

WHEREAS, USBPJ voluntarily elects to permanently waive any right to a hearing on this matter and judicial review of this Consent Order (the “Order”) under the Alabama Securities Act (“ACT”);

NOW, THEREFORE, the Alabama Securities Commission, as administrator of Title 8 Chapter 6, Code of Alabama 1975, hereby enters this Order:

RESPONDENT

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

2. USBPJ is currently registered with the Alabama Securities Commission as a broker-dealer, and has been so registered since October 24, 1981.

I. FINDINGS OF FACT

A. Background and Jurisdiction

3. At various times during the relevant period, USBPJ placed undue emphasis on using its research analysts to maximize opportunities to obtain investment-banking revenues from companies in the technology, telecommunications, and biotechnology industry sectors. Such emphasis on obtaining investment-banking revenue created conflicts of interest for the research analysts that resulted in the issuance of research reports that violated Title 8, Chapter 6, Code of Alabama 1975. USBPJ failed adequately to monitor and supervise the conflicts of interest inherent in seeking investment-banking opportunities from companies covered by USBPJ research analysts. USBPJ's violative conduct, described herein, was caused by a flawed organizational structure, combined with inadequate supervision of the conflicts of interest.

4. USBPJ grouped its research analysts by industry sector and those analysts worked as a team with the firm's investment bankers, who focused on the same industry sector. The majority of research analysts' compensation was paid in the form of bonuses, which for some analysts was directly tied to revenues from investment banking transactions of companies in their

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

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

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

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

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

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

8. USBPJ was founded in 1895.¹ The firm is headquartered in Minneapolis, Minnesota, and has approximately 3,100 employees, including approximately 875 financial advisers, more than 80 investment bankers, and approximately 70 research analysts. USBPJ has operations in 124 offices in 25 states throughout the country.

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

10. In 1998, USBPJ generated equity investment banking revenue of approximately \$79,500,000. That increased by 100 percent to approximately \$159,000,000 in 1999. In 2000, revenue from equity investment banking grew to approximately \$269,200,000, a 69 percent increase over 1999. In 2001, USBPJ's revenue from equity investment banking was approximately \$153,000,000. From 1999 through 2001, revenue from equity investment banking represented a significant portion of the firm's revenue, accounting for between 19 – 26 percent of the firm's total revenue.

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

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

11. During the relevant period, many companies, particularly those in the technology area, issued stock through public offerings, and there was intense competition among investment

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

banking firms to obtain this business. In order to maximize its chances to participate in these offerings, USBPJ made a concerted effort to include its research analysts in its solicitation of this business. This effort included developing and implementing specific marketing plans, which provided for research analyst involvement in the investment banking process.

(i) Move to the Left Strategy

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

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

(ii) Lead Manager Protocol

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

Markets—to share responsibility for the success of each and every lead-managed offering.”

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

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

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

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

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

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

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

18. Before USBPJ made its “pitches” to an issuer for investment banking business, the investment banker, teamed with a research analyst for the appropriate sector, would make a presentation to USBPJ’s Pre-Commitment Committee. This presentation included a recommendation and analysis detailing why the firm should pursue an investment banking relationship with the issuer. After USBPJ determined to compete for a company’s investment

banking business, particularly in the case of an initial public offering (“IPO”), the research analyst’s role was influential in obtaining that business.

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

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

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

21. For example, in August 2000, USBPJ made a pitch to be the lead underwriter for an

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

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

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

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

24. Specifically, USBPJ paid certain analysts a percentage of investment banking revenue and institutional commissions generated by companies in their industry sector. The firm

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

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

26. In determining the amount of discretionary bonuses, supervisors in the research department considered, among other things, a research analyst's contributions to the firm's success in obtaining investment-banking revenues. Performance evaluations of the research analysts demonstrate this consideration. Research analysts received periodic reports detailing the year-to-date revenues generated by their covered companies. At times, senior investment bankers provided these reports to the research analysts, as well as to investment banking employees, and listed the projected investment banking revenue goals for the covered companies. One supervisor noted in a performance evaluation that a certain analyst should work on becoming a "lead managing analyst." That expression was a reference to the lead managing underwriter position that USBPJ sought in

offerings because it resulted in the greatest amount of control and revenue. Thus, the supervisor's expression acknowledged the role that an analyst could play at USBPJ in obtaining investment-banking business. For example, one senior analyst received a salary of \$160,000 and a bonus of over \$3.8 million. In another example, an analyst received a salary of \$130,000 and a bonus of over \$3 million. In both of these instances, the bonus determination included consideration of investment banking and trading revenues for companies in the industry sector covered by the analyst.

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

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

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

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

29. Thus, investment bankers provided significant input in the performance evaluation of research analysts which, in turn, influenced the bonus compensation of those research analysts. For example, an investment banker noted in his banker peer review that a particular analyst: "needs to be proactive in pursuing fee-generating companies for his coverage list. He is very

focused on big cap names that do not pay.”

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

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

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

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

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

added). On January 26, 2001, USBPJ initiated coverage of Metromedia with a “strong buy” and a \$27 price target.

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

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

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

36. In view of the interaction between research analysts and investment banking described above, USBPJ lacked adequate systems or procedures to supervise the influence that investment-banking opportunities had on research personnel. For example, on January 17, 2001, a USBPJ senior research analyst wrote an e-mail to a junior analyst seeking input as to whether he should maintain a “buy” rating on Natural Microsystems, Inc. (“NMSS”). USBPJ had downgraded NMSS from “strong buy” in December 2000 based on the company’s announcement that it would likely miss its earnings projections for the year. Upon the company’s announcement in January 2001 that it had, in fact, not met its projections for 2000, the senior analyst again evaluated the company’s rating. In response to the senior analyst’s request for input, the junior analyst responded that, in his opinion, the company should stay a “buy” “taking into consideration banking relationship,” but that absent such considerations he would rate the stock a neutral.

37. On January 18, 2001, USBPJ issued a research report that maintained the previously lowered “buy” rating.² The report included a lower price target than that published previously, cautionary statements about NMSS’s short-term prospects and a predicted “struggle” for the

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

company's shares during the first half of 2001. In the same research report, USBPJ lowered its revenue estimates by almost one half and reduced the earnings per share to show a loss in fiscal year 2001. At that time, USBPJ defined a "buy" rating as: "Expect positive price appreciation over next 12 months; Solid long term company fundamentals; attractive long-term valuation, though shares may be extended based on near-term parameters." USBPJ subsequently lowered its rating to "neutral" on April 12, 2001.

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

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

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

(1) Esperion Therapeutics, Inc.

40. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc. ("Esperion") and consequently initiated research coverage of Esperion on September 5, 2000 with a "buy" rating. On January 9, 2002, a USBPJ senior research analyst stated in an e-mail to a senior investment banker: "ESPR delayed a pipeline product and completely dropped development of a second pipeline product, giving a reason that was nothing short of hokey. So it was bad news

all around....Esperion has not met a single milestone that they have laid out since they went public. Everything has slipped. [Esperion's CEO] is a good scientist, an awful CEO."

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

(2) Triton Network Systems

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

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

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

44. In September 1999, USBPJ attempted to compel Emisphere Technologies, Inc. to

select it for investment banking business by informing company executives that it would drop research coverage of the company if it were not selected as the lead manager for an offering of Emisphere's securities. USBPJ's threatening conduct undermined competition for investment banking services.

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

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

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

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

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

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

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

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

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

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

52. During the relevant period, USBPJ's management failed adequately to monitor the

activities of the firm's research and investment banking professionals to ensure compliance with state securities laws and regulations. Among other things, this failure to supervise gave rise to and perpetuated the above-described violative conduct.

II. CONCLUSIONS OF LAW

53. The Alabama Securities Commission has jurisdiction over this matter pursuant to the Alabama Securities Act.

54. Respondent, during the relevant period, engaged in acts or practices that created and/or maintained inappropriate influence by investment banking over Research Analysts, imposed conflicts of interest on Research Analysts and failed to manage these conflicts in an adequate and appropriate manner, in violation of just and equitable principal of trade, violating 8-6-3(j)(7) Code of Alabama 1975. The NASD and NYSE have both established rules governing ethical practices and conduct.

The standards established by the NASD and the NYSE are recognized by the Alabama Securities Commission as minimum standards of ethical conduct for the purposes of § 8-6-3(j)(7), relating generally to dishonest or unethical practices in the securities business. During the relevant period, USBPJ engaged in acts and practices violative of:

- a) NASD Conduct Rule 2110 requiring members to observe high standards of commercial honor and just and equitable principles of trade;
- b) NYSE Rule 401 requiring that broker dealers shall at all times adhere to the principles of good business practice and the conduct of his or its business affairs;
- c) NYSE Rule 476(a)6 prohibiting the engagement in practices of conduct inconsistent with just and equitable principles of trade;

55. Respondent committed dishonest and unethical practices under 8-6-3(j)(7), as described in the Findings of Fact above, by issuing research reports, including those for Esperion Therapeutics, Inc., and Triton Network Systems, that contained opinions for which there was no reasonable basis and/or exaggerated or unwarranted claims.

56. Respondent inappropriately threatened executives of a potential investment-banking client by stating that they would drop research coverage of the company if the firm was not selected as the lead manager in an investment banking transaction violating 8-6-3(j)(7) Code of Alabama 1975.

57. Respondent violated 8-6-3(j)(7), by receiving compensation directly or indirectly, from an issuer, underwriter or dealer, in part, for issuing research reports, including reports for JDS Uniphase Corp. and Comverse Technology, Inc. without fully disclosing the receipt or the amount of the compensation.

58. Respondent as described in the Findings of Fact above, made payments for research to other broker-dealers not involved in an underwriting transaction, when the firm knew that these payments were made, at least in part, for research coverage, and failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments, 8-6-3(j)(7).

59. Respondent failed to establish and enforce written supervisory procedures reasonably designed to ensure that analysts were not unduly influenced by investment banking concerns. Despite knowledge of research analysts' complex responsibilities and conflicts of interest, Respondent failed to implement a system to detect and insulate its research analysts from improper influence and pressure by investment banking personnel. To the contrary, Respondent business practices motivated research analysts to issue research that would attract and retain investment-banking business, 830-x-3-.13 (1) & (3).

60. The Alabama Securities Commission finds the following relief appropriate and in the public interest.

III. ORDER

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

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Alabama Securities Commission and any other action that the Alabama Securities Commission could commence under the Alabama Securities Act on behalf of Alabama as it relates to Respondent USBPJ, relating to certain research or banking practices at Respondent USBPJ.

2. Respondent USBPJ will CEASE AND DESIST from violating 8-6-3(j)(7) and 830-x-3-.13 (1) & (3) in connection with the research practices referenced in this Order and will comply with the 8-6-3(j)(7) and 830-x-3-.13(1) & (3), in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.

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

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

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

applicable law of Alabama and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

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

7. Nothing herein shall preclude Alabama, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Alabama Securities Commission and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent USBPJ in connection with certain research and/or banking practices at Respondent USBPJ.

IT IS FURTHER ORDERED that:

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

- a) \$12,500,000 to the states (50 states, plus the District of Columbia and Puerto Rico)
(Respondent USBPJ's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, Respondent USBPJ shall pay the sum of \$171,327 as follows:

- 1) That in accordance with Section 8-6-19(j)(1), Code of Alabama 1975 USBPJ shall pay to the State of Alabama an administrative penalty in the total sum of \$150,000 said funds to be tendered in certified funds contemporaneously with the entry of this Order;

2) That in accordance with Section 8-6-19(k)(1), Code of Alabama 1975, USBPJ shall pay to the Alabama Securities Commission, as partial reimbursement for the Commission's cost for investigating this matter, the sum of \$1,327 said funds to be tendered in certified funds contemporaneously with the entry of this Order;

3) USBPJ shall pay the sum of \$10,000 payable to the Office of the Attorney General, State of Alabama for reimbursement of its cost in this investigation and past and future investigations and for the use of that office as it sees fit in its efforts to continue to safeguard the citizens of the State of Alabama;

4) USBPJ shall pay the sum of \$10,000 to the Investor Protection Trust, a non-profit corporation and such funds are designated specifically for investor education and investor protection in the State of Alabama as directed by the Alabama Securities Commission in its sole discretion. The total amount to be paid by Respondent USBPJ to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Respondent USBPJ's state settlement offer, the total amount of the Alabama payment shall not be affected, and shall remain at \$171,327;

- b) \$12,500,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;
- c) \$7,500,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

Respondent USBPJ agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Respondent USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent USBPJ further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Respondent USBPJ shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Respondent USBPJ understands and acknowledges that these provisions are

not intended to imply that the Alabama Securities Commission would agree that any other amounts Respondent USBPJ shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.


Respondent USBPJ agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this Paragraph affects Respondent USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Alabama Securities Commission is not a party.

Respondent USBPJ enters into this Consent Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Alabama Securities Commission or any member, officer, employee, agent, or representative of the Alabama Securities Commission to induce Respondent USBPJ to enter into this Consent Order

Dated this 23rd day of September 2003.

Alabama Securities Commission

By 
Joseph P. Borg

Approved By: 
Bill Pyror, Attorney General

**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 Alabama Securities Commission, 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 Alabama Securities Commission as settlement of the issues contained in this Order.

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

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

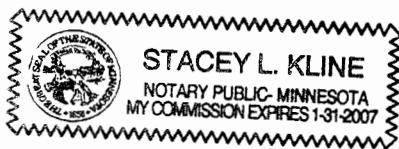
Dated this 17th day of September, 2003.

US Bancorp Piper Jaffray Inc.

By: [Signature]

Title: Managing Director + Secretary

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



[Signature]
Notary Public

My Commission expires:

1-31-07