommendation...his research associate...will be calling you later  
3 today to request help in finalizing the report. *Nothing will be*  
4 *published without your prior approval.*" (Emphasis added). On  
5 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  
8 wrote to executives of Qwest thanking them for an in-person  
9 meeting. The banker wrote: "We expect to initiate research  
10 coverage within the next few weeks and will submit a draft of  
11 such report for your review and approval prior to publication."

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

15

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

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

21 investment-banking opportunities had on research personnel. For

22 example, on January 17, 2001, a USBPJ senior research analyst

23 wrote an e-mail to a junior analyst seeking input as to whether

24 he should maintain a "buy" rating on Natural Microsystems, Inc.

25 ("NMSS"). USBPJ had downgraded NMSS from "strong buy" in

26 December 2000 based on the company's announcement that it would

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1 likely miss its earnings projections for the year. Upon the  
2 company's announcement in January 2001 that it had, in fact, not  
3 met its projections for 2000, the senior analyst again evaluated  
4 the company's rating. In response to the senior analyst's  
5 request for input, the junior analyst responded that, in his  
6 opinion, the company should stay a "buy" "taking into  
7 consideration banking relationship," but that absent such  
8 considerations he would rate the stock a neutral.

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

22 40. Moreover, USBPJ rarely issued a sell rating. During  
23 most of the review period, USBPJ had a four point rating scale:  
24 strong buy, buy, neutral, and sell. More than 80 percent of the  
25  
26

---

<sup>2</sup> USBPJ widely distributed its research through public services such as Thompson Financial's First Call and on its website [www.gotoanalyst.com](http://www.gotoanalyst.com).



1 research reports issued contained either "buy" or "strong buy"  
2 recommendations, with less than 20 percent of the companies, on  
3 average, rated as a "neutral." Throughout the review period,  
4 USBPJ gave less than one percent of companies a "sell"  
5 recommendation. In certain cases, the firm would discontinue  
6 coverage, usually without explanation, rather than drop a  
7 company to a sell rating. In those cases, therefore, USBPJ had  
8 only a three point rating system.

9  
10 C. USBPJ Issued Research on Two Companies That Lacked a  
11 Reasonable Basis Or Was Imbalanced

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

15  
16 (1). Esperion Therapeutics, Inc.

17 42. In August 2000, USBPJ served as co-manager for the IPO  
18 of Esperion Therapeutics, Inc. ("Esperion") and consequently  
19 initiated research coverage of Esperion on September 5, 2000  
20 with a "buy" rating. On January 9, 2002, a USBPJ senior  
21 research analyst stated in an e-mail to a senior investment  
22 banker: "ESPR delayed a pipeline product and completely dropped  
23 development of a second pipeline product, giving a reason that  
24 was nothing short of hokey. So it was bad news all  
25 around...Esperion has not met a single milestone that they have  
26

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1 laid out since they went public. Everything has slipped.  
2 [Esperion's CEO] is a good scientist, an awful CEO."

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

7

8 (2). Triton Network Systems

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

16 45. On March 30, 2001, the analyst issued a "blast" e-mail  
17 to institutional clients with cautionary statements about Triton  
18 due to the likely loss of a key customer, Advanced Radio  
19 Telecom, which was considering a Chapter 11 bankruptcy filing.  
20 Other than the "blast" e-mail, USBPJ did not issue a new  
21 research report directly on that information at that time.

22 Notwithstanding this negative news, USBPJ maintained a "buy"  
23 rating. Another month passed before USBPJ disclosed in a  
24 broadly disseminated research report Triton's problems with this  
25 customer while downgrading Triton to a neutral on May 1, 2001.  
26 After two more months, when Triton was trading below \$1, the

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1 research analyst told the head of USBPJ's equity research  
2 department, that since the company was in bankruptcy  
3 proceedings, "we can drop now if banking says ok." USBPJ  
4 discontinued coverage of Triton with a last published rating of  
5 neutral.

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

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

17  
18 E. USBPJ Failed to Disclose That it Received Payments From  
19 Proceeds of Certain Underwritings, In Part, To Publish  
20 Research Regarding The Issuer

21 47. From 1999 through 2001, USBPJ received payments out of  
22 the proceeds of certain underwritings to compensate the firm for  
23 services that included publishing research on the issuer. These  
24 payments were made in the form of "research guarantees" or  
25 "research checks." During this period, USBPJ accepted more than  
26 \$1.8 million in exchange for, among other services, issuing

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1 research reports. Despite having an obligation to do so, the  
2 firm failed to disclose in research reports or elsewhere that it  
3 received the payments, in part, as compensation for issuing the  
4 reports. For example:

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

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

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

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21

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

25 51. From 1999 through 2001, at the direction of certain  
26 issuer clients, USBPJ paid portions of certain underwriting

1 proceeds to other brokerage firms to initiate or continue  
2 research coverage on issuers for which Piper served as lead or  
3 co-manager. It knew that these payments were, in part, for  
4 research. USBPJ did not take steps to ensure that the brokerage  
5 firms paid to initiate or continue coverage of its investment  
6 banking clients disclosed that they had been paid to issue such  
7 research. Further, USBPJ did not disclose or cause to be  
8 disclosed the fact of such payments.

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

21 53. In April 2000, USBPJ, acting as lead manager for an  
22 offering for Buca, Inc. directed the payment of an aggregate of  
23 \$105,000 to three brokerage firms for the issuance of research.  
24 In February 2001, while assisting in another investment banking  
25 transaction for Buca, Inc., USBPJ distributed \$225,000 to other  
26 firms for their research coverage. USBPJ did not ensure that

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1 these payments were disclosed to the public.

2

3 G. USBPJ Failed to Adequately Supervise Its Research

4 Analysts and Investment Banking Professionals

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

11

12

CONCLUSIONS OF LAW

13 1. The Director has jurisdiction over this matter  
14 pursuant to the ORS Chapter 59.

15 2. The Director finds that Respondent USBPJ engaged in  
16 acts and practices that created and/or maintained inappropriate  
17 influence by investment banking over research analysts and  
18 therefore imposed conflicts of interest on research analysts.  
19 USBPJ failed to manage these conflicts in an adequate and  
20 appropriate manner, thereby violating ORS 59.205(13) and ORS  
21 59.205(2) as it relates to dishonest and unethical practices.

22 3. The Director finds that Respondent USBPJ has committed  
23 dishonest and unethical practices as described in the Findings  
24 of Fact above, by issuing research that contained opinions for  
25 which there was no reasonable basis and/or exaggerated or  
26 unwarranted claims, thereby violating ORS 59.205(13) and ORS

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1 59.205(2) as it relates to dishonest and unethical practices.

2 4. The Director finds that Respondent USBPJ  
3 inappropriately threatened executives of a potential investment-  
4 banking client by stating that they would drop research coverage  
5 of the company if the firm was not selected as the lead manager  
6 in an investment banking transaction, thereby violating ORS  
7 59.205(13) and ORS 59.205(2) as it relates to dishonest and  
8 unethical practices.

9 5. The Director finds that Respondent USBPJ received  
10 compensation directly or indirectly, from an issuer, underwriter  
11 or dealer, in part, for issuing research reports, without fully  
12 disclosing the receipt or the amount of the compensation,  
13 thereby violating ORS 59.205(13) and ORS 59.205(2) as it relates  
14 to dishonest and unethical practices.

15 6. The Director finds that Respondent USBPJ, as described  
16 in the Findings of Fact above, made payments for research to  
17 other broker-dealers not involved in an underwriting  
18 transaction, when the firm knew that these payments were made,  
19 at least in part, for research coverage, and failed to disclose  
20 or cause to be disclosed in offering documents or elsewhere the  
21 fact of such payments, thereby violating ORS 59.205(13) and  
22 59.205(2) as it relates to dishonest and unethical practices.

23 7. The Director finds that Respondent USBPJ failed to  
24 establish and enforce written supervisory procedures reasonably  
25 designed to ensure that analysts were not unduly influenced by  
26 investment banking concerns. Despite knowledge of research

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1 analysts' complex responsibilities and conflicts of interest,  
2 Respondent USBPJ failed to implement a system to detect and  
3 insulate its research analysts from improper influence and  
4 pressure by investment banking personnel. To the contrary,  
5 Respondent USBPJ's business practices motivated research  
6 analysts to issue research that would attract and retain  
7 investment-banking business. By engaging in the aforementioned  
8 activities, USBPJ violated ORS 59.205(13) and ORS 59.205(2) as it  
9 relates to dishonest and unethical practices.

10 8. The Director finds the following relief appropriate  
11 and in the public interest.

12

13

#### ORDER

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

19 **IT IS HEREBY ORDERED:**

20 1. This Order concludes the investigation by the Director  
21 and any other action that the Director could commence under the  
22 ORS Chapter 59 on behalf of the State of Oregon as it relates to  
23 Respondent USBPJ, relating to certain research or banking  
24 practices at Respondent USBPJ.

25 2. Respondent USBPJ will CEASE AND DESIST from violating  
26 ORS Chapter 59 in connection with the research practices

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1 referenced in this order and will comply with ORS Chapter 59 in  
2 connection with the research practices referenced in this Order  
3 and will comply with the undertakings of Addendum A, incorporated  
4 herein by reference.

5 //

6 3. IT IS FURTHER ORDERED that:

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

11 a) \$12,500,000 to the states (50 states, plus the District  
12 of Columbia and Puerto Rico) (Respondent USBPJ's offer  
13 to the state securities regulators hereinafter shall be  
14 called the "state settlement offer"). Upon execution of  
15 this Order, Respondent USBPJ shall pay the sum of  
16 \$131,811 of this amount to the Oregon Department of  
17 Consumer and Business Services as a civil monetary  
18 penalty pursuant to ORS 59.995, to be deposited in the  
19 General Fund. The total amount to be paid by Respondent  
20 USBPJ to state securities regulators pursuant to the  
21 state settlement offer may be reduced due to the  
22 decision of any state securities regulator not to accept  
23 the state settlement offer. In the event another state  
24 securities regulator determines not to accept Respondent  
25 USBPJ's state settlement offer, the total amount of the  
26

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1 Oregon payment shall not be affected, and shall remain  
2 at \$131,811;

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

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

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

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1 to the SEC Final Judgment may be reimbursed or indemnified  
2 (whether pursuant to an insurance policy or otherwise) under  
3 applicable law or may be the basis for any tax deduction or tax  
4 credit with regard to any state, federal or local tax.

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

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

20 6. The SEC Final Judgment, the NYSE Stipulation and  
21 Consent, the NASD Letter of Acceptance, Waiver and Consent, this  
22 Order and the order of any other State in related proceedings  
23 against Respondent USBPJ (collectively, the "Orders") shall not  
24 disqualify any Covered Person from any business that they  
25 otherwise are qualified, licensed or permitted to perform under  
26 the applicable law of the State of Oregon and any

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1 disqualifications from relying upon this state's registration  
2 exemptions or safe harbor provisions that arise from the Orders  
3 are hereby waived.

4 7. For any person or entity not a party to this Order,  
5 this Order does not limit or create any private rights or  
6 remedies against Respondent USBPJ including, without limitation,  
7 the use of any e-mails or other documents of Respondent USBPJ or  
8 of others regarding research practices, limit or create  
9 liability of Respondent USBPJ or limit or create defenses of  
10 Respondent USBPJ to any claims.

11 8. Nothing herein shall preclude the State of Oregon, its  
12 departments, agencies, boards, commissions, authorities,  
13 political subdivisions and corporations, other than the Director  
14 and only to the extent set forth in paragraph 1 above,  
15 (collectively, "State Entities") and the officers, agents or  
16 employees of State Entities from asserting any claims, causes of  
17 action, or applications for compensatory, nominal and/or  
18 punitive damages, administrative, civil, criminal, or injunctive  
19 relief against Respondent USBPJ in connection with certain  
20 research and/or banking practices at Respondent USBPJ.

21 9. This Order and any dispute related thereto shall be  
22 construed and enforced in accordance with, and governed by, the  
23 laws of the State of Oregon without regard to any choice of law  
24 principles.

25 10. Respondent USBPJ agrees not to take any action or to  
26 make or permit to be made any public statement denying, directly

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1 or indirectly, any finding in this Order or creating the  
2 impression that this Order is without factual basis. Nothing in  
3 this Paragraph affects Respondent USBPJ's: (i) testimonial  
4 obligations, or (ii) right to take legal or factual positions in  
5 defense of litigation or in defense of other legal proceedings  
6 in which the Director is not a party.

7 11. Respondent USBPJ, through its execution of this Consent  
8 Order, voluntarily waives their right to a hearing on this matter  
9 and to judicial review of this Consent Order under ORS Chapters  
10 59 and 183.

11 12. Respondent USBPJ enters into this Consent Order  
12 voluntarily and represents that no threats, offers, promises, or  
13 inducements of any kind have been made by the Director or any  
14 member, officer, employee, agent, or representative of the  
15 Director to induce Respondent USBPJ to enter into this Consent  
16 Order.

17 13. The parties represent, warrant and agree that they  
18 have received independent legal advice from their attorneys with  
19 respect to the advisability of executing this Consent Order.

20 14. This Consent Order shall become final upon entry.

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21  
22  
23 Dated this 29th day of SEPTEMBER, 2003.

24 BY ORDER OF CORY STREISINGER

25   
26 \_\_\_\_\_  
DIRECTOR, DEPARTMENT OF CONSUMER AND  
BUSINESS SERVICES

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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 Director, 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 Director 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 17<sup>th</sup> day of September, 2003.

US Bancorp Piper Jaffray Inc.  
By: [Signature]  
Title: Managing Director + Secretary

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SUBSCRIBED AND SWORN TO before me this 17<sup>th</sup> day of September 2003.

STACEY L. KLINE  
NOTARY PUBLIC - MINNESOTA  
MY COMMISSION EXPIRES 1-31-2007

[Signature]  
Notary Public

My Commission expires: 1-31-07